

The Montreux Document on Private Military and Security Companies

**Proceedings of the Regional Workshop for
North East and Central Asia**



The Montreux Document on Private Military and Security Companies: Proceedings of the Regional Workshop for North East and Central Asia Ulaanbaatar, Mongolia – 12 & 13 October, 2011



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Mongolia



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On the 12th and 13th of October 2011 a workshop was held in Ulaanbaatar, Mongolia, to discuss 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” and its relevance for the North East and Central Asia region. The workshop was convened by the Swiss Federal Department of Foreign Affairs, the Office of the President of Mongolia and the Mongolian Ministry of Foreign Affairs and Trade, in co-operation with the International Committee of the Red Cross and in collaboration with DCAF and the Institute for Strategic Studies. The event included the participation of 50 representatives of governments, international organisations and experts from nine countries in North East and Central Asia.

These proceedings were prepared by the Geneva Centre for the Democratic Control of Armed Forces at the request of the Swiss Federal Department of Foreign Affairs.

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WORKSHOP REPORT

On the 12th and 13th of October, 2011 in Ulaanbaatar, Mongolia, a regional seminar for the North East and Central Asia region was held on 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”.

The seminar was convened by the Swiss Federal Department of Foreign Affairs, the Office of the President of Mongolia and the Mongolian Ministry of Foreign Affairs and Trade, in co-operation with the International Committee of the Red Cross (ICRC) and in collaboration with the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Institute for Strategic Studies (ISS). The event was attended by nearly 50 participants, including representatives of nine governments from the region, the United Nations and experts on the subject matter.

The objective of the seminar was to raise awareness of the Montreux Document in the region, where two countries have supported it thus far (China and Afghanistan). It was also to gain a regional perspective with regard to States’ interactions with PMSCs, and to identify existing rules and obligations. While the focus of the Montreux Document is on PMSCs operating in situations of armed conflict, the workshop also considered how its “Good Practices” section can assist governments in their regulation of private security companies operating in other situations.

Wednesday, 12 October 2011 – The Montreux Document and Other International Initiatives

Dashjamts Battulga, Head of the Office of the President of Mongolia, welcomed the participants on behalf of Mongolia and reaffirmed Mongolia’s shared values with Switzerland, including a commitment to neutrality and international dialogue. He noted that Mongolia is examining whether to support the Montreux Document.

Ambassador Blaise Godet, Swiss Ambassador to Mongolia, then welcomed the participants on behalf of Switzerland. He noted that this is the second regional seminar on the Montreux Document after one held in Santiago, Chile in May 2011. He read extracts from a letter of the President of the Swiss Confederation, Ms. Micheline Calmy-Rey, to the President of Mongolia, Mr. Tsakhiagiin Elbegdorj. In the letter she had noted the need to fill the gaps in the regulation of the industry, noting the real challenges that are on the ground.

1. The Montreux Document

Felix Schwendimann, Diplomatic Officer, Swiss Federal Department of Foreign Affairs (Swiss FDFA) made the initial presentation on the Montreux Document. He highlighted Switzerland's role in the protection of international humanitarian law (IHL). He started by setting-out the definition of PMSCs in the Montreux Document, noting that it includes a wide range of activities, including armed guarding and protection of persons and objects, the maintenance and operation of weapons systems, prisoner detention, and advice to or training of local forces and security personnel.

He then gave a brief historical account, pointing-out that PMSCs do not just provide logistical support, but are involved in activities that bring them close to armed conflict situations. And by doing so, they are therefore increasingly more likely to come into contact with protected persons under IHL.

The misconception that there is a legal void within which PMSCs operates was raised. To clarify this, Switzerland had launched an initiative in 2006, jointly with the ICRC, to promote respect for IHL and human rights law (HRL). It culminated in September 2008 when 17 States finalized the document now known as the Montreux Document. It is a non-legally binding understanding between the States that support it.

Part I of the Montreux Document contains a restatement of international law for States related to operations of PMSCs, namely that States have an obligation to ensure respect for international humanitarian law, protect human rights and ensure criminal accountability. It also reminds States that they are responsible whenever PMSC conduct is attributable to it. In respect of PMSCs and their personnel, it reminds them that they also have an obligation to respect international humanitarian law, that they usually have the status of civilians and not of combatants under

the Geneva Conventions and that their personnel themselves may be criminally responsible.

Part II of the Montreux Document sets-out good practices in respect of PMSCs, the main idea of which is to ensure responsible conduct in the field, restrict certain activities and establish an authorization and accountability mechanism or system.

He pointed out that States implement the Montreux Document in different ways, noting that Switzerland had just released a draft national law that addressed PMSCs. Also, since 2008, the number of supporting governments had risen to 36 as of October 2011. It was noted that it was easy to support: simply a diplomatic note sent from a State's government to the Swiss government.

He concluded by noting that the Montreux Document asserts that there are international legal obligations that must be respected with regard to PMSCs. It is also a tool to foster national regulation, promote respect for IHL and HRL and protect civilians in armed conflict.

Marie-Louise Tougas, Legal Advisor, International Committee of the Red Cross then spoke in more detail on the content of the Montreux Document. She again noted that PMSCs do not operate in a legal vacuum, and that this is the case under both national law and international law (IHL, HRL, and international criminal law (ICL)).

The Montreux Document highlights obligations of States based on their relation with PMSCs – Home States, Territorial States and Contracting States - each with a basic duty to promote IHL. She noted that the Contracting State is the one with the closest link to the PMSC and so is best-placed to control it. She noted that the IHL obligations of the State remain even if it contracts out PMSCs to perform certain activities. She turned to the question of when a State will remain liable even when the relevant act is committed by a PMSC. She highlighted three cases when this would be the case: (1) If the PMSCs is a State agent. (2) If the PMSC is empowered to exercise elements of governmental authority, for example acting as border guards or running an internment camp under contract. (3) If the act is committed by persons acting on the instructions of the State or under its direction or control.

Turning to Home States and Territorial States, she noted that they should both respect and ensure respect for IHL, suggesting that it could do this through, for example, a licensing or other regulatory regime. This regime could, *inter alia*, prohibit certain activities, require certain elements

such as training or disciplinary measures, necessitate authorisation for every contract, and apply sanctions for breach, giving the examples of withdrawal of an operating license, the loss of a bond, as well as criminal sanctions.

Turning to the status of PMSC staff, she noted that they could be one of several depending on the context. They could be combatants in certain circumstances, but most of the time, however, they would be civilians, benefiting from the protections against attack unless and for such time as they directly participated in hostilities. The question of what is direct participation in hostilities (DPH) was considered, citing the recent work carried out by the ICRC on establishing interpretive guidance on the notion of DPH after many years of research.

Turning to the obligations of companies under IHL, she reminded participants that there are no direct obligations of companies as such under IHL or HRL but that these were given effect through national law. She finished by giving example of what practical measures may be taken to give effect to Montreux Document and IHL principles, noting that there could be screening of staff (for criminal records and past offences), training in IHL, HRL and appropriate rules for the use of force and mechanisms for complaints, investigation and accountability.

Interactive Session on the Montreux Document

In the interactive session, follow-up questions were raised, including what the distinction between a private military and a private security company is. There was some discussion on what was the relevance of the Montreux Document to countries in the region who generally do not experience armed conflict, nor are they exporters or users of PMSCs. It was suggested that this topic is in the interest of all countries because it is the universal duty of States to promote IHL, and to do so in peacetime.

One participant asked what the presenters felt were the shortcomings of the Montreux Document. The lack of an enforcement or reporting mechanism was one, the voluntary nature of the document – which is its strength – is also potentially a weakness as it adds no obligations to States was another. The lack of mention of the States of nationality of PMSC personnel was considered a gap in the Montreux Document, together with the politicization of it, it being essentially an uncontroversial restatement of existing international law and voluntary good practices.

At the end of the interactive dialogue, it was mentioned in closing that the Montreux Document does not seek to be the only answer to the challenge of PMSC regulation, but that it was a part of a mosaic within which other international – and national – initiatives each play a role.

2. Other International Initiatives

(1) “UN Intergovernmental Working Group on PMSCs” and “UN Working Group on Mercenaries”

Patricia Arias, Researcher, Centro de Estudios del Desarrollo, Santiago, Chile and member of the UN Working Group on the Use of Mercenaries introduced the UN Working Group on Mercenaries and its mandate within the Special Procedures mechanism of the UN Human Rights Council in Geneva. On the subject of PMSCs, they are mandated to monitor and study the impact of the activities of these companies on the enjoyment of human rights. She outlined how the Working Group conducts missions abroad, receives complaints, promotes the creation of academic networks and holds regional consultations.

Her focus then moved to the situation of PMSCs in Asia, including examples of human rights abuses by PMSCs in Afghanistan and Iraq. She then considered the Working Group’s view of the Montreux Document. She emphasised that the Working Group welcomed this effort. In particular they agree with the principle that States retain their obligations under international humanitarian and human rights even when outsourcing. She commented that the Montreux Document has so far failed to provide a solution for enforcements and that the Working Group believes that these voluntary initiatives cannot on their own provide all the solutions, but rather could compliment an international convention.

Alexander Nikitin, Professor, Moscow State Institute of International Relations and former member of the UN Working Group on the Use of Mercenaries followed on from Ms. Arias, again noting that the Working Group senses that the work of the Working Group is complimentary to the Montreux Document and other international initiatives. He suggested that the Montreux Document is essentially a Code of Conduct for governments, in that it is not binding.

After describing the process of the elaboration of the Working Group’s proposed draft convention - including a series of regional

consultations and drafting by an expert group - he explained how it was then presented to the UN Human Rights Council in 2010 which decided to establish a new open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework for PMSCs taking into account, *inter alia*, the draft prepared by the Working Group on Mercenaries. He explained that the first session of this intergovernmental working group had taken place in May 2011 with participation by many States, and he encouraged the States present to attend the next session, expected to take place in 2012.

He then explained the content of the UN Working Group on Mercenaries' proposed draft convention, including requiring that States establish registration systems for PMSCs, an international register, requiring that companies become licensed. States would be obliged to provide training to PMSCs, and parliamentary bodies would be required to conduct oversight of them. Finally, it would compel relevant States to elaborate a national law on PMSCs. This national law would define those aspects which cannot be outsourced by the State, with this varying from country to country. The convention would also establish a system of enquiries between governments.

He concluded by noting that not all PMSCs should be prohibited and that they provide useful solutions in certain circumstances and by again reiterating that the proposed draft convention does not conflict with the Montreux Document, noting that countries can be and are often supportive of both.

(2) "International Code of Conduct for Private Security Service Providers"

Rémy Friedmann, Senior Advisor, Swiss FDFA started by explaining some of the background to how the International Code of Conduct (ICoC) came about, noting that while the Montreux Document was aimed at States, PMSCs had expressed a strong desire to show their commitment to its principles and so the need for this second Swiss Initiative was born.

André du Plessis, Project Officer, Geneva Centre for the Democratic Control of Armed Forces (DCAF), continued, explaining that DCAF was a facilitating partner of the Swiss government in this initiative. He outlined the development of the Code during 2009 and 2010, emphasizing that it was a multistakeholder process, with participations from governments, civil society and PMSCs themselves, as well as academics and the insurance

industry, and culminated in an agreement to have a Code of Conduct that would be subject to independent oversight.

The ICoC itself was signed by 58 leading PMSCs in Geneva in November 2010, with the ICoC being a public commitment to IHL, HRL, good management practices, and to work towards an oversight mechanism for the code, as the mechanism was not actually established at the time of the ICoC's signing. He noted that in a year a further 150 or so companies had signed, with more than half being headquartered in Europe – predominantly in the United Kingdom – and significant numbers also from North America and Africa.

Noting that efforts were ongoing to establish an oversight and accountability mechanism, principally through drafting and negotiations carried-out by a multistakeholder steering committee, he highlighted that the text of the ICoC itself required that the eventual mechanism comprise of certification of companies, reporting by them, auditing and monitoring of work in the field and the establishment of a mechanism to address alleged violations. He informed participants that the proposed draft charter – the essential founding document of the oversight mechanism – would likely be released in the next few weeks.

After emphasizing the crucial role that clients play in requiring PMSCs to comply and sign-up to the ICoC, he concluded by encouraging governments to follow and support the initiative and to remain abreast of developments on the ICoC's website: www.icoc-psp.org.

(3) “The Voluntary Principles on Security & Human Rights”

Rémy Friedmann, Senior Advisor, Swiss FDFA, highlighted that the Voluntary Principles on Security & Human Rights (VPs) were an initiative for the extractive and energy industry. He noted that the VPs are based on human rights based principles and that it is also a multistakeholder dialogue between the extractive industry, civil society and seven governments, including Switzerland. It seeks to provide guidance to companies on maintaining their security operations within a framework that protects human rights, with guidance in three areas: risk assessment, public security forces and private security forces.

He concluded by first explaining recent developments to implement the VPs, including through the promulgation of an implementation guidance tool and moves to incorporate an office for it to be hosted in, and by setting out ways that governments can engage in the process.

Interactive Session on Other International Initiatives

During the interactive session, questions were raised on what were the dynamics in the intergovernmental working group and the actual number of PSCs and their personnel worldwide and which statistics could be believed. The social status of mercenaries and PMSC personnel was also raised, with at least one participant noting that regional perceptions of mercenarism may vary. It was raised that perhaps security has become a commodity for sale. It was noted by another participant that in some countries, returning PMSC personnel from conflict regions are treated as heroes.

Thursday, 13 October 2011 – The Regional Perspective

3. The North East and Central Asia Experience of PMSCs

(1) North East Asia – Expert Presentation

Artsed Sukhbaatar, Non-staff fellow, Institute for Strategic Studies, Ulaanbaatar explained that most states in the region are striving to maintain peace and stability, but that at the same time there is still a strong military concentration. He noted that the focus of the region was now primarily on economic development. This creates international competition that might lead to international conflict and an arms race in North East Asia. He continued, noting that economic cooperation is also evident in energy, oil and gas infrastructure from Siberia to the Pacific, as well as infrastructure projects. In all these projects PMSCs can be used, and for Mongolia the relevance is acute, where foreign PMSCs could potentially be used to safeguard mines.

He concluded by noting the relevance of PMSCs for peacekeeping missions, mentioning that Mongolia contributes to such missions in Afghanistan and several countries in Africa.

(2) Central Asia and Russia – Expert Presentation

Erica Marat, Professor, American University, Washington D.C. opened by explaining the phenomenon of PMSCs in the region, highlighting the background of the collapse of the Soviet Union and how the introduction of market-based economies have paved the way for the emergence of a private security sector that complements and at times rivals the State's

monopoly on violence. She noted that many of them evolved because of shortcomings in the State and lack of law-enforcement provided by State institutions and that there are many private security companies in the region, both registered and unregistered.

She then highlighted the situation and legal regime in Russia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan relating to PMSCs, highlighting the numbers of private security companies and various laws in the different countries.

Giving a general regional overview, reasons for better regulating the private security market included the emerging importance of the region's extractive industries and energy markets that will increasingly need to rely on private security, and also the increased insecurity in the region and its neighbours that may be beyond the capabilities of State military forces. Additional factors included providing for the needs of retired or downsized military and police personnel, the potential for PSCs in the region to serve abroad to protect national businesses or join international peace efforts and the future involvement of the China-led Shanghai Cooperation Organization and the Collective Security Treaty Organization in providing security services in Afghanistan, after the International Security Assistance Forces (ISAF) withdraw in 2014.

Turning to the relevance of the Montreux Document, she highlighted how it can help promote security and human rights standards, guiding States to adopt regulations in compliance with international standards. She emphasised its value as a voluntary, suggestive instrument.

She concluded with recommendations for the region, including seeking to bring relevant laws up to international standards including eliminating any legal vacuums in the regulation of PSCs' activities, considering supporting the Montreux Document as a way to publicly affirm international humanitarian law's relevance to PSCs and the good practices mentioned therein, assessing how PSCs can be professionalized so that they become a viable option for contracting out by the State to meet future security challenges and engaging with other members of international community to discuss these issues.

(3) Afghanistan – Expert Presentation

Susanne Schmeidl, Senior Advisor Research/Peacebuilding, The Liaison Office, Kabul, started by emphasising the extreme difficulty of the situation in Afghanistan, mentioning its similarity in some ways to the “Wild West”.

She emphasised that a key to understanding the PMSC industry was to find the profit motive behind what they did. She gave examples where companies had defrauded their clients, sought to be exempted from paying licensing fees and overbilled in order to make as much profit as possible.

She then noted that although there was not a specific law in Afghanistan on PSCs, there were other regulations that applied to PSCs in Afghanistan, including criminal law, the Afghan Constitution, the police law and laws on weapons. She set-out the history of seeking to regulate PSCs, noting that official government efforts to do so started in 2004, but that it was only in 2008 that the “Procedures for Regulating Activities of Private Security Companies in Afghanistan” was enacted.

There followed an overview of the companies in Afghanistan, noting that 54% of the 52 PSCs in Afghanistan were Afghan companies, with British forming 21% and American 15%. She noted that despite the legal requirements, many were unlicensed and several had been banned. She pointed out that in 2009 there were reportedly 71,700 contractors in Afghanistan: more than twice the number of U.S. troops.

Noting the problems with enforcing regulation, she explained that this had resulted in the promulgation of Presidential Decree 62, banning of all PSCs in Afghanistan from 21 March 2012. She concluded by noting that there was a bridging strategy in operation for the interim period, the strategy being effectively a negotiated compromise to allow PSCs to operate up until the deadline. It was expected to be an interesting transition and nothing could be certain as to the future of the policy.

Interactive Session on the North East and Central Asia Experience of PMSCs

During the interactive session, questions were raised on Afghan PSC policy, including whether it required PSCs to adhere to the International Code of Conduct and Montreux Document. One participant noted that Afghanistan was an endorser of the Montreux Document, and that by deciding to ban PSCs, it was actually complying with a good practice of the Montreux Document, namely good practice number 24: “To determine which services may or may not be carried out on their territory by PMSCs or their personnel”.

4. Country Perspectives – Regulation and Best Practices

For Mongolia, *Sereenov Mandakhbat, the Deputy Director of Legal Policy Department, Ministry of Justice and Home Affairs*, explained that PSC regulation is relatively new in Mongolia with two relevant laws in existence: the Law on Private Protection (2001), and the Law on Contractual Guarding and Protection (2000), with the police being responsible for licensing under both regimes.

Under the 2001 law, he noted that a civilian may provide private protection against criminal attack to a customer under a contract – effectively a law on bodyguards. He noted that there are specific provisions for bodyguards to be licensed under this law, that foreign citizens may generally receive such a licence and that all bodyguards are prohibited from using firearms, although they may use, *inter alia*, handcuffs, rubber and electric sticks, and guns loaded with tear gas or rubber bullets. He noted that no licence had yet been issued by the police under this law.

Regarding the 2000 law, he noted that the police is required to conduct registration of, and entitled to supervise and request for relevant documents of, PSCs. He reported that 203 licenses had been issued, of which 152 were to companies in Ulaanbaatar. As regards training, guards are required to be trained at the University for Internal Affairs. However, it was explained that fewer than 10% of guards have actually attended this as they are required to pay for the training themselves. Some guards attend courses provided by their employers, but overall the level of training is poor.

Highlighting issues of concern, he noted that employers do not necessarily properly introduce the functions, obligations and job description to guards, they do not conduct labour contracts with them and they may fail to provide them with training.

For China, *Ren Xiaoxia, First Secretary, Department of Treaty and Law, Ministry of Foreign Affairs*, set out a brief history of PSCs in China. She noted that the first PSC appeared in Shenzhen in 1984. By 2010 there were 3000 such companies with 4,200,000 security guards. She noted that in China there were no private military companies, as all military activities are the preserve of the State. She also noted that there didn't appear to be much export of private security services from China and so there was no legislation for that. Setting out the regulatory framework, she highlighted State Council Decree number 564 of 2009 regarding security services that

came into effect in January 2010. She then went into more detail on the legal and regulatory framework under which services are provided. Almost all of the provision of private security requires a license and she noted that there are no restrictions for applying to establish a PSC or to engage in private security services based on nationality of the applicant or applicant company and that no participation of State organs or their personnel in the management activities of a PSC is allowed.

The private security providers who are authorised to carry firearms is very limited, namely guarding and escort companies or those who have a specific licence to operate as such. The law sets-out that the guards are not to violate the personal freedoms, conduct body searches or insult or assault others. In addition they are prohibited from detaining persons or seizing the travelling documents or property of others. She concluded with commenting that China was in the early stages of this regulation and that it did not have comprehensive coverage and that there was not yet a parliamentary law on PSCs.

For Kazakhstan, *Azamat Ryszhanov, an Expert of the Subordinate Acts Department, Ministry of Justice*, noted that there was a law on guarding services in Kazakhstan with its legal basis in the constitution. He noted that there are no private military companies in Kazakhstan and that the law on PSCs applies only to Kazakh companies providing security services in Kazakhstan itself.

He went on to point out that the law in Kazakhstan recognizes that PSCs provide protection of individuals from criminal attacks but that in doing so it should not violate the rights and liberties of individuals. The number of personnel in a PSC is controlled by law and there is a licencing system of PSCs and private security services can only be provided by a licenced PSC.

As regards the security guards themselves, a government-approved training programme is conducted in government-approved training centres. Security guards are required to be Kazakh citizens and be physically and mentally healthy, with no criminal record. These guards are also required to periodically undergo a professional test. He explained that the right to possess firearms for security guards in Kazakhstan is limited under firearms regulations to situations of self-defense, detention and protection from animal attack. If the use of arms exceeds self-defence then the license is revoked and they are fully responsible for all damage.

For Japan, *Masashi Horie, Official, International Legal Affairs Division, International Legal Affairs Bureau, Ministry for Foreign Affairs*, started by noting that Japan welcomed the pragmatic approach of the Montreux Document. He explained that although Japan has not supported the Montreux Document, that should not be interpreted as meaning that Japan does not consider it an important initiative.

Keishi Ono, Head, Defense Economics and Post-conflict reconstruction Division, National Institute for Defense Studies (NIDS), Ministry of Defense, Japan, continued, explaining that PMSCs recently were tending to offer non-combat services. He continued noting trends in the industry, highlighting that they were seeking profits by multinationalizing, diversifying their services and accumulating expertise.

While welcoming the Montreux Document, he also noted its limitations. He noted the strong reliance on the Territorial State in the Montreux Document, questioning the capacity of such a State to carry-out its Montreux Document commitments. He considered the added value of self-regulation of PMSCs, highlighting examples of industry associations having strict membership criteria, the possibility of some companies gaining ISO certification on certain management systems and also the ongoing work of the International Code of Conduct for Private Security Service Providers.

He noted that there was only one Japanese PMSC, but that it carried out limited non-armed information activities in Afghanistan. He did, however, note that there was a large private security market within Japan. Use of weapons by these companies is prohibited. He noted that there are some foreign PMSCs with local offices in Japan and that Japanese diplomatic missions abroad may use foreign PMSCs as well as in respect of a Japan-funded overseas development police training project in Iraq. He concluded by calling for more disclosure by both PMSCs and their users, noting that greater transparency would deter illegal work.

For Tajikistan, *Asadullo Hakimov, Head of the Senior Department of International Relations of the Ministry of Justice*, started by noting that while there are no PMSCs in the country there are legislative acts and norms that regulate their activities.

He noted that the development of the private sector in the economy had also meant the development of a private security market in Tajikistan. This had led to the adoption of a licensing system, both for carrying weapons and for providing private security services. Neither PSCs nor

individuals are authorized to conduct investigation activities, these being left only to the police.

While there is no special law on PSCs, there is a law that assumes the establishment of such companies as well as a special security unit within the Ministry of Interior charged with the oversight of this industry. Noting the different services these companies provide - surveillance, alarm, protection of buildings and other sites – he concluded that it is necessary to develop further legislation on PSCs as the industry needs clear guidelines for its operations.

For Kyrgyzstan, *Azamat Alpamishev, Head, State Venture 'Kyrgyz Kural'*, welcomed the better regulation of PMSCs and the need to establish clear legislative guidance for their activities. He noted that private military companies are not currently envisaged in the existing Kyrgyz legislation.

He then went on to note, however, that PSCs are permitted to and do operate in Kyrgyzstan where they are subject to oversight in accordance with the law on Private investigative and searching activities. They are authorized to possess firearms by getting a license in accordance with the law. To do so they have to undergo special checks, and they are authorised to use them if they are attacked directly, or if the guarded object is attacked and the attacker is resisting. He concluded by noting that although currently Kyrgyzstan does not permit the export of PSC services, in the future the Montreux Document could serve as a sound basis on which to conduct such activities.

Stuart Groves, Security Consultant to the United Nations, spoke on the use of private security companies by the United Nations in protecting their personnel in complex situations. He noted that he had worked in the security department of the UN's Office for Human Rights and also at the UN's Department for Security and Safety and had experienced first hand the work of these contractors, who in the main were competent professionals. He highlighted some of the challenges that the UN faces in its use of such contractors, including the need to coordinate the policy of the 64 separate organizations that made-up the UN family, satisfy the 193 member states that it was doing the right thing and appease many other actors who had an interest in the United Nations' policy on this issue.

In this light, he noted that the UN system is in the process of coordinating its policy in respect of these companies and that this was expected to be released soon after a long period of close consultation

within and without the UN organisation, including with the United Nations Working Group on the use of Mercenaries who has issued a report some years ago suggesting that the UN should use security in compliance with the principles of the UN charter. He noted the positive contribution that DCAF had played in providing support to this process and, while recognizing that the policy was not yet out, indicated that it would include elements of the Montreux Document and the International Code of Conduct, and would emphasise that the UN should, consistent with its own rules, only choose companies that meet certain criteria.

Going forwards, he noted that the policy would need to be translated into separate departmental policies to cover specific procedures and training, and that the UN as a whole was closely following the various international initiatives to ensure that it was at the forefront in their development.

Round Table discussion and Closing Remarks

During the Round Table discussion that followed, participants were asked what they thought of the possibility of the multilateral elaboration of a model national law. There was discussion on how this was a way to promote the adoption of international standards into national legal systems in a non-binding way. Participants generally welcomed the idea, noting that there was a good precedent for this approach in international fora. Others noted that this would be a potential way for all governments to unite behind the issue as by not creating new international or national law it would avoid some of the concerns raised by several governments.

At the end of the workshop, *Blaise Godet, Swiss Ambassador to Mongolia, Thierry Meyrat, Head of Regional Delegation, ICRC Beijing and Damba Ganbat, Director, Institute for Strategic Studies, Ulaanbaatar* thanked all the participants for attending actively and contributing substantively to the workshop.

OPENING REMARKS

Welcome Address by the Ambassador of Switzerland to China, Mongolia and the Democratic People's Republic of Korea, Blaise Godet – check against delivery.

Ladies and Gentlemen,

I am very pleased to welcome you all to this conference on behalf of the Swiss Federal Department of Foreign Affairs.

This workshop is organized jointly by the Ministry of Foreign Affairs and Trade of Mongolia and the Directorate of International Law, Federal Department of Foreign Affairs of Switzerland, in co-operation with the International Committee of the Red Cross (ICRC), the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Institute for Strategic Studies (ISS) in Ulaanbaatar.

I wish to sincerely thank the Government of Mongolia and all the other partners for co-organizing and co-hosting this important event in Ulaanbaatar, located at the crossroads on the Asian continent.

It is the second in a series of regional workshops on the Montreux Document on Private Military and Security Companies. The first awareness raising seminar took place in Chile in May 2011. Another awareness raising seminar is planned to take place in Africa.

This conference builds on the ongoing successes of the Swiss Initiatives, including the adoption in September 2008 of the Montreux Document on legal obligations and good practices relating to PMSCs operating in armed conflict and the adoption in November 2010 of the International Code of Conduct for Private Security Service Providers with continuing efforts focused on building an effective international oversight institution.

To continue, I would like to read to you extracts of a letter by the President of the Swiss Confederation, Her Excellency Ms Micheline Calmy-

Rey, addressed to the President of Mongolia, His Excellency Mr Tsakhiagiin Elbegdorj , on the occasion of this seminar:

“Switzerland has a long humanitarian tradition. The use of PMSCs has raised a number of humanitarian concerns past and present. It is against this background that the Montreux Document wants to improve the protection of the rights of the civilian population against any negative impact the use of such companies may have. The aim of our joint conference is to raise regional awareness about the Montreux Document, as well as to open a dialogue about both challenges faced as well as successes achieved regarding PMSCs in North East and Central Asia.

This conference also builds on the emerging consensus, among practitioners as well as academics, on the need to fill any gaps that may exist in the regulation of PMSCs. As this industry — and the effects it has on civilian population — grows, so should our discussion and dialogue about how to improve its governance. But there is no “one-size fits all” approach to effective governance. For it to be effective, this discussion has to take into account the real challenges that are happening on the ground.”

The Montreux Document is now supported by 36 States and remains open for endorsement to all states and international organisations.

Today, you will start off by looking at efforts that are happening at the international level and discuss how the growing use of PMSCs impacts and shapes international standards. Tomorrow, you will start to narrow the focus to North East and Central Asia, listening to perspectives from individual countries. The reason we take this approach from international to local is very simple: because international principles must have real meaning on the ground to help safeguard persons from violations of their international humanitarian law protection standards and their human rights. And this requires a dialogue between the international and local, so that local practices are aware of international standards, and international standards take into account actual security challenges faced by people every day.

Finally, we will be looking at the Voluntary Principles on Security and Human Rights, a multi-stakeholder initiative aimed at providing guidance to companies in the extractive sector in order to ensure that the safety and security of their operations are being maintained in a framework of respect for human rights and fundamental freedoms. Switzerland is a full

participant of this process and is committed to disseminate the Principles and contribute strengthening the efforts for their effective implementation.

This is the context within which this workshop is held. It is up to all of you to turn this meeting into a meaningful exchange.

I trust that the conference will allow participants to engage in an open dialogue and fruitful discussions, making this conference a resounding success. With such a distinguished group of participants, I am sure that we will succeed. In order to facilitate success, we want you to speak openly. Therefore, the so-called Chatham House rules will apply, meaning that, although a report of today's meeting will be prepared, no statements whatsoever will be ascribed to individual participants or their institutions of affiliation.

Let me conclude with my heartfelt thanks once more to the Mongolian Government, and in particular to the Ministry of Foreign Affairs and Trade of Mongolia for hosting this conference, for the excellent organization together with the Institute for Strategic Studies, and to you all for attending.

I wish you all fruitful and successful discussions.

Thank you.

RESEARCH PAPER

Regulating private military and security companies in Central Asia and Russia

Erica Marat¹

Across the world, more and more governments and private corporations are hiring private military and security companies to fill their needs. Over the past three decades, the number of documented private guards increased 300 percent, reaching 20 million personnel in 2010. In some parts of the world the number of private guards exceeds the number of state police.² By allowing private military and security companies (PMSCs) to perform functions once handled by governments, states relinquish their monopoly on the use of power in favor of shared responsibility with non-state actors.³ And in contracting private providers to provide their security, corporations expose themselves to different risks than if relying on the public security sector. But in the absence of an effective regulative framework, these forces often function outside of state control. Even in cases where the government does regulate them, PMSCs cannot – by virtue of being private entities – be fully controlled by the state. The rapidly growing number of PMSCs, as well as their increasing use on the national and international levels, has underlined the need for international regulatory mechanisms.

In the context of Russia and the states of Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan), there are at least five reasons to better regulate PMSCs. First, the collapse of the Soviet Union and introduction of market-based economies have paved the way for the emergence of a private security sector that complements and at times rivals the state's monopoly on violence. In Russia alone, there are roughly 30,000 registered private security organizations that guard local, national, and foreign businesses and individuals.⁴ In the Central Asian states the number of both registered and unregistered private security guards is growing. They primarily secure the interests of individuals and groups. In Central Asia

private guards have challenged the authority of incumbent political leaders by bullying police forces and intimidating public officials.

Second, insecurity in Central Asia and its neighbors, including Afghanistan, has prompted the governments of Russia and regional states to address threats from non-state actors operating there, such as drug-traffickers, organized criminal networks, and terrorist groups. These threats may be beyond the capabilities of state military forces and require new types of security arrangements, both domestically as well as regionally. Given the current trends, responding to these types of threats the states might increase the use of PMSCs, which should be appropriately regulated. Russian-led regional groups, such as the Collective Security Treaty Organization, have sought to issue guidelines for the operations of foreign mercenaries and PMSCs operating on the territory of member states. These regulations are currently under consideration by the member states.

Third, the region's extractive industries and energy markets will increasingly need to rely more on PMSCs. Russia and Kazakhstan are constantly looking for foreign markets for their energy exports. Both countries have already resorted to the use of private local and foreign security guards to protect public and private interests in this sector, but more detailed operational guidelines are needed. Other countries will inevitably follow Moscow and Astana's lead as they expand their own extractive and energy industries and will need to resort to the help of guards to protect factories and transportation routes. For example, Tajikistan and Kyrgyzstan plan to export hydropower electricity to Pakistan through Afghanistan's territory. Uzbekistan, in turn, may resort to these security providers when constructing railroad links to China.⁵

Fourth, Russia and Central Asia inherited portions of the bloated Soviet military, which was structured to fight Cold War threats with a large, labor-based military. As the post-Soviet states transition to leaner, more capital-intensive military forces and law-enforcement agencies, they will need to provide for the needs of retiring or downsized military and police personnel. Many of these veterans have been hired by private security companies at home or abroad. Russia, Kazakhstan, and Kyrgyzstan are in the similar process of transforming police forces and presumably reducing the number of their employees as well.

Finally, should Russia and the Central Asian states in the future wish to allow their own PMSCs to serve abroad to protect national businesses or

to join international efforts, they would have to clarify the rules of engagement with other states, whether they are large suppliers of PMSCs, such as the United States or United Kingdom, or smaller states. Both the China-led Shanghai Cooperation Organization (SCO) and the CSTO have announced plans to provide security services in Afghanistan, after the International Security Assistance Forces (ISAF) will withdraw in 2014.

In order to be better prepared for these changes, Russia and the Central Asian states need to foster mechanisms that would make the process better regulated and more transparent. The purpose of this paper is therefore threefold. First, it seeks to explain why international regulation of the private security and military sector is needed and how the Montreux Document could help states acquire such regulations. Second, it examines the current activities of PMSCs in Russia and the Central Asian states, explaining the legal foundations for their functions as well as existing legal loopholes. Finally, the paper outlines the parameters of future debates on how Russia and the Central Asian states can expand the meaning and applicability of the Montreux document beyond current member-states.

Why the Montreux Document?

Across the world, PMSCs function as regular businesses. They have their own hierarchies, corporate literature, websites, and other elements of a business entity.⁶ Some of them advertise their services, while others were formed to serve a particular niche market; many compete among each other for government contracts. In well-regulated security markets, having government-run military and security services compete with private PMSCs for contracts may increase efficiency, provide the government with flexibility in the defense sector, and reduce costs.⁷ In the worst cases, PMSCs break international regulations and threaten, rather than uphold, state stability. Recent history knows of multiple examples of reckless conduct by some large and small PMSCs. There are also cases when mercenaries from former Soviet states, currently serving in Africa, violated international regulations.⁸

The Montreux Document is a shared initiative between the Swiss government and the International Committee of the Red Cross. It was signed in September 2008 in Montreux, Switzerland. Today 36 states have endorsed the document, including the world's two largest suppliers of

private guards – the United States and the United Kingdom. The document is a practical instrument that seeks to create guidelines for PMSC activities. It brings together states that have practical experience in regulating PMSCs and states that are concerned with the rising activity of various PMSCs. It provides a useful framework for regulating PMSCs activity by referring to International Humanitarian Law and is often used as a benchmark standard in relevant meetings of the United Nations.⁹ All states and organizations are invited to support the document.

The Montreux Document contains two main parts. The first part defines “contracting states”, “territorial states”, and “home states” and matches each definition with relevant international legal obligations according to international humanitarian and human rights law. This part of the document also details the international legal obligations of “all other States”, the duties of PMSCs and their personnel, as well as questions of ultimate responsibility. The document’s second part lists over 70 procedural recommendations to contracting states, territorial states and home states. The recommendations are based on international best practices for regulating PMSCs and include elements such as transparent licensing regimes to ensure better supervision and accountability. The ultimate goal is to help states create PMSCs that are more likely to respect international humanitarian and human rights law, through appropriate training, internal procedures and supervision, and that can provide reliable services during armed conflicts.

The document reminds states that they are accountable for PMSC conduct when they outsource to them. Specifically, governments that contract PMSCs are responsible for their compliance with international regulations, including humanitarian law and respect for human rights. The contracting states’ PMSCs may also be protected from being held accountable for violations they commit under the jurisdiction of other states, as with traditional military and security forces, under status of force agreements.

The Montreux Document defines PMSCs as “private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and

security personnel”. It is important to note that the Montreux Document does not consider the legitimacy of the reasons PMSCs are deployed. Rather, it summarizes pertinent international laws that regulate such deployments.

The Montreux Document does not differentiate between different private military and private security companies. It acknowledges that most companies provide a range of services – from strictly military to strictly security. The PMCs provide both military and security services, while PSCs are limited to investigative and security services. Interestingly, most major contracting states claim they do not use PMCs. In Russia and Central Asia, it is often quite difficult to make clear distinctions between the two. Although formally Russia and Central Asian states do not recognize private military companies, many private security organizations allow their employees to carry firearms, the defining characteristic of a military group. Legally speaking, PSC employees are civilians who possess the necessary skills to protect a specific zone or entity. However, in practice these employees usually are former army or police personnel (retirees) and thus have been trained to engage in armed confrontation should there be the need.

The extent to which the Montreux Document is applicable in Russia and Central Asia varies from state to state. Russia and Kazakhstan have the most dynamic private security markets, and both states have elaborate bodies of legislation that regulate the activities of PSCs.¹⁰ Kyrgyzstan has also been open to allowing PSCs to function within its territory, yet the country’s private security domain is dwarfed by those in Russia and Kazakhstan. All three states have indicated an interest in sending their troops and private guards to participate in international peacekeeping campaigns.

In restricting itself to situations of armed conflict, the Montreux Document does not directly apply to many of the situations in Central Asia. However, its principles are relevant in more diverse situations. For instance, the Montreux Document does not apply to the huge underworld of informal PSCs that function across Central Asia. This is partly because the Montreux Document really assumes that there will be a corporate entity established and also due to the armed conflict restriction mentioned above. These structures are mostly formed by private citizens to protect political leaders, influential entrepreneurs, and their families. Often PSCs are formed to service specific companies or individuals. They possess the manpower

and firearms to challenge state forces. Often they enjoy greater influence compared to state armed forces and police forces defer to these PSCs. Kyrgyzstan and Tajikistan, in particular, have sought to establish greater control over such informal formations.

In Uzbekistan and Turkmenistan the states maintain nearly complete control over the use of power. Official military, security, and police forces have penetrated nearly all aspects of social and economic life in these countries. The armed forces and police primarily defend the ruling regime and were in the past deployed to suppress social dissent.

Tajikistan lived through a civil war that left the state with a large army that was not needed when the war ended. Although the country's ruling regime has a near monopoly over armed and police forces, Tajikistan is more exposed to private militias than the other Central Asian States. Tajikistan's proximity to Afghanistan and the possible spillover of Islamist militants from Afghanistan, as well as former civil war field commanders unable to secure political offices in post-war government continue to challenge domestic stability.

The region's two largest security organizations, the CSTO and the SCO, have both recently declared their interest in contributing to Afghanistan's stability beyond 2014, the year when the U.S. and NATO are expected to withdraw. Should the plans of either or both organizations materialize, they would most certainly need to resort to the services of PMSCs. In 2011 Kazakhstan and Kyrgyzstan have shown interest in participating in international military campaigns.

Finally, throughout Central Asia and Russia, the extractive and energy sector plays an important role. While the Montreux Document is one initiative to consider in respect of private security, another is the Voluntary Principle on Security and Human Rights.¹¹ This voluntary initiative, established by governments, leads companies in the extractive and energy sector, as well as non-governmental organizations to promote the respect of international human rights and fundamental freedoms by these companies as they seek to maintain the safety and security of their operations. The principles apply to these companies in their interactions with public security forces but also, importantly for this paper, in their interactions with private security. While there are many critiques of the initiative, in particular of its to date lack of success in establishing effective oversight of the principles, there remains potential for the initiative to

provide guidance to both governments in the region, as well as extractive and energy industries operating on better human rights compliance in the sector. Governments in the region would be well-advised to monitor the progress of the Voluntary Principles and, if appropriate, engage with it.

Russia

Of all former Soviet states Russia has the most rapidly developing private security market. Today, over 30,000 PSCs function in Russia with the total number of personnel ranging from a few individuals to several thousand. According to Small Arms Survey, in 2008 the number of private security guards (800,000) exceeded the number of police, (601,000). Of those PSC personnel, 196,266 are authorized to carry firearms, and some 116,000 firearms are reported to be in possession of various PSCs.¹² These numbers strongly indicate that Russia has been part of the global trend of outsourcing security to private companies and downsizing the public sector.

Small informal PSCs began emerging in Russia in the 1980s when the Soviet economy was opening up to more competition and newly emerging entrepreneurs needed an edge against their rivals. The number of PSCs considerably expanded in the 1990s under President Boris Yeltsin, whose liberal economic policies and lax state created conditions for even greater unregulated activity.

In the early 1990s up to 50 percent of law-enforcement personnel were let go as a result of reforms.¹³ Some of the redundant policemen and army personnel, as well as older veterans of the Soviet war in Afghanistan, joined the emerging PSC sector. Often these PSCs were involved in criminal activities such as theft, raiding, racketeering, and kidnapping. As the demand for PSCs expanded and the country's private security market grew more diverse and sophisticated, both the government and PSCs sought to introduce mechanisms that would regulate their work.¹⁴

In 1992 the Russian Duma adopted the law "On private investigative and protective activity in the Russian Federation". This was the government's first step to regulate PSCs. Shortly after the law came into force, over 570 PSCs registered in Russia to exceed 6,000 by the mid 1990s.¹⁵ According to the law, the Interior Ministry must review the work of PSCs on an annual basis, paying special attention to how companies use and store their weaponry. However, greater state regulations did not prevent

Russian PSCs from violent activities. Up to the mid 2000s, there were a number of cases when a PSC illegally invaded or intimidated businesses.¹⁶

The 1992 law was regularly updated over the years. In order to reduce unsanctioned violence, in 2005 the Russian government adopted a law restricting the use of certain types of armament in PSC activities. This included banning Izh-71 guns, one of the most popular PSC weapons, and other restrictions like painting the smooth-bore “Saiga” carbines white to make them less threatening.¹⁷ This legislative change aimed at reducing the possession of heavy armor by PSCs. Later, additional amendments banned “Saigas” altogether. The latest version of the law on PSCs allows private guards to use pistols, revolvers, and other defensive weapons. Despite this, some companies still list sub-machine guns among their weapons.¹⁸

In the 2000s, the number of large PSCs – with more than 1,500 employees – surged. Some of these companies adopted corporate-style structures, and their influence spread across several regions inside the country. Soon Russia’s large companies began lobbying to create their own armed PSCs that would protect their facilities and employees. In 2007 Russia’s two energy giants, Transneft and Gazprom, pushed the parliament to allow them create their own PSCs. In 2010 the Russian government banned businesses from forming their own PSCs. Transneft and Gazprom, however, were exempt from this law.

The 1992 law was further amended in 2010 to introduce stricter regulations for firearms possession. The Interior Ministry tried to reduce the number of firearms among PSCs, explaining it as a necessity to strengthen control over small arms. Some PSCs were forced to disarm their employees. Emphasis was made primarily on PSCs in Moscow because the number of PSCs in the Russian capital is the highest in the country, reaching 5117 firms with 157,138 employees in 2010. Moscow PSCs protect 43,821 sites, including banks, shops, hotels, hospitals, schools, etc.¹⁹ This surge is also partly explained by the fact that the private sector and individuals in Russia trust private security more than state institutions.

The latest amendments to the law were made in 2011 and strengthened the licensing requirements. Currently Russian PSCs are not permitted to function outside of the country in any capacity.²⁰ Russian PSCs must also abide by several existing laws that previously had been applicable mostly to state armed forces, including the laws “On Defense” and “On Armament”.

According to the 1992 law on PSCs, the Ministry of Interior is responsible for regulating the work of the private security sector. The ministry was also the leading institution to seek greater regulations in the private security market. Over the years it developed more elaborate requirements for PSC registration. Importantly, the ministry also sought to establish collaboration with as many PSCs as possible.²¹

Despite the thriving private security sector, it remains unclear how PSCs and the government interact. On one hand, PSCs like “Alfa” are trained to counter terrorism, but on the other – there are no guidelines for government-contracted PSCs services. That is, the Interior Ministry has an elaborate framework of PSC regulations, but it cannot use their services. A number of laws spell out instances when PSCs must participate in government anti-terrorism activities, but even during such activities private guards are treated more like ordinary citizens, than skilled, armed servicemen.

Various regions in Russia have adopted legislation that would allow civilians to help maintain public order. According to the Russian Interior Ministry, in 2009 such civilian patrols were present in most parts of the country, involving over 34,000 local organizations and over 363,000 people. Among them were 46,000 people in 872 Cossack brigades. These groups are reportedly responsible for uncovering roughly 40,000 crimes and over 400,000 administrative offenses.²² For instance, in Saint-Petersburg a special law stipulates that local residents have the right to serve as voluntary patrol and take on some of the police’s functions.²³ The ministry can recruit civilians to patrol neighborhoods and report any suspicious activity. However, that same law does not consider hiring PSCs for similar purposes.

There were several attempts, primarily driven by the Interior Ministry, to adopt a federal law that would allow recruiting civilians for community police patrol purposes. These efforts were met with criticism, especially from members of parliament, who were concerned that civilian guards might abuse their powers.

The Interior Ministry has tried to impose a number of other restrictions to PSCs activity, such as increasing requirements for their charter capital, training personnel, and defining sites where PSCs are generally allowed to function.²⁴ Penalties were increased for illegal PSC activity, such as violations of privacy or illegal raiding and forceful

acquisition of other businesses. As such, the following amendments to the 1992 law were introduced in 2005: PSC personnel must be citizens of the Russian Federation, be over 18 years old, professionally competent, healthy, and have no criminal record.²⁵ Furthermore, all PSC employees must have health and life insurance. Current government employees cannot work for PSCs. Finally, PSC employees can only carry weapons while at work.

Russia's police reform in the late 2000s resulted in the downsizing of police personnel, including police generals. Such retired Interior Ministry members are likely to seek opportunities in the private security market.²⁶ Other former police and military personnel joined international PSCs, including PSCs in African countries where the demand for professional fighters is abundant.²⁷

Large Russian PSCs often band together in associations that allow them to lobby their interests in the parliament as a joint force. The Association of International Cooperation on Non-State Security Structures (Association NSSS)²⁸ was the first major PSC to emerge in Russia shortly after the 1992 law was adopted. This PSC laid the path for the emergence of similar companies throughout the country. The association's top management is composed of former KGB, Interior Ministry and Federal Taxation Service employees. It unites over 50 PSCs based across Russia.²⁹ It is a member of the American Chamber of Commerce office in Russia whose functions include protecting American and Russian businesses in Russia.³⁰

As the private security market became more sophisticated in Russia, NSSS sought to introduce international best practices to Russian PSCs. Initially the association focused on creating and developing the PSC market for individual and business protection services. Later the association shifted its mission to increasing the quality of private security services in the country by "studying, using, and promoting positive international experience".³¹

The Association of Retired Employees of the Government Protection [Service] "Devyatichi" was formed in 1998 specifically to provide security services to the federal government, including the FSB and the Interior Ministry.³² The association unites 36 PSCs across Russia, and its top management is comprised mostly of retired KGB servicemen. "Devyatichi" works with Interpol and a number of international security organizations, including ASIS and the Israeli Security Academy.

Another organization that draws from retired special forces is “Alfa” association. It was formed in 1992, shortly after the KGB’s restructuring, and was dominated by retired members of “Group A”, an elite unit of Soviet-era special forces. During the Soviet period the group participated in military campaigns in Afghanistan, Georgia, Lithuania, as many other Soviet territories. After the Soviet Union’s collapse, the unit was deployed as a government contractor to various locations in the North Caucasus and Moscow to counter terrorist attacks. This unit responded to attacks at a Moscow theater (known as Nord-Ost incident) in October 2002 and in Beslan in September 2004, the Chechen wars in the 1990s, and several campaigns in Dagestan.³³ “Alfa’s” servicemen were awarded multiple state medals for their bravery.

Today “Alfa” is the largest conglomerate of retired special forces personnel in Russia. Aside from its main functions, “Alfa” also seeks to spread its values to younger generations by visiting schools and universities. “Military-patriotic education” is a significant part of the company’s work.³⁴ “Alfa’s” main slogan is to continue the combat practices of its predecessor, the “Group A”.

Hundreds of other PSCs serve various private security market niches, such as protecting construction sites, banks, small businesses, individuals, foreigners, etc. Most associations uniting PSCs seek to establish international contacts with businesses and P[M]SCs as well.

Regulations affecting Russian PSCs developed ad hoc, due to the absence of an overarching regulatory framework based on specific principles and norms. The legislative base lack statutes on respect for international humanitarian and human-rights law and international practice. This causes some confusion over whether Russian PSCs actually provide only security services and are not involved in the military domain. Since PSCs in Russia can carry guns and body armor and resort to technologies otherwise used by Russian Armed Forces, their de facto activities indeed surpass the provisions controlled by the Interior Ministry.³⁵ Neither the law “On Defense” nor current legislation affecting PSCs specifies whether Russian PSCs are allowed to participate in anti-terrorism activities.³⁶

In sum, it appears that the Russian Interior Ministry has largely outsourced the protection of private sites and businesses to PSCs across the country. The country’s largest PSCs provide cutting-edge training for their

personnel whose professionalism might at times exceed those of the police or armed forces. Although instances of various Russian PSCs collaborating with the Federal Protection Service are becoming increasingly widespread, this process often takes place in a legislative and normative vacuum. The Russian government is yet to learn strategies to fully leverage the ample private security sector in the country. The Montreux Document offers a comprehensive account of such positive practices for the Russian private security sector.

International dimensions. Russian government does not allow its PSCs to provide services abroad, including to other former Soviet states. However, with the Russian domestic private security market rapidly expanding, the country's PSCs will inevitably follow the global trend and at some point expand their services internationally. The largest Russian PSCs have already developed ties with foreign PSCs working in Russia. Motions to allow Russian PSCs to expand internationally have been discussed in the parliament for a number of years.³⁷ Two factors, in particular, are behind such discussions, namely Russian businesses continue to expand to other countries, and Russian PSCs are well-known around the world for their highly professional personnel. For instance, Russian private guards were invited by the Somali government to help fight pirates off the coast of Somalia.³⁸ However, Russian PSCs still lack a competitive edge in the international market for their lack of English language skills.³⁹

Russian nationals have already been deployed to Iraq and Afghanistan in private capacities. Russian guards served at Iraq's "InterEnergService" energy company. The company also employed members of the Russian PSC "Antiterror" guards. If Russian PSCs do enter the international market, the Russian government will need to adapt its relevant body of legislation in line with international norms. This is where the Montreux Document would be of particular use.

Furthermore, as the Russian economy grows and the country secures membership in the World Trade Organization, there will be an increased need for foreign PSCs to pave the way for international businesses in the Russian market. A subsequent need for more regulations for the work of foreign and local PSCs in Russia therefore arises. PSCs such as Securitas, G4S, Armor Group Moscow, Control Risks, Olive Group, and others have entered Russia's private security sectors. Foreign PSCs working on Russian

territory have recruited local cadres. Russian PSCs and their international partners host trainings for bodyguards and private guards who work for local firms.

There were some concerns that foreign PSCs operating in Russia were engaged in economic espionage and trying to acquire strategic government information. Together with the Interior Ministry, the Russian parliament developed a set of regulations for such companies' involvement in the Russian market. The most significant of these restrictions stipulates that only private firms from countries with which Russia has a bilateral agreement on PSCs are allowed to enter the Russian security market.⁴⁰

In the past Russian PSCs provided services to foreign businesses operating in Russia. For example, they cleared landmines for Western companies interested in constructing a pipeline on Sakhalin Island, and they have escorted trains carrying high value cargo.⁴¹ But these contracts have been rather sporadic. The use of Russian PSCs is largely confined to expatriate investment in locally registered joint-venture PSCs. Although it is possible for PSCs to bypass this ban by hiring foreign security experts as consultants, this does not provide opportunities for international PSCs to share their best practices and experience with their Russian counterparts.⁴²

As Russian firms explore the Arctic region for oil and gas reserves, they may hire foreign PSCs or at least have their Russian PSC's cooperate with the international guards. The United States, Canada, Norway, and Denmark currently share common interests in the Arctic's resources.⁴³ As Russia expands into the Arctic, other countries will expect Moscow to abide by international regulations when deploying PSCs to protect Russia's Arctic resources.

Russia has been leading regional discussions about mercenaries on the territory of CSTO states.⁴⁴ In 2009 the CSTO suggested that members sign agreement that defines terms like "mercenary" (наемник), "mercenary activity organizers" (организатор наемничества), and "mercenary activity" (наемничество). Mercenaries may engage in subversive activities and threaten the territorial integrity of CSTO member-states. According to the draft agreement, the organization's member-states must exchange intelligence information on possible mercenary activity on their territories, fight to prevent such activities, and share experiences in curbing mercenaries.⁴⁵ The Commonwealth of Independent States (CIS), another

Russia-led post-Soviet regional organization, has been working on similar agreements. The CSTO document has not been approved yet.

Central Asia

During the 1990s, Central Asian governments did little to distance themselves from Soviet practice in terms of the proper role and place of military institutions in the state and in society. However, they built on this tradition differently. The military provided additional value by either reinforcing national sovereignties or regime holders' domestic power. Kazakhstan made the biggest progress by translating its successful economic privatization efforts into military reforms and seeking to meet international standards. The country has the largest and most diverse private security market in the region. Kyrgyzstan has made modest progress in reforming its military institutions despite the lack of financial resources. The changes in the Kyrgyz armed forces were largely determined by individual agents within the presidential administration, the Security Council, and the Ministry of Defense.

By contrast, Tajik, Turkmen and Uzbek leaders used the military to serve the regime's domestic needs. The armed forces of all three states continued the Soviet tradition of protecting the regime against any challenges. Regime holders often relied on the military to exercise greater control over the civilian population. These militaries retained their privileged place in the hierarchy of state institutions and were rewarded with larger budgets and increased political leverage. In Tajikistan, President Emomali Rakhmon used the military to centralize power in the post-civil war period. In Turkmenistan military personnel have been used to staff key public institutions, ensuring that everyone complies with the regime's decrees. And in Uzbekistan the vast number of military personnel and weapons depots play a key role in President Islam Karimov's efforts to control the large population and competing political forces.

At various times opposition groups in Kyrgyzstan, Tajikistan and Uzbekistan have formed military or paramilitary structures independent from the state. These structures either built links with similar groupings across national borders or mobilized their own forces. For instance, Kyrgyzstan's political opposition and some local government officials are known to rely on the brute force of martial arts sportsmen. In the 1990s,

Tajikistan's United Tajik Opposition political party created its own armed guard with the help of Iran and Afghanistan. In Uzbekistan the militant wing of the Islamic Movement of Uzbekistan is the product of ideological leaders working in close collaboration with field commanders. However, non-state actors in Central Asia do not seem to mobilize their military capabilities to anywhere near the level of those in the Middle East or Africa. Instead, they infiltrated the states to pursue their own political or economic goals or they subdued their political ambitions, like the Islamic opposition in Tajikistan.

Outside of Kazakhstan, very few registered PSCs in Central Asia have a corporate structure. Moreover, many PSCs in Tajikistan and Uzbekistan lack any legal status because there are no laws requiring registration and because of the overall instability in the region due to weak state institutions. These types of PSCs can also be defined as "armed actors" that represent a continuum between organized criminal groups and drug-traffickers to ideology-based groups that resort to violence.

Kazakhstan is the only Central Asian state that has a legal base for the functioning of PSCs on its territory and abroad. In Kyrgyzstan most legislative acts are copied from Russia, while in Uzbekistan, where a number of PSCs function openly, but the government keeps laws on PSCs closed to the wider public. In Tajikistan PSCs exist, but they neither openly advertise their services nor does the government disclose how it regulates the private security market.

Central Asian states are vulnerable to spillover from Islamist militant groups from Afghanistan. The region is also prone to drug-trafficking and organized crime. Often law-enforcement agencies collaborate with criminal groups. The situation is particularly dire along the major drug-trafficking routes that pass through Tajikistan, Kyrgyzstan, Uzbekistan, and Kazakhstan. Kyrgyzstan's and Tajikistan's Armed Forces are too weak and undertrained to deter these threats or gather sufficient intelligence.

Kazakhstan

Kazakhstan's private security market has rapidly developed over the past two decades. Today, roughly 7,000 PSCs, employing a total 77,500 private guards, are officially registered in Kazakhstan.⁴⁶ The country has an elaborate legal framework for regulating PSCs that has evolved in a pattern similar to Russia's. The main law, "On Security Activity," adopted in 2000,

regulates the private security market.⁴⁷ In late 2010 Kazakhstan adopted a law that imposes strict regulations over the country's PSCs. As such, PSC employees are prohibited from carrying long-range guns, while private companies are no longer allowed to carry out in-house security operations.⁴⁸ The legislation, signed by President Nursultan Nazarbayev in late December 2010, allows guards to carry smooth-bore guns but not grooved-bore guns, also known as rifled-bore guns and very popular among PSCs. This was done to prevent the accidental killing of innocent people from a long distance.

Some PSCs were against this new restriction. According to the KazMunaiGas general manager for business support, Serikbek Yelshibekov, his company's pipelines have been attacked by armed groups and individuals a number of times. He says that it would not be possible to protect the company's infrastructure using shotguns alone.⁴⁹ However, Minister of Interior Alexander Kulinich claimed that such attacks happened only a few times a year and do not justify PSC possession of grooved-bore weapons. Bulet Baekenov, president of the Association of Security Companies, estimates that until the law was adopted, 5,000 of the 7,000 PSCs used grooved-bore firearms. Kazakhstan's PSCs must relinquish their firearms after this law was enacted.

Kazakhstan's TemirZholoy Railway System and KazMunaiGas are the two largest companies in the country, together employing up to 21,500 people.⁵⁰ Kazakhstan TemirZholoy uses the services of the 14,000-employee Militarized Railway Guard company, while KazMunaiGas' Semser Security employs 7,500 guards.⁵¹ KazMunaiGas maintains 1,667 guard posts along its oil and gas pipelines, in addition to 214 mobile units that patrol the pipelines. Both companies opposed new regulations in the private security sector.

Kazakhstan's Interior Ministry offices in Astana and Almaty are authorized to grant licenses to PSCs and private security guards. Licensed PSCs are allowed to function across Kazakhstan's territory but cannot engage in any other types of entrepreneurial activity. PSCs can be formed to protect the lives and wellbeing of citizens and to protect property owners and their assets. An individual cannot work for more than one PSC. Entrepreneurs must hold Kazakhstan citizenship and be over 19 years of age to open a security agency. PSC employees must be mentally healthy, have no history of alcoholism or drug abuse, and have no criminal record.

They must take a two-week training course at one of the three authorized training centers: Association of security organizations, “Dinamo”, and “Bars”. Kazakhstan has a centralized and government-regulated training center for prospective private guards. A number of foreign PSCs offer their training services in Kazakhstan as well.

The Interior Ministry is authorized to conduct regular and ad hoc reviews of PSC activities. The Prosecutor’s Office is responsible for overseeing that PSCs abide by the country’s Labor Code and that the rights of PSC employees are respected.⁵² The Prosecutor’s Office has access to all documents related to PSC activity. The process of registration is fairly transparent, and most large PSCs post information about the company on their own websites.

Furthermore, the ministry regards private guards as highly trained professionals who have received proper instruction about the rules and regulations applicable to PSC functions. In the two-week specialized training course, applicants must learn civil law, criminal and civil acts, as well as master a wide spectrum of professional skills. Trained private guards are expected to be able to identify what constitutes a crime and possible grounds for detention. They must also be able to recognize counterfeit documents, such as passports and IDs. Finally, private guards must know how to provide first aid in case of injury.

Kazakhstan’s Interior Ministry insists that PSCs must pay significant attention to the rights of ordinary citizens. For instance, PSCs may install video surveillance cameras, but they must not interfere with the private lives of civilians. Private guards are allowed to use other surveillance technologies, as well as firearms, in the course of their work. But the use of sophisticated firearms may be justified, given the risks they face. Moreover, private guards must know self-defense techniques that would allow them to subdue suspects without resorting to firearms. They are also expected to have the necessary communication skills to be able to engage with civilians by interviewing civilians and questioning suspects. All of these skills are tested by the end of the two-week training.⁵³

The ministry separates private security activities into three types: remote security alarm monitoring installed on properties, protection carried out by private guards, and a combination of the two. Several of Kazakhstan’s PSCs train their personnel to be first responders in case of

terrorist acts and other emergency situations. The country's largest PSCs have a corporate structure and elaborate links with foreign PSCs.

Like in Russia, Kazakhstan's PSCs unite in associations. The Association of Security Organizations in the Republic of Kazakhstan was founded in 2002, at the initiative of the country's largest PSCs. The association was mandated to protect its members' interests by lobbying parliament and collaborating with the Interior Ministry to develop new regulations. It collaborates with the parliamentary committee on international affairs, defense and security, as well as with the prosecutor's office. Among the association's goals is to learn from domestic and international success stories. The Kazakhstani association also helps develop the private security markets in Kyrgyzstan and Uzbekistan⁵⁴ and collaborates with foreign PSCs, including Russian counterparts, the International Practical Shooting Confederation of Canada, and IFS2I Consulting LLC.⁵⁵ Association members have offered to share advice with other PSCs working in the country.

Kazakhstan also has its own "Alfa" division, which maintains close relations with its counterpart in Russia. The type of activities that Kazakhstan's "Alfa" group performs are similar to the Russians, and the group draws from former members of the KGB's "Group A". It is actively involved in the analysis of antiterrorism activities on a national and regional level, regularly assessing antiterrorism campaigns conducted by Russian special forces in Northern Caucasus.

Starting from 2004 Kazakhstan's laws allow civilians to form patrol brigades to provide security at large private events.⁵⁶ There is an elaborate framework for recruiting such guards among citizens, with their functions spelled out in the law "On participation of citizens in providing social order". Civilian brigades are managed mostly by local government administrations. Brigade members are not allowed to use physical violence against women, children, and persons with special needs. Civilian brigades must respect the rights guaranteed in the country's constitution. The law stipulates: "Citizens participating in providing social order must act in accordance with the principles of the rule of law, respect and comply with human rights and civil rights". The law also allows the government to financially remunerate citizen guards for their services.

Similar to Russia, however, Kazakhstan still lacks clear guidelines for government PSC contracts. While citizens are allowed to assist the Interior

Ministry, PSCs largely exist in a separate domain. The country, however, will need better regulations in this sector in the coming years as the country's energy exports continue to expand and Kazakhstan becomes an important transit zone between China, Russia, and rest of Central Asia.

International dimensions. Together with international PSCs Kazakhstan hosts trainings for private guards that are open to foreign nationals. For example, the Texas-based IFS2I Consulting LLC has offered seven-day and month-long training courses in Kazakhstan for women who wished to work as bodyguards.⁵⁷ Kazakhstan's private guards also regularly travel to Western Europe and Russia to undergo additional training. The country's largest PSCs also organize various competitions for private guards to test their skills.

In 2003, Kazakhstan sent its peacekeepers to Iraq to carry out demining and water purification tasks. The country's crew served under Polish command. Kazakhstan's sappers trained over 50 Iraqis and, together with Polish contingent, provided medical service to over 500 Iraqi civilians.⁵⁸

Furthermore, Kazakhstan was the only Central Asian state that considered sending its troops to Afghanistan to support ISAF. The government's proposal to send four servicemen – two military analysts, one epidemiologist and one logistics expert – was quickly rebuked in the parliament.⁵⁹ Concerns were raised about putting the Kazakh team's lives at risk. Kazakhstan is playing an ever-greater role in both SCO and CSTO. Potentially the country will be an important counterpart in both organizations' engagement in Afghanistan after 2014.

Kyrgyzstan

Over the past years, Kyrgyzstan⁶⁰ has continued to develop its legislative base for PSC activity on its territory. To a large extent the country has followed the lead of Russia and Kazakhstan. Kyrgyzstan adopted the law "On private investigative and security activities" in 1996.⁶¹ The law was consequently amended to include stricter regulation on firearms possession, as well as life and health insurance coverage for PSC employees. Roughly 350 PSCs are registered in Kyrgyzstan today, of those 50 are actively engaged in providing private security activities and the rest

existing mostly on paper.⁶² Some PSCs are formed to serve specific companies, such as gas stations and supermarket chains.

According to the law, PSCs are under the supervision of the Interior Ministry, which can evaluate each PSC on an annual basis.⁶³ The law elaborates how PSCs can use and store armaments, as well as setting limits on how many a PSC is allowed to possess. The ministry is also responsible for examining the professionalism of PSC employees before allowing them to engage in private security services. Finally, the ministry can revoke the license from PSCs and prosecute private security guards for illicit activity.

Two regime changes in Kyrgyzstan (March 2005 and April 2010) and the temporary power vacuum that followed the 2010 upheaval, prompted entrepreneurs and communities across the country to organize voluntary militia troops to provide protection for all members of society.⁶⁴ Those groups, known as “druzhinas”, were organized when law-enforcement and security institutions refused to stop the widespread looting and arson that occurred following the collapse of President Kurmanbek Bakiyev’s government.⁶⁵ Their ranks were ad hoc, including people from very different backgrounds – from business owners and their private guards to concerned citizens trying to protect their families. Some militiamen used privately owned firearms, while others seized weapons from the police.

“Druzhinas” were not accountable to any state institution and at times they were the sole security provider in the capital city, Bishkek, and locations around the country. Their performance has demonstrated that if the state is not a reliable provider of security, then privately organized groups can be effective substitutes. The Provisional Government that formed in the days following the regime changes issued decrees to regulate their activities, as they are not mentioned in formal legislation. Because many militias successfully protected businesses across Bishkek, their leaders later received support from major political parties. One such “druzhina” was subsequently officially registered as “Patriot”, but it is not considered to be a PSC.

International dimensions. Kyrgyzstan hosts the U.S.-operated Transit Center “Manas” and a Russian airbase. A December 2006 incident, in which a U.S. serviceman shot dead a Kyrgyz truck driver, fueled anti-American and anti-NATO views in Kyrgyzstan. Various politicians insist that the U.S. center must leave Kyrgyzstan by 2014. In contrast, public support for the Russian

airbase has been strong. After the 2010 regime change the United States and Kyrgyzstan renewed the rental contract for an additional year within the framework of the existing five-year contract concluded in 2009 despite the ongoing controversy surrounding the U.S. center.⁶⁶ As part of its military assistance program for Kyrgyzstan, the United States will spend \$10 million to help Kyrgyz troops counter terrorism and build an anti-terrorism center in southern Kyrgyzstan.

Importantly, in 2011 Kyrgyzstan has shown interest in participating in international peacemaking and peacekeeping efforts. At a meeting with CENTCOM's Lieutenant General Vincent Brooks in August 2010, Kyrgyz Defense Minister Abibulla Kudaiberdiyev indicated that Kyrgyzstan is ready to send its troops to participate in UN military operations across the world.⁶⁷ The minister also said that Kyrgyzstan's Armed Forces have been actively collaborating with the international military community and are eager to contribute to the international peacemaking efforts and continue their current collaboration with Enduring Freedom campaign. Appropriate legislation is yet to be developed for such international deployments.

Tajikistan

Among all Central Asian states, Tajikistan has had the most complicated process of determining how state force would be used to protect national security. During Tajikistan's civil war, government troops fought United Tajik Opposition forces from 1992 to 1997. The war delayed the formation of a central state and resulted in an army that, in relative terms, is much larger than those possessed by its neighbors (measured as proportion of conscripts compared to the local population). The troop build-up came from a significant increase in conscription by the Popular Front during the war (According to unofficial data the number of personnel in post-war years reached 100,000).

Most of the soldiers to both government and opposition squads were drawn from a civilian population and lacked higher education. When the peace agreement was reached, many former soldiers could not find work due to insufficient training and the already high rates of unemployment in the country. In the late 1990s the Tajik government acted to help the jobless veterans by providing them with civilian employment and integrating opposition troops into the national army.

After the end of the civil war, some former war commanders were barred from political life and continued their association with underground networks of Islamic radicals. In the late 1990s the opposition party fully or at least partially controlled the security structures in Karategin, Gorno-Badakhshan, and Pamir regions. The exact number of armed formations in the state's poorly administered districts is hard to verify. Reports of increasing activity by Islamic rebels in the southern part of the country became more frequent in the late 1990s. During the Batken conflict (1999 and 2000), the Tajik government was blamed for not being able to control the activities of criminal groups operating within its borders. More recently, the Tajik government has blamed Islamic extremists for instigating unrest in the summers of 2009 and 2010.

In 1998 the country adopted the law "On Search Activity" that outlines regulations for state security institutions to reduce crime. The law briefly mentions that the creation of PSCs to curb criminal activity is legal. The law was further amended in the 2000s, but there appear to be no specific legal acts that regulate the activity of PSCs in Tajikistan.

One of the most important areas where Tajikistan will potentially need to employ private security guards is the country's hydropower sector. Tajikistan has the potential to considerably expand its hydropower production and export energy through the Central Asia – South Asia-1,000 project (CASA-1,000). If realized, CASA-1,000 would deliver Tajikistan's electricity to Pakistan through Afghanistan. Dushanbe might consider either making arrangements with Kabul to deploy Afghan guards or will have to rely on private international contingents to secure CASA-1,000's infrastructure.

Sharing a long border with Afghanistan, Tajikistan must prepare for ISAF's withdrawal in 2014 and increase security in the border areas to prevent drug trafficking and infiltration by guerillas. Tajikistan might need to resort to the service of foreign or local private guards to protect its border with Afghanistan. Russia has already offered to redeploy its troops to the Tajik-Afghan border. Russian troops were stationed in Tajikistan from 1991 to 2004.

Reportedly, in 2011 Tajikistan has developed legislature that regulates PSCs' activities.⁶⁸ However, these regulations are not available through public sources.

Turkmenistan

Virtually no information on the private security market is available on Turkmenistan. The country continues to expand its energy exports and construct new gas pipelines. Similar to other Central Asian countries, Turkmenistan is vulnerable to threats such as drug trafficking and spillover of Islamic militants on its territory after ISAF's withdrawal from Afghanistan.

Uzbekistan

Uzbekistan obviously has developed a legal foundation for PSCs, but these regulations are not disclosed publically. What is available through open sources indicates that in 1992 President Islam Karimov signed a law that prohibits "non-state security structures" from performing the functions of law-enforcement agencies. The law considers clubs offering various martial arts training as one of these non-state structures that are subject to investigation by the Ministry of Justice, Interior Ministry, National Security Service, State Committee on Physical Culture and Sports, Ministry of Finance, State Taxation Administration, as well as local government.⁶⁹ Another legislative act regulating the activity of non-state security structures, "On the Main Administrative Non-State Security of the Interior Ministry," indicates that PSCs are under the control of the Interior Ministry.

It is difficult to estimate exactly how many registered and unregistered PSCs function in Uzbekistan today. Tens of PSCs openly advertise their services online, which include property protection, private investigations, and bodyguards. Therefore, most information on Uzbekistan's private security market is available not from government sources, but from PSC advertisements. Based on the available information, it is possible to assume that Uzbekistan's private security market has been developing in recent years and that local PSCs closely collaborate with government institutions.

The government issues PSC employees special licenses and checks their activities on a regular basis, while PSCs must regularly test their employees' professional skills and knowledge. Several of Uzbekistan's PSCs have a corporate structure and organize specialized trainings for their employees. At least some PSCs provide services to government institutions by protecting public universities and industrial sites. A few PSCs work with

foreign companies and are responsible for guarding transportation routes, gas pipelines, and financial institutions.

It is possible to assume that Uzbekistan's PSCs function in a fairly competitive environment. Virtually all PSCs offer protection during private events such as weddings, concerts, and corporate functions. Most PSCs assure their potential clients that their employees are highly trained and have all the needed licenses. PSCs are allowed to use surveillance technologies. However, it remains unclear what types of armament PSCs use. "Titan Security's" website, for example, includes images of its guards dressed in blue and black uniforms carrying dungeons, but their belts include gun holsters.⁷⁰ The company assures that its guards are well-versed in the country's legal system and that the company respects individual freedom and human rights. Uzbekistan's PSCs employ retired military and security personnel. Another PSC, «Vita Security», affirms that its employees have over 35 years' experience working in the security sector and had attained officer ranks. Some PSCs also emphasize the fact they furnish their employees with health insurance.⁷¹

On the other hand, Uzbekistan's Interior Ministry offers similar services to private companies and individual households.⁷² The ministry's prices are as low as \$2 per month, considerably cheaper than those offered by PSCs. It is impossible to verify whether such services are a common practice in the country or whether Uzbekistan citizens actually do hire them. Uzbekistan's army and police personnel are the most numerous in the region, counting over 55,000 active personnel.⁷³

Uzbekistan has an elaborate legal framework for the protection of the country's historic and cultural sites. This is one of the domains where private security guards might be utilized. The country is likely to turn to private guards in order to protect construction of new infrastructure such as railroads, gas pipelines, and industrial sites.

Conclusions and Recommendations

As Russia and the Central Asian states – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan – seek to participate in the international campaigns organized by UN, NATO or other organization, they would benefit from adopting the good practices recommended by the Montreux Document to better protect human rights and ensure PMSC employees are

themselves protected while affirming the need for them to retain their status as civilians. Further, as Russia and Central Asia seek to become full-fledged players on the international stage, whether by hosting foreign PSCs or sending private guards abroad, they need to consider international best practices and improve their regulatory frameworks.

Russia has realized the importance of regulating private security companies and controlling their activities both at home and abroad. Domestically, Russia passed a law specifying the rights and obligations of private security firms operating in the country and prohibiting foreign involvement. The need to protect Russia's strategically important extractive industry at home and abroad (e.g., oil and gas pipelines, oil and gas fields, storage sites and other infrastructure) is an issue that raises questions about the use of private security. There are reports of Russian state oil and gas companies (Transneft, Rosneft, Gazprom) planning to use private security companies to protect its assets both at home and abroad. Russia has hosted the UN Working Group on Mercenaries for a regional seminar on this issue in the past and, although not a current endorser, Russia was one of the active negotiators in the process of preparing the Montreux document.

Kazakhstan has a vibrant and rapidly growing private security market that is the largest in the Central Asian region. Most Central Asian PSCs have elaborate corporate structures and collaborate with international PSCs. Recently the Kazakh government introduced new regulations on PSCs' right to use firearms. This was met with strong opposition from the large PSCs. Kazakhstan constantly seeks to diversify its energy exports, and, as the country invests in new energy infrastructure both at home and abroad, the need for private security services will continue to grow as well. In the next decade Kazakhstan seeks to play a bigger role in international peacemaking and peacekeeping efforts. Kazakhstan was the only Central Asian country to offer servicemen to assist ISAF, but this initiative encountered strong domestic opposition. Astana has a strong voice in SCO as well as in CSTO, and both organizations are planning strategies for dealing with post-NATO Afghanistan. Given Kazakhstan's military capacity, the country has the potential to play an important role in peacekeeping and rebuilding efforts in Afghanistan beyond 2014.

Kyrgyzstan has a fairly dynamic private security market. With that, however, there is a large underground private security market that

possesses firearms and manpower. The government constantly seeks ways to control this market. Furthermore, as a result of two regime changes over the past six years, local communities in Bishkek and other cities have organized informal squads that are ready to mobilize at times when the government is unable to protect private property. After the April 2010 regime change, Kyrgyzstan embarked on an ambitious police reform that will require retiring some police personnel who are likely to join PSCs. Recently Kyrgyzstan's Defense Ministry has expressed interest in participating in international peacekeeping efforts under the UN's aegis.

Tajikistan has a large underground private security market, mostly residual formations left after the 1992-1997 civil war. The war left an oversized army and large number of unemployed men with combat experience. However, Tajikistan's PSC regulations need more attention and improvement. Tajikistan is potentially the highest per capita hydropower producer in the world. The country is working to construct the Rogun dam and a number of hydropower stations to export electricity to South Asia via Afghanistan. Tajikistan would require private security services to protect electric grid-lines passing through the territory of Afghanistan. Finally, after ISAF withdrawal from Afghanistan, Tajikistan might need foreign or local private guards to help protect its border with Afghanistan.

Uzbekistan has a few PSCs but the country's public laws don't specify private security market regulations (aside from mentioning that PSCs are under the Interior Ministry's control). The country needs private guards to protect construction of new railroads, gas pipelines, industrial sites, etc. As home to world-famous historic and cultural architecture, Uzbekistan needs to protect these unique sites from possible terrorist attacks. This protection may be carried-out by private companies. Similar to other Central Asian states, Uzbekistan must prepare for post-ISAF Afghanistan, consider participating in SCO, CSTO or other regional and international initiatives to prevent the possible penetration of Islamic militants and drug smugglers from Afghanistan.

Based on the above conclusions, Russia and Central Asian states should consider the following recommendations:

- Bring laws regulating PSCs up to international standards by considering good state practices designed to assist states in

implementing their obligations under international law through a series of national measures.

- Eliminate any legal vacuums regulating PSCs' activities, particularly PSCs servicing monopolist enterprises, such as energy and transportation companies.
- Improve legislature to create incentives for unregistered PSCs to acquire necessary licensing, thus reducing the shadow market of private security services.
- Consider supporting the Montreux Document as a way to publicly affirm international law's relevance to PMSCs and the good practices mentioned therein.
- Assess how existing PSCs can be professionalized so that they become a viable option for contracting out by the state and private sector to meet national and regional challenges in the coming years, as well as in protecting existing and future energy infrastructure.
- Identify areas where national PSCs can cooperate with other PSCs from the region, or internationally, and state forces; based on this analysis prepare necessary legislative statutes.
- Identify ways that the state law enforcement agencies can better oversee the activities of private security companies, whether through licensing, through police or army monitoring, or independent oversight institutions.
- Engage in other members of international community to discuss these issues, including the newly-established United Nations open-ended intergovernmental Working Group on private military and security companies as a way to develop best practice and consider further regional or international regulation. Russia in particular should consider engaging more fully in the international processes

having taken an early lead in the Montreux process, but recently taking a more disengaged view.

- Make national laws and regulations more transparent and accessible to the wider public by making latest amendments to the law on PSCs available in the local press and online.

Notes

- ¹ Erica Marat, PhD, is a professor at the American University in Washington, DC and author of a book *The Military and the State in Central Asia: From Red Army to Independence* (Routledge 2009). The author thanks André du Plessis and Anna Zotova from DCAF for their enormous help in writing the paper.
- ² Robert Evans, "World has more private security guards than police", *Reuters*, July 7, 2011.
- ³ Carlos Ortiz, *Private Armed Forces and Global Security: A Guide to the Issues*, Praeger: Santa Barbara, 2010. P. 5.
- ⁴ Mikhail Falaleev, "ChOPy razoruzhauyt", *Rossiyskaya Gazeta*, February 2, 2010.
- ⁵ Expert interview, Bishkek, October 2011.
- ⁶ *Ibid.*, Otiz, p. 6.
- ⁷ *Ibid.*, Otiz, p. 160.
- ⁸ Alexander Nikitin, professor at the Moscow Humanitarian Institute of International Relations, interview on August 15, 2010.
- ⁹ Summary of the first session of the 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
http://www2.ohchr.org/english/bodies/hrcouncil/military_security_companies/docs/SummaryIGWG1stsession.pdf , last accessed 11 October 2011
- ¹⁰ To date none of the states discussed in the paper allow functioning of PMSCs.
- ¹¹ More details can be found here www.voluntaryprinciples.org.
- ¹² Nicolas Florquin, *A Booming Business: Private Security and Small Arms, Small Arms Survey*, 2011. According to *Rossiyskaya gazeta*, however, the number of PSC personnel is 745,000 and a third of them are authorized to carry firearms.
- ¹³ N.A. Kal'pina, *Chastnye ohrannye predpriyatiya, sluzhby bezopasnosti kompanii i assotsiatsii silovyh struktur*, Moscow: Tsentri politicheskoi informatsii, 2008, p. 3.
- ¹⁴ *Ibid.*, interview with Nikitin.
- ¹⁵ According to Russian Interior Ministry data, *Ibid.*, Kal'pina, p 59.
- ¹⁶ Kal'pina describes a number of such incidents, *Ibid.* p. 6.
- ¹⁷ *Ibid.*, Kal'pina, p. 60.
- ¹⁸ *Ibid.*, Florquin, p. 117.
- ¹⁹ *Ibid.*, Faleleev, *Novaya Gazeta*.

- ²⁰ Ibid., interview with Nikitin.
- ²¹ Ibid, interview with Nikitin.
- ²² Mikhail Falaleev, “Ulitsa besopasnaya, nomer poryadkovyi”, *Rossiiskaya gazeta*, March 3, 2009.
- ²³ “MVD razrabotalo i napravilo v gosdumu zakonoproekt ‘Ob uchastii grazhdan v obespechenii pravoporyadka’”, *Guard-Info*, April 29, 2008. Also here: http://www.prpc.ru/met_nko/portf_20.shtml.
- ²⁴ All amendments listed here: <http://www.consultant.ru/online/base/?req=doc;base=LAW;n=110166>, last accessed on August 17, 2011.
- ²⁵ Amendments can be found here: <http://www.rg.ru/2005/06/09/popravki.html>, last accessed on August 17, 2011.
- ²⁶ Interview, Nikitin.
- ²⁷ Interview, Nikitin.
- ²⁸ Assotsiatsia mezhdunarodnogo sotrudnichestva negosudarstvennykh struktur bezopasnosti (Assotsyatsiya NSB).
- ²⁹ Ibid., Kal’pina, p. 11.
- ³⁰ The association’s official website: <http://www.ansb.ru/about.php>, last accessed on August 19, 2011.
- ³¹ “Tseli i izadachi” [Goals and issues], http://www.ansb.ru/about_3.php, last accessed on August 19, 2011.
- ³² Assotsiatsiya veteranov gosudarstvennoi ohrany, <http://www.deviatichi.ru/>, last accessed on August 16, 2011.
- ³³ Ibid., Kal’pina, p. 17.
- ³⁴ <http://alphagroup.ru/association/index.php>, last accessed on 16 August, 2011.
- ³⁵ Interview, Nikitin.
- ³⁶ Vladimir Belous, *Deyatel’nost’ gosudarstvennykh i negosudartvennykh struktur ohrany i bezopasnosti v Rossii*, Moscow: Arkhangelsk Academy of Management, 2008.
- ³⁷ “My zaplatim uranom’ ili rossiyskie ChVK I Somali”, *Direktor po bezopasnosti*, July 22, 2009.
- ³⁸ Ibid, *Direktor po bezopasnosti*.
- ³⁹ Expert interview, August 2011.
- ⁴⁰ Ibid., Kal’pina, p. 62.
- ⁴¹ Anna Zotova’s notes, September 2011.
- ⁴² Anna Zotova’s notes, September 2011.
- ⁴³ Ibid, Otiz, p. 157.
- ⁴⁴ Includes Russia, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan.
- ⁴⁵ Соглашение государств-участников Организации Договора о коллективной безопасности о противодействии наемничеству, can be accessed here: www.unwg.rapn.ru/ru/mow/4.doc. Also here <http://www.pravoby.info/docum09/part15/akt15931/index.htm>.
- ⁴⁶ Hal Foster, “New Kazakh law regulates private security industry and weaponry”, *Central Asia Newswire*, January 19, 2011; “O litsenzirovanii i deyatel’nosti chastnykh ohrannykh

predpriyatii”, Atyrau office of Interior Ministry, <http://dvd-atyrau.kz/content-view-12.html>, last accessed on August 19, 2011.

47 Ibid, Atyrau office of Interior Ministry.

48 Ibid, Foster.

49 Ibid, Foster.

50 Preliminary research notes by Michelle Hess, DCAF, Summer 2011; also Hal Foster, “New Kazakh law regulates private security industry and weaponry”, Central Asia Security Newswire, January 19, 2011.

51 More information can be found here <http://www.vjdo.kz/en/> and http://www.semser.kz/page.php?page_id=111&lang=3.

52 Ibid., Atyrau office of Interior Ministry.

53 Ibid., Atyrau office of Interior Ministry.

54 As mentioned on the Association of Security Organizations in the Republic of Kazakhstan’s site <http://stc-aso.kz/ru/news/43>, last accessed on August 19, 2011.

55 Ibid, <http://stc-aso.kz/ru/news/43>.

56 «Zakon Respubliki Kazakhstan ot 09.07.2004 #590-II ‘Ob uchastii grazhdan v obespechenii obschestvennogo poryadka’», <http://www.pavlodar.com/zakon/?dok=03002&ogl=all>.

57 An advertisement for this particular training can be found here <http://www.ifs2i-formation-securite.com/index.php?/female-bodyguard.html>, last accessed August 19, 2011.

58 “Sotrudnichestvo”, *Kazakhstanskaya Pravda*, August 4, 2011.

59 Joshua Kucera, “About Those Kazakh Troops in Afghanistan: Never Mind”, *Eurasia Net*, May 24, 2011.

60 Kyrgyzstan is the only country in the region that moved to establish a parliamentary system of governance. Kyrgyzstan’s new Constitution adopted as a result of national referendum in June 2010 places the National Security Service under the government’s control (limiting the President’s authority over security).

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63 http://www.gov.kg/index.php?option=com_content&task=view&id=1217&Itemid=1

64 Preliminary research notes by Michelle Hess, DCAF, Summer 2011.

65 For more information on “durzhinas” <http://www.ocamagazine.com/seminar-aijan-sharshenova-druzhina-in-kyrgyzstan-src-auca-mar-23>, last accessed on August 19, 2011.

66 www.akipess.kg, September 10, 2010.

67 Yuliya Mazykina, «Kyrgyzstan gotov uchavstvovat’ v operatsiyah OON po podderzhaniiu mira i stabil’nosti v goryatchih tochkah planety” [Kyrgyzstan is ready to participate in UN operations on supporting peace and stability in the world’s troubled spots], www.24.kg, August 16, 2011.

68 Presentation by Asadullo Khakimov, head of Department at the Ministry of Justice of the Republic of Tajikistan, Montreux Document Workshop in Ulaanbaatar, October 13, 2011.

- ⁶⁹ A copy of this legislature can be found here http://www.lex.uz/guest/irs_html.winLAV?pid=402087&p_txt=%D0%B4%D0%B5%D1%82%D0%B5%D0%BA%D1%82%D0%B8%D0%B2%D0%BD%D0%B0%D1%8F, last accessed on August 30, 2011.
- ⁷⁰ Images can be found here: <http://chop.uz/uniforma.html>, last accessed on August 21, 2011.
- ⁷¹ For example Security UZ mentions this here http://gigal.uz/objects/dir/tashkent/ohrana_i_zashita/security_uz.html?from=index, last accessed on August 21, 2011.
- ⁷² Interior Ministry of the Republic of Uzbekistan <http://www.mvd.uz/ru/content/st/90>.
- ⁷³ International Institute for Strategic Studies, *Military Balance*, 2007.

ANNEX I: AGENDA

Regional Workshop on The Montreux Document on Private Military and Security Companies (PMSCs), Ulaanbaatar, Mongolia, 11 - 13 October 2011

TUESDAY 11 OCTOBER:

1900 Welcome Reception hosted by Mongolian Government

WEDNESDAY, 12 OCTOBER 2011: The Montreux Document and Other International Initiatives

0900	Welcome	<i>Chair: Dr Damba Ganbat, Director, Institute for Strategic Studies, Ulaanbaatar</i> <i>Mr. Dashjamts Battulga, Head of the Office of the President of Mongolia</i> <i>Ambassador Blaise Godet, Swiss Ambassador to Mongolia</i>
0930	Introduction to the Montreux Document	<i>Chair: Dr Damba Ganbat, Director, Institute for Strategic Studies, Ulaanbaatar</i> <i>Felix Schwendimann, Diplomatic Officer, Swiss Federal Department of Foreign Affairs (Swiss FDFA)</i> <i>Marie-Louise Tougas, Legal Advisor, International Committee of the Red Cross</i>
1130	Interactive Session on the Montreux Document (Q&A)	<i>Chair: Dr Damba Ganbat, Director, Institute for Strategic Studies, Ulaanbaatar</i>
1400	Other International Initiatives	<i>Chair: Chimeddorj Battumur, Director of Law and Treaty Department, Mongolian Ministry of Foreign Affairs and Trade (Mongolian MFAT)</i> <i>(1) "UN Intergovernmental Working Group on PMSCs" and "UN Working Group on Mercenaries"</i> <i>Patricia Arias, Researcher, Centro de Estudios del</i>

Desarrollo, Santiago, Chile and member of the UN Working Group on the Use of Mercenaries; and Alexander Nikitin, Professor, Moscow State Institute of International Relations and former member of the UN Working Group on the Use of Mercenaries

(2) “International Code of Conduct for Private Security Service Providers”

Rémy Friedmann, Senior Advisor, Swiss FDFA; and André du Plessis, Project Officer, Geneva Centre for the Democratic Control of Armed Forces (DCAF)

(3) “The Voluntary Principles on Security & Human Rights”

Rémy Friedmann, Senior Advisor, Swiss FDFA

1600 **Interactive Session on Other International Initiatives (Q&A)** Chair: *Chimeddorj Battumur, Director of Law and Treaty Department, MFAT*

THURSDAY, 13 OCTOBER 2011 – The Regional Perspective

0900 **The North East and Central Asia Experience of PMSCs** Chair: *Thierry Meyrat, Head of Regional Delegation, ICRC Beijing*

(1) North East Asia – Expert Presentation
Artsed Sukhbaatar, Non-staff fellow, Institute for Strategic Studies, Ulaanbaatar

(2) Central Asia and Russia – Expert Presentation
Erica Marat, Professor, American University, Washington D.C.

(3) Afghanistan – Expert Presentation
Susanne Schmeidl, Senior Advisor Research/Peacebuilding, The Liaison Office, Kabul

1030 **Interactive Session on the North East and Central Asia Experience of PMSCs** Chair: *Thierry Meyrat, Head of Regional Delegation, ICRC Beijing*

- 1130 **Country Perspectives – Regulation and Best Practices**
- Chair: *Ambassador Blaise Godet, Swiss Ambassador to Mongolia*
- (1) Mongolia
Sereenov Mandakhbat, Deputy Director of Legal Policy Department, Ministry of Justice and Home Affairs
- (2) China
Ren Xiaoxia, First Secretary, Department of Treaty and Law, Ministry of Foreign Affairs
- (3) Kazakhstan
Saltanat Zhunussova, Expert of Department of Legislation, Ministry of Justice; and
Azamat Ryszhanov, Expert of the Subordinate Acts Department, Ministry of Justice
- 1400 **Country Perspectives – Regulation and Best Practices (continued)**
- Chair: *Ambassador Blaise Godet, Swiss Ambassador to Mongolia*
- (4) Japan
Masashi Horie, Official, International Legal Affairs Division, International Legal Affairs Bureau, MFA; and
Keishi Ono, Head, Defense economics and Post-conflict reconstruction Division, National Institute for Defense Studies (NIDS), Ministry of Defense, Japan
- (5) Tajikistan
Asadullo Hakimov, Head of the Senior Department of International Relations of the Ministry of Justice; and
Parviz Nazarzoda, Attaché, Law and Treaty Department, Ministry of Foreign Affairs
- (6) Kyrgyzstan
Azamat Alpamishev, Head, State Venture ‘Kyrgyz Kural’
- (7) The United Nations and private security
Stuart Groves, Security Consultant to the United Nations

58		<i>Regional Workshop on the Montreux Document on PMSCs</i>
1500	Round Table discussion	
1600	Closing Remarks	<i>Thierry Meyrat, Head of Regional Delegation, ICRC Beijing</i> <i>Dr Damba Ganbat, Director, Institute for Strategic Studies, Ulaanbaatar</i> <i>Chimeddorj Battumur, Director of Law and Treaty Department, MFAT</i>

ANNEX II

Family Name	First Name	Organization	Title
REN	Xiaoxia	China	First Secretary, Dept of Treaty and Law. MFA
TAN	Kefei	China	Lieutenant Colonel, Legal Affairs Bureau of the Central Military Committee, MoD
PAK	Chol Jun	Democratic People's Republic of Korea	Researcher of the Asia and Oceania Department, MFA
RYOM	Chol Jun	Democratic People's Republic of Korea	Vice Director of Asia and Oceania Department, MFA
HORIE	Masashi	Japan	Official, International Legal Affairs Division, International Legal Affairs Bureau, MFA
ZHUNUSSOVA	Saltanat	Kazakhstan	Expert of Department of Legislation, Ministry of Justice
RYSZHANOV	Azamat	Kazakhstan	Expert of the subordinate acts Department, Ministry of Justice
ALPAMISHEV	Azamat	Kyrgyz Republic	Head, State Venture 'Kyrgyz Kural', MoD
JUMALIEV	Nurlan	Kyrgyz Republic	Officer, Department of International Military Cooperation, MoD
CHOI	Jae ha	Republic of Korea	Consul
GODET	Blaise	Switzerland	Ambassador to Mongolia
GILLIOZ	Sébastien	Switzerland	Advisor

FRIEDMANN	Rémy	Switzerland	Senior Advisor, Human Security and Business Desk
SCHWENDIMANN	Felix	Switzerland	Diplomatic Officer
FELLMAN	Felix	Switzerland	Swiss Development Corporation, Country Director
HAKIMOV	Asadullo	Tajikistan	Head of the Senior Department of International Relations of the Ministry of Justice
NAZARZODA	Parviz	Tajikistan	Attaché, Law and Treaty Department, Ministry of Foreign Affairs
CASSARD	Vincent	ICRC, Beijing	Deputy Head of Regional Delegation
MEYRAT	Thierry	ICRC, Beijing	Head of Regional Delegation
TOUGAS	Marie-Louise	ICRC, Geneva	Legal Advisor
MARAT	Erica	American University, Washington D.C.	Professor
NIKITIN	Alexander	Moscow State Institute of International Relations	Professor, Former Member of the UN Working Group on the Use of Mercenaries
ONO	Keishi	National Institute for Defence Studies, Tokyo	Head, Defence Economics and Post-Conflict
ARIAS	Patricia	UN Working Group on Mercenaries	Member
GROVES	Stuart	UN DSS	Consultant
SCHMEIDL	Susanne	The Liaison Office, Kabul	Senior Advisor Research / Peacebuilding
DU PLESSIS	Andre	DCAF	Project Officer, Privatisation of Security Programme
ZOTOVA	Anna	DCAF	Research Assistant, Privatisation of Security Programme

CHINGARID	Tsogtbaatar	Mongolia, MFAT	Third Secretary, Law and Treaty Department, MFAT
BATTUMUR	Chimeddorj	Mongolia, MFAT	Director of Law and Treaty Department, MFAT
MANDAKHBAT	Sereenov	Mongolia, Ministry of Justice and Home Affairs	Deputy Director of Legal Policy Department
GANBAATAR	T	Mongolia, Ministry of Justice and Home Affairs	Specialist, Legal Policy Department,
SUKHBAATAR	Artsed	ISS	Non-staff Fellow
BATTULGA	Dashjamts	The Office of the President of Mongolia	Head of the office of the President of Mongolia
PUREVSUREN	Lundeg	The Office of the President of Mongolia	Foreign policy adviser to the President of Mongolia
GANBAT	Damba	ISS, Mongolia ¹	Director, Institute for Strategic Studies
MASHBAT	Otgonbayar	ISS, Mongolia	Vice Director, Institute for Strategic Studies
MUNKHTUR	Dorjraa	ISS, Mongolia	Researcher
GERELZAYA	Batnasan	ISS, Mongolia	Researcher
BYAMBAKHAND	Luguusharav	ISS, Mongolia	Researcher
SANCHIR	Jargalsaikhan	ISS, Mongolia	Researcher
DORJSUREN	Nanjid	ISS, Mongolia	Researcher
BATSUKH	Jamiyndorj	Swiss Development Corporation	Assistant
BOLD	S	The Office of National Security Council	Senior expert

¹ Institute for Strategic Studies of Mongolia

BATBOLD	S	The Office of National Security Council	Expert
BATJARGAL	P	General Staff of the Mongolian Armed Forces	Expert
ENKHBOLD	Ganbold	ISS, Mongolia	Non-staff fellow
CHINZORIG	Uranbaatar	ISS, Mongolia	Non-staff fellow
RAGCHAADORJ	Sed	Department for Strategy, Management and Planning, Ministry of Defense	Senior specialist
FRANZ	Shawn	US Embassy in Ulaanbaatar	Attaché
ULAANKHUU	Ch	Institute for Defense Studies	Major General, Senior researcher
BONDEREV	Boris	Russian Federation Embassy	Representative
RAGSHAEV	Rhygzin	Russian Federation Embassy	Second secretary
SUKHBAATAR	T	Institute for Defense Studies	

ANNEX III: THE MONTREUX DOCUMENT

United Nations

A/63/467-S/2008/636



General Assembly Security Council

Distr.: General
6 October 2008

Original: English

General Assembly
Sixty-third session
Agenda item 76

**Status of the Protocols Additional to the Geneva
Conventions of 1949 and relating to the protection
of victims of armed conflicts**

Security Council
Sixty-third year

Letter dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General

I am pleased to inform you that on 17 September 2008, 17 States* came to an understanding on the "Montreux Document", a text containing rules and good practices relating to private military and security companies operating in armed conflict (see annex). The Montreux Document, which is the result of an international process launched in 2006 by the Government of Switzerland and the International Committee of the Red Cross, is intended to promote respect for international humanitarian law and human rights law.

We trust that the document will be of interest to all States, and invite them to consider adopting such measures as appear therein. We also invite all States to consider communicating their support for the document to the Federal Department of Foreign Affairs of Switzerland.

I would be most grateful if you could have the present letter and its annex circulated as a document of the General Assembly, under agenda item 76, and of the Security Council, as the international process is related to the question of protection of civilians in armed conflicts and was mentioned in paragraph 9 of your report to the Security Council on this topic (S/2007/643).

(Signed) Peter **Maurer**
Ambassador
Permanent Representative

* Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, Ukraine and the United States of America.

Annex to the letter dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General

Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict

**Montreux,
17 September 2008**

INFORMAL SUMMARY OF THE MONTREUX DOCUMENT BY SWITZERLAND

1. Private military and security companies (PMSCs) are nowadays often relied on in areas of armed conflict – by individuals, companies, and governments. They are contracted for a range of services, from the operation of weapon systems to the protection of diplomatic personnel. Recent years have seen an increase in the use of PMSCs, and with it the demand for a clarification of pertinent legal obligations under international humanitarian law and human rights law.
2. The Montreux Document seeks to meet this demand. The result of a joint initiative by Switzerland and the International Committee of the Red Cross (ICRC) launched in 2006, it recalls existing obligations of States, PMSCs and their personnel under international law whenever PMSCs – for whatever reason – are present during armed conflict. In a second part, it contains a set of over 70 good practices designed to assist States in complying with these obligations. Neither parts are legally binding, nor are they intended to legitimize the use of PMSCs in any particular circumstance. They were developed by governmental experts from seventeen States¹ with a particular interest in the issue of PMSCs or international humanitarian law. Representatives of civil society and of the PMSC industry were also consulted.
3. Part I differentiates between contracting States, territorial States and home States. For each category of States, Part I recalls pertinent international legal obligations according to international humanitarian law and human rights law. The question of attribution of private conduct to the State under with customary international law is also addressed. In addition, Part I devotes sections to the pertinent international legal obligations of “all other States”, to the duties of PMSCs and their personnel, as well as to questions of superior responsibility.
4. Like Part I, Part II also differentiates between contracting States, territorial States and home States. The good practices draw largely from existing practices of States not only directly with regard to PMSCs but also, for instance, from existing regulations for arms and armed services. They range from introducing transparent licensing regimes to ensuring better supervision and accountability - so that only PMSCs which are likely to respect international humanitarian law and human rights law, through appropriate training, internal procedures and supervision, can provide services during armed conflict.
5. In the preface of the Montreux Document, the participating States invite other States and international organisations to communicate their support for the document to the Federal Department of Foreign Affairs of Switzerland.

¹ Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, Ukraine, and the United States of America.

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PREFACE

This document is the product of an initiative launched cooperatively by the Government of Switzerland and the International Committee of the Red Cross. It was developed with the participation of governmental experts from Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, Ukraine, and the United States of America in meetings convened in January and November 2006, November 2007, and April and September 2008. Representatives of civil society and of the private military and security industry were consulted.

The following understandings guided the development of this document:

1. That certain well-established rules of international law apply to States in their relations with private military and security companies (PMSCs) and their operation during armed conflict, in particular under international humanitarian law and human rights law;
2. That this document recalls existing legal obligations of States and PMSCs and their personnel (Part One), and provides States with good practices to promote compliance with international humanitarian law and human rights law during armed conflict (Part Two);
3. That this document is not a legally binding instrument and does not affect existing obligations of States under customary international law or under international agreements to which they are parties, in particular their obligations under the Charter of the United Nations (especially its articles 2(4) and 51);
4. That this document should therefore not be interpreted as limiting, prejudicing or enhancing in any manner existing obligations under international law, or as creating or developing new obligations under international law;
5. That existing obligations and good practices may also be instructive for post-conflict situations and for other, comparable situations; however, that international humanitarian law is applicable only during armed conflict;
6. That cooperation, information sharing and assistance between States, commensurate with each State's capacities, is desirable in order to achieve full respect for international humanitarian law and human rights law; as is cooperative implementation with the private military and security industry and other relevant actors;
7. That this document should not be construed as endorsing the use of PMSCs in any particular circumstance but seeks to recall legal obligations and to recommend good practices if the decision has been made to contract PMSCs;
8. That while this document is addressed to States, the good practices may be of value for other entities such as international organisations, NGOs and companies that contract PMSCs, as well as for PMSCs themselves;

9. That for the purposes of this document:

- a) "PMSCs" are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.
- b) "Personnel of a PMSC" are persons employed by, through direct hire or under a contract with, a PMSC, including its employees and managers.
- c) "Contracting States" are States that directly contract for the services of PMSCs, including, as appropriate, where such a PMSC subcontracts with another PMSC.
- d) "Territorial States" are States on whose territory PMSCs operate.
- e) "Home States" are States of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, then the State where the PMSC has its principal place of management is the "Home State".

The participating States commend this document to the attention of other States, international organisations, NGOs, the private military and security industry and other relevant actors, which are invited to adopt those good practices that they consider appropriate for their operations. The participating States invite other States and international organisations to communicate their support for this document to the Federal Department of Foreign Affairs of Switzerland. The participating States also declare their readiness to review and, if necessary, to revise this document in order to take into account new developments.

PART ONE
PERTINENT INTERNATIONAL LEGAL OBLIGATIONS RELATING TO PRIVATE
MILITARY AND SECURITY COMPANIES

INTRODUCTION

The following statements aim to recall certain existing international legal obligations of States regarding private military and security companies. The statements are drawn from various international humanitarian and human rights agreements and customary international law. This document, and the statements herein, do not create legal obligations. Each State is responsible for complying with the obligations it has undertaken pursuant to international agreements to which it is a party, subject to any reservations, understandings and declarations made, and to customary international law.

A. CONTRACTING STATES

1. Contracting States retain their obligations under international law, even if they contract PMSCs to perform certain activities. If they are occupying powers, they have an obligation to take all measures in their power to restore, and ensure, as far as possible, public order and safety, i.e. exercise vigilance in preventing violations of international humanitarian law and human rights law.
2. Contracting States have an obligation not to contract PMSCs to carry out activities that international humanitarian law explicitly assigns to a State agent or authority, such as exercising the power of the responsible officer over prisoner of war camps or places of internment of civilians in accordance with the Geneva Conventions.
3. Contracting States have an obligation, within their power, to ensure respect for international humanitarian law by PMSCs they contract, in particular to:
 - a) ensure that PMSCs that they contract and their personnel are aware of their obligations and trained accordingly;
 - b) not encourage or assist in, and take appropriate measures to prevent, any violations of international humanitarian law by personnel of PMSCs;
 - c) take measures to suppress violations of international humanitarian law committed by the personnel of PMSCs through appropriate means, such as military regulations, administrative orders and other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate.
4. Contracting States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations. To this end they have the obligation, in specific circumstances, to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct of PMSCs and their personnel.
5. Contracting States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have

committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.

6. Contracting States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.
7. Although entering into contractual relations does not in itself engage the responsibility of Contracting States, the latter are responsible for violations of international humanitarian law, human rights law, or other rules of international law committed by PMSCs or their personnel where such violations are attributable to the Contracting State, consistent with customary international law, in particular if they are:
 - a) incorporated by the State into its regular armed forces in accordance with its domestic legislation;
 - b) members of organised armed forces, groups or units under a command responsible to the State;
 - c) empowered to exercise elements of governmental authority if they are acting in that capacity (i.e. are formally authorised by law or regulation to carry out functions normally conducted by organs of the State); or
 - d) in fact acting on the instructions of the State (i.e. the State has specifically instructed the private actor's conduct) or under its direction or control (i.e. actual exercise of effective control by the State over a private actor's conduct).
8. Contracting States have an obligation to provide reparations for violations of international humanitarian law and human rights law caused by wrongful conduct of the personnel of PMSCs when such conduct is attributable to the Contracting States in accordance with the customary international law of State responsibility.

B. TERRITORIAL STATES

9. Territorial States have an obligation, within their power, to ensure respect for international humanitarian law by PMSCs operating on their territory, in particular to:
 - a) disseminate, as widely as possible, the text of the Geneva Conventions and other relevant norms of international humanitarian law among PMSCs and their personnel;
 - b) not encourage or assist in, and take appropriate measures to prevent, any violations of international humanitarian law by personnel of PMSCs;
 - c) take measures to suppress violations of international humanitarian law committed by the personnel of PMSCs through appropriate means such as military regulations, administrative orders and other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate.
10. Territorial States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these

obligations. To this end they have the obligation, in specific circumstances, to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct of PMSCs and their personnel.

11. Territorial States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.
12. Territorial States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.
13. In situations of occupation, the obligations of Territorial States are limited to areas in which they are able to exercise effective control.

C. HOME STATES

14. Home States have an obligation, within their power, to ensure respect for international humanitarian law by PMSCs of their nationality, in particular to:
 - a) disseminate, as widely as possible, the text of the Geneva Conventions and other relevant norms of international humanitarian law among PMSCs and their personnel;
 - b) not encourage or assist in, and take appropriate measures to prevent, any violations of international humanitarian law by personnel of PMSCs;
 - c) take measures to suppress violations of international humanitarian law committed by the personnel of PMSCs through appropriate means such as administrative or other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate.
15. Home States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations. To this end they have the obligation, in specific circumstances, to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct of PMSCs and their personnel.
16. Home States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.

17. Home States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.

D. ALL OTHER STATES

18. All other States have an obligation, within their power, to ensure respect for international humanitarian law. They have an obligation to refrain from encouraging or assisting in violations of international humanitarian law by any party to an armed conflict.
19. All other States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations.
20. All other States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.
21. All other States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.

E. PMSCS AND THEIR PERSONNEL

22. PMSCs are obliged to comply with international humanitarian law or human rights law imposed upon them by applicable national law, as well as other applicable national law such as criminal law, tax law, immigration law, labour law, and specific regulations on private military or security services.
23. The personnel of PMSCs are obliged to respect the relevant national law, in particular the national criminal law, of the State in which they operate, and, as far as applicable, the law of the States of their nationality.
24. The status of the personnel of PMSCs is determined by international humanitarian law, on a case by case basis, in particular according to the nature and circumstances of the functions in which they are involved.
25. If they are civilians under international humanitarian law, the personnel of PMSCs may not be the object of attack, unless and for such time as they directly participate in hostilities.

26. The personnel of PMSCs:

- a) are obliged, regardless of their status, to comply with applicable international humanitarian law;
- b) are protected as civilians under international humanitarian law, unless they are incorporated into the regular armed forces of a State or are members of organised armed forces, groups or units under a command responsible to the State; or otherwise lose their protection as determined by international humanitarian law;
- c) are entitled to prisoner of war status in international armed conflict if they are persons accompanying the armed forces meeting the requirements of article 4A(4) of the Third Geneva Convention;
- d) to the extent they exercise governmental authority, have to comply with the State's obligations under international human rights law;
- e) are subject to prosecution if they commit conduct recognised as crimes under applicable national or international law.

F. SUPERIOR RESPONSIBILITY

27. Superiors of PMSC personnel, such as

- a) governmental officials, whether they are military commanders or civilian superiors, or
- b) directors or managers of PMSCs,

may be liable for crimes under international law committed by PMSC personnel under their effective authority and control, as a result of their failure to properly exercise control over them, in accordance with the rules of international law. Superior responsibility is not engaged solely by virtue of a contract.

PART TWO

GOOD PRACTICES RELATING TO PRIVATE MILITARY AND SECURITY COMPANIES

INTRODUCTION

This Part contains a description of good practices that aims to provide guidance and assistance to States in ensuring respect for international humanitarian law and human rights law and otherwise promoting responsible conduct in their relationships with PMSCs operating in areas of armed conflict. They may also provide useful guidance for States in their relationships with PMSCs operating outside of areas of armed conflict.

The good practices do not have legally binding effect and are not meant to be exhaustive. It is understood that a State may not have the capacity to implement all the good practices, and that no State has the legal obligation to implement any particular good practice, whether that State is a Contracting State, a Territorial State, or a Home State. States are invited to consider these good practices in defining their relationships with PMSCs, recognising that a particular good practice may not be appropriate in all circumstances and emphasising that this Part is not meant to imply that States should necessarily follow all these practices as a whole.

The good practices are intended, *inter alia*, to assist States to implement their obligations under international humanitarian law and human rights law. However, in considering regulation, States may also need to take into account obligations they have under other branches of international law, including as members of international organisations such as the United Nations, and under international law relating to trade and government procurement. They may also need to take into account bilateral agreements between Contracting States and Territorial States. Moreover, States are encouraged to fully implement relevant provisions of international instruments to which they are Parties, including anti-corruption, anti-organised crime and firearms conventions. Furthermore, any of these good practices will need to be adapted in practice to the specific situation and the State's legal system and capacity.

A. GOOD PRACTICES FOR CONTRACTING STATES

States contemplating to contract PMSCs should evaluate whether their legislation, as well as procurement and contracting practices, are adequate for contracting PMSCs. This is particularly relevant where Contracting States use the services of a PMSC in a State where law enforcement or regulatory capacities are compromised.

In many instances, the good practices for Contracting States may also indicate good practices for other clients of PMSCs, such as international organisations, NGOs and companies.

In this sense, good practices for Contracting States include the following:

I. Determination of services

1. To determine which services may or may not be contracted out to PMSCs; in determining which services may not be contracted out, Contracting States take into account factors such as whether a particular service could cause PMSC personnel to become involved in direct participation in hostilities.

II. Procedure for the selection and contracting of PMSCs

2. To assess the capacity of the PMSC to carry out its activities in conformity with relevant national law, international humanitarian law and international human rights law, taking into account the inherent risk associated with the services to be performed, for instance by:
 - a) acquiring information relating to the principal services the PMSC has provided in the past;
 - b) obtaining references from clients for whom the PMSC has previously provided similar services to those the Contracting State is seeking to acquire;
 - c) acquiring information relating to the PMSC's ownership structure and conducting background checks on the PMSC and its superior personnel, taking into account relations with subcontractors, subsidiary corporations and ventures.
3. To provide adequate resources and draw on relevant expertise for selecting and contracting PMSCs.
4. To ensure transparency and supervision in the selection and contracting of PMSCs. Relevant mechanisms may include:
 - a) public disclosure of PMSC contracting regulations, practices and processes;
 - b) public disclosure of general information about specific contracts, if necessary redacted to address national security, privacy and commercial confidentiality requirements;
 - c) publication of an overview of incident reports or complaints, and sanctions taken where misconduct has been proven; if necessary redacted to address national security, privacy and commercial confidentiality requirements;
 - d) oversight by parliamentary bodies, including through annual reports or notification of particular contracts to such bodies.

III. Criteria for the selection of PMSCs

5. To adopt criteria that include quality indicators relevant to ensuring respect for relevant national law, international humanitarian law and human rights law, as set out in good practices 6 to 13. Contracting States should consider ensuring that lowest price not be the only criterion for the selection of PMSCs.
6. To take into account, within available means, the past conduct of the PMSC and its personnel, which includes ensuring that the PMSC has:
 - a) no reliably attested record of involvement in serious crime (including organised crime, violent crime, sexual offences, violations of international humanitarian law, bribery and corruption) and, insofar as the PMSC or its personnel had engaged in past unlawful conduct, has appropriately remedied such conduct, including by effectively cooperating with official authorities, taking disciplinary measures against those involved, and, where appropriate and consistent with findings of wrongdoing, providing individuals injured by their conduct with appropriate reparation;
 - b) conducted comprehensive inquiries within applicable law regarding the extent to which any of its personnel, particularly those who are required to carry weapons as part of their duties, have a reliably

attested record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces;

- c) not previously been rejected from a contract due to misconduct of the PMSC or its personnel.
7. To take into account the financial and economic capacity of the PMSC, including for liabilities that it may incur.
 8. To take into account whether it and its personnel possess or are in the process of obtaining requisite registrations, licenses or authorisations.
 9. To take into account whether it maintains accurate and up to date personnel and property records, in particular, with regard to weapons and ammunition, available for inspection on demand by the Contracting State and other appropriate authorities.
 10. To take into account that the PMSC's personnel are sufficiently trained, both prior to any deployment and on an ongoing basis, to respect relevant national law, international humanitarian law and human rights law; and to establish goals to facilitate uniformity and standardisation of training requirements. Training could include general and task- and context-specific topics, preparing personnel for performance under the specific contract and in the specific environment, such as:
 - a) rules on the use of force and firearms;
 - b) international humanitarian law and human rights law;
 - c) religious, gender, and cultural issues, and respect for the local population;
 - d) handling complaints by the civilian population, in particular by transmitting them to the appropriate authority;
 - e) measures against bribery, corruption, and other crimes.Contracting States consider continuously reassessing the level of training by, for example, requiring regular reporting on the part of PMSCs.
 11. To take into account whether the PMSC:
 - a) acquires its equipment, in particular its weapons, lawfully;
 - b) uses equipment, in particular weapons, that is not prohibited by international law;
 - c) has complied with contractual provisions concerning return and/or disposition of weapons and ammunition.
 12. To take into account the PMSC's internal organisation and regulations, such as:
 - a) the existence and implementation of policies relating to international humanitarian law and human rights law, especially on the use of force and firearms, as well as policies against bribery, corruption, and other crimes;
 - b) the existence of monitoring and supervisory as well as internal accountability mechanisms, such as:
 - i. internal investigation and disciplinary arrangements in case of allegations of wrong-doing by its personnel;

- ii. mechanisms enabling persons affected by the conduct of the personnel of the PMSC to lodge a complaint, including both third party complaint mechanisms and whistle-blower protection arrangements; and
 - iii. regular performance reporting, specific incident reporting, and reporting on demand to the Contracting State and under certain circumstances other appropriate authorities;
 - iv. requiring PMSC personnel and its subcontracted personnel to report any misconduct to the PMSC's management or a competent authority.
13. To consider the respect of the PMSC for the welfare of its personnel, as protected by labour law and other relevant national law. Relevant factors may include:
- a) providing personnel a copy of any contract to which they are party in a language they understand;
 - b) providing personnel with adequate pay and remuneration arrangements commensurate to their responsibilities and working conditions;
 - c) adopting operational safety and health policies;
 - d) ensuring personnel unrestricted access to their own travel documents; and
 - e) preventing unlawful discrimination in employment.

IV. Terms of contract with PMSCs

14. To include contractual clauses and performance requirements that ensure respect for relevant national law, international humanitarian law and human rights law by the contracted PMSC. Such clauses, reflecting and implementing the quality indicators referred to above as selection criteria, may include:
- a) past conduct (good practice 6);
 - b) financial and economic capacity (good practice 7);
 - c) possession of required registration, licenses or authorisations (good practice 8);
 - d) personnel and property records (good practice 9);
 - e) training (good practice 10);
 - f) lawful acquisition and use of equipment, in particular weapons (good practice 11);
 - g) internal organisation and regulation and accountability (good practice 12);
 - h) welfare of personnel (good practice 13);
- Contractual clauses may also provide for the Contracting State's ability to terminate the contract for failure to comply with contractual provisions. They may also specify the weapons required for contract performance, that PMSCs obtain appropriate visas or other authorizations from the Territorial State, and that appropriate reparation be provided to those harmed by the misconduct of PMSCs and their personnel.
15. To require by contract that the conduct of any subcontracted PMSC is in conformity with relevant national law, international humanitarian law and international human rights law, including by:
- a) establishing the criteria and qualifications for the selection and ongoing employment of subcontracted PMSCs and personnel;

- b) requiring the PMSC to demonstrate that subcontractors comply with equivalent requirements as the PMSC initially contracted by the Contracting State;
 - c) ensuring that the PMSC is liable, as appropriate and within applicable law, for the conduct of its subcontractors.
16. To require, if consistent with force protection requirements and safety of the assigned mission, that the personnel of the PMSC be personally identifiable whenever they are carrying out activities in discharge of their responsibilities under a contract. Identification should:
- a) be visible from a distance where mission and context allow, or consist of a non-transferable identification card that is shown upon demand;
 - b) allow for a clear distinction between a PMSC's personnel and the public authorities in the State where the PMSC operates.
- The same should apply to all means of transport used by PMSCs.
17. To consider pricing and duration of a specific contract as a way to promote relevant international humanitarian law and human rights law. Relevant mechanisms may include:
- a) securities or bonds for contractual performance;
 - b) financial rewards or penalties and incentives;
 - c) opportunities to compete for additional contracts.
18. To require, in consultation with the Territorial State, respect of relevant regulations and rules of conduct by PMSCs and their personnel, including rules on the use of force and firearms, such as:
- a) using force and firearms only when necessary in self-defence or defence of third persons;
 - b) immediate reporting to and cooperation with competent authorities, including the appropriate contracting official, in the case of use of force and firearms.

V. Monitoring compliance and ensuring accountability

19. To provide for criminal jurisdiction in their national legislation over crimes under international law and their national law committed by PMSCs and their personnel and, in addition, to consider establishing:
- a) corporate criminal responsibility for crimes committed by the PMSC, consistent with the Contracting State's national legal system;
 - b) criminal jurisdiction over serious crimes committed by PMSC personnel abroad.
20. To provide for non-criminal accountability mechanisms for improper or unlawful conduct of PMSCs and their personnel, including:
- a) contractual sanctions commensurate to the conduct, including :
 - i. immediate or graduated termination of the contract;
 - ii. financial penalties;
 - iii. removal from consideration for future contracts, possibly for a set time period;

- iv. removal of individual wrongdoers from the performance of the contract;
 - b) referral of the matter to competent investigative authorities;
 - c) providing for civil liability, as appropriate.
21. To provide for, in addition to the measures in good practices 19 and 20, appropriate administrative and other monitoring mechanisms to ensure the proper execution of the contract and the accountability of contracted PMSCs and their personnel for their improper and unlawful conduct; in particular to:
- a) ensure that those mechanisms are adequately resourced and have independent audit and investigation capacity;
 - b) provide Contracting State government personnel on-site with the capacity and authority to oversee proper execution of the contract by the PMSC and the PMSC's subcontractors;
 - c) train relevant government personnel, such as military personnel, for foreseeable interactions with PMSC personnel;
 - d) collect information concerning PMSCs and personnel contracted and deployed, and on violations and investigations concerning their alleged improper and unlawful conduct;
 - e) establish control arrangements, allowing it to veto or remove particular PMSC personnel during contractual performance;
 - f) engage PMSCs, Territorial States, Home States, trade associations, civil society and other relevant actors to foster information sharing and develop such mechanisms.
22. When negotiating agreements with Territorial States which contain rules affecting the legal status of and jurisdiction over PMSCs and their personnel:
- a) to consider the impact of the agreements on the compliance with national laws and regulations;
 - b) to address the issue of jurisdiction and immunities to ascertain proper coverage and appropriate civil, criminal, and administrative remedies for misconduct, in order to ensure accountability of PMSCs and their personnel.
23. To cooperate with investigating or regulatory authorities of Territorial and Home States, as appropriate, in matters of common concern regarding PMSCs.

B. GOOD PRACTICES FOR TERRITORIAL STATES

The following good practices aim to provide guidance to Territorial States for governing the supply of military and security services by PMSCs and their personnel on their territory. Territorial States should evaluate whether their domestic legal framework is adequate to ensure that the conduct of PMSCs and their personnel is in conformity with relevant national law, international humanitarian law and human rights law or whether it needs to establish further arrangements to regulate the activities of PMSCs.

Acknowledging the particular challenges faced by Territorial States in armed conflict, Territorial States may accept information provided by the Contracting State concerning the ability of a PMSC to carry out its activities in conformity with international humanitarian law, human rights law and relevant good practices.

In this sense, good practices for Territorial States include the following:

I. Determination of services

24. To determine which services may or may not be carried out on their territory by PMSCs or their personnel; in determining which services may not be carried out, Territorial States take into account factors such as whether a particular service could cause PMSC personnel to become involved in direct participation in hostilities.

II. Authorisation to provide military and security services

25. To require PMSCs to obtain an authorisation to provide military and security services in their territory (“authorisation”), including by requiring:
- a) PMSCs to obtain an operating license valid for a limited and renewable period (“corporate operating license”), or for specific services (“specific operating license”), taking into account the fulfilment of the quality criteria set out in good practices 31 to 38; and/or;
 - b) individuals to register or obtain a license in order to carry out military or security services for PMSCs.

III. Procedure with regard to authorisations

26. To designate a central authority competent for granting authorisations.
27. To allocate adequate resources and trained personnel to handle authorisations properly and timely.
28. To assess, in determining whether to grant an authorisation, the capacity of the PMSC to carry out its activities in conformity with relevant national law, international humanitarian law and international human rights law, taking into account the inherent risk associated with the services to be performed, for instance by:
- a) acquiring information relating to the principal services the PMSC has provided in the past;
 - b) obtaining references from clients for whom the PMSC has previously provided similar services or clients in the Territorial State;
 - c) acquiring information relating to the PMSC’s ownership structure and conduct background checks on the PMSC and its personnel, taking into account relations with subcontractors, subsidiary corporations and ventures, or obtain information from the Contracting State on these matters.
29. To ensure transparency with regard to authorisations. Relevant mechanisms may include:
- a) public disclosure of authorisation regulations and procedures;
 - b) public disclosure of general information on granted authorisations, including on the identity of authorised PMSCs and their number of personnel, if necessary redacted to address national security, privacy and commercial confidentiality requirements;

- c) publication of an overview of incident reports or complaints, and sanctions taken where misconduct has been proven; if necessary redacted to address national security, privacy and commercial confidentiality requirements;
- d) oversight by parliamentary bodies, including through annual reports or notification of particular contracts to such bodies;
- e) publishing and adhering to fair and non-discriminatory fee schedules for authorisations.

IV. Criteria for granting an authorisation

- 30. To ensure that PMSCs fulfil certain quality criteria relevant for the respect of relevant national law, international humanitarian law and human rights law by the PMSC and its personnel, including those set out below.
- 31. To require that the conduct of PMSCs and of any PMSC subcontracted is in conformity with relevant national law, international humanitarian law and international human rights law, which includes ensuring that:
 - a) the PMSC notifies any subcontracting of military and security services to the authorisation authority;
 - b) the PMSC can demonstrate that its subcontractors comply with equivalent requirements as the PMSC which initially obtained an authorisation by the Territorial State;
 - c) the subcontractor is in possession of an authorisation;
 - d) the PMSC initially granted authorisation is liable, as appropriate and within applicable law, for the conduct of its subcontractors.
- 32. To take into account, within available means, the past conduct of the PMSC and its personnel, which includes ensuring that the PMSC has:
 - a) no reliably attested record of involvement in serious crime (including organised crime, violent crime, sexual offences, violations of international humanitarian law, bribery and corruption) and, insofar as the PMSC or its personnel had engaged in past unlawful conduct, has appropriately dealt with such conduct, including by effectively cooperating with official authorities, taking disciplinary measures against those involved, and where appropriate and consistent with findings of wrongdoing, providing individuals injured by their conduct with appropriate reparation;
 - b) conducted comprehensive inquiries within applicable law regarding the extent to which any of its personnel, particularly those who are required to carry weapons as part of their duties, have a reliably attested record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces;
 - c) not previously had an operating license revoked for misconduct of the PMSC or its personnel.
- 33. To take into account the financial and economic capacity of the PMSC, including for liabilities that it may incur.

34. To take into account whether the PMSC maintains accurate and up to date personnel and property records, in particular, with regard to weapons and ammunition, available for inspection on demand by the Territorial State and other authorities.
35. To take into account that the PMSC's personnel are sufficiently trained, both prior to any deployment and on an ongoing basis, to respect relevant national law, international humanitarian law and human rights law; and to establish goals to facilitate uniformity and standardisation of training requirements. Training could include general and task- and context-specific topics, preparing personnel for performance under the specific contract and in the specific environment, such as:
 - a) rules on the use of force and weapons;
 - b) international humanitarian law and human rights law;
 - c) religious, gender, and cultural issues, and respect for the local population;
 - d) complaints handling;
 - e) measures against bribery, corruption, and other crimes.Territorial States consider continuously reassessing the level of training by, for example, requiring regular reporting on the part of PMSCs.
36. Not to grant an authorisation to a PMSC whose weapons are acquired unlawfully or whose use is prohibited by international law.
37. To take into account the PMSC's internal organisation and regulations, such as:
 - a) the existence and implementation of policies relating to international humanitarian law and human rights law, especially on the use of force and firearms, as well as policies against bribery and corruption;
 - b) the existence of monitoring and supervisory measures as well as internal accountability mechanisms, such as:
 - i. internal investigation and disciplinary arrangements in case of allegations of wrong-doing by its personnel;
 - ii. mechanisms enabling persons affected by the conduct of the personnel of the PMSC to lodge a complaint, including both third party complaints mechanisms and whistle-blower protection arrangements;
 - iii. regular reporting on the performance of the assignment and/or specific incident reporting;
 - iv. requiring PMSC personnel and its subcontracted personnel to report any misconduct to the PMSC's management or a competent authority.
38. To consider the respect of the PMSC for the welfare of its personnel.
39. To take into account, in considering whether to grant a license or to register an individual, good practices 32 (past conduct) and 35 (training).

V. Terms of authorisation

40. To include clauses to ensure that the conduct of the PMSC and its personnel is continuously in conformity with relevant national law, international humanitarian law and international human rights law. The authorisation includes, where appropriate, clauses requiring the PMSC and its personnel to implement the quality criteria referred to above as criteria for granting general and/or specific operating licenses and relating to:
- a) past conduct (good practice 32);
 - b) financial and economic capacity (good practice 33);
 - c) personnel and property records (good practice 34);
 - d) training (good practice 35);
 - e) lawful acquisitions (good practice 36);
 - f) internal organisation and regulation and accountability (good practice 37);
 - g) welfare of personnel (good practice 38);
41. To require the PMSC to post a bond that would be forfeited in case of misconduct or non-compliance with the authorisation, provided that the PMSC has a fair opportunity to rebut allegations and address problems.
42. To determine, when granting a specific operating license, a maximum number of PMSC personnel and equipment understood to be necessary to provide the services.

VI. Rules on the provision of services by PMSCs and their personnel

43. To have in place appropriate rules on the use of force and firearms by PMSCs and their personnel, such as:
- a) using force and firearms only when necessary in self-defence or defence of third persons;
 - b) immediately reporting to and cooperation with competent authorities in the case of use of force and firearms.
44. To have in place appropriate rules on the possession of weapons by PMSCs and their personnel, such as:
- a) limiting the types and quantity of weapons and ammunition that a PMSC may import, possess or acquire;
 - b) requiring the registration of weapons, including their serial number and calibre, and ammunition, with a competent authority;
 - c) requiring PMSC personnel to obtain an authorisation to carry weapons that is shown upon demand;
 - d) limiting the number of employees allowed to carry weapons in a specific context or area;
 - e) requiring the storage of weapons and ammunition in a secure and safe facility when personnel are off duty;
 - f) requiring that PMSC personnel carry authorised weapons only while on duty;

- g) controlling the further possession and use of weapons and ammunition after an assignment is completed, including return to point of origin or other proper disposition of weapons and ammunition.
45. To require, if consistent with force protection requirements and safety of the assigned mission, that the personnel of the PMSC be personally identifiable whenever they are carrying out activities in discharge of their responsibilities under a contract. Identification should:
- a) be visible from a distance where mission and context allow, or consist of a non-transferable identification card that is shown upon demand;
 - b) allow for a clear distinction between a PMSC's personnel and the public authorities in the State where the PMSC operates.

The same should apply to all means of transportation used by PMSCs.

VII. Monitoring compliance and ensuring accountability

46. To monitor compliance with the terms of the authorisation, in particular:
- a) establish or designate an adequately resourced monitoring authority;
 - b) ensure that the civilian population is informed about the rules of conduct by which PMSC have to abide and available complaint mechanisms;
 - c) requesting local authorities to report on misconduct by PMSCs or their personnel;
 - d) investigate reports of wrongdoing.
47. To provide a fair opportunity for PMSCs to respond to allegations that they have operated without or in violation of an authorisation.
48. To impose administrative measures, if it is determined that a PMSC has operated without or in violation of an authorisation; such measures may include:
- a) revocation or suspension of the authorisation or putting the PMSC on notice of either of these steps in case remedial measures are not taken within a set period of time;
 - b) removing specific PMSC personnel under the penalty of revoking or suspending the authorisation;
 - c) prohibition to re-apply for an authorisation in the future or for a set period of time;
 - d) forfeiture of bonds or securities;
 - e) financial penalties.
49. To provide for criminal jurisdiction in their national legislation over crimes under international law and their national law committed by PMSCs and their personnel and, in addition, to consider establishing corporate criminal responsibility for crimes committed by the PMSC, consistent with the Territorial State's national legal system.
50. To provide for non-criminal accountability mechanisms for improper and unlawful conduct of PMSC and its personnel, including:
- a) providing for civil liability;

- b) otherwise requiring PMSCs, or their clients, to provide reparation to those harmed by the misconduct of PMSCs and their personnel.
51. When negotiating agreements with Contracting States which contain rules affecting the legal status of and jurisdiction over PMSCs and their personnel:
- a) to consider the impact of the agreements on the compliance with national laws and regulations;
 - b) to address the issue of jurisdiction and immunities to ascertain proper coverage and appropriate civil, criminal, and administrative remedies for misconduct, in order to ensure accountability of PMSCs and their personnel.
52. To cooperate with investigating and regulatory authorities of Contracting and Home States in matters of common concern regarding PMSCs.

C. GOOD PRACTICES FOR HOME STATES

The following good practices aim to provide guidance to Home States for governing the supply of military and security services by PMSCs and their personnel abroad (“export”). It is recognised that other good practices for regulation - such as regulation of standards through trade associations and through international cooperation - will also provide guidance for regulating PMSCs, but have not been elaborated here.

In this understanding, Home States should evaluate whether their domestic legal framework, be it central or federal, is adequately conducive to respect for relevant international humanitarian law and human rights law by PMSCs and their personnel, or whether, given the size and nature of their national private military and security industry, additional measures should be adopted to encourage such respect and to regulate the activities of PMSCs. When considering the scope and nature of any licensing or regulatory regime, Home States should take particular notice of regulatory regimes by relevant Contracting and Territorial States, in order to minimise the potential for duplicative or overlapping regimes and to focus efforts on areas of specific concern for Home States.

In this sense, good practices for Home States include the following:

I. Determination of services

53. To determine which services of PMSCs may or may not be exported; in determining which services may not be exported, Home States take into account factors such as whether a particular service could cause PMSC personnel to become involved in direct participation in hostilities.

II. Establishment of an authorisation system

54. To consider establishing an authorisation system for the provision of military and security services abroad through appropriate means, such as requiring an operating license valid for a limited and renewable period (“corporate operating license”), for specific services (“specific operating license”), or through other forms of authorisation (“export authorisation”). If such a system of authorisation is established, the good practices 57 to 67 set out the procedure, quality criteria and terms that may be included in such a system.

55. To have in place appropriate rules on the accountability, export, and return of weapons and ammunition by PMSCs.
56. To harmonise their authorisation system and decisions with those of other States and taking into account regional approaches relating to authorisation systems.

III. Procedure with regard to authorisations

57. To assess the capacity of the PMSC to carry out its activities in respect of relevant national law, international humanitarian law and international human rights law, taking into account the inherent risk associated with the services to be performed, for instance by:
 - a) acquiring information relating to the principal services the PMSC has provided in the past;
 - b) obtaining references from clients for whom the PMSC has previously provided similar services or clients in the Territorial State;
 - c) acquiring information relating to the PMSC's ownership structure and conduct background checks on the PMSC and its personnel, taking into account relations with subcontractors, subsidiary corporations and ventures.
58. To allocate adequate resources and trained personnel to handle properly and timely authorisations.
59. To ensure transparency with regard to the authorisation procedure. Relevant mechanisms may include:
 - a) public disclosure of authorisation regulations and procedures;
 - b) public disclosure of general information on specific authorisations, if necessary redacted to address national security, privacy and commercial confidentiality requirements;
 - c) oversight by parliamentary bodies, including through annual reports or notification of particular contracts to such bodies;
 - d) publishing and adhering to fair and non-discriminatory fee schedules.

IV. Criteria for granting an authorisation

60. To take into account the past conduct of the PMSC and its personnel, which include ensuring that the PMSC has:
 - a) no reliably attested record of involvement in serious crime (including organised crime, violent crime, sexual offences, violations of international humanitarian law, bribery and corruption) and, insofar as the PMSC or its personnel had engaged in past unlawful conduct, has appropriately dealt with such conduct, including by effectively cooperating with official authorities, taking disciplinary measures against those involved, and where appropriate and consistent with findings of wrongdoing, providing individuals injured by their conduct with appropriate reparation;
 - b) conducted comprehensive inquiries within applicable law regarding the extent to which its personnel, particularly those who are required to carry weapons as part of their duties, have a reliably attested record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces;

- c) not previously had an authorisation revoked for misconduct of the PMSC or its personnel.
61. To take into account the financial and economic capacity of the PMSC, including for liabilities that it may incur.
62. To take into account whether the PMSC maintains accurate and up to date personnel and property records, in particular, with regard to weapons and ammunition, available for inspection on demand by competent authorities.
63. To take into account that the PMSC's personnel are sufficiently trained, both prior to any deployment and on an ongoing basis, to respect relevant national law, international humanitarian law and human rights law; and to establish goals to facilitate uniformity and standardisation of training requirements. Training could include general and task- and context-specific topics, preparing personnel for performance under the specific contract and in the specific environment, such as:
- a) rules on the use of force and firearms;
 - b) international humanitarian law and human rights law;
 - c) religious, gender, and cultural issues, and respect for the local population;
 - d) complaints handling;
 - e) measures against bribery, corruption and other crimes.
- Home States consider continuously reassessing the level of training by, for example, requiring regular reporting on the part of PMSCs.
64. To take into account whether the PMSC's equipment, in particular its weapons, is acquired lawfully and its use is not prohibited by international law.
65. To take into account the PMSC's internal organisation and regulations, such as:
- a) the existence and implementation of policies relating to international humanitarian law and human rights law;
 - b) the existence of monitoring and supervisory as well as internal accountability mechanisms, such as:
 - i. internal investigation and disciplinary arrangements in case of allegations of wrong-doing by its personnel;
 - ii. mechanisms enabling persons affected by the conduct of the personnel of the PMSC to lodge a complaint, including both third party complaints mechanisms and whistle-blower protection arrangements.
66. To consider the respect of the PMSC for the welfare of its personnel as protected by labour law and other relevant national law.

V. Terms of authorisation granted to PMSCs

67. To include clauses to ensure that the conduct of the PMSC and its personnel respect relevant national law, international humanitarian law and international human rights law. Such clauses, reflecting and implementing the quality criteria referred to above as criteria for granting authorisations, may include:
- a) past conduct (good practice 60);
 - b) financial and economic capacity (good practice 61);
 - c) personnel and property records (good practice 62);
 - d) training (good practice 62);
 - e) lawful acquisitions (good practice 64);
 - f) internal organisation and regulation and accountability (good practice 65);
 - g) welfare of personnel (good practice 66).

VI. Monitoring compliance and ensuring accountability

68. To monitor compliance with the terms of the authorisation, in particular by establishing close links between its authorities granting authorisations and its representatives abroad and/or with the authorities of the Contracting or Territorial State.
69. To impose sanctions for PMSCs operating without or in violation of an authorisation, such as:
- a) revocation or suspension of the authorisation or putting the PMSC on notice of either of these steps in case remedial measures are not taken within a set period of time;
 - b) prohibition to re-apply for an authorisation in the future or for a set period of time;
 - c) civil and criminal fines and penalties.
70. To support Territorial States in their efforts to establish effective monitoring over PMSCs.
71. To provide for criminal jurisdiction in their national legislation over crimes under international law and their national law committed by PMSCs and their personnel and, in addition, consider establishing:
- a) corporate criminal responsibility for crimes committed by the PMSC, consistent with the Home State's national legal system;
 - b) criminal jurisdiction over serious crimes committed by PMSC personnel abroad.
72. To provide for non-criminal accountability mechanisms for improper and unlawful conduct of PMSCs and their personnel, including:
- a) providing for civil liability;
 - b) otherwise requiring PMSCs to provide reparation to those harmed by the misconduct of PMSCs and their personnel.
73. To cooperate with investigating or regulatory authorities of Contracting and Territorial States, as appropriate, in matters of common concern regarding PMSCs.
-