

Check Against Delivery



Statement by Mr. José Luis Gómez del Prado

**Chairperson-Rapporteur of the 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**

Fourth session of the Human Rights Council

Geneva, 21 March 2007

- UNOFFICIAL TRANSLATION -

Mr. President, distinguished delegates, representatives of the United Nations, intergovernmental and non-governmental organizations.

I am honoured to present this second annual report to the Council, in my capacity as Chairperson of the Working Group on the Use of Mercenaries, and conforming to the practice of geographical rotation of presidency, adopted by the Group.

In the fulfilment of its mandate, particularly with regard to the monitoring and the study of activities of private military and security companies and the repercussions on the enjoyment of human rights, the Group has elaborated and integrated in its methods of work a system of individual communications process that allows it to receive and to study allegations of possible violations.

In this respect, it is necessary to indicate that the dimensions and specificity of the mandate, entrusted to us, touch on many aspects of the new concept of 'human security'. Unlike other special procedures, that deal from the perspective of victims of human rights violations, the Working Group deals with persons who can themselves violate human rights as much as be the victims. Our mandate is multifaceted and can deal with violations of human rights, such as the right to life and the security of the individual; economic and social rights; rights of indigenous peoples; right to health; labour rights; freedom of expression; the right of peoples to self-determination. Also, the Working Group has received information concerning cases of mercenarism tied to terrorist activities, as well as cases of private or independent contractors implicated in torture, and cases of child soldiers that act as mercenaries on many low-intensity conflicts that mark the 21st century.

The field missions to Honduras, Ecuador and Peru have allowed us to obtain relevant information and to study emerging manifestations and tendencies with respect to mercenary-related activities, as well as those of private military and security companies and the impacts on the enjoyment of human rights.

Traditional forms of the past have not completely disappeared, as the failed coup attempt in Equatorial Guinea in 2004 demonstrated that there are connections between traditional mercenaries and private military and security companies.

The new modalities involve an emerging and very flourishing industry of private military and security companies, which operates under a commercial logic of obtaining the greatest profit. With the privatization of war, the 'private or independent contractors' (the new freelancers of the 21st century) would appear to have become the prime export product of some industrialized countries to zones of armed conflict. These companies also recruit and train in developing countries, which experience high unemployment rates, cheap manual labour and a tradition of migrant labour, and send these persons to conflict zones, where effectively ordinary guards become combatants.

Within this context, we have observed that in some cases the employees of private military and security companies enjoy an immunity which can easily become impunity, implying that some States may contract these companies in order to avoid direct legal responsibilities. In this regard, the Working Group reiterates the request made to States in GA resolution 61/151 to prohibit private military and security companies intervening in armed conflicts.

Also, the Working Group has observed the implication of private security companies in social conflicts, and in some cases the national armed forces providing protection to natural resources extractive industries.

Further to the three missions already conducted, the Group is involved in a process of consultations and seeking official invitations to conduct visits to some 15 countries covering all regions of the world.

The Working Group observes that one of the difficulties encountered by the international community in countering the new forms of mercenarism, stems especially from the lessened attention paid by Governments since they considered that it belonged to the decolonization period, and that it did not affect them. This inattention, on the one hand, has led some to not accede to the 1989 Convention, and on the other hand to not adopt necessary legislative and administrative measures at the national level, which would have allowed them to be prepared to address the new modalities of mercenarism. The Group was able to verify on various occasions that the phenomenon has taken Governments off-guard and sometimes disarmed them.

In terms of the elaboration of norms and directives, as requested by the Commission on Human Rights, with the aim of filling the existing loopholes, the Working Group considers that in the short or long term, it will be necessary to hold a high level round table under the auspices of the United Nations, preceded by regional roundtables, in order to debate the fundamental question of the State as primary holder of the monopoly of the use of force. This will allow better understanding of the responsibilities of different actors, including the private military and security companies, in the current context, and their obligations in the promotion and protection of human rights.

Meanwhile, the Group will continue with the strategy of conducting field missions with an aim to study and determine the new and emerging manifestations and trends and, at the same time, monitor and address the possible human rights violations as consequences of mercenarism and activities of private military and security companies, within the procedure of individual communications established by the Group. Likewise, it will try to obtain the most ample accession to the 1989 Convention, since in spite of all its loopholes it is the only instrument which contains measures against mercenarism at the international level.

Compared to the main human rights conventions, the 1989 Convention lacks a treaty organ. It is essential then that the Group, being the only existing mechanism within the United Nations in charge of subjects related to mercenarism, continues the work of promotion and follow-up with a view of obtaining a universal accession to the Convention.

In this respect, we consider that within the programme of consultative services of the Office of the High Commissioner for Human Rights, it could be elaborated a model law with a view to facilitate accession of those States that wish to become party to the Convention, facilitating therefore the steps to be followed in order to adapt international norms into domestic legislation. Another practical measure in this regard could be the publication by the Office of the High Commissioner for Human Rights of