



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**

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- 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

a compilation of international and regional instruments, as well as existing national laws as a means of information to promote the accession by States. Both proposals are within the scope of requests the General Assembly regularly makes to the Secretary-General and the Office of the High Commissioner for Human Rights.

The unawareness of impacts by the new forms of mercenarism and activities of the private companies on the enjoyment of human rights is shared not only by the national authorities but also by intergovernmental organizations as well as by the civil society.

Fortunately, the anachronistic vision of mercenarism linked to decolonization is changing, to a large extent thanks to the field missions conducted by the Working Group, the information disseminated by the mass media, the consultations that the Group has had with representatives of governments, inter-governmental organizations and NGOs. The Working Group also welcomes debates within academic circles and the support by some NGOs, offering us information by means of dissemination through web portals, of the impact of the activities of private companies on the enjoyment of human rights and consequences of the new mercenarism of the 21st century.

We are especially pleased to inform that Honduras and Ecuador have already started the necessary mechanisms at the national level for the prompt accession to the Convention against the Use of Mercenaries. Peru is in the process of acceding thereby becoming the 29th State Party to the Convention and fifth of the Latin America and Caribbean region. Moreover, the Commission on Defence of the Peruvian Congress has recently elaborated a draft law which would prohibit the contracting of Peruvians performing security services in armed conflict zones.

Mr. President, concerning the mission to Honduras, I would like to point some of the concerns, reflected in the report:

Firstly, Honduras as a member of the international community could have prevented that Hondurans and Chileans be recruited and trained in its territory to work in an armed conflict area.

In Honduras, with Security Committees, Community Watches, private security companies, either operating legally or illegally and Honduran citizens having the possibility of creating their own protection of up to a 100 persons there exists 'small armies' which might fall outside the control of the authorities. The State might have, thus, ceded part of the monopoly of the use of force.

Honduras might have taken measures, on the 29 August 2006, regarding citizen safety and security which would allow some 30'000 private security guards to support the police and the armed forces in combating delinquency in Honduras. Such measures would authorize private security guards to intervene including to shoot delinquents. One can raise the question as to what extent a State can yield the control of violence to private security companies.

The Working Group is also concerned by the campaign of harassment, defamation and death threats allegedly triggered by a private security company, against human

rights defenders for defending labour rights of 12 guards who worked for that company and who were arbitrarily dismissed.

The Working Group recommends to the Honduran authorities:

To carry out an in-depth study of the manner in which the agencies and institutions responsible for enforcing the law, operate and perform their duties, and make the necessary changes to guarantee law and order, protect people and property and strengthen the rule of law;

To strictly apply the provisions of the Police Act and the Regulations on the Registration, Monitoring, Supervision, and Oversight of Private Security, Investigation and Training Companies;

To ensure the certification of the services provided by private security companies and the training of their agents, and better control of private security companies and all their employees;

To set up an authority, either parliamentary committee or commissioner, which would have the power to monitor the activities of private security companies, and which could receive complaints;

To prohibit the export of private military or security services to other countries and, where such exports do occur, regulate such services.

With reference to the mission to Ecuador, the Working Group is concerned with information received which indicates that:

The National Police charged private entities and individuals for the task of performing security services. Public resources might be used for commercial and private aims, using State uniforms, installations, weapons and ammunition. This would affect the principle of non-discrimination, in that which the State has to perform equal services for all citizens and not only for those who can afford to pay for these services;

A transnational private security company was performing counter-insurgency and counter-narcotics tasks from the military base in Manta; tasks that fall within the exclusive competence of agents of the United States armed forces, operating in Manta, and not within that of private contractors;

A US national, who had worked for the said private security company operating at the Manta base, had created a ghost company, not registered in the legal registries of Ecuador, and would have recruited Ecuadorian and Colombian personnel through press ads, to perform security services in Iraq;

The protest of indigenous peoples for their rights including right to land and to a clean environment, have taken actions which the members of the Ecuadorian armed forces (providing security services for oil installations) would consider as acts of sabotage;

The Working Group recommends the Ecuadorian authorities:

To elaborate rigorous national legislation to regulate and monitor the activities of national and transnational private military and security companies;

To complete promptly the investigations surrounding the company 'Epi Security and Investigations' in Manta, which offered to recruit Ecuadorian and foreign nationals for security work in Iraq;

Without giving some value judgment, but considering the positive actions concerning the protection of the rights of citizens with regard to fumigations done at the northern border of Ecuador; implement the recommendation of the Human Rights Ombudsperson and the National Congress. In this respect, we consider that the Working Group has performed work within its given mandate;

To ensure that the Juntas de Defensa del Campesinado (rural defence groups) do not become paramilitary actors.

To continue to promote the defence and protection of the rights of Ecuadorians as well as the development of education campaigns in human rights.

Mr. President, we would like to take this opportunity to thank the Honduras, Ecuador and Peru authorities for the close collaboration provided at all times to the Working Group, the assistance we received in the accomplishment of these three missions as well as the constructive climate within which consultations were conducted.

We take this opportunity also to cordially appeal to other States, in particular those that the Working Group has approached already, to extend invitations to visit their respective countries.

Mr. President, distinguished delegates, I thank you for the attention given to the issue of mercenarism, and trust that the interactive dialogue will be the most fruitful and constructive possible.