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**REPORT TO THE ECONOMIC AND SOCIAL COUNCIL ON THE  
SIXTY-FIRST SESSION OF THE COMMISSION**

**Draft report of the Commission**

**Rapporteur: Ms. Deirdre KENT (Canada)**

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\* Documents E/CN.4/2005/L.10 and addenda will contain the chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Economic and Social Council will be contained in documents E/CN.4/2005/L.11 and addenda.

**2005/1. Situation in occupied Palestine**

*The Commission on Human Rights,*

*Guided* by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

*Guided also* by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

*Guided further* by the provisions of the Vienna Declaration and Programme of Action, adopted in June 1993 by the World Conference on Human Rights (A/CONF.157/23), and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

*Recalling* General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions which confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

*Recalling also* Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

*Recalling further* its previous resolutions in this regard, the latest of which is resolution 2004/3 of 8 April 2004,

*Reaffirming* the right of the Palestinian people to self-determination in accordance with the provisions of the Charter of the United Nations, the relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to

self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign and independent State;

2. *Reaffirms* its support for the solution of two States living side by side in peace and security, Israel and a viable, democratic, sovereign and territorially contiguous Palestine;

3. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

4. *Decides* to include in the provisional agenda of its sixty-second session the item entitled “The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation” and to consider the situation in occupied Palestine under that agenda item.

*38th meeting*

*7 April 2005*

[Adopted by a recorded vote of 49 to 1,  
with 2 abstentions. See chap. V.]

**2005/2. The use of mercenaries as a means of violating human rights and  
impeding the exercise of the right of peoples to self-determination**

*The Commission on Human Rights,*

*Recalling* all of its relevant resolutions, in which, inter alia, it condemned any State that permitted or tolerated the recruitment, financing, training, assembly, transit and use of mercenaries with the objective of overthrowing the Governments of States Members of the United Nations, especially those of developing countries, or of fighting against national

liberation movements, and recalling also the relevant resolutions and international instruments adopted by the General Assembly, the Security Council, the Economic and Social Council and the Organization of African Unity, inter alia, the Convention of the Organization of African Unity on the Elimination of Mercenarism in Africa, as well as the African Union,

*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, territorial integrity of States, self-determination of peoples, the non-use of force or threat of use of force in international relations and non-interference in affairs within the domestic jurisdiction of States,

*Reaffirming also* that by virtue of the principle of self-determination, all peoples have the right to determine freely their political status and to pursue freely their economic, social and cultural development,

*Reaffirming further* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

*Alarmed and concerned* about the danger which the activities of mercenaries constitute to peace and security in developing countries, particularly in Africa and in small States,

*Deeply concerned* about the loss of life, the substantial damage to property and the negative effects on the policy and economies of affected countries resulting from mercenary international criminal activities,

*Extremely alarmed and concerned* about recent mercenary activities in Africa and the threat they pose to the integrity and respect of the constitutional order of these countries,

*Convinced* that, notwithstanding the way in which mercenaries or mercenary-related activities are used or the form they take to acquire some 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,

1. *Takes note* of the report of the Special Rapporteur on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination, Ms. Shaista Shameem (E/CN.4/2005/14), and commends the Special Rapporteur for her valuable work in the fulfilment of her mandate;
2. *Reaffirms* that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations;
3. *Recognizes* that armed conflicts, terrorism, arms trafficking and covert operations by third Powers, inter alia, encourage the demand for mercenaries on the global market;
4. *Urges once again* all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries, and to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to impede the right to self-determination, to overthrow the Government of any State, or dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right to self-determination of peoples;
5. *Requests* all States to exercise the utmost vigilance against any kind of recruitment, training, hiring or financing of mercenaries by private companies offering international military consultancy and security services, as well as to impose a specific ban on such companies' intervening in armed conflicts or actions to destabilize constitutional regimes;
6. *Calls upon* all States that have not yet done so to consider taking the necessary action to sign or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries;
7. *Welcomes* the cooperation extended by those countries that received a visit by the Special Rapporteur and the adoption by some States of national legislation that restricts the recruitment, assembly, financing, training and transit of mercenaries;

8. *Invites* States to investigate the possibility of mercenary involvement whenever and wherever criminal acts of a terrorist nature occur;

9. *Condemns* recent mercenary activities in Africa and the threat they pose to the integrity and respect of the constitutional order of these countries and the exercise of the right to self-determination of their peoples and commends the Governments of Africa on their collaboration in thwarting these illegal actions;

10. *Calls upon* the international community, in accordance with its obligations under international law, to cooperate with and assist the judicial prosecution of those accused of mercenary activities, in transparent, open and fair trials;

11. *Decides* to end 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 to establish a 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, made up of five independent experts, one from each regional group, for a period of three years;

12. *Requests* the working group to meet for five working days before the next session of the Commission in fulfilment of the following mandate:

(a) To elaborate and present concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities;

(b) To seek opinions and contributions from Governments and intergovernmental and non-governmental organizations on questions relating to its mandate;

(c) To monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world;

(d) To study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination;

(e) To monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities;

13. *Also 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 the recruitment, use, financing and training of mercenaries, taking into account the proposal for a new legal definition of a mercenary drafted by Mr. Enrique Bernales Ballesteros in paragraph 47 of his report to the Commission at its sixtieth session (E/CN.4/2004/15);

14. *Further requests* the working group to report annually on the progress made in the fulfilment of its mandate to the Commission and to the General Assembly;

15. *Expresses its appreciation* to the United Nations High Commissioner for Human Rights for convening the third meeting of experts on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, and takes note of the report of the meeting (E/CN.4/2005/23);

16. *Requests* the Office of the High Commissioner, as a matter of priority, to publicize the adverse effects of mercenary activities on the right of peoples to self-determination and, when requested and where necessary, to provide advisory services to States that are affected by these activities;

17. *Requests* the working group to take into account, in the discharge of its mandate, that mercenary activities are continuing to occur in many parts of the world and are taking on new forms, manifestations and modalities, and in this regard requests its members to pay particular attention to the impact of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights by everyone and every people and, in particular, on the exercise of the right of peoples to self-determination;

18. *Urges* all States to cooperate fully with the working group in the fulfilment of its mandate;

19. *Requests* the High Commissioner for Human Rights to provide the working group with all the necessary assistance and support for the fulfilment of its mandate, including through the promotion of cooperation between the working group and other components of the United Nations system that deal with countering mercenary-related activities;

20. *Requests* the working group to consult States and intergovernmental and non-governmental organizations in the implementation of the present resolution and, in its report to the Commission at its sixty-second session, to report its findings on the use of mercenaries to undermine the enjoyment of human rights and to impede the exercise of the right of peoples to self-determination and to formulate specific recommendations thereon;

21. *Decides* to consider at its sixty-second session the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination under the same agenda item;

22. *Recommends* the following draft decision to the Economic and Social Council for adoption:

“The Economic and Social Council, taking note of Commission on Human Rights resolution 2005/2 of 7 April 2005, endorses the Commission’s decision to establish a working group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination, to be composed of five independent experts, one from each regional group, to meet intersessionally for a period of three years, with the following mandate:

“(a) To elaborate and present concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities;

“(b) To seek opinions and contributions from Governments, intergovernmental and non-governmental organizations on questions relating to its mandate;



“(c) To monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world;

“(d) To study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination;

“(e) To monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities;

“The Council also endorses the request to the working group to report annually to the Commission and the General Assembly.”

*38th meeting*

*7 April 2005*

[Adopted by a recorded vote of 35 votes to 15,  
with 2 abstentions. See chap. V.]

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