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CONSEIL DES DROITS DE L'HOMME
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**PROMOTION ET PROTECTION DE TOUS LES DROITS DE L'HOMME,
CIVILS, POLITIQUES, ÉCONOMIQUES, SOCIAUX ET CULTURELS,
Y COMPRIS LE DROIT AU DÉVELOPPEMENT**

**Rapport du Groupe de travail sur l'utilisation de mercenaires comme moyen
de violer les droits de l'homme et d'empêcher l'exercice du droit des peuples
à disposer d'eux-mêmes**

Président-Rapporteur: M. José Luis Gómez del Prado

Additif

**Consultation régionale pour l'Amérique latine et les Caraïbes sur les effets des
activités des sociétés militaires et de sécurité privées sur la jouissance
des droits de l'homme: réglementation et surveillance* **
(17 et 18 décembre 2007)**

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport, joint en annexe, est distribué en espagnol et en anglais seulement.

** La soumission tardive de ce document s'explique par le souci d'y faire figurer des renseignements aussi à jour que possible.

Résumé

Par sa résolution 2005/2, la Commission des droits de l'homme a chargé le Groupe de travail, entre autres tâches, d'étudier «les incidences sur l'exercice des droits de l'homme, en particulier le droit des peuples à l'autodétermination, des activités des sociétés privées qui offrent, sur le marché international, des services d'assistance, de conseil et de sécurité dans le domaine militaire, et [d']établir un projet de principes fondamentaux à l'échelle internationale, qui encouragent le respect des droits de l'homme par ces sociétés dans leurs activités».

Au cours des visites officielles qu'il a récemment effectuées dans plusieurs pays de la région de l'Amérique latine et des Caraïbes, le Groupe de travail a pu observer que le phénomène que constituent les nouveaux problèmes, manifestations et tendances associés aux activités mercenaires ou liés au mercenariat ainsi que le rôle joué par les sociétés militaires et de sécurité privées (SMSP) et leurs effets préjudiciables sur la jouissance et l'exercice des droits de l'homme continuent de s'étendre en Amérique latine et aux Caraïbes. En témoignent à la fois l'augmentation du nombre de sociétés transnationales de sécurité qui opèrent dans la région et le recours à des agents de sécurité privés à la place des forces de police ou de sécurité nationales. Dans ce contexte, le Groupe de travail a jugé opportun de convoquer une consultation afin de disposer d'un point de vue régional sur les pratiques de ces sociétés, d'étudier la question du transfert du monopole du recours légitime de la force à des acteurs privés non gouvernementaux, selon la tendance – de plus en plus marquée au niveau international – à la sous-traitance des fonctions de l'État à des sociétés militaires et de sécurité privées, avec les conséquences que cela peut avoir sur la souveraineté nationale, et d'analyser les cadres de réglementation ou d'autres mesures adoptés par les États pour garantir que lesdites sociétés respectent les normes internationales des droits de l'homme.

La consultation régionale a été organisée par le Haut-Commissariat des Nations Unies aux droits de l'homme en étroite collaboration avec le Groupe de travail des Nations Unies sur l'utilisation de mercenaires, et s'est tenue dans la ville de Panama, siège du Bureau régional pour l'Amérique latine et les Caraïbes, les 17 et 18 décembre 2007, en vertu de la résolution 62/145 de l'Assemblée générale, qui prie le Haut-Commissariat de convoquer des consultations régionales sur la question.

Dans ses observations finales sur la consultation régionale, le Groupe de travail indique que, dans certaines situations, les activités des sociétés militaires et de sécurité privées (SMSP) et de leurs employés peuvent donner lieu à des violations des droits de l'homme. Le recrutement d'«agents de sécurité privés» est un phénomène mondial qui n'existe pas seulement en Amérique latine et dans les Caraïbes mais aussi dans d'autres régions; les SMSP emploient des «agents de sécurité privés» dans des situations de conflit armé de faible intensité ou d'après-conflit. Les SMSP opèrent dans une zone grise où il est facile de violer les droits de l'homme en toute impunité sans devoir rendre des comptes, ce qui engendre de graves problèmes politiques et militaires. Les SMSP assument chaque jour une part croissante des fonctions qui, jusqu'à il y a peu, constituaient la base de la souveraineté des États, seuls détenteurs du monopole du recours légitime à la force. Le transfert de ces fonctions au secteur privé, notamment à des sociétés transnationales, a pour effet d'affaiblir la souveraineté nationale tout comme le système de sécurité collective des Nations Unies. Cette nouvelle industrie militaire et de sécurité privée qui exporte ses services dans des zones de conflit armé s'est développée de manière spectaculaire ces dernières années. Le cadre réglementaire qui s'applique aujourd'hui aux activités de

certaines SMSP, essentiellement fondé sur l'autorégulation et sur des codes de conduite d'application facultative, est insuffisant, comme le prouvent les nombreux cas de violations des droits de l'homme.

L'obligation de réglementer ces activités incombe aux États, à qui il appartient d'adopter les mesures nécessaires pour faire respecter, mettre en œuvre et promouvoir les droits de l'homme. Cependant, étant donné le caractère transnational des activités en question, une réglementation est également nécessaire au niveau régional et dans le cadre des Nations Unies.

Ont participé à la consultation régionale des représentants des Gouvernements du Chili, du Costa Rica, de Cuba, de l'Équateur, d'El Salvador, du Honduras, du Panama, du Paraguay et de la République dominicaine, le Président-Rapporteur et deux membres du Groupe de travail sur l'utilisation de mercenaires, des experts indépendants, des représentants de l'Institut interaméricain des droits de l'homme, des représentants de deux associations de sociétés militaires et de sécurité privées ainsi que des représentants du Haut-Commissariat des Nations Unies aux droits de l'homme.

Annexe

**REPORT OF THE 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**

**Latin American and Caribbean regional consultation on the effects
of the activities of private military and security companies on the
enjoyment of human rights: regulation and monitoring
(17-18 December 2007)**

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Introduction

1. Resolution 2005/2 of the Commission on Human Rights requested the 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 inter alia “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”. The Working Group was further instructed to “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”.
2. During missions to Honduras, Ecuador, Peru and Chile in the period 2006-2007, the Working Group noted that the enjoyment and exercise of human rights in Latin America and the Caribbean were increasingly being impeded by the emergence of some new problems and trends related to mercenaries or their activities and by the role played by private military and security companies (PMSCs), as evidenced by the expansion of transnational security companies’ operations in the region and the use in some places of private security guards instead of national police or security forces.
3. In the course of its field missions, the Working Group discovered that the monopoly over the legitimate use of force was being transferred more and more to private non-State actors in line with the international boom in the private military and security sector. These practices have meant an outsourcing or privatization of warfare at the international level and of security at the domestic level.
4. One aspect of this is the recruitment and training of personnel from Latin America and the Caribbean with a view to offering security services to private companies working in countries such as Iraq and Afghanistan. The Working Group found that governments in the region are often ill-equipped to come to grips with this problem by registering and licensing the PMSCs operating in their territory, for example or introducing effective administrative, regulatory and accountability arrangements so as to ensure that these firms follow standard recruitment procedures and offer standard working conditions. Weak or inadequate domestic legislation combined with few economic opportunities have made for a proliferation of PMSCs, which hire former soldiers and policemen and other persons from third countries so as to offer security services in low-intensity armed conflicts and post-conflict situations.
5. The Working Group deemed it advisable to hold a consultative meeting in order to gain a regional perspective of the practices of PMSCs operating in the region and to analyse the measures adopted by States to regulate and control these firms. The regional consultation also studied various good practices and options for regulating PMSCs to ensure that they comply with international human rights standards.

6. The regional consultation, which was organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in close collaboration with the Working Group on the use of mercenaries, was held at the OHCHR regional office in Panama, pursuant to the recently adopted General Assembly resolution 62/145, which requests OHCHR to hold regional consultations on this question.

I. PARTICIPANTS

7. The consultation was attended by representatives of the Governments of Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Honduras, Panama and Paraguay, representatives of the Inter-American Institute of Human Rights (IIHR), four experts on the subject, and representatives of two associations of PMSCs, the International Peace Operation Association (IPOA) and the British Association of Private Security Companies (BAPSC). The list of participants may be found in annex I.

8. The Working Group was represented by the Chairperson-Rapporteur Mr. José Luis Gómez del Prado, Ms. Amada Benavides de Pérez and Mr. Alexander Nikitin.

II. PROGRAMME OF WORK

9. The following subjects were studied during the consultation:

- (a) PMSC practices, methods and trends in the region and elsewhere;
- (b) Existing international instruments and mechanisms;
- (c) The State as the holder of the legitimate monopoly over the use of force;
- (d) Privatization and internationalization of the use of force;
- (e) National laws and other measures adopted by States to regulate the practices of PMSCs;
- (f) National experiences outside Latin America and the Caribbean;
- (g) The example of South Africa;
- (h) Proposals for possible guidelines and basic principles promoting greater respect and protection of human rights by PMSCs.

10. Annex II contains more detailed information about the programme of work.

III. FINDINGS OF THE WORKING GROUP

11. The government representatives attending the regional consultation and the members of the Working Group emphasized that States have a duty to respect, implement and promote human rights.

12. The regional consultation, like the Working Group's reports, served to alert national authorities and international public opinion to the effects of the activities of PMSCs and their personnel on the enjoyment of human rights. In some situations their action could result in human rights violations.
13. The Working Group considered it advisable to present the following findings based on statements and debates at the regional consultation.
14. "Private security guards" were recruited all over the world, not just in Latin America and the Caribbean but in the world's other four geopolitical regions, Africa, Asia and the Pacific, Eastern Europe and Western Europe.
15. PMSCs employ "private security guards" to offer a variety of security services in low-intensity armed conflicts and post-conflict situations. They work in a grey area that is hard to distinguish from the mercenarism of the soldiers of fortune of former times. As with the mercenaries of the past, the actions of those "private security guards", who work for legally registered transnational companies which export their services, give rise to a number of human rights problems. Yet although their activities have characteristics in common with mercenarism, save in exceptional cases they do not fit the technical definition provided in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. That instrument was drafted in the 1970s and no longer matches reality. Apart from the lacunae it contains, the Convention is not a universal instrument since only 30 States are parties to it.
16. A number of political and military dilemmas are posed by the action of PMSCs, which operate in a grey zone where human rights violations are facilitated by impunity and a lack of accountability. In order to avoid electoral costs and having to answer to public opinion, some governments outsource to such firms. At the same time, the involvement of non-State actors fragments and complicates armed conflicts and post-conflict situations because there is no coordination or control over these actors, and this hampers the armed forces' freedom of action.
17. PMSCs are constantly taking over functions that were until recently inherent to the sovereignty of States as the sole holders of the legitimate monopoly over the use of force. The transfer of these functions to the private sector and their performance by transnational companies are weakening national sovereignty and the United Nations collective security system, which rests on Member States' sovereignty. In some circumstances it is even possible to speak of a "privatization of war".
18. PMSCs which export military and security services blur the dividing line between the public and private sectors. Moreover, although in reality they are essentially profit-driven, they often present themselves as humanitarian or peacebuilding organizations, thereby also making it unclear where the boundaries of non-governmental humanitarian organizations' field of action really lie. In fact, these transnationals are neither humanitarian actors nor peacebuilders and are basically motivated by commercial considerations.
19. The new military and private security industry which exports its services to areas of armed conflict has expanded spectacularly with the fall of the Berlin Wall, the globalization of the world economy and the new pattern of governance. The industry has encouraged the establishment of associations that use the latest marketing techniques to effectively lobby

governments, intergovernmental and non-governmental organizations and private industry. It would be illusory to think that when such companies violate human rights they will be punished by the invisible hand of the market as business dries up and they fade away: they are not. On the contrary, experience shows that, in many cases, companies reported for crimes against the civilian population in their theatre of action continue to receive contracts.

20. The current framework governing the activities of PMSCs, which is based mainly on self-regulation and voluntary codes of conduct, is inadequate as can be seen from the numerous instances of human rights violations. One of the most recent and most blatant incidents, which was not an isolated occurrence, was the killings that took place on 16 September 2007 in Baghdad, in which 17 civilians, among them women and children, died and a further 20 people were wounded as a result of indiscriminate shooting by personnel of the Blackwater company, which up to then had been self-regulated by the voluntary standards and codes of conduct of the International Peace Operation Association.

21. It falls to States to regulate these activities, but as they are transnational activities there is also a need for regulation at the regional level and in the framework of the United Nations. To that end, States must precisely define what functions are inherently governmental and cannot be transferred to PMSCs.

22. The wide range of activities of PMSCs poses serious problems for the international community and United Nations peacekeeping operations.

23. In the short term, the Working Group considers it necessary for States to accede to the Convention and bring their domestic legislation into line with it since, despite the fact that it is outdated and contains several lacunae, it is the only international instrument there is until such time as new provisions are drafted. In order to ease the accession of States not yet parties to the Convention, OHCHR, acting in close collaboration with the Working Group on the use of mercenaries, could draft a model law based on the Convention.

24. At the same time, in the short and medium term, the activities of PMSCs also need to be regulated at the national level, both by the States of registration of transnational exporters of military and security services and by the countries importing those services and where the companies operate or recruit.

25. As a priority measure, States should define the military and security functions which cannot be outsourced because they inherently belong to governments as holders of the monopoly over the legitimate use of force. Similarly it is necessary: to define and delimit functions which can be outsourced and for which national rules should be formulated; to adopt legislation and set up supervisory machinery, in respect of those activities; to establish a registration and licensing system and penalties; to lay down rules concerning the respect for human rights and international humanitarian law; to make it obligatory to provide personnel with proper training also encompassing human rights standards; to establish effective arrangements for selecting vetting applicants; and lastly to make it obligatory to present periodic reports and to introduce a monitoring system.

26. States must take the necessary steps to prevent the recruitment of former soldiers and police officers as “private security guards” for deployment in armed conflict or post-conflict zones. An individual’s right to free choice of employment cannot be absolute when the State becomes involved, as it does when it takes part, albeit indirectly through its citizens, in an armed conflict.

27. In the medium and long term, the Working Group considers it necessary to identify the loopholes in the Convention that PMSCs use in order to work in armed conflict or post-conflict zones and to draw up standards and additional binding basic principles with a view to incorporating them in an additional protocol to the Convention, which would first be debated in the United Nations General Assembly.

28. Furthermore the United Nations could set up in its departments, offices, organizations, programmes and funds an effective system for selecting and vetting personnel and could encourage the formulation of guidelines setting out relevant criteria for regulating and supervising the activities of PMSCs that win contracts and operate under its authority. It should also demand and ensure that those guidelines comply with human rights standards and international humanitarian law. In particular it should introduce the requirement that companies or persons employed by them have not been implicated in human rights violations.

Annex I

PARTICIPANTS

Government representatives	Chile	Mr. Jorge Tagle Mr. Griott Mr. Barrientos
	Costa Rica	Mr. Juan Luis Sánchez Vargas
	Cuba	Ms. María del Carmen Herrera Caseiro
	Dominican Republic	Col. Ángel Camacho Ubiera Mr. Fernández Valerio
	Ecuador	Mr. Augusto Saá
	El Salvador	Mr. Wilfredo de Jesús Avelenda Echeverría
	Honduras	Mr. Juan Carlos Bonilla Valladares
	Panama	Ms. Ianna Quadri Mr. Vladimir Franco Mr. Portugal Falcón Mr. Janio Tuñón Mr. Ernesto Cerrud
	Paraguay	Ms. Amalia Quintana de Florentín
	Experts	Ms. Anna Leander Mr. Jesús Núñez Villaverde Mr. Sabelo Gumedze (unable to attend) Ms. Chia Lehnardt
Intergovernmental bodies	IIHR	Mr. Roberto Cuéllar Mr. Juan Navarrete
Representatives of associations of the private military and security sector	IPOA BAPSC	Mr. Doug Brooks Ms. Sabrina Schulz
Working Group on the use of mercenaries		Mr. José Luis Gómez del Prado Ms. Amada Benavides de Pérez Mr. Alexander Nikitin
Office of the United Nations High Commissioner for Human Rights		Mr. Karim Ghezraoui Ms. Teresa Alberó Ms. Maymuchka Lauriston Ms. Dominique Laplace

Annex II

PROGRAMME OF WORK

A. 17 December 2007

1. Opening of the meeting and introductions

Welcome

1. Mr. Ricardo J. Duran, Deputy Minister for Foreign Affairs of Panama welcomed participants.
2. Mr. Karim Ghezraoui, Thematic Coordinator, Special Procedures Branch, Office of the United Nations High Commissioner for Human Rights and Ms. Teresa Albero, Regional Representative, OHCHR Regional Office for Latin America and the Caribbean, outlined the work of the Office.
3. The Chairperson-Rapporteur of the Working Group on the use of mercenaries, Mr. José Luis Gómez del Prado, opened the working session. He introduced the participants, summarized the programme of work and explained the purposes of the regional consultation.
4. The Chairperson-Rapporteur emphasized that the purpose of such regional consultations was to share, consider and make good use of the lessons learnt from other national, regional and international experiences and practices in the field in question.
5. Documentation:
 - (a) Background paper;
 - (b) Annotated programme;
 - (c) List of participants.

2. Activities of private military and security companies (PMSCs) in Latin America and the Caribbean

Assessment of emerging issues, manifestations and trends with regard to the activities of PMSCs in the region and elsewhere

6. The members of the Working Group presented their findings and observations from missions to countries in the region.
7. Ms. Amada Benavides de Pérez then gave a presentation describing the activities of PMSCs operating in Latin America and the Caribbean.
8. The Chairperson-Rapporteur opened the discussion in which he gave the floor to government representatives, experts, non-governmental organizations and representatives of associations of the private military and security sector (IPOA and BAPSC).

9. Documentation:

(a) Annual reports of the Working Group on the use of mercenaries to the General Assembly and the Human Rights Council (A/HRC/4/42, A/61/341, E/CN.4/2006/11 and Add.1);

(b) Reports of the Working Group's missions to Honduras and Ecuador (A/HRC/4/42/Add.1 and 2);

(c) Commission on Human Rights resolution 2005/2 establishing the Working Group's mandate (E/CN.4/RES/2005/2);

(d) General Assembly resolution 61/151 on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/RES/61/151).

3. International, regional and national regulations (part I)

Existing international instruments and mechanisms

10. Ms. Anna Leander gave a presentation of existing international instruments and mechanisms regulating PMSCs, including the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989, the Geneva Conventions of 1949 and protocols thereto of 1977, United Nations human rights conventions, the Charter of the United Nations and the relevant resolutions of the United Nations. One of her main conclusions was that there was a large amount of indirect, but no direct, legislation applicable to PMSCs. This subject was then discussed extensively.

11. Mr. Alexander Nikitin described regional regulatory mechanisms in the Commonwealth of Independent States (CIS).

12. Documentation:

(a) International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989;

(b) Geneva Conventions of 1949;

(c) OHCHR fact sheet No. 28, the Impact of Mercenary Activities on the Right of Peoples to Self-Determination;

(d) Copy of the expert's statement concerning international instruments of relevance to PMSCs;

(e) CIS instrument;

(f) Report on the first 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 (2001);

(g) Report on the second 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 (2002);

(h) Report on 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 (2004).

4. International, regional and national regulations (part II)

The State as holder of the right to use force

13. Mr. José Luis Gómez del Prado gave a presentation based on the paper prepared by Ms. Shaista Shameem, a member of the Working Group, on the State as the holder of the right to use force.

Privatization and internationalization of the use of force

14. Mr. Jesús Núñez Villaverde's presentation focused on the privatization and internationalization of the use of force.

15. Documentation:

(a) Working Group questionnaire sent to governments;

(b) Compilation of governments' replies;

(c) Reports of the Working Group on the use of mercenaries on its missions to Honduras, Ecuador, Peru and Chile (A/HRC/4/42/Add.1 and 2, A/HRC/7/7/Add.2 and 4);

(d) Copy of the expert's report on the privatization and internationalization of the use of force;

(e) Comparison of national experiences in regulating the activities of PMSCs;

(f) Report on the first 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 (2001);

(g) Report on the second 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 (2002);

(h) Report on 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 (2004).

B. 18 December 2007

5. International, regional and national regulations (part III)

Information regarding domestic legislation and other measures taken by States to regulate the activities of PMSCs

15. The government representatives gave presentations of the situation in their countries, drawing attention to domestic legislation and other measures to regulate and supervise the activities of PMSCs, including registration, licensing and monitoring procedures.

16. Documentation:

- (a) Working Group questionnaire sent to governments;
- (b) Compilation of governments' replies;
- (c) Reports of the Working Group on the use of mercenaries on its missions to Honduras, Ecuador, Peru and Chile (A/HRC/4/42/Add.1 and 2;
- (d) Copy of the expert's report on the privatization and internationalization of the use of force;
- (e) Comparison of national experiences in regulating the activities of PMSCs;
- (f) Report on the first 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 (2001);
- (g) Report on the second 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 (2002);
- (h) Report on 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 (2004).

National experiences outside Latin America and the Caribbean: the example of South Africa

17. Mr. José Luis Gómez del Prado gave a summary of the presentation prepared by Mr. Sabelo Gumedze, who was unable to attend the meeting, describing the legislative and administrative measures adopted by South Africa to regulate and supervise the activities of PMSCs, including registration, licensing, and regulatory and supervisory arrangements.

18. The representatives of IPOA and BAPSC described the two associations' self-regulatory initiatives.

19. Documentation:

- (a) Copies of expert reports on regulatory options and monitoring procedures;
- (b) Copies of the industry's self-regulatory initiatives.

Proposals for possible guidelines or basic principles encouraging greater respect for and protection of human rights by PMSCs

20. Drawing on States' experiences and debates on the subject, Ms. Chia Lehnardt described the most important factors that would need to be borne in mind when drafting possible guidelines and basic principles for regulating the activities of PMSCs operating in low-intensity armed conflicts.

21. All the participants engaged in a lively debate.

22. Documentation:

- (a) Code of Conduct for Law Enforcement Officials;
- (b) Copy of the International Labour Organization Guide to Private Employment Agencies;
- (c) Copy of the expert report on possible guidelines and basic principles for PMSCs.

6. Conclusion of the consultation

Conclusions, observations and closure of the regional consultation by the Chairperson of the Working Group

23. Mr. Gómez del Prado suggested some preliminary conclusions based on comments made by participants and members of the Working Group and closed the Latin American and Caribbean regional consultation.
