

directly having to assume the consequences; comparatively low cost, in terms both of money and of endangering the lives of one's own military personnel; knowledge of strategic planning; and

- ♦ two circumstances usually determine the actual use of mercenaries: (a) the existence of an organization, state or party to a conflict which, in order to carry out operations, resorts to hiring mercenaries as a way of achieving its goals; and (b) recruiting organizations and enterprises and people who, for high pay, will agree to serve as mercenaries knowing that they will be performing acts prohibited by national laws and international treaties protecting human rights, state sovereignty and the right of peoples to self-determination.

Commenting on current international law and its limitations, the report states that the increasing tendency of mercenaries to hide behind modern private security companies may be due to the fact that existing international law does not offer the best means of anticipating and resolving situations such as those posed by the presence of mercenaries.

The narrative on private security companies sets the context by stating that such firms are taking upon themselves responsibilities and functions reserved to states and associating their activities with a profit motive that is proper to any private firm producing goods and services on a free market, but which has limits when such sensitive issues as the self-determination of a people, the national security of a state or human rights are involved. With regard to these private firms, the report notes that: seeking to assume responsibility for the security of entire countries, they consider security to be a commodity like any other, subject to the law of supply and demand; if a state facing problems wishes to purchase security, they will sell it, replacing a country's armed forces and police and supposedly performing their role more efficiently — in respect of everything to do with "order"; and, for this purpose, such companies are generally part of holdings and are therefore able, through other companies, to take part in various services which complement and enhance their offer, for example, transport, communications, economic and financial consultancy, health, sanitation services.

The report notes that those who defend the involvement and activities of such firms do so on the basis that they: offer a more rational solution for states beset by crises that render them incapable of performing the law-enforcement and security functions for which they are responsible; may participate in internal armed conflicts on the side of the law, although with greater freedom and efficiency; and, are cheaper, that is, it is cheaper to hire them than to resort to other means.

Countering the claim that these security companies are operating legally since they sign contracts with governments that lawfully and legitimately represent the state, the report asserts that no government is authorized to

exercise the attributes of authority against the sovereignty of the state itself and, further, responsibility for internal order and security in a sovereign country is an obligation which may not be renounced or transferred and which the state discharges through its police and armed forces.

The report suggests a non-exhaustive list of topics requiring further and more detailed investigation, including: (a) possible changes in the nature of mercenaries, as defined since the establishment and organization of national armies, on the basis that large numbers of them have been joining private companies which provide security and military advice and training internationally; and (b) the international lawfulness of allowing the free market to include completely unrestricted competition from companies selling security services and the risk of interference in internal affairs by agents who, claiming to be experts, might actually be mercenaries, intelligence agents from third states, saboteurs or other elements whose assignment is to dominate, dissociate and weaken the receiving state.

The report recommends, *inter alia*, that:

- ♦ the Commission on Human Rights reaffirm its condemnation of mercenary activities and suggest to all states that they incorporate practical measures in their national legislation to prohibit the use of their territory for the recruitment, training, assembly, transit and financing and use of mercenaries;
- ♦ mercenary activity be treated in every respect as an unlawful and prosecutable act and a continuing offence;
- ♦ the Commission on Human Rights propose that states consider adopting legislation to prohibit mercenary activity and the use of national territory for such unlawful acts;
- ♦ the Commission on Human Rights appeal to states for understanding so that they will decide to ratify or accede to the Convention on the use of mercenaries and bring it rapidly into force;
- ♦ the evolution of private security companies, the relevant legislation of states and the conditions under which states agree to conclude contracts with such companies be monitored closely in order to assess whether the security and internal order of a state, which has lost part or all of its capacity to keep order, have been left to the action of specialized companies which will take charge of the state's security;
- ♦ further investigation be carried out to determine the impact of the relationship between private security companies and the countries using their services, particularly from the standpoint of the exercise of authority by the state, self-determination, political stability, the protection of natural resources and conditions for the maintenance of peace and respect for human rights;