

# ELEMENTS OF A PROPOSED DRAFT CONVENTION ON PMSC

**OPEN-ENDED  
INTERGOVERNMENTAL  
WORKING GROUP TO :**  
**CONSIDER THE  
POSSIBILITY OF  
ELABORATING AN  
INTERNATIONAL  
REGULATORY FRAMEWORK  
ON THE REGULATION,  
MONITORING AND  
OVERSIGHT OF THE  
ACTIVITIES OF PRIVATE  
MILITARY AND SECURITY  
COMPANIES**



**GENEVA. 23-27 MAY 2011**

ELEMENTS  
OF A  
PROPOSED  
DRAFT  
CONVENTION  
ON  
PMSC

- Preamble
- General Provisions
- General Principles
- Legislative regulation, oversight and monitoring
- State responsibilities to impose sanctions on offenders and provide remedies to victims
- International oversight and monitoring
- Final Provisions

# I. THE PREAMBLE MAKES REFERENCE TO

## GENERAL PRINCIPLES

- UN CHARTER, *erga omnes* obligations, SOVEREIGN EQUALITY OF STATES....
- INTERNATIONAL HUMAN RIGHTS and INTERNATIONAL HUMANITARIAN LAW
- ROME STATUTE AND INTERNATIONAL CRIMINAL COURT

## DUTIES OF STATES AND SOFT LAW

- TO PREVENT ABUSES OF INTERNATIONAL HUMAN RIGHTS and INTERNATIONAL HUMANITARIAN LAW COMMITTED BY TRANSNATIONAL CORPORATIONS
- TO PREVENT, INVESTIGATE, PROSECUTE AND PUNISH HUMAN RIGHTS VIOLATIONS AND PROVIDE REMEDIES TO THE VICTIMS THROUGH LEGISLATIVE AND OTHER MEASURES
- UN CODES OF CONDUCTS, UN GUIDELINES, MONTREUX DOCUMENT...

## PRESENT SITUATION

- INCREASING OUTSOURCING OF INHERENTLY STATE FUNCTIONS UNDERMINING THE STATE MONOPOLY OF LEGITIMATE USE OF FORCE
- INCREASING ALARMING CASES OF ABUSES COMMITTED BY PMSC
- INSUFFICIENCY OF SELF-REGULATION
- THE URGENCY FOR STATES TO REGULATE AND MONITOR PMSC'S ACTIVITIES

# II. GENERAL PROVISIONS

- PURPOSES OF DRAFT CONVENTION

- DEFINITIONS

- SCOPE OF APPLICATION

# PURPOSES OF DRAFT CONVENTION (Art. 1)

Reaffirm the State responsibility for the legitimate use of force

Identify inherently State functions that cannot be outsourced

Provide guidance for regulation by States of the activities of PMSCs and their potential sub-contractors

Promote cooperation between States regarding the licensing and regulation of PMSCs activities

Establish an international monitoring mechanism and promote the creation of monitoring bodies at national level

# DEFINITIONS

PMSC  
MILITARY  
SERVICES  
SECURITY  
SERVICES

EXPORT/IMPORT  
OF  
MILITARY AND  
SECURITY  
SERVICES

INHERENTLY  
STATE  
FUNCTIONS

CONTRACTING  
STATES  
STATES OF  
OPERATIONS  
HOME STATES  
THIRD STATES

## **INHERENTLY STATE FUNCTIONS WHICH CANNOT BE OUTSOURCED:**

- 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.

# SCOPE OF APPLICATION





# III. GENERAL PRINCIPLES

- **State responsibility for the legitimate use of force**
- **State sovereignty. Principles of sovereignty, equality and territorial integrity**
- **Prohibition of outsourcing inherent State functions to PMSCs**
- **Prohibition of outsourcing the use of certain firearms**
- **Respect for IHRL and IHL and accountability for violations.**
- **Liability of superior of PMSCs personnel for crimes under international law committed by PMSC personnel under their effective authority and control**
- **Prevent PMSCs from trafficking and illicitly manufacturing firearms**
- **Rule of Law**

# IV. Legislative regulation, oversight and monitoring

**A  
NATIONAL  
REGIME  
OF  
REGULATION  
AND  
OVERSIGHT**

**STATES  
PARTIES**

A NATIONAL  
CENTRALIZED SYSTEM  
OF REGISTRATION OF  
PMSC

- PROHIBITING  
REGISTRATION OF  
PMSC OFF-SHORE

A LICENSING SYSTEM  
FOR

- COMPANIES
- PERSONNEL
- CONTRACTS

PERIODIC  
REPORTS TO UN  
ESTABLISHED BODY  
ON

- REGISTRATION
- LICENCING

# V. STATE RESPONSIBILITY TO IMPOSE CRIMINAL, CIVIL AND/OR ADMINISTRATIVE SANCTIONS ON OFFENDERS AND PROVIDE REMEDIES TO VICTIMS

## **Criminalization of offenses**

**Criminalization of:**

Acts of carrying out inherently State functions

The export/import of PMSCs services without license or authorization

Unlawful use of force and firearms

Investigation, prosecution and punishment of violations covered by the convention

Effective remedies to victims

## **Establishment of jurisdiction**

Jurisdiction over offenses committed in the territory of a State party; on board of a vessel flying the flag of that State or an aircraft registered under the laws of that State: or by one of its nationals or against a national

**VI. INTERNATIONAL COMMITTEE ON THE REGULATION,  
OVERSIGHT AND MONITORING OF PMSCs WOULD BE  
RESPONSIBLE FOR RECEIVING AND DEALING WITH**



**Reports from States parties**



**Petitions from individuals and groups of individuals**



**Confidential Inquiries: *in situ* visit**



**Complaints from States parties –  
Conciliation Commission**

# VII. FINAL PROVISIONS

- ❑ SIGNATURE, ENTRY INTO FORCE,  
DENUNCIATION, RESERVATIONS.....
- ❑ INTERGOVERNMENTAL ORGANIZATIONS