

PMSCs IGWG – U.S. Statement on Existing Initiatives

Statement by the Delegation of the United States of America

**Open-Ended Intergovernmental Working Group on
Private Military and Security Companies, August 13-17, 2012**

“Existing specific initiatives including the Montreux Document and the International Code of Conduct”

Thank you Mr. President. The United States is a strong supporter of both the Montreux Document and the International Code of Conduct.

We are pleased that the Montreux Document continues to attract support. Our hope is that states will use this Document to help ensure compliance with their international law obligations, and in particular IHL. The good practices – while not constituting a checklist against which states will be judged – do provide helpful and practical guidance to States that contract with private security companies, to States on whose soil they operate, and to States in which they are based or incorporated.

Likewise, we are supportive of the Code and the follow-up processes now underway. Indeed, the Code not only reflects the important substantive commitments of companies that sign up to it, but also calls for the establishment of (1) industry standards that can be measured and verified by external auditors, and (2) an oversight and governance mechanism that will manage the Code and ensure that companies are implementing their commitments effectively. The first quality management system for PSC operations was approved by the American National Standards Institute in April of this year. This standard provides measurable and auditable criteria to implement the recommendations of the Montreux Document and the principles of the ICoC in both company operations and enforceable contract provisions. Conformance with this standard is now required in all U.S. Defense Department contracts for private security functions. The standard is the product of subject matter experts from 24 nations, with assistance from UN DSS and the ICRC. It is moving towards international approval and is under review by national standards bodies from several other nations and the European Union. In the coming months, ANSI will submit the standard to ISO for international recognition. With regard to the oversight mechanism, the temporary steering committee is continuing to engage in an open and transparent effort to revise the draft Charter for the mechanism. Earlier this year, extensive comments were received on the functions and governance of an oversight mechanism, and we appreciate the time and effort that went into preparing those comment. Additional outreach to and deliberation with interested stakeholders will take place at meetings to be held in September and October to consider and work toward consensus on remaining issues associated with drafting the Charter. This will include resolving exactly how the main functions of the oversight mechanism will operate, including certification of company policies, monitoring of company practices, and mechanisms for receiving complaints.

Once the standard and oversight mechanism are in place, we will be in a better position to assess the effectiveness of the Code; but we think the Code has real potential to improve performance across the industry and limit the risk of human rights related abuses.

Although work is ongoing on the mechanisms that will ultimately determine the success of the ICoC initiative, I would like to respond to some of the comments we often hear.

At the outset, it is important to emphasize that the ICoC is not designed to be a substitute for state regulation. We strongly believe that national regulation of PSCs and PMCs in accordance with the Montreux Document is critical for promoting good practices and ensuring accountability in cases of misconduct. The ICoC is designed to complement state regulation by encouraging PSCs to adopt practices which support State regulation and by improving oversight and promoting accountability in places where traditional legal regimes face challenges. With that in mind, here are some of the comments we have heard expressed.

First, we sometimes hear that the Code is voluntary and therefore ineffective. This criticism discounts the role that market pressure can play. The PSC and PMC industry grew because there was a market for these services. By the same token, market pressure will give companies an incentive to alter their practices – to sign up to the Code and to ensure that they are deemed compliant by the oversight mechanism – as clients, states, media, and the public in general will be handed an effective tool for distinguishing between companies.

Another criticism is that the Code is non-binding or not effectively enforceable. While the Code is voluntary, it is important to note that the Code contemplates the existence of an oversight mechanism, which is currently being designed, that will help ensure compliance on the part of those companies who choose to sign-up to the Code. This criticism also ignores the ability of states and other clients to enforce the Code. The standards derived from the Code can be integrated into contracts and clients can then use contractual remedies to ensure compliance. In other circumstances, a company's agreement to the Code could be a condition of eligibility for a license to operate. For commercial clients of PSC services, certification by the oversight mechanism could be made a pre-condition for submitting a bid or contract award.

Indeed, given some of the challenges posed by extraterritorial activities of PSCs, leveraging a state's power as client, and the power of the market to influence decisions by private parties, may be one of the most effective ways of making an impact on the ground.

All this said, we are not arguing that the Montreux Document and the Code are the only initiatives we can discuss. Again, the Code may help complement State regulation, but we fully recognize that it is not and cannot be a substitute for effective accountability under the law. The Montreux Document is a very good starting point for improving national regulation, but we recognize that, here too, there is more work to be done.

Indeed, we think there remains room to discuss additional measures that could be taken to reduce the risk of, or ensure accountability for, human rights related impacts of PSC or PMC activity, including under the auspices of the Human Rights Council. But any such discussion should complement the Montreux Document and the Code. It should also focus on human rights, rather than IHL, consistent with the mandate of the Council. And any such discussion should take account of the careful way in which the Montreux Document and the Code were elaborated, listening to all viewpoints and developing best practices upon which states can draw – as this has been a critical part of the success of the Montreux Document and the Code. A hasty, take-it-or-leave-it approach simply will not work.