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Non-admissibility of using mercenaries and foreign fighters as a means of undermining peace, international security, the territorial integrity of States and violating human rights

Draft resolution submitted by the Standing Committee on Peace and International Security

Rapporteur: Mr. J.I. ECHÁNIZ (Spain)

The 140th Assembly of the Inter-Parliamentary Union,

- (1) *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 inviolability of internationally recognized borders, the self-determination of peoples, the non-use of force or threat of use of force in international relations, the non-interference in affairs within the domestic jurisdiction of States, and the promotion of and respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion,
- (2) *Recalling* the definitions of mercenaries contained in Article 47 of Additional Protocol I to the 1949 Geneva Conventions and Article 1 of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries,
- (3) *Also recalling* that Additional Protocol I of the Geneva Conventions is applicable in international armed conflicts and that the International Convention on Mercenaries is applicable in all armed conflicts,
- (4) *Noting* that there is no international legal instrument regarding foreign fighters or foreign terrorist fighters, and no commonly accepted legal definition of these terms; and that the Human Rights Council 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 uses the following definition for foreign fighters: "individuals who leave their country of origin or habitual residence and become involved in violence as part of an insurgency or non-State armed group in an armed conflict",
- (5) *Considering* that The Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict of 17 September 2008 defines private military and security companies as private business entities, irrespective of how they define themselves, that provide military and/or security services, that include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel,

- (6) *Also considering* that the personnel, employees and managers, of private military and security companies, are persons employed by, through direct hire or under contract with, a private military and security company,
- (7) *Aware* of the fact that the activities of private military and security companies are, in most cases, in keeping with the relevant legal obligations and good practices,
- (8) *Reaffirming* that the personnel of private military and security companies are obliged, regardless of their status, to comply with applicable international humanitarian law and the State's obligations under international human rights law, and are subject to prosecution if they commit acts recognized as crimes under applicable national or international law; and furthermore, that private military and security companies have a responsibility to respect human rights and international humanitarian law, to take action to stop abuses by their personnel and to provide for or cooperate in processes to provide an effective remedy to the victims,
- (9) *Recalling* the relevant United Nations General Assembly Resolutions including resolution 71/182 of 19 December 2016 and Human Rights Council resolutions 15/12 of 30 September 2010, 15/26 of 1 October 2010, 18/4 of 29 September 2011, 21/8 of 27 September 2012, 24/13 of 26 September 2013, 27/10 of 25 September 2014, 30/6 of 1 October 2015, 33/4 of 29 September 2016 and 36/3 of 28 September 2017, and 39/5 of 27 September 2018, as well as all resolutions adopted by the Commission on Human Rights in this regard, and European Parliament resolution of 4 July 2017 on private security companies, the International Code of Conduct for Private Security Service Providers (2010), and the Convention for the Elimination of Mercenarism in Africa (1977),
- (10) *Also recalling* the United Nations Security Council resolutions on women and peace and security (1325, 1888, 1960) and, in particular, resolution 1820, which recognizes that all forms of sexual violence in armed conflicts can constitute war crimes or crimes against humanity,
- (11) *Expressing grave concern* at the danger that the activities of mercenaries constitute to peace and security in various parts of the world, in particular in areas of armed conflict, and at the threat they pose to the integrity of and respect for the constitutional order of the affected countries,
- (12) *Also expressing grave concern* at the scores of human rights violations perpetrated by mercenaries and foreign fighters, including those employed by private military and security companies, against the civilian population, including extrajudicial killings, rape, enslavement of women and children, torture, enforced disappearance and abductions as well as pillaging and arbitrary arrest and detention,
- (13) *Deploring* the disturbing trend of violence, including sexual violence such as rape as a weapon of war, against vulnerable groups such as women and children and dismayed at the extremely difficult recovery facing survivors who, once they have returned to their homes, suffer harsh treatment, including stigmatization and abandonment by spouses and other relatives,
- (14) *Noting with concern* that children are increasingly becoming victims of mercenaries and foreign fighters, including by those employed by private military and security companies, be they forcibly recruited as child soldiers or used for sexual slavery and other purposes,
- (15) *Firmly believing* that bringing to justice perpetrators of human rights violations and ensuring that victims of human rights violations are being made aware of their rights and guaranteed full access to justice and remedies are crucial to building peace,
- (16) *Reaffirming* that the use of mercenaries and their recruitment, financing, protection and training in armed conflicts, and of foreign fighters, including those hired by private military and security companies in armed conflicts, are causes of grave concern to all States and that they violate the purposes and principles enshrined in the Charter of the United Nations,
- (17) *Condemning* any State that permits, promotes or tolerates the recruitment, financing, training, assembly, transit or use of mercenaries and foreign fighters, the use of private sectors and private military and security companies with the objective of violating human rights, disrupting and/or undermining the territorial integrity of the sovereign States within their internationally recognized borders and their constitutional order,

(18) *Remaining concerned* over state-sponsored recruitment of mercenaries with the purpose to undermine the territorial integrity, sovereignty and constitutional order of other States,

1. *Decides* to cooperate closely with the United Nations General Assembly with the aim to develop and adopt common legal criteria for determining the legal definition of mercenaries and foreign fighters; and in this regard, invites the Human Rights Council 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 to develop, on the basis of existing international legal documents, such criteria and to submit them for consideration to the United Nations General Assembly;
2. *Urges* all parliaments to take legislative measures to ensure that their nationals do not take part in the recruitment, assembly, financing, training, protection or transit of mercenaries or foreign fighters, including those employed by private military and security companies, in violating human rights and international humanitarian law, planning of activities designed to destabilize the situation in any State or to dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States;
3. *Calls on* parliaments to amend their existing legislation, so as to prevent and punish the recruitment, assembly, financing, training, protection or transit of mercenaries or foreign fighters, including those employed by private military and security companies, who engage in activities designed to destabilize the situation in any State and/or violate human rights and international humanitarian law;
4. *Also calls upon* parliaments to enact legislation to promote the prohibition of the recruitment, training, hiring or financing of foreign fighters, including those employed by private military and security companies intervening in armed conflicts with a purpose of destabilizing constitutional regimes and/or violating human rights and international humanitarian law;
5. *Encourages* parliaments to establish national regulatory mechanisms for registering activities aimed at hiring former servicemen or active duty personnel on leave as imported military assistance in order to ensure that the imported services neither impede the enjoyment of human rights nor violate human rights or international humanitarian law in the recipient State nor are designed to undermine the constitutional order or territorial integrity of that State;
6. *Invites* the parliaments of States which have not yet done so, to consider taking the necessary action to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries;
7. *Calls on* parliaments and governments to enact provisions of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries in national legislation in order to eliminate mercenary activities and to further monitor implementation of the Convention;
8. *Urges* States to take into account women's rights, gender equality, and the special needs of women and girls in all peace and security efforts, and stresses the importance of the equal participation of men and women in these efforts;
9. *Stresses* the importance of the participation of women as negotiators and the contribution of women and girls from local communities for inclusive and long lasting peace;
10. *Condemns* the recruitment and use of children in armed conflict by all actors, and invites parliaments to amend respective legislation so as to criminalize such practices in national legislation;
11. *Strongly condemns* the policies aimed at instilling militant/combatative attitudes and mind-sets among children;

12. *Condemns* mercenary activities in areas of ongoing armed conflicts and in future conflicts after the adoption of this Resolution, and the threat they pose to the integrity of and respect for the constitutional order of sovereign States, to international peace and security, and to human rights and international humanitarian law;
13. *Also condemns* violations of international humanitarian law and of human rights by foreign fighters, including those hired by private military and security companies, and the threat they pose to the integrity of and respect for the constitutional order of sovereign States, to international peace and security, and to human rights and international humanitarian law;
14. *Calls upon* States to hold liable those who hire private military and security companies, such as governmental officials, whether they are military commanders or civilian superiors, as well as executives of private military and security companies, for crimes under international law committed by foreign fighters hired by such companies and under their effective authority and control, as a result of their failure to properly exercise control over such foreign fighters in accordance with international law;
15. *Also calls upon* States to introduce measures enabling them to monitor the activities of private military and security companies that are carried out not only on their territory but, with respect to their national companies, activities that are carried out in other countries;
16. *Further calls upon* States to take special measures to protect women and girls from sexual and gender-based violence in situations of armed conflict, and address accountability gaps and impunity as regard the criminal prosecution for sexual and gender-based violence perpetrated by mercenaries, foreign fighters, including private military and security company employees, and of all those that sponsor them;
17. *Condemns* any form of impunity granted to perpetrators of violations of international law as part of their mercenary activities and to those responsible for the use, recruitment, financing and training of mercenaries, and urges all States, in accordance with their obligations under international law, to bring them, without discrimination, to justice;
18. *Also condemns* any form of impunity granted to executives of private military and security companies, involved in violations of human rights and international humanitarian law and urges all States, in accordance with their obligations under international law, to bring them, without discrimination, to justice;
19. *Further condemns* any form of impunity granted to foreign fighters and to those responsible for the use, recruitment, financing and training of foreign fighters for their violations of human rights and international humanitarian law, and urges all States, in accordance with their obligations under international law, to bring them, without discrimination, to justice;
20. *Calls upon* parliaments, in accordance with international law, to cooperate closely with the objective to bring to justice those accused of mercenary activities, as well as those who are foreign fighters, including executives of private military and security companies, who committed violations of international humanitarian law or of human rights, to hold them accountable and have them tried by a competent, independent and impartial tribunal, in compliance with international human rights standards and international humanitarian law;
21. *Also calls upon* parliaments to adopt clear and precise legislation to strengthen access to full effective legal assistance, support and remedies for victims of violations of international law committed by mercenaries, foreign fighters and private military and security company employees;
22. *Decides* to remain seized of this matter.