

Item 4.2 Discussion on specific issues:

- The issue of “inherently State functions” (related to PP7, article/para 1 (f), 2 (e), 4 (4) and 6 (b))
- the issue of “direct participation in hostilities/combat” (related to article/para 1 (f), 4 (5), 6 (b))

UK proposals:

PP7) Concerned about States increasing delegation or outsourcing of inherently State functions which [undermines States’ capacity to retain their monopoly on the legitimate use of force] **negatively impacts State capability to protect human rights³; / Concerned about the risk posed by excessive or otherwise inappropriate the use of Private Military and Security Companies by States for certain activities functions, including the use of force⁴**

Proposal to replace Article 1 (f) – ‘State Functions’ definition with a definition of prohibited activities:

Article 1 (f) “Prohibited activities” are activities that a State cannot outsource to Private Military and Security Companies under any circumstance, including but not limited to, conducting and engaging in combat operations, taking prisoners and the interrogation of detainees, law making, the use of, and other activities related to, weapons of mass destruction, and any activity that International Humanitarian Law explicitly assigns to a State agent or authority or that would result in their participation in acts of aggression or other other unlawful uses of force.¹ **activities prohibited under the UN Charter**

The last part of this sentence is taken from the bracketed section in Article 2 (e) of the current draft. We have replaced ‘other unlawful uses of force’ with ‘activities prohibited under the UN Charter’.

Article 2 (e):

prohibit Private Military and Security Companies, their personnel, ~~and~~ their sub-contractors ~~and agents~~, in view of the State monopoly on the use of force, from exercising ~~state functions~~ **prohibited activities as defined in Article 1(f).**

~~;~~ ~~[enable States to determine which services may or may not be performed by Private Military and Security Companies within their respective jurisdictions]~~ ~~[prohibit States from contracting Private Military and Security Companies from to carrying out activities that International Humanitarian Law explicitly assigns to a State agent or authority].~~ ~~/ Encourage States to define the scope of inherently governmental functions that may not be performed by Private Military and Security Companies~~

Article 4 (5):

~~[Signatory States]~~ ~~[States Parties]~~ ~~[States Participants]~~ ~~[undertake not to]~~ ~~[shall not]~~ ~~employ contract~~ Private Military and Security Companies, their personnel ~~and or~~ sub-contractors ~~in any function~~ **to carry out prohibited activities as defined in Article 1 (e)**

Article 4 (4) proposal to **remove** as this would be covered in Article 4 (2) and (5)

Article 6 (b)

~~Prevent prohibit~~ the personnel of Private Military and Security Companies or the personnel of sub-contractors from ~~engaging~~ carrying out **prohibited activities as outlined in article 1(f).** ~~functions or the provision of services that have been assigned by international law to States or State agencies as inherently State functions;¹⁷ or that International Humanitarian Law explicitly assigns to a State agent or authority, or that would result in their participation in acts of aggression or other unlawful uses of force.~~