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Private military and security firms and the erosion of the state monopoly on the use of force

Report[1]
Committee on Political Affairs and Democracy
Rapporteur: Mr Wolfgang WODARG, Germany

Summary

The report points to a growing trend of involving private companies in assuming various tasks in the military and security areas, which traditionally had been a domain of the states.

The increasing use of private military and/or security companies (PMSCs) undermines the position of a state as the only actor allowed to legitimately and lawfully use force. It presents a challenge to modern democracies, as the right to use force shifts from the state, guarantor of the public interest, to private actors driven by corporate interests.

The activities of PMSCs raise a whole range of concerns related to the lack of democratic control, transparency and accountability, higher risk of human rights violations, the growing influence of private businesses on political choices and policy orientations, and the shift from crisis prevention to rapid reaction and from the civilian handling of crises to the use of force.

Many of the challenges arising from the increasing role of PMSCs reach to the core of the values protected by the Council of Europe. Our Organisation, with its experience in the field of human rights, democracy and the rule of law, offers the appropriate framework for regulating activities of PMSCs on the basis of common principles.

The report recommends that the Committee of Ministers draw up a Council of Europe convention aimed at regulating the relations of its member states with PMSCs and laying down minimum standards for the activity of these private companies.

1. Reference to Committee: Reference N° 3370 of 1 October 2007.

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A. Draft recommendation

1. In recent years, there has been a growing trend in a number of states, including in Europe, to involve private companies in assuming various tasks in the military and security areas, which traditionally had been a domain for state actors.

2. According to some research publications, there are currently more than a million employees working as private soldiers or security officers for over one thousand private military and/or security companies (PMSCs) in over one hundred countries in the world. In 2006, the turnover in this new branch of the service industry was estimated at about 200 billion US dollars.

3. As this new industry seeks to develop its own markets, serious questions arise of a systemic and principled nature. On the one hand, most of the large PMSCs are organised as shareholder companies or are part of profit oriented entreprises. As such, they have every interest in the outbreak or maintenance of conflicts as a means of securing their economic growth. The more conflicts increase, the more the market for their services becomes profitable. On the other hand, for states, the emergence and pursuit of conflicts place a major strain on public budgets and resources, leading to a conflict of interests as between the public and private sectors.

4. States are the main contractors of PMSCs, but other actors, such as major international organisations (such as the United Nations), private businesses, humanitarian agencies, the media and non-governmental organisations, more and more often turn to these services to provide security in zones of conflict or instability.

5. The increasing privatisation of the military and security apparatuses undermines the traditional position of a state as the only actor allowed to legitimately and lawfully use force, both internally and externally. It presents a fundamental challenge to modern democracies, as the right to use force shifts from the state, guarantor of the public interest, to private actors driven by corporate interests.

6. Bearing in mind that PMSCs respond to some real needs and are already part of the reality, it seems difficult to prohibit them. However, it is at least necessary and possible to create an adequate framework for their activities in such a way, that they are performed in compliance with the basic principles of democracy, respect for human rights and the rule of law.

7. To date, the main public concern about the PMSCs' activities is related to possible – and in many cases real – human rights abuses by the personnel of these private companies and the difficulty of bringing perpetrators to justice, with the ensuing risk of impunity.

8. PMSCs' personnel and their employers are bound by general provisions of international humanitarian law. They are also bound by provisions of human rights law, insofar as they perform tasks which are normally performed by state actors. However, there are multiple difficulties in applying these provisions in practice.

9. However, apart from the deficit of legal answerability, the activities of PMSCs raise a whole range of concerns related to the lack of democratic control, transparency and accountability, higher risk of human rights violations, the growing influence of private businesses on political choices and policy orientations, the blurred division of tasks between the military and the police, and the shift from crisis prevention to rapid reaction and from the civilian handling of crises to the use of force.

10. As the PMSCs often operate internationally and their activities have transnational aspects and consequences, there is a clear need to regulate such activities at the international level. However, there are no specific legal instruments under existing international law that explicitly regulate such activities.

11. Many of the challenges arising from the increasing role of PMSCs reach to the core of the values protected by the Council of Europe. Our Organisation has therefore particular responsibilities in addressing the issue of regulating activities of PMSCs on the basis of common principles. The Council of Europe, with its experience in defining, promoting and protecting common standards in the field of human rights, democracy and the rule of law, offers the appropriate framework for this, and should take the lead in this process, as it did before in many other groundbreaking areas.

12. Accordingly, the Parliamentary Assembly recommends that the Committee of Ministers draw up a Council of Europe instrument aimed at regulating the relations of its member states with PMSCs and laying down minimum standards for the activity of these private companies.

13. The Assembly suggests that such an instrument should, as a minimum, include the following elements:

13.1. definition of those areas of internal and external security that must remain a sovereign function of the state and that are 'inherently governmental' in character;

13.2. standardisation of the principles for the safeguard of the state monopoly on the use of force;

13.3. clear affirmation of the dividing line between internal and external security as established by law and the constitution;

13.4. confirmation of priority of conflict prevention to rapid reaction and of the civilian handling of crises instead of the solution of conflicts by use of force;

13.5. standardisation of the principles for the use of PMSCs;

13.6. determination of criteria regarding the activities, obligations, duties, responsibilities, including accountability for breaches of international humanitarian law and human rights abuses, and the areas of tasks and competences of PMSCs;

13.7. definition of criteria that must be applied to admission of PMSCs for carrying out military and security services;

13.8. introduction of a registration and licensing system for PMSCs;

13.9. adjustment and harmonisation of national and international criminal law (especially rules of law enforcement) regarding criminal acts committed by PMSCs and their personnel;

13.10. introduction of specific rules for PMSCs in civil law (especially as regards conditions of liability);

13.11. setting up of a legal and regulatory framework for PMSCs who wish to export their services (e.g. mission and project-oriented authorisations which provide democratic oversight, control, supervision, accountability and specification of responsibilities; it would be advisable to combine such regulations with the existing arms export regimes);

13.12. requirement of parliamentary approval for missions of PMSCs outside their national territory, and provisions establishing co-operation, information sharing and assistance between the states involved;

13.13. application of laws and rules governing deployment of national military and police forces abroad to PMSCs as well;

13.14. introduction of rules and regulations (e.g. code of conduct and requirement to register with the foreign ministry) for business companies, non-governmental or humanitarian organisations etc. who wish to contract PMSCs for their security purposes abroad;

13.15. obligation on the part of the PMSC sector to set up a framework for self-control, including a binding code of conduct and the establishment of a “PMSC-Ombudsman” and/or a “PMSC violations investigation team”;

13.16. regulations that include the following elements: an effective vetting and training system for PMSC personnel; effective oversight and investigatory system; an effective enforcement system, and the protection of social rights of PMSCs employees.

14. With regard to a possible nature of such an instrument, the Assembly states its preference for a legally binding document (convention). However, the Assembly would welcome it if, prior to drafting such a convention, and in order to achieve a sense of common purpose, the Committee of Ministers could adopt a Recommendation to the member states.

15. In the meantime, the Assembly recommends that the Committee of Ministers supports, on behalf of the Council of Europe, the “Montreux Document” which sums up legal obligations under existing international law and best practices related to PMSCs’ activities, and call on member states that have not already done so, to endorse it.

B. Explanatory memorandum by Mr Wodarg, rapporteur

1. Introduction

1. In recent years, the traditional state monopoly on the use of force has been diluted, or even undermined, in a growing number of states. This phenomenon, which became noticeable since the end of the Cold war, grew stronger after the 9/11 terrorist attack on the World Trade Centre in New York.

2. Many former military professionals and a lot of military hardware lost their raison d'être and function after the breakdown of the iron curtain. This was the ground on which the new private military and security business were rapidly growing.

3. The erosion of the state monopoly on the use of force is today taking form by way of an increasing recourse by states to services offered by private organisations providing military and policing services, hereafter referred to as Private Military and Security Companies (PMSCs).

4. This phenomenon is not limited to sovereign states and their governments. Other actors, such as major international organisations (like the United Nations), private businesses, humanitarian agencies, the media and non-governmental organisations, avail themselves of such services in pursuit of security-related goals.

5. The shift in public security obligations to the private sector has already contributed to transforming the balance of power inside societies affected by this trend, and to a gradual destabilisation of international relations.

6. In all the countries where PMSCs are active, it is becoming more and more perceptible that the relationship between citizens and state power institutions (military and police) is changing and is becoming increasingly disturbed.

7. The recourse to services of PMSCs – especially in "weak" and "fragile" states – entails disempowerment of the state, the weakening of public governance and a decreasing capability to resolve conflicts by civilian means. It often leads to erosion of public order, and may ultimately result in the collapse of the state itself.

8. The growing activities of PMSCs in various conflict zones throughout the world, often beyond any government or public control, also weaken and undermine the role of the international community of nations in maintaining international peace.

9. One of the consequences of this latter trend is the shift in priorities in political choices from prevention to rapid action, and from the civilian handling of crises, to the solution of conflicts by the use of force.

10. The European democratic model, with its way of dealing with internal, common, external and international problems in accordance with its values, has become more and more attractive worldwide.

11. The uncontrolled activities of European private military and security companies, whose practices often run counter to the principles to which the European states are committed, may undermine the moral standing and international reputation of these states.

12. Therefore, Europe has particular responsibilities in addressing the issue of regulating activities of PMSCs on the basis of common principles. The Council of Europe, with its experience in defining, promoting and protecting common standards in the field of human rights, democracy and the rule of law, offers the appropriate framework for this, and should take the lead.

13. I wish to thank Mrs Caroline Holmqvist, Department of War Studies, King's College London, Mr Daniel Klingele, Head of Section, Section Human Rights and Humanitarian Law, Directorate of International Law, Federal Department of Foreign Affairs, Switzerland and Lieutenant–Colonel Tim Spicer, Chief Executive, Aegis Defence Services Ltd., for their valuable contributions to the hearing on Private Military and Security Firms organised by the Political Affairs Committee on 10 September 2008.

14. I would also wish to express my particular gratitude to Mr Hans Born and Mrs Anne-Marie Buzatu from the Geneva Centre for the Democratic Control of Armed Forces (DCAF), who also took part in the hearing and prepared for it a most useful study entitled "Recommendations to the Council of Europe Parliamentary Assembly for Effective Regulation of Private Military and Security Companies".

15. Finally, I wish to pay tribute to Mr Rolf Uesseler, independent expert on private security firms, who has been most helpful during my work on this report.

2. Emergence of the private military and security industry

16. Since the early 1990s, a rapidly growing market for PMSCs has taken shape. An entirely new industry has emerged, providing services in the highly sensitive area of internal and external security, which had been exclusively the domain of state responsibility.

17. These developments started in the industrialised West. In particular, the United States and the United Kingdom were most instrumental in promoting this new trend. In the meantime, the phenomenon of PMSCs has spread throughout the world and can now be observed in most diversified forms and quantities.

18. There are a number of reasons why this trend has recently been gathering momentum: – *inter alia*, changes in the distribution of geopolitical power; the downsizing of national armies; the electronic revolution affecting the armament industry; and the neo-liberal concept of "slim state", with the tendency to outsource governmental functions.

19. But above all, it was the new manner in which political crises have arisen in the international arena since the demise of international "block" allegiance ("Capitalist" versus "Socialist" states). Conflicts no longer occur in a single fashion, no longer have an easily identifiable single causative factor, and no longer occur by being planned, provoked or assisted by the power-elite in either of the two superpowers, the USA or the USSR.

20. Instead, new areas of conflict have their origin in a number of sources of destabilisation which were hitherto non-existent. A multiplicity of agents of violent social transformation have created a new concept of villainy to be dealt with, involving a variety of persons and parties, and state and violent non-state actors beyond the control of political entities.

21. The "classical" security policy oriented on wars between nations or on civil wars has been challenged by the new forms of conflict. Traditional armed forces were no longer adapted to the evolving character of this new kind of conflict. Many state – as well as non-state-actors – therefore, saw the solution for the emerging new security problems in an engagement of PMSCs.

22. The growing demand for PMSCs by western and other powerful states seeking to preserve their geo-strategic interests can be put down to four main factors:

– the increased need for military intervention capacity outside the respective states' zone of influence (the concept of "extended self-defence" with which the United States and their allies legitimised their intervention in Afghanistan and Iraq may serve as an example);

– the possibility to increase the limited means available to governments under downsized defence budgets by contracting private security services, as well as to have additional personnel capacity at their disposal in times of peace;

– the general trend in line with the neo-liberal concept of reducing state activity to its core tasks and leaving the rest to the market, including internal as well as external security needs;

– the changes within military forces and police services, both in structure and function. Large units designed for intrastate warfare with its multiple and undifferentiated tasks were in many parts restructured into differentiated smaller units with special tasks, focused on deployment overseas. The internal law enforcement and security services had their responsibilities reduced to core tasks and oversight duties.

23. Three main forms have emerged in the process of transformation of the military and policing security services in the politically desired direction: outsourcing, privatisation and commercialisation:

– Outsourcing means the short, or long-term, transfer of particular tasks and services to private providers of services, in this case PMSCs. Forms of outsourcing vary as far as state participation rights and the delegation of authority control are concerned.

– In the case of privatisation, the state sheds itself of certain security tasks under its authority and leaves them completely to the private sector.

– In the case of commercialisation in military and policing areas, private suppliers of security services compete with the state actors.

3. Consequences of the growing use of private military and security companies

24. These transformations in an area of sovereignty that until now has been exclusively reserved for the state have created a new mixed pattern, not only in the western states but throughout the world. The actors involved are hardly identifiable, in particular in violent conflicts fought out by military means. This is mainly due to the fact that it is no longer only the states with their regular armed forces that are opposed to each other in wars (or parties of a civil war). Instead, various types of state and non-state actors with different functions and responsibilities may be involved in any of the conflict parties.

25. As regards the relationship between states and PMSCs, it is possible to make the following distinction:

– Contracting states are those states that sign a contract with a PMSC, commissioning the latter to act on their orders and to perform certain tasks. Those states remain in the role of a contracting state in the case where the PMSC holding the initial contract subcontracts with other PMSCs.

– Territorial states are those states on whose territory PMSCs operate.

– Home states are states of the nationality of a PMSC. This may refer to:

  a. the legal seat of the PMSC;

  b. the business headquarters of the PMSC, i.e. the base where the management is located and where the business procedures ranging from acquisition to administration are transacted;

  c. the operational seat, i.e. the centre from where the different activities on the territory are directed;

  d. the homeland of the PMSC core personnel.

26. Depending on the category in which states fall in their relation with PMSCs and their operation, certain specific obligations arise for such states under customary international law, international humanitarian law and human rights law. I refer in this context to the "Montreux Document"[2]released on 17 September 2008 and summarising legal obligations and best practices related to PMSCs operations.

27. PMSCs are private business entities that provide military and/or security services, irrespective of how they describe themselves. When operating in "strong" Western states where they take care of internal order or security, many private military companies (PMCs) present themselves as "security" companies. In turn, when they operate in conflict areas of "weaker" states, where they support or replace the regular national forces, they describe themselves as military companies.

28. However, a distinction – if at all necessary – between private security companies and private military companies can only be made on the basis of the tasks that these private service companies perform in the execution of functions which normally are part of the state monopoly on the internal and external use of force.

29. Among the variety of tasks which may be performed by PMSCs, the following areas of service are of particular relevance as regards the maintenance of international peace and peaceful co-existence of nations, as laid out in the United Nations Charter:

– putting combat units at the disposal of the contracting state (most often, but not exclusively, for the support of the regular forces of the respective nation);

– providing special combat units to fight terrorists, subdue rebellions or to fight insurgents or militias;

– armed protection of infrastructures, industrial facilities and institutions (e.g. protection of government buildings, escort of convoys and protection of maritime transportation and oilfields, shipping and insurance companies as well as armed bodyguards);

– instruction and training for military personnel as well as for police personnel in instruction centres and training camps run by the PMSCs;

– military counselling, including instruction in strategic and tactical warfare, especially for the high-echelon staff of foreign forces;

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2. "Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict", available at the Website of the ICRC: (http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/montreux-document-170908/$FILE/Montreux-Document.pdf).

– the whole range of logistics supplies and reinforcements and maintenance sector, including the construction of complete military bases, supplying troops in combat with fuel, food, ammunition, and the maintenance of highly complex systems of weaponry;

– activities throughout the intelligence sector. This includes employment of specialised interrogators and espionage activity, gathering and analysing secret information, as well as employment of undercover agents, development of deception strategies, military reconnaissance and risk analysis.

30. State governments are not the only commissioners of PMSCs, even if they represent the largest group among the consumers of military/security services at present. Companies in the extracting industry, as well as those producing consumer goods, often use PMSCs services. The global players in the insurance sector and international high finance also contract PMSCs. More and more NGOs and humanitarian organisations rely on PMSCs to ensure their security in regions where no alternative reliable means or mechanisms of protection are available.

31. The responsibility for the activities – and possible wrongdoings – of PMSCs and their personnel has to be assumed by the providers of services themselves and by their respective state or non-state employer. However, when problems arise in connection with services provided by PMSCs to the private sector or to private organisations, responsibility has also to be assumed by the states in which PMSCs are located (national states and home states), as well as by those states in which the PMSCs are acting on the order, or on behalf of, private entities (territorial states).

32. Although PMSCs do not operate in the situation of “vacuum of law” and the general provisions of international law or international humanitarian law are applicable when specific national law related to such private services providers does not exist, the activities of PMSCs have raised a variety of problems that up to now either have not been addressed, or have only been solved in an unsatisfactory manner.

33. These problems relate not only to criminal law – even if the violation of human rights by PMSCs (including, in extreme cases, murder and torture) raises most serious concerns – but also to some aspects of civil and contractual law. They also raise political questions.

34. Problems related to PMSCs mainly result from the fact that standards for PMSCs activities, – which would be comparable to those applicable for the military or for state law-enforcement forces, – either do not exist, or have only been formally introduced without being really implemented.

35. Furthermore, there are problems arising from the fact that there are no agreements between the contracting, the territorial and the home states, setting out clear rules for the activities of PMSCs.

36. Problems related to PMSCs activities include, inter alia:

– a lack of democratic monitoring;

– a lack of transparency;

– unclear responsibilities;

– a lack of traceability as regards responsibility;

– a lack of accountability at the political level, as well as with regard to criminal law and civil law.

37. A few examples may illustrate this.

38. PMSCs are generally private service organisations which conclude contracts with employers under civil law and are thus protected by contractual secrecy. As a result, the usual mechanisms of democratic accountability are ineffective, and democratic investigation into contract conditions and fulfilment is almost impossible:

– parliamentary oversight is extremely complicated since the government can provide information about contract contents only to a limited degree;

– the judiciary cannot play any active role as, in accordance with the principles of the rule of law, the fulfilment of the contract does not lie within its sphere of jurisdiction;

– the audit office is not in a position to effectively investigate the lawfulness of use of public funds because it lacks sufficient information about contract conditions;

– the media and the public lack information in order to supervise the government effectively;

– furthermore, the executive itself is hardly in a position to exercise effective control over the fulfilment of concluded contracts in terms of quantity and quality, since it often does not have the adequate personnel at its disposal and, moreover, it only has a limited capacity to conduct oversight or investigations into activities of PMSCs abroad.

39. There have been a number of spectacular cases where PMSCs and their employees have disregarded rules of criminal law and/or were involved in human rights abuses (e.g. acts of torture committed by the employees of the US companies CACI International and Titan in Abu Ghraib prison in Iraq; involvement of DynCorp personnel in sexual abuses in Bosnia and Herzegovina; shooting of 17 civilians in 2007 by employees of Blackwater in Baghdad).

40. It is not that there is no legal basis for bringing crimes to justice, or for making individuals liable for crimes committed, but that the enforcement of law is difficult or even impossible. This is due to an unclear distribution of competences and responsibilities within and between the states involved. As a result, crimes cannot be attributed convincingly, accountability is lacking, perpetrators cannot be judged and impunity prevails.

41. The growing recourse to services provided by PMSCs presents a considerable risk for the democratic order within nations as well as for the peaceful co-existence between states.

42. In some situations, it may appear more advantageous to governments to use services of PMSCs in order to be able to react to certain conflicts in a quick and “non-bureaucratic” manner, or to avoid embarrassing situations, or to secure national and/or particular internal groups’ interests unofficially. In this way, the government can avoid debates in parliament (especially with the opposition), it will not have to face public opinion (especially when the loss of lives has to be accounted for), and it will not have to respond to the questions of international bodies or justify its way of acting.

43. As a consequence, the requirement of parliamentary approval for the use of military force which exists in many states, in particular in Europe, can be by-passed. In such cases the parliament concerned will not only be unable to take a decision, but often will not even be informed of the action prepared or taken “in the name of the nation”.

44. In addition, the role of public opinion, which is essential for the functioning of democracy, can be sidelined or even ignored by their own government.

45. Moreover, it can be observed, in particular in cases where PMSCs perform their services abroad, that military and police tasks become increasingly mixed. As a consequence, the division of areas of competence of police and military forces in territorial states where foreign PMSCs operate, has a tendency to fade away and thereby fundamental rules of the constitution are disregarded.

46. In extreme cases, uncontrolled operations of PMSCs – as many examples show – result in a militarised society.

4. Summary and conclusions

47. The growing and largely uncontrollable presence of PMSCs in an increasing number of countries is a challenge to the internal and external monopoly of the state on the use of force, leading to the loss of effectiveness of the latter.

48. The operational activities of these private companies, often performed in a violent manner and beyond any state and public control, are more and more cause for concern, as they:

– weaken the democratic oversight and control of the use of force by private actors;

– challenge the democratic order of the states;

– undermine universal international law and in particular international humanitarian law;

– infringe, in an increasing number of cases, basic human rights principles and key international documents in this field;

– contribute to strengthening the influence of private companies and political elites on governmental choices in foreign, security, interior and defence policies, in contradiction with democratic principles;

– circumvent rules of civil and criminal law;

– endanger the peaceful co-existence between states.

49. In order to reverse these dangerous trends, the following avenues should be explored:

50. First of all, states' demand for the services offered by PMSCs must be reduced. In the military sphere, this could be achieved by reorganising national troops, creating synergies and establishing international co-operation.

51. Secondly, a comprehensive mechanism should be developed for monitoring these companies at national and international level. It should include the following elements:

a. At national level:

b.

– need to identify private contractors' tasks and remits, as well as the criteria governing their authorisation and activities;

– approval process, licensing of, and registration system for PMSCs;

– legislation and regulations governing national PMSCs who wish to export their services: authorisation for specific contracts and projects, providing for supervision, monitoring and the identification of responsibilities;

– regulations governing the intervention of foreign PMSCs on national territory;

– rules and regulations as well as a code of conduct for national business enterprises and organisations working abroad who wish to employ PMSCs for security purposes (for example compulsory registration with the Ministry of Foreign Affairs).

c. At international level:

d.

– taking appropriate steps to ensure that, insofar as possible, all states introduce rules and regulations for the use of PMSCs on their national territory (as in the national model above);

– multilateral and bilateral intergovernmental or interstate agreements concerning the monitoring of such companies (including the setting up of monitoring mechanisms and cooperation bodies);

– uniform rules for the use of the services of these companies by international organisations (e.g. UN);

– regional regulations governing PMSCs (e.g. a Council of Europe Convention, or Recommendation by the Committee of Ministers);

– steps should be taken by the UN to specify the international law provisions which apply to PMSCs.

52. Thirdly, political priorities in the handling of crises must be changed. The trend towards militarisation must be stopped and reversed. Priority should be given to civilian prevention efforts and peaceful conflict resolution (even when using military force) and the long-term handling of conflicts (inter alia through "hybrid missions").

5. Recommendations

53. It is advisable that the Council of Europe elaborates a binding legal instrument (convention) to regulate relations of its member states with PMSCs.

54. Prior to such convention, in order to achieve a sense of common purpose, the Committee of Ministers could adopt a Recommendation to the member states.

55. These documents should include the following elements:

– definition of those areas of internal and external security that must remain a sovereign function of the state and that are 'inherently governmental' in character;

– standardisation of the principles for the safeguard of the state monopoly on the use of force;

– clear affirmation of the dividing line between internal and external security as established by law and the constitution;

– confirmation of priority of conflict prevention to rapid reaction and of the civilian handling of crises instead of the solution of conflicts by use of force;

– standardisation of the principles for the use of PMSCs;

– determination of criteria regarding the activities, obligations, duties, responsibilities including accountability for breaches of International humanitarian law and Human Rights abuses and the area of tasks and competence of PMSCs;

– definition of criteria that must be applied to admission of PMSCs to carry out military and security services;

– introduction of a registration and licensing system for PMSCs;

– adjustment of criminal law (especially rules of law enforcement) regarding criminal acts committed by PMSCs and their personnel;

– introduction of specific rules for PMSCs in civil law (especially as regards conditions of liability);

– setting up of a legal and regulatory framework for PMSCs who wish to export their services (e.g. mission and project-oriented authorisations which provide democratic oversight, control, supervision, accountability and specification of responsibilities. It would be advisable to combine such regulations with the existing arms export regimes);

– requirement of parliamentary approval for missions of PMSCs outside their national territory. Provisions establishing co-operation, information sharing and assistance between states involved;

– laws and rules governing deployment of national military and police forces abroad must be made equally applicable to PMSCs;

– introduction of rules and regulations (e.g. code of conduct and requirement to register with the foreign ministry) for business companies, non-governmental or humanitarian organisations etc. who wish to contract PMSCs for their security purposes abroad;

– obligation on the part of the PMSC sector to set up a framework for self-control, including a binding code of conduct and the establishment of a "PMSC-Ombudsman" and/or a "PMSC violations investigation team";

– regulations that include the following elements: an effective vetting and training system for PMSC personnel; effective oversight and investigatory system; and an effective enforcement system.

56. In the meantime, Council of Europe member states should be invited to endorse the "Montreux Document" which sums up legal obligations under the existing international law and best practices.

Reporting Committee: Political Affairs Committee.

Reference to Committee: Reference N° 3370 of 1 October 2007

Draft recommendation adopted by the Committee on 16 December 2008

Members of the Committee: Mr Göran **Lindblad** (Chairperson), Mr David **Wilshire** (Vice-Chairperson), Mr Björn Von Sydow (Vice-Chairperson), Mrs Kristina **Ojuland** (Vice-Chairperson), Mrs Fátima Aburto Baselga, Mr Françis Agius (alternate: Mr Joseph **Debono Grech**), Mr Miloš Aligrudić, Mr Alexander Babakov, Mr Denis **Badré**, Mr Ryszard Bender, Mr Fabio Berardi, Mr Radu Mircea Berceanu, Mr Andris **Bērzinš**, Mr Alexandër Biberaj, Mrs Gudfinna Bjarnadottir, Mr Pedrag Boškovic, Mr Luc **Van den Brande**, Mr Mevlüt **Çavuşoğlu**, Mr Lorenzo Cesa (alternate: Mr Pietro **Marcenaro**), Ms Anna **Čurdová**, Mr Rick Daems, Mr Dumitru Diacov, Ms Josette Durrieu, Mr Frank Fahey, Mr Joan Albert Farré Santuré, Mr Pietro Fassino (alternate: Mr Andrea **Rigoni**), Mr Per-Kristian Foss, Ms Doris Frommelt, Mr Jean-Charles Gardetto, Mr Charles Goerens, Mr Andreas **Gross**, Mr Michael **Hancock**, Mr Davit Harutiunyan, Mr Joachim Hörster, Mrs Sinikka **Hurskainen**, Mr Tadeusz **Iwiński**, Mr Bakir Izetbegović, Mr Michael Aastrup Jensen, Mrs Birgen **Keleş**, Mr Victor Kolesnikov, Mr Konstantion Kosachev (alternate: Mr Sergey **Markov**), Mr Jean-Pierre Kucheida, Ms Darja Lavtižar-Bebler, Mr René van der Linden, Mr Dariusz **Lipiński**, Mr Juan Fernando López Aguilar (alternate: Mr Pedro **Agramunt**), Mr Younal Loutfi, Mr Gennaro **Malgieri**, Mr Mikhail Margelov, Mr Dick Marty, Mr Frano Matušić, Mr Mircea Mereută, Mr Dragoljub Mićunović, Mr Jean-Claude **Mignon**, Ms Nadezhda Mikhailova, Mr Aydin Mirzazada, Mr João Bosco Mota Amaral, Mrs Miroslava **Nemcova**, Mr Zsolt Németh, Mr Fritz Neugebauer, Mr Hryhoriy **Omelchenko**, Mr Theodoros Pangalos, Mr Aristotelis Pavlidis, Mr Ivan **Popescu**, Mr Christos Pourgourides, Mr John **Prescott**, Mr Gabino **Puche**, Mr Oliver Sambevski, Mr Ingo **Schmitt**, Mr Samad Seyidov, Mr Leonid Slutsky, Mr Rainder Steenblock, Mr Zoltán **Szabó**, Mr Mehmet Tekelioğlu, Mr Han Ten Broeke, Lord Tomlinson (alternate: Mr Rudi **Vis**), Mr Petré **Tsiskarishvili**, Mr Mihai Tudose, Mr José Vera Jardim, Ms Biruté Vesaité, Mr Luigi **Vitali**, Mr Wolfgang **Wodarg**, Ms Gisela Wurm, M r Boris Zala.

Ex-officio: MM. Mátyás **Eörsi**, Tiny Kox

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat to the Committee: Mr Perin, Mrs Nachilo, Mr Chevtchenko, Mrs Sirtori-Milner, Ms Alleon