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Mr. Chair, distinguished delegates, representatives of the United Nations , Intergovernmental and Non-Governmental Organizations,it is an honor, in my quality of Chairperson of the Working Group on the Use of Mercenaries, to present our second report to the Third Committee of the General Assembly.

The Working Group is almost completing its second year since it was established by the Human Rights Commission in 2005. At the time, the Commission thought it was important to reinforce the sole mandate on the subject of mercenaries and their related activities by transforming it into a Working Group composed of five members and giving it therefore a global geopolitical dimension, in addition of integrating a gender balance.

One of the most immediate effects of this decision has been the more intense promotion of the ratification of the International Convention against the recruitment, use and financing of mercenaries of 1989 which, with the recent adhesion of Cuba and Peru, has already 30 State parties. In contrast with the main instruments of human rights, the Convention has not established a treaty body. The Working Group, as the only existing mechanism in the United Nations in charge of subjects related to mercenarism, attempts within its possibilities to cover that loophole by monitoring, follow-up and promoting universal adhesion to the Convention. In addition, the Committee on the Rights of the Child has recently introduced an innovative reference, in the reporting guidelines for States parties to the Optional Protocol to the convention, concerning the criminal liability of legal persons such as private military and security companies for acts and activities enumerated in the Protocol.

In addition, with regard to the elaboration of concrete proposals on possible new standards, general guidelines or basic principles aiming at the strengthening of the international legal framework to fight the new modalities of mercenarism, I am pleased to inform you that the Working Group will hold a Regional Consultation with Latin American and Caribbean countries in Panama City, on 17-18 December, to discuss the impact on human rights of the activities of private military and security companies. This meeting is organized by the Office of the High Commissioner for Human Rights within the context of regional consultations requested by the Working Group to the General Assembly in order to discuss the role of the State as holder of the monopoly on the use of force and to arrive to a common understanding as to which additional regulations and controls are needed at the international level.

Within the program of consultative services of the Office of the High Commissioner for Human Rights, the elaboration of a model law of the Convention aiming at facilitating the adhesion of States that wish to ratify the Convention, and facilitating therefore the steps to adapt the international norms to the internal legislation, could also be promoted.

In this respect, in order to fulfill its mandate, specifically in relation to the monitoring and the study of the effect of military and security companies activities on the enjoyment of human rights, the Group has elaborated and integrated in its methods of work a system of individual communications which enables it to receive and to study

allegations of possible human rights violations. In the course of these two years, as a result of received allegations, communications have been sent to the governments of Australia, Brazil, Chile, Colombia, Ecuador, the United States of America, Honduras, Iraq and Peru. The most recent communications are related to the killings allegedly perpetrated by private military security companies respectively in September and October of this year in Baghdad.

Furthermore, I would like to indicate other positive results of the Working Group. The mandate benefits from the knowledge, wisdom and experiences that each of the five independent experts has, since they belong to different legal and political systems. The added value of having five instead of one expert is creating awareness in each of the five geopolitical regions to which we belong. In fact, each of us, within his/her possibilities and the available time, promotes in his/her region the different dimensions of the mandate through conferences, meetings, seminars and consultations, the creation of academic networks and contacts with civil society and the mass media. In this respect, the Working Group and the questions it addresses in the fulfillment of its mandate have received great attention and have had great dissemination in international and local mass media, in particular the written and electronic press, radio and television.

The individual and collective work of the Working Group members, is having an impact not only on the international public opinion but also in official documents like the one elaborated by the Congressional Research Service of the Congress of the United States of America that devotes a special section to our activities.

Mr Chair, the specificity and the dimensions of the mandate that has been granted to us touch many characteristics of the new "human security" concept such as the right of human beings and peoples to live in a private and public environment which is safe and healthy, and to receive protection against illegitimate acts of violence, with independence of their state or non-state of origin as well as to have the instruments, means and material resources which make it possible to enjoy life with dignity.

Our mandate, in contrast with other special procedures which have a perspective focused on the victims of human rights violations, takes into account both individuals who are victims of human rights as well as individuals violating human rights, complementing thus other mandates that take care of the right to life and the security of the person, economic and social rights; indigenous peoples rights; right to health, labor rights, right to freedom of expression or the right of the peoples to self-determination.

The Working Group's approach is dual: on the one hand we examine the possible human rights violations that mercenaries or people recruited by private security companies in situations of violence, low intensity armed conflicts or post-conflicts could have committed; and on the other hand we examine the abuses and possible violations that those private security companies may commit in their search for profit to the contracted private guards, who are often in situations of vulnerability , and to those people whose fundamental rights are violated.

Regarding the first two aspects, the Working Group has received information from different sources which indicates that very often the guards of these private security

companies, operating in situations of violence and armed conflict like in Iraq, act indiscriminately shooting and killing or hurting civilians who they consider as a threat. The killings of 16 September 2007 is one among many incidents that happened in Iraq in the course of the four years since these private security companies have started to operate in that country.

The new modalities of mercenarism point at an emergent and very flourishing industry of military and private security companies that respond to a commercial logic in search of the greater profit. Traditional" mercenaries are being absorbed by the private security companies.

We have raised these issues with governments' representatives, highlighting the fact that it is the State that has the duty to respect human rights, public security,the rule of law and public order. If they do it directly or through private security companies, the States' responsibility remains intact towards the victims and international law. By virtue of national sovereignty and in accordance with international law, collective security of the Charter of the United Nations and the constitutional law of each State, security, order and national defense are competence of the military and police machinery.

Furthermore, we have alerted the authorities of the countries from which these individuals are recruited to operate as security guards in armed conflict zones about the danger of committing at any time war crimes. Consequently, in one of the recommendations of our report to the General Assembly, we encourage the States in which private security companies recruit former military and ex- police and send them to armed conflict areas, to adhere to the Convention if they have not done so, and to adopt the necessary measures to avoid the recruitment of mercenaries, to make public statements and to apply policies to discourage these practices.

In relation to the second aspect, the visits to Chile, Ecuador, Fiji, Honduras and Peru have allowed us to obtain information and to study the new emerging manifestations and trends regarding mercenaries, as well as the activities of private military security companies and their impact on the enjoyment of the human rights They indicate that there have been contractual irregularities, bad conditions of work, overcrowding, working excess hours, breach in the payment of salary, mistreatment and isolation, as well as lack of attention to basic needs such as health and hygiene. Although they had been contracted as security guards, they received a military training in the United States of America, Iraq or in a third country and ended up performing functions that were not foreseeable in their contracts.

The purpose of the contracts can be interpreted as putting into practice elements or others very similar to those stipulated in article 1 of the International Convention of 1989. The Chilean, Fijian, Honduran or Peruvian "independent contractors" were recruited abroad, encouraged by the desire for private gain to work according to the contract clauses, *"in countries which are at war where occupation forces and pockets of resistance exist*". If they are attacked they can become at anytime combatants in an armed conflict (in accordance with their contracts *(...) in an atmosphere of high danger and risk for their security and/or personal integrity)* and take part in the hostilities. Contrary to article 47 of the Additional Protocol I , the Convention of 1989

does not specify the word "directly", the independent contractor can performance passive functions that would imply to take part in the hostilities.

Some of the recruited guards who had been in Iraq informed the Working Group they were heavily armed with automatic rifles and sometimes with antitank bazookas. They had responded every time they were attacked by the insurgency and they had even used prohibited arms by the international laws of war. These private guards often circulated in vehicles with tinted windows and with no sign of identification following the death squads' behavior, and in numerous occasions they have done an excessive and indiscriminate use of force, committing human rights violations and killing civilians. .

All this indicates that they were prepared to take part in the hostilities and that the line that separates passive from active combat in an armed conflict or post-conflict situation is extremely fine. Most of the individuals recruited in this manner are neither nationals nor residents of one of the parts in the conflict. They are not military or members of the United States army, one of the party to the conflict, or civilians because they are armed. They have neither been sent in official mission by a State.

The contracting companies admit to work directly for State Departments of the United States of America Government that contracted them with the purpose of conducting protection activities in zones of armed conflict or post-conflict like Afghanistan and Iraq. These companies, once they have obtained the contract from the Government of the United States, subcontract other companies abroad that select and recruit ex- militaries and ex- policemen from developing countries. Of course, the type of organizational relation or type of contract between the subcontracted companies and the contracting companies is private and the companies are not willing to disclose it.

These transnational security companies have created a labyrinth of contracts and subcontracts difficult to disentangle. Several companies, often from different countries, are implicated in the same contract. The contracts' clauses force the recruited individuals to renounce to important rights such as the jurisdictional competence of their national courts. Their contracts indicate that they are recruited as security guards but they are trained and militarily armed for a conflict. In addition, the contracts are generally signed after departing from their respective countries.

In this labyrinth of contracts and subcontracts it would be interesting to know if there are mechanisms that can be used and which are the United States authorities to whom the ex- militaries and ex- policemen or their families whose rights have been violated could bring their complaints to obtain reparation.

The companies' activities contracting ex- militaries and ex- policemen as "private security guards" perform mercenary related activities such as recruitment, training, financing and use of people within a commercial logic of profit.

The losses of private guards or independent contractors would already be over 1 000 casualties and some thirteen thousand wounded. According to information received, those who were involved or their relatives would encounter enormous difficulties to obtain reparation based on the contracted insurance policies at the moment of

recruitment. Another of the underlying problems is the social reintegration of the "private guards" who have been operating unlawfully in situations like those of Iraq or Afghanistan, receiving much higher payments than those offered to them in their respective countries, not only for the psychological traumas as a result of what they have been living but also by the adaptation difficulties at the moment of being reintegrated in a society with social rules and a legal order.

Since our first report, we have called the attention of the General Assembly on the impunity in which the military and private security companies operate, which violate human rights in low intensity armed conflict or post conflict situations.

Mr. Chair, I would like to insist on the fact that the outsourcing of military functions and the supplying in zones of armed conflict or post conflict of military and security services by transnational companies would be leading to the privatization of war. This new phenomenon raises to the international community serious political, legal and human rights problems related with the use of force by non-state actors, as well as the lack of transparency and oversight with which they operate . The monopoly of the use of force has been at the basis of national sovereignty for several centuries and of the collective security system embodied in the Charter of the United Nations. In this respect, through the questionnaire that we sent to Member States in order to implement General Assembly resolution 61/151 , we asked whether they had adopted measures to regulate the outsourcing of functions traditionally carried out by members of the armed forces; and what functions they considered could not be carried out by the private sector. In addition to the twenty-three States that appear in the report, we have received communications from the Governments of Bosnia and Herzegovina, Italy and the Dominican Republic. Within this context, the Italian authorities underline the wide and well-extended multifaceted forms of military services including activities by the prívate sector at the international level and the need to introduce a specific normative framework.

To conclude, Mr. Chair, I would like to express the concerns of the Working Group, regarding the recruitment and training of thousands of citizens from all over the world, from developed and developing countries by private security companies to perform tasks in Afghanistan, Iraq or in other zones of armed conflict. We consider that the use of "independent contractors" or "security guards" by private security transnational companies to operate in situations of low intensity armed conflict or post conflict are the new manifestations of mercenarism of the XXI century. One of the recommendations that we make in our report to the General Assembly is to insist on the fact that States should specifically prohibit the intervention of military and private security companies in all the conflicts or armed action, internal or international, which intends to destabilize a constitutional regime.

Considering the difficulties that States coming out from war encounter in order to regulate and control military and private security companies, a considerable part of the responsibility falls on States from which these transnational companies export military and security services. We exhort those States where the exporting companies are registered to regulate and control the military and private security companies and to not grant immunity to the personnel; to investigate and bring to the courts the

private security guards who have perpetrated crimes and human rights violations in Iraq or in other situations.

Thank you very much for your attention