

Statement by Pakistan during the Fourth Open-Ended Inter-Governmental Working Group to Consider the Possibility of Elaborating International Regulatory Framework on the Regulation, Monitoring and Oversight of the Activities of Private Military and Security Companies
(27 April 2015)

Mr. Chairperson,

We would like to congratulate you upon your re-election as the Chair-Rapporteur of the Working Group and hope that under your able leadership this session would make significant progress towards achieving its mandate.

In recent years, the international community has witnessed unprecedented proliferation of private military and security companies around the world. These companies are providing a wide-range of services to transnational corporations, international organizations including the UN, governments as well as NGOs. However, the increase in outsourcing of security-related state functions to private companies has led to serious human rights challenges. This was recently demonstrated by difficulty in prosecuting personnel of a private security company who were responsible for killing of civilians in Iraq.

In addition, technological advancement has now made it possible for civilians to participate remotely in combat operations through surveillance systems and unmanned aerial vehicles or drones. The fact that these companies and their personnel carry out activities that entail the potential or actual use of lethal force underlines that their activities inevitably constitute a serious threat to human rights protection. Therefore, we believe that it is necessary to ensure that there is no protection gap which allows room for impunity.

We also believe that the services provided by PMSCs should not be considered ordinary commercial activities or commodities which may be

regulated through self-regulation initiatives. In this regard, PMSCs cannot be allowed to regulate their own behavior which can only be done by an independent authority. The services provided by PMSCs are highly specialized, technical and sensitive which highlight the need for the development of international legal standards and oversight mechanisms.

Mr. Chairperson,

We note with concern that to date PMSCs have not become direct subjects of International Humanitarian Law and Human Rights Law. The Montreux document on the pertinent international legal obligations and good practices for States related to operations of PMSCs only covers armed conflict situations and the specific rules contained therein do not represent legal obligations. Similarly, the International Code of Conduct for Security Companies is a moral commitment which companies decide to undertake on a voluntary basis.

We believe that the current normative framework for the regulation of the activities of PMSCS, including the Montreux document and the Code of Conduct, fail to adequately address the complexity of the problems raised by the operation of these companies and, in particular, do not establish proper mechanisms for accountability, effective remedies for victims, regulation, monitoring and oversight of these corporate entities and their personnel. Therefore, there is an urgent need to overcome the existing gaps in the current international legal framework by ensuring prosecution of PMSCs and their personnel, setting up of mechanisms for entertaining extradition requests of suspects by states, dealing with Issues of extraterritorial jurisdiction, addressing lack of accountability and effective remedies for victims of human rights abuses. In the absence of a legally binding instrument, we may not be able to overcome these challenges.

Mr. Chairperson,

In accordance with the mandate given by HRC to the OEIGWG, we would like to recommend that the current session should focus on streamlining elements for the elaboration of a legally binding instrument for the regulation, monitoring and oversight of PMSCs. In this regard, we have submitted elements of the draft convention for the consideration of the current session of OEIGWG which are based on human rights instruments, International Code of Conduct, Montreux Document as well as draft convention prepared by the Working Group on the Use of Mercenaries. We request all member states to support and cosponsor these draft elements. We also urge the Chair of OEIGWG to present text of a draft convention based on these elements and deliberations of the session, as Chair's text for the consideration of member states before the next session.

I thank you.

**Elements for a Draft Convention on the Regulation,
Monitoring and Oversight of the Activities of Private Military
and Security Companies**

- I. The draft convention may be applicable to states and intergovernmental organizations within the limits of their competence with respect to PMSCs, their activities and personnel.
- II. It may cover all situations and determine classification of services provided in each situation.
- III. Scope- Territorial and extraterritorial jurisdiction.
- IV. Inclusion of list of inherent state functions, i.e., consistent with the principle of the State control on the legitimate use of force which it cannot outsource or delegate to PMSCs under any circumstances. Among such functions are direct participation in hostilities, waging war and/or combat operations, taking prisoners, lawmaking, espionage, intelligence, knowledge transfer with military, use of and other activities related to remotely piloted aircrafts and weapons of mass destruction, security and policing application and police powers, especially the powers of arrest or detention including the interrogation of detainees.
- V. To elaborate procedures for contracting states, home states, states of operations or third states for contracting PMSCs and subcontracting services.
- VI. To set up a UN register for PMSCs on the lines of UN Register of Conventional Arms (established through UNGA resolution 46/36).
- VII. Contracting states, home states, states of operation and third states may identify or establish a governmental body responsible for the registry of PMSCs and exercise oversight over their activities.
- VIII. To elaborate licensing procedures for the export and import of military and security personnel and services.
- IX. Establish criteria for granting licenses and authorizations to PMSCs for their activities, taking into account in particular any records or reports of human rights violations committed by the companies, and ensuring training in international human rights and humanitarian law and robust due diligence measures.
- X. To ensure respect for social, religious and cultural particularities in carrying out functions in states of operation.

- XI. To elaborate guidelines for the use of force (where required) by PMSCs.
- XII. Prohibition of the use of force and outsourcing of the use of certain arms.
- XIII. To ensure that the personnel of PMSCs providing military and security services in the states of operation undertake to respect the sovereignty and laws of the country and to refrain from any actions inconsistent with international law, including human rights and international humanitarian law.
- XIV. Prohibition on the involvement of PMSCs in the activities related to use of armed drones and weapons of mass destruction including biological and chemical weapons.
- XV. Inclusion of provisions to ensure that PMSCs and their personnel do not, participate in, encourage, or seek to benefit from any national or international crimes including but not limited to war crimes, crimes against humanity, genocide, torture, enforced disappearance, forced or compulsory labour, hostage-taking, sexual or gender-based violence, human trafficking, the trafficking of weapons or drugs, child labour or extrajudicial, summary or arbitrary executions and illegal detention.
- XVI. Contracting states, home states and states of operation may take legislative, administrative and other measures as may be necessary to ensure that PMSCs and their personnel are held accountable for violations of applicable national or international law.
- XVII. Contracting states, home states, states of operation and third states shall investigate reports of violations of international humanitarian law and human rights law by private military companies and private security companies and ensure civil and criminal prosecution and punishment of offenders in accordance with their domestic laws consistent with international law.
- XVIII. To establish corporate criminal responsibility (where applicable) for crimes committed by the PMSCs, consistent with the Contracting State's national legal system.

- XIX. Responsibility of contracting states, states of operation and home states to impose criminal, civil and/or administrative sanctions on offenders.
- XX. To ensure that contracting states, states of operation and home states (as applicable) provide effective remedies to victims, including compensations/reparations.
- XXI. To promote international cooperation amongst states regarding licensing and regulation of the activities of PMSCs in order to more effectively address any challenges to the full implementation of their human rights obligations.
- XXII. To establish a Committee on the Regulation, Oversight and Monitoring of PMSCs.
- XXIII. To set up an Inquiry Procedure and a complaint procedure.
- XXIV. To set up a reporting mechanism (For initial as well as periodic reports).