



UN LIBRARY TALK Programme

Discussion on the Evolution of Warfare

The Respect of International Humanitarian Law by Private Military and Security Companies

5th December 2018, UNOG, Geneva



Summative Report



UN LIBRARY TALK **Discussion on the Evolution of Warfare**

Date: 5 December, 2018, 12:30- 14:00

Venue: UN Library, Geneva, Switzerland

Organizer: Centre for Socio-Eco-Nomic Development (CSEND)

Co-sponsor: UN Library Talks Geneva

Panelists and their Topics:

Raymond Saner, Director, Diplomacy Dialogue, Geneva. Topic: Introduction - the PMSC Industry.

Valentin Zellweger, Ambassador & Permanent Representative of Switzerland, to the United Nations and other International Organization in Geneva. Topic: International standard setting for PMSCs: a model for other areas?

Kelisiana Thynne, Legal Advisor, Advisory Services on International Humanitarian Law International Committee of the Red Cross (ICRC), Geneva. Topic: PMSC & International Humanitarian Law: the need for implementation.

Jamie A. Williamson, Executive Director, International Code of Conduct for Private Security Service Providers' Association (ICoCA), Geneva. Topic: The International Code of Conduct for Private Security Providers' Association.

Moderator: Dr. Lichia Yiu, President, CSEND, Geneva

Number of Participants: Around 30 people.



Welcome Remarks were conveyed to the participants by Sigrun Habermann, Chief, Cultural Diplomacy, UNOG Library, Geneva



Summary of the Discussions:

Introduction by Dr. Raymond Saner, Director, Diplomacy Dialogue, Geneva. Topic: Introduction - the PMSC Industry.

Warfare is a topic that may not be well understood by most citizens. Hence, this UN Library Event will help clarify the relation between the use of Private Military and Security companies (PMSCs) and international law and human rights. Saner used two country examples to concretely show the engagement of PMSCs. For instance, the kingdom of Saudi Arabia uses PMSCs to supply different capabilities and services to the government and its military and in various parts of the country. This contrasts with East Timor where Australian forces were present and PSCs were used during the time of its independence.

The PMSC industry consists of different actors. There are private companies that provide armed combat or security services, such as guarding military bases or disposing of explosive ordinance within a country. The second category of PMSCs are Private Security Companies who provide armed and unarmed security services and expertise to private and public clients mostly dealing with security consulting and investigative services. There are no clear lines between PMCs



(private military contractors) and PSCs (private security contractors). Both types of companies may offer services in these two subfields, which causes lines to be blurred between both types of PMSCs. The activities of the PMSCs consists of advising/consulting, armed protection, technical support, military training, and surveillance. The market size of PMSCs is estimated at 400 billion USD and millions of employees worldwide in 2014. There is little transparency to allow for more detailed analysis. It is extremely difficult to get data on such companies because information is kept confidential.

In conclusion, it is difficult to get a well documented overview on this industry. Because of blurred lines and scarce information, it is difficult to assess who is doing what and through what means to enforce some degree of accountability. The majority of these companies are currently located in the United States and the United Kingdom, but there are also some companies with headquarters in Sweden and Spain. According to recent newspaper reports Russia is using PMCs in Syria and China employs PSCs to protect Chinese investment in Africa.



Diplomacy
Dialogue

Private military industry actors



Private Military Company (PMC)

- Is a private company providing armed combat or security services such as guarding military bases or disposing of explosive ordinance. If involved in offensive combat, considered unlawful combatants (Geneva Convention)
- Private Security Company (PSC)
 - Is a private company which provides armed and unarmed security services and expertise to private and public clients mostly deals with security consulting and investigative services
- => **Lines between PMCs and PSCs are not always clear cut**, since both types of companies at times offer services in the two subfields -

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Panel Deliberation on the Existing International Regulatory Instruments Regarding PMSCs and Creative Responses



1. ***Setting International standard for PMSCs: a model for other areas?***

Valentin Zellweger, Ambassador & Permanent Representative of Switzerland, to the United Nations and other International Organization in Geneva.

The Iraq War started in 2003, and lots of PMCs were used during the war and were not fully covered by the current instruments that govern war, i.e., International Humanitarian Law (IHL) and the Geneva Convention. This topic was chosen because it provides an interesting model for other emerging topics such as cybersecurity, autonomous weapons. As Zellweger is an international lawyer, he views that current international law is not adequate as a regulatory standard and new laws need to be created. The current international treaty making process is rigid and plagued by divergent interests, which makes it difficult to create a new international legal framework for all these new phenomena with reasonable speed to be responsive to the situation on the ground.

In 2003, there was an argument that some of these PMCs were acting in a legal void. The ICSC (international civil service commission) and Switzerland decided to bring together different groups of states; the territorial states, contracting state, or host states (where PMCs were registered), to discuss the existing law. This was done because while there was already a law in place, i.e., IHL and Geneva Convention, how to apply them in a new context of war where non-state actors are directly engaged in combat through contractual arrangements needed to be clarified and enforced.

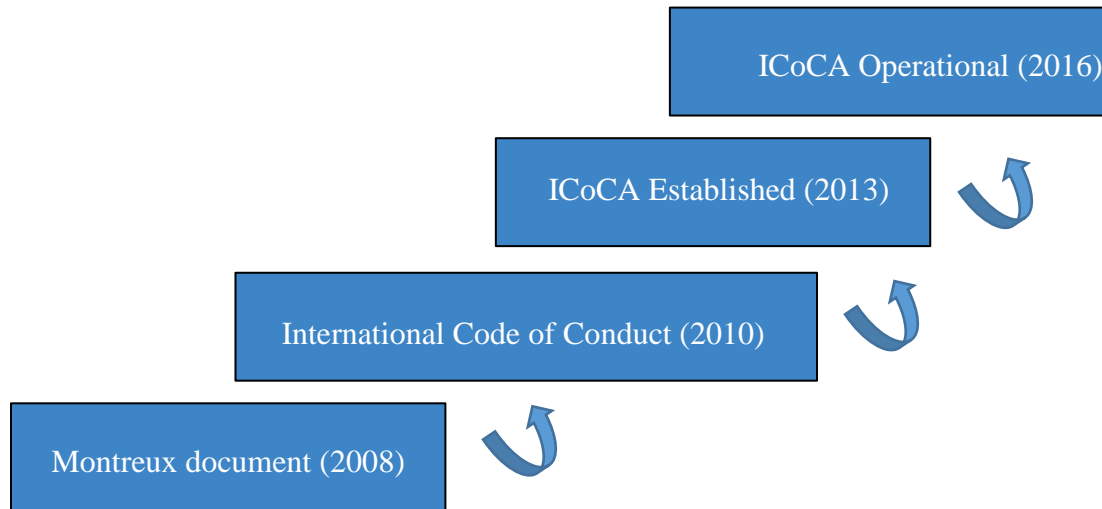
Seven countries signed the Montreux document in 2008, which consists of two parts. 1) Existing body of law, human rights law, humanitarian law, and the international law. 2) Best practices.¹ The Later on Montreux Document found widespread support within the United Nations. NATO also signed the document.

An additional step was later taken to complement the Montreux Documents. The process consisted of a three-pillar approach that included the self-regulation of PMSC industry, involvement of civil society and the obligation of states. Together, they developed the International Code of Conduct

¹ Montreux Document can be further viewed at <https://www.mdforum.ch/en/montreux-document>



(ICOC) and a certification mechanism for implementation. There are different layers of regulations provided by International Code of Conduct Association (ICoCA). The first is the obligation of states and then of actors. The international code of conduct is in effect a soft law because it signing up to it is voluntary.



The Montreux document brought together 700 PMSCs as signatories. Switzerland added another layer of enforceability by passing a law that stipulates that PMSCs had to be a part of the code of conduct and to submit themselves for certification. All PMSCs in Switzerland had to subscribe to the regulation. . This was a significant achievement because of the national law that it passed and hence making a soft law binding. If other countries would now legislate rules governing PMSCs like Switzerland, the Montreux Document could see widespread applications at the international scale and achieve its intended impact, i.e., respecting established international law even during warfare. While it may seem that it took a long time to get this system to be put in practice, it was relatively quick, from the 2006 to 2016, compared with other international negotiations.

There are some countries pretending there is a legal void regarding cyberspace. This is inaccurate because this model - of putting together a group of the willing in order to deliberate a common sets of rules and then articulate a code of conducts for certification - can adopt a similar methodology and application in the cyberspace and other emerging challenges that have a strong international dimension. The model was unknown during the process of finding an effective instrument in



dealing with the non-state actors in inter-state warfare and other conflict situations. Yet the lessons learnt can be applicable to other domains as well.



2. PMSC & International Humanitarian Law: the need for implementation.

*Kelisiana Thynne, Legal Advisor, Advisory Services on International Humanitarian Law
International Committee of the Red Cross (ICRC), Geneva.*

There is more to discuss in regards to the Montreux Document and the many ways that the private military and security companies (PMSC) need to implement it. There are humanitarian issues that arise from PMSCs when these companies operate without clear rules on the use of force; if they lack adequate training on international humanitarian law and other applicable law; if they conduct activities which should be within the remit of governments exclusively; and if states involved do not ensure effective accountability for possible violations of such companies of either international humanitarian law or domestic law, during times of war and conflict.



The Common Article 1 in the Geneva Conventions, states that parties ‘undertake to respect and to ensure the present Convention [and IHL] in all circumstances.’ This means that states need to take responsibility for the PMSCs they register and hire to ensure that principles that adhere to the International Humanitarian Law are followed. There should be dissemination of the Geneva Conventions (GC) and IHL. Any legislation necessary should be enacted to provide effective penal sanctions for persons committing, or ordering to be committed, any breaches to the GC. This should be expanded to a broader range of war crimes. Any necessary measures should be taken to suppress all acts contrary to the provisions of the GCs. There is no legal void.

The Montreux document is needed to clarify and underline the fact that under existing international law, states have obligations with respect to the operations of PMSCs. There is a set of good practices on how to regulate the activities of PMSCs within national law of different groups of states, i.e., the territorial states, contracting state, or host states.



There are three main obligations of states:



- States may not contract private contractors for tasks that international humanitarian law explicitly assigns to states.
- States have to ensure respect for international humanitarian law by PMSCs and give effect to human rights law
- States have to investigate and, if required or appropriate, prosecute, extradite or surrender persons suspected of having committed international crimes, in particular war crimes

Better domestic implementation is needed in every state where PMSCs are present. They also need to be registered in their own country.

3. Means of Implementation - The International Code of Conduct for Private Security Providers' Association.

Jamie A. Williamson, Executive Director, International Code of Conduct for Private Security Service Providers' Association (ICoCA), Geneva.

In my two previous careers, I saw the need for accountability with international law when things went wrong. It was important to look at how to prevent these events from occurring before they happen. The code of conduct is a very useful tool and it can be implemented in this growing industry of private military and security services. We can build on the Montreux Document and the UN Guiding Principles on Business and Human Rights to bring greater respect for the human rights even in war and conflict. When these main instruments and respective actors are brought together, more change can be seen.

There are currently seven governments that signed the ICoCA, ninety-three private security companies, thirty civil society members, twelve board members, and a secretariat in Geneva. This however is not sufficient, because it is very easy to sign an international treaty and because there are so few countries involved. It is important to address and then re-address human rights violations, which can be accomplished through the monitoring and identifying of problems.



The next question to answer is how to put that into effect?

It is important to monitor actual practices and spotting violations so that systemic shortcomings can be assessed. Through this process of monitoring and certification, complaints can be submitted. This will occur through the raising of standards because the clients of private security companies come from a range of sectors, including corporate entities, governments, international organizations, NGOs, humanitarian agencies and private individuals. In many contexts, as the provision of security services is carried out by subcontractors, clients often have less visibility over the supply chain. Ensuring access to grievance mechanisms and offering effective remedies can be challenging given the complex ‘ecosystem of grievance mechanisms’ within the supply chain (client, prime contractor, subcontractor).

Monitoring of the PSC industry is not a priority for most CSOs. There is also a lack of systematic reporting on human rights challenges in the private security industry by the news media or by human rights monitoring and reporting organizations.

Too often, too much of the focus is on saying to companies “This is what you have to do” instead of “these are the issues you have to address”. The biggest stakeholder in the room is governments. There are many governments who are way behind the mark in observing the state obligations. Consequently, organizations think that if the governments do not care, then why should they?





Interactive Segment:

How do we get this particular fundamental security and safety issue higher on the government agenda? Besides raising awareness, how to encourage other governments to take action?

Valentin Zellweger: My first question is do we want it to be high on the agenda? It is much easier to solve the issue of setting standard if it is low on the agenda. Agendas are driven by political events and opportunities (i.e. the Iraq War). One thing the international community could do is to legislate on the national level. Switzerland is a case in point that has implemented this agenda in their legislation. One of the biggest security and military companies in the world established its headquarters in Switzerland, so it was stated that the company needed to be regulated for its business activities according to the Swiss law. The company decided to leave because they did not want to be subject to it. Lessons learnt is that we need to first create an environment where businesses realize it is in their interest to comply. Secondly, efforts should be focused on strengthening the associations, the industry, and the mechanisms to better implement a sector wide Code of Conducts.

Moderator: *How do we tackle this coordinated effort and consensus building if the issue of PMSCs is kept away from the agenda? Isn't international humanitarian law universal? As the concept of human rights do not necessarily have the same definitions in different parts of the world, is the Montreux Document only an effort of the like-minded countries?*

Kelisiana Thynn: All countries of the world are members of the Geneva Convention, so in that sense, yes IHL is universal because the Geneva Convention is universal. We almost don't want the issue of PMSCs to be high on the agenda because then that would mean there are major humanitarian concerns occurring which causes tension amongst different categories of states. Thankfully these concerns have died down a lot and we are starting to put regulations in place.

Valentin Zellweger: If you look at the group of countries, it is not the classical like-minded group of countries you would usually see. For instance, signature countries of the Montreux Document are



for instance, USA, Russia and China. China almost signed up for ICOC too. It shows there is universal interest in trying to regulate them. The Geneva Convention is not only universal in the sense that they have more members than the UN, but also in the sense that they are undisputed.

Q&A: First round of questions from the floor:

1. Williamson spoke about the growth of the industry in Latin America. Do we see these systems in areas of conflict? Are there any practical examples?
2. The only thing I am missing in this panel discussion is the perspective of the UN Human Rights Council. There is currently a process that parallels this system. Why does this not advance?
3. Are there any measures taken to protect private contractors?

Valentin Zellweger: The UN HRC system was created in the same year as the Montreux Document in 2006. We advocated for a while that the convention discussed within the HRC should not be too ambitious. The mandate has since been changed to continue the discussions. There is a need to formulate the hard law but it is too difficult to come up with internationally binding regulations. We have to think of new approaches for these jurisdiction issues. We need to continue the discussion in order to create better mandates.

Kelisiana Thynn: There is a growth of the PMS industry in Latin America. From our perspective, international humanitarian law applies.

As for practical examples, I can't think of any specific ones. but there have been very public cases. PMSC have to abide by IHL if they have continuous combat functions. Private contractors would remain as civilians under IHL, so they would be protected by rights and not be targeted.

Jamie A. Williamson: There are very few examples right now because there is a lack of accountability. What can we do to improve that? In many countries, there is a bit of corruption thrown into it, which makes it too easy to compartmentalize.



Q&A from the audience: Second round of questions:

1. Is there an overlap with domestic and international humanitarian law? If so, are there long-term and short-term solutions for current problems with the system?
2. Have these issues been addressed in the code of conduct?
3. Does this incorporate gender-sensitive measures as well? What kind of civil society organisations participate and how can they become a member? If individuals have complaints, are there successful outcomes?

Kelisiana Thynn: There is a need for organizations that are more self-regulated. Because of the soft nature of the regulations currently in place, it is up to the PMSCs to do the right thing when they are dealing with employees. This is where the law needs to be implemented domestically.

Jamie A. Williamson: Human rights are not commodities, so they often fail because of their nature. If PMSCs don't abide by IHL, reputations will be damaged, which will commercially hurt the PMSC. By implementing IHL, it will be much better for employees and help create a more efficient working environment. This is also a gender-sensitive matter because of the male dominated environment. While this is not seen as a bad thing, it can lead to discrimination and negative outcomes. There are a number of complaints that have been received, but a large number have not reached threshold and have thus been filtered out of the system. Another reason for little action have been taken is because these complaints are against non-member companies.



Moderator: *From a humanitarian worker point of view, how would the person be able apply IHL when encountered PMSC personnel in the field? This is a confusing environment to be in, but one needs to safeguard one's own security.*

Kelisiana Thynn: This is a complex scenario because it is not just PMSCs walking around carrying weapons. This system provides access to complaints so that victims can get humanitarian assistance, but it is vaguely identified and negotiating access is needed. ICRC staff are going to demonstrate who we are. If PMSCs commit violations, that's when ICRC needs to know who they are. But unlike the national army, there is no clear emblem for identification. It is hard to ascertain who is actually hiring them but still needs to talk to them in terms of what responsibilities they have. These conversations are there to increase accountability.

Jamie A. Williamson: The vast majority of security companies are unidentifiable, which makes it difficult to distinguish them from regular armed forces. Ultimately the demand has to come from users themselves.



Closing Remarks by Dr. Raymond Saner:

Thank you all for coming. War making is becoming increasingly more privatized.

Blurring of lines between the functions of PMCs and PSC are currently occurring and data on the PMSC industry is scarce. It might be beneficial to create an observatoire that could conduct annual or biannual assessments of the industry and report violations of IHL and the Geneva Conventions. Once such data is collected and publicized, hopefully more PMSCs will sign up to ICoCA, which would increase accountability and pressure on PMSCs to follow IHL. At the same time, it would increase pressure on governments to join the Montreux Document and pass national laws to regulate the PMSC industry.



Rapporteur

This report was prepared by Julia Lazzaroni and Helen Watson, Interns at CSEND.

The Centre for Socio-Eco-Nomic Development (CSEND) promotes inclusive, equitable, sustainable and integrated development through dialogue and institutional learning. CSEND provides policy research, capacity development and consulting services on institutional development and change processes especially in the area of institutional strengthening, human and social capital development, trade and development, quality education, aid effectiveness, international negotiations and new diplomacies.

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Saner, R. (2015), *Private Military and Security Companies: Industry-Led Self-Regulatory Initiatives versus State-Led Containment Strategies*, The Centre on Conflict, Development and Peacebuilding, CCDP Working Paper 11, Institute of International and Development Studies, Geneva