

**Working Group on the use of mercenaries as a means of violating human rights  
and impeding the exercise of the rights of peoples to self-determination**

**PANEL ON  
“PRIVATIZATION OF WAR – IMPACT ON HUMAN RIGHTS”**

**Thursday 21 July 2015  
Conference Room 3, United Nations, New York**

**Concept Note**

***Introduction***

The Working Group convenes this panel in light of its mandate by the Human Rights Council (Resolution 30/6) to continue to monitor mercenaries and mercenary-related activities in all their forms and manifestations, as well as private military and security companies (PMSCs), in different parts of the world.

Since its establishment in 2005, the Working Group has been mandated to monitor and study the effects on the enjoyment of human rights, particularly the right of peoples to self-determination, of the activities of private companies offering military assistance, consultancy and security services on the international market (HRC Res 2005/2).

Having undertaken this mandate since 2005, the Working Group has engaged in the issue through several key efforts. These covered regional consultations; the preparation of a draft convention on PMSCs for consideration by the Human Rights Council; a global study of national laws on private military and security companies to assess their effectiveness in protecting human rights and promoting accountability for violations; participation in the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies; country visits; and communications on PMSCs.

### *Self determination*

In this panel, the Working Group focuses specific attention on the impact of PMSCs on the right to self-determination during armed conflict.

As noted in the Working Group's 2015 GA report (A/70/330), the right of peoples to self-determination is enshrined in the Charter of the United Nations, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The General Assembly has repeatedly reaffirmed the right of peoples to self-determination, and specifically the right to freely determine their political status and to pursue their economic, social and cultural development. As asserted by the Working Group, initially, the right of peoples to self-determination developed in the context of non-self-governing territories and peoples who were subjected to alien subjugation, domination and exploitation in such a way as to create a legal right to independence. In its contemporary manifestation, the right of peoples to self-determination encompasses political struggles for greater democracy and human rights, in particular as a manifestation of the so-called internal right to self-determination, as distinct from the external right to self-determination in the sense of a legal right to independence.

The Working Group's report further notes that, according to the Human Rights Committee, the realization of the right to self-determination is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. The exact contours of the right to internal self-determination remain uncertain, but the right is broadly understood as the right of peoples to determine their own political and economic system, including by participatory political processes.

The beneficiaries of the right to self-determination are peoples, not States, although the precise definition of which people or which group of people are entitled to that right is as yet unclear. Previously, outside the colonial context, peoples were equated with the whole population of the State, with the corollary that minorities and indigenous peoples were not entitled to this right. In two decisions, the African Commission on Human and Peoples Rights accepted that a group of persons with common culture, language, history, occupying a distinct territory and self-identifying as a people with separate and distinct identity may constitute a people for the purposes of self-determination.

***Panel I: The effect of privatization of war on self-determination***

The United Nations Human Rights Council and General Assembly resolutions on the Working Group depict the thinking on self-determination in the international community.

Both resolutions contain a pre-ambular paragraph “*Reaffirming* the purposes and principles enshrined in the Charter of the United Nations concerning the strict observance of the principles of sovereign equality, political independence, the territorial integrity of States, the self-determination of peoples, the non-use of force or of the threat of use of force in international relations and non-interference in affairs within the domestic jurisdiction of States.”

The GA resolution (A/RES/70/142) further reaffirms that, “by virtue of the principle of self-determination, all peoples have the right freely to determine their political status and to pursue their economic, social and cultural development and that every State has the duty to respect this right in accordance with the provisions of the Charter.” In addition, the HRC Resolution statement reads “Convinced that, notwithstanding the way in which mercenaries or mercenary-related activities are used or the form they take to acquire a semblance of legitimacy, they are a threat to peace, security and the self-determination of peoples and an obstacle to the enjoyment of human rights by peoples”.

The first panel will explore the nature and scope of the impact of PMSC activity on the right to self-determination.

Panel to cover, inter alia:

- How does PMSC activity affect the right of peoples to self-determination?
- In the context of PMSC activity, how can protection of the right to self-determination be strengthened?

### ***Panel II: The effect of privatization of war on accountability and remedy***

The circumstances surrounding PMSC activity are among the determinants of applicable law and related accountability for human rights violations committed. In situations of armed conflict, international humanitarian law and international human rights law are relevant.

Under international human rights law, private actors are accountable for violations of human rights, such as the right to life and to security of person, the right to remedy for human rights violations, as well as for the right to self-determination. National criminal law will also establish accountability for crimes committed.

Under international humanitarian law, rights and protections are contingent on the status of actor, whether civilian or military wartime prisoner, wounded or sick, civilian, or non-combatant. If PMSC personnel are knowingly and willingly guarding a military objective, they are directly participating in hostilities, are accorded combatant status and are targetable. If they are guarding civilians or civilian objects, they are non-combatants and not targetable.

#### Panel to cover, inter alia:

- How does privatization of war impact on accountability for human rights violations?
- What is the impact of private actors in warfare on access to remedy for victims?

### ***Panel III: Options for regulation***

The Working Group has reviewed options for regulation of PMSCs. It notes the Montreux Document that restates obligations under international law, and the associated International Code of Conduct (ICoC). The Working Group is also aware of proposals for model laws and for contractual templates. However, the Working Group has highlighted that these initiatives are all voluntary in nature, and that, in the case of the Montreux Document, applies only to situations of armed conflict.

As noted above, the Working Group has also extensively assessed national laws on PMSCs. Its study has shown significant regulatory gaps, notably given the transnational nature of PMSC activity. It thus advocates for an international, legally binding instrument.

Panel to cover, inter alia:

- What regulatory framework would ensure accountability for PMSC activity?
- What regulatory framework would ensure access to redress and remedy for victims?

*Conclusions*

In convening this panel, the Working Group hopes to benefit from the direct experience and expertise of State representatives, academics, victims, civil society, the larger international community, and members of the private military and security industry. As the use of private military and security companies grows, the Working Group urges greater accountability and clear guidance to protect the rights of victims and peoples.