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

**Private military and security companies (Element 8); and definitions and interpretations (Element 1) (Wednesday, 28 April, 10am-12pm)**

Thank you, Mr. Chair.

**Private Military and Security Companies (Element 8)**

Regarding the rules addressed to PMSCs themselves under Element 8, the ICJ agrees that such section is necessary, which is also in line with the provisions in the Montreux Document and the ICoC. In the same way as in the Guiding Principles on Business and Human Rights, these duties for PMSCs should be understood as independent from the obligations incumbent upon States and should be complied with by PMSCs in all circumstances and wherever they operate.

Further, the ICJ offers several specific recommendations with respect to the rules addressed to PMSCs. First, PMSCs should be required to respect and ensure respect by its personnel of international humanitarian law and international human rights law in all their operations regardless of where they take place. Second, to ensure they respect humanitarian law and human rights law, PMSCs should adopt a policy and carry out human rights due diligence including on IHL when there is risk of or they operate in situations of armed conflict, crisis or high instability. Third, the ICJ considers that internal processes and mechanisms adopted by PMSCs to ensure their respect with IHL and human rights law should not be seen as an ordinary compliance process, but a continuing process. It agrees that these internal processes should comprise systems for the selection, vetting and training of personnel to serve in the PMSC in accordance with international standards. Fourth, PMSCs should participate in effective and legitimate mechanisms to provide remedy and reparations when the company has been involved in an infringement of human rights, or provide direct reparation to the victim without prejudice to the right of persons to have access to an effective remedy, including a remedy of judicial nature.

**Definitions and Interpretations (Element 1)**

The ICJ offers two recommendations regarding the definitions and interpretations under Element 1 of the Discussion Document. First, with respect to the definitions of PMSCs PSCs and PMCs, the ICJ reiterates that this assembly should avoid endless discussions about definitions, and instead, adopt a pragmatic approach. To that end, the focus of the definitions and interpretations under Element 1 should be on the type of operations these companies carry out, rather than specific labels or definitions. As demonstrated by the recent expansion in the scope of services provided by PMSCs, virtually any security company can engage in any type of security activity regardless of its formal definition or corporate structure.

Second, with respect to definition of ‘complex environments’, the ICJ reiterates its recommendation that the scope of the proposed regulatory framework should not be limited to PMSCs operating in ‘complex environments’ as this would fail to capture the wide range of activities increasingly being carried out by PMSCs. In the alternative, the definition of ‘complex environments’ should expressly state that this includes, but is not limited to, international and non-international armed conflicts, as well as the outsourcing of inherently complex state functions such as immigration and border control, and cyber surveillance.

Thank you, Chairperson-Rapporteur