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**Human Rights Council**

**Forty-eight session**

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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

 DRAFT Progress report on the second session of the open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies

 *Chair-Rapporteur: Amb. Mxolisi Sizo Nkosi* (South Africa)

 I. Introduction

1. The Human Rights Council decided, in its resolution 45/16, to renew the mandate of the open-ended intergovernmental working group for a period of three years, with a mandate to continue elaborating the content of an international regulatory framework, without prejudging the nature thereof, in efforts to protect human rights and ensure accountability for violations and abuses relating to the activities of private military and private security companies. The resolution states that the working group’s mandate should be informed by a discussion document on elements for an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, as prepared by the Chair-Rapporteur, and further inputs from Member and Observer States and other stakeholders, and factoring in the work done under the previous mandate.

2. The second session of the working group, held from 26 to 29 April 2021[[1]](#footnote-2) was opened by the Director of the Thematic Engagement, Special Procedures and Right to Development Division of the Office of the UN High Commissioner for Human Rights. She noted that the working group has an opportunity to explore measures to more effectively prevent human rights abuses relating to the activities of private military and security companies, as well as ensuring access to justice and remedies for victims of such abuses and accountability of the perpetrators. She further noted the broader context of the evolution of standards for business enterprises towards fostering greater respect for human rights, notably through the development of regulatory measures requiring companies to carry out human rights due diligence. Inviting the group to consider the devastating and differentiated impacts that activities of PMSCs have on people in vulnerable situations, including women and girls, she underlined that the prevention and redress of human rights abuses committed by PMSCs, and ensuring greater accountability and remedy for victims of such abuses should be at the core of any framework considered by this group. She stressed the need to build and expand on the discussion document and to identify gaps and encouraged all stakeholders to participate in the deliberations constructively.

 II. Organization of the session

 A. Election of the Chair Rapporteur

3. At its first meeting the working group elected the Permanent Representative of South Africa to the United Nations Office at Geneva, H. E. Ambassador Mxolisi Sizo Nkosi, as its Chair-Rapporteur. The working group then adopted the provisional agenda (A/HRC/WG/17/2/1), timetable and programme of work.

 B. Attendance

4. The list of participants is contained in the annex to the present report.

 C. Introductory remarks of the Chair-Rapporteur

5. In his introductory remarks, the Chair-Rapporteur stated that while long standing treaties under IHL address military actions and actions taken by States through its military and security forces, the absence of an international regulatory framework on PMSCs combined with limited domestic regulation offers a “breeding ground” for abuses committed by PMSCs. He further stated that the working group was entrusted with the task of developing a regulatory framework that could pave the way for increased monitoring and accountability of the private military and security industry. He noted that the future instrument needed to address the circumstances under which PMSCs can be held responsible for human rights violations and the channels through which victims could seek redress and remedy. He added that the goal is to close the normative gaps so that PMSCs can effectively be held accountable for their human rights violations.

6. The Chair-Rapporteur explained that the Programme of Work had been developed so that experts could brief the working group on latest developments and participants could discuss elements contained in the discussion document. He further highlighted the need to start discussions on the way forward, including on the structure of a regulatory framework, and invited interested parties to take part in constructive exchanges and to make concrete suggestions, including in between the sessions. He finally encouraged the participants to consult the historic overview of the IGWG’s mandates with the outcomes of all previous sessions, available on the webpage of the second session.

 D. Plenary discussion – general statements

7. The representative of the EU noted with regrets that the last three-year mandate had delivered little, with only one session held out of the three expected, and with no new discussion documents or reference documents being produced or updated. He indicated that the EU would carefully assess the content and added-value of any possible proposal of a non-binding international regulatory framework to regulate PMSCs’ activities. He recalled that PMSCs do not operate in a regulatory vacuum and that an international legal framework exists. He pointed to the important role of the Montreux document and welcomed the participation of the Co-Chairs of the Montreux Document Forum, ICoCA, relevant experts, civil society organisations and business communities throughout the session’s activities. Requesting the IGWG to deliver shortly on its mandate, he indicated that the EU would continue to engage constructively and re-assess its position according to the substance and progress achieved.

8. The representative of Venezuela noted with great concern that, in spite of the existing international initiatives, the self- and domestic regulations on the activities of PMSCs are insufficient to tackle the impunity regarding abuses committed by those companies, often resulting in atrocities such as torture, targeted killings, secret dentation, trafficking of weapons or activities of mercenaries. Venezuela reaffirmed its firm support to the IGWG process.

9. The representative of Brazil expressed the view that the work of the IGWG should be guided by the strict mandate given by the HRC in the sense that it does apply in general to the activities of security companies outside the context of conflict zones and humanitarian settings. Brazil further noted that the Group’s work should remain independent from deliberations and recommendations from other HRC mandated IGWGs and special procedures. He noted that the UNGPs and the Montreux document were useful sources of inspiration. Brazil highlighted the need to clearly define the functions that cannot be delegated to non-state actors; safeguards indicating that the rules under the future instrument cannot be implemented “selectively”; alternative solution in order to allow accountability; the need to further clarify concepts of “home state” and “state of nationality” including in relation to an alternative broader concept of the state of origin; and how to separate and define the nature of a company in comparison to the kind of services provided by a company in the context of an armed conflict, essential to define the civil or military status of its staff. Brazil indicated its openness to consider suggestions on new elements and recommended that the process towards a revised discussion document should be transparent, including by properly attributing suggestions.

10. The representative of Argentina pointed to the importance of protecting human rights and ensuring accountability and responsibility for violations for abuses committed by PMSCs. Argentina agreed that the Montreux document was an appropriate starting point for discussion.

11. While recognizing that PMSCs are not a replacement for combat forces, the representative of the United States noted that they play a critical support role in conflict situations, indicating that greater reliance on contract personnel requires vigorous oversight and accountability mechanisms. The US pointed to the existence of several non-binding frameworks promoting compliance with existing rules, such as the International Code of Conduct and the Montreux Document, which sets out well-established rules of international law and describes good practices for States to promote compliance with international law during armed conflict. Thus, in his view, a new international legally binding instrument is not necessary to ensure the protection of human rights and access to justice for victims.

12. The representative of Cuba expressed its full support to the process. Recognizing that there are divergent opinions on the nature of the future instrument, Cuba sees a need to have a binding instrument and stated that other measures binding in nature could complement and coexist with this convention.

13. The representative of Switzerland, as co-chair of the Montreux Document Forum, pointed to the complementarity between the work of the Forum and of this IGWG given their shared goal of strengthening IHL and IHRL in context of PMSCs activities. Recalling that the mandate of the IGWG has to do with a regulatory framework without prejudging its nature, Switzerland stressed that complementarity with the Montreux Document has to be taken into account when addressing the challenges at stake.

14. While noting that the State is the sole legitimate authority to provide security to people and property, and recognizing attempts to establish some mechanisms for holding PMSCs accountable and ensure effective remedies for victims, the representative of India noted that existing initiatives, such as the Montreux Document and the International Code of Conduct are not sufficient to address the gaps in regulating the activities of PMSCs and that regulation is crucial to ensure accountability and to address new challenges effectively.

15. The representative of China expressed support for a regulatory framework to prevent violations of international law and address remedy for victims. Regulation of PMSCs should build upon and complement international initiatives such as the Montreux Document and the International Code of Conduct. China further indicated recent legislation to regulate PMSCs with the State Council having developed measures requiring codes of conduct and the supervision of State organs.

16. While recognizing the importance of having regulations in situations of peace and in the context of armed conflict, the representative of Mexico expressed reservations about the need to develop a special legal framework to regulate the activities of PMSCs, because it could lead to an unnecessary multiplicity of international instruments, in addition to diluting both State and individual responsibilities for unlawful acts, particularly in the context of armed conflict. Existing documents such as the International Code of Conduct, the Montreux Document, as well as the Guiding Principles on Business and Human Rights, are not binding precisely because of legal and practical difficulties.

17. Noting that the discussion document had remained unchanged since the last session, the representative of Egypt reiterated the need for clear definitions of the terms “private military company”, “private security company” and “conflict situations”, hoping that their contribution would be taken on board and reflected. Egypt also pointed to the importance of clarifying the difference between conflict situations and other situations and suggested that the ICRC could help in this regard.

18. Reaffirming the need for accountability, the representative of South Africa stated that PMSCs operate in a legal vacuum permitting impunity and rendering populations in territorial States (where PMSCs operate) increasingly vulnerable. Pointing to the negative impacts that PMSCs have especially in developing countries, South Africa stated that urgent attention is needed in view of the transnational nature of these violations and pointed to the negative effects of PMSCs, including destabilizing countries and other long-term negative impacts.

19. The representative of Iraq expressed support for the work of the Working Group, and recalled that his country, which is part of the Montreux Document, issued legislation in 2017 regulating the work of private security companies. Further, the Ministry of Interior established a Directorate of Private Security Companies Affairs, with the objective of granting permits and monitoring the work of these companies. Iraq reaffirmed the need to ensure that the rights of individuals are not negatively affected by the activities of PMSCs, through the existence of a mechanism to monitor their work in a manner that ensures accountability for violations and reparation. Iraq also stressed the importance of respecting State sovereignty and of reaching a clear and consensus-based definition of PMSCs.

20. The representative of Iran emphasized the need to address the issue of PMSCs within an international legal instrument based on the respect of national law, including criminal law, human rights law, and applicable international humanitarian law. While initiatives like the Montreux Document and the International Code of Conduct could provide useful inputs for the Group’s deliberations, they cannot be regarded as inclusive of all necessary elements required for a legally binding and multilaterally negotiated instrument. Iran recalled that the Geneva Conventions oblige States to hold war criminals accountable for their crimes, even when they act as private security contractors, and that granting reprieve or pardon in these cases violates State obligations under international law and specifically undermine humanitarian law and human rights at a global level. Iran stressed that an international legal framework should fill the existing accountability gaps in international law, to ensure the responsibility of relevant states for misconduct and crime by members of those companies and rights of victims to access to an effective remedy, redress and compensation.

21. The representative of Pakistan considered that PMSCs should not be treated as ordinary business entities, since their services bear far-reaching implications for global peace and human rights, and advocated for a separate global regulatory framework. The notion of self-regulation by PMSCs has failed to stand the test of time, with current trends and developments calling into question the adequacy and effectiveness of the Montreux Document and the Code of Conduct. Pakistan advocated for bringing the discussion on a new regulatory framework under wider United Nations scrutiny through a well-elaborated process, while recognising that certain aspects of such a process might go beyond the mandate of HRC resolution 15/26.

22. The representative of the Russian Federation expressed concerned over the involvement of PMSCs in armed conflicts without clear rules of engagement and legal standards. The Russian Federation stressed the need to resolve international legal issues, such as determining the status of these personnel - whether they fall under the categories of combatants, civilians or a new category. There is a need to define which services can be delegated by States to PMSCs. The issues relating to contracts involving PMSCs operating in the territories of other States need clarification, including the responsibilities that pertain to licensing States and States providing oversight. The status of personnel and individual responsibilities over crimes also need to be addressed. While the Montreux document has clarified some issues, it does not take into account views of a significant number of States, is not universal and is not legally-binding. The use of “cyber-mercenaries” was being discussed in other international fora and fall beyond the mandate of the Working Group.

23. The representative of Libya noted that, while the Montreux Document could serve as a solid basis for the Working Group’s discussion, it is not sufficient to cover all the legal aspects. Libya reiterated the need for a legally binding instrument which should include clear definitions, concept and terms, as well as separation between PSCs and PMSes. The instrument should highlight relevant principles of IHRL and IHL, the importance of states which subcontracts to these companies, those which register them and grant them licenses. PMSCs should operate only after full approval by legitimate governments, respect their agreements, refrain from recruiting personnel that are not sufficiently trained, and uphold their responsibilities of registering the sources of weapons they acquire. The lived reality in Libya points to the necessity of elaborating an international framework to regulate the activities of these companies which guarantees the right of states to oversee their own security and stability, to address accountability for all violations of human rights, and to ban any interference in the internal affairs of countries.

24. The representative of Cameroon noted that as a result of the insufficiencies of regular forces, many States are using PSMCs for protection. These companies often have better equipment than the regular army. The security and the military sector is part of the sovereignty of the State and should not be privatized. Cameroon noted that it is time to adopt an international instrument to regulate this situation.

25. In summarizing interventions made, the Chair-Rapporteur identified the need for an international regulatory framework that goes beyond voluntary initiatives such as the Montreux Document, in order to close the gaps of human rights violations and abuses by PSMCs and ensure redress for victims.

 III. Presentation by experts and relevant stakeholders

26. In conformity with its programme of work, the Working Group heard presentations from experts and relevant stakeholders, who had been invited in line with OP 4 of res. 45/16. The experts and relevant stakeholders were also invited to participate throughout the session from the floor.

27. The Founder and Executive Director of the African Centre for the Constructive Resolution of Disputes (ACCORD), Vasu Gounden, referred to the pertinent issues of PMSCs in the African continent, and how the prevalence of such problems is increasing in nature, scope, and number. He warned that dramatic population growth and rapid urbanisation on the African continent have not been coupled with a transition of the economic system from agriculture to industrialisation and services, and that this will likely cause social and political conflict. Moreover, States which do not have full control over their sovereign territory will see a rise in radicalised insurgencies, criminal syndicates, and armed opposition groups, linked to companies exploiting natural resources. Moreover, national militaries are often placed in a worse position than PMSCs in relation to training and specific equipment. PSMCs will interact on the ground with militiamen, rebels, mercenaries, and bandits. They provide services like humanitarian assistance and logistical support, but also cyberwarfare, political strategy, and electoral manipulation. He insisted on the importance of regulation, as well as on the need to involve PSMCs themselves in the decision-making process. Mr. Gouden recommended that the Regulatory Framework should include core elements, such as the protection of civilians, along with the promotion of peace, security, governance, and development. According to Mr. Gouden, regulation is in the interest of PSMCs.

28. The Chairperson of the United Nations Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples
to self-determination, Dr. Jelena Aparac, indicated that the Working Group is active in long-standing efforts to regulate PMSCs, in particular to develop and enforce measures designed to both prevent and ensure accountability for human rights and IHL abuses committed by PMSC personnel. For instance, the Working Group conducted a three year long, global study of national legislation on PMSCs and human rights abuses in 60 states. The study was presented to the Human Rights Council in 2017 ([A/HRC/36/47](https://undocs.org/A/HRC/36/47)),[[2]](#footnote-3) which revealed that States’ approach to the regulation of PMSCs is ad hoc and inconsistent, exacerbating human rights risks and abuses. From 2010 to 2017, the Working Group proposed general principles and content of an international treaty on PMSCs at this IGWG under its former mandate. In 2019, the Working Group contributed to the first session of this new IGWG by expert statement and submission. She referred to the Working Group’s most recent reports on the relationship between PMSC and the extractive industry[[3]](#footnote-4); the gendered human rights impacts of PMSCs,[[4]](#footnote-5) the role of PMSCs in immigration and border management[[5]](#footnote-6); and the evolving forms, trends and manifestations of mercenaries and mercenary-related activities.[[6]](#footnote-7) She raised concerns around the issue of interoperability between PMSC and peacekeeping missions, particularly as regards the lack of transparency about their relationships. Only clear legal norms backed by State enforcement can ensure accountability and provide effective remedies for victims. She proposed a number of specific recommendations for inclusion in any future instrument, including on the use and recruitment of PMSCs and their personnel and on the permissibility of PMSCs conducting activities that constitute direct participation in hostilities. She recommended that any regulatory mechanism should refer to ‘services’ or ‘activities’ rather than ‘PMSCs’. Moreover, any regulatory mechanism should try to capture non-State clients and the complex relationships between large international and national companies, provide for more public and transparent contractual relationships, and ensure access to information to interested parties. Any regulatory mechanism should include explicit gender-sensitive and gender-transformative approaches and take into account the exacerbated vulnerabilities of specific groups. In addition, any regulatory mechanism should include explicit provisions regarding the negative impact of PMSC services on the environment and on the rights of people to self-determination. She further recommended that the normative framework should identify the variety of State policy options, including licensing, authorization mechanisms, contracts, and legislation on PMSC certification and registration. The normative framework should not only focus on State responsibility and corporate due diligence but also on corporate responsibility for human rights and IHL abuses. In this connection, States should ensure effective investigation of human rights and international humanitarian law allegations, accountability and remedy for victims and their families. Finally, States should consider adopting mutual cooperation and mutual legal assistance (horizontal and vertical) for investigating PMSC employees and, where applicable, corporate entities.

29. Speaking as co-chair of the Montreux Document, Mr. Jonathan Cuénoud provided a brief history on the adoption of the Montreux Document and its relation to the ever-growing use of PMSCs. He explained that the Montreux Document does not establish new regulations, but merely answers legal and humanitarian questions that arose from the increasing use of PMSCs in this context. Moreover, as stated in the preface of the Montreux Document, “existing obligations and good practices may also be instructive for post-conflict situations and for other, comparable situations”. He recalled the three main types of States that the Montreux Document identifies obligations for: (a) States that contract the services of PMSCs (Element 4 of the document); (b) States whose territory the PMSCs operate in (Element 5); and States under whose jurisdiction PMSCs are incorporated or registered (Element 6). Additionally, the Montreux Document provides guidance for all other States, including responsibilities of the States of nationality of PMSC employees. These obligations stem from existing IHL and IHRL standards. Regarding the scope and nature of PMSCs, he pointed out that these include myriad emerging functions, including providing logistics and support to armed forces; guarding objects or persons against various forms of crime or violence; providing security for businesses, training military and security forces; and maintaining and operating technologically advanced weapon systems. He highlighted that States should adopt and implement national legislation to regulate PMSCs, and, where domestic laws are in place, they should be amended to better fit the evolution of PMSCs’ practices. With regards to implementation efforts, Mr. Cuénoud referred to the Montreux Document Forum, which is a platform designed to discuss and exchange information on good practices and challenges relating to the regulation of PMSCs. The Forum has assisted in the development of several tools, such as the Legislative Guidance Tool and the Contract Guidance Tool. Regarding the instrument to be elaborated, Mr. Cuénoud provided three general comments. Firstly, any international regulatory framework must reflect and build upon existing international law standards. Secondly, international humanitarian law and international human rights law must be taken into consideration when assessing “complex situations”, which may include situations of international or non-international armed conflicts. Thirdly, particular focus should be given to regulating the conduct of PMSCs, without needing to strictly define and distinguish between private security companies, private military companies or PMSCs.

30. The ExecutiveDirector of the International Code of Conduct for Private Security Service Providers’ Association (ICoCA), Mr. Jamie Williamson, provided an overview of the work and activities of the association. ICoCA is a multi-stakeholder, international association made up of Governments, private security companies, civil society organisations, and observers. It acts as the oversight and monitoring mechanism for the International Code of Conduct for Private Security Service Providers, which was adopted in 2010 after extensive consultations among all actors concerned. He explained that the International Code of Conduct contains a range of IHL and human rights principles and obligations that are addressed directly to private security companies. The contents of the code are related to other relevant international standards, including the Montreux Document, the Guiding Principles on Business and Human Rights, and the Voluntary Principles on Security and Human Rights. One of the key aspects of the International Code of Conduct is its flexibility, including its capacity to be amended as the private security landscape evolves, for instance in relation to migration, corruption or modern technology. The work of ICoCA may be seen as part of a growing trend towards promoting regulatory frameworks in this area, including national and regional initiative relating to mandatory human rights due diligence. This includes, for instance, ICoCA’s preventive work through capacity-building and awareness-raising activities, on issues such as human trafficking, vetting, and modern slavery. Through field missions and monitoring situations, the association has also contributed to increasing transparency as well as to a better understanding of the role of PSMCs in conflict areas. He stressed the need for maintaining the distinction and clarity on the actors to which the instrument would apply, as the category of PMSCs may apply to a broad range of actors and contexts. Moreover, he recommended to identify who are the clients that use PMSCs, including governments and private entities, as it is the clients who ultimately drive the market, and they should also bear responsibility to know whether the companies they work with abide by human rights standards. He further stressed the need to address the existing accountability gap and impunity.

31. Prof. Surya Deva, Vice-Chairperson of the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, highlighted the importance of the UNGPs for the purpose of drafting an internationally recognized regulatory framework regarding PMSCs. He noted that companies, including PMSCs, can play a significant role in both adverse and positive impacts on human rights. The lack of regulation on such companies is increasingly fueling the likelihood of further human rights violations. He pointed to the importance of incorporating a “smart-mix” regulatory framework, which includes both soft as well as hard law, to facilitate an effective regulatory eco-system. Moreover, recommendations were made on how States must not outsource duties to the private sector and should proactively implement adequate national legislation regulating all functions of PMSCs. Sole territorial regulatory measures are insufficient, and States must cooperate amongst each other to facilitate better understanding of the issue at hand. Particular attention must be given to the standards of IHL, as well as international criminal law, in instances where PMSCs operate in conflict ridden regions. The achievement and protection of human rights must be at the forefront of a regulatory framework and key objectives should be to prevent human rights abuses by PMSCs as well as holding them accountable for abuses which could not be prevented. Additionally, the regulatory framework must be built upon existing legal instruments, such as the Montreux Document, the International Code of Conduct for Private Security Providers and the UNGPs. He recommends a multi-stakeholder approach be involved in considering the content of the regulatory framework. He also advocated for mandatory human rights due diligence for PMSCs operating in conflict zones. Furthermore, while ensuring that companies are held accountable, Prof. Deva highlighted the need for effective remedial processes, which ought to be covered in the regulatory framework. Prof. Deva referred to OHCHR’s Accountability and Remedy Project, as a source for guidance on how best to incorporate remedy within the meaning of the regulatory framework.

32. The floor was then opened for questions and answers on the basis of these experts’ presentations. The representative from the EU recalled that the State has the primary responsibility to regulate the activities of private actors, and, expressed support to the Montreux document in this regard. He solicited Professor Deva’s opinion on whether an international instrument on transnational corporations could be relevant in this domain and compatible with other existing frameworks.

33. Professor Deva recalled that the evolution of standards has been an intrinsic part in the development of international human rights law, and that the adoption of legally-binding instruments has generally been slow. Attention also needs to be paid to the context in which standards are operating, which include serious regulatory gaps, including in relation to operations in low governance areas regions or areas of difficult implementations. Moreover, in Professor Deva’s view, voluntary standards cannot serve as the basis for mutual legal assistance, nor do they provide for remedy in many instances, particularly in case of serious abuses requiring judicial remedies. In a context in which PMSCs are operating withhighly sophisticated technological tools, it will not possible to give justice to victims without legally binding standards. According to Professor Deva, a “smart mix” is required, and soft law standards should coexist with hard law.

34. The representative of South Africa inquired into the human rights impacts of modern technology, such as weaponized drones, which are often operated by highly specialized private security contractors on behalf of a state. The representative also questioned the effectiveness of existing regulations in this context, for instance in the case of companies that are operating drones remotely and are not based on the countries of operation. These situations could generate accountability gaps, for instance, in relation to civilian casualties caused by apparent mistakes in drone operations.

35. In response, Mr. Williamson recalled that the raison d’être of both the Montreux Document and the International Code of Conduct was to address governance gaps in high risk and conflict zones. Modern technology, including cyber security and unmanned vehicles, generated problems of attribution. However, such problems also arise in more traditional situations, for instance in the case of armed insurgencies. Mr. Williamson also noted that facial recognition and biometrics are areas that need further attention, particularly as these are services that are increasingly being demanded from private actors. Mr. Carlos López, also agreed that cyber security has become an area of increased activity by PMCSs.

36. Mr. Cuénoud indicated that issues of cyber technology have been recognized by Montreux Document signatories, but this is an area still under exploration. He cited the possibility that the Montreux Document Forum establishes working groups on specific topics, recalling the example of the Maritime Working Group, which produced guidance on how the Montreux Document applies to the maritime sector.

37. Dr. Aparac referred to previous reports of the Working Group on mercenaries that have tackled issues related to modern technology, such as the use of biometrics in immigration and border management. The Working Group is currently considering the phenomenon of “cyber mercenaries” and how it interacts with existing concepts and regulations.

38. The Chair-Rapporteur of the Open-ended Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights, Ambassador Emilio Rafael Izquierdo Miño, referred to HRC resolution 26/9 of 2014, which established the Working Group with the mandate to “develop a legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other companies with regard to human rights”. Ambassador Izquierdo Miño explained that the sessions of the Intergovernmental Working Group have witnessed a growing participation of States and other relevant actors, intergovernmental organizations, national human rights institutions, civil society organizations, and groups of employers and workers. The turning point in this process occurred in the fourth session when the Zero Draft of the legally binding instrument (LBI) was presented. In 2019, a revised version of the LBI was introduced, building on the proposals received during the fourth session, as well as in the inter-sessional consultations. This revised version sought to further align its provisions with existing instruments and frameworks, such as the UNGPs, the ILO Tripartite Declaration on Multinational Enterprises and Social Policy, and other relevant instruments, such as the OECD Guidelines for Multinational Enterprises. A second revised version of the draft treaty was circulated in August 2020. He further explained that the Chair-Rapporteurship was working on the preparation of a third revised version of the legally binding instrument, and called upon all stakeholders to participate at all levels of this process, particularly at the regional and national levels. He expressed the view that that it is possible to improve victims' access to justice and effective reparation through binding norms that complement other international norms of non-binding character, such as the UNGPs, among others. The ongoing and constructive cooperation between the Intergovernmental Working Group and the United Nations Working Group on Business and Human Rights was also noted.

39. A Senior Legal Adviser of the International Commission of Jurists (ICJ), Mr. Carlos López, indicated that while the activities of PMSCs sometimes provide meaningful support to security and safeguarding human rights, they have the potential to infringe human rights and humanitarian law, and in many instances PMSC personnel have engaged in conduct in violation of international obligations and committed human rights abuses. The number of countries and private actors hiring PMSCs has grown in recent years and the areas where these companies operate has also expanded. The need for an international instrument that provides a set of internationally agreed standards in this field is clearer now than ever. An adequate regulatory framework, which includes provisions on accountability and remedial processes, would enable States and companies to fully respect and protect human rights. A legally binding instrument would be most effective in this context. Mr. López highlighted the importance of the Montreux Document, the International Code of Conduct and the draft convention prepared by the Working Group on mercenaries as the basis for further discussions. He urged the Working Group not to be entangled in endless discussions about definitions and adopt a pragmatic approach, focusing on the type of operations these companies carry out.

40. The Deputy Head of the Business and Security Division of the Geneva Centre for Security Sector Governance (DCAF), Mr. Jean-Michel Rousseau, provided a presentation on the lessons learned by DCAF in supporting international and regional policy initiatives. He identified a number of recent trends such as the renewed visibility of PMSCs in armed conflicts, the increased growth of private cyber and surveillance services, as well as instances where companies not traditionally considered to be part of the PMSC industry – such as technology companies – are providing such services. However, these developments do not highlight a fundamental shift of the nature of PMSCs and should thus not be seen as heralding the need for a distinct model of PMSC regulation. While the issue of PMSCs in armed conflict is one that regularly makes headlines, the immense majority of PMSC activities are taking place in “every-day situations” where human rights law applies. Regarding domestic legislation, in the last 5 years, DCAF has supported more than 25 countries in strengthening their regulatory systems, taking into account good practices and international norms such as those found in the Montreux Document, the International Code of Conduct, and, increasingly, the Guiding Principles on Business and Human Rights. Despite these developments, there are persistent regulatory challenges, such as national legal and policy frameworks that are insufficient or not tailored to the specific regulatory needs regarding PMSCs; insufficient human and financial resources; public procurement of PMSCs that does not include human rights criteria; and administrative sanctions which are impracticable or not deterrent enough.. Mr. Rousseau recommended that the instrument developed in the Working Group be fully complementary with the Montreux Document and the International Code of Conduct, as otherwise States that have in recent years already strengthened their national frameworks would be penalised and would have to start their endeavour again from scratch. He warned against applying by analogy the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials to PMSCs, given their different mandates. He also advocated for integrating a gender perspective in the regulation of PMSCs.

 IV. General Discussion on the elements for an international regulatory framework

41. In line with resolution 45/16, the working group considered the elements of an international regulatory framework as drawn from the discussion documents adopted at the sixth session of the former working group.[[7]](#footnote-8) It also discussed additional elements to be considered, such as on scope, access to justice, accountability and remedy.

42. At the beginning of each session, the Chair-Rapporteur delivered some remarks, reiterating the view that the discussion document, while offering a useful compass to inform and guide the Group’s work, contains only bare elements regarding the legal obligations of States and PMSCs and their personnel when they operate in armed conflicts. He stated that he was mindful of the need to expand on that document and identify the gaps it contains.

 Objectives of the regulatory framework (Element 2) and Principles (Element 3)

43. The Chair-Rapporteur noted that in the Group’s efforts to formalise the text for the objectives and principles, the Group should never lose sight of the victims of human rights violations and abuses by PMSCs. The main objective of this mandate is to find a way to ensure that those who commit such violations and abuses will be held accountable in a transparent manner and that the victims are able to find effective redress.

44. The representative of the United States reiterated the commitment with the developing framework, which could universalize standards in the Montreux Document and ICoCA, promote respect for human rights, and ensure accountability. The United Sates considered that the regulation should focus on complex situations such as conflicts, where the rule of law is compromised, while other situations fall normally within the realm of State domestic law. The regulation should also be limited to transnational activities involving contracting States, home States and States of nationality.

45. The representative of Iraq stressed the importance of drawing a distinction between situations of conflict and non-conflict. He further referred to comments made last year regarding the notion of “complex situation”, which was considered vague and unclear. It was not clear whether the notion applies only to conflict situations or otherwise.

46. The representative of Pakistan considered that the regulatory framework should take a preventive approach vis-à-vis human rights violations in the global regulatory framework of PMSCs, and reaffirm the basic principles and purposes of the UN Charter, especially non-interference in domestic affairs of States, non-use of force, and respect for territorial integrity and sovereignty of States. It should clearly exclude inherent state functions from scope of services to be provided by PMSCs (such as participation in hostilities; powers of arrest and interrogation; prison administration; or intelligence and espionage). At the operational level, the framework should lay down robust oversight, procurement, deployment and reporting mechanisms, and also identify categories of weapons, which should be barred for usage by PMSCs. The representative of Pakistan recommended that the framework should provide clear guidance on issues related to jurisdiction and responsibility, while elaborating on accountability and remedial mechanisms for victims. A differentiated approach to armed conflicts and normal law-enforcement contexts was also recommended.

47. The representative of South Africa agreed that the regulatory framework should be victim-centered, and that the industry should respect international human rights law, IHL and other applicable instruments. In the view of the representative of South Africa, the scope of the framework should be extended to apply to subcontractors, and state clear objectives on accountability, redress, and transparency, and adopt a gender perspective.

48. The representative of Brazil reiterated the need for a clear definition of functions that could not be delegated to PSMCs, such as direct participation in armed conflicts, intelligence, detention, law enforcement, or questioning of persons deprived of liberty. He further recommended the rules contained regulatory framework should not be applied selectively.

49. The representative of China welcomed the compilation document prepared by the Secretariat and recommended that the document should include also conflicting recommendations and be updated in light of the present discussions. China agreed with other delegations that a new objective should be included to ensure that the activities of PMSCs comply with IHL, IHRL and relevant national laws. He underlined the importance of focusing on complex situations to ensure respect for human rights and IHL in such situations. He noted the different language of “complex situations”, used in paragraph 2(a) of the Discussion Document, and “complex environment”, used in paragraph 1(d). China considered that the terminology should be unified, and that reference should made to the notion of “complex environment” as contained in ICoCA.

50. The ICJ welcomed the objective of ensuring respect for human rights by PMSCs. However, the ICJ considered that the regulatory framework should aim to ensure respect for human rights by PMSCs in all contexts in which they operate, not just in ‘complex situations’ as provided for in Element 2(a). The ICJ welcomed the objective of ensuring the transparent use of PMSCs, given that States may purposefully use PMSCs as a means of obscuring their involvement in a conflict in an attempt to avoid their obligations under IHRL and IHL. The representative of ICJ recommended to include objectives on improving accountability and enhancing access to an effective remedy and reparations. Moreover, he recommended that the ‘Principles’ section should make explicit reference to the need for a non-discriminatory and gendered approach to regulating PMSCs. The CEDAW Committee recalled in its General Recommendation No. 30 on conflict situations that the Convention requires States parties to regulate activities of domestic non state actors within their effective control and operating extraterritorially. Finally, the ICJ emphasised the vital importance of the principle of inclusiveness and participation in the development of a regulatory framework, as many key States do not participate in either the Montreux Document or ICoCA.

51. The representative of ICoCA considered that priority should be given to contexts in which national authorities do not have the capacity to oversee the activities of PMSCs. He stressed the importance of prevention of human rights violations. Prevention work includes building the capacities of PMSCs and national authorities to ensure that they have oversight capacity in place. As part pf prevention there should be a greater international cooperation to ensure that PMCS responsible for abuses are blacklisted in the industry. Finally, the representative of ICoCA stressed the need to help support States in developing national legislation regulating PMSCs, including by developing model legislation.

 Obligations of Contracting States (Element 4); Territorial States (Element 5); Home States (Element 6) and State of nationality (Element 7)

 Contracting States

52. The representative of the US stressed ICoCA’s usefulness for contracting states, particularly with regards to due diligence in their procurement policy and the requirement of training and policies that safeguard against human rights abuses, including with regard to subcontractors. In the US, Only private security companies that are members of ICoCA are eligible to bid on contracts of “high threat.” With regard to 4(d), The representative of South Africa recalled the importance to highlight the nature of service provided in particular cases (armed conflict situation or non-armed conflict situation), to clearly reflect the responsibilities of the Contracting States. Contracting States bearing the full responsibility for the acts of contracting agents, he recommended to add “effective transparency” to 4(d)’s requirements of “monitor and ensure accountability.” The representative of China recommended to clarify for which activities States are not allow to contract PMSCs for under international law, and add compensation to the victims under Element 4.

53. The representative of Cuba recommended to clarify in the regulatory framework which functions the PMSCs contracted by States can perform and which cannot. Additionally, the framework should focus on the services provided by the PMSCs in order to establish the regulatory framework based on their services. With regards to granting immunities from prosecution, Contracting States should not allow any immunity for their contractors operating abroad and should include in their contracts with PMSCs safeguards to make accountability possible.

54. The representative of the ICJ made a series of recommendations such as making a distinction between obligations that apply in situations of armed conflict and those that apply in all circumstances and banning contracting States from using PMSCs for participation in hostilities. States’ obligation to assess PMSCs and subcontractors include consideration of past records of respect for IHL and human rights, and the company’s policies for the selection and training of staff. The regulatory framework should reaffirm that States retain their obligations under international law even if they contract PMSCs. In fulfilling their obligation to ensure PMSCs with which they contract respect human rights, States should ensure PMSC personnel are trained in HR and IHL, and perform due diligence and investigations where appropriate. Contracting States must provide access to an effective remedy and reparations for violations of IHL and IHRL resulting from the conduct of PMSCs where attributable to the State. Finally, the foregoing rules should also extend to international organizations who contract for the services of PMSCs.

 Territorial States

55. With regard to Element 5, the representative of South Africa noted that there needs to be an agreement between the territorial/ host country and contracting state but noted that in practice, some PMSCs companies operate without consent. Due to the use of modern technology, including drones, consideration must be given to their effect/impact in third party countries. He recommended to add a 5(e) provision to monitor PMSCs that operates on and from the State territory, and a new 5(f) to monitor and ensure effective and transparent accountability for human rights violations, including through addressing issues of jurisdiction and immunity for companies operating under a government contract on and from a State territory. The representative of Pakistan suggested to clearly add “consent and permission of the territorial state” and recommended to clarify jurisdictional issues.

56. The representative from Switzerland urged States to adopt national legislation which regulates PMSCs on their own territories and abroad. Within this context, it is important to enhance international cooperation when it comes to the monitoring of the provisions of PMSCs.

57. With regards of provision on 5 and 6 on monitoring and oversight, the ICoCa representative indicated that this should be not limited to the prime contractor, but include any providers under supply chain which includes subcontractors. Additionally, with regards to verification and monitoring, and taking into account complex environments that may include potential rule of law issues, he recommended recognition of independent external oversight mechanisms, such as ICoCA, to assist States in verification, monitoring, and oversight as part of their due diligence in hiring, contracting and hosting PMSCs.

58. The representative of the ICJ recommends that the term “territorial state” should be understood as the state where a PMSC carries out operations regardless of whether the company is incorporated or not within the jurisdiction, and the duration and kind of operations. Second, States where a PMSC operates should ensure its domestic courts are able to exercise jurisdiction over the PMSC personnel operating within its territory or under its jurisdiction. Third, such States have the responsibility to establish a legal framework to ensure the company’s operations respect human rights and IHL and accountability and sanctions for those that commit abuses.

 Home States

59. The representative of Brazil stressed that more clarity was needed with regards to Home States and State of Nationality. He recommended to use State of Origin and other concepts already established in this topic. To understand which activities will be regulated under this framework, to separate and define nature of services of company and State is key.

60. The representative of the ICJ recommended that the term “home state” should be defined as the state where a PMSC is incorporated or has its main place of management. Second, the Regulatory Framework should require home states to establish a system of authorization for the export of military services abroad, which will prohibit the export of services that the state itself cannot contract out, or which would be prohibited in the PMSCs home State. Third, the Framework should provide for minimum standards for licensing for operations and recruitment of local personnel. Finally, the home state should set up oversight and accountability, especially for services that are meant to be exported.

 States of Nationality

61. The representative of South Africa explained the issue of South African citizens operating in foreign countries without the consent of South Africa had been dealt with in the national legislation. Such legislation also regulates the provision of military services in a country of armed conflict and recruitment of nationals from South Africa in other armed forces and/or by other countries to perform PMSCs services. It also regulates the provision of humanitarian assistance in countries of armed conflict and provides for extraterritorial jurisdiction with regards to certain offenses and penalties. The legislation criminalized the actions of South Africans joining PMSCs in areas where the government itself has not giving explicit permission for any action outside these fora.

62. The representative of the ICJ recommended that the term be defined as the State of nationality of the PMSC employees and other staff. It should be distinguished from the State of nationality of the PMSC itself or the State of nationality of any potential victim of a human rights violation. Second, the Regulatory Framework should address specific rules to States of nationality of PMSC staff with a view to better protect the rights of their nationals. Third, States of employees’ nationality should adopt laws and other measures to regulate the recruitment of their nationals into PMSC to serve abroad, including prohibiting their nationals from providing services abroad that are prohibited within the State of nationality. Finally, States of nationality should establish processes to grant authorization for the nationals to perform security services abroad to ensure there is no recruitment to provide prohibited services, and should prohibit the recruitment of their nationals for the same purpose, establishing penalties for the infringement of the law.

 Private military and security companies (Element 8) and Definitions and interpretations (Element 1)

63. With respect to element 1, the representative of the United States referred to previous discussions regarding whether the scope of the instrument should be limited to complex or conflict situations, and also on the difficulties involved in the definition of “complex situations”. He referred to the definition of “complex environments” in the ICoC, recommended that this definition be used, and suggested that the scope of the instrument should be limited to these situations.

64. The representative of China supported the conceptual separation between private companies, on the one hand, and security companies, on the other, as a foundation for defining the content of the future regulatory framework. However, given the complexity and diversity of PMCs, such separation might be difficult in practice. China supported a pragmatic approach to solve these issues, focusing on the nature of the services provided by PMCs.

65. The representative of Egypt reiterated the need to respect the mandate of the Working Group and narrow the scope of the discussion, and noted that conflict-related issues are handled by other bodies, such as the ICRC. The representative noted that Egypt had not participated in certain talks and was not in agreement with definitions that had not been agreed upon in a due manner.

66. With regard to Element 8, the representative of Iran believed that the main purpose of the regulatory framework should be to ensure the responsibility of States for PMSC’s crimes and abuses and put an end to impunity where PMSCS operate. The representative of Iran considered that the main question was whether States are allowed to delegate their sovereign power to PMSCs. This should not be an argument to violate IHRL and IHL in host countries, and these countries should establish mechanisms to monitor, oversee, investigate and prosecute perpetrators of breaches. The representative of Iran noted that establishing oversight mechanisms and grievance mechanisms is essential for prevention and ensuring non recurrence. In his view pardons, amnesties and other form of exonerations open the door for future abuse, and granting pardons for companies that committed serious crimes violate State obligations under international law.

67. In the view of the representative of South Africa, the Working Group should not be bogged down with issues of definition and separation of private security companies and private military companies, which could be elaborated in the instrument itself. Regarding the definition of PMSCs, the Representative of South Africa referred to the Montreux Document, which define PMSCs as “entities that provide military and/or security services, irrespective of how they describe themselves”, as well as to the definition of the Working Group on the use on mercenaries, according to which a PMSC is “a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities”. South Africa suggested a hybrid formula, by adding the last part of the Montreux Document definition to the Working Group’s definition: “irrespective of how they describe themselves”. With regard to the definition of “complex environment”, the representative of South Africa took note of the reference in the discussions to the definition included in the ICoC, which South Africa had also used in the past.

68. With regard to Element 8, the representative of ICoCA noted that compliance is increasingly seen by PMSCs as a tick box exercise in relation to processes such as procurement, request for proposals, and contracts. The representative recommended independent oversight of both PMSCs and their clients, as otherwise compliance would become a superficial exercise. The representative of ICoCA noted that training requirements should be robust and adapted to the local environment. Their content should go beyond technical issues, and include IHRL, IHL, and other issues covered by ICoCA. In relation to definitions, the representative of ICoCA encouraged the Working Group to use the definition of security companies in the Code of Conduct, as it had already been tested in practice. He further called to attention to the overlap between military contractors and mercenaries.

69. The Chairperson of the Working Group on the use of mercenaries reminded that the Working Group has a strong position against the use oof “complex environments”, as it lacks a legal definition, while the concept of armed conflict and peace are clearly defined, as well as the respective rules applying in these situations. The Working Group defines “military services” as “specialized services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities”. It understands “security services” as “armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities”. These definitions are broad and precise, and provide legal certainty in relation to PMSC’s current and future activities. Holding corporations responsible for the misconduct of their employees is not enough, and any grave violation of human rights and IHL should be adjudicated by a court of law. This underlines the need for transparency and vetting of personnel.

70. Dr. Sorcha MacLeod, Member of the Working Group on the use of mercenaries, welcomed the focus on the gender dimension and differentiated human rights impacts of PMSCs, and called attention to the Group’s report on the issue[[8]](#footnote-9) and its recommendations to States to use tools such as licensing or authorization as a means to enforce human rights standards. This should include the mandatory collection of gender-disaggregated data and adoption of relevant internal policies. States should also ensure that PMCSs’ personnel who have committed acts of sexual and gender-based violence are investigated and brought to justice, and that effective remedies are accessible to all victims.

71. The representative of IHRC recommended that Element 8(b) be reworded as follows: “To establish a grievance mechanism from international civil judiciary bodies upon reporting serious violations, provided that that body has independent powers and is supervised by the United Nations.” In relation to Element 8(c), he recommended the following wording: “To supervise and hold accountable the employees of private military and security companies who are involved in misconduct or gross violations of the Code of Ethics of International Law, the Geneva Convention and the Universal Declaration of Human Rights through the legal committee mentioned in clause (b) Article (8) without the need to obtain prior approval from the United Nations Council or the Secretary-General of Security, especially in mass killings that amount to war crimes, or overthrowing government systems.”

72. In relation to Element 8, the representative of ICJ considered that the duties of PMSCs should be understood as independent from the obligations incumbent upon States and should be complied with by PMSCs in all circumstances and wherever they operate. PMSCs should be required to respect and ensure respect by its personnel of IHL and IHRL in all their operations regardless of where they take place, including by adopting a policy and carrying out human rights due diligence. PSMC due diligence should cover IHL when there they operate in situations of armed conflict, crisis or high instability. PMSC internal processes should comprise systems for the selection, vetting and training of personnel, which should be seen as a continuing process and not merely as a compliance procedure. Finally, he recommended that PMSCs should participate in effective and legitimate mechanisms to provide remedy and reparations when the company has been involved in an infringement of human rights, or provide direct reparation to the victim without prejudice to the right of persons to have access to an effective remedy, including a remedy of judicial nature.

73. On Element 1, the representative of ICJ recommended a pragmatic approach focusing on the type of operations these companies carry out. The scope of the proposed regulatory framework should not be limited to PMSCs operating in ‘complex environments.’ In the alternative, the definition of ‘complex environments’ should expressly state that this includes, but is not limited to, international and non-international armed conflicts, and the framework should cover outsourcing of inherently complex State functions such as immigration and border control, and cyber surveillance.

74. Mr. Carlos López, reiterated that the regulatory framework should apply to all States and all companies regardless of where they operate. In addition, Mr. López requested clarification from the representative of ICoCA regarding how the definition of “complex environments” applied in practice.

75. The representative of ICoCA responded that, while the focus of the association is on “complex environments”, there is an increased interest from PMSCs to apply the ICoCA standards in other contexts. This is derived for the perception of the benefit from due diligence and reputational risk to extend the scope of application beyond complex situations.

76. Mr. López further inquired about the possibility that a company may recruit staff in a country that is normally not considered to be in a complex situation, but are subsequently sent to “complex environments”. In this connection, the representative of ICoCA explained that the association provides oversight of all activities of international security providers, including those outside their countries of origin, and the complex structures and situations of these companies are considered.

 Additional elements to be considered

77. The representative of South Africa proposed that the elements mentioned by the Chairperson-Rapporteur in his introduction should be considered by the Working Group, as they represent a strong basis for the Working Group’s future discussions. He suggested to develop language for the proposed new elements and include them in the Discussion Document. The representative of Brazil considered that the mandate of the Group does not apply to general activities of security companies outside conflict zone and humanitarian settings. Noting the compilation of recommendations from previous sessions prepared by the Secretariat, and its absence of attribution, he recommended that the compilation should attribute the authorship of the recommendations to facilitate the Group’s inter-sessional activities.

78. The representative of the ICJ reiterated that the scope of the proposed regulatory framework should include obligations to all States and to all PMSCs, and that the framework should be broadened to ensure respect for human rights in all contexts. Furthermore, the framework should ensure that, if States are complicit in abuses, the victim should have access to remedy from that State according to international standards. It should also affirm State obligations to provide effective penal sanctions for PMSC staff and the companies themselves under the Geneva Conventions, Additional Protocol I (where applicable), and international criminal law. Finally, judicial remedies should always be provided for serious human rights violations, while non-judicial remedies could be afforded in less serious cases.

 V. Way forward

79. The Chair-Rapporteur outlined the way forward by announcing that he would invite, in line with paragraph 4 of resolution 45/16 and within eight weeks after the online publication of the advance unedited version of the present summary report, written contributions from Governments, relevant special procedure mandate holders and mechanisms of the Human Rights Council, the treaty bodies, regional groups, intergovernmental organizations, civil society, the industry and other stakeholders with relevant expertise, including the Co-Chairs of the Montreux Document Forum and the International Code of Conduct Association.

80. The inputs and the recommendations made during and after the 2019 and the current session as well as the work done under the previous mandate will enable the Chair-Rapporteur to update and expand on the discussion document with the view to prepare and circulate a zero draft of a regulatory framework, without prejudging the nature thereof. He will then convene informal intersessional consultations on the basis of the zero draft and circulated a revised zero draft before the third session. .

81. A short discussion followed the presentation of the way forward, and representatives from the EU, Panama, Brazil, the United States, Cuba, Pakistan, South Africa, Switzerland, the Working Group on mercenaries, as well as the IHRC expressed support. The EU recommended that experts continue to be invited, including from the International Maritime Organization as well as from academia. The representative of Panama suggested that the framework incorporate a gender approach and reflect differentiated impact for different groups, covering also technology, AI, weapons management and environment issues. Brazil requested that the sources of any new elements be indicated in the new document. Responding to Brazil and the United States on the reason why for calling the new document to be prepared a “zero draft” and now a “revised” discussion document, the Chair-Rapporteur clarified that this would give a new impetus to the process while ensuring that such zero draft would not prejudge the nature of the instrument.

 VI. Adoption of the summary report and concluding remarks

82. On 29 April 2021, the working group adopted *ad referendum* the draft summary report on its second session and decided to entrust the Chair-Rapporteur with its finalization and submission to the Human Rights Council for consideration at its forty-eight session.

**Annex**

**List of participants**

**States Members of the United Nations**

Algeria, Argentina, Azerbaijan, Botswana, Brazil, Cameroon, Canada, Chile, China, Costa Rica, Côte d’Ivoire, Cuba, Djibouti, Ecuador, Egypt, France, Germany, Greece, India, Indonesia, Iraq, Iran (Islamic Republic of), Israel, Italy, Japan, Korea (Republic of), Libya (State of), Mexico, Namibia, Nepal, Pakistan, Panama, Paraguay, Peru, Portugal, Qatar, Russian Federation, Saudi Arabia, Slovakia, South Africa, Switzerland, Syrian Arab Republic, Thailand, Togo, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela (Bolivarian Republic of).

**Non-member States represented by an observer**

State of Palestine.

**Intergovernmental organizations**

European Union

**Non-governmental organizations in consultative status with the Economic and Social Council**

Action Citoyenne pour l’Information et l’Education au Développement Durable; Fondation pour un Centre pour le Développement Soci-Eco-Nomique (CDSEN), Genève pour les droits de l’homme: formation internationale, International Youth and Student Movement for the United Nations; the International Commission of Jurists, International Human Rights Council, Sikh Human Rights Group

**Other stakeholders**

African Centre for the Constructive Resolution of Disputes (ACCORD), the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, the Working Group on the issue of human rights and transnational corporations and other business enterprises, the International Code of Conduct Association (ICoCA); Geneva Centre for Security Sector Governance (DCAF), International Committee of the Red Cross (ICRC) and Switzerland as Co-chairs of the Montreux Document.

1. The second session took place within the context of measures to combat the spread of coronavirus disease (COVID-19). Thus, participation in the working group’s sessions took place mostly virtually, through the use of the Zoom platform, while a few participants attended in-person. Participation through the sending of pre-recorded video statements was also possible. Additional information about the modalities of the session and copies of the statements made during the session that were shared with the Secretariat are available at <https://www.ohchr.org/EN/HRBodies/HRC/IGWG_PMSCs/Pages/Session2.aspx> [↑](#footnote-ref-2)
2. Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, [A/HRC/36/47](https://undocs.org/A/HRC/36/47) (2017). [↑](#footnote-ref-3)
3. Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination: Impact of the use of private military and security services in immigration and border management on the protection of the rights of all migrants, [A/HRC/45/9](https://undocs.org/A/HRC/45/9) (2020). [↑](#footnote-ref-4)
4. Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination: the gendered human rights impacts of private military and security companies, [A/74/244](https://undocs.org/A/74/244) (2019). [↑](#footnote-ref-5)
5. Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, [A/HRC/45/9](https://undocs.org/A/HRC/45/9) (2020). [↑](#footnote-ref-6)
6. Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination: The evolving forms, trends and manifestations of mercenaries and mercenary-related activities, A/75/259 (2020) [↑](#footnote-ref-7)
7. A/HRC/36/36, pp 4-5 [↑](#footnote-ref-8)
8. A/74/244 (2019). [↑](#footnote-ref-9)