International Regulation for PMSCs: Elements and Principles
Convention

Convention is a Code of Conduct for states (regarding PMSCs)

States then adopt national legislation and regulatory rules for PMSCs
Convention

Convention also establishes mechanisms and procedures for Inter-state dialogue and interaction regarding PMSCs and role of UN mechanisms in these processes.
PRINCIPLES FOR CONVENTION

States should establish a system of registration for PMSCs separate from regular businesses, with more entry info required.

Prohibit registration of PMSCs in off-shore zones.
PRINCIPLES FOR CONVENTION

Create UN-based International Register for PMSCs

Apply experience of the UN Register for Conventional Arms (172 states annually report)
PRINCIPLES FOR CONVENTION

Transparency, responsibility, accountability

Annual report of the states to the UN on main state contracts with PMSCs, on registration and licensing
PRINCIPLES FOR CONVENTION

System of advanced and detailed licensing
Licensing companies
Licensing personnel
Licensing contracts

Increase responsibility of “home state” for its PMSCs
PRINCIPLES FOR CONVENTION
Enable “countries of operation” ("territorial states") to possess entry control over companies and personnel
- Right to expel misbehaving companies ("company non grata")
- Right to check entering personnel
Demand from PMSCs only legitimate ways of acquiring, importing and transporting weapons
PRINCIPLES FOR CONVENTION

Certain limitations on use of force and use of weapons by PMSCs
PRINCIPLES FOR CONVENTION

Oblige companies to provide appropriate training:
- in International Humanitarian Law
- in Human Rights Law
- in national law of a country of operation
PRINCIPLES FOR CONVENTION

Parliamentary oversight over PMSCs:

- Hearings
- Investigations
- Subcommittee
- National law on PMSCs
PRINCIPLES FOR CONVENTION

Principle of state monopoly on use of force
PRINCIPLES FOR CONVENTION

Each state needs to define legislatively military and security functions which are in principle not outsourcable from the state.
PRINCIPLES FOR CONVENTION

Examples:

Not to allow PMSCs use, guard or transport WMD

Afghanistan defined “protection of religious sites” as non-outsourcable function
PRINCIPLES FOR CONVENTION

Draw “red line” beyond which activities of PMSC become pure mercenarism or break into non-outsourcable state functions.

Distinct clearly allowed and prohibited activities for PMSCs.
PRINCIPLES FOR CONVENTION

Create mechanism of interstate complaints and inquiries

«What your company is doing on my territory?»
«How my company behaves at your territory?»
PRINCIPLES FOR CONVENTION

Monitoring of PMSCs’ activities (here interface with CoC mechanism is possible)
PRINCIPLES FOR CONVENTION

System of sanctions applicable to PMSCs:
* “black marks” in International Register;
• Prohibition to international organizations to contract with certain PMSCs;
• Recommendation to the state of registration to deprive certain PMSC of licenses;
  * Initiate investigation;
  * Initiate trial or request from the state of registration or operation to initiate trial
Regulatory Framework

Oversight body (control organ) is required within the UN system (modeled after already established organs in UN Human Rights arrangements)
Functions of Oversight UN Committee

- Manage International PMSCs Register;
- Collect and analyze states’ annual reports;
- Monitor PMSCs activities;
- Process inter-state complaints /inquiries;
- Collect and analyze public complaints;
Functions of Oversight UN Committee

• Recommend actions regarding PMSCs to HRC and other international bodies;

*Recommend actions to states

• Promote international legal assistance regarding PMSCs cases

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Structure of Convention

Preamble

44 articles

Part 1.
Definitions
Scope of Application
Structure of Convention

Part 4.
Sanctions
Remedies
Liability
Jurisdiction
Prosecution
Extradition
Structure of Convention

Part 5.

International Oversight
International Monitoring
International Bodies (Committee)
International Register
Reports by States
Inquiries/Complaints/Petitions
Structure of Convention

Part 6.
Signature
Entry into force
Amendments/Reservations
Applicability to intergovernmental organizations
PRINCIPLES FOR CONVENTION

PMSCs are **NOT** «business as usual»

It is highly specific export, requiring robust “export control”