



**The 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.**

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Speech presented by
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Thank you to the Working Group on the use of Mercenaries for inviting me. It is a privilege for me to be able to address you today on behalf of DCAF, and to tell you about some of the work we have been doing on the complex issue of private security / private military / mercenarism.

I am happy to see among you a few familiar faces, and many others that I hope will become more familiar as we work together to meet--and hopefully solve—some of the challenges that these non-state actors are bringing both to the battlefields, and to our own communities.

The issue of armed non state actors for hire has been a main area of focus for DCAF for several years. The downsizing of regular armed forces in response to the end of the Cold War, and the emergence of many new smaller and hotter conflicts during the 1990's, increased the demand for professional military manpower and expertise. These gaps have increasingly been filled through 'alternative service delivery', which is a euphemism for the services provided by private security, private military and mercenaries.

The use of private security and military companies raises several concerns, including transparency and accountability. Transparency issues include the lack of public information on the terms of their contracts, including their costs and the standards governing their hiring and performance, as well as the background and training of those hired under contract. The apparent lack of a practical means to hold contractors accountable under national law for abuses and other transgressions, and the problem of extra-territoriality is also a source of concern.

As part of the Privatisation of Security Programme, DCAF has undertaken a number of activities with the aims of informing, advising and co-operating on private security issues. Through these activities, we have documented and analysed good practices, and made the results available to our partners in national government, parliament and civil society as well as the within the international community. We have also conducted extensive research into the international and domestic regulatory regimes that may—or may not—apply to these actors. This research has brought to light some key challenges that I would like to highlight today.

- Confusion among terms. 'Private Security', 'Private Military' and 'Mercenaries': these terms are slippery and ill-defined with one easily blending into another creating a fog which clouds and distorts the issue—both from a legal as well as a moral point of view—of how and when such services should be used appropriately. But out of this fog one aspect is clear: actors working

under any of these labels have the potential to use deadly force against other human beings. In these times where the State has relinquished some of its traditional monopoly on the use of force, resulting in its assuming less control on the standards and training of persons authorised to use force, this fog can be—and has been—lethal.

- Cacophony of regulation: Another key issue closely related to the first is the lack of consistent international and domestic approaches to regulating these actors. Having looked at the PMSC regulation of over 60 countries, we have found a wide variety in regulatory approaches—even among economically and culturally similar countries, such as France, Belgium and Germany in the EU. Another wrinkle contributing to this cacophony is that some of this domestic private security and military regulation applies extra-territorially, creating the situation that a PSMC could be subject to two or more conflicting regulations in a given area of operations.

In response to these challenges, we have undertaken several specific activities, of which I would like to mention a few.

1. Policy Studies

DCAF has authored several publications on the privatisation of security, such as an exploratory study mandated by the Swiss Federal Office of Justice on *The Activities of Private Security Companies in Zones of Risk and Conflict* (2007). This study documents and assesses Swiss-based military and security providers operating in crisis and conflict regions, and analyses various national approaches to regulating PMSCs. DCAF also drafted an expert study on *Regulating Private Security in Europe* (2006) for the Council Europe (Council for Police Matters)

Additional DCAF publications include Policy Paper No. 20 on *Regulating Private Security in Europe: Status and Prospects*, which was based upon the study *Regulating Private Security in Europe* carried out by DCAF for the Council of Europe in 2006, and the DCAF Backgrounder on Private Military Companies (2006).

2. Expert Consultations

In 2006 the Swiss Department of Foreign Affairs and the International Committee of the Red Cross joined forces in what is known as the ‘Swiss Initiative,’ which seeks to identify good practices and regulatory options for states engaging PMSCs, and to clarify and reaffirm obligations to uphold international humanitarian law and human rights law.

In this context, DCAF organised two expert consultations aimed at producing recommendations for a draft convention on the use of private military and security companies. The first, in November 2007, focused on measures that could be taken by states on whose territory international PMSCs conduct operations, including the establishment of licensing systems and how to exercise jurisdiction and ensure such companies do not enjoy impunity from the law. The second, held in December 2007, focused on states in which PMSCs are incorporated or based.

3. Dissemination

In partnership with the Swiss Ministry of Foreign Affairs, DCAF is developing the website www.privatesecurityregulation.net devoted to regulations governing Private Military and Security Companies (PMSCs) and their activities. Meant to complement and support work currently being carried out under the Swiss PMSC Initiative, this website seeks to create a focal meeting point and clearinghouse of information where interested persons can go to better understand the issues and challenges surrounding the regulation of PMSCs. The heart of the website is the PMSC Regulation

Database, which contains more than 120 laws and regulations from over 60 countries, as well as ‘soft-law’ guides of principles, codes of conduct and expressions of good practices. The website also provides ‘Backgrounders’ or topic guides on important PMSC issues and legal commentaries on selected PMSC regulation.

To summarize, I would like to highlight the main points our work regarding PMSCs:

- it is a area that has been on our radar screen for several years, and on which we have authored several publications and studies
- we have worked with a wide variety of partners to collaborate on numerous activities on this subject, including national governments, parliament and civil society as well as the within the international community
- and we have been actively involved in disseminating the fruits of this work through training workshops and conferences, as well as through our development of the PMSC regulation database at private security regulation net.

I know that many of you have also been actively engaged in this area, and I thank you for your efforts in trying to bring clarity to the nature of these private actors as well as accountability for their actions. If you find that the issues I mentioned today find resonance with your own work, I invite you to contact me or my colleague Hans Born to discuss further how we could join our own ‘non-state’ forces and work together.

For more information about DCAF’s Private Security Activities:

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