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WORKING PAPER

WEAPONS, PRIVATE MILITARY AND SECURITY COMPANIES, AND INTERNATIONAL LAW: A CRITICAL ANALYSIS OF THE FIFTH DRAFT OF THE UNITED NATIONS INSTRUMENT ON PMSCS

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GLOSSARY OF ABBREVIATIONS AND ACRONYMS

ACLED	Armed Conflict Location & Event Data project
CAR	Central African Republic
CCW	United Nations Convention on Certain Conventional Weapons
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
ISR	Intelligence, Surveillance, and Reconnaissance
PCASP	Privately contracted armed security personnel
PMSC	Private military and security company
UN	United Nations
UNODA	United Nations Office for Disarmament Affairs
UNODC	United Nations Office on Drugs and Crime
UNIDIR	United Nations Institute for Disarmament Research
VBA	Vessel-based armoury
VPD	Vessel protection detachment

INTRODUCTION

The strategic importance of regulating private military and security companies (PMSCs) has grown in tandem with their expanding role on the global stage. Once considered as only end users of military and policing equipment, PMSCs have evolved into active participants in the international arms trade, often operating in under-regulated spaces and with minimal oversight. This transformation poses a significant challenge to international peace and security, creating a regulatory vacuum that State-centric legal frameworks have so far struggled to fill.

This Working Paper critically analyses the weapons provisions in a recent landmark effort that seeks to bring the PMSC industry within a dedicated normative framework, namely the Fifth Draft of the proposed international instrument on PMSCs being elaborated under United Nations (UN) auspices.[1]

This Working Paper is in three main sections. The first details the evolving threat landscape, outlining the multifaceted roles PMSCs now play in arms supply, including, on occasion, in violation of UN arms embargoes. The second section analyses the principal weapons provisions proposed in the Fifth Draft of the PMSC Instrument (see Annex. Article 11 of the Fifth Draft of the PMSC Instrument). The third critically evaluates the framework's coherence, identifying innovative strengths as well as significant omissions or internal inconsistencies. The third section also offers recommendations for the way forward in the PMSC Instrument that States conclude, irrespective of the binding nature of the instrument), which are summarized below.

SUMMARY OF FIVE KEY RECOMMENDATIONS

The PMSC instrument should:

- consistently refer to 'weapons' in its provisions. The Fifth Draft mixes references to 'weapons' and the narrower formulation of 'conventional arms'.

- consistently refer to 'PMSCs, their personnel and subcontractors'. In the Fifth Draft, mention of PMSC 'personnel' is sometimes omitted, seemingly without justification.

- maintain its application to the maritime environment and explicitly encompass all activities pertaining to vessel-based or floating armouries.

- explicitly refer to the risk of diversion of weapons through PMSCs. While it is proposed to add mention of illegal trafficking in Article 11 of the Fifth Draft, 'diversion' should be added to the list of activities explicitly requiring 'effective control' by States.

- add record-keeping duties for PMSCs with respect to all weapons activities.

I. THE ROLE OF PMSCS IN ARMS PROLIFERATION

PMSCs have transitioned from peripheral actors to significant figures in arms procurement, trafficking, and proliferation, creating novel and complex challenges for the maintenance of international peace and security. Their activities now span the entire weapons life-cycle, often operating with a degree of impunity that undermines arms control. Indeed, it is now well documented that arms proliferation by PMSCs is occurring through the air and on the seas as well as across land.[2] From being only end users of weapons, PMSCs have become actors capable of evading UN arms embargoes and transferring arms to States not permitted to receive them.[3] On occasion, State-backed PMSCs are given carte blanche to acquire and transfer weapons across multiple jurisdictions, seemingly without oversight or accountability.[4]

The UN 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 (hereafter UN Working Group on Mercenaries) has observed that the activities of PMSCs 'go beyond' the provision of weapons to 'fuel the demand for weapons in the regions in which they are deployed'.[5] This finding has been corroborated by studies examining PMSC activities and weapons proliferation, particularly in Sub-Saharan Africa[6] and the Middle East and North Africa.[7] A small number of prominent PMSCs are even using weapons to commit or facilitate international crimes and/or violations of human rights in certain States.[8] Evidence from investigative reporting reveals the multiple, often illicit, roles that PMSCs play in global arms flows. Their activities can include direct participation in hostilities in armed conflict and involvement in the transfer of weapons in breach of international law.

DIRECT PARTICIPATION IN HOSTILITIES

Civilians – including PMSC personnel – who participate directly in hostilities in a situation of armed conflict lose their immunity from attack under international humanitarian law (IHL).[9] PMSCs have become global players in the arms trade, moving beyond their traditional security functions to engage directly in combat. This role is sometimes accompanied by procurement of heavy weapons.[10]

Direct participation in hostilities by PMSC personnel often occurs in the context of partnerships with States that are battling armed opposition groups on their territory. In Mali, for example, between December 2021 and June 2023, the Wagner Group is reported to have participated in 298 violent events. Malian interlocutors assert that Wagner Group personnel were engaged in most of the military operations mounted by the Malian Armed Forces in the centre of the country.[11] These operations against rebel forces involved use of combat aircraft and armoured vehicles.[12]

The ability of PMSCs to access and use heavy weaponry is undoubtedly contributing to an escalation of armed violence and increases the level of civilian harm.[13] In the Central African Republic (CAR), the Wagner Group engaged in 'punitive military operations throughout the country, indiscriminately targeting combatants and civilians and committing … widespread war crimes'.[14]

INVOLVEMENT IN ILLICIT WEAPONS TRANSFERS

Certain PMSCs have been directly implicated in illicit arms transfers, including in breach of UN arms embargoes. Documented cases in Libya show contractors delivering military hardware under the guise of security assistance,[15] and PMSCs have been accused of supplying missiles to forces in Sudan.[16] Mali has been used as a location for the acquisition of military equipment.[17] Commentators have further observed that, in certain States, PMSCs 'finance operations through arms trafficking, including darknet sales and illicit grey and black-market transfers … with States also playing a central role in arms proliferation'.[18]

PMSCs exploit legal and regulatory gaps, such as inadequate coverage in treaties such as the 2013 Arms Trade Treaty,[19] as well as in the 2001 Firearms Protocol that sought to prevent the trafficking of

firearms.[20] To obscure accountability, PMSCs contract brokers, forge end-user certificates, move weapons through unregulated zones, and establish complex networks of offshore shell companies.[21] Reports indicate that in CAR, weapons transferred to State forces under end-user certificates were later used by Wagner personnel in violation of the end-user commitments attached to those transfers.[22] This practice illustrates how official arms transfers may be re-routed to private actors, undermining export control regimes and the framework applicable to CAR as a State Party to the Arms Trade Treaty.[23]

The UN Working Group on Mercenaries has also noted that arms proliferation facilitated by PMSCs is not confined to operations on land – a parallel risk emerges in the maritime domain. This occurs through vessel-based armouries (VBAs), with ships used 'to store small arms, ammunition and security-related equipment'. This typically occurs beyond the territorial sea of coastal States and therefore their sovereign territory.[24] The risk of weapons diversion is associated with the lack of oversight mechanisms for VBAs or floating armouries,[25] and in the absence of a centralized international registration of armouries or the weapons they hold.[26]

EXPANSION INTO NEW FRONTIERS

The PMSC industry is rapidly evolving, with companies acquiring and using dual-use technologies such as ghost-guns,[27] unmanned systems (surveillance and even armed drones), and cyber capabilities.[28] This presents new oversight challenges that traditional normative frameworks are ill-equipped to address. A 2024 report published by the UN Institute for Disarmament Research (UNIDIR) notes that PMSCs were involved in nine per cent of drone incidents in 2018–23, particularly in Africa. The Wagner Group relies on these systems 'for surveillance and possibly attacks in CAR and Mali'.[29] Commentators note that 'PMSCs have even been implicated in the development and operation of offensive cyber capabilities'.[30]

In sum, PMSCs have become holders and operators of strategic technologies, combining into unified service packages: drones; Intelligence, Surveillance, and Reconnaissance (ISR) platforms; electronic warfare tools; cyber intrusion capabilities; and data-processing systems.[31] These tendencies confirm the risks PMSCs carry as non-State actors who influence a wide range of scenarios, including in the course of hybrid warfare.

Set against this landscape, the current, primarily State-centric international regulatory landscape struggles to address the challenges created by the changing nature of PMSCs. Key treaties such as the 2013 Arms Trade Treaty and the 2001 Firearms Protocol were concluded to govern the actions of States, and their application to PMSCs depends on effective national implementation, which in practice can be weak or inconsistent. Soft law (ie, politically binding instruments) such as the Montreux Document[32] and the International Code of Conduct for Private Security Service Providers[33] have had a limited impact, as they focus primarily on PMSCs as recipients of weapons rather than as suppliers, and in any event lack effective enforcement mechanisms.[34] Nevertheless, these instruments do require that PMSCs operating in conflict zones and elsewhere obtain[35] and handle weapons lawfully.[36]

The gaps and challenges described above underscore the need for a dedicated and coherent regulatory response, which the UN Open-Ended Intergovernmental Working Group seeks to provide through its mandate to elaborate an international framework to regulate the activities of PMSCs. The current provision dedicated to weapons (Article 11) in the Fifth Draft of the PMSC Instrument largely maintains the structure and wording of the same article in earlier iterations,[37] but it broadens its scope of application by introducing a maritime dimension. This involves reference to VBAs as a means by which PMSCs acquire and move weapons.

The following section critically assesses the regulatory response regarding weapons, in the proposed Fifth Draft of the PMSC Instrument.

II. CRITICAL ANALYSIS OF THE WEAPONS PROVISIONS IN THE FIFTH DRAFT

This section of the Working Paper analyses the proposed regulation of weapons in the Fifth Draft of the PMSC Instrument. The relevant provisions are set forth in its draft Article 11 (a provision entitled 'Regulation of the Use and Acquisition of Weapons'), in its paragraphs 1(a), (b), and (c), 2, and 3. The analysis assesses both the strengths of the proposed framework and ambiguities that could undermine its effectiveness (see Annex. Article 11 of the Fifth Draft of the PMSC Instrument).

As a general remark, the Fifth Draft refers to both 'weapons' and 'conventional arms' in its provisions, albeit with the term 'weapon(s)' occurring far more frequently. Mention of either term is sometimes accompanied by reference to 'ammunition, parts and components or other relevant technologies and accessories', implying – incorrectly – that ammunition is not generally considered a weapon. Moreover, while no formal definition exists in international law of a weapon,[38] the notion is certainly broader than arms, which are generally understood to be factory-produced, military-grade weapons. Arms (and armaments) are thus a 'subset' of weapons.[39] Conventional arms are generally understood to be all weapons except weapons of mass destruction.

The Fifth Draft of the PMSC Instrument covers a far broader range of weapons than does the 2013 Arms Trade Treaty, which does not even formally apply to all conventional arms or munitions. In addition, the Arms Trade Treaty further limits its material scope to the following conventional arms: battle tanks; armoured combat vehicles; large-calibre artillery systems; combat aircraft; attack helicopters; warships; missiles and missile launchers; and small arms and light weapons.[40] In contrast, weapons in the Fifth Draft of the PMSC Instrument seemingly include also cyber weapons, hand grenades, manually emplaced landmines, flamethrowers, directed-energy weapons (including certain lasers), and electro-shock weapons such as Tasers.[41] None of these fall within the scope of application of the 2013 Arms Trade Treaty. Also explicitly encompassed by the Fifth Draft – at least potentially, for the relevant text is bracketed – are weapons of mass destruction.

To avoid terminological inconsistency and possible ambiguity, it would be advisable to refer only to weapons in the text, and without qualification. There is no good reason to limit the scope of weaponry to be covered by the PMSC Instrument – conventional or non-conventional; factory-produced or artisanal; military-grade or policing equipment – all should be regulated. Weapons include ammunition/munitions and complete weapon systems, as well as the platforms from which they are operated, such as armoured vehicles.[42]

THE DUTY ON STATES TO CONTROL PMSC WEAPON-RELATED ACTIVITIES

Article 11(1)(a) of the Fifth Draft of the PMSC Instrument would obligate contracting States to regulate and apply 'effective' customs and other controls over PMSC weapon-related activities. These explicitly include acquisition, brokering, disposal, export, import, management, transfer, storage, transportation, transit, and trans-shipment of 'conventional arms'. The provision in subparagraph (a) requires States to 'adopt or strengthen' their domestic legislation on the handling of arms and to regulate PMSC access to them through effective licensing, customs controls, and other oversight. While the proposed Draft does not define each of the activities related to the transfer of arms (eg, export), it does mirror language in Article 5 of the Arms Trade Treaty regarding the establishment of effective control systems over weapons transfers.

'Effective customs control'

Article 11(1)(a) provides that States shall adopt 'appropriate measures to: regulate and apply effective customs control and other forms of control'. Neither the Fifth Draft nor the Arms Trade Treaty defines

what constitutes effective customs control. In practice, meaning is provided by the 2001 Firearms Protocol, which obliges its States Parties to increase the effectiveness of import, export and transit controls, including border controls and transborder customs cooperation, in order to detect, prevent, and eliminate theft, loss, diversion, and illicit trafficking of firearms along with their parts and ammunition.[43] The World Customs Organization's recommendation on the implementation of the Firearms Protocol calls for 'harmonized and effective customs control procedures', advance documentation, licensing verification, risk-based controls, and enhanced information exchange in firearms transfers.[44]

The UN Office for Disarmament Affairs (UNODA) notes that customs and border authorities serve as frontline actors responsible for verifying that all shipments of weapons are covered by valid authorizations; that documentation is authentic and accurate; and that the consignments dispatched correspond to the authorizations.[45] States can also ensure effective customs control by 'checking the existence and authenticity of electronic or written documents, examining the accounts of undertakings and other records, inspecting means of transport, carrying out official inquiries, and other similar acts'.[46]

Given these standards, effective customs control in Article 11 should be understood as comprehensive, on-site oversight that aims to detect and prevent illicit transfers and diversion within national borders.[47] In any movement of weapons (eg, transit/trans-shipment of missiles), customs authorities clearly play a critical role in enforcing national controls and ensuring compliance with UN Security Council arms embargoes and other international legal obligations.[48] While customs control operates at the physical border or point of transit, it does not exhaust States' obligations under international law, which can also require institutional and licensing controls beyond border checkpoints.

'Other forms of control'

The reference to 'other forms of control' reflects Article 5 of the Arms Trade Treaty, which requires its States Parties to establish effective national control systems and to designate competent national authorities to administer them. This duty requires the establishment of a governmental authority, typically operating under ministerial supervision, which is mandated to 'collect, verify, and analyse information; overview compliance with its decisions; ... [and] assure coordination with other State organs.'[49] The authority must be empowered to apply prohibitions, issue denials, and revoke or suspend transfer licences wherever that is required under either domestic or international law.[50]

In addition, Article 5(2) of the Arms Trade Treaty requires each State Party to establish a national control system and list covering the categories of arms, ammunition, and parts and components regulated by the Treaty.[51] A national control system typically requires a domestic legal framework that defines which entity can export arms and clarifies when an export is deemed to occur (eg, upon departure from national territory).[52] Many States that belong to non-binding export control frameworks such as the Wassenaar Arrangement maintain detailed national control lists that cover a broad spectrum of items, 'from warships and aircraft to parts, components and technology'.[53]

A comprehensive weapons control system must also regulate which entities may lawfully receive controlled items. Competent authorities may restrict transfers to certain categories of end user or exclude specific geographic destinations, particularly where there is a foreseeable risk that they would be used to commit or facilitate violations of IHL or international human rights law. Thus, the competent authority should deny or suspend an authorization based on an 'overriding', ie clear 'risk', an issue discussed further below.

In addition, special attention must be paid to control of VBAs or floating armouries – ships used to store weapons for maritime security operations, which operate in a legal 'grey area' beyond the territorial seas of States. The UN Working Group on Mercenaries has confirmed that VBAs are a significant offshore route for weapons leakage, proliferation, and diversion to PMSCs,[54] making their inclusion in the Fifth Draft of the PMSC Instrument a forward-looking step to address a documented and emerging proliferation

risk. Given the increasingly extensive use of VBAs as offshore storage and transfer points, 'other forms of control' should encompass licensing, record-keeping, and monitoring mechanisms capable of regulating PMSC access to, and withdrawals, from VBAs operating in international waters.

PROHIBITION OF UNLAWFUL WEAPONS

Article 11(1)(b) of the Fifth Draft requires contracting States to adopt or strengthen in their domestic law appropriate measures to prohibit any transfer to, and use by, PMSCs, their personnel and subcontractors, of weapons, ammunition, parts and components, relevant technologies or other related accessories whose use is prohibited under international law. States must further prohibit such companies and personnel from engaging in any activities related to such weapons, defined as including – in bracketed text – 'weapons of mass destruction, weapons which cause superfluous injury or unnecessary suffering, or which … cause indiscriminate, long-term and severe damage to the environment, cyber weapons, and inherently abusive security goods and equipment'. As a footnote to the text in Article 11(1)(b) explains, a number of delegations proposed that the text in square brackets be deleted.

'Prohibited under International Law'

International law prohibits States from using – and, in certain treaties, from transferring – several categories and types of weapons. These treaties, which include both IHL and disarmament, pertain to specific weapons of mass destruction and conventional weapons. Article 11(1)(b) imports into the Fifth Draft existing international prohibitions on weapons whose use is banned under international law, extending these prohibitions to PMSCs. The bracketed list accompanying the provision includes several categories of weapons that call for comment.

Weapons causing superfluous injury or unnecessary suffering

Under IHL, weapons that are of a nature to cause superfluous injury or unnecessary suffering to combatants/fighters may not be used in armed conflict.[55] In its 1996 *Nuclear Weapons* Advisory Opinion, the International Court of Justice thus reaffirmed the principle of IHL that prohibits 'weapons causing them such harm or uselessly aggravating their suffering'.[56] Weapons that cause superfluous injury or unnecessary suffering include expanding or explosive bullets,[57] chemical weapons,[58] and blinding laser weapons.[59]

Weapons with indiscriminate effects

Conventional disarmament treaties that comprehensively prohibit the use and transfer of specific weapons along with their development and stockpiling are the 1997 Anti-Personnel Mine Ban Convention[60] and the 2008 Convention on Cluster Munitions.[61] Both treaties prohibit weapons which often have indiscriminate effects, although they do not codify customary IHL. Nevertheless, Article 11(1)(b) of the Fifth Draft of the PMSC Instrument aims to prevent circumvention of international obligations: States must not transfer to PMSCs – or allow them access to – weapons they could not lawfully use themselves.

Weapons of mass destruction

Prohibitions on biological and chemical weapons, which exist in customary law, are codified in dedicated disarmament treaties. The 1971 Biological Weapons Convention[62] and the 1992 Chemical Weapons Convention[63] impose absolute prohibitions on the development, possession, use, and transfer of such weapons.

The international legal regime governing nuclear weapons is more fragmented. Nuclear weapons are restricted under Article I of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons to five designated nuclear-weapon States, and any transfer of nuclear weapons or control over them to any recipient, including non-State actors, is prohibited.[64] The 2017 Treaty on the Prohibition of Nuclear Weapons establishes an absolute prohibition on nuclear weapons for its States Parties, but nuclear-weapon and nuclear umbrella States are not party to it. That said, it is certainly unlawful for any State to transfer any weapon of mass destruction to a PMSC.

Weapons causing environmental harm

The bracketed list in the current draft Article 11 also includes weapons that cause 'indiscriminate, long-term, and severe damage to the environment'. This is a narrowly framed obligation. The wording mirrors that set forth in Additional Protocol I to the 1949 Geneva Conventions, which prohibits means and methods of warfare causing widespread, long-term, and severe harm to the natural environment.[65] This high, cumulative threshold is hard to apply in practice.[66]

Although the wording in the Protocol is changed in the Fifth Draft of the PMSC Instrument from 'widespread' to 'indiscriminate', this does not largely affect the scope of the prohibition. Thus, it might be suggested that Article 11 could encompass all incendiary weapons regulated under Protocol III of the United Nations Convention on Certain Conventional Weapons (CCW), but this is not correct. Under the Protocol, incendiary weapons may not be used to attack 'forests or other kinds of plant cover ... except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives'.[67] The use of, for example, an incendiary weapon in armed conflict would not be indiscriminate if it were targeted against a military objective outside an area with a concentration of civilians. If it were not so targeted, it could be an indiscriminate attack or even an attack directed against a civilian object. In either case, it would violate IHL.

'Cyber weapons'

Article 11(1)(b) also foresees a ban on the transfer to and use of cyber weapons by PMSCs. A weapon in cyberspace has been defined as a 'device, materiel, instrument, mechanism, equipment, or software used, designed, or intended to be used to conduct a cyber-attack'.[68] This includes 'worms, viruses, botnet codes, time and logic bombs'.[69] Nevertheless, weapons used in cyber operations are not prohibited by treaty or under customary law. As the International Committee of the Red Cross (ICRC) has stated, under IHL, cyber tools are prohibited where they qualify as weapons and are inherently indiscriminate – affecting civilians and civilian objects on the one hand and military objectives on the other without distinction.[70]

'Inherently abusive security goods and equipment'

The term 'inherently abusive security goods' is not defined in any binding treaty. UN General Assembly resolutions have, however, call upon States to adopt effective legislative, and administrative measures to prevent and prohibit the production, trade, transfer, and use of equipment that has no practical use other than for torture or other cruel, inhuman, or degrading treatment or punishment.[71] Regional instruments are also relevant in this regard, notably a Recommendation issued in 2021 by the Council of Europe which calls on States to prevent and prohibit the import, export, transit, brokering, and promotion of 'inherently abusive goods', including (i) execution devices (such as gallows); (ii) coercive restraint devices designed to inflict pain or degradation (e.g., thumb-cuffs); (iii) impact weapons designed to enhance injury (eg, spiked batons); and (iv) body-worn electric shock devices used for human restraint.[72] Drafters might, though, consider changing the language in Article 11(1)(b) to 'security tools whose use is incompatible with the principles and rules of IHL and human rights'.

THE 'OVERRIDING RISK' STANDARD FOR TRANSFER AUTHORIZATION

Draft Article 11(2) requires that authorization for the transfer to a PMSC or a subcontractor of conventional arms, ammunition, parts, components, relevant technologies, or other related accessories not be granted by States in certain circumstances. This is where the proposed exporting State assesses, in accordance with applicable domestic law and international obligations and commitments, that an 'overriding risk' exists that they might be used to commit or facilitate crimes under international law; abuses or violations of international human rights law; or violations of IHL as defined (non-exhaustively) in Article 4(3) of the Fifth Draft. This provision draws on – but differs from – the language of Article 7 of the Arms Trade Treaty, which subjects all requests for export authorization not prohibited under Article 6 to a structured risk assessment process.

Article 7(1) of the Arms Trade Treaty thus obligates its States Parties to conduct a risk assessment prior to the authorization of an export of conventional arms within the scope of the treaty. If, following the assessment and further consideration of possible mitigation measures, the exporting State identifies an overriding risk they could be used to commit or facilitate a serious violation of international human rights law or IHL, the proposed export must be denied.[73] The term 'overriding risk' is not explicitly defined in the treaty, although the majority of State practice has determined that this is where a 'clear risk' exists. An 'overriding risk' is understood by the ICRC to arise where negative consequences 'are more likely to materialize than not'.[74]

Article 11(2) of the Fifth Draft of the PMSC Instrument excludes several elements set forth in Article 7(1)(b) and (4) of the Arms Trade Treaty – namely the risks that the weapons would undermine peace and security, or be used in connection with terrorism, transnational organized crime, or serious acts of gender-based violence, and violence against women and children. Their absence potentially narrows the scope of the current provision compared to the Arms Trade Treaty framework.

The reference in the Fifth Draft to 'crimes under international law' uses an ambiguous formulation that may not equate merely to international crimes, but could be considerably broader. In addition, the reference to 'abuse or violation of international human rights law' is less restrictive than the qualified 'serious' violations of international human rights law and IHL in the risk assessment formulation of the Arms Trade Treaty. Potentially, therefore, the Fifth Draft offers a more protective threshold for denial of proposed weapons exports. Finally, a new proposed subparagraph (c) in Article 11(2) of the Fifth Draft would prohibit PMSCs, their personnel, and subcontractors from 'illicit trafficking in conventional arms, their ammunition, parts, components, relevant technologies or other related accessories'.

THE SAVINGS CLAUSE AND INTERACTION WITH EXISTING LAW

Article 11(3) of the Fifth Draft of the PMSC Instrument is a 'savings clause', which confirms that the Fifth Draft does not limit the applicability of existing binding and non-binding international instruments regulating the manufacture, transfer, trafficking, and use of conventional arms, ammunition, parts and components, and relevant technologies or other related accessories. Pursuant to the savings clause, the Fifth Draft does not limit or supersede obligations on States under existing international instruments governing weapons transfers. For States that are party to the Arms Trade Treaty, the broader Article 7 risk-assessment criteria therefore continue to apply.

But the savings clause extends beyond global and regional weapons treaties to also encompass soft-law instruments – notably, the UN Programme of Action on Small Arms and Light Weapons,[75] the Montreux Document, and the International Code of Conduct for Private Security Service Providers. It also covers technical guidelines such as the International Tracing Instrument,[76] the Modular Small-Arms-Control Implementation Compendium (MOSAIC),[77] and the International Ammunition Technical Guidelines (IATG).[78] Also applicable is UN Security Council Resolution 1540 (2004), which obliges States to establish

appropriate laws and regulations to prevent non-State actors – defined as individuals or entities not acting under the lawful authority of any State – from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical, or biological weapons and their delivery systems.[79]

Having analysed the weapons related language within the Fifth Draft of the PMSC Instrument, the final section assesses its overall coherence and adequacy in addressing the risks identified above.

III. COHERENCE, OMISSIONS, AND EFFECTIVENESS IN THE FIFTH DRAFT

STRENGTHS AND INNOVATIONS IN THE FIFTH DRAFT

The Fifth Draft of the PMSC Instrument contains many strengths and a number of innovative features. Most notably with respect to weapons, this concerns the broadening of application to the maritime environment by reference to vessel-based armouries. According to the International Code of Conduct for Private Security Service Providers, the typical role of a private security company employed for maritime security services is to provide 'counter-piracy services, armed or unarmed maritime escorts or onboard vessel protection'.[80]

Article 11(1)(a) of the Fifth Draft requires States to adopt or strengthen in their domestic law appropriate measures to regulate and apply effective control over all weapons transfer-related activities of PMSCs, including those obtained from VBAs. Floating armouries store small arms and light weapons and other equipment for private security contractors that transportation companies use for counterpiracy measures.[81] They emerged due to the logistical demands of PMSCs, which were being increasingly hired to safeguard and defend commercial vessels against piratical attacks.[82]

As noted, the UN Working Group on Mercenaries has underlined the risk of weapons diversion and arms proliferation through VBAs. In addition, commentators have noted control and inspection problems associated with private security contractors that requires 'to verify if arms are properly stored, if they are operational, or living/working conditions of the staff operating on vessels'.[83] Due to a gap in accountability and transparency, cases of human rights violations or abuses committed by private security contractors at sea have been documented.[84]

The application of the Arms Trade Treaty to maritime activities remaining contested,[85] the provision in the Fifth Draft is to be considered innovative. It responds to the concerns about uncontrolled proliferation and diversion of weapons from VBAs, and aims to integrate maritime security more systematically into arms-transfer control mechanisms applicable to PMSCs.

INCONSISTENT APPLICATION TO REGULATED ACTORS

There is, however, an internal inconsistency arising from terminology used in Article 11 of the Fifth Draft to describe the actors it regulates. While subparagraphs 1(a) and (c) of Article 11 – and other provisions – refer to 'Private Military and Security Companies, their personnel and subcontractors', Article 11(2) omits reference to 'personnel'. Given their central role in weapons handling, and to ensure coherence and clarity, **Article 11 should consistently employ the formulation 'PMSCs, their personnel and subcontractors'**.

DIVERSION

While Article 11(1)(a) of the Fifth Draft seeks to regulate all weapons-related activities of PMSCs, there is a notable omission of reference to diversion. Diversion is the delivery of weapons 'to an unauthorized end user or unauthorized use by an authorized end user'.[86] It can occur in many ways during the movement of weapons – in the country of origin (pre-shipment); in transit; at the point of delivery; or on post-delivery

– in particular through unauthorized re-export or re-transfer.[87]

Diversion is recognized by the UN Security Council as a major driver of armed conflict, organized crime, and terrorism.[88] While the proposed subparagraph (c) on arms trafficking would cover some of this issue, explicit reference to diversion in the text of the PMSC Instrument is warranted. Furthermore, diversion is only weakly regulated in the Arms Trade Treaty.[89] Under Article 11(2) of the Arms Trade Treaty, the exporting State has the duty only to assess diversion risks before authorizing a transfer and to adopt 'measures' to prevent or mitigate such risks. These measures 'may' include confidence-building with the importing State, examination of all actors involved in the export, and requirements for additional end-use documentation. UNODA recommends that exporting States also evaluate the importing State's capacity to secure stockpiles; the strength of its national control system; and any past record of the end user being involved in diversion.[90]

Beyond the Arms Trade Treaty, diversion is addressed in other instruments. Article 11 of the 2001 Firearms Protocol requires its States Parties to adopt security, marking, and border-control measures to prevent diversion at manufacture, and during import, export, and transit. Similarly, the UN Programme of Action on Small Arms and Light Weapons urges States to take measures to 'prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients'.[91] As well, before authorization of export, States must take into account the risk of diversion and assess according to strict national regulations and procedures 'under relevant international law'.[92]

The omission of diversion in the proposed Draft is particularly problematic given the record of certain PMSCs operating in conflict zones. Reports indicate that PMSCs illegally acquire weapons through seizure from barracks or the battlefield,[93] as well as from the 'direct attacks on border security or army posts, barracks or convoys'.[94] The UN Working Group noted that some States 'do not consistently apply, observe or uphold the end-user certificate process'. It further says they 'facilitate the illicit proliferation of arms' to PMSCs 'operating in or from their territory'.[95] Similarly, the Working Group has found that, in some instances, even where initial State-to-State transfers are lawful, States frequently become involved in diversion by deliberate 're-routing' of weapons such as armoured vehicles, artillery systems, and aircraft to PMSCs and other non-State actors.[96]

While Article 11(1)(a) of the Fifth Draft aims to regulate the entire chain of weapons transfer by PMSCs, without explicit reference to diversion the provision fails to address the most common and well-documented process of weapon 'loss'. Accordingly, to align the provision with contemporary standards, and to address the risk of PMSC-facilitated diversion, **'diversion' should be added to the list of activities explicitly requiring 'effective control'** – alongside acquisition, brokering, export, import, transfer, transit, trans-shipment, and storage.

RECORD-KEEPING

A further structural weakness of Article 11 of the Fifth Draft is the absence of an obligation of record-keeping for transferred weapons, despite this being a core measure to prevent the supply of weapons to unauthorized users and preclude their diversion.[97] As underlined by the UN Working Group on Mercenaries, the lack of comprehensive record-keeping mechanisms, including for VBAs, facilitates diversion, prevents weapons tracing, and 'serves as an impediment to accountability, transparency and monitoring'.[98] It calls on States to introduce robust, 'authentic', and reliable record-keeping systems at national and international levels.[99]

Record-keeping is addressed by both the 2013 Arms Trade Treaty and the 2001 Firearms Protocol. The Firearms Protocol obliges its States Parties to keep firearm transfer records for at least ten years to ensure tracing and identification.[100] Under Article 12 of the Arms Trade Treaty, States Parties must maintain national records of either the issuance of export authorizations or actual exports for all conventional arms covered by Article 2(1), and keep such records for at least ten years.[101] These 'export authorizations'

concern licenses or permits that a State has approved, irrespective of whether the weapons have been dispatched. By contrast, 'actual exports' involve transfers that have been authorized and which have physically left the exporting State. Article 12(3) of the Arms Trade Treaty encourages its States Parties to record additional details such as the quantity, value, and model/type of transfers, along with information on exporting, importing, transit actors or end users.[102]

Under the UN Programme of Action, States are encouraged to maintain comprehensive and accurate records of transfers of small arms and light weapons for as long as possible, and to organize such records so that competent authorities can quickly retrieve and consolidate information.[103] The International Tracing Instrument goes further, requiring States to retain records of marked imports and exports for a minimum of twenty years.[104] Article 11(1)(a) of the Fifth Draft, however, contains no requirement for States to maintain records of weapons acquired or transferred to PMSCs or authorizations granted for PMSC-related exports, imports, transit or brokering. The absence of diversion provisions and the lack of mandatory record-keeping in the Fifth Draft creates a potential loophole. As a consequence, **record-keeping duties for PMSCs-related weapons movement should be added to Article 11(1)(a)**.

CONCLUSION

This Working Paper has examined the weapons-related activities of PMSCs and assessed the extent to which the Fifth Draft of the proposed international instrument on PMSCs responds to corresponding risks. The analysis has shown that PMSCs have evolved from end users of weapons into complex actors operating across the full weapons life-cycle, often in contexts marked by weak oversight, armed conflict, and heightened risks of diversion and misuse.

This instrument represents a significant normative opportunity, particularly through its broad material scope and its explicit engagement with maritime activities and vessel-based armouries. At the same time, the analysis has identified important areas where its Fifth Draft remains incomplete or internally inconsistent. Terminological ambiguity, uneven application to regulated actors, the absence of explicit diversion controls, and the lack of record-keeping obligations risk undermining the effectiveness of the proposed framework.

In particular subsequent drafts should consider:

- consistently referring to 'weapons' in its provisions. The Fifth Draft mixes references to 'weapons' and the narrower formulation of 'conventional arms'.

- consistently referring to 'PMSCs, their personnel and subcontractors'. In the Fifth Draft, mention of PMSC 'personnel' is sometimes omitted, seemingly without justification.

- maintaining its application to the maritime environment and explicitly encompass all activities pertaining to vessel-based or floating armouries.

- explicitly referring to the risk of diversion of weapons through PMSCs. While it is proposed to add mention of illegal trafficking in Article 11 of the Fifth Draft, 'diversion' should be added to the list of activities explicitly requiring 'effective control' by States.

- adding record-keeping duties for PMSCs with respect to all weapons activities.

Addressing these shortcomings would not require the creation of entirely new standards, but rather a more consistent and comprehensive integration of existing international weapons-control principles into the PMSC context. Strengthening Article 11 along these lines would enhance the instrument's capacity to prevent proliferation, improve accountability, and ensure that PMSCs do not become a structural loophole in the international weapons regulation.

ANNEX

ARTICLE 11 OF THE FIFTH DRAFT OF THE PMSC INSTRUMENT

[States Parties][States Participants] [should][shall] adopt or strengthen in their domestic law, appropriate measures to:

(a) regulate and apply effective customs control and other forms of control over the acquisition, brokering, export, import, transfer, storage, transportation, transit, trans-shipment, disposal and management of conventional arms including their ammunition, parts and components or other relevant accessories, by Private Military and Security Companies, their personnel and sub-contractors in accordance with applicable legal obligations and international standards relating to weapons, including from Vessel-Based Armouries operating in international waters;[105]

(b) prohibit any transfer to and use by Private Military and Security Companies and their personnel or subcontractors of weapons, their ammunition, parts and components, relevant technologies or other related accessories the use of which is prohibited under international law and prohibit such Companies, their personnel and subcontractors from engaging in any activities related to such weapons, [which include weapons of mass destruction, weapons which cause superfluous injury or unnecessary suffering, or which are to cause indiscriminate, long-term and severe damage to the environment, cyber weapons and inherently abusive security goods and equipment].[106]

(c) prohibit Private Military and Security Companies, their personnel and subcontractors from illicit trafficking in conventional arms, their ammunition, parts, components, relevant technologies or other related accessories;[107]

(2) [States Parties] [States Participants] [should][shall] not authorise any transfer of conventional arms, including their ammunition, parts, and components, relevant technologies or other related accessories to Private Military and Security Companies or their sub-contractors when they assess, in accordance with applicable domestic law and international obligations and commitments, that there is an overriding risk that such arms might be used to commit or facilitate crimes under international law, abuses or violations of International Human Rights Law or violations of International Humanitarian Law.

(3) This provision does not prejudice the applicability of international treaties, conventions or guidelines or other binding or non-binding international standards regulating any aspects of the trade, manufacturing, trafficking or use of conventional arms, their ammunition, parts, and components, relevant technologies or other related accessories.

END NOTES

1 Fifth Draft Instrument on an International Regulatory Framework on the Regulation, Monitoring of and Oversight over the Activities of Private Military and Security Companies, Geneva, 1 October 2025 (hereafter, Fifth Draft of the PMSC Instrument).

2 A. Macías-Tolosa, J. de Deus Pereira, J. Jezdimirovic Ranito, and M. Small, 'Use of Maritime PMSCs, Weapons Procurement and Predatory Recruitment – New Frontiers in PMSC Regulation', Symposium on PMSCs, Opinio Juris, 14 July 2025, https://bit.ly/3YIXstO.

3 M. Blancafort, C. Watson, F. Foster, and J. Mieszkowska, 'The Role of PMSCs in the Proliferation of Weapons and Implications under Arms Control Mechanisms', Symposium on PMSCs, Opinio Juris, 14 July 2025, https://bit.ly/3KOtwJl.

4 A. Marcén Naval, 'Weapons without Fingerprints: Wagner, Arms Trafficking, and the Price of Impunity', Armed Groups and International Law, 28 May 2025, https://bit.ly/4b5EXXT.

5 UN 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, 'Role of Mercenaries, Mercenary-Related Actors and Private Military and Security Companies in the Trafficking and Proliferation of Arms', Report to the Human Rights Council, UN Doc A/HRC/57/45, 9 September 2024. The mandate of the UN Working Group thus extends beyond mercenaries to include PMSCs. See: https://bit.ly/49d4mMX.

6 Global Initiative Against Transnational Organized Crime, 'After the Fall: Russian Influence on Africa's Illicit Economies Post-Wagner', Report, February 2025, https://bit.ly/4997ARo, pp 17–25.

7 Ibid.

8 T. Mehra and M. Demuynck, 'Justifications, (Dis)Advantages and Implications of Designating Proxy Actors: The Case of the Wagner Group/Africa Corps', Report, International Centre for Counter-Terrorism, July 2025, p 4.

9 N. Melzer, Interpretive Guidance on Direct Participation in Hostilities under International Humanitarian Law, Report, International Committee of the Red Cross (ICRC), Geneva, 2009, esp. pp 69–73.

10 UN Working Group on the use of mercenaries, 'Role of Mercenaries, Mercenary-Related Actors and Private Military and Security Companies in the Trafficking and Proliferation of Arms', para 18.

11 L. Serwat, H. Nsaibia, and N. Gurcov, 'Moving Out of the Shadows: Shifts in Wagner Group Operations Around the World', Report, Armed Conflict Location & Event Data project (ACLED), 2023, https://bit.ly/4pVkIX9, p 33.

12 Global Initiative Against Transnational Organized Crime, 'Private Military Companies and Arms Control Challenges: The Wagner Group in Mali', Report, October 2025, https://bit.ly/4jhA4NO, pp 12–38.

13 UN Working Group on the use of mercenaries, 'Role of Mercenaries, Mercenary-Related Actors and Private Military and Security Companies in the Trafficking and Proliferation of Arms', para 34.

14 Global Initiative Against Transnational Organized Crime, 'After the Fall: Russian Influence on Africa's Illicit Economies Post-Wagner', Report, February 2025, p 13.

15 UN Working Group on the use of mercenaries, 'Role of Mercenaries, Mercenary-Related Actors and Private Military and Security Companies in the Trafficking and Proliferation of Arms', para 63.

16 'Wagner Group Amplifies Sudan Conflict With Weapons Drop', Online article, Africa Defence Forum, 9 May 2023, https://bit.ly/3MWApZW.

17 Global Initiative Against Transnational Organized Crime, 'Private Military Companies and Arms Control Challenges: The Wagner Group in Mali', pp 3–4.

18 J. Aparac, G. Rona, and S. Shameem, 'Regulating Private Military and Security Companies: What's in it for States?', Report, 7 April 2025, https://bit.ly/3Y9r2Zm.

19 Arms Trade Treaty; adopted at New York, 2 April 2013; entered into force, 24 December 2014 ('2013 Arms Trade Treaty').

20 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime; adopted at New York, 31 May 2001; entered into force, 3 July 2005 ('2001 Firearms Protocol').

21 UN Working Group on the use of mercenaries, 'Role of Mercenaries, Mercenary-Related Actors and Private Military and Security Companies in the Trafficking and Proliferation of Arms', para 53.

22 Global Initiative Against Transnational Organized Crime, 'Private Military Companies and Arms Control Challenges: The Wagner Group in Mali', p 20.

23 CAR acceded to the Arms Trade Treaty in 2015.

24 UN Working Group on the use of mercenaries, 'Role of Mercenaries, Mercenary-Related Actors and Private Military and Security Companies in the Trafficking and Proliferation of Arms', para 51.

25 Macías-Tolosa and others, 'Use of Maritime PMSCs, Weapons Procurement and Predatory Recruitment – New Frontiers in PMSC Regulation'.

26 Global Initiative Against Transnational Organized Crime, 'Floating armouries in the western Indian Ocean: new trends in the modern maritime-security landscape', https://bit.ly/4qp2RIQ.

27 These are non-serialized – and therefore untraceable – firearms produced from components purchased as a kit or as separate items.

28 UN Working Group on the use of mercenaries, 'Role of Mercenaries, Mercenary-Related Actors and Private Military and Security Companies in the Trafficking and Proliferation of Arms', paras 56–58.

29 B. Morais Figueiredo, 'The Use of Uncrewed Aerial Systems by Non-State Armed Groups: Exploring Trends in Africa', Report, UN Institute for Disarmament Research (UNIDIR), 2024, https://bit.ly/491hVjP, pp 12–23.

30 Macías-Tolosa and others, 'Use of Maritime PMSCs, Weapons Procurement and Predatory Recruitment – New Frontiers in PMSC Regulation'.

31 J. de Deus Pereira, 'From Drones to Data: Private Contractors and Cyber Mercenaries', Commentary, RUSI, 19 September 2025, https://bit.ly/3Yctu1d.

32 The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict, 17 September 2008, https://bit.ly/3YNncoR (hereafter, The Montreux Document).

33 International Code of Conduct for Private Security Service Providers, as amended on 10 December 2021, http://bit.ly/47em8hM.

34 Aparac, Rona and Shameem, 'Regulating Private Military and Security Companies: What's in it for States?'.

35 The Montreux Document, paras 36–64.

36 International Code of Conduct for Private Security Service Providers, para 56.

37 Art 11(1)(a), Revised Fourth Draft Instrument on an International Regulatory Framework on the Regulation, Monitoring of and Oversight over the Activities of Private Military and Security Companies, Geneva, April 2025, http://bit.ly/47jF1jx.

38 Weapons have been unofficially defined as 'tools and devices that are used, constructed, or adapted with a view to killing, harming, disorientating, or incapacitating a person, or for damaging or even destroying buildings or material'. S. Casey-Maslen, *Arms Control and Disarmament Law*, Oxford University Press, 2021, 2.

39 Ibid.

40 Art 2(1), 2013 Arms Trade Treaty.

41 S. Casey-Maslen, A. Clapham, G. Giacca, and S. Parker, The Arms Trade Treaty: A Commentary, 1st Edn, Oxford University Press, 2016, 171.

42 Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 4th Edn, Cambridge University Press, 2022, 82.

43 Art 11, 2001 Firearms Protocol.

44 World Customs Organization, 'Recommendation concerning the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime', Recommendation of the Customs Co-operation Council, 29 June 2002, https://bit.ly/44Jh2d3.

45 United Nations Office for Disarmament Affairs (UNODA), 'Arms Trade Treaty Implementation Toolkit', Module 6 – Export, Geneva, 2017, https://bit.ly/49oWUiS, p 26.

46 Ibid.

47 Small Arms Survey, 'Small Arms Control Measures and the Arms Trade Treaty', Report, Geneva, 2012, p 154.

48 P. Danssaert and P. Beijer, 'Article 9: Transit or Trans-Shipment', in C. da Silva and B. Wood (eds), *The Arms Trade Treaty: Weapons and International Law*, Intersentia, 2021, 199.

49 Casey-Maslen and others, *The Arms Trade Treaty: A Commentary*, 174.

50 Ibid, 169.

51 F. Caonero and A.-C. Merrell Wetterwik, 'Article 5: General Implementation', in da Silva and Wood (eds), *The Arms Trade Treaty: Weapons and International Law*, 93.

52 Ibid.

53 A. Wood, 'Article 4: Parts and Components', in da Silva and Wood (eds), *The Arms Trade Treaty: Weapons and International Law*.

54 UN Working Group on the use of mercenaries, 'Role of Mercenaries, Mercenary-Related Actors and Private Military and Security Companies in the Trafficking and Proliferation of Arms', para 51.

55 W. H. Boothby, *Weapons and the Law of Armed Conflict*, 2nd Edn, Oxford University Press, 2016, vii–viii.

56 International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996, para 78.

57 M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, 2nd Edn, Edward Elgar, 2024, 417–18.

58 ICRC, Customary IHL Rule 74: 'Chemical Weapons', https://bit.ly/4j9RL1z.

59 Protocol on Blinding Laser Weapons; adopted at Vienna, 13 October 1995; entered into force, 30 July 1998, annexed to the Convention on Certain Conventional Weapons (CCW Protocol IV).

60 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction; adopted at Oslo, 18 September 1997; entered into force, 1 March 1999.

61 Convention on Cluster Munitions; adopted at Dublin, 30 May 2008; entered into force, 1 August 2010.

62 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction; adopted at New York, 16 December 1971; entered into force, 1975.

63 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction; adopted at Geneva, 3 September 1992; entered into force, 29 April 1997.

64 Art I, Treaty on the Non-Proliferation of Nuclear Weapons; opened for signature, 1 July 1968; entered into force, 5 March 1970.

65 Arts 35(3) and 55, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts; adopted at Geneva, 8 June 1977; entered into force, 7 December 1978 (Additional Protocol I of 1977).

66 E. Maruma Mrema, C. Bruch, and J. Diamond, 'Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law', Report, UN Environment Programme, 2009, 4.

67 Art 2(4), Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons; adopted at Geneva, 10 October 1980; entered into force, 2 December 1983.

68 M. N. Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, Cambridge University Press, 2017, rule 103, para 2.

69 M. Roscini, *Cyber Operations and the Use of Force in International Law*, Oxford University Press, 2014, 169.

70 ICRC, 'International Humanitarian Law and Cyber Operations during Armed Conflicts: Position Paper submitted to the Open-Ended Working Group on Developments in the Field of Information and Telecommunications in the Context of International Security and the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security', Report, November 2019, https://bit.ly/3Y5MePY, p 5.

71 UN General Assembly Resolution 73/304: 'Impact of Arms Proliferation on Human Rights', adopted on 28 June 2019.

72 Council of Europe Committee of Ministers, Recommendation CM/Rec(2021)2 on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment, 31 March 2021.

73 Art 7(3), 2013 Arms Trade Treaty.

74 ICRC, 'Understanding The Arms Trade Treaty From A Humanitarian Perspective', Report, 2016, https://bit.ly/4pcZ61z, p 23.

75 Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, UN Doc A/CONF.192/15, https://bit.ly/44J33Uy (hereafter, 'Programme of Action on SALW'), Part II, para 14.

76 International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, 2005, https://bit.ly/4pcucq5 (ITI).

77 https://bit.ly/4pKxOkm.

78 https://bit.ly/4pclbfV.

79 UN Security Council Resolution 1540, adopted by unanimous vote in favour on

28 April 2004.

80 International Code of Conduct for Private Security Service Providers (as amended), p 6.

81 'Stockpiles at Sea: Floating Armouries in the Indian Ocean', *Small Arms Survey 2015: Weapons and the World*, 2015, https://bit.ly/4qq7X17, p 219.

82 UN Office on Drugs and Crime (UNODC), 'Summary of Laws Regulating Floating Armouries and their Operations: Annex A to Maritime Crime – A Manual for Criminal Justice Practitioners', Vienna, 2019, https://bit.ly/3NehHwY, p 6.

83 Macías-Tolosa and others, 'Use of Maritime PMSCs, Weapons Procurement and Predatory Recruitment – New Frontiers in PMSC Regulation'.

84 'Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination: Note by the Secretary-General', UN Doc A/77/268, 4 August 2022, para 54.

85 UNODC, 'Summary of Laws Regulating Floating Armouries and their Operations: Annex A to Maritime Crime – A Manual for Criminal Justice Practitioners', p 19.

86 Casey-Maslen and others, *The Arms Trade Treaty: A Commentary*, p 343.

87 Ibid, p 352.

88 UN General Assembly Resolution 64/48: 'The Arms Trade Treaty', adopted on 12 January 2010.

89 Article 11(1) of the Arms Trade Treaty stipulates that: 'Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.' The remainder of the article offers suggestions on what those measures could or should entail, but little in the way of binding obligation.

90 UNODA, 'Arms Trade Treaty Implementation Toolkit', Module 6 – Export, p 3.

91 Programme of Action on SALW, Part II, para 2.

92 Ibid, para 11.

93 Global Initiative Against Transnational Organized Crime, , 'After the Fall: Russian Influence on Africa's Illicit Economies Post-Wagner', p 3.

94 UN Working Group on the use of mercenaries, 'Role of Mercenaries, Mercenary-Related Actors and Private Military and Security Companies in the Trafficking and Proliferation of Arms', para 48.

95 Ibid, para 37.

96 Ibid, para 41.

97 B. Griebel and P. Holtom, 'Article 12: Record Keeping' in da Silva and Wood (eds), *The Arms Trade Treaty: Weapons and International Law*, 275.

98 UN Working Group on the use of mercenaries, 'Role of Mercenaries, Mercenary-Related Actors and Private Military and Security Companies in the Trafficking and Proliferation of Arms', para 38.

99 Ibid, 19, recommendation (j).

100 Art 7, 2001 Firearms Protocol.

101 Art 12(1)-(4), 2013 Arms Trade Treaty.

102 Art 12(3), 2013 Arms Trade Treaty.

103 UN Programme of Action on SALW, Section II, para 9.

104 ITI, para 12(b).

105 Proposed by a delegation. [Original footnote]

106 A number of delegations proposed that the text in square brackets be deleted. [Original footnote]

107 Text added in a revised version of the Fifth Draft issued in October 2025 [colour in original].

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