



Elements of the Regulatory Framework for Private Military and Security Companies (PMSCs)

By: Maat for Peace, Development and Human Rights

June 2021

Introduction

The phenomenon of private military and security companies (PMSCs) became a tangible reality after the Second World War. It became one of the United Nations mechanisms used in maintaining international peace and security since the 1990s. The international jurisprudence was irritated about it, its legal status, repercussions on the interactions between the international system and its legal system, especially those related to human rights. In this regard, Maat for Peace, Development and Human Rights, guided by the purposes and principles of the United Nations Charter, the International Covenant on Political and Civil Rights, the International Covenant on Economic, Social and Cultural Rights, the international humanitarian law, the Human Rights Council resolution 45/16 at the 48th session, paragraph (4), and the roles of civil society, presents a written contribution to the open-ended intergovernmental working group to elaborate the

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Headquarters: 148 Misr Helwan El-Zyrae Road, El Matbaa Sq, Hadayek El Maadi, 4th Floor, No 41, Cairo, Egypt

Maat Training Center: 380 Corniche El Nil St., Gawharet El Maadi Tower, 38th Floor, Tower B, Cairo, Egypt



490 El Maadi

www.maatpeace.org



maat@maatpeace.org



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content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, in which it provides its comments and recommendations on these elements.

First: Element (1) on Definitions & Interpretations

Regarding element (1) on definitions and interpretations and its paragraphs (a, b, c, d), Maat for Peace, Development and Human Rights recommends the necessity of scrutinizing the form and content of the text, the formulation of definitions and their interpretations, and the need to distinguish between them, specifically private military companies, private security companies, complex environments, in addition to the countries in terms of contracting, region, origin, and nationality, after taking into account the definitions provided in the relevant documents, in particular: the Montreux Document on Private Military and Security Companies, the International Code of Conduct for Private Security Services Providers (ICoC), the Working Group on the Use of Mercenaries, and taking into account all existing and future developments to the military companies and their services at the knowledge and practical levels, highlighting the concept of complex environments and explaining the conditions and

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considerations for its realization, Maat recommends replacing it with the concept of “armed conflict and peace” so that the regulatory framework can be applied in all contexts and cases and is not limited only to complex environments, and the quality of military and security services that can be and cannot be delegated to companies such as direct participation in armed conflict, intelligence, custody, law enforcement, interrogation of persons deprived of their liberty, administration of prisons, waging war and combat operations, law-making, use of weapons of mass destruction, police powers including to stop the detention and interrogation of civilians, law enforcement and its provisions.

Second: Element (2) on the Objectives of the Regulatory Framework

In the context of element (2) and its paragraphs (a, b, c, d), Maat for Peace, Development and Human Rights recommends generalizing paragraph (a) to include ensuring respect for international law, in particular the United Nations Charter and its principles relating to the national sovereignty of the state, and international human rights and humanitarian law conventions by the military and security companies operating in all complicated and un complicated contexts and situations, especially political

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and civil rights, including the right to self-determination, and determining the legal status of employees of private military and security companies and the categories to which they belong in situations of armed conflict under international humanitarian law, the possibilities for them to be considered “combatants, civilians, mercenaries”, and the possibilities for them to enjoy the status of prisoners of war, and the quality of military and security services that they may provide away from the basic functions of the state, and the establishment of a legal mechanism for accountability, oversight, and investigation of violations and abuses of human and peoples' rights by these companies, with reparation for the harm that falls on the victims and compensating them in proportion to the extent of the damage.

Third: Element (3) on the Principles of the Regulatory Framework

As to element (3) which is concerned with the principles of the regulatory framework, specifically effectiveness, comprehensiveness, transparency and affordability in paragraphs (a, b, c, d) respectively, Maat for Peace, Development and Human Rights recommends the need to generalize the

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application of the principle of transparency to include outside contractors, not only PMSCs.

It stresses the need for the organizational framework to include the principle of accountability and fair trial of military and security companies for their transgressions and various violations of human rights, as well as governmental and civil organizations and contracting states; the principle of respect and protection of international human rights law and international humanitarian and criminal law and international refugee law; the principle of consistency with national and international legal frameworks; the principle of participation and inclusion in the preparation and formulation of the regulatory framework to include states, civil society organizations, and private military and security companies; reaffirming the principles of international law concerned with the national sovereignty of the state, non-interference in the internal affairs of states, prohibiting the use of force and the participation of military and security companies in hostile and combative actions related to overthrowing a government, undermining the constitutional order, supporting the external occupation, targeting civilians, restricting access to resources and livelihoods, impeding the right of peoples to self-

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determination, prohibiting the delegation of military and security companies to the functions entrusted to the state, and prohibiting the companies' use of illegal weapons and equipment.

Fourth: Element (4) on Contracting States

Element (4) on the contracting states includes (4) paragraphs: (a, b, c, d) concerned with defining military and security services that the state may not contract, evaluating the capabilities of companies to perform services in accordance with the law, and incorporating requirements into government contracts to ensure respect of relevant laws, continued monitoring and accountability.

In the context of paragraph (a), Maat for Peace, Development and Human Rights recommends that the regulatory framework must stress the contracting states' commitment under international law, even if they contracted with private military or security companies, to perform some activities, to take all measures to restore public order and public safety and to ensure that it protects and prevents violations of international human rights law and international humanitarian law in all complex and uncomplicated contexts and cases by paying attention to raising

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the awareness of military and security companies of their legal and human rights obligations, training them, enacting national legislation, imposing administrative, disciplinary and judicial sanctions, conducting investigations and prosecutions of the perpetrators of violations among the employees of private military and security companies, all under international law and to provide effective remedies and compensating victims in proportion to the harm, as well as affirming their commitment not to assign sovereign activities entrusted to a government official or authority, and the need to limit the activities of these companies to the security roles of guarding and insurance.

In paragraph (b), Maat recommends the contracting parties with military and security companies to assess the ability of companies to carry out their activities in line with national and international law by obtaining information on the main services provided by the company in the past and reference certificates from clients to whom the company has previously provided similar services, information about company ownership and background checks on the company, its principals, its subcontractors, companies and projects.

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In paragraph (c), Maat recommends that the company selection criteria and contract terms should be included in light of the company's previous behavior and its financial and economic capacity, availability of registration certificates, licenses and necessary permissions and records regarding personnel and property, legal possession of equipment and weapons, training in the rules of use of force and weapons and respect for international, humanitarian and human rights law, understanding of gender, cultural and religious considerations and the local population, and measures to combat bribery, corruption and other crimes.

In paragraph (d), Maat recommends activating oversight and ensuring accountability by including in its national legislation criminal jurisdiction of the State over what is committed by PMSCs, and non-criminal accountability in the event of improper and illegal behavior, including immediate or gradual termination of the contract, the application of penalties, ignoring future contract requests, and not to grant the contracting states some kind of judicial immunity for these companies.

Maat for Peace, Development and Human Rights indicates the need to include an additional paragraph for this element that

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would specify the conditions and considerations under which the contracting states bear responsibility for violations and abuses of military, security and private companies under international humanitarian law and human rights, especially if these companies are registered with that state, operate under its command, or act on the basis of its privileges and instructions.

Fifth: Elements (5, 6, 7) on the countries of the region, origin, and nationality:

In the context of elements (5, 6, and 7), Maat for Peace, Development and Human Rights recommends the necessity of the countries of region, origin and nationality to respect private military and security companies operating in their territories under international law, international human rights law, humanitarian law and international refugee law, through awareness-raising procedures and measures, dissemination of those obligations to employees and legislation, access to records of commitment of these companies to previous human rights, ensuring the enforcement of their internal mechanisms and procedures for training and selection of their members, imposing administrative, disciplinary or judicial sanctions, ensuring accountability, oversight and remedies, as well as recommending the necessity

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of determining the services that may or may not be mandated by the countries of the region, origin and nationality for private military and security companies, and to oblige private military and security companies to obtain permission to provide military and security services, oblige their members to register or obtain a license to perform military or security services for Private military and security companies, the need to expand the jurisdiction of national civilian courts to those companies when they commit human rights and non-human rights violations, and ensure remedies and compensation for victims.

Sixth: Element (8) on Military and Security Companies

As to element (8) on military and security companies, Maat for Peace, Development and Human Rights recommends the need to emphasize the commitment of military and security companies to national and international law, especially international humanitarian law and international human rights law, and the need to determine the legal status of employees of private military and security companies and the groups they belong to in situations of armed conflict under international humanitarian law and the possibilities for them to be considered “combatants, civilians, mercenaries, and the possibilities for them

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to get prisoner of war status.” Paragraph 8 (a) must be formulated in a way that clarifies the quality of compliance mechanisms, whether it is international, or national, and that it should be based on human rights indicators and standards and recommends the importance of training personnel and employees of private military and security companies, and that they pass pre-employment and contracting tests. Moreover, paragraph 8 (b) must also be reformulated to emphasize the need to establish an international civil judicial grievance mechanism when reporting severe violations by military and security companies, supervised by the United Nations, with clear reference to the commitment of the heads of private military and security companies to the responsibility of crimes as a result of their failure to exercise oversight properly in accordance with the rules of international law.

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