

**Working Group on the use of mercenaries as a means of violating human rights
and impeding the exercise of the rights of peoples to self-determination**

**PANEL ON PRIVATE MILITARY AND SECURITY COMPANIES:
REGULATIONS AND NATIONAL EXPERIENCE**

Room IX, Palais des Nations, Geneva

Concept Note

Introduction

The Working Group was established by Commission on Human Rights resolution 2005/2. Human Rights Council Resolution 30/6, of October 2015, inter alia, “*Requests* the Working Group to continue to monitor mercenaries and mercenary-related activities in all their forms and manifestations, as well as private military and security companies, in different parts of the world”. It also requests the Working Group and other experts to continue their participation during the fifth session of the Open-ended Intergovernmental Working Group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies (OEIWG).

The Working Group decided to refine its work on private military and security companies (PMSCs) through undertaking a national legislation study on a regional basis. The research has sought to identify trends, gaps and good practices in the field, with three reports thus far submitted to the Human Rights Council. The Working Group has also held two expert meetings and consulted with stakeholders, including on the use of PMSCs by the UN. This panel will constitute another element of its global study on national regulations.

The reports have focused on the laws and regulations of the following:

- eight countries in Central America and the Caribbean (Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama) (A/HRC/30/34);
- eight countries in South America (Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Peru and Uruguay) (A/HRC/30/34);
- four countries in Europe (France, Hungary, Switzerland and the United Kingdom) (A/HRC/30/34);
- eight francophone African States and eight Asian States (A/HRC/27/50); and
- thirteen Anglophone African States (A/HRC/24/45).⁵

In its next report to the Council, to be submitted in 2016, the Working Group intends to focus on the national legislation of countries in Eastern Europe, the Pacific and North America.

The Working Group hopes that its global study will result in guidance that will help Member States to regulate the growing number of private military and security companies. Its efforts also contribute to the development of its recommendations with respect to a possible international legally binding instrument, including a concept note for OEIWG consideration.

Definitions and analytical approach

For the purposes of the Working Group's work, a private military and security company is defined as "a corporate entity which provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities".

Military services refer to "specialized services related to military actions, including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities".

In the same vein, security services refer to "armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities".

In its reports, the Working Group has analysed national laws on PMSCs along the following dimensions, and welcomes the contributions of the panellists particularly with regard to:

- (a) scope of the legislation;
- (b) licensing, authorization and registration;
- (c) selection and training of personnel;
- (d) permitted and prohibited activities;
- (e) rules on the acquisition of weapons;
- (f) use of force and firearms;
- (g) accountability for violations and remedies for victims; and
- (h) ratification of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

Scope of the legislation

In its work up to this point, the Working Group has identified only a few countries that have national legislation covering the activities of private military and security companies abroad. Considering the transnational nature of private security and military services, the insufficient regulation regarding the scope of the analysed legislation seriously weakens the rule of law. In contexts in which borders between countries are porous, it is necessary to fill the gaps and promote regional and sub-regional agreements for the regulation of private military and security companies, to effectively protect the rule of law, human rights and exercise of the right of peoples to self-determination.

The Working Group has also observed that regulations do not directly address military-like activities or private military and security companies.

PANEL I to cover, *inter alia*:

- Do regulations in your focus country/countries cover military activity?
- Do they cover activity abroad?

PANEL II to cover, *inter alia*:

- What would be the minimum standards of regulation?
- What gaps have been identified? Do regional agreements offer coverage? What are good practices?

Licensing, authorization and registration

While in general States have detailed regulations on private security services, the relevant laws do not include any references to a single dedicated body responsible for licencing and monitoring the activities of private military and security companies, or specific rules on the content of monitoring activities and inspections.

The Working Group also observed weaknesses of the systems of selection and background checking, as well as in the training of operational personnel, making more difficult for them a good understanding and internalization of legal norms and principles. It was recommended that selection procedures and background checks must be improved, with specific reference to international human rights and humanitarian law in the selection criteria, and that training requirements should meet the minimum standards of duration and with particular content on human rights.

PANEL I to cover, *inter alia*:

- What is entailed in licensing, authorization and registration of PMSC personnel?
- How is monitoring implemented?

PANEL II to cover, *inter alia*:

- Does training include human rights?
- What are the gaps and good practices?

Permitted and prohibited activities

States have varying approaches to regulating permitted and prohibited activities. A common prohibited activity relates to the distinction between the functions and activities of private security companies and those of the police and the military, with the former prohibited from undertaking the functions of the latter. Some States have taken the approach of specifically

prohibiting certain activities such as direct participation in hostilities in an armed conflict abroad. In light of the divergent approaches to what constitutes permitted and prohibited activities, a discussion on regulation in this respect would provide useful guidance to States.

PANEL I to cover, *inter alia*:

- Should there be specific activities prohibited in all circumstances, if so, what are they? e.g. powers of arrest or detention including the interrogation of detainees, intelligence, etc.

PANEL II to cover, *inter alia*:

- Which permissible activities require regulation?

Rules on the acquisition of weapons and the use of force and firearms

Research has also indicated that there are serious regulatory gaps concerning the illegal acquisition of weapons and trafficking in arms by private military and security company personnel and their consequences. There are also divergent approaches to the regulation of the use of force and firearms by PSCs. In most of the national laws studied, there were no requirements for PSC personnel to have undertaken essential trainings such as in international law or human rights standards. Guidance on the regulation of these activities is needed as well as the sharing of existing good practices.

PANEL I to cover, *inter alia*:

- Are there standard rules and methods for acquiring, exporting, importing, possessing and using weapons?
- Are there specific international norms and standards that could be incorporated in the regulation of firearms and the use of force?

PANEL II to cover, *inter alia*:

- What mechanisms of accountability are applied to acquisition of weapons, trafficking in arms and use of force?
- Are there good practices?

Accountability for violations and remedies for victims

In general, across regions, the Working group noted that legislation lacks references to company or personnel compliance with the standards of international human rights law and humanitarian law, penal accountability and civil liability of individuals and corporate actors, as well as effective remedies to victims. Given the right of victims of human rights violations to effective remedies, the lack of relevant rules may result in ineffective regulation of the private security industry.

PANEL I to cover, *inter alia*:

- What are the accountability mechanisms?
- Do the regulations provide for effective remedy to victims? What resources are made available for victims?

PANEL II to cover, *inter alia*:

- What is the experience of mutual legal assistance between States involved?
- Where are the gaps, and what are illustrative good practices?

General conclusions

The Working Group's research revealed that while all analysed countries have legislation regulating private security companies, each country approaches the privatization of the security industry differently, which results in patchy and inconsistent regulation. The Working Group stresses that the different approaches and regulatory gaps demonstrated in the study may result in a serious undermining of the rule of law and the accountability of private military and security company personnel for violations of the law.

Furthermore, regulatory gaps create potential risks to various fundamental human rights, such as the right to security, the right to life, the prohibition of the arbitrary deprivation of liberty, the prohibition of torture, cruel, inhuman or degrading treatment, and the right of victims to effective remedies.

PANEL I to cover, *inter alia*:

- What human rights violations by PMSC personnel have been documented for your country?
- With what accountability mechanism applied, and what outcome?

PANEL II to cover, *inter alia*:

- What can be done to close existing gaps across countries?
- Are there any good practices that may apply?