



# General Assembly

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## Human Rights Council

**Open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies**

**First session**

Geneva, 23–27 May 2011

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

**Prepared by 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**

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\* Late submission.

## **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,

*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,

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

*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,

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

*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,

*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,

*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,

*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,

*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,

*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,

*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,

*Aware of* the United Nations Global Compact initiative for businesses that are committed to aligning their operations and strategies with 10 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,

*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,

*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,

*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,

*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 Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana in 1990,

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

*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,

*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,

*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,

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

*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,

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

*Considering* the urgency for States 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 subcontractors;

(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 principle 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 subcontracting;
  - (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/reimport 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 subcontracted 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 updated 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. States 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 States 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 the 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 States 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;

(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 a report to the Committee, States 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 cooperate 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 cooperation 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 cooperation 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 United Nations 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 United Nations 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 90 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 with 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**

### **Depository**

The Secretary-General of the United Nations shall be the depository 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.

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