VERBATIM RECORD OF THE ONE DAY SPECIAL MEETING ON "CONTEMPORARY ISSUES IN INTERNATIONAL HUMANITARIAN LAW" HELD ON WEDNESDAY, 2ND JULY 2008, AT 10.00 AM

A. Inaugural Session

President: Good morning Distinguished Delegates. Today we will have a One Day Special Meeting on the topic "Contemporary Issues in International Humanitarian Law", being jointly organized by the AALCO and ICRC. Both these Organizations have been working in close cooperation and we have had a number of seminars in collaboration of ICRC, and this seminar is a continuation of those cooperative programmes. Today's programme is divided into three sessions: The first session is on "Cluster Munitions"; the second session is on "Ottawa AP Landmine Ban Convention and 1980 CCW Convention" and the third session is on "Private Military and Security Companies (PMCs and PSCs). For each of these sessions there will be an expert who will chair the session. I now give the floor to the Secretary-General, Amb. Kamil for his introductory remarks.

Amb. Dr. Wafik Zaher Kamil, Secretary-General of AALCO: Good morning Excellencies, Mr. President, Hon'ble Ministers, Heads of Delegations, Mr. Vincent Nicod, Head of Regional Delegation, ICRC, New Delhi, Mr. Christopher Harland, Regional Legal Adviser for South Asia, ICRC, Panelists, Ladies and Gentlemen. I welcome you all to today's Special Meeting being held in conjunction with the Forty-Seventh Session of AALCO in cooperation of the ICRC. As our President just mentioned, AALCO and ICRC enjoy a mutually beneficial relationship, which was formalized through a Cooperation Agreement initialed in New Delhi in 2002, and formally signed by me and Mr. Jacob Kellenberger, the President of the ICRC, in Geneva, in July 2003. The primary objective of this Cooperation Agreement is to work together for the Promotion and development of International Humanitarian Law. Today's Special Meeting is another such step in this direction. I hope that future efforts would result in substantial contribution to the field of International Humanitarian Law.

It may be recalled that over the past one decade the two Organizations have *inter alia* convened four joint meetings on issues of contemporary relevance and interest to Member States. At this juncture I would like to add that the custom of holding Special Meetings in conjunction with our Annual Sessions was started way back in 1996 on my proposal, the Special Meetings held on diverse topics over the years proved to be immensely useful and were appreciated by all Delegations. I hope that this tradition is carried forward.

Mr. President the topic for today's Special Meeting on "Contemporary Issues in International Humanitarian Law" is of topical significance, as it touches upon some of the challenges currently being faced by the international community. Due to the all encompassing nature of the topic it has been divided into three subjects that were just mentioned by the President. They are all comparatively new developments in International Humanitarian Law. Over the last few years some of these lesser dealt with topics have caught the attention of the international community which is now progressively dealing towards their codification. Since the adoption of the Geneva Convention of 1949 mankind has experienced an alarming number of armed conflicts affecting almost every continent. During this time the four Geneva Conventions and their Additional Protocols of 1977 have provided legal protection to persons who no longer directly participate in hostilities, the wounded, the sick and shipwrecked persons deprived of their liberty for reasons related to armed conflict and civilians. Even though there have been numerous violations of these provisions resulting in sufferings the civilian casualties could have been avoided had International Humanitarian Law principles been respected.

Over the last few decades the nature of armed conflict has undergone a change to a considerable extent. Earlier armed conflict arose

as a result of inter-state violence, now this has been replaced by internal conflicts within a nation, between different warring groups the motives behind these conflicts are mostly ethnic or socio-economic factors that continue to play a very important role. Whatever maybe the reasons for the conflicts the suffering that has to be borne by the civilians particularly, women, children and the elderly are immense. The landmines, cluster munitions and remnants of war compound the after effects of war. It is pertinent to recall that the role of ICRC has been to preserve humanity in the midst of war. Its guiding principle is that even in war there are limits. Limits on how warfare is conducted and even limits on how combatants should behave.

Mr. President, Cluster Munitions have been a consistent humanitarian problem for decades. In armed conflicts over the past few decades these weapons have killed or injured a large number of civilians in war affected countries. Cluster Munitions have unique characteristics which make them very dangerous for men, women and children. At the time that they are used in armed conflict Cluster Munitions can disperse explosive sub-munitions bombs over very wide areas and civilian casualties can be very high when these weapons are used in any area. In addition large numbers of sub-munitions fail to explode as intended and leave a large term legacy of unexploded contamination. Only now are Governments beginning to take concerted efforts to assess the human cost of the use of Cluster Munitions. As a major arms control initiative on 30th May 2008 Ireland convened the Dublin Conference on Cluster Munitions. It was aimed to ban the current design of cluster bombs and require destruction of stock-piling in eight years. It is expected that the Convention would be signed during December 2008 in Oslo.

The indiscriminate and irresponsible use of Anti-Personnel Landmines over the past 50 years has created a legacy of suffering and disability that most affected are ill equipped to deal with. The individual tragedy of each landmine victim has wider implications for the socio-economic development of the country years after the end of the conflict. In the last few years the negative effects of the landmines have been heightened by way of review of the Ottawa Landmine Convention. The launch of the Ottawa process and the international campaign to ban anti-personnel landmines led to the adoption of the 1997 Anti-Personnel Landmine Convention, ten years after the adoption of that treaty we see that it has made some difference to the lives of those affected. The treaty today has 126 States Parties. Of the 50 States that at one time produced these landmines 34 are Parties to the Convention. The States bound by it have so far destroyed 42 million anti-personnel landmines. The list of achievements goes on and it is quite impressive.

Excellencies, Mr. President I have touched very briefly upon the subjects that would be deliberated upon during today's meeting. I now welcome the representatives of the ICRC who have traveled long distances to be here with us today to attend this meeting and will provide us with details about the subjects, and I am sure that with their experience they will enrich all of us. Thank you.

President: I thank the Secretary-General for his introductory remarks and now I would invite Mr. Vincent Nicod, Head of the Regional Delegation, ICRC, New Delhi to make some introductory remarks on today's programme. Mr. Vincent Nicod has taken a keen interest in dissemination of International Humanitarian Law and is regularly organizing seminars and teaching programmes in the region, which are open to delegates not only from India but also other countries in the region and I thank him for the excellent programme which he has organized today and the number of resource persons he has been able to invite to Delhi to brief us on the latest developments in the field. You have the floor Sir.

Mr. Vincent Nicod, Head of the ICRC Regional Delegation, New Delhi: Thank you Mr. President. Mr. Narinder Singh, President of AALCO, Amb. Wafik Z. Kamil, Secretary-General of AALCO and Mr. Rahmat Mohamad, newly elect Secretary-General, Excellencies, Ministers of Justice, Attorneys-General, Ladies and Gentlemen. I would like to thank the Asian-African Legal Consultative Organization and its Secretary-General for the opportunity to hold

this Special Meeting at your Forty-Seventh Annual Session. We are indeed honoured to be here with Amb. Kamil, at his last meeting as Secretary-General of AALCO and I seize this opportunity to thank him very much for his assistance in helping us to promote International Humanitarian Law in Asia and Africa, two continents where ICRC operations are highly concentrated.

More than three quarters of our Annual Budget are regularly devoted to alleviate the suffering of the victims of conflicts and armed violence raging in these continents. Of course in these regions the challenges are numerous as new issues have recently surfaced such as the perpetration of natural disasters coupled with the instances of global warming and climatic change it creates, the expansion of pandemics, the uncontrolled migration in some countries and the trafficking of human beings caused by poverty and unequal distribution of wealth, which is exasperated by the current food prices or fuel prices etc. These calamities often create additional tensions between different groups sharing meager resources or accessibility to pre-existing sources of tension. As a result armed violence erupts between local authorities against all kinds of militants, insurgents, and break away groups or among themselves, and in these cases the civilian population is very often the first casualty of the situation of armed violence. When law and order are breaking down it is of utmost importance to put the populations and victims of these disasters under the protection of the basic principles of the human rights laws which are universal and to give them the assistance of a neutral, impartial and independent humanitarian Organization such as the ICRC.

Over the years this independent, impartial and humanitarian approach of the ICRC and action in the field has proved its potential to be acceptable and useful to all parties to a conflict and to the intended beneficiaries themselves. Precisely, because it aims to help all the victims regardless of who they are, what they believe in, where they come from, or what side they are siding with. As an example last year alone, ICRC operating in more than 80 countries in the world connected two lack fifty thousand messages, visited nearly half a million persons in detention in more than two hundred and fifty places of detention in 71 countries. We established the whereabouts of about five thousand missing persons, and we ran assistance programmes in 52 countries and helped hundred and twenty thousand patients in 18 hospitals, while our physical rehabilitation unit provided support to hundred and sixty thousand patients in 26 countries.

Acting as a neutral intermediary to initiate dialogue on mutual humanitarian concerns between the relevant parties is often essential to the protection of the victims of conflict especially when weapons replace all other means of communication. It is in this context that in 2002 we signed a Memorandum of Understanding with AALCO which highlights the cooperation between our two Organizations and provides that matters of mutual interest would include, updating information on developments and regulations relating to humanitarian law, and conducting seminars and training programmes on contemporary issues of IHL. We are therefore, very pleased to co organize this one day special meeting together with AALCO today.

I know, as I mentioned before that you have many serious issues before you this week, I know that your countries along with the whole world are facing many challenges, I know therefore of your many priorities, which may take precedence over the problems of International Humanitarian Law (IHL) or the Law of Armed Conflict as it is called sometimes. But some of your countries are experiencing or have experienced armed conflicts or violence in recent years, and might still suffer from the consequences of these conflicts. Governments must play a crucial role in minimizing these sufferings, steps that maybe taken include by you Your Excellencies, maybe advising your Governments on the role of IHL, ensuring that those involved in decision making respect the law of armed conflict, outlining the legal agreements in order to facilitate accession to IHL instruments and seeking to ensure with other Ministries and your Parliament the

adoption of appropriate legislation to enable the application of rules and practices.

IHL is a dynamic set of law, as shown over the development of 10 new instruments of IHL in the past few years. Barely four weeks ago, in Dublin, the text of a new treaty, prohibiting Cluster Munitions, was adopted. You will have the opportunity of discussing the elements of this new treaty with both the ICRC negotiator on this treaty Mr. Louis Maresca, who is here with us today, as well as with someone who is now involved with clearing Cluster Munitions and other explosive remnants of war in South-East Asia, Mr. Lee Moroney, he is also here with us from Vietnam. We hope that you will take advantage of this opportunity to stimulate a lively debate; IHL is a dynamic set of law which must create debate. Following that Mr. Len Blazeby, an ICRC expert from Geneva will provide an Overview of Issues related to the implementation of the Ottawa Treaty Regulating the Anti-Personnel Landmines Convention as well as the obligations under the 1980 Convention on Conventional Weapons. Finally, a project jointly being undertaken with the Swiss Government on regulation of persons engaged in Private Military Companies or Security Companies will be outlined. We will also hear from a South African Representative who will explain the steps taken by his Government in this respect. Once again I thank AALCO for this opportunity to discuss these issues here with you today and I congratulate the Secretary-General for his good work and thank him for his support. Thank you very much.

Mr. President I would like to say a few words about the next speaker Mr. Christopher Harland, he is the ICRC Regional Adviser for South Asia based in New Delhi. He is a Canadian lawyer by background, and has been working with the ICRC Legal Division at the Headquarters in Geneva prior to joining the Regional Delegation here. His professional legal background in IHL and Human Rights and has a wide experience accumulated in various countries in Africa, in the battles in Asia.

President: Thank you Mr. Nicod. I now invite Mr. Christopher Harland, to give us an introduction to the topic of weapons issues and International Humanitarian Law.

Mr. Christopher Harland, Regional Legal Adviser for South Asia, ICRC, New Delhi: Thank you very much Mr. President. Mr. President, Secretary-General, Secretary-General elect, Excellencies, Hon'ble Ministers and Attorneys-General, Ladies and Gentlemen, Good Morning. It's a great pleasure to be here with you at your Forty-Seventh Annual Session and it's a great honour that the ICRC is with you discussing International Humanitarian Law. I will be speaking about Weapons Issues and I will provide a brief introduction to weapons issues in general but prior to this I will invite you to watch an 8 minute video on IHL, which will provide bit of an overview on IHL and mentions also the link with ICRC. After the video show Mr. Harland said that:

The video show gives you bit of an idea of how the ICRC is involved in the Law of Armed Conflict. This is reflected in our mission statement which includes strengthening international humanitarian law and principles. That comes from the status of the ICRC in the 1949 Geneva Conventions and subsequent International Treaties. I would provide bit of an overview on some traditional aspects of warfare and limitation. By traditional I mean essentially historical in various parts of the world. Secondly, I will discuss rather more briefly, modern restrictions that started in the 1600s but which began to be codified in the 1800s and then talk about the contemporary law from 1899 The Hague Peace Conferences, the Geneva Conventions and their Protocols and law with respect to weaponry, in various IHL treaties.

Human Rights law governs peace time, but IHL specifically refers to rules which apply when armed conflicts take place. Among the first weapons that we find in recorded history include the use of the "Spear"; this has evidence going back to hundreds of thousands of years. About 10 thousand years ago, depending on the place we refer to we have the use of "Bow and Arrow" as a common instrument and about a thousand years ago "Firearms" began to be used. Mankind has used weapons as long ago as we find history.

I will give some examples of means of warfare in history, that's the types of weapons, methods of warfare (how those weapons are used) as both these aspects have had restrictions on them by various cultures and traditions throughout the world.

For example 13 Centuries ago, in the Six Secret Teachings of Jiang Ziya, in ancient China in 11th century B.C., Common Customs of Warfare, Ancient Greece, 6th century B.C., Code of Manu, Chapter VII, verse 90 (around 2000 years ago, Indian culture), Khalif Abu Bakr Al-Siddiq, the first caliph after the Prophet Muhammed, 6-7th century, Malik ibn Anas ibn Malik ibn Amr al-Asbahim, distinguished scholar of Islamic Law, 8th century, 1864 Maori Warrior Code, of New Zealand was reflective of traditional war fare practices, and some oral provisions in Senegal talked of ethics of war being taught to every young person. Therefore, there were many such traditional restrictions that are found throughout cultures around the world. These come from the ICRC studies that we have undertaken in various parts of the world, in Africa, the Pacific, some Islamic countries and in other parts of the world we tried to gather traditional practices that maybe linked to contemporary International Humanitarian Law. Beyond that, these Codes had official sanctions and other carried moral or cultural authority. Therefore, there were traditional weapons for example, spear, bow and arrow which sometimes had cultural or moral or sometimes official sanctions and limitations placed on them, some prohibitions also.

As the notion of nation states began to develop, these restrictions became more codified in rules and what we call as law today. Each country had its own set of laws, and it wasn't till the 1800s infact in 1864 the First Geneva Convention placed some restrictions on the actions of authorities in armed conflict during war time which would be a multilateral treaty. Not just one country agreeing to the rules and having those rules applying internally but multiple countries agreeing on the same rules. This is present in custom and treaty law in general but with respect to law of armed conflict a major step was taken in 1864 with the First Geneva Convention. The first multilateral weapons regulation is probably the 1868 Saint Petersburg Declaration, which contained a couple of interesting items. The first was that in its Preamble it stated that 'the only legitimate object that States should endeavour to accomplish during war, is to weaken the military forces of the enemy', and this was bit of a revolution because in some settings war was seen as an all out war and it was seen as acceptable. The Saint Petersburg Declaration codified the rules existing today, besides it clearly states that the purpose of war is to weaken the opposing military forces of the enemy. In fact this Declaration is mentioned in the subsequent IHL treaties. Then it stated that the object would be exceeded by the employment of arms which uselessly aggravate the suffering of disabled men or rendered death as inevitable and therefore, the employment of such arms would be contrary to the laws of humanity and finally, it prohibited projectiles less than 400 grams which are explosive. Now this rule has changed since 1868. What is kept therefore is only the Preamble of that Declaration which states the purpose of war.

In 1899 there were the first set of the Peace Conferences sometimes called the 'First Hague Peace Conference'; it was followed up by another Peace Conference in 1907 which also included the rules. The 1899 Peace Conference attached two elements of law, firstly issues related to *Jus ad bellum* 'Rules governing the legality (legitimacy) of the use of force, and secondly *Jus in bello* 'Rules governing the conduct of hostilities (IHL). Three weapons prohibitions were included, first; to not drop munitions from balloons, it expired in 1905, the second was it was prohibited to use projectiles which had for its purpose using poisonous military gases and this became the prohibitions in Biological and Chemical Weapons Treaty, in 1969 it was listed as custom in a General Assembly Resolution, and to not use 'Dum Dum Bullets' named after the city near Calcutta where they were manufactured by the British, that is to say 'Expanding Bullets' which is in force today. Then in 1907 there were additional prohibitions or restrictions that were included. So at the Second Hague Peace Conference in 1907 there was an idea to have a Third Peace Conference but it didn't happen because of the First World

War. Submarine Contact Mines near ports were included, they are restrictions on where you can place the marine mines, non-military targets in non-military localities could not be bombed by the navy the 1899 prohibition on the dropping of munitions from balloons was also kept but a few restrictions were put on it and the Hague Regulations in Convention IV placed much more details with what you can do with your Naval and Arial forces.

There was an attempt to further sum up these prohibitions after the First World War. There was a fear of the use of a particular bacteriological weapon in World War I and after the war there was an effort to prohibit chemical and bacteriological weapons. There was an attempt first with the 1922 Washington Agreement but it did not enter into force because France was not ready to agree, then the Geneva Gas Protocol of 1925 included bacteriological methods of warfare. It is currently in force and many of the States present here today are parties to the 1925 Geneva Gas Protocol. Some States have reservations and the ICRC is encouraging those States to remove from the 1925 Protocol. Two of the major outcomes of World War I included protection for the 'Prisoners of War' which became 'Geneva Convention III' including poison gases. After World War II civilians were added to the list of wounded and sick at land 'Geneva Convention I', 'Wounded and Sick at Sea' Geneva Convention II, this makes up the categories of all persons protected under the Four Geneva Conventions of 1949. In 1949 weapons issues were placed outside the discussions of Geneva Conventions. The Hague rules dealt with weapons and the Geneva Conventions dealt with persons.

After World War II and up to the 1970s the results of the Wars for Liberation and cold war as well as casualties in South East Asia in the 1960s and 1970s led countries to revisit these weapons issues. In 1972 for example the Biological Weapons Convention was adopted, and in 1976 the Environmental Modifications Techniques Convention was adopted. The results of these wars led to the adoption of Additional Protocols I and II, I dealing with International Armed Conflict and II dealing with Non-International Armed Conflict, and incorporated some weapons issues. For example the general prohibition against using weapons which would cause superfluous injury or unnecessary suffering is included in Article 35 of Additional Protocol I, there is also a provision relating to new weapons. So States Parties to the Additional Protocol are obliged when they buy any weapon or make it examine the humanitarian consequences in battle field conditions of that weapon and if that weapon has a negative humanitarian impact which is to exceed the military value it is not acceptable. The ICRC has a Guide of Committees set up to examine weapons. Similarly we have a Guide which we will be distributing here on Arms Transfer Decisions, so before you transfer weapons many States now have legislations in their domestic law to prevent the sale of weapons in areas where they are likely to be used and spread widespread harm to civilians and those not taking part in hostilities.

Article 35 the restriction in Additional Protocol I was fairly broad, so it led States to ask which weapons are the ones that cause superfluous injury or unnecessary suffering as this issue was not agreed upon in the conferences between 1974 and 1977, therefore it was pushed to the United Nations which eventually adopted a new treaty in 1980 called the 'Certain Conventional Weapons'. In 1980 there was a framework Convention with five Protocols, in 1993 a Convention Prohibiting Chemical Weapons was adopted. In 1997 a Convention outside the United Nations banning anti-personnel landmines was adopted. Attempts began with the Geneva Conventions to try and restrict certain weapons was not accepted, pushed to the UN and then accepted by certain countries within the CCW. As referred by the Secretary-General on 3rd of December this year in Oslo a Convention will be adopted on Cluster Munitions.

There are also Customary International Law restrictions and limitations on weapons. In 2005 one of the launch ceremonies took here in New Delhi together with ICRC, a study identifying 161 rules as custom identified by States was released. This clearly states that a state is bound to adhere to the customary international norm. It took 10 years to develop this study and includes some rules relating to weapons. There are

prohibitions on Biological Weapons and Chemical Weapons and there are rules against bullets which expand in the human body, anti-personnel use of expanding bullets, and CCW prohibited weapons. Also weapons which have non-detectable fragments, laser weapons, and restrictions on booby traps and land mines. All of these will be discussed today but I just mentioned this that besides treaties there is also customary prohibition against the use of these weapons in IHL.

To conclude, what I hoped to do here was to provide a brief introduction to traditional practices, restrictions and prohibitions on weapons outlined that with examples from countries that led to the multilateral prohibition and restrictions on the use of certain weapons that we have today. I once again look forward to the debate we have today throughout the day, very pleased that AALCO agreed to carry out this one day session and thank you very much for your attention.

President: I thank Mr. Christopher Harland for his very detailed introduction the subjects that we will be considering in the different sessions today. With that I close this session here and we will assemble here after 20 minutes after the tea break. Thank you.

B. II Session
"Ottawa Anti Personnel Landmine Ban Convention and 1980 Certain Conventional Weapons Convention"

Major General Dipankar Bannerjee (Retd.), Director, Institute of Peace and Conflict Studies in the Chair.

Major General Dipankar Bannerjee (Retd.),: Your Excellencies, Ladies and Gentlemen, Welcome to the third session of this important conference. The session will be addressing the Ottawa Anti-Personnel Landmines Ban Convention and 1980 Convention on Conventional Weapons. It's a great pleasure to welcome this distinguished audience. I was fortunate to be involved with the anti-personnel landmine movement all of '95 and '97, and finally at the Ottawa Treaty Signing Conference. Here we are assembled to review the progress in the implementation of this important convention. I have great pleasure in inviting Len Blazeby, the Legal advisor, Advisory Service of the ICRC at Geneva, to kindly make his presentation.

Len Blazeby, the Legal advisor, Advisory Service of the ICRC at Geneva: This afternoon I've been asked to speak about Anti-Personnel mines, explosive remnants of war and the Certain Conventional Weapons Convention.

The first treaty that I would like to speak about is known as the Ottawa treaty or the Anti-Personnel Landmine Prohibition Treaty. We can see here a painting which I think graphically illustrates the danger that comes from anti-personnel landmines. This was painted by an eleven year old child who obviously knew and understood, unfortunately, the humanitarian consequences of Anti-Personnel landmines. Because as we can see, we have someone who is walking along the forest, who has contact with a landmine and loses their leg. I think it is quite unfortunate that, in society, we have eleven year old children have such intimate knowledge of the unfortunate powerful effect of such weapons. The Ottawa Treaty bans anti-personnel landmines. It came into force in 1998 and it is a complete ban on all anti-personnel landmines. Like the Cluster Ammunitions adopted treaty, and like the treaties that deal with weapons of mass destruction, those are the chemical and biological weapons conventions that I am referring to, the Ottawa treaty deals with a complete ban of anti-personnel landmines. This means it bans not only the use of such weapons, but also their acquisition, their development, their production, the stockpiling, retention and

transfer of such mines. It also requires states to destroy these mines.

What are we actually talking about when we talk of anti-personnel mines? There is a definition within the treaty or the convention, but the definition is quite interesting because it doesn't describe what an anti-personnel mine is, it describes the effect of an anti-personnel mine. How it explodes? Because it is a mine, designed to be exploded by the presence, proximity or contact of a person and it will injure, incapacitate or kill one or more persons. So as we can see from this it is the effect of the weapon that is reflected in the definition. And in fact, this is the whole idea of many of the weapons treaties that we deal with and indeed the treaties that I am going to address this afternoon. And that is the idea that these weapons have grave effects, generally grave effects on the civilian population. So, when one talks about implementation of the Ottawa treaty or the Anti-personal landmine convention, what is it that we are talking about that States is required to do? What are the obligations on States? And I may say that there are currently one hundred and fifty six states which are party to the landmine convention, including many of the States that are in this room this afternoon. It requires that there be a number of definitions outlined, including of course, of anti-personnel mine, the definition of mine itself and also definition of transfer. But it really depends on the state as to anything else which is not covered in the convention itself that they wish to make as defined terms within their domestic law.

Probably the most important thing is to prohibit what we talked about in the slide before last, and that is prohibiting the use, acquisition, development, production, stockpiling and transfer of these anti-personnel mines. But its not only those acts, but also the acts of encouraging, assisting or inducing someone to do so that need to be prohibited. These need to be made crimes under domestic law. And as such there is the need to create a penalty. If you need to create the crime of using or possessing or whatever, of these particular mines, as well as anyone who would assist with doing so and to create penalty. I've also written here that one should consider extra-territorial application. Now, during the negotiation in relation to the anti-personnel land mine convention, there was talk of how far the jurisdiction should actually go but, what we are talking about here is being able to cover ones nationals, not only within the territory, but for acts that they do abroad. Which is quite useful, especially, if you are talking about a military which may be acting abroad. In terms of the crimes, we are talking about that generally in international law there wasn't such a thing as individual criminal responsibility, it used to be state responsibility for actions. But in recent times, this idea of individual criminal responsibility has actually come to the fore in many international criminal laws and many international humanitarian law treaties. And so it requires individuals, who either do the acts or order acts to be done to be individually criminally liable. I have here once again, exemptions, we talked about exemptions this morning when we were talking about cluster munitions. That here, the exemptions simply relate, not to the type of mine, but relate to whether or not mines can be retained by States. And yes, they can be retained by States but, only in the minimum number necessary, and only for these following purposes. They are the purposes of

- Mine detection
- Mine clearance, destruction or deactivation

There is no number in the convention itself seen as the minimum number absolutely necessary. Some states have decided to destroy their entire stockpiles, saying that they can do this training in mine detection, etc, without having live mines. Some States have kept reasonably significant numbers of mines in order to fulfill their need for training purposes.

I said first of that not only is it a complete ban, but it also requires the destruction of mines and of course these are mines in territory or jurisdiction controlled by the States concerned. It requires all stockpiles of mines to be destroyed within a period of four years. What this means is that any mines which are held back by States or that States have already had in their arsenals, need to be destroyed within a period of four years.

Now I can make one distinction here between the newly adopted cluster munitions conventions and the mine ban convention. And that is, that there is possibility for extension of the eight year period in relation to destruction of cluster munitions. But, under the mine ban treaty, there is a four year period under which all mines which aren't retained for the exceptions purposes to be destroyed. And there is no mechanism under that particular convention to extend that four year period. Some States have already reached that four year period, and most states whose periods have been reached have managed to destroy the stockpiles in the required period.

The next thing I'll talk about is emplaced mines. These of course are mines that have been laid in the ground and the treaty talks here about a ten year period for destruction of those particular mines. However, the situation here is that, unlike the stockpiled mines, but like the cluster munitions conventions, it is possible for States to apply for an extension of time to get rid of the mines they have got in the ground. Now, that's really important because, we have a number of States that really do face significant difficulties to destroy the huge number of mines that they have in the ground. Examples such as Mozambique and Angola, Angola, because, you have many areas which are difficult access, to destroy mines. And Mozambique because, after the end of the conflict in Mozambique, when most of the mines were laid, you had floods, and the floods moved many of the mines from their original areas, so, even though they were starting to mark and monitor those areas, they've moved and its going to be difficult for them to be able to remove their mines within the time. This year the convention has eighteen States whose ten years is about to be reached and of those, unfortunately I would say, we have fifteen states which are applying for extension. I think a lot of that shows that it is difficult to remove mines accurately and safely in a short period of time. It also means that perhaps there should be a look by the international community at the amount of funding and assistance which is going in to assisting States in the clearance in their mined area. So I think these are some reasons and some difficulties that states are finding when they are trying to clear their mines.

There are also other requirements within the mine ban convention and they are that those areas that are mined and before they are cleared need to be marked, monitored and the civilian population to be protected against the effects of these mines. The last thing to be provided for in domestic law is the ability of any fact finding mission to enter and do its work in the territory of the State party. A fact finding mission is provided for under the convention which would be asked by the State parties to the convention in a situation where there is perhaps a dispute in relation to mines being possessed or used within a territory to be able go and assess that situation. So, what is required under the legislation is that this fact finding mission be given the privileges and immunities which is generally given to diplomatic personnel, as well as capabilities to search, as well as to seize items under the convention. To also provide for the fact finding mission's accommodation, transport and security, if required, and to allow them to bring within the State, equipment required to under do their task. So that often requires customs clearance and other things.

One of the other non-legislative requirements under domestic law for the mine ban convention is that of reporting. It is required once a State becomes a party to the mine ban convention to report to the secretary general within a period of six months and then provide an annual report; these are known as Article 7 reports, by the thirtieth of April each year. These reports are required to deal with the following situations.

To deal with national implementing measures. What that means is that States have to say what they've done to have their legal obligations fulfilled. And it's quite interesting because, I think, out of the one hundred and fifty six States which are party to the Convention; we have eighty three States which have legislations which fulfils their obligations. So we have just over half, so we have over sixty states that have no implementing legislation in relation to the mine ban convention, which, as I stress, is an obligation.

States also need to look at the total mines, either stockpiled or placed in the ground, the number of mines retained for exemption purposes, clearance, detection etc, as well as the status of their program of destruction, and what measures there are to warn and protect civilians, in relation to protecting civilians who are also talking about the assistance which is provided for victims.

As I said it is a requirement that States put in a report under Article 7. This report is to the Secretary General of the United Nations and this year, out of the one hundred and fifty six States, we have eighty four States that have put in their report under Article 7 reports. So, if any States present in the room, know that their State has not put in their reports, even if we are past the deadline, I would ask you to encourage your States to put in Article 7 reports. Now there are long form and short form reports, and it is quite permissible to put in a short form report which is basically one page and you tick the boxes. So it's not a difficult task to report but it may be difficult to gather all of the information required. However, it's quite important to see how; the actual treaty itself is going in the international community. And we have the meeting of States Parties of the Ottawa Treaty later this year, so it is always good, if possible, to get these Article 7 reports in before the meeting of States Parties.

Next year, of course, we have the second review conference of the Ottawa Treaty, which will either take place in Colombia or Cambodia. There we'll be able to look at how the States look at the Treaty and whether or not they would consider any amendments to it. So, that's all I wanted to talk about in relation to the Mine ban Convention.

I will now move on to the certain Conventional Weapons Convention. This was referred to this morning, when we were talking about the issue of Cluster Munitions. It was referred to because there are two processes, this morning mainly dealt on the Oslo Process because that, to some degree, is a more finalised process, than the process which is preceding within the Conventional Weapons Convention. But, the Conventional Weapons Convention is quite a different 'animal', shall I say. It could even be an octopus because what you have is a convention itself which is the core and then you have five current protocols which come out from the convention itself. Now let's see what we have, as far as obligations under the conventions are concerned. The first, which comes from the framework convention, is that States are required to disseminate the convention and its protocols within the State, especially to the Military. Of course, this is more than appropriate because if you ratify the treaty which restricts or prohibits the use of certain weapons, which this treaty does, your Military needs to know what it can and cannot do. It is often being said, to myself and to colleagues, within the ICRC that there is a concern by States that the Certain Conventional Weapons and its protocols will restrict the militaries in their abilities to undertake military action. I think to some degree that is not correct, and the reason is that most of the weapons which are dealt with in the convention by way of prohibition are weapons that are not being widely used, in warfare, in any event. And the restrictions that are placed in weapons that are not prohibited are merely there for humanitarian purposes. To try to make sure, as the Cluster Munitions Convention does, to reduce the effect of weapons on people who aren't fighting. The protocol that requires specific implementation under the Conventional Weapons Convention is amended Protocol II. This protocol deals with the restriction of anti-personnel landmines as well as the restriction on the use of anti-vehicle mines or mines other than anti-personnel mines and the use of booby traps.

Now for those of you who aren't familiar with this convention or the mine ban convention, the mine ban convention really grew up out of the Conventional Weapons Convention. In 1980, you had the first idea to try and look at the restriction of the scourge of anti-personnel landmines. This was then reviewed in 1996 with amended Protocol II which is what I am talking about here. But, this once again is a restriction, not a complete ban, as anti-personnel landmines. Some States are party to the Conventional Weapons Convention without being party to the Ottawa Treaty. But many States thought that the Conventional Weapons Convention in relation to

Anti-Personnel mines did not go far enough called for a complete ban and that is why we have the Ottawa Treaty. So, in relation to these Anti-personnel mines, if you're not a party to the Ottawa Treaty but are a party to amended Protocol II, what do you need to do? It says that all anti-personnel mines must be detectable with a minimal of eight grams of metal within the mine itself, because of course metal detectors detect metal and it is that which is found within the mine in order for them to be removed It also says that all anti-personnel mines which are not remotely delivered must be marked fenced and monitored. These are mines that are emplaced by hand because some mines are remotely delivered, they could be delivered by artillery or they could be delivered by air. When we are talking about these particular mines these are outside mine fields of course, because you can't tell exactly where they are going to land, if you drop them from aircraft or if you fire them from artillery. We see the inaccuracy we have of cluster munitions, for example, because of the fact that they disperse from aircraft or from artillery. So when we are talking about these, the location of all mines, the details must be recorded and the details post hostility or post conflict provided to the party who is in control of the territory. It may be your own territory or it may be acquired as a result of the conflict.

Lastly it is the user of the mines who, if they have access to the area, is responsible to clear or provide assistance in clearing all mines that are used.

But as you can see this was quite a complex regime and it was this reason as well as the humanitarian concerns in relation to anti-personnel mines that led to a specific treaty. So that's anti-personnel mines and how they are dealt with and what States need to implement in relation to anti-personnel mines. But as I've said the Conventional Weapons Convention amended Protocol II not only with anti-personnel but also mines other than anti-personnel mines otherwise shortly known as anti-vehicle mines. The location of these mines must be recorded and details provided as with AP mines to the party in control of the territory post hostilities. And once again it is the user who is responsible for their removal.

Interestingly, unlike anti-personnel mines, there is no delectability requirement for anti-vehicle mines. And their use in marked, fenced or monitored mine fields is only a feasible precaution rather than it being a mandatory act.

Once again remotely delivered mines must self destruct or self-deactivate after use to a feasible extent. So this is how you would need to reflect the use of these killer weapons within your domestic law.

Now, we look at the third class of weapons, perhaps, which is treated in Protocol II, Booby traps. The location of all booby traps used also needs to be recorded and details provided to the party who is control of the territory. So we have uniformity with the three different types of weapons. Also, the user, once again, is responsible to clear or provide clearance to these booby traps. And there is a prohibition on the use of booby traps. Booby traps, as you may know, are something which is apparently harmless but when approached and dealt with, explode. And so it is considered that you can't use anything to trigger a booby trap, and some of the things that you are not able to use form part of the prohibition. So, when you are putting into place your law relating to the conventional weapons convention, you need to make sure that there is a prohibition of attaching booby traps to any of these following items, because if it is the case, it is considered perfidy and that, in itself is a war crime. So you must not attach it to -

- The protective emblems the emblems of the Red Crescent, Red Cross or the Red Crystal, for example
- To burial sites or grave objects or facilities
- To children's toys or objects
- To religious objects
- You can't attach it to animals whether those animals be alive or dead
- To sick, wounded or dead people
- To medicinal or food or drink items
- To historical monuments or cultural sites

You can understand why this be the case because these are items that are either otherwise protected at International Humanitarian Law or which would cause civilians to approach more than they would the military.

Now there are other Protocols of the Certain Conventional Weapons Convention. I'll deal with those reasonably quickly. The first is of Undetectable fragments, which is Protocol I of the Convention. What this weapon deals with are explosives, generally devices which have within them shards of glass or plastic which when enter the human body cannot be detected by x-ray. This, of course, means that doctors who are performing surgery can't find these items and the person generally dies of blood loss. So what you have to do is prohibit the use, in any way, of a weapon, the primary effect of which has fragments which injure the human body and escape detection by x-ray.

The next is incendiary weapons; we know incendiary weapons that were used quite extensively in the 1970s and in the 1980s, probably most famously in the Vietnam Conflict, when napalm was used extensively. So, the idea here is not prohibit the use, outright, of such weapons but to prohibit their use in certain circumstances. So it's a restriction rather than a prohibition. So, what you need to restrict here is any use of an incendiary weapon which is targeted towards the civilian population. You must not make the civilian population the object of attack of an incendiary weapon. Also if you have military objectives which are located within a concentration of civilians then they must not be the object of attack of air delivered incendiary weapons or by non air delivered weapons, without feasible precautions being taken, in other words, trying to get the civilian population to move from that particular area. The other thing which you must not do and which you need to put in place in your domestic law is to make forests or plant cover which is not specifically being used as camouflage for combatants for military objectives, the target of incendiary weapons. This has with it not only a humanitarian but also an environmental aspect because you start getting rid of forests, in a large way, you affect the environment. And that, under customary law as well as under the Geneva conventions and additional protocols, is prohibited. Anything that has long term, lasting, severe damage should be prohibited.

And the last weapon that we are talking about in the Certain Conventional Weapons Convention is that of blinding laser weapons. Now this is a weapon that has been prohibited before it was actually used in conflict, and it is weapon which is quite insidious because we all use lasers in our everyday lives to either play CDs or the DVDs we've had here today or to have laser pointers maybe even to do laser surgery. But it works on frequencies, and if you set a laser to a specific frequency, and point it at someone, you can automatically detach the retina from the back of the eye causing permanent blindness. Rather a disgusting device. So the idea of this protocol, which is Protocol IV of the Conventional Weapons Convention, prohibits the use of such weapons. Weapons that are specifically designed, has a sole use or one of its combat function is to cause permanent blindness to unenhanced vision. It's fairly easy to see why such a weapon should be prohibited. Because not only do you affect people immediately during the conflict but you would have, literally, thousands, if not hundreds of thousands of people, after the conflict permanently blinded. You could see what sort of damage that could cause to society.

So these are the weapons, few of the weapons which are actually within the Certain Conventional Weapons Convention and I think I have illustrated what is required by States in order to implement this Convention.

This leaves me with the Protocol V of the Conventional Weapons Convention on Explosive Remnants of War. It basically has states responsible for their own acts and makes them clean up after themselves at the end of conflict. That is the basic tenet of Protocol V. Making states responsible for what they use and cleaning up after themselves at the end of the conflict. Article IX to this particular Protocol encourages States to take what are known as generic measures to minimise the occurrence of explosive remnants of war. There is a technical annex at the back of the Protocol which deals

with the idea of what these are and in particular it refers to weapons manufacture in order to achieve maximum reliability. It also looks at best practice with regard to storage, transport and handling of weapons. And we see here, the link with this morning's presentations on Cluster Munitions, because cluster munitions have, and do form, one of the largest forms of numbers of Explosive remnants of war. We see here that one of the reasons that why the Cluster Munitions Convention was a focus of international attention was the fact that it was difficult to have manufacture maximum reliability of Cluster Munitions as we saw in the laboratory a failure rate of one percent; in the field, up to thirty percent. so this technical annex looks at how you should, firstly, produce weapons and then to store weapons in order to try to make sure that you don't have this type of failure rate. Now there are obligations as well under this particular protocol. They are that State must record information on their munitions that they use. So, you record the type, the quantity, where you targeted. You must take all feasible precautions to protect civilians in the use of these particular weapons and you must clear or provide assistance to whoever is in control of the territory at the end of the conflict to clear explosive remnants of war from your operations. Information must be provided to facilitate clearance, this is generally the handover of the information that was recorded earlier so what you've used, where you've used it and how you've used it. There is a mutual assistance within the protocol, in order for clearance as well as mine reschuducation and victim assistance. And lastly, in relation to those countries which have existing explosive remnants of War in their countries, they may ask for and receive assistance from other states that are party to the protocol.

And that brings us to a reasonably rapid, I think, outline of both the Anti-Personnel Mine Ban Treaty and the Certain Conventional Weapons Convention deal with relation to implementation. Thank you very much, Mr. Chairperson.

Major General Dipankar Bannerjee (Retd.), Director, Institute of Peace and Conflict Studies: Thank You Len Blazeby for a very comprehensive presentation on the implications and the implementations of the Land Mine Ban Convention and the Certain Conventional Weapons Convention. We now move on to witness the film on Explosive Remnants of War.

Representative of the Hashemite Kingdom of Jordan: Mr. Chairman, Mr. Secretary General, Mr. Secretary General Elect, Honourable Heads of Delegation, Ladies and Gentlemen, It is my honour and privilege to brief the distinguished delegates on the 8th meeting of the States Parties to the Anti-Personnel Mine Ban Convention which was held at the Dead Sea- Jordan between the 18th and 22nd November, 2007.

At this meeting, Jordan played host to around 1100 delegates from 115 states and dozens of organizations, attracting the highest number of representatives in all of the meetings of the States Parties.
The 8th meeting of the member states of the parties coincidence with the 10th anniversary of the adoption of the convention, and the fact that it was the first time a meeting of the State Parties was held in the Middle East provided the President with the opportunity to pursue three main objectives:

- To reinvigorate global interest in the landmine problem, with 1100 attendees, the 8th meeting boasted the highest participants in the history of the Member States Parties, and with a heightened international media interest, the objective of reinvigorated global interest in the landmine problem was successfully achieved.

- To increase interest in the convention in the Middle East. The profile of the Mine ban convention was highlighted in the idle East region, with Kuwait and Iraq acceding to the convention a few months before the meeting and with prospects of more Arab Countries of the Gulf soon to follow. Additionally, more Arab States participated in the 8th meeting than any previous one, which indicates their interest in this Global Humanitarian cause (Nine out of Ten

Arab States Parties, Seven out of eleven States not parties were represented at the meeting).

- To highlight the reality of the challenges faced in the implementation and creative cost effective and efficient ways to overcome these challenges were efficiently highlighted in the meeting. To ensure that adequate attention is given to this particular issue, Jordan allocated a three hour block during plenary session to allow mine affected countries discuss these challenges and the best ways to overcome them.

The States Parties welcomed the Dead Sea Progress Report. The purpose of this report is to support the application of the Nairobi Action Plan by measuring progress made during the period from 22nd September to 22nd November 2007. While all seventy points of the Nairobi Action Plan remain equally important and should be acted upon, the Dead Sea Progress report aims to highlight priority areas of work for the States Parties, the Co-Chairs and the Convention's President in the Period between the Eighth and Ninth meetings of the States Parties.

It is third in a series of Annual Progress Reports prepared by the Presidents of Meetings of the States Parties in advance of the 2009 second review conference, the meeting agreed to designate his Excellency, Ambassador Jurg Streuli of Switzerland, President of the Ninth Meeting of the State Parties and decided to hold the Ninth meeting in Geneva in November 2008. A wealth of side events were also held on the margins of the 8th meeting, covering various topics of Mine action, as well as an Exhibition of the works and publications of Jordanian and International Organizations.

The meeting was precede by a field trip to the Baptism site, which once was a mine field, now one of Jordan's most important historical and religious and tourist sites. During this trip, participants were able to witness techniques used by the two mine clearance operators in the country, the Royal Engineering Corps and the Norwegian People's Aid. The official opening that was held on the evening of that same day was designed to reinforce the President's messages to the States Parties through a number of speeches, songs and a dance. Thank You

Representative of Japan: Mr. Chair, The Ottawa Convention, which entered into effect in March 1999, is going to mark the 10th year. Japan has been faithfully implementing its obligations under the Convention. It has already completed the destruction of one million stockpiled anti-personnel landmines pursuant to Article IV, which stipulates the destruction of stockpiled landmines within 4 years. In accordance with Article 7 (Transparency Measures), Japan has been reporting annually on the total number of anti-personnel landmines retained by its Self-Defense Forces for training purposes allowed under the Convention. Japan considers that the two questions which were discussed at the 8th Meeting of State Parties are particularly important. One concerns the implementation of the aforementioned Article IV, which stipulates the obligation of destroying stockpiled landmines within four years. The other is with regard to Article V, which provides for the destruction of landmines in mined areas under its jurisdiction or control. Certain States could not fulfill their obligations as stipulated in those articles of the Convention.

I believe that those cases require most careful treatment as they concern, and could affect adversely, the very confidence in the effective implementation of the Convention. Thank You.

C. III Session
"Private Military and Security Companies (PMCs and PSCs)"

Mr Len Blazeby, Legal Advisor, Advisory Service, ICRC, Geneva in the Chair.

Mr Len Blazeby, ICRC: .... so now we are going to move away from that slightly, and we are going to move on to the idea of private military and private security companies. In order to take us through this rather interesting subject, we have Ms. Cordula Droege, Legal Advisor

with the ICRC based in Geneva. So, thank you very much Cordula.

Ms. Cordula Droege, ICRC: Mr. President, Excellencies, Ministers, Distinguished Guests, Ladies and Gentlemen, you are all very tired, and don't want to listen to another long presentation so I will try to do a short presentation. I have been asked to talk about the subject of private military and security companies, and in that respect there are two issues that I want to address. Private military and security companies are not a new phenomenon. Civilians accompanying the armed forces, private security companies are something that has existed for a long time. What is new however is that they get closer and closer to combat operations and that creates a whole set of new problems from a humanitarian point of view and the other thing that is certainly new is the amplitude of the phenomenon. How many companies there are? How big the companies are? The two issues that I want to address therefore are on the one hand, the status, the rights and the obligations of the personnel of those companies and on the other hand, the obligations of states in that respect. We often here, we are hearing every second or we read ,every second, a newspaper article, that private military and security companies work outside the framework of the law and that there is a legal vacuum, there is nothing to hold them to account. What I want to do with you are to actually go through that argument and to actually look if there really isn't any law out there, if there really isn't any accountability. So, on the first point, the status, rights and obligations of those companies, what are they? What is the status of the personnel of those companies? And let me just say a little aside on the companies themselves. The company under international law, as a legal entity, in general doesn't have rights and obligations. So I will focus on the individuals who work for the companies, the personnel of the companies.

In armed conflict, in international law of armed conflict, you have only two possibilities, there can be either combatants or there can be civilians. From the ICRC perspective, there is no third status; there are either combatants or civilians. Combatants are defined in IHL as either the members of regular armed forces or as members of organized armed groups, which belong to a party to the conflict. Now members of regularly armed forces, they generally are not. It can be that the armed forces of a State decide to incorporate members of private security companies into their armed forces when they call upon them to support them. This is something that was done by the government of Papua New Guinea sometime ago when it wanted to fight insurgency in its own country and it called upon a private company whose personnel were then incorporated into the armed forces in order to do so. The second group of people who can be combatants are organized armed groups belonging to a party to the conflict. They're traditionally militia, militia who, for instance, resistance groups and who work on behalf of the government. Can we say that private militaries and security companies belong to such armed groups? I think in theory it is possible. Because if they have an organized structure, if they are big enough, if they have a disciplinary system, and if they are under the effect of control of one of the parties to the conflict, it is in theory possible that they would form such an armed group and therefore would generically be part of the armed forces of a state, next to the regular armed forces. However, we haven't seen in practice a situation that we can qualify like that because in general, when you employ, as a country, when you contract a private military or security company, you won't usually have so much control and direction over them as to be able to say that that company really is an armed force that belongs to you as a party to the conflict. Nonetheless, it could, in theory be possible. So what we are left with is that they must be civilians, and that, at first sight, when we look at pictures in television of black hordes of people who are heavily armed is quite counter-intuitive, because you think that civilians shouldn't walk around like this. Sometimes with quite heavy weaponry, sometimes even having helicopters and so forth, and this is usually not what civilians do. Now international Law of Armed Conflict doesn't prohibit civilians expressly from carrying arms and, in fact, a lot of civilians in a lot of countries carry arms. It also doesn't expressly prohibit

them directly participating in hostilities. By that I mean combat operations however it approves of it but the consequences of civilians directly participating in hostilities is that they lose their protection against attack. So what we have to look when we look at private security personnel is whether they are actually directly participating in hostilities, in which case, they become legitimate objects of attack. And what is direct participation in hostilities, now that's a very long subject. It's not, as easy as it always seems but we have some quite clear guidance on what it is and what it is not if in the middle we have some grey areas where we might argue. So, what it is not, for instance is, bodyguards for diplomatic personnel. That is something that is a very common activity of private security companies but that's certainly not combat operation, its privatization of security. Guarding of construction sites in places, guarding of the sites for developmentary construction, accompanying and providing security for humanitarian personnel, none of that would amount to combat operations or to direct participation of hostilities. So we have a whole set of activities that those companies are employed for or contracted for which certainly doesn't fall under combat operations even though it might involve armed services, on the other hand, we have things that quite clearly amount to participation in hostilities, guarding military objectives, guarding legitimate military objectives, for instance, would be one of those weapons depots, accompanying military convoys is probably something that amounts to a combat operation because what you are really doing is securing military personnel or military material, to move around the combat zone so you are directly participating in hostilities. Interrogation of prisoners; is that direct participation or not? I would argue that it depends on what that interrogation is done for but, I would certainly argue that if you are interrogating prisoners, for instance, to obtain military intelligence that could very well amount to direct participation in hostilities. Now again as I said, the consequences of that is that if private military and security personnel participate in hostilities, participants in combat operations in an armed conflict situation then they are liable to be attacked.

One of the things I want to address briefly is the question of mercenarism. Mercenarism isn't a status in the law of armed conflict such as combatant status or the fact that someone is civilian. Mercenarism is however something that is regulated, on the one hand, in IHL and on the other hand in two conventions, one of the United Nations and one of the, now, African Union, which try to combat mercenarism. Mercenaries are defined in IHL and the definitions in the UN and AU conventions are squarely similar. It's defined in a very narrow way. To be a mercenary you have to fulfil six cumulative criteria, which narrows down the definition quite a bit.

One of the criterions is that you have to be explicitly employed to directly participate in hostilities and you have to be in fact directly participating in hostilities. Now as I said to you, most of the activities of those companies are not activities that involve combat operations. They will be body guards, they will be logistics, they will be maintenance of weapons systems, and they might be cooks and so forth. Though most of that doesn't fall within direct participation in hostilities and therefore falls outside of the mercenarism definition. The other restriction of the mercenarism definition, which is extremely important to bear in mind, is that as a mercenary, you cannot be a national of either of the parties to the conflict. So of you take the situation, for instance like Iraq, most of the private security personnel in Iraq, even those contracted by foreign companies are Iraqis. So none of those Iraqis could fall under the definition of a mercenary, nor could, in a situation like Iraq, anyone from the United States or the UK because they are all nationals of a party to the conflict. So that reduces the definitions of mercenaries to such an extent that, really, even though we might have some people who still fall under this definition, and being private security personnel, the vast majority of private security personnel doesn't fall within that definition and therefore the whole concept of mercenarism as it is defined at the moment in international law doesn't really capture the phenomenon of private military and security companies as it exists in temporary arms conflicts. However, as I said some people might still fall under it if they

are foreigners, if they are nationals of third States, if they are explicitly hired for combat operations in which case under IHL, in international armed conflicts the consequence is that they have no prisoner of war status. Other than that there isn't much consequence because, as I said before, as civilians they are not supposed to participate in hostilities anyway they can be attacked of they do. So that's the consequence, basically, of being a civilian participating in the hostilities or if you wishes, a mercenary. Under the UN and African union convention, however, there is an additional restriction for mercenaries in the sense that, states that have ratified those conventions have an obligation and have committed themselves to criminalize such activities and must therefore criminalize mercenary activity as well as the use of mercenary activity. Certain states have implemented legislation to that effect. Peru, for instance, quite recently implemented legislation to prohibit and criminalize mercenarism.

As I said, to come back to our IHL and humanitarian perspective on the status, rights and obligations of private military and security personnel, most of them are civilians which means they are not supposed to directly participate in hostilities although there is no explicit prohibition, if they do participate in hostilities they may be legitimately attacked. They have the rights of civilians, however, and they have the obligation as well, if they are in a situation of armed conflict, to respect the rules of IHL which means that they are not supposed to commit violations of IHL and are criminally responsible if they commit serious violation of IHL, meaning war crimes. So, under international law, they are responsible to respect International Humanitarian Law. So there you see, there isn't really a legal vacuum, any individual who goes into an armed conflict even private military or security personnel is supposed to respect the laws of IHL, and that's very important. However, obviously, individuals don't hold themselves accountable so, we do have to look at states in order to have a really complete picture of what the obligations are, in such situations.

When we look at states we have to break it down in order to get a clearer picture because the phenomenon of global private military and security companies and the phenomenon of those companies going from one place to the other, hiring people from all over the place has the consequence that many, many states are involved. I'll give you an example to make that clearer. Imagine you have a company like Armour Group or Egis or another company that is incorporated in the United Kingdom. So you have an English company, that company is hired by the US Government, so by another State, to provide services in Iraq, a third state, and say you are looking at the activities of personnel who might not be from any of those places but might be from, for instance, Fiji or Philippines or Napole or Peru or Chile. You then have four states involved, you have the home state of the company, you have the contracting State, you have the state on whose territory the company is active and you have the home state of the national, the individual who is hired by the company. What are the obligations of all those States? According to Common Article I to the Geneva Convention, all States have an obligation to respect and ensure respect for International Humanitarian Law, which means that all of those states must not only abstain from violating the law but must also take positive measures in order to provide incentives and ensure respect by private parties to respect the law. That obligation is the most obvious when you look at a territorial state. Any state, on whose territory armed conflicts are fought, on whose territories you have people involved and acting in relation to the conflict, has an obligation to ensure that on it's territory, IHL is respected the most important obligation there, of course, is to prosecute and punish serious violations of IHL. The contracting state is the state that is nearest to the company and therefore, it can, under international law (under the rules established or codified, coming from customary law under international law commission) those can be directly responsible for the activities of private actors if those private actors perform inherently governmental functions or also if those actors act under the direction, control or instructions of the state. Say you have a contracting state and that state hires a

private company in order to run its prison system. We have a lot of states, at least in the Western world, in the US, in the European countries, who have privatized some of their detention systems. Now if in those detention systems, people are interrogating or providing other services that have a direct relation to prisoners, if those companies then act under the direct instructions, direction, control of the State, then any activities of that private actor is attributable to the state. That's quite important in relation to states that contract those companies. However I must say that not all states that have a big industry contract those very much, for instance, the United States contacts a lot of private military and security companies. The United Kingdom on the other hand, has a big industry of private military and security companies but doesn't contract a lot of people. Most of the private military and security industry in the UK has private industry as clients. But, nonetheless, if a state is the contractor of the company, then that state might be directly liable for what the company does. However, you need a certain amount of effective control so that not any contract that you are passing with the company will make any activity of that company, of course, attributable to the State because that would go far too much. States contract things out all the time, which doesn't mean that any activity of any private actor that they contract is attributable to them. However, you can quite easily imagine, say, in a detention facility, that you have direction and control of the military and in those situations, acts are attributable to them. The third state that we have is the home state of the company, the home state of the company also has the obligation to ensure respect for IHL. How can it do that? It can, for instance, have a system of licensing for its exports of military services, just like states have export systems and export licensing system for weapons, then they could equally have export licensing system for armed services, for military services, in which case they can impose respect for IHL as a criterion in order to obtain a license or withdraw a license, for instance, if that isn't respected. So lastly you have the state of nationality of the individual that state of course can hold the individual criminally accountable when the individual comes back to the state and if the state gets any information that the individual hasn't respected the laws of war.

However, even though you might not have a legal vacuum on the international law level, when you look at the domestic level and the domestic practice, is when you notice that really there is a gap in accountability and why is that? Because in order to really hold people accountable to violations, you need strict legislations to implement the international obligations and you need the practice, you need the political will in order to hold individuals accountable. Also we of course know that, although the territorial state might be the state that normally under any international law is really the sovereign state that should deal with violations happening within its territory, very often in situations of armed conflicts, the structures of that state might be quite weak, the traditional system might be weakened and in those situations, the territorial states have problems holding people accountable, so that then what you need is other states, such as the exporting states, to hold people accountable. What happens here is that, although in civil law systems you have less problems because, normally in Civil Law systems, you have quite broad extra-territorial jurisdiction over your nationals. In common law systems you have much less territorial jurisdiction, it means that the territorial state can't hold people accountable and exporting states doesn't have enough extra-territorial jurisdiction, then you are really left in the gap in the possibility to hold people accountable.

I will say a bit on what states have done in this respect because I think its quite interesting and we can take some lessons from it. Take a state like Sierra Leone, for instance. Sierra Leone has legislation in place on its territory that if there are private military and security companies and if private military and security services are required, then the companies require a license in order to be able to provide those services and the license has a number of criteria attached with it so that the Government of Sierra Leone, or rather the mechanism that supervises the licensing system has a possibility of ensuring that no violation swill be committed. Another

territorial state clearly with a strong presence of private military and security companies is Iraq. One of the regions of Iraq, the Kurdish Region also has a licensing system in place on the part that it governs and the Iraqi government is at the moment looking into regulation for those companies in order to have no gaps in accountability. Afghanistan , at the moment, has quite a sophisticated regulation by which again , it has a board to grant authorisation to companies when they want to provide military or security services it has quite a number of requirements attached to it for a company to be allowed to provide those services, so the company has to show that it has appropriate training, it has to show that it has appropriate training also in weapons systems, that it has the required licenses for carrying weapons and using weapons, it has to show who its personnel is, what the background of the personnel is, it has to deposit a bond; so there are all sorts of mechanisms by which states are trying to really regulate those companies and make them accountable to the states. Not accountable to the states, that's probably the wrong way of putting it, but rather make the states able to monitor those companies so that they don't work, precisely in what we call a legal vacuum. A contracting state like the United States progressively has put into place, more and more legislation, it had as a common law country, very restricted extra-territorial jurisdiction so that it couldn't really reach a whole lot of people who are acting outside of US territory. Of course, you've all read about the Black Water Scandal and the way that it is not clear whether the people were working for the state in Iraq could actually be held accountable under US law. These are gaps that the United States is at the moment trying to address, in order to leave fewer gaps in accountability. That is also that is pending, at the moment, in the US parliament.
South Africa has been a big exporter or has been a big exporter of private military and security companies and the South African government has tried to address this. The South African government is also a party to the mercenarism convention and South Africa has tried to really curb the activities of South Africans going out into other situations of armed conflicts is something that is quite counter to South Africa's understanding of its own role in the understanding of its own role, particularly in Africa and it doesn't necessarily want to see South Africans involved in all sorts of armed conflict around the world so South Africa has put limitations on people to be able to go out and so if you want to go out, you're not supposed to do so for private military or security activities, you can apply for license if you want to do humanitarian activities. But there again another way for a country to really monitor the export the private military or security activities and I think our South African colleague will say something about that in a minute.

So, you have a lot of discussion, you have a lot of progress in terms of national regulation implementation. There is still a lot to be done however and also of course practice makes it very very difficult when you're in a situation of armed conflict to prosecute violations, just because it's difficult to secure the evidence, it's difficult to get testimony from the witnesses and so forth. However you have to have legislation in place, you have to have the resources in place in order to really hold people accountable for violations that they are committing.

So from an ICRC perspective, this is what is most important and I cannot emphasise it enough. There is not so much legal vacuum from the point of view of international law. International law prohibits violations of IHL by private military and security companies in situations of armed conflict. So is it prohibits it, there's not much more that you need from a humanitarian point of view. However, you need also domestic legislation. I was really focussing on the humanitarian law. You also need states to decide what activities companies are allowed to do on their territory? What services can they do on their territory? What services can they export and so forth? From our point of view, because most of these companies provide, most of the personnel of those companies are civilians, it would be, from an ICRC perspective, much better to exclude direct participation in hostilities by any security personnel. That should be something that the regular armed forces do. Security activities like bodyguards and so forth are something different, and are certainly

something that, probably in the modern world, would be quite difficult to fight. On the other hand it's very important in situations of armed conflict to have a clear distinction between combatants and civilians. Civilians should possibly not take part in any war activities, if I may say it in an un-technical way.

You need the structure and resources at the domestic level to hold people accountable when they commit violations. I'll say one last thing about an initiative by the Swiss government because the ICRC collaborates in that initiative. The Swiss government has started, about two years ago, an initiative in which it invited concerned governments, so governments which are either big exporting states of private military or security companies or states on whose territory those companies are very present or states who have quite some experience with private military and security services, in order to discuss the phenomenon, and particularly also in order to re-affirm the pertinence of the international legal framework for the activities of private military security companies. Secondly, also to develop best practices for all the different states concerned in order to not only re-affirm existing international legal obligations but to make them much more practical and to show states how they can regulate those companies. Now that is with our prejudice of course to an absolute ban by some states such as South Africa on exporting private military or security services or having private military or security services on your territory. The Swiss initiative is limited to saying, as long as those companies are there, as long as they are present in situations of armed conflict and providing armed activities we have to reckon with that phenomenon and we have to really do something about no violations being committed, again this is without any prejudice to other initiatives. The second initiative I would like to mention in that respect is the activities of the United Nations Human Rights Council, which is a working group on mercenaries, consists of five independent experts and that working group has been tasked by the human rights council to look again at the international legal framework, and possibly also to come up with proposals for principles or for a declaration or even for a binding instrument on the activities of the companies. So, its very well possible that within the united nations framework, there will be further activities on those companies there will certainly be further discussion, I don't think it's a subject that's going to go away its only a subject that's going to draw our attention for quite some time to be and so I'll look forward to your questions and your comments and thank you very much.

Mr. Len Blazeby, ICRC: Thank you very much Cordula, for that very stimulating presentation on an area of law which needs really to be looked at because it's very pertinent in many of today's conflicts. I think we'll be welcoming questions and comments from the floor now, and I think we'll start with south Africa who will make a very short presentation from the floor in relation to their experience of legislation in this area. Thank you South Africa.

Representative of the Republic of South Africa: Thank You Mr. Chairman, Actually this is more a comment than a presentation. Let me start by just saying that prior to the new dispensations South Africa was a country with a high level of manifestations of private military and security services. A number of countries in the African continent were destabilised, in part, by such companies having their domicile in South Africa. Post Apartheid South Africa advanced because of a caring society, peaceful co-existence and international solidarity. One of the first post-apartheid tasks was thus to entrench a culture of human rights and thus accede to all international treaties relevant to the advancement of international humanitarian law. The Regulation of Foreign Military Assistance Act of 1997 and the Prohibition of Mercenary Activity and the Prohibition and Regulation of Certain Activity in an Area of Armed Conflict Act of 2006, were considered and passed into law by our parliament. The 2006 act amended the 1997 act, in that, it is less ambiguous in imposing prohibition on all South Africans, South African peasants, i.e. companies, citizens and permanent residents from rendering military related services abroad without governmental authority. The legislation is the most direct attempt at regulating private security companies

involved in military activities around the world. Important policy issues embodied in the act is that if people or entities wish to render services in conflict zones they must be regulated and thus held accountable for their actions. Another important aspect is the exemption granted to persons working with humanitarian organizations such as the United Nations, the International Committee of the Red Cross and the International Federation of the Red Cross and the Red Crescent Societies. This is to enable such persons to carry out their humanitarian duties without any unintended hindrances embodied in the 2006 Acts. The importance of the legislation is that it has acted as a deterrent for adventurous activities, often associated with mercenary activities. Thank You.

Mr. Len Blazeby, ICRC: Thank you very much South Africa. I now call for any other questions or comments from the floor in relation to this topic. I see Japan, followed by the People's Republic of China. Japan?

Representative of Japan: Thank You Mr. Chairman. My delegation has listened carefully, with great interest, to the presentations and comments provided by the previous speakers. We agree that this is a very complex issue. I would like to share with you our experience of a very small case and present our thinking on this question at the moment. In Japan, It was reported in 2005, that one Japanese national was found included among the employees of such Non-Japanese companies who was assaulted in Iraq. It was not surprising that this case was brought up during the session of the Japanese Diet, we considered from various aspects, the legal status of such a company and in particular the status of employees of such companies. Our present thinking on the matter is as follows:

One, the status under international law of the employee of such a company depends very much on the specific situation of his activity, relations between the employees of such company and regular armed forces and all the other united factors requiring case by case treatment considering individual circumstances most carefully. Therefore, whether or not, in a particular case, one falls under the definition of a prisoner, or mercenary as stipulated in the relevant provisions of Geneva Conventions and its protocols, we need to judge individually, and should avoid making generalization to cover all cases. Thank You

Mr. Len Blazeby, ICRC: Thank You very much for those comments Japan. I now call upon the People's Republic of China.

Representative of the People's Republic of China: Thank you Mr. Chairman. My delegation is also very thankful for the excellent and interesting presentation. According to us, we saw that the involvement by private military and security companies of armed conflict or post conflict activities must be governed by international humanitarian law, international human rights law and the laws of concerned countries. The second important thing that I want to emphasise is that, we saw that in general, persons of private military and security companies cannot be granted combatant status and should not conduct activities reserved for armed forces of a state. The third point is that, we also saw that a state cannot absolve itself, its international responsibilities and international law, should use private military and security companies. Besides that I would also want to comment personally on the presentation by Ms. Cordula Droege. According to my understanding, when we talk about IHL, which means this law applies only in, or in principle, in the situation of armed conflict, which means there is a war or there is armed conflict. However, after the armed conflict is ended, legally, the post conflict situation, it not only apply IHL, it also apply Human Rights Law. At the same time, the IHL is not applied wholly to the post conflict situation. So, it amounts that international law in theory has been set up to handle these kinds of situations. Thank you very much

Mr. Len Blazeby, ICRC: Thank you very much People's Republic of China for those comments and queries. I'd now like to call upon the Islamic Republic of Iran.

Representative of the Islamic Republic of Iran: Thank you very much Mr. Chairman**,** Mr. Chairman, I appreciate Ms. Droege for her useful presentation. This is one of the challenges of International humanitarian law. So we should pay attention delicately and sensitively to this norm setting process of the private military and security companies. My delegation believes that the activities of the companies should be based on the rules and principles of the international law and respecting the sovereignty of the states. On the other hand, very important issue that these companies, all of their activities should be observes human rights and International Humanitarian Law. So I have one question about this matter that, if madam answers my question, is there any national legislation in European countries or the United States, some companies that are acting or working in this field, is there any national legislation of this company in that country that who has an extra territorial activities? Is there any cooperation between some of these companies and different countries? And if there is, would you please elaborate more whether these companies are private military corporation or not? Or part of the government? Thank you.

Mr. Len Blazeby, ICRC: Thank you very much. Do we have any other contributions or questions? We'll ask Cordula to reply to those questions that we've had from the floor. And if there are any more as a result of that we might take a little bit more time.

Ms. Cordula Droege, ICRC: Thank you very much for your comments and questions. I don't have very much to add to the comment from the distinguished delegate from China, and I agree absolutely, you have to look on a case by case basis at what the status of people is. They can be combatants or they can be civilians. Most of them as a matter of practice, at the moment are civilians because they are not members of the regular armed forces or the militia but if they are incorporated into the armed groups, they are combatants. So, you really have to look for every individual and their exact activity and their exact way of being deployed.

As for the comments by the distinguished delegate from China, I thank you very much on those, because one of the things said is that states cannot absolve themselves from their obligations by hiring private contractors. That's also completely true, it's also something we emphasise a lot at ICRC and in that respect may I mention that in the 2006 issue of the Review of The International Red cross, there's a whole volume about private military and security companies and you all see there that is one of the things, the legal advisors of the ICRC also writes. I'll give you an example, for instance, in humanitarian law both prisoner of war camps and civilian internment camps, its stated very clearly in the Geneva Convention that they have to be under the direct responsibility of the military officer of detaining power which means that while in peace time it means nothing in international law that prevents you from completely privatizing your prison system, actually under international humanitarian law you have an obligation to have prisoners of war and civilian internees under command responsible by a military officer. So that is something that you can't contract out, that's an obligation that you keep. Similarly of course as an occupying power you keep all obligations as an occupying power that you have to ensure the security and the well being of the population of the territory you are occupying. So those are just some examples to show what a delegate from China said. In terms of not agreeing that there is legal vacuum, now I completely agree with you that IHL only applies in situations of armed conflicts that post conflict situations would fall out of that, although, of course we have to be very careful because sometimes things are politically called post conflict situations even though they are armed conflicts and IHL continues to apply. But, say you have situation completely outside armed conflicts which you can well have because you have for instance, training of armed forces and a lot armed forces of developing states are trained by military contractors in peace time. So, what applies then is of course human rights law, and of course human rights law doesn't apply directly to private actors at least. This is the prevailing view of human rights law and there's a discussion on that but usually states agree that human rights

law doesn't bind private actors or at least the treaties don't.

However, I still don't argue that you have a complete vacuum because under human rights law, states not only have an obligation to respect human rights law, but they also have an obligation to protect their citizens or people in their jurisdiction against violations by other private actors. Now, where I think your example comes back to what I was saying before you were saying while for instance tale the situation in Iraq, if there is no legislation in place, of course there is no accountability. But I think that reinforces what I said before that indeed I think the problem is even though international human rights law provides obligations and principles, you really need national legislation in place because of course otherwise, there's no way that the state will be really able to hold people accountable. So national legislation and national practice is extremely important in order to fill any legal gaps that we might have. Then there was a comment by the distinguished delegate from Iran about legislation being in place in some of the exporting countries. It would be very difficult for me to review all of the exporting countries, The United States being, of course, the biggest contracting Government of private military and security companies has a lot of legislations in place. There's a directive by the Department of Defense on how to contract private military and security companies, there's an agreement between the Department of Defense and the Department of States on the use of private military companies in Iraq which also has rules on the use of force and there's a lot of statutes on Extra-Territorial Criminal Jurisdiction, you have the Uniform Code of Military Justice, you have the military extra territorial jurisdiction act, you have an act on special maritime jurisdiction under which actually, one private contractor who had actually beaten someone to death on a military base in Afghanistan was held accountable in a civilian court in the united states and sentenced to prison. It's a case called the *Passaro.*

Lastly there is something called the military extra-territorial jurisdiction act now it would lead far too much into detail to really provide you with the detail of all the legislation. Suffice is to say, at the moment, that of course legislation being in place is one thing, you need the resources, you need the evidence, you need the testimony of the witnesses in order to hold people accountable and all of that is a huge challenge for any state that has to apply extraterritorial jurisdiction. A country like the United Kingdom has far less jurisdiction in place which again has to do with the fact that that, of course, is a Common Law country so its jurisdiction doesn't reach very much outside of the territory. however, if look at the mere humanitarian point of view, of course the UK has legislation in place for prosecuting war crimes and can at anytime prosecute war crimes even when they are committed abroad. There are other statutes, for instance, that provide extra territorial jurisdiction on murder, for instance, but I wouldn't be able to tell you enough the details of domestic UK legislation. Other countries such as Switzerland, Germany or France, because they are civil law countries have much more extra territorial jurisdiction in place so it's much easier for them to prosecute their own nationals if they commit crimes abroad. If you look at the sum of the states that are responsible; the territorial state, the exporting states, the states whose nationals go out to work for private security companies, you probably have enough in place that somewhere people can always be held accountable. Usually the problem that you have then is the political will to prosecute, the practical possibilities to prosecute as I said, evidence, testimony and so forth and all of those are challenges that I think are not new so much in terms of the regular armed forces but quite new in terms of private actors, and so the situation is certainly far from perfect as it is now and much more will need to be done in that respect. Thank you.

Mr. Len Blazeby, ICRC: Thank you very much. Any other states wish to make a comment or ask questions? Yes, Egypt?

Representative of the Arab Republic of Egypt: Thank you very much and I would like to thank Ms. Droege for her presentation. I have a small question for you, that, with the beginning of the global war on terrorism, a new

expression creeped up which is *Illegal Enemy Combatant*, and a whole new procedure came with this new expression like the Rendition for Interrogation, which is sending the illegal enemy combatant to his national country to be interrogated and sent back to whatever state, also the legality of the flight on which this illegal enemy combatant is transported to different destination. The question is whether this particular term is shown under Geneva Convention or not? If it does show, what type of treatment should be granted to the illegal enemy combatant? Thank you.

Ms. Cordula Droege, ICRC: A bit outside the PSCs, I'll try to answer to the best of my abilities. As I said before, under IHL there are only two statuses, you are either Combatant or a civilian. From an ICRC perspective, there is no third status. It's either or. Civilians are not supposed to combat, clearly because of the principle of distinction which means that if you are going to have to distinguish between combatants and civilians, then it would be much better if only combatants were combating and civilians were not, because then you can distinguish. There has always been, the phenomenon of civilians taking up arms and that is, there's a very famous article from the 1950's about *Unlawful Belligerence*, which is basically the concept of civilians taking up arms and directly participating in hostilities. How should those civilians be treated, I will not use the term "Illegal Enemy Combatants" because in ICRC we don't use that term, because it doesn't appear in IHL. So you are either a combatant or a civilian. You might be a civilian directly participating in hostilities the consequence of that is you lose protection against attack. Clearly in an international armed conflict, you are not a prisoner of war, because you are a civilian so you are not entitled to civilian of war status, however, you are entitled to the protection of the Geneva Convention because you're a civilian. There are certain restrictions in the Geneva Conventions on people who pose an imperative threat to security in Article V. They are mainly restrictions on communication. That isn't to say you are not a civilian, that isn't to say you are not protected by the Geneva Convention or if applicable additional Protocol I or customary law protecting civilian detainees including Article 75 of Additional Protocol I, which provides for the basic treatment, so no torture, no ill treatment and so forth and also provides for basic judicial guarantees if you are prosecuted for a crime. Whereas combatants have combatant immunity, that means they cannot be prosecuted for the mere fact of participating in hostilities because that's what soldiers do, so they can be prosecuted for committing war crimes, but they can't be prosecuted for fighting. Civilians can be prosecuted for fighting, but again if they are, the fundamental judicial guarantees have to be respected. Thank you.

Mr. Len Blazeby, ICRC: Are there any other states that would like to comment or make questions? Yes sir, from Libya. Thank you.

Representative of the Great Socialist People's Libyan Arab Jamahiriya: (*translated)*
If it is acceptable that there could be security and private companies for protection of private individuals during war or during armed conflicts. How can we accept the existence of military companies? How can we accept having a military private company according to international law? Thank you.

Ms. Cordula Droege, ICRC: Thank you for the question. There is no obligation on any state to accept private military companies. Any state is free to ban private security and military services to be either offered on its territory or be exported from its territory. So nothing obliges us to accept those companies. Nothing in IHL however, prohibits the deployment of armed services, certainly not when they're outside of combat functions, such as body guards for diplomats or for instance a lot of humanitarian organisations these days, our colleague Lee Moroney, who was here earlier was telling me about some demining companies in Iraq who use the services of private security companies. So nothing in IHL prohibits that either. The question of mercenarism as I said, it can be that, personnel working for such companies fulfils all the criteria for falling into the category of a mercenary. In that case, that person, if the country has ratified or is party to the

Mercenarism convention has an obligation to criminalise that activity. However as I said that, the problem with the definition of mercenarism is that it is so narrow, that you cant capture this modern phenomenon of private military and security companies with the concept of mercenarism. The concept of mercenarism was really developed after mainly, the Second World War during the wars of decolonisation, wars of liberation, and of course activities of mercenaries particularly on the African continent who were destabilising newly elected or new governments in place. That's the history of the mercenary's convention. The private military and security industry as it exists now is quite different in nature and in phenomenon also in amplitude. Therefore, the mercenarism concept doesn't really capture that entire phenomenon. Thank you.

Mr. Len Blazeby, ICRC: Thank you. I've been advised that we have to finish by six o'clock. So, perhaps the final intervention? Once again by Iran.

Representative of the Islamic Republic of Iran: Thank you Mr. Chairman. I am sorry that I interrupted very late but the legal question is, we know that the states are held accountable for any violation of International Humanitarian Law, on the other hand, non-state actors under some circumstances and conditions for example, if they are related to the organized militia according to the Additional Protocols, they are held responsible but the international and domestic private companies namely non state actors are not accountable or as far as the actual international humanitarian law dictates, one cannot hold them accountable. On the other hand the employees or members of these private companies, they are held accountable according to the international law. Then what is the suggestion? The legal entity, the private legal entity could not be held responsible, but the individual members of these private international companies are binding and they are held accountable. What is the suggestion? Because now, today the personal entity has to be held accountable are very large accepted in international law? Now we have the responsibilities of international organisations along with the responsibilities of states which is one of the items under discussion of the international law commission. Then what is your suggestion that along with the individual responsibility such non-state actors could be held accountable.

Mr. Len Blazeby, ICRC: Thank you. Cordula?

Ms. Cordula Droege, ICRC: Thank you. That's a very good question but in a way it goes much further than just private military and security companies. Any private or multinational company, the phenomenon, begs the same question. Private companies are not legal entities that have any obligations under international law and there is quite a long standing debate in human rights law whether private or multinational companies should be accountable for human rights violations because of course a lot of violations have been said to be committed by the extractive industry in other states and so forth. Now, it's true that under, IHL its individuals who are bound and human rights law not only individuals and certainly not companies. So what would the suggestion be? I think one way around is though, is to say that none the less, states have an obligation to ensure respect for IHL but also to protect people from violations of their human rights, both on their territory and under their jurisdiction. So, states have the possibility to regulate companies as legal entities and I think one of the best ways to protect victims, that's a personal opinion of mine, is to have appropriate tort law in your own national system so victims of companies can actually bring a complaint against the company. There's no possibility for the company to hold anyone criminally accountable that's for the State to do. So from the victims perspective, what is important for you is to get justice and to get repairational compensation and that I think in terms of company law is to have good tort law systems in place so that individuals can go before the national courts and defend their rights against the companies.

Mr. Len Blazeby, ICRC: Thank you very much. Even though I did say that that was the last intervention, there is one more from the

People's Republic of China. So please if you would like to pose that. Thank you.

Representative of the People's Republic of China: Thank you Mr. Chairman. I apologize for taking the floor again. I must say that I fully agree that the territory jurisdictions are very important however when you take the cases in Iraq, the House of Lords of UK and also the European courts have made decisions concerning this kind of situation. So, which means that the international human rights law cannot be applied outside the European territory which means if there is human rights abuses by a private company in Iraq, only the Iraqi court can punish this kind of situation and the European legal courts did not take this kind of cases into consideration because they have decided that they will not apply human rights law extra territorially. So in theory, your comment is right but in fact, the legal rules has showed that this is not right, as you have mentioned. And I also agree that states could agree or object whether they accept the private company or not, however, the only countries that need this type of companies are those countries that could not decide their own security, they are aware of that situations so you can ask them to recognize or punish those exporting companies. Thank you very much.

Mr. Len Blazeby, ICRC: Thank you very much. Cordula, if you would like to respond?

Ms. Cordula Droege, ICRC: Yes thank you. Just briefly on your second comment, I mean I made that remark when I was giving the presentation that it is indeed a problem that a territorial state of course, very often has very weak structures that is very difficult for it to hold accountable. Which makes it all the more important to have this extra territorial jurisdiction by the exporting states. Now, I don't completely agree with your reading of the European convention on Human Rights, I mean the House of Lords and the Al-Skeini case has clearly said that the European convention on human rights applies to Mr. Al-Skeini, who was in a detention facility of the UK military of Iraq. So, to some situations the European convention of human rights applies. In any case, the fact that human rights law doesn't necessarily oblige a state to exercise, to protect people who are outside of its territory, from activities of companies which are incorporated in its countries, is true. Of course, the reason for that is that in theory it's the territorial state that has the obligation and we know that in practice that is a problem. That doesn't mean though that states are not allowed to put into place tort law that can apply extra territorially and in fact for instance, the United States with the Alien Torts Claims Act and the Tortue Victim Protection Act has done so, and you can, as a victim, outside of the country, bring a case in US courts to that effect, and there are other states which have tort law which also applies to torts committed by their nationals including legal entities which are their national abroad. So again it's a question of putting that into place on the domestic level. In order to fill any gaps that might exist for the protection of victims who are probably in situations where the structures are weakened and where you need some other mechanism to cope with that.

Mr. Len Blazeby, ICRC: Thank you very much. I think you will need at this point of time to close the session but I thank you very much Cordula for your presentation and also responses to the questions and also to the floor and to the delegates for their interesting comments and questions which I think brought quite a bit of discussion. I now hand back to the Secretary General, for the closure of the day. Thank you.

Amb. Dr. Wafik Zaher Kamil, Secretary-General of AALCO: Thank you so much. I'll be very brief because we have to vacate the hall for the dinner. First at the outset I would like to, on behalf of all of you, to thank very much the ICRC, all the panelists who have given us an excellent perspective of the horrors which are surrounding humanity. Either cluster munitions, or landmines or all these weapons which are just devastating and killing civilians as well as military. As a legal body, I think, we have to take this very seriously or urge and explain or give more elaboration to our member states to be part of all the international instruments which are supposed to bind and completely eradicate these weapons from our planet. The horrors we

have seen are beyond my perception as civilian diplomats though we are not much aware how much the damage of this kind of weapons can do to humanity. So as a legal body we have to act very seriously and I think in the resolution which will up come from this meeting we will reflect all what we have heard and seen and we'll have a close cooperation with ICRC to bring forward a work program as a legal body for that. Again I thank you very much and to the International Committee for Red Cross, I hope there will remain very close cooperation between our two organisations. Thank you very much. Excellencies I would like to make a small announcement, the drafting committee will meet immediately after we leave this hall. Thank you very much.