
Compilation of concrete textual proposals on the revised zero draft instrument on an international regulatory framework on the regulation, monitoring of and oversight over the activities of private military and security companies

Third 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

Summary

The present document contains a compilation of concrete textual proposals on the revised zero draft instrument on an international regulatory framework on the regulation, monitoring of and oversight over the activities of private military and security companies presented during the third session. Only concrete textual proposals received by the Secretariat and presented during the third session are part of this compilation and have been reproduced in the original language of submission.

Contents

	<i>Page</i>
Compilation of concrete textual proposal on the revised zero draft instrument on an international regulatory framework on the regulation, monitoring of and oversight over the activities of private military and security companies	3
A. Preamble	3
B. [PARAGRAPH][ARTICLE] 1	6
C. [PARAGRAPH][ARTICLE] 2	7
D. [PARAGRAPH][ARTICLE] 3	9
E. [PARAGRAPH][ARTICLE] 4	9
F. [PARAGRAPH][ARTICLE] 5	10
G. [PARAGRAPH][ARTICLE] 6	12
H. [PARAGRAPH][ARTICLE] 9	12
I. [PARAGRAPH][ARTICLE] 10	12
J. [PARAGRAPH][ARTICLE] 11	13
K. [PARAGRAPH][ARTICLE] 12	14
L. [PARAGRAPH][ARTICLE] 14	15
M. [PARAGRAPH][ARTICLE] 15	15
N. [PARAGRAPH][ARTICLE] 16	15
O. [PARAGRAPH][ARTICLE] 17	16
P. [PARAGRAPH][ARTICLE] 18	16

Compilation of concrete textual proposal on the revised zero draft instrument on an international regulatory framework on the regulation, monitoring of and oversight over the activities of private military and security companies

A. Preamble

The EU

As stated during the informal consultation last month, although the drafters of the text left the definition of the instrument opened, we are of the view that the text is typical for a Treaty language, and could be easily turned into a legally binding instrument. The proposed revised draft instrument text further deepen this ambiguous nature and we see this from the structure and the expressions used [e.g. Preamble, some paragraphs which create clear legal obligations such as the obligation to criminalise certain behaviours in national law of the State parties].

(PP5)

[With the caveat that this does not represent a negotiation on behalf of the EU] in PP5, the EU would like to suggest adding 'international' Human Rights Law - this term 'international Human Rights Law' should be used consistently throughout the rest of the text.

Moreover, we would like to suggest replacing 'equal and effective access to justice and judicial and other remedies and reparation', with 'equal access to judicial and other effective remedies' [as it is more in line with the UN UNGPs III. Access to Remedy part A.25]

(PP9)

The EU would like to suggest replacing 'inter alia' with '**public or private**' and to add 'when it respects international humanitarian law and international human rights law', and delete the rest of the para without mentioning specific entities or actors.

i.e. *Mindful of the assistance rendered by Private Military and Security Companies to a variety of clients, public or private, when it respects international humanitarian law and international human rights law'*

(PP10)

There is a repetition of the word '**groups**'

(PP11)

The EU would like to suggest adding '**international**' Human Rights Law;

Argentina

PP1:

Eliminate selective reference to the principles and objectives of the UN Charter. The pp should read: "Reaffirming the principles and purposes of the Charter of the United Nations"

PP2:

replace the term "registration" with "REGULATION", in order to be consistent with the language used in Human Rights Council Resolution 15/26:

"Recalling Human Rights Council resolution 15/26 of 1 October 2010, that established the open-ended working group to consider the possibility of elaborating an international regulatory framework on the REGULATION, monitoring, and oversight of the activities of Private Military and Security Companies and their personnel;"

Japan

PP8: Japan suggests to add "though this document is not a legally binding instrument," after "Recognizing that".

Panama

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

(PP1bis) *Recalling* the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, international humanitarian law and international criminal law, and general international law principles on the responsibility of States for internationally wrongful acts;

(PP4bis) *Bearing in mind* other relevant international conventions, including the ILO Conventions, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and its two Protocols;

(PP4ter) *Concerned* about the increasing delegation or outsourcing of inherently State functions which undermine State's capacity to retain its monopoly on the legitimate use of force;

(PP4quart) *Expressing concern* at the increasing and alarming violations of international humanitarian law and violations and abuses of human rights related to the activities of Private Military and Security Companies and their personnel, including but not limited to extrajudicial, summary or arbitrary executions, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, arbitrary detention, forced displacement, trafficking in persons, confiscation or destruction of private property, forced labour, recruitment and use of children and child labour, hostage-taking, sexual and gender-based violence, trafficking of weapons and drugs;

(PP9) *Mindful of* the assistance rendered by Private Military and Security Companies to a variety of clients, *inter alia* to governments, **the United Nations, international organizations**, humanitarian actors and peacekeeping missions;

(PP10) *Concerned* about the differentiated **and disproportionate** impacts of the activities of Private Military and Security Companies on different groups of the societies in States where such Companies are operating, and especially individuals and groups in vulnerable situations, including, but not limited to, women, children, ~~and~~ people with disabilities, **indigenous peoples, human rights and environmental defenders, migrants, refugees and asylum seekers;**

(PP10bis) *Emphasizing the need to integrate a gender perspective in all aspects of the regulation of Private Military and Security Companies to ensure that such regulation addresses the experiences and concerns of both men and women;*

(PP10ter) *Recognizing that in all actions concerning children, including in the context of the activities of Private Military and Security Companies, the best interests of the child shall be a primary consideration, and shall be respected in pursuing remedies for violations of the rights of the child, and that such remedies should take into account the need for child-sensitive procedures at all levels;*

The Russian Federation

PPI:

Прежде чем переходить к комментариям по конкретным положениям нулевого проекта документа, мы бы хотели еще раз подтвердить, что считаем преждевременной разработку конкретного документа до решения таких принципиальных вопросов, как правомерность ЧВОК с точки зрения международного права и статус персонала ЧВОК в контексте МГП.

Теперь что касается конкретно пункта PP1 хотели бы отметить, что принципы и цели Устава ООН не ограничиваются теми, которые перечислены в PP1. В связи с этим мы предлагаем включить формулировку «in particular» после слов «Charter of the United Nations» и перед «the sovereign equality», либо сократить данный пункт, как предложил ряд делегаций, и поставить точку после слов «Charter of the United Nations».

PP6:

Хотели бы вновь обозначить нашу позицию применительно к Документу Монрё. Этот документ действительно получил поддержку ряда государств, о чем было неоднократно заявлено рядом делегаций в ходе общего обсуждения. Он действительно отличается качественной проработкой отдельных аспектов, связанных с деятельностью ЧВОК. Однако я повторяю, что уже говорил ранее, он не учитывает подходы значительной части государств к вопросу ЧВОК, не является универсальным, не носит юридически обязывающего характера и содержит ряд спорных моментов, касающихся статуса персонала ЧВОК по МПП, его ответственности за совершенные преступления и других аспектов. Это в равной степени относится и к Международному кодексу поведения частных охранных компаний.

В связи с этим предложили бы либо исключить PP6 из нулевого проекта документа полностью, либо подумать над такими формулировками, которые отражали бы обозначенный нами подход. Соответственно, исключения или корректировки потребует и пункт PP8, поскольку он органически связан с пунктом PP6.

DCAF

Preamble

1. PP 11 encapsulates the essence of States' obligations with regards to PMSC regulation, monitoring, and oversight. We would thus suggest moving it further up, as some of the previous PPs flow from what is laid out in PP 11.
2. In PP 7, we would suggest replacing the term "self-regulation" by "voluntary regimes", given that there currently is no self-regulation by PMSCs. This would be in line with the content stretching from PP6 to PP8.
3. We suggest considering adding a definition of the term "subcontractors", with regards to both natural and legal persons. This is a recurrent practice in the PMSC industry and should be adequately defined to avoid loopholes.

The ICJ

PP2 and PP3 refer to several Human Rights Council resolutions and may be better merged into one single paragraph. (Comment: this sort of PP usually goes in HRC resolutions, but this is not a Resolution to make reference to all these precedent resolutions which are normally of temporary or specific nature. If it is a binding instrument, probably there should not be any such reference as it is not customary to refer to instruments or documents of transitory nature.)

PP4 should be split into two PP to differentiate between a reference to international binding instruments from key substantive content from them. In the first (PP4a) we should add reference to human rights instruments and key fundamental labour rights instruments, such as the ILO 1998 Declaration on Fundamental Principles and Rights at work, which would provide protection to workers of PMSCs.

A second paragraph (PP4b) should refer to obligations to respect and ensure respect to IHL and protect, respect and fulfil human rights, and businesses responsibilities to comply with IHL and respect HR.

PP5 should also be split into two to separate paragraphs. One (PP5a) recognize the duty to protect human rights in the context of PMSCs activities. The other should recognize the duty to provide effective remedies as provided for international human rights law:

“Recognising the need to provide equal and effective access to justice and judicial and other remedies and reparation as provided by international law, including the UN Basic Principles and Guidelines on the right to remedy and reparation”.

In PP7: replace “self regulation” with “voluntary initiatives” - to be consistent with PP8 that talks about “voluntary regimes”

In PP9 we should talk about States (no governments), and add explicit reference to the private sector as client of PMSCs

A new PP should be added to reflect the general principle that “States retain their obligations under international law even if they contract PMSCs to perform certain activities”. Further, the adoption of the Regulatory Framework should not be understood as endorsement of contracting PMSCs to perform certain activities.

B. [PARAGRAPH][ARTICLE] 1

The EU

(1.b)

The EU would like to request some clarifications regarding the meaning of ‘centre of activity’, and suggest the Chair-Rapporteur to consider using ‘principal place of management’ instead [in line with MDF - pg. 10]

On paragraph 1.c, the EU is of the view that the definition of “military services” is both too wide and too vague, which is not easy to characterize. Legal uncertainty must be avoided and definitions should be consistent in all relevant documents.

We would appreciate some clarification on why this paragraph (1.d) refers to ‘private military and/or security company’. In our view “Private Military and Security Company” is an established term and the term should be used consistently throughout the rest of the text [The Montreux document refers to “Private Military and Security Company”.]

(1.e)

The EU would like to suggest adding a ‘comma’ after ‘with’.

“Personnel” means persons employed by, through direct hire or under a contract with, a Private Military or Security Company, including employees and managers;

(1.f)

Similar to our previous comment on the definition of “military services” [in paragraph 1.c], the definition of “security services” is not easy to characterize [MDF pg. 38]. Legal uncertainty must be avoided and definitions should be consistent in all relevant documents.

This paragraph will therefore require further clarification and textual improvement.

(1.g)

The EU has some concerns regarding the definition of ‘State Functions’, it may raise complex legal difficulties, which requires further clarification and textual improvement.

Panama

(c) “Military services” means specialized services that resembles or is related to military action, including strategic planning, intelligence, investigation, reconnaissance, flight operations, manned or unmanned, satellite surveillance, **transfer of military technologies**, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities, whether on land, in the air or at sea, or whether in cyberspace or space;

(j) “Victim” means a person **or group of persons** who suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions **in the context of activities of Private Military and Security Companies** that constitute **gross-violations and abuses of human rights**

abuses and violations of international humanitarian rights—law. A person shall be considered a victim regardless of whether the perpetrator of such abuses and violations is identified, apprehended, prosecuted, or convicted (6).

The Russian Federation

Мы хотели бы выразить нашу позицию сразу по нескольким пунктам данного раздела.

Российская Федерация приветствует включение конкретных определений, на основе которых можно проводить дальнейшую дискуссию, однако полагаем, что некоторые из определений требуют дальнейшей проработки и обсуждения.

В частности, нулевой проект документа содержит такие термины как «государство-контрагент» (contracting state), «государство происхождения» (home state), «государство гражданства» (state of nationality) и «территориальное государство» (territorial state). Полагаем, что могут возникать определенные коллизии, связанные, например, с тем, что персонал ЧВОК может состоять из граждан различных государств. Кроме того, если исходить из текущего определения понятия «территориальное государство», могут возникать ситуации, в которых на такие государства будут возложены обязательства в отношении ЧВОК, находящихся и действующих на территории такого государства незаконно.

Учитывая расхождения в позициях участников группы относительно того, что следует понимать под «военными услугами» и «государственными функциями», предложили бы существенно сократить определения данных терминов и изложить их в следующей редакции:

«Military services» means specialized services that resemble or are related to military action.

«State functions» are functions to be carried out exclusively by State organs and that cannot be outsourced to Private companies or persons.

Кроме того, поддерживаем позицию, озвученную уважаемым представителем Международного сообщества юристов (ICJ) относительно определения понятия «функций государства» (по п. «g») раздела «Определения».

DCAF

- In 1.d., we suggest striking the word “or” and returning to the previously used term “Private Military and Security Company”, which has by now become a standard technical term.
- The general definition of Private Military and Security Companies as used in 1.d. has stood the test of time as witnessed in the implementation of the Montreux Document. We would suggest prioritizing it over 1.c. and 1.f. and consider deleting 1.c. and 1.f.; a too specific list of services as contained in 1.c. and 1.f. might impede the capacity of the document to keep in line with the quickly changing nature of the PMSC industry and the services it provides.

The ICJ

“State functions” or “essential State functions” is an evolving concept and is also different from one society to the other. The concept should be redefined to provide a minimum threshold of activities that should be considered “State function”, leaving each State with the freedom to consider as such other additional activities.

C. [PARAGRAPH][ARTICLE] 2

The EU

Paragraph 2 (a): confusing with regard to the applicability of IHRL and IHL. The text should be amended in order to reflect this issue, e.g. by adding ‘as applicable’ at the end of the sentence.

Paragraph 2(b) refers to:

- ‘**abuses of rights**’:

Could you provide more detail on what abuses of rights refer to? Does this refer explicitly to ‘human rights’, if so it should be clarified.

Some provisions are not necessarily consistent with the Montreux Document and they would seem to go beyond applicable IHL and HR rules.

For example, paragraph 2(d) would “*prohibit Private Military and Security Companies [PMSC] and their personnel from exercising State functions*”, which is not consistent with the **Montreux Document that sees a much more limited prohibition** [at Section A(2) of that Document] **based on existing norms of IHL**.

Moreover, paragraph 2(d): the problem with the prohibition of “State Functions” is also related to the link between the definition of, on the one hand, “State Functions” and, on the other hand, “Military Services” and “Security Services”. If PMSCs are prohibited to exercise “State Functions”, it is hard to understand why, in paragraph 3(2), these companies could nevertheless exercise military and security services which would be prohibited under “State Functions” => **there seems to be some contradiction in the respective definitions**.

Panama

Before paragraph (a): Ensure that the rights of persons are not negatively impacted upon by the activities carried out by Private Military and Security Companies and their personnel;

(a) provide for the regulation of and transparent oversight over the operations of Private Military and Security Companies, their personnel and sub-contractors, by [signatory States][States Parties] according to ~~minimum standards in~~ international law, to ensure the **respect**, protection and fulfilment of human rights and International Humanitarian Law by Private Military and Security Companies and their personnel in the environments wherein they operate;

(c) ensure **access to information**, access to justice and effective avenues of redress and remedy for victims of rights abuses by Private Military and Security Companies, their personnel, and their sub-contractors;

The Russian Federation

Paragraph 2 subparagraph “e”:

Спасибо, господин Председатель!

Я хотел бы принести свои извинения и, если это возможно, вернуться к пункту (paragraph) 2 нулевого проекта документа, в частности, к подпункту “e”. Наша озабоченность связана с положением, содержащимся в сноске 7 (footnote 7). Там, в частности, указано, насколько понимаем, что статус персонала ЧВОК урегулирован международным гуманитарным правом. Вместе с тем, мы исходим из того, что международное гуманитарное право проводит разницу между комбатантами, гражданскими лицами и наемниками, однако не содержит четких и недвусмысленных положений относительно статуса персонала ЧВОК.

Хотели бы вновь напомнить то, о чем заявляли в ходе общего обсуждения. Исходим из того, что вопрос о правовом статусе ЧВОК и их персонала в международном праве до сих пор не разрешен, в связи с чем считаем преждевременными дискуссии в отношении детальных вопросов, связанных с правовым регулированием таких компаний.

D. [PARAGRAPH][ARTICLE] 3

The EU

The scope of this instrument in paragraph 3(1) applies to the activities of PMSCs carried out in the territory outside its Home State only. We would like to recall our comment made during the informal consultation and the opening statement, and would appreciate some clarifications as to why paragraph 3(1) refers specifically to the activities of PMSCs carried out outside the territory of Home State.

In the EU's view, it would be important that any Instrument covers all businesses in a non-discriminatory manner, should be consistent with the UN Guiding Principles on Business and Human Rights, should be realistically implementable and enforceable.

MDF [pg 38] also mentions that PMSCs encompass all companies that provide either military or security services or both.

The ICJ

Paragraph 1 should be deleted because it creates confusion. Only paragraph 2 should be maintained in a reformulated way:

“This instrument shall apply to all situations, including situations of armed conflict, to the relationship between States and PMSCs”

E. [PARAGRAPH][ARTICLE] 4

Argentina

We suggest replacing the word "steps" with "MEASURES":

"[Signatory States][States Parties] [undertake to][shall] take appropriate MEASURES to criminalise in their domestic law abuses by Private Military and Security Companies and their personnel of international human rights law and violations of International Humanitarian Law".

The Russian Federation

Paragraph 4 subparagraph 2:

В подпункте 2 пункта 4 нулевого проекта документа содержится положение о криминализации государствами в их национальном праве определенных деяний ЧВОК и их персонала. В Уголовном кодексе Российской Федерации и, насколько нам известно, ряда других государств, не предусмотрена уголовная ответственность юридических лиц, компаний. В связи с этим полагаем, что текст данного пункта нуждается в определенной доработке.

The ICJ

Article 5.1 should be moved up here (after current 4.1):

“States shall adopt legislative and other measures to regulate and provide oversight and accountability over PMSC, their personnel and services, in accordance with the provisions of this (instrument) (Convention)”

Current paragraph 4.2. should be redrafted:

“In accordance with their international obligations, States parties shall ensure that their domestic law criminalises conduct of PMSCs or their personnel that constitutes grave breaches of the Geneva Conventions of 1949 and Additional Protocol I of 1977 and other crimes, including war crimes, crimes against humanity and genocide.”

In relation to 4.4:

The ICJ agrees that National law should prohibit the contract of services that entail PMSC personnel direct participation in hostilities and should attach criminal sanctions to the breach of such a prohibition.

In addition, Contracting States should have the obligation not to put PMSC staff into ambiguous situations in order to maintain a clear distinction between civilians and combatants and to avoid that such staff lose their protection as civilians in armed conflict.

Therefore, paragraph 4.4 should be redrafted in the following way:

“States shall not employ services of PMSC and their personnel in activities that entail direct participation in hostilities that would result in such personnel directly participating in hostilities.”

Consistent with States’ obligations under international human rights law, a PMSC must not be contracted to perform “core State activities which involve the use of force and the detention of persons” without final supervision and decision-making power in the hands of State officials.

F. [PARAGRAPH][ARTICLE] 5

The EU

Paragraph 5(3.a) refers to the integration of ‘IHL principles’. If PMSC operate in times of armed conflict, they must integrate IHL across their operations, not only the principles thereof.

[See e.g. requirements at page 33 of the Montreux Document: **adequate internal policies and training.**]

(5.3.e)

The EU would like to suggest adding ‘**International**’ Human Rights [...].

We would like to request the drafters to share further clarification on this paragraph, and its relations with the legal principle of ‘presumption of innocence’.

(5.3.f)

We would appreciate some clarification regarding these standards, for example by indicating it in a footnote (i.e. legal instruments drawn up by ILO’s tripartite constituents).

Panama

Please find below Panama’s language proposals on obligations with respect to registration, licensing and recruitment. Best regards, Grisselle.

(3) [Signatory States][States Parties] [undertake to][shall] require Private Military and Security Companies, to qualify for a license, to adopt policies providing for:

(b) gender commitments prohibiting discrimination and promoting gender and other forms of diversity and gender-specific internal policies; **(Panama strongly supports the retention of this paragraph)**

Paragraph 3.b(bis): undertaking human rights, labour and environmental impact assessments prior and throughout their operations;

(c) ensuring training in international human rights law and International Humanitarian Law, the rules relating to the use of force and the use of weapons, **and on this Instrument;**

(d) effective recruitment, selection and vetting procedures for personnel to prevent the employment of persons suspected of or convicted for human rights abuses and International Humanitarian Law violations as well as sexual and gender- based violence **and violence against children;**

(e) effective internal mechanisms for monitoring, supervising and ensuring accountability for alleged abuses of **international** human rights law and violations of International Humanitarian Law; and

(f) compliance with fundamental international labour **and environmental** standards. (10).

The Russian Federation

Paragraph 5 Subparagraph 3 «b»:

Российская Федерация предлагает исключить этот пункт в связи с тем, что он основан на использовании неконсенсусной терминологии, в частности, понятие «gender» является неконсенсусным термином на международных площадках, в том числе в ООН, и не разделяется частью стран мира.

Кроме того, затрагиваемая в указанном пункте проблематика не входит в предмет регулирования разрабатываемого группой документа.

DCAF

5.1. and 5.2. currently do not contain qualitative requirements on regulation, monitoring, and oversight. The mere existence of a law on PMSC or of a licensing system do not per se constitute an effective protection of human rights and respect for IHL. In addition, the adjective “effective” in 5.2 does not provide sufficient clarity. There are specific, detailed obligations in 5.3. but those are placed de facto on companies (via their policies), not States.

Keeping in mind PP 11, we would suggest the paragraph/article start by clearly laying out States’ obligations to adequately regulate, monitor and oversee the PMSC sector. We would therefore propose that 5.1. and 5.2. be merged to establish the need for effective public legal and policy frameworks as well as processes with regards to the regulation, monitoring, and oversight of PMSCs. Subsequently, a series of sub-points would elaborate on what these frameworks and processes should contain:

- Move the elements currently under 3.a. to 3.f. here to lay out the obligations of States with regards to international human rights law and international humanitarian law requirements;
- Rely on the Good Practices contained in the Montreux Document, particularly those regarding Home States (53 – 73);
- Add further elements on process set-up and functioning taken from DCAF’s [Legislative Guidance Tool for States to Regulate Private Military and Security Companies, including](#) and particularly:
 - Permitted and prohibited activities of PMSCs
 - Dedicated authority/authorities for PMSCs regulation
 - Authorisation, licensing, and registration processes for PMSCs
 - Vetting, selection, and contracting of PMSCs
 - Responsibilities of PMSCs and their personnel
 - Accountability and effective remedies processes for victims

A renewed 5.3. could continue to address specific obligations of PMSCs as well as welcoming them entering voluntary commitments beyond the content and scope of the present document.

The current approach to ensure PMSC compliance – as laid out in 5.4. – seems to focus on criminalising PMSC activities that take place without a registration or license and authorisation. From our work experience the main reason for non-respect is not the lack of criminalisation in domestic legislation, but rather the lack of effective public human and financial capacities to regulate, monitor, and hold PMSCs accountable and thus ensure implementation of the prior provisions in 5. We would thus suggest adding the following wording: “States [undertake to] [shall] ensure adequate human and financial resources are

available for the regulation, monitoring, and oversight of Private Military and Security Companies”. This could either be a new 5.5. or substitute the current wording in 5.4.

The ICJ

Paragraph 5.4 should be slightly changed:

“States parties shall monitor the activities of Private Military and Security Companies and their personnel and apply sanctions when these activities are undertaken without the required registration or license and authorization, including the export and import of military and security services”

A new paragraph 5. 6. Should be added:

“States parties shall establish independent competent authorities to provide for monitoring, accountability and oversight of the PMSCs industry”

G. [PARAGRAPH][ARTICLE] 6

The EU

(6.1.a)

The EU would like some clarification regarding this paragraph.

Panama

Without prejudice to the other obligations provided for in this Instrument, Contracting States [undertake to][shall], when entering into contracts with Private Military and Security Companies, ensure that such government contracts:

Paragraph 1.a(bis): integrate due diligence requirements in line with the UN Guiding Principles on Business and Human Rights to ensure that their activities do not contribute directly or indirectly to violations and abuses of human rights and violations of international humanitarian law. Private Military and Security Companies operating in conflict-affected areas should be required to conduct heightened human rights due diligence;

Paragraph 1.a(ter): ensure access to information to interested parties;

(b) ~~prevent~~ **prohibit** the personnel of Private Military and Security Companies from engaging in any conduct amounting to either direct participation in hostilities or the exercising of State Functions;

H. [PARAGRAPH][ARTICLE] 9

Argentina

Change the title: "OBLIGATIONS OF States of Nationality".

I. [PARAGRAPH][ARTICLE] 10

The EU

Paragraph 10(2) refers to “offences”, while in other parts the Instrument refers to “violations” => Could the Chair-Rapporteur provide more detail on whether these two terms have the same meaning and are therefore interchangeable?

(10.2.c)

We would appreciate some clarification regarding the term ‘ordinarily resident’. Could you provide more detail on what it refers to? whether this term is based on and origin from an existing international human rights instrument/framework, doctrine or otherwise?

(10.2.e.)

The EU would like to request some clarifications regarding this paragraph, especially concerning the fact that it seems to allow the judge to have a sort of universal jurisdiction.

Argentina

a. With respect to the concept of "applicable offences", clarify its scope in the text of the instrument. It is possible to refer to Article 4(2), or include a definition in Article 1 ("Definitions").

b. Regarding the concept of territory "under the control" of States as distinct from territory "of" States in subparagraphs (a) and (e), our delegation considers it necessary to understand the scope of the concept of territory "under the control" of States as distinct from territory "of" States in subparagraphs (a) and (e) above.

Therefore, in this instance, we reserve this reference and request that it is corked.

c. Consider the inclusion of a reference to the jurisdiction of States over offences committed in their territorial sea, in accordance with the international law of the sea, as reflected in the United Nations Convention on the Law of the Sea (UNCLOS), in particular Article 27. With regard to the reference to the criminal jurisdiction of States in the exclusive economic zone and on the high seas, it is suggested that paragraph (e), in its second part, be reworded in accordance with the provisions of UNCLOS concerning the jurisdiction of States with regard to offences committed in the aforementioned maritime spaces, as follows:

"including TO THE EXTENT ALLOWED BY THE INTERNATIONAL LAW OF THE SEA".

d. With regard to the reference to "crime under international law" in paragraph e) in fine, we consider as necessary to specify the scope of this concept in the text of the instrument under negotiation, insofar as it appears as an additional criterion to those contemplated as enabling jurisdiction in the general jurisdiction clause under examination.

e. In addition, we highlighted the need to have a rule that provides a criterion for resolving conflicts of international jurisdiction, given that the criteria for conferring jurisdiction in many cases include overlapping situations of jurisdiction.

f. With regard to subparagraph (f), we suggest that the word "are" is replaced by "IS", so that it begins with "by an alleged offender who IS present in the territory".

g. With respect to paragraph 3, we suggest the following re-wording

"This Instrument does not exclude any additional grounds of criminal jurisdiction that EXIST under international law or under the domestic law of the [signatory States] [States Parties]."

Inclusión of the following note to Article 10. A and C:

<i>"This article shall only have effects for the purposes of the present instrument and its clauses and shall have no legal implications over territorial disputes or be interpreted as a change in the position of the parties involved in such disputes with regard to sovereignty".</i>

The ICJ

It should be clarified that paragraph 10.1 refers to jurisdiction over civil claims against PMSCs.

Paragraph 10.2 refers to jurisdiction over crimes. It should make reference to the crimes provided for under current Article 4.2.

J. [PARAGRAPH][ARTICLE] 11

The EU

(11. a)

Arms Trade Treaty (Art I para 2): the EU would like to propose to modify this paragraph as follows ‘regulate the acquisition, licensing, transfer and use of weapons by Private Military and Security Companies and their personnel in accordance with established international standards relating to arms control and norms, including IHL’.

Panama

REGULATION OF THE USE, ~~AND~~ ACQUISITION **AND TRANSFER** OF WEAPONS

[Signatory States][States Parties] [undertake to][shall] adopt legislation to:

(1) regulate the acquisition, licensing, import, export and use of weapons by Private Military and Security Companies and their personnel in terms of international standards relating to arms control;

(New)Paragraph 1.a(bis): prohibit Private Military and Security Companies and their personnel from using weapons and/or engage in any activities related to certain types of weapons, such as weapons of mass destruction, weapons which cause superfluous injury or unnecessary suffering, or which are to cause widespread, long-term and severe damage to the environment, as well as from trafficking in firearms, their parts, components or ammunition and other related accessories;

(New)Paragraph 3: [Signatory States][States Parties] [undertake to][shall] refrain from transferring arms when they assess, in accordance with applicable domestic laws, regulations and procedures and international obligations and commitments, that there is a clear risk that such arms might be used to commit or facilitate serious violations or abuses of international human rights law or serious violations of international humanitarian law.

DCAF

- We suggest adding the words “as well as the use of force” to the title so that it reads “REGULATION OF THE USE AND THE ACQUISITION OF WEAPONS AS WELL AS THE USE OF FORCE”. This is because the use of force by PMSCs is not per se tied to weapons; it can also take place e.g. through brute force.

- In 1.a., we suggest adding the words “storage” and “transport”. Violations of human rights and IHL by PMSC do not happen during storage or transport; however numerous weapons get robbed during storage and transport for a variety of reasons and can become a threat for human rights and IHL subsequently as part of illegal arms flows.

In 1.a. (or as separate letter, i.e. 1.b.) we suggest including the imperative need for States to legislate on the specific requirements for the use of force by PMSCs. A wording suggestion would be: “clarify that the use of force by PMSC must be guided by the personal right to self-defence unless explicitly authorised by law to perform wider tasks.”

The use of force is an exclusive State prerogative; however, we have witnessed that due to a lack of specific rules, States and PMSCs alike tend to apply by analogy the rules on the use of force applied to public officials, even if the conditions and the limitations for the use of force by PMSCs are fundamentally different; this then results in severe challenges to human rights. The legal basis for PMSCs to use force shall be the same as for any individual citizen, meaning that the use of force by PMSCs must be guided exclusively by the personal right to self-defence. Please refer to the corresponding [DCAF guidance](#) for more information.

K. [PARAGRAPH][ARTICLE] 13

Panama

(1) [Signatory States][States Parties] [undertake to][shall] ensure, through judicial, administrative, legislative or other appropriate means, that victims of abuses of human rights and violations of International Humanitarian Law within their territory or under their jurisdiction shall have equal, ~~and~~ effective, **child-friendly and gender-sensitive** access to a remedy and adequate, effective and prompt reparations. (13)

(New) Paragraph 1(bis): [Signatory States][States Parties] [undertake to][shall] guarantee that victims are treated with humanity and respect for their dignity and human rights, and their personal integrity, safety, physical and psychological well-being and privacy shall be ensured;

(New) Paragraph 1(ter): [Signatory States][States Parties] [undertake to][shall] guarantee victims access to information in relevant languages and accessible formats to adults and children alike, including those with disabilities, and legal aid relevant to pursue effective remedy;

The ICJ

Paragraph 13.2 should start with a caveat: “Without prejudice to paragraph 13.1...”

Consider merging article 14 and article 13.

L. [PARAGRAPH][ARTICLE] 14

Argentina

Clarify what interpretation should be given to this concept, making it clear whether it is different from "applicable offences".

M. [PARAGRAPH][ARTICLE] 15

The EU

Paragraph 15.1 refers to prosecution of the ‘crimes covered by the instrument’. Could you provide more detail on what the term crimes refers to?

Brazil

[PARAGRAPH] [ARTICLE] 15

MUTUAL LEGAL ASSISTANCE,

[Signatory States] [States Parties] [undertake to] [shall] provide one another with mutual legal assistance in the investigation and prosecution of the crimes covered by the Instrument.

[PARAGRAPH] [ARTICLE] 15 bis EXTRADITION AND SURRENDER

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

(2) If the law of the Requested State does not allow the extradition of its citizens on the grounds of their nationality, the Requested State shall, by request of the Requesting State, submit the case to its competent authorities so that, if needed judged, procedures suitable can be performed. Such request shall be accompanied by the relevant procedural documentation and evidence relating to the offense. The Requesting State shall be informed of the outcome of the case.

Argentina

Take note of the Multilateral treaty under discussion.

Panama

(New) Paragraph 1(bis): States Parties may invite any State not party to this Instrument to provide mutual legal assistance and international judicial cooperation under this Article on the basis of an *ad hoc* arrangement, an agreement with such State or any other appropriate basis.

N. [PARAGRAPH][ARTICLE] 16

CSEND

Suggest to add a new 16 (2): **(Signatory States) (States Parties) agree to establish a monitoring and reporting mechanism which will report on their implementation of the International Regulatory Framework on PMSCs. Monitoring and Reporting will be undertaken by their respective National Contact Point. Monitoring shall be ongoing and the reporting shall be conducted on a biannual basis. The respective reports will be collected and disseminated to the membership by the secretariat.**

O. [PARAGRAPH][ARTICLE] 17

The EU

Paragraph 17 is formulated in a restrictive way: only IHL is concerned, while the text also refers to IHRL. Moreover, it is unclear why references are limited to the GC and APs, noting that not all states are HCP (High Contracting Parties) to the APs.

The EU would like to propose a textual suggestion as follows: ‘This Instrument is without prejudice to the principles and rules of International Humanitarian Law and International Human Rights Law’.

P. [PARAGRAPH][ARTICLE] 18

Argentina

In the event that a legally binding instrument is adopted, it would be important for Argentina that such a mechanism be of a compulsory nature.
