

ETHICAL ISSUES IN PREVENTING AND COMBATING HUMAN TRAFFICKING

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Panel 2: Codes of Conduct and zero tolerance policies in conflict and crisis situations

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Introduction

DCAF is an International Foundation established in 2000 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. Support to the OSCE and its member states is a key part of DCAF's work.

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. Around the world simplistic assumptions about who actually delivers security are challenged by the reality on the ground which is more often than not a hybrid, often fragmented mix of public and private security actors. This complexity, exacerbated in situations of conflict or where state oversight is weak, challenges our ability to ensure that security is provided in ways that protect human rights and promote the rule of law.

With the recent criminal prosecution of 4 former Blackwater security guards, 7 years after the tragic incident in Nisour Square that led to the deaths of 17 Iraqi civilians, we have all been reminded of the pertinence of international efforts to regulate the global private security industry. It was incidents such as this as well as well-documented incidents linking private security companies to human trafficking, that provided the impetus to 2 complementary initiatives known as the 'Swiss Initiative', reflecting the convening and leadership role played by Switzerland in this field: the **Montreux Document** and the **International Code of Conduct for Private Security Service Providers**.

DCAF has supported these initiatives from the outset. 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.

Important recent developments make this the ideal time to discuss these initiatives and their relevance for the OSCE, its member states and partner organisations and how this ties into the specific topic of human trafficking. During my short intervention I would therefore like to focus on 3 points:

- What are the MD and the ICoC, how do they address concerns over human trafficking?
- What is the state of play 5 years after these initiatives were agreed?
- How can these initiatives fit into the wider efforts of the OSCE / OSCE Member States to protect human rights and address issues such as human trafficking?

Montreux Document and the International Code of Conduct: what do they address, how are they linked to human trafficking?

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. While human trafficking is not mentioned explicitly, core obligations include ensuring respect for international humanitarian law, protecting human rights, ensuring criminal accountability and, of fundamental importance, 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. Good practices include ensuring that PMSCs and their personnel have no reliably attested record of involvement in serious crime, to ensure minimum standards of training, and to ensure that IHL and HRL have been translated into company procedures. Criminal and non-criminal accountability mechanisms are also identified.

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 to 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. Standards relating to training, vetting of personnel and the use of weapons are established. Companies are obliged to develop and implement internal management processes and procedures to integrate their commitments within the corporate structure. Alongside prohibitions on torture and other breaches of international law, a prohibition on human trafficking is clearly set out. According to article 39 of the Code “Companies will not, and will require their personnel not to, engage in trafficking in persons.”

Moreover, the Code does not require either a transnational element or a link to organised crime in its definition of trafficking, thus setting down a high standard for companies to abide by. This insistence on strong provisions on both sexual exploitation and trafficking came at the insistence of the companies themselves.

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.

Montreux Document and the International Code of Conduct: 5 years on, current challenges and opportunities

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, 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. Ultimately, over 700 companies from around the world signed the Code. Today, over 140 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.

To mark the 5th anniversary of the MD, last year’s Montreux + 5 conference 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.

Where are the challenges?

In the run up to the 5th anniversary of the Montreux Document, DCAF conducted a major research project to assess progress and address gaps in implementation. This was based not only on our own research but to detailed questionnaire responses provided by MD states. A number of important gaps in implementation were highlighted including: imprecise constraints on which functions may be carried out by private companies, inadequate extraterritorial applicability of legislation, insufficient resources dedicated to contracting and licensing, low standards accepted as a basis for contracts and licensing, and weak monitoring and accountability.

For the ICoC there are also a number of challenges based on 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 and deliver on the human rights-driven goals of the initiative.
- 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.

A major elephant in the room that has come into focus through these initiatives is 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?
- A rights-based approach to employees within the private security is often absent, leaving individuals vulnerable to unfair treatment and inadequate pay and conditions.
- Finally, it is difficult to address challenges surrounding private security as a public policy issue at the national level as there is little or no public debate or discussion on the private security sector.

Conclusion: How can these initiatives fit into wider efforts of the OSCE / OSCE Member States to protect human rights and address issues such as human trafficking?

The current focus of both the MD and ICoC on implementation is essential and will determine their long term success. Raising these issues in fora such as this one is essential. These initiatives offer important opportunities to reinforce wider efforts of the OSCE to protect the vulnerable and promote respect for human rights. So what is required to make this happen in practice? Let me offer 3 points:

First, and I would say this is relevant to the OSCE, member states and all the organisations represented here, while we know a lot more than we used to about the global private security industry, not enough information is available on the current challenges on the ground. To give just one example, while problems relating to sex trafficking have been the subject of significant attention, very little work has been done on the issue of labour trafficking in the private security sector. This needs to change. There is a need for credible, bottom-up analysis on the nature of the industry in different contexts in order to craft appropriate responses. I would ask you to please share your experiences of private security in the OSCE region.

Second, much attention is currently being given to the development of good practices to support state regulation. This includes developing models to support the drafting of national laws, regulations, contracting procedures and policies. But the requirement goes far beyond that. To make regulation stick, this will need to be accompanied by doctrine, training and capacity building that reinforce management and oversight capacities at the national level. There is a wealth of experience in this area within the OSCE region. I strongly urge those OSCE member states that have not adhered to the MD to do so and those that have to play an active role in the MDF. Sharing your experience and good practices can only improve the implementation of the initiative as a whole.

At the same time, it is particularly important that the OSCE as an institution has endorsed the MD. Further engagement by the OSCE secretariat, institutions and field presence in support of MD implementation offers an important way to turn good practices into behaviour change

through linking them to wider efforts to promote better oversight and accountability of the security sector.

And third, critical to the success of the ICoC over the coming months will be the collective work by industry, governments and concerned CSOs to support, encourage, enforce and measure compliance. OSCE member states can contribute to ensuring independent oversight of the global private security sector by the ICoCA in a number of ways:

- By following the example of the UK, US, Switzerland and the UN and requiring ICoCA membership in your procurement policies as a basis for contracting with PSCs. Through this kind of conditionality soft law becomes increasingly hard.
- OSCE member states and interested CSOs should consider joining the ICoC Association. Your experience can contribute directly to the development and implementation of rigorous procedures. An effective certification process combined with an active monitoring role played by the Association can make a concrete contribution to addressing human trafficking concerns.
- States can also use the ICoC in relation to their own national legal frameworks to ensure the activities of PSCs are properly addressed. To give one example, the Swiss parliament has recently passed a new Federal Act setting strict requirements for the provision of private security services abroad from companies based in Switzerland. Significantly, the Federal Act requires ICoC membership, demonstrating how national law and international initiatives can be mutually reinforcing.

Conclusion

In conclusion, as a newcomer to the counter-trafficking discourse, I have listened and learned a great deal over the last two days. It has struck me that the importance of public-private partnerships that draw on the different qualities governments, I.O.s, civil society and the commercial sector bring to the table, has been widely recognized in the THB community. This insight on the need for multi-stakeholder approaches to complex security challenges is increasingly being recognized in my field of SSR.

However, our knowledge communities remain apart. This needs to change. As I have sought to demonstrate, the nexus between PSC regulation and THB offers a concrete example of the kind of synergies that can be realized in order to meet our common goal of protecting human rights and safeguarding human dignity. DCAF is deeply committed to support this goal.

Thank you.