

# NEW YORK MONITOR

International Service for Human Rights



Human Rights Monitor Series

**NEW YORK UPDATE  
GENERAL ASSEMBLY, 62<sup>ND</sup> SESSION  
SELF-DETERMINATION, 7 NOV. – 18 DEC. 2007**

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## Overview

On 7 November 2007, the Third Committee began its consideration of agenda item 69, 'Right of peoples to self-determination.' It considered two reports on the matter and three draft resolutions. A number of Member States also used the general discussion to elaborate on their interpretation of the right to self-determination or raise concerns about the denial of peoples' enjoyment of this right in several locations.

The Chairperson of the Working Group on the Use of Mercenaries addressed the Committee and engaged in an interactive dialogue with Member States. It was encouraging that more States participated in the interactive dialogue as compared to last year, and several expressed their support for the work being done by this special procedure. The Chairperson reiterated the Working Group's concern about the proliferation of private military and security companies and the consequent 'privatisation of war,' but also drew the Committee's attention to emerging trends of concern. These included the new modalities of operation of mercenaries, the targeting of former military and ex-police personnel in developing countries for recruitment as so-called 'security guards', and the human rights violations that mercenaries themselves are experiencing in the course of their work.

Several of the recommendations of the Working Group were picked up in Cuba's resolution on the use of mercenaries, including the need for States importing military and security services from private companies to establish national mechanisms to register and licence such companies. However, the Committee failed to support the inclusion of a paragraph in the resolution that would have authorised the Working Group to begin work on a model law to assist in the implementation of the *International Convention against the recruitment,*

*use and financing of mercenaries*. Similarly, it failed to draw attention to the large number of private military and security companies operating in Iraq and Afghanistan. Despite opposition from the EU and a number of Western States, the resolution was adopted by a vote in both the Third Committee and the General Assembly plenary.

The two other resolutions, dealing with the right to self-determination (sponsored by Pakistan) and the right of the Palestinian people to self-determination (sponsored by Egypt), were little changed from last year's texts. As a result, the former was again adopted by consensus, and the latter by a vote.

## Information before the Committee

The Committee considered two reports under agenda item 69:

- Report of the Secretary-General on the universal realisation of the right of peoples to self-determination;<sup>1</sup> and
- Note by the Secretary-General transmitting the 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.<sup>2</sup>

### **Report of the Secretary-General on the universal realisation of the right of peoples to self-determination**

On 7 November 2007, the representative of the New York Office of the United Nations High Commissioner for Human Rights (OHCHR), Mr. Craig Mokhiber, delivered a statement to introduce the Secretary-General's report. He explained that the report outlined developments related to the Human Rights Council's consideration of the question of self-determination, particularly as they relate to the human rights situation in the Occupied Palestinian Territory (OPT), the Commission of Inquiry on Lebanon, and the report of the 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. Mr Mokhiber also highlighted the report's summary of recent concluding observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in respect of the implementation of the right to self-determination as guaranteed in common article 1 of the Human Rights Covenants. The summary was based on the Committees' consideration of reports submitted by States parties to these Covenants.<sup>3</sup>

### **Note by the Secretary-General transmitting the 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<sup>4</sup>**

The report is submitted in accordance with General Assembly resolution 61/151<sup>5</sup> and outlined:

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<sup>1</sup> A/62/184. Available at <http://www.un.org/ga/third/62/doclist.shtml>

<sup>2</sup> A/62/301. Available at <http://www.un.org/ga/third/62/doclist.shtml>

<sup>3</sup> In considering the country reports from the US and Norway, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights both made recommendations to the two States to improve indigenous peoples' ownership and use of land and to enhance their ability to influence decisions that affect their natural environment, means of subsistence and their own cultures.

<sup>4</sup> A/62/301. Available at <http://www.un.org/ga/third/62/doclist.shtml> The 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 was established in July 2005 by Commission on Human Rights *Resolution 2005/2*. It succeeded the mandate of the Special Rapporteur on the use of mercenaries that was established in 1987. The Working Group monitors mercenaries and mercenary-related activities in all their forms and manifestations and studies the effects of the enjoyment of human rights of the activities of private companies offering military assistance, consultancy, and security services on the international market. For more information on the Working Group, see <http://www2.ohchr.org/english/issues/mercenaries/index.htm>

<sup>5</sup> A/RES/61/151. Available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

- Activities undertaken by the Working Group, including communications; decisions from the Working Group's second session; field missions to Honduras, Ecuador, Peru, Fiji, and Chile;
- Member States' responses to the Working Group's questionnaire sent in April 2007;
- Country situations by region and an overview of international developments;
- Future activities of the Working Group; and
- Conclusion and recommendations of the Working Group.

### **Presentation of the Chairperson 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**

The Chairperson of the Working Group, **Mr José Luis Gomez del Prado**, began his presentation by stating that the mandate of the Working Group, now in its second year, is unique amongst special procedures because it takes into account both the individuals who are victims of human rights violations, as well as the individual perpetrators of those violations. This dual nature allows it to get a more holistic picture of emerging trends, modalities of operation amongst mercenaries, the human rights impacts they are having, as well as the individual experience of being a mercenary or being abused by one. The Chairperson emphasised the link between the Working Group's mandate and the growing interest at the international level in the concept of 'human security'. Further, the fact that the Working Group comprises five experts with a geographic and gender balance, means that can be more effective in promoting the ratification of the 1989 *International Convention against the recruitment, use and financing of mercenaries* (the Convention) in all five geopolitical regions.

Given that there is no treaty body to oversee the implementation of the Convention, the Chairperson outlined the methods of work of the Working Group. He explained that it has developed a system of individual communications so that it can receive and study allegations of human rights violations. Over the last two years it has followed up on such allegations through communications with the following States: Australia, Brazil, Chile, Columbia, Ecuador, the US, Honduras, Iraq and Peru. He also touched on the Working Group's future work and its consideration of what additional regulations and controls are needed to strengthen the international framework against mercenaries. To this end, the Working Group, in conjunction with the Office of the High Commissioner for Human Rights (OHCHR), will hold a regional consultation with Latin American and Caribbean countries from 17-18 December 2007 to discuss the impact that private military and security companies (PMSCs) are having on human rights. The Working Group is also interested in working with OHCHR to develop a model law that would assist States in implementing the Convention.<sup>6</sup>

The Chairperson then turned to international trends of concern to the Working Group. He began by explaining that what might be termed 'traditional mercenaries' are being absorbed by a flourishing industry of PMSCs. Often part of large transnational operations, these companies have created a 'labyrinth of contracts and subcontracts' that is difficult to disentangle. In order to fulfil their contracts and make the most lucrative profits, some of these transnational companies are targeting former military personnel and ex-policemen in developing countries for recruitment as 'security guards', who are in fact private military armed soldiers. As these companies and their subsidiaries multiply and gain expertise in supplying military and security services to zones of armed conflict or post conflict, there is a trend towards the 'privatisation of war'.

The Chairperson also highlighted the fact that mercenaries are increasingly becoming the victim of human rights abuses themselves. PMSCs tend to recruit staff under the guise of becoming a 'security guard' and only present them with a contract after they have left their respective country of origin. It is then that recruits tend

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<sup>6</sup> Recommendation 73(a) of the Working Group's report to the General Assembly (A/62/301) elaborates on this point, suggesting that a model law would help facilitate accession to the Convention by indicating the steps a State would need to take to incorporate international norms into domestic legislation. During the interactive dialogue, the Chairperson also advised that the Working Group had circulated a questionnaire amongst Member States, as authorised under General Assembly *Resolution 61/151*, asking them to list measures they had adopted to regulate the outsourcing of functions traditionally carried out by members of the armed forces, and what functions they considered could be carried out by the private sector. In response, the Italian Government had commented on the need to introduce a specific normative framework.

to learn that they have to undergo training for military and armed conflict, and renounce important rights, such as the jurisdiction of their national courts. Most mercenaries end up performing functions that were not foreseeable in their contracts, and working in conflict zones outside their country of origin. Information gathered from country visits<sup>7</sup> confirmed to the Working Group that there is an emerging trend in contract irregularities, bad conditions of work, overcrowding, excess working hours, breaches in salary payment, mistreatment and isolation, and lack of attention to basic human rights such as health and hygiene. The Chairperson estimated that over 1,000 private guards or independent contractors have been killed and a further 13,000 wounded. According to information received by the Working Group, those who were injured and the families of those killed would encounter 'enormous difficulties to obtain repatriation', even if it were a provision of the employment contract.

The Chairperson expressed particular concern at the recruitment and training of thousands of citizens from around the world by PMSCs to perform 'protection activities' in Afghanistan and Iraq. The Working Group noted that many of the contracting companies operating in these countries admitted to working directly for the United States Department of State. They explained that once they have the contract from the US Government, they sub-contract to other companies abroad, who recruit former military personnel and ex-policemen from developing countries to perform mercenary-related activities.<sup>8</sup> Some of the recruited guards who had worked in Iraq informed the Working Group that they were heavily armed and responded every time they were attacked, including using arms prohibited by the international laws of war. The Chairperson compared their behaviour (travelling in unmarked, tinted vehicles, heavily armed, resorting to excessive and indiscriminate use of force) to that of 'death squads'. He also commented that the social reintegration of those who have been contracted to work in these conflict zones is another emerging problem that affects not only the individual, but their family and broader community.

In closing, the Chairperson drew the Committee's attention to the need to address the level of impunity with which PMSCs and their staff are operating. He referred to a number of the recommendations from the Working Groups' report to the General Assembly that relate to States' responsibilities to respect human rights and ensure public security and the operation of the rule of law, regardless of whether it acts through its own agents or hires a private security company. He reminded States that under the UN Charter and the constitutional law of each State, security, order and national defence are the competence of the military and the police force. Further, he advised the Committee of the Working Groups' efforts to alert authorities in countries from which individuals are being recruited as 'security guards' to work in armed conflict zones, about the danger of committing war crimes. Among the recommendations the Chairperson referred to were:

- States in which private security companies recruit former military and ex-police to work in armed conflict areas are encouraged to adhere to the Convention against mercenaries. This includes taking the necessary measures to avoid and discourage the recruitment of mercenaries.
- States should specifically prohibit the intervention of PMSCs in all the conflicts or armed action, internal or international, which intends to destabilise a constitutional regime.
- States where PMSCs are based have a responsibility to first register these companies, and then regulate and control them.
- States have a duty to investigate and bring to court the private security guards who have perpetrated crimes and human rights violations.

### **Interactive Dialogue**

The Chairperson engaged in a dialogue with the representatives of Panama, Ecuador, Venezuela, the United States, Peru, the Russian Federation, Chile, the Libyan Arab Jamahiriya, Cuba, and Honduras. This contrasted to last year's interactive dialogue which only involved two States.<sup>9</sup>

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<sup>7</sup> The Chairperson referred to the Working Group's visits to Chile, Ecuador, Fiji, Honduras and Peru in this context.

<sup>8</sup> The Chairperson said these activities included recruitment, training, financing and use of people within a commercial logic of profit.

<sup>9</sup> These were Ecuador and Cuba. See *ISHR New York Monitor Update on Self-Determination* from the 61<sup>st</sup> session of the General Assembly, available at <http://www.ishr.ch>

Some States were concerned about the legal responsibilities of the State in relation to the operation of PMSCs and how to address their impunity. Venezuela for example, wanted to clarify who bore the legal responsibility when deaths were caused by a private military company fighting in an armed conflict, particularly when its new methods of operation were not yet identified by the relevant State as mercenary activities. Venezuela therefore asked the Chairperson to elaborate on his understanding of the definition of the term 'mercenary' as one means of addressing impunity. In response, the Chairperson said it was difficult to identify an individual as a mercenary. Most work for private companies that are registered and subject to a distinct code of conduct. However, most of these companies do not abide by the legal standards and are therefore subject to little if any real regulation. The responsibility in terms of regulation lies with States, and there is an urgent need for them to improve and enforce their own domestic legislation in this regard.

The US took the floor to advise that the security contractors used by the State Department in Iraq were required to be of the highest standards and professionalism. These standards included prior experience, specified pre-deployment training and in country supervision, and were written into all relevant contracts. Picking up on earlier comments of the Chairperson of the Working Group, the US advised that it was conducting three separate reviews into the incident that occurred on 16 September 2007 in Iraq.<sup>10</sup> In response, the Chairperson expressed his appreciation for the Government's inquiry and review of the Blackwater incident. However, he pointed out that the question of accountability of such companies had been raised in a report on Iraq in 2005, and OHCHR had concerns about the 20,000 private security guards operating in Iraq. The Chairperson was also concerned about the United States' accountability, especially when Paul Bremer, the Civilian Administrator in Iraq between 2003 and 2004, had granted immunity to private security companies operating there. The Chairperson acknowledged that there are codes of conduct, but they are rarely put into practice. Instead there are numerous cases documented in the international media of mercenaries indiscriminately killing civilians.

The Chairperson was also asked about a range of other tactics to address the use of mercenaries and their evolving methods of operation. The Russian Federation encouraged discussion about restoring the State monopoly on the use of force, and was critical of those States who follow the trend towards the privatisation of war as a means of abrogating their human rights responsibilities. Libya asked the Chairperson whether other measures or instruments were needed to complement the Convention, such as a code of conduct for companies or an additional protocol. The Chairperson advised that the Working Group is examining the possibility of developing an optional protocol to the Convention as there is 'a need for something complementary, to cover that grey area in which private security companies operate.' To help build consensus on what additional measures are needed, the Chairperson appealed to Member States to respond to the Working Group's questionnaire requesting information about what national measures they had put in place to regulate PMSCs and to what extent they had privatised the use of violence.

Although most States complemented the Chairperson on the work of the Working Group or expressed their commitment to following up on the recommendations of the Working Group,<sup>11</sup> Chile was defensive in its remarks. Noting that the Working Group had visited Chile in July 2007, the representative stated that the Chilean Government plans to submit its comments to the Human Rights Council when a report is made available. Chile pointed out that the resolution that established the mandate of the Working Group<sup>12</sup> does not address private companies operating within their national jurisdiction, and the Working Group therefore had

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<sup>10</sup> In this incident, 17 Iraqis were allegedly shot by Blackwater staff guarding State Department employees. For further information, see <http://news.bbc.co.uk/2/hi/americas/7095764.stm> The FBI is reviewing the facts surrounding the effects of the incident; a joint commission of inquiry with the Government of Iraq is looking at the various private security operations that have been established; and the Secretary of State's Panel has undertaken a full and complete review, addressing questions of how the United States is providing security for its employees, including rules for the use of force and jurisdiction.

<sup>11</sup> Russian commented that the Working Group was contributing to the development of important human rights standards on mercenaries. Honduras expressed its appreciation for the Working Group's recommendations and said its government was cooperating fully with the Working Group. Similar comments were made by Ecuador and Peru, which were also visited by the Working Group. Cuba thanked the Chairperson for his report.

<sup>12</sup> Resolution 2005/2 of the Human Rights Commission – paragraph 12(e) in particular.

no mandate to comment on alleged human rights violations in indigenous communities by security guards contracted by forestry companies.

In concluding his presentation, the Chairperson called for greater regulation at the national, regional, and international levels. The only international instrument that exists on this issue is the Convention, which he urged states to ratify.

## General Discussion

On 7-8 November 2007, the Third Committee held a general discussion on the themes of racial discrimination and self-determination, in which some 35 States and the International Federation of the Red Cross and Red Crescent Societies participated. Some States used it as an opportunity to express their views on protracted disputes about peoples' ability to exercise their right to self-determination in Jammu and Kashmir,<sup>13</sup> Western Sahara,<sup>14</sup> the Occupied Palestinian Territory<sup>15</sup> and the Caucasus.<sup>16</sup> Others elaborated on their concerns about the rise of anti-Islamism as a result of the so-called 'war on terror'.<sup>17</sup>

Lichtenstein took advantage of the opportunity to draw the Committee's attention to the recent adoption of the UN Declaration on the Rights of Indigenous Peoples. Among the significant aspects of the Declaration that Lichtenstein emphasised is that it accords with the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States*, and therefore does not equate the right of self-determination with attaining independence. Rather, the Declaration affirms that the right of self-determination includes the right to autonomy or self-government in matters relating to internal and local affairs, which offers 'a promising new approach' for all peoples seeking to give expression to their distinctiveness and to more fully enjoy their human rights, without resorting to violence or posing a threat to the territorial integrity of States. Furthermore, the General Assembly's adoption of the Declaration is a strong counter to arguments that the right of self-determination is restricted to the context of decolonisation or the situation of peoples under foreign occupation; rather this right applies to all peoples, as envisaged in common article 1 of the two Covenants on Human Rights.

## OUTCOMES

### ***Resolution on the universal realisation of the right of peoples to self-determination***<sup>18</sup>

The Resolution:

- Reaffirms* that the universal realisation of the right of peoples to self-determination is a condition for the guarantee and observance of all human rights;<sup>19</sup>
- Declares* its firm opposition to acts of foreign military intervention, aggression and occupation;<sup>20</sup>
- Calls upon* those States responsible to cease all such actions immediately;<sup>21</sup>
- Requests* the Human Rights Council to continue to give special attention to violations of human rights arising from foreign military intervention, aggression, or occupation;<sup>22</sup> and
- Requests* the Secretary-General to report to the 63<sup>rd</sup> session of the General Assembly on this matter.<sup>23</sup>

<sup>13</sup> Remarks were made by India and Pakistan.

<sup>14</sup> These discussions involved Algeria and Morocco.

<sup>15</sup> Comments were made by Kuwait, Egypt, Algeria, Cuba, South Africa, China, Israel and Palestine.

<sup>16</sup> Armenia and Azerbaijan commented on this matter.

<sup>17</sup> These States included Iran, Syria, Libya, Sudan and Pakistan (on behalf of the G77 and China).

<sup>18</sup> A/C.3/62/L.56. Available at <http://www.un.org/ga/third/62/propslist.shtml>

<sup>19</sup> PP1 of A/C.3/62/L.56.

<sup>20</sup> OP2 of A/C.3/62/L.56.

<sup>21</sup> OP3 of A/C.3/62/L.56.

<sup>22</sup> OP5 of A/C.3/62/L.56.

<sup>23</sup> OP6 of A/C.3/62/L.56.

Sponsored by **Pakistan**, the draft resolution was virtually identical to last year's resolution on this matter<sup>24</sup> and again found consensus. However the EU continued to hold the same reservations about some aspects of the text, which it outlined when the resolution was considered by the Committee (see below).

### *The vote*

On 16 November 2007, **Pakistan**, as the main sponsor of the resolution, said that the right of self-determination was one of the cornerstones of the UN Charter has been recognised by all the major international summits, declarations, and resolutions. It also stated that the resolution's consistent adoption since the 1980s reflects the General Assembly's affirmation of the existence of this right.

The Committee then adopted the draft resolution without a vote.

The representative of Argentina referred to the Special Committee of 24 on Decolonization<sup>25</sup> and the differences between Argentina and the United Kingdom. According to Argentina, the way to resolve the dispute is to take into account the consideration the interests of the people of the Malvinas (Falkland) Islands. This prompted the UK to advise that it had no doubts about its sovereignty over the Falklands and had reaffirmed this point during the recent high-level session of the General Assembly, attended by the President of Argentina.

The representative of Portugal (on behalf of the EU) stated that the right to self-determination was a fundamental principle of international law, inherently connected to the rule of law and respect for democracy. However the scope of the resolution was still too narrow and it contained a number of inaccuracies on international law. Self-determination was not a precondition for other human rights and the EU hoped it would not be presented in this way in a future General Assembly resolution on this matter.

The representative of Lichtenstein said his country advocated a staged approach to self-determination, which was not embodied in the final text. As in previous years, there had been little scope for discussion of this and other broader issues. However Lichtenstein hoped that next year would bring a more open and inclusive discussion.

### ***Resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination***<sup>26</sup>

#### The Resolution:

- Expresses concern* about the new modalities or mercenarism and notes that the recruitment of former military personnel and ex-policemen by PMSCs to serve as "security guards" in zones of armed conflict seems to be continuing (new paragraph);<sup>27</sup>
- Urges* States to take all necessary steps (including legislative measures) to ensure that their territories and other territories under their control, as well as their nationals, are not being used for mercenary activities;<sup>28</sup>
- Requests* all States to impose a specific ban on the use of PMSCs to intervene in armed conflicts or actions to destabilise constitutional regimes;<sup>29</sup>
- Encourages* States that import the military assistance, consultancy and security services provided

<sup>24</sup> The only change is to update the reference in the text to the previous session's resolution on the matter, namely A/RES/61/150, available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

<sup>25</sup> For more information on the UN and decolonisation, see <http://www.un.org/Depts/dpi/decolonization/main.htm>

<sup>26</sup> A/C.3/62/L.62. Available at <http://www.un.org/ga/third/62/propslist.shtml>

<sup>27</sup> PP10 of A/C.3/62/L.62.

<sup>28</sup> OP4 of A/C.3/62/L.62.

<sup>29</sup> OP5 of A/C.3/62/L.62.

by private companies to establish regulatory national mechanisms for the registering and licensing of these companies (new paragraph);<sup>30</sup>

- ❑ *Calls upon States* to investigate the possibility of mercenary involvement whenever and wherever criminal acts of a terrorist nature occur and to bring to trial those believed to be responsible;<sup>31</sup>
- ❑ *Condemns* all forms of impunity granted to perpetrators of mercenary activities;<sup>32</sup>
- ❑ *Requests* the Working Group to continue the work already done by the previous Special Rapporteurs on the strengthening of the international legal framework for the prevention and sanction of mercenary activities;<sup>33</sup>
- ❑ *Requests* the Working Group to consult States and intergovernmental and non-governmental organisations and to report at its 63<sup>rd</sup> session.<sup>34</sup>

Put forward by **Cuba**, this resolution updates and builds on last years' text<sup>35</sup> by incorporating some of the concerns and recommendations of the Working Group. These include a new preambular paragraph expressing 'concern' about the new modalities of mercenarism and the continuing problem of PMSCs recruiting former military personnel and ex-policemen to serve as 'security guards.' There is also a new operative paragraph 'encouraging' States that import the military or security services of such companies to establish national regulatory mechanisms that register and license them, as recommended by the Working Group.

An update of note in the resolution occurs in the operative paragraph expressing the General Assembly's appreciation for the support provided by the Office of the High Commissioner for Human Rights (OHCHR)<sup>36</sup> over the last year. This year it draws attention to the upcoming regional governmental consultation in Panama, and requests that OHCHR convene other such regional governmental consultations.

It is also important to note what is missing from this year's resolution. Cuba had drafted an additional preambular paragraph<sup>37</sup> that expressed concern at the low level of ratification of the Convention and considered '...the possible future use of a model law to facilitate the accession of the States that wish to become parties to the Convention'. However when the Committee came to consider the draft resolution, this paragraph was deleted.<sup>38</sup> The inclusion of this paragraph would have allowed the Working Group to begin work on this matter in earnest, something which it has now floated in the General Assembly for two years running. Also missing from this year's text is any specific reference to the prevalence of mercenaries in Iraq and Afghanistan, which was highlighted by the Chairperson during the interactive dialogue as a major concern. It appears that Cuba sought to allude to this in preambular paragraph 9, which now expresses the General Assembly's extreme concern about recent mercenary activities 'in Africa *and other places*.' Otherwise the reader is left with the false impression that mercenarism is a human rights problem predominantly occurring in Africa.

### *The vote*

The Secretary of the Committee stated that if the draft resolution were to be adopted, an additional \$139,600 would be required in 2008-2009. That amount would go towards one regional consultation per year, to be convened by OHCHR.

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<sup>30</sup> OP6 of A/C.3/62/L.62.

<sup>31</sup> OP10 of A/C.3/62/L.62.

<sup>32</sup> OP11 of A/C.3/62/L.62.

<sup>33</sup> OP13 of A/C.3/62/L.62.

<sup>34</sup> OP19 of A/C.3/62/L.62.

<sup>35</sup> A/RES/61/151 available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

<sup>36</sup> This year the GA's expression of appreciation to OHCHR is contained in OP15, and in last year's text this occurred in OP14 (which referred to the third meeting of experts on traditional and new forms of mercenary activities convened by OHCHR).

<sup>37</sup> PP6 of A/C.3/62/L.62.

<sup>38</sup> However, OP7, which was retained, picks up the first element of what was contained in PP6 by calling upon States who have not yet done so, to consider ratification and/or accession to the Convention.

The main sponsor of the resolution, Cuba, noted the rise of new forms and modalities of mercenarism and the ongoing importance of the Working Group. It noted that OHCHR would be asked to convene regional consultations on the role of mercenaries in impeding the right of peoples to self-determination.

The Chair then announced that a recorded vote had been requested.

Prior to the vote, Portugal (on behalf of the EU) expressed its long-held view that neither the Human Rights Council nor the Third Committee was the appropriate forum to consider this issue. This was related to the EU still being unconvinced that mercenarism should be taken up from the perspective of human rights violations and threats to self-determination, and doubtful that there is a clear link between mercenarism and terrorism.<sup>39</sup> As a result, the EU flagged that it would not support the resolution, but would remain open to further discussions on these issues.

Despite these objections, the Third Committee adopted the resolution with 122 States in favour, 51 opposed, and 6 abstentions.<sup>40</sup> Last year, the resolution was also adopted by the Third Committee with a similar vote of 116 votes in favour, 49 against, and 5 abstentions.<sup>41</sup>

Following the vote, Argentina briefly took the floor to express its support for the right to self-determination of people under colonial domination and foreign occupation. It then stated that the dispute over the Malvinas (Falkland) Islands between Argentina and the UK was not a question of self-determination and that the question could only be resolved through negotiations that take into account the interest of the islanders.

The representative of Chile said he had abstained from the vote because he did not agree with the provision in preambular paragraph 10, which referred to new modalities of mercenarism, as there are no legal definitions of the 'new modalities.'

The General Assembly subsequently adopted the resolution<sup>42</sup> on 18 December 2007 with a vote mirroring that in the Third Committee (127:52:6).<sup>43</sup> Last year, the sixty-first session of the General Assembly adopted the resolution<sup>44</sup> by a very similar margin (127:51:7).

### ***Resolution on the right of the Palestinian people to self-determination***<sup>45</sup>

The Resolution:

- Recalls* the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the OPT*, which concludes that the wall severely impedes the right of the Palestinian people to self-determination;<sup>46</sup>
- Expresses* the urgent need for the resumption of negotiations within the Middle East peace process;<sup>47</sup>
- Stresses* the need for respect for and preservation of the territorial unity, continuity and integrity of all of the OPT, including East Jerusalem;<sup>48</sup>
- Reaffirms* the right of the Palestinian people to self-determination, including the right to an independent State;<sup>49</sup> and
- Urges* States and UN agencies and bodies to support and assist the Palestinian people in the early

<sup>39</sup> At the 61<sup>st</sup> session of the General Assembly, the EU made similar remarks at the Third Committee and suggested that the link between mercenarism and terrorism was better considered by the General Assembly's Legal Committee. See *New York Monitor Update* from the 61<sup>st</sup> session of the General Assembly on the Rights of Peoples to Self-Determination, available at <http://www.ishr.ch>

<sup>40</sup> Joining the EU in opposition to the resolution were: Australia, Canada, Japan, Marshall Islands, Micronesia, Palau and the US. Those States abstaining were Chile, Fiji, Lichtenstein, New Zealand, Switzerland, and Tunisia.

<sup>41</sup> Those States abstaining were Fiji, Republic of Korea, Lichtenstein, New Zealand and Switzerland.

<sup>42</sup> A/RES/62/145. Available at <http://www.un.org/ga/62/resolutions.shtml>

<sup>43</sup> The States that abstained from the vote in the plenary were: China, Lichtenstein, New Zealand, Switzerland, Tonga and Tunisia.

<sup>44</sup> A/RES/61/151. Available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

<sup>45</sup> A/C.3/62/L.63. Available at <http://www.un.org/ga/third/62/propslist.shtml>

This resolution was sponsored by **Egypt**, and differs from last year's text<sup>51</sup> only by virtue of a new preambular paragraph. New preambular paragraph 9 stresses 'the need for respect for and preservation of the territorial unity, continuity and integrity of all of the OPT, including East Jerusalem.'

The repetitive nature of this resolution contrasts somewhat to the resolutions of the Human Rights Council regarding the Middle East peace process. Although the sensitive politics surrounding this issue and the make-up of the Council are such that resolutions in that forum tend to go to a vote, the Council's resolutions are usually more focussed on immediate events and concerns in the region, rather than historical developments, as is the case in the General Assembly's resolutions. This was particularly evident in the resolution adopted by recent sixth special session of the Council, entitled 'Human rights violations emanating from Israeli military attacks and incursions, in the OPT, particularly the occupied Gaza Strip.'<sup>52</sup> However, like the resolutions of the General Assembly, those of the Council often draw the criticism that they are unbalanced and too heavily focussed on the violations committed by Israel.<sup>53</sup>

### *The vote*

Egypt drew the Committee's attention to the fact that 117 States had agreed to co-sponsor the resolution this year, and suggested this was a reflection of the international community's increasing desire to help the Palestinian people realise their inalienable right to self-determination and assist them at a time of great need. Egypt also expressed its hope that the UN would play a more active and important role in the Quartet and other confidence-building measures, and urged States to take the first step in this regard by adopting the resolution by consensus.

The representative of Israel then requested a vote, explaining that although it recognises the right of the Palestinian people to self-determination, it expects the Palestinians to respect Israel's right to live in peace and security. Until the Palestinians realise that security is a prerequisite to their statehood, then the two-State solution would remain elusive. Israel would vote against the present text because it affirms Palestinian rights but makes no demands on them to fulfill their responsibilities, such the need for Palestine to denounce the use of terrorism. Nonetheless, Israel would continue to meet with the Palestinian leadership to launch the Annapolis dialogue, in the hope of achieving the common vision of a two-State solution.

Israel's call for a vote was supported by the US and Australia. The representative of the US spoke of his government's continuous work to support the socio-economic development and legitimate political aspirations of the Palestinian people, as reflected in the level of aid the US provided to the Palestinian people. The US' objective remained the achievement of two sovereign and democratic States living side by side in peace and security. However, it could not support the current resolution because it reflected an outdated approach, conceived when the Palestinian people thought that a solution lay solely in the UN. The UN had an important role in the peace process, but this should be to support both parties to work together within the context of the Quartet. Australia followed, also emphasising the need for a peaceful negotiated settlement based on a two-

<sup>46</sup> PP6 and PP7 of A/C.3/62/L.63.

<sup>47</sup> PP8 of A/C.3/62/L.63.

<sup>48</sup> PP9 of A/C.3/62/L.63.

<sup>49</sup> OP1 of A/C.3/62/L.63.

<sup>50</sup> OP2 of A/C.3/62/L.63.

<sup>51</sup> A/RES/61/152. Available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

<sup>52</sup> See for example Council *Resolution 6/18*, available at [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_6\\_18.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_18.pdf) and *Resolution S-6/1* available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/specialsession/A.HRC.S-6.L.1.pdf>. The former was adopted by consensus, and the latter by a vote in which 30 States were in favour, one against (Canada) and 15 abstained (many of whom were EU Member States).

<sup>53</sup> This was the criticism of several States that abstained from the vote on Council *Resolution S-6/1*, which included Guatemala, Japan, Ghana, Brazil and Switzerland. See ISHR *Council Monitor*, Human Rights Council 6<sup>th</sup> Special Session 23 and 24 January 2008, available at <http://www.ishr.ch>

State solution. Australia foreshadowed its intention to abstain from the vote due to the unbalanced nature of the text.

The Committee then adopted the resolution with a vote of 172 States in favour, 5 opposed, and 5 abstentions.<sup>54</sup> Last year, the Committee adopted the resolution with a smaller majority (162:4:4).<sup>55</sup>

In an explanation of vote after the vote, Argentina expressed its view that only people living under subjugation can exercise the right to self-determination. In the context of the dispute between Argentina and the UK over the Malvinas (Falkland) Islands, it was therefore not appropriate to raise arguments about self-determination. Rather, the situation could only be resolved through negotiations that take into account the interest of the islanders.

Portugal (on behalf of the EU) restated its commitment to enabling the Palestinian people to fulfill their right to self-determination, including the possibility of establishing a sovereign State as set out in the Road Map. The EU was ready to contribute to preparations for the upcoming Annapolis conference within the context of the Quartet, and would continue to support both parties in the ongoing negotiations. In parallel with these negotiations, Palestinians needed to strengthen their institutions to help improve people's daily lives. Both parties were encouraged to take additional steps to implement the Road Map and the Agreement on Movement and Access.

Canada reiterated its strongest possible support for the Palestinian people and their right to self-determination, as well as its full backing of the Quartet's Road Map. However, as the resolution did not adequately address the responsibilities of both parties to the conflict to demonstrate efforts towards the goals set out in the Road Map, Canada had chosen to abstain.

Palestine responded by expressing its appreciation for the wide support of the resolution, and its disappointment that a consensus outcome had not been possible. The fact that Israel continued to cast a negative vote on a resolution that simply reaffirmed international law was a matter of deep concern to Palestine. The negative vote cast by Israel can be considered contradictory to its professed position in favour of peace and security. Palestine concluded by expressing its hope that this resolution would not be necessary at the 63<sup>rd</sup> session, but if this proved not to be the case, it remained optimistic that it could be adopted without a vote.

The General Assembly subsequently adopted the resolution<sup>56</sup> on 18 December 2007 (176:5:4). Last year the General Assembly adopted the resolution<sup>57</sup> with an almost identical vote (176:5:5).

## Looking Forward

Much of the Third Committee's work this year under agenda item 69 was a repetition of previous years, with the exception of its consideration of the use of mercenaries as a means of violating the right of self-determination. This was evident in the extent to which States engaged with the Chairperson of the Working Group on the use of mercenaries, as well as the extent to which its recommendations were incorporated in the associated resolution. These are positive signs for the renewal of the mandate of the Working Group, which will be considered at the seventh session of the Human Rights Council in March 2008.

Although the Working Group was not given the authority to begin work with OHCHR to develop a model law to assist in the implementation of the Convention, the Chairperson made clear its interest in consulting with States to consider the possibility of developing an optional protocol to the Convention. This initiative could provide an important means of addressing the 'grey area' in which private military and security companies are

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<sup>54</sup> Those States which opposed the resolution were: Israel, Marshall Islands, Federated States of Micronesia, Palau and US. Those which abstained from the vote were: Australia, Canada, Cameroon, Equatorial Guinea and Fiji.

<sup>55</sup> Those States opposed to the resolution were: Israel, Micronesia, Palau and the US. Those who abstained were: Australia, Canada, Haiti and Georgia.

<sup>56</sup> A/RES/62/146. Available at <http://www.un.org/ga/62/resolutions.shtml>

<sup>57</sup> A/RES/61/151. Available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

operating in conflict and post-conflict zones. Later in 2008, the Human Rights Council will consider the communications and summaries of responses received by the Working Group from the following States: Colombia, Ecuador, Honduras, Peru, and the United States. Although the timing is not clear at this stage, it is also expected that the Working Group will report on the results of its questionnaire to Member States about the extent to which they have outsourced the traditional functions of the armed forces and police.

## **Background**

The General Assembly is the main deliberative organ of the United Nations (UN). It is composed of representatives of all member States and has a general mandate to discuss and make recommendations on any matters within the scope of the United Nations Charter. Under Article 13 of the Charter, the General Assembly is specifically mandated to ‘initiate studies and make recommendations for the purpose of ... assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’. The regular session of the General Assembly runs from the beginning of September to the end of December. Each year the General Assembly addresses over 150 agenda items, which are considered either in the plenary or in one of its six committees.<sup>58</sup> The Third Committee (Social, Cultural, and Humanitarian) addresses most agenda items relevant to human rights defenders, including advancement of women, children’s rights, the rights of indigenous peoples, the elimination of racism, and human rights questions. Numerous special procedures also report to the Third Committee on a number of these issues and engage in an interactive dialogue with States. The Fifth Committee (Administrative and Budgetary) is also particularly relevant to human rights defenders since it evaluates and approves the budgetary requirements arising out of the work of the other five committees. After completing their work, the Third and the Fifth Committee, as well as the other three main committees, submit draft resolutions to the General Assembly for final adoption.

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<sup>58</sup> Information on the main committees of the General Assembly is available at <http://www.un.org/ga/maincommittees.shtml>

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The New York Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments in the UN in New York.

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