



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA
Directorate of Political Affairs DP
Political Affairs Division IV – Human Security:
Peace, Human Rights, Humanitarian Policy, Migration
Human Rights Policy Section
Desk Human Security and Business

Fact Sheet

International Code of Conduct for Private Security Companies (PSCs)



Académie de droit international humanitaire
et de droits humains à Genève
Geneva academy of international humanitarian law
and human rights

Adh
genève



UNIVERSITÉ
DE GENÈVE
FACULTÉ DE DROIT

THE GRADUATE INSTITUTE | GENEVA
GRADUATE INSTITUTE OF INTERNATIONAL
AND DEVELOPMENT STUDIES

I. Background Information

The increased use of private actors to provide security and military services poses significant challenges to existing oversight and accountability mechanisms. These service providers offer many services relevant for the protection of and respect for human rights, whether these be military, security, contingency or intelligence services, to name a few. As part of its ongoing efforts to promote respect for international law and standards by private service providers, the Swiss government has supported initiatives that aim to both clarify international standards for the industry, as well as to improve oversight and accountability of the industry. Since the “Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict” (Montreux Document) was finalised in September 2008, it has succeeded in establishing itself as a reference text with regard to private contractors. It has also encouraged members of the private contractor industry to reflect intensively on their role and the positive contribution they could make regarding the respect for international humanitarian law and human rights standards. Consequently, the industry embarked on a process to take standard-setting and oversight further by developing an International Code of Conduct (CoC) for their services. To be effective, it is recognized that such an international industry standard should be based on international humanitarian and human rights law, developed through an industry-driven multi-stakeholder process, and overseen by an independent institution with sufficient means to hold those who violate the standards accountable. After a series of workshops with different stakeholders culminating in a Wilton Park Conference in June 2009, substantial agreement was reached on the need for, and general structure of an international CoC. Representatives of the industry and their associations concluded the conference with a public statement expressing their commitment to pursue and develop an international code of conduct.¹ Following this commitment, a draft of the CoC was developed through the collaboration of members of the private security industry along with the Swiss Department of Foreign Affairs, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Geneva Academy of International Humanitarian Law and Human Rights (ADH) and released for public comment in January 2010. This was followed by another series of multi-stakeholder workshops, after which another draft went out for discussion at the end of August 2010. The CoC articulates standards for private service providers in accordance with international humanitarian law and international human rights standards. It also aims to set the foundation for a second phase of implementation, institution building, including the development of a global institution that will provide meaningful and independent oversight of and effective accountability to the CoC.

II. Challenges and Opportunities

The setting of industry standards firmly grounded in international human rights and humanitarian law principles provides several opportunities. By setting a high bar, such standards can have an immediate effect on corporate practices, such as performing due diligence in selecting personnel and in serving clients. The CoC also sets the standards against which provision of services and management practices will be measured, and from which meaningful and independent oversight and effective means of accountability of its members will be developed. Further, clients of private security providers can require in their contracts with them to perform services in accordance with the CoC.

However, for the CoC to fulfil its purpose and potential, the second phase of implementation and institutions building has to begin immediately with the adoption of the CoC. Indeed, the industry itself

¹ **PMSC Industry Statement, June 2009**

“Mindful of the Montreux Document which focused on the obligations of states and situations of armed conflict, and following discussions at the Nyon conference, the industry representatives now present at the conference consider it time to pursue and develop an international code of conduct for the companies themselves in all situations.”

Following a collective process involving pertinent stakeholders, we have achieved a broad consensus that an international code of conduct must be compliant with Human Rights and IHL. Further, there is a clear necessity for effective oversight, accountability and operational standards in such a code.

Together with their involved partners, the Swiss government has played a crucial role in ensuring this process is inclusive, valid and dynamic.

We see this process as an opportunity to enhance our ability to address broader stakeholder concerns and to serve all our clients, government and otherwise, in a transparent, professional and ethical manner.”

has asserted that the CoC will only be effective insofar as it can be independently and effectively enforced, and its violations meaningfully sanctioned. For these reasons, reference to the envisaged second phase and its accompanying implementing institution will be made in the CoC itself. The CoC will not be complete until such an oversight institution and effective accountability mechanisms are developed, implemented and enforceable against participating companies.

Setting clear standards for the selection and training of industry personnel, as well as for the manner in which services are provided, will have a preventative effect, helping to head off potential violations before they arise. However, in the event that violations do occur, the CoC can provide an avenue for effective recourse and remedy. As a non-state mechanism, a CoC will be supplementary to any national governmental measures, encouraging member compliance and offering an additional facility through which victims can seek redress. In places where there is little or no governmental authority it might provide the only means of recourse. Indeed, this approach contemplates the added benefit that the grievance mechanism may be provided directly on the ground, playing an integral part in the process of redress. Ultimately, accountability for private service providers is a win-win situation for both the industry and for society at large.

III. Expected Outcomes

The CoC will provide unambiguous guidance to the industry, their clients, states, civil society and other stakeholders as to how services should be provided in accordance with international human rights and humanitarian law standards. It is anticipated, that the CoC will be the basis for the establishment of effective accountability with meaningful sanctions and remedies to victims when such standards are breached.

The finalization of the CoC is expected by the end of September 2010. A signatory event is planned for fall 2010. While the CoC is only open for signature by private service providers, Governments and non-state clients, such as humanitarian organizations, international organizations and private companies, are encouraged to make supportive policy statements. Such statements could include the demand of adhering to the code as a precondition for future service contracts.

An important role has to be played by the wider stakeholder community. Governments, civil society and academia are encouraged to contribute to the establishment of the implementation mechanism, including the external oversight and grievance mechanism.

DCAF - Privatisation of Security Programme

In response to the growing role of private service providers as a significant component of the security sector, DCAF has created the Privatisation of Security Programme. Within this framework, DCAF has undertaken a number of activities aimed at ensuring democratic accountability of the industry, transparency in their activities and development of viable international and domestic regulations. In collaboration with national parliaments and governments and international organisations such as the UN Working Group on the use of Mercenaries, the Parliamentary Assembly of the Council of Europe, and the Swiss Department of Foreign Affairs, DCAF engages in a variety of research and policy activities, including undertaking policy studies, expert consultations, capacity building and dissemination.

Further contacts: Anne-Marie Buzatu, +41 (0)22 741 7781; André du Plessis +41 (0)22 741 7772
a.buzatu@dcaf.ch | a.duplessis@dcaf.ch | <http://www.dcaf.ch/privatisation-security>

Geneva Academy of International Humanitarian Law and Human Rights

The Geneva Academy of International Humanitarian Law and Human Rights (ADH) engages in research and teaching in all branches of international law related to armed conflict. With expertise in the legal roles and responsibilities of non-state actors, including private service providers, the Academy contributes its specialist knowledge in the process of developing and implementing legal instruments and standards, including the proposed CoC. The Academy's work on this issue draws on expertise developed in connection with its Master's programme on international humanitarian law and the work of its other research projects on the rule of law in armed conflicts and human rights law and policy.

Further contacts: Professor Andrew Clapham, +41 (0)22 908 5806; Claire Mahon, +41 (0)22 908 4432
andrew.clapham@graduateinstitute.ch | claire.mahon@graduateinstitute.ch <http://www.adh-geneva.ch>

Federal Department of Foreign Affairs (Switzerland) / Desk Human Security and Business

The promotion of peace and human rights and the provision of a sustainable socio-economic order is the responsibility of the state. Switzerland therefore regards dialogue with non-state actors with a specific impact on human rights, such as corporations in general and private service providers in particular, and their integration into peace and human rights policies as an important form of co-operation. With a specific focus on conflicts the Political Affairs Division IV (Human Security) is therefore constantly working together with representatives of the private economy, civil society and governments to develop methods and instruments aimed at minimising the negative influences of business activities on the course of conflicts, and promoting ways in which they can have a positive impact.

Further contacts: Desk Human Security and Business: Nils Rosemann, +41 (0)31 325 87 73;
nils.rosemann@eda.admin.ch | <http://www.eda.admin.ch>