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

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

GENERAL PRINCIPLES

- 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...

DUTIES OF STATES AND SOFT LAW

- 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

PRESENT SITUATION
II. GENERAL PROVISIONS

- PURPOSES OF DRAFT CONVENTION
- DEFINITIONS
- SCOPE OF APPLICATION
<table>
<thead>
<tr>
<th>Purpose</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Reaffirm the State responsibility for the legitimate use of force</td>
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<td>Identify inherently State functions that cannot be outsourced</td>
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<td>Provide guidance for regulation by States of the activities of PMSCs and their potential subcontractors</td>
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<td>Promote cooperation between States regarding the licensing and regulation of PMSCs activities</td>
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<td>Establish an international monitoring mechanism and promote the creation of monitoring bodies at national level</td>
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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

States and International Organizations

Not directly applicable to PMSCs and individuals

All situations not only armed conflicts
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

<table>
<thead>
<tr>
<th>States Parties</th>
<th>Periodic Reports to UN Established Body on</th>
</tr>
</thead>
<tbody>
<tr>
<td>A National Centralized System of Registration of PMSC</td>
<td>Prohibiting Registration of PMSC Off-Shore</td>
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<tr>
<td>A Licensing System for</td>
<td>• Companies</td>
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<td>• Personnel</td>
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- **Prohibiting Registration of PMSC Off-Shore**
- **Companies**
- **Personnel**
- **Contracts**
- **Registration**
- **Licensing**
V. STATE RESPONSIBILITY TO IMPOSE CRIMINAL, CIVIL AND/OR ADMINISTRATIVE SANCTIONS ON OFFENDERS AND PROVIDE REMEDIES TO VICTIMS

Criminalization of offenses:
- 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