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

**Additional elements to be considered (preamble, scope, access to justice, accountability, and remedy) (Wednesday, 28 April, 3pm-5pm)**

Thank you, Mr. Chair

**Scope**

Regarding the scope of the proposed regulatory framework, The ICJ recommends the incorporation of a section containing obligations applicable to all States, and obligations applicable to all PMSCs. The proposed regulatory framework must be broad in scope in order to ensure respect for human rights by PMSCs in all contexts in which they operate, not only during armed conflict or other ‘complex environments’. This latter term has no agreed definition in the UN. PMSCs are increasingly operating in situations outside of armed conflict, including immigration and border services and peacetime cyber surveillance. Such contexts carry the risk of serious human rights abuses by PMSCs. For instance, according to a 2020 report by the working group on the use of mercenaries, PMSCs operating private migrant detention centres have engaged in serious mistreatment of migrants including sexual violence, deaths in custody, the use of solitary confinement as punishment, and other serious human rights abuses. Such cases highlight the need for two additional sections which contain IHL and IHRL rules applicable to all States and PMSCs respectively in order to ensure that human rights are respected and protected in all contexts in which PMSCs operate.

**Access to Remedy**

Further, the ICJ recommends additional elements that are required in order to ensure that victims of human rights violations committed by both PMSCs and States have access to an effective remedy in accordance with well-established principles of IHRL. First, the proposed framework should expressly provide that in cases where a State is accused of having participated in the abusive conduct of a PMSC, the victim has a right to an effective remedy and reparation from the State in accordance with the principal human rights treaties and the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation. Second, the proposed framework should reaffirm States’ obligation to enact necessary legislation to provide effective penal sanctions for PMSCs staff and the company as a legal person for the commission of grave breaches of the Geneva Conventions and, where applicable Additional Protocol I, and crimes under international law. This element should include states’ obligation to search for those persons and to bring them, regardless of their nationality, before their own national courts, or to extradite the person to a State that has jurisdiction or hand them over to an international criminal tribunal. Third, with respect to remedies for abuse or misconduct by businesses, judicial remedies must always be provided where the misconduct rises to the level of a serious crime and other public law offences. For less serious misconduct, non-judicial remedies may be provided, including company grievance procedures in the first instance that are fully compatible with and do not prejudice the right to an effective judicial remedy. Finally, the ICJ reiterates that women and girls face specific barriers in accessing an effective remedy. For instance, a 2019 report by the working group on mercenaries highlights how PMSCs have enjoyed near total impunity for sexual and gender-based violence. Accordingly, the ICJ recommends that all proposed elements concerning the right to an effective remedy must take a gendered approach.