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**Human Rights Council**

**Fifty-fourth session**

XX September–XX October 2023

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 fourth session of the open-ended intergovernmental working group 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**[[1]](#footnote-1)\*

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

 **I. Introduction**

1. In its resolution 45/16, the Human Rights Council decided to renew for a period of three years the open-ended intergovernmental working group 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 security companies. The fourth session of the working group, held from 17 to 21 April 2023,[[2]](#footnote-2) was opened by the United Nations Deputy High Commissioner for Human Rights. She noted the progress of the working group in releasing a revised second draft instrument[[3]](#footnote-3), which was amended from its previous version[[4]](#footnote-4) based on inputs received in the third session of the working group and intersessional consultations. She stressed the opportunity given to the Working Group to strengthen the protection of human rights and to ensure accountability for violations and abuses related to their activities. She further noted the timeliness and importance of the international regulatory framework being debated by the working group, focusing in particular on the global trend of growing reliance on private military and security companies and on their use of emerging technologies, the latter calling in particular for a regulatory framework flexible enough to accommodate the unforeseen future while remaining unyielding in its safeguardings of victims.. She stressed the current wave of mandatory human rights due diligence requirements for business being developed which speaks to the importance of effective regulation, oversight and accountability for all business enterprises, including private military and security companies, and noted in that regard the groups’ opportunity to ​​support States through a clear and consistent regulatory framework which would ensure access to justice for victims..

 **II. Organization of the session**

 **A. Election of the Chair-Rapporteur**

2. At its 1st meeting, the working group elected the Permanent Representative of South Africa to the United Nations Office at Geneva, Mxolisi Sizo Nkosi, as Chair-Rapporteur by acclamation, following his nomination by the delegation of Côte d’Ivoire on behalf of the African Group of States. The working group then adopted the provisional agenda,[[5]](#footnote-5) timetable and programme of work.

 **B. Attendance**

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

 **C. Introductory remarks by the Chair-Rapporteur**

4. The Chair-Rapporteur welcomed the Deputy High Commissioner’s remarks regarding the importance of the work being conducted by the working group, adding that the roles of private military and security companies have significantly changed and continue to evolve such that risks of human rights abuses are increasingly prevalent. He expressed concern that private military and security companies, in these changing roles, have been increasingly involved in conflict settings including direct participation in combat through the use of modern technology. He highlighted the need for the working group to centre victims and access to justice in their consideration of the revised second draft instrument. While acknowledging that the working group has not reached consensus on itsvision for the regulatory framework, he emphasised that the existing ecosystem of voluntary instruments is not sufficient to address the issues at-hand and drew attention to the need for an instrument with a broader scope and greater universality. He concluded his remarks by reminding the working group that a key output from their fourth session would be alignment on the way forward at the conclusion of their third and final year under the present mandate.

 **D. General statements**

5. The representative of the European Union expressed concern that some private military and security companies and their State sponsors play an increasingly destabilising role through lack of compliance with international standards and international humanitarian law. The European Union called to attention that some of these companies, naming the Wagner Group specifically, are involved in human rights abuses against civilians. The European Union gratefully noted that the revised second draft instrument reflected some of its textual suggestions but reiterated that some of its previously expressed concerns had not yet been addressed. It noted that the scope of the revised second draft instrument remained specific to the activities of private military and security companies conducted outside of their home State, while the European Union would find it necessary to extend the instrument’s scope to domestic activities as well. The European Union commented that some provisions remain too wide or vague, while other do not exist. The European Union noted with concern that the revised second draft may indicate a prejudging of the nature of the future instrument, including verbiage in the preamble paragraphs, the section on General Obligations of States, the final clauses from arts 19 to 24, and the use of terms such as ‘shall’ or ‘obligation’. It expressed its view that the existing international legal framework, including the Montreux Document, imparts responsibilities on the State to regulate private military and security companies and to thereby protect and respect human rights. Noting that a renewal of the working group’s mandate would be soon due, it inquired as to the intended timeline of the Chair-Rapporteur’s decision about the legal nature of the potential future framework as an essential piece of information for future proceedings. The European Union reiterated its reservations against adopting a legally binding instrument from the perspective of international human rights law, citing that this approach does not take into account crucial areas of international humanitarian law, international criminal law and State responsibility. It concluded its comments by reiterating the European Union’s commitment to engage in the present session and to assess the content and added value of a potential non-binding international regulatory framework.

6. The representative of Pakistan welcomed that foundational principles of international humanitarian law have been incorporated into the revised second draft instrument, including State responsibility and the obligation to effectively regulate PMSCs. Pakistan noted that the territorial integrity of States is a fundamental element of the United Nations Charter and emphasised that the regulatory instrument must restrict private military and security companies from carrying out functions inherent to the State, including taking part in conflicts, powers of arrest and interrogation, espionage, and others. It noted that private military and private security are two separate concepts and that a broad treatment of these concepts as the same must be avoided. Pakistan expressed that, despite previous attempts to hold private military and security companies to account for human rights abuses and to ensure access to justice for victims, self-regulation by private military and security companies has not been upheld in letter or spirit. It specifically called attention to the outsourcing of security-related state functions to private military and security companies under unclear rules of engagement, including the use of modern weapons such as unmanned technologies in conflict settings. It concluded by stressing that the instrument should provide clear guidance on issues pertaining to jurisdiction and fixation of responsibility while establishing accountability and remedy mechanisms to address human rights violations committed by private military and security companies.

7. The representative of Switzerland expressed its commitment to ensuring the respect of international humanitarian law and international human rights law by private military and security companies, including through the Montreux Document and the International Code of Conduct. Switzerland recalled its previously expressed view that the Montreux Document is complementary to the United Nations framework and noted that the revised second draft instrument presents an opportunity to build a scope of application beyond that of the Montreux Document, which should include elements of cooperation, mutual assistance, and the protection of victims. Acknowledging that the present mandate precludes prejudging the nature of a regulatory framework, it suggested that a renewal of the mandate would require clarity on the nature of this instrument. Switzerland suggested that a non-binding instrument would be a more realistic and more universally accepted output. In closing, Switzerland stated that the goal of the working group should be to strengthen, not weaken, international law relevant to private military and security companies.

8. The representative of the United Kingdom remarked that private military and security companies can be local or global entities employed by, among others, States, the United Nations, and non-governmental organisations in both conflict and non-conflict settings, the majority of which provide services that positively contribute to society. The United Kingdom recognized that ad hoc approaches to domestic regulation do not always take into account the risks for human rights violations associated with some private military and security companies’ operations and that most States have not signed up to existing international instruments in this context. It called attention to the domestic legislation put into place by the United Kingdom to ensure comprehensive domestic regulation of the security industry. It stressed the need for strong accountability, and monitoring, which is reinforced by non-State actors’ involvement in illicit activities while purporting to operate as private military and security companies. In this regard, the United Kingdom highlighted that this instrument would be capable of encouraging States to formulate comprehensive domestic frameworks to regulate private military and security companies. The United Kingdom expressed that a non-binding instrument would improve the adaptability of the regulatory framework to the rapidly evolving elements of this industry. In conjunction with the current draft, the United Kingdom recognized the value added by existing instruments, such as the Montreux Document and the International Code of Conduct, in crafting standards for regulating the activities of private military and security companies. The United Kingdom stressed the importance of clarifying the next steps of this working group, with particular reference to the decision-making process for the binding or non-binding nature of this instrument.

9. The representative of the United States appreciated the incorporation of some of its recommendations given in the intersessional consultations to the revised second draft instrument. It expressed that the collective effort of the working group must be to further existing initiatives, including the Montreux Document, which reflect and embody efforts to advance human rights in this context. The United States observed that private military and security companies provide legitimate services to a variety of contracting parties, which are subject to the responsibilities of States to provide accountability and oversight to address abuses and violations where they occur. It would differentiate these companies from mercenaries which engage in conflict, which it noted are infamous for their human rights abuses. The United States suggested that the working group prioritise progress, focus on areas which are incomplete instead on highly detailed matters, and extend existing best practices to new fields such as to develop and enforce national regulatory frameworks and close legal loopholes. It agreed with some colleagues that the working group may have the most impact by driving towards consensus, which could only be achieved under a non-binding instrument. The creation of a non-binding instrument would be a milestone achievement that would lay groundwork for state and international action. The United States offered its regrets that the revised second draft instrument does not sufficiently reflect non-binding verbiage.

10. The representative of Cuba expressed its appreciation for the revised second draft instrument, which it noted is aligned with the primary mandate of the working group. Cuba noted that private military and security companies provide a broad range of services but that in many cases their activities and the abuses associated with these activities go beyond the scope of existing domestic and international law. For instance, it noted with concern that these legal frameworks lack mechanisms for the reparation of victims and that violations have proliferated in specific contexts, such as secret holding facilities against women, children and indigenous people, in conflicts and the extractive industry. Cuba stated that the working group must move forward in drafting a regulatory instrument with binding legal force, in order to protect human rights on a universal and equal legal basis.

11. The representative of the Russian Federation noted that the international community holds a range of positions regarding the legitimacy of and parameters for the use of private military and security companies. Without mutual understanding on matters such as the lawfulness of private military and security companies, including the categorization of their personnel under international law generally and under international humanitarian law specifically, any detailed conversations on provisions would be premature. While the Russian Federation appreciated that the revised second draft instrument contains valuable provisions which provide a foundation for future discussion, it noted with concern that the revisions made to the text from the third session and intersessional consultations do not reflect its views . It remarked that it holds issue with some references to the Montreux Document, which despite some positive elements neither takes into account the approaches of numerous States nor is universal or legally binding. Further, it contains controversial issues regarding the status of the personnel of private military and security companies and the responsibility for crimes that may be carried out under their auspices. The Russian Federation stated that the revised second draft instrument lacks grounds for being legally binding, therefore it would support the removal of provisions which suggest any binding nature. It concluded by noting that the present mandate is clearly defined and that discussions in the working group should be kept professional and non-politicized.

12. The representative of Iran recalled its experiences over the course of years of war against former Iraqi president Saddam Hussein and his equipment with weapons that were used against innocent people in Iran. It further recalled the use of private military and security companies against neighbouring countries. Iran suggested that the regulatory framework must be considered in view of the experiences of and lessons learned from States which have historically been impacted by the activities of private military and security companies. Iran stated the importance of this regulatory framework and the activities of the working group and affirmed its commitment to participate in the present session and its appreciation for efforts to elaborate the revised second draft instrument.

13. The representative of India noted with concern the unprecedented proliferation of private military and security companies, which provide a wide range of services to State and non-State actors including the United Nations and other international organisations. It elaborated that the activities of private military and security companies have developed in a broad and complex context, which has included the involvement of civilians in hostilities. India stated that private military and private security are two distinct concepts with differing connotations, but acknowledged that in both cases the State is the sole legitimate authority to provide security to its people and their property. India highlighted that it has enacted domestic legislation which provides guidelines for the regulation of this growing industry, including licensing norms and training requirements for guards. However, it noted that domestic legislation has limitations in its capacity to address the transnational activities of private military and security companies and that gaps in current international law exist, particularly in regard to the establishment of proper mechanisms for accountability and in providing grievance mechanisms and effective remedy for victims. India recalled the importance of the Montreux Document in identifying pressing challenges and providing States with good practices in this space, but highlighted that regulations are needed to ensure that the principles of international human rights law and international humanitarian law are applied by private military and security companies in all activities including those which extend beyond normal protection and security. India further recalled that the International Code of Conduct attests to the needs for standards in this industry, but does not address the issue of accountability for human rights violations committed by private military and security companies.

14. The representative of Türkiye explained that clear and specific rules for the context of private military and security companies have not yet been formed in international law, including through practice and case law. Türkiye expressed that more time would be needed in order to conclude a legally binding document and therefore that the working group should proceed with a non-binding alternative. It proposed that arts 18-24 be revised to remove references to a potentially binding nature and that verbiage such as “obligation”, “establish” and “legislation” should be omitted throughout. It also suggested the inclusion of an explanatory paragraph regarding the legal character of the instrument. Türkiye proposed that references to international law, international human rights law, and international humanitarian law may be repetitive and that the relevant areas of law could be clarified in the preamble to address this repetition. It also offered the suggestion that the revised second draft instrument would better incorporate the positions of a diverse array of States should terminology such as “as applicable” or “where applicable” be appended to mentions of specific international documents. Türkiye also offered its perspective that verbiage including “hostilities”, “conflicts” and “armed conflict” seem to be used interchangeably in the revised second draft instrument, and suggested that this may be rectified if the instrument either uses a common term throughout the text or if clarification and definitions be added to differentiate these terms from each other.

15. The representative of Japan affirmed its commitment to ensuring that private military and security companies comply with international humanitarian law and international human rights law. In reference to the nature of the future instrument, Japan expressed its support for a non-binding framework which would reinforce existing legal frameworks, mentioning its specific support for the Montreux Document.

16. The representative of Bahrain reiterated the importance of the elaboration of an international regulatory framework, especially noting the importance to protect and promote human rights at all levels and to stop violations thereof. It noted the significant roles played by private military and security companies and the need to focus on the matter of accountability for their actions. Bahrain expressed the need for this framework to regulate the use of technologies, especially given the danger of their misuse, and the need for States to honour their commitments vis a vis human rights violations. Bahrain stated its desire for the working group to reach consensus and jointly drive forward its common goals.

17. The representative of South Africa welcomed the revised second draft instrument and the progress made therein with particular thanks for the support of the legal experts engaged during the revision process. South Africa stressed that the working group’s deliberation must be centred on the protection of victims of the activities of private military and security companies and that an outcome must be the end of impunity which exists at the cost of victims. It emphasised that a legally binding instrument is necessary to strengthen processes and measures to control the actions of private military and security companies. South Africa noted that the current mandate does not allow a prejudgement of the nature of this instrument and expressed its appreciation that the revised second draft instrument maintains and balances language for both legally binding and non-binding alternatives. South Africa concluded by emphasising the need for deliberations to be forward-thinking such as to future-proof the instrument and ensure lasting accountability for violations of international human rights law and international humanitarian law.

18. The representative of Venezuela affirmed its support for any resolutions of the Human Rights Council relating to the regulation of the activities of private military and security companies. Venezuela expressed that initiatives such as national self-regulation are not sufficient to address impunity for the actions of private military and security companies, especially in extraterritorial matters wherein such activities may not be adequately governed by existing international law. It further noted the need for a regulatory framework which is pursuant to international legal standards and sufficient to protect human rights.

19. The representative of Mexico noted with concern the proliferation of abuses by private military and security companies and the need to ensure accountability and reparation for victims. It reiterated its position that it is not necessary to regulate private military and security companies, as international law has clear regulations pertaining to these companies which are further supported by customary law. Mexico expressed that this instrument should be complementary to the existing legal framework. It commented that the context of this instrument, which seeks to regulate the activities of private actors, is redundant given existing obligations of States to ensure that private actors under the control or direction of the State to ensure said actors respect human rights. Mexico noted with concern that some concepts in the revised second draft instrument are imprecise and recommended that all mention of weapons of mass destruction be removed from the text. Mexico explained that there may be inherent contradictions within the revised second draft instrument between its objective and the fact that private military and security companies undertake state activities, including prisoner custody duties, and stated that these matters should be the remit of the State.

20. The representative of China noted with appreciation that the revised second draft instrument reflects prior discussions of the working group. China offered its support for adopting an international regulatory framework and for strengthening regulation and the primary role of States in this regard, with note of its support for the Montreux Document and its efforts to improve its domestic regulatory framework to govern private military and security companies and its issuing of provisional guidelines for these companies with activities abroad. China expressed that it is open to either a legally binding or non-binding instrument and, based on the end of the present mandate this year, offered support for advancing the conversation on the revised second draft instrument in its current state. It recommended differentiation between private military and private security in the definitions section and in the obligations and regulatory requirements section of the text, given that the activities of private military companies are linked to more concerns of violations of international human rights law and international humanitarian law. China stated that it is necessary to distinguish between these companies’ services and to impose stricter management on private military companies likewise. It suggested that some textual content is controversial and should be addressed pragmatically, specifically citing the matter of territorial and universal jurisdiction in art 10.

21. The representative of Iraq affirmed its prior and ongoing engagement with the working group and its contributions of proposals and concerns to the debate. Iraq noted that the revised second draft instrument engages a number of important issues, including a commitment to the mandate; the need to ensure clarity on and respect for human rights; and respect for international law.

21. The representative of Algeria noted that private military and security companies are specialised in providing sensitive services, focusing on military-type services including planning and intelligence. Algeria stated that the Montreux Document is at the centre of the revised second draft instrument as pertains to oversight and monitoring and affirmed its support for the inclusion of international legal standards, including the United Nations Charter and international humanitarian law, in this instrument. Algeria remarked that this instrument should help States introduce legally binding provisions in their legislation. Algeria noted with concern that the revised second draft instrument does not define the legal status of private military and security companies involved in armed conflicts nor does it define the status of individuals involved in such activities.

22. The representative of the Working Group affirmed the need for the future instrument to be legally binding in order to address the evolving challenges of this context, calling to attention the negative impacts of private military and security companies on the environment and climate change; the rights of people to self-determination; private cyber operations; relationships with non-state actors; and migration. It noted that the scope of the instrument remains focused only on extraterritorial services and reiterated its perspective that the instrument should be expanded to include the domestic provision of services. It suggested that the revised second draft instrument specify that the State holds a monopoly on the use of force, including detailing which activities should be forbidden in the text such as direct participation in hostilities, exercising the power of the responsible officer over prisoners of war or internment camps, and the police powers of arrests, detention, and interrogations. It also noted that the instrument should ensure that States adopt a clear and precise domestic legal framework on the use of force and firearms. It expressed that the text should include a broad and detailed articulation of applicable international law, which should include all rules of international humanitarian law and customary international humanitarian law. It noted the specific need for clear provisions on weapons acquisition, possession, and transfer and provisions on transparency and mutual legal assistance to facilitate access to justice, remedy, and accountability.

23. The representative of the International Code of Conduct Association discussed the International Code of Conduct, which was adopted in 2010 under the leadership of Switzerland and amended in 2021 to broaden its scope of application and the range of security services it covers. ICoCA is a non-profit multi-stakeholder initiative including 7 Governments, 50 civil society organisations and 120 security providers globally which seek to support States to ensure that providers of private security services respect human rights and international humanitarian law through implementation of the International Code of Conduct for Private Security Service Providers. It noted the tenth anniversary of the International Code of Conduct Association in 2023 and that it has demonstrated its value and contributions to the raising of standards in the private security industry. It affirmed its support for national and international efforts to ensure accountability and access to remedy in this context and expressed that the responsibility for prosecuting and punishing perpetrators of human rights abuses and humanitarian law violations lies first and foremost with States.

24. The representative of the International Commission of Jurists noted with appreciation that the revised second draft instrument includes important clarifications but stated that several issues are outstanding. It specifically noted concerns regarding accountability for serious criminal conduct (art 4), the limitation of the instrument’s scope to transnational activities (art 3.1), and insufficient rules on the use of force and weapons (art 11). The International Commission of Jurists stated that there remains a lack of adequate accountability globally for the conduct of private military and security companies which creates an environment of impunity for violations and abuses committed by their personnel. It recalled that there has been almost no accountability or access to effective remedy for the victims of the Iraq conflict but noted that this conflict and others have spurred domestic and international initiatives such as the creation of the Montreux Document, the International Code of Conduct, and this working group. It noted with concern that the use of private military and security companies, specifically naming the Wagner Group and its activities in Ukraine and in the Sahel, remains associated with gross abuses and violations with impunity. It welcomed the revised second draft instrument and its potential to provide impetus for regulation, oversight, and accountability of private military and security companies and protection of private military and security companies’ personnel, the civilian population, and combatants in armed conflict. The International Commission of Jurists expressed its support for a legally binding instrument in order to ensure respect for its provisions, stressing that the lack of clarity on the nature of this instrument provides an obstacle for discussion and agreement on its provisions.

25. The representative of Transparency International highlighted the corruption risks linked to private military and security companies, including operations which they conduct in secret and which are outside standard transparency and accountability structures. Transparency International welcomed the inclusion of references to the [United Nations Convention Against Corruption](https://www.unodc.org/unodc/en/treaties/CAC/) in the revised second draft instrument, noting that corruption and the unchecked actions of private military and security companies have far-reaching consequences for the rule of law, the undermining of human rights and security, the threatening of the legitimacy of governments, and the perpetuation of impunity, inequality, and injustice. It noted with concern that it has identified dozens of cases in which private military and security companies are suspected of corruption and fraud, such as engaging in collaboration with government officials to inflate risk threat perceptions in the pursuit of contracts which has resulted in the excessive use of force against protestors and harms to civilians. Transparency International noted the practice of private military and security companies to fail to disclose conflicts of interests, such as requiring local governments to pay kickbacks for participating in government-funded projects. Transparency International stated that it can be difficult to ascertain chains of command, responsibilities, and levels of coordination among private military and security companies and their subcontractors. It concluded by supporting transparency and reporting as steps which the State can take to effectively monitor and oversee private military and security companies and to prevent, address, and remedy abuses they commit.

26. The representative of the International Human Rights Council noted with concern the use of technologies by private military and security companies. It stated that sophisticated surveillance technologies, such as mobile phone hacking software, are sold by private military and security companies to governmental agencies in violation of the human right to privacy. It described its concerns regarding the use of drones and associated technologies in attacks, intelligence-gathering, surveillance, and the transport of materials including weapons in the context of international humanitarian law.

27. The representative of Maat for Peace reiterated its previous position that it is essential to establish a legally binding framework to ensure protection for civilians and civil society. It named the Wagner Group and its activities in Central Africa, Mali, and elsewhere and noted reports from these areas of human rights abuses including arbitrary arrests and secret detention facilities. It further noted that the revised second draft instrument provides a good start for future binding instruments. It noted with concern that there is a gap in accountability and remedy for victims and in regard to the illicit transfer or trafficking of arms by private military and security companies. As pertains to the latter, it proposed to include provisions to define responsibility in the matter of preventing arms transfers in both the preamble and as an article.

**III. Consideration of the revised second draft instrument**

X. In conformity with its programme of work, the working group engaged in a reading of the revised second draft instrument. General comments and suggestions made by States and non-State stakeholders are reflected in the present section of the report, while concrete textual suggestions by States and non-State stakeholders delivered during the session have been compiled and are available as an annex[[6]](#footnote-6).

 **A. Preamble**

X. On the first preambular paragraph, the United States and Türkiye suggested to use the term of “States Participants” to reflec a non-binding nature which should applay throughout the text. The European Union affirmed that the nature of the document should remain open. Panama noted that a voluntary framework will not be an adequate or effective response to protect the human rights of victims and to guarantee access to justice and accountability.

X. On the first preambular paragraph bis, the European Union, with support from Panama, advocated for maintaining the original wording. The United States, seconded by Argentina, suggested omitting the subparagraph due to potential implications.

X. On the third preambular paragraph, numerous delegations flagged the term “as applicable” as a concern. The European Union, seconded by Switzerland, and Panama, proposed removing it for lack of consistency. Conversely, the United States supported keeping the term and adding it prior to the Additional Protocols of 1977, the latter being supported by the United Kingdom. The United States also provided concrete textual suggestions and reference to relevant instruments to enhance alignment. Delegations from Switzerland, Panama and Ecuador, with support from the Working Group on mercenaries, underlined the importance of referencing the full body of international humanitarian law, including the Hague Regulations and customary international humanitarian law.

X. On the third preambular paragraph bis, Türkiye advised referring to businesses instead of non-state actors, while Nigeria suggested dropping the term “standards.”

X. On the third preambular paragraph ter, the United States proposed omitting the vague reference to “other relevant international conventions” while welcoming the inclusion of the two Conventions mentioned. Panama opted for retaining the text as is and acknowledged the potential pertinence of other conventions.

X. On the third preambular paragraph quart, the United States recognized the significance of the concept given the increasing use of subcontractors but had reservations about defining state functions. It proposed alternative language to address this concern. Meanwhile, Panama emphasised the importance of the delegations of state functions, which has led to issues with impunity and accountability, and preferred to retain the language.

X. On the third preambular paragraph quinque, the European Union, supported by Panama, suggested adding international humanitarian law. Some delegations, including Panama and Nigeria, called for the deletion of the term “some” since it might indicate a threshold. The United States clarified that the qualifier was intended to differentiate between PMSCs that violate international law and those that do not. ICOCA reiterated its support to the inclusion of the qualifier to avoid denoting that all PMSCs violate international law. The United Kingdom provided textual amendments while Switzerland and Panama advised for the explicit inclusion of subcontractors. Transparency International advocated adding corruption to the list. Finally, the United States sought to simplify the text by omitting non-human rights references and adding the term “illicit” before “trafficking of weapons and drugs.”

X. On the fifth preambular paragraph, the European Union recommended substituting the term “obliged”, which presumes the document’s nature. It suggested textual amendments to replace the last part of the paragraph due to the absence of criminal liability for companies in some countries. The International Commission of Jurists proposed dividing the paragraph into two parts with the first part stipulating that states retain their obligations under international law albeit using private actors and with the second focusing on oversight and accountability over PMSCs. The United States shared concerns about the language and made some textual proposals.X. On the sixth preambular paragraph, the European Union welcomed the inclusion of previous suggestions but argued for the removal of “and reparation” since remedies cover both compensation and reparation. The United States proposed amending the text to focus on the obligation to protect rather the rights of individuals within the territories and jurisdiction of states, which was supported by Switzerland. The United States also encouraged removing the reference to international humanitarian law while CSEND alarmed about access to judicial remedies at national level.

X. On the sixth preambular paragraph bis, the United States recommended removing “as provided by international law” since the UN BasicPrinciples and Guidelines on the right to remedy and reparation are not part ofinternational law. To acknowledge that the Guiding Principles built upon existing jurisprudence, the International Commission of Jurists suggested resolving the issue by a specific textual proposal. Notwithstanding other delegations’ objections to remove “reparation”, the International Commission of Jurists was in favor of retaining it, stressing that remedy should not only be procedural. Panama also sided with the retention of both remedies and reparation, as it is consistent with existing international standards, including resolutions of the Human Rights Council.

X. On the seventh preambular paragraph, the United States recommended revising the current languages to ensure alignment with the UN Guiding Principles on business and human rights and suggested a seventh preambular bis to address human trafficking concerns related to PMSCs. For consistency, the European Union supported the use of “violation” instead of “abuse”.

X. On the eighth preambular paragraph, the United States made concrete textual suggestions.

X. On the ninth preambular paragraph*,* the United States recommended textual amendments while the Commission of Jurists emphasised that the international legal standards are indispensable for the voluntary regime to deliver positive impact.

X. On the tenth preambular paragraph, the United States proposed to delete the reference to international human rights law and international humanitarian law while the European Union opted for retaining the original text, supported by Argentina, Panama and South Africa, Iran and Algeria. The Working Group on the use of mercenaries raised concern that the current formulation did not adequately convey the negative impact of PMSCs..

X. On the eleventh preambular paragraph, the Working Group on the use of Mercenaries, with support from numerous delegations (Argentina, South Africa, Ecuador, United Kingdom, Panama) urged for the gender responsive language throughout the entire document.Panama, Ecuador rejected the textual proposal made by Türkiye and supported by Iran which aimed at acknowledging the differences amongst national systems.The United States proposed textual amendments for the formulation for human rights defenders while Iran noted its reservation to the terms human rights and environmental defenders. Ecuador emphasised the need to maintain alignment with the languages used by the Human Rights Council. Maat for Peace urged consideration for vulnerable groups such as children and women and for the issue of recruitment of children by PMSCs.

X. On the eleventh preambular paragraph bis, the European Union reiterated concern with some languages leaning toward a legally binding instrument. To align with the mandate, the European Union proposed to replace “regulation” with “guidance” and the United Kingdom and Japansupported the provision of alternative languages. The United Kingdom stressed the importance of establishing a more streamlined approach to gender, and to replace “ both men and women” with “individuals”. Recalling the mandate of the Working Group, Panama rejected replacing ‘regulation’ by ‘guidance’. Iran expressed support to retain the paragraph as drafted, and Mexico welcomed the proposal to enhance gender perspective with concrete textual amendments.

X. On the eleventh preambular paragraph ter, the European Union requested to substitute “shall” with “should” to reflect the instrument’s potentially non-binding nature, and proposed replacing “violation” of the rights of children with “abuse” to focus on PMSCs. The former comment is supported by the United Kingdom, the United States and Japan. Panama argued that “shall '' should be retained as it refers to an existing obligation of states. Iran supported retaining this paragraph as drafted. Maat for Peace called for a better inclusion of the issue of recruitment of children and for a strong regulation for accountability on this issue throughout the instrument.

**B. [Paragraph][Article] 1**

X. On a general note and applicable to all the definitions contained in article 1, several delegations highlighted the need to ensure alignment with existing definitions, in particular those contained in the Montreux document (Switzerland, the United States, the UK).

X. On subparagraph (a), Switzerland made textual suggestions to broaden the scope of the definition of Contracting States.

X. On subparagraph (b), delegations noted with concern the variation in the definition of home states, compared to already accepted definitions, including the Montreux Document. The United States reaffirmed the need to be consistent with existing definitions by removing reference to the main place of business. This position was supported by Switzerland and the United Kingdom.

X. On subparagraph (c), concerned to develop a document which is future proof, several delegations, including the United States and Switzerland emphasised the need to rely on the Montreux definition and advised against defining Private Military Company and Private Security Company separately. Switzerland warned of the danger of creating a place in the middle which is not defined and made concrete textual suggestions. China, sharing comments on subparagraph c, d and f, expressed the view that the current distinction between military and security services should be retained. This position was supported by Cuba, Pakistan, Ecuador and Iran. Ecuador was of the view of keeping the current version, bearing in mind how the instrument will have to be interpreted and implemented at national level and provided textual suggestions.

X. On subparagraph (d), China suggested a textual amendment to maintain the distinction between Private Military Company and Private Security Company. Transparency International, on behalf of the International Commission of Jurists, made textual suggestions to include entities owned or partially owned by states. The United Kingdom and Switzerland reiterated the importance of mirroring the Montreux Document with Switzerland making a concrete textual suggestion.

X. On subparagraph (g), Switzerland proposed a textual amendment to the definition of subcontractors The European Union also made concrete textual suggestions to clarify the paragraph.

X. On subparagraph (h), the European Union, the United states, the United Kingdom, and Switzerland expressed concern with the inclusion of the definition of state functions. Switzerland recalled that it is currently unclear whether there is a prohibition to outsource state functions under international law and welcomed the United States’ call to examine relevant regulation in the Montreux Document. The United States urged deletion of this term from the definition section since it is for states to determine which functions are non-delegables. While the Working Group on the use of mercenaries agreed that the definition of state functions can be removed from the instrument, it stressed the importance of explicitly including in the document the state monopoly on the use of force and the activities that should be outlawed, such as direct participation in hostilities and police powers. The International Commission of Jurists supported the deletion of the definition, as long as the spirit remains with regards to direct participation in conflict, and other functions that states should not delegate. Ecuador, supported by South Africa, Pakistan and Iran, reaffirmed a willingness to keep this article to the extent possible, with the inclusion of a non-exhaustive list of activities which should not be outsourced. Nigeria requested the removal of “cannot outsource” as the definition should not impede state sovereignty.

X. On subparagraph (j), Switzerland was of the view to use the definition found in the Montreux Document while Ecuador stated the willingness to keep the definition, bearing in mind the Montreux Document.

X. On subparagraph (k), the European Union, the United Kingdom and the United States shared concerns about the definition of victim, with the United States providing textual suggestions.. The International Commission of Jurists noted with concern the incomplete incorporation of an existing definition, warning of the negative impact of renegotiating accepted international law concepts. Ecuador agreed and shared textual suggestions to provide nuance. Cuba, South Africa and Iraq expressed the wish to retain the provision as is, stressing the importance of including a concept of victims mindful of existing international norms. South Africa highlighted the need to consider impacts on groups and not solely on individuals. Transparency International asked to bear in mind that abuse can lead or facilitate further harms like arm trafficking. The International Committee of the Red Cross recommended to refer to the definition contained in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which was adopted by consensus by the General Assembly - either referring to definition or following the language. Iran and Pakistan support the retention of the paragraph as it is. The United Kingdom welcomed the International Committee of the Red Cross’s stance and agreed to use the language from the UN basic principle. The United States reserved its position, expressing concern about the context in which the definition is established, namely gross human rights violation and the inclusion of groups. The European Union reserved its position. Panama stressed the importance of retaining the paragraph as it is, as part of the raison d' être of the process is to protect victims and to end impunity.

**C. [Paragraph][Article] 2**

X. With regards to the chapeau, Türkiye made a concrete textual suggestion, which was supported by Iran with further amendment. Argentina, Panama and South Africa rejected this proposal.

X. On subparagraph (a), the United States, supporting Türkiye’s amendment to the chapeau, provided textual suggestion, which was not agreed upon by Iran and Cuba. Maat for Peace stressed the importance of respecting the rights of persons who are negatively impacted and protecting victims.

X. On subparagraph (b), the United States proposed textual edits, including suggestions to provide a non-legally binding alternative. Switzerland, Panama, and Iraq expressed their support for removing qualifying language on the applicability of international law. Panama also noted that the current text confirms that this instrument builds on existing standards. Transparency International recommended further expanding the scope of this subparagraph to include regulation and oversight over a variety of activities beyond operations.

X. On subparagraph (d), the working group disagreed on the language which imparts responsibilities on States, specifically on what wording should be associated with a non-binding nature. The United States, Nigeria, Cuba, and Ecuador contributed to this debate. The working group also disagreed regarding access to information. The United States suggested specifying specific types of information required. Panama remarked that the types of information should be kept general such as to guarantee victims access to the broadest information available, which was supported by Cuba, South Africa, and Pakistan.

X. On subparagraph (e), the working group debated whether States should determine which services can be carried out by private military and security companies. It was discussed that this debate remains dependent on para/art 1(h), the definition of State functions. The European Union, United States, Switzerland, United Kingdom, and Nigeria supported a formulation which would leave States to make this determination. Panama and CSEND generally did not support leaving this matter to State discretion. Cuba, Iran, Pakistan supported leaving both formulations as interdependent matters are debated.

X. On subparagraph (f), the working group debated and ultimately agreed on the purpose of this provision, which they decided is to detail State responsibility, and its placement. Switzerland, South Africa, Nigeria, and the United shared input for this discussion. Switzerland also requested that this provision explicitly mention subcontractors or that language on subcontractors otherwise be streamlined throughout the text.

X. On subparagraph (g), Transparency International requested that providing for effective systems, rules of law, and protection be included as objectives of this instrument.

 **D. [Paragraph][Article] 3**

X. On paragraph/article 3, the United States requested that a new paragraph be added to clarify the nature of the instrument, which was supported by Japan.

X. On subparagraph (1), the working group discussed deleting this provision on the grounds that it limited the instruments’ scope to transnational activities of private military and security companies. The general consensus was that subparagraph (2) was sufficient to outline the instrument’s scope. The European Union, Switzerland, United Kingdom, Panama, South Africa, and ICJ agreed on this matter. The United States agreed on this matter but suggested that subparagraph (2) should be clarified as applying in all situations, a proposal which was supported by the United Kingdom.

X. On subparagraph (2), in addition to the aforementioned debate, Cuba noted concerns with language associated with the nature of the instrument and referenced previous input from the United States and Nigeria. Ecuador requested that language from subparagraph (1) defining the scope of the instrument be incorporated into subparagraph (2), especially applicability tied to the categorisation of States.

 **E. [Paragraph][Article] 4**

X. On paragraph/article 4, The United States requested that the title of this paragraph/article be changed or an alternative titling option be added to reflect a non-binding alternative. Maat for Peace suggested alternative wording.

X. On subparagraph (1), the working group disagreed on the language used to describe the obligation of States. Panama, South Africa, Ecuador, and ICRC supported the text as-is, citing other instruments in support of their positions. The United States disagreed with the wording and suggested an alternative, also providing a supporting citation.

X. On subparagraph (1bis), the United States proposed using language to reflect a broader array of measures that a State may take to regulate and oversee private military and security companies beyond legislation. Nigeria agreed with this proposal. The European Union suggested that this provision be amended to align with the Montreux Document, which distinguishes between the obligations of contracting states, territorial states and non-states’ obligations. The United States also suggested non-binding textual alternatives in several places.

X. On subparagraph (2), the working group generally agreed that this provision required more clarity. The European Union, United States, Ecuador, South Africa, Panama and ICJ provided perspectives regarding what should be included in the list of crimes detailed in this subparagraph. The United States recommended adding qualifying language regarding the applicability of some parts of this list while Panama disagreed with this change.

X. On subparagraph (3), the working group continued its debate on whether States should determine which services can be carried out by private military and security companies and, if so, whether bottom-line standards should be established. As before, it was discussed that this debate remains dependent on para/art 1(h), the definition of State functions. The United States, United Kingdom, Switzerland, Cuba, Panama, and ICJ contributed their perspectives to this discussion.

X. On subparagraph (4), the working group disagreed on the inclusion of the terminology “direct participation in hostilities”. The working group generally agreed that there is not a global consensus on this term’s meaning. The United States stated its concern that this wording may cause issues with activities permissible under current international law and proposed instead using the terminology “combat” or verbiage from the Montreux Document. The European Union also expressed a preference with using the language of the Montreux Document. The United Kingdom generally supported setting minimal standards due to the lack of consensus on this term’s meaning. Switzerland, Panama, South Africa, the ICRC, and ICJ rejected this proposal on the basis that the current language reflects contemporary challenges under international humanitarian law. The ICRC added that, should the text be changed, several key humanitarian concerns must be reflected.

 **F. [Paragraph][Article] 5**

X. On subparagraph (1), as discussed in other contexts, the United States proposed using language to reflect a broader array of measures that a State may take to regulate and oversee private military and security companies beyond legislation. Nigeria agreed with this proposal and also recommended expanding the text to explicitly include companies’ and personnels’ activities, which was supported by South Africa. DCAF expressed that regulations should be added to the list of required State actions, which was supported by South Africa and Transparency International. Argentina noted the similarity of arts 5(1) and 4(1bis) and requested clarification.

X. On subparagraph (2), the United States suggested changing verbiage to reflect the core issue of licensing in order to carry out services, which was supported by Switzerland. CSEND noted that the current wording reflects activities carried out in another State and suggested that this consideration be included in any changes to the verbiage. Transparency International requested that a requirement for risk-based licensing systems be added.

X. On subparagraph (3), following cooperative discussions between the United States, Transparency International, and ICJ, it was proposed that the chapeau of this provision be separated into one provision setting minimum standards for licensing authorities and one provision detailing requirements for regulation thereof. This conversation followed disagreement among the working group regarding the intent of this provision, to which Panama also contributed.

X. On subparagraph (3)(a), Transparency International suggested that principles of relevant conventions relating to corruption be mentioned in reference to requirements for licenses.

X. On subparagraph (3)(b), the European Union proposed that this provision require the promotion of gender equality, in alignment with language used by the United Nations. Ecuador, United Kingdom, Panama, and United States concurred with this proposal. However, the working group did not agree on the inclusion or exclusion of other forms of diversity in this subparagraph and this matter was determined to require further discussion. Transparency International suggested that specific actions be delineated for combating discrimination and promoting gender equality.

X. On subparagraph (3)(c), the working group agreed on the inclusion of prevention of sexual exploitation and abuse as a training requirement, a change which was proposed by ICOCA and expanded upon by the United Kingdom. Transparency International proposed the inclusion of training on the lethal and non-lethal equipment as an alternative to weapons, which was supported by Panama, and the inclusion of requirements for a beneficial ownership register. The working group disagreed on the removal of qualifying language, to which Switzerland, United States, and Panama contributed perspectives.

X. On subparagraph (3) (d), ICOCA recommended considering public tracking for vetting as the absence of a system to track records and guard training led to licensing concerns and insufficient professionalism. The United States suggested adding "likely to commit" after human rights abuses to consider the potential correlation between past records of abuses and future misconduct. Transparency International proposed adding "and corruption-related acts." The International Commission of Jurists suggested alternative language for vetting, and the ICRC suggested referring to paragraph 32 of part 2 of the Montreux Document.

X. On subparagraph (3) (f), the EU requested clarification on standards and suggested adding them to footnotes. ICOCA called for including labor standards in a dedicated sub-paragraph, supported by the US's suggestion to move "applicable" before environmental standards.

X. On subparagraph (3) (g), Transparency International proposed including “for prime contractors and subcontractors and adequate transparency of the beneficial ownership status.”

X. On subparagraph (3) (h), the representative of the United Kingdom made a reservation as to whether PMSCs should be identified universally due to the risks it might raise.

X. On subparagraph (4), The International Commission of Jurists and Transparency International suggested adding requirements for companies to regularly report on their activites. The United States proposed focusing on oversight and imposing civil and criminal penalties for non-compliance with registration/licensing procedures.. CSEND questioned if licensing goes beyond domestic legal context, correlating with subparagraphs (2) and (3).

X. On subparagraph (5), the United States stressed that the obligation should be on territorial states where PMSCs operate. South Africa agreed but noted that the territorial state may lack power to enforce regulations due to PMSCs' influence, and the ICJ suggested that home states regulate export of services, citing Switzerland's law authorizing export licenses. Transparency International drew a parallel to arms control regimes and end-user certificates. CSEND proposed adding texts to ensure home states oversee PMSCs' licenses to operate in territorial states. The United States clarified that the Swiss practice is a due diligence review, not communication for permission.

X. On subparagraph (6), the United States supported the text while ICOCA suggested including “training” at the end of the paragraph.

X. On subparagraph (7), the United States recommended adding “supporting” in addition to establishing.

 **G. [Paragraph][Article] 6**

X. On subparagraph (1), Cuba recommended adding “shall” before “ensure” and removing “undertake to shall.” The United State suggested non-binding alternatives such as “commitments” or “endeavors” instead of “ensure.”

X. On subparagraph (1) (a), the United States preferred bracketed formulation and suggested elaborating on applicable requirements, such as “promote adherence of such companies and their personnel and subcontracting companies and their personnel.”The International Commission of Jurists proposed adding “subcontractors.” Switzerland, supported by Panama, expressed reservations about the word "applicable" as international human rights law and international humanitarian law are by nature applicable to PMSCs. The United States clarified that “applicable” refers to incorporating requirements for PMSCs, not domestic law.

X. On subparagraph (1) (b), the United Kingdom held about the paragraph and supported the proposal of the United States to include prohibition on conduct in domestic and international law. The International Commission of Jurists recommended addressing direct participation in hostilities separately. The United States proposed adding text to clarify that PMSC personnel are not asked to engage in prohibited conduct.

X. On subparagraph (1) (c), the United States recommended replacing “non-registered and non-licensed companies” with “such companies that are not in compliance with applicable laws and regulations including registration and licensing requirements.”

 **H. [Paragraph][Article] 7**

X. On subparagraph (1), the United States, the United Kingdom, and Switzerland favored the bracketed text with the latter two underlining the focus on services rather than state functions. Panama supported the original text and noted the potential need to define state functions.

X. On subparagraph (2), the United States suggested substituting “not registered and licensed in terms of this instrument to operate within their jurisdiction” with “not in compliance with applicable registration and licensing requirements.”

**I. [Paragraph][Article] 8**

X. The United States, with support from the European Union, favored the bracketed text and proposed incorporating it into paragraph (5). South Africa raised the concern about the bracketed languages on “domestic law” since not all States have it in place, making unlawful practices permissible. Switzerland acknowledged South Africa's viewpoint but favored the bracketed version for the moment. The International Commission of Jurists suggested keeping the current wording in brackets as an option until further clarification is made.

 **J. [Paragraph][Article] 9**

The United States supported bracketed text due to ambiguity in the phrase "by this instrument" and suggested changing "to engage" to "from engaging." Switzerland proposed adding "or maintain" after adopting legislation and "and policies" to regulate recruitment. South Africa recommended adding "strengthen" after adopt, as some countries already have laws in place.

 **K. [Paragraph][Article] 10**

X. On subparagraph (1), the United States suggested referencing the Montreux Document for good practices on contracting territorial and home states regarding criminal jurisdiction and accountability of PMSCs. The International Jurists noted that civil jurisdictions exist in many countries, which is echoed by the European Union’s definition of civil and commercial jurisdictions.

X. On subparagraph (2), Türkiye proposed dropping “territory” under subparagraph (2)(a) and (b) and expressed concern about the broad scope of paragraph (10) exceeding the generally accepted jurisdiction rules. The European Union questioned whether the term “offense” and “violation” are interchangeable and suggested phrasing “should establish jurisdictions regarding criminal offense committed by PMSCs personnel” before “when such offenses are committed.” The United States recommended referring to “abuse” and “violations” rather than “offense” and suggested removing the list of jurisdictions since it might conflict with what has been addressed. Sharing part of the concerns, Argentina recommended keeping reference to [paragraph][article] 4 (2) regarding the definition of “offense.”

X. On paragraph (2) (e) and (f), the United Kingdom recommended adding “where appropriate” both at the end to specify the non-exhaustive nature of other grounds for jurisdiction.

X. On paragraph (2) (c) (d) (e), and (f), China stressed that jurisdiction under [paragraph][article] 4(2), should align with domestic law or international treaty and not exceed their scope. It proposed a new paragraph that upholds the principles of sovereign equality and non-interference, and advocated avoiding the issue of universal jurisdiction due to the lack of consensus.

X. On subparagraph (3), the United States suggested addressing the text in brackets to maintain the non-binding nature of the instrument.

 **L. [Paragraph][Article] 11**

X. On subparagraph (1) (a), the United States suggested using “appropriate measures” instead of “adopt legislation.” Transparency International requested to include standards on corruption and corruption in arms trafficking, and suggested referring to the Montreux Document regarding types of weapons companies should not acquire. Argentina recommended keeping the word “arms control” rather than using weapons. Maat for Peace advised mentioning arms trade treaty on prohibition on sale of weapons.

X. On subparagraph (1) (abis), the United States preferred “types of weapons prohibited under applicable international law” instead of a non-exhaustive list. Switzerland supported the term “widespread” as it derived from customary international law. Transparency International inquired if the application of “trafficking” is identical in this and other provisions and advised including the use of inherently abusive security goods or equipment, which was supported by the International Commission of Jurists.

X. On subparagraph 1(b), the International Commission of Jurist made concrete textual suggestions, as well as the United States and the United Kingdom .

X. On subparagraph 2, delegations exchanged on the scope of “transfer” as opposed to “import and export”. Transparency International and the ICRC advised to use the term “transfer”, consistently with the Arms Trade Treaty and to expand the scope. Transparency International, supported by Panama, proposed to include transfer, transit and transhipment and to broaden the scope of items by including “military equipment or related equipment” to the list. The ICRC noted that transfer does not include re-export by end users and proposed language to incorporate “other forms of control over transfer of weapons by PMSC including brokering, import, export, re-import, re-export”. The United States stated its readiness to include a broader scope than just weapons.

X. On subparagraph 3, Switzerland made a concrete textual suggestion based on the wording of the Armed Trade Treaty to read that states “shall not authorise any transfer of arms to PMSCs. The United States and Argentina agreed.

**M. [Paragraph][Article] Article 12**

X. While the European Union mentioned its uncertainty as to which situations will give rise to state responsibilities in this context, the United States recommended omitting this section, favoring referring to existing customary international law rules. The ICRC recalled that the Montreux Document reminds states of their potential responsibility for violation by PMSCs, with a reference to customary international law.

**N. [Paragraph][Article] 13**

X. On subparagraph (1), Panama expressed support for the current draft while the United States provided textual suggestions, which were supported by the United Kingdom. The United Kingdom reserved its position on some aspects of the article. With the support of Panama, the United States and Mexico, the United Kingdom proposed to replace gender sensitive with gender responsive. South Africa, with whom the ICJ agreed, insisted on keeping the language as it is, since access to remedy is well established in law. The ICRC proposed to address separately abuse of human rights and violation of international humanitarian law, building on existing obligations and considering new commitment to provide effective remedy for violation of international humanitarian law to individuals. This proposal was endorsed by the United States, who initially expressed concern that this paragraph was extending beyond existing obligations.

X. On subparagraph (1bis), the United States shared the view of including the bracketed language as part of the text.

X. On subparagraph (1ter), the United States also called for the bracketed language to become part of the text and made a concrete textual suggestion.

X. On subparagraph (2), the ICJ addressed the delegations to clarify the origin of the language included therein, namely the UN Guiding Principles and made a concrete textual suggestion.

 **O. [Paragraph][Article] 14**

X. On subparagraph (1), the United States requested the inclusion of the language placed in brackets and proposed language. The ICJ made a concrete textual suggestion inspired by the UN Basic Principles. CSEND expressed concern with the inclusion of the expression “consistent with their domestic law” as it may not be sufficient in some countries. The United States reiterated concern about importing into this document provision from the UN Basic Principles without appropriate adjustment.

X. On subparagraph (2), the United States voiced their support to include the terms in brackets into the text.

 **P. [Paragraph][Article] 15**

X. On subparagraph (1), the United States provided for textual amendments to address the matter with one paragraph only, which was agreed upon by Türkiye. Both states also made textual suggestions to edit this subparagraph. Switzerland confirmed the need to review the United States suggestion while the United Kingdom stated its reservation as they continue to review this article.

X. On subparagraph (1bis), the United States recommended omitting the subparagraph whereas Panama and South Africa endorsed the preservation of this paragraph. While the United States made textual suggestions for a non-binding version if the paragraph is maintained, Panama, with the support of Cuba, expressed the view that the current text is not prescriptive.

X. On subparagraph (2), the United States suggested language to clarify the scope.

X. On subparagraph (2bis), the United States requested to include alternative language to reflect the open nature of the instrument and suggested additional textual amendment. The ICJ shared the view of including “and international law obligations” when the terms “consistent with domestic law” is incorporated, a proposal which was approved by CSEND.

 **Q. [Paragraph][Article] 16**

X. On subparagraph (1), the United States reiterated its call for the inclusion of alternative language in view of a non-binding instrument. Additionally, the United States voiced support to unbracket the text, agreed to include language to ensure both compatibility with international law as well as domestic law and made a textual suggestion, which was accepted by Switzerland. DCAF requested the paragraph to specify what minimal set of information will be required to be collected, analyzed and shared. South Africa highlighted the wish to include subcontractors.

X. On subparagraph (2), the European Union made a suggestion to ensure consistency throughout the text and the United States supported the inclusion of the bracketed terms “consistent with domestic law”, noting that governments can only share information in line with their domestic legislations. However, South Africa and Panama expressed concern with the inclusion of this expression, considering its potential undermining impact. To address South Africa’s concern, the ICJ proposed the inclusion of international obligation. While this suggestion was agreed upon by the United States, Panama reserved its position.

X. On subparagraph (2bis), the United States proposed to simplify the language with a concrete textual suggestion. CSEND welcomed the inclusion of this paragraph in the revised draft.

 **R. [Paragraph][Article] 17**

The United States, with the agreement of Switzerland, suggested rephrasing the title to acknowledge that both international law and international humanitarian law were included. The additional textual proposal made by the United States was not agreed upon by South Africa.

 **S. [Paragraph][Article]18 - [Paragraph][Article]24**

X. With regards to the remaining paragraphs, the United States expressed the wish to include the text in brackets and to incorporate corresponding text to reflect a non-binding instrument, to remain aligned with the mandate of the Working Group not to prejudge the nature of the instrument.

 **IV. Way-forward**

X. Following discussions held during the fourth session and acknowledging the comments and concrete textual suggestions received on the revised second draft instrument, the Chair-Rapporteur presented the procedural way forward as outlined below:

*1. The mandate of the Intergovernmental Working Group (IGWG) 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 (PMSCs) was established in 2017 by resolution 36/11 and extended in 2020 for another three years by resolution 45/16.*

*2. The mandate given by the Council specified that the work of the IGWG would be informed by the 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 States and other stakeholders”. It offered a unique opportunity for the IGWG to identify the means by which to more effectively prevent human rights abuses relating to the activities of private military and security companies; to more effectively protect and ensure access to justice and remedies for victims of such abuses - and to more effectively strengthen accountability.*

*3. Since its establishment, a total of four sessions have been held. During the first session, States and other stakeholders considered one by one the Elements contained in the discussion document and provided their substantive comments on those, making good progress towards fleshing out the elements as contained in the discussion document. During the session, the IGWG was briefed by a number of invited experts who provided relevant updates on the topic of PMSCs from their perspective and area of expertise, and embarked on discussing further the elements for an international regulatory framework, as contained in the discussion document, with the aim to further refine and develop them, and devoted time to identify possible additional elements.*

*4. After the second session, and as agreed in the way forward, the Chair-Rapporteur, on the basis of the wealth of recommendations made in earlier sessions, and written input collected after the second session, prepared a zero draft of a regulatory framework, without prejudging the nature thereof, which was discussed in inter-sessional consultations in April 2022.*

*5. On the basis of inputs gathered during these consultations, and in line with the way forward agreed to during the second session of the Working Group, the Chair-Rapporteur circulated a revised zero draft instrument ahead of the third session. That revised zero draft formed the basis of the negotiations which took place during the third session.*

*6. After the third session, and in line with the agreed way forward, the Chair-Rapporteur released a second draft which was discussed in inter-sessional consultations in December 2022, and, on the basis of input gathered, released a revised second draft in March 2023, ahead of the fourth session. During the fourth session, the IGWG considered the revised second draft and made substantive progress in this regard.*

*7. To be in line with its mandate, it needs to be recalled that the approach followed by the Chair-Rapporteur since the release of the zero draft has been to cast the zero draft and further iterations of it in a format that could form the basis for either a legally or a non-binding outcome, with language options to reflect both approaches.*

*8. During the 4th session, delegations reaffirmed the importance of the Working Group’s mandate and the need for a regulatory framework.*

*9. Delegations noted the importance of the Montreux Document, the International Code of Conduct and the United Nations Guiding Principles on Business and Human Rights, and the need to develop a universal framework to regulate the activities of PMSCs, and identified some broad points of agreement regardless of the framework being of a binding nature or not. Such consensus, inter alia, relates to the regulation of PMSCs, the victim-centric nature of the instrument, provisions for mutual cooperation in investigating and prosecuting crimes committed by PMSCs and their personnel, and the need for the instrument to be gender responsive.*

*10. Delegations acknowledged that outstanding issues remain, such as opposing views with regard to the legal nature of the instrument, with some having some strong views for a legally binding instrument, while similarly strong views for a non-binding instrument were expressed and noted. In this regard, it is imperative that agreement is reached on the nature of the framework in order to take the process forward.*

*11. In that light, further acknowledging all the work and significant progress made since 2017, and the need for mandate renewal at the 54th session of the Human Rights Council (HRC), the Working Group recommends that the mandate be renewed for another three years, in line with the usual HRC procedure for mandate renewal.*

X. The Working Group had an open discussion, and after some consultations, decided to adopt by consensus the way forward as presented.

X. The United States made a reservation on paragraph 11 of The Way Forward based on its proposal and preference to make a recommendation in paragraph 11 to the Human Rights Council that the mandate be renewed with clarity for continued work on a non-binding instrument. The United Kingdom and Japan supported such reservation.

X. The European Union decided to reserve their position on the way forward.

X. The Chair reminded delegations that it is not for the Chair to make a determination on the nature of the instrument and encouraged States, in the period leading up to the 54th session of the Human Rights Council, to build upon the constructive spirit to move towards such determination.

 **V. Adoption of the summary report and way forward**

On 21 April 2023, before the adoption of the draft summary report, some delegations made concluding remarks: the European Union, the Russian Federation, Switzerland, South Africa, China, Brazil, United States, the United Kingdom, Iran, and Bahrain.[[7]](#footnote-7)

Following these remarks, the working group adopted *ad referendum* the draft summary report on its fourth session and decided to entrust the Chair-Rapporteur with its finalization and submission to the Human Rights Council for consideration at its fifty-fourth session.

**Annex**

 **List of participants**

 **States Members of the United Nations**

Algeria, Argentina, Azerbaijan, Bahrain, Belgium, Brazil, Burkina Faso, Cabo Verde, Cameroon, Chad, Chile, China, Colombia, Côte d’Ivoire, Cyprus, Cuba, Ecuador, Egypt, France, Gambia, Guatemala, Guyana, India, Iran (Islamic Republic of), Iraq, Japan, Lao (People’s Democratic Republic of), Malaysia, Mexico, Nepal, Netherlands (Kingdom of the), Nigeria, Pakistan, Panama, Paraguay, Poland, Qatar, Romania, Russian Federation, South Africa, Switzerland, Sweden, Syrian Arab Republic, Tanzania (United Republic of), Thailand, Togo, Türkiye, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, and Venezuela (Bolivarian Republic of).

 **International organizations**

European Union, the International Code of Conduct Association.

 **Observer organization**

International Committee of the Red Cross (ICRC)

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

African Centre for the Constructive Resolution of Disputes Education Trust, Arab-European Center of Human Rights and International Law (AECHRIL), Association de lutte contre la dépendance, Bureau Pour la Croissance Intégrale et la Dignité de L'enfant, Conectas Direitos Humanos, Fondation pour un Centre pour le Développement Socio-Eco-Nomique, Genève pour les droits de l’homme : formation internationale, International Commission of Jurists (ICJ), International Human Rights Commission Relief Fund Trust, International Human Rights Council, Maat for Peace, Development and Human Rights Association, Pleaders of Children and Elderly People at Risk "PEPAINGO", Pompiers humanitaires, Transparency International, United Nations of Youth, Network - Nigeria, Vie et Santé du Centre, International Association of Soldiers for Peace, TRIAL International.

 **Other stakeholders**

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 Chair-Rapporteur’s group of experts, Geneva Centre for Security Sector Governance (DCAF), International Organization for Self-Determination and Equality (IOSDE), NGO Pulse of Democracy, Office of Legal Counsel to Popular Organizations - GAJOP, Centro de Defesa da Criança e do Adolescente (CEDECA Ceará), Chinese (Taiwan) Society of International Law, Hunan Normal University, University Jean Moulin, Lyon III, Guyana Defence Force.

1. \* The annex is reproduced as received, in the language of submission only. [↑](#footnote-ref-1)
2. The session took place in a hybrid format. Oral statements are available at [www.ohchr.org/EN/HRBodies/HRC/IGWG\_PMSCs/Pages/Session3.aspx](http://www.ohchr.org/EN/HRBodies/HRC/IGWG_PMSCs/Pages/Session3.aspx). [↑](#footnote-ref-2)
3. https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/wgmilitary/2022-11-03/PMSCs-Second-Draft%20-Instrument-Clean.pdf [↑](#footnote-ref-3)
4. https://www.ohchr.org/sites/default/files/2022-04/revised-zero-draft-instrument.pdf. [↑](#footnote-ref-4)
5. A/HRC/WG.17/3/1. [↑](#footnote-ref-5)
6. Link to the webpage [↑](#footnote-ref-6)
7. Link statements received to the webpage [↑](#footnote-ref-7)