

Re: Call for submission - Open-ended intergovernmental working group to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies

June 2021

This statement is submitted on behalf of Australia, Canada and the United Kingdom.

We present our compliments and thank the Chair-Rapporteur for the invitation to provide written contributions on the elements for an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, issued from the second session of the working group meeting last April.

The increasing relevance of and reliance on private military and security companies (PMSCs) by a variety of stakeholders, including in complex security and high risk environments, creates the impetus to further strengthen and ensure the effective regulation, accountability and oversight of the private security industry. In this regard, we value our shared objective to prevent, mitigate and address human rights abuses and as applicable, violations of international humanitarian law (IHL) by PMSC employees, including ensuring reliable avenues for access to remedies, through judicial or non-judicial mechanisms, for victims and survivors of violations and abuses.

In support of a rules-based international order, we strongly support efforts to ensure that territorial, contracting and home States involved with the services of PMSCs fully discharge their respective obligations by ensuring that PMSCs operate and act in a manner that is consistent with, and respect international human rights and international humanitarian law, where applicable.

With respect to further elaboration on the elements of a regulatory framework, we wish to reassert our shared position as articulated through our countries' separate written submissions in 2019. It is our view that PMSCs currently operate under international law. Several international initiatives have been undertaken with a view to clarifying, reaffirming or developing international legal

standards regulating the activities of PMSCs and, in particular, ensuring their compliance with standards of conduct reflected in IHL and human rights law—this is not a legal vacuum. Of critical importance however, is the need for strengthened adherence by all stakeholders to the relevant laws, which will significantly prevent and mitigate violations and abuses.

The respective international legal obligations of contracting, territorial, home States and PMSCs are restated, together with recommendations of best practices in the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict* (Montreux Document) and enjoys broad support from States and regional organizations including the European Union (EU), Organization for Security and Co-operation in Europe (OSCE) and North Atlantic Treaty Organization (NATO).

Further, the *International Code of Conduct for Private Security Service Providers* (Code of Conduct) sets an industry standard for obligations, best practices and management principles in order to enhance respect for human rights and compliance with IHL in the provision of security services.

As a multi-stakeholder oversight mechanism, the *International Code of Conduct Association for Private Security Service Providers* (ICoCA) supports adherence to the Code of Conduct through its multi-pronged function of certification, independent auditing, monitoring PMSC activities and addressing grievances related to the conduct of PMSCs. Over the last decade, ICoCA has developed industry-leading standards to fill gaps in knowledge and practice and to ensure that PMSCs respect international human rights and IHL in complex environments through guidance tools such as *Protection against Sexual Abuse and Exploitation* (PSEA) guidelines and recently, the *Guidance on Human Rights Impact Assessment (HRIA) for Private Security Providers*.

Finally, the ICoCA and Montreux Document complement other frameworks including the Voluntary Principles on Security and Human Rights, and build on the framework of the UN Guiding Principles on Business and Human Rights, all which aim to address security related human rights abuses by business entities, including PMSCs.

We recognise that abuses of human rights involving PMSCs continue to occur, with tragic consequences, for affected populations, particularly in zones of ongoing conflict. These abuses are occurring in our view not because of a lack of regulation but rather due to weak implementation of existing frameworks. We share the view that our collective efforts should be directed at strengthening existing international frameworks and obligations, in particular strengthening the implementation of those frameworks, with efforts to support best practice guidance through regulation at the national level. Based on the existing international guidance and as appropriate, States can adopt and implement national legislation to regulate PMSCs. This approach would best ensure that these regulations are amended to best reflect the evolution of PMSCs' practices according to country context.

We remain open to constructive dialogue and will engage in meaningful discussions aimed at bridging areas of consensus.