2nd session of the new IGWG on PMSCs (Geneva, 26 to 30 April 2020)

**General Statement from Brazil (national capacity)**

Mister Chair Rapporteur,

Dear delegates and participants,

As a member of the Human Rights Council, Brazil was pleased to join the consensus in the adoption of resolution 45/16, which renewed, for a period of three years, the mandate of the Open Ended Intergovernmental Working Group, as stated in resolution HRC 36/11.

2. We thank the African Group for its support to this agenda, and commend South Africa for its leadership role, as chair-rapporteur and facilitator of the discussions.

3. We hope that the constructive spirit and flexibility of all relevant stakeholders that prevailed in the activities of the first session will once again preponderate on this second session.

4. As a matter of principle, we understand that the work of IGWG should be guided by the strict mandate given by the HRC, in the sense that (i) it does apply in general to the activities of security companies outside the context of conflict zones and humanitarian settings, and (ii) its work should remain independent from deliberations and recommendations of other HRC mandated IGWGs and special procedures.

5. We understand it would be useful to have more clarity, at this early stage, on possible linkages between the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and the instrument under consideration of the IGWG on PMSCs.

6. In 2021 we commemorate the 10th anniversary of the UN Guiding Principles on Business and Human Rights. Efforts to implement the UNGPs, including their aspects related to prevention of violations and abuses, training and capacity building, accountability and remedy to victims should be considered, as appropriate, in the development of the substance of a future instrument for the PMSCs.

7. We should recognize the role of the Montreux Document, as a key, voluntary initiative dedicated to the issue of the PMSCs.

8. Even though Brazil is not one of the 57 states that formally support the Montreux Document, we are of the view that it constitutes a valuable source of inspiration to our discussions, as it seeks to compile pertinent international legal obligations and good practices for states related to operations of private military and security companies during armed conflict.

9. Notwithstanding the abovementioned binding and non-binding frameworks, in the understanding that gaps remain in the international regulatory framework for the protection and promotion of human rights in the context of activities performed by PMSCs, Brazil will continue to engage constructively in the deliberations of this IGWG.

10. The issues on the agenda of this IGWG are of special concern to Brazil, bearing in mind the increasing number of PMSCs working in humanitarian settings, the enlargement of the scope of their functions - bearing in mind the advances of military technology -, as well the alleged higher incidence in recent years of human rights violations and abuses perpetrated by such non-state actors.

11. In relation to the substance of the discussions, we have noticed that the same "discussion document" - with the 8 elements that were discussed during the previous session - remain the basis of the IGWG deliberations.

12. In this sense, it is relevant to reiterate some of our suggestions and concerns raised on previous occasions and that directly stem from the "discussion document", including the following:

(a) a clear definition of functions which may not be delegated to non-state actors, such as direct participation in hostilities, detention, intelligence, law enforcement or questioning of persons deprived of their liberty, including prisoners of war;

(b) the need of safeguards stating that the rules under the future instrument are not to be implemented "selectively";

(c) given the incidence of difficulties for the victims to seek justice and reparations to abuses of PMSCs, including as a result of legal restrictions or state institutional fragilities, alternative solutions could be considered in order to allow accountability.

(d) further clarifications are needed to refine the concepts of "home state" and "state of nationality", including in relation to an alternative, broader concept of "state of origin". And

(e) how to separate and define the "nature of a company" in comparison to "the kind of service provided by a company in the context of a armed conflict - which, in the end, may be essential to define the civil or military status of its staff.

13. Brazil is open to consider suggestions on new elements to the discussion document, bearing in mind that the nature of the instrument to be developed by the IGWG, be it binding or non-binding, is still subject to discussion.

14. On the way forward, in the case the IGWG mandates the chair rapporteur to revise the discussion document to reflect the recommendation for the participants, we recommend that such an exercise be done as transparently as possible, including by properly identifying the authorship of each suggestion that was taken into consideration.

15. We see as positive that the discussions, in the early stages of our deliberations in the IGWG, are held as inclusively as possible, since the HRC mandate requires the IGWG to be "open ended" in nature.

16. Nevertheless, a moment should be foreseen to the future in which direct intergovernmental negotiations are to take place, in order to finalize the work of the IGWG and deliver a balanced and feasible output for consideration of the HRC.

Thank you.