



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

**Open-ended Inter-governmental Working Group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies**  
**First Session 23-27 Mayo 2011**

## ICJ Oral Intervention

*Check against delivery*

The International Commission of Jurists is pleased to be able to take part in this process and welcomes the convening of the Open Ended Working Group on Private Military and Security Companies. The United Nations Human Rights Council is the most appropriate forum to deal with major questions of concern or impact on the enjoyment worldwide of human rights and to devise multilaterally agreed solutions to those problems. Issues touching upon social, economic, political or security areas may be addressed insofar as they concern or impact the protection and promotion of human rights and the respect of humanitarian international law.

The ICJ would note that there are significant gaps in international human rights protection as concerns PMSC and there is a pressing need for further international regulation in this area. <sup>1</sup>

The use of Private Military and Security Companies has become common in many parts of the world and in respect of many functions, including those that were previously regarded as exclusively in the domain of States. PMSCs' activities now even may sometimes concern the use of force, within and between States, a domain previously considered as a core competency of the State. In certain conflict and post-conflict areas the contingent of PMSCs employees has reached in recent times sizes comparable to States' armed forces. Private companies hired by parties to armed conflicts or others to conduct armed conflict are however not yet direct subjects of international humanitarian law or human rights law.

However, private military and security companies (PMSCs) and their staff do not act in a legal black hole. While existing international legal standards have not been made for PMSCs they may nevertheless cover them. Those standards can be found in a

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diversity of international instruments pertaining to human rights and international humanitarian law.

The ICJ supports this opening of inter-governmental discussions about the “possibility of elaborating an international regulatory framework, including, *inter alia*, the option of elaborating a legally binding instrument”<sup>2</sup> concerning the activities of PMSCs. The consideration of the feasibility of an international instrument should be anchored on the assessment of needs, taking into account the scope and nature of the human rights problems created in connection to activities by PMSCs and the existing gaps in the international legal framework.

The current state of international human rights law and humanitarian law applicable to States and in their relationship with PMSCs and most especially the state of their implementation and enforcement leave important protection gaps that need to be addressed. While self-regulation through unilateral or multistakeholder initiatives or codes of conduct is a positive step for companies to understand their human rights responsibilities and take voluntarily action to respond to concerns, the implementation and enforcement gaps can only be addressed through a multilateral instrument containing legal obligations for States to be implemented across the board.

The ICJ rejects the argument made by some actors that self-regulation by companies is sufficient in the military, security and policing sector. The necessary impact of such activities on human rights, not to mention questions of national sovereignty and regional security, militate for the necessity of robust state regulation of this sector. In addition, these companies have very limited exposure to market pressures, including consumer action, since the demand side of the market is largely concentrated in a few powerful buyers of these kinds of services. Indeed, PMSCs themselves have argued in favour of stronger regulation: Andy Bearpark, Director General of the British Association of Private Security Companies, has reportedly said that “it is essential that PSCs do not drift into areas that are the remit of the military. For that, we need a clear and complete regulatory environment”.<sup>3</sup>

The ICJ therefore looks forward to the upcoming discussions in the Working Group with a view to elaborating international standards in this critical human rights area.

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<sup>2</sup> Resolution A/HRC/RES/15/26

<sup>3</sup> Jane's Defence Weekly (2011) *MEPs call for private security companies to be regulated by EU*