Presentation made by UN Working Group on the Use of Mercenaries to:

Western European and Others Group
Regional Consultation and Meetings held with other 4 Regional Groups of UN Human Rights Council

Activities of Private Military and Security Companies: Regulation and Oversight

Geneva, 14-16 April 2010
PMSCs were actively recruiting former security forces from the region to work in Iraq and Afghanistan, without the knowledge of the authorities taking advantage of weak or inadequate domestic regulation and legislation and lack of national economic opportunities.

PMSC exporting military and security services were blurring the dividing line between public and private sectors.

PANAMA 2007
Participants discussed the principles under which a comprehensive system of oversight and regulation for PMSC industry should be based such as:

- Vetting systems for the selection of PMSC employees
- An effective system for the licensing of PMSC
- National, regional and international control and monitoring

Participants also discussed the legal status of PMSCs in CIS countries
REGIONAL CONSULTATIONS

- Participants emphasized that PMSC’s activities had risen worldwide.
- Concern was expressed to the effects of PMSC’s activities and their personnel on the enjoyment of human rights.
- And on the fact that PMSC are increasingly taking over functions that were until recently inherent to the sovereignty of States.
- The legal framework needed to be clarified and further strengthened.

BANGKOK 2009

- The WG introduced the elements of a possible draft convention on PMSCs.
REGIONAL CONSULTATIONS

Participants emphasized:

- The impact of mercenary activities on human rights and the growing presence of foreign PMSCs operating in Africa in the absence of clear oversight and monitoring mechanisms.

- The legal gap at the international level vis-à-vis their activities.

- The importance of sub-regional and regional cooperation to combat mercenary activities.

- The need to ratify the OAU and the UN conventions on mercenaries.

The Representative of the African Union indicated its engagement in a process of revision of all existing OAU Convention and encouraged the Commission and African States to discuss the possibility of regulating PMSCs at the regional level during this process.
The Working Group presented the principles and contents of the text of the draft convention, in particularly of the:
- need for a new UN instrument
- other initiatives going on in the region and the pertinence of the recommendation of the Parlementary Assembly of the Council of Europe on the need of the adoption of a convention on PMSC
- complementarity with the Swiss Initiative
- comments sent by a number of States, including Spain on behalf of the EU, Australia, Canada, Switzerland, U.K and USA
A COMMON PATTERN IN ALL REGIONS OF THE WORLD

LACK OF COMMON STANDARDS FOR

- REGISTRATION
- LICENCING
- VETTING
- TRAINING
- SAFEKEEPING OF WEAPONS
UN COMMISSION ON HUMAN RIGHTS RESOLUTION 2005/2 ESTABLISHED THE UN WORKING GROUP ON THE USE OF MERCENARIES MANDATING IT, INTER ALIA,:

☐ “TO MONITOR AND STUDY THE EFFECTS OF THE ACTIVITIES OF PRIVATE COMPANIES OFFERING MILITARY ASSISTANCE, CONSULTANCY AND SECURITY SERVICES ON THE INTERNATIONAL MARKET ON THE ENJOYMENT OF HUMAN RIGHTS, PARTICULARLY THE RIGHT OF PEOPLES TO SELF-DETERMINATION, AND TO PREPARE DRAFT INTERNATIONAL BASIC PRINCIPLES THAT ENCOURAGE RESPECT FOR HUMAN RIGHTS ON THE PART OF THOSE COMPANIES IN THEIR ACTIVITIES";

TO ELABORATE AND PRESENT CONCRETE PROPOSALS ON POSSIBLE NEW STANDARDS, GENERAL GUIDELINES OR BASIC PRINCIPLES ENCOURAGING THE FURTHER PROTECTION OF HUMAN RIGHTS,
Draft international basic principles for PMSC to respect human rights

Proposals on new standards, general guidelines, basic principles encouraging the further protection of human rights

Content Scope Elements of a possible UN Draft international convention on the regulation and monitoring of PMSC
HAS ADOPTED TWO REPORTS recommending “that the Committee of Ministers draw up a Council of Europe instrument aimed at regulating the relations of its member states with PMSCs and laying down minimum standards for the activity of these private companies”:

- Report of the Political Affairs Committee. Doc. 11787 (22 December 2008)
- Report of the Committee on Legal Affairs and Human Rights Doc. 11801 (27 January 2009) on:

“Private military and security firms and the erosion of the state monopoly on the use of force”

Stating “its preference for a legally binding document (convention)”.
ONGOING INITIATIVES IN WESTERN EUROPE

- **SWISS INITIATIVE**
  - Montreux Document
  - International (Global) Code of Conduct

BASED ON SELF-REGULATION
The Montreux Document is useful in reiterating existing obligations of States and PMSC and their personnel under international humanitarian and human rights law;

The description of good practices section could prove to be a useful tool for setting out guidelines on both private military and security companies and State activities. The practice of PMSC, however, shows that they do not take into account the good practices of the Document;

The unbalanced representation of Western Group States (9 out of the 17 adopting States) and the PMSC industry denotes the heavy involvement of countries where most of the security industry originates and operates from (or 16 out of 34 which endorsed it).

The restrictive character of the document is illustrated by the indication that international humanitarian law only applies in armed conflict ;
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<tr>
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<td>UK</td>
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<td>USA</td>
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SWISS INITIATIVE

- It does not foresee a centralized system at the State level which would be responsible for registering all private military and security industry contracts for applying common standards and for monitoring contracts and vetting procedures;

- The Working Group has fully adopted the wording of Article 27 which stipulates that “Superiors of PMSC personnel, such as
  a) governmental officials, whether they are military commanders or civilian superiors, or
  b) directors or managers of PMSCs, may be liable for crimes under international law committed by PMSC personnel under their effective authority and control, as a result of their failure to properly exercise control over them, in accordance with the rules of international law.

Superior responsibility is not engaged solely by virtue of a contract”
THE USE OF PMSC IN HUMANITARIAN OPERATIONS

- Is blurring the distinction between humanitarian non-profitable organizations and corporations working for pecuniary gain.

- Humanitarian and aid assistance organizations are not perceived as neutral, often associated with the intervening force and targeted as such.
THROUGH SELFNESS COMMITMENT AND COMPASSION FOR ALL PEOPLES, BLACKWATER WORKS TO MAKE A DIFFERENCE IN THE WORLD AND PROVIDE HOPE TO THOSE WHO STILL LIVE IN DESPERATE TIMES.
Alarmed by the conference regarding Haiti on 9-10 March 2010, organized by IPOA, the trade association representing many PMSCs.

Letter to USA Secretary of State Ms. Clinton by 18 NGOs urging that funds pledged by the United States and other members of the international community, be directed towards rebuilding Haiti, not to international private security contractors.
UNOCHA INITIATIVE

A joint research on the use of private security providers in humanitarian operations with the Center on International Cooperation and the Humanitarian Policy Group.

Supported by a grant from the Government of Canada.

To establish norms and standards of usage to guide humanitarian actors.

BASED ON THE FOLLOWING PREMISES:

- Lack of a common approach and methodology in the UN system in hiring private security providers.
- Hiring security services locally can compromise neutrality by feeding into conflict dynamics, or can create new sources of conflict and insecurity by degenerating into protection rackets or sparking localized arms races.
- Use of international PSPs can compromise acceptance by introducing a foreign element, and distancing the agency from the beneficiaries and host community (Cockayne 2006).
« In Afghanistan, the U.N. has contracted an Afghan subsidiary of the London-based company, IDG Security Ltd., to provide 169 Gurkhas, according to figures compiled by the U.N. Mission in Afghanistan (some U.N. officials say there may be as many as 400 Gurkhas protecting U.N. officials). They are charged with supplementing security provided by the Afghan National Police. »

9 February 2000, Sandline listed as registered supplier in UN database

Sandline International is pleased to report that the company is now a registered supplier in the United Nations Common Supply Database (UNCSD).

This database is used as a source of information by a number of UN and UN-related organizations seeking qualified suppliers to undertake specific contracts.

It would seem that the PMSC Greystone of the Blackwater Group had also been registered in UNCSD
PMSCs DO HAVE AN IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS
NISSOR SQUARE
BAGHDAD

MASSACRE OF 16 SEPTEMBER 2007

- 17 CIVILIANS KILLED AMONG WHICH CHILDREN AND WOMEN
- OVER 20 CIVILIANS INJURED
- WITHOUT PROVOCATION ACCORDING TO US MILITARY REPORTS
- NONE OF THE EMPLOYEES ALLEGEDLY RESPONSIBLE FOR THE INCIDENT HAS BEEN YET PROSECUTED

EXTRAJUDICIAL SUMMARY EXECUTIONS
“The existence of a zone of de facto impunity for killings by private contractors operating in Iraq and elsewhere has been tolerated for far too long. Government officials with whom I met acknowledged this lack of accountability, and it now seems to be recognized that this vacuum is neither legally nor ethically defensible—nor politically sustainable”.

Phillip Alston
UN Special Rapporteur on Summary Executions
L-3 COMMUNICATIONS-TITAN CACI

ABOU GHRAIB SCANDAL

TORTURE and OTHER CRUEL INHUMAN or DEGRADING TREATMENT OR PUNISHMENT
CLAIM BY TWO HUNDRED AND FIFTY PLAINTIFFS UNDER THE ALIEN TORT

- rape and threats of rape,
- sexual assaults;
- electric shocks; beatings,
- prolonged hanging from limbs;
- forced nudity; hooding;
- isolated detention;
- being urinated on;
- religious intolerance.
POSSIBLE IMPLICATION OF OTHER PMSC IN TORTURE TECHNIQUES

- MITCHELL JESSEN & ASSOCIATES would have advised the CIA in torture techniques.
- GLOBAL RISKS SOLUTION INC. allegedly of having trained the Policía Federal in León (Mexico) in torture techniques.
- SPECIAL INTERVENTION GROUP (SIG) their close protection and body-guarding techniques would include torture techniques.
IMPACT OF PMSC ON HUMAN RIGHTS

- BLACKWATER killing of 3 Iraqi guards; killing of two Afghans

- ERINYS three civilians wounded in Kirkuk Oct. 2007; death of an American soldier in 2005

- DYNCORP killing of an Iraqi driver Nov. 2007

- UNITY RESOURCES GROUP killing of 2 Iraqi women Oct. 2007; shooting of a 72 Australian
IMPACT OF PMSC ON HUMAN RIGHTS

Many “security guards” have experienced:

- contractual irregularities
- poor working conditions, including excessive working hours, partial or full non-payment of salaries,
- ill-treatment and the neglect of basic needs such as access to medical services

(UN Working Group on the use of mercenaries)
OTHER ALLEGATIONS AGAINST Xe/BLACKWATER

- Presented by the families of those killed and wounded in six different incidents between 2005-2008

- Unprovoked civilian shootings by Xe/Blackwater personnel in Iraq.

- Xe/Blackwater is accused of committing: war crimes, assault and battery, wrongful death, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent hiring, training and supervision, and tortuous spoliation of evidence
OTHER ACTIVITIES OF PMSC
COVERT OPERATIONS: SCANDAL IN GERMANY

Allegedly, a Blackwater/CIA team went in dark in Germany following a naturalized German citizen from Syria, accused of being an Al Qaeda supporter, “to take him down” (However, finally the order was not given).

Vanity Fair
Jan. 2010
OTHER ACTIVITIES OF PMSC

BLACKWATER INVOLVED IN RENDITION FLIGHTS OF C.I.A.

- It helped provide security on C.I.A. flights transporting detainees after the 2001 Blackwater paramilitary operations is a scandal waiting to be examined.” US Representative Rush D. Holt
- A former top C.I.A. officer. “There was a feeling that Blackwater eventually became an extension of the agency.”
THE REVOLVING DOOR SYNDROME OR THE CONNECTIONS BETWEEN PMSC AND NATIONAL MILITARIES, POLICE, INTELLIGENCE SERVICES, MINISTRIES, AGENCIES AND NATIONAL ADMINISTRATIONS AT LARGE

EXECUTIVE DIRECTORS OF BLACKWATER

• Cofer Black, former head of C.I.A. Counter Terrorism Center
• Enrique Prado, former chief of Operations of C.I.A.
• Rof Richter, former second in command of C.I.A. clandestine services
PMSC AND PIRACY: A NEW FIELD OF ACTIVITIES

“ALAKRANA” SPANISH TUNA FISH BOAT SEIZED BY SOMALI PIRATES IN 2009
AS A RESULT OF THIS AND ANOTHER INCIDENT THE SPANISH GOVERNMENT CHANGED THE LAW TO PERMIT PMSC TO CARRY MILITARY WEAPONS ON MERCHANT VESSELS

APRIL 2010
THE SPANISH MINISTRIES OF DEFENSE AND INTERIOR AUTHORIZED PROVIDING 19 ADDITIONAL SUB-MACHINE GUNS TO SPANISH MERCHANT VESSELS FISHING IN THE INDIAN OCEAN (EL PAÍS)
'Pirate' death puts spotlight on 'guns for hire'

The death of a suspected pirate off the coast of Somalia has drawn attention to the use of armed private security contractors on board merchant vessels.

Several organisations, including the International Maritime Bureau (IMB), have previously expressed concerns over the use of armed security contractors.

The IMB director stated:

✓ "While we understand that owners want to protect their ships, we don't agree in principle with putting armed security on ships,"

✓ "Ships are not an ideal place for a gun battle."

By Kathryn Westcott
BBC News 24 March 2010
PRIVATIZATION OF WAR

A NEW NON-STATE ACTOR: THE PMSC

IRAQ:
- 180 Private Companies providing services to militaries
- 190,000 Private Contractors
- 48,000 Private “security guards”

Rate Militaries/Private Contractors
- First War Golf: 50 to 1
- War Golf 2003: 1 to 1

AFGHANISTAN:
- 60 Private Companies
- Between 18,000 and 28,000 Private “security guards”

Estimates from various sources 2007-2008
PRIVATIZATION OF WAR
A NEW NON-STATE ACTOR: THE PMSC

IRAQ

Private Contractors 190,000

Militaries 150,000

- MORE THAN ANY OTHER ARMY OF THE COALITION EXCEPT USA
- MORE CASUALTIES (1000 KILLED, 8000 INJURED) THAN OTHER ARMIES OF COALITION EXCEPT USA

OF WHICH A "DISPOSAL ARMY" OF 48,000 PRIVATE "SECURITY GUARDS"
“Private guards” RECRUITMENT IN IRAQ

- SOME 180 000 PRIVATE CONTRACTORS
- SOME 50 000 « Private guards » « Corporate warriors »

- AMERICANS: 3 000 TO 5 000
- EXPATRIATES: AUSTRALIANS, BRITISH, CANADIANS, SOUTH AFRICANS
- THIRD COUNTRY NATIONALS: CHILEANS, FIJIANs, NEPALESE, RUMANIAN, HONDURANS, PERUVIANS, COLOMBIANS, NIGERIANS, POLISH, BULGARIANS, PHILIPPINOS...

- IRAQIS: 25 000 TO 30 000
- OVER 1 000 KILLED
- OVER 8 000 INJURED

FROM INDIVIDUALS WITH BAD HUMAN RIGHTS RECORDS TO LEGITIMATE ARMY OFFICERS
Nationality of Civilian Contractors Reported Working in Iraq and Afghanistan

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Number of Workers</th>
<th>Percent of Total Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign Workers*</td>
<td>45,194</td>
<td>67%</td>
</tr>
<tr>
<td>American Workers</td>
<td>22,465</td>
<td>33%</td>
</tr>
</tbody>
</table>
The latest figures of U.S. Department of Defense (April 2010) show there are more civilian contractors in Afghanistan than there are soldiers (Pro Publica)

- 107,292 U.S.-hired civilian workers
- 78,000 soldiers
<table>
<thead>
<tr>
<th>Company</th>
<th>Deaths</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aegis Defense Service</td>
<td>26</td>
<td>2.03%</td>
</tr>
<tr>
<td>Al- Naseem Company For General Trading</td>
<td>22</td>
<td>1.71%</td>
</tr>
<tr>
<td>ArmorGroup International Limited</td>
<td>36</td>
<td>2.81%</td>
</tr>
<tr>
<td>Blackwater Security Consulting</td>
<td>29</td>
<td>2.26%</td>
</tr>
<tr>
<td>DynCorp International</td>
<td>46</td>
<td>3.59%</td>
</tr>
<tr>
<td>EOD Technology, Inc.</td>
<td>25</td>
<td>1.95%</td>
</tr>
<tr>
<td>Hart GMSSCO LTD.</td>
<td>41</td>
<td>3.20%</td>
</tr>
<tr>
<td>KBR</td>
<td>95</td>
<td>7.40%</td>
</tr>
<tr>
<td>Kulak Construction Company</td>
<td>30</td>
<td>2.34%</td>
</tr>
<tr>
<td>L-3 Communications (includes Titan)</td>
<td>358</td>
<td>27.90%</td>
</tr>
<tr>
<td>Prime Projects International</td>
<td>27</td>
<td>2.10%</td>
</tr>
<tr>
<td>PWC Logistics</td>
<td>54</td>
<td>4.21%</td>
</tr>
<tr>
<td>Sallyport Global Services</td>
<td>20</td>
<td>1.56%</td>
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<tr>
<td>Sandy Group</td>
<td>57</td>
<td>4.44%</td>
</tr>
<tr>
<td>The Shaw Group</td>
<td>20</td>
<td>1.56%</td>
</tr>
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</table>

- 289 civilians killed since war began in Afghanistan
- 100 have died in last six months.
GAPS IN INTERNATIONAL AND NATIONAL LEGISLATIONS
DIFFUSED RESPONSIBILITY AND LACK OF ACCOUNTABILITY

A labyrinth of contractual and insurance layers and shells

Many contracts outsourced by U.S.A. government to PMSCs are in their turn subcontracted to other companies registered in U.S.A. or abroad

Examples: Triple Canopy subcontracted Your Solutions Inc. Illinois whose subsidiary Your Solutions Honduras recruited Latinos for Iraq
Blackwater subcontracted Grupo Tactico Chile

These companies (some of which are “ghost” that have never been legally registered) are entrusted with selecting and recruiting military and police personnel from third countries.
DIFFUSED RESPONSIBILITY AND ACCOUNTABILITY

- Blackwater guards have been involved in nearly 200 shootings in Iraq since 2005.

- Despite the terms of the contracts which provide that Blackwater can engage only in defensive use of force,

- The report indicates that Blackwater reported that in over 80% of the shooting incidents its forces fired the first shots.

According to a Congressional report October 2007
LACK OF VETTING PROCEDURES

The Case of Danny Fitzsimons

Was diagnosed as suffering from Post-Traumatic Stress Disorder (PTSD) in January 2004, while still in the army. Assessments by consultant psychiatrists in May 2008 and June 2009 reported that the symptoms had worsened.

- Despite this, in August 2009, he was hired by ArmorGroup and sent out to Iraq without undergoing a full medical assessment.

- Within 36 hours of his arrival, the incident took place in which two colleagues died and an Iraqi was injured.

Danny Fitzsimons

The Queensland Times
LACK OF VETTING PROCEDURES

The case of three Hungarians

A court in Dakar Senegal, on 27 March 2010, sentenced three Hungarians to life imprisonment convicted of killing their driver as they travelled to Sierra Leone to seek work for work as security officers in diamond mines.

They were found guilty of criminal conspiracy, murder and theft and strangling of their Senegalese driver and stolen his vehicle.

One of the Hungarians was a deserter from the French Foreign Legion, while another deserted from the Hungarian military, prosecutors indicated.
The case of South African PMSC employed in Iraq
Among PMSC employees in Iraq were found South Africans having committed crimes against humanity when they served in the South African police and army during the former apartheid regime.
LACK OF VETTING PROCEDURES

In the Attempted Coup d’Etat in Equatorial Guinea of March 2004:

- Osmosis of Mercenaries and employees of Private Military and Security Companies
- Employees of the South African PMSC Meteoric Tactical Solutions (Hermanus Carsle, Lourens Horn) were providing security services to Western Embassies in Baghdad while on holidays they decided to join for the Equatorial Guinea operation.

Former directors of the company Executive Outcomes (Simon Mann, Nick du Toit)
LACK OF VETTING PROCEDURES

The case of two Norwegians in Congo

- In May 2009 two Norwegians were charged with murder, attempted murder, espionage, conspiracy and armed robbery after their driver was found dead with a gunshot wound to his head.

- They were reportedly in the country to set up their own security company. Norwegian military ID cards, counterfeit UN hats and employee ID badges with both correct and false names were allegedly found by police at an apartment shared by the two men in Uganda.

- The employee badges were believed to use the logo of a Norwegian security company, Special Interventions Group (SIG), on false pretences.

- A source at SIG said: "We were supposed to have a partnership with these guys a year ago but it didn't happen. They decided to try it for themselves and start their own company. Unfortunately they chose our name and used our ID cards."
Elements for a possible draft Convention on PMSCs
STATE SOVEREIGNTY AND THE EROSION OF THE LEGITIMATE USE OF FORCE

FROM PEACE OF WESTPHALIA 1648

- THE CONCEPT OF COLLECTIVE SECURITY ENSHRINED IN THE CHARTER BASED ON THE PRINCIPLE THAT EACH OF ITS MEMBERS, AS SOVEREIGN STATE, HAS THE CONTROL OF A GIVEN TERRITORY AND THE MONOPOLY OF THE LEGITIMATE USE OF FORCE
  - INTERNALLY (POLICE)
  - EXTERNALLY (ARMY)

UNITED NATIONS CHARTER
SINCE PEACE OF WESTPHALIA (1648) THE EXISTENCE OF THE STATE HAS BEEN BASED ON THE EXERCICE OF THE LEGITIMATE USE OF FORCE (Max Weber)

STATE WOULD BE EVOLVING NOW FROM EMPLOYER TO REGULATOR OUTSOURCING INHERENTLY FUNCTIONS

PRIVATIZATION OF USE OF FORCE BLURS THE SPHERES OF:

• PUBLIC AND PRIVATE
• ECONOMIC AND POLITICAL
• LICIT AND ILLICIT
ACTIVITIES OF PMSC

A HIGHLY SPECIFIC AND DANGEROUS EXPORT WHICH REQUIRE “EXPORT CONTROL” MECHANISMS
· General provisions
· General Principles
· Legislative regulation, oversight and monitoring
· State responsibilities and remedies
· Obligations of IOs and PMSCs
· International oversight and monitoring
· Final Provisions
# PURPOSES OF DRAFT CONVENTION

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<th>Purpose</th>
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<td>Reaffirm the State responsibility for the legitimate use of force</td>
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<td>Identify inherently State functions that cannot be outsourced</td>
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<td>Provide guidance for regulation by States of the activities of PMSCs and their potential sub-contractors</td>
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<td>Promote cooperation between States regarding the licensing and regulation of PMSCs activities</td>
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<td>Establish an international monitoring mechanism and promote the creation of monitoring bodies at national level</td>
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SCOPE OF APPLICATION

States and International Organizations

Not directly applicable to PMSCs and individuals

All situations, not only conflict situations
Respect for IHL and IHRL and accountability for violations. Liability of superior of PMSCs personnel for crimes under international law committed by PMSC personnel under their effective authority and control.

**State responsibility for the legitimate use of force**

**State sovereignty. Principles of sovereignty, equality and territorial integrity**

**Prohibition of outsourcing inherent State functions to PMSCs**

**Prohibition of outsourcing the use of certain firearms**

**Rule of Law**

- Prevent PMSCs from trafficking and illicitly manufacturing firearms
- PMSC’s activities consistent with IHL and IHRL
- Compliance with legislation of the territorial State
- Agreements with the legislation of home, territorial and national State
INHERENTLY STATE FUNCTIONS WHICH CANNOT BE OUTSOURCED

- direct participation in hostilities,
- waging war and/or combat operations,
- taking prisoners,
- law-making,
- espionage,
- intelligence,
- use of and other activities related to weapons of mass destruction and police powers, especially the powers of arrest or detention including the interrogation of detainees.
A NATIONAL CENTRALIZED SYSTEM OF REGISTRATION OF PMSC

- PROHIBITING REGISTRATION OF PMSC OFF-SHORE

A LICENSING SYSTEM FOR

- COMPANIES
- PERSONNEL
- CONTRACTS

PERIODIC REPORTS TO UN ESTABLISHED BODY ON

- REGISTRATION
- LICENCING
Guarantees for the Use of Force

- Rules on the use of force and firearms by PMSC
- Only legitimate ways of acquiring and transporting weapons

Guarantees for the Use of Force

- Use of force when strictly necessary and to the extent authorized by the state

Guarantees for the Use of Force

- Use of force regulated by military norms and human rights and international humanitarian law when PMSC provide services under agreement with armed forces of a state
STATE RESPONSIBILITY

Criminalization of offenses
- Criminalization of the export/import of PMSCs services without license or authorization
- Investigation, prosecution and punishment of violations covered by the convention
- Effective remedies

Establishment of jurisdiction
- Jurisdiction over offenses committed on the territory of a State party or by one of its nationals or against a national
- War crimes, crimes against humanity, genocide and grave breaches of the Geneva Conventions are to be penalized under the Convention.
STATE RESPONSIBILITY

Extradition. Criminal offenses under the convention to be included in any existing and subsequently concluded extradition treaties between States parties.

Mutual legal assistance in investigations, prosecutions and judicial proceedings

Transfer of criminal proceedings to another State to the ICC

Liability of legal persons. Establishment of the criminal and civil liability of PMSCs for participation in offenses penalized under the convention

Obligation to lift immunity applicable to PMSCs and their personnel under other conventions and agreements

Fund to rehabilitate victims of offenses

Obligation of PMSCs to compensate victims of violations
INTERNATIONAL COMMITTEE ON THE REGULATION, OVERSIGHT AND MONITORING OF PMSCs

International monitoring mechanism for the implementation of the convention
RESPONSIBLE FOR RECEIVING AND DEALING WITH

Reports from States parties

Petitions from individuals and groups of individuals

Confidential Inquiries: in situ visit

Complaints from States parties – Conciliation Commission
IMPLEMENTATION OF MANDATE GIVEN TO THE WORKING GROUP BY UN HUMAN RIGHTS COUNCIL IN OPERATIVE PARA. 13 OF ITS RESOLUTION 10/11 OF 26 MARCH 2009

- consult with IGO, NGO, academic institutions and experts on the content and scope of a possible draft Convention on PMSCs;
- share with Member States elements for a possible draft convention on PMSCs requesting their input;
- report to the fifteenth session of the HRC on the progress achieved in the elaboration of the draft convention;
NEW DRAFT TEXT SENT TO 192 UNITED NATIONS MEMBER STATES FOR COMMENTS IN 2010

ELEMENTS

TEXT OF ARTICLES OF A POSSIBLE

DRAFT CONVENTION ON THE REGULATION, OVERSIGHT AND MONITORING OF PMSC
THE ELEMENTS AND TEXT OF DRAFT CONVENTION WILL BE SUBMITTED TO UN HUMAN RIGHTS COUNCIL IN 2010-2011. THE UN HUMAN RIGHTS COUNCIL MAY ESTABLISH AN OPEN ENDED WORKING GROUP FOR THE ELABORATION OF A NEW INSTRUMENT.