



General Assembly

Distr.: General
5 July 2010

Original: English

Human Rights Council

Fifteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

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

Chairperson/Rapporteur: José Luis Gómez del Prado

Addendum

Regional consultation for Western European and Others Group on the activities of mercenaries and private military and security companies: regulation and monitoring (14 April 2010)*

Summary

In accordance with General Assembly resolution 62/145 and Human Rights Council resolution A/HRC/7/21, the Working Group held a regional consultation for the Western European and Others Group (WEOG) in Geneva on 14 April 2010.

This consultation, which was held during one of the regular sessions of the Working Group in Geneva, is the last in a series of five regional consultations covering each region over a period of two and a half years. Through the consultations, the Working Group has sought to gain a regional perspective on the current practices related to mercenaries and private military and security companies (PMSCs) registered, operating or recruiting personnel in WEOG member States and to share information on steps taken by States in the region to introduce legislation or other measures to regulate and monitor the activities of these companies on the international market.

* The summary is being circulated in all official languages. The report itself, contained in the annex to the summary, is being circulated in English only.

The consultation provided an opportunity for the Working Group to brief participants on progress towards developing a draft convention on the regulation, oversight and monitoring of private military and security companies and to seek their views and comments on the content and scope of such a convention.

Representatives of the following WEOG member States attended the consultation: Australia, Austria, Canada, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America, together with representatives from the European Union.

The Working Group was represented by its Chairperson/Rapporteur, José Luis Gómez del Prado, and its members, Amada Benavides de Pérez, Alexander Nikitin and Shaista Shameem.

Annex

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

Regional consultation for Western European and Others Group on the activities of mercenaries and private military and security companies: regulation and monitoring (14 April 2010)

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I. Background

1. In paragraph 15 of its resolution 62/145, the General Assembly requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to convene regional governmental consultations 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, in particular regarding the effects of the activities of private military and security companies (PMSCs) on the enjoyment of human rights.

2. In line with the above-mentioned resolution and Human Rights Council resolution 7/21, 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-determination¹ held its final regional consultation, with the Western European and Others Group (WEOG) in Geneva, Switzerland, on 14 April 2010.

3. The Working Group had held four previous regional consultations, the first in Panama City for the Latin American and Caribbean Region on 17 and 18 December 2007, the second in Moscow for the Eastern European Group and Central Asian Region on 17 and 18 October 2008, the third in Bangkok for Asia and the Pacific on 26 and 27 October 2010 and the fourth in Addis Ababa for the African Group on 3 and 4 March 2010.²

4. Representatives of the following WEOG member States attended the consultation: Australia, Austria, Canada, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America, together with representatives from the European Union. The Working Group had a separate meeting with the Israeli delegation during which it informed the delegation of its progress towards the development of a new international instrument to regulate and monitor the activities of private military and security companies.

5. The Working Group was represented by its Chairperson-Rapporteur, José Luis Gómez del Prado, and its members, Amada Benavides de Pérez, Shaista Shameem and Alexander Nikitin.

II. Summary of the meeting

A. Introduction

6. The consultation was opened by Karim Ghezraoui, Chief, Groups in Focus Section, Special Procedures Branch, Office of the United Nations High Commissioner for Human Rights (OHCHR), who welcomed all participants on behalf of OHCHR. He said that, with this consultation, the Working Group was completing a series of five regional consultations held over a period of two and a half years. During these consultations, participants exchanged views on good practices and lessons learned on the monitoring and regulation of

¹ The Working Group on the use of mercenaries was established by resolution 2005/12 of the Commission on Human Rights. The Working Group is composed of five independent experts serving in their personal capacities. As of March 2010, José Luis Gómez del Prado (Spain) is the Chairperson-Rapporteur. The other members are Amada Benavides de Pérez (Colombia), Alexander Nikitin (Russian Federation), Shaista Shameem (Fiji) and Najat al-Hajjaji (Libyan Arab Jamahiriya).

² Please see reports A/HRC/7/7/Add.5 of 5 March 2008, A/HRC/10/14/Add.3 of 26 February 2009, A/HRC/15/25/Add.4 of 1 April 2010 and A/HRC/15/15/Add.5 of 28 May 2010.

the activities of mercenaries and private military and security companies at the national and regional level. Discussion also revolved around different approaches for a possible new international framework for the regulation of the industry, including the Working Group's proposed elements for a possible new international convention on PMSCs. Finally he noted the timeliness of this last consultation and the added value of member States' input in this final stage of the project as the Working Group was preparing to submit its report on the progress achieved in the development of a possible draft legal instrument for consideration and action by the Human Rights Council in September 2010.

7. In his opening remarks, José Luis Gómez del Prado thanked all representatives of the Western Group for their participation and in particular the ambassador of Norway for coordinating this regional consultation in Geneva.

8. He emphasized that the new instrument on PMSCs proposed by the Working Group was geared to regulate and monitor the activities of private military and security companies in order to prevent, and protect individuals from, serious human rights violations, which unfortunately were regularly committed, and also to establish mechanisms of accountability and to provide effective remedies to the victims.

9. He expressed the gratitude of the Working Group to the Governments which had already provided written comments and constructive observations on the elements for a possible draft convention on PMSCs that had been circulated in early January 2010. The Working Group had thoroughly studied their comments and their reservations regarding the proposal of a possible new convention on PMSCs. He emphasized that the Working Group shared the views of a number of countries regarding the necessity of more effective regulation of the private military and security industry.

10. Within this context, Mr. Gómez del Prado stressed that such concerns regarding PMSCs' activities had led 15 countries from WEOG to express their support for the non-binding *Montreux Document on pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict*.³

11. He also referred to the efforts deployed under the Swiss initiative to draw up a global code of conduct for the industry. He pointed out some of the differences between the Working Group's proposal for a legally binding document and initiatives for self-regulation, emphasizing that these initiatives were not mutually exclusive but complementary to each other, given that both are aimed at strengthening regulation of PMSCs.

12. Analysing some of the comments provided by States, Mr. Gómez del Prado stated that the Working Group was in agreement with some observations, in particular that PMSCs are not mercenaries and that the definition of mercenaries as established by international law is not applicable to the personnel of PMSCs. He stressed that the legal status of PMSCs continued to be a grey area that needed further clarification. He also said that the proposed draft convention would apply to all situations, not only in armed conflict and that, therefore, the draft convention aimed at stressing the human rights obligations of States vis-à-vis PMSCs and their personnel. He concluded by reiterating that the proposed instrument aimed at ensuring that States take the necessary measures to ensure respect for human rights by PMSCs together with accountability and effective remedies for victims. The Working Group considered that the United Nations would constitute the best framework for the development of a new international instrument for the regulation, oversight and monitoring of PMSCs.

³ A/63/467 – S/2008/636 of 6 October 2008.

13. In her opening remarks, Ms. Bente Angell-Hansen, ambassador of Norway, speaking as coordinator of WEOG, stressed that WEOG attached great importance to dialogue with all Special Procedures and considered their independence to be crucial. She referred to the sensitive nature of this topic for WEOG, underlining that the group did not coordinate its position on substantive issues. She called for a fruitful exchange of information.

B. Elements for a possible draft international convention on the regulation, oversight and monitoring of PMSCs

14. The Chair of the Working Group gave a comprehensive presentation⁴ on the activities, regulations and oversight of PMSCs, with a specific emphasis on activities and initiatives in WEOG countries. He started by presenting the conclusions of the previous four regional consultations. He went on to discuss regional initiatives, in particular at the level of the Council of Europe (CoE). He specifically mentioned that the Parliamentary Assembly of the CoE had adopted two relevant reports on PMSCs and the erosion of the State monopoly on the use of force. He pointed out that both reports recommended that the Committee of Ministers draw up a Council of Europe convention aimed at regulating the relations of its member States with PMSCs and laying down minimum standards for the activity of these private companies.⁵ Mr. Gómez del Prado also highlighted examples of the impact of PMSC activities on the enjoyment of human rights, several new areas of activity in which PMSCs have become involved and the extent of the privatization of war and the subsequent use of PMSCs in particular in the context of Iraq and Afghanistan.

15. The Chair then underlined the existing gaps in international and national legislation. He raised the concerns of the Group regarding diffused responsibility, the absence of effective vetting mechanisms and a general lack of accountability of PMSCs.

16. Mr. Gómez del Prado then introduced the elements of the proposed draft convention, including the purposes, the scope of application, the general principles, the domestic regime of regulation and oversight, the responsibilities of States regarding the activities of PMSCs and the international mechanism proposed to monitor the implementation of the convention by States parties.

17. After this introduction, the States representatives engaged in a dialogue with the members of the Working Group, focusing their comments on the proposed draft convention in particular. Several expressed appreciation for the opportunity to comment on the draft convention developed by the Working Group. Some representatives emphasized that their Governments did not consider PMSCs as mercenaries.

18. Most delegates stated that they fully supported effective regulation of the private security industry. Several mentioned that their countries were signatories to the Montreux Document and agreed as to the necessity of adopting measures to ensure that PMSCs and their personnel were respecting human rights and were held accountable when crimes occurred. Some comments stated that the Montreux Document should be tested for its effectiveness before a legally binding instrument on the use of PMSCs could be considered.

⁴ The PowerPoint presentation is available on the Working Group's web page <http://www2.ohchr.org/english/issues/mercenaries/index.htm>.

⁵ Council of Europe, Parliamentary Assembly, Report of the Political Affairs Committee, *Private military and security firms and the erosion of the state monopoly on the use of force*, document 11787, 22 December 2008, and Council of Europe, Parliamentary Assembly, Report of the Committee on Legal Affairs and Human Rights, *Private military and security firms and the erosion of the state monopoly on the use of force*, document 11801, 27 January 2009.

One representative pointed to the complementarity between the Swiss initiative for a code of conduct for the industry and the Working Group's proposal for a convention.

19. Several representatives stated that their Governments did not believe there was a demonstrated need for a legally binding convention on the use of PMSCs. One representative said that the current legal framework provided effective oversight and accountability for the industry and that there were promising efforts under way to improve this framework further. Others pointed out that the human rights questions arising from the activities of PMSCs were adequately covered by existing human rights instruments and concluded that a new instrument would simply have the effect of overburdening the existing system of international protection of human rights. Another indicated that the work in this area needed to be focused on increasing the implementation of States' existing obligations with respect to PMSCs.

20. Several comments noted the fact that there was little agreement internationally over what should be considered as inherently governmental functions and that this was not a settled matter in international law. In addition, some noted that there was great variation among States as to the degree to which they were using private contractors. They said that these differences would complicate the task of standardizing fundamental principles for national regulation of the industry.

21. Several delegates stated that their countries considered that the issue of mercenaries remained an important one but that it was not within the remit of the Human Rights Council and that it should not be dealt with as a human rights problem. One representative indicated that the issues at stake were not primarily human rights issues but mainly issues covered by humanitarian law, international criminal law and other relevant international law.

22. Some raised concerns over what they see as serious obstacles to enforcing a licensing regime as envisioned in the draft convention and the high implementation cost for States parties. Finally some stressed that a broad consensus on both the process and draft instrument would be crucial to ensuring that the convention could be implemented effectively.

23. Members of the Working Group provided additional information in response to some comments. Ms. Benavides de Pérez reiterated that the Working Group did not consider PMSCs as mercenaries, as had been noted by some delegates. She stressed the difficulties in implementing existing national legislation given the transnational nature of the activities of PMSCs. She also underlined the complementarity between the Swiss initiative and the Working Group's proposal for a draft convention, notably with regard to the purposes and scope of application.

24. Alexander Nikitin stated that the proposal for a possible new convention had received support from countries in all other regions. He mentioned several initiatives geared towards increased oversight of PMSCs at the national level, including in the United States of America and Afghanistan. He also recalled that industry associations were not opposed to the idea of international regulation for companies. He stressed that PMSCs lacked international standards and international oversight mechanisms.

25. Finally, Ms. Shameem emphasized the complementary nature of both a self-regulation mechanism and a legally binding treaty, indicating that these had erroneously been presented as an "either/or" exercise. She added that there was a need for self-regulation, national regulations and an international legal framework for the activities of PMSCs.

26. In her concluding remarks, the representative of Norway indicated that the exchange of views had demonstrated that the two approaches presented a number of commonalities as well as differences. She underlined the importance of the distinction between mercenaries

and PMSCs and the need to strengthen national legislation to fight against impunity. The Ambassador stressed that several questions remained, including that of the need for a new international treaty and that of whether the Human Rights Council was the appropriate forum for consideration of these issues. She also recalled that experience at the Human Rights Council had shown that a broad consensus would facilitate effective implementation of the treaty.

III. Conclusions and observations of the Working Group

27. **The Working Group would like to thank all Governments who have responded positively to the invitation of the Working Group to attend this important consultation and for submitting written comments to the Working Group regarding elements for a possible draft convention on PMSCs.**

28. **The Working Group notes the reservations expressed by some Governments about the need for a possible new convention on PMSCs on account that the existing legal framework provides effective oversight and accountability for the industry. The Working Group believes that the experiences in Afghanistan and Iraq, in particular but not exclusively, have shown that the existing framework is not sufficient and that there is a need for internationally agreed standards and oversight mechanisms for the activities of PMSCs. It also recalls States' responsibility to respect, protect and fulfil human rights and to ensure that PMSCs are held accountable if and when they are responsible for crimes or human rights violations.**

29. **The Working Group is of the view that the Montreux Document, the initiative for a self-regulation mechanism for the industry and the Working Group's proposal for a legal instrument share the same goal of increased regulation of the industry and that they are not mutually exclusive but complementary mechanisms. The Working Group supports a "three-tier approach" to regulation of PMSCs, including self-regulation, regulation at the national level and international regulatory legal standards and oversight mechanisms.**

30. **The Working Group regrets that some States continue to object to the mandate of the Working Group on the ground that the matter should not be dealt with by the Human Rights Council as a human rights issue. The Working Group is of the opinion that given the impact of the activities of PMSCs on the enjoyment of human rights, the United Nations Human Rights Council is the best forum for discussion of these issues. It therefore invites those States to reconsider their position and to engage in a substantive discussion aimed at the adoption of specific measures to regulate and monitor the activities of PMSCs.**

31. **The Working Group would like to emphasize its utmost concern at the impact of the activities of PMSCs on the enjoyment of human rights, in particular when operating in conflict, post-conflict or low-intensity armed situations and calls upon Member States, intergovernmental and non-governmental organizations to take effective action in accordance with international human rights law to ensure accountability of PMSCs and their personnel.**

32. **The Working Group fully agrees that the broadest possible support for a new international instrument on PMSCs is needed for the implementation of such a treaty. It therefore calls on all States and intergovernmental and non-governmental organizations to constructively engage with this process.**

Appendix

List of participants

Government representatives

Australia	Ms. Miranda Brown, Counsellor
Austria	Mr. Peter Guschelbauer, First Secretary
Belgium	Mr. Nicolas Fierens Gevaert, Attaché
Canada	Ms. Johanne Forest, First Secretary
Finland	Ms. Anna-Mari Wilamo
Germany	Ms. Anke Konrad, Counsellor Ms. Kati Ahlendorf
Greece	Mr. Alexander Seretakis
Ireland	Ms. Roisin Fegan
Italy	Mr. Roberto Nocella, First Secretary
Netherlands	Ms. Nynke Wijmenga, First Secretary
Norway	Ms. Bente Angell-Hansen, Ambassador of Norway, as Coordinator of WEOG Ms. Beate Stiro, Minister Counsellor
Spain	Mr. Pablo Gómez de Olea Bustinza, Counsellor
Sweden	Mr. Malin Häggqvist
Switzerland	Ms. Nathalie Kohli, First Secretary
Turkey	Ms. Ela Görkem, Counsellor
United States of America	Ms. Margaret Wang, Political Assistant
EU Delegation	Ms. Laura Kruger Ms. Lusia Peçah
