



Statement by Ms. Anita Ramasastry

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Third session of the Open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies

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Chairperson-Rapporteur, Excellencies, Distinguished Delegates, Ladies and Gentlemen, it is my pleasure to join you today on behalf of the UN working Group on Business and Human Rights and I would like to thank the Chairperson-Rapporteur for the invitation. The Working Group appreciates the opportunity to participate in this 3rd session of the open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies (PMSCs).

I am a member and former Chairperson of the Working Group. I represent the WEOG region in the Working Group and I am honoured to follow in the footsteps of the previous member of the Working Group for the Asia-Pacific region, Surya Deva. He addressed the 2nd session of this intergovernmental working group in 2021. He also participated in the 5th session of the previous Open-ended intergovernmental working group in 2016. So, the Working Group has closely followed the deliberations over a number of years. I offer these remarks in a spirit of open dialogue and the Working Group is pleased to provide our input to this important process. I congratulate the Chair, and the drafting team, for providing a zero draft for consideration and for welcoming input from States, civil society and experts.

In 2016 and 2021, the Working Group highlighted the relevance of the UN Guiding Principles on Business and Human Rights (UN Guiding Principles) to the content of an international regulatory framework concerning PMSCs and I reiterate that today. The Working Group has a mandate to promote, disseminate and implement the UN Guiding Principles, and also to exchange and promote good practices and lessons learned on their implementation. The UN Guiding Principles are the authoritative global framework for preventing and addressing adverse business-related human rights impacts. The UN Guiding Principles are a foundational tool for tackling major collective challenges and they are most relevant to the content of an international regulatory framework relating to the activities of PMSCs.

The key document to be discussed during this session is the revised zero draft instrument on an international regulatory framework on the regulation, monitoring of and oversight over the activities of PMSCs. In my remarks today, I will outline how important it is that the draft instrument aligns with the UN Guiding Principles.

We want to make some general observations.

After one decade of the implementation of the UN Guiding Principles, in 2021 the Working Group released both a stocktaking report¹ to the Council as well as a roadmap for the next decade.² We have also worked closely with States, civil society and business, to address issues relating to business, human rights and conflict affected areas, including our recommendations set forth in our report to the UN General Assembly in the fall of 2020.³ We have actively engaged with the International Code of Conduct Association, DCAF and the Voluntary Principles for Security and Human Rights. Many of our country visit reports contain observations concerning the connection between private military and security companies and human rights abuses.⁴ Thus, we appreciate the efforts of the Chair to formulate binding rules concerning this critical sector.

We will submit more extensive comments but want to share some observations at this stage.

¹ <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-reader-friendly.pdf>

² <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>

³ A/75/212, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/190/21/PDF/N2019021.pdf?OpenElement>

⁴ <https://www.ohchr.org/en/special-procedures/wg-business/reports-and-other-documents>

First, we would encourage the Chair and any drafting experts to consider the key processes and concepts of the UN Guiding Principles, to ensure coherence in terms of requirements and norms. After a decade since the UN Guiding Principles were endorsed by the Human Rights Council in 2011, we have seen key frameworks, including national legislation on human rights due diligence, embedding concepts from the UN Guiding Principles. These include requirements based on the State duty to protect human rights, such as requirements for procurement and other financial incentives to be linked to compliance with the UN Guiding Principles and other human rights norms and standards.

We underline the importance of the use of human rights due diligence by PMSCs to address and identify their connection to salient human rights abuses. The concept of looking at direct linkage is critical and helps us to address issues of parent and subsidiary businesses, as well as business partners. ICOCA's Guidance on Human Rights Impact Assessments for security providers is an example of a tool that embeds the UN Guiding Principles in a way that operationalizes the UN Guiding Principles for the sector. We also see this alignment with the UN Guiding Principles with other binding initiatives – from the draft EU directive, which may also apply to security companies, to the draft Legally Binding Instrument under consideration in the Human Rights Council through the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. The UN Guiding Principles are a foundation through which many new binding rules are being crafted.

Second, we concur that binding initiatives are important and critical at this stage. After a decade of the UN Guiding Principles, the Working Group, in its 2021 Roadmap⁵, has urged States to recalibrate the “Smart Mix” of measures – national and international, mandatory and voluntary – to foster business respect for human rights that the UN Guiding Principles ask States to adopt – with more focus on hard law.

Third, we also support the clear elaboration of rules relating to accountability in the area of criminal law. The Working Group previously drafted a report on the issue of cross border cooperation to address issues of violations of international criminal law.⁶ We continue to support criminal remedies as part of a robust Pillar III approach to accountability and remedy.

Fourth, while we understand that the current draft applies to companies operating in a transnational context, we have consistently recommended a more holistic approach to businesses' responsibility to respect human rights by recommending that companies be subject to the same rules whether operating domestically or transnationally, and whether state-owned or private.

Our largest message today is that we see clear opportunities to include core concepts from the UN Guiding Principles on which there is larger agreement and implementation.

I look forward to the dialogue today. The Working Group also welcomes the opportunity to engage constructively with this process in future.

Thank you very much for your kind attention.

⁵ <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>

⁶ A/HRC/35/33, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/100/07/PDF/G1710007.pdf?OpenElement>