

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

Version in track changes (as compared to Revised Second Draft)

PREAMBLE

The [Signatory States][States Parties][[States Participants](#)]¹ to this Instrument:

(PP1) *Reaffirming* the Purposes and Principles of the Charter of the United Nations [\[the sovereign equality, territorial integrity and political independence of all States, the right to self-determination of peoples, the prohibition of the threat or use of force in international relations, the principle of non-intervention in matters that are essentially within the domestic jurisdiction of any State and the obligation of States to promote universal respect for, and observance of human rights and fundamental freedoms\]](#)²;

(PP**4bis**²) *Recalling* the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant [on](#) Civil and Political Rights;

(PP**23**) *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 regulation, monitoring of and oversight over the activities of Private Military and Security Companies and their personnel and in its resolution 36/11 of 28 September 2017 [that](#) 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 resolutions [45/16](#), adopted on 6 October 2020, [and 54/11, adopted on 11 October 2023](#);

- (PP~~34~~) *Recalling* the Geneva Conventions of 1949 and, as applicable, their Additional Protocols of 1977, the Hague Regulations and the obligation of High Contracting Parties and other parties to armed conflicts to respect and ensure respect for [applicable] International Humanitarian Law, including customary International Humanitarian Law, in all circumstances;
- (PP~~3bis5~~) *Recalling further* 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 ~~(3)~~;
- (PP~~3ter6~~) *Bearing in mind* [other relevant international conventions, including] the International Labour Organisation Conventions, notably the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and its two Protocols; the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime;
- (PP~~3quart7~~) *Concerned* about the increasing delegation or outsourcing of inherently State functions which undermines States' capacity to retain their monopoly on the legitimate use of force;
- (PP~~3quinque8~~) *Expressing* concern at the violations of International Humanitarian Law and International Human Rights Law and abuses of human rights [related to]linked to the activities of [some] Private Military and Security Companies ~~(4)~~, their subcontractors and their personnel, including but not limited to, extrajudicial, summary or arbitrary executions, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, arbitrary detention, forced displacement, trafficking in persons, confiscation or destruction of private property, forced labour, recruitment and use of children and child labour, hostage-taking, sexual and gender-based violence and illicit trafficking of weapons and drugs;

(PP59) *Mindful* thereof that States retain their obligations under International Human Rights Law and International Humanitarian Law and bear the primary responsibility to prevent violations thereof and ~~are therefore obliged~~have an obligation, within their power, to effectively regulate and provide oversight over Private Military and Security Companies to ensure respect thereof by such companies and their personnel, ~~and to ensure;~~

(PP10) Noting that accountability for violations of International Human Rights Law and International Humanitarian Law by ~~taking~~Private Military and Security Companies, can only be ensured if States take appropriate steps to prevent, investigate, prosecute, punish and redress abuses and violations through establishing appropriate jurisdiction, effective remedies for victims, effective policies, legislation, regulations and adjudication, including to provide for civil, administrative or criminal liability as appropriate for Private Military and Security Companies ~~and,~~ their personnel and sub-contractors present or operating in their territory or jurisdiction;~~(5)~~³

(PP611) *Recognising* the right to protect, within their power and within their territory and jurisdiction all persons affected by the activities of some Private Military and Security Companies and their personnel, whether civilians or military personnel, from ~~violations and~~ abuses of their rights as provided for in International Human Rights Law and violations of International Humanitarian Law, and the need to provide victims with equal access to judicial and other effective remedies and reparation;

(PP6bis12) *Recognising* the need to provide equal and effective access to justice and judicial and other remedies / equal access to judicial and other effective remedies [and reparation] as provided by international law human rights standards, including the UN Basic Principles and Guidelines on the right to remedy and reparation;⁴

- (PP713) *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 establishing an expectation that PMSCs–Private Military and Security Companies will respect human rights in their business operations, regulating the activities of Private Military and Security Companies and preventing ~~abuses or~~ violations during such activities as well as setting standards for access to effective remedies for abuses to which they have caused or contributed ~~to~~;*
- (PP14) Concerned about reports of an increase in human trafficking and the recruitment of children and the use of children and child labour within the context of the provision of military and security services;
- (PP815) *Acknowledging that voluntary regimes/initiatives by Private Military and Security Companies should be supplemented to ensure the observance of International Human Rights Law and International Humanitarian Law by their personnel and sub-contractors and that business enterprises are required to respect human rights and International Humanitarian Law ~~(6)~~;*
- (PP916) *Recognising that international standards and the effective implementation thereof in domestic law and practice [are required to] enhance these existing voluntary regimes in order to prevent ~~violations~~abuses of International Human Rights Law and violations of 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;*
- (PP4017) *Mindful of the assistance rendered by Private Military and Security Companies to a variety of clients, public or private, [while respecting International Human Rights Law and International Humanitarian Law]; and that States retain their obligations under international law when contracting such companies; ~~(7)~~*

(PP4118) *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 on individuals and groups in vulnerable situations, [including, but not limited to], women, children, people with disabilities, indigenous peoples, human rights and environmental defenders, migrants, refugees, and asylum seekers;

(PP41bis19) *Emphasising* the need to ~~integrate~~adopt a gender transformative perspective in all aspects of the [regulation][guidance] of Private Military and Security Companies to ensure that such [regulation][guidance] addresses the experiences and concerns of ~~both men and women~~individuals;

(PP41ter20) *Recognizing* that in all actions concerning children, including in the context of the activities of Private Military and Security Companies, the best interests of the child [shall] [should] be a primary consideration, and [shall][should] be respected in pursuing remedies for ~~violations~~abuses of the rights of the child, and that such remedies should take into account the need for child-sensitive procedures at all levels;⁵

[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 for the services of Private Military and Security Companies ~~for their services~~, including as appropriate, where ~~the contracted company such a Private Military and Security Company~~ subcontracts with another Private Military and Security Company ~~or where the contracted Private Military and Security Company operates through its subsidiary companies;~~⁶

- (b) “Home State” means a State ~~where of nationality of~~ a Private Military and Security Company, i.e. where a Private Military and Security Company is incorporated or registered; if the State where the Private Military and Security Company is incorporated is not the one where it has its principal place of management, ~~is incorporated, registered or domiciled in or~~ then the State where the Private Military and Security Company has its ~~main~~ principal place of ~~business [or conduct substantial activities]~~ management is the “Home State”;⁷
- (c) “Military services” means specialized services that resembles ~~or is~~ are related to military action, including strategic planning, intelligence, investigation, reconnaissance, flight operations ~~of any kind~~, manned or unmanned, satellite surveillance, transfer of military technologies, 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;⁸
- (d) “Private Military and Security Company” means a private business entity, including entities owned or partially owned by a State, and irrespective of how it describes itself, which provides [on a compensatory basis] military and/or security services ~~through natural. Military and security services include, in particular, armed guarding and protection of~~ persons ~~or~~ and objects, such as convoys, buildings and other ~~legal entities; places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.~~⁹
- (e) “Personnel” means persons employed by, through direct hire or under a contract with, a Private Military ~~or~~ and Security Company, including employees and managers;
- (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) “Subcontractor” means an independent natural or legal person who undertakes by a contractual arrangement with a Private Military ~~or~~and Security Company to fulfil tasks or obligations outsourced to it by such Private Military ~~or~~and Security Company. A subcontractor is not employed by the Private Military ~~or~~and Security Company.⁹
- (h) [“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.]¹⁰
- (i) “State of Nationality” means a State of the nationality of employees or other personnel of Private Military and Security Companies;
- (j) “Territorial State” means a State ~~where on whose territory~~ 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~~Companies operate;¹¹
- (k) “Victim” means a person ~~or~~who individually or collectively as a member of a group of persons who suffered harm, ~~directly or indirectly~~, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions [in the context of the activities of Private Military and Security Companies] that constitute ~~abuses~~gross violations of international human rights ~~and~~ law or serious violations of International Humanitarian Law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. [A person shall be considered a victim regardless of whether the perpetrator of such abuses and violations is identified, apprehended, prosecuted or convicted.]¹²

[PARAGRAPH][ARTICLE] 2

OBJECTIVES

The objective of this Instrument is to provide a (regulatory) framework:

- (a) provide a framework to ensure that the rights of persons are not negatively impacted by the activities of Private Military and Security Companies and their personnel and sub-contractors;
- (b) provide for the regulation of and transparent oversight over the operations of Private Military and Security Companies, their personnel and sub-contractors, by [~~s~~Signatory States][States Parties] according to international law, to ensure the protection and fulfilment and prevent violations of human rights and International Humanitarian Law by Private Military and Security Companies ~~and~~, their personnel and their sub-contractors in the environments wherein they operate.
- (c) describe the circumstances under which such companies, their personnel and sub-contractors could be held accountable for abuses of human rights and violations of International Humanitarian Law;
- (d) ensure access to information, 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;¹³
- (e) prohibit Private Military and Security Companies, ~~and~~ their personnel and their sub-contractors, in view of the State monopoly on the use of force, from exercising State functions; [enable States to determine which services may or may not be performed by PMSCsPrivate Military and Security Companies within their respective jurisdictions] [States from contracting Private Military and Security Companies from carrying out activities that International Humanitarian Law explicitly assigns to a State agent or authority].

- (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 and their subcontractors; ~~(10)~~¹⁴
- (g) provide for effective systems of whistleblower protection and the 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, 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.~~

~~Subject to paragraph (1), t~~his Instrument shall apply to all situations, including [situations of conflict]~~[situations of armed conflict and humanitarian actions]~~, 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 / COMMITMENTS OF STATES

- (1) [Signatory States][States Parties][States Participants] recognise their obligation/commitment 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) ~~(1bis)~~—[Signatory States][States Parties][States Participants] [undertake to][should][shall] ~~adopt~~enact any legislation [appropriate measures] necessary for the regulation of and oversight over Private Military and Security Companies and their personnel and the provision of military and security services, and to, in specific circumstances to provide effective penal sanctions for persons committing, or ordering to commit, grave breaches of the Geneva Conventions and where applicable, Additional Protocol I [International Humanitarian Law] [and abuses of International Human Rights Law] and to provide access to information according to international standards.¹⁵
- (3) [Signatory States][States Parties][States Participants] [undertake to][shall] take appropriate measures 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 breaches of the Geneva Conventions of 1949 and their Additional Protocols of 1977, forced labour, trafficking of people, natural resources and weapons and other crimes under international law.
- (4) ~~(3)~~[Signatory States][States Parties][States Participants] [undertake to][shall] through their domestic law prohibit Private Military and Security Companies and their personnel from exercising State functions.
- (5) ~~(4)~~[Signatory States][States Parties][States Participants] [undertake not to][shall not] employ Private Military and Security Companies ~~and~~, their personnel and sub-contractors in any function that would result in such personnel directly participating in hostilities ~~[Private Military and Security Companies and their personnel in/~~combat].¹⁶

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

- (1) [Signatory States][States Parties][States Participants] [undertake to][shall] adopt legislation, regulations and policies ~~[as / appropriate]~~ measures for the regulation and monitoring of and oversight over Private Military and Security Companies ~~and,~~ their personnel and sub-contractors subject to their jurisdiction and the provision of military and security services.

- (2) [Signatory States][States Parties][States Participants] [undertake to][shall] establish an effective risk-based licensing system in their domestic law to ensure that Private Military and Security Companies do not ~~import and export~~ offer/provide their services without appropriate licenses.

- (3) [Signatory States][States Parties][States Participants] [undertake to][shall] require Private Military and Security Companies, to qualify for a license, ~~to~~ adopt and implement policies providing for [ensure their legislation and policies are sufficient to regulate]:
 - (a) the integration of human rights and International Humanitarian Law ~~across~~ and international standards on the prevention and combating of corruption cross their operations, including an internal code of conduct, ethics and behaviour;
 - (b) gender commitments prohibiting discrimination and promoting gender equality and other forms of diversity and gender-specific internal policies;
 - (c) ~~(b bis)~~ the undertaking of human rights due diligence to identify, prevent and mitigate the risks of negative human rights impacts and abuses arising from their activities which will include human rights, labour and environmental impact assessments prior and throughout their operations;

- (d) ensuring training in International Human Rights Law and International Humanitarian Law, the standards and rules ~~governing~~covering the use of force ~~and~~, the use and management of weapons and ammunition, the use of lethal and non-lethal equipment and the prevention of sexual exploitation and abuse, where applicable;
- (e) effective recruitment, selection and vetting procedures for personnel and the keeping of records to prevent the employment of persons ~~responsible for~~likely to commit/with a record of involvement in human rights abuses and International Humanitarian Law violations ~~as well as~~, sexual offences and sexual and gender-based violence, corruption-related acts, serious crime (including organised crime), and violent crime;¹⁷
- (f) effective internal mechanisms [including through third party independent verification] for monitoring, supervising and ensuring accountability for alleged ~~violations~~abuses of International Human Rights Law and violations of International Humanitarian Law; ~~and~~
- (g) compliance with applicable international human rights, ~~labour and~~applicable environmental standards as specified in international environmental agreements.~~(11)~~;
- (h) compliance with applicable international labour standards;
- ~~(h)~~(i) adequate transparency of contracts for the provision of military and security contracts for prime contractors and sub-contractors and adequate transparency of the beneficial ownership status; ~~(12)~~ and
- ~~(i)~~(j) their personnel to be clearly identifiable by means of distinctive uniforms, emblems and insignia ~~(13)~~.
- (4) [Signatory States][States Parties][States Participants] [undertake to][shall] monitor compliance including by means of regular reporting systems, by Private Military and Security Companies ~~and~~, their personnel and sub-contractors, and apply sanctions

when activities are undertaken without the required registration or license and authorisation, including the export and import of military and security services.

- (5) [Signatory States] [States Parties][States Participants] shall ensure that their licensing systems prohibit [adequately regulate] the provision of military and / or security services {to a Territorial State without the permission of that State and provide adequate oversight}.
- (6) [Signatory States][States Parties][States Participants] [undertake to][shall] allocate adequate human and financial resources ~~e~~ for the regulation and monitoring of and oversight over Private Military and Security Companies, including by {establishing competent authorities to provide for monitoring, accountability and oversight of the Private Military and Security Company industry in relation to the requirements for registration, licensing ~~and~~, recruitment and training and contract transparency.

[PARAGRAPH][ARTICLE] 6

OBLIGATIONS / COMMITMENTS OF CONTRACTING STATES

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~~provide that such government contracts:

- (a) incorporate requirements to ~~ensure respect~~promote adherence by such companies and, their personnel and sub-~~contractors and their personnel~~contractors for the domestic law of the Contracting State, International Human Rights Law and International Humanitarian Law [incorporate applicable requirements under the domestic law of the Contracting State and applicable International Human Rights Law and International Humanitarian Law];
- (b) prevent the personnel of Private Military and Security Companies or the personnel of sub-contractors from engaging in any conduct amounting to either direct participation

in hostilities or the exercising of functions or the provision of services that have been assigned by international law to States or State agencies as inherently State functions;¹⁸

- (c) are not concluded with Private Military and Security Companies that are not ~~registered and licenced as required by in compliance with~~ applicable laws and regulations, including registration and licensing requirements; and that such companies do not subcontract with non-registered and non-licensed companies;

~~(d) (14)~~

~~(1) (15).~~

[PARAGRAPH][ARTICLE] 7

OBLIGATIONS/COMMITMENTS OF TERRITORIAL STATES

- (1) Territorial States ~~[undertake to][shall] ensure that no State Functions are carried out within their jurisdiction by Private Military and Security Companies and their personnel. [Territorial States should determine which services may or may not be performed by~~ should determine which services may or may not be performed by Private Military and Security Companies within their respective jurisdictions. ~~]~~ ~~(16).~~
- (2) Territorial States [undertake not to][shall not] allow Private Military and Security Companies ~~that are not registered~~ not in compliance with applicable registration and licensed in terms of this Instrument licensing requirements to operate within their jurisdiction.

[PARAGRAPH][ARTICLE] 8
OBLIGATIONS / [COMMITMENTS](#) OF HOME 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.]
[Home States should ensure that their domestic law sufficiently regulates the provision of services by Private Military and Security Companies].¹⁹

[PARAGRAPH][ARTICLE] 9
OBLIGATIONS / [COMMITMENTS](#) OF STATES OF NATIONALITY

States of nationality [undertake to][shall] adopt [or strengthen](#) legislation [and policies](#) [appropriate measures] to regulate the recruitment of their nationals [and persons resident in the State] by Private Military and Security Companies to serve abroad and prohibit their nationals to engage in any activity that is prohibited by this Instrument [by applicable international law].

[PARAGRAPH][ARTICLE] 10
JURISDICTION²⁰

- (1) [Signatory States][States Parties][[States Participants](#)] [undertake to][shall] provide for criminal [and civil] 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][[States Participants](#)] [undertake to][shall] establish its jurisdiction through its domestic law over offences provided for in this Instrument and in international law ~~(17)~~ 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 resident in that State;
 - (d) against a national of or a person resident in that State;
 - (e) outside the territory of that State (or a territory under its control), or its territorial waters, including to the extent allowed by the international Law of the Sea and the offence constitutes a crime under international law, [where appropriate](#);
 - (f) by an alleged offender who is present in the territory of the [Signatory State][State Party] [\[State Participant\]](#) after the commission of the offence in another State, [where appropriate](#).
- (3) This Instrument does not exclude any additional grounds for criminal jurisdiction that exist under international law or the domestic law of [Signatory States][States Parties].

[PARAGRAPH][ARTICLE] 11

REGULATION OF THE USE AND ACQUISITION OF WEAPONS AS WELL AS THE USE
OF FORCE²¹

- (1) [Signatory States][States Parties][\[States Participants\]](#) [undertake to][shall] adopt national laws and regulations [/ appropriate measures](#) to:
- (a) regulate the acquisition, licensing, transfer-, storage, transport and management of weapons by Private Military and Security Companies and their personnel in accordance with legal obligations and established international standards relating to weapons including International Humanitarian Law;

- (b) ~~(a bis) prohibit~~ shall not authorise any transfer to Private Military and Security Companies and their personnel [from using] certain types of weapons prohibited under applicable international law and/or engaging in any activities related to such weapons, [like weapons of mass destruction, weapons which cause superfluous injury or unnecessary suffering, or which are to cause indiscriminate, long-term and severe damage to the environment, and inherently abusive security goods and equipment,] as well as from trafficking in firearms, their parts, components or ammunition and other related accessories;

~~(a ter)~~;

- (c) require Private Military and Security Companies to effectively train their personnel in the law governing the individual use of force, guided by the personal right to self-defence with respect to the provision of private military and security services, including in a situation of armed conflict ~~(18)~~.
- (2) [Signatory States][States Parties][States Participants] [undertake to][shall] introduce effective customs control and other forms of control over the transfer, including import and export, re-import and re-export, transit, trans-shipment and ~~transfer~~brokering of weapons, military or related equipment used by Private Military and Security Companies and their personnel.
- (3) [Signatory States][States Parties][States Participants] [undertake to][shall] ~~refrain from transferring~~not authorise any transfer of arms to Private Military and Security Companies when they assess, in accordance with applicable domestic laws, regulations and procedures and international obligations and commitments, that there is an overriding risk that such arms might be used to commit or facilitate violations or abuses of international human rights law or serious violations of international humanitarian law.

[PARAGRAPH][ARTICLE] 12
STATE RESPONSIBILITY²²

Without prejudice to other possible grounds for responsibility of the State under international law and the prohibitions contained in [Paragraphs][Articles] ~~3~~, 4(45), 6(4)(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][States Participants] [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 caused by Private Military and Security Companies ~~and~~, their personnel and sub-contractors within their territory or under their jurisdiction shall have equal effective, child-friendly and gender-~~sensitive~~responsive access to a remedy and adequate, effective and prompt reparations.
- (2) ~~(1 bis)~~ [Signatory States][States Parties][States Participants] [undertake to][shall] guarantee that victims are treated with humanity and respect for their dignity and human rights, and their personal integrity, safety, physical and psychological well-being and privacy ~~shall be ensured~~ [is protected];
- (3) ~~(1 ter)~~ [Signatory States][States Parties][States Participants] [undertake to][shall] guarantee victims, adults and children alike ~~(19)~~, including those with disabilities, access to information in relevant languages and accessible formats, ~~and~~ legal aid relevant to pursue effective remedies [to the extent possible or practical];
- (4) Without prejudice to [Paragraph][Article] 13(1), [Signatory States][States Parties][States Participants] [undertake to][shall] provide [should consider providing] for non-judicial grievance procedures that are legitimate, independent, accessible,

predictable, equitable, transparent, rights-compatible, ~~transparent~~ and a source of continuous learning to identify lessons for improving the mechanisms.

[PARAGRAPH][ARTICLE] 14
INVESTIGATION AND PROSECUTION

- (1) [Signatory States][States Parties] [States Participants] [undertake to][shall] conduct effective, thorough and impartial investigations [related to alleged crimes committed within their territory or jurisdiction by Private Military and Security Companies ~~and~~, their personnel, and sub-contractors and prosecute persons suspected of having committed applicable such crimes [consistent with their domestic law] and international obligations.
- (2) [Signatory States][States Parties][States Participants] [undertake not to][shall not] grant immunity [in their courts] from prosecution to Private Military and Security Companies, their personnel or their contractors for crimes committed anywhere they operate [except for the purpose of the effective prosecution of perpetrators].

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

- (1) [Signatory States] [States Parties][States Participants] [undertake to] [shall] provide one another with mutual legal assistance in the investigation and prosecution of the offenses provided for in this Instrument [in terms of their domestic law or bilateral or multilateral agreements].²³
- (2) ~~(1 bis)~~ [Signatory States][States Parties][States Participants] may invite any State not party to this Instrument to provide mutual legal assistance and international judicial cooperation under this provision on the basis of an *ad hoc* arrangement, an agreement with such State or any other appropriate basis.

- (3) [Signatory States][States Parties][[States Participants](#)] [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.
- (4) ~~(2bis)~~ If the law of the Requested State does not allow for the extradition of its citizens on the grounds of their nationality, the Requested State shall, by request of the Requesting State, submit the case to its competent authorities so that, if judged needed, [procedures suitable can be performed] [[pursue prosecution consistent with its domestic law and international obligations](#)]. Such request shall be accompanied by the relevant procedural documentation and evidence relating to the offence. The Requesting State shall be informed of the outcome of the case. ~~(20)~~

[PARAGRAPH] [ARTICLE] 16]

COOPERATION

- (1) [Signatory States][States Parties][[States Participants](#)] [undertake to][shall], [consistent with their domestic law] [and their international obligations](#) [for the purpose of sharing information], establish a National Contact Point [or other authority](#) for the collection, analysis and exchange ~~/sharing~~ of information on companies [and their sub-contractors](#) providing military and / or security services and possible violations of national and international law [provided for in this Instrument].
- (2) [Signatory States][States Parties][[States Participants](#)] [undertake to][shall], [consistent with their domestic law, including the law related to privacy,~~],~~ [and international obligations](#) share information on the activities of Private Military and Security Companies with a view to ensure effective regulation [and monitoring](#) of and oversight over their activities with a view to investigate and prosecute possible crimes committed by such companies ~~and/~~ [their subcontractors](#) or their personnel.

- (3) ~~(2bis)~~ [Signatory States][States Parties][States Participants] [undertake to][shall] establish a monitoring and reporting mechanism to which they will report on their implementation of the International Regulatory Framework on Private Military and Security Companies. Monitoring and reporting [is to be][shall] be undertaken by their respective National Contact Points. Monitoring [is to be][shall] be ongoing and conducted on a biannual basis. The respective reports [is to be][shall] be collected and disseminated to the membership by the Secretariat.

[PARAGRAPH][ARTICLE] 17
INTERNATIONAL [HUMANITARIAN] LAW

This Instrument [is without prejudice to][reaffirms applicable] International [Humanitarian Law and International Human Rights] Law [(and other applicable International Law)], including the law relating to disarmament].

[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 revised text is an updated version of the [Revised](#) Second Draft Instrument that was considered [by](#) the [informal, intercessional meeting Fourth Session](#) of the OEWG on [1—2 December 2022-17 – 21 April 2023](#). It aims to include proposals made from the floor and also written proposals received subsequent to the meeting on that text. [However, not many specific textual proposals were received. Some textual proposals were also not clearly captured by the drafter](#) and therefore [reflects the amendments proposed to that text. Hence, a new set of footnotes have been could not be](#) included, [to provide guidance to while sometimes conflicting proposals were captured, in which case](#) the [amendments to the Second Draft Instrument incorporation was done with a view to ensure consistency](#). Not all the proposed amendments have been attributed, as this would overload the text. [Furthermore, the capturing of specific proposals also results in inconsistencies with other parts of the text, which can be cleared up once broad consensus about the text has been achieved.](#)

The major issue to be addressed remains the question of inherently State functions/direct participation in hostilities, about which there is not yet consensus. The text tries to reflect options in this regard. The legal team may wish to guide in this regard.

The text in Articles 18 until the end reflects treaty language and has, as requested by a delegation, been bracketed.

Footnotes:

- ~~(1) It has been proposed by a State that the terms “States Participants” be used instead of “Signatory States” or “States Parties”.~~
- ~~(2) Following a discussion on whether or not to refer to specific principles, the Chair held that PP1 should be included and PP1 bis should be deleted.~~
- ~~(3) It has been proposed that text with respect to the IHL obligations of States and those of non-State actors should be separated.~~
- ~~(4) Amendments proposed by a State.~~
- ~~(5) It was proposed that a clear distinction should be drawn between text dealing with prevention and accountability~~
- ~~(6) It has been proposed that some such voluntary regimes may be listed in this PP.~~
- ~~(7) PP10 and PP11 mirrored each other and PP11 was therefore deleted. In PP10 the identification of clients include both private and public clients. The point that States as subjects of international law retain obligations under IHRL and IHL was then separated as a free-standing PP. Some delegations were of the view that the non-exhaustive list of clients should be deleted, others that it should be expanded. The list contained States, the United Nations, international organisations, humanitarian actors and peacekeeping missions. The meeting may wish to consider whether to include an exhaustive or non-exhaustive list. The notion that States retain their obligations under IHRL and IHL has been inserted into PP5.~~
- ~~(8) It has been proposed that the definitions of “Military Services” and “Security Services” be merged or deleted. With reference to the definition “Private Military and/or Security Company” in 1(d) that still distinguish between private military and private security companies, it is submitted that the distinction between the two definitions can be maintained. Both are open-ended definitions (including “other related activities”) that will allow for the definitions to keep up to date with the changing nature of PMSCs. It is generally recognised that the distinction between PMSCs is not always clear and their functions may overlap. A more extensive, but still open-ended, definition of “Security Services” is contained in the *International Code of Conduct for Private Security Service Providers*.~~
- ~~(9) Definition based on the ILO Instrument on Contract Work (1998)~~
- ~~(10) One delegation proposed that this paragraph be moved to the Preamble~~
- ~~(11) The question has been raised whether reference here should be to general/international environmental standards, or industry-specific standards.~~

- ~~(12) The principle of contract transparency was proposed by ICoCa.~~
- ~~(13) Proposed by the Working Group on Use of Mercenaries~~
- ~~(14) In view of the comments Article 6(1)(d), it was considered to collapse 6(1)(d) into 6(1)(c), as both deals with the matter of registration and licensing. The idea that sub-contractors must comply with the highest international standards, is reflected in the amendments to Articles 6(1)(b) and (c) to make those provisions applicable to sub-contractors and their personnel.~~
- ~~(15) Incorporated into Article 6(1)(b).~~
- ~~(16) Proposal by the United States, which noted that if the proposal is adopted, Article 7(2) would become redundant.~~
- ~~(17) It is submitted that the amendments to the text will align it with the crimes in Article 4(2). One delegation proposed that the notion of universal jurisdiction should be included. It is submitted that the present text provides for semi-universal jurisdiction, as it incorporates extraterritorial jurisdiction but requires a link to the State. It may be difficult for many States to incorporate an open universal jurisdiction provision into their domestic law.~~
- ~~(18) In view of the comments by delegations that the notion of the “use of force” is not well-defined and its relationship with self-defence is not clear, it has been attempted to address these concerns by deleting Article 11(1)(a) *ter* and including the reference to the personal right to self-defence in Article 11(1)(b).~~
- ~~(19) It may be considered to, for consistency in the text, include the notion that victims will include children and adults, in the definition in 19(k).~~
- ~~(20) Paragraphs 15(1) and 15(1) *bis* deal with mutual legal assistance, Paragraph 15(2) with extradition/surrender and 15(2) *bis* with the situation where a State as a matter of policy does not extradite its nationals. Given this factual situation, a somewhat vague procedure is provided for, as there will be no binding legal obligations on the Requested Party.~~

¹ It has been proposed by a State that the terms “States Participants” be used instead of “Signatory States” or “States Parties”.

² Some delegations were of the view that the bracketed should be deleted as not all the principles contained therein are legally binding, while other delegations advocated for its retention.

³ It has been proposed that the text of the fifth preambular paragraph in the Revised Second Draft Instrument be split into two parts, with the first part stipulating that States retain their obligations under international law when using private actors and the second focusing on oversight and accountability over Private Military and Security Companies.

⁴ Civil society organisations wish to retain the reference to “reparations”, as opposed to the position of some States.

⁵ Some delegations noted that the verb “shall” in this context does not denote a legally binding nature of the Instrument, but relates to binding obligations contained in the Convention on the Rights of the Child.

⁶ Definition of the Montreux Document adopted. However, it was proposed to remove the word “directly” be deleted, although it appears in the Montreux definition.

⁷ Montreux Document definition.

⁸ The Chair’s conclusion was that the present definition be retained, while textual inputs from delegations are welcomed.

⁹ Montreux Document definition.

¹⁰ Delegations were divided on whether to keep this definition in the text, with some seeking guidance from the Montreux Document. The Montreux Document provides in Part One, A.2 that Contracting States have an

obligation not to contract Private Military and Security Companies to carry out activities that international humanitarian law explicitly assigns to a State agent or authority, such as exercising the power of the responsible officer over prisoner of war camps or places of internment of civilians in accordance with the Geneva Conventions. The Chair determined that the definition should be retained for the time being, depending on alternative language that may be agreed upon by delegations.

¹¹ Montreux Document definition.

¹² Definition amended in line with the definition in UNGA Resolution 60/147: 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, as proposed by a number of delegations.

¹³ Delegations were divided on whether access to information should be restricted to specifically defined information.

¹⁴ There was no final decision on whether this provision as well Paragraph/Article 12 on State Responsibility should be retained or deleted and reflected in the Preamble. A preambular paragraph may read as follows: "Affirming that state responsibility may be incurred for [abuses of human rights and violations of International Humanitarian Law] [internationally wrongful acts] by Private Military and Security Companies, their personnel and sub-contractors where such [abuses and violations] [acts] are attributable to a State, consistent with customary international law."

¹⁵ Aligned with Montreux Document, but overlaps now with (3) with respect to criminal jurisdiction.

¹⁶ Sub-paragraphs (4) and (5) may be combined into one provision providing that States should not contract Private Military and Security Companies to carry out activities that international humanitarian law explicitly assigns to a State agent or authority, in line with the proposal in endnote 10.

¹⁷ Text from paragraph 32, Part 2 of the Montreux Document included.

¹⁸ This provision can be amended consistent with the proposal for text in endnote 10 which will also reflect text in Paragraph/Article 4(4) and (5) in terms of the amendment proposal.

¹⁹ No consensus exists at present between delegations on which of the two text options is preferable, consequently both have been placed in brackets.

²⁰ This Paragraph/Article deals with jurisdiction, and contains fairly standard provisions from domestic law and international instruments on extending jurisdiction extraterritorially in order to ensure accountability for international crimes. It is not to be confused with the criminalisation of acts. A delegation proposed that the provision be deleted, while another proposed that the reference to territory under control of a State be deleted. Deletion of the provision will have an effect on Paragraph/Article 15, as mutual legal assistance, extradition and surrender require a jurisdictional basis.

It is submitted that in view of the concerns of some delegations about the concept of "universal jurisdiction", that (2) can be limited to paragraphs (a) – (d).

As regards the distinction between "violations" and "offences", no applicable definitions could be found, and probably will differ from jurisdiction to jurisdiction. It is submitted that while rules/norms/laws are violated by a specific act, such an act moves into the realm of an "offense" when the law enforcements stage is reached: jurisdiction is established, mutual legal assistance and extradition and prosecution take place. "Violate" is according to the *Oxford Concise Dictionary* (10th Ed.) means to break or to fail to comply with a rule, while "offence" is defined in the context of giving offence or a military campaign. Not very helpful!

²¹ Inconsistent reference is now made in this Paragraph / Article to weapons, arms, military and related equipment. It may be considered, if consensus exists on the types to be included in the instrument, to include a definition of "weapons" (reflected in the title).

²² See endnote 14.

²³ A delegation undertook to provide new text for this provision.