

# **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**

## **Summary report of the expert panel on the use of private military and security companies by the United Nations (31 July 2013, New York)**

### **I. Introduction**

1. 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 was created by the Commission on Human Rights in 2005 and is mandated by the Human Rights Council to monitor and report on the activities of companies offering military and security consultancy services on the international market.

2. In its eighteenth session in March 2013, the Working Group decided to host a panel event on the use of private military and security companies by the United Nations. The event took place in New York on 31 July 2013 during the nineteenth session of the Working Group.

3. The event was opened by Anton Katz, Chairperson-Rapporteur of the Working Group on the use of mercenaries who recalled that the private military and security companies currently provide the United Nations with a number of security services, including armed guards. He explained that the activities of these companies in the context of United Nations operations impact several stakeholder groups, including United Nations officials, civil society, and the private security industry. He thanked the representatives of all of these stakeholder groups for attending the event and sharing their views on this important topic. Mr. Katz introduced the members of the Working Group and noted the Working Group's interest in the use of private military and security companies by the United Nations. He explained that the Working Group intends to dedicate its report to the General Assembly in 2014 to this topic.

4. The Chair referred to the United Nations policy on the use of armed private security companies published by the United Nations Department of Safety and Security in 2012 and acknowledged that the Department of Safety and Security has engaged privately with the Working Group although it declined its invitation to participate in the event.

### **II. Organization of the event**

#### **A. Attendance**

5. The following delegations attended the event: Angola, Armenia, Australia, Bahrain, Belarus, Belgium, Plurinational State of Bolivia, Burkina Faso, Canada, Chile, People's Republic of China, Czech Republic, Colombia, Côte d'Ivoire, Djibouti, Ecuador, Egypt, El Salvador, Fiji, Finland, France, Germany, Iceland, India, Indonesia, Islamic Republic of Iran, Iraq, Israel, Italy, Japan, Jordan, Libya, Lithuania, Luxembourg, Malta, Namibia, New Zealand, Norway, Organization of Islamic Conference, Panama, Philippines, Russian Federation,

Swaziland, Switzerland, United Republic of Tanzania, Thailand, United Arab Emirates, Uganda, United States of America, Uzbekistan, Bolivarian Republic of Venezuela.

6. Forty-one civil society representatives attended the event. The following groups and organizations were represented: Fordham Centre on National Security, Centre for Human Rights & Global Justice, European University Institute, Center for Constitutional Rights, Kings College London, Harvard University, Brennen Center for Justice, International Federation of Settlements and Neighborhood Centers, International Corporate Accountability Roundtable, Seton Hall Law School, Fellowship of Reconciliation, Boyle Litigation, Institute of International and Development Studies, Human Affect International, American Society of International Law, Ambivium Institute, University of Puerto Rico, Caritas International, Columbia Law School, International Association of Democratic Lawyers, International Development Law Organisation.

7. The World Food Programme, IDG Security and the International Stability Operations Association (ISOA) were also represented at the event.

#### B. Composition

8. The event consisted of two panels of experts.<sup>1</sup>

9. The first panel focused on the use of private military and security companies by the United Nations as armed guards, and comprised presentations by Stuart Groves, Senior Security Consultant at Stuart Groves Security Consulting, Lou Pingeot of the Global Policy Forum; and Rick Cottam, President of the United Nations Staff Union-International Criminal Tribunal for the former Yugoslavia and a representative of the Coordinating Committee of International Staff Unions and Associations to the Inter-Agency Security Management Network working group on private security companies. This panel was moderated by Faiza Patel of the Working Group on the use of mercenaries.

10. The second panel, which addressed the use of private military and security companies by the United Nations in peace operations included presentations by Åse Gilje Østensen of the University of Bergen, Norway; Mirko Sossai, professor of international law at the University of Rome III and co-director of the Priv-War project; and Sabelo Gumedze, Head of Research and Development at the Private Security Industry Regulatory Authority in South Africa. Gabor Rona of the Working Group on the use of mercenaries acted as moderator for the second panel.

### **III. The United Nations use of private military and security companies as armed guards:**

11. Ms. Patel thanked panelists and audience members for their participation and noted that the Working Group on the use of mercenaries has a dual mandate from the Human Rights Council, not only to monitor and report on the activities of mercenaries, but also on those of private military and security companies. Ms. Patel introduced the panelists and noted that they represented a spectrum of views on whether or not the United Nations should use private security companies, as well as on the effectiveness of the policy published by the United Nations

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<sup>1</sup> For the Agenda of the event, see Annex I. For brief biographies of the panelists, see Annex II.

Department of Safety and Security in 2012, which addresses the issue of the use of private security companies as armed guards.

12. Stuart Groves, former Chief Security Coordinator at the Office of the High Commissioner for Human Rights, and now a Senior Security Consultant, began by discussing the history and evolution of thinking on the United Nations policy regarding the use of private security companies. Mr. Groves explained that in August 2011, the United Nations Inter-Agency Security Management Network<sup>2</sup> established a working group to draft a policy and guidelines on the Use of Armed Private Security Companies by the United Nations. This policy provides for the engagement of an Armed Private Security Company, strictly as a last resort, with specific steps to determine if such a service is warranted. The Guidelines developed to support the policy provide a methodology for the practical aspects of such engagements and the supervision of and reporting on the provision of their services.

13. Mr. Groves described specific elements of the United Nations policy and Guidelines for the use of Armed Private Security Companies, and concluded that while the new policy provides a much needed tool that is consistent across the United Nations system, there is yet much more to be done to continue to improve the Inter-Agency Security Management Network's policy to govern the use of private security companies.

14. Lou Pingeot of the Global Policy Forum began her presentation by describing United Nations contracting before the promulgation of the its Guidelines. In her view, there were no uniform rules throughout the United Nations system, no established procedure and chain of accountability, no exchange of information among the various agencies which hired private military and security companies and a lack of public discussion of the subject. Ms. Pingeot opened her assessment of the United Nations Guidelines by acknowledging that although the Guidelines represent progress on some fronts, they leave many issues yet unaddressed.

15. On the positive side, Ms. Pingeot noted that the Guidelines have provided an opening for this important conversation to now take place within the United Nations. Ms. Pingeot also agreed that the United Nations Guidelines have clarified the chain of accountability somewhat, as ultimately the use of armed private security companies must be approved by the Under Secretary-General for Safety and Security. She added that the Guidelines stand to increase transparency and visibility of the use of these companies system-wide as all agencies, funds and programmes must now be notified when one entity hires armed private security services. Finally, the United Nations Guidelines, in her view, require an evaluation of the potential negative impacts of the use of armed private security, particularly on the local level.

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<sup>2</sup> The Inter-Agency Security Management Network working group included representatives from the Office of the High Commissioner for Human Rights, World Food Programme, United Nations Development Programme, United Nations Children's Fund, Office for the Coordination of Humanitarian Affairs, Department of Peacekeeping Operations, Department of Field Support, Department of Political Affairs and Department of Safety and Security, with support from Office of Legal Affairs and United Nations Procurement. The two staff federations, the Federation of International Civil Servants' Associations and the Coordinating Committee of International Staff Unions and Associations, were also represented in the discussions.

16. Turning to the shortcomings of the United Nations Guidelines, Ms. Pingeot noted that the screening and vetting processes rely too heavily on self-reporting and are inadequate to screen out companies with dubious records. Ms. Pingeot also observed that the selection process outlined in the Guidelines requires companies to be members of the International Code of Conduct for Private Security Service Providers despite the fact that the Code is not yet operational and its oversight mechanism is still being discussed. Ms. Pingeot took the opportunity to highlight two issues of particular concern that remain unresolved by the United Nations Guidelines; the first dealing with armed private guards for the protection of convoys – which the Guidelines authorize but is a controversial issue, especially among humanitarian workers; and the second addressing the shortcomings of the “last resort” criteria for outsourcing to private military and security companies. Ms. Pingeot explained that although the Guidelines require that “strong reasons” be given to justify the use of an armed private security company, they do not elaborate acceptable reasons, making the determination of whether the private sector is the “last resort” very subjective. She asserted that “last resort” is not just a technical issue, which can be addressed through guidelines, it is a political issue and may be a convenient alibi not to look for other solutions.

17. Ultimately, Ms. Pingeot argued, the use of private military and security companies by the United Nations is presumed in the Guidelines to be acceptable, and the Guidelines are limited in scope to cover only armed private military and security companies, and fail to consider the various activities private military and security companies perform for the United Nations. These are political questions, not technical issues, she concluded, and can only be addressed through serious debate among Member States and the United Nations leadership.

18. Richard Cottam of the United Nations Staff Union and the Coordinating Committee of International Staff Unions and Associations noted that he had participated in the Inter-Agency Security Management Network working group on private security companies described earlier by Mr. Groves. Even though the Coordinating Committee and the Federation of International Civil Servants’ Associations did not approve of the proliferation of the use of these companies, they felt it was important to participate in the dialogue going on within the Inter-Agency Security Management Network on this issue. He reflected that, in the Inter-Agency Security Management Network process, unfortunately, the staff union representatives did not achieve what they had wanted to achieve, particularly in regard to screening of personnel on the ground and the companies themselves.

19. Mr. Cottam argued that United Nations staff understands that the world has become a much more dangerous place and that the need for humanitarian services is increasing. United Nations staff understand that being deployed in areas of high risk is part of their job, however, they also want to know that they will be protected and who will be protecting them. This is particularly important in humanitarian and post-conflict situations, where perceptions are crucial in building the trust of local populations in the United Nations. If United Nations staff are charged with bringing in food aid, for example, they may be concerned whether their security guards have been engaged in dubious activities on one or the other side of the conflict.

20. Mr. Cottam discussed two proposals by Coordinating Committee of International Staff Unions and Associations and the Federation of International Civil Servants’ Associations that

were not ultimately adopted in the final Inter-Agency Security Management Network working group policy proposals. The first proposed that private security company personnel be asked to sign a declaration voluntarily disclosing prior military or militia service so that they may be searched later against databases and other information pertaining to war criminals, mercenaries, etc. However, in the end, this proposal was not accepted. The second proposal suggested a system of surge deployment of Safety and Security Section officers from various duty stations to meet immediate needs and to provide for backfilling from the roster and the use of short-term contracts to address the voids at duty stations from which those officers had been deployed, which would enable United Nations staff to be protected by its own internal security.

21. At the request of the moderator, Mr. Groves noted that although the Inter-Agency Security Management Network working group considered the possibility of an internal screening mechanism, due to the sheer volume of people to be screened, the time this would require, and the fact that background information may be protected in some countries, it was determined that unfortunately an internal mechanism for screening was not feasible in light of the immediate demand for people on the ground.

22. A number of Member State delegations made interventions and asked questions of the panelists. Some States noted that they regard the Working Group's study of the United Nations use of private military and security companies to be timely and positive and expressed the hope that this study would be taken up by the Department of Safety and Security and the Department of Peacekeeping Operations. One State also questioned whether private military and security companies were being used in the United Nations Organization Stabilization Mission in the Democratic Republic of Congo and queried whether there should be a disclosure by troop contributing countries when security is provided by private companies. Another delegation suggested that clear information should be provided to Member States about where private security companies are being used, what intergovernmental mandate applies, how much it costs, who is paying for it, and how effective it is. One State questioned the premise put forward by Mr. Cottam that the world is more dangerous now than it was before, such as during the Second World War or the Cold War. The representative posited that perhaps we are only being asked to believe this by those that would benefit from this view. If the world is more dangerous, the representative noted, then we need more security, and companies that provide security no doubt benefit from this worldview. The delegation from one State discussed two proposed instruments, the Montreux Document on private military and security companies, and the International Code of Conduct for Private Security Service Providers. The representative from another State agreed with the panel that this is a political issue for Member States, more than a technical issue, as had been stated by one of the panelists. The same State noted the importance of consent and accountability when private military and security companies are used in Member States and recalled the experience of Iraq with companies like Blackwater. It observed there is still no clear definition of this issue in an international instrument and noted that the Montreux Document is not comprehensive as it represents the views of around 30 countries.

23. The panelists took the opportunity to respond to comments by Member States. In response to one of the questions raised, Mr. Cottam clarified his earlier comments, stating that the world is more dangerous now, than ever before, *for United Nations staff*. He stated that twenty years ago, the protection of a blue United Nations flag was paramount and respected

more or less by all. Unfortunately, he noted, over the years, we've seen more and more direct, targeted attacks on United Nations staff. Mr. Groves also noted that it was Member States, whose influence on humanitarian organizations and the Department of Safety and Security led to a major shift in United Nations policy from "not when to leave, but how to stay." This new policy replaced the phase system which had mandated a series of evacuations responding to increasing security risks. It was imposed on security officers from above, and created new security needs that Member States should be aware of when mandating United Nations operations. Ms. Pingeot noted that, with regard to the involvement of Member States, the fifth Committee has taken up this issue, and passed a resolution in March, requesting inter alia more information regarding the use of private military and security companies. Ms. Pingeot also noted the policy shift to "how to stay" has often involved hardened security measures, a "bunkerization" of United Nations forces behind fortified compounds, which may affect the effectiveness of United Nations operations and the security of staff.

#### **IV. Panel 2: the use of private military and security companies by the United Nations in peace operations.**

24. Before introducing the panelists, Mr. Rona commenced the second panel by encouraging the United Nations to take up vibrant and transparent debate on the issue of private military and security companies in the interests of human rights. He asserted that the premise of this event is that the United Nations should not wait for violations to occur, as they surely will, before enacting measures to prevent and remedy them.

25. Åse Østensen of the University of Bergen, Norway, discussed the practical and political implication of PMSC involvement in United Nations peace operations. In addition to armed guards, she explained that private military and security companies supply a range of other services crucial to United Nations peacekeeping operations, such as police and military training and capacity building, security training and consultancy, strategic information gathering. Ms. Østensen noted that private military and security companies may become involved in United Nations operations indirectly, through the contributions of Member States. She observed that private military and security companies approach security risk assessments and planning with a view to selling future services. They approach situations with short term countermeasures for specific threats rather than defusing long-term threats, which may be better for the client's interests. When they engage in these activities in the context of peace operations, private military and security companies may influence how the United Nations views strategic information and planning, and may therefore influence how and when United Nations activities are carried out.

26. Ms. Østensen commended the Department of Safety and Security for establishing the United Nations Guidelines. She expressed her hope that this initiative will promote transparency, allow the United Nations to draw on its own experiences in a more systematic way and allow the United Nations to learn from its own lessons and give it more consumer power. She further expressed her hope that the United Nations and Member States will understand the influence of private military and security companies on United Nations thinking, policymaking and decision-making.

27. Mirko Sossai, of the Priv-War project and University of Rome III began his presentation by placing United Nations peacekeeping within a broader legal context. To do this, he discussed force generation for peace operations and a possible role for the private sector; the lack of transparency regarding force generation and the emerging trend within international law to recognize transparency as a legal principle; and consent as a crucial basic principle of peacekeeping, as represented by Status of Forces Agreements. With regard to the legal context and limitations for the United Nations use of contractors, Mr. Sossai posited that the United Nations Charter should be the primary reference. Several norms in the United Nations Charter might be considered a limit to outsourcing certain functions. Mr. Sossai suggested that Article 48, for example, might be understood as a limit on the outsourcing of peacekeeping tasks by Member States. Mr. Sossai asserted that the United Nations is bound by human rights law and when it hires contractors, it is bound by human rights due diligence obligations. Mr. Sossai also addressed the context of responsibility for internationally wrongful acts.

28. Mr. Sossai inquired as to what sort of peace operations are appropriate for outsourcing. Should core functions of peacekeeping such as security sector reform be outsourced? He suggested that since peacekeeping is done for the protection of the collective interests of the international community – peace and increasingly, human rights – private military and security companies might have a part in it, but only in a secondary way, by performing activities supplemental to the core functions. He observed that outsourcing by the United Nations is a question of legitimacy. Mr. Sossai recalled a quote from the Capstone Doctrine, which observes that multi-dimensional United Nations peacekeeping operations “*enjoy a high degree of international legitimacy and represent the collective will of the international community*”. Mr. Sossai concluded by suggesting that perhaps outsourcing to private military and security companies is a limit of international legitimacy.

29. Sabelo Gumedze of the Private Security Industry Regulatory Authority of South Africa focused on the challenges of the use of private military and security companies in peacekeeping operations and security sector reform, using Liberia as a case study. He recalled that the multi-dimensional peacekeeping mission in Liberia (Security Council Resolution 1509 of 2003) included a mandate to build a new Liberian army. The United States accepted this part of the United Nations mission, and then hired DynCorp International, a private military and security company, to carry out this task. The United Nations never questioned the secondment of Dyncorp by the Government of the United States of America. Mr. Gumedze observed that although Dyncorp succeeded in building a Liberian army, how it was done bears further study.

30. Mr. Gumedze identified the phenomenon of “diversification of services,” in the context of private military and security companies’ activities. This phenomenon occurs when a company is hired by the United Nations or another entity to perform a specific contract in a certain country, but then once it is established in-country it begins to take on other, often unrelated contracts. After Dyncorp was hired to rebuild the Liberian army, it was also awarded numerous other contracts, including training a new police force, reconstructing police facilities, providing and maintaining support facilities for the national army.

31. Mr. Gumedze observed that DynCorp, for its part, considered itself accountable only to its client, the US Government and saw itself as a part of the US foreign policy mission. This lack of transparency was problematic, as Article 8.3 of the peace agreement provided for the participation of the Liberian people in the reform of the security sector, which was ultimately skewed in favor of international donors such as the United States, and not the Liberian people.

32. In conclusion, Mr. Gumedze noted that private military and security companies will continue to thrive with the use and endorsement of the United Nations. It is important during the development of guidelines that the policy also factors in the kinds of arrangements where a State provides its contribution toward peacekeeping by contracting private military and security companies to carry out security sector reform.

33. A number of Member States intervened in response to the second panel. One State stressed the importance that any use of private military and security companies should abide by international human rights and humanitarian law, especially in the case of the use of private military and security companies in the context of peacekeeping and United Nations missions. The use of private military and security companies should be raised in the intergovernmental forum for peacekeeping, the thirty-fourth Committee, and there should be accountability for internationally wrongful acts. Further, the use of private military and security companies should respect the sovereignty and territorial integrity of states. Another State also noted that the subject should be discussed in the thirty-fourth Committee.

34. Mr. Sossai took the opportunity to clarify that, although public attention usually focuses on states as the main clients of private security companies, international organizations and troop contributing countries are also using them. He highlighted that the United Nations still has obligations and responsibilities when troop contributing countries use contractors in United Nations operations. This opened a brief discussion of the 1999 Bulletin of the Secretary General and the extent to which the United Nations is bound by international human rights and humanitarian law. Mr. Sossai observed that the rules under international humanitarian law on direct participation in hostilities poses a limit on the outsourcing of certain functions to contractors.

35. One State questioned why we are seeing an increase in the use of private military and security companies. The representative noted that the United Nations has gone from peacemaking to the imposition of peace. The representative considered the example of the new type of peace mission in the Democratic Republic of Congo and questioned if we are ready for an organization whose flag seen more as a battle shield of a faction of a conflict rather than the only universal multilateral organization in the world.

36. Mr. Gumedze noted that in the case of Liberia, no other country offered the assistance offered by the United States of America. Countries without resources are in the precarious position of accepting assistance provided through private military and security companies, or going without needed aid.



## V. Concluding remarks

37. In conclusion, Mr. Katz thanked the panelists, moderators, audience, and Secretariat of the Working Group. He noted that increased demands on the United Nations resources, and increased risks, will continue to call for new security solutions, making this an important discussion to continue, within the United Nations, with Member States and civil society. He advised that the Working Group will report on this topic to the General Assembly in 2014.

38. The panel event was broadcasted live online at the United Nations web TV on 31 July 2013 and is archived for viewing at: <http://webtv.un.org/meetings-events/watch/working-group-on-the-use-of-mercenaries-panel-event-use-of-private-military-and-security-companies-by-the-united-nations/2579099513001>. Similarly, the press conference held on 1 August 2013 following the panel event is available for viewing at: <http://webtv.un.org/media/watch/the-use-of-private-military-and-security-companies-in-un-peace-and-humanitarian-operations-in-the-field-press-conference/2579578078001>.