**Remarks of Dr. Jelena Aparac**

**Chairperson-Rapporteur of the Working Group on the use of mercenaries**

**Second session of the Open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies**

**The expert statement and contribution**

26 April 2021, 15h (7-10 min)

**Mr. Chairperson,**

**Ladies and Gentleman,**

**Dear Colleagues,**

On behalf of the Working Group on the use of mercenaries, I would like to thank the Chair-Rapporteur of South Africa and the secretariat for convening the second session of the IGWG on PMSC. I also would like to thank you for inviting us to make an expert statement and contribute to the discussion on the future instrument.

**First, let me start by saying that the Working Group on the use of mercenaries has the explicit mandate to monitor and study the effects of mercenaries, mercenary related activities and private military and security companies (PMSCs) on the enjoyment of human rights (A/HRC/33/4).**

The Working Group is also active in **long-standing efforts to regulate the PMSC** in particular to develop and enforce measures designed to both **prevent and ensure accountability for human rights and international humanitarian law (IHL)** abuses committed by PMSC personnel.

For instance, our report submitted to the Human Rights Council in 2017 (A/HRC/36/47), revealed that States approach to the regulation of PMSC is *ad hoc* and inconsistent, exacerbating human rights risks and abuses. The report’s evidence base **was driven from a comprehensive three year long, global study of national PMSCs legislation** and subsequent human rights abuses in 60 states.

In addition, from 2010 to 2017, **we remained engaged and globally advocated for general principles and possible content** of an international treaty on PMSCs at the annual sessions of the Open-ended Intergovernmental Working Group, mandated to consider the possibility of elaborating an international regulatory framework on PMSCs. In 2019 we contributed to the First session of this new IGWG by expert statement and submission.

**Secondly, in exercising our mandate we recognize that self-regulatory and voluntary initiatives, cannot in themselves prevent human rights and IHL abuses nor ensure comprehensive accountability and effective remedies for victims.**

We are **pleased with the continued development of voluntary initiatives** such as the Montreux Document and the International Code of Conduct for Private Security Providers. However, recent reports and communications **demonstrate the need to strengthen these existing frameworks** through the adoption of **more robust normative frameworks**.

**Some of the most concerning issues are highlighted in our recent reports, for example:**

In our report on the **relationship between PMSC and extractive industry** we have identified the extractive industry as an important client base for PMSCs and we raised our concerns about the lack of a clear, precise and legally defined role for each security actor operating in the extractive industry. We were further alarmed by the conduct of security providers, including PMSCs, and their involvement in alleged human rights abuses and the current opacity around them obstructing the identification of perpetrators.

In our report on the **gendered human rights impacts of PMSC** we drew attention to the fact that that male domination of the industry, past major abuses of gender-based discrimination and sexual and gender-based violence, and the absence of legal and regulatory frameworks should compel States, private military and security companies, clients and other stakeholders to push forward a gender-sensitive and gender-transformative agenda within the industry.

In 2020, in our **report on the role of PMSC in immigration and border management** we highlighted the **increasing migration-related services** provided by PMSCs **such as** i) **provision of research and technical expertise**; ii) **border security technologies and monitoring services**; iii) **immigration detention, returns and removals**; **and** iv) the implementation of **“externalization” policies**. We noted with great concern that **important regulatory gaps exist in this context.** Neither the Montreux Document nor the International Code of Conduct mentions migration or border management specifically. **They fail to capture the broad range of companies that provide security-related services** for immigration and border management and the variety of contexts and environments in which they operate. These companies are thus often left **unregulated**.

Finally, in our **report on the evolving forms, trends and manifestations of mercenaries and mercenary-related activities** we examined the evolution of the related actors – including PMSCs – in the context of developments in contemporary armed conflicts. The PMSCs and related actors are employed **as an instrument to remotely influence armed** conflicts and **have contributed to the intensification and prolongation** of hostilities and therefore to the **human suffering borne by civilian** populations. Their activities may also **undermine the right of peoples to self-determination**, including in non-conflict settings.

In our most recent public statement we have also raised concerns around the issue of interoperability between PMSC and peacekeeping missions. Drawing from our 2014 report, the proximity and interoperability of PMSC and peacekeeping missions and lack of transparency about their relationships can have particularly negative impact on human rights and IHL.

We continue to work on concrete and pragmatic approaches designed to support states in elaborating their normative frameworks and control mechanisms.

I would like to stress that **only clear legal norms backed by State enforcement can ensure accountability and provide effective remedies for victims.** Particular attention must be paid to companies whose activities take place in environments with an increased risk of serious human rights and IHL abuses.

**The Working Group thus supports the incorporation of these norms into an international legally binding instrument on PMSCs** to complement national regulation.

**The Working Group on the use of mercenaries proposes the following specific recommendations for inclusion in any future instrument:**

* **State and non state actors should generally refrain** from use and recruitment of PMSC’s and their personnel, in particular when there is an increased risk for human rights and IHL abuses.
* **States should not outsource activities that constitute direct participation in hostilities** and should further prohibit the provision of for-profit services constituting direct participation in hostilities by private individuals and companies that are either registered or have their principal place of management in their territories. This prohibition should apply not only domestically but also with regard to exporting such services abroad.
* Due to the rapidly changing operating contexts and services provided, any regulatory mechanism developed via this process should refer to **‘services’** or **‘activities’** rather than ‘PMSCs’ as more effective options for capturing human rights or IHL abuses.
* Any regulatory mechanism should **try to capture non-state clients and the complex relationships** between large international and national companies such as extractives –PMSC/local security private and public, and provide for more public and transparent contractual relationships; the should also **ensure access to information** to interested parties;
* Any regulatory mechanism should include **explicit gender-sensitive and gender-transformative approaches**;
* They should recognize the **exacerbated vulnerabilities of specific groups** and include explicit provisions on the protection of migrants, refugees and asylum seekers, as well as human rights and environmental defenders; on children as rights holders and address the cases where children are recruited and used by PMSC;.
* Any regulatory mechanism should include explicit provisions where PMSC services have negative impact **on the environment** and in particular on **the rights of people to self-determination;**
* States should use all tools at their disposal to enforce human rights standards, including **licensing or authorization mechanisms** and contracts. It should further require domestic legislation on **certification and registration** for PMSCs.
* Particular attention should be paid to the **proper vetting of personnel** (at the State level and by companies); in particular where the personnel may have contributed to human rights and IHL law abuses either on their territory or abroad.
* The normative framework should not only focus on State responsibility and **corporate due diligence but also on corporate responsibility for human rights and IHL abuses**;
* The States should ensure **effective investigation** of human rights and international humanitarian law allegations, accountability and remedy for victims and their families.
* Finally, States should consider adopting **mutual cooperation and mutual legal assistance (horizontal and vertical)** for investigating PMSC employees and where applicable corporate entities;

The Working Group on the use of mercenaries looks forward to the discussions during the second IGWG session. **On behalf of all the members of the Working Group on the use of mercenaries, I thank you** and I look forward to the rich discussions.