



Swiss Initiative in Cooperation with the International Committee of the Red Cross to Promote Respect for International Humanitarian Law and Human Rights Law with regard to Private Military and Security Companies Operating in Conflict Situations

Outline

22 November 2006

Background: Issues Raised by the Activities of Private Military / Security Companies in Situations of Armed Conflict

In recent conflicts, private military and security companies have increasingly been used by a number of states. While the presence of these actors in conflict situations is not a new phenomenon, their numbers and, more significantly, the nature of their activities have changed. In addition to typical security functions – which have also been performed for corporations or humanitarian actors operating in conflict zones – as well as the more traditional logistical and support functions to armed forces, private military and security companies have recently also been mandated with tasks closer to the heart of military activities, such as the interrogation of prisoners, the provision of technical expertise for the maintenance of weapons systems, and, more rarely, direct participation in combat. Observers broadly agree that this is not a passing phenomenon but, rather, one that is even likely to increase in importance in coming years.

Such challenges to the traditional assumptions about state monopoly on the use of force raise many issues. Unchecked power may give rise to abuses. Some of the more pressing challenges with regard to the operation of such companies in conflict areas that observers have identified relate to the legal and regulatory framework, the accountability of companies and employees, as well as control over their activities.

It has sometimes been argued that there is a gap in the law. However, not least in situations of armed conflict, there is a body of international law that both regulates the activities of the staff of private military and security companies and establishes the responsibilities of such staff and of the states that hire them. Nonetheless, difficulties have arisen in bringing proceedings to enforce such responsibilities as a matter of practice.

The area where the applicable legal framework is sparse and, in the view of some experts, often insufficient, is in the field of national laws laying down the criteria that companies must meet in order to be allowed to operate and the formalities they must comply with. Only a handful of states have adopted legislation stipulating the procedures that private military and security companies incorporated in their territory must comply with in order to be allowed to operate abroad. Similarly, few of the states facing conflicts and disturbances within their borders regulate the operation of such companies in their own territory. There is no international regulatory framework specifically focusing on this industry and its activities.

The phenomenon of private military and security companies and the issues it raises have been the subject of a significant and increasing number of academic and other contributions and conferences. Networks and associations of these companies are beginning to be established. However, no intergovernmental process existed to specifically discuss the challenges and ways to meet them.

The Initiative and its Objectives

In view of the absence of an intergovernmental process, Switzerland, in cooperation with the International Committee of the Red Cross (ICRC), wishes to facilitate and contribute to an intergovernmental dialogue on how to ensure and promote respect for international humanitarian and human rights law by states and private military and security companies operating in conflict areas. The objectives of the process are:

1. to contribute to the intergovernmental discussion on the issues raised by the use of private military and security companies;
2. to reaffirm and clarify the existing obligations of states and other actors under international law, in particular under international humanitarian law and human rights law;
3. to study and develop good practices, regulatory models and other appropriate measures at the national, possibly regional or international level, to assist states in respecting and ensuring respect for international humanitarian law and human rights law.

The discussion of issues raised by the resort to private military and security companies and of ways of promoting respect for international humanitarian law and human rights is not intended to legitimize the use of such companies. Given the fact that these actors have become a reality in a number of conflicts, the envisaged process aims to prevent or reduce certain potential adverse consequences.

As a first step, Switzerland in cooperation with the ICRC organized a workshop on 16-17 January 2006. Invited participants included experts from states with relevant experience as well as a small number of representatives from the industry and other experts. Participants encouraged the organizers to pursue the initiative and facilitate further inter-governmental exchange on the issue.

A second meeting of governmental and other experts has taken place on 13-14 November 2006. Participants shared the view that states have to respect international law when using private military and security companies. Participants furthermore agreed on the usefulness of elaborating (non-binding) good practices to assist states in promoting respect for international humanitarian law and human rights in their relations with private military and security companies.

Future Steps

The details of good practices in promoting respect for international humanitarian law and human rights to assist states in their relations with private military and security companies will be further studied and elaborated. In a medium-term perspective, recommendations and good practices developed through the process could be carried into or inform the debate in fora such as the 30th International Red Cross and Red Crescent Conference scheduled to take place end of November 2007 as well as other regional or international fora. Between now and then Switzerland in cooperation with the ICRC will continue to broaden its outreach to interested states and stakeholders.

It is hoped that the initiative and the intergovernmental dialogue it aims to facilitate will contribute to the search by states for appropriate national regulatory solutions and measures.

Further information is available on the following website: www.eda.admin.ch/psc.

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