



Working towards an International PMSC Code of Conduct

Report from the Industry workshop organized by DCAF in partnership with the Swiss Department of Foreign Affairs

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London, UK

I. Background Information

The recent boom in the private security service sector that has significantly shifted the provision of security from the public to the private sector has not been adequately accompanied by a parallel shift of effective accountability mechanisms applying to these private actors. Building on the successful conclusion of the *“Montreux Document”*¹ and the emerging consensus on the need to fill normative and accountability gaps through a coordinated industry-driven PMSC standard setting process, the Swiss Department of Foreign Affairs has partnered with DCAF to support the development of a Code of Conduct (CoC) that lays down clear operational guidelines, establishing international PMSC industry norms and standards for the provision of private security services.

The London workshop kicked off the first phase of the project to elaborate a Code of Conduct for PMSCs. It gathered representatives of leading international PMSCs and industry associations to focus on best practices in regards to standards and accountability mechanisms for regulating PMSCs and related services. The aim of the workshop was to identify the elements essential to an effective CoC from the perspective of the providers of PMSC services.

As a continuation of this first phase of the project, the London event will be followed by a series of similar regional workshops in which other interested stakeholders (PMSC clients, civil society, legal scholars, standard setters) will have the opportunity to clearly articulate their needs and concerns regarding the provision of PMSC services in accordance with international human rights standards and international humanitarian law. The overall aim is to assemble a collection of the elements most essential to each of the stakeholders in

¹ For more information, please log on to : <http://www.eda.admin.ch/psc>

regards to PMSCs, identifying consensus themes across the groups as well as any conflicts that need to be addressed and ultimately resolved by the eventual CoC.

This draft of fundamental PMSC elements will be presented at the Wilton Park Conference (WPC) scheduled for June 2009. It will serve as the official launching of the second phase of the process of the International PMSC Code of Conduct by convening together for the first time all of the stakeholders who have participated in the preparatory workshops in order to begin the process of framing and elaborating the structure of the CoC.

II. Essential Discussion Elements

Session I: Identifying Standards and Good Practices for PMSC and related services

1. Standards elaborated for PMSC activities should be applicable regardless of the context in which they are performed (armed conflict or not), and therefore should be based upon **International Human Rights standards**.
2. Scope of PMSC CoC application: divergence of opinion between **broad scope** (all private services provided in support of security operations) and **narrower scope** (only 'armed' services. Emerging consensus that PMSC CoC should apply to services which **impact human rights**).
3. All **subcontractors** should be held accountable to the same requirements and standards as the prime subcontractor.

Session II: Effective Accountability Mechanisms for PMSC and related services

1. Two distinctive approaches emerged as alternatives for providing oversight and enforcement of an International PMSC CoC: 1) a model based on the enforcement of common standards on a **state-by-state basis** as opposed to 2) standards enforced by an **international body**, with preference expressed for the latter approach.
2. The importance of the **State's power to investigate and prosecute** allegations of criminal violations was underlined, with broad recognition that the role of a PMSC CoC would not be to substitute for this power, but rather to help prevent criminal violations from occurring.
3. Further, participants emphasized the **power of the State as Contractor** and its capacity to incorporate CoC standards in its procurement practices, as well as to 'blacklist' or deny contracts to those PMSCs who violate CoC standards.

III. Presentations

The workshop commenced with introductory remarks of representatives from the Swiss Foreign Ministry, the US Department of Defense and the UK Foreign and Commonwealth Office outlining the positions of their respective governments in regards to the drafting of an industry-driven CoC on PMSCs.

One government representative pointed out the need to complement previous attempts to regulate the provision of PMSC services by bridging the expectations of both the industry and other key stakeholders (governments, NGOs, International organizations) involved in the process. Therefore, it was noted that the aim of a CoC would be to respond to that challenge by encouraging the transfer of the development of regulatory norms and

standards to the industry while ensuring the respect of the Geneva Conventions and International Human Rights Law.

Another government representative stressed his support for the Swiss Initiative's engaging of industry representatives in a discussion on the elaboration of a CoC, adding that it would constitute the first step towards achieving international industry led standards.

Moreover, another government representative at the workshop underlined the necessity of industry wide enforceable and transparent standards applying to all PMSCs that would address the deficiencies of existing regulatory mechanisms and tools and ensure compliance with international and national law. It was suggested that such standards could be modelled along the lines of an ISO type certification and could be ultimately incorporated in contractual arrangements with PMSCs in order to exclude from the recruitment process incriminated PMSC actors. According to the delegate, this process should be representative of the entire industry, which could be achieved by establishing an international association or a consortium of national organisations of PMSCs. It was stated that a viable CoC should set up firm and consistent standards that are enforceable against PMSC the industry while noting that it is ultimately the responsibility of the State to determine how to regulate PMSCs.

III. Discussions

1. Identifying the scope and the types of PMSC services to be covered by a CoC

One of the main issues approached by the participants in the workshop was the scope of the envisaged CoC and the types of services that would be covered under its regulations. During the discussions a consensus emerged as to the unsuitability of a CoC applying only to those PMSC services provided '*within the context of **armed conflict***'. It was argued that such a definition would be inappropriate as it would narrow down the focus of the Code only to those situations covered by International Humanitarian Law, thus failing to deal with a broad array of contingency and support services as well as issues related to International Human Rights Law.

However opinions diverged in regards to the types of services that should be regulated by a CoC. Some representatives of PMSCs expressed their preferences for a broader approach that would encompass all services - armed and non-armed - provided in both hostile environment and post conflict/stabilization operations. This idea was questioned by a number of other PMSC industry representatives who considered that such an approach would lead to an overstretch and implementation hurdles given that in that case the focus of the CoC would extend to cover activities that are not performed exclusively by PMSCs (eg. NGOs, International organizations etc.).

It was noted by one industry representative that a more viable alternative would be to use the definition "**armed services**" as a conceptual basis for a CoC. In that case, one delegate noted, examples could be drawn from existing CoCs (such as those produced by the industry

organisations BAPSC, IPOA and PASA) in order to distinguish between **offensive** (eg. Interrogation and Sniping are defined by BAPSC as offensive) and **defensive** activities. This distinction, however, did not muster the support of all the participants, with some affirming that defensive action can be interpreted and considered in different contexts to be offensive (one delegate argued that hostage relief operations could fall under the offensive category). Another participant suggested that the scope of the CoC cover those activities which have a high likelihood of impacting human rights (e.g., right to life).

A majority of the participants also supported the applicability of a CoC to all staff members of a PMSC, including locally contracted staff. In the case of adopting a narrow approach in the drafting of a CoC, there was an overall understanding that the code should nevertheless apply to all the employees of the company, even if only some of them are involved in armed security services. The prevailing opinion was that in addition to human rights the CoC should also address a wide array of managerial and governance issues such as recruitment procedures, training, rights of employees, professionalism, integrity, corruption etc. The CoC should also ensure that subcontractors are held accountable and subscribe to the same obligations and rules pertaining to the prime contractor.

2. Identifying potential accountability, oversight and enforcement mechanisms

Two distinctive approaches emerged as alternatives for ensuring the oversight and enforcement of an International PMSC CoC: a model based on the enforcement of common standards on an *ad hoc* state-by-state basis, as opposed to standards enforced by a centralised international body, possibly an International Secretariat, International Industry Association, International Complaint Commission or, as some suggested, an Ombudsperson type of institution.

The views diverged as to which model would be the most congruent with the objectives of a CoC. Some participants raised the issue of the complexity of setting up an international body and questioned the willingness of states to relinquish some of their enforcement powers to such an institution. In contrast to that position, a number of participants evaluated positively the idea of setting up an international body. It was argued that if empowered with robust enforcement and oversight powers, such a body would be capable of addressing the issue of often incomplete national legislations and limited willingness on the part of some states to regulate the PMSC industry.

However, delegates expressed skepticism as to the capacity of an international PMSC body to investigate on the ground criminal offenses committed by a PMSC. It was suggested that its primary role should be to receive complaints for acts carried out by PMSCs in alleged contravention of the CoC standards, advise the competent state authorities on alleged violations for further investigations, and impose sanctions and/or suspend membership when there are established cases of misconduct. Furthermore, participants reaffirmed the importance of the State's role in applying and enforcing criminal sanctions, stating that a PMSC CoC would not be a substitute for this power.

Moreover, the role of the State as Contractor and its capacity to incorporate CoC standards in its procurement practices was singled out as an important enforcement leverage that could ensure the respect of a minimum set of rules by PMSCs. Such an arrangement could lead to the exclusion of non-compliant or refractory PMSCs from bidding procedures and provide a legal contractual remedy against PMSCs in cases of breach of agreement.

Some delegates referred to the “due diligence” or “**duty of care**” of PMSCs to prove that they have done everything in their power to comply with industry standards and obligations, leaving it to the state to investigate any wrongdoings. As to the possibility of developing an ‘ISO-type’ standard, this was qualified by some participants as not well-adapted to regulating PMSCs because such an approach would describe standards in terms of quality factors, therefore not providing suitable or appropriate measures by which to evaluate whether PMSC activities had breached IHL or international human rights standards.

3. Further steps in the process of devising an International PMSC CoC

The participants in the workshop reaffirmed their full support for the process of drafting an international CoC on PMSCs. They suggested that for the purpose of organizing the envisaged future seminars, the list of invitees should be the broadest possible including various representatives of client-states, commercial entities, NGOs, academia representatives etc. It was also suggested that in order to encourage discussions and explore existing issues from a broad array of perspectives, participants with diverging and critical positions should be given the opportunity to take part in the discussions. This confrontation of ideas should however seek to avoid the blockage of the discussions due to insurmountable differences.

Another recommendation concerned the lack of representation of smaller PMSCs along with the big industry players. Therefore it was proposed that the Wilton Park conference could be a more rigorous form of the three preliminary workshops encouraging discussion of previously identified issues within a longer and more representative group. Finally the industry expects that the Wilton Park conference will result in setting-up a framework and a process for the future elaboration of a PMSC CoC.