

Open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies

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Opening Remarks by Ms. Flavia Pansieri
Deputy High Commissioner

Excellencies,
Distinguished Delegates,
Ladies and Gentlemen,

It is a pleasure to welcome you today at this session of the open-ended intergovernmental working group. The Human Rights Council, in its resolution 15/26, established the working group “to consider the possibility of elaborating an international regulatory framework, including, inter alia, the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of private military and security companies, including their accountability”.

At its most recent session in March 2015, the Human Rights Council decided to extend the working group’s mandate for a further period of two and a half years.

The intergovernmental working group has so far held three sessions. At the first session in May 2011, participants addressed a range of challenges to the effective regulation of the activities of private military and security companies (“PMSCs”), focusing on existing law and practice. At the second session in August 2012, discussions focussed on the definition, scope and nature of PMSCs and related challenges for member States. During the third session in July 2014, participants reaffirmed the shared goal of protecting human rights and ensuring accountability for violations and abuses relating to the activities of PMSCs.

I would like to take this opportunity to highlight several recent developments that have occurred since then at the international and national levels.

First, the Human Rights Council in its resolution 26/9 established an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. Its mandate is to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. The first session of this new working group will be held in July 2015 here in Geneva.

Second, OHCHR will shortly be publishing a progress report on legal options and practical measures to improve access to remedy for victims of business-related human rights abuses (as requested by Human Rights Council resolution 26/22). This initiative aims at creating a fairer and more effective system of domestic law remedies in cases of business involvement in severe human rights abuses. A final report will be submitted to the Human Rights Council in June 2016. This OHCHR-led process entails extensive multi-stakeholder consultations and is intended to contribute to more effective implementation of the UN Guiding Principles on Business and Human Rights, including through enhanced preventive and remedial measures.

Like all private companies, PMSCs have a responsibility to respect human rights, as stipulated in the UN Guiding Principles. This may include implementing training procedures for employees, establishing grievance procedures in cases of alleged abuses, and conducting regular monitoring to ensure adequate oversight, immediate cessation of abuses, and accountability. If cases of human rights abuses occur, States have the obligation to ensure that they are referred to the concerned authorities for investigation, prosecution and reparation.

It is essential from a human rights perspective to ensure that there is no protection gap and no impunity for PMSCs, including where they operate transnationally. As noted by the Chairperson-Rapporteur at the end of the third session of the intergovernmental working group, there was widespread agreement about gaps in the current regulatory framework, not least because only very few States have specific legislation on PMSCs.

The question remains whether and how States can ensure effective remedies for victims and accountability of perpetrators, in particular regarding the most serious human rights abuses?

In this context, the prosecutions and recent sentencing by a U.S. Federal Judge of four Blackwater contractors, who had killed 14 unarmed Iraqi civilians in 2007, have sent a strong signal that human rights abuses committed by PMSCs should never remain unpunished. However, as flagged two weeks ago by the UN Working Group on the use of mercenaries, “justice is served in this case but must be assured globally”.

Other initiatives are also relevant when considering an international regulatory framework on the regulation, monitoring and oversight of the activities of PMSCs. These include the International Code of Conduct for Private Security Providers and the Montreux Document, which seeks to promote respect for international humanitarian law and human rights law whenever PMSCs are present in armed conflicts.

Excellencies,

The provisional programme of work for adoption before you features a number of distinguished expert speakers. They bring a wealth of experience from academia, human rights mechanisms, international organisations and PMSC industry.

This afternoon, you will hold a general discussion and share updates on developments since the third session, including with regard to relevant legislation, initiatives and other measures taken concerning the regulation, monitoring and oversight of the activities of PMSCs.

Tomorrow, you will hear a substantive report from the Chairperson 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. You will also hold a discussion with a representative from a private security company.

Later this week, the specificities of regulating sea-based private security activities will be discussed in more detail. A presentation will also be made to help inform your discussions on the use of private security companies by the United Nations.

Let me conclude by thanking you all for your active engagement in this process. The previous sessions of the intergovernmental working group have showed that the topic under discussion raises important human rights challenges. I hope that discussions during this session will continue to put human rights at the centre of its deliberations, in particular as the intergovernmental working group considers the recommendations it has been requested to present to the Human Rights Council at its thirtieth session in September 2015. I wish you a productive session.