

**REVISED ZERO DRAFT INSTRUMENT ON AN INTERNATIONAL REGULATORY
FRAMEWORK ON THE REGULATION, MONITORING OF AND OVERSIGHT OVER
THE ACTIVITIES OF PRIVATE MILITARY AND SECURITY COMPANIES**

PREAMBLE

The [Signatory States][States Parties] to this Instrument:

- (PP1) *Reaffirming* the principles and purposes of the Charter of the United Nations, the sovereign equality, territorial integrity and political independence of all States, the right of self-determination of peoples, and the prohibition of the threat, or use of force, in international relations;
- (PP2) *Recalling* Human Rights Council resolution 15/26 of 1 October 2010 that established the open-ended working group to consider the possibility of elaborating an international regulatory framework on the registration, monitoring of and oversight over the activities of Private Military and Security Companies and their personnel;
- (PP3) *Recalling further* that the Human Rights Council in its resolution 36/11 of 28 September 2017 established a new open-ended intergovernmental working group for a period of three years, with a mandate 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, which was renewed for a further period of three years by resolution 45/16 adopted on 6 October 2020;
- (PP4) *Recalling* the Geneva Conventions of 1949 and their Additional Protocols of 1977, and the obligation of High Contracting Parties and other parties to armed conflict to respect and ensure respect for International Humanitarian Law in all circumstances, and the responsibility of non-State actors, including business

entities, to respect international human rights standards and ensure respect for international humanitarian law in all circumstances (1);

- (PP5) *Recognising* the right to protect all persons affected by the activities of Private Military and Security Companies and their personnel, whether civilians or military personnel, from violations of their rights as provided for in Human Rights Law and International Humanitarian Law, and the need to provide victims with equal and effective access to justice and judicial and other remedies and reparation; (2)
- (PP6) *Recognising further* the contribution of the *Montreux Document on pertinent international legal obligations and good practices for States relating to operations of Private Military and Security Companies during armed conflict*, the *International Code of Conduct for Private Security Providers* and the *United Nations Guiding Principles of Business and Human Rights*, amongst others, in regulating the activities of Private Military and Security Companies and in preventing abuses or violations during such activities;
- (PP7) *Acknowledging* that self-regulation by Private Military and Security Companies is not sufficient to ensure the observance of human rights law and International Humanitarian Law by their personnel and that business enterprises are required to respect human rights;
- (PP8) *Recognising* that international minimum legal standards and the effective implementation thereof in domestic law are required to enhance these existing voluntary regimes in order to prevent violations of international human rights law and International Humanitarian Law and to ensure that the activities of Private Military and Security Companies and their personnel are carried out in accordance with international law;
- (PP9) *Mindful* of the assistance rendered by Private Military and Security Companies to a variety of clients, *inter alia* to governments, humanitarian actors and peacekeeping missions;

- (PP10) *Concerned* about the differentiated impacts of the activities of Private Military and Security Companies on different groups of the societies in States where such Companies are operating, and especially individuals and groups in vulnerable situations, including, but not limited to, women, children and people with disabilities;
- (PP11) *Mindful* thereof that States bear the primary responsibility to prevent, repress, and suppress abuses of human rights law and violations of International Humanitarian Law and are therefore obliged to ensure respect thereof by Private Military and Security Companies and their personnel, and to take appropriate steps to prevent, investigate, prosecute, punish and redress abuses through establishing appropriate jurisdiction, effective remedies for victims, effective policies, legislation, regulations and adjudication, including to provide for civil, administrative or criminal liability for enterprises and associated persons present or operating in their territory or jurisdiction;

[Have reached the following understandings][Hereby agree as follows]:

[PARAGRAPH][ARTICLE] 1
DEFINITIONS

For the purposes of the present Instrument:

- (a) “Contracting State” means a State that directly contracts with Private Military and Security Companies for their services, including where the contracted company subcontracts with another Private Military and Security Company or where the contracted Private Military and Security Company operates through its subsidiary companies;

- (b) “Home State” means a State where a Private Military and Security Company has its centre of activity, is incorporated, registered or domiciled in or has its main place of business or conduct substantial activities;
- (c) “Military services” means specialized services that resembles or is related to military action, including strategic planning, intelligence, investigation, reconnaissance, flight operations, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities, whether on land, in the air or at sea, or whether in cyberspace or space;
- (d) “Private Military and/or Security Company” means a private business entity, irrespective of how it describes itself, which provides on a compensatory basis military and/or security services through natural persons or other legal entities;
(3)
- (e) “Personnel” means persons employed by, through direct hire or under a contract with a Private Military or Security Company, including employees and managers;
(4)
- (f) “Security Services” means armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing application, development and implementation of informational security measures and other related activities;
- (g) “State Functions” are functions which are consistent with the principle of the State monopoly on the legitimate use of force that a State cannot outsource to Private Military and/or Security Companies under any circumstance, including but not limited to, direct participation in hostilities (as defined in international law), waging war and/or conducting 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,

exercising police powers, especially powers of arrest or detention and the interrogation of detainees.(5)

- (h) “State of Nationality” means a State of the nationality of employees or other personnel of Private Military and Security Companies;
- (i) “Territorial State” means a State where a Private Military and Security Company carries out activities regardless of whether the company is incorporated or not within such State’s jurisdiction, or the duration and kind of operations;
- (j) “Victim” means a person who suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law. (6)

[PARAGRAPH][ARTICLE] 2

OBJECTIVES

The objective of this Instrument is to:

- (a) provide for the regulation of and transparent oversight over the operations of Private Military and Security Companies, their personnel and sub-contractors, by [signatory States][States Parties] according to minimum standards in international law, to ensure the protection and fulfilment of human rights and International Humanitarian Lawⁱ by Private Military and Security Companies and their personnel in the environments wherein they operate;
- (b) provide for the circumstances under which such companies, its personnel and sub-contractors could be held accountable for abuses of human rights and violations of International Humanitarian Law;

- (c) ensure access to justice and effective avenues of redress and remedy for victims of rights abuses by Private Military and Security Companies, their personnel, and their sub-contractors;
- (d) prohibit Private Military and Security Companies and their personnel from exercising State functions;
- (e) (7)
- (f) strengthen awareness of the existing conditions where State Responsibility will be incurred for abuses of human rights and violations of International Humanitarian Law by Private Military and Security Companies and their personnel;
- (g) provide for effective investigation and prosecution of persons responsible for the abuses of human rights and violations of International Humanitarian Law.

[PARAGRAPH][ARTICLE] 3
SCOPE

- (1) In relation to a Home State,(8) this Instrument is applicable in situations that involve persons, whether a legal person or a natural person, engaging in activities that provide private military and security services in any territory outside its Home State, or provide services in its Home State that is connected to the provision of private military and security services outside its Home State, or exercises control from its Home State over a person that provides private military and security services outside the territory of the that person's Home State.
- (2) Subject to paragraph (1), this Instrument shall apply to all situations, including situations of conflict, where private military and security services are provided by Private Military and Security Companies and their personnel and their sub-contractors.

[PARAGRAPH][ARTICLE] 4
GENERAL OBLIGATIONS OF STATES

- (1) [Signatory States][States Parties] recognise their obligation to respect, protect and fulfil human rights and to respect and ensure respect for International Humanitarian Law and to ensure the respect of human rights and International Humanitarian Law by Private Military and Security Companies and their personnel within their jurisdiction.
- (2) [Signatory States][States Parties] [undertake to][shall] take appropriate steps to criminalise in their domestic law abuses by Private Military and Security Companies and their personnel of international human rights law and violations of International Humanitarian Law, specifically, but not limited to, war crimes, crimes against humanity, genocide, grave violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, and other crimes under international law (9).
- (3) [Signatory States][States Parties] [undertake to][shall] through their domestic law prohibit Private Military and Security Companies and their personnel from exercising State functions.
- (4) [Signatory States][States Parties] [undertake not to][shall not] employ Private Military and Security Companies and their personnel in any function that would result in such personnel directly participating in hostilities.

[PARAGRAPH][ARTICLE] 5
OBLIGATIONS WITH RESPECT TO
REGISTRATION, LICENSING AND RECRUITMENT

- (1) [Signatory States][States Parties] [undertake to][shall] adopt legislation for the regulation of and oversight over Private Military and Security Companies and their personnel and the provision of military and security services.

- (2) [Signatory States][States Parties] [undertake to][shall] establish an effective licensing system in their domestic law to ensure that Private Military and Security Companies do not import and export their services without appropriate licenses.
- (3) [Signatory States][States Parties] [undertake to][shall] require Private Military and Security Companies, to qualify for a license, to adopt policies providing for:
 - (a) the integration of human rights and International Humanitarian Law principles across their operations, including an internal code of conduct, ethics or behaviour;
 - (b) gender commitments prohibiting discrimination and promoting gender and other forms of diversity and gender-specific internal policies;
 - (c) ensuring training in international human rights law and International Humanitarian Law, the rules relating to the use of force and the use of weapons;
 - (d) effective recruitment, selection and vetting procedures for personnel to prevent the employment of persons suspected of or convicted for human rights abuses and International Humanitarian Law violations as well as sexual and gender-based violence;
 - (e) effective internal mechanisms for monitoring, supervising and ensuring accountability for alleged abuses of human rights law and violations of International Humanitarian Law; and
 - (f) compliance with fundamental international labour standards. (10)
- (4) [Signatory States][States Parties] [undertake to][shall] criminalise in their domestic law the activities of Private Military and Security Companies and their personnel undertaken without the required registration or license and authorisation, including the export and import of military and security services.

- (5) [Signatory States] [States Parties] shall ensure that their licensing systems prohibit the provision of military and / or security services to a Territorial State without the permission of that State. (11)

[PARAGRAPH][ARTICLE] 6
OBLIGATIONS OF CONTRACTING STATES

- (1) Without prejudice to the other obligations provided for in this Instrument, Contracting States [undertake to][shall], when entering into contracts with Private Military and Security Companies, ensure that such government contracts:
- (a) incorporate requirements to ensure respect by such companies and their personnel for the domestic law of the Contracting State, international human rights law and International Humanitarian Law;
 - (b) prevent the personnel of Private Military and Security Companies from engaging in any conduct amounting to either direct participation in hostilities or the exercising of State Functions;
 - (c) are not concluded with Private Military and Security Companies that are not registered and licenced; and
 - (d) prohibit sub-contracting to non-registered companies.
- (2) Contracting States [undertake not to][shall not] enter into contracts with Private Military and Security Companies for the provision of services that have been assigned by international law to States or State agencies as inherently State functions.

[PARAGRAPH][ARTICLE] 7
OBLIGATIONS OF TERRITORIAL STATES

- (1) Territorial States [undertake to][shall] ensure that no State Functions are carried out within its jurisdiction by Private Military and Security Companies and their personnel.
- (2) Territorial States [undertake not to][shall not] allow Private Military and Security Companies that are not registered and licensed in terms of this Instrument to operate within its jurisdiction.

[PARAGRAPH][ARTICLE] 8
OBLIGATIONS OF HOME STATES

In addition to the obligations of Territorial States, Home States [undertake to][shall] in their domestic law determine which military and security services cannot be exported and criminalise the export of such prohibited services.

[PARAGRAPH][ARTICLE] 9
STATES OF NATIONALITY

States of nationality [undertake to][shall] adopt legislation to regulate the recruitment of their nationals by Private Military and Security Companies to serve abroad and prohibit their nationals to engage in any activity that is prohibited by this Instrument.

[PARAGRAPH][ARTICLE] 10
JURISDICTION

- (1) [Signatory States][States Parties] [undertake to][shall] provide for jurisdiction over Private Military and Security Companies and its personnel when the company, or its parent or controlling company, is incorporated in, or is registered or domiciled in, or

has its main place of business or substantial activities in the territory of that State or in a territory wherein it is able to exercise jurisdiction.

- (2) [Signatory States][States Parties] [undertake to][shall] establish its jurisdiction through its domestic law over applicable offences when such offences are committed:
- (a) in the territory of that State or a territory under its control;
 - (b) 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;
 - (c) by a national of or person ordinarily resident in that State;
 - (d) against a national of or a person ordinarily resident in that State;
 - (e) outside the territory of that State or a territory under its control, including in the Exclusive Economic Zone of any State or on the High Seas and the offence constitutes a crime under international law; (12)
 - (f) by an alleged offender who are present in the territory of the [Signatory State][State Party] after the commission of the offence in another State.
- (3) This Instrument does not exclude any additional grounds for criminal jurisdiction that exists under international law or the domestic law of [Signatory States][States Parties].

[PARAGRAPH][ARTICLE] 11

REGULATION OF THE USE AND ACQUISITION OF WEAPONS

- (1) [Signatory States][States Parties] [undertake to][shall] adopt legislation to:

- (a) regulate the acquisition, licensing, import, export and use of weapons by Private Military and Security Companies and their personnel in terms of international standards relating to arms control;
 - (b) require Private Military and Security Companies to effectively train their personnel in the law relating to the lawful use of force, with respect to the provision of private military and security services, including in a situation of armed conflict.
- (2) [Signatory States][States Parties] [undertake to][shall] introduce effective customs control and other forms of control over the import and export and re-import and re-export of weapons used by Private Military and Security Companies and their personnel.

[PARAGRAPH][ARTICLE] 12
STATE RESPONSIBILITY

Without prejudice to other possible grounds for responsibility of the State under international law and the prohibitions contained in [Paragraphs][Articles] 1(g), 4(4), 6(1)(b), and 9, and consistent with the principles international law, State Responsibility may arise pursuant to the use of Private Military and Security Companies.

[PARAGRAPH][ARTICLE] 13
ACCESS TO JUSTICE, ACCOUNTABILITY AND REMEDIES

- (1) [Signatory States][States Parties] [undertake to][shall] ensure, through judicial, administrative, legislative or other appropriate means, that victims of abuses of human rights and violations of International Humanitarian Law within their territory or under their jurisdiction shall have equal and effective access to a remedy and adequate, effective and prompt reparations. (13)

- (2) [Signatory States][States Parties] [undertake to][shall] provide for non-judicial grievance procedures that are legitimate, accessible, predictable, equitable, rights-compatible, and transparent.

[PARAGRAPH][ARTICLE] 14
INVESTIGATION AND PROSECUTION

- (1) [Signatory States][States Parties] [undertake to][shall] conduct effective and impartial investigations and prosecute persons suspected of having committed applicable crimes.
- (2) [Signatory States][States Parties] [undertake not to][shall not] grant immunity from prosecution to Private Military and Security Companies, their personnel or their contractors for crimes committed anywhere they operate.

[PARAGRAPH] [ARTICLE] 15
MUTUAL LEGAL ASSISTANCE, EXTRADITION AND SURRENDER

- (1) [Signatory States] [States Parties] [undertake to] [shall] provide one another with mutual legal assistance in the investigation and prosecution of the crimes covered by this Instrument.
- (2) [Signatory States][States Parties] [undertake to][shall] extradite or surrender persons suspected of having committed applicable crimes in terms of their domestic law or bilateral and multilateral agreements to a State or international criminal tribunal having jurisdiction over such crime.

[PARAGRAPH] [ARTICLE 16]
COOPERATION

- (1) [Signatory States] [States Parties] [undertake to] [shall] for the purpose of sharing information, establish a national contact point for the collection, analysis and exchange of information on companies providing military and / or security services and possible violations of national and international law.
- (2) [Signatory States][States Parties] [undertake to][shall] share information on the activities of Private Military and Security Companies with a view to ensure effective regulation of and oversight over their activities with a view to investigate and prosecute possible crimes committed by such companies and/or their personnel.

[PARAGRAPH][ARTICLE] 17
INTERNATIONAL HUMANITARIAN LAW

This Instrument is without prejudice to the provisions of International Humanitarian Law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949, the two Additional Protocols thereto of 8 June 1977, and the third Additional Protocol thereto of 8 December 2005, and other relevant obligations in International Humanitarian Law.

ARTICLE 18
SETTLEMENT OF DISPUTES

Legally binding text:

- (1) States Parties shall endeavour to settle disputes concerning the interpretation and application of this Instrument through consultations and negotiation.

- (2) Any dispute between two or more States Parties concerning the interpretation or application of this Instrument that cannot be solved through consultations and negotiation within six months of the date of request for such settlement shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of arbitration, those States Parties are unable to agree on the terms of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice in accordance with the Statute of the Court.

ARTICLE 19
SIGNATURE, RATIFICATION AND ACCESSION

- (1) This Instrument will be open for signature by all United Nations Member States from to
- (2) This Instrument shall be open for ratification by all States that signed it. Instruments of ratification shall be deposited with the Depositary.
- (3) Non-Signatory Member States of the United Nations may accede to this Instrument by depositing an instrument of accession with the Depositary.

ARTICLE 20
ENTRY INTO FORCE

- (1) This Instrument shall enter into force days after the deposit of the instrument of ratification or accession.
- (2) For each State acceding to this Instrument after its entry into force, it shall enter into force days after the depositing of the instrument of accession.

ARTICLE 21
AMENDMENTS

- (1) After expiry of five years from the entry into force of this Instrument, any State Party may propose an amendment to this Instrument to the Depositary, which shall circulate the proposal forthwith to all States Parties and other United Nations Member States for the purpose of considering and deciding on the proposal in the United Nations Human Rights Council.
- (2) States Parties shall make every effort to reach agreement on any proposed amendment to this Instrument by consensus. If all efforts at consensus have been exhausted, and no agreement is reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the State Parties present and voting during a meeting called by the Human Rights Council in terms of its procedures. For the purposes of this article, States Parties present and voting means States Parties present and casting an affirmative or negative vote.
- (3) The Depositary shall communicate any adopted amendments to all States Parties and other Member States of the United Nations.
- (4) An amendment to this Instrument adopted in accordance with this article shall enter into force for the States Parties which have consented to be bound by it on theday after depositing of its instrument of acceptance of the amendment. Any State acceding to the Instrument after the adoption of an amendment shall be bound by such amendment.

ARTICLE 22
RESERVATIONS

Note: Delegations will have to consider whether to allow for reservations.

ARTICLE 23
WITHDRAWAL

- (1) Any State Party may withdraw from this Instrument by giving written notice to the Depositary.
- (2) A withdrawal shall become effective one year after receipt of the notification by the Depositary, or at such later date as may be specified in the notification of withdrawal.

ARTICLE 24
DEPOSITARY AND LANGUAGES

- (1) The Secretary-General of the United Nations is designated as the Depositary of this Instrument.
- (2) The original of this Instrument, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Depositary.

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

DONE at on this day of20...

General remarks:

This Zero Draft Instrument aims to provide new impetus to the process of elaborating an International Regulatory Framework on the regulation, monitoring of and oversight over Private Military and Security

Companies. It therefore aims to consolidate the deliberations in the Open-Ended Intergovernmental Working Group (IWG) mandated to elaborate the content of an international regulatory framework, without prejudicing the nature thereof on the regulation, monitoring of and oversight over the activities of Private Military and Security Companies. This text draws on IWG reports, the non-exhaustive list of elements of a discussion document based on inputs received at the first (2019) and second (2021) sessions, and a number of existing non-binding regulatory documents, like the *International Code of Conduct for Private Security Service Providers*, the *Montreaux Document on Pertinent International Legal Obligations relating to Private Military and Security Companies*, the *United Nations Guiding Principles of Business and Human Rights* and the *Draft of a Possible Convention on Private Military and Security Companies for consideration and action by the Human Rights Council (A/HRC/15/25)*, as well as the deliberations of the informal intercessional meeting of the IWG that took place on 4 and 5 April 2022.

This document takes the approach, derived from the possibility that it may evolve into a legally binding document, that obligations/duties will be placed on States as the subjects of international law. It therefore elaborates broad obligations and principles, to which States will be bound, while leaving the States, with different legal systems and traditions, to legislate detailed provisions in their domestic law to implement the provisions of this Instrument. Non-States Parties are not addressed directly, but it is recognised that such actors are bound by international human rights law and International Humanitarian Law.

It makes sense to regulate the activities of PMSC's in all situations, including situations of conflict, where IHL will be applicable. The term "complex situations" is not used as it is not a legally defined term, while situations of conflict find adequate definition in International Humanitarian Law.

Provision has not been made in this draft for a reporting obligation or a Conference of States Parties, while provision has been made for the establishment of National Contact Points in 16(1). Delegations will also have to provide guidance on the inclusion in the Instrument of the establishment or designation of any central authority responsible for monitoring and administrative enforcement or accountability by that authority after initial registration or a licensing. Guidance must include whether such an authority must be established as a 'treaty' body or by State in their domestic law.

Two versions of the text will be provided, one with track changes indicating amendments to the text which were considered by the intersessional meeting, and a "clean" document incorporating the changes, the clean document to serve as the basis for discussions.

Footnotes:

- (1) Text based on Security Council Resolution 2417 (2018)

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- (2) Text aligned with General Assembly's *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of international human rights law and serious violations of International Humanitarian Law*.
 - (3) Text aligned with *Montreaux Document* definition.
 - (4) Definition based on *Montreaux Document*.
 - (5) Aligned with definition in draft *Convention on Private Military and Security Companies (PMSCs)* ("Draft Convention") prepared by the Working Group on the Use of Mercenaries.
 - (6) Based on the definition of "victims" 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*.
 - (7) This provision has been deleted as this objective is not taken up in the text and is covered by International Humanitarian Law.
 - (8) This provision limits the scope of the Instrument to services provided outside the territory of a Home State, but can be amended to also provide for regulation of PMSCs in the Home State, by amending the text to read: "on the territory or in any territory outside its Home State."
 - (9) The proposed alternative text with respect to crimes to be covered by the Instrument provides for a more generic approach. The alternative text is based on the *Montreaux Document* and the *Draft Convention*, and the original text is from paragraph 22 of the *International Code of Conduct for Private Security Service Providers*. The approach taken is not to create new crimes under international law, but to strengthen accountability measures for existing crimes.
 - (10) Text from the *Draft Convention*.
 - (11) This provision replaces 7(3), which aimed to place obligations directly on PMSCs.
 - (12) This provision has been included in order to provide for jurisdiction over PMSCs providing services to maritime companies and aims to incorporate jurisdiction outside the territorial waters of coastal States, i.e. in the Exclusive Economic Zones of coastal States, and on the High Seas, as defined in the *Law of the Sea Convention*.
 - (13) Text aligned with the *Basic Principles and Guidelines* and aims to also address obstacles to justice ("equal and effective").
 - (14) The original paragraph 14, "Cooperation" was split into three parts to distinguish cooperation provisions from investigation and prosecution and mutual legal assistance and extradition/surrender provisions. Provision is made under Cooperation for the establishment of national contact points to enhance cooperation activities. Such national contact points and their functions are elaborated upon in the *OECD Guidelines for Multinational Enterprises*. The text intentionally does not aim at establishing a free-standing extradition and / or mutual legal assistance in criminal matters regime in view of the present initiative to negotiate the *Multilateral Treaty for Mutual Legal Assistance and Extradition for the Most Serious International Crimes*, while most States will also have these areas covered by their domestic legislation.