UN Working Group on the Use of Mercenaries

Regulating and Monitoring Private Military and Security Companies

José L. Gómez del Prado

Geneva, 17th Session Special Procedures
PMSCs DO HAVE AN IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS
“Private soldiers,” “private security guards” or “independent contractors.
Employees of transnational military-security companies

Individuals who can violate human rights as much as be victims of human rights violations.

Summary executions, disappearances, torture, arbitrary detention, forced displacement, trafficking in persons, confiscation or destruction of private property, health, right to privacy...

Contractual irregularities, bad working conditions, overcrowding, excessive working hours, unpaid salaries, degrading treatment and isolation, lack of attention to their basic needs such as health and hygiene
SERIOUS HUMAN RIGHTS VIOLATIONS CUTTING ACROSS DIFFERENT MANDATES

EMPLOYEES OF PRIVATE MILITARY AND SECURITY COMPANIES COMMITTING EXECUTIONS

SUMMARY

TORTURE

Abou Ghraib

Nissour Square

HEALTH

Aerial Fumigation

TRAFFICKING IN PERSONS MIGRANT WORKERS

RENDITION

FLIGHTS

CIA

ARBITRARY DETENTION

105 CHILEANS

105

SERIAL TRAUMA
NISOOR SQUARE
BAGHDAD

MASSACRE OF 16 SEPTEMBER 2007

- 17 CIVILIANS KILLED AMONG WHICH CHILDREN AND WOMEN
- OVER 20 CIVILIANS INJURED
- WITHOUT PROVOCATION ACCORDING TO US MILITARY REPORTS
- NONE OF THE EMPLOYEES ALLEGEDLY RESPONSIBLE FOR THE INCIDENT HAS BEEN YET SANCTIONED

EXTRAJUDICIAL SUMMARY EXECUTIONS
BLACKWATER ASSISTED THE CIA PREDATOR PROGRAMME IN AFGHANISTAN AND PAKISTAN RESULTING IN ARBITRARY EXECUTIONS
L-3 COMMUNICATIONS-TITAN
CACI

ABOU
GHRAIB
SCANDAL

TORTURE and OTHER CRUEL
INHUMAN or DEGRADING
TREATMENT OR PUNISHMENT
CLAIM BY TWO HUNDRED AND FIFTY PLAINTIFFS UNDER THE ALIEN TORT

- rape and threats of rape,
- sexual assaults;
- electric shocks; beatings,
- prolonged hanging from limbs;
- forced nudity; hooding;
- isolated detention;
- being urinated on;
- religious intolerance.
BLACKWATER INVOLVED IN RENDITION FLIGHTS OF C.I.A.

- It helped provide security on C.I.A. flights transporting detainees after the 2001 paramilitary operations is a scandal waiting to be examined.”

- A former top C.I.A. officer. “There was a feeling that Blackwater eventually became an extension of the agency.”

“the use of contractors in intelligence and

US Representative Rush D. Holt
In 2005, 105 Chileans were providing/or undergoing military training in the former army base of Lepaterique in Honduras. The instruction consisted in anti-guerrilla tactics such as possible ambushes and deactivation of explosives and mortars how to avoid them. The Chileans had entered Honduras as tourists and were illegally in Honduras. They used high-calibre weapons such as M-16 rifles or light machine guns.
22 women in the frontier line, in Ecuador and Colombia where they were exposed by the air fumigations from the Plan Colombia to the ‘glifosato’ mixture with POEA + Cosmuflux 411 F., besides the intoxication symptoms, presented genetic damages in a third of the sanguine cells.
The report refers to four lawsuits concerning the spraying of narcotic plant crops along the Colombian border adjacent to Ecuador on behalf of 3 Ecuadorian Providences and 3266 plaintiffs.

“*The aerial spraying operations were and continue to be managed by us under a DoS contract in cooperation with the Colombian government. The DoS contract provides indemnification to us against third-party liabilities arising out of the contract, subject to available funding. The DoS has reimbursed us for all legal expenses to date.*”

“*The terms of the DoS contract provide that the DoS will indemnify our operating company against third-party liabilities arising out of the contract, subject to available funding. The DoS has reimbursed us for all legal expenses to date.*”
GAPS IN HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

DEFINITION OF MERCENARY

- ALMOST IMPOSSIBLE TO APPLY IT TO THESE “PRIVATE CONTRACTORS” OR “SECURITY GUARDS”

INMUNITY

PLAN COLOMBIA

IRAQ
THE USE OF PMSC IN HUMANITARIAN OPERATIONS

- Is blurring the distinction between humanitarian non-profitable organizations and corporations working for pecuniary gain

- Humanitarian and aid assistance organizations are not perceived as neutral, but often associated with the intervening force and targeted as such.
THROUGH SELFNESS COMMITMENT AND COMPASSION FOR ALL PEOPLES, BLACKWATER WORKS TO MAKE A DIFFERENCE IN THE WORLD AND PROVIDE HOPE TO THOSE WHO STILL LIVE IN DESPERATE TIMES.
Alarmed by the conference regarding Haiti on 9-10 March 2010, organized by IPOA, the trade association representing many PMSC

Letter to USA Secretary of State Ms. Clinton by 18 NGOs urging that funds pledged by the United States and other members of the international community, be directed towards rebuilding Haiti, not to international private security contractors.
- **Warlord Groups in Somalia**
- **Taliban in Afghanistan**

**Collusion Between PMSC and Rebel Groups**
Comment by Sandline International

9 February 2000, Sandline listed as registered supplier in UN database

Sandline International is pleased to report that the company is now a registered supplier in the United Nations Common Supply Database (UNCSD).

Other PMSC in UNCSD: Aegis, Armor Group, DynCorp, MPRI…

It would seem that the PMSC Greystone of the Blackwater Group had also been registered in UNCSD.

« In Afghanistan, the U.N. has contracted an Afghan subsidiary of the London-based company, IDG Security Ltd., to provide 169 Gurkhas, according to figures compiled by the U.N. Mission in Afghanistan (some U.N. officials say there may be as many as 400 Gurkhas protecting U.N. officials). They are charged with supplementing security provided by the Afghan National Police. »
A common pattern in all regions of the world is the lack of common standards for:

- Registration
- Vetting
- Training
- Licensing
- Safekeeping of weapons
DIFFUSED RESPONSIBILITY AND LACK OF ACCOUNTABILITY

A labyrinth of contractual and insurance layers and shells

Many contracts outsourced by U.S.A. government to PMSCs are in their turn subcontracted to other companies registered in U.S.A. or abroad

Examples: Triple Canopy subcontracted Your Solutions Inc. Illinois whose subsidiary Your Solutions Honduras recruited Latinos for Iraq
Blackwater subcontracted Grupo Tactico Chile

These companies (some of which are “ghost” that have never been legally registered) are entrusted with selecting and recruiting military and police personnel from third countries.
Blackwater guards have been involved in nearly 200 shootings in Iraq since 2005.

Despite the terms of the contracts which provide that Blackwater can engage only in defensive use of force,

The report indicates that Blackwater reported that in over 80% of the shooting incidents its forces fired the first shots.

According to a Congressional report October 2007
LACK OF VETTING PROCEDURES

- The case of South African PMSC employed in Iraq
  Among PMSC employees in Iraq were found South Africans having committed crimes against humanity when they served in the South African police and army during the former apartheid regime.
LACK OF VETTING PROCEDURES

The Case of Danny Fitzsimons

Was diagnosed as suffering from Post-Traumatic Stress Disorder (PTSD) in January 2004, while still in the army. Assessments by consultant psychiatrists in May 2008 and June 2009 reported that the symptoms had worsened.

- Despite this, in August 2009, he was hired by ArmorGroup and sent out to Iraq without undergoing a full medical assessment.

- Within 36 hours of his arrival, the incident took place in which two colleagues died and an Iraqi was injured.

Danny Fitzsimons

*The Queensland Times*
PRIVATIZATION OF WAR
A NEW NON-STATE ACTOR: THE PMSC

IRAQ:
- 180 Private Companies providing services to militaries
- 190,000 Private Contractors
- 48,000 Private “security guards”

Rate Militaries/Private Contractors
- First War Golf: 50 to 1
- War Golf 2003: 1 to 1

AFGHANISTAN:
- 60 Private Companies
- Between 18,000 and 28,000 Private “security guards”

Estimates from various sources 2007-2008
PRIVATIZATION OF WAR
A NEW NON-STATE ACTOR: THE PMSC

IRAQ

Private Contractors 190 000

Militaries 150 000

OF WHICH A “DISPOSAL ARMY”
OF 48 000
PRIVATE “SECURITY GUARDS”

☑️ MORE THAN ANY OTHER ARMY OF THE COALITION EXCEPT USA
☑️ MORE CASUALTIES (1000 KILLED, 8000 INJURED) THAN OTHER ARMIES OF COALITION EXCEPT USA
“Private guards” RECRUITMENT IN IRAQ

- SOME 180,000 PRIVATE CONTRACTORS
- SOME 50,000 « Private guards » « Corporate warriors »

**AMERICANS**
- 3,000 TO 5,000

**EXPATRIATES**: AUSTRALIANS, BRITISH, CANADIANS, SOUTH AFRICANS
- 7,000 TO 10,000

**THIRD COUNTRY NATIONALS**: CHILEANS, FIJIANs, NEPALESE, RUMANIAN, HONDURANS, PERUVIANS, COLOMBIANS, NIGERIANS, POLISH, BULGARIANs, PHILIPPINOs...
- 15,000 TO 20,000

**IRAQIS**: 25,000 TO 30,000

- OVER 1,000 KILLED
- OVER 8,000 INJURED

FROM INDIVIDUALS WITH BAD HUMAN RIGHTS RECORDS TO LEGITIMATE ARMY OFFICERS
Nationality of Civilian Contractors Reported Working in Iraq and Afghanistan

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<th>Number of Workers</th>
<th>Percent of Total Workers</th>
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<tr>
<td>Foreign Workers*</td>
<td>45,194</td>
<td>67%</td>
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<tr>
<td>American Workers</td>
<td>22,465</td>
<td>33%</td>
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Source: U.S. Central Command, July 2007
The latest figures of U.S. Department of Defense (April 2010) show there are more civilian contractors in Afghanistan than there are soldiers (Pro Publica)

- 107,292 U.S.-hired civilian workers
- 78,000 soldiers
A SOCIAL PHENOMENON WHICH REACHED 2010 CANNES FESTIVAL

*Route Irish*, by Ken Loach

An incredible and scary plot.
(El País)

Investigates the death in Baghdad of a “security guard” working for one of the multiple private military and security companies making sinister businesses and committing crimes with absolute impunity in a devastated country.
A POSSIBLE DRAFT CONVENTION ON PMSCs
HAS ADOPTED TWO REPORTS recommending “that the Committee of Ministers draw up a Council of Europe instrument aimed at regulating the relations of its member states with PMSCs and laying down minimum standards for the activity of these private companies”:
- Report of the Political Affairs Committee. Doc. 11787 (22 December 2008)
- Report of the Committee on Legal Affairs and Human Rights Doc. 11801 (27 January 2009) on:

“Private military and security firms and the erosion of the state monopoly on the use of force”
Stating “its preference for a legally binding document (convention)”.
IMPLEMENTATION OF MANDATE GIVEN TO THE WORKING GROUP BY UN HUMAN RIGHTS COUNCIL IN OPERATIVE PARA. 13 OF ITS RESOLUTION 10/11 OF 26 MARCH 2009

2009
- consult with IGO, NGO, academic institutions and experts on the content and scope of a possible draft Convention on PMSCs;

2010
- share with Member States elements for a possible draft convention on PMSCs requesting their input;
- report to the fifteenth session of the HRC on the progress achieved in the elaboration of the draft convention;
Some 200 replies comprising over 800 suggestions from academics, NGOs, IGOS, proposals, suggestions, amendments, changes, new suggestions collected during 2009 lead to a new draft of possible convention on PMSC.
NEW DRAFT TEXT SENT TO 192 UNITED NATIONS MEMBER STATES FOR COMMENTS IN 2010

ELEMENTS

TEXT OF ARTICLES OF A POSSIBLE DRAFT CONVENTION ON THE REGULATION, OVERSIGHT AND MONITORING OF PMSC
Reaffirms the relevant principles and rules of international human rights and international humanitarian law.

Expresses concerns about the increasing delegation or outsourcing of inherently State functions which undermine any State's capacity to retain its monopoly on the legitimate use of force.

Reiterates that responsibility for violations of international human rights and humanitarian law may be imputable not only to States but also to inter-governmental organizations and non-State actors.

Considers that victims of human rights violations have the right to effective remedies, and declares that mechanisms must be devised to ensure the accountability of States, inter-governmental organizations and PMSCs.
STRUCTURE OF THE DRAFT CONVENTION

- General Provisions
- General Principles
- Legislative regulation, oversight and monitoring
- State responsibilities to impose sanctions on offenders and provide remedies to victims
- International oversight and monitoring
- Final Provisions
<table>
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<th>PURPOSES OF DRAFT CONVENTION (Art. 1)</th>
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<tr>
<td>Reaffirm the State responsibility for the legitimate use of force</td>
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<td>Identify inherently State functions that cannot be outsourced</td>
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<td>Provide guidance for regulation by States of the activities of PMSCs and their potential sub-contractors</td>
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<td>Promote cooperation between States regarding the licensing and regulation of PMSCs activities</td>
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<td>Establish an international monitoring mechanism and promote the creation of monitoring bodies at national level</td>
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SCOPE OF APPLICATION

- States and International Organizations
- Not directly applicable to PMSCs and individuals
- All situations, not only armed conflict situations
GENERAL PRINCIPLES

State responsibility for the legitimate use of force

State sovereignty. Principles of sovereignty, equality and territorial integrity

Prohibition of outsourcing inherent State functions to PMSCs

Prohibition of outsourcing the use of certain firearms

Respect for IHRL and IHL and accountability for violations. Liability of superior of PMSCs personnel for crimes under international law committed by PMSC personnel under their effective authority and control

Rule of Law

Prevent PMSCs from trafficking and illicitly manufacturing firearms

PMSC's activities consistent with IHRL and IHL

Compliance with legislation territorial State

Agreements with the legislation of home, territorial and national State
INHERENTLY STATE FUNCTIONS WHICH CANNOT BE OUTSOURCED

- direct participation in hostilities,
- waging war and/or combat operations,
- taking prisoners,
- law-making,
- espionage,
- intelligence,
- use of and other activities related to weapons of mass destruction and police powers, especially the powers of arrest or detention including the interrogation of detainees.
A NATIONAL CENTRALIZED SYSTEM OF REGISTRATION OF PMSC

- Prohibiting registration of PMSC off-shore

A LICENSING SYSTEM FOR

- Companies
- Personnel
- Contracts

PERIODIC REPORTS TO UN ESTABLISHED BODY ON

- Registration
- Licensing
• RULES ON THE USE OF FORCE AND FIREARMS BY PMSC
• ONLY LEGITIMATE WAYS OF ACQUIRING AND TRANSPORTING WEAPONS

• USE OF FORCE WHEN STRICTLY NECESSARY AND TO THE EXTENT AUTHORIZED BY THE STATE

• USE OF FORCE REGULATED BY MILITARY NORMS AND HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW WHEN PMSC PROVIDE SERVICES UNDER AGREEMENT WITH ARMED FORCES OF A STATE
STATE RESPONSIBILITY TO IMPOSE CRIMINAL, CIVIL AND/OR ADMINISTRATIVE SANCTIONS ON OFFENDERS AND PROVIDE REMEDIES TO VICTIMS

Criminalization of offenses
- Criminalization of:
  - acts of carrying out inherently State functions
  - the export/import of PMSCs services without license or authorization
  - unlawful use of force and firearms

Investigation, prosecution and punishment of violations covered by the convention

Effective remedies to victims

Establishment of jurisdiction
- Jurisdiction over offenses committed in the territory of a State party; on board of a vessel flying the flag of that State or an aircraft registered under the laws of that State: or by one of its nationals or against a national
STATE RESPONSIBILITY

- **Extradition.** Criminal offenses under the convention to be included in any existing and subsequently concluded extradition treaties between States parties.
- **Mutual legal assistance in investigations, prosecutions and judicial proceedings.**
- **Transfer of criminal proceedings to another State, to the ICC.**
- **Liability of legal persons.** Establishment of the criminal and civil liability of PMSCs for participation in offenses penalized under the convention.
- **Obligation to lift immunity** applicable to PMSCs and their personnel under other conventions and agreements.
- **Fund to rehabilitate victims of offenses.**
- **Obligation of PMSCs to compensate victims** of violations.
INTERNATIONAL COMMITTEE ON THE REGULATION, OVERSIGHT AND MONITORING OF PMSCs

International monitoring mechanism for the implementation of the convention
RESPONSIBLE FOR RECEIVING AND DEALING WITH

Reports from States parties

Petitions from individuals and groups of individuals

Confidential Inquiries: *in situ* visit

Complaints from States parties – Conciliation Commission
THE TEXT OF A POSSIBLE DRAFT CONVENTION

WILL BE SUBMITTED TO UN HUMAN RIGHTS COUNCIL IN September 2010 (A/HRC/15/25/Add 7)

THE UN HUMAN RIGHTS COUNCIL MAY ESTABLISH AN OPEN ENDED WORKING GROUP FOR THE ELABORATION OF A NEW INSTRUMENT