

San Remo Roundtable on Private Military and Security Companies (P(M)SCs) Session 6: Improving Compliance with IHL

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Introduction:

Looking at the use of P(M)SCs by states, it is often the latter's desire to decrease the military footprint of their armed forces on the ground while seeking to continue influencing and supporting certain armed/security actors, that drives them to contract P(M)SCs to act as their force-multipliers. The ICRC interest in them is twofold:

1. Firstly, it looks at the P(M)SCs' own behaviour, e.g. when using force and directly participating in hostilities and how these actions fit, with applying provisions of IHL. The impact of such direct activities on the front line on ICRC operations is a connected concern here for ICRC and thus then also the need for meaningful and effective training .
2. Secondly, ICRC interest in P(M)SCs revolves around the training content that P(M)SCs use when themselves giving training to armed/security actors on IHL/IHRL related matters of ICRC relevance (e.g. detention, UoF, crowd control, use of weapons). The repercussions of such training on the behaviour of armed actors towards the civilian population in an armed conflict context or another situation of violence, as well as its impact on parallel ICRC training efforts to these armed actors are of particular interest to ICRC.

Training of P(M)SCs - ICRC's position on meaningful training:

Taking the example of the use of force, today, P(M)SCs active in armed conflict and other situations of violence use force primarily, if not exclusively, for defensive security tasks, such as personal security, mobile security and static infrastructure security. Nevertheless, their respect of rules on the use of force gives rise to ICRC concern. 'Self-defence' as a 'one size fits all' notion justifying a maximalist UoF interpretation is as misleading and false as the notion that P(M)SCs cannot defend themselves when protecting a military compound and must wait before returning fire until being shot at. Being aware of and adequately acting accordingly to the IHL/IHRL rules that apply is not a given. For example, the different notions of proportionality applying depending on the legal norms covering a given situation of the defence, when lethal force is allowed at the outset or when there needs to be a non-lethal escalation of force (IHRL context), the arms and ammunition used etc. are all aspects that require comprehensive training. The integration of these aspects into the end-product, i.e. the eventual behaviour on the ground is much easier said than done.

In relation to an armed conflict scenario, IHL regulates the activities of P(M)SC staff including the P(M)SC staff's legal status. Former state armed forces military personnel now working as P(M)SC contractors have a civilian status in most cases and are not combatants. There are crucial differences to be taken into account as a result. IHL therefore requires to become part and parcel of the mindset of such companies, e.g. when it comes to operational decision making. Shaping the mindsets of the P(M)SC, also of senior and middle-management staff that shape the mission and tasks as well as the staff that implements does neither happen over night nor does it occur in the course of sporadic lectures on IHL.

Based on a long-term ICRC study looking at the 'Roots of Behaviour in War, Understanding and Prevent IHL Violations' amongst arms carriers, the ICRC approach has evolved and thereby expanded the spectrum of activities applied to translate knowledge into behaviour. Indeed, lacking IHL knowledge had not been the issue, what had been the issue was the transposition of knowledge into military processes and the anchoring of 'IHL reflexes' in the decision-making processes throughout the chain of command.

For example, one main finding focussed on the vastly higher retention percentage of theoretical norms learned via practical exercises and the crucial importance of an effective and applied sanctions system to meaningfully enforce the application of these IHL compatible practices. These factors are crucial and not replaceable when it comes to shaping behaviour according to norms that are known and understood but without this practical integration into military reflexes and a realistic deterrence factor, still not applied when it matters. Also, training needs to start early, prior to deployment and then needs to be 'kept alive' in applied behaviour via undergoing it on a continuous basis and adapted to the evolution of the P(M)SC tasks in a given context. However, training and sanctions are but two elements to instil adequate behaviour in armed conflict and other situations of violence.

Training forms part of a (hopefully) virtuous circle that also contains relevant doctrine (e.g. SOPs). The latter sets the basis on what the a/m training subsequently focuses on. Doctrine is then also the subsequent basis on which sanctions and disciplinary measures should be applied. It provides for a transparent and predictable mechanism to ensure compliance with basic IHL/IHRL norms. Lessons learned and After Action reviews will provide ongoing input for revised directives and thus also for revised or newly fine-tuned training curricula. Adapting and often increasing the scope P(M)SC activities without corresponding doctrine, training (including practical/exercise based training) and sanctions systems that are taught and integrated into P(M)SC staff's mindsets has been conducive to violations. The repercussions are significant, first and foremost for the persons affected by it but, as one could see in Iraq, also for the entire war (e.g. COIN) effort as well as for the branding of the P(M)SC.

In the past, insufficiently stringent and transparent Command and Control mechanisms leading to inadequate command climates within a P(M)SC have paired up with often toothless penal and disciplinary sanctions systems by states and companies respectively and then created conducive environments for repeated violations of applicable legal norms; thus the need to improve oversight. PMSC senior management in PMSC HQs or regional hubs are as crucial as PMSC detail leaders in the field (as direct superiors to staff whose behaviour we seek to positively influence) when it comes to create the necessary command climate that renders the respect for the applicable rules part of the corporate culture everybody adheres to. The development of the ICoC and/or the American National Standard to ensure and monitor P(M)SC compliance with appropriate legal provisions and in accordance with the provisions stipulated for example in the Montreux Document are promising. But, it is the way these measures are applied on the ground that will determine their success.

Training by P(M)SCs

While training conducted by P(M)SCs to others often happens far away from any front lines and thus seems *per se* unproblematic, the fact that there is so far little oversight into it e.g. by the contracting states, is concerning. Also, current oversight mechanisms do not sufficiently cover P(M)SCs training of armed/security actors. What is for example the training content given to third parties active in conflict and are the adequate standards and necessary integration processes of IHL applied to meaningfully shape the military behaviour of the recipients of such training? Taking P(M)SCs in East Africa as an example, it would be interesting to know what exactly they train on regarding IHL and how in-depth their training of it is, e.g. with AMISOM troop contributing countries in Burundi and Uganda that then deploy to Somalia and engage in hostilities with Al-Shabaab. The spreading of unregulated and unchecked military practice via potentially wrong or insufficient training will shape generations of soldiers and thus affect generations of civilians faced with the ensuing effects.

Looking beyond East Africa, thousands of UN blue-helmet peacekeepers worldwide are today trained, e.g. on IHL via P(M)SCs. With UN Peacekeeping having evolved and their tasked activities getting much closer to persons protected by IHL, e.g. in DRC where MONUSCO is party to the conflict and where Peacekeepers are today actively using force to protect civilians in the Kivus, the training they receive (ideally at Troop Contributing Country level) is crucial in shaping their behaviour. Not only does it shape their own behaviour vis-à-vis one of the most vulnerable civilian population on the

planet, but it also determines their ability to identify IHL violations when perpetrated by spoilers. Training given by P(M)SCs is thus a crucial component in promoting IHL and ensuring that it is respected in order to protect victims of armed conflict. Having a coherent and tested application of it and having it overseen by credible oversight mechanisms (industry-driven ones but also crucially by the responsible states) is a must.

ICRC and Training by P(M)SCs:

Coordination and exchange of info on P(M)SC training to third party armed/security forces with the contracting state, organisation and/or P(M)SC itself is in the interest of ICRC. Field experience shows that unfortunately, P(M)SCs (and relevant states/orgs) often do not understand that what they are teaching or paying to be taught. Contracting countries even admit they do not know what is being taught on their behalf. ICRC would want to make sure P(M)SCs have a basic understanding themselves of ICRC and especially IHL, so that it can be incorporated into general combat training towards others as necessary. We would want to have P(M)SCs sensitized as to what IHL subject matter should be taught to troops deploying on operations. ICRC would also want to ensure that its own bilateral IHL training injects/support rests incorporated into the overall programme for troops' pre-deployment training.

When dialoguing with P(M)SCs and related stakeholders, it goes without saying that associated perception risks with e.g. national authorities or the armed opposition need to be taken into account by ICRC, e.g. when sharing training platforms with P(M)SCs or when dealing with them in general. Also, the increased use by e.g. Western P(M)SCs of subcontracted local/national 'P(M)SCs' complicate the approach and a potential ICRC dialogue with them is not straight forward. These 'P(M)SCs' are often an ambiguous mass not always easy to interact with without considerable security risk.

Nevertheless, it is clear that P(M)SCs will continue to operate in a way that is of interest of ICRC and that they are likely to for example even increase their training activities on ICRC relevant issues. P(M)SCs are global shapers of armed actor's behaviour in situations of violence that influence IHL/IHRL environments and thus the protection of persons by IHL(IHRL). ICRC can act as supporter/advisor towards the integration of IHL/IHRL into P(M)SC doctrine, education, training and internal disciplinary sanctions measures. ICRC is not able and willing though to substitute states and industry in these efforts - it supports them in an impartial and operations-driven manner while avoiding any kind of instrumentalisation. As set out by the Montreux Document, states remain the accountable actor to control the adherence of P(M)SCs to relevant legal standards.

Marc Linning, September 2012