



**Comments by Raymond Saner, CSEND<sup>1</sup>, Geneva  
Pertaining to the Draft Progress Report on the second session of the  
OEIWG on the Elaboration of a regulatory framework for PMSCs**

**16<sup>th</sup> May 2021**

I would like to thank the Chairperson-Rapporteur for having organised and very professionally chaired the second session of the OEIWG on PMSCs and thanks also to the secretariat for sharing with the participants the Draft Progress Report of the second session.

The statements made during the sessions were constructive and rich in regard to proposed solutions how to move the process forward towards an agreement of a regulatory framework. What follows are comments which CSEND puts forward for your consideration that have not been mentioned so far by the delegates.

1. As has been mentioned by a majority of the participants, the Montreux Document (membership by governments, adopted in 2008) and the International Code of Conduct (multi-stakeholder membership: PMSCs, governments and CSOs, created in 2013) are important milestones for the regulatory framework being elaborated. Thanks are due to the Swiss Government for having contributed to the creation of the MDA and ICOC in

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cooperation with like-minded countries and multi-stakeholder actors involved in the PMSC field.

2. At the same time, we are currently facing a serious challenge. The number of PMSCs and PMSC activities have increased worldwide but the membership in both organisation has remained stagnant (MDA- 57 states + 3 IOs versus UNGA membership of 193 states and 11 UN agencies plus many other IOs) who have not joined so far) In regard to ICOC/ICOCA the current membership consists of 7 governments, 42 CSOs and 74 PMSCs versus a potential of 193 governments and many PMSCs who have not signed up to the ICOCA yet.
3. Other instruments and standards were created to provide regulatory support for the PMSC actors such as the ISO 18788:2015 Management system for private security operations - Requirements with guidance for use<sup>2</sup> and the ISO 28007-1:2015 guidelines for PMSCs on board of ships.<sup>3</sup> Both ISO standards are PMSC industry led initiatives which provide advice for PMSCs and their clients but cannot be a substitute for an international regulatory framework.<sup>4</sup>
4. Adherence to MDA and ICOCA could be increased and the regulatory framework on PMSC could be supported if the information pertaining to the PMSC sector could be made more transparent and more available to the public at large beyond the confidential nature of PMSC information developed and kept confidentially by the intelligence units of key countries so that the actual political, economic and foreign affairs' importance of PMSC could be better understood by members of parliaments and the public at large
5. Similar to the Small Arms Survey<sup>5</sup>, an annual survey and report could be undertaken which would cover the PMSC field (number of PMSCs, the location of their operations, number of staff, number of subcontractors, compliance with IHL and IHRL, country's

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<sup>2</sup> [https://www.iso.org/standard/63380.html#:~:text=ISO%2018788%3A2015%20provides%20a,operations%20management%20system%20\(SOMS\).](https://www.iso.org/standard/63380.html#:~:text=ISO%2018788%3A2015%20provides%20a,operations%20management%20system%20(SOMS).)

<sup>3</sup> <https://www.iso.org/standard/63166.html>

<sup>4</sup> For a comparison of the different initiatives and standards, see pp 10-14; Raymond Saner ((2015) "Private Military and Security Companies: Industry-Led Self-Regulatory Initiatives versus State-Led Containment Strategies", CCDP Working Paper, [http://www.diplomacydialogue.org/images/files/CCDP\\_Working\\_Paper\\_11\\_-\\_PMSCs.pdf](http://www.diplomacydialogue.org/images/files/CCDP_Working_Paper_11_-_PMSCs.pdf)

<sup>5</sup> [https://en.wikipedia.org/wiki/Small\\_Arms\\_Survey](https://en.wikipedia.org/wiki/Small_Arms_Survey)

laws pertaining to PMSCs, their implementations etc.)<sup>6</sup>. The Geneva based organisations could create a consortium and conduct such an annual survey such as The Academy of International Humanitarian Law and Human Rights, ICOCA, DCAF, CSEND, ICJ, ICRC and other organisations with a track record of research and scholarship in the field of PMSCs.

6. Government's Public Procurement of PMSC type services should stipulate that PMSC companies participating in tenders have to be certified by ICOCA and that member countries of the future regulatory framework amend their public procurement regulations accordingly.
  
7. Building on the suggestion by Mr Surya Deva, Vice-Chairperson, WG on HRs and TNCs and other business enterprises, that countries should create a "smart mix" of binding and voluntary measures to create an effective regulatory eco-system, CSEND proposes that the OECD Responsible Business Conduct guidelines could be taken as an example of soft law applied to PMSCs. Member countries of the regulatory framework could ask their country's defence and military departments to set up a National Contact Point where claims of reported HRs violations by a PMSC could be filed and if a claim is considered legitimate, the PMSCs and the claimant would get invited to accept mediation including settling of remedial compensation if seen at fault. Severe violation of HRs would however be put to the appropriate judicial authorities for due legal process.

I trust that my comments and proposals will be seen as constructive and useful for the coming interim session's deliberations.

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<sup>6</sup> Examples of coverage of PMSCs, R. Saner, (2015), ditto, pp 24-27