

## **35th Round Table on current issues of International Humanitarian Law**

### **Private Military and Security Companies**

**San Remo, 6-8 September 2012**

#### **Improving Compliance with IHL Report of the Panel**

**Brigadier General Erwin Dahinden,  
Member of the Council of the IHL and Chief of International Relations of the  
Swiss Armed Forces**

Today, private military and security companies (PMSC) have become a reality across the spectrum of the current operational environment, be it during peace operations in the widest sense of the term, during counter-piracy operations on the high seas or when protecting interests of multinational companies in areas where State authorities are unable or unwilling to ensure a safe environment for business activities.

Since 2004, a number of important initiatives aiming at developing common standards for the activities of PMSC have been undertaken and have resulted in the Montreux Document (an instrument restating existing legal obligations of States and compiling good practices for their implementation) and the International Code of Conduct [ICoC] (an instrument of industry self-commitment to international legal standards). Moreover, the UN Draft International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies of 13 July 2009 proposes to ban the outsourcing of a number of inherently governmental activities and to require States to regulate certain other activities including the training for PMSC personnel.

At this stage, the experiences made by States, but also by the industry would certainly call for a more comprehensive approach to the training of PMSC personnel.

The **Montreux Document** recalls that international law requires:

- **Contracting States** to ensure respect for international humanitarian law by PMSCs they contract, in particular to ensure that such PMSCs and their personnel are aware of their obligations and are trained accordingly;
- **Territorial States as well as Home States** to ensure respect for international humanitarian law by PMSCs operating or, respectively, incorporated in their territory, in particular to disseminate, as widely as possible, the text of the Geneva

Conventions and other relevant norms of international humanitarian law among PMSCs and their personnel.

The **ICoC** requires signatory companies to ensure that all Personnel performing Security Services **receive initial and recurrent professional training and are also fully aware of this Code and all applicable international and relevant national laws, including those pertaining to international human rights, international humanitarian law, international criminal law and other relevant criminal law**. Signatory Companies will maintain records adequate to demonstrate attendance and results from all professional training sessions, including from practical exercises”.(ICoC Para 55).

The **UN Draft International Convention** requires States to ensure that “Specific legal requirements are met for persons employed by private military and security companies concerning inter alia their training and experience” [Art 15, 1 (ii)]; the instrument also expects that each State Party, consistent with its legal system, shall take legislative, judicial, administrative and other effective measures to ensure the training of personnel and to promote human rights norms and principles relating to activities of private military and security companies and their personnel [Art 20, 1].

We may thus conclude that all regulatory initiatives aim to ensure that PMSC personnel are appropriately made aware of their obligations under international humanitarian law or other relevant international norms, and that the responsibility that the standards are met lies both with States and the industry.

The panel discussed the following topics:

- **What training is offered today;**
- **What legal issues might arise in relation to training, and what should be the form and content of the training provided for or by PMSC;**
- **What should be the criteria for certification of such training, and what could be the role of States or qualified training institutions such as the Sanremo Institute or the Geneva Centre for Security Policy;**

and last, but not least:

- **How and by whom could appropriate training support be offered in practice.**

Marc Linning, Advisor of the International Committee of the Red Cross (ICRC) noticed that there were numerous compliance initiatives, regulative proposals, and declarations, all

recognising the need for training. However, with regard to International Humanitarian Law, the focus must be implementation; training alone is not sufficient. Implementation as understood by the ICRC is a constant cycle, starting with the building up of knowledge (through lectures, courses, etc.), continuing with practical application of the acquired knowledge through field and command post exercises, monitoring the conduct of operations and initiating sanctions if necessary in cases of violations (disciplinary or legal sanctions in case of serious violations). The basis, of course, is ratification of the conventions and their integration, as appropriate, into national law and standing operational procedures (SOP).

With regard to PMSC personnel, Linning emphasized the fact that especially former members of Armed Forces have to adapt to their new function and status under IHL. They are no longer acting as combatants but are considered to be civilians. The use of force is therefore strictly restricted to situations of self-defence and/or defence of persons under their protection against unlawful violence. This implies a different conduct in the field, especially in conflict zones.

Senior staff as well as operational personnel of PMSC must be aware that taking a direct part in hostilities would result in temporary loss of civilian protection, meaning that they could be attacked as legitimate military targets. In case of capture by an opposing belligerent, PMSC personnel having directly participated in hostilities may also be exposed to criminal prosecution for acts harmful to the capturing Party. In contrast to regular military combatants, PMSC personnel normally do not benefit from combatant immunity against prosecution under national criminal law for having participated in lawful acts of war.

The ICRC is also concerned by the increasing training activities provided by PMSC for local armed forces, especially in Africa. So far, such training activities are neither regulated nor certified, there is no quality control, and it is not certain that IHL is appropriately included. Furthermore, the ICRC has in some instances been deprived of the opportunity to disseminate IHL directly to local military forces in accordance with its mission and its operating procedures. In the worst case, this may result in a lack of understanding of the ICRC's humanitarian mission which, in turn, could well increase the risk of security incidents involving the ICRC in the field.

Although a certain progress becomes noticeable in the field, it is thus clear that the content and curriculum of training provided by PMSC needs to be subjected to appropriate oversight.

Ms. Sylvia White, Director and member of the Executive Board of Aegis Group representing the Industry on the panel presented the steps already undertaken by her company to implement the various obligations, especially those imposed by the ICoC, which Aegis has signed. Aegis considers itself as leading provider of private security services such as

stabilization, transition and reconstruction support for governmental agencies and corporate clients. It is a corporate aim to differentiate the company with a clear focus on compliance, accountability, transparency and integrity. The main attention is given to compliance and to systems which support compliance.

For Aegis, respect for others ensures “good security”, it therefore tries to build appropriate relationships with local authorities.

Training provided includes IHL, national law of the host nation in relation with extraterritorial effects and contractual obligations, UN Charter, UN Declaration on Human Rights, International Customary and Treaty Law. Specific problems in mission areas are also addressed, e.g. the issue of human trafficking. Business practices have been reviewed in light of the ICoC, discrepancies were identified and the required changes implemented. Aegis adheres to the PSC standard and would like to take the road to certification, both within the executive management and the rest of the company.

Commitment is needed across the industry, with regard to the standards. The industry is market-driven. Therefore those who buy PMSC services are also responsible for the implementation of standards.

Colonel Darren M. Stewart OBE, Chief of Staff, Directorate of the UK Army Legal Service represented the view of a Home State government. He first expressed a certain discomfort that Private Security Companies (PSC's – the vast majority of the actors in the field), take over traditional military functions while the generation of standards has not yet been resolved.

There is a fundamental difference between the commercial and the State perspective. The State demands flexibility and must ensure conduct according to the law in all situations. Therefore, appropriate training of personnel is a requirement which is not questioned as such. PSCs work under a contract, they also must make profit – and training generates costs.

Secondly, Stewart pointed out that the training needed for military personnel must be distinguished from training needed for PSC personnel. While military personnel are part of the armed forces and, in situations of armed conflict act as combatants, PSC are 100% civilians.

Because PSC personnel are mostly former members of the armed forces, training must clearly address their new role: They have a different task, they wear different clothing and they must adapt to different standards of conduct.

The content of training must therefore differ from military training. LOAC should be the last topic, and the focus in this sequence must be on how not to become a direct participant in hostilities. PSC personnel must be trained in non-violent behavior, and their authority to use force is limited to self-defence and defence of others under their protection. The Montreux Document as well as the ICoC provide useful guidance as to what should be the training content.

A more difficult challenge lies in the need for proper evaluation and certification. Who does the training, how should the trainers be qualified and certified? Some PSC's will ask applicants for high qualification before hiring. Credentials must therefore come from a credible source.

Smaller PSC's will face the difficulty to ensure that standards are met.

Training should be continuous: After basic training, there is a need for mission specific training. Particular mindsets should not become entrenched but require adaptation to a changing environment even during a mission.

Steward proposed to take a systematic approach:

- Content of the training curriculum is known and recognized;
- Training packages need to be designed;
- A link to certification must be established.

The Contracting Party is obliged to validate the quality of training and services provided, but the Contractor also must prove that it has the necessary validation.

It is required that operations staff members understand procedures of how to deal with incidents in the field.

In this field, the IIHL Sanremo could play an important role, e.g. providing training for heads of operation or recruiting staff. It could engage with ISO standardization. The ICRC on the other hand could play a role as a neutral validator on the ground, making suggestions for further improvement.

## **Conclusions**

- 1. The need for appropriate training meeting certified standards is widely acknowledged. Content needs to be oriented on the specific tasks and the status of PSC's as civilians operating in an armed conflict environment.**

2. **Standardized and certified training could be entrusted to an institution such as IIHL Sanremo. Such training would address senior operational or recruiting staff of PSC's, as well as PMSCs and PMSC personnel specialized on providing training. Independent monitoring of success in the field is needed. Conceivably, the ICRC could consider assuming certain aspects of this role.**
3. **Training provided by PSCs to local governmental forces (military or police) is a sensitive issue. Without proper qualification, such training could do more harm than good and could even negatively affect the relations between the ICRC and the host nation authorities in the field.**
4. **The development of training packages should be done in close concertation with the process of the relevant advisory groups. Premature and uncoordinated initiatives would cause confusion at this stage and should be avoided.**