

PRIVATE MILITARY AND SECURITY COMPANIES (PMSCS)

ABOUT THIS SSR BACKGROUNDER

This Backgrounder discusses Private Military and Security Companies (PMSCs) as actors of the security sector. It shows that good Security Sector Governance (SSG) is relevant to the governance of PMSCs, which also must abide to the same high standards of security provision as the public sector. PMSCs must be subject to all major international and regional SSG/R frameworks. This Background outlines core international norms and good practices that already contribute to the good governance of PMSCs, highlighting policy tools, designed to offer practical guidance for states in addressing these challenges. Finally, this Backgrounder proposes a holistic approach to Security Sector Reform (SSR) in the field of PMSCs to ensure that legal, political, and policy frameworks reflect good governance of PMSCs that make them more effective and accountable, both at the organizational and operational levels. Several recommendations are advanced to achieve the application of the core principles of good governance.

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ABOUT THIS SERIES

The SSR Backgrounders provide concise introductions to topics and concepts in good security sector governance (SSG) and security sector reform (SSR). The series summarizes current debates, explains key terms and exposes central tensions based on a broad range of international experiences. The SSR Backgrounders do not promote specific models, policies or proposals for good governance or reform but do provide further resources that will allow readers to extend their knowledge on each topic.

The SSR Backgrounders are a resource for security governance and reform stakeholders seeking to understand and also to critically assess current approaches to good SSG and SSR.

DCAF – Geneva Centre for Security Sector Governance is dedicated to improving the security of states and their people within a framework of democratic governance, the rule of law, respect for human rights, and gender equality. Since its founding in 2000, DCAF has contributed to making peace and development more sustainable by assisting partner states, and international actors supporting these states to improve the governance of their security sector through inclusive and participatory reforms. It creates innovative knowledge products, promotes norms and good practices, provides legal and policy advice and supports capacity-building of both state and non-state security sector stakeholders.

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WHAT ARE PMSCS?

Private Military and Security Companies (PMSCs) are business entities that offer specialized military and security services, according to the Montreux Document (see section 4), regardless of how they define themselves. These services include combat support; intelligence collection; operational and logistical support; the training of public security forces; the protection of goods, infrastructure, and individuals; and the maintenance of weapons systems. While certain activities such as combat are associated with military actors, and other activities like the protection of infrastructure are associated with security actors, there is no universally accepted distinction between companies that provide military services versus those that provide security services. The inclusive term PMSCs thus encompasses all businesses that provide military services, security services, or both. Some PMSCs are also transnational in nature. Still, it is worth noting the difference between PMSCs and mercenaries, as shown in box on the right.

Geopolitical shifts and an increase in conflict has contributed to a rapid privatization of military and security services. Today, the use of PMSCs has therefore become more common in fragile environments and conflict situations. This has normalized PMSCs across the globe, so that, in many countries, they were classified as “essential services” during the COVID-19 pandemic.

WHY ARE PMSCS CONSIDERED A SECURITY SECTOR ACTOR?

The security sector is composed of structures, institutions, and personnel responsible for security provision, management, and oversight. The sector comprises formal and informal actors, including state and non-state security providers. PMSCs, which fall under the umbrella of non-state security providers, are licensed by states and are regulated by states and by international norms and good practices.

→ For more information, please refer to the SSR Backgrounder on the **Security Sector**.

Security privatization is a crucial aspect of the modern security landscape, as security functions once handled by states are increasingly carried out by private actors. However, the substantial role played by private companies in the security sector is often overlooked. States, international organizations, NGOs, humanitarian agencies, multinational corporations, and individuals all contract the services of PMSCs, due to an increasing demand for safety and security. This is linked to the prevalence of armed conflicts and terrorism, as well as security threats that emanate from globalization and urbanization. The services provided by PMSCs have also evolved, and now include maritime security, border management, the management of detention centres, cybersecurity, and security tailored to extractive and other “big footprint” industries.

DIFFERENTIATION BETWEEN PMSCS AND MERCENARIES

PMSCs:

- PMSCs are only defined in soft law
- PMSCs are business entities
- The employees of PMSCs could be considered mercenaries, on a case-by-case basis, if they meet the cumulative criteria laid out in Article 47 of [Additional Protocol I to the 1949 Geneva Conventions](#) (see these criteria, at right); however, it can be challenging to prove that they are primarily motivated by personal gain
- Most employees of PMSCs are not engaged in combat as part of military operations, and many are nationals of one of the parties to a conflict

Mercenary:

- The definition of a “mercenary” is legally binding at the international level, per Article 47, and is someone who:
 - is specifically recruited for combat in an armed conflict
 - directly participates in hostilities
 - is primarily motivated by financial gain
 - is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict
 - is not a member of the armed forces of a party to the conflict
 - has not been sent by a state that is not a party to the armed conflict to perform an official duty as a member of its armed forces
- This definition applies only to individuals
- There is also an [International Convention against the Recruitment, Use, Financing and Training of Mercenaries](#) (signed 1989, ratified by 37 states)

HOW IS GOOD SSG RELEVANT TO THE GOVERNANCE OF PMSCS?

Good security sector governance (SSG) entails the application of principles of good governance to a state’s security sector, and is based on the idea that this sector should be held to the same high standards of public service delivery as other public sector service providers. These principles are *accountability, transparency, rule of law, participation, responsiveness, effectiveness, and efficiency*.

→ For more information, please refer to the SSR Backgrounder on **Security Sector Governance**.

Because states are the ultimate guarantors of security, efforts promoting good SSG have tended to focus primarily on the governance of public security institutions. Although PMSCs have authority and influence over security matters at both the national and international levels, legal and policy frameworks, accountability mechanisms, and capabilities have not kept pace. In fact, private security providers outnumber public providers in many countries, and must be subject to the same high standards as state actors.

At the state level, PMSCs are often used to compensate for the limited or absent national capacity of public security providers. PMSCs offer specialized skills in domains where armed forces can no longer afford to train personnel, and can serve as a “force multiplier” to strengthen state capacity and human security and facilitate economic development. PMSCs are also thought to offer operational advantages over regular military forces, as they can be rapidly deployed and may act as a counterweight to national militaries in states with weak political institutions.

While specific PMSCs have faced public scrutiny for human rights violations, it is essential to recognize that the challenges in governing PMSCs are systemic and are often facilitated by widespread weaknesses in the legal and policy frameworks that regulate the security sector.

Hence, it is crucial that PMSCs are included in all major international and regional SSG/R frameworks, as the principles of good SSG must be applied to PMSCs for the following reasons:

- **Accountability:** PMSCs can be used by states to provide plausible deniability. This is especially important given the allegations of use of force and human rights violations by employees of PMSCs, which have attracted international attention but have not led to legal culpability due to a lack of grievance mechanisms at both the national and international levels. There are clear expectations that security provision by PMSCs should be subject to strong and effective regulatory and oversight mechanisms to ensure accountability, and that sanctions should be imposed for non-compliance.

- **Transparency:** The roles and responsibilities of PMSCs must be clearly defined and understood by all security sector actors, including oversight bodies and civil society, to mitigate the risk of blurring the line between public and private functions. Information on the public procurement of PMSCs must facilitate external oversight.
- **Rule of law:** The activities of PMSCs are subject to both national laws as well as international humanitarian law (IHL) and international human rights law (IHRL). However, there is a tendency to regard PMSCs as merely economic entities, so that the specific risks inherent to the services they provide are only partially reflected in regulatory frameworks, or not at all. Thus, legal frameworks that regulate PMSCs must be strengthened to guarantee the rule of law.
- **Participation and responsiveness:** There is a general lack of training for employees of PMSCs to ensure their awareness of gender, the cultural specificities of local communities, and the impact of PMSCs on human rights. Moreover, PMSCs must provide equal opportunities to individuals of all backgrounds to participate in their activities, from decision-making to service provision.
- **Effectiveness and efficiency:** Because PMSCs are business entities, they are motivated by private gain, which increases the risks of corruption and conflicts of interests with the state, such as by serving multiple clients or unduly profiting from national resources. Hence, states must fulfill their due diligence regarding potential conflicts of interests when employing the services of PMSCs and must constantly assess the costs and benefits of such arrangements to the state and its population.
- The **Montreux Document** (adopted 17 September 2008) on pertinent international legal obligations and good practices for states, related to the operations of PMSCs during armed conflict, which:
 - outlines the responsibilities of states to uphold international humanitarian law and human rights law, requiring them to take measures to prevent misconduct by PMSCs and ensure accountability for any criminal actions; and
 - contains comprehensive toolkits for governments to establish effective regulatory frameworks.

As the Secretariat for the Montreux Document Forum, DCAF provides advisory support to states and international organizations to effectively implement these norms and good practices.

- The **International Code of Conduct (ICoC) for Private Security Providers** (adopted 9 November 2010), which:
 - articulates the human rights responsibilities of private security companies, and sets out standards for the responsible provision of private security services, particularly when operating in complex environments; and
 - is a multistakeholder framework for governments, private security companies, and civil society organizations.

As a strategic partner, DCAF supports the implementation of the ICoC and works in partnership with the International Code of Conduct Association (ICoCA) to jointly oversee implementation of the ICoC.

- The **UN Guiding Principles on Business and Human Rights (UNGPs)** outline the responsibilities of both states and businesses regarding human rights.
- The **United Nations Intergovernmental Working Group** is exploring the possibility of a convention for PMSCs, and is currently negotiating a draft text that would establish mechanisms to regulate, monitor, and provide oversight of the activities of PMSCs.

Apart from these international instruments, which are specific to PMSCs, it is worth considering how the various branches of international law may apply to PMSCs depending on the circumstances, as shown in Figure 1.

Despite these legal instruments, there remains room to improve as well as increase understanding and awareness of good practices regarding PMSCs among states and international organizations, which would ultimately lead to greater and more consistent implementation at the national level.

WHAT ARE THE INTERNATIONAL NORMS AND GOOD PRACTICES THAT CONTRIBUTE TO GOOD GOVERNANCE OF PMSCS AT THE NATIONAL LEVEL?

Over the past two decades, international efforts have led to the development of a set of norms and good practices that address the unique challenges posed by PMSCs to good SSG. These have been effective when implemented, and discussions are ongoing to elaborate and potentially convert these norms and good practices into a binding international convention.

International Level

While there is currently no binding international treaty that directly regulates PMSCs, a catalogue of norms and good practices provides an international regulatory framework for PMSCs, albeit on a voluntary and good faith basis. These are found in the following instruments:

FIGURE 1 APPLICABLE INTERNATIONAL LAW

International Humanitarian Law (IHL)	International Human Rights Law (IHRL)	International Criminal Law (ICL)	International Customary Law
<p>IHL sets clear rules on the status of individuals employed by PMSCs. On a case-by-case basis, they may be considered:</p> <ul style="list-style-type: none"> • Civilians. Most employees of PMSCs are deemed civilians, which entitles them to protection during armed conflict and stipulates they shall not be attacked. However, if they directly participate in hostilities, they lose this protection and can be prosecuted. • Civilians accompanying an armed force. In this case, they are viewed as civilians who have a direct link to and provide a service to armed forces. • Members of the armed forces. This requires formal incorporation, and since PMSCs typically work independently of the military chain of command and on a mandate basis, their employees rarely qualify for this status in practice. 	<p>While PMSCs and their personnel are not legally obligated to adhere to IHRL, which applies only to states, states are obligated to protect individuals from any misconduct by PMSCs that could violate their human rights.</p> <p>IHRL provides for individual petitions and reporting systems to which states can refer when taking measures to protect against human rights violations by local or foreign PMSCs.</p> <p>Nevertheless, while states must exercise due diligence and take reasonable measures to prevent or minimize harm from misconduct by PMSCs and provide remedy to those affected, including to employees of PMSCs themselves, it is important to recognize that states alone are unlikely to effectively prevent every potential harm caused by private companies.</p>	<p>States are required to exercise criminal accountability in response to international crime.</p> <p>ICL provides that states must investigate and prosecute individuals charged with international core crimes, namely genocide, war crimes, crimes against humanity, and the crime of aggression.</p>	<p>The International Law Commission's Articles on State Responsibility stipulate that states are responsible for any internationally wrongful acts attributable to states, which can include misconduct by PMSCs, in cases where:</p> <ul style="list-style-type: none"> • PMSCs are integrated into a state's armed forces, essentially becoming part of the state apparatus. • a PMSC is hired by a state to perform activities that have elements of governmental authority, such as managing prisons, as these activities are fundamentally government functions for which the state remains accountable, even if they are outsourced. • a PMSC acts based on the explicit instructions of a state, or under its direction or within its control. <p>Ideally, any state that employs a PMSC is liable for its conduct, but legally, this requires attribution to the state under specific conditions that are often difficult to prove or fulfil.</p>

National Level

Indeed, the main challenge to the governance of PMSCs at present is insufficient implementation of international norms and good practices. Though states are obliged to establish measures to ensure that PMSCs respect human rights and humanitarian law under their jurisdiction, national legal and policy frameworks are often inadequate and the regulatory bodies and judicial institutions meant to enforce them lack the resources to do so. This has been compounded by the increased diversification and sophistication of services provided by PMSCs. Furthermore:

- There is a general lack of regulation and, even when regulations exist, they are frequently outdated or of an administrative nature.
- States use varying definitions of what constitutes a PMSC. In most cases, national laws only regulate private security services and not private military services, usually because private military services are not permitted in those national jurisdictions.
- There is an absence of extraterritorial jurisdiction in most states, which can limit their ability to regulate PMSCs, given their transnational nature. Still, while some states have merely enacted legislation prohibiting the export of military and security services, others have taken a more progressive approach in terms of the extraterritorial application of their laws.

GUIDANCE TOOLS DESIGNED TO OFFER PRACTICAL GUIDANCE FOR STATES IN ADDRESSING THESE CHALLENGES

- The [Legislative Guidance Tool](#) provides a blueprint to legislators seeking to create policies and laws in line with internationally recognized good practices.
- The [Contract Guidance Tool](#) supports actors in incorporating IHL and IHRL into contracting practices related to the procurement of private military and/or security services.

- Most states have a supervisory authority that regulates the licensing and registration of PMSCs, overseeing a vetting process which considers the human rights track records of these companies and, in most cases, also monitoring the activities of PMSCs, but these activities tend to be limited by insufficient human and financial resources.
- There is general lack of accountability, monitoring, and reporting systems to determine the compliance of PMSCs with human rights standards and international law and provide effective sanctioning mechanisms and remedies when violations are committed.

FIGURE 2 RECOMMENDATIONS FOR SSR RELATED TO PMSCS

Principles of good SSG	SSR Recommendation for regulation of PMSCs	Who should act?
Accountability and rule of law	<ul style="list-style-type: none"> National legislation governing PMSCs must be adopted or strengthened to ensure respect for the rule of law, accountability, reporting, monitoring, and enforcement mechanisms. More specifically, such legislation should: <ul style="list-style-type: none"> Define the services of PMSCs that are permitted and prohibited. Specify minimum standards that oblige PMSCs and their personnel to refrain from behaviour that is inappropriate or harmful. Create mandatory training for PMSCs or update the basic training for employees of PMSCs to include gender, human rights, rules of engagement on the use of force, and matters of weapon and firearms management. Provide sufficient human and financial resources for public regulatory and oversight bodies to ensure the good governance (and hence, accountability) of PMSCs. Establish enforceable and effective sanctions mechanisms to serve as a deterrent for non-compliant PMSCs. Abide by the Montreux Document and participate in the Montreux Document Forum (MDF) to ensure that national legislation is in line with international norms and good practices. 	<ul style="list-style-type: none"> Government institutions Oversight bodies, i.e., parliament, judicial authorities, human rights commissions, ombuds institutions, civil society, and human rights advocates
Transparency	<ul style="list-style-type: none"> The roles of national militaries and PMSCs must be clearly outlined and distinguished, especially to clarify the attribution of responsibility and the prevention of corruption. Active efforts must be made to raise awareness of the roles and responsibilities of PMSCs. States must establish robust public procurement procedures for PMSCs, in accordance with the guidelines provided in DCAF’s Contract Guidance Tool for States. Parliamentary committees must receive support in monitoring the public procurement of services from PMSCs, and these committees should aim to make information related to the activities of PMSCs accessible in order to encourage oversight by civil society, media, and the public. Licensing, registration, and procurement processes related to PMSCs must be carried out in a manner that is in keeping with national and international laws and standards and should be overseen by an independent authority. 	<ul style="list-style-type: none"> Security sector actors Oversight bodies Media
Participation	<ul style="list-style-type: none"> Democratic civilian control is key to avoiding arbitrary decision-making, abuse of power, and the malfunctioning of the legislative system. Accountability, transparency, and rule of law within the security sector must be premised on free, equitable, and inclusive principles, particularly in decision-making processes. PMSCs must comply with policies aimed at fostering equal opportunities and representation at all levels of their organization, with an emphasis on gender equality (for more information, please see the policy brief on gender and PMSCs). 	<ul style="list-style-type: none"> PMSCs Oversight institutions
Responsiveness	<ul style="list-style-type: none"> As providers of security as a public good, PMSCs have a duty to promote unity, integrity, discipline, impartiality, equality, and respect for human rights, for all the population. PMSCs must be mandated to incorporate these values into their activities, and to improve rules and procedures for good conduct and systems for internal control and supervision, based on the rule of law and human rights. 	<ul style="list-style-type: none"> PMSCs Monitoring and oversight bodies (including internal bodies)
Effectiveness and efficiency	<ul style="list-style-type: none"> As security sector actors, PMSCs must be held to high professional standards to promote trust and integrity. PMSCs must continuously engage in training and capacity building on matters of human rights, gender, humanitarian law, and other international law that relate to their activities. PMSCs should aim to raise standards of professional management, including by using merit-based recruitment. PMSCs should implement internal regulation with robust due diligence processes that ensure protection of human rights, before and during their operations. This includes risk assessments, impact assessments, and mechanisms for addressing human rights abuses. States must practice due diligence in the contracting process for PMSCs to ensure that public resources are allocated in the most effective manner. 	<ul style="list-style-type: none"> PMSCs International standards-setting bodies Monitoring and oversight bodies Government institutions

HOW CAN SECURITY SECTOR REFORM (SSR) CONTRIBUTE TO THE GOOD GOVERNANCE OF PMSCS?

The challenges of regulating PMSCs, identified above, can serve as a basis for SSR – which is the political and technical process of improving state and human security by making security provision, management, and oversight more effective and more accountable, within a framework of democratic civilian control, rule of law, and respect for human rights. SSR is thus aimed at good governance and concerns all state and non-state actors involved in security provision, management, and oversight.

→ For more information, please refer to SSR Backgrounder on **Security Sector Reform**.

With respect to PMSCs, SSR must take a holistic approach to ensure that legal, political, and policy frameworks reflect good governance of PMSCs that make them more effective and accountable, both at the organizational and operational levels. Figure 2 presents policy recommendations to this end, based on the principles of good SSG.

WHAT TO READ NEXT

- **The Montreux Document**
Montreux Document Forum, Secretariat, Geneva: DCAF, 2008.
- **Montreux Document Guidance Tools**
Montreux Document Forum, Secretariat, Geneva: DCAF, 2008.
- **The International Code of Conduct (ICoC) for Private Security Providers**
Geneva: International Code of Conduct Association, 2010.
- **The Open-Ended Intergovernmental Working Group**
Session reports that elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies.
UN Human Rights Council, Geneva: 20-23 May 2019, 26-29 April 2021, 17-23 April 2023.
- **Report of the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of People to Self-determination**
On Access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies.
Geneva: UN, 5 July 2010.
- DCAF – Geneva Center for Security Sector Governance **Regulating the Use of Force by Private Security Providers. A Guidance Tool for States**
Geneva: DCAF, 2019.
- Anna Marie Burdzy and Lorraine Serrano **Gender and private security regulation**
DCAF, OSCE/ODIHR and UN Women: “Gender and Private Security Regulation”, in Gender and Security Toolkit, Geneva: DCAF, OSCE/ODIHR, UN Women, 2019.

MORE DCAF SSR RESOURCES

DCAF publishes a wide variety of tools, handbooks and guidance on all aspects of SSR and good SSG, available free-for-download at www.dcaf.ch

Many resources are also available in languages other than English.

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