

**STATEMENT OF THE CHAIR 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**

On the occasion of the Fourth Session of the 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

Geneva, 27 April – 1 May 2015

Distinguished delegates,

Mr. Chairperson,

Ladies and gentlemen,

I am pleased to participate in this fourth session of the Open Ended 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, on behalf of the Working Group on the use of mercenaries. Since our Working Group participated in your third session last July, we have continued to seek to deepen and expand our understanding of the phenomenon of private military and security companies (or PMSCs).

We have undertaken additional research of national laws and regulation. Our report to the Human Rights Council this year covers eight countries in Central America and the Caribbean: Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama; eight countries in South America: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Peru, and Uruguay; and four European countries: France, Hungary, Switzerland and the United Kingdom of Great Britain and Northern Ireland (United Kingdom). This follows on the Working Group's 2014 report to the Human Rights Council which focused on eight

francophone African States¹, eight Asian States², and, in 2013, thirteen anglophone African States³. In its next report to the Human Rights Council, in 2016, the Working Group intends to report on the national legislation of countries in the Eastern European Group (EEG), as well as North America and the Pacific. These studies have assessed existing national laws regarding PMSCs and their effectiveness in protecting human rights and promoting accountability for violations. They have also aimed at identifying common points, good practices and regulatory gaps that may exist. A global analysis will be presented to the General Assembly in 2016.

The Working Group has, over the last few years, also held two expert meetings and consulted with stakeholders, including on the use of PMSCs by the UN. These efforts have informed the discussions of the Working Group on a possible legally binding instrument for the regulation of private military security companies. These reflections are contained in the concept note prepared by our Working Group for your consideration on this occasion.

The note expresses our continued engagement on this complex and ever-evolving issue. It reflects the perspectives and experiences of the government officials, experts, and civil society representatives whose voices we have listened to, and heard. It is the result of the expansive consultations and pioneering work of our predecessors in the Working Group, whose first draft of a possible convention is the foundation of our thinking. It is also the outcome of ongoing research on national level legislation on private military and security companies that we are undertaking of regions on a worldwide basis.

Moreover, this concept note is an expression of our Working Group's commitment to advance a coherent, focused, realistic framework for your consideration that is responsive to current dynamics on the ground, and above all, guarantees the respect, protection and fulfilment of human rights.

In seeking to achieve this, we have distilled the key concerns for us into eight main points.

¹ Burkina Faso, Cameroon, Côte d'Ivoire, the Democratic Republic of Congo, Mali, Morocco, Senegal and Tunisia (A/HRC/27/50)

² China, India, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka and the United Arab Emirates (A/HRC/27/50)

³ Botswana, Ghana, the Gambia, Kenya, Lesotho, Mauritius, Namibia, Nigeria, Sierra Leone, South Africa, Swaziland, Uganda and Zimbabwe. (A/HRC/24/45)

Firstly, the Working Group acknowledges that certain functions are inherent to the State. Functions that are inherent to the State are those for which the State retains ultimate responsibility regardless of whether or not the State outsources that function.

The Working Group also believes that some inherent State functions may not be outsourced. These are direct participation in hostilities in armed conflict, and detention and interrogation of prisoners of war, as defined in the Third Geneva Convention.

In addition, the Working Group proposes to include in the draft legislation recommendations for recognition of different classifications of service activity. These classifications are predicated on identifying which activities increase the risk of human rights violations when undertaken by private actors. They also fill the gap presented by the Montreux Document, which applies solely to armed conflict. The classifications are in terms of whether the services are military in character or not; whether service providers are armed or not; the different scenarios under which services are offered e.g. armed conflict or a marine context; and the type of service, from transport to offensive operations.

Secondly, we assert that inter-governmental organizations, as well as States, can be Party to the Convention. While this is not new, we believe it reinforces the notion of accountability of inter-governmental organizations, and supports the growing trend of such organizations assuming their objective international legal personality in becoming party to international instruments.

Thirdly, we propose one coherent article on implementation, assembling the different related articles in the first draft convention. Obligations under this article will apply to domestic and international companies, as well as to services offered to states, inter-governmental, non-state or corporate clients.

Fourthly, we offer a new definition of a license, which will serve as a modality for establishing and enforcing standards. It is now defined as permission evidenced by a document authorizing specified activities under a law of general application issued by a State-appointed body authorized to grant such permission.

Fifthly, we put forward, one coherent article on licensing, again bringing together related elements in the first draft convention. The new article covers five focus areas.

These are:

- a)* Licensing of companies, including vetting of personnel
- b)* Licensing the import and export of services
- c)* Licensing the possession of arms
- d)* Licensing the possession of equipment other than arms e.g. vehicles and drones, and
- e)* Licensing of individuals, with minimum criteria, including training

Our sixth point is to ensure registration as a secondary step following licensing. This builds on the registry of the first draft convention and would serve as a monitoring system of related actors and activities.

For our seventh point, we introduce a new framework of regulation of jurisdiction. The new draft seeks to strengthen accountability and extraterritorial provisions, notably to cover the complex environments in which the security industry often operates. The framework applies the following hierarchy of principles for establishing jurisdiction:

- a) Active person
- b) Passive person
- c) Territoriality, and
- d) Universal jurisdiction

Finally, the Working Group deems it essential to establish a mechanism for the purposes of oversight and ensuring remedy and reparations for victims. The modality has not yet been determined, but any mechanism that can regularly, efficiently and comprehensively undertake monitoring and investigation and guarantee remedy for victims is worthy of review. These may include a committee, ombudsperson or other modality.

We hope that this new formulation of key principles will be a source of fruitful and constructive discussion among you, and build a stronger foundation for mutual consideration and shared positions as deliberations progress.

Thank you for your attention.