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增进和保护所有人权、公民、政治、经济、
社会和文化权利，包括发展权

使用雇佣军作为手段侵犯人权并阻挠行使民族
自决权问题工作组的报告

主席兼报告员：何塞·戈麦斯·德尔普拉多先生

增 编

拉丁美洲和加勒比地区关于私营军事和保安公司的活动
对享受人权的影响的区域协商会议：监管和监督 * **
(2007 年 12 月 17 日至 18 日)

* 本报告的内容提要以所有正式语文分发。载于附件中的报告，只以英文和西班牙文分发。

** 受报告所载的活动从事的日期的影响，本报告迟交。

内容提要

人权委员会第 2005/2 号决议除其他外请工作组“监测和研究在国际市场上提供军事援助、顾问和安全服务的私营公司开展的活动对享受人权尤其是民族自决权的影响，并起草鼓励这些公司在其活动中尊重人权的国际基本原则草案。”

工作组最近在对拉丁美洲和加勒比地区若干国家进行访问的过程中注意到，人权的享有日益受到涉及雇佣军或其活动所带来的一些新问题和趋势以及私营军事和保安公司的角色的阻挠，跨国保安公司在这一地区的业务有所扩大以及有些地方雇用私人保安人员而不是国家警察或保安部队即说明了这种情况。在这种背景之下，工作组认为最好能举行一次协商会议，以便对这种公司的行径采取区域看法，讨论将合法使用武力的垄断权作为在国际上出现的将国家的职能分包给私营军事和保安公司的这种大趋势的一部分，转交给私人非国家行为者的问题，审查这种做法对国家主权可能产生的影响以及分析各国为确保这些公司尊重国际人权标准可选用的监管办法和其他措施。

区域协商会议是由联合国人权事务高级专员办事处(人权高专办)与使用雇佣军问题工作组密切协作在巴拿马市举办的。协商会议根据大会第 62/145 决议于 2007 年 12 月 17 和 18 日在人权高专办拉丁美洲和加勒比区域办事处举行。第 62/145 号决议请人权高专办就该问题举行区域协商会议。

工作组在区域协商会议的结论中指出，在某些情况下，私营军保公司及其工作人员的活动会造成对人权的侵犯。私营军保公司征召“私营保安员”，在世界各地、不仅在拉丁美洲和加勒比地区的低激烈武装冲突中或在冲突后情况中使用这些人员。私营军保人员在灰色区域活动，由于有罪不罚现象和不必为其行动负责，他们更易于侵犯人权。这种情况就造成了严重的政治和军事问题。国家作为合法使用武力的唯一垄断者行使主权所承担的职能日益由私营军保公司接管。将这些职能转由私营部门负责，并由跨国公司行使不断削弱国家主权和联合国的集体安全体系。这种新的将服务输往武装冲突地区军事和私营保安业近年来发展神速。大量的侵犯人权事件表明，关于其活动的现行框架已不适足，这种框架主要以自我管制和自愿性的行为守性为基础。各国负有义务管制其活动，因为它们有责任采取必要措施，确保尊重、享有和促进人权。然而，由于这些活动是跨国进行的，它们也必须受到区域一级和联合国的管制。

出席区域协商会议的有智利、哥斯达黎加、古巴、多米尼加共和国、厄瓜多尔、萨尔瓦多、洪都拉斯、巴拿马和巴拉圭等国政府的代表、使用雇佣军问题工作组主席兼报告员和两名成员、独立专家、美洲人权研究所代表、两个军事和私营保安业协会的代表和人权事务高级专员办事处的代表。

Annex

**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-DETERMINATION**

**Latin American and Caribbean regional consultation on the effects
of the activities of private military and security companies on the
enjoyment of human rights: regulation and monitoring
(17-18 December 2007)**

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Introduction

1. Resolution 2005/2 of the Commission on Human Rights requested 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 inter alia “to elaborate and present concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities”. The Working Group was further instructed to “study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities”.
2. During missions to Honduras, Ecuador, Peru and Chile in the period 2006-2007, the Working Group noted that the enjoyment and exercise of human rights in Latin America and the Caribbean were increasingly being impeded by the emergence of some new problems and trends related to mercenaries or their activities and by the role played by private military and security companies (PMSCs), as evidenced by the expansion of transnational security companies’ operations in the region and the use in some places of private security guards instead of national police or security forces.
3. In the course of its field missions, the Working Group discovered that the monopoly over the legitimate use of force was being transferred more and more to private non-State actors in line with the international boom in the private military and security sector. These practices have meant an outsourcing or privatization of warfare at the international level and of security at the domestic level.
4. One aspect of this is the recruitment and training of personnel from Latin America and the Caribbean with a view to offering security services to private companies working in countries such as Iraq and Afghanistan. The Working Group found that governments in the region are often ill-equipped to come to grips with this problem by registering and licensing the PMSCs operating in their territory, for example or introducing effective administrative, regulatory and accountability arrangements so as to ensure that these firms follow standard recruitment procedures and offer standard working conditions. Weak or inadequate domestic legislation combined with few economic opportunities have made for a proliferation of PMSCs, which hire former soldiers and policemen and other persons from third countries so as to offer security services in low-intensity armed conflicts and post-conflict situations.
5. The Working Group deemed it advisable to hold a consultative meeting in order to gain a regional perspective of the practices of PMSCs operating in the region and to analyse the measures adopted by States to regulate and control these firms. The regional consultation also studied various good practices and options for regulating PMSCs to ensure that they comply with international human rights standards.

6. The regional consultation, which was organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in close collaboration with the Working Group on the use of mercenaries, was held at the OHCHR regional office in Panama, pursuant to the recently adopted General Assembly resolution 62/145, which requests OHCHR to hold regional consultations on this question.

I. PARTICIPANTS

7. The consultation was attended by representatives of the Governments of Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Honduras, Panama and Paraguay, representatives of the Inter-American Institute of Human Rights (IHR), four experts on the subject, and representatives of two associations of PMSCs, the International Peace Operation Association (IPOA) and the British Association of Private Security Companies (BAPSC). The list of participants may be found in annex I.

8. The Working Group was represented by the Chairperson-Rapporteur Mr. José Luis Gómez del Prado, Ms. Amada Benavides de Pérez and Mr. Alexander Nikitin.

II. PROGRAMME OF WORK

9. The following subjects were studied during the consultation:

- (a) PMSC practices, methods and trends in the region and elsewhere;
- (b) Existing international instruments and mechanisms;
- (c) The State as the holder of the legitimate monopoly over the use of force;
- (d) Privatization and internationalization of the use of force;
- (e) National laws and other measures adopted by States to regulate the practices of PMSCs;
- (f) National experiences outside Latin America and the Caribbean;
- (g) The example of South Africa;
- (h) Proposals for possible guidelines and basic principles promoting greater respect and protection of human rights by PMSCs.

10. Annex II contains more detailed information about the programme of work.

III. FINDINGS OF THE WORKING GROUP

11. The government representatives attending the regional consultation and the members of the Working Group emphasized that States have a duty to respect, implement and promote human rights.

12. The regional consultation, like the Working Group's reports, served to alert national authorities and international public opinion to the effects of the activities of PMSCs and their personnel on the enjoyment of human rights. In some situations their action could result in human rights violations.
13. The Working Group considered it advisable to present the following findings based on statements and debates at the regional consultation.
14. "Private security guards" were recruited all over the world, not just in Latin America and the Caribbean but in the world's other four geopolitical regions, Africa, Asia and the Pacific, Eastern Europe and Western Europe.
15. PMSCs employ "private security guards" to offer a variety of security services in low-intensity armed conflicts and post-conflict situations. They work in a grey area that is hard to distinguish from the mercenarism of the soldiers of fortune of former times. As with the mercenaries of the past, the actions of those "private security guards", who work for legally registered transnational companies which export their services, give rise to a number of human rights problems. Yet although their activities have characteristics in common with mercenarism, save in exceptional cases they do not fit the technical definition provided in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. That instrument was drafted in the 1970s and no longer matches reality. Apart from the lacunae it contains, the Convention is not a universal instrument since only 30 States are parties to it.
16. A number of political and military dilemmas are posed by the action of PMSCs, which operate in a grey zone where human rights violations are facilitated by impunity and a lack of accountability. In order to avoid electoral costs and having to answer to public opinion, some governments outsource to such firms. At the same time, the involvement of non-State actors fragments and complicates armed conflicts and post-conflict situations because there is no coordination or control over these actors, and this hampers the armed forces' freedom of action.
17. PMSCs are constantly taking over functions that were until recently inherent to the sovereignty of States as the sole holders of the legitimate monopoly over the use of force. The transfer of these functions to the private sector and their performance by transnational companies are weakening national sovereignty and the United Nations collective security system, which rests on Member States' sovereignty. In some circumstances it is even possible to speak of a "privatization of war".
18. PMSCs which export military and security services blur the dividing line between the public and private sectors. Moreover, although in reality they are essentially profit-driven, they often present themselves as humanitarian or peacebuilding organizations, thereby also making it unclear where the boundaries of non-governmental humanitarian organizations' field of action really lie. In fact, these transnationals are neither humanitarian actors nor peacebuilders and are basically motivated by commercial considerations.
19. The new military and private security industry which exports its services to areas of armed conflict has expanded spectacularly with the fall of the Berlin Wall, the globalization of the world economy and the new pattern of governance. The industry has encouraged the

establishment of associations that use the latest marketing techniques to effectively lobby governments, intergovernmental and non-governmental organizations and private industry. It would be illusory to think that when such companies violate human rights they will be punished by the invisible hand of the market as business dries up and they fade away: they are not. On the contrary, experience shows that, in many cases, companies reported for crimes against the civilian population in their theatre of action continue to receive contracts.

20. The current framework governing the activities of PMSCs, which is based mainly on self-regulation and voluntary codes of conduct, is inadequate as can be seen from the numerous instances of human rights violations. One of the most recent and most blatant incidents, which was not an isolated occurrence, was the killings that took place on 16 September 2007 in Baghdad, in which 17 civilians, among them women and children, died and a further 20 people were wounded as a result of indiscriminate shooting by personnel of the Blackwater company, which up to then had been self-regulated by the voluntary standards and codes of conduct of the International Peace Operation Association.

21. It falls to States to regulate these activities, but as they are transnational activities there is also a need for regulation at the regional level and in the framework of the United Nations. To that end, States must precisely define what functions are inherently governmental and cannot be transferred to PMSCs.

22. The wide range of activities of PMSCs poses serious problems for the international community and United Nations peacekeeping operations.

23. In the short term, the Working Group considers it necessary for States to accede to the Convention and bring their domestic legislation into line with it since, despite the fact that it is outdated and contains several lacunae, it is the only international instrument there is until such time as new provisions are drafted. In order to ease the accession of States not yet parties to the Convention, OHCHR, acting in close collaboration with the Working Group on the use of mercenaries, could draft a model law based on the Convention.

24. At the same time, in the short and medium term, the activities of PMSCs also need to be regulated at the national level, both by the States of registration of transnational exporters of military and security services and by the countries importing those services and where the companies operate or recruit.

25. As a priority measure, States should define the military and security functions which cannot be outsourced because they inherently belong to governments as holders of the monopoly over the legitimate use of force. Similarly it is necessary: to define and delimit functions which can be outsourced and for which national rules should be formulated; to adopt legislation and set up supervisory machinery, in respect of those activities; to establish a registration and licensing system and penalties; to lay down rules concerning the respect for human rights and international humanitarian law; to make it obligatory to provide personnel with proper training also encompassing human rights standards; to establish effective arrangements for selecting vetting applicants; and lastly to make it obligatory to present periodic reports and to introduce a monitoring system.

26. States must take the necessary steps to prevent the recruitment of former soldiers and police officers as “private security guards” for deployment in armed conflict or post-conflict zones. An individual’s right to free choice of employment cannot be absolute when the State becomes involved, as it does when it takes part, albeit indirectly through its citizens, in an armed conflict.

27. In the medium and long term, the Working Group considers it necessary to identify the loopholes in the Convention that PMSCs use in order to work in armed conflict or post-conflict zones and to draw up standards and additional binding basic principles with a view to incorporating them in an additional protocol to the Convention, which would first be debated in the United Nations General Assembly.

28. Furthermore the United Nations could set up in its departments, offices, organizations, programmes and funds an effective system for selecting and vetting personnel and could encourage the formulation of guidelines setting out relevant criteria for regulating and supervising the activities of PMSCs that win contracts and operate under its authority. It should also demand and ensure that those guidelines comply with human rights standards and international humanitarian law. In particular it should introduce the requirement that companies or persons employed by them have not been implicated in human rights violations.

Annex I

PARTICIPANTS

Government representatives	Chile	Mr. Jorge Tagle Mr. Griott Mr. Barrientos
	Costa Rica	Mr. Juan Luis Sánchez Vargas
	Cuba	Ms. María del Carmen Herrera Caseiro
	Dominican Republic	Col. Ángel Camacho Ubiera Mr. Fernández Valerio
	Ecuador	Mr. Augusto Saá
	El Salvador	Mr. Wilfredo de Jesús Avelenda Echeverría
	Honduras	Mr. Juan Carlos Bonilla Valladares
	Panama	Ms. Ianna Quadri Mr. Vladimir Franco Mr. Portugal Falcón Mr. Janio Tuñón Mr. Ernesto Cerrud
	Paraguay	Ms. Amalia Quintana de Florentín
	Experts	Ms. Anna Leander Mr. Jesús Núñez Villaverde Mr. Sabelo Gumedze (unable to attend) Ms. Chia Lehnardt
Intergovernmental bodies	IIHR	Mr. Roberto Cuéllar Mr. Juan Navarrete
Representatives of associations of the private military and security sector	IPOA BAPSC	Mr. Doug Brooks Ms. Sabrina Schulz
Working Group on the use of mercenaries		Mr. José Luis Gómez del Prado Ms. Amada Benavides de Pérez Mr. Alexander Nikitin
Office of the United Nations High Commissioner for Human Rights		Mr. Karim Ghezraoui Ms. Teresa Alberó Ms. Maymuchka Lauriston Ms. Dominique Laplace

Annex II

PROGRAMME OF WORK

A. 17 December 2007

1. Opening of the meeting and introductions

Welcome

1. Mr. Ricardo J. Duran, Deputy Minister for Foreign Affairs of Panama welcomed participants.
2. Mr. Karim Ghezraoui, Thematic Coordinator, Special Procedures Branch, Office of the United Nations High Commissioner for Human Rights and Ms. Teresa Alberro, Regional Representative, OHCHR Regional Office for Latin America and the Caribbean, outlined the work of the Office.
3. The Chairperson-Rapporteur of the Working Group on the use of mercenaries, Mr. José Luis Gómez del Prado, opened the working session. He introduced the participants, summarized the programme of work and explained the purposes of the regional consultation.
4. The Chairperson-Rapporteur emphasized that the purpose of such regional consultations was to share, consider and make good use of the lessons learnt from other national, regional and international experiences and practices in the field in question.
5. Documentation:
 - (a) Background paper;
 - (b) Annotated programme;
 - (c) List of participants.

2. Activities of private military and security companies (PMSCs) in Latin America and the Caribbean

Assessment of emerging issues, manifestations and trends with regard to the activities of PMSCs in the region and elsewhere

6. The members of the Working Group presented their findings and observations from missions to countries in the region.
7. Ms. Amada Benavides de Pérez then gave a presentation describing the activities of PMSCs operating in Latin America and the Caribbean.

8. The Chairperson-Rapporteur opened the discussion in which he gave the floor to government representatives, experts, non-governmental organizations and representatives of associations of the private military and security sector (IPOA and BAPSC).

9. Documentation:

(a) Annual reports of the Working Group on the use of mercenaries to the General Assembly and the Human Rights Council (A/HRC/4/42, A/61/341, E/CN.4/2006/11 and Add.1);

(b) Reports of the Working Group's missions to Honduras and Ecuador (A/HRC/4/42/Add.1 and 2);

(c) Commission on Human Rights resolution 2005/2 establishing the Working Group's mandate (E/CN.4/RES/2005/2);

(d) General Assembly resolution 61/151 on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/RES/61/151).

3. International, regional and national regulations (part I)

Existing international instruments and mechanisms

10. Ms. Anna Leander gave a presentation of existing international instruments and mechanisms regulating PMSCs, including the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989, the Geneva Conventions of 1949 and protocols thereto of 1977, United Nations human rights conventions, the Charter of the United Nations and the relevant resolutions of the United Nations. One of her main conclusions was that there was a large amount of indirect, but no direct, legislation applicable to PMSCs. This subject was then discussed extensively.

11. Mr. Alexander Nikitin described regional regulatory mechanisms in the Commonwealth of Independent States (CIS).

12. Documentation:

(a) International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989;

(b) Geneva Conventions of 1949;

(c) OHCHR fact sheet No. 28, the Impact of Mercenary Activities on the Right of Peoples to Self-Determination;

(d) Copy of the expert's statement concerning international instruments of relevance to PMSCs;

(e) CIS instrument;

(f) Report on the first meeting of experts on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2001);

(g) Report on the second meeting of experts on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2002);

(h) Report on the third meeting of experts on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2004).

4. International, regional and national regulations (part II)

The State as holder of the right to use force

13. Mr. José Luis Gómez del Prado gave a presentation based on the paper prepared by Ms. Shaista Shameem, a member of the Working Group, on the State as the holder of the right to use force.

Privatization and internationalization of the use of force

14. Mr. Jesús Núñez Villaverde's presentation focused on the privatization and internationalization of the use of force.

15. Documentation:

(a) Working Group questionnaire sent to governments;

(b) Compilation of governments' replies;

(c) Reports of the Working Group on the use of mercenaries on its missions to Honduras, Ecuador, Peru and Chile (A/HRC/4/42/Add.1 and 2, A/HRC/7/7/Add.2 and 4);

(d) Copy of the expert's report on the privatization and internationalization of the use of force;

(e) Comparison of national experiences in regulating the activities of PMSCs;

(f) Report on the first meeting of experts on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2001);

(g) Report on the second meeting of experts on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2002);

(h) Report on the third meeting of experts on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2004).

B. 18 December 2007

5. International, regional and national regulations (part III)

Information regarding domestic legislation and other measures taken by States to regulate the activities of PMSCs

15. The government representatives gave presentations of the situation in their countries, drawing attention to domestic legislation and other measures to regulate and supervise the activities of PMSCs, including registration, licensing and monitoring procedures.

16. Documentation:

- (a) Working Group questionnaire sent to governments;
- (b) Compilation of governments' replies;
- (c) Reports of the Working Group on the use of mercenaries on its missions to Honduras, Ecuador, Peru and Chile (A/HRC/4/42/Add.1 and 2;
- (d) Copy of the expert's report on the privatization and internationalization of the use of force;
- (e) Comparison of national experiences in regulating the activities of PMSCs;
- (f) Report on the first meeting of experts on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2001);
- (g) Report on the second meeting of experts on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2002);
- (h) Report on the third meeting of experts on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2004).

National experiences outside Latin America and the Caribbean: the example of South Africa

17. Mr. José Luis Gómez del Prado gave a summary of the presentation prepared by Mr. Sabelo Gumedze, who was unable to attend the meeting, describing the legislative and administrative measures adopted by South Africa to regulate and supervise the activities of PMSCs, including registration, licensing, and regulatory and supervisory arrangements.

18. The representatives of IPOA and BAPSC described the two associations' self-regulatory initiatives.

19. Documentation:

- (a) Copies of expert reports on regulatory options and monitoring procedures;
- (b) Copies of the industry's self-regulatory initiatives.

Proposals for possible guidelines or basic principles encouraging greater respect for and protection of human rights by PMSCs

20. Drawing on States' experiences and debates on the subject, Ms. Chia Lehnardt described the most important factors that would need to be borne in mind when drafting possible guidelines and basic principles for regulating the activities of PMSCs operating in low-intensity armed conflicts.

21. All the participants engaged in a lively debate.

22. Documentation:

- (a) Code of Conduct for Law Enforcement Officials;
- (b) Copy of the International Labour Organization Guide to Private Employment Agencies;
- (c) Copy of the expert report on possible guidelines and basic principles for PMSCs.

6. Conclusion of the consultation

Conclusions, observations and closure of the regional consultation by the Chairperson of the Working Group

23. Mr. Gómez del Prado suggested some preliminary conclusions based on comments made by participants and members of the Working Group and closed the Latin American and Caribbean regional consultation.
