



International Service for Human Rights

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ISHR's summaries of documents for the Human Rights Council 4th Session

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-determination¹

Chairperson of the Working Group

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Mandate

The mandate 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 was established in 2005,² and replaces the mandate of the Special Rapporteur on this issue. The mandate of the Working Group is to elaborate and present concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights; to seek opinions and contributions from Governments, intergovernmental and non-governmental organisations; and to monitor mercenaries and mercenary-related activities in all their forms and manifestations.

Annual Report³

Scope:

This report provides an update on the activities and the findings of the Working Group. It particularly focuses on the identification and analysis of the effects of the activities of private military and private security companies (PMSCs) in various countries, and elaborates on the theme of the State as the primary holder of the use of force.

Activities:

- Annual report;
- Questionnaire to all member States in mid-November 2005. As of 15 December 2006, 14 responses had been received;
- The Working Group sent two follow-up communications and has not received any reply. It also sent three communications, and received two replies. It sent one urgent appeal and has not received any response;
- Visit to Honduras from 21 to 25 August 2006;
- Visit to Ecuador from 28 August to 1 September 2006.

¹ Summary prepared by Elodie, Intern, ISHR; edited by Gareth Sweeney, Information Program, ISHR.

² Commission on Human Rights resolution 2005/2.

³ A/HRC/4/42, 7 February 2007.

Summary and key conclusions:

- The Working Group is concerned that the extensive use of private military security companies (PMSCs) **in Iraq** could lead to a privatisation of the conflict, leading to **impunity**. Indeed, PMSCs in this country operate without control, without visibility and without being accountable beyond the private company itself. Some of these companies have recruited personnel with questionable backgrounds, and were involved in the human rights violations that occurred in the prison of Abu Ghraib, without being held accountable.
- PMSCs recruit personnel to be sent to countries of conflict as security guards, but upon arrival they are assigned and expected to perform military functions for which they were not contracted. Some serving for PMSCs have been prevented from returning to their countries and were put in isolation, arbitrarily detained, and subjected to degrading treatment.
- In **Eastern Europe**, legal proceedings have been initiated against Russian and Ukrainian citizens on charges of mercenarism. However, Georgia, which is a signatory to the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* (the Convention), has not included provisions on mercenarism in its Criminal Code.
- The report highlights the increased concession of military and security core functions to PMSCs in **Latin America**, with the risk of impunity for human rights violations carried out by their employees. There are bilateral agreements providing for the immunity of nationals, and including personnel of PMSCs, from judicial proceedings and exemption from bringing cases to the International Criminal Court.
- Another concern is that **PMSCs are exercising domestic police functions**. It is therefore essential that States control the activities of the PMSCs with regard to arms control and licensing, as many illegal companies own large stocks of small arms and light weapons.
- Although several States see mercenary recruitment as a matter of “labour mobility” rather than an issue for prosecution of the crime of mercenarism, the Working Group believes that privatisation or delegation of security does not diminish the **responsibilities of the State** under international law. The definition of “mercenaries” in the *Convention* does not clarify whether PMSCs and their employees should be considered as mercenaries. Therefore, it would be necessary to amend the *Convention*, or to elaborate an Additional Protocol, which would complement it.
- To clarify exactly what can be permitted as having a legitimate status in armed conflict, and what is not, Member States need to decide what the international community will accept as State responsibility for the use of force.
- The Working Group welcomes the accession to the *Convention* by the Republic of Moldova, and recent developments of legal instruments at the national, regional, and international levels.

Key recommendations:

States should:

- Accede or ratify the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*, enact domestic laws against mercenarism, and incorporate international and regional standards into national law;
- Hold a round table to establish a policy regarding the issue of the monopoly by the State of the use of force;
- Regulate and attribute the responsibility arising from the nature of the PMSC and its global reach to avoid granting blanket immunity leading to effective impunity;
- Establish regulatory systems of registration and licensing of PMSCs that would include minimum requirements for transparency and accountability of firms, and establish a monitoring system;
- Recommend the introduction of human rights components in education and training programmes offered to the staff of PMSCs.

Country visits:

Mission to Honduras

Scope:

The Working Group visited Honduras from 21 to 25 August 2006. In the course of its mission, the Working Group delegation met with Government officials, NGOs, private security companies, and individuals. The Working Group delegation had the opportunity to visit a site where a private security company organised trainings in 2005.

Summary and key conclusions:

- The Working Group insists that given the limitation of the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*, it is necessary to enact domestic measures that **licenses and registrates private military and security companies (PMSCs)** and their employees, and thus provide for transparency and accountability. In this regard, the Working Group welcomes the creation of a ‘mercenaries unit’ in the Ministry of Public Security to carry out announced or surprise inspection visits, and the process launched to strengthen the Criminal Code to counter the use of mercenaries.
- The Working Group received information concerning irregularities in compliance with the contracts of PMSCs sent to Iraq: partial payment of wages, lack of basic necessities and medical treatment for example. Furthermore, they were sent as security guards but were given military training and instruction in anti-guerrilla tactics.
- People recruited, trained and sent to Iraq by PMSCs meet some of the criteria of the *Convention*, but the Working Group is concerned that Honduras considered them as migrant workers. Honduras was responsible to prevent its territory from being used for the recruitment and training of persons and the financing of activities for the purpose of participation in armed conflict.
- The Working Group is concerned that Honduras has ceded part of its sovereignty to private companies on matters of internal security. Delegating its own powers amounts to negligence. In August 2006, the three branches of the Government decided to allow 30,000 private security guards to provide backup to the police and the armed forces in fighting crime in the country.
- The Working Group notes that that none of the four private security companies described by the Ministry of Security as most important are listed in the Ministry’s register of legally constituted private security companies.
- Former members of the armed forces and the police own many of these PMSCs or hold important positions in them, sometimes while they are still in active service. This may lead to a dangerous conflict of interest.

Key recommendations:

The Honduran Government should:

- Accede to the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* and amend the relevant article of the Criminal Code to take account of the measures contained in the *Convention* on punishment for the recruitment, use, financing and training of the personnel for mercenary purposes;
- Carry out an in-depth research on how the agencies and institutions responsible for enforcing the law operate and perform their duties, and make the necessary changes, relying on the advice of the National Commission for Internal Security to guarantee law and order and to strengthen the rule of law;
- Ensure that domestic laws provisions stating that all private security companies should be legally constituted and registered with the Ministry of Security are respected, and ensure the certification of the services provided by these companies and the training of their agents;

- Ensure that private security company directors and their personnel have not been previously implicated in human rights violations, and investigate whether there are any conflicts of interest between the posts held by certain members or former members of the military or police and their involvement in private security companies;
- Establish an authority over the Ministry of Security empowered to monitor the activities of private security companies and to receive complaints;
- Prohibit the export of private military or security services to other countries and regulate by law such services when it occurs.

Mission to Ecuador

[The report on the mission to Ecuador was only available in Spanish 24 hours prior to the Working Group's presentation before the Council]