

**Human Rights Council: Open-ended intergovernmental working group
on the regulation, monitoring and oversight of the activities of private military and security
companies**

Compilation of recommendations from six sessions of the IGWG PMSCs (2011-2017)

**First session: Geneva, 23-27 May 2011
A/HRC/WG.10/1/CRP.2**

<i>Paragraph</i>	<i>Quote</i>	<i>Comment</i>
3	- “Ensure that the rights of individuals are not negatively impacted upon by the activities carried out by such private military and security companies”	Objective and principles
16	- “Clearly define the term private military and security companies” - “Distinguish between private military companies and private security companies” - “Difference should be made between transnational and domestic PMSCs”	Definitions
21	- “As clients, States can include the standards of the Code of Conduct in their contracts with PSCs, whereas as regulators, they can implement procedures and policies so that PSCs in their jurisdiction have to comply with the standards required by the Code of Conduct”	Contracting States and Home States
23	- “Those mechanisms should be established by the business enterprises themselves to provide early on for avenues for remedy” [referring to the “grievance mechanisms”] - “These grievance mechanisms should not replace domestic judicial avenues, but should constitute a complementary instrument” - “Business enterprises, including PMSCs, acting in situations of conflict must adhere to a higher threshold of due diligence as the risk of gross human rights abuses is heightened in conflict-affected areas” - “Business enterprises should respect human rights standards” - “States are obliged to protect human rights standards and should therefore provide business enterprises with relevant guidance”	Private military and security companies
27	- “The mechanism of an independent ombudsman operating in the corporate world to enforce the Code of Conduct could be an efficient solution”	Enforcement mechanism
30	- “The Guiding Principles should be implemented by all relevant stakeholders”	UNGPs
34	- “The use of firearms should be in accordance with the law and should previously be authorized by the relevant government authority”	Private military and security companies
35	- “These companies should inform the government in advance of their activities abroad and that such activities should be carried out in strict compliance with the national constitution and the law, and in accordance with the principle of neutrality”	Private military and security companies

36	<ul style="list-style-type: none"> - “As a home State for a number of PMSCs, it imposes strict export licencing requirements that cover a range of activities” - “Oversight mechanisms within a government when interacting with its own contractors” 	Home States
37	<ul style="list-style-type: none"> - “Not allow for the possibility of establishing private military companies on its territory” 	
40	<ul style="list-style-type: none"> - “States should establish a system of registration for PMSCs that is separate from regular businesses” - “They should prohibit the registration of PMSCs in off-shore zones” - “Creation of a reporting obligation for States concerning the main State contracts with PMSCs, as well as information on registration and licensing” - “PMSCs can only employ legitimate ways of acquiring, importing and transporting weapons” - “Limitations on the use of force and the use of weapons by PMSCs” - “Provide appropriate training in international humanitarian law and in international human rights law, as well as in the national law of a country of operation” - “From each State to define legislatively military and security functions which are in principle not subject to outsourcing” 	States’ responsibilities vis-à-vis PMSCs
42	<ul style="list-style-type: none"> - “Clarify how existing law covers PMSCs, as well as to identify potential gaps and possible avenues to close those gaps” 	Way forward
44	<ul style="list-style-type: none"> - “The rights of the victims should be at the core of any regulatory framework” - “The elements contained in the draft convention as proposed by the Working Group on the use of mercenaries are crucial for a possible regulation of PMSCs and should therefore be further considered” 	Principles and objectives
47	<ul style="list-style-type: none"> - “States should also provide remedies for victims, more particularly with regard to criminal, civil and/or administrative offences, liability of legal persons and entities; should prosecute or extradite alleged offenders; should transfer criminal proceedings; and should notify the outcome of proceedings to victims” 	Right to a remedy/ States’ obligations
48	<ul style="list-style-type: none"> - “Include in new human rights instruments relevant parts on compensation and reparation for the victims of serious violations of human rights” Right to a remedy - “Suggested human rights treaty bodies to include in their work the monitoring of these aspects” Monitoring of PMSCs by TBs - “To take measures not only to hold accountable personnel of PMSCs for their acts, but to provide effective remedies for victims” [referring to States] States’ obligations to provide remedies - “Compensation must meet the needs of the victims, must be proportional to the damage caused, must include rehabilitation, reconciliation elements and should provide guarantees of non-repetition” States’ obligations to provide remedies - “PMSCs are also affected by human rights violations, in which case the contractors would need to be provided with appropriate legal ways to ensure justice and to get compensated for their losses” 	

51	- “Any solution needs to concentrate on the issue of effective remedies and the rights of victims” [referring to “national legislation on accountability mechanisms and remedy for victims” and “the lack of sufficient norms, insufficient implementation or the failure to respect the applicable law”] effective remedies and the rights of victims	
53	- “PMSC industry needs to be properly regulated to prevent and remedy possible human rights violations”	Way forward

Second session: Geneva, 13-17 August 2012
A/HRC/22/41

<i>Paragraph</i>	<i>Quote</i>	<i>Comment</i>
12	- “Need to adopt an international legal framework to regulate the activities of PMSCs”	Way forward
19	- “Support for stronger control of PMSCs, especially concerning their transnational activities”	Transnational nature of PMSCs activities
20	- “PMSCs should not be contracted to directly participate in hostilities as long as they are not part of the armed forces”	States of nationality
22	- “Careful distinction should be made between private security companies, private military companies and mercenaries”	Definitions
23	- “The definition of PMSCs should focus either on the nature of the company or the type of services it provides in a particular case” - “A definitional categorization should depend on the type of services provided in a particular case”	Definitions
29	- “Additional measures, including under the auspices of the Human Rights Council, these should complement existing initiatives and focus on human rights, taking into account and based on the viewpoints of all stakeholders”	Way forward
34	- “Private security companies must be distinguished from private military companies that were involved in military operations”	definitions
37	- “Regulatory frameworks, be they national or international, should meet four key criteria: (a) effectiveness, in that they must have a genuine, significant and positive impact on performance, rather than just offering process without substantive change and, to that end, must be based on third party rather than self-regulation; (b) inclusiveness, in that they must impact on the performance of all companies, and not just those companies who are already achieving appropriate standards, although perhaps not in a fully measurable and independently verifiable manner; (c) transparency through robust, independent processes which addresses broader concerns about the integrity of voluntary or self-regulatory systems; and (d) affordability, in that regulation must be proportionate to operational need, and	Principles

	<p>companies should only have to demonstrate conformity with one accepted and recognized standard”</p> <ul style="list-style-type: none"> - “Regulatory standards should cover elements of leadership, management and governance; operational processes; selection, screening and vetting of staff and sub-contractor organizations; collective and individual training, and maintenance of training records; procurement, licensing and management of firearms; rules for use of force; compliance with international and national law, including human rights obligations, and the specific regulatory requirements of the jurisdictions in which companies operate; reporting and documenting of incidents and grievance processes” 	
40	<ul style="list-style-type: none"> - “Legally binding instruments could ultimately be a part of an effective regulatory framework for this industry, as experience has shown that there could not be effective enforcement of standards in this industry without the use of binding enforcement mechanisms” 	Nature of the framework (argument in favour of a legally binding instrument)
41	<ul style="list-style-type: none"> - “Finding common regulatory positions on specific aspects of regulation, such as licensing, export controls and remedies for human rights abuses and violations” 	Homes States
45	<ul style="list-style-type: none"> - “The idea of establishing an international ombudsperson to assist States in making listing and de-listing decisions should be considered” 	Oversight mechanism
46	<ul style="list-style-type: none"> - “A convention could complement existing initiatives and fill regulatory gaps in areas such as accountability, remedies, licensing and oversight” - “A convention could also ensure that States would be prohibited from continuing to contract companies that had been involved in human rights violations” 	Objectives
47	<ul style="list-style-type: none"> - “PMSCs should not be considered in the same vein as other businesses” 	Distinction PMSCs/other business
49	<ul style="list-style-type: none"> - “A Step-by-step approach focused on first reaching substantive agreement on different areas before committing to a specific form of regulatory framework” 	Way forward
53	<ul style="list-style-type: none"> - “A certification system based on industry-specific standards the most effective way to address human rights problems involving PMSCs” 	Certification
58	<ul style="list-style-type: none"> - “An independent body attached to the oversight mechanism of the International Code of Conduct would have an added value for victims” - “The most appropriate grievance mechanism to address serious human rights violations would be an international body composed of independent experts” 	Oversight and grievance mechanism
61	<ul style="list-style-type: none"> - “A report by OHCHR, which could look into the human rights issues raised during the meeting and provide an objective, evidence-based analysis with respect to human rights challenges” 	Way forward
62	<ul style="list-style-type: none"> - “Distinguish between private military companies and private security companies” 	definitions
63	<ul style="list-style-type: none"> - “There should be recognition that there is no “one size fits all” solution. [...] PMSCs created a variety of challenges. It was important to take careful stock of 	Way forward

	existing initiatives before taking a decision on how to best address these challenges and review what States were doing at the national level”	
66	- “A number of issues would require further clarification and better understanding. Gaps in international law related to accountability, redress and compensation for victims, the status of PMSCs and their personnel, and the extent to which States could be authorized to use PMSCs, needed to be addressed”	Way forward
67	- “Need to elaborate principles and elements of a future convention”	
68	- “Time should be allowed to assess the effectiveness of the Montreux Document and the International Code of Conduct and efforts should be made to avoid duplication of work” - “The intergovernmental working group should have flexibility in moving forward and its future work should be directed to specific issues”	Assessment of existing initiatives
69	- “In the absence of a consensus on how to proceed, a convention should not be the only option on the table” - “Priority should be given by the Human Rights Council and the intergovernmental working group to addressing a range of substantive issues such as the definition of PMSCs, extraterritoriality, reparations and accountability” - “Arms exports, granting of licences and issues of international humanitarian law and international criminal law were beyond the mandate of the Human Rights Council and should be discussed in more detail in other relevant forums”	Way forward
72	- “The starting point for the work of the intergovernmental working group should be a clear distinction between mercenaries and PMSCs”	Definitions
74	- “The draft Convention prepared by the Working Group on the use of mercenaries would be complementary to the Montreux Document and that it should be finalized and adopted”	Draft convention WG mercenaries
77	“In view of the initial constructive and substantive discussions held during the first two sessions of the open-ended inter-governmental working group, and in light of the complexities of the issues, it recommends to the Human Rights Council the following: (a) Continuation of the substantive discussions in the intergovernmental working group with the participation of experts and all relevant stakeholders for a further two year period; (b) Consideration of the human rights aspects of, inter alia, the following: (i) Accountability and the provision of appropriate remedies for the victims; (ii) To distinguish between the activities of private security companies and private military companies, as well as other possible activities relevant to this issue; (iii) Review of all measures, including existing National legislation for registering, licensing and contracting PMSCs. (c) Consideration of the possibility of an international regulatory framework, including the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of PMSCs, as well as other approaches and strategies, including international standards, and the way in which they might interact to protect human rights”	

Third session: Geneva, 21-25 July 2014
A/HRC/WG.10/3/2

<i>Paragraph</i>	<i>Quote</i>	<i>Comment</i>
11	<ul style="list-style-type: none"> - “Urged States to build on the earlier work done, engage in constructive interaction, develop a progressive framework and make collective progress” - “The working group should consider whether private military and private security companies should be treated as one entity or separate entities, given that they were usually engaged in different types of activities” - “Bridging the differences regarding which activities of PMSCs to regulate and how” 	<p>Way forward</p> <p>PMSc/PMCs</p>
15	- “An international legally binding instrument could fill such gaps; contribute to standard-setting; and improve the monitoring and oversight of the industry, challenges which could not be addressed by non-binding guiding principles and good practices alone” [referring to the challenges raised: “collection and sharing of evidence between States; the extradition of suspects, which depended on the cooperation of other States; issues of extraterritorial jurisdiction; and the lack of effective remedies and accountability, including corporate accountability”]	Argument in favour of a legally binding instrument
17	- “States could significantly improve protection through national legal and policy frameworks” [“laws and policies regarding the registration, licensing, contracting screening, selection, training and oversight of PMSCs”]	Objectives
19	- “Improving self-regulation mechanisms and national regulation might be more efficient” [than “an international legally binding instrument”]	
23	- “Further efforts should focus on ensuring effective implementation of the Montreux Document and the international law underlying it”	Way forward
24	- “Efforts should focus on strengthening compliance with the ICoC and the Montreux Document”	Way forward
25	<ul style="list-style-type: none"> - “Need to work towards drafting binding legal instruments to fill existing regulatory gaps” - “The implementation of the ICoC should have the support of a more independent and effective control mechanism” 	<p>Way forward</p> <p>Oversight of ICoCA</p>
27	<ul style="list-style-type: none"> - “An international instrument would need to distinguish between different support services” - “A step-by-step approach might be the best way to achieve a successful regulatory framework” 	Way forward
29	<ul style="list-style-type: none"> - “Distinguishing between private security companies, private military companies and mercenaries” - “Consider the specific service, function or activity that the company carried out, as well as the circumstances within which it operated” [instead of “attempting to categorize companies as either security or military”] 	Definitions

	<ul style="list-style-type: none"> - “Identifying the services of PMSCs which might be particularly susceptible to human rights abuses” - “Further consideration would have to be given to determine which companies, services or functions could potentially be covered under one international instrument” 	
31	<ul style="list-style-type: none"> - “Regulation must consider all types of clients of PMSCs, including States, corporations and NGOs, and access to non-judicial remedies” - “An integrated “smart mix” of regulation” [including “access to remedies and effective oversight of self-regulation mechanisms”] 	Scope of the regulatory framework Remedies and oversight
32	<ul style="list-style-type: none"> - “An international instrument, building on existing international law and reflecting elements that could be identified across existing national legislation, would fill an important legal gap in the governance of PMSCs and provide a normative and institutional framework” - “Model national laws could be developed consideration be given to the development of regional conventions” 	Way forward
37	<ul style="list-style-type: none"> - “Discussing an international instrument, in particular for extraterritorial activities of PMSCs” 	Transnational character of PMSCs activities
38	<ul style="list-style-type: none"> - “Sharing good practices, with one delegation expressing interest in the provisions that other States used when contracting PSMCs, so as to prevent human rights abuses” 	
39	<ul style="list-style-type: none"> - “An international legal instrument could establish key elements to be reflected in all national legislation, including specific human rights criteria” [referring to “the lack of uniformity in legislation at national level”] 	Objectives
41	<ul style="list-style-type: none"> - “That effective complaints mechanisms and remedies be adopted, implemented and overseen seriously” - “The balance should be shifted in favour of victims and that resources should be spent on self-regulatory initiatives instead of being used to enable victims to obtain justice for abuses suffered” 	Remedies
43	<ul style="list-style-type: none"> - “Possibilities for obtaining redress before regional human rights courts” [considering that “in cases that implicated PMSCs, there was often dual attribution of responsibility to the company and to the State”] - “Cooperation between States was essential, and an instrument facilitating cooperation in the specific area of PMSCs should be considered” 	Remedies Cooperation between states as objective
44	<ul style="list-style-type: none"> - “A stronger role for national human rights commissions had to be considered” 	Role of NHRIs
46	<ul style="list-style-type: none"> - “Gaps could be filled through model laws for national legislation, regional instruments and a treaty at the international level” [referring to the “gaps in the governance of the activities of PMSCs”] - “An international treaty, which constituted the highest source in international law, would fill a normative, institutional and procedural gap; transform existing soft 	Objectives

	law principles into treaty provisions; consolidate and reinforce existing inadequate and scattered laws; provide a distinctively tailored instrument for the governance of PMSCs; clarify rights for victims to claim and establish mechanisms for redress; establish clear lines of responsibility and accountability; and ensure a human rights-based approach”	
47	<ul style="list-style-type: none"> - “Gaps could be addressed through a new treaty or through soft law instruments” [referring to the “gaps related to the use of force in self-defence; the capture and custody of pirates and robbers at sea; transport of weapons; and human rights abuses committed by PMSCs”] - “A soft law instrument, depending on the nature of the body adopting it and the level of support enjoyed, could gradually crystalize into binding customary international law” - “Adopt one single regulatory instrument for armed security personnel acting both on land and at sea, or two separate instruments” - “If the preference was to adopt a single instrument regulating the activities of PMSCs, it should at least include a section dealing with armed private personnel at sea” 	<p>Objectives</p> <p>Scope</p>
48	- “The working group should focus on streamlining elements for the elaboration of a legally binding instrument and further considering the draft of a possible convention on private military and security companies prepared by the Working Group on the use of mercenaries (see A/HRC/15/25, annex) in that regard”	Way forward
49	<ul style="list-style-type: none"> - “Self-regulatory initiatives were positive steps, but should be complemented by a carefully elaborated legally binding international instrument” - “The mere existence of non-binding instruments should not preclude the development of a complementary binding instrument” - “The following areas as possible starting points for discussion: activities that should not be outsourced or deemed problematic from a human rights perspective; key elements for national regulation, including licensing, monitoring and oversight, accountability and remedies; extraterritoriality and the issue of enforcement; judicial assistance between States, including collection of evidence and extradition” 	Suggested elements for a frame work
50	- “Patchy national legislation could be addressed by an increased focus on strengthening national-level approaches, e.g. through the development of model laws, and that protection gaps resulting from a lack of implementation of existing norms could be addressed through additional guidance for States or increased international cooperation”	Way forward
51	<ul style="list-style-type: none"> - “For the working group to achieve broadly supported results, it should follow a multi-stakeholder approach in future discussions, including civil society, the private security industry and other United Nations entities working on similar issues” - “It was also suggested that the working group closely examine national certification processes and the relevant work of the International Organization for Standardization” 	Way forward : multi-stakeholders approach

Fourth session: Geneva, 27 April – 1 May 2015
A/HRC/30/47

<i>Paragraph</i>	<i>Quote</i>	<i>Comment</i>
12	<ul style="list-style-type: none"> - “Need for victims to have the right to an effective remedy, including reparations, and for an international legally binding instrument in addition to national initiatives on the activities of private military and security companies” - “Such companies, given their specificities, should not be allowed to regulate their own behaviour, which could only be done by an independent authority” - “Recommended that the open-ended intergovernmental working group begin discussions on concrete elements for inclusion in a legally binding instrument during the fourth session” 	<p>Right to a remedy</p> <p>Way forward : discussions on concrete elements</p>
13	<ul style="list-style-type: none"> - “Norms should be elaborated in international law to (a) define private military and security companies; and (b) hold such companies accountable under international humanitarian and international human rights law” - “The new instrument should complement national and regional mechanisms, particularly in the area of combating impunity and effective punishment” - “It should also include mechanisms for recourse in cases of violations. Such mechanisms would include a committee on the regulation, oversight and monitoring of private military and security companies, an enquiry and a complaint procedure and reporting mechanisms on compliance with new norms and standards in international human rights and humanitarian law by private military and security companies” 	<p>Objectives Oversight and remedy</p>
14	<ul style="list-style-type: none"> - “International regulation must be complemented by effective national laws and policies that would allow States to investigate and prosecute violations of international human rights and humanitarian law” - “Any regulatory gaps in areas such as accountability, remedies, licensing and oversight should be filled through an international legally binding instrument that would complement existing initiatives” 	<p>Objectives</p>
21	<ul style="list-style-type: none"> - “Private military companies and private security companies should be addressed separately, given their very broad and diverse range of activities” - “States and international organizations, as clients, could enhance standards in the operations of companies” 	<p>Definitions</p>
22	<ul style="list-style-type: none"> - “Any international regulatory framework should focus on strengthening compliance with existing international law and on ensuring accountability” 	<p>Objectives</p>
33	<ul style="list-style-type: none"> - “Certain functions were inherent to the State, for which it retained ultimate responsibility regardless of whether or not it outsourced that function” - “Intergovernmental organizations, as well as States, could become party to the convention” - “Obligation under that article [on implementation] would apply to domestic and international companies, as well as to services offered to States and to intergovernmental, non-State and corporate clients” - “New definition of a licence, which would serve as a modality for establishing and enforcing standards” - “Registration should take place as a secondary step following licensing” - “New framework of regulation of jurisdiction” 	

	- “Establish a mechanism for the purposes of oversight and ensuring remedy and reparations for victims”	
36	- “Need to strengthen domestic laws and their implementation, as well as to see how the International Code of Conduct and other initiatives translated into practice” - “Other options could be explored, including guidelines, possible plans of action, model laws, good practices and mutual legal assistance programmes”	Way forward
38	- “International convention would be the best mechanism to regulate the issue of private military and security companies” - “International convention would be an effective mechanism for a better implementation of a system of control”	Way forward
49	- “Companies [... involved in the administration of detention facilities] should be subject to regulation and be held accountable for any abuses committed” - “Vet and train employees of private security companies, but also to make clients understand that they bore responsibility for contracting reliable companies only”	Scope : PSCs involved in administration of detention
57	- “A detailed code on use of force in the maritime environment was lacking and that that lacuna could not be filled in the proposed international regulatory framework”	Scope : PMSCs in maritime context
60	- “To acknowledge the work undertaken by IMO and that the Human Rights Council should not duplicate the work done by IMO”	IMO work
70	- “To ensure that the contracted private security companies had adequate internal oversight and accountability mechanisms, including complaint and performance reporting mechanisms, as recommended by the Working Group on mercenaries” - “Key actors — including States in which private security companies were based or operated and the private armed security companies themselves — must also be involved in a formal process whereby a common and internationally agreed upon normative framework could be established”	PMSCs
77	<p>“The Chair-Rapporteur suggested that the open-ended intergovernmental working group consider including the following text as part of its conclusions and recommendations:</p> <p>[Paragraph 1] The intergovernmental working group noted the multifaceted and diverse issues raised throughout its third and fourth sessions. These included: the distinction between the activities of private military companies and private security companies; measures for registering, licensing and contracting private military and security companies; ensuring accountability and provision of assistance and remedies for victims; possibility of an international regulatory framework; specificities of regulating sea-based private security activities; and the use of private security companies by the United Nations. The intergovernmental working group noted the initiatives undertaken by various stakeholders relating to those issues, while highlighting the challenges that remain.</p> <p>[Paragraph 2] Different views were offered as to how to achieve the shared goal of protecting human rights and ensuring accountability for violations and</p>	

	<p>abuses relating to the activities of private military and security companies. Some delegations proposed that the intergovernmental working group begin elaborating a legally binding instrument for the regulation, monitoring and oversight of private military and security companies, and submitted elements of a draft convention for the consideration of the intergovernmental working group. Other delegations proposed the consideration of the range of options to be explored to further develop an international regulatory framework, including international standards setting and development of guidelines, possibly actions plans or model laws, contract templates based on the Montreux Document, good practices and mutual legal assistance programmes.</p> <p>[Paragraph 3] Taking account of Human Rights Council resolution 28/7 of 26 March 2015, the intergovernmental working group will continue its work on the above-mentioned issues and also recommends further consideration of human rights issues relating to, inter alia, (a) the operation of private military and security companies in the maritime context; (b) the use of private military and security companies by humanitarian actors; and (c) access to justice and remedies for victims of violations and abuses linked to the activities of private military and security companies”</p>	
80	<p>“The open-ended intergovernmental working group noted the multifaceted and diverse issues raised throughout its third and fourth sessions. These included: the distinction between the activities of private military companies and private security companies; measures for registering, licensing and contracting private military and security companies; ensuring accountability and provision of assistance and remedies for victims; possibility of an international regulatory framework; specificities of regulating sea-based private security activities; and the use of private security companies by the United Nations. The intergovernmental working group noted the initiatives undertaken by various stakeholders relating to those issues, while highlighting the challenges that remain”</p>	
81	<p>“The open-ended intergovernmental working group will continue its work on the above-mentioned issues and also recommends further consideration of related human rights issues”</p>	
Annex II	<ul style="list-style-type: none"> - “To look into progress made in other fora” - “Not to duplicate the work carried by the International Maritime Organisation” - “Continuation of the substantive discussions in the intergovernmental working group with the participation of experts and all relevant stakeholders to take stock of progress at the national and international levels — including in widening the support to the Montreux Document and its Forum, and the development of the International Code of Conduct Association — regarding the regulation, monitoring and oversight of the activities of Private Military Companies and Private Security Companies” - “Review the implementation of the Guiding Principles on Business and Human Rights with particular emphasis on the third pillar regarding access to remedies, in the case of the activities carried out by private military companies and private security companies” - “Consideration of the range of options to be explored to further develop an international regulatory framework, including international standards setting, development of guidelines, possibly actions plans or model laws, contract 	

	<p>templates based on the Montreux Document, good practices and mutual legal assistance programmes”</p> <ul style="list-style-type: none"> - “Consideration of the tasking of a high-level group of legal experts/the Office of the United Nations High Commissioner for Human Rights to prepare a document for consideration at the fifth session to outline the modalities for each possible option, drawing when possible on past experience” 	
Annex III	<ul style="list-style-type: none"> - “Nous appelons ce groupe de travail à poursuivre ses travaux dans le cadre du mandat qui a été mis en place et qui consiste en l’élaboration d’un instrument international à caractère contraignant” 	

Fifth session: Geneva, 12-16 December 2016
A/HRC/WG.10/5/2

<i>Paragraph</i>	<i>Quote</i>	<i>Comment</i>
3	<ul style="list-style-type: none"> - “Ensuring that victims’ rights were protected and that the wrongs caused to them by private military and security companies, whether operating at the national or the transnational level, were not left with impunity” - “The establishment of grievance procedures to deal with cases of alleged abuses and regular monitoring to ensure oversight, immediate cessation of abuses and accountability” 	<p>Objectives</p> <p>Accountability and remedy</p>
8	<ul style="list-style-type: none"> - “Building on this earlier work and of continuing to engage in constructive interaction with a view to making further progress” 	Way forward
10	<ul style="list-style-type: none"> - “Certain functions should be the sole responsibility of States, including direct participation in hostilities, and detention and interrogation of prisoners of war” - “Elaborating a legally binding international convention in order to complement existing national mechanisms and voluntary initiatives with regard to private military and security companies” - “The new instrument should ensure that penalties are imposed and that remedies are commensurate with the scale of violations committed” - “Establishing mechanisms for recourse in cases of violations, including a committee on the regulation, oversight and monitoring of private military and security companies; an enquiry procedure and complaint procedure; and reporting mechanisms on compliance by private military and security companies with new norms and standards in international human rights law and international humanitarian law” 	Oversight mechanisms and accountability
11	<ul style="list-style-type: none"> - “To consider the possibility of an international regulatory framework, including the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of private military and security companies, and other approaches and strategies, including international standards, and the way in which they might interact to protect human rights” - “To consider the range of options to be explored to further develop an international regulatory framework, including international standards setting, the development of guidelines, possibly actions plans or model laws, contract templates based on the Montreux Document, good practices and mutual legal assistance programmes” 	Way forward

	- “Any international regulatory framework should focus on compliance and accountability, urging a continued focus on national regulation and enhanced international and multi-stakeholder collaboration and coordination”	Objective
18	- “Intergovernmental organizations could also be party to a convention on private military and security companies, which would reinforce the notion of accountability and support the growing trend of such organizations becoming party to international instruments” - “Establishing an oversight mechanism to ensure remedy and reparations for victims” - “International legally binding instrument on private military and security companies, which would complement national legislation and voluntary initiatives in providing effective and robust regulation of such companies”	Membership to the framework Oversight Objective
20	- “That every regulation needed effective implementation, noting the complementarity between soft law and hard law”	Complementarity soft/hard law
22	- “Adopting and implementing adequate domestic legislation and regulatory framework” - “While several States had enacted related national legislation, more States should do so” - “Others should update existing national laws and corresponding regulatory frameworks to ensure that they were clearer and more robust” - “States should take action to clearly delimit the services that may or may not be contracted out to private military and security companies” - “To ensure the accountability of and oversight over such companies and their personnel for violations of international and national law”	
24	- “Sharing good practices and lessons learned by regional and global partners” - “To ensure that legislation reflected operational realities on the ground”	
25	- “New tool that would be aimed at providing simple, concise and practical guidance for States, international organizations and non-governmental organizations on structuring their contracts and contracting procedures, drawing on international norms, standards and good practices”	Way forward
28	- “The strengthening of legislation should go hand in hand with strengthening the national capacity, since international norms and good practices – be they binding or not – are incorporated into national legislation and regulation, thereby becoming part of the binding national legal framework and thus enforceable within the national judicial system” - “Victims of abuses required easy and safe access not only to the justice system but to additional, non-judicial remedy procedures as well”	Way forward Access to justice
32	- “Elaboration on existing challenges to implementation” - “To elaborate on the ways this diversity was reflected in the tools to meet the needs of different companies”	Way forward
33	- “To focus on developing a plan of action to guide home, contracting and territorial States in improving national regulation of private military and security companies”	Way forward

	<ul style="list-style-type: none"> - “The working group could make use of the DCAF contracting tool as a starting point for developing a set of best practices for national regulation of the said companies” - “The need for the uniformity and objectivity of international standards” - “The need for a universal legally binding framework that complemented and completed current efforts” - “Legally binding instrument would fill existing gaps and would oblige private military and security companies to abide by international standards” 	
40	<ul style="list-style-type: none"> - “Ensuring access to justice and remedies for the victims of human rights abuses linked to the activities of private military and security companies” - “Take appropriate steps not only to prevent the said companies from violating human rights, but also to investigate, punish and redress violations” - “A clarification or the development of additional standards and strengthening of cooperation among States to enforce existing norms to ensure that the companies were not able to exploit regulatory gaps” [referring to the “challenges arose owing to the context in which the companies often operated, including conflict zones with weak governance or on the high seas”] 	Objectives Cooperation between states
45	<ul style="list-style-type: none"> - “To ensure access to justice, it was important to guarantee that (a) the judiciary – including the prosecutor – were independent, impartial and adequately resourced; (b) legislation clearly defined the right of claimants to file their claims and who may be liable, including the possible criminal liability of corporations; (c) practical obstacles, such as immunities of liability, were removed since they could deprive individuals of their access to justice; (d) courts had wide-reaching jurisdiction, including for crimes committed abroad; and (e) international mechanisms, such as tribunals and expert committees, existed in order to guide, assist and encourage States to take the necessary steps to ensure access to justice” 	Accountability and remedy
46	<ul style="list-style-type: none"> - “Legally binding international instrument on private military and security companies would be useful to ensure accountability. While it would not solve all problems, since implementation through national law and courts was essential, it could help to underpin and promote the necessary changes at the national level” 	Objectives
49	<ul style="list-style-type: none"> - “Legally binding instrument on private military and security companies, which should guarantee access to remedies and effective reparation for victims of violations, in accordance with international law” 	Objectives
50	<ul style="list-style-type: none"> - “The full range of remedy mechanisms should be available to victims” [referring to the “complementary of judicial and non-judicial redress mechanisms”] - “Ensuring that the victims had access to the most appropriate type of mechanism, including in a cross-border setting” - “Relationship between soft law instruments and binding norms should not be seen as mutually exclusive, but rather that implementation was the key” 	Remedies
51	<ul style="list-style-type: none"> - “The need to be creative, proposing such ideas as tax incentives to corporations that cooperate and were proactive in providing non-judicial grievance mechanisms” [referring to the “type of measures that could be taken to incentivize companies to provide remedies”] - “Companies that did not cooperate could be placed on a list excluding them from public markets or from obtaining bank loans” 	Incitement for companies to provide non-judicial

		grievance mechanisms
57	<ul style="list-style-type: none"> - “The concepts of territorial State and contracting State, however, should be interpreted and refined specifically for the maritime context” [“in that context, ‘territorial State’ meant a State ‘under whose jurisdiction private military and security companies operate’”] - “The concept of jurisdiction and the notions of territorial State and contracting State should be analysed and interpreted in the light of the maritime context specifically, taking into account the requirements of the law of the sea and the actual situation at sea” 	Specificities of the maritime context
58	<ul style="list-style-type: none"> - “Further exploring under which circumstances private military and security companies were allowed to hold a person on board and of clearly drawing the line between lawful acts of deprivation of liberty by those companies and situations where they engaged in arrest and detention qualifying as an inherently State function, which was prohibited” - “To look at relevant rules from a specifically maritime perspective in relation to both the clarification and development of the existing legal framework and a possible new legal instrument on them” 	Functions that States cannot outsource to PMSCs
65	<ul style="list-style-type: none"> - “Particular attention should be paid to situations where clients and service providers were headquartered outside the areas where services were delivered” 	Territorial states
68	<ul style="list-style-type: none"> - “Development of complementary national and international regulatory frameworks would contribute to the promotion of even greater respect for human rights” 	Objectives
70	<ul style="list-style-type: none"> - “A truly global and fair regulatory framework that took into account the circumstances in which private companies operated” 	Objectives
72	<ul style="list-style-type: none"> - “Regulation of private military and security companies should not be conflated with the broader process of transnational corporations and other business enterprises” - “The intergovernmental working group should not be bogged down with the details of the differences and definitions between private security companies and private military companies, which could be elaborated in the instrument itself” - “The intergovernmental working group should examine at its next session the options available to take the mandate forward” - “While the solution was not a binary approach of either having a legally binding instrument or not, in the interim, much could be done to encourage good practices and initiatives, such as ICoCA or self-regulation” 	IGWG TNCs/PMS Cs Definitions Way forward (while regulatory framework in the making)

Sixth session: Geneva, 22-24 May 2017
A/HRC/36/36

<i>Paragraph</i>	<i>Quote</i>	<i>Comment</i>
4	- “ensuring that there was no gap in protection from human rights abuses; whenever such abuses were committed by private military and security companies, victims should have access to an effective remedy. Accountability and justice related to the abuses committed by private military and security companies required robust monitoring and reporting, immediate cessation of abuses and establishment of accountability mechanisms”	Objectives
9	- “Human rights abuses perpetrated by private military and security companies needed to be addressed and there was a need to ensure effective remedies for all victims”	Objectives
12	- “There had been agreement during the previous five sessions regarding the need to improve regulation of private military and security companies and address abuses perpetrated by such companies”	IGWG recognition of the need to improve regulation
13	- “key for any new regulatory framework to be based on and complement existing processes, mechanisms, legislation and initiatives, such as the International Code of Conduct for Private Security Service Providers and the International Code of Conduct Association; 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 and the Montreux Document Forum; the Legislative Guidance Tool for States to Regulate Private Military and Security Companies and the Contract Guidance Tool for Private Security prepared by the Geneva Centre for the Democratic Control of Armed Forces; and international standard ISO-18788:2015, which provides a framework for establishing, implementing, operating, monitoring, reviewing, maintaining and improving the management of security operations. They also referred to the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex) and the Accountability and Remedy Project of OHCHR, including the report of the United Nations High Commissioner for Human Rights on improving accountability and access to remedy for victims of business-related human rights abuse (A/HRC/32/19 and Corr.1 and A/HRC/32/19/Add.1)”	Way forward: instrument on which to build
14	- “to be mindful of the distinctions between the two types of companies. They also observed that the open-ended intergovernmental working group could examine national legislation so as to determine best practices and lessons learned”	PMSc and PMCs
15	- “in the absence of national legislation, or in the context of insufficient or ineffective legislation, the open-ended intergovernmental working group should draft a document to be submitted to the Council.”	Way forward
16	- In the open-ended intergovernmental working group, there was an emerging consensus to work on the basis of the Chair-Rapporteur’s discussion document (see section III, above) and an acknowledgement that moving forward on the topic would be an important breakthrough in the work of the open-ended intergovernmental working group.”	Way forward

Compilation of recommendations from 1st of the IGWG PMSCs under its new mandate

**First session: Geneva, 20-23 May 2019
A/HRC/42/36**

<i>Paragraph</i>	<i>Quote</i>	<i>Comment</i>
13	- "...importance of preventing human rights and humanitarian law abuses by private and military and security companies".	Objectives
13	- "...the need to hold the perpetrators of such abuses accountable before the law." - "...victims of such abuses by military and security companies should have access to an appropriate remedy, notably by receiving adequate compensation."	Objectives / remedies
14	- "...gaps related to the prevention and accountability for abuses of human rights and international humanitarian law remained (in 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). - "The representative also noted that a clear definition of functions that may not be delegated to non-State actors was necessary."	Way forward: instruments on which to build
15	- "...private military and security companies should be regulated under international humanitarian law, international human rights law and the domestic laws of relevant States." ... "...those activities should be monitored by international mechanisms." - "States should bear primary responsibility for ensuring that private military and security companies acted within the law" ... "... improve national legislation to enhance regulation of domestic security companies."	Objectives / way forward
16	- "...supported the elaboration of a broad, binding and universal international instrument."	Way forward
17	- "...it was important that the intergovernmental working group begin to implement its mandate, building upon the work of the previous working group (...), relevant work of special procedure mandate holders, mechanisms and working groups and other related initiatives, with the objective of establishing a legally binding regulatory framework to ensure effective protection of human rights, access to justice, and accountability for violations and abuses relating to activities of PMSCs."	Way forward: instruments on which to build on
18	- "...the need to take into account the differences in national legislation related to the establishment and organisation of private military and security companies."	Way forward
19	- "...continue to work in the direction of further complementing and strengthening existing initiatives such as the Montreux Document Forum and the International Code of Conduct for Private Security Service Providers."	Way forward: instruments on which to build on

21	<ul style="list-style-type: none"> - “The concept of mercenaries and the protection of the right to self-determination of the people must be reflected in the future (international) instrument.” - “...concepts of effective vetting; mutual legal assistance; remedial measures; responsibility of States of nationality and contracting, territorial and host States; and responsibility within the chain of command of the private military and security companies are important.” (to add to the international instrument) 	Way forward
22	<ul style="list-style-type: none"> - Discussion of respect for human rights by PMSCs would only be possible when “...the working group focuses on discussing controversial issues such as legitimacy of PMSCs, status of private military and security personnel under international humanitarian law, functions that could be delegated by the State to PMSCs’ personnel.” 	Objective
23	<ul style="list-style-type: none"> - “...reaffirmed the importance of the (regulatory) framework in preventing and curtailing the destabilisation of constitutional democracies and Governments and the promotion of social and political instability by PMSCs, which has long-term consequences for the victims.” 	Objective
27	<ul style="list-style-type: none"> - “...necessary to learn from past cases of massive violations of human rights and international humanitarian law in Iraq, Afghanistan and elsewhere where innocent civilians have been massacred, tortured, and abused in cold blood by personnel of military companies” - “States needed to work together to develop an international legal framework to regulate the activities of PMSCs and ensure responsibility of relevant States for misconduct and crimes committed by members of those companies.” 	Lessons learned Cooperation amongst States
28	<ul style="list-style-type: none"> - “...mechanisms (needed) to monitor the work of (PMSCs) in order to ensure accountability for violations and reparations.” 	Way forward / Objective
29	<ul style="list-style-type: none"> - “...a way to overcome historical challenges in defining PMSCs would be to focus on regulating the “services” they provided.” - “...regulatory mechanisms (must) go beyond “complex situations” in order to capture the variety of environments where PMSCs were used, and human rights abuses could occur.” - “...any future regulatory mechanism should extend to subcontractors and should include effective vetting training, including human rights and international humanitarian law.” - “...transparent and effective State accountability mechanisms that could ensure access to justice and remedies for victims.” ... “it was essential to take jurisdictional issues and mutual legal assistance into account for effective vetting and accountability processes.” 	Definition Scope Objective of regulatory mechanisms/ Scope Access to remedy/ Accountability
30	<ul style="list-style-type: none"> - “ICRC would be ready to engage with States on questions relating to international law applicable when PMSCs were used in armed conflicts, in particular as regards international humanitarian law” 	Way forward
31	<ul style="list-style-type: none"> - “...(international regulatory framework) should be built on the most recent development of standards at the international level and count on the participation of all relevant stakeholders.” 	Way forward for regulatory framework
32	<ul style="list-style-type: none"> - “...it was crucial to hold responsible not only States but also the PMSCs within their supply chains, by establishing binding regulations.” 	Accountability / implementat

	- "...follow-up implementation mechanism for the binding instrument was stressed."	ion of regulation
33	- "...a new regulatory framework should be attractive and compelling in order to encourage States to subscribe to and support it."	Way forward for regulatory framework
34	- "Some delegations suggested that the new regulatory framework should build on the findings of the WG on the use of mercenaries, including its draft proposal for a possible new international legal instrument regulating PMSCs (A/HRC/15/25)."	Way forward: instruments to build on
35	- "...importance of implementing national legislation that would incorporate international law regulating the activities of PMSCs."	Possible way forward
36	- "...the need to define the status under international law of individual contractors employed by PMSCs" - In opposition "WG on the use of mercenaries responded by suggesting that any new regulatory framework should avoid defining the contractors themselves and focus instead on regulating services"	Definition (two opposing views)
37	- "...any regulatory framework should clearly list the activities that States may not delegate to PMSCs." - "new framework should also regulate more complex issues, such as the behaviour of PMSC subcontractors and the use of new tactics and technologies such as cyberwarfare, unmanned aerial vehicles and autonomous weapons systems."	Way forward / what States cannot outsource to PMSCs Way forward for regulatory framework (complex issues)
40	- "One delegation stressed the need to start (regulatory process) by examining the compliance of the use of PMSCs with international law before looking at human rights factors." - "Some delegations insisted on the need to refer explicitly to the UN Charter and its principles of sovereignty and territorial integrity"	Objectives (Element 2)
41/42	- "...suggested merging objectives 2(a) and 2(c) ¹ ." ... "the two objectives were redundant and could be merged in a preambular text that would also refer to accountability, redress for victims, transparency and gender perspectives" - "...suggested adding in objective 2(a) respect for international law, in particular international humanitarian law, as applicable, by PMSC in complex situations."	Objectives (Element 2)
43	- "...emphasised accountability as both an objective and a principle that should guide the regulatory framework." - "...insisted the coherence between international and national regulations be included as a principle."	Principles (Element 3)

¹ 2(a) – Ensure respect for human rights by the private military and security industry operating in complex situations;
2(c) – Ensure that the rights of individuals are not negatively impacted upon by the activities carried out by such PMSCs.

	- "...suggested including the principle of complementarity of international law in the list of principles."	
44	- "...suggested replacing the end of 3(c) ² with "concern about the effectiveness of existing regulatory systems"."	Principles (Element 3, language suggestion)
45	- "It was pointed out that the principles of transparency and integrity should be delinked from the question of integrity of voluntary or self-regulatory systems. The principle of transparency should be applied to the whole supply chain, including subcontractors, and not only to PMSCs."	Principles (Element 3) Suggestion on 3(c)
46	- "...insisted that certification requirements must be proportionate to operations need in order to attract small and medium-size enterprises, which were often concerned about the cost implications of joining an international certification process."	Principles (inclusion of affordability 3(d))
47	- "one delegation stressed that the regulatory framework should remain as attractive as possible by not creating further responsibilities for States." - Take into consideration when preparing regulatory framework that "international humanitarian law does not refer to PMSCs but rather to organised armed groups"	Principles (element 3)
48	- "one delegation stressed that PMSCs should not be used for military activities and should focus on performing auxiliary security activities instead."	Contracting States (element 4)
49	- "a delegation suggested that there was a need to distinguish between situations of armed conflict and situations where there were no armed conflict." - "...further proposed defining the services first, followed by language distinguishing what services a State may not contract for in situations of armed conflict and situations without an armed conflict."	Contracting States (element 4) + Distinctions and definitions
51	- "support of a service-based approach and recalled that all non-State actors, including armed groups, must respect international humanitarian law in conflict situations."	Contracting States (element 4) + definitions
52	- "...stressed the need for Governments to introduce the appropriate level of due diligence and risk management as part of their procurement policies. The standards applied in such policies should also be reviewed regularly and shared with government personnel."	Contracting State (Element 4 (b) Due diligence)
53	- "Government procurement processes should refer to criteria such as companies' past human rights records and internal procedures for selection and training, including internal policies and mechanisms for safeguarding human rights." - "...ensure that the contracting State did not circumvent its obligations by subcontracting services to a third party." - "...the need to include language ensuring that subcontractors could be held accountable."	Contracting State (Element 4 (b) Due diligence) and accountability of

² 3(c) – Transparency, through robust independent processes which address broader concerns about the integrity of voluntary or self-regulatory systems.

		subcontractors
55/56	<ul style="list-style-type: none"> - "...inclusion of language that would preclude contracting States from including any form of immunity from prosecution for their security contractors operating abroad, and territorial States from granting such immunities." - "...include a reference to mutual legal assistance as an issue that needed to be addresses to ensure further accountability." 	Contracting States/ Accountability/ removal of immunity
57	- "...add another point to element 4 that would ensure that contracting States would bear full responsibility for the acts of their contracting agents and third party, including the payment of damaged to victims of abuses."	Contracting States/ Accountability and remedies
60	- "...the need to consider whether there were jurisdictional issues unique to maritime security companies, such as the matter of flag State jurisdiction."	Territorial States/ Maritime law consideration and territoriality jurisdiction
62	- "...suggested amending the language in 5(a) ³ to read: "Ensure that the private security industry within their jurisdiction is effectively controlled and regulated in order to ensure respect for international human rights law and international humanitarian law, as applicable.""	Territorial States/ Accountability and control
63	- With regards to adding language to the framework emphasizing that States and regions have the ultimate discretion to decide whether PMSCs can operate within their territory – "it was proposed that the discussion be set aside for the time being since the language requested by one delegation could potentially be included in the preamble to the framework."	Territorial States / decision to be made at a later time
64	- "...suggested amending the language in 6(c) to read: "Regulate the conduct of PMSCs and personnel in order to ensure respect for international human rights law and international humanitarian law, as applicable.""	Home States /Element 6 (c)
65	- "...proposed making it clear that home States would extend the jurisdiction of their national civil courts to companies domiciled in the home State which committed violations in other countries." ... "importance of ensuring adequate liability for those companies within national legislation."	Home States /Element 6 (d) Accountability/ access to justice
67	- "representative of Switzerland suggested looking for guidance at the definitions of the terms "contracting State", "territorial State" and "home State" contained in the Montreux Document."	Definitions of supporting instruments
68	- "...suggested adding the following language to element 7(e): "the responsibility of ensuring access to remedy for victims is not limited to States of nationality. Other regulatory actors and private military and security companies should also have such responsibility.""	State of nationality / Element 7 (e)

³ 5(a) – Ensure that the private security industry within their jurisdiction is effectively controlled and regulated.

71	- "...stressed the importance of training programmes for PMSCs' personnel. In that regards, it suggested that international humanitarian law training should be mandatory as well as the passing of examination before receiving government certification."	PMSC (Element 8) training for certification
72	- On the issue of compliance mechanisms "...stressed that they needed to be robust and completed with human rights indicators and metrics that could assist in identifying gaps and areas where improvement was needed."	PMSC (Element 8 (a))
77	- "...suggested the following definition of PMSCs: "a private military and security company is that company, and its branches or subsidiaries, that provides private and paid military or security services to any moral or natural body that requires these services."	Definition and interpretation (Element 1) PMSCs
78	- "...stressed the need to differentiate between military and security companies and to provide definitions for both, as both were referred to in the discussion document."	Definitions and interpretation (Element 1) distinctions military and security companies