



**European Union**

**UNITED NATIONS**

**4<sup>th</sup> session of the Open-ended intergovernmental working group to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies**

**17 to 21 April 2023**

**Opening remarks by the European Union**

**Geneva, 17 April 2023**

**- CHECK AGAINST DELIVERY -**

Chair-Rapporteur,

The European Union would like to thank you and the Secretariat for holding the fourth session of the Open-ended intergovernmental working group on PMSCs.

We would like to commend the Chair-Rapporteur for sharing the revised second draft instrument, following the informal intersessional consultation held last December 2022, and for his efforts in advancing the IGWG process.

First of all, we would like to reiterate our engagement on this topic of great importance. While the EU recalls that the use of private military and security companies is legitimate and advisable in certain circumstances, we are deeply concerned about the increasingly destabilising role of some unregulated private military entities and State sponsors that do not comply with international standards and international humanitarian law. It has been documented and condemned, by the UN and civil society organisations, that some of these entities, in particular Wagner, are involved in serious human rights abuses, against civilian populations. These abuses are unacceptable and must not remain unpunished.

Secondly, regarding the revised second draft instrument that was circulated earlier last month, we noted with appreciation that the Chair-Rapporteur has incorporated some of our textual suggestions. However, only limited progress has been made and some of our key concerns we had expressed in the past have not been addressed.

As an example, we had expressed concern and requested some clarifications regarding why the scope of the zero draft and revised draft instrument applied only to the activities of PMSCs carried out in the territory outside its Home State. In the revised second draft instrument, the scope remained the same without consideration being given to our concerns. The EU would like to highlight the necessity for any instrument to cover all businesses in a non-discriminatory manner to ensure a level playing field for companies globally. We would appreciate to hear the Chair-Rapporteur's insight on this point.

Some provisions remain either too wide or too vague in their drafting and require further improvement such as those concerning 'administrative liability' (PP5) or 'negative impact' (art 2.a). Other concepts such as 'criminal liability for companies' (PP5), 'territorial waters'<sup>1</sup> (art 10.2.e), or 'human rights labour standards' (art 5.3.f), do not really exist.

Finally, we regret that the revised second draft continues to provide clear indication of the intention of the drafters to prejudge the nature of the future instrument. As an example, the use of some expressions such as Preamble Paragraphs (PPs), General

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<sup>1</sup> It does not exist the concept of 'territorial waters' under international law. UNCLOS refers to 'territorial sea'.

Obligations of States, all final clauses from article 19 to article 24, are typical of Treaty language, and terms such as ‘shall’ or ‘obligation’ has a bearing on the nature of that instrument and presuppose what this process wishes to achieve.

#### Chair-Rapporteur

In this context, the EU would like to recall the fact that this working group was mandated to elaborate the content of an international regulatory framework [on the regulation, monitoring and oversight of the activities of private military and security companies], and that the current mandate does not make any presumptions as to the ultimate legal nature of a potential future framework. Today, there is still a difference of views as to the nature of a potential new international regulatory framework.

While we all agree on the need to protect human rights and ensure accountability for violations and abuses, we would like to recall the fact that PMSCs do not operate in a legal vacuum and that an international legal framework exists. States have the primary responsibility to regulate PMSCs, including to, *inter alia*, protect and respect human rights.

In this regard, the Montreux Document plays an important role in reaffirming the existing and well-established international legal obligations for contracting States, territorial States, home States and other States relating to the activities of PMSCs during armed conflict. Indeed the Montreux Document, which is supported by 58 States and three international organisations, including the EU itself and 25 EU Member States, contains a compilation of such relevant international legal obligations.

#### Chair-Rapporteur

As the renewal of the mandate of the OEIGWG on PMSCs for the next three years is soon due, we would like to reiterate our call on the Chair-Rapporteur to inform as to the intended timeline of the decision regarding the legal nature of the potential future framework. The legal nature of the future framework is an essential piece of information needed for stakeholders and their future contributions to the proceedings of this IGWG for the next three years.

The EU reiterates its doubts regarding the opportunity to adopt a legally binding instrument to regulate the activities of PMSCs, primarily from the perspective of international human rights law, as it does not sufficiently take into account other crucial areas such as international humanitarian law, international criminal law and State responsibility.

While we will continue to engage constructively in this week’s session by means of providing elements to the discussion, we will carefully assess the content and added value of any possible proposal of a non-binding international regulatory framework to regulate PMSCs’ activities, noting that its content would need to be in line with applicable international law, in particular international human rights law and

international humanitarian law.

Thank you