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

**Obligations of Contracting States (Element 4); Territorial States (Element 5); Home States (Element 6); and State of Nationality (Element 7) (Tuesday, 27 April, 3pm-5pm)**

Thank you, Mr. Chair

**Contracting States**

The ICJ makes several recommendations with respect to the obligations of contracting states. First, the ICJ submits that there should be a distinction between those obligations, mostly deriving from IHL, that apply in situations of armed conflict and those that apply in all circumstances. Second, the ICJ proposes that contracting States should be prohibited from using PMSCs for participation in hostilities, activities that IHL explicitly assigns to a State agent or authority, or for inherently public functions without final supervision and decision-making by State officials. Third, a State’s obligation to assess PMSCs should include consideration of past records of respect for IHL and human rights, and the company’s policies for the selection and training of staff. Further, these criteria should extend to subcontractors to ensure PMSCs do not evade their obligations by outsourcing tasks to subcontractors. Fourth, the regulatory framework should reaffirm that States retain their obligations under international law even if they contract PMSCs. Fifth, in fulfilling their obligation to ensure PMSCs with which they contract respect human rights, States should ensure PMSC personnel are trained in HR and IHL, and perform due diligence and investigations where appropriate. Sixth, contracting States must provide access to an effective remedy and reparations for violations of IHL and IHRL resulting from the conduct of PMSCs where attributable to the State. Finally, the foregoing rules should also extend to international organizations who contract for the services of PMSCs.

**Territorial States**

The ICJ also makes several recommendations with respect to territorial states. First, the term should be understood as the state where a PMSC carries out operations regardless of whether the company is incorporated or not within the jurisdiction, and the duration and kind of operations. Second, States where a PMSC operates should ensure its domestic courts are able to exercise jurisdiction over the PMSC personnel operating within its territory or under its jurisdiction. Third, the State where a PMSC deploys has the responsibility to establish a legal framework to ensure the company’s operations respect human rights and IHL and will establish a framework of accountability and sanctions for those that commit abuses.

**Home States**

Next, the ICJ makes several recommendations with respect to home states. First, the term should be defined as the state where a PMSC is incorporated or has its main place of management. Second, the Regulatory Framework should require home states to establish a system of authorization for the export of military services abroad, which will prohibit the export of services that the state itself cannot contract out, or which would be prohibited in the PMSCs home State. Third, the Framework should provide for minimum standards for licensing for operations and recruitment of local personnel. Finally, the home state should set up oversight and accountability, especially for services that are meant to be exported.

**State of Nationality**

Finally, the ICJ has several recommendations with respect to the State of nationality. First, the term should be defined as the State of nationality of the PMSC employees and other staff. It should be distinguished from the State of nationality of the PMSC itself or the State of nationality of any potential victim of a human rights violation. Second, the Regulatory Framework should address specific rules to States of nationality of PMSC staff with a view to better protect the rights of their nationals. Third, States of employees’ nationality should adopt laws and other measures to regulate the recruitment of their nationals into PMSC to serve abroad, including prohibiting their nationals from providing services abroad that are prohibited within the State of nationality. Finally, States of nationality should establish processes to grant authorization for the nationals to perform security services abroad to ensure there is no recruitment to provide prohibited services, and should prohibit the recruitment of their nationals for the same purpose, establishing penalties for the infringement of the law.