

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

PREAMBLE

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

(PP1) *Reaffirming* the Purposes and Principles ~~principles and purposes~~ of the Charter of the United Nations (2);

~~(PP1bis) Reaffirming the principles and purposes of the Charter of the United Nations the sovereign equality, territorial integrity and political independence of all States, the right 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);~~

(PP1~~bis~~ter) *Recalling* the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant of Civil and Political Rights, ~~and other relevant international instruments in the fields of human rights, International Humanitarian Law and international criminal law, and general international law principles on the responsibility of States for internationally wrongful acts;~~

(PP2) *Recalling* Human Rights Council resolution 15/26 of 1 October 2010 that established the open-ended working group to consider the possibility of elaborating an international regulatory framework on the 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 established a new open-ended intergovernmental

working group for a period of three years, with a mandate to elaborate the content of an international regulatory framework, without prejudging the nature thereof, to protect human rights and ensure accountability for violations and abuses relating to the activities of Private Military and Security Companies, which was renewed for a further period of three years by resolution 45/16 adopted on 6 October 2020;

(PP34) ~~(a)~~ *Recalling* the Geneva Conventions of 1949 and their Additional Protocols of 1977, ~~the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work...~~, and ~~(b)~~ the obligation of High Contracting Parties and other parties to armed conflicts to respect and ensure respect for applicable International Humanitarian Law in all circumstances;

~~(PP3bis)~~ *Recalling further* ~~and~~ the responsibility of non-State actors, including business entities, to respect international human rights standards and ensure respect for International Humanitarian Law in all circumstances (3);

(PP34~~ter~~bis) *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;

(PP34~~quart~~ter) *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;

(PP34~~quart~~quinque) *Expressing* concern at the ~~increasing and alarming~~ violations of International Human Rights Law and abuses of human rights related to the activities ~~of~~ of some Private Military and Security Companies (4) 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 trafficking of weapons and drugs;

(PP5) *Mindful* thereof that States retain their obligations under ~~bear the primary responsibility to prevent violations~~

~~Of~~ _____ International Human Rights Law and ~~of~~ International Humanitarian Law and bear the primary responsibility to prevent violations thereof and are therefore obliged to effectively regulate and provide oversight over Private Military and Security Companies to ensure respect thereof by ~~Private Military and Security such C~~companies and their personnel, and to ensure accountability for violations by takeing appropriate steps to prevent, investigate, prosecute, punish and redress abuses through establishing appropriate jurisdiction, effective remedies for victims, effective policies, legislation, regulations and adjudication, including to provide for civil, administrative or criminal liability for ~~enterprises and associated persons~~ Private Military and Security Companies and their personnel present or operating in their territory or jurisdiction; (5)

(PP6) *Recognising* the right to protect all persons affected by the activities of Private Military and Security Companies and their personnel, whether civilians or military personnel from violations 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;

(PP6bis) *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, including the UN Basic Principles and Guidelines on the right to remedy and reparation;

(PP7) *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 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;

(PP8) *Acknowledging* that ~~–voluntary regimes/initiatives by Private Military and Security Companies~~ are not sufficient should be supplemented to ensure the observance of International Human Rights Law and International Humanitarian Law by their personnel and that business enterprises are required to respect human rights and International Humanitarian Law (6);

(PP9) *Recognising* that international ~~minimum legal~~ standards and the effective implementation thereof in domestic law are required to enhance these existing voluntary regimes in order to prevent violations of International Human Rights Law and 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;

(PP10) *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; ~~States and that States retain their obligations under international law when contracting such companies;~~

~~(PP11) *Mindful of* the assistance rendered by Private Military and Security Companies to a variety of clients, *inter alia* to governments, the United Nations, international organisations, humanitarian actors and peacekeeping missions; (7)~~

(PP1~~1~~2) *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;

(PP1~~12~~bis) *Emphasising* the need to integrate a gender perspective in all aspects of the regulation of Private Military and Security Companies to ensure that such regulation addresses the experiences and concerns of both men and women;

(PP1~~12~~ter) *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 be a primary consideration, and shall be respected in pursuing remedies for violations of the rights of the child, and that such remedies should take into account the need for child-sensitive procedures at all levels;

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

[PARAGRAPH][ARTICLE] 1

DEFINITIONS

For the purposes of the present Instrument:

- (a) “Contracting State” means a State that directly contracts with Private Military and Security Companies for their services, including where the contracted company subcontracts with another Private Military and Security Company or where the contracted Private Military and Security Company operates through its subsidiary companies;
- (b) “Home State” means a State where a Private Military and Security Company has its principal place of management, is incorporated, registered or domiciled in or has its main place of business [or conduct substantial activities];

- (c) “Military services” means specialized services that resembles or is related to military action, including strategic planning, intelligence, investigation, reconnaissance, flight operations 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;~~(68)~~
- (d) “Private Military and Security Company” means a private business entity, irrespective of how it describes itself, which provides on a compensatory basis military and/or security services through natural persons or other legal entities;
- (e) “Personnel” means persons employed by, through direct hire or under a contract with, a -Private Military or 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) “Subcontractors” means ~~.....(input awaited)~~ an independent natural or legal person who undertakes by a contractual arrangement with a Private Military or Security Company to fulfil tasks or obligations outsourced to it by such Private Military or Security Company. A subcontractor is not employed by the Private Military or 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.]

- (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 a Private Military and Security Company carries out activities regardless of whether the company is incorporated or not within such State’s jurisdiction, or the duration and kind of operations;
- (k) “Victim” means a person or 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 of human rights and of International Humanitarian Law. A person shall be considered a victim regardless of whether the perpetrator of such abuses and violations is identified, apprehended, prosecuted or convicted.

[PARAGRAPH][ARTICLE] 2

OBJECTIVES

The objective of this Instrument is to:

- (a) provide a framework to eEnsure 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 [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 in the environments wherein they operate, as applicable;

- (c) ~~describe provide for~~ 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;
- (e) prohibit Private Military and Security Companies and their personnel from exercising State functions; [enable States to determine which services may or may not be performed by PMSCs within their respective jurisdictions]
- (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; (10)
- (g) provide for effective investigation and prosecution of persons responsible for the abuses of human rights and violations of International Humanitarian Law.

[PARAGRAPH][ARTICLE] 3

SCOPE

- (1) In relation to a Home State, this Instrument is applicable in situations that involve persons, whether a legal person or a natural person, engaging in activities that provide private military and security services in any territory outside its Home State, or provide services in its Home State that is connected to the provision of private military and security services outside its Home State, or exercises control from its Home State over a person that provides private military and security services outside the territory of the that person's Home State.
- (2) Subject to paragraph (1), this Instrument shall apply to all situations, including situations of conflict [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 OF STATES

- (1) [Signatory States][States Parties] recognise their obligation to respect, protect and fulfil human rights and to respect and ensure respect for International Humanitarian Law and to ensure the respect of human rights and International Humanitarian Law by Private Military and Security Companies and their personnel within their jurisdiction.
- (1**bis**) [Signatory States][States Parties] [undertake to][shall] adopt legislation ~~legislation~~ [appropriate measures] 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 provide access to information according to international standards. ~~(9)~~
- (2) [Signatory States][States Parties] [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.
- (3) [Signatory States][States Parties] [undertake to][shall] through their domestic law prohibit Private Military and Security Companies and their personnel from exercising State functions.
- (4)[Signatory States][States Parties] [undertake not to][shall not] employ Private Military and Security Companies and their personnel in any function that would result in such personnel directly participating in hostilities [Private Military and Security Companies and their personnel in combat].

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

- (1) [Signatory States][States Parties] [undertake to][shall] adopt legislation and policies [as appropriate] for the regulation and monitoring of and oversight over Private Military and Security Companies and their personnel subject to their jurisdiction and the provision of military and security services.
- (2) [Signatory States][States Parties] [undertake to][shall] establish an effective licensing system in their domestic law to ensure that Private Military and Security Companies do not import and export their services without appropriate licenses.
- (3) [Signatory States][States Parties] [undertake to][shall] require Private Military and Security Companies, to qualify for a license, to adopt 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 their operations, including an internal code of conduct, ethics and behaviour;
 - (b) gender commitments prohibiting discrimination and promoting gender and other forms of diversity and gender-specific internal policies;
 - (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;
 - (c) ensuring training in International Human Rights Law and International Humanitarian Law, the standards and rules relating to governing the use of force and the use and management of weapons and ammunition, where applicable;

- (d) effective recruitment, selection and vetting procedures for personnel to prevent the employment of persons ~~suspected of or convicted~~ responsible for human rights abuses and International Humanitarian Law violations as well as sexual and gender-based violence;
- (e) effective internal mechanisms [including through third party independent verification] for monitoring, supervising and ensuring accountability for alleged violations ~~of~~ of International Human Rights Law and of International Humanitarian Law; and
- (f) compliance with fundamental applicable international human rights, labour and environmental standards as specified in international environmental agreements. (11)
- (g) adequate transparency of contracts for the provision of military and security contracts; (12)
- ~~(f)~~(h) their personnel to be clearly identifiable by means of distinctive uniforms, emblems and insignia (13)
- (4)[Signatory States][States Parties] [undertake to][shall] monitor ~~the activities of compliance~~ by Private Military and Security Companies and their personnel and apply sanctions when ~~these~~ 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] 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].
- (6) [Signatory States][States Parties] [undertake to][shall] ~~ensure that allocate~~ adequate human and financial resources ~~are available~~ for the regulation and monitoring of and oversight over Private Military and Security Companies, including by -
- ~~(7) [Signatory States][States Parties][undertake to][shall]~~ establishing independent 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 contract transparency.

[PARAGRAPH][ARTICLE] 6
OBLIGATIONS OF CONTRACTING STATES

- (1) Without prejudice to the other obligations provided for in this Instrument, Contracting States [undertake to][shall], when entering into contracts with Private Military and Security Companies, ensure that such government contracts:
 - (a) incorporate requirements to ensure respect by such companies and their personnel and sub-contractors and their personnel 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 ~~State F~~ functions or the provision of services that have been assigned by international law to States or State agencies as inherently State functions;
 - (c) are not concluded with Private Military and Security Companies that are not registered and licenced as required by applicable law; and -that such companies do not sub-contract with non-registered and non-licensed companies;
 - (d) prohibit sub-contracting to non-registered and non-licensed companies. (14)
- (2) ~~Contracting States [undertake not to][shall not] enter into contracts with Private Military and Security Companies for the provision of services that have been assigned by international law to States or State agencies as inherently State functions (15).~~

[PARAGRAPH][ARTICLE] 7
OBLIGATIONS 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 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 and licensed in terms of this Instrument to operate within their jurisdiction.

[PARAGRAPH][ARTICLE] 8
OBLIGATIONS OF HOME STATES

~~In addition to the obligations of Territorial States,~~ Home States [undertake to][shall] in their domestic law determine which military and security services cannot be exported and criminalise the export of such prohibited services. [Home States should ensure that their domestic law sufficiently regulates the provision of services by Private Military and Security Companies].

[PARAGRAPH][ARTICLE] 9
OBLIGATIONS OF STATES OF NATIONALITY

States of nationality [undertake to][shall] adopt legislation [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
JURISDICTION

- (1) [Signatory States][States Parties] [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] [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 ordinarily 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;
 - (f) by an alleged offender who is present in the territory of the [Signatory State][State Party] after the commission of the offence in another State.
- (3) This Instrument does not exclude any additional grounds for criminal jurisdiction that 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
FORCE

- (1) [Signatory States][States Parties] [undertake to][shall] adopt ~~legislation~~ national laws and regulations to:
- (a) regulate the acquisition, licensing, transfer, storage, transport and ~~use~~ management of weapons by Private Military and Security Companies and their personnel in accordance with legal obligations and established international standards relating to ~~arms control~~ weapons and norms, including International Humanitarian Law;
- (abis) prohibit Private Military and Security Companies and their personnel from using certain types of weapons prohibited under international law and/or engaging in any activities related to ~~certain types of such~~ weapons, ~~such as like~~ –weapons of mass destruction, weapons which cause superfluous injury or unnecessary suffering, or which are to cause ~~widespread~~ indiscriminate, long-term and severe damage to the environment, as well as from trafficking in firearms, their parts, components or ammunition and other related accessories;
- (ater) ~~clarify that the use of force by Private Military and Security Companies must be guided by the personal right to self-defence unless explicitly authorised by law to perform wider tasks;~~
- (b) require Private Military and Security Companies to effectively train their personnel in the law ~~relating to the lawful~~ 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] [undertake to][shall] introduce effective customs control and other forms of control over the import and export ~~and~~ re-import and re-export and transfer of weapons used by Private Military and Security Companies and their personnel.
- (3) [Signatory States][States Parties][undertake to][shall] refrain from transferring 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 clear 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 RESPONSIBILITY

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

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

- (1) [Signatory States][States Parties] [undertake to][shall] ensure, through judicial, administrative, legislative or other appropriate means, that victims of abuses of human rights and violations of International Humanitarian Law caused by Private Military and Security Companies and their personnel within their territory or under their jurisdiction shall have equal effective, child-friendly and gender-sensitive access to a remedy and adequate, effective and prompt reparations.
- (1 *bis*) [Signatory States][States Parties] [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];
- (1 *ter*) [Signatory States][States Parties] [undertake to][shall] guarantee victims, adults and children alike (19), including those with disabilities, access to information in relevant languages and accessible formats, including those with disabilities, and legal aid relevant to pursue effective remedies [to the extent possible or practical];

- (2) Without prejudice to Paragraph/Article 13(1), [Signatory States][States Parties] [undertake to][shall] provide [should consider providing] for non-judicial grievance procedures that are legitimate, independent, accessible, predictable, equitable, 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] [undertake to][shall] conduct effective and impartial investigations [related to alleged crimes committed within their territory or jurisdiction by Private Military and Security Companies and their personnel] and prosecute persons suspected of having committed applicable crimes [consistent with their domestic law].
- (2) [Signatory States][States Parties] [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] [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].
- (1**bis**) [Signatory States][States Parties] 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.

(2) [Signatory States][States Parties] [undertake to][shall] extradite or surrender persons suspected of having committed applicable crimes in terms of their domestic law or bilateral and multilateral agreements to a State or international criminal tribunal having jurisdiction over such crime.

(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. 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] [undertake to] [shall], [consistent with their domestic law] for the purpose of sharing information, establish a National Contact Point for the collection, analysis and exchange of information on companies providing military and / or security services and possible violations of national and international law [provided for in this Instrument].

(2) [Signatory States][States Parties] [undertake to][shall], [consistent with their domestic law, including the law related to privacy,] share information on the activities of Private Military and Security Companies with a view to ensure effective regulation of and oversight over their activities with a view to investigate and prosecute possible crimes committed by such companies and/or their personnel.

(2bis) [Signatory States][States Parties] [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 ~~the principles of~~ 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 Second Draft Instrument that was considered by the informal, intercessional meeting of the OEWG on 1 – 2 December 2022. It aims to include proposals made from the floor and also written proposals received subsequent to the meeting on that text and therefore reflects the amendments proposed to that text. Hence, a new set of footnotes have been included, to provide guidance to the amendments to the Second Draft Instrument. Not all the proposed amendments have been attributed, as this would overload the text.

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 the 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.