**2nd Session of the OEWG on a Regulatory Framework on PMSCs**

1. **General discussion, and objectives and principles of the regulatory framework (Tuesday, 27 April, 10am-12pm)**

Thank you, Mr. Chairperson-Rapporteur, and distinguished delegates.

The elaboration of a regulatory framework within the UN human rights system is a unique opportunity at the multilateral level to provide meaningful and robust guidance and support to States and PMSC to enable them to fully respect and protect human rights. The ICJ is committed to participate and contribute to these discussions with a view towards establishing such a framework. To that end, the ICJ advances five brief points regarding the objectives and principles enumerated in Sections 2 and 3 of the Discussion Document on Elements.

First, The ICJ welcomes the objective of ensuring respect for human rights by PMSCs. However, the ICJ respectfully submits that the regulatory framework should aim to ensure respect for human rights by PMSCs in all contexts in which they operate, not just in ‘complex situations’ as provided for by Section 2.i. of the Discussion Document. As already alluded to by several distinguished delegates during yesterday’s session, PMSCs are increasingly operating in a broad range of contexts including immigration and border services and peacetime cyber surveillance. Accordingly, the ICJ submits that the objective of ensuring respect for human rights by PMSCs should be framed more broadly in order to capture the full scope of activities increasingly being carried out by PMSCs.

Second, the ICJ welcomes the objective of ensuring the transparent use of PMSCs. The ICJ would like to take this opportunity to highlight the fact that states are allegedly increasingly using PMSCs as intermediaries in order to directly participate in hostilities during armed conflict. In some cases, States may purposefully use PMSCs as a means of obscuring their involvement in the conflict in an attempt to avoid their obligations under international human rights law and international humanitarian law. As such, the current lack of transparency regarding the use of PMSCs hides from accountability situations of violations of a state’s obligation to protect against reasonably foreseeable abuses of human rights by private actors, and may also prevent meaningful access to an effective remedy for survivors of human rights violations. Transparency also applies to PMSCs themselves in their reporting of their efforts and processes to identify risks of violations, prevent and mitigate them.

Third, the present regulatory framework should also pursue the objective of improving accountability of PMSCs use and the impacts of such use over the respect of human rights and humanitarian law. Accountability is one of the elements that is most lacking in the context of PMSCs operations. The instrument should also pursue the objective of enhancing access to an effective remedy and reparations by those whose rights have been harmed by PMSCs and states using PMSCs.

Fourth, the ICJ submits that the ‘Principles’ section of the Discussion Document on Elements should make explicit reference to the need for a non-discriminatory and gendered approach to regulating PMSCs. PMSCs have frequently been involved in gender-based discrimination and sexual violence with little to no accountability. Women and girls are disproportionately affected given the specific barriers they face in accessing and effective remedy. This was demonstrated by the WG on Mercenaries in its 2019 report. The CEDAW Committee has recalled in its General Recommendation N 30 on conflict situations that the Convention requires States parties to regulate activities of domestic non state actors within their effective control and operating extraterritorially. This would include establishing accountability and oversight mechanisms for private security contractors operating in conflict zones. Accordingly, the provisions of the proposed framework should be guided by the principle of non-discrimination.

Finally, the ICJ would like to emphasize the vital importance of the principle of inclusiveness and participation in the development of a regulatory framework. While recognizing the notable accomplishments of the Montreux Document and ICoCA, many key states and PMSCs do not participate in either framework. This highlights the need for an approach that captures the conduct of all States and PMSCs.

Thank you, Chairperson-Rapporteur