



# International Service for Human Rights

## The Reports in Short

ISHR's summaries of documents for the UN Commission on Human Rights  
62nd Session and Human Rights Council 2<sup>nd</sup> Session

### Working Group on mercenaries<sup>1</sup>

Mandate Holder

Ms. Amada Benavides de Pérez (Chairperson-Rapporteur)

Mandate<sup>2</sup>

Mercenaries have been used to fight against national liberation movements, prevent the exercise of the right to self-determination of peoples, and to destabilise newly independent Governments. Recent developments include their diversification into criminal activities, and the provision of a variety of security services by private security and military assistance companies. The Working Group, created in 2005, replaces the mandate of the Special Rapporteur on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination, and is made up of five independent experts. The mandate of the Working Group is to investigate possible new standards, general guidelines or basic principles, and to strengthen the international legal framework for the prevention and sanction of the recruitment, use, financing and training of mercenaries; to monitor mercenary-related activities; to study and identify emerging issues, manifestations and trends regarding mercenary-related activities and their impact on human rights, especially the activities of private companies offering military assistance, consultancy and security services on the international market. The working Group is asked to carry out its mandate with special attention to the issue of the right of peoples to self-determination.

Activities

- First session of the Working Group from 10 to 14 October 2005;
- The Working Group met with representatives of the Office of the High Commissioner for Human Rights (OHCHR), and consulted with States, inter-governmental, and non-governmental organisations (NGOs).

Annual Report<sup>3</sup>

#### **Scope**

To report on the Working Group's first session held from 10 to 14 October 2005. The report summarises the Working Group's activities, reviews its methods of work and its substantive areas of work.

#### **Summary and key conclusions**

##### **Methods of work:**

- The Working Group's second session will be held in January/February 2006;
- The meetings will be held in Geneva and will be private, with appropriate consultation with all relevant actors;
- The chairpersonship will be for one year and will rotate on a regional basis; field missions will be undertaken;

---

<sup>1</sup> Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.

<sup>2</sup> The full title of the Working Group is the 'Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination'.

<sup>3</sup> *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, E/CN.4/2006/11, 23 December 2005.

- No decision was taken on the frequency of meetings, or the possible establishment of a complaints mechanism.

#### **Substantial areas of work:**

- There was consultation with relevant actors and discussion on the possibility of creating a global network of academics;
- Discussion on a possible comparative study of national legislation;
- Possibility of convening of a round table on the State as the primary holder of the monopoly of the use of force;
- The Working Group decided that its initial substantive focus would be on the **role of the State as the primary holder of the monopoly of the use of force**, and agreements between Governments which led to immunity, for private military and security companies and their employees, from accountability for human rights violations.

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination on the resumed first session (10 to 14 October 2005 and 13 to 17 February 2006)<sup>4</sup>

#### **Scope**

The report presents the results of a meeting, held from 13 to 17 February 2006, which completed the Working Group's first session, held from 10 to 14 October 2005.

#### **Summary and key conclusions**

The Working Group adopted a document outlining its methods of work. Key features include the incorporation of opinions in the Working Group's reports to the Commission and the General Assembly; the elaboration of concrete proposals and advisory opinions on possible new standards, general guidelines or basic principles; studies on emerging issues; and the use of "urgent action" procedures.

During its February 2006 meeting, the Working Group discussed various aspects of national, regional and international legislation, mainly by examining the responses from States to its questionnaire, listening to a presentation of the CIS Model Law "On counteracting mercenaries"<sup>5</sup>, and discussing the status of the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*, in particular with regard to the relevance of its definition of mercenaries to modern contexts. Members also discussed the possibility of compiling and analysing all relevant legislation on mercenaries and mercenary-related activity and disseminating such a collection of documents.

The Working Group also reviewed a number of country situations:

- **Equatorial Guinea** where alleged mercenaries convicted in 2004 in for attempting to overthrow the Government were reported to have been ill-treated and denied food and medical care since their arrest.
- **Honduras** where it was reported that alleged Chilean mercenaries were active in September 2005.
- **Papua New Guinea** where it was reported that alleged Fijian mercenaries were active.
- **Panama** where the Government of Cuba drew attention to alleged mercenaries of Cuban origin being arrested, tried and convicted and subsequently pardoned and freed. Cuba also made reference to abuses and torture in the Abu Ghraib prison in **Iraq** and and the **Guantánamo naval base** in Cuba, allegedly perpetrated by "military contractors". Cuba also drew attention to the detention in March 2004 in **Zimbabwe** of 64 alleged mercenaries and 15 other persons detained in **Equatorial Guinea**.

Other issues included the reported use by some UN departments, funds, programs and organisations in the system, as well as NGOs of the services of private military and security companies and the range of human rights reportedly violated in the course of the operations of private military and security companies recruiting employees in developing regions, especially the right to security of persons, the rights of workers, and respect for national sovereignty.

The Working Group decided to establish a network of academics to further support the gathering of information on and study of different regional experiences and to compile and undertake a comparative analysis of relevant national, regional and international legislation on mercenaries and mercenary-related activity.

<sup>4</sup> E/CN.4/2006/11/Add.1, 3 March 2006.

<sup>5</sup> More information can be found on p.8.

## **Key recommendations**

- The normative provisions of the draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights should be applied to private military and security companies operating and providing military and security services in more than one country.
- Member States who have not yet done so should ratify the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* and incorporate it and regional legislation into national legislation.
- States should consider the convening of a high-level round table under the auspices of the UN to undertake a discussion on the question of the role of the State as primary holder of the monopoly on the use of force.
- The Working Group should be given equal footing with other Working Groups of the Commission by allowing it three sessions per year and allocating appropriate funds in this regard.
- Governments of States from which private companies export military assistance, consultancy and security services as well as importing Governments should adopt relevant legislation and set up regulatory mechanisms, including registration and licensing mechanisms, to control and monitor their activities.