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Совет по правам человека

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Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Доклад Рабочей группы по вопросу об использовании наемников как средстве нарушения прав человека и противодействия осуществлению права народов на самоопределение

Председатель-докладчик: Шаиста Шамим

Добавление

Региональные консультации для Азии и Тихого океана по вопросу о деятельности частных военных и охранных компаний: регулирование и надзор (26-27 октября 2009 года)*

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен.

Резюме

В соответствии с резолюцией 62/145 Генеральной Ассамблеи и резолюцией 7/21 Совета по правам человека Рабочая группа провела региональные консультации для Азии и Тихого океана в Бангкоке 26 и 27 октября 2009 года.

Посредством консультаций Рабочая группа стремилась получить региональную перспективу текущей практики в отношении наемников и зарегистрированных частных военных и охранных компаний, действующих или набирающих свой персонал в Азии, Тихоокеанском регионе и на Ближнем Востоке. Консультации позволили обсудить принципиальный вопрос о роли государства как обладателя монопольного права на законное применение силы, а также обменяться информацией о предпринимаемых государствами региона шагах по введению законодательства и принятию других мер регулирования и надзора за деятельностью таких компаний на международном рынке.

Рабочая группа сообщила о проводимой ею работе по подготовке разработки возможного нового имеющего обязательную силу международно-правового акта по вопросу о регулировании деятельности частных военных и охранных компаний с целью поощрения дальнейшей защиты прав человека.

В консультациях участвовали представители Афганистана, Бангладеш, Вьетнама, Иордании, Исламской Республики Иран, Йемена, Камбоджи, Катар, Китая, Мьянмы, Пакистана, Самоа, Таиланда и Фиджи, а также наблюдатель от Палестины.

Рабочую группу представляли ее Председатель-докладчик Шаиста Шамим и ее члены Амада Бенавидес де Перес, Хосе Луис Гомес дель Прадо и Александр Никитин.

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 Asia and the Pacific on the activities of private military and security companies: regulation and monitoring (26-27 October 2009)

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I. Background

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.

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 a regional consultation for Asia and the Pacific in Bangkok on 26 and 27 October 2009.

The consultation was attended by representatives of Afghanistan, Bangladesh, Cambodia, China, Fiji, the Islamic Republic of Iran, Jordan, Myanmar, Pakistan, Qatar, Samoa, Thailand, Viet Nam and Yemen; as well as by the observer of Palestine.

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

The Working Group had held two previous regional consultations, the first in Panama City for the Latin American and Caribbean Region on 17 and 18 December 2007 (see A/HRC/7/7/Add.5) and the second in Moscow for the Eastern European Group and Central Asian Region on 17 and 18 October 2008 (see A/HRC/10/14/Add.3).

The Working Group expresses its sincere appreciation for the warm welcome of the authorities of Thailand and for their support for the organization of this consultation in Bangkok. It also thanks the OHCHR office in Bangkok for its invaluable assistance throughout the meeting.

II. Summary of the meeting

The consultation was opened by Asda Jayanama, advisor to the Minister of Foreign Affairs of the Government of Thailand, who welcomed the participants and underlined the importance to explore regional perspectives on the issue of PMSCs. Mr. Jayanama said that PMSCs were on the rise and active worldwide and that the legal gaps applicable to such groups needed to be filled. He added that many questions had to be addressed, including the accountability of PMSCs, their obligations to respect human rights and international humanitarian law and the extent to which States could outsource their inherent security and military functions to private entities. He concluded by encouraging participants to engage in a fruitful discussion on

¹ The Working Group on the use of mercenaries was established by the Commission on Human Rights through its resolution 2005/2. The Working Group is composed of five independent experts serving in their personal capacities. Since March 2009, Shaista Shameem (Fiji) is the Chairperson-Rapporteur. The other members are Amada Benavides de Pérez (Colombia), José Luis Gómez del Prado (Spain), Alexander Nikitin (Russian Federation) and Najat al-Hajjaji (Libyan Arab Jamahiriya).

the possibility of a new international convention to ensure regulation and oversight of the activities of PMSCs.

A. National experiences regarding the activities of private military and security companies

The representative of Fiji introduced the session and provided a comprehensive presentation on the practice of foreign PMSCs employing personnel from Fiji to operate in third countries, in particular in Iraq and Afghanistan, and the challenges it represented for the country and the personnel. He noted that Fiji had not until now adopted a specific regulation on the issue.

Participants shared the experience of their countries regarding PMSCs. They stressed the need to distinguish between local private security companies used to secure official or private buildings (often with unarmed personnel) and foreign private military companies operating outside their own countries, often in zones of conflict or tension. Some also recalled specific situations where PMSCs had been involved in mercenary activities.

A discussion followed on the importance of regular human rights training for PMSC personnel. Participants also noted the need for an enforcement mechanism to protect against potential violations by PMSC personnel of international human rights standards.

Participants discussed the consequences of the increased recruitment of former security personnel to PMSCs on the employees themselves and on the society. One representative said that often personnel were not offered the working conditions initially promised. He noted, for example, that in many instances personnel were not paid the wage announced. Another participant noted the negative impact a large-scale recruitment by PMSCs could have on a home country, in particular when the recruits were sent back with serious post-traumatic trauma and no appropriate structure to assist them.

B. National legislation to regulate and monitor the activities of private military and security companies

The item was introduced through a presentation of the regulation of PMSCs in Afghanistan. The representative of Afghanistan outlined the regulation adopted in February 2008 by the Ministry of Interior, in particular the guidelines for registration and licensing as well as the monitoring and verification mechanisms. He described the “irregularities” that had been committed by PMSCs in Afghanistan, including the killing of civilians, clashes with Afghan forces, and threats against clients who did not intend to renew their contracts.

The representative underlined that the need for PMSCs was largely dependent on the situation of the country, that is, whether a conflict was taking place or not, as well as on the capacity of the national security forces to provide security and protection to its population. In his country, the Government lacked the capacity to maintain the full monopoly of the use of force, which had prompted it to call on the assistance of PMSCs. The Government was in the process of building the capacity of its armed forces to regain the full control over the use of force. The new regulation in Afghanistan stated that PMSCs could not be involved in offensive actions.

Participants engaged in a discussion of the different forms of regulation in place in their respective countries. Most representatives underlined the distinction between international PMSCs and national private security companies providing services on their national territory. Several noted that they had a licensing regime in place for national private security companies. Most countries, with the exception of Afghanistan, stated that they had no foreign or national private military companies operating on their territory. For example, a representative noted that such companies were not authorized to operate in his country; and that the Government was currently investigating allegations that some companies were active in the country without its knowledge or authorization. In particular he underlined that PMSCs commonly used the cover of a multinational military operation, such as NATO, to operate in countries without the explicit approbation and oversight of the territorial country.

One representative highlighted the guidelines provided in 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 (A/63/467) and stated that his country was supportive of efforts to develop an international instrument or basic principles highlighting the human rights standards on the issue and emphasizing the need for accountability in cases of human rights violations. He also reiterated the importance for States to support all human rights when contracting PMSCs.

C. The role of the State as holder of the monopoly of the legitimate use of force

The Chairperson of the Working Group said that the Working Group had noted a global trend toward the increased privatization of security. In some conflict zones, PMSC contractors were more numerous than conventional forces and often had very sophisticated logistical support and weaponry. She underlined the potential conflict of interest faced in the case of a for-profit organization providing security in a conflict or post-conflict zone. Those developments had consequences on the role of the State as holder of the legitimate monopoly on the use of force. That assessment had led the Working Group to advocate for the elaboration of an international framework to regulate and the activities of PMSCs. The Chairperson welcomed the Swiss initiative towards a code of conduct for the industry but stressed that self-regulatory initiatives were far from sufficient.

Several participants underlined the existing legal vacuum and stressed the necessity to ensure that the activities of PMSCs were systematically monitored. Several representatives expressed their support for the efforts of the Working Group with regard to drafting a new convention, an initiative complementary to the Swiss efforts towards an international code of conduct. A representative reiterated the responsibility of States vis-à-vis PMSCs they contracted and stressed that States could not shift their responsibility to such companies by virtue of a contract. PMSCs should exercise maximum restraint in the use of force, and should not participate in any activities to overthrow a legitimate Government.

Participants also underlined the importance of increased transparency regarding the activities of PMSCs, including with respect to their numbers, the number of weapons used and the services provided. They emphasized the right of the public to be informed.

D. Elements for a possible draft convention on private military and security companies

The Chairperson noted that the restrictive definition of mercenaries as per the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989) was not applicable to PMSCs. That assessment had led the Working Group to advocate for a new convention on the regulation, oversight and monitoring of such companies and their activities.

In that regard, the Chairperson recalled that in its resolution 10/11 (para. 13), the Human Rights Council had requested the Working Group: (a) to consult with intergovernmental and non-governmental organizations, academic institutions and experts on the content and scope of a possible draft convention on PMSCs; (b) to share with Member States elements for a possible draft convention on PMSCs and to request their input on the content and scope of such a convention; and (c) to report to the Council at its fifteenth session on the progress achieved in the elaboration of the draft convention.

The Chairperson emphasized that a legal gap existed with respect to governing the activities of private military and security companies. The purpose of a new convention on the issue would be to fill that legal gap, by, among other things, reaffirming and strengthening State responsibility for the use of force and supporting the regulation of the activities of PMSCs and subcontractors.

The Chairperson described the main purpose and elements of the draft convention, including the fundamental principles on State responsibility for the exercise of the legitimate use of force; the States' primary obligation to ensure that respect for human rights and humanitarian law was demonstrated by the PMSCs they contracted; the definition of parameters of inherently State functions that could not be outsourced, in any context or circumstances, to PMSCs; the establishment of international and national regulatory principles for the activities of PMSCs, through the establishment of licensing and registration; the creation of an independent international oversight and monitoring mechanism; and the provision of an avenue of redress for victims.

Other members of the Working Group provided additional information on the rationale and purpose of the new legal instrument, including its applicability to all situations regardless of the existence of armed conflict, the emphasis on the access of victims to reparation and justice and the need for a system of national registration and increased control for host countries where companies operate.

Participants welcomed the work of the Working Group on a possible draft convention. Several delegates recognized the importance of national legislation but also noted the importance of an international framework to address the global problem. Several countries underlined the responsibility of countries of origin with regard to PMSCs that were contracted to operate abroad.

Another delegate emphasized that the convention should address the human rights impact of PMSCs and not become an attempt to regulate all PMSC activities. In particular, monitoring and regulating the use of national private security companies should remain the prerogative of the State concerned.

Finally, several participants underlined that the Working Group and Member States should strive to ensure the universality of such an instrument or basic principles.

III. Conclusions and observations of the Working Group

The Working Group concluded the meeting by thanking all participants for their valuable contributions. The Chairperson reiterated the key points that had been raised, including the general concern at the rapid growth of private military and security companies (PMSCs) and the consensus on the need for increased national and international regulation of private military and security companies.

Participants discussed the monopoly of the legitimate use of force and the possibility of defining at the international level those functions that were inherently governmental and that should not be outsourced. The Working Group shared its concerns regarding the trend of PMSCs increasingly taking over functions that were, until recently, inherent to the sovereignty of States.

The Working Group notes that although the growth of PMSCs is a global phenomenon, States are particularly concerned with the activities of foreign PMSCs operating in countries in the absence of clear oversight and monitoring mechanisms.

The Working Group recognizes a consensus from the participants regarding the existing legal gap at the international level regarding the activities of PMSCs and welcomes the declarations of support regarding its efforts to elaborate an international instrument for the regulation of such companies.

The Working Group recalls the responsibility of States to respect and protect human rights and to ensure that PMSCs are held accountable if and when they are responsible for crimes or human rights violations.

The Working Group believes that an effective system for the licensing and registering of private military and security companies and the training of their employees should be developed.

The Working Group encourages all regulatory efforts (a) at the industry level through self-regulation, (b) at the national level through specific legislation and (c) at the international level with the efforts of the Working Group to elaborate a possible draft convention for the oversight and monitoring of PMSCs.

The Working Group plans to hold the final two regional consultations, in Africa and in Western Europe, in 2010. New legal instruments on regulating private military and security companies, which are currently being elaborated by the Working Group, shall be deliberated with Member States at these consultations, to provide wide input into the content and consensus on the format of these instruments.

The Working Group notes that this process of regional consultation may lead to the holding of a high-level round table of States under the auspices of the United Nations to discuss the fundamental question of the role of the State as holder of the monopoly of the use of force. The round table would be aimed at (a) facilitating a critical understanding of the responsibilities of the different actors, including private military and security companies, in the current context, and their respective obligations for the protection and promotion of human rights and (b) reaching a common understanding as to which additional regulations and controls are needed at the international level, as requested in Human Rights Council resolution 7/21.

Appendices

Appendix I

List of participants

Afghanistan	General Abdul Razaq Amiri Deputy Director of Counter Terrorism Dept. Ministry of Interior Mr. Aziz Ahmadzai Director of the Joint Secretariat for D&R Commission, Ministry of Interior Joint Secretariat D&R Commission Disarmament of Illegal Armed Groups (DIAG)
Bangladesh	Mr. Mustafizur Rahman Minister Permanent Mission of Bangladesh
Cambodia	Colonel Kem Sarin Deputy Director of Counter Terrorism Dept. Commissariat General of Cambodia National Police
China	Mr. Qian Bo Counsellor Mission of China to the United Nations
Fiji	Mr. Joji Wasigitoni Dumukuro Ministry of Defence Fiji
Iran (Islamic Republic of)	Mr. Ali Zamani Expert from the Ministry of Foreign Affairs
Jordan	Mr. Mutaz Hyassat First Secretary Permanent Mission of Jordan
Myanmar	Lt-Col. Nyan Zaw Deputy Director Myanmar Police Force
Pakistan	Mr. Malik Tahir Sarfaraz Permanent Mission of Pakistan
Qatar	Mr. Mohammed Al Muhannadi Qatar Army
Samoa	Mr. Fatu Pula Police Superintendent Deputy Team Leader SPP Ministry of Police & Prisons

Thailand	<p>Mr. Medha Promthep Head of Delegation, Deputy Director-General, Department of International Organizations, MFA</p> <p>Col. Krisna Bovornratanaraks Director, Military Legislation and Foreign Affairs Division, The Judge Advocate General's Department, Ministry of Defence</p> <p>Col. Nitiphat Krittsuansombat Deputy Director, Office of Policy and Planning, Ministry of Defence</p> <p>Mr. Cherdkiat Atthakor Director, Peace, Security and Disarmament Division, Department of International Organizations, MFA</p> <p>Ltc. Pongsiri Purgchaipaw Chief of International Law Section, The Judge Advocate General's Department, Ministry of Defence</p> <p>Wg. Cdr. Gritgorn Cholvisuth Chief of International Arrangement of Agreement Section, Office of Policy and Planning, Ministry of Defence</p> <p>Ms. Bhavivarn Noraphallop First Secretary, Department of International Organizations, MFA</p> <p>Ms. Supapan Tiapiriyakij Second Secretary, Department of International Organizations, MFA</p> <p>Mr. Paradorn Rangsimaporn Second Secretary, Department of International Organizations, MFA</p> <p>Ms. Chonvipat Changtrakul Second Secretary, Department of International Organizations, MFA</p> <p>Mr. Thanin Katethong Policy Analyst, Professional level, Office of the National Council</p> <p>Ms. Nitiphan Saengsil Policy Analyst, Practitioner level, Office of the National Council</p>
Viet Nam	<p>Ms. Hoang Bich Lien Ministry of Foreign Affairs</p>
Yemen	<p>Mr. Fadhl al-Maghafi Minister Plenipotentiary Deputy Permanent Representative at the Permanent Mission of Yemen to the Office of the United Nations</p>
Palestine (Observer)	<p>Mr. Abed S. A. Abumohimeed Colonel Ministry of Interior Mission of Palestine</p>

Appendix II

Programme

26 October 2009

**Item I:
Opening session**

10:00 – 10:30 Welcoming address

Introductory remarks by H.E. Mr. Asda Jayanama, Advisor to the Foreign Minister, Government of Thailand.

Introductory remarks by Mr. Karim Ghezraoui, Chief, Groups in Focus, Special Procedure Division, Office of the United Nations High Commissioner for Human Rights (OHCHR).

Introductory remarks by Ms. Shaista Shameem, Chairperson-Rapporteur of the Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination.

**Item II:
National experiences regarding PMSC activities**

10:30 – 11:30 Presentation of concrete cases of the activities of PMSCs registered, operating or recruiting at national level as well as any mercenary activities:

Mr. Joji Wasigitoni Dumukuro, Ministry of Defence, Republic of the Fiji Islands: the experience of Fiji

Open discussion on national experiences regarding the activities of PMSCs and mercenaries.

11:30 – 11:45 Coffee break

11:45 – 13:00 Item II continued

13:00 – 15:00 Lunch

**Item III:
National legislation to regulate and monitor the activities of PMSCs**

15:00 – 16:30 Presentation of national experiences of regulating and monitoring the activities of PMSCs, focusing on national legislation.

General Abdul Razaq Amiri, Deputy Director of Counter Terrorism Department, Ministry of Interior, and **Mr. Aziz Ahmadzai**, Director, Joint Secretariat D & R Commission, Disarmament of Illegal Armed Groups, Ministry of Interior, Afghanistan: the experience of Afghanistan

Open discussion on steps taken at national level by Member States to introduce legislation and/or other measures to regulate and monitor the activities of PMSCs.

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| 16:30 – 16:45 | Coffee Break |
| 16:45 – 18:00 | Item III continued |
| 18:30 | Dinner hosted by the Government of Thailand, Pimarnman Room, Four Seasons Hotel. |

27 October 2009

Item IV:

The role of the State as holder of the monopoly of the use of force

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| 10:00 – 11:00 | Participants will discuss the concept of the role of the State as holder of the monopoly of the use force

Introductory remarks by Ms. Shaista Shameem , Chairperson of the Working Group on the use of mercenaries

Open discussion |
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Item V:

Elements for a possible draft convention on PMSCs

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| 11:00 – 12:00 | Members of the Working Group will share with participants the progress made so far in the elaboration of elements for a possible draft convention on PMSCs.

Open discussion on (i) guidelines, norms and basic principles for the regulation and and (ii) views regarding the content and scope of an International Convention on the regulation, monitoring and oversight of PMSCs. |
| 12:00 – 12:15 | Coffee break |

Item VI:

Conclusion of Consultation

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| 12:15 – 13:00 | Concluding remarks by the Chairperson-Rapporteur of the Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination. |
| 13:00 – 15:00 | Lunch |
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