

COUNCIL MONITOR

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Overview

The Chairperson of the Working Group on the use of mercenaries, Mr Alexander Nikitin, engaged in the interactive dialogue with Council on the afternoon of 6 March 2009. The dialogue was relatively constructive, and despite a number of objections to recommendations made to the United Kingdom following a visit by the Working Group from 26-30 May 2008, there was notable support (including from the United Kingdom) for the elaboration of elements towards the drafting of an international convention on mercenaries. Also of note was Egypt's blank refusal to discuss the 'Swiss Initiative' and the Montreux Document (discussed below), on the basis that these were not UN initiatives. It's worth noting of course that Egypt was not one of the 17 States to partake in this initiative.

Item 3 – Working Group on the use of mercenaries

Presentation by the Chairperson

The Chairperson 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, Mr Alexander Nikitin, presented the annual report.¹ He updated the Human Rights Council (the Council) on the key activities of the Working Group over 2008: a country visit to the United Kingdom of Great Britain and Northern Ireland, and the continuation of the monitoring of the phenomenon of mercenarism.

Furthermore, he addressed the unique human rights challenges that the private military and security companies (PMSCs) raise for the international community. He underlined that the Working Group has elaborated firm proposals to address gaps in regulation and accountability, and that it has come to the conclusion that a new international convention on the regulation of PMSCs is needed. Mr Nikitin highlighted that this legal codification

¹ A/HRC/10/14; Add.1 (communications to and from governments); Add. 2, 19 February 2009 (report on mission to the United Kingdom); Add. 3, 26 February 2009 (report on the regional consultation for the Eastern European Group and Central Asia region on the activities of private military and security companies: regulation and oversight).

should be based upon the system of principles set out in the report,² which must be translated into real, legally-binding standards. He noted that the Working Group has already elaborated some draft initial components and formulations for such a convention, and he encouraged States to initiate the appropriate process for further elaboration and adoption of an international convention.

Furthermore, the Chairperson drew attention to the ‘Swiss Initiative’, a joint initiative launched in 2006 by the Government of Switzerland and the International Committee of the Red Cross to address the demand for a clarification of legal obligations under international humanitarian and human rights law as regards PMSCs, and also the Montreux Document,³ the outcome of the Initiative reached in September 2008 by 17 States⁴ on international legal obligations and good practices for States related to operations of PMSCs during armed conflict. He noted that the Working Group had studied the Montreux Document and that its conclusions were set-out in the report. He welcomed dialogue and cooperation with the Swiss Initiative where the aims of the Initiative and the Working Group coincide.

The Chairperson thanked the United Kingdom for the cooperation of its national authorities during the Working Group’s visit there in 2008. He summarised the recommendations as contained in an addendum to the report.⁵ These include that the UK Government would undertake a new comprehensive inquiry into the status and regulating of PMSCs in the UK and that it would finally make a policy choice between the options for regulation elaborated in its Green Paper.

He also mentioned two country visits in the next few months to Afghanistan and the US. Furthermore, he recognized the importance of a regional perspective on the fundamental question of the role of the State as holder of the monopoly over the legitimate use of force, and on the prevalence and regulation of PMSCs. He drew attention to the Working Group’s planning to hold further regional consultations in Asia, Africa and Western Europe.

Interactive dialogue

The United Kingdom, as a concerned country, thanked the Working Group for the report. It underlined that it was pleased that the Working Group considered the UK’s Green Paper on the regulation of PMSCs as an important and positive step. It stressed that difficulties were encountered in implementing issues such as self-regulation, and national regulation based on export controls and a licensing system.

However, the UK stated that it considered some paragraphs in the current report to be not entirely accurate, including a number of technical errors.⁶ It also underscored that the UK Government ensured that all contracts are subjected to a rigorous selecting process, that any company engaged by the government needs to pass through a stringent and transparent procurement process, and that all PMSC contracts are subjected to ongoing performance monitoring and contract management by the Foreign and Commonwealth Office. The UK concluded by thanking the Working Group for the initiative for an international instrument on PMSCs and requested the Working Group to elaborate further on how they see this international instrument working and what processes would be followed to establish it.

Several States expressed their support for greater regulation of PMSCs.⁷ The UK, Cuba, Nigeria and the Russian Federation explicitly supported the consideration of a new international convention. Cuba and Switzerland asked

² A/HRC/10/14, para. 70.

³ A/63/467.

⁴ Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom, Ukraine, United States.

⁵ A/HRC/10/14/Add. 2, 19 February 2009, report on mission to the United Kingdom.

⁶ It mentioned for example that it was not true that ‘only the Government can initiate legislation in parliament’, as provided in paragraph 23 of the report. It also noted that paragraphs 31 and 32 are not an entirely accurate statement of the legal position in the UK, as had been explained to the Working Group.

⁷ United Kingdom, Pakistan (on behalf of the OIC), Cuba, Russian Federation, Egypt (on behalf of the African Group), Nigeria, South Africa.

the Working Group to address the challenges and the time period for adoption. Mr Nikitin informed the Council that the draft principles are ready, that the Working Group will convene consultations with organisations and academic institutes in March and December 2009, that it will hold consultations with national delegations from January to September 2010 and that it will present ‘a legal product’ to the Council during the September 2010 session.

Other States claimed that there are no loopholes in international law in relation to PMSCs, and that these companies are regulated by humanitarian law and by the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*.⁸

Peru questioned the mandate of the Working Group. Concerning the development of a new international convention and the expansion of the mandate of the Working Group in general, it stressed that it should be clarified what would be the scope of such an exercise. It recommended in this regard the adoption of a more specific and clear definition of the phenomenon of mercenaries, including reference to the mechanisms involved in using them from an international perspective. In this context, it stated that the work done by most of the PMSCs in Peru seems not to be included within the purview of the competence of the Working Group nor should they be subject to regulation through an international instrument, since this work is not done in the zone of armed conflict and has no international dimension to it.

Egypt (on behalf of the African Group) addressed the need for the establishment of an oversight mechanism to receive complaints. It highlighted that while the Working Group currently carries out some of the oversight tasks, it has neither the mandate nor the resources to provide an oversight mechanism. It inquired if the Working Group recommended the Council to empower it with this task, and if not, what it would recommend instead. Mr Nikitin later responded that there is a need for a UN structure or organ to deal with complaints. Until that time, the Working Group itself will cover this. Egypt (on behalf of the African Group) also stated that the focus regarding PMSCs should be on the primary responsibility of contracting States, not only on the States of origin.

The United Kingdom and Switzerland commented on the importance of the Swiss Initiative and the Montreux Document in increasing international cooperation in regulating the PMSC industry. Egypt and Venezuela, on the other hand, criticised the fact that this document was discussed in the report and during the interactive dialogue. Egypt refused to comment on the document, since it is not considered a UN document. Venezuela stated that there were several implications to this, such as the lack of a process of consultation or broad participation. Mr Nikitin made clear that the Working Group insisted on cooperation with the Initiative and that in the future the Initiative should involve the UN, the Working Group, and other regions and States that were left out in the previous round of discussions that led to the Montreux Document.

Mr Nikitin concluded by thanking all participants in the discussion. He welcomed the statement of the UK, indicating that it considered international regulation a viable option, since 80% of the PMSCs are registered in the UK and the US. He underscored the importance of providing a good combination of both self-regulation by PMSCs through codes of conduct, as well as regulation at the international level through a legally binding instrument at the UN level.

Further information

For further information on the Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council’s proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to information@ishr.ch.

⁸ Venezuela, Egypt. Venezuela is carrying out relevant studies in order to soon become a party to this Convention.

- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 10th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/10session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>.
- More informal documents and draft resolutions are available on the ‘OHCHR extranet’ at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: ‘hrc extranet’ Password: ‘1session’.

NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.

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