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Progress report on the fourth session of the open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, to protect human rights and ensure accountability for violations and abuses relating to the activities of private military and security companies*

Chair-Rapporteur: Mxolisi Sizo **Nkosi** (South Africa)

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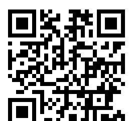

I. Introduction

1. The fourth session of the working group, held from 17 to 21 April 2023,[1] was opened by the United Nations Deputy High Commissioner for Human Rights. She noted the progress of the working group in releasing a revised second draft instrument,[2] which had been amended from its previous version[3] based on inputs received during the third session of the working group and intersessional consultations. She stressed the opportunity given to the working group to strengthen the protection of human rights and to ensure accountability for violations and abuses related to the activities of private military and security companies. She noted the timeliness and importance of the international regulatory framework being debated by the working group, focusing in particular on the global trend of growing reliance on private military and security companies and on their use of emerging technologies, the latter calling in particular for a regulatory framework flexible enough to accommodate the unforeseen future, while remaining unyielding in its safeguarding of victims. She stressed the current wave of mandatory human rights due diligence requirements for business being developed, which spoke to the importance of effective regulation, oversight and accountability for all business enterprises, including private military and security companies, and noted in that regard the opportunity of the working group to support States through a clear and consistent regulatory framework that would ensure access to justice for victims.

II. Organization of the session

A. Election of the Chair-Rapporteur

2. At its 1st meeting, the working group elected the Permanent Representative of South Africa to the United Nations Office at Geneva, Mxolisi Sizo Nkosi, as Chair-Rapporteur by acclamation, following his nomination by the delegation of Côte d'Ivoire on behalf of the African Group of States. The working group then adopted the agenda[4] and programme of work.

B. Attendance

3. The list of participants is contained in the annex to the present report.

C. Introductory remarks by the Chair-Rapporteur

4. The Chair-Rapporteur welcomed the Deputy High Commissioner's remarks, adding that the roles of private military and security companies had significantly changed and continued to evolve such that risks of human rights abuses were increasingly prevalent. He expressed concern that private military and security companies, in those changing roles, had been increasingly involved in conflict settings, including direct participation in combat through the use of modern technology. He highlighted the need for the working group to focus on victims and their access to justice in its consideration of the revised second draft. While acknowledging that the working group had not reached consensus on the legal nature of the regulatory framework, he emphasized that the existing ecosystem of voluntary instruments was not sufficient to address the issues at hand and drew attention to the need for an instrument with a broader scope and greater universality. He concluded his remarks by

[1] The session took place in a hybrid format. Oral statements are available at www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index/4th-session-igwg-military.

[2] See www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/wgmilitary/four-session/PMSCs-RevisedSecondDraftInstrument-in-track-changes.pdf.

[3] See www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/wgmilitary/four-session/PMSCs-SecondDraftInstrument-clean-version.pdf.

[4] A/HRC/WG.17/4/1.

reminding the working group that a key output from their fourth session would be alignment on the way forward at the conclusion of their third and final year under the present mandate.

D. General statements

5. The representative of the European Union expressed concern that some unregulated private military entities and their State sponsors played an increasingly destabilizing role through lack of compliance with international standards and international humanitarian law. Some of those entities, naming the Wagner Group specifically, were involved in human rights abuses against civilians. The European Union gratefully noted that the revised second draft reflected some of its textual suggestions but reiterated that some of its previously expressed key concerns had not yet been addressed. The scope of the revised second draft remained specific to the activities of private military and security companies conducted outside of their home State, while the European Union found it necessary to cover all businesses in a non-discriminatory manner to ensure a level playing field for companies globally. Some provisions remained too wide or vague, while others did not exist. The European Union noted with concern that the revised second draft might indicate a prejudging of the nature of the future instrument. The existing international legal framework, including 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, imparted responsibilities on the State to regulate private military and security companies and to thereby protect and respect human rights. Noting that a renewal of the working group's mandate would be due soon, the European Union enquired as to the intended timeline of the Chair-Rapporteur's decision about the legal nature of the potential future framework. The European Union reiterated its reservations about adopting a legally binding instrument from the perspective of international human rights law, citing that that approach did not consider crucial areas of international humanitarian law, international criminal law and State responsibility. The European Union reiterated its commitment to engage in the present session carefully and to assess the content and added value of a potential non-binding international regulatory framework, noting that its content would need to be in line with applicable international law, in particular international human rights law and international humanitarian law.

6. The representative of Pakistan welcomed the fact that the foundational principles of international humanitarian law had been incorporated into the revised second draft, including State responsibility and the obligation to effectively regulate private military and security companies. The territorial integrity of States was a fundamental element of the Charter of the United Nations and the regulatory instrument must restrict private military and security companies from carrying out functions inherent in the activities of the State, including taking part in conflicts and carrying out arrests, interrogations and espionage. Private military and security companies were two separate concepts and thus a broad treatment of those concepts as the same must be avoided. Despite previous attempts to hold private military and security companies to account for human rights abuses and to ensure access to justice for victims, self-regulation by private military and security companies had not been upheld in letter or spirit. Pakistan specifically called attention to the outsourcing of security-related State functions to private military and security companies under unclear rules of engagement, including the use of modern weapons, such as unmanned technologies in conflict settings. Any instrument should provide clear guidance on issues pertaining to jurisdiction and attribution of responsibility, while establishing accountability and remedy mechanisms to address human rights violations committed by private military and security companies.

7. The representative of Switzerland expressed the country's commitment to ensuring respect for international humanitarian law and international human rights law by private military and security companies, including through the Montreux Document and the International Code of Conduct for Private Security Service Providers. The representative recalled the previously expressed view of Switzerland that the Montreux Document was complementary to the United Nations framework and noted that the revised second draft presented an opportunity to build a scope of application beyond that of the Montreux Document, which should include elements of cooperation, mutual assistance and the

protection of victims. Acknowledging that the present mandate precluded prejudging the nature of a regulatory framework, a renewal of the mandate would require clarity on the nature of that instrument. A non-binding instrument would be a more realistic and more universally accepted output. A new regulatory framework should be based on existing international law and should not weaken it.

8. The representative of the United Kingdom of Great Britain and Northern Ireland remarked that private military and security companies could be local or global entities employed by, among others, States, the United Nations or non-governmental organizations in both conflict and non-conflict settings, the majority of which provided services that positively contributed to society. The United Kingdom recognized that ad hoc approaches to domestic regulation did not always consider the risks of human rights violations associated with some private military and security companies' operations and that most States had not signed up to existing international instruments in that context. The United Kingdom called attention to the domestic legislation that it had put in place to ensure comprehensive domestic regulation of the security industry. It stressed the need for strong accountability and monitoring, which was reinforced by the involvement of non-State actors in illicit activities while purporting to operate as private military and security companies. In that regard, the instrument would be capable of encouraging States to formulate comprehensive domestic frameworks to regulate private military and security companies. A non-binding instrument would improve the adaptability of the regulatory framework to the rapidly evolving elements of the industry. The United Kingdom recognized the value added by existing instruments, such as the Montreux Document and the International Code of Conduct, in crafting standards for regulating the activities of private military and security companies. It stressed the importance of clarifying the next steps of the working group, with particular reference to the decision-making process for the binding or non-binding nature of the instrument.

9. The representative of the United States appreciated the incorporation of some of its recommendations made during the intersessional consultations in the revised second draft. The collective effort of the working group must be to further existing initiatives, including the Montreux Document, which reflected and embodied efforts to advance human rights in that context. Private military and security companies provided legitimate services to a variety of contracting parties and they must be differentiated from mercenaries who engaged in conflict and were infamous for their human rights abuses. The working group should not focus on areas in which highly detailed standards existed and instead should extend existing best practices to new fields and draw attention to implementing and enforcing national regulatory frameworks and addressing the remaining gaps in those systems. The working group would have the most impact if it proceeded with consensus, which could only be achieved under a non-binding instrument creating the first United Nations framework on the topic. That would be a milestone achievement that would lay groundwork for further State and international action. The United States regretted that the revised second draft did not sufficiently reflect non-binding alternative texts.

10. The representative of Cuba expressed appreciation for the revised second draft, which was aligned with the primary mandate of the working group. Private military and security companies provided a broad range of services, but in many cases their activities and the abuses associated with those activities went beyond the scope of existing domestic and international law. For instance, those legal frameworks lacked mechanisms for the reparation of victims; violations had proliferated in specific contexts, such as secret holding facilities for women, children and Indigenous People, in conflicts and in the extractive industries. The working group must move forward in drafting a regulatory instrument with binding legal force to protect human rights on a universal and equal legal basis.

11. The representative of the Russian Federation noted that the international community still held a range of positions regarding the legitimacy, and parameters for the use, of private military and security companies. Without mutual understanding on matters such as the lawfulness of private military and security companies, including the categorization of their personnel under international law, namely whether they were combatants, civilians or a new category of persons, any detailed conversations on provisions would be premature. While the Russian Federation appreciated that the revised second draft contained valuable provisions that provided a foundation for future discussion, it noted with concern that the revisions made

to the text during the third session and intersessional consultations did not, in general, reflect its views, while reflecting the views of some other members of the working group. There was still a need to define the criteria to distinguish between traditional forms of mercenaryism and the lawful activities of private military and security companies. It was not appropriate to hold discussions ignoring the issue of the lawfulness of private military and security companies or assume that the question had already been resolved. The Russian Federation still had issues with some references to the Montreux Document, which, despite some positive elements, neither considered the approaches of numerous States nor was universal or legally binding. Furthermore, it contained controversial issues regarding the status of the personnel of private military and security companies, responsibility for crimes that might be committed by them, as well as other aspects. There were still no sufficient grounds for adopting a legally binding regulation on private military and security companies, therefore the Russian Federation would support the removal of provisions that suggested a binding nature. The present mandate of the working group was clearly defined and its discussions should be kept professional and non-politicized.

12. The representative of the Islamic Republic of Iran recalled the war wrought by the former President of Iraq, Saddam Hussein, against the country during the course of several years and his chemical weapons supplied by Western private companies that were used against innocent Iranians. The regulatory framework must be considered in view of the experiences of and lessons learned by States that had historically been affected by the activities of private military and security companies. The Islamic Republic of Iran highlighted the importance of the regulatory framework and the activities of the working group and affirmed its commitment to participate in the present session and its appreciation for efforts to elaborate the revised second draft.

13. The representative of India noted with concern the unprecedented proliferation of private military and security companies, which provided a wide range of services to State and non-State actors, including the United Nations and other international organizations. The activities of private military and security companies had developed in a broad and complex context, which included the involvement of civilians in hostilities. India had enacted domestic legislation that provided guidelines for the regulation of that growing industry, including licensing norms and training requirements. However, domestic legislation had limitations in its ability to address the transnational activities of private military and security companies. Gaps in current international law existed, particularly regarding the establishment of proper mechanisms for accountability and effective remedy. India recalled the importance of the Montreux Document in identifying pressing challenges and providing States with good practices, but regulations were needed to ensure that the principles of international human rights law and international humanitarian law were applied by private military and security companies in all activities. The International Code of Conduct attested to the need for industry standards but it did not address the issue of accountability for human rights violations committed by private military and security companies.

14. The representative of Türkiye explained that clear and specific rules in the context of private military and security companies had not yet been formed in international law, including through practice and case law. More time would be needed to conclude a legally binding document and the working group should proceed with a non-binding alternative. It proposed that articles 18–24 be revised to remove references to a potentially binding nature and that verbiage such as “obligation”, “establish” and “legislation” should be omitted throughout. It also suggested the inclusion of an explanatory paragraph regarding the legal character of the instrument. Türkiye proposed that references to international law, international human rights law and international humanitarian law may be repetitive and that the relevant areas of law could be clarified in the preamble to address that repetition. The revised second draft would better incorporate the positions of a diverse array of States if terminology such as “as applicable” or “where applicable” be appended to mentions of specific international documents, including the Protocols Additional to the Geneva Conventions of 1949.

15. The representative of Japan affirmed the country’s commitment to ensuring that private military and security companies complied with international humanitarian law and international human rights law. In reference to the nature of the future instrument, Japan

expressed its support for a non-binding framework that would reinforce existing legal frameworks, mentioning its specific support for the Montreux Document.

16. The representative of Bahrain reiterated the importance of the elaboration of an international regulatory framework. The representative noted the significant roles played by private military and security companies and the need to focus on accountability for their actions. The representative expressed the need for a framework to regulate the use of technologies, especially given the danger of their misuse, and for States to honour their commitments vis-à-vis human rights. Bahrain stated its desire for the working group to reach consensus and jointly drive forward its common goals.

17. The representative of South Africa welcomed the revised second draft and the progress made with particular thanks for the support of the legal experts engaged during the revision process. The working group’s deliberations must be centred on the protection of victims of the activities of private military and security companies and an outcome must signal the end of impunity. A legally binding instrument was necessary to strengthen processes and measures to control the actions of private military and security companies. The current mandate of the working group did not allow a prejudgment of the nature of the instrument. South Africa expressed its appreciation that the revised second draft maintained and balanced language for both legally binding and non-binding alternatives. South Africa concluded by emphasizing the need for deliberations to be forward-thinking, such as to future-proof the instrument and ensure lasting accountability for violations of international human rights law and international humanitarian law.

18. The representative of the Bolivarian Republic of Venezuela affirmed its support for any resolutions of the Human Rights Council related to the regulation of the activities of private military and security companies. Initiatives such as national self-regulation were not sufficient to address impunity for the actions of private military and security companies, especially in extraterritorial matters wherein such activities might not be adequately governed by existing international law. The representative noted the need for a regulatory framework that was pursuant to international legal standards and sufficient to protect human rights.

19. The representative of Mexico noted with concern the proliferation of abuses by private military and security companies and the need to ensure accountability and reparation for victims. It was not necessary to have a legally binding instrument to regulate private military and security companies since international law had clear rules, derived from both treaty and customary law, applicable to States in their relations with those companies and their operations during armed conflicts, and international human rights law provided a framework in situations that did not amount to armed conflict. This instrument should be complementary to the existing legal framework. Work on adopting secondary norms to regulate the activities of private actors was redundant given the existing obligations of States to ensure that private actors under their control or direction respected human rights. Some concepts in the revised second draft were imprecise. Mexico recommended that all mention of weapons of mass destruction be removed from the text. The representative explained that there may be inherent contradictions within the revised second draft between its objective and the fact that private military and security companies carried out State activities, including prisoner custody duties, and that those matters should be within the remit of the State.

20. The representative of China noted with appreciation that the revised second draft reflected the prior discussions of the working group. China offered its support for adopting an international regulatory framework and for strengthening regulation, noting its support for the Montreux Document. The representative mentioned the efforts of China to improve its domestic regulatory framework to govern private military and security companies and its issuing of provisional guidelines for those companies with activities abroad. China was open to either a legally binding or non-binding instrument and, based on the end of the present mandate that year, offered support for advancing the conversation on the revised second draft instrument in its current state. It recommended differentiation between private military and private security companies in the definitions section and in the obligations and regulatory requirements section of the text, given that the activities of private military companies were linked to greater concerns about violations of international human rights law and international humanitarian law. It was necessary to distinguish between those companies’ services and to impose likewise stricter management of private military companies. Since certain textual

content was controversial, it should be addressed pragmatically, specifically citing the matter of territorial and universal jurisdiction in article 10.

21. The representative of Iraq affirmed the country's prior and ongoing engagement with the working group and its contributions to the proposals and concerns in the debate. The revised second draft touched on several important issues, including a commitment to the mandate; the need to ensure clarity on and respect for human rights; and respect for international law.

22. The representative of Algeria noted that the Montreux Document, which was not legally binding and had no legal force in international law, was at the centre of the revised second draft. Such an instrument should help States introduce legally binding provisions in their legislation. The revised second draft did not define the legal status of private military or security companies involved in armed conflicts nor did it define the status of individuals involved in their activities.

23. The representative 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 affirmed the need for the future instrument to be legally binding to address the evolving challenges, while highlighting the negative impacts of private military and security companies on the environment and climate change; the rights of people to self-determination; private cyberoperations; relationships with non-State actors; and migration. The scope of the instrument should be expanded to include the domestic provision of services. The revised second draft should specify that the State held a monopoly on the use of force, including detailing which activities should be forbidden. The instrument should ensure that States adopt a clear and precise domestic legal framework on the use of force and firearms. The text should include a broad and detailed articulation of applicable international law, which should include all rules of international humanitarian law and customary international humanitarian law. The representative noted the specific need for clear provisions on weapons acquisition, possession and transfer, and provisions on transparency and mutual legal assistance to facilitate access to justice, remedy and accountability.

24. The representative of the International Code of Conduct for Private Security Service Providers' Association discussed the International Code of Conduct, which had been adopted in 2010, under the leadership of Switzerland, and amended in 2021 to broaden its scope of application and the range of security services it covered. The International Code of Conduct Association was a non-profit multi-stakeholder initiative, including seven Governments, 50 civil society organizations and 120 security providers globally, which sought to support States to ensure that providers of private security services respected human rights and international humanitarian law through implementation of the International Code of Conduct. The International Code of Conduct Association had demonstrated its value and contribution to raising standards in the private security industry and supporting national and international efforts to ensure accountability and access to remedy. The responsibility for prosecuting and punishing perpetrators of human rights abuses and humanitarian law violations lay first and foremost with States.

25. The representative of the International Commission of Jurists noted with appreciation that the revised second draft included important clarifications, but stated that several issues were outstanding, including those regarding accountability for serious criminal conduct (paragraph/article 4), the limitation of the instrument's scope to transnational activities (paragraph/article 3 (1)) and insufficient rules on the use of force and weapons (paragraph/article 11). There remained a lack of adequate accountability globally for the conduct of private military and security companies, which created an environment of impunity for violations and abuses committed by their personnel. The International Commission of Jurists welcomed the revised second draft and its potential to provide impetus for regulation, oversight and accountability of private military and security companies and protection of their personnel, the civilian population and combatants in armed conflict. It expressed its support for a legally binding instrument to ensure respect for its provisions, stressing that the lack of clarity on the nature of the instrument provided an obstacle to discussion and agreement on its provisions.

26. The representative of Transparency International highlighted the corruption risks linked to private military and security companies, including the operations that they conducted in secret and that were outside standard transparency and accountability structures. Transparency International welcomed the inclusion of references to the United Nations Convention against Corruption, noting that corruption and the unchecked actions of private military and security companies had far-reaching consequences for the rule of law, human rights and security, the legitimacy of Governments and the perpetuation of impunity, inequality and injustice. Private military and security companies failed to disclose conflicts of interests, such as requiring local governments to pay kickbacks for participating in government-funded projects. It could be difficult to ascertain chains of command, responsibilities and levels of coordination among private military and security companies and their subcontractors. Transparency and reporting were steps that States could take to effectively monitor and oversee private military and security companies and to prevent, address and remedy the abuses that they committed.

27. The representative of the International Human Rights Council noted with concern the use of technologies by private military and security companies. Sophisticated surveillance technologies, such as mobile phone hacking software, were sold by private military and security companies to governmental agencies in violation of the human right to privacy. Concerns, in the context of international humanitarian law, existed regarding the use of drones and associated technologies in attacks, intelligence-gathering, surveillance and the transport of materials, including weapons.

28. The representative of the Maat for Peace, Development and Human Rights Association reiterated the need to establish a legally binding framework to ensure protection for civilians and civil society. There was a gap in accountability and remedy for victims and in regard to the illicit transfer or trafficking of arms by private military and security companies. As regarded the latter issue, the Association proposed to include provisions to define responsibility in the matter of preventing arms transfers in both the preamble and a separate article.

III. Consideration of the revised second draft instrument

29. In conformity with its programme of work, the working group engaged in a reading of the revised second draft instrument. General comments made by States and non-State stakeholders are reflected in the present section of the report, while specific textual suggestions by States and non-State stakeholders and explanations pertaining to those have been compiled and are available as an annex.[5]

A. Preamble

30. In the chapeau, the United States proposed, and Türkiye supported, adding the term "States participants" in the non-binding version. The European Union affirmed that, although the drafters had left the definition of the instrument open, the current text was typical of the language found in treaties. Moreover, the highly detailed and unclear nature of the suggested instrument would likely generate new problems in identifying and interpreting the applicable rules for the conduct to be regulated. Finally, the new instrument often intended to prohibit conduct already prohibited by existing rules or did not always justify why certain conduct should be prohibited. Panama noted that a voluntary framework would not be an adequate response to protect the human rights of victims and to guarantee access to justice and accountability.

31. Regarding the first preambular paragraph bis, the European Union, with support from Panama, suggested reinserting the original wording, beginning with "and other relevant international instruments".

[5] See www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-military/session4/igwg-session4-compilation-concrete-textual-proposals.docx.

32. On the third preambular paragraph, numerous delegations flagged the addition of "applicable" before "International Humanitarian Law" as a concern. The European Union, supported by Panama and Switzerland, proposed removing it consistently throughout the text. Conversely, the United States supported keeping the term and adding "as applicable" prior to the "Additional Protocols of 1977" and adding a reference to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem. That proposal was supported by the United Kingdom. Ecuador, Panama and Switzerland, with support from the Working Group on the use of mercenaries, underlined the importance of referencing the full body of international humanitarian law, including the Regulations respecting the Laws and Customs of War on Land (Hague Regulations) and customary international humanitarian law.

33. On the third preambular paragraph bis, Türkiye advised, bearing in mind the scope of the text, referring to only businesses instead of non-State actors, while Nigeria suggested dropping the term "standards".

34. On the third preambular paragraph ter, the United States proposed a textual amendment while welcoming the inclusion of three conventions on labour, corruption and organized crime. Panama opted to retain the text as it was and acknowledged the potential pertinence of other conventions.

35. On the third preambular paragraph quart, the United States proposed an alternative version, while Panama preferred to retain the language, emphasizing that delegations of State functions had led to issues with impunity and accountability.

36. On the third preambular paragraph quinque, the European Union, supported by Panama, suggested adding a mention of international humanitarian law. Some delegations, including those of Nigeria and Panama, called for the deletion of the qualifier "some" before private military and security companies. The United States clarified that the qualifier was intended to indicate that not all private military and security companies engaged in those abuses and violations, which was supported by the International Code of Conduct Association. The United Kingdom provided textual amendments, while Panama and Switzerland advised including a specific mention of subcontractors. Transparency International advocated adding "corruption" to the list. Finally, the United States sought to further clarify the text by suggesting a textual amendment.

37. On the fifth preambular paragraph, the European Union recommended amending the text in line with the Montreux Document. It suggested textual amendments to acknowledge the absence of criminal liability for companies in some countries. The International Commission of Jurists proposed dividing the paragraph into two parts with the first part stipulating that States retained their obligations under international law albeit using private actors and the second focusing on oversight and accountability over private military and security companies. The United States proposed text to clarify the international legal obligations of States and the related need to regulate private military and security companies.

38. On the sixth preambular paragraph, the European Union welcomed the inclusion of previous suggestions but argued for the removal of "and reparation" since remedies covered both compensation and reparation. The United States proposed amending the text to focus on the obligation to protect and suggested that the paragraph be limited to addressing human rights abuses, dealing separately with violations of international humanitarian law. The Centre for Socio-Eco-Nomic Development (CSEND) was alarmed about access to judicial remedies at the national level.

39. On the sixth preambular paragraph bis, the United States proposed omitting "as provided by international law" before the reference to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. To acknowledge that the Basic Principles and Guidelines had been built upon existing jurisprudence, the International Commission of Jurists suggested resolving the issue by a specific textual proposal. Notwithstanding other delegations' objections to remove "reparation", the International Commission of Jurists argued to retain it, as remedy should not only be procedural. Panama also agreed to the retention of "reparation", in accordance with existing international standards, including resolutions of the Human Rights Council.

40. On the seventh preambular paragraph, the United States recommended revising the current text to accurately reflect the Guiding Principles on Business and Human Rights with regard to the responsibility of businesses to respect human rights and suggested a seventh preambular bis to address the issue of trafficking in persons in relation to private military and security companies. For consistency, the European Union proposed using "abuses and violations" throughout the text.

41. On the eighth preambular paragraph, the United States suggested edits, including terms to clarify the aim of supplementing the current voluntary regimes.

42. On the ninth preambular paragraph, the United States recommended textual amendments consistent with its prior edits, while the International Commission of Jurists emphasized that international legal standards were indispensable for the voluntary regime to deliver positive impacts.

43. On the tenth preambular paragraph, the United States proposed to delete the reference to respecting international human rights law and international humanitarian law, while the European Union opted to retain the original text, supported by Algeria, Argentina, Iran (Islamic Republic of), Panama and South Africa. The Working Group on the use of mercenaries was concerned that the current formulation did not adequately convey the negative impact of private military and security companies.

44. On the eleventh preambular paragraph, the Working Group on the use of mercenaries, with support from Argentina, Ecuador, Panama, South Africa and the United Kingdom, called for gender-inclusive language throughout the entire document. Ecuador and Panama rejected the textual proposal made by Türkiye and supported by the Islamic Republic of Iran, which aimed at acknowledging the differences among national systems. The United States and the Islamic Republic of Iran expressed their concern about the term "human rights and environmental defenders". Ecuador emphasized the need to maintain alignment with the language used by the Human Rights Council. The Maat for Peace, Development and Human Rights Association called for consideration of vulnerable groups, such as children and women, and of the issue of recruitment of children by private military and security companies; and for strong regulations on accountability on those issues throughout the instrument.

45. On the eleventh preambular paragraph bis, the European Union reiterated its concern about certain language demonstrating a leaning towards a legally binding instrument and suggested replacing it with alternative language, which was supported by Japan and the United Kingdom. That idea was rejected by Panama. The United Kingdom stressed the importance of establishing a more streamlined approach to gender with a textual suggestion. The Islamic Republic of Iran expressed support for retaining the paragraph as drafted and Mexico welcomed the proposal to enhance the gender perspective with specific textual amendments.

46. On the eleventh preambular paragraph ter, the European Union noted, and was supported by Japan, the United Kingdom and the United States, that the term "shall" must not be used, including in recitals. A suggestion to substitute "shall" with "should" was made. Panama argued for its retention as it referred to an existing obligation of States. The Islamic Republic of Iran supported retaining the paragraph as drafted.

B. [Paragraph][Article] 1

47. On a general note and applicable to all the definitions contained in article 1, several delegations highlighted the need to ensure alignment with existing definitions, in particular those contained in the Montreux Document (Switzerland, the United Kingdom and the United States).

48. On subparagraph (a), Switzerland made textual suggestions to broaden the scope of the definition.

49. On subparagraph (b), delegations noted with concern the variation in the definition, compared with already accepted definitions, including those in the Montreux Document. The

United States reaffirmed the need to be consistent with existing definitions and to remove the expansion of the definition. That position was supported by Switzerland and the United Kingdom. Switzerland made a textual suggestion to slightly rephrase the subparagraph.

50. On subparagraph (c), concerned that the document did not define terms unnecessarily and not to incorporate dated definitions, several delegations, including Switzerland and the United States, emphasized their preference for the definitions in the Montreux Document and advised against defining “military services” and “security services” separately. Switzerland warned of the danger of creating a place in the middle that was not defined and made specific textual suggestions. China, sharing comments on subparagraphs (c), (d) and (f), expressed the view that the current distinction between military and security services should be retained. That position was supported by Cuba, Ecuador, Iran (Islamic Republic of) and Pakistan. Ecuador argued to keep the current version, mindful of the interpretation and implementation at the national level and provided textual suggestions.

51. On subparagraph (d), China suggested a textual amendment to maintain the distinction between private military companies and private security companies. Transparency International, on behalf of the International Commission of Jurists, made textual suggestions to include entities owned or partially owned by States. Switzerland and the United Kingdom reiterated the importance of mirroring the Montreux Document, with Switzerland making a specific textual suggestion.

52. On subparagraph (g), the European Union and Switzerland made specific textual suggestions.

53. On subparagraph (h), the European Union, Switzerland, the United Kingdom and the United States expressed significant concern about defining State functions, which the United States clarified was actually an attempt to define non-delegable State functions. Switzerland recalled that it remained unclear whether there was a prohibition to outsource State functions under international law and welcomed the call of the United States to examine how the matter was addressed in the Montreux Document. The United States urged the deletion of the term from the definition section since it was for States to determine which functions were non-delegable. While the Working Group on the use of mercenaries agreed that the definition of State functions could be removed, it stressed the importance of explicitly including in the instrument the State’s monopoly on the use of force and the activities that should be outlawed, such as direct participation in hostilities and police powers. The International Commission of Jurists supported the deletion of the definition, if the spirit remained with regard to direct participation in conflict and other functions that States should not delegate. Ecuador, supported by Iran (Islamic Republic of), Pakistan and South Africa, reaffirmed a willingness to keep the subparagraph to the extent possible, with the inclusion of a non-exhaustive list of activities that should not be outsourced. Nigeria requested the removal of “cannot outsource” as the definition should not impede State sovereignty.

54. On subparagraph (j), Switzerland proposed to use the definition from the Montreux Document, while Ecuador stated its willingness to keep the definition, bearing in mind the Montreux Document.

55. On subparagraph (k), the European Union, the United Kingdom and the United States shared concerns about the definition of victim, with the United States providing textual suggestions. The International Commission of Jurists noted with concern the incomplete incorporation of an existing definition, warning of the negative impact of renegotiating accepted international law concepts. Ecuador agreed and shared a textual suggestion. Cuba, Iraq and South Africa expressed the wish to retain the provision as was, stressing the importance of including a concept of victims that was mindful of existing international norms. South Africa highlighted the need to consider impacts on groups and not solely on individuals. Transparency International asked to bear in mind that abuse could lead or facilitate further harm, such as arms trafficking. The International Committee of the Red Cross (ICRC) recommended referring to the definition of victim contained in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which had been adopted by consensus by the General Assembly. The Islamic Republic of Iran and Pakistan supported the retention of the subparagraph as it was.

The United Kingdom welcomed the stance of ICRC and agreed to use the language contained in the Basic Principles and Guidelines. The United States preferred omitting the definition and expressed concern about the context from which it was drawn (the Basic Principles and Guidelines, which were limited to gross violations of international human rights law and serious violations of international humanitarian law). The European Union reserved its position. Panama stressed the importance of retaining the subparagraph as it was, as part of the raison d'être of the process was to protect victims and end impunity.

C. [Paragraph][Article] 2

56. With regard to the chapeau, Türkiye made a specific textual suggestion, which was supported by the Islamic Republic of Iran with further amendment. Argentina reserved its position, while Panama and South Africa rejected the proposal.

57. On subparagraph (a), the United States supported the amendment by Türkiye to the chapeau and suggested language, which was not agreed upon by Cuba and the Islamic Republic of Iran. The Maat for Peace, Development and Human Rights Association stressed the importance of respecting the rights of persons who were negatively affected and protecting victims.

58. On subparagraph (b), the United States proposed textual edits, including suggestions to incorporate more accurately references to international human rights law. Iraq, Panama and Switzerland expressed their support for removing qualifying language on the applicability of international humanitarian law. Panama also noted that the current text confirmed that the instrument was built on existing standards. Transparency International recommended expanding further the scope of the subparagraph with a specific textual suggestion.

59. On subparagraph (d), the working group disagreed about access to information, with the United States suggesting specifying that access be provided to information about private military and security companies, whereas Panama stressed that the types of information should be kept general, so as to guarantee victims' access to the broadest information available, which was supported by Cuba, Pakistan and South Africa.

60. On subparagraph (e), the working group debated whether the instrument should prohibit States from outsourcing certain activities to private military and security companies. The debate was connected with the definition of State functions. The European Union noted that the provision was not consistent with the Montreux Document, which contained a much more limited prohibition (under section A (2) thereof) based on existing international humanitarian law. Nigeria, Switzerland, the United Kingdom and the United States supported a formulation that would leave it to States to make that determination. Panama and CSEND did not, in general, support leaving the matter to State discretion. Cuba, Iran (Islamic Republic of) and Pakistan supported leaving both formulations as interdependent matters.

61. On subparagraph (f), the working group debated and ultimately agreed on the purpose of the provision, which was to encourage the accountability of States for the acts of private military and security companies based on customary international law. Nigeria, South Africa, Switzerland and the United States shared inputs for the discussion. Switzerland also requested that the provision explicitly mention subcontractors or that language on subcontractors otherwise be streamlined throughout the text.

62. On subparagraph (g), Transparency International requested that the provision of effective systems, the rule of law and protection be included as objectives of the instrument.

D. [Paragraph][Article] 3

63. On paragraph/article 3, the United States, supported by Japan, requested that a new subparagraph on "legal effect" be added to clarify the nature of the instrument.

64. On subparagraph (1), the working group discussed deleting the provision on the grounds that it limited the instrument's scope to the transnational activities of private military

and security companies. The consensus was that subparagraph (2) was sufficient to outline the instrument's scope. Panama, South Africa, Switzerland, the United Kingdom and the International Commission of Jurists agreed to that proposal as did the United States, which clarified that the bracketed language in subparagraph 2 need not be retained. The view of the European Union was that it would be important for any instrument to cover all business in a non-discriminatory manner, be consistent with the Guiding Principles on Business and Human Rights and be realistically implementable and enforceable.

E. [Paragraph][Article] 4

65. On paragraph/article 4, the United States requested that the title of the paragraph/article be changed, or an alternative be added to reflect a non-binding instrument.

66. On subparagraph (1), the working group disagreed on the language used to describe the existing obligations of States. Ecuador, Panama, South Africa and ICRC supported the text as drafted. The United States suggested an alternative.

67. On subparagraph (1 bis), the United States, supported by Nigeria, proposed that States be urged to adopt "appropriate measures" not limited to "legislation" for the regulation of private military and security companies. The European Union suggested that the provision be amended to align with the Montreux Document, which distinguished between contracting States, territorial States and non-State actors. It also proposed deleting part of the last sentence, from "and their personnel" onwards. The United States also suggested non-binding textual alternatives in several places.

68. On subparagraph (2), the working group generally agreed that the provision required more clarity regarding which acts States should criminalize. Ecuador, the European Union, Panama, South Africa, the United States and the International Commission of Jurists made proposals regarding what should be included in the list of crimes.

69. On subparagraph (3), the working group continued its debate on whether the instrument should prohibit private military and security companies from performing certain functions. It was agreed that the debate on subparagraph (3) had implications for the debate on paragraph/article 1 (h) and the definition of non-delegable State functions. Cuba, Panama, Switzerland, the United Kingdom, the United States and the International Commission of Jurists contributed to the discussion.

70. On subparagraph (4), the working group disagreed on whether States should be prohibited from contracting private military and security companies for activities that would result in their personnel's "direct participation in hostilities". It was agreed that there was no consensus on the meaning of the term. The United States stated that there was no existing prohibition under international law and suggested tracking the Montreux Document, which urged contracting States to consider the risks. The European Union also expressed a preference for using the language of the Montreux Document. The United Kingdom generally supported setting minimum standards, but noted the lack of consensus on the meaning of the term. Panama, South Africa, Switzerland, ICRC and the International Commission of Jurists wished to retain the current terminology on the basis that it reflected the contemporary challenges under international humanitarian law. ICRC added that, should the text be changed, several key humanitarian concerns must be reflected.

F. [Paragraph][Article] 5

71. On subparagraph (1), the United States proposed using language to reflect a broader array of measures that a State might take to regulate and oversee private military and security companies beyond legislation. Nigeria agreed and recommended expanding the text to explicitly include the activities of companies and their personnel, which was supported by South Africa. The Geneva Centre for Security Sector Governance expressed the view that regulations should be added to the list of required State actions, which was supported by South Africa and Transparency International. Argentina noted the similarity of articles 5 (1) and 4 (1 bis) and requested clarification.

72. On subparagraph (2), the United States proposed an amendment, which was supported by Switzerland. CSEND noted that the current wording reflected activities carried out in another State and suggested that that consideration be included in any changes. Transparency International requested that a requirement for risk-based licensing systems be added.

73. On subparagraph (3), following cooperative discussions between the United States, the International Commission of Jurists and Transparency International, it was proposed that the chapeau of the provision be separated into one provision setting minimum standards for licensing authorities and one provision detailing requirements for the private military and security companies themselves. This conversation followed disagreement among the working group regarding the intent of the provision, to which Panama also contributed.

74. On subparagraph (3) (a), Transparency International suggested that principles of relevant conventions relating to corruption be mentioned.

75. On subparagraph (3) (b), the European Union proposed that the provision required the promotion of gender equality, in alignment with language used by the United Nations. Ecuador, Panama, the United Kingdom and the United States concurred. However, the working group did not agree on the inclusion or exclusion of other forms of diversity. Transparency International suggested that specific actions be delineated for combating discrimination and promoting gender equality and addressing abuse, such as sexual extortion.

76. On subparagraph (3) (c), the working group agreed on the inclusion of prevention of sexual exploitation and abuse as a training requirement, as proposed by the International Code of Conduct Association and expanded upon by the United Kingdom. Transparency International proposed the inclusion of training on lethal and non-lethal equipment as an alternative to weapons, which was supported by Panama, and the inclusion of requirements for a beneficial ownership register. The working group disagreed on the removal of qualifying language, to which Panama, Switzerland and the United States contributed their views.

77. On subparagraph (3) (d), the International Code of Conduct Association recommended considering the lack of a vetting system in many countries, which had led to licensing concerns and insufficient professionalism, and suggested putting in place such a system. While the United States initially suggested vetting should screen out those “likely to commit” human rights abuses, after consulting with ICRC and the International Commission of Jurists, the consensus was to support the revised text. Transparency International made a specific textual suggestion.

78. On subparagraph (3) (f), the European Union requested clarification on standards and suggested adding them to footnotes. The International Code of Conduct Association called for the inclusion of labour standards in a dedicated subparagraph, which was supported by the United States, with a further edit.

79. On subparagraph (3) (g), Transparency International proposed specific textual suggestions.

80. On subparagraph (3) (h), the United Kingdom made a reservation as to whether private military and security companies should be identified universally.

81. On subparagraph (4), the International Commission of Jurists and Transparency International suggested adding requirements for companies to regularly report on their activities. The United States proposed focusing on oversight and imposing civil and criminal penalties for non-compliance with registration/licensing procedures. CSEND questioned if licensing went beyond the domestic legal context, correlating with subparagraphs (2) and (3).

82. On subparagraph (5), the United States stressed that the obligation should be on territorial States to regulate the operation of private military and security companies on their territory. South Africa agreed but noted that the territorial State might lack power to enforce regulations due to the influence of private military and security companies, and the International Commission of Jurists suggested that home States regulate the export of services, citing the Swiss law authorizing services provided abroad. Transparency International drew a parallel to arms control regimes and end-user certificates. CSEND proposed adding text to ensure that home States oversaw the licences of private military and

security companies to operate in territorial States. The United States sought clarification about the Swiss practice, which Switzerland stated was part of a due diligence review but did not require the Swiss company to obtain permission from a territorial State.

83. On subparagraph (6), the International Code of Conduct Association suggested including “training” at the end of the subparagraph.

84. The United States supported the revised text’s inclusion of what had been subparagraph (7) as part of subparagraph (6) and made a textual suggestion.

G. [Paragraph][Article] 6

85. On subparagraph (1), Cuba made a specific textual suggestion and the United States suggested non-binding alternatives.

86. On subparagraph (1) (a), the United States preferred the bracketed formulation with additional language. The International Commission of Jurists proposed adding the word “subcontractors”. Switzerland, supported by Panama, expressed reservations about the word “applicable”. The United States clarified that “applicable” referred to incorporating requirements for private military and security companies into contracts where relevant, so did not raise issues of international law.

87. On subparagraph (1) (b), the United Kingdom supported the proposal of the United States to delete the provision as drafted and instead to state that the personnel of private military and security companies should not be asked to engage in conduct prohibited by domestic or applicable law. The International Commission of Jurists recommended addressing direct participation in hostilities separately.

88. On subparagraph (1) (c), the United States recommended a textual amendment to modify the companies concerned by the prohibition of subcontracting.

H. [Paragraph][Article] 7

89. On subparagraph (1), Switzerland, the United Kingdom and the United States favoured the bracketed text, which would leave it to territorial States to determine which services would be permitted within their jurisdiction. Panama supported the original text and noted the potential need to define State functions.

90. On subparagraph (2), the United States suggested a textual amendment with regard to which private military and security companies that are not registered and licensed should not be allowed to operate within the jurisdiction of the territorial State.

I. [Paragraph][Article] 8

91. The United States, supported by the European Union, proposed incorporating the bracketed text into paragraph/article 5. South Africa expressed concern about the bracketed text on “domestic law” since not all States had sufficient regulation in place. Switzerland acknowledged the viewpoint of South Africa but favoured the bracketed version for the moment. The International Commission of Jurists suggested keeping the current wording in brackets as an option until further clarification was made.

J. [Paragraph][Article] 9

92. The United States supported the inclusion of the bracketed text. Switzerland proposed textual additions. South Africa made a recommendation to reflect the fact that some countries already had laws in place.

K. [Paragraph][Article] 10

93. The United States expressed some reservations. On subparagraph (1), the United States suggested referencing the Montreux Document for good practices on contracting, territorial and home States regarding criminal jurisdiction and accountability of private military and security companies. The International Commission of Jurists favoured the addition of "and civil" since civil jurisdictions existed in many countries.

94. On subparagraph (2), Türkiye expressed concern about the broad scope of the provision, which exceeded the generally accepted rules on jurisdiction, and proposed deleting the term "or a territory under its control" in subparagraph (2) (a) and (e). The European Union questioned whether the terms "offence" and "violation" were interchangeable and made a specific textual suggestion. The United States recommended using "abuses" or "violations" rather than "offences". Argentina recommended making reference to paragraph/article 4 (2) regarding the definition of "offence".

95. On paragraph (2) (e) and (f), the United Kingdom made a textual suggestion to specify the non-exhaustive nature of other grounds for jurisdiction. The European Union mentioned that the United Nations Convention on the Law of the Sea referred to "territorial sea" not to "territorial waters".

96. On paragraph (2) (c), (d), (e) and (f), China stressed that jurisdiction under paragraph/article 4 (2) should align with domestic or international treaty law and not exceed their scope. It proposed a new subparagraph that upheld the principles of sovereign equality and non-interference and advocated avoiding the issue of universal jurisdiction due to the lack of consensus on the issue.

97. The United States noted that subparagraph (3) should be bracketed as it would not be necessary for a non-binding instrument.

L. [Paragraph][Article] 11

98. On subparagraph (1) (a), the United States suggested using the term "appropriate measures" instead of "national laws and regulations". Transparency International requested the inclusion of standards on corruption and corruption in arms trafficking and suggested referring to the Montreux Document regarding types of weapons companies should not acquire. Argentina made a specific textual suggestion. The Maat for Peace, Development and Human Rights Association advised mentioning the Arms Trade Treaty.

99. On subparagraph (1) (a bis), the United States proposed alternative language to the non-exhaustive list included in the text. Switzerland, in accordance with customary international law, supported the term "widespread" instead of "indiscriminate". Transparency International advised including the use of inherently abusive security goods or equipment, which was supported by the International Commission of Jurists.

100. On subparagraph 1 (b), the International Commission of Jurists made specific textual suggestions. The United States supported the proposal by the United Kingdom qualifying the training of individuals' use of force.

101. On subparagraph (2), delegations discussed the scope of "transfer" as opposed to "import and export". Transparency International and ICRC advised using the term "transfer", in accordance with the Arms Trade Treaty and to expand the scope; ICRC made a textual proposal. Transparency International, supported by Panama, proposed to include transfer, transit and transhipment and brokering and to broaden the scope of the items listed. The United States stated its readiness to broaden the scope beyond weapons.

102. On subparagraph (3), Switzerland made a specific textual suggestion based on the wording of the Arms Trade Treaty. Argentina and the United States agreed.

M. [Paragraph][Article] 12

103. While the European Union mentioned that it was unsure about which situations would give rise to State responsibility, the United States recommended omitting the paragraph/article and made a textual suggestion as an alternative. ICRC recalled that the Montreux Document reminded States of their potential responsibility for violations by private military and security companies, with a reference to customary international law. The International Commission of Jurists proposed adding a second subparagraph to reflect the language in paragraph 8 of the Montreux Document on reparations.

N. [Paragraph][Article] 13

104. On subparagraph (1), Panama expressed support for the current draft. The United States proposed textual amendments, which the United Kingdom supported, while reserving its position on some aspects of the paragraph/article. With the support of Mexico, Panama and the United States, the United Kingdom proposed to replace "gender-sensitive" with "gender-responsive". South Africa, with the support of the International Commission of Jurists, insisted on keeping the language as drafted, since access to remedy was well established in law. ICRC proposed to address separately abuses of human rights and violations of international humanitarian law, building on existing obligations and considering new commitments to provide effective remedy for violations of international humanitarian law to individuals. The United States expressed concern that the subparagraph would extend remedies beyond existing obligations but stated its interest in engaging further with ICRC.

105. On subparagraph (1 bis), the United States argued that the bracketed language should become part of the text.

106. On subparagraph (1 ter), the United States also called for the inclusion of the bracketed language in the text.

107. On subparagraph (2), the International Commission of Jurists clarified the origin of the language included therein, namely the Guiding Principles on Business and Human Rights, and made a specific textual suggestion, following an enquiry by the European Union.

O. [Paragraph][Article] 14

108. On subparagraph (1), the United States requested the inclusion of the bracketed language. The International Commission of Jurists made a specific textual suggestion inspired by the Basic Principles and Guidelines. CSEND expressed concern with the inclusion of the expression "consistent with their domestic law" as it might not be sufficient in some countries.

109. On subparagraph (2), the United States voiced its support to include the terms in brackets in the text.

P. [Paragraph][Article] 15

110. The United Sates proposed a one paragraph replacement for the paragraph/article. On subparagraph (1), the United States made a specific textual suggestion. Switzerland confirmed the need to review the suggestion by the United States, while the United Kingdom stated its reservation as it reviewed the paragraph/article.

111. On subparagraph (1 bis), the United States recommended bracketing the subparagraph as it was only relevant for a binding instrument and suggested alternative language. Panama and South Africa endorsed the retention of the subparagraph. Panama, with the support of Cuba, expressed the view that the current text was not prescriptive.

112. On subparagraph (2), the United States suggested language to clarify the scope of the provision.

113. On subparagraph (2 bis), the United States made a specific textual suggestion.

Q. [Paragraph][Article] 16

114. On subparagraph (1), the United States reiterated its call for the inclusion of alternative non-binding language. Additionally, the United States voiced support for unbracket the text. The Geneva Centre for Security Sector Governance stated that the paragraph should specify the minimal set of information to be collected, analysed and shared. South Africa highlighted its wish to include subcontractors.

115. On subparagraph (2), the European Union, supported by the United States, suggested ensuring consistency throughout the text by including the bracketed term. Panama and South Africa expressed concern with its insertion, considering its potential undermining impact. To address the concern, the International Commission of Jurists proposed additional language. While that suggestion was agreed upon by the United States, Panama reserved its position.

116. On subparagraph (2 bis), the United States proposed that the reports be circulated to the national points of contact without reference to a secretariat, which would only be relevant to a binding instrument. CSEND welcomed the inclusion of that subparagraph.

R. [Paragraph][Article] 17

117. The United States, supported by Switzerland, suggested rephrasing the title to acknowledge that it pertained to "international law" and proposed additional text for a non-binding instrument, which was not acceptable to South Africa.

S. [Paragraphs][Articles] 18–24

118. With regard to the remaining paragraphs/articles, the United States proposed bracketing the text and suggested non-binding alternatives to remain aligned with the mandate of the working group not to prejudge the nature of the instrument.

IV. Way forward

119. Following discussions held during the fourth session and acknowledging the comments and specific textual suggestions received on the revised second draft instrument, the Chair-Rapporteur presented the procedural way forward as outlined below:

(a) The mandate of the working group had been established in 2017 by the Human Rights Council in its resolution 36/11 and extended in 2020 for another three years by the Council in its resolution 45/16;

(b) The mandate given by the Council had specified that the work of the working group would be informed by the discussion document on elements for an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, as prepared by the Chair-Rapporteur, and further inputs from Member States and other stakeholders. It offered a unique opportunity for the working group to identify how to more effectively prevent human rights abuses relating to the activities of private military and security companies and to more effectively protect and ensure access to justice and remedies for victims of such abuses and strengthen accountability;

(c) Since its establishment, a total of four sessions had been held. During the first session, States and other stakeholders had considered one by one the elements contained in the discussion document and provided their substantive comments on those, making good progress towards fleshing out the elements contained therein. During the session, the working group had been briefed by a number of experts who had provided relevant updates on the topic of private military and security companies from their perspectives and areas of expertise; had embarked on discussing further the elements for an international regulatory framework, as contained in the discussion document, with the aim of further refining and developing them; and had devoted time to identifying possible additional elements;

(d) After the second session, and as agreed in the way forward, the Chair-Rapporteur, on the basis of the wealth of recommendations made during the sessions and written inputs collected after the second session, had prepared a zero draft of a regulatory framework, without prejudging the nature thereof, which had been discussed during the intersessional consultations in April 2022;

(e) Based on inputs gathered during those consultations, and in accordance with the way forward agreed during the second session of the working group, the Chair-Rapporteur had circulated a revised zero draft instrument ahead of the third session. The revised zero draft had formed the basis of the negotiations that had taken place during the third session;

(f) After the third session, in accordance with the way forward agreed, the Chair-Rapporteur had released a second draft, which had been discussed during the intersessional consultations in December 2022, and, on the basis of the inputs gathered, a revised second draft in March 2023, ahead of the fourth session. During the fourth session, the working group had considered the revised second draft and made substantive progress in that regard;

(g) It should be recalled that the approach followed by the Chair-Rapporteur, in accordance with the mandate of the working group, was always to release draft versions of the instrument in a form that could form the basis for either a legally binding or non-binding outcome, with language options to reflect both approaches;

(h) During the fourth session, delegations had reaffirmed the importance of the working group’s mandate and the need for a regulatory framework;

(i) Delegations had noted the importance of the Montreux Document, the International Code of Conduct and the Guiding Principles on Business and Human Rights and the need to develop a universal framework to regulate the activities of private military and security companies, and identified some broad points of agreement regardless of the framework’s legal status. Such consensus related, inter alia, to the regulation of private military and security companies, the victim-centred nature of the instrument, provisions for mutual cooperation in investigating and prosecuting crimes committed by private military and security companies and their personnel and the need for the instrument to be gender inclusive;

(j) Delegations had acknowledged that outstanding issues remained, such as opposing views regarding the legal nature of the instrument, with some having a strong preference for a legally binding instrument, while similarly strong views for a non-binding instrument were expressed and noted. In that regard, it is imperative that agreement is reached on the nature of the framework to take the process forward;

(k) In that light, further acknowledging all the work and significant progress made since 2017, and the need for a renewal of the mandate at the fifty-fourth session of the Council, the working group recommends that the mandate be renewed for another three years, in accordance with the Council’s normal procedure for mandate renewal.

120. The Working Group had an open discussion and, after some consultations, decided to adopt by consensus the way forward as presented.

121. The United States made a reservation in relation to subparagraph (k) of the way forward based on its proposal and preference to make a recommendation in that subparagraph to the Human Rights Council to the effect that the mandate should be renewed for continued work on a non-binding instrument. The United Kingdom and Japan supported such a reservation.

122. The European Union decided to reserve its position on the way forward.

123. The Chair-Rapporteur reminded delegations that it was not for the Chair-Rapporteur to decide on the nature of the instrument and encouraged States, in the period leading up to the fifty-fourth session of the Human Rights Council, to build upon the constructive spirit to move towards such a determination.

V. Adoption of the progress report and way forward

124. On 21 April 2023, before the adoption of the draft progress report, some delegations made concluding remarks: the European Union, the Russian Federation, Switzerland, South Africa, China, Brazil, the United States, the United Kingdom, Iran (Islamic Republic of) and Bahrain.[6]

125. Following those remarks, the working group adopted *ad referendum* the progress report on its fourth session and decided to entrust the Chair-Rapporteur with the finalization and submission of the report to the Human Rights Council for consideration at its fifty-fourth session.

[6] See www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index/4th-session-igwg-military.

Annex

List of participants

States Members of the United Nations

Algeria, Argentina, Azerbaijan, Bahrain, Belgium, Brazil, Burkina Faso, Cabo Verde, Cameroon, Chad, Chile, China, Colombia, Côte d'Ivoire, Cyprus, Cuba, Ecuador, Egypt, France, Gambia, Guatemala, Guyana, India, Iran (Islamic Republic of), Iraq, Japan, Lao (People's Democratic Republic of), Malaysia, Mexico, Nepal, Netherlands (Kingdom of the), Nigeria, Pakistan, Panama, Paraguay, Poland, Qatar, Romania, Russian Federation, South Africa, Switzerland, Sweden, Syrian Arab Republic, Tanzania (United Republic of), Thailand, Togo, Türkiye, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, and Venezuela (Bolivarian Republic of).

International organizations

European Union, the International Code of Conduct Association (ICoCA).

Observer organization

International Committee of the Red Cross (ICRC).

Non-governmental organizations in consultative status with the Economic and Social Council

African Centre for the Constructive Resolution of Disputes Education Trust, Arab-European Center of Human Rights and International Law (AECHRIL), Association de lutte contre la dépendance, Bureau Pour la Croissance Intégrale et la Dignité de L'enfant, Conectas Direitos Humanos, Fondation pour un Centre pour le Développement Socio-Eco-Nomique, Genève pour les droits de l'homme: formation internationale, International Commission of Jurists (ICJ), International Human Rights Commission Relief Fund Trust, International Human Rights Council, Maat for Peace, Development and Human Rights Association, Pleaders of Children and Elderly People at Risk "PEPAINGO", Pompiers humanitaires, Transparency International, United Nations of Youth, Network – Nigeria, Vie et Santé du Centre, International Association of Soldiers for Peace, TRIAL International.

Other stakeholders

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, the Working Group on the issue of human rights and transnational corporations and other business enterprises, the Chair-Rapporteur's group of experts, Geneva Centre for Security Sector Governance (DCAF), International Organization for Self-Determination and Equality (IOSDE), NGO Pulse of Democracy, Office of Legal Counsel to Popular Organizations - GAJOP, Centro de Defesa da Criança e do Adolescente (CEDECA Ceará), Chinese (Taiwan) Society of International Law, Hunan Normal University, University Jean Moulin, Lyon III, Guyana Defence Force.