Statement by
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Chair-Rapporteur
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

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In my capacity as Chairperson of the Working Group on the use of mercenaries, I am honoured to address the Third Committee of the General Assembly and introduce the report of the Working Group pursuant to Human Rights Council resolution 21/8 and General Assembly resolution 67/159. In accordance with its usual practice, the Working Group held three regular sessions during the reporting period, two in Geneva in December 2012 and in March 2013 and one in New York in July 2013. It continued to receive and review reports regarding the activities of mercenaries and private military and security companies and their impact on human rights. During its session in New York, the Working Group held an expert panel event to discuss the use of private military and security companies by the United Nations in the context of a study launched this year, which will form the basis of the Working Group’s report to the General Assembly in 2014. The Working Group conducted country visits to Somalia from 8 to 14 December 2012, and to Honduras from 18 to 22 February 2013. The Working Group has requested visits to Bolivia, Chad, Colombia, Comoros, Côte d’Ivoire, Ghana, Mexico and Papua New Guinea. The Working Group’s planned mission to Libya in May 2013 was postponed due to security concerns. The Working Group remains committed to visiting Libya in the near future. The Working Group has received an invitation from the Syrian Arab Republic and intends to visit the country as soon as the security situation allows it. The Working Group awaits positive responses of the various governments concerned to its country visit requests. Since its last report (2012) to the General Assembly, the Working Group sent communications to the Governments of Colombia, Honduras, Liberia and the United States of America. On behalf of the Working Group, I would like to thank the Government of Colombia for its reply, and invites the other Governments to do so as soon as possible. This year, the Working Group has pursued its survey of national laws relevant to private military and security companies. The rationale of the study is to analyse good practices and possible shortcomings in States’ protection of human rights in transnational security related activities. The first phase of the project, which focused on English-speaking countries of Africa, was presented to 24th session of the Human Rights Council on 10 September 2013. The next phase of the study will focus on French-speaking African countries and Asia, followed by other regions of the world. The research on domestic legislation demonstrates that the various African States analysed have responded to the privatization of security in different ways. Given the absence of a legally binding international instrument, there is little guidance on how effectively to address the phenomenon of the privatization of security. This has resulted in divergent regulatory approaches at the national level creating regulatory gaps, which by its very nature may be a
potential source of human rights violations. In the present report, the Working Group updates the General Assembly about developments with respect to both parts of its mandates: mercenaries and private military and security companies. The Working Group is concerned about the continuing activities of mercenaries along the border of Côte d’Ivoire and Liberia and about the detention of alleged mercenaries in Libya. The Working Group also notes with concern the reference by the Permanent Representative of the Syrian Arab Republic of the aggravating role that mercenaries play in the conflict in that State, in his presentation to the 22nd session of the Human Rights Council. In the present report, the Working Group also brings the General Assembly up to date on the evolution of the private military and security industry notably in Iraq and Afghanistan, as well as in the area of maritime security.

Mr. Chairperson,
Distinguished delegates,
Ladies and Gentlemen,

Recent events in several parts of the world clearly demonstrate that the problems posed by mercenaries are still a live issue. Mercenaries pose a threat not only to security, but also to human rights and the right of peoples to self-determination. It thus remains crucial that States cooperate to eliminate this phenomenon. As for private military and security companies, their ever-expanding activities continue to raise a number of challenges. Providing security, a fundamental human right, to its people is a fundamental responsibility of the State and outsourcing security to private military and security companies creates risks for human rights, hence the need to regulate their activities. In this regard, the Working Group is encouraged to note that States recognize this need for regulation. The discussions are focused on what form such regulation should take. The Working Group reiterates its position that an international legally binding instrument is a necessary complement to existing mechanisms to regulate the activities of private military and security companies. Existing national legislation provides an inadequate framework for addressing the challenges posed by private military and security companies due to inadequacies related to registering, licensing and providing effective and transparent mechanisms for accountability and remedies for human rights violations. These limitations are further exacerbated by the transnational nature of private military and security companies and the related difficulties with regard to establishing jurisdiction to prosecute relevant cases or to collect related evidence. The Working Group acknowledges the value of the Montreux Document in affirming the legal obligations of home, host and contracting States under international humanitarian law and international human rights law with regard to the activities of private military and security companies in armed conflicts, and in providing a set of good
practices that can be considered as a source of inspiration for States regarding their due diligence obligations. At the same time, the Working Group believes that the Montreux Document is not a complete solution to the regulatory gaps concerning private military and security companies. It is not a legally binding instrument and applies only in situations of armed conflict, whereas private military and security companies carry out various activities in peacetime as well. The Working Group supports the industry-led initiative to regulate the activities of PMSCs, namely the International Code of Conduct (ICoC), despite its shortcomings. For example, the Working Group believes that the absence of a complaint mechanism resulting in accountability and remedies for human rights violations is a component which the ICoC appears not to address. The Working Group also wishes to see an affirmation that the ICoC Association is the final authority on code requirements, and that it will add significant value by ensuring that all human rights and humanitarian concerns are embedded in company procedures. Finally, we emphasize the need for an independent, self-governing civil society body, which has the authority to adopt membership procedures to ensure that only appropriately vetted individuals are eligible to be contracted as security officers. The Working Group is of the view that the successful regulation of private military and security companies requires a multi-layered approach. A robust international legal framework, coupled with national legislation and self-regulatory initiatives, is necessary to effectively regulate these corporate actors whose operations pose potential threats to human rights.

Thank you.