Remarks by Gabor Rona, UN Working Group on the Use of Mercenaries, Montreux +5 Conference 11-13 December 2013

Ladies and Gentlemen:

On behalf of the UN Working Group on the use of mercenaries, I thank Switzerland, the ICRC and DECAF for the opportunity to take part in this panel.

From the outset, the Working Group commended the adoption of the Montreux Document. In addition to identifying and clarifying existing obligations of States and PMSCs under international law in situations of armed conflict, the Montreux Document also provided impetus for the creation of the International Code of Conduct for Private Security Service Providers (ICoC) in 2010. The Working Group considers the Montreux Document and the ICoC important complementary initiatives towards the improvement of standards across the private military and security industry.

The Mercenaries Working Group was established in 2005 by the UN Human Rights Council and is composed of five experts. In 2008, our mandate was expanded by the Human Rights Council to cover PMSCs; including to study the effects of PMSC activities on the enjoyment of human rights and to draft basic international principles that encourage respect for human rights by these companies. The expansion of our mandate reflects the depth of the Human Rights Council’s concerns about the proliferation of PMSCs. Indeed, in the last decade, many States, international organizations, NGOs and transnational corporations have become increasingly dependent on PMSCs to provide services that have historically been within the domain of States.

Our work regarding PMSCs has not been without its challenges. We have had to address various misconceptions about our mandate, for example, that the Working Group conflates mercenaries and PMSCs and that it has wrongly strayed from human rights law into the realm of international humanitarian law.

These criticisms are, we think, misguided. Since its mandate was expanded to include PMSCs, the Working Group has made every effort to clearly distinguish mercenaries whose activities are prohibited under international law from private military and security actors who operate within a legal framework.

We have made this distinction in our thematic and country visit reports which are annually presented to the Human Rights Council and General Assembly.

With regard to separating IHRL from IHL, virtually every human rights and international humanitarian law body that has addressed these two branches of law (such as the ICTY, ICTR, ICJ, Inter-American Court, Human Rights Committee and ICRC), has concluded that they are complementary. Furthermore, during situations of armed conflict, the requirements of human rights law must be determined with reference to international humanitarian law.

The Working Group has also noted argument over whether or not non-state actors have human rights obligations. The concept of corporate responsibility to respect human rights as stated in the Guiding Principles on Business and Human Rights, which were adopted in 2011 by the Human Rights Council and endorsed by many States, provide guidance to this discussion. The Guiding Principles note that business enterprises should respect human rights; they should avoid infringing on the human rights of others and address adverse human rights impacts of their operations. Business enterprises need to create and abide by deliberate management processes for the exercise of due diligence—steps that reasonable and prudent enterprises need to undertake - to meet their responsibility to respect human rights. Corporate responsibility to respect human rights is also premised on the application, at a minimum, of the rights expressed in the International Bill of Human Rights which consists of the UDHR, ICCPR and ICESCR. The Guiding Principles are an important reference in our work; important to the implementation of fundamental human rights principles on which the International Bill of Human Rights are founded.

The Working Group has focused specific attention on the need for an international Convention to effectively regulate corporate actors whose operations pose potential threats to human rights. Given the transnational nature of many PMSC activities and the flexible corporate structures that we see in the industry, it is important that the international community reach some consensus on the minimum standard of regulation of PMSCs.

It was in this context that a draft Convention on PMSCs was elaborated by the Working Group in 2009. The draft Convention seeks to achieve something quite different than either Montreux or the ICoC by creating new, binding international rules on PMSCs. It also addresses accountability issues which are not adequately covered by existing initiatives. For example, the ICoC and its oversight mechanism, the Charter, contain no complaint mechanism resulting in accountability and remedies for human rights violations. Nor do they adequately provide for field audits to certify that PMSCs are operating in compliance with the Code. Stakeholders did not reach a consensus understanding of the Code’s provision on either the substance or process of a grievance mechanism.
Experience shows that self-regulation to be necessary, but insufficient.

Because the ICoC is voluntary, and because of its omissions, the Working Group stresses that the successful regulation of PMSCs requires a multi-layered approach involving industry self-regulation, international standard setting, and robust national legislation that implements international legal requirements.

The draft Convention’s inherent value is in defining the content of States’ international human rights obligations and requiring States to take legislative, administrative and other measure to ensure PMSCs and their personnel are held accountable for violations. This is particularly significant given that currently, prosecutions in PMSC home states are extremely rare, while obstacles to remedy faced by victims are many, leading to the perception that these companies operate with impunity.

In addition to the draft Convention, the Working Group also engages in other important activities on the issue of PMSCs. We receive communications alleging human rights violations including those committed by PMSCs. The communication mechanism is a valuable tool that advocates and victims can use to bring allegations of human rights violations to the Working Group’s attention. Even violations of the provisions of the Montreux Document can potentially be brought to the attention of the Working Group and thus provide a means of potential redress for victims.

At the invitation of governments, the Working Group also undertakes country visits, which provide an opportunity for dialogue with the concerned government and representatives of civil society organisations. After each visit, the Working Group reports its findings, conclusions and recommendations to the Human Rights Council.

The Working Group has also launched a project to survey and analyse national laws relevant to PMSCs. This past September, we presented to the Human Rights Council a report on the national laws of English-speaking countries of Africa. We are currently working on the analyses of national laws in Francophone African countries and in the Asia region.

This past July, the Working Group held an expert panel event to discuss the use of PMSCs by the United Nations. The UN’s use of PMSCs will form the basis of the Working Group’s report to the General Assembly in 2014. We plan to hold a similar panel event in Geneva during our 21st session in March 2014.

Next week the Working Group will hold its 20th session in Geneva. Running parallel to this was to have been the third session of the Open ended intergovernmental working group (OEIGWG) which was established by the Human Rights Council in 2010, to consider the possibility of elaborating an international regulatory framework focusing on PMSCs while taking into account the draft Convention proposed by the Working Group. The Intergovernmental Working Group session has been postponed due to the death of Nelson Mandela and given the key role of South Africa, but it will hopefully be reconvened early next year. The Mercenaries Working Group serves as a resource person for the OEIGWG consultations where it regularly provides updates on the draft Convention.

The discussions that have been held here and those that will take place in next week’s meeting of the Mercenaries Working Group have the same goal: the development of mechanisms to ensure that the activities of PMSCs are in line with international law.

Thank you.


Letter from the Working Group on mercenaries to the Permanent Mission of the UK and the EU delegation, 23 September 2013

Refer to foot note 4

Ibid

A/HRC/24/45