

## **Public Private Partnerships: Regulating Private Security Companies**

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Ladies and gentlemen, distinguished members of the OSCE Parliamentary Assembly,

DCAF is an International Foundation established on the initiative of the Swiss Government to promote democratic security sector governance through security sector reform. Our mission is to support effective, efficient security sectors which are accountable to the state and its citizens. It is an honour and a privilege to present to you today a groundbreaking area of our work – the development of public-private partnerships in the area of private security regulation.

Private security companies may seem rather far away from DCAF's core work on security sector reform and governance. So let me start by telling you why DCAF has taken such a central role in this field. We are convinced that understanding the role and impact of the private security sector - both positive and negative - is intimately linked to wider questions of security sector governance. Today, simplistic assumptions about who actually delivers security around the world are constantly challenged. The reality in both the global North and the global South is not that of a Weberian state with a monopoly on the use of force. It is more often than not a hybrid, often fragmented system composed of a diverse array of public and private actors whose roles and responsibilities are blurred. And if you are committed - as we are - to changing the realities on the ground for the better, you need to address all actors that impact on the security of the state as well as its citizens.

In order to address governance gaps involving private security actors, DCAF has gained significant expertise and experience over a number of years as Switzerland's strategic partner in developing innovative approaches to private security regulation. I believe that much can be learned from the innovative, multi-stakeholder approach that has evolved to support private security regulation. As we have heard over the last two days, security challenges are increasingly complex, constantly evolving and do not respect national borders. To address challenges to international security, enable social and economic development and protect the rule of law, we need innovative solutions developed by all those with a stake in the outcome.

What I would like to do in this presentation is to outline the development of the two complementary initiatives at the international level that form the Swiss Initiative on private security regulation. I will then give a perspective on what has been achieved already and, more importantly, what remains to be done. Finally I will reflect on the experience of public-private partnerships in this field and their wider relevance.

## **The development of the Montreux Document and the International Code of Conduct**

DCAF supports two complementary 'soft law' initiatives under the overall title of the 'Swiss Initiative' that seek to regulate private security companies: the Montreux Document (focusing on the obligations of states) and the International Code of Conduct (focusing on the industry itself). Both seek to promote international humanitarian law and human rights law in conflict settings or in 'complex environments' where governance is weak. They are thus intended to complement and in no way to take the place of effective national legal and other regulatory measures.

Why did Switzerland take the lead in addressing this issue? It will come as no surprise to you that abuses linked to private security in Iraq - highlighted by the global news media - provided a powerful catalyst to act. The scale and scope of their activities was striking. The figures speak for themselves. During the first Gulf War the ratio of uniformed military to contractors was 55:1. The ratio for the Iraq war was 1:1. Moreover, the size of the industry was reflected in an increasingly diverse set of activities - expanding from logistical support to the protection of military personnel and assets, training and advising of armed forces, the maintenance of weapons systems or the interrogation of detainees.

Concerns within the international community were raised on multiple levels. First, there was a sense of impunity - that the industry seemed to exist in a legal void. There was also an unease that a large and continuously growing industry was operating under the radar screen. It was against this background - the growing trend towards commercial security service provision and a clear need for greater accountability - that the process leading to the Montreux Document needs to be understood.

### *The Montreux Document*

Beginning in 2006, DCAF supported the Swiss Government, together with the International Committee of the Red Cross, to launch an intergovernmental initiative to clarify legal issues surrounding the use of private military and security companies in conflict situations. The process was guided by two principles:

- **De-politicise the issue as far as possible** - it was made very clear that the process sought neither to legitimise nor condemn the industry;
- **Don't try to create new obligations for states** - rather, the goal was to clarify the ways international humanitarian and human rights law apply to the operations of private military and security companies (PMSCs). The process also sought to identify concrete good practices that states could implement.

From this starting point, a two and a half year process led to the agreement on 17 September 2008 of the Montreux Document. It consists of 27 core international obligations and 73 good practices designed to assist states in complying with these obligations. Core obligations include ensuring respect for international humanitarian law, protecting human rights, ensuring criminal accountability and underlining state responsibility for violations committed by PMSCs. The good practices are intended to enable states to determine which services should be contracted out, to establish a domestic authorisation system and to ensure effective national oversight, including parliamentary, oversight. The Montreux Document can effectively be considered as a blue print for regulating the private security industry. This is the approach that was for instance adopted by Switzerland when they drafted their specific legislation on provision of private security services abroad.

### *The International Code of Conduct*

Even as the Montreux Document was being developed, it was clear that a focus on states was not sufficient. The industry itself needed to be closely involved in its own regulation. This was the logic that led to the development of the International Code of Conduct for Private Security Service Providers (the ICoC for short).

The Code is the fruit of a multi-stakeholder initiative launched by Switzerland in 2008 and again supported by DCAF. Over the course of an 18-month process, some of the world's largest private security companies, states (including Switzerland, Australia, the United Kingdom and the United States) and civil society organizations (including Amnesty International, Human Rights Watch and

Human Rights First) worked hand in glove. They elaborated a groundbreaking code of conduct for the private security industry, based on international human rights and humanitarian law standards. The Code was agreed in November 2010.

The objective of the process was articulate the human rights responsibilities of private security companies and to set out international principles and standards for the responsible provision of private security services, particularly when operating in complex environments. The Code translates these commitments into principles that a private company can apply. Prohibitions on torture, trafficking and other breaches of international law are clearly set out. Standards relating to training, vetting of personnel and the use of weapons are established. Companies are then obliged to develop and implement internal management processes and procedures to integrate their commitments within the corporate structure. One final but crucial point. Signatories also agreed to work towards the establishment of an independent oversight mechanism that would ensure compliance with the Code.

### **So what has been achieved?**

First of all, both the Montreux Document and the Code of Conduct have gained widespread international support:

- From a starting point of 17 endorsing states in 2008, today 50 states as well as 3 international organisations (the OSCE, the NATO and the European Union) have endorsed the document. I would like to underline that 33 OSCE member countries are Montreux document supporters. This is the largest of any regional grouping.
- The ICoC was initially signed by 58 private security companies. Today, over 700 companies from around the world have signed the Code. 139 of these companies have already taken the additional step to join the new ICoC Association.

Both initiatives have also taken important steps to ensure that obligations and good practices are implemented.

The Montreux Document has seen a sustained process to raise awareness and build political support. To date 5 regional conferences have taken place in Chile, Mongolia, Australia, the Philippines and Senegal. This has focused attention and provided new understandings of the real challenges linked to private security on the ground in different parts of the world. This experience has contributed to an important lesson-learning exercise. In the run up to the 5<sup>th</sup> anniversary of the Montreux Document, DCAF conducted a major research project to assess progress and address gaps in implementation. These issues were debated at last year's Montreux + 5 conference and provided the basis for a renewed focus on the need to provide dedicated support to states in this area.

One important recommendation has been to strengthen the dialogue between states and international organisations in order to ensure the Montreux Document contributes directly to national regulatory efforts. This objective will be realised through the creation of a Montreux Document Forum in December this year. The Montreux Document Forum, to be co- chaired by Switzerland and the ICRC, will provide a centre of gravity for the initiative. It will facilitate outreach, promote good practices and facilitate the sharing of experiences among participants.

In order to provide 'teeth' to the oversight role of the Code of Conduct, an Association was created in Geneva in 2013. This Association has a multi-stakeholder governance structure made up of governments, companies and civil society. With the support of a dedicated secretariat, supported by DCAF, the Association will be responsible for certifying member companies, fulfilling a monitoring role and addressing complaints by third parties.

The Code has already gained significant support from companies. Part of this dynamic is because major clients (including the UK, US and Swiss governments as well as the United Nations) require Code adherence as a pre-condition for contracts. To give just one example, a UN tender for private security in Pakistan resulted in more than 10 hitherto unknown local companies applying to join the Code. These companies would otherwise have been invisible. Thus, a membership conditionality imposed by the client makes soft law increasingly hard and as a result encourages good behaviour.

### **Where are the challenges?**

The Swiss Initiative has made great strides. In the last few years, an industry that was indeed operating below the radar screen is now increasingly visible. As a result, new challenges and accountability gaps have become apparent.

At the national level, the Montreux Document has brought to light a major elephant in the room – the existence of a burgeoning and often unregulated domestic security sector in many different states. Our work in different regions has shown that the growth of domestic private security often takes place in both a regulatory void but also with laissez-faire approach in policy terms:

- Governments, national parliaments and civil society are often unaware of the size, mandates, weapons holdings and ownership structures of private security companies. The background profiles and training of individuals can be equally unclear.
- At the same time, little attention is given to the human security implications of this phenomenon. Is the private sector filling gaps in public security provision or is this actually marginalising the poor and vulnerable and displacing insecurity?
- As a consequence, there is little or no public debate or discussion on the private security sector.

Putting these questions on the agenda of national oversight bodies is essential. You, as members of the OSCE Parliamentary Assembly, clearly have an influential role to play.

In the case of the Code, greater understanding of the contours of the industry has made visible important shifts and changing dynamics:

- While 10 years ago states were the main customers, now non-state clients – notably major extractives companies seeking protection for their operating sites and personnel – occupy the bulk of the market. Engaging with this key group will be essential in order to mainstream good practices throughout the industry.
- The business has also changed. While much of the initial focus has been on land-based activities, the private maritime security industry has expanded greatly in response to the

increased threat of piracy. Addressing the particular challenges of private security in territorial waters or on the high seas is therefore essential.

- Finally, the Code initiative has made great strides achieving buy in from the international private security industry. However, to be truly international, it still needs to reach and engage with small and medium size companies operating beyond Europe and the US.

## **Conclusion**

In conclusion, the multi-stakeholder dynamics we have sought to encourage provide a useful framework for advancing on contested and complex security questions where interests are strong and responsibilities are fragmented. We need to take these positive dynamics and apply the lessons of smart partnerships in other areas. To give one very current example, Switzerland is promoting just such an approach - with DCAF's support - in the area of cyber security governance. The Geneva Internet Conference taking place here in Geneva on November 17-19 will look at exactly this challenge of multi-sector governance of the World Wide Web. Given the multiple actors and interests involved, finding a neutral and inclusive space will be essential in order to address critical issues, gaps, and future developments in Internet governance.

Returning to the topic of my presentation, the Swiss Initiative on private security regulation was underpinned by a powerful multi-stakeholder dynamic. Pooling of expertise by states, international organisations, companies and civil society organisations was essential. At least as important has been the process of confidence-building. Working together has led to shared understandings, an increase in trust and a willingness to compromise across groups not previously used to working together. This has resulted in major steps forward.

As I have underlined, serious challenges remain at the national level. The OSCE Parliamentary Assembly has wisely recognised this. The July 2014 Resolution calls on OSCE States to establish concrete means to hold the private security sector accountable. As a trusted partner of the OSCE institutions and member states, let me give you a clear message: DCAF is deeply committed to support this drive for greater accountability and oversight in the OSCE region. Tell us your needs - we are here to support you in any way we can! Thank you.