

**ZERO DRAFT INSTRUMENTⁱ ON AN INTERNATIONAL REGULATORY FRAMEWORK
ON THE REGULATION, MONITORING OF AND OVERSIGHT OVER THE ACTIVITIES
OF PRIVATE MILITARY AND SECURITY COMPANIES**

PREAMBLE

The [signatory States][States Parties]ⁱⁱ to this Instrument:

- (PP1) *Reaffirming* the principles and purposes of the Charter of the United Nations, the sovereign equality, territorial integrity and political independence of all States, the right of self-determination of peoples, and the prohibition of the threat, or use of force, in international relations;
- (PP2) *Recalling* Human Rights Council resolution 15/26 of 1 October 2010, that established the open-ended working group to consider the possibility of elaborating an international regulatory framework on the registration, monitoring, and oversight of the activities of Private Military and Security Companies and their personnel;
- (PP3) *Recalling further* that the Human Rights Council in its resolution 36/11 of 28 September 2017 established a new open-ended intergovernmental working group for a period of three years, with a mandate to elaborate the content of an international regulatory framework, without prejudging the nature thereof, to protect human rights and ensure accountability for violations and abuses relating to the activities of Private Military and Security Companies, which was renewed for a further period of three years by resolution 45/16 adopted on 6 October 2020;
- (PP4) *Recalling* the obligations of States and other parties to armed conflicts to respect and ensure respect for international humanitarian law in all circumstances;

- (PP5) *Recognising* the right to protect all persons affected by the activities of Private Military and Security Companies and their personnel, whether civilians or military personnel, from violations of their rights, and the right to effective and comprehensive remedies for such victims under international human rights law and International Humanitarian Law;
- (PP6) *Recognising further* the contribution, despite their voluntary nature, of the *Montreux Document on pertinent international legal obligations and good practices for States relating to operations of Private Military and Security Companies during armed conflict*, the *International Code of Conduct for Private Security Providers* and the *United Nations Guiding Principles of Business and Human Rights*, amongst others, in regulating the activities of Private Military and Security Companies and in preventing abuses or violations during such activities;
- (PP7) *Acknowledging* that self-regulation by Private Military and Security Companies is not sufficient to ensure the observance of human rights law and International Humanitarian Law and that business enterprises are required to respect human rights;
- (PP8) *Recognising* that international minimum legal standards and the effective implementation thereof in domestic law are required to enhance these existing voluntary regimes in order to prevent violations of international human rights law and International Humanitarian Law and to ensure that the activities of Private Military and Security Companies and their personnel are carried out in accordance with international law;
- (PP9) *Mindful of* the assistance rendered by Private Military and Security Companies to legitimate governments, humanitarian actors and peacekeeping missions;
- (PP10) *Concerned* about the differentiated impact of the activities of Private Military and Security Companies on different groups of the societies in States where such

Companies are operating, and especially on vulnerable groups, including, but not limited to, women, children and people with disabilities;

- (PP11) *Mindful* thereof that States bear the primary responsibility to prevent, repress, and suppress abuses of human rights law and violations of International Humanitarian Law and are therefore obliged to ensure respect thereof by Private Military and Security Companies and their personnel, and to take appropriate steps to prevent, investigate, prosecute, punish and redress abuses through establishing appropriate jurisdiction, effective remedies for victims, effective policies, legislation, regulations and adjudication, including to provide for civil, administrative or criminal liability for enterprises and associated persons present or operating in their territory or jurisdiction;

[Have reached the following understandings][Hereby agree as follows]:

[PARAGRAPH][ARTICLE] 1
DEFINITIONS

For the purposes of the present Instrument:

- (a) “Contracting State” means a State that directly contracts with Private Military and Security Companies for their services, including where the contracted company subcontracts with another Private Military and Security Company or where the contracted Private Military and Security Company operates through its subsidiary companies;
- (b) “Home State” means a State where a Private Military and Security Company has its centre of activity, is incorporated, registered or domiciled in or has its main place of business or conduct substantial activities;
- (c) “Military services”ⁱⁱⁱ means specialized services that resembles or is related to military action, including strategic planning, intelligence, investigation,

reconnaissance, flight operations, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities, whether on land, in the air or at sea, or whether in cyberspace or space;

- (d) “Private Military and Security Company” means a corporate entity which provides on a compensatory basis military and security services through natural persons or other legal entities;
- (e) “Security Services”^{iv} means armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing application, development and implementation of informational security measures and other related activities;
- (f) “State Functions” include such activities as would be performed by the legitimate armed forces of a State that rely on the authority of a State to use force, including but not limited to, direct participation in hostilities, waging war or conducting combat operations, taking prisoners, law-making, espionage, intelligence, knowledge transfer with military, security and policing application, use of, and other activities related to, weapons of mass destruction, exercising police powers, especially powers of arrest or detention and the interrogation of detainees.^v
- (g) “State of Nationality” means a State of the nationality of employees or other personnel of Private Military and Security Companies;
- (h) “Territorial State” means a State where a Private Military and Security Company carries out activities regardless of whether the company is incorporated or not within such State’s jurisdiction, or the duration and kind of operations.

[PARAGRAPH][ARTICLE] 2
OBJECTIVES

The objective of this Instrument is to:

- (a) provide for the regulation of and transparent oversight over the operations of Private Military and Security Companies, their personnel and sub-contractors, by [signatory States][States Parties] according to minimum standards in international law, to ensure the protection and fulfilment of human rights and International Humanitarian Law^{vi} by Private Military and Security Companies and their personnel in the environments wherein they operate;
- (b) provide for the circumstances under which such companies, its personnel and sub-contractors could be held accountable for abuses of rights and violations of International Humanitarian Law;
- (c) ensure access to justice and effective avenues of redress and remedy for victims of rights abuses by Private Military and Security Companies, their personnel, and their sub-contractors;
- (d) prohibit Private Military and Security Companies and their personnel from exercising State functions;
- (e) provide for the status of the personnel and sub-contractors of Private Military and Security Companies under international law;
- (f) strengthen awareness of the existing conditions where State Responsibility will be incurred for the activities of Private Military and Security Companies and their personnel;

- (g) provide for effective investigation and prosecution of persons responsible for the abuses of human rights and violations of International Humanitarian Law.

[PARAGRAPH][ARTICLE] 3

SCOPE^{vii}

- (1) In relation to a Home State, this Instrument is applicable in situations that involve persons, whether a legal person or a natural person, engaging in activities that provide private military and security services in any territory outside its Home State, or provide services in its Home State that is connected to the provision of private military and security services outside its Home State, or exercises control from its Home State over a person that provides private military and security services outside the territory of the that person's Home State.
- (2) Subject to paragraph (1), this Instrument shall apply to all situations, including situations of conflict, where private military and security services are provided by Private Military and Security Companies and their personnel and their sub-contractors.^{viii}
- (3) *[Considering the difficulty of limiting the scope of "security services", it could be considered to add a list of activities that are excluded from the concept of security services.]^{ix}*

[PARAGRAPH][ARTICLE] 4

GENERAL OBLIGATIONS OF STATES

- (1) [Signatory States][States Parties] recognise their obligation to respect, protect and fulfil human rights and to respect and ensure respect for International Humanitarian Law and to ensure the respect of human rights and International Humanitarian Law by Private Military and Security Companies and their personnel within their jurisdiction.

- (2) [Signatory States][States Parties] [undertake to][shall] take appropriate steps to criminalise in their domestic law abuses by Private Military and Security Companies and their personnel of international human rights law and violations of International Humanitarian Law, specifically, but not limited to, war crimes, crimes against humanity, genocide, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, forced or compulsory labour, hostage-taking, sexual or gender-based violence, human trafficking, the trafficking of weapons or drugs, child labour or extrajudicial, summary or arbitrary executions.^x
- (3) [Signatory States][States Parties] [undertake to][shall] through their domestic law prohibit Private Military and Security Companies and their personnel from exercising State functions.
- (4) [Signatory States][States Parties] [undertake not to][shall not] employ Private Military and Security Companies and their personnel in any function that would amount to such personnel directly participating in hostilities.

[PARAGRAPH][ARTICLE] 5
OBLIGATIONS WITH RESPECT TO
REGISTRATION, LICENSING AND RECRUITMENT^{xi}

- (1) [Signatory States][States Parties] [undertake to][shall] adopt legislation for the regulation of and oversight over Private Military and Security Companies and their personnel and the provision of military and security services.
- (2) [Signatory States][States Parties] [undertake to][shall] establish an effective licensing system in their domestic law to ensure that Private Military and Security Companies do not import and export their services without appropriate licenses.

- (3) [Signatory States][States Parties] [undertake to][shall] require Private Military and Security Companies, to qualify for a license, to adopt policies relating to international human rights law and International Humanitarian Law providing for:
- (a) the integration of human rights and International Humanitarian Law principles across their operations, including an internal code of conduct, ethics or behaviour;
 - (b) gender commitments prohibiting discrimination and promoting gender and other forms of diversity and gender-specific internal policies;
 - (c) ensuring training in international human rights law and International Humanitarian Law, the rules relating to the use of force and the use of weapons;
 - (d) effective recruitment, selection and vetting procedures for personnel to prevent the employment of persons suspected of or convicted for human rights abuses and International Humanitarian Law violations as well as sexual and gender-based violence; and
 - (e) effective internal mechanisms for monitoring, supervising and ensuring accountability for alleged abuses of human rights law and violations of International Humanitarian law.
- (4) [Signatory States][States Parties] [undertake to][shall] criminalise, in their domestic law, the activities of Private Military and Security Companies and their personnel undertaken without the required registration or license and authorisation, including the export and import of military and security services.

[PARAGRAPH][ARTICLE] 6
OBLIGATIONS OF CONTRACTING STATES

- (1) Without prejudice to the other obligations provided for in this Instrument, Contracting States [undertake to][shall], when entering into contracts with Private Military and Security Companies, ensure that such government contracts:
 - (a) incorporate requirements to ensure respect by such companies and their personnel for the domestic law of the Contracting State, international human rights law and International Humanitarian Law;
 - (b) prevent the personnel of Private Military and Security Companies from engaging in any conduct amounting to either direct participation in hostilities or the exercising of State Functions; and
 - (c) are not concluded with Private Military and Security Companies that are not registered and licenced.^{xii}
- (2) Contracting States [undertake not to][shall not] enter into contracts with Private Military and Security Companies for the provision of services that have been assigned by international law to States or State agencies as inherently State functions.

[PARAGRAPH][ARTICLE] 7
OBLIGATIONS OF TERRITORIAL STATES

- (1) Territorial States [undertake to][shall] ensure that no State Functions are carried out within its jurisdiction by Private Military and Security Companies and their personnel.
- (2) Territorial States [undertake not to][shall not] allow Private Military and Security Companies that are not registered and licensed in terms of this Instrument to operate within its jurisdiction.
- (3) Private Military and Security Companies may only operate within the jurisdiction of a Territorial State with its consent and permission.

[PARAGRAPH][ARTICLE] 8
OBLIGATIONS OF HOME STATES

In addition to the obligations of Territorial States, Home States [undertake to][shall] in their domestic law determine which military and security services cannot be exported and criminalise the export of such prohibited services.

[PARAGRAPH][ARTICLE] 9
STATES OF NATIONALITY

States of nationality [undertake to][shall] adopt legislation to regulate the recruitment of their nationals by Private Military and Security Companies to serve abroad and prohibit their nationals to engage in any activity that is prohibited by this Instrument.

[PARAGRAPH][ARTICLE] 10
JURISDICTION

- (1) [Signatory States][States Parties] [undertake to][shall] provide for jurisdiction over Private Military and Security Companies when the company, or its parent or controlling company, is incorporated in, or is registered or domiciled in, or has its main place of business or substantial activities in the territory of that State or in a territory wherein it is able to exercise jurisdiction.
- (2) [Signatory States][States Parties] [undertake to][shall] establish its jurisdiction through its domestic law over applicable offences when such offences are committed:

- (a) in the territory of that State or a territory under its control;
 - (b) on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;
 - (c) by a national of that State;
 - (d) against a national of that State;
 - (e) outside the territory of that State or a territory under its control, including in the Exclusive Economic Zone of any State or on the High Seas and the offence constitutes a crime under international law;^{xiii}
 - (f) by an alleged offender who are present in the territory of the [signatory State][State Party] after the commission of the offence in another State.
- (3) This Instrument does not exclude any additional grounds for criminal jurisdiction that exists under international law or the domestic law of [Signatory States][States Parties'] domestic law.

[PARAGRAPH][ARTICLE] 11

REGULATION OF THE USE AND ACQUISITION OF WEAPONS

- (1) [Signatory States][States Parties] [undertake to][shall] adopt legislation to:
- (a) regulate the acquisition, licensing, import, export and use weapons by Private Military and Security Companies and their personnel in terms of international standards relating to arms control;
 - (b) require Private Military and Security Companies to effectively train their personnel in the law relating to the lawful use of force, with respect to the provision of private security services (including in a situation of armed conflict).

- (2) [Signatory States][States Parties] [undertake to][shall] introduce effective customs control and other forms of control over the import and export and re-import and export of weapons used by Private Military and Security Companies and their personnel.

[PARAGRAPH][ARTICLE] 12
STATE RESPONSIBILITY

Without prejudice to other possible grounds for responsibility of the State under international law and the prohibitions contained in [Paragraphs][Articles] 1(f), 4(4), 6(1)(b), and 9, and consistent with the principles international law, State Responsibility may arise pursuant to the use of Private Military and Security Companies.

[PARAGRAPH][ARTICLE] 13
ACCESS TO JUSTICE, ACCOUNTABILITY AND REMEDIES

- (1) [Signatory States][States Parties] [undertake to][shall] take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that those affected by abuses of human rights and violations of International Humanitarian Law within their territory or under their jurisdiction shall have access to effective remedies.
- (2) [Signatory States][States Parties] [undertake to][shall] provide for non-judicial grievance procedures that are legitimate, accessible, predictable, equitable, rights-compatible, and transparent.

[PARAGRAPH][ARTICLE] 14
COOPERATION^{xiv}

- (1) [Signatory States][States Parties] [undertake to][shall] conduct effective and impartial investigations and prosecute persons suspected of having committed applicable crimes.^{xv}
- (2) [Signatory States][States Parties] [undertake not to][shall not] grant immunity from prosecution to Private Military and Security Companies, their personnel or their contractors for crimes committed anywhere they operate.
- (3) [Signatory States][States Parties] [undertake to][shall] extradite or surrender persons suspected of having committed applicable crimes in terms of their domestic law or bilateral and multilateral agreements, to a State or international criminal tribunal having jurisdiction over the crime.
- (4) [Signatory States][States Parties] [undertake to][shall] share information on the activities of Private Military and Security Companies with a view to ensure effective regulation of and oversight over their activities.

[PARAGRAPH][ARTICLE] 15
INTERNATIONAL HUMANITARIAN LAW

This Instrument is without prejudice to the provisions of International Humanitarian Law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949, the two Additional Protocols thereto of 8 June 1977, and the third Additional Protocol thereto of 8 December 2005.

[PARAGRAPH][ARTICLE] 16
SETTLEMENT OF DISPUTES

[Non-legally binding text:]

Any dispute between two or more Signatory States as to the interpretation or application of this Instrument is to be settled amicably through consultations and negotiation between such States, provided that the good offices of the United Nations High Commissioner for Human Rights may assist in this regard, with the agreement of the relevant States.]

[Legally binding text:

- (1) States Parties shall endeavour to settle disputes concerning the interpretation and application of this Instrument through consultations and negotiation.
- (2) Any dispute between two or more States Parties concerning the interpretation or application of this Instrument that cannot be solved through consultations and negotiation within six months of the date of request for such settlement shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date for arbitration, those States Parties are unable to agree on the terms of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice in accordance with the Statute of the Court.]

[PARAGRAPH][ARTICLE] 17

SIGNATURE, RATIFICATION AND ACCESSION

[Non-legally binding text:

This Instrument will be open for signature by all United Nations Member States from to]

[Legally binding text:

- (1) This Instrument will be open for signature by all United Nations Member States from to

- (2) This Instrument shall be open for ratification by all States that signed it. Instruments of ratification shall be deposited with the Depositary.
- (3) Non-Signatory Member States of the United Nations may accede to this Instrument by depositing an instrument of accession with the Depositary.]

[PARAGRAPH][ARTICLE] 18
ENTRY INTO [FORCE][EFFECT]

[Non-legally binding text:

This Instrument enters into effect for Signatory States on the date of Signature.]

[Legally binding text:

- (1) This Instrument shall enter into force days after the deposit of the instrument of ratification or accession.
- (2) For each State acceding to this Instrument after its entry into force, it shall enter into force days after the depositing of the instrument of accession.]

[PARAGRAPH][ARTICLE] 19
AMENDMENTS

[Non-legally binding text:

After expiry of five years from the entry into effect of this Instrument, any Signatory State may propose an amendment to the United Nations Office of the High Commissioner of Human Rights, which shall communicate the proposed amendment forthwith to all Signatory

States as well as other United Nations Member States. The United Nations Human Rights Council shall consider such an amendment in terms of its procedures.]

[Alternative for legally-binding text:

- (1) After expiry of five years from the entry into force of this Instrument, any State Party may propose an amendment to this Instrument to the Depository, which shall circulate the proposal forthwith to all States Parties and other United Nations Member States for the purpose of considering and deciding on the proposal in the United Nations Human Rights Council.
- (2) States Parties shall make every effort to reach agreement on any proposed amendment to this Instrument by consensus. If all efforts at consensus have been exhausted, and no agreement is reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the State Parties present and voting during a meeting called by the Human Rights Council in terms of its procedures. For the purposes of this article, States Parties present and voting means States Parties present and casting an affirmative or negative vote.
- (3) The Depository shall communicate any adopted amendments to all States Parties and other Member States of the United Nations.
- (4) An amendment to this Instrument adopted in accordance with this article shall enter into force for the States Parties which have consented to be bound by it on theday after depositing of its instrument of acceptance of the amendment. Any State acceding to the Instrument after the adoption of an amendment shall be bound by such amendment.]

[PARAGRAPH][ARTICLE] 20
RESERVATIONS

Note: Delegations will have to consider whether to allow for reservations.

[PARAGRAPH][ARTICLE] 21

WITHDRAWAL

- (1) Any [signatory State][States Party] may withdraw from this Instrument by giving written notice to the [Office of the United Nations High Commissioner for Human Rights][Depositary].
- (2) A withdrawal [becomes][shall become] effective one year after receipt of the notification by the [United Nations High Commissioner for Human Rights][Depositary], or at such later date as may be specified in the notification of withdrawal.

[PARAGRAPH][ARTICLE] 22

DEPOSITARY AND LANGUAGES

Note: Only applicable in case of a legally binding instrument

- (1) The Secretary-General of the United Nations is designated as the Depositary of this Instrument.
- (2) The original of this Instrument, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Depositary.]

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

DONE at on this day of20...

ⁱ This Zero Draft Instrument aims to provide new impetus to the process of elaborating an International Regulatory Framework on the regulation, monitoring of and oversight over the activities of Private Military and Security Companies. It therefore aims to consolidate the discussions within the Open-Ended Intergovernmental Working Group (IWG) mandated to elaborate the content of an international regulatory framework, without prejudicing the nature thereof, on the regulation, monitoring and oversight of the activities of Private Military and Security Companies. This Zero Draft draws on the IWG reports, the non-exhaustive list of elements of a discussion document based on inputs received at the first (2019) and second (2020) sessions, and a number of existing non-binding regulatory documents, like the International Code of Conduct for Private Security Service Providers, the Montreux Document on Pertinent International Legal Obligations relating to Private Military and Security Companies, the United Nations Guiding Principles of Business and Human Rights and the Draft of a Possible Convention on Private Military and Security Companies for consideration and action by the Human Rights Council (A/HRC/15/25).

It appears that it has not been possible to secure agreement on a definition of private military services, or on private security services, or on private military and security services. The approach adopted in this Instrument (Paragraph/Article dealing with Scope) was to start with a definition that is as broad as possible, but specific in relation to such services being provided across international borders. This leaves the possibility to eventually consider an exclusion clause that will rather exclude specific activities from the scope in a subsequent draft, if required. Thereby, the scope can be defined more clearly by exclusion considering that a positive definition has eluded negotiators for so long. The approach followed in this Zero Draft was to enumerate the international undertakings/obligations that Signatory States/States Parties will ascribe to in terms of international law, while avoiding detailed prescriptions. It is left to States to incorporate and legislate in terms of their domestic systems, and it is submitted that this “treaty” rather than “model law” approach will not only enhance effective negotiations, but also enhance consent to be bound by States. In order to move the process forward, the Chair Rapporteur determined to cast the document in a format that could form the basis for both a legally and non-legally binding outcome, with language options to reflect both options with respect to the nature of the document and designating it as “International Regulatory Framework.” Notwithstanding, to reinforce the open-ended nature thereof, the more neutral term “Instrument” was used that does not detract from the possibility of being an international regulatory framework.

ⁱⁱ The document takes the approach, derived from the possibility that it may evolve into a legally binding document, that obligations/duties will be placed on States as the subjects of international law. Hence the document elaborates broad obligations and principles to which States will be bound, while leaving the States, with different legal systems and traditions, to legislate and implement detailed provisions in its domestic law to provide for accountability in domestic legal systems, in the present absence of an international accountability mechanism (except for cases where international criminal jurisdiction may be applicable). As this document relates to inter-State obligations, non-State parties are not addressed directly.

ⁱⁱⁱ It appears that it has not been possible to secure agreement on a definition of private military services, or on private security services, or on private military and security services. The approach adopted in this Instrument (Paragraph/Article dealing with Scope) was to start with a definition that is as broad as possible, but specific by requiring that such services must be provided across international borders. This leaves the possibility to eventually consider an exclusion clause that will rather exclude specific activities from the scope in a subsequent draft, if required. Thereby, the scope can be defined more clearly by exclusion considering that a positive definition has eluded negotiators for so long.

^{iv} “Security Services” is a very wide concept and it is inconceivable that this Instrument should attempt to regulate the typical domestic security guard that guards an object or person that is of a private character and that has nothing to do with the international (cross-border) abuses and impunity that is the object of the exercise. Typically, private security services are heavily regulated through domestic law (training, licencing, weapons licencing, accreditation) and it involves a range of activities like guarding of private buildings or commercial assets, protecting assets-in-transit or cash-in-transit from private financial institutions, providing

an access control function at private buildings and establishments, providing security or patrols for private residential establishments, providing private security patrols and functions at shopping malls, amusement parks, public spaces etc. It is recognised that the definition of the security services that should form the subject of this Instrument has proven elusive, and it may be worth considering working on a list of specific exclusions as an alternative method to narrow the scope of the security services that should form the subject of this Instrument.

v The definition of State Functions derives from the deliberations within the IWG.

vi It appears that there is no agreement yet on whether the document will be applicable also in situations of conflict, where International Humanitarian Law will be applicable, or whether it will be focused on the protection of victims against violations of human rights (bearing in mind the overlapping nature of these two regimes). Also, this Instrument presupposes that it will also apply to situations of armed conflict, but it is acknowledged that there will be situations wherein only international human rights will be applicable. As there has not been agreement in the process on the scope of application (and therefore also on the non-applicability of International Humanitarian Law) the text has not made a distinction by omitting International Humanitarian Law in situation that may not see it being applicable.

vii With respect to Paragraph/Article 3(1) (Scope) the Instrument intentionally aims to exclude regulation by Home States for their own domestic security industry which is usually provided for in specific domestic legislation.

viii It makes sense to regulate the activities of PMSC's in all situations, including situations of conflict, where IHL will be applicable, and consequently, this approach will call for the applicability of International Human Rights Law. The term "complex situations" is not used as it is not a legally defined term, while situations of conflict find adequate definition in International Humanitarian Law.

ix Also see the note relating to the definition of "Security Services".

x The approach chosen in this Instrument is not to create new crimes under international law, but to strengthen accountability mechanisms. It is noted that a closed or open-ended approach can be taken in defining the applicable crimes and Paragraph/Article 3(4) can therefore make reference only war crimes, crimes against humanity, and genocide (which includes other crimes like torture) or be a more open-ended provision as it presently the case.

xi Provision has not been made in this draft a reporting obligation or a Conference of States' Parties. Delegations will also have to provide guidance on the inclusion in the Instrument of the establishment or designation of any central authority responsible for monitoring and administrative enforcement or accountability by that authority after initial registration or a licensing. Guidance must include whether such an authority must be established as a 'treaty' body or by State in their domestic law.

xii The manner of registration and licencing is yet to be determined.

xiii "High Seas" is legally defined in the LOSC, while the term "international waters" is not and is sometimes used to refer to a limited area beyond the Territorial Sea (i.e., the Exclusive Economic Zone) up to the commencement of the High Seas, or the same area but with inclusion of the High Seas. Thus, "High Seas" and the "EEZ" were included in order to, with the provision in Paragraph/Article 11(2)(b), provide for jurisdiction over the activities of maritime Private Military and Security Companies everywhere (including the EEZ and the High Seas).

xiv This text intentionally does not aim at developing a free-standing extradition and/or mutual legal assistance in criminal matters regime in view of the present initiative to negotiate the *Multilateral Treaty for Mutual Legal Assistance and Extradition for the Most Serious International Crimes*.

xv The Instrument does not intend to create any new crimes, but relies on existing international crimes (war crimes, crimes against humanity, genocide as examples) and existing or to be created crimes in domestic law. That principle informed the use of the term "applicable crimes".