



**General Assembly**

Distr.: General  
2 July 2010

Original: English

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**Human Rights Council**

**Fifteenth session**

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Report of the Working Group on the use of mercenaries  
as a means of violating human rights and impeding the  
exercise of the right of peoples to self-determination**

**Chairperson/Rapporteur: José Luis Gómez del Prado**

## **Summary**

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination was established in July 2005 pursuant to Commission on Human Rights resolution 2005/2. The Working Group is composed of José Luis Gómez del Prado (Spain), Chair during the time of the preparation of this report, Shaista Shameem (Fiji), Amada Benavides de Peréz (Colombia), Alexander Nikitin (Russian Federation) and Najat Al-Hajjaji (Libyan Arab Jamahiriya). Ms. Shameem took on the chair of the Working Group from April 2009 to April 2010.

The present report is submitted in accordance with resolution 10/11 of 26 March 2009 requesting the Working Group to report on the progress achieved in the elaboration of a draft legal instrument for proper consideration and action by the Human Rights Council.

Chapter I introduces the report and Chapter II presents an overview of activities undertaken during the reporting period, including a summary of its missions to Afghanistan and the United States of America and of its regional consultations held in Asia, Africa and Europe. Chapter III describes the progress achieved by the Working Group towards the elaboration of a possible new draft convention on private military and security companies. It summarizes the core rationale for the Working Group's proposals on the adoption of a new legal instrument on private military and security companies, its scope of application and its content. The report also provides a summary of the consultation process and the comments received from Member States and non-governmental entities on the proposed convention.

Finally, the Working Group recommends Member States to carefully consider the present draft proposal for a possible new international legal instrument regulating private military and security companies and the Human Rights Council to establish an intergovernmental open-ended Working Group with the task of drafting a new convention taking into account the initial work carried out by the Working Group on the use of mercenaries.

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1-3	
II. Activities .....	4-30	
A. Communications .....	7-8	
B. Press releases .....	9-11	
C. Country visits .....	12-23	
D. Regional consultations .....	24-28	
E. Other activities of the Working Group members .....	29-30	
III. Progress towards the elaboration of a possible new draft convention on private military and security companies .....	31-88	
A. Context and purpose .....	32-42	
B. Scope of application .....	43-46	
C. Content .....	47-57	
D. Comments from Member States and non-governmental entities .....	58-88	
IV. Conclusions and recommendations .....	89-93	

### ANNEX

1. Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council

## **I. Introduction**

1. In the present report, the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination describes the activities it has undertaken since it last reported to the Human Rights Council in March 2009. The report focuses in particular on the progress achieved in the elaboration of a possible draft convention on private military and security companies (PMSCs). It takes into consideration communications sent between 16 December 2008 and 18 April 2010.

2. The report is submitted pursuant to resolution 2005/2 of the Commission on Human Rights establishing the mandate of the Working Group and resolution 7/21 of 28 March 2008 extending the mandate of the Working Group.

3. The Working Group is composed of five independent experts serving in their personal capacities: José Luis Gómez del Prado (Spain), Chairperson during the period when this report was being drafted, Ms. Shaista Shameem (Fiji), Amada Benavides de Pérez (Colombia), Alexander Nikitin (Russian Federation) and Najat al-Hajjaji (Libyan Arab Jamahiriya). Ms. Shameem took on the chairmanship of the Working Group from April 2009 to April 2010. In April 2010, the Working Group decided to operate under a three-monthly rotating chairmanship for the last year of their mandate.

## **II. Activities**

4. In accordance with its usual practice, the Working Group continued to hold three regular sessions per year, two in Geneva and one in New York. The Working Group concentrated its efforts on its ongoing work on the development of a possible new international convention on the regulation of activities of PMSCs, discussed in detail in Part III of this report. It also carried out two country visits, held regular meetings with member States representatives, NGOs and experts and reviewed allegations regarding the activities of mercenaries and PMSCs and their impact on human rights and decided on appropriate action.

5. The Working Group has recently received information suggesting that in some instances PMSCs are supporting warlords and rebel groups. For instance, allegations suggest that in Afghanistan a number of PMSCs contracted by the Government of the United States have a privileged relationship with the Taliban. Other suggest that a German PMSC is considering deploying a significant number of military guards to Somalia to train warlord groups close to the self-proclaimed but not internationally recognized President of Somalia, Abdinur Ahmed Darman.

6. The collusion between PMSCs and rebel groups is a worrisome trend which calls for further attention, in particular in view of its potential impact on the enjoyment of human rights. Accordingly, the Working Group intends to engage in the near future with the authorities of the Governments concerned, seeking additional information with respect to both situations described below with a view to reminding all States of their responsibilities when contracting PSMCs and of the possible negative

implications when PMSCs operate in conflict zones without a legal framework or mechanism to ensure that they respect international human rights and humanitarian law.

## **A. Communications**

7. The present report covers communications sent from 16 December 2008 to 18 April 2010 and replies received from 1 February 2009 to 1 June 2010. The details of this correspondence and the information provided in response by Governments are reflected in an addendum to the report (A/HRC/15/25/Add.1).

8. A total of 17 communications were sent to 15 countries,<sup>1</sup> relating to alleged involvement of country nationals in mercenary activities in a foreign country and to activities of PMSCs and their impact on the enjoyment of human rights. In some cases, the Working Group sent similar communications to several Governments whose nationals were allegedly involved in the same incident. For half the communications sent, the Working Group received a complete or partial response from the Government concerned. The Working Group expresses its appreciation to those Governments that have provided substantive replies to its communications and invites those that have not done so to cooperate with its mandate from the Human Rights Council and the General Assembly.

## **B. Press releases**

9. In addition to its media advisories or press releases issued in connection to country visits, regional consultations and the holding of its regular sessions, the Working Group issued two press releases in connection to alleged mercenary activities in Bolivia and Honduras. On 29 April 2009, the Working Group expressed its grave concerns at allegations that mercenaries were involved in a plot against Bolivian authorities. It received some information from Governments concerned in response to its correspondence but in view of the international ramifications of the mercenary activities of the incident, the Working Group is calling on all the Governments concerned to carry out a transparent investigation into the incident. In this connection, it has requested the Bolivian authorities to share its findings with the Working Group.

10. On 9 October 2009, the Working Group issued a statement following reports that former paramilitaries from Colombia had been recruited in Honduras to protect properties and individuals from further violence between supporters of the de facto Government and those of the deposed President Manuel Zelaya. It urged the Honduran authorities to take all practical measures to prevent the use of mercenaries within its territory and to fully investigate allegations concerning their presence and activities.

11. In addition, following a decision from a United States Federal District Court to dismiss an indictment against five Blackwater security guards charged with voluntary manslaughter and firearms

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<sup>1</sup> Afghanistan; Australia; Bolivia; Colombia; Croatia; Fiji; Guinea; Hungary; Ireland; Israel; Papua New Guinea; Peru; Romania; South Africa; United States of America;

violations in connection with a shooting in Nisour Square in Iraq 2007 during which 17 civilians, among whom women and children, were killed and over 20 others injured, many seriously, the Working Group issued a statement expressing its concern that this decision might lead to a situation where no one would be accountable for grave human rights violations. The Working Group commends the Government of the United States for appealing this decision and calls for all necessary measures to be taken to ensure that in accordance with international obligations there is no impunity for such violations.

### **C. Country visits**

12. The Working Group undertook two country visits in the course of 2009, one to the Islamic Republic of Afghanistan and the other to the United States of America.

13. Afghanistan, together with Iraq, represents the largest theatre of operations for PMSCs and the United States, which has the largest military and diplomatic presence in Afghanistan, is the principal employer of PMSCs in the country. The presence and activities of PMSCs in Afghanistan are very much interconnected with the large number of unauthorized armed groups of various kinds on Afghan territory. The Ministry of Interior has estimated that no fewer than 2,500 unauthorized armed groups were operating in the provinces under governmental control, which represent less than half the territory of the country. There was a perception among interlocutors that many de facto non-State armed groups used the regularization process for PMSCs to disguise their groupings as private security companies, reinforcing the perception that PMSCs were a threat to peace and the stability of Afghanistan. In early 2008, the Government of Afghanistan adopted a comprehensive regulation to address some of these challenges and regulate the activities of PMSCs operating on its territory. However, the Working Group noted that there is a lack of systematic monitoring and reporting on cases involving the use of force by PMSCs on the part of the Government, the Afghan Independent Human Rights Commission (AIHRC) and the United Nations Assistance Mission in Afghanistan (UNAMA).

14. The Working Group did not receive first-hand information that PMSC personnel have engaged in direct combat activities since the adoption of the Regulation. Nevertheless, the Working Group noted that by protecting Forward Operating Bases in conflict zones, a civilian contractor, by protecting legitimate military targets, becomes a military target and may lose protection under international humanitarian law.

15. The vast majority of NGOs stressed that the high presence of armed private guards did not generate a feeling of increased security among the Afghan population and that, to the contrary, the large number of armed individuals, vehicles and weapons created a feeling of fear and insecurity. The AIHRC also underlined the lack of clarity regarding the jurisdiction applicable to PMSCs and the lack of accountability when crimes are committed. On the basis of its findings, the Working Group made several recommendations to the Government. The full report and a series of recommendations can be found in an addendum to this report (A/HRC/15/25/Add.2)

16. The Working Group visited the United States of America from 20 July to 3 August 2009. The Working Group found that the Government of the United States relies heavily on the private military and security industry in conducting its worldwide military operations. American PMSCs dominate this new industry, estimated to earn US\$ 20 to 100 billion annually. Private forces constitute about half the total United States force deployed in Afghanistan and Iraq.

17. The Working Group noted that the information accessible to the public on the scope and type of contracts between the Government of the United States and PMSCs is scarce and opaque. The lack of transparency is especially significant when companies subcontract to others. The situation is particularly opaque when United States intelligence agencies contract PMSCs. Given the agencies' power to invoke confidentiality in the interest of national security, the public does not have access to information on the company hired, the activities it has been contracted to carry out or the area of deployment.

18. The Working Group discussed with the authorities cases which raised concerns about the extent to which private security companies, hired for defensive guard duty, have joined in offensive military and intelligence operations and the existing close relationship between the intelligence agencies and PMSCs.

19. The Working Group examined information received with regard to the American company now known as Xe/Blackwater which had its licence revoked in Iraq following the shooting by its personnel of innocent civilians in Nisour square in Baghdad which killed 17 civilians and severely injured more than 20 others on 16 September 2007. According to a congressional report on the conduct of Blackwater in Iraq, Blackwater guards were found to have been involved in nearly 200 escalation-of-force incidents that involved the firing of shots – with Xe/Blackwater firing the first shots in 80 per cent of the shooting incidents - in Iraq since 2005. Despite the decision of the Iraqi authorities and the congressional reports, Xe/Blackwater was still operating in Iraq at least until September 2009.

20. The Working Group also reported on the alleged involvement of two United States-based corporations, CACI and L-3 Services (formerly Titan Corporation) in the torture of Iraqi detainees at Abu Ghraib prison, Iraq. CACI and L-3 Services were the United States Government contractors responsible for interrogation and translation services respectively at Abu Ghraib and other facilities in Iraq.

21. The Working Group noted that the Government of the United States had taken serious corrective action and welcomed the recent adoption by the American authorities of legislation and regulations aimed at strengthening further the oversight and accountability of PMSCs. It observed that the clarification of applicable jurisdiction had yet to lead to successful prosecutions and punishment of those responsible for human rights abuses and other crimes. The full report and recommendations aimed at improving the American oversight mechanism and at ensuring accountability can be found in an addendum to this report (A/HRC/15/25/Add.3).

22. The Working Group is planning a visit to Equatorial Guinea from 16 to 21 August 2010. The Working Group will focus its visit on the measures taken by the Government in the context of the attempted coups d'état conducted by mercenaries in 2004 and thereafter, including the judicial proceedings related to these cases. It will also study all relevant legislation in force regarding mercenary activities, together with the activities of PMSCs operating in the country.

23. The Working Group has also been invited to visit South Africa during the course of the year to discuss the current efforts of the Government to ensure oversight and monitoring of the activities of South African PMSCs and their personnel operating abroad.

#### **D. Regional consultations**

24. In accordance with General Assembly resolution 62/145 and Human Rights Council resolution 7/21, the Working Group held its three remaining regional consultations during the period covered in this report.

25. After the first consultation for Latin America and the Caribbean held in Panama in December 2007<sup>2</sup> and the second in Moscow for Eastern Europe and Central Asia<sup>3</sup> held in October 2008, the Working Group held regional consultations in Bangkok in October 2009 for Asia and the Pacific, in Addis Ababa in March 2010 for Africa, and in Geneva in April 2010 for the Western European and Others Group. Reports on each of these last three consultations are available as addenda to this report.

26. Participants at the consultation for Asia and the Pacific noted that PMSCs were on the rise and active worldwide and that the legal framework applicable to these groups needed to be clarified and further strengthened. Participants exchanged views on their national experience with PMSCs, with the representatives of Afghanistan and Fiji giving comprehensive presentations on the situation of PMSCs in their respective countries. The Working Group presented elements of its proposed draft convention on PMSCs for discussion.<sup>4</sup>

27. The consultation in Addis Ababa was attended by representatives of 20 African countries and by representatives from the African Union Commission. Participants provided comprehensive information on and engaged in discussion of recent mercenary activities on the continent and their impact on human rights, together with the growing activities of PMSCs in Africa. The Working Group presented the elements of the draft convention in some detail and States expressed strong support for the work done by the Working Group on the preparation of this text.<sup>5</sup>

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<sup>2</sup> See A/HRC/7/7/Add.5 of 5 March 2008

<sup>3</sup> See A/HRC/10/14/Add.3 of 26 February 2009

<sup>4</sup> The consultation was attended by representatives of Afghanistan, Bangladesh, Cambodia, China, Fiji, the Islamic Republic of Iran, Jordan, Myanmar, Pakistan, Qatar, Samoa, Thailand, Viet Nam and Yemen; as well as by the observer of Palestine. See report A/HRC/15/25/Add.4 of 1 April 2010

<sup>5</sup> The consultation was attended by representatives of Algeria, Angola, Burkina Faso, Cameroon, Central African Republic, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Madagascar, Malawi, Mauritius, Morocco, Mozambique, Niger, Sierra Leone, Sudan, Uganda, Zambia and Zimbabwe and by representatives from the African Union Commission. See report A/HRC/15/25/Add.5.

28. The most recent consultation, originally planned for October 2010 in Madrid, Spain, took place in April 2010 in Geneva with the representatives of Western European and Others Group (WEOG). The discussion focused on initiatives taken at the national and regional level by Western States as well as on elements for a possible new draft Convention as circulated by the Working Group to all Member States in early January 2010. The Working Group expressed its appreciation for the constructive comments on the document. While the Working Group noted the reservations of the EU and others with regard to a possible new convention on the issue, it underlined the shared goal of more effective regulation of the private security industry to ensure protection of individuals from human rights violations and ensure that when they occur, those responsible are held accountable and that victims have access to effective remedies.<sup>6</sup>

### **E. Other activities of the Working Group members**

29. On 27 May 2010, the Chair of the Working Group, Mr. Gómez del Prado, gave a presentation on the regulation, monitoring and oversight of PMSCs at a seminar at the Centro de Estudios Internacionales of the University of Barcelona. Academics, representatives of civil society, the armed forces, and security companies, the media, experts and diplomats participated at this event. From 31 May to 2 June 2010, he participated in an international drafting committee of independent experts at the Parliament of Catalonia on the development of a universal declaration on the human right to peace, an initiative under the Barcelona Declaration. Mr. Gomez del Prado focused his input on the implications of mercenary and PMSC activities for the enjoyment of human rights, and in particular on the accountability of PMSCs and their personnel.

30. Ms. Benavides de Pérez led a regional conference on mercenaries and PMSC activities in Latin America on 7-8 May 2009 in Bogota. The event was organized by the Universidad Externado de Colombia and the Javeriana University and gathered more than 150 experts, academics and civil society organizations, including representatives from the OHCHR Office in Colombia, the International Committee of the Red Cross in Colombia, of the “Regulating the Privatization of War” project, the European University Institute and a large number of NGOs. On 8 February 2010, Ms. Benavides de Pérez gave a lecture on “Privatization of security: challenges and risks for the international community” at the Universidad de Antioquia, Medellín, Colombia. She also presented a paper on “PMSCs in the context of international humanitarian law” on 5 April 2010 at the Cátedra Von Humboldt, Universidad Jorge Tadeo Lozano, Bogota. Finally, at a discussion on “accountability for Private Security Contractors? The role of the UN” on 19 May 2010, organizers from the Global Policy Forum and The Hague Appeal for Peace read an opening statement by Ms. Benavides.

## **III. Progress towards the elaboration of a possible new draft convention on private military and security companies**

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<sup>6</sup> The consultation was attended by representatives from Australia, Austria, Canada, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States of America, and representatives from the European Union. See A/HRC/15/25/Add.6.

31. In this chapter, the Working Group reports on the progress achieved towards the elaboration of a possible new draft convention on private military and security companies. It discusses the context, purpose, scope and content of such a convention. It also presents a summary of the consultation process in which it has engaged in accordance with resolution 10/11 of 26 March 2009 and a summary of the responses received from States, non-governmental entities and the academic sector. A draft of a possible international convention on private military and security companies is presented as an annex to this report.

### **A. Context and purpose**

32. The Working Group has repeatedly expressed its concern regarding the impact of the activities of PMSCs on the enjoyment of human rights. In its mission reports it has provided detailed information regarding grave human rights violations perpetrated by their employees, in particular when operating in conflict or post-conflict areas, and the lack of transparency and accountability of PMSCs. These concerns are based on the findings of the Working Group, particularly following its missions to countries where PMSCs are operating such as Afghanistan, where PMSCs are registered such as the United States of America and the United Kingdom and countries where personnel are being recruited such as Fiji and several Latin American countries.

33. The use of local and international PMSCs has impacted on the enjoyment of human rights in several countries, in particular where the industry has remained unregulated. For example, PMSCs have been drawn into military-type activities when operating in volatile areas and have been involved in combat and in many incidents involving the use of firearms.

34. Furthermore, several of these incidents have highlighted the blurring of the lines of responsibility between PMSCs and States, whether home States, contracting States or States of operations. In some instances, the identity and chain of command between the PMSCs and the client have remained unclear and have led to situations where no one has been held accountable.

35. In a letter dated 23 April 2010 to Member States, the Working Group summarized the core rationale for its proposals for the adoption of a new international legal instrument aimed at developing standards for the regulation, monitoring and oversight of the activities of PMSCs. The main arguments are presented below.

36. As stated in its previous report to the HRC (see A/HRC/10/14/Add.2), the Working Group assessed the existence of a regulatory gap covering the activities of PMSCs at the international level. While a number of rules under international humanitarian law and human rights law could apply to States in their relations with PMSCs, the Working Group observed that there have been difficulties in the application of domestic laws, in particular for international PMSCs operating in a foreign State, as well as difficulties in conducting investigations in conflict zones. The effect of this situation is that PMSCs are rarely held accountable for violations of human rights. Although there have been efforts to

address this glaring gap over the years, accountability of private military and security contractors continues to be a challenge, with a startling lack of prosecutions.

37. The second argument in favour of an international legal instrument is linked to the very nature of the PMSC industry and its impact on the enjoyment of human rights. The Working Group believes that services provided by PMSCs should not be considered ordinary commercial commodities that can be regulated through self-regulation initiatives. The services provided by PMSCs are highly specific and dangerous and involve trade in a wide variety of military and security services, which call for the development of international standards and oversight mechanisms.

38. The third reason relates to the fact that PMSC personnel cannot usually be considered to be mercenaries, according to the definition of mercenaries as set out in article 47 of Additional Protocol I to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts and in article 1 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 4 December 1989. The definition of mercenaries as used in those two conventions does not generally apply to the personnel of PMSCs legally operating in foreign countries.

39. The aim of a new binding legal instrument is not the outright banning of PMSCs but to establish minimum international standards for States parties to regulate the activities of PMSCs and their personnel. In addition, the Working Group, concerned about the extensive outsourcing of military and security functions and the growing role of PMSCs in armed conflicts, post-conflict and low-intensity armed conflict situations recommends prohibiting the outsourcing of inherently State functions to PMSCs in accordance with the principle of the State monopoly on the legitimate use of force. These functions are detailed later in the report.

40. The proposed convention would reaffirm the responsibilities of States regarding the activities of PMSCs. States are responsible for implementing their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations. To this end they have the obligation to take appropriate measures to prevent, investigate, punish and provide effective remedies for misconduct by PMSCs and their personnel. These legal responsibilities of States, which remain even if States choose to contract out certain activities, have been emphasized by the Human Rights Committee. The Committee stated that “the contracting out to the private commercial sector of core State activities which involve the use of force and the detention of persons does not absolve a State party of its obligations under the Covenant”.<sup>7</sup>

41. Finally, the proposed new legally binding instrument is aimed at ensuring that States take the necessary measures to promote transparency, responsibility and accountability in their use of PMSCs and their personnel, and establish mechanisms for the rehabilitation of victims.

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<sup>7</sup> A/58/40 (Vol. II) of 1 November 2003, Communication No 1020/2002, *Cabal and Pasini vs. Australia*, para.7.2, pp.357.

42. The Working Group believes that the Human Rights Council would constitute the best forum for the development of a new international instrument for the regulation, oversight and monitoring of PMSCs, to address the above-mentioned challenges, inter alia.

## **B. Scope of application**

43. Given that intergovernmental organizations, such as the United Nations, the North Atlantic Treaty Organization (NATO), the European Union and others are using the services of PMSCs, the Working Group considers it important to establish a framework by which such organizations may adhere to the convention within the limits of their competence with respect to PMSCs, their activities and personnel.

44. Drawing on the example of the most recent international convention to enter into force, the Convention on the Rights of Persons with Disabilities, which establishes in its article 44 that regional integration organizations shall be treated as States parties in matters within their competence, the Working Group included a similar clause in its draft convention.

45. Article 3 of the draft text states that the proposed convention applies to States and intergovernmental organizations, within the limits of their competence, with respect to PMSCs, their activities and personnel.

46. Finally, the draft convention specifies that it would apply to all situations whether or not the situation is defined as an armed conflict.

## **C. Content**

47. The draft convention as annexed to the report is in six parts.

48. The preamble reaffirms, inter alia, the relevant principles and rules of international human rights and international humanitarian law, expresses concerns about the increasing delegation or outsourcing of inherently State functions which undermine any State's capacity to retain its monopoly on the legitimate use of force, reiterates that responsibility for violations of international human rights and humanitarian law may be imputable not only to States but also to intergovernmental organizations and non-State actors, recalls the International Law Commission's Articles on State Responsibility, and the international commitment to prevent impunity for war crimes, crimes against humanity, genocide and grave breaches of the Geneva Conventions, acknowledges the duty of all States to prevent human rights violations through legislative and other measures, the duty to investigate reports of violations and, where appropriate, prosecute and punish offenders and to provide effective remedies to the victims, and also acknowledges the duty of all States to prevent violations of human rights or other abuses committed by or involving transnational corporations and other business enterprises considers that victims of human rights violations have the right to effective remedies, and declares that

mechanisms must be devised to ensure the accountability of States, intergovernmental organizations and PMSCs.

49. The general provisions of the draft convention are set out in Part I and include the purpose, definitions, and scope of application. The purposes of the present convention are:

- To reaffirm and strengthen the State responsibility for the use of force and reiterate the importance of the State monopoly of the legitimate use of force
- To identify those functions which are inherently State functions and which cannot be outsourced under any circumstances
- To regulate the activities of PMSCs and sub-contractors
- To promote international cooperation between States regarding licensing and regulation of the activities of PMSCs in order to more effectively address any challenges to the full implementation of their human rights obligations, including the right to self-determination
- To establish and implement mechanisms to monitor the activities of PMSCs and violations of international human rights and humanitarian law, in particular any illegal or arbitrary use of force committed by PMSCs, to prosecute the perpetrators and to provide effective remedies to the victims.

50. The terms used in the draft convention are defined in article 2. In particular, it proposes as a definition of a PMSC “a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities”. Military services refers to specialized services related to military action, including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities while security services refers to armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities.

51. The Working Group describes inherently State functions as functions that cannot be outsourced to PMSCs in any circumstances. Among such functions, consistent with the principle of State monopoly on the legitimate use of force, are the direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, knowledge transfer with military, security and policing application, 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.

52. The general principles governing the treaty are set out in Part II of the draft convention. The eight principles are: that the State party bears responsibility for the military and security activities of

PMSCs registered or operating in their jurisdiction, respect for the rule of law by PMSCs, respect of State sovereignty by PMSCs, the State party's obligation to prohibit PMSCs from directly participating in hostilities, terrorist acts and military actions in violation of international law, the prohibition on outsourcing inherently State functions to PMSCs, including the use of certain weapons of a nature to cause superfluous injury or unnecessary suffering and the prohibition on PMSCs and their personnel with regard to illegally acquiring, possessing or trafficking in arms and ammunitions.

53. Part III concerns the national regime of regulation and oversight, the obligation to license the services of PMSCs, the establishment of a national registry, the obligations of training and vetting the PMSC personnel and respecting fundamental labour standards and the regulation of the use of force and firearms by PMSCs.

54. The issue of States parties' responsibility to impose criminal, civil and/or administrative sanctions on offenders and provide remedies to victims are addressed in Part IV. The draft convention outlines State parties' obligations to ensure that the acts of carrying out inherently State functions, the unlawful use of force and firearms, and the unlawful use of certain weapons and illicit trafficking in arms by PMSCs and their personnel, are offences under the national legislation of State parties. In addition, all activities of PMSCs occurring without the required licence and authorization are also considered offences. State parties are required to ensure that individual criminal responsibility is established, that PMSCs and their personnel are held accountable and that effective remedies are provided to victims.

55. This part also covers areas such as the liability of legal persons and entities, the establishment of States' jurisdiction, the obligations related to prosecution and extradition measures. The draft instrument also provides for the establishment of an international fund for the rehabilitation of victims.

56. Part V deals with the establishment of a committee on the regulation, oversight and monitoring of PMSCs. In accordance with established procedures in international human rights treaties, the committee would receive reports by States parties on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this convention. The draft convention also envisages an inquiry procedure and an individual complaint procedure. It would also receive complaints from States parties which consider that another State Party is not giving effect to the provisions of the Convention and set up an ad hoc conciliation commission if deemed necessary. The draft also proposes that the Secretary-General establish an international register of PMSCs operating on the international market based on information provided by States parties. Each State Party would provide data annually for the Register on imports and exports of military and security services of PMSCs and standardized information on PMSCs registered in and licensed by the State Party.

57. Part VI lists the final provisions, including the ratification, entry into force, amendments and reservations, and is also based on provisions existing in other human rights conventions.

## D. Comments from States and non-governmental entities

### 1. Process

58. In accordance with Human Rights Council resolution 10/11 of 20 March 2009, the Working Group organized a series of consultation with a wide range of stakeholders on the content and scope of a possible draft convention from July 2009 to May 2010.

59. An initial draft text of a possible convention was circulated on 15 July 2009 to some 250 experts, academics and NGOs for comments. They were given until the end of September 2009 to provide their input on the content and scope of the Convention. The Working Group received some 45 written submissions from this group in response to its letter, comprising a total of over 400 comments.<sup>8</sup>

60. During their seventh session in New York in July 2009, the Working Group held two events organized by the International Peace Institute (IPI). The first was a lunchtime policy forum to explore current efforts inside and outside the United Nations to develop a more effective system of international regulation, oversight and accountability. Speakers included Peter Maurer, Ambassador of Switzerland, James Cockayne, International Peace Institute (IPI) Senior Associate and Shaista Shameem, as Chairperson-Rapporteur of the Working Group. The event attracted over 50 participants from embassies, the United Nations and from civil society.

61. The second event was a four-hour closed-door workshop with experts and civil society representatives, primarily based in the United States, to discuss the content and scope of a possible legal instrument for the regulation of PMSCs. The event gathered over 20 participants and provided an initial opportunity for the Working Group to discuss, in particular, the question of inherently State

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<sup>8</sup> The following institutions and individuals submitted comments: Geneva Centre for the Democratic Control of Armed Forces (DCAF); FAFO foundation, International Committee of the Red Cross, Human Rights Advocates, Omega Research Foundation, Alfred de Zayas, Geneva School of Diplomacy, Helena Torroja, University of Barcelona and Sònia Güell, Pompeu Fabra University, Victor Guerrero, Pontificia University Javeriana of Bogotá, Sabelo Gumede, Institute for Security Studies.; Dr. Alexander Volevodz, Mr. Ivan Safranchuk, Moscow State Institute of International Relations of Russian MFA; Prof. Marco Sassóli, Prof. Vincent Chetail, Lindsay Cameron, University of Geneva, Faculty of Law; Paul Higate, Bristol University; Emily Speers Mears, HPCR/independent consultant; Christopher Kinsey, King's College, London; Claribel de Castro Sánchez, UNED University; Olga Martín Ortega, University of East London and Kristopher Kerstetter, Linklaters LLP; Julio Jorge Urbina, University of Santiago de Compostela; Francesco Francioni and Christine Bakker, European University Institute, Florence; Susanne Schmeidl, expert on PMSCs in Afghanistan; Andrei Kozik, IILSR, Belarus; Vera Rusinova, Immanuel Kant State University of Russia; Ottavio Quirico, European University Institute, Florence; Natalino Ronzitti, LUISS University, Rome; Michael Love, United States Attorney; Petr Kremnev, Lomonosov State University, Moscow; Colombian Academic Network and input following an academic meeting in Ecuador; Cora Weiss, Hague Appeal for Peace; Doug Brooks, International Peace Operations Association, Washington; James Cockayne, International Peace Institute (IPI); Svyatoslav Shchegolev, MGIMO, Moscow State University of International Relations; Paul Robinson, University of Ottawa; Yuri S. Apukhtin, ZAO Neva Line, St. Petersburg; Gleb I. Bogush, Lomonosov Moscow State University; Vyacheslav V. Gavrilov, Law Institute, Far Eastern National University, Russia; Karen A. Gevorkyan, Yerevan State University, Armenia; Svetlana V. Glotova, Lomonosov Moscow State University and Natalya A. Zivadze, Institute for State and Law, Russian Academy of Science (RAS); Academy of Management TISBI, Kazan, Russia; Oumed Mansourov, Russian-Tajik Slavonic University, Dushanbe; Alexander B. Mezyaev, Academy of Management TISBI Kazan; Inna A. Orlova, State Marine Technical University of St. Petersburg; Zhyldyz Ch. Tegizbekova, Kyrgyz-Russian Slavonic University, Bishkek; Yuzejir Yu. Mammadov, Kazan State University, Russia; Drs. Carmen Quesada Alcalá (UNED) and Ruth Abril Stoffels (CEU-UCH) Spain; Dr. Adela Rey Aneiros (Chair Jean Monnet Faculty of Law, University of La Coruña) Spain; Dr. Cesáreo Gutiérrez Espada and María José Cervell Hortal (Universidad de Murcia) Spain.

functions that should not be outsourced to PMSCs and the system of implementation and enforcement provided for in the draft convention.

62. This meeting was extremely useful to the Working Group to have an initial discussion with experts on the scope, content and oversight mechanism provided for in the convention. This greatly assisted the Working Group in addressing some of the key elements of the draft as well as some potential gaps. The Working Group takes this opportunity to thank the IPI for organizing and hosting these two important events.

63. On 25 July 2009, at a meeting held by the Colombian Academic Network on Privatization of Security, Ms. Benavides de Pérez led a panel of experts discussion of the proposed draft convention in Bogota, Colombia. A similar meeting was held in Quito, Ecuador, which gathered 25 representatives of NGOs and of the academic sector on 26 August 2009. The conclusions and recommendations of both meetings were sent to the Working Group. The Working Group expresses its gratitude to the OHCHR Office in Colombia and Ecuador for hosting these two meetings.

64. Through one of its members, José L. Gómez del Prado, the Working Group also collaborated with a network of Spanish academics from 15 Spanish Universities, the Spanish Red Cross Centre for the Study of International Humanitarian Law, the Institute of Studies on Conflict and Humanitarian Action and NGOs regarding the elaboration of the draft convention. In this regard, a closed-door seminar organized by the Law Faculty of the Universidad Española de Educación a Distancia (UNED-the Spanish Open University) took place in Madrid, on 19-20 November 2010. During the seminar a number of constructive and practical recommendations were made which have contributed to improving the draft text.

65. From September to December 2009, the Working Group considered the comments received from all the above-mentioned stakeholders and drafted an amended version of the draft convention.

66. In a second phase and in accordance with the above-mentioned resolution which requests the Working Group to “share with Member States, through the Office of the United Nations High Commissioner for Human Rights, elements for a possible draft convention on private military and security companies, request their input on the content and scope of such convention and transmit their replies to the Working Group”, the Working Group prepared a “Note on elements for a possible draft convention on Private Military and Security Companies (PMSCs)” for Member State’s comments. This nine-page note was sent by note verbale on 4 January, with feedback requested by 15 March 2010. The deadline for comments was later extended to 15 May 2010.

67. The Working Group received written submissions from Australia, Azerbaijan, Belarus, Canada, Cuba, Ecuador, Egypt, Guatemala, Lebanon, Qatar, Russian Federation, Serbia, Slovenia,

South Africa, Spain (on behalf of the European Union), Switzerland, Trinidad and Tobago, the United Kingdom of Great Britain and Northern Ireland and the United States of America.<sup>9</sup>

68. The Working Group also received written submissions from the institutions of the Commonwealth of Independent States (CIS).<sup>10</sup>

69. In parallel to this process, the Working Group also received feedback on the ideas contained in the draft elements during the three regional consultations held in Bangkok, Addis Ababa and Geneva. In addition, the Working Group also organized briefings for all permanent missions in Geneva during its session in April 2010.

## 2. General comments

70. Many States and experts underlined their general support for a convention, highlighting the need to strengthen the legal obligations vis-à-vis PMSCs and to put in place a licensing and registration system. They also underlined the key role for the United Nations in monitoring the activities of PMSCs.

71. One country said that the draft convention should emphasize States parties' obligations to implement all international obligations, not only the norms of international human rights and humanitarian law.

72. Another comment raised the question of the legal status of the personnel of PMSCs which is not addressed in the draft text. It underlined that one of the objectives of a future convention should be the adoption of an international legal definition of the status of PMSCs, the establishment of criteria for the legalization of their activity, and distinguishing between the activities of PMSCs and other traditional forms of mercenarism.

73. Others raised the opinion that a treaty may not be the most effective way of improving oversight and accountability for the industry and argued that existing laws provided an effective framework for understanding States' obligations to regulate PMSCs and hold them accountable. They referred to other existing initiatives, in particular the Montreux Document,<sup>11</sup> which recalls existing obligations of States, PMSCs and their personnel under international law whenever PMSCs are present during armed conflict.

74. The industry conveyed to the Working Group that it is seeking to obtain greater clarity vis-à-vis its legal standing and greater validity in its public perception. The industry underlined the

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<sup>9</sup> Some of the comments are still in translation and may not have been fully reflected in this report.

<sup>10</sup> The CIS institutions that submitted comments include: the Executive Committee of CIS; the Committee of Heads of Law Enforcement Units of the Council of Heads of Customs Services of CIS Member States; the Coordinating Council of the Intergovernmental Courier Communications Service; the Coordinating Service of the Council of Commanders of Border Troops of the CIS; the Coordinating Council of Heads of Bodies for Tax/Financial Investigation of CIS Member States; the Academy of the Prosecutor General's Office of the Russian Federation; the Federal Protection Service of the Russian Federation and the Federal Immigration Service of the Russian Federation.

<sup>11</sup> A/63/467 – S/2008/636 of 6 October 2008

importance of having a treaty that enjoys the support of the key players involved in the debate in order to make a positive impact on the enjoyment of human rights by individuals.

### **3. Scope of the Convention**

75. Some of the comments received revolved around the direct applicability of some obligations outlined in the draft convention to PMSCs, i.e. non-State actors. The Working Group considered that the key responsibility should lie with the States parties to the convention and the intergovernmental organizations that would adhere to the instrument. The Working Group clarified this point in its most recent text.

76. A significant number of experts stressed that the scope of the draft convention should seek to be as broad as possible and cover all situations, not only armed conflict, recognizing the ever-evolving range of activities carried out by PMSCs in increasingly diverse situations around the world. This comment was addressed in the draft text.

### **4. Domestic implementation**

77. Some comments emphasized that the mandatory licensing regime established in the draft convention has the advantage that by requiring the consent of both the exporting and importing State, it ensures that all States involved will have effectively given their formal consent to the operations taking place. It would also make it easier to determine which PMSC is operating where and when.

78. Others regretted that the draft text did not specify criteria for awarding licences and that the decision to award licenses would remain with States parties. They said that this could lead to situations where licences would be granted to companies that do not abide by international standards.

79. Some pointed out that the convention could go further by proposing that a licensing system be established at the international level, administered by an intergovernmental body. This, they said, would provide a central, directly accessible register, thereby avoiding the need to rely on individual State registries.

80. The idea of the creation of a special fund to compensate victims of crimes committed by PMSC personnel was welcomed by many. Some however emphasized that the draft text could go further with respect to the functioning and methods of work of the Fund, such as by defining the notion of “victim”, the amounts for compensation and for States’ contributions, and the existing correlation between the obligations of PMSCs and States to compensate victims.

81. Some States made the point that the proposed legislative regulation, licensing regime, contracting and training requirements, oversight and monitoring outlined in the draft convention might place a high implementation cost on States, which might be a disincentive to ratification. Further, some raised concerns as to usefulness of requiring States to establish domestic licensing regimes where such regimes were likely to differ significantly from jurisdiction to jurisdiction.

## **5. Inherently State functions**

82. A number of experts and States stressed that there is no agreed definition in international law on what constitutes inherently governmental functions and considered that defining such functions could prove difficult.

83. Others stated that it was crucial to establish clear standards for PMSCs and their activities given the growing trend towards the delegation of military and security functions to private actors. They said that such an instrument was essential to ensure that the State retains the monopoly on the use of force. Some considered the proposed distinction presented in the draft convention between inherently State functions that cannot be outsourced and services that can be delegated to PMSCs to be satisfactory, while others called for a more restrictive approach.

84. Some recalled that while there is no internationally agreed definition of inherently State functions, certain provisions of international humanitarian law specifically precluded member States from outsourcing the performance of certain tasks such as the exercise of “the power of the responsible officer over prisoner of war camps or places of internment of civilians” (see article 39 of the Third Geneva Convention; article 99 of the Fourth Geneva Convention). They added that while there is no specific prohibition on the direct participation by civilians in hostilities, their participation would at the least lead to the loss of certain privileges, such as immunity from attack.

## **6. International oversight and monitoring body**

85. A number of comments called for any adjudicatory or grievance mechanism to be established by the convention that should operate with full transparency; others expressed disappointment that the individual right to petition the Committee is only given in respect of those countries that consent to such a process.

86. One State pointed out that the provision regarding the conciliation commission was not sufficiently detailed and did not specify what would happen if a State did not accept the recommendations of the conciliation commission and, if accepted, who would be responsible for implementing these recommendations. Some also thought that a confidential, inter-State dispute resolution mechanism of this type was not necessary to ensure the implementation of the Convention.

87. Other comments cautioned that the need for transparency must not overshadow privacy rights or lead to a freezing of cooperation from the industry itself.

88. Finally some experts raised the point that special attention would need to be paid to ensuring that less developed States have support to strengthen their capacity to regulate PMSCs, both through the technical assistance of the Committee and through funding.

## **IV. Conclusions and recommendations**

89. The Working Group takes this opportunity to thank all Member States and non-governmental entities including experts and academics who have engaged with the Working Group on this important endeavour, have provided their expertise throughout this process and submitted constructive comments on the elements for a possible international draft convention on PMSCs.

90. The Working Group would like to emphasize its utmost concern at the impact of the activities of PMSCs on the enjoyment of human rights, in particular when operating in conflict, post-conflict or low-intensity armed situations and notes that PMSCs and their personnel are rarely held accountable for violations of human rights.

91. The aim of a proposed new binding legal instrument is not the outright banning of PMSCs but the establishment of minimum international standards for States parties to regulate the activities of PMSCs and their personnel.

92. The Working Group believes that the Human Rights Council would constitute the best forum for the development of a new international instrument for the regulation, oversight and monitoring of PMSCs, to address the human rights impact of the activities of PMSCs.

93. It encourages Member States to carefully consider the present draft proposal for a possible new international legal instrument regulating PMSCs and recommends that the Human Rights Council establish an intergovernmental open-ended Working Group with the task of developing a new convention taking into account the initial work done by the Working Group on the use of mercenaries.

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## **Annex**

### **Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council**

The Parties to the present Convention,

PP 1: *Reaffirming* the General Principles enshrined in the Charter of the United Nations, the *erga omnes* obligations related to the protection of human rights and the strict adherence to principles of the sovereign equality of all States, the territorial integrity and political independence of every State, the right of self-determination of peoples, the prohibition of the threat, or the use of, force in international relations, the prohibition of propaganda for war and the prohibition of interference in affairs which are essentially within the domestic jurisdiction of any State,

PP 2: *Further reaffirming* the principles and rules of international human rights and humanitarian law and their complementarity,

PP 3: *Bearing in mind* the universal principle of non-discrimination contained in all international human rights instruments and the basic labour rights recognized in the ILO conventions,

PP 4: *Recalling* the International Law Commission's Articles on State Responsibility,

PP 5: *Conscious of* the international commitment to prevent impunity for war crimes, crimes against humanity, genocide and grave breaches of the Geneva Conventions, and affirming in this connection the principles contained in the Statute of Rome of the International Criminal Court,

PP 6: *Acknowledging* the duty of all States to prevent human rights violations through legislative and other measures, the duty to investigate reports of violations and, where appropriate, prosecute and punish offenders as well as to provide adequate remedies to victims,

PP 7: *Further acknowledging* the duty of all States to prevent violations of human rights or other abuses committed by or involving transnational corporations and other business enterprises,

PP 8: *Bearing in mind* other relevant international conventions, including The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and its two Protocols, and the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression, and other relevant principles,

PP 9: *Concerned* about the increasing delegation or outsourcing of inherently State functions which undermine any State's capacity to retain its monopoly on the legitimate use of force,

PP 10: *Taking into consideration* the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, as well as the OAU Convention for the elimination of mercenarism in Africa,

PP 11: *Considering* that responsibility for violations of international humanitarian and human rights may be imputable not only to States but also to intergovernmental organizations and non-State actors, including private military and security companies (PMSCs), and that mechanisms must be devised to ensure the accountability of States, intergovernmental organizations and PMSCs,

PP 12: *Aware of* the United Nations Global Compact initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption, and the 2008 Annual Report to the Human Rights Council of the United Nations Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, which sets forth a three-part “protect, respect and remedy” framework;

PP 13: *Determined* to take all necessary measures to combat impunity by establishing jurisdiction and devising mechanisms to investigate reports of criminal activities and apprehend those individuals and entities involved in criminal activities, including senior officials of PMSCs, with a view to their prosecution and punishment,

PP 14: *Emphasizing* the responsibility to protect all persons affected by the activities of PMSCs, whether civilians or military personnel, including the employees of these companies, from abuses of their human rights by the actions or omissions of non-State actors including PMSCs,

PP 15: *Considering* that the victims of violations of international humanitarian and human rights committed by the personnel of PMSCs, including but not limited to extrajudicial, summary or arbitrary executions, disappearances, torture, arbitrary detention, forced displacement, trafficking in persons, confiscation or destruction of private property, right to privacy, have the right to a comprehensive and effective remedy in accordance with international law, including the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,

PP 16: *Recalling the* United Nations Code of Conduct for Law Enforcement Officials of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana in 1990,

PP 17: *Recalling* the United Nations Non-binding Guidelines on the Use of Military or Armed Escorts for Humanitarian Convoys of 14 September 2001,

PP 18: *Noting* the recruitment of former military and police officers by PMSCs to work in a range of activities in places of armed conflict, and further to provide a range of other services in conflict zones and in business activities such as extractive industries,

PP 19: *Taking note of* the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict of 17 September 2008,

PP 20: *Taking into account* the adoption of codes of conduct, but considering that self-regulation of private military and security companies is not sufficient to ensure the observance of international humanitarian law and human rights law by the personnel of these companies,

PP 21: *Recognizing* that important gaps remain in the national and international legal regimes applicable to PMSCs,

PP 22: *Expressing* concern at the increasing and alarming violations of international human rights law and international humanitarian law committed by PMSCs and their personnel, and *Aware of* the pressing need to establish effective measures to ensure that the activities of PMSCs are carried out in accordance with international law,

PP 23: *Being of the opinion* that effective protection requires appropriate national and international legislation in order to adopt and implement mechanisms to ensure enforcement,

PP 24: *Considering* the urgency for State Parties to agree on international minimum legal standards to regulate the activities of PMSCs,

Have agreed as follows:

## **PART I. General Provisions**

### **Article 1**

#### **Purpose**

1. Bearing in mind the fundamental principles of international law on the prohibition of the threat and use of force and on the equal sovereignty of States, the purposes of the present convention are:
  - a. to reaffirm and strengthen State responsibility for the use of force and reiterate the importance of its monopoly of the legitimate use of force within the comprehensive framework of State obligations to respect, protect and fulfil human rights, and to provide remedies for violations of human rights;
  - b. to identify those functions which are inherently State functions and which cannot be outsourced under any circumstances;

- c. to regulate the activities of PMSCs and sub-contractors;
- d. to promote international cooperation between States regarding licensing and regulation of the activities of PMSCs in order to more effectively address any challenges to the full implementation of their human rights obligations including the right to self-determination;
- e. to establish and implement mechanisms to monitor the activities of PMSCs and violations of international human rights and humanitarian law in particular any illegal or arbitrary use of force committed by PMSCs, to prosecute the perpetrators and to provide effective remedies to the victims.

2. In the implementation of the Convention, States Parties shall take all necessary legislative, judicial and administrative measures pursuant to existing or emerging provisions of their domestic laws to ensure that PMSCs do not engage in illegal activities or in arbitrary use of force.

## Article 2

### Definitions

If not specified separately or implied differently, for the purposes of the present Convention:

(a) **Private Military and/or Security Company (PMSC)**: refers to a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities.

(b) **Military services**: refers to specialized services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities.

(c) **Security services**: refers to armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities.

(d) **Licence (authorization, permit)**: refers to a special document authorizing specified activities under the strict observance of licensing terms and obligations, which is issued by a licensing body to a legal entity or a physical person.

(e) **Licensing regime**: refers to a regime of measures related to the issuing of a licence, redrafting documents, confirming licence, suspension of licence on grounds of violation of obligations and provisions of the licence, cessation or resumption of licence, withdrawal of licence, control of licensing bodies over the observance of obligations and terms of licence by licensees in their activities, introduction of licence registries as well as an established form of provision of information from licence registries and other licensing information by interested persons.

(f) **Licence registry:** refers to the data pool related to the issuing of a licence, redrafting documents, confirming licence, suspension or resumption of licence, and withdrawal of licence; a licence registry must operate pursuant to written minimum standards.

(g) **Export of military and/or security services:** refers to the export of military and/or security services from the home State in which a PMSC is registered or export of military and/or security services which a PMSC provides outside the State in which it is registered or where it has its principal place of management or headquarters.

(h) **Import of military and/or security services:** refers to an import of military and/or security services which a PMSC registered in a foreign State provides.

(i) **Inherently State functions:** are functions which are consistent with the principle of the State monopoly on the legitimate use of force and that a State cannot outsource or delegate to PMSCs under any circumstances. Among such functions are direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, knowledge transfer with military, security and policing application, 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 and other functions that a State Party considers to be inherently State functions.

(j) **Contracting States:** are States that directly contract with PMSCs for their services, including, as appropriate, where such a company subcontracts with another PMSC or where a PMSC operates through its subsidiary companies.

(k) **States of operations:** are States in whose territory PMSCs operate.

(l) **Home States:** are States of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, the State where the company has its principal place of management or headquarters is the home State.

(m) **Third States:** are States other than the contracting, home States or States of operations whose nationals are employed to work for a PMSC.

(n) **Intergovernmental organization:** shall mean an organization based on a formal instrument of agreement between the Governments of nation states, including three or more nation States as parties to the agreement and possessing a permanent secretariat performing ongoing tasks.

(o) **Committee:** shall mean the Committee on Regulation, Oversight and Monitoring of PMSCs as established by this Convention.

(p) **Complaint:** shall mean any complaint submitted by a State Party to this Convention to the Committee on Regulation, Oversight and Monitoring of PMSCs.

(q) **Petition:** shall mean a communication submitted by or on behalf of an individual or group to the Committee on Regulation, Oversight and Monitoring of PMSCs.

### **Article 3**

#### **Scope of Application**

1. The present Convention applies to States and intergovernmental organizations within the limits of their competence with respect to PMSCs, their activities and personnel.
2. References to "States Parties" in the present Convention shall apply to intergovernmental organizations within the limits of their competence.
3. The present Convention applies to all situations whether or not the situation is defined as an armed conflict.
4. In cases not covered by this Convention or by other international agreements, States Parties remain bound by virtue of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

## **PART II. General Principles**

### **Article 4**

#### **State responsibility *vis-à-vis* private military and security companies**

1. Each State party bears responsibility for the military and security activities of PMSCs registered or operating in their jurisdiction, whether or not these entities are contracted by the State.
2. Each State party must ensure that the PMSCs it has contracted are trained in and respect international human rights and international humanitarian law.
3. No State Party can delegate or outsource inherently State functions to PMSCs.
- 4 Each State Party shall take such legislative and other measures as may be necessary to establish:
  - a) procedures for contracting PMSCs, other legal entities and individuals, and sub-contracting;
  - b) licensing procedures for the export of military and security personnel and services;
  - c) licensing procedures for the import of military and security personnel and services;
  - d) effective customs and other forms of control over export/import and re-export/re-import of firearms used by PMSCs.

5. Each State Party, in accordance with its domestic law, shall take legislative and other measures required to introduce full or partial prohibition of the delegation or outsourcing of military or security services.

## **Article 5**

### **Rule of law**

1. Each State Party shall ensure that PMSCs, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international human rights and humanitarian law.

2. Each State Party shall take such legislative, administrative and other measures as may be necessary to ensure that PMSCs and their personnel are held accountable for violations of applicable national or international law.

3. Each State Party shall ensure that any contract or agreement between the State party and a PMSC on provision of military and/or security services entered into by a PMSC and its employees is in accordance with international law and is consistent with the legislation of:

- (a) the home State;
- (b) the contracting State;
- (c) the State of operations, and
- (d) third States whose nationals are employed to work for a PMSC under this contract.

## **Article 6**

### **State sovereignty**

1. Each State Party shall ensure that PMSCs and their personnel under no circumstances carry out activities that undermine the sovereignty of another State, its territorial integrity and/or that contravene the principle of sovereign equality and obligation of non-intervention in the domestic affairs of other States and the principle of self-determination of peoples.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of inherently State functions under international or domestic laws.

## **Article 7**

### **Respect and protection of international human rights and humanitarian law**

1. Each State Party shall take legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel are held accountable in accordance with this Convention and to ensure respect for and protection of international human rights and humanitarian law.

2. Each State party shall ensure that PMSCs and their personnel apply due diligence to ensure that their activities do not contribute directly or indirectly to violations of human rights and international humanitarian law.

3. Superiors of PMSC personnel, such as:

- a. government 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. No clause in a contract shall be interpreted as permitting evasion of responsibility on the part of superiors under international law.

## **Article 8**

### **Prohibition of the use of force**

1. Each State party shall take such legislative, administrative and other measures as may be necessary to prohibit and make illegal the direct participation of PMSCs and their personnel in hostilities, terrorist acts and military actions aimed at, or which States have grounds for suspecting would result in:

(a) The overthrow of a Government (including regime change by force) or undermining of the constitutional order, or the legal, economic and financial bases of the State;

(b) The coercive change of internationally acknowledged borders of the State;

(c) The violation of sovereignty, or support of foreign occupation of a part or the whole territory of State;

(d) Explicitly targeting civilians or causing disproportionate harm, including but not restricted to:

i) assaults on the life and security of civilians,

ii) the coercive removal or displacement of people from areas of permanent or habitual residence,

iii) limits to the freedom of movement of civilians; and

iv) restriction in access to resources and means of livelihood, including but not limited to water, food, land, livestock, shelter, and access to sacred sites and places of worship.

2. Each State party shall ensure that the activities of PMSCs and their personnel do not cause or exacerbate inter- or intra-State warfare or conflict;

3. Each State party shall ensure that PMSCs and their personnel do not provide training that could facilitate its clients' direct participation in hostilities, terrorist acts or military actions, when these actions are aimed at the results defined in article 8.1.

#### **Article 9**

##### **Prohibition of delegation and/or outsourcing of inherently State functions**

Each State Party shall define and limit the scope of activities of PMSCs and specifically prohibit the outsourcing to PMSCs of functions which are defined as inherently State functions, including direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, knowledge transfer with military, security and policing application, use of and other activities related to weapons of mass destruction, police powers, especially the powers of arrest or detention including the interrogation of detainees, and other functions that a State Party considers to be inherently State functions.

#### **Article 10**

##### **Prohibition of outsourcing of the use of certain arms**

1. Each State Party, without prejudice to its respective conventional obligations, has the duty to respect the principles of international humanitarian law such as the "basic rules" on the prohibition of certain methods and means of warfare as set out in article 35 of Additional Protocol I of 1977 to the Geneva Conventions of 1949, that refers to the prohibition of weapons which cause superfluous injury or unnecessary suffering, or which are to cause widespread, long-term and severe damage to the natural environment.

2. Each State party shall take such legislative, administrative and other measures as may be necessary to prevent PMSCs and their personnel from using weapons likely to adversely and/or irreversibly damage the environment on a massive scale.

3. Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel under no circumstances use, threaten to use and/or engage in any activities related to nuclear weapons, chemical weapons, biological and toxin weapons, their components and carriers.

#### **Article 11**

**Prohibition on illegal acquisition, possession and trafficking in Firearms, their Parts and Components and Ammunition**

1. Each State Party, bearing in mind the principles and standards of international law, shall establish and maintain an effective system of licensing or other authorization, which prohibits PMSCs, their personnel and any sub-contracted personnel from trafficking in firearms, their parts, components or ammunition.

2. Each State Party, bearing in mind the principles and standards of international law, shall take such measures as may be necessary to ensure that its licensing or authorization procedures are robust and secure and that the authenticity of licensing or authorization documents can be independently verified or validated.

3. In order to effectively detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition by PMSCs and their personnel, each State Party shall take appropriate measures:

a) To require the security of firearms, their parts and components and ammunition at the time of manufacture, and during import, export and transit through its territory; and

b) To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder duties and cooperation with neighbouring States; and

c) To regulate the possession and use of firearms by personnel of PMSCs inside the premises of the client they have been contracted to protect, and to restrict them from possession and use of firearms outside the limits of the premises in which they have been contracted to provide security.

**PART III. Legislative regulation, oversight and monitoring**

**Article 12**

**Specific legislative regulation**

Each State Party shall develop and adopt national legislation to adequately and effectively regulate the activities of PMSCs.

**Article 13**

**National regime of regulation and oversight**

1. Each State Party shall:

(a) Establish a comprehensive domestic regime of regulation and oversight over the activities in its territory of PMSCs and their personnel including all foreign personnel, in order to prohibit and investigate illegal activities as defined by this Convention as well as by relevant national laws;

(b) In order to ensure that administrative, regulatory, law enforcement and other bodies, implementing the regime of regulation and oversight over the activities of PMSCs and their personnel, are able to cooperate and exchange information at national and international levels, there should be established, at the domestic level, a register and/or a governmental body which shall act as a national centre for collection, analysis and exchange of information concerning possible violations of national and international law so as to provide operative information about the activities of PMSCs.

2. States Parties shall apply practical measures for sharing information on companies providing military and security services outside their territories and for establishing control over the provision of such services, as consistent with the safeguards aimed at ensuring the proper use of information without impeding their legal implementation in any way. Such measures may include the provision of information or reports on the use of transborder military and security services by persons as well as legal entities, for example companies.

3. In the establishment of a domestic regime of regulation and oversight according to the provisions of this Article and in compliance with other Articles of this Convention, all States Parties agree to be guided by the respective initiatives of regional, interregional and multilateral organizations.

4. States Parties shall endeavour to develop and encourage global, regional, subregional and bilateral cooperation among judicial bodies, law-enforcement agencies and financial regulation bodies in order to monitor and control any use of force by PMSCs.

5. States Parties shall investigate reports of violations of international humanitarian law and human rights norms by private military companies and private security companies and ensure civil and criminal prosecution and punishment of offenders.

6. States Parties shall take appropriate action against companies that commit human rights violations or engage in any criminal activity, *inter alia* by revoking their licences and reporting to the Committee on the record of activities of these companies.

## **Article 14**

### **Licensing**

1. Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel carry out their activities exclusively under the respective licences and authorizations.

2. Each State party shall ensure that all licences and authorizations issued to PMSCs and their personnel shall be registered in the general Registry of the State and shall be granted following a transparent and open procedure.

3. Each State Party shall establish criteria for granting licences and authorizations to PMSCs, taking into account in particular any records or reports of human rights violations committed by the companies, providing and/or ensuring training in international human rights and humanitarian law and robust due diligence measures.

#### **Article 15**

##### **Licensing import and export of military and security services**

1. Each State Party shall take such legislative, judicial, administrative and other measures as may be required to ensure that PMSCs and their personnel import and export their services only under the appropriate licences and authorizations. The licence and authorization for operations related to the export of military and security services shall be issued by the relevant body of the State Party in whose territory the entity concerned has its permanent residence under the relevant domestic law.

2. Each State Party which imports or exports private military and security services shall publicize their scope and activities, keep the Committee informed about its licensing regime and provide regular and up-dated information on any changes and supplements to the import or export of these services, including details of any subsidiaries or holding companies of the PMSC in question.

3. Each State Party shall ensure that only those PMSCs and their personnel possessing licences and authorizations on exporting military and/or security services issued by the competent bodies of the State Party can enter into agreements for providing such services in the territory of the other State Party.

4. Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary in order to:

(a) ensure that any State which is not party to the present Convention is informed about the issuance of licences to PMSCs and their personnel to export military and/or security services to this State,

(b) ensure that PMSCs and their personnel, holding valid licences and authorizations, issued by the competent bodies of the State Party to export military and/or security services to carry out single acts or, alternatively, regular activity in the territory of any State not party to the Convention, provide comprehensive information to the competent bodies of all concerned States about the nature and extent of such acts and activities.

## **Article 16**

### **Registration and accountability**

1. Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary to establish:
  - a. Specific and obligatory procedures on governmental registration of PMSCs;
  - b. Specific legal requirements for persons employed by PMSCs concerning inter alia their training and experience;
  - c. A ban on the registration of PMSCs offshore.
2. Each State Party shall establish and maintain a general State Registry of PMSCs operating in their jurisdiction, including details of any subsidiaries or holding companies of each registered PMSC.
3. Each State Party shall identify or establish a governmental body responsible for the registry of PMSCs and exercise oversight of their activities.

## **Article 17**

### **State obligations *vis-à-vis* the PMSCs and their personnel**

1. Each State party shall ensure that all PMSCs registered or operating on its territory complies with fundamental international labour standards.
2. Each State party shall ensure that personnel of PMSCs are professionally trained to respect relevant international human rights law and international humanitarian law.
3. Each State party shall ensure that PMSC personnel are required to be professionally trained and vetted according to the applicable international standards, in particular regarding the use of specific equipment and firearms. Such training and vetting shall be conducted in accordance with the procedure defined by the legislation of the State Party in whose territory the private military and/or security company is registered under the domestic law and under international standards on the use of force and firearms in the course of military or security activities.

4. Each State party shall ensure that personnel of PMSCs strictly adhere to relevant norms of international human rights law and international humanitarian law, including through prompt investigation, prosecution and punishment of violations of human rights and humanitarian law.

5. Each State party shall ensure that the personnel of PMSCs providing military and security services in the territory of a foreign country undertake to respect the sovereignty and laws of the country of operations, to refrain from any actions inconsistent with the principle not to interfere with the domestic affairs of the country of operations, to refrain from intervening in the political process or in the conflicts in its territory, and to take all necessary measures to avoid harm to the citizens, damage to the environmental and industrial infrastructure, and to objects of historical and cultural importance.

## **Article 18**

### **Regulation of use of force and firearms**

1. Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary to establish rules on the use of force and firearms by the personnel of PMSCs, taking into account that employees may carry firearms in providing military and security services, including such principles described in this Convention and any other relevant principles of international law.

2. State parties shall ensure that in providing military and security services, employees of PMSCs shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.

3. Whenever the use of force and firearms is unavoidable, PMSCs personnel shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

4. In providing military and security services, employees may use force or firearms only in the following circumstances:

(a) To defend him/herself or other employees of the company against what he/she believes to be an imminent unlawful threat of death or serious body injury, in respect of the exercise of the essential right of self-defence,

(b) To defend persons whom he/she is under a contract to protect against what he/she believes to be an imminent unlawful threat of death or serious bodily injury,

(c) To resist what he/she reasonably believes to be an attempt to unlawfully abduct him/her, other employees of the company or a person whom he/she is under contract to protect,

(d) To prevent or put a stop to the commission of a serious crime that would involve or involves a grave threat to life or of serious bodily injury.

5) In the circumstances defined under article 18 (4), the personnel of PMSCs shall identify themselves as such and give a clear warning of their intent to use firearms, if the situation permits.

6) In the case of PMSCs and their personnel providing military and security services under the agreement as a part of armed forces or military units of the State Party, the use of force is regulated by the norms of its military and other respective legislation and relevant international humanitarian law and international human rights law.

7) Each State party shall ensure that all incidents involving the use of force and firearms by PMSCs are promptly reported to the competent State bodies and ensure appropriate investigation of the incident by competent authorities.

#### **PART IV. State Responsibility to impose criminal, civil and/or administrative sanctions on offenders and provide remedies to victims**

##### **Article 19**

##### **Criminal, civil and/or administrative offences in the sphere of private military and security services**

1. Each State party shall ensure that the acts of carrying out inherently State functions, as specified in article 9 of this Convention by PMSCs and their personnel are offences under its national law.

2. Each State Party shall ensure that the unlawful use of force and firearms, unlawful use of certain arms and illicit trafficking in arms by PMSCs and their personnel, pursuant to articles 8, 10, 11 and 18 of this convention, are punished as criminal offences under its national law.

3. Each State party shall ensure that all activities of PMSCs occurring without the required licence and authorization, including the export and import of military and security services, pursuant to articles 14 and 15 of this convention, are offences under its national law.

4. Each State party shall take such legislative, judicial, administrative and other measures as to ensure, in accordance with their obligations under international human rights law, international

criminal law and international humanitarian law, that individual criminal responsibility is established and that PMSCs and their personnel are held accountable for any violations of the law, that no recourse is taken to immunity agreements, and that effective remedies are provided to victims.

5. In relation to imposing penalties for offences established in this article, due consideration should be paid to offences committed against vulnerable groups.

## **Article 20**

### **Liability of legal persons and entities**

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons and entities for the offences established in accordance with article 19 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative, or a combination of these.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have actually committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including fines, economic sanctions, prohibitions of further employment, obligation to provide restitution and/or compensation to the victims.

## **Article 21**

### **Establishment of jurisdiction**

1. Each State party shall take such measures as may be necessary to establish its jurisdiction through its domestic law over the offences set out in article 19 when:

(a) The offence is committed in the territory of that State;

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State

2. A State party may also establish its jurisdiction over any of the offences set out in article 19 when:

(a) The offence is committed against a national of that State; or

(b) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;

3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

4. Upon ratifying, accepting, approving or acceding to this Convention, each State party shall notify the Secretary-General of the United Nations of the measures it has taken with respect to the establishment of jurisdiction under this article. Should any subsequent change take place, the State party concerned shall immediately notify the Secretary-General of the change.

5. Each State party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set out in this Article in cases where the alleged offender is present in its territory and it does not extradite such person to any of the States parties which have established their jurisdiction in accordance with paragraphs 1 or 2 of this Article.

6. Each State party which establishes jurisdiction under subparagraphs 1(b) and paragraphs 2 or 4 of this Article shall make the offences set out in this Article punishable by the same penalties which would apply when they are committed in its own territory.

7. This Convention does not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its national law and its international obligations.

## **Article 22**

### **Jurisdiction over other crimes**

1. Each State party shall take such measures as may be necessary to establish its jurisdiction over other crimes committed by the personnel of PMSCs in providing their services in the territory of another State party or State not party to this Convention.

2. Any specific jurisdiction or legal matters related to the investigations of crimes committed by the personnel of PMSCs in providing their services in the territory of another State party or State not party to the present Convention, or agreements of extradition, may be regulated by an additional international agreement concluded between these States.

## **Article 23**

### **Obligations related to prosecution**

1. Each State party shall take such measures as are necessary to investigate, prosecute and punish violations of the present Convention, and to ensure effective remedies to victims.

2. Each State party, in the interests of justice, shall take such measures as necessary to ensure that no immunity agreement from prosecution for PMSCs and their personnel for violations of international human rights law and international humanitarian law is enforced.

3. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 19 is found shall in the cases contemplated in article 21, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

4. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 21, paragraph 1(c), the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 21.

5. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 19 shall be guaranteed fair treatment at all stages of the proceedings.

#### **Article 24**

##### **Extradition**

1. To the extent that the crimes set out in article 19 are not mentioned specifically in any extradition treaty existing between States parties, they shall be deemed to be included as extraditable offences in the treaty. States parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded by them.

2. When a State party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State party with which it does not have an extradition treaty, the State party requesting extradition may, at its option, consider this Convention as a legal basis for extradition in respect of the offences. Extradition procedures should take into account but shall not be limited by any conditions or restrictions stipulated in the law of any State party.

3. States parties which do not make extradition conditional on the existence of a treaty shall recognize the offences listed in article 19 as extraditable offences between themselves, taking into account but not limited by the law of any of the State parties.

4. The provisions of all extradition treaties between States parties with regard to the offences set out in article 19 shall be deemed to be modified as between States parties to the extent that they are incompatible or inconsistent with this Convention.

5. In the event of a conflict between the obligations of States parties under this Convention and other bilateral or multilateral conventions on extradition, this Convention shall prevail.

#### **Article 25**

### **Mutual legal assistance**

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party.

2. States parties shall carry out their obligations under paragraph 1 of this Article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States parties shall afford one another assistance in accordance with their national law and international principles on friendly relations between States.

### **Article 26**

#### **Transfer of criminal proceedings**

States parties may transfer to one another proceedings for the prosecution of offences under this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice.

### **Article 27**

#### **Notification of outcome of proceedings**

The State Party where the alleged offender has been prosecuted under articles 21, 23 and 24 shall, in accordance with its national law or applicable procedures, communicate the final outcome of the proceedings to Committee on the Regulation, Oversight and Monitoring, who shall transmit the information to other States Parties and as appropriate to other concerned States not party to the Convention.

### **Article 28**

#### **International Fund for the rehabilitation of victims**

1. States parties shall consider establishing an international Fund to be administered by the Secretary-General to provide reparation to victims of offences under this Convention and/or assist in their rehabilitation;

2. The establishment of such a Fund shall be without prejudice to the obligation of PMSCs and/or the individuals criminally liable to directly compensate victims of violations.

## **PART V. International Oversight and Monitoring**

**Article 29**

**Committee on the Regulation, Oversight and Monitoring of PMSCs**

1. For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Regulation, Oversight and Monitoring of PMSCs (hereinafter referred to as the Committee). The Committee shall consist, at the time of entry into force of the present Convention, of [...] and, after the entry into force of the Convention for the [...] State Party, of [...] experts of high moral standing, impartiality and recognized competence in the field covered by the Convention elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. (a) The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the terms of [...] of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these [...] members shall be chosen by lot by the Chairperson of the Committee;

(b) The election of the eight additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

(c) If a member dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State party who nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term, subject to the approval of the Committee.

6. The Committee shall adopt its own rules of procedure.

7. The Secretary-General of the United Nations shall provide for the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

8. The Committee shall normally meet annually. The meetings of the Committee shall normally be held at the United Nations headquarters.

9. With the approval of the General Assembly of the United Nations, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

10. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission to the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

### **Article 30**

#### **International Register of PMSCs**

1. States Parties request the Committee to establish and maintain an International Register of PMSCs operating on the international market, based on information provided by States parties.

2. Each State Party shall provide annually for the Register data on imports and exports of military and security services of PMSCs and standardized information on PMSCs registered in and licensed by the State Party.

### **Article 31**

#### **Reports by State parties**

1. Each State Party undertakes to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention.

(a) within [...] years after the entry into force of the Convention for the State Party concerned; and

(b) thereafter every [...] years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall decide any guidelines applicable to the content of the reports.

3. A State party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing report to the Committee, State parties are invited to consider doing so in an open and transparent process.

### **Article 32**

#### **Consideration of reports**

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party. The Committee may request further information from States Parties relevant to the implementation of the present Convention.
2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article shall apply.
3. The Secretary-General of the United Nations shall make available the reports to all States Parties.
4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the observations and recommendations relating to these reports.
5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

### **Article 33**

#### **Inquiry Procedure**

1. If the Committee receives reliable information indicating grave or systematic violations of the provisions set forth in this Convention, the Committee shall invite the State where the offences have been reported to have occurred and/or the State of registration of the PMSC reportedly involved in such offences to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State(s) concerned as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2, the Committee shall seek the co-operation of the States concerned. In agreement with the State(s) concerned, such an inquiry may include a visit *in loco*.

4. After examining the findings of its member or members submitted in accordance with paragraph 2, the Committee shall transmit these findings to the State(s) concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State(s) concerned shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State(s) concerned, decide to include a summary account of the results of the proceedings in its annual report to the General Assembly made in accordance with article 37.

#### **Article 34**

##### **Complaints against Parties**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party to this Convention considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the complaint to the Party concerned. Within three months, the receiving Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that Party.

(b) If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving Party of the initial complaint, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other Party.

(c) The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

2. The Committee shall hold closed meetings when examining complaints under this article.

3. In any matter referred to it, the Committee may call upon the Parties concerned to supply any other relevant information.

4. When any matter arising out of this article is being considered by the Committee, the Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

## **Article 35**

### **Conciliation Commission**

1. (a) If a matter referred to the Committee in accordance with article 33 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;

(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairperson and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 34, paragraph 3 of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

#### **Article 36**

##### **Report of the Conciliation Commission**

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairperson of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairperson of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairperson of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairperson of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

#### **Article 37**

##### **Individual and Group Petitions**

1. A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.

2. The Committee shall consider a communication inadmissible where:

(a) The communication is anonymous;

(b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;

(c) The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where

(d) All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.

3. If the Committee considers that the communication meets the requirements set out in paragraph 2 of this article, it shall transmit the communication to the State Party concerned, requesting it to provide observations and comments within a time limit set by the Committee.

4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.

5. The Committee shall hold closed meetings when examining communications under the present article. It shall inform the author of a communication of the responses provided by the State Party concerned. When the Committee decides to finalize the procedure, it shall communicate its views to the State Party and to the author of the communication.

### **Article 38**

#### **Relationship of the Committee with other bodies**

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

(a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

(c) The Committee may refer urgent matters and legal questions to the General Assembly, Security Council or other United Nations bodies, and to their respective specialized committees, as appropriate, and may request the General Assembly or Security Council to request, pursuant to article 96 of the UN Charter, advisory opinions from the International Court of Justice on any legal question.

### **Article 39**

#### **Report of the Committee**

The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make further suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

## **PART VI. Final provisions**

### **Article 40**

#### **Signature**

This Convention is open for signature by all Member States and by intergovernmental organizations at United Nations Headquarters in New York as of [...].

### **Article 41**

#### **Consent to be bound**

1. The present Convention shall be subject to ratification or accession by signatory States and to formal confirmation by signatory intergovernmental organizations. It shall be open to accession by any State or intergovernmental organization which has not signed the Convention.
2. PMSCs and their professional associations as well as other non-State actors can communicate their support to this Convention, by writing to the Secretary-General of the United Nations.

### **Article 42**

#### **Intergovernmental organizations**

1. Intergovernmental organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.
2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence.
3. Intergovernmental organizations, in matters within their competence, may exercise their right to vote in the Meeting of States Parties.

### **Article 43**

#### **Entry into force**

1. This Convention shall enter into force on the [.....] day after the date of deposit to the UN Secretary General of the [.....] instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by an intergovernmental organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State Party or intergovernmental organization ratifying, accepting, approving or acceding to this Convention after the deposit of the [.....] instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

#### **Article 44**

##### **Amendment**

1. After the expiry of three years from the entry into force of this Convention, a State Party may propose an amendment which shall be filed with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional international organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise their right to vote and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

#### **Article 45**

### **Denunciation**

A State Party may denounce the present Convention at any time by written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

### **Article 46**

#### **Reservations**

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.
2. Reservations may be withdrawn at any time.

### **Article 47**

#### **Conference of States Parties and other parties to the Convention**

1. The States Parties and other parties to the Convention shall meet regularly in a Conference of States parties in order to consider any matter which regard to the implementation of the present Convention.
2. No later than six months after the entry into force of the present Convention the Conference of the States parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-general of the United Nations biennially or upon the decision of the Conference of States Parties.

### **Article 48**

#### **Depositary**

The Secretary-General of the United Nations shall be the depositary of this Convention.

### **Article 49**

#### **Languages**

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.