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Open-ended intergovernmental 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

4th Session

The Brazilian Delegation points out that the existing legal and regulatory framework on the activities of private military and security companies suffers from serious loopholes, be at the national or international levels, or at that of self-regulation. With this backdrop, the reports of violations and human rights abuses committed by private military or security companies (PMSCs), and the great difficulty faced by the victims in their quest for redress, continue to generate concerns. Cases with an effective judicial follow-up, as the one resulting in the recent conviction of former employees of "Blackwater" for the murder of 14 civilians in Iraq in 2007, continue to be the exception rather than the rule and, despite its symbolic significance, they cannot justify any diminishment of the absolute importance of significant advances in the regulation of PMSCs' activity.

Against this backdrop, it is essential to seek to continue without delay the efforts to elaborate an

international convention on the subject, drawing on the valuable contributions of the draft prepared and recently revised by the Working Group on the Use of Mercenaries (A/HRC/WG.10/1/2).

We opposes the idea that the elaboration of a treaty would be unnecessary and ineffective, bearing in mind that, in addition to the relevance of turning into legal obligations some patterns of behavior that today appear in non-binding instruments, as the Montreux Document and the International Code of Conduct, an international convention could schematize existing norms, create tools to strengthen compliance and serve as a "model" for national legislation on the subject.

Brazil welcomes initiatives that seek to promote improvements in domestic laws and in self-regulatory tools, such as the development of "model laws" or the strengthening of voluntary mechanisms (e.g. Montreux Document and Code of Conduct), but those cannot serve as an pretext to rein in efforts to draw up an international legally binding instrument. In this sense, we regret that the supporters of the Montreux Document and ICoC continue to vote against or abstain with respect to resolutions of the Human Rights Council on the issue. In this context, we would like to recall that in some "territorial states" self-regulation initiatives finds a clear limit in the broad power enjoyed by PMSCs in the contexts of instability and fragility in which they often operate.

Regarding the Concept Note prepared by this Working Group on the Use of Mercenaries, the Brazilian Delegation

congratulates all the members for the work done and supports the efforts to refine the first draft of an international convention on PMSCs.

Brazil considers positive the attempt to define, at least in part, the functions that would be "inherent to States" and, even further, the "essential functions" whose outsourcing to private entities should be prohibited. We also support the inclusion of direct participation in hostilities, detention and interrogation of prisoners of war, in the latter category, as proposed in the Concept Note.

Efforts to systematize various aspects of the PMSCs' regulation, such as obligations, licensing and registration seem equally constructive. The suggested services and activities classification can be an interesting way to allow a more detailed focus on the particularities of each of the many tasks performed by the PMSCs, and most importantly, to prioritize those functions that are more sensitive, and may result in human rights abuses. However, it will be necessary to be careful when proceeding to the definition of this taxonomy, including with regard to the nomenclature to be adopted (avoiding inaccuracies as the term "drug wars").

Another important achievement is the proposal that the jurisdiction of national courts on abuses committed by PMSCs go beyond its territorial limits and embraces the criterion of the nationality of the offender and of the victim. In theory, this would allow that the courts of the countries of origin of these companies could judge violations and abuses committed by them. This is an important

development if we take into account the frequent difficulty as for the exercise of jurisdiction by the territorial State, for reasons of power asymmetry, as well as often due to legal barriers, such as the inclusion of "immunity clauses" in "status of force agreements".

We would also note the importance of a timely availability of both the program of work and the draft convention text to be analyzed in future sessions of the Working Group.
