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### Non-admissibility of using mercenaries as a means of undermining peace and violating human rights

***Explanatory memorandum submitted by the co-Rapporteurs  
Mr. K. Al Bakkar (Jordan) and Mr. B. Tarasyuk (Ukraine)***

We live in a tense geopolitical environment where our States are facing unprecedented hard and soft security challenges. Terrorism and asymmetrical conflicts which undermine peace, international security, sovereignty and the territorial integrity of States are among the most dangerous threats.

The last twenty years have seen an increase in human losses as a result both of conflicts and terrorist attacks. From 2011 to 2014, the number of battle-related deaths increased 356 per cent while deaths from terrorism increased 353 per cent<sup>1</sup>.

The United Nations and its Member States are fighting terrorism and asymmetric conflicts by, for example, dealing with issues of mercenarism, private military companies and foreign terrorist fighters.

The activities of mercenaries, foreign terrorist fighters, terrorist organizations and other non-State actors undermine the purposes and principles enshrined in the Charter of the United Nations on the strict observance of, among other, sovereign equality, political independence, the territorial integrity of States, the self-determination of peoples, the non-use of force or threat of use of force in international relations, non-interference in domestic affairs of States and promotion of respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

There are no commonly accepted and exhaustive definitions of either terrorism or mercenaries and foreign fighters.

Mercenaries are not new to armed conflicts but they have taken on new forms and aspects that were not common in the past, and these include private military and security companies.

Foreign terrorist fighters (FTF) are a growing threat to many countries. The flow of FTF into Iraq and Syria continued in 2014 and 2015. It is estimated that about 25,000 to 30,000 FTF arrived in Syria and Iraq since 2011. Several reports identify South-Eastern Europe (SEE), as one of the main sources of FTF, along with Western Europe and the Middle East<sup>2</sup>.

<sup>1</sup> See in: [visionofhumanity.org/app/uploads/2018/12/Global-Terrorism-Index-2018-1.pdf](http://visionofhumanity.org/app/uploads/2018/12/Global-Terrorism-Index-2018-1.pdf), pg. 41.

<sup>2</sup> [www.unodc.org/documents/frontpage/2017/Foreign\\_Terrorist\\_Fighters.pdf](http://www.unodc.org/documents/frontpage/2017/Foreign_Terrorist_Fighters.pdf)

The threat of "blowback" from foreign fighters and mercenaries, unaffiliated volunteers who join an insurgency in a distant land, and non-State actors, has incited States to explore a number of normative mechanisms.

It is important to mention that children and young people have become the main targets of terrorists' recruiting and the fact that, with the development of technologies, recruitment methods have become increasingly sophisticated. Consequently, it is essential to strengthen the fight against such recruitment and its methods on both the national and international level.

Since 2013, around 50 countries all over the world have enacted laws and regulations to prevent their citizens from joining extremist armed groups such as the Islamic State in Iraq and the Levant (also known as ISIL). Most of these measures were enacted in accordance with United Nations Security Council resolution 2178 of 24 September 2014. Collectively, these "foreign terrorist fighter" measures erode the principles of human rights and the rule of law<sup>3</sup>.

In drafting this memorandum, the co-Rapporteurs aimed to systematize and identify the legal framework of the above-mentioned notions.

### **Proposed title**

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.

### **Legal framework**

United Nations General Assembly 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; United Nations Security Council resolution 2178 (2014); Article 47 of Additional Protocol I to the 1949 Geneva Conventions and Article 1 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; 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.

### **Expected outcome**

To draw the attention of Member Parliaments to the need to amend their national legislation on counter-terrorism and criminal codes to counteract better the harmful outcomes of the activities of mercenaries and foreign terrorist fighters.

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<sup>3</sup> *"Foreign Terrorist Fighter Laws": Human Rights Rollbacks Under UN Security Council Resolution 2178* ([www.hrw.org/sites/default/files/news\\_attachments/fff\\_essay\\_03feb2017\\_final.pdf](http://www.hrw.org/sites/default/files/news_attachments/fff_essay_03feb2017_final.pdf))