

Updates and main trends, gaps, and challenges with regards to PMSC regulation

Presentation to the Open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies

Dear Chair,

Your Excellencies,

Ladies and gentlemen,

I would like to thank you for the invitation to provide updates and identify main trends, gaps, and challenges with regards to the regulation of private military and security companies. My presentation will be based on the lessons learnt by DCAF - Geneva Centre for Security Sector Governance in more than a decade of support to both international and regional policy initiatives and to national-level implementation and reform precisely in this field.

Trends

A considerable amount of baseline research into PMSC regulation has been carried out over the last years by DCAF, its partners, and other actors. For the sake of time I would therefore like to centre on a few recent trends:

- Recent years have seen a renewed visibility of PMSCs in armed conflicts across several settings. These come along with additional home and client States and have increased humanitarian and human rights challenges.
- In addition, COVID-19 has acted as a magnifying glass, exposing and widening fault lines in the PMSC industry.
- With regards to services provided by PMSCs, we note the increased growth of private cyber and surveillance services, as well as instances where companies not traditionally considered to be part of the PMSC industry - such as technology companies - are providing such services.

At the same time, these developments do not constitute a fundamental shift in the nature of PMSCs, and key challenges in PMSC regulation remain unchanged. We believe they can be approached within existing norms, good practices, and international initiatives, and highlight their continued pertinence.

In addition, while the issue of PMSCs in armed conflict is one that regularly makes headlines, our baseline research and our work experience clearly show that the immense majority of PMSC activities take place in “every-day situations” where human rights law



applies. This means that all States are concerned by reflections on the need to strengthen PMSC regulation.

Regulatory challenges

We continue to note the importance of engaging States and regional organisations on the need for adequate PMSC regulation. This engagement has led to a significant amount of States initiating or completing reforms in PMSC regulation. From DCAF's side, in the last 5 years we have supported more than 25 countries in strengthening their regulatory systems, based on international norms and good practices such as the Montreux Document and the International Code of Conduct. I would also note the increasing importance of the UN Guiding Principles in PMSC regulation, notably through political commitments made in the frameworks of National Action Plans on Business and Human Rights.

Despite these positive developments, we continue to witness significant regulatory challenges, centered around the following key points:

- National legal and policy frameworks that are insufficient and not tailored to the specific regulatory needs regarding PMSCs.
- Insufficient human and financial resources allocated to authorities tasked with regulating PMSCs.
- Lack of whole-of-government approaches to regulating PMSCs.
- Public procurement of PMSC services that does not include human rights and humanitarian law criteria.
- Administrative sanctions available to the regulatory authorities which are impracticable or not deterrent enough.

Oversight and accountability challenges

I would also like to draw the attention of the Working Group to challenges associated with oversight and accountability of PMSC and their employees, and highlight corresponding DCAF support.

- National Human Rights and Ombuds Institution traditionally play a key part with regards to the oversight of public security sector actors such as the police and the

armed forces. However, they are so far largely absent – due to mandate unclarity and lack of thematic capacities – when it comes to PMSC oversight. DCAF is currently carrying out a pilot project to strengthen the capacity of the two networks of National Human Rights and Ombuds Institution in Latin American and the Caribbean, namely FIO and RINDHCA.

- We also believe that national justice systems as well as regional human rights systems should play a stronger role when it comes to PMSCs. Again, a key challenge here is the lack of thematic capacities with regards to this particular industry. Therefore, we are currently supporting the Inter-American Commission on Human Rights in the elaboration of a corresponding report.
- Ensuring adequate civil society and media oversight of the PMSC industry is crucial, and again lacking. We are thus currently supporting the pan-African network “Private Security Governance Observatory”, which now counts over 90 members and representing 21 countries in Francophone and Anglophone Africa.

Content

In our advisory work, we rely on existing international norms and good practices to support national stakeholders. The norms and good practices contained in the Montreux Document and the International Code of Conduct have proven to be relevant for every single context we have involved in and have provided useful frameworks to support States in strengthening PMSC regulation. From a technical perspective, it would therefore be important that content developed in the Intergovernmental Working Group be fully complementary with the Montreux Document and the International Code of Conduct, as otherwise States that have in recent years already strengthened their national frameworks would be penalised and would have to start their endeavour again from scratch.

Please allow me to expand on two normative elements that ought to be further strengthened. One relates to the use of force by PMSCs in situations of human rights. In our work, we have noted that States often by analogy apply the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as well the Code of Conduct for

¹ <https://www.observatoire-securite-privee.org/en>

Law Enforcement Officials, which should not be the case given the fundamentally different mandates of public security officials and PMSC employees. DCAF has thus developed a specific guidance tool for States on how to regulate the Use of Force by private security providers, and we stand ready to share it with the Intergovernmental Working Group.

The second element is the need for States to integrate a gender perspective in the regulation of PMSCs. This can notably be done through:

- regulating PMSCs in a consultative manner;
- establishing a national PMSC regulatory authority with gender expertise;
- integrating a gender perspective in the licensing requirements for PMSCs;
- integrating a gender perspective in procurement and contracting of PMSCs' services;
- and ensuring effective grievance (complaints) mechanisms, paying attention to sexual exploitation and abuse and gender-based violence.

As is the case for Use of Force, DCAF has also drafted a briefing for States on gender and private security regulation, which we stand ready to share.

In conclusion, we look forward to the discussions this week, and stand ready to provide additional information to the Intergovernmental Working Group as required².

Thank you.

² N.B. : All of DCAF's studies, tools and additional publications on PMSC regulation, monitoring, and accountability are available at <https://businessandsecurity.dcaf.ch/en/publications>