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SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

**Mandate of the Working Group on the use of mercenaries as a means of violating human rights
and impeding the exercise of the rights of peoples to self-determination**

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Excellency,

Since its establishment in 2005, 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” has repeatedly expressed its concern at the human rights’ impact of private military and security companies (PMSCs) operating in conflict or post-conflict areas. It stressed in particular the legal gaps regarding the jurisdiction applicable to PMSCs and the need to reaffirm the responsibilities of States regarding the activities of private PMSCs. The Working Group recommended in its reports to the Human Rights Council and to the General Assembly that a new international legal instrument in the format of a new convention on PMSCs be elaborated and adopted by the United Nations.

Against this background, the Human Rights Council Resolution A/HRC/10/11 of 26 March 2009 requested the Working Group to “share with Member States, through the Office of United Nations High Commissioner for Human Rights, elements for a possible draft convention on private military and security companies, to request their input on the content and scope of such a convention [...]”.

Accordingly, the Working Group engaged in a consultative process at national and regional levels with member States, intergovernmental and non-governmental organizations and academic networks seeking their views with respect to the possible elements which could be enshrined in a new draft convention. Based on its consultations, the Working Group notes that an increasing number of actors from the Government, civil society and even the industry are calling for further clarification of the State’s responsibilities regarding the activities of PMSCs, and for the development of stronger regulation, oversight and monitoring at national and international level.

In addition, the Working Group is aware of the existing initiatives undertaken to promote the industry’s respect for international human rights and humanitarian law standards, including industry-wide self-regulation mechanism. The Working Group welcomes these efforts but believes that they are not sufficient. It trusts that the adoption of a new international legal instrument within the United Nations would provide a clear international legal framework to effectively monitor abuses and violations of human rights

committed by PMSCs and provide an independent avenue for redress for victims of such violations.

Pursuant to the above-mentioned Human Rights Council Resolution, the Working Group has the honour to share with you for your consideration and comments the attached "Note on elements for a possible draft convention on Private Military and Security Companies".

The guiding principles of such a convention would be to:

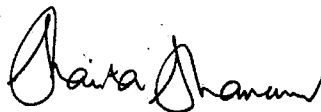
- i. Reiterate the fundamental principles of State responsibility for the exercise of the legitimate use of force;
- ii. Reaffirm the State's primary obligation to ensure respect for human rights and humanitarian law by PMSCs they contract;
- iii. Define the parameters of inherent State functions that cannot be outsourced, in any context or circumstances, to PMSCs;
- iv. Propose international and national regulatory principles for the activities of PMSCs, through the establishment of licensing and registration arrangements;
- v. Establish an independent international oversight and monitoring mechanism; and
- vi. Provide an avenue of redress for victims.

The Working Group will report to the fifteenth session of the Human Rights Council on the progress achieved in the elaboration of the draft legal instrument, in particular on member States' views of the content and scope of a possible draft convention on the regulation, oversight and monitoring of private military and security companies.

The Working Group invites all member States to carefully consider the annexed "Note on elements for a possible draft convention on Private Military and Security Companies" and provide general and/or specific comments. The Working Group also attaches a working text elaborated after consultation with a significant number of institutions and experts which illustrates how the elements could be reflected in a possible convention.

Comments can be submitted in writing through Ms. Julie Tétard, Human Rights Officer in the Office of the High Commissioner for Human Rights at mercenaries@ohchr.org. We would be most grateful if you could provide your comments by 15 March 2010.

Please accept, Excellency, the assurances of my highest consideration.



Shaista Shameem
Chairperson-Rapporteur

Working Group on the Use of Mercenaries as a means of violating human rights
and impeding the exercise of the rights of peoples to self-determination

Note on elements for a possible draft convention on Private Military and Security Companies (PMSCs)

Preamble

The preamble makes reference *inter alia* to:

- The General Principles enshrined in the Charter of the United Nations: the *erga omnes* obligations, the principles of sovereign equality of all States, the territorial integrity and political independence of every State, the right of self-determination of peoples, and the prohibition of the threat and use of force in international relations;
- The principles and rules of international human rights and humanitarian law and their complementarity;
- The universal principle of non-discrimination;
- The International Law Commission's Articles on State Responsibility;
- The principles contained in the Rome Statute of the International Criminal Court;
- The duty of all States to protect all persons, whether civilians or military personnel, from and to prevent international human rights and humanitarian law violations, to investigate violations and, where appropriate, to prosecute and punish offenders as well as to provide adequate remedies to the victims;
- The duty of all States to prevent violations of international human rights and humanitarian law or other abuses committed by or involving transnational corporations and other business enterprises;
- The duty of every State to exercise its criminal jurisdiction over those responsible for international crimes;
- The right of victims of violations of international human rights and humanitarian law committed by the personnel of PMSCs to a comprehensive and effective remedy, including medical and psychological care, and rehabilitation as well as for their social and economic inclusion;
- The principles contained in relevant international conventions for the protection of cultural property in the event of armed conflict and the protection of the diversity of cultural expressions;
- The United Nations Code of Conduct for Law Enforcement Officials; the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the United Nations Non-Binding Guidelines on the Use of Military or Armed Escorts for Humanitarian Convoys;
- The Montreux document.

Purposes of the Convention:

The purposes of this Convention are to:

- Reaffirm and strengthen the State responsibility for the use of force and reiterate the importance of the State's monopoly on the legitimate use of force;
- Identify those functions which are inherent State functions and which cannot be outsourced under any circumstances;
- Regulate the activities of PMSCs and sub-contractors;
- Promote international cooperation between States regarding licensing and regulation of the activities of PMSCs in order to more effectively address any challenges to the full implementation of their human rights obligations including the right to self-determination;
- Establish and implement mechanisms to monitor the activities of PMSCs and violations of international human rights and humanitarian law, in particular any illegal or arbitrary use of force committed by PMSCs, prosecute the violators and provide remedies to the victims.

Definitions:

The following definitions are proposed:

- **Private Military and/or Security Company (PMSC):** a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities.
- **Military services:** specialized services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, military training and logistics, material and technical support to armed forces and other related activities.
- **Security services:** armed guarding or protection of buildings, installations, property and people, police training, material and technical support to police forces, elaboration and implementation of informational security measures and other related activities.
- **License (authorization, permit):** a special document authorizing specified activities under the strict observance of licensing terms and obligations, which is issued by a licensing body to a legal entity or a physical person.
- **Licensing regime:** a regime of measures related to the issuing of a license, redrafting documents, confirming license, suspension of license on grounds of violation of obligations and provisions of the license, cessation or resumption of license, withdrawal of license, control of licensing bodies over the observance of obligations and terms of license by licensees in their activities, introduction of license registries as well as provision in an established way of information from license registries and other licensing information by interested persons.
- **License registry:** the data pool related to the issuing of license, redrafting documents, confirming license, suspension or resumption of license, and

withdrawal of license; a license registry must operate pursuant to written minimum standards.

- **Export of military and/or security services:** an export of military and/or security services from the home state in which a PMSC is registered or an export of military and/or security services which a PMSC provides outside the state in which it is registered or where it has its principle place of management or headquarters.
- **Import of military and/or security services:** an import of military and/or security services which a PMSC registered in a foreign State provides.
- **Inherent State functions:** functions that a State cannot outsource or delegate to PMSCs. Among such functions, consistent with the principle of State monopoly on the legitimate use of force, are direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, use of and other activities related to weapons of mass destruction and police powers, especially the powers of arrest or detention including the interrogation of detainees.
- **Contracting States:** States that directly contract with PMSCs for their services, including, as appropriate, where such a company subcontracts with another PMSC or where a PMSC operates through its subsidiary companies.
- **States of operations:** States on whose territory PMSCs operate.
- **Home States:** States of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, the State where the company has its principal place of management or headquarters is the home State.
- **Third States:** States whose nationals are employed to work for a PMSC.
- **Inter-governmental organization:** an organization being based on a formal instrument of agreement between the governments of nation states, including three or more nation states as parties to the agreement and possessing a permanent secretariat performing ongoing tasks.
- **Committee:** the Committee on Regulation, Oversight and Monitoring of PMSCs as established by this Convention.
- **Complaint:** any complaint submitted by a State Party to this Convention to the Committee on Regulation, Oversight and Monitoring of PMSCs.
- **Petition:** a communication submitted by or on behalf of an individual or group to the Committee on Regulation, Oversight and Monitoring of PMSCs.

Scope of application:

This Convention shall apply:

- To States and inter-governmental organizations in relation to the regulation, oversight and monitoring of activities and personnel of PMSCs.
- To all situations regardless of the existence or not of an armed conflict.
- Without prejudice to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989.

General Principles:

The Convention shall reiterate and be based on the following principles:

- **State responsibility for the legitimate use of force**
 - Each State party bears responsibility for the military and security activities of PMSCs registered or operating in their jurisdiction, whether or not these entities are contracted by the State.
 - No State Party can delegate or outsource inherent State functions to PMSCs.
 - Each State Party, in accordance with its domestic law, shall take legislative and other measures required to introduce full or partial prohibition on the delegation or outsourcing of military and/or security services.
- **Rule of law**
 - States Parties shall ensure that PMSCs, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international human rights and humanitarian law.
 - States Parties shall ensure that any contract or agreement on provision of military and/or security services entered into by PMSCs as well as their employees is consistent with the legislation of the home State, the contracting State and the State of operations.
- **State sovereignty**
 - States Parties shall ensure that PMSCs under no circumstances carry out activities that undermine the sovereignty of another State, its territorial integrity and/or that contravene to the principle of sovereign equality and obligation of non-intervention in the domestic affairs of other States.
- **Respect and protection of international human rights and humanitarian law**
 - Superiors of PMSC personnel, such as:
 - a. governmental officials, whether they are military commanders or civilian superiors, or
 - b. directors or managers of PMSCs,may be liable for crimes under international law committed by PMSC personnel under their effective authority and control, as a result of their failure to properly exercise control over them, in accordance with the rules of international law. Superior responsibility is not engaged solely by virtue of a contract.
- **Prohibition to delegate and/or outsource inherent State functions**
 - States parties shall define and limit the scope of activities of PMSCs and specifically prohibit functions which are inherent State functions, including direct participation in hostilities, waging war and/or combat

operations, taking prisoners, law-making, espionage, intelligence, use of and other activities related to weapons of mass destruction and police powers, especially the powers of arrest or detention including the interrogation of detainees.

▪ **Prohibition to delegate and/or the use of certain arms**

- Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel under no circumstances use, threaten to use and/or engage in any activities related to nuclear weapons, chemical weapons, biological and toxin weapons, their components and carriers.

▪ **Prohibition for PMSCs and their personnel on illegal acquisition, illegal possession or trafficking of firearms, their parts and components and ammunition.**

National legislative regulation, oversight and monitoring:

▪ **Specific legislative regulation**

- Each State Party shall elaborate and adopt comprehensive national legislation to regulate the activities of PMSCs.

▪ **National regime of regulation and oversight**

- Each State Party shall establish a comprehensive domestic regime of regulation and oversight over the activities on its territory of PMSCs and their personnel including all foreign personnel, in order to prohibit and investigate illegal activities as defined by this Convention.
- States Parties shall investigate reports of violations of international human rights and humanitarian law by PMSCs and ensure civil and criminal prosecution and punishment of offenders.
- States Parties shall take appropriate action against companies that commit violations of international human rights and humanitarian law or criminal incidents, *inter alia* by revoking their licenses and reporting to the Committee on Regulation, Oversight and Monitoring of PMSCs on all violations committed by these companies.

▪ **Licensing**

- Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel carry out their activities exclusively under the respective licenses and authorizations.
- Each State Party shall establish minimum criteria to grant licenses and authorizations to PMSCs, including the training and vetting of the personnel.

▪ **Licensing import and export of military and/or security services**

- Each State Party shall take such legislative, judicial, administrative and other measures as may be required to ensure that PMSCs and their personnel import and export their services only under the respective licenses and authorizations. The license and authorization for operations related to the export of military and/or security services shall be issued by the respective body of the State Party in which territory the PMSC has its permanent residence under the relevant domestic law.
- Each State Party which imports private military and/or security services shall publicize their scope and activities and keep the Committee on Regulation, Oversight and Monitoring of PMSCs informed about its licensing regime as well as provide regular and up-dated information on any changes to the import of these services.

▪ **Registration and accountability**

- Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary to establish:
 - a. Specific and obligatory procedures on governmental registration of PMSCs;
 - b. Specific legal requirements for persons employed by PMSCs concerning *inter alia* their training and experience;
 - c. A ban on the registration of PMSCs offshore.
- Each State Party shall establish and maintain a general State registry of PMSC operating in their jurisdiction.
- Each State Party shall identify or establish a governmental body responsible for the registry of PMSCs and exercise oversight of their activities.

▪ **State obligations vis-à-vis the personnel of PMSC**

- States parties shall ensure that the personnel of PMSCs are professionally trained, examined and vetted according to the applicable international standards for military and/or security services and for the use of specific equipment and firearms and according to the procedures established by the State party in which territory the PMSC is registered.
- Each State party shall ensure that the personnel of PMSCs respect the sovereignty and laws of the receiving country and strictly observe international human rights and humanitarian law.

▪ **Regulation of the use of force and firearms**

- Each State Party shall establish rules on the use of force and firearms by the personnel of PMSCs.
- Each State Party shall ensure that the personnel of PMSCs use force only when strictly necessary and to the extent authorized by the State for the performance of their duty.
- If a PMSC provides its services under an agreement with the armed forces or military units of a State Party, the use of force shall be regulated by the

norms of its military and other respective legislation and relevant international human rights and humanitarian law.

- Each State party shall ensure that the excessive, arbitrary or abusive use of force and firearms by PMSC personnel is prosecuted and punished as a criminal offence under the law of the contracting State, State of operations or home State.

State responsibility to impose penal sanctions and provide remedies

■ Criminalization of offenses in the sphere of military and security services

- The States Parties shall penalise the export and import of military and/or security services without the required licenses and authorizations.
- The States Parties shall investigate, prosecute and punish the violations of this Convention and ensure effective remedies for victims.

■ Establishment of jurisdiction

- The States Parties shall establish their jurisdiction for offenses committed on their territory or by one of their national. They shall be entitled to establish their jurisdiction for offenses committed against one of their national, committed by a stateless person having habitual residence on their territory, when the offense is subject to universal jurisdiction or in the case the offender is present in their territory and they do not extradite him to any of the States that have established its jurisdiction.
- This Convention does not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its national law.
- War crimes, crimes against humanity, genocide and grave breaches of the Geneva Conventions of 1949 and Additional Protocols of 1977, as defined in existing international legal instruments, are to be penalized under this Convention.

■ Extradition

- Offenses to be penalised under this Convention shall be included as extraditable offenses in any extradition treaty between State parties and in any extradition treaty to be subsequently concluded to them.

■ Mutual legal assistance

- The States Parties shall afford one another mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offenses covered by this Convention and reciprocally.

■ Transfer of criminal proceedings

- This Convention allows for the possibility of transferring proceedings to another State for the prosecution of offenses under the Convention if in the interest of the proper administration of justice.

- The Convention envisages that cases may be referred to the International Criminal Court.
- **Liability of legal persons and entities:**
 - The States Parties shall adopt the necessary measures to establish the criminal, civil and/or administrative liability of legal persons and entities (PMSCs) for participation in serious crimes or offenses penalized under this Convention. Such liability shall be without prejudice to the criminal liability of the natural persons who have actually committed the offenses.
 - The States Parties shall lift any immunity applicable to PMSCs and their personnel under other conventions or agreements.
- **Compensation and rehabilitation of victims:**
 - The States Parties shall establish a fund to rehabilitate victims of offenses under this Convention, without prejudice to the obligation of PMSCs to directly compensate victims of violations.

Obligations of inter-governmental organizations

- Inter-governmental organizations parties to the Convention shall monitor compliance with this Convention and investigate reports of violations of international human rights and humanitarian law by any member State with a view of remedying such violations or referring appropriate cases to a competent tribunal.
- Inter-governmental organizations parties to the Convention shall ensure the strict adherence to international human rights and humanitarian law by the personnel of PMSCs they have contracted and that activities of PMSCs do not violate, directly or indirectly, international human rights and humanitarian law.

Obligations of PMSCs

- PMSCs and their employees shall respect, ensure respect of and protect human rights recognized in international as well as national law.
- PMSCs and their employees shall abide by the international standards for corporate responsibility to respect all internationally recognized human rights.
- PMSCs and their employees shall have the responsibility to use due diligence in ensuring that their activities do not contribute directly or indirectly to human rights abuses and to causing or exacerbating inter or intra-state warfare or conflict.
- PMSCs and their employees shall abide by the national law of the countries of origin, transit and operation.
- PMSCs and their employees shall not carry out activities defined as inherent State functions under this Convention.

International Oversight and Monitoring

Under this Convention, a Committee on the Regulation, Oversight and Monitoring of PMSCs is to be established, which would be responsible for:

- Receiving States parties' periodic reports on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention.
- Receiving, examining and undertaking proceedings on **inquiries** from States parties indicating that a PMSC is operating in violation of international human rights and/or humanitarian law, transmitting its findings to the States concerned together with its suggestions in view of the situation.
- Receiving **petitions** from individuals and groups of individuals claiming to be victims of a violation by a State Party of the rights set forth in this Convention on the condition that the Party concerned has made a declaration that it recognizes the competence of the Committee to receive and consider such petitions.
- Receiving **complaints** from States parties that consider that another State Party is not giving effect to the provisions of the Convention and, if deemed necessary and with the unanimous consent of the parties to the dispute, appointing an ad hoc Conciliation Commission in a view to an amicable solution of the matter on the basis of respect for the Convention.

Final provisions

The Convention comprises regular provisions regarding signing, ratification, entry into force, languages etc.

**Mandate of the Working Group on the use of mercenaries as a means of violating human rights
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Addendum to the
'Note on elements for a possible draft convention on
Private Military and Security Companies (PMSCs)'

**Working text for a possible draft convention
on Private Military and Security Companies (PMSCs)**

The Parties to the present Convention,

PP 1: *Reaffirming* the General Principles enshrined in the Charter of the United Nations, the *erga omnes* obligations related to the protection of human rights and the strict adherence to the principles of the sovereign equality of all States, the territorial integrity and political independence of every State, the right of self-determination of peoples, the prohibition of the threat or the use of force in international relations, the prohibition of propaganda for war and the prohibition of interference into affairs which are essentially within the domestic jurisdiction of any State,

PP 2: *Further reaffirming* the principles and rules of international humanitarian and human rights law and their complementarity,

PP 3: *Bearing in mind* the universal principle of non discrimination contained in all international human rights instruments and the basic labor rights recognized in the ILO conventions,

PP 4: *Recalling* the International Law Commission's Articles on State Responsibility,

PP 5: *Conscious of* the international commitment to prevent impunity for war crimes and crimes against humanity, and affirming in this connection the principles contained in the Statute of Rome of the International Criminal Court,

PP 6: *Acknowledging* the duty of all States to prevent human rights violations through legislative and other measures, the duty to investigate reports of violations and, where appropriate, prosecute and punish offenders as well as to provide adequate remedies to the victims,

PP 7: *Further acknowledging* the duty of all States to prevent violations of human rights or other abuses committed by or involving transnational corporations and other business enterprises,

PP 8: *Bearing in mind* other relevant international conventions, including the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and its two Protocols, and the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and other relevant principles,

PP 9: *Concerned* about the increasing delegation or outsourcing of inherent State functions which undermine any state's capacity to retain its monopoly on the legitimate use of force,

PP 10: *Taking into consideration* the current International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 4 December 1989,

PP 11: *Considering* that responsibility for violations of international humanitarian and human rights may be imputable not only to States but also to inter-governmental organizations and non-State actors, including Private Military and Security Companies (PMSCs), and that mechanisms must be devised to ensure the accountability of States, inter-governmental organizations and PMSCs,

PP 12: *Aware of* the United Nations Global Compact initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption,

PP 13: *Determined* to take all necessary measures to combat impunity by establishing jurisdiction and devising mechanisms to investigate reports of criminal activities and apprehend those individuals and entities involved in criminal activities, including senior officials of PMSCs, with a view to their prosecution and punishment,

PP 14: *Emphasizing* the responsibility to protect all persons affected by the activities of PMSCs, whether civilians or military personnel, including the employees of these companies, from abuses of their human rights by the actions or omissions of non-State actors including PMSCs,

PP 15: *Considering* that the victims of violations of international humanitarian and human rights committed by the personnel of PMSCs, including killings, disappearances, torture, arbitrary detention, forced displacement, trafficking in persons, confiscation or destruction of private property, right to privacy, have the right to a comprehensive and effective remedy, particularly providing assistance to victims, including medical care, rehabilitation and psychological as well as providing for their social and economic inclusion,

PP 16: *Recalling the* United Nations Code of Conduct for Law Enforcement Officials of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement

Officials adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana in 1990,

PP 17: *Recalling* the United Nations Non-Binding Guidelines on the Use of Military or Armed Escorts for Humanitarian Convoys of 14 September 2001,

PP 18: *Noting* the recruitment of the former military and police officers by PMSCs to work in a range of activities in places of armed conflict, and further to provide a range of other services in conflict zones and in business activities such as extractive industries,

PP 19: *Bearing in mind* the Montreux Document of 17 September 2008,

PP 20: *Taking into account* the adoption of codes of conduct, but considering that self-regulation of private military companies, private security companies, and hybrid companies providing both military and security services is not sufficient to ensure the observance of international humanitarian law and human rights law by the personnel of these companies,

PP 21: *Recognizing, however,* that important gaps remain in the national and international legal regimes applicable to PMSCs,

PP 22: *Being of the opinion* that effective protection needs appropriate national and international legislation in order to adopt and implement mechanisms to ensure enforcement,

PP 23: *Considering* the urgency for State Parties to lay down minimum standards to regulate the activities of PMSCs.

Have agreed as follows:

PART I. General Provisions

Article 1

Purpose

1. Bearing in mind the fundamental principles of international law on the prohibition of the threat and use of force and on the equal sovereignty of States, the purposes of the present convention are:

- a. to reaffirm and strengthen the State responsibility for the use of force and reiterate the importance of the monopoly of the legitimate use of force;
- b. to identify those functions which are inherent State functions and which cannot be outsourced under any circumstances;
- c. to regulate the activities of PMSCs and sub-contractors;

- d. to promote international cooperation between States regarding licensing and regulation of the activities of PMSCs in order to more effectively address any challenges to the full implementation of their human rights obligations including the right to self-determination;
 - e. to establish and implement mechanisms to monitor the activities of PMSCs and violations of international human rights and humanitarian law in particular any illegal or arbitrary use of force committed by PMSCs, to prosecute the violators and to provide remedies to the victims.
2. In the implementation of the Convention States Parties shall take all necessary legislative, judicial and administrative measures pursuant to existing or emerging provisions of their domestic laws to ensure that PMSCs do not engage in illegal activities or in arbitrary use of force.

Article 2

Definitions

If not specified separately or implied differently, for the purposes of the present Convention:

- (a) **Private Military and/or Security Company (PMSC):** is a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities.
- (b) **Military services:** refer to specialized services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, military training and logistics, material and technical support to armed forces and other related activities.
- (c) **Security services:** refer to armed guarding or protection of buildings, installations, property and people, police training, material and technical support to police forces, elaboration and implementation of informational security measures and other related activities.
- (d) **License (authorization, permit):** is a special document authorizing specified activities under the strict observance of licensing terms and obligations, which is issued by a licensing body to a legal entity or a physical person.
- (e) **Licensing regime:** refers to a regime of measures related to the issuing of a license, redrafting documents, confirming license, suspension of license on grounds of violation of obligations and provisions of the license, cessation or resumption of license, withdrawal of license, control of licensing bodies over the observance of obligations and terms of license by licensees in their activities, introduction of license registries as well as provision in an established way of information from license registries and other licensing information by interested persons.
- (f) **License registry:** refers to the data pool related to the issuing of license, redrafting documents, confirming license, suspension or resumption of license, and withdrawal of license; a license registry must operate pursuant to written minimum standards.

(g) **Export of military and/or security services:** refers to the export of military and/or security services from the home state in which a PMSC is registered or export of military and/or security services which a PMSC provides outside the state in which it is registered or where it has its principle place of management or headquarters.

(h) **Import of military and/or security services:** refers to an import of military and/or security services which a PMSC registered in a foreign State provides.

(i) **Inherent State functions:** are functions that a State cannot outsource or delegate to PMSCs. Among such functions, consistent with the principle of State monopoly on the legitimate use of force, are direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, use of and other activities related to weapons of mass destruction and police powers, especially the powers of arrest or detention including the interrogation of detainees.

(j) **Contracting States:** are States that directly contract with PMSCs for their services, including, as appropriate, where such a company subcontracts with another PMSC or where a PMSC operates through its subsidiary companies.

(k) **States of operations:** are States in whose territory PMSCs operate.

(l) **Home States:** are States of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, the State where the company has its principal place of management or headquarters is the home State.

(m) **Third States:** are States whose nationals are employed to work for a PMSC.

(n) **Inter-governmental organization:** shall mean an organization being based on a formal instrument of agreement between the governments of nation states, including three or more nation states as parties to the agreement and possessing a permanent secretariat performing ongoing tasks.

(o) **Committee:** shall mean the Committee on Regulation, Oversight and Monitoring of PMSCs as established by this Convention.

(p) **Complaint:** shall mean any complaint submitted by a State Party to this Convention to the Committee on Regulation, Oversight and Monitoring of PMSCs.

(q) **Petition:** shall mean a communication submitted by or on behalf of an individual or group to the Committee on Regulation, Oversight and Monitoring of PMSCs.

Article 3

Scope of Application

1. The present Convention applies to States and inter-governmental organizations with respect to PMSCs, their activities and personnel.
2. The present Convention shall be applied without prejudice to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.
3. The present Convention applies to all situations regardless of the existence or not of an armed conflict.

PART II. General Principles

Article 4

State responsibility for the legitimate use of force

1. Each State party bears responsibility for the military and security activities of PMSCs registered or operating in their jurisdiction, whether or not these entities are contracted by the State.
2. Each State party must ensure that the PMSCs it has contracted are trained in and respect international humanitarian law and human rights norms.
3. No State Party can delegate or outsource inherent State functions to PMSCs.
4. Each State Party shall take such legislative and other measures as may be necessary to establish:
 - a) procedures for contracting PMSCs, other legal entities and individuals, as well as sub-contracting;
 - b) licensing procedures for the export of military and security personnel and services;
 - c) licensing procedures for the import of military and security personnel and services;
 - d) effective customs and other forms of control over export/import and re-export/re-import of firearms.
5. Each State Party, in accordance with its domestic law, shall take legislative and other measures required to introduce full or partial prohibition on the delegation or outsourcing of military or security services.

Article 5

Rule of law

1. States Parties shall ensure that PMSCs, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international human rights and humanitarian law.
2. Each State Party shall take such legislative, administrative and other measures as may be necessary to ensure that PMSCs and their personnel comply with the legislation of the States in which they provide military and/or security services.
3. States Parties shall ensure that any contract or agreement on provision of military and/or security services entered into by PMSCs as well as their employees is consistent with the legislation of:
 - (a) the home State;
 - (b) the contracting State; and
 - (c) the State of operations.

Article 6

State sovereignty

1. States Parties shall ensure that PMSCs under no circumstances carry out activities that undermine the sovereignty of another State, its territorial integrity and/or that contravene to the principle of sovereign equality and obligation of non-intervention in the domestic affairs of other States.
2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of inherent State functions under international as well as domestic laws.

Article 7

Respect and protection of international human rights and humanitarian law

1. Each State Party shall take legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs established and functioning in its territory as well as the personnel of these PMSCs are held accountable for in accordance with the international principles enunciated in this Convention and to ensure, respect for and protection of international human rights and humanitarian law.
2. In providing military and/or security services, PMSCs, as well as their personnel, are encouraged to take cognizance of and observe the norms of international humanitarian law and human rights law as well as relevant domestic law.
3. Superiors of PMSC personnel, such as:
 - a. governmental officials, whether they are military commanders or civilian superiors, or
 - b. directors or managers of PMSCs,may be liable for crimes under international law committed by PMSC personnel under their effective authority and control, as a result of their failure to properly exercise control over them, in accordance with the rules of international law. Superior responsibility is not engaged solely by virtue of a contract.

Article 8

Prohibition of the use of force

1. Each State party shall take such legislative, administrative and other measures as may be necessary to make it illegal for and prohibit PMSCs and their personnel to directly participate in hostilities, terrorist acts and military actions aimed at:
 - (a) The overthrow of a government (including regime change by force) or undermining of the constitutional order, or legal, economic and financial bases of the State;
 - (b) The coercive change of internationally acknowledged borders of the State;
 - (c) The violation of sovereignty, or support of foreign occupation of a part or the whole territory of State;
 - (d) Explicitly targeting civilians and causing disproportionate harm, including but not restricted to:
 - i) assaults on the life and security of civilians,

- ii) the coercive removal or displacement of people from areas of permanent or habitual residence,
- iii) limits to the freedom of movement of civilians; and
- iv) restriction in access to resources and means of livelihood, including but restricted to water, food, land, livestock, shelter, and access to sacred sites and places of worship.

Article 9

Prohibition of delegation and/or outsourcing of inherent State functions

States parties shall define and limit the scope of activities of PMSCs and specifically prohibit functions which are inherent State functions, including direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, use of and other activities related to weapons of mass destruction and police powers, especially the powers of arrest or detention including the interrogation of detainees.

Article 10

Prohibition of delegation and/or outsourcing of the use of certain arms

1. Each State Party, without prejudice to their respective conventional obligations, has the duty to respect the principles of international humanitarian law such as the “basic rules” on the prohibition of certain methods and means of warfare as set out in art. 35 of AP I of 1977 to the Geneva Conventions of 1949, that refers to the prohibition of weapons which cause superfluous injury or unnecessary suffering, or which are to cause widespread, long-term and severe damage to the natural environment.
2. Each State party shall take such legislative, administrative and other measures as may be necessary to prevent PMSCs and their personnel from using such weapons of mass destruction, including chemical or biological weapons or other weapons likely to adversely affect the environment, including depleted uranium.
3. Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel under no circumstances use, threaten to use and/or engage in any activities related to nuclear weapons, chemical weapons, biological and toxin weapons, their components and carriers.

Article 11

Prohibition on illegal acquisition, possession and trafficking in Firearms, Their Parts and Components and Ammunition

1. Each State Party, bearing in mind the principles and standards of international law, shall establish and maintain an effective system of licensing or other authorization, which prohibits PMSCs, their personnel and any sub-contracted personnel from trafficking in firearms, their parts, components or ammunition.

2. Each State Party, bearing in mind the principles and standards of international law, shall take such measures as may be necessary to ensure that its licensing or authorization procedures are robust and secure and that the authenticity of licensing or authorization documents can be independently verified or validated.

3. In order to effectively detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition by PMSCs and their personnel, each State Party shall take appropriate measures:

- a) To require the security of firearms, their parts and components and ammunition at the time of manufacture, and during import, export and transit through its territory; and
- b) To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs trans-border duties and cooperation with neighboring States; and
- c) To regulate the activities of PMSCs inside the premises these companies have been contracted to protect, and to restrict them from operating outside the limits of the premises in which they have been contracted to provide security.

PART III. Legislative regulation, oversight and monitoring

Article 12

Specific legislative regulation

Each State Party shall elaborate and adopt national legislation to regulate the activities of PMSCs.

Article 13

National regime of regulation and oversight

1. Each State Party shall:

- (a) Establish a comprehensive domestic regime of regulation and oversight over the activities in its territory of PMSCs and their personnel including all foreign personnel, in order to prohibit and investigate illegal activities as defined by this Convention;
- (b) In order to ensure that administrative, regulative, law enforcement and other bodies, implementing the regime of regulation and oversight over the activities of PMSCs and their personnel, are able to cooperate and exchange information at national and international levels, there should be established, at the domestic level, a register and/or a governmental body which shall act as a national center for collection, analysis and exchange of information concerning possible violations of national and international law so as to provide operative information about the activities of PMSCs.

2. States Parties shall apply practical measures for exposing information on companies providing military and security services outside their territories and for establishing

control over the provision of such services, as consistent with the safeguards aimed at ensuring the proper use of information without impeding their legal implementation in any way. Such measures may include the provision of information or reports on the use of trans-border military and security services by persons as well as legal entities, for example companies.

3. In the establishment of a domestic regime of regulation and oversight according to the provisions of this Article and in compliance with other Articles of this Convention, all States Parties agree to be guided by the respective initiatives of regional, interregional and multilateral organizations.

4. States Parties shall endeavor to develop and encourage global, regional, sub-regional and bilateral cooperation among judicial bodies and law enforcement agencies as well as financial regulation bodies in order to monitor and control any private-sector use of force.

5. States Parties shall investigate reports of violations of international humanitarian law and human rights norms by private military companies and private security companies and ensure civil and criminal prosecution and punishment of offenders.

6. States Parties shall take appropriate action against companies that commit human rights violations or engage in any criminal activity, *inter alia* by revoking their licenses and reporting to the Committee on the record of activities of these companies.

Article 14

Licensing

1. Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel carry out their activities exclusively under the respective licenses and authorizations.

2. All licenses and authorizations issued to PMSCs and their personnel shall be registered in the general Registry of the State and granted following a transparent and open procedure.

3. Each State Party shall establish minimum criteria to grant licenses and authorizations to PMSCs, in particular, taking into account, any records or reports of human rights violations committed by the companies, as well as providing and/or ensuring training in international human rights and humanitarian law.

Article 15

Licensing import and export of military and security services

1. Each State Party shall take such legislative, judicial, administrative and other measures as may be required to ensure that PMSCs and their personnel import and export their services only under the respective licenses and authorizations. The license and authorization for operations related to the export of military and security services shall be issued by the respective body of the State Party in which territory the respective entity has its permanent residence under the relevant domestic law.

2. Each State Party which imports private military and security services shall publicize their scope and activities and keep the Committee informed about its licensing regime as well as provide regular and up-dated information on any changes and supplements to the import of these services.

3. PMSCs and their personnel possessing licenses and authorizations on exporting military and/or security services issued by the competent bodies of the State Party can enter into agreements for providing such services in the territory of the other State Party with the State or another entity only after the license and authorization to import such services is issued to them by the competent bodies of the territorial State.

4. Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary in order to:

(a) ensure that any State which is not party to the present Convention is informed about the issuance of licenses to PMSCs and their personnel to export military and/or security services to this State,

(b) ensure that PMSCs and their personnel, holding valid licenses and authorizations, issued by the competent bodies of the State Party to export military and/or security services to carry out single acts or, alternatively, regular activity in the territory of any State not party to the Convention, provide comprehensive information to the competent bodies of all concerned States about the nature and extent of such acts and activities.

Article 16

Registration and accountability

1. Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary to establish:

- a. Specific and obligatory procedures on governmental registration of PMSCs;
- b. Specific legal requirements for persons employed by PMSCs concerning inter alia their training and experience;
- c. A ban on the registration of PMSCs offshore.

2. Each State Party shall establish and maintain a general State registry of PMSC operating in their jurisdiction.

3. Each State Party shall identify or establish a governmental body responsible for the registry of PMSCs and exercise oversight of their activities.

Article 17

State obligations *vis-à-vis* the personnel of PMSCs

1. Employees of PMSCs employed under contract with these companies and their activities are subject to regulation under the legislation of the States Parties in whose territory the companies are registered under the relevant domestic law.

2. The provision of services in the export and/or import of military and security services, and the activities of personnel of PMSCs are regulated in accordance with the legislation

of the State Party which issued the license and authorization for the provision of such services.

3. Persons employed by PMSCs must be professionally trained and vetted according to the applicable international standards for military and security services and for the use of specific equipment and firearms. Such training and vetting shall be conducted in accordance with the procedure defined by the legislation of the State Party in which territory the private military and/or security company is registered under the domestic law and under international standards on the use of force and firearms in the course of military or security activities.

4. The personnel of PMSCs providing military and security services in the territory of a foreign country undertake to respect the sovereignty and laws of the receiving country, to refrain from any actions inconsistent with the principle not to interfere with the domestic affairs of the receiving country, to refrain from intervening in the political process or in the conflicts in its territory, as well as to take all necessary measures to avoid harm to the citizens and damage to the environmental and industrial infrastructure, and to objects of historical and cultural importance.

5. The personnel of PMSCs providing military and security services in the territory of a foreign state undertake to observe the norms of international humanitarian law, as provided by the Geneva Conventions of 12 August 1949 and in the Additional Protocols from 8 June 1977, and strictly adhere to the norms and standards set out in the core international human rights instruments.

Article 18

Regulation of use of force and firearms

1. Each State Party shall take such legislative, judicial, administrative and other measures as may be necessary to establish rules on the use of force and firearms by the personnel of PMSCs taking into account that employees may carry firearms in providing military and security services.

2. In providing military and security services, employees shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force or firearms only if other means remain ineffective or without any promise of achieving the intended result and to the extent authorized by the State for the performance of their duty.

3. Whenever the use of force and firearms is unavoidable, PMSCs personnel shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offense;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

4. In providing military and security services, employees may use force or firearms only in the following circumstances:

(a) To defend him/herself or other employees of the company against what he/she believes to be an imminent threat of death or serious body injury, in respect of the exercise of the essential right of self-defense,

(b) To defend persons whom he/she is under a contract to protect against what he/she believes to be an imminent threat of death or serious body injury,

(c) To resist what he/she reasonably believes to be an attempt to abduct him/herself, other employees of the company or a person whom he/she is under contract to protect,

(d) To prevent or put a stop to the commission of a serious crime that would involve or involves a grave threat to life or of serious bodily injury.

5) In the circumstances provided under article 18 (4), the personnel of PMSCs shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed.

6) In the case of PMSCs and their personnel providing military and security services under the agreement as a part of armed forces or military units of the State Party, the use of force is regulated by the norms of its military and other respective legislation and relevant international humanitarian law and international human rights law.

Article 19

Additional measures

1. In addition to the measures set out in Articles 12-18 of the present Convention each State Party, consistent with its legal system, shall take legislative, judicial, administrative and other effective measures to ensure the training of personnel and to promote human rights norms and principles relating to activities of PMSCs and their personnel.

2. Each State Party shall ensure that arbitrary or abusive use of force and firearms by personnel of PMSCs is punished as criminal offense under the law of the contracting State, State of operations or home State.

3. The States Parties shall, through international and regional organizations, exchange information on the activities of PMSCs in their respective territory or area of deployment, with the view to coordinating approaches, elaborating general definitions, standards and methodology and generally broadening their knowledge and experience on the issue.

4. Each State Party shall undertake to implement policy for regulating the activities of these companies as well as to carry out regular assessment of their efficiency and effectiveness and their continuing relevance.

PART IV. State Responsibility to impose penal sanctions on offenders and provide remedies to victims

Article 20

Criminalization of offenses in the sphere of military and security services

1. Pursuant to Article 15 of this Convention, each State party shall take such legislative, judicial, administrative and other measures as are necessary to penalise the export and import of military and security services when this occurs without the required licenses and authorization.
2. States parties shall take such measures as are necessary to investigate, prosecute and punish violations of the present Convention, and to ensure effective remedies to victims.

Article 21

Establishment of jurisdiction

1. Each State party shall take such measures as may be necessary to establish its jurisdiction through its domestic law over the offenses set out in this Article when:
 - (a) The offense is committed in the territory of that State; or
 - (b) The offense is committed by a national of that State.
2. A State party may also establish its jurisdiction over any of the offenses set out in this Article when:
 - (a) The offense is committed against a national of that State; or
 - (b) The offense is committed by a stateless person who has his or her habitual residence in the territory of that State; or
 - (c) The offense is subject to universal jurisdiction.
3. Upon ratifying, accepting, approving or acceding to this Convention, each State party shall notify the Secretary-General of the United Nations of the measures it has taken with respect to the establishment of jurisdiction under this article. Should any subsequent change take place, the State party concerned shall immediately notify the Secretary-General of the change.
4. Each State party shall likewise take such measures as may be necessary to establish its jurisdiction over the offenses set out in this Article in cases where the alleged offender is present in its territory and it does not extradite such person to any of the States parties which have established their jurisdiction in accordance with paragraphs 1 or 2 of this Article.
5. Each State party which establishes jurisdiction under subparagraphs 1(b) and paragraphs 2 or 4 of this Article shall make the offenses set out in this Article punishable by the same penalties which would apply when they are committed in its own territory.
6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its national law.

7. War crimes, crimes against humanity, genocide and grave breaches of the Geneva Conventions of 1949 and Additional Protocols of 1977, as defined in existing international legal instruments, are to be penalized under this Convention.

8. In relation to imposing penalties for offenses elaborated in this article, due consideration should be paid to offenses committed against vulnerable groups.

Article 22

Jurisdiction over other crimes

1. Each State party shall take such measures as may be necessary to establish its jurisdiction over other crimes committed by the personnel of PMSCs in providing their services in the territory of another State party or State not party to this Convention.

2. Any specific jurisdiction or legal matters related to the investigations of crimes committed by the personnel of PMSCs in providing their services in the territory of another State party or State not party to the present Convention, or agreements of extradition, may be regulated by an additional international agreement concluded between these States.

Article 23

Extradition

1. To the extent that the crimes set out in article 21.7 are not mentioned specifically in any extradition treaty existing between States parties, they shall be deemed to be included as extraditable offenses in the treaty. States parties undertake to include such offenses as extraditable offenses in every extradition treaty to be subsequently concluded by them.

2. When a State party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State party with which it does not have an extradition treaty, the State party which requests extradition may, at its option, consider this Convention as a legal basis for extradition in respect of the offenses. Extradition procedures should take into account but shall not be limited by any conditions or restrictions stipulated in the law of any State party.

3. States parties which do not make extradition conditional on the existence of a treaty shall recognize the offenses listed in article 21.7 as extraditable offenses between themselves, taking into account but not limited by the law of any of the State parties.

4. The provisions of all extradition treaties between States parties with regard to the offenses set out in article 21.7 shall be deemed to be modified as between States parties to the extent that they are incompatible or inconsistent with this Convention.

5. In the event of a conflict between the obligations of States parties under this Convention and other bi-lateral or multilateral conventions on extradition, this Convention shall prevail.

Article 24

Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offenses covered by this Convention and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the victims, witnesses, proceeds, instrumentalities or evidence of such offenses are located in the requested State Party.
2. States parties shall carry out their obligations under paragraph 1 of this Article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States parties shall afford one another assistance in accordance with their national law and international principles on friendly relations between States.

Article 25

Transfer of criminal proceedings

1. States parties may transfer to one another proceedings for the prosecution of offenses under this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice.
2. States parties may refer cases to the International Criminal Court.

Article 26

Notification of outcome of proceedings

The State Party where the alleged offender has been prosecuted under articles 21 and 23 shall, in accordance with its national law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to other States Parties and to the State of operations.

Article 27

Liability of legal persons and entities

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons and entities for participation in serious crimes involving an organized criminal group or company or other entity and for the offenses established in accordance with article 21 of this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons, including groups, companies and entities may be criminal, civil or administrative, or a combination of these.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have actually committed the offenses.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-

criminal sanctions, including fines, economic sanctions, prohibitions of further employment, obligation to provide restitution and/or compensation to the victims.

5. States Parties shall, in the interests of justice, lift any immunity applicable under other Conventions or Agreements.

Article 28

Funds for the rehabilitation of victims

1. States parties shall establish funds to rehabilitate the victims of offenses under this Convention;

2. The establishment of such funds shall be without prejudice to the obligation of PMSCs to directly compensate victims of violations.

PART V. Obligations of Inter-governmental organizations and PMSCs

Article 29

Obligations of Inter-Governmental Organizations

1. Inter-governmental organizations that have ratified this Convention shall adopt internal rules and regulations to monitor compliance with the Convention and take such measures as are necessary to investigate reports of violations of this Convention by any member State or organization with a view of remedying such violations and/or referring appropriate cases to a competent tribunal.

2. If the United Nations employs PMSCs in the implementation of Security Council Resolutions, peacekeeping or other missions under the UN Charter, it shall exercise due diligence in ensuring the strict adherence to human rights norms by the personnel of said companies and shall not invoke article 103 of the UN Charter in any manner that would hamper the implementation of the present Convention. The United Nations shall promptly investigate any reports of violations of human rights norms and impose appropriate disciplinary or penal sanctions.

Article 30

Obligations of PMSCs

1. Within their respective spheres of activity and influence, Private Military and Security Company have the obligation to respect, ensure respect of and protect human rights recognized in international as well as national law.

2. PMSCs and their employees shall abide by the international standards for corporate responsibility to respect all internationally recognized human rights;

3. PMSCs and their employees shall have the responsibility to use due diligence in ensuring that their activities do not contribute directly or indirectly to human rights abuses and to causing or exacerbating inter or intra-state warfare or conflict;

4. PMSCs and their employees shall abide by the national law of the countries of origin, transit and operation.
5. PMSCs and their employees shall not carry out activities defined under article 2(i) as inherent State functions.

PART VI. International Oversight and Monitoring

Article 31

International Committee

1. There shall be established a Committee on the Regulation, Oversight and Monitoring of PMSCs (hereinafter referred to as the Committee). The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairperson of the Committee;
(b) If a member dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, The States party who nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term, subject to the approval of the Committee.

6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 32

Reporting Obligations

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:

(a) within two years after the entry into force of the Convention for the State Party concerned; and

(b) thereafter every four years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. A State party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided.

3. Each report shall be considered in public session in the presence of State Party representatives. The Committee shall make such observations and recommendations on the report and on the examination thereon, as it may consider appropriate. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

4. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 3 of this article shall apply.

5. The Secretary-General of the United Nations shall make available the reports to all States Parties.

6. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the observations and recommendations relating to these reports.

7. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programs of the United Nations and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

Article 33

Interpretative Comments by the Committee

The Committee shall issue interpretative comments on the provisions of this Convention, as appropriate.

Article 34

Rules of procedure, elections, sessions

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.
4. The Committee shall hold two sessions per year and meetings shall normally take place at United Nations Headquarters or at the United Nations Offices in Geneva.

Article 35

Inquiry Procedure

1. If the Committee receives reliable information which appears to it to contain well-founded indications that PMSCs are operating in violation of international human rights and humanitarian law, the Committee shall invite the State where the offenses have been reported to have occurred and/or the State of registration of said companies to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State(s) concerned as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2, the Committee shall seek the co-operation of the States concerned. In agreement with the State(s) concerned, such an inquiry may include a visit in loco.
4. After examining the findings of its member or members submitted in accordance with paragraph 2, the Committee shall transmit these findings to the State(s) concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State(s) concerned shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State(s) concerned, decide to include a summary account of the results of the proceedings in its annual report to the General Assembly made in accordance with article 41.

Article 36

Complaints against Parties

1. If a Party to this Convention considers that another Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the complaint to the Party concerned. Within three months, the receiving Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that Party.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving Party of the initial complaint, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other Party.
3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.
4. The Committee shall hold closed meetings when examining complaints under this article.
5. In any matter referred to it, the Committee may call upon the Parties concerned to supply any other relevant information.
6. When any matter arising out of this article is being considered by the Committee, the Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 37

Conciliation Commission

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairperson shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;
(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.
3. The Commission shall elect its own Chairperson and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.
5. The secretariat provided in accordance with article 34, paragraph 3 of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.
6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 38

Report of the Conciliation Commission

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairperson of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairperson of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairperson of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairperson of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 39

Individual and Group Petitions

1. A Party may at any time declare that it recognizes the competence of the Committee to receive and consider petitions from or on behalf of individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that Party of any of the rights set forth in this Convention. No petition shall be received by the Committee if it concerns a Party which has not made such a declaration.

2. Any Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate an entity within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any entity established or indicated in accordance with paragraph 2 of this article shall be deposited by the Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect petitions pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.
5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.
6. (a) The Committee shall confidentially bring any petition referred to it to the attention of the Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous petitions;
(b) Within three months, the receiving Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that Party.
7. (a) The Committee shall consider petitions in the light of all information made available to it by the Party concerned and by the petitioner. The Committee shall not consider any petition unless it has ascertained that the same matter, submitted by the same petitioner, has not been already examined or is not in the process of examination before another international instance of individual investigation or settlement. Moreover, the Committee shall ascertain that the petitioner has exhausted all available and effective domestic remedies. However, the rule of exhaustion of domestic remedies shall be waived where the application of the remedies is unreasonably prolonged;
(b) The Committee shall forward its suggestions and recommendations, if any, to the Party concerned and to the petitioner.
8. The Committee shall include in its annual report a summary of such petitions and, where appropriate, a summary of the explanations and statements of the Parties concerned and of its own conclusions and recommendations.
9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten Parties to this Convention are bound by declarations in accordance with paragraph I of this article.
10. States parties shall adopt enabling legislation so as to facilitate the implementation or enforcement of the Committee's conclusions and recommendations in the State party concerned.

Article 40

Relationship of the Committee with other bodies

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

- (a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall

within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

(c) The Committee shall also consult, as appropriate, other inter-governmental organizations.

(d) The Committee may refer urgent matters and legal questions to the General Assembly, Security Council or other United Nations bodies, and to their respective specialized committees, as appropriate, and may request the General Assembly or Security Council to request, pursuant to article 96 of the UN Charter, advisory opinions from the International Court of Justice on any legal question.

Article 41

Report of the Committee

The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make further suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

PART VI. Final provisions

Article 42

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature [.....] at United Nations Headquarters in New York until [.....].

2. This Convention shall also be open for signature by intergovernmental organizations, provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. An inter-governmental organization may deposit its instrument of ratification, acceptance or approval if at least one of its Member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such

organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any inter-governmental organization of which at least one Member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, an inter-governmental organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 43

Consent to be bound

1. The present Convention shall be subject to ratification or accession by signatory States and to formal confirmation by signatory inter-governmental organizations. It shall be open to accession by any State or inter-governmental organization which has not signed the Convention.
2. PMSCs and their professional associations as well as other non-State actors can communicate their support to this Convention.

Article 44

Inter-governmental organizations

1. Inter-governmental organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.
2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence.
3. Inter-governmental organizations, in matters within their competence, may exercise their right to vote in the Meeting of States Parties.

Article 45

Entry into force

1. This Convention shall enter into force on the [.....] day after the date of deposit to the UN Secretary General of the [.....] instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by an inter-governmental organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or inter-governmental organization ratifying, accepting, approving or acceding to this Convention after the deposit of the [.....] instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 46

Amendment

1. After the expiry of three years from the entry into force of this Convention, a State Party may propose an amendment which shall be filed with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.
2. Regional international organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise their right to vote and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 47

Denunciation

1. A State Party may denounce the present Convention at any time by written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. An inter-governmental organization shall cease to be a Party to this Convention when all of its member States have denounced it.

Article 48

Reservations

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.
2. Reservations may be withdrawn at any time.

Article 49

Conference of States Parties and other parties to the Convention

1. The States Parties and other parties to the Convention shall meet regularly in a Conference of States parties in order to consider any matter which regard to the implementation of the present Convention.

2. No later than six months after the entry into force of the present Convention the Conference of the States parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-general of the United Nations biennially or upon the decision of the Conference of States Parties.

Article 50

Depository

The Secretary-General of the United Nations shall be the depository to the present Convention.

Article 51

Languages

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.