



Key tools of UNODC to promote international cooperation in criminal matters, including mutual legal assistance: General considerations and relevance to operations of PMSCs

Dimosthenis CHRYSIKOS

**Division for Treaty Affairs, Organized Crime and
Illicit Trafficking Branch, United Nations Office on
Drugs and Crime (UNODC)**

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Pertinent international legal obligations relating to private military and security companies

A. Contracting States

5. Contracting States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a prima facie case, or to an international criminal tribunal.

6. Contracting States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.



Pertinent international legal obligations relating to private military and security companies

B. Territorial States

11. Territorial States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a prima facie case, or to an international criminal tribunal.

12. Territorial States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.



Pertinent international legal obligations relating to private military and security companies

C. Home States

16. Home States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a prima facie case, or to an international criminal tribunal.

17. Home States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.



Pertinent international legal obligations relating to private military and security companies

D. All other States

20. All other States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a prima facie case, or to an international criminal tribunal.

21. All other States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.



Good practices relating to private military and security companies

A. Contracting States

22. When negotiating agreements with Territorial States which contain rules affecting the legal status of and jurisdiction over PMSCs and their personnel: a) to consider the impact of the agreements on the compliance with national laws and regulations; b) to address the issue of jurisdiction and immunities to ascertain proper coverage and appropriate civil, criminal, and administrative remedies for misconduct, in order to ensure accountability of PMSCs and their personnel.

23. To cooperate with investigating or regulatory authorities of Territorial and Home States, as appropriate, in matters of common concern regarding PMSCs.



Good practices relating to private military and security companies

B. Territorial States

49. To provide for criminal jurisdiction in their national legislation over crimes under international law and their national law committed by PMSCs and their personnel and, in addition, to consider establishing corporate criminal responsibility for crimes committed by the PMSC, consistent with the Territorial State's national legal system.

50. To provide for non-criminal accountability mechanisms for improper and unlawful conduct of PMSC and its personnel, including: a) providing for civil liability; b) otherwise requiring PMSCs, or their clients, to provide reparation to those harmed by the misconduct of PMSCs and their personnel.

51. When negotiating agreements with Contracting States which contain rules affecting the legal status of and jurisdiction over PMSCs and their personnel: a) to consider the impact of the agreements on the compliance with national laws and regulations; b) to address the issue of jurisdiction and immunities to ascertain proper coverage and appropriate civil, criminal, and administrative remedies for misconduct, in order to ensure accountability of PMSCs and their personnel.

52. To cooperate with investigating and regulatory authorities of Contracting and Home States in matters of common concern regarding PMSCs.



Good practices relating to private military and security companies

C. Home States

71. To provide for criminal jurisdiction in their national legislation over crimes under international law and their national law committed by PMSCs and their personnel and, in addition, consider establishing: a) corporate criminal responsibility for crimes committed by the PMSC, consistent with the Home State's national legal system; b) criminal jurisdiction over serious crimes committed by PMSC personnel abroad.

72. To provide for non-criminal accountability mechanisms for improper and unlawful conduct of PMSCs and their personnel, including: a) providing for civil liability; b) otherwise requiring PMSCs to provide reparation to those harmed by the misconduct of PMSCs and their personnel.

73. To cooperate with investigating or regulatory authorities of Contracting and Territorial States, as appropriate, in matters of common concern regarding PMSCs.



Montreux Document - Preface

The following understandings guided the development of this document:

5. That existing obligations and good practices may also be instructive for post-conflict situations and for other, comparable situations; however, that international humanitarian law is applicable only during armed conflict.

The good practices may provide useful guidance for States in their relationships with PMSCs also operating outside of areas of armed conflict



Montreux Document – Indicative thematic areas beyond armed conflicts and relating to international cooperation

- Scope of offences in question: international crimes, violations of international humanitarian law and international human rights law; serious crimes established in international treaties (transnational criminal law).
- Jurisdictional issues.
- Liability of legal persons and international cooperation.
- Detention centres and transfer of prisoners.
- The use of special investigative techniques and admissibility of evidence.



United Nations Convention against Transnational Organized Crime

Scope of application

- Convention applies to the “prevention, investigation and prosecution” of
 - **offences established by the convention** (Art. 5, 6, 8 and 23)
 - Other **serious crimes** defined in Art.2
 - **Protocol offences** (Protocols, Art.1)
- Only when:
 - **transnational in nature**
 - an **organized criminal group** is involved



United Nations Convention against Transnational Organized Crime

- **Serious crime (Art.2.b)**
 - conduct designated by national law as an offence
 - punishable by deprivation of liberty of at least four years



United Nations Convention against Transnational Organized Crime

- Offence is *transnational in nature* if:
 - Committed in more than in one State;
 - Substantial part of preparation, planning, direction or control takes place in another state;
 - Involves an organized criminal group engaging in criminal activities in more than one State; or
 - Has substantial effects in another State. (Art.3.2)



United Nations Convention against Transnational Organized Crime

- **Organized criminal group**
 - structured group
 - three or more persons
 - existing for a period of time
 - acting in concert
 - aim of committing:
 - *serious crime(s)* or Convention offences
 - to obtain direct or indirect financial or other material benefit (Art. 2.a)



Offences established by the Convention

- Convention requires States Parties to have four basic offences:
 - Participation in an organized criminal group (Art. 5)
 - Laundering of proceeds of crime (Art. 6)
 - Corruption (Art. 8)
 - Obstruction of justice (Art. 23)



UNCAC, Chapter III: Criminalization and law enforcement

Mandatory Offences

- Bribery of National Public Officials (Art. 15)
- Active Bribery of Foreign Public Officials (Art.16, para.1)
- Embezzlement, Misappropriation or Other Diversion of Property (Art. 17)
- Laundering of proceeds of crime (Art. 23)
- Obstruction of Justice (Art. 25)
- Participation in such offences (Art. 27, para. 1)



Optional Offences

- Passive Bribery of Foreign Public Official (Art.16)
- Trading in Influence (Art. 18)
- Abuse of Functions (Art. 19)
- Illicit Enrichment (Art. 20)
- Bribery in Private Sector (Art. 21)
- Embezzlement of Property in Private Sector (Art. 22)
- Concealment (Art. 24)
- Attempt / preparation of UNCAC offences (Art.27, paras. 2-3)



Jurisdiction (art.15 of UNTOC; art. 42 of UNCAC)

- **Mandatory/compulsory jurisdiction**
 - offences on a State's territory, vessel or aircraft
 - where offender is not extradited because of nationality
- **Optional jurisdiction**
 - offender or victim is national of the State
 - offence of participating in organized criminal group outside the State with a view to committing serious crime within the territory of the State
 - participation in money-laundering outside the State with a view to laundering proceeds within the territory of the State
 - where offender is not extradited on other grounds



International Cooperation

- Extradition (art. 16 UNTOC; art. 44 UNCAC)
- Transfer of sentenced persons (art.17 UNTOC; art. 45 UNCAC)
- Mutual legal assistance (art. 18 UNTOC; art. 46 UNCAC)
- Transfer of criminal proceedings (art.21 UNTOC; art. 47 UNCAC)
- Joint investigations (art.19 UNTOC; art. 49 UNCAC)
- Special investigative techniques (art.20 UNTOC; art. 50 UNCAC)
- Law enforcement cooperation (art.27 UNTOC; art. 48 UNCAC)



Extradition (art.16 UNTOC; art. 44 UNCAC)

- Extradition available for all Convention and Protocol offences
- Double criminality requirement
- No refusal for fiscal offences
- Limitations/conditions in domestic law and existing treaties apply
- If extradition of nationals is not possible, Parties should instead initiate domestic prosecution (*aut dedere aut judicare*)
- Conditional surrender for purposes of prosecution only is possible
- Simplification of evidentiary requirements
- Expedited extradition procedures
- Before refusing an extradition request, the States involved should consult



Extradition (art.16 UNTOC)

- Extended scope of application
 - Condition of transnationality not strictly necessary
 - The person sought should simply located in the territory of the requested State party



Mutual legal assistance (art. 18 UNTOC; art. 46 UNCAC)

- “States Parties shall afford one another **the widest measure of mutual legal assistance...**”
- Most requirements are operational, not legislative, but Parties must have legal powers needed to produce and deliver assistance
- States Parties are required to designate a *central authority* to receive, execute or transmit legal assistance requests
- No right to refuse MLA on the ground of bank secrecy



Mutual legal assistance (art. 18 UNTOC; art. 46 UNCAC)

- “States Parties shall afford one another **the widest measure of mutual legal assistance...**” in relation to investigations, prosecutions and judicial proceedings for offences involving legal persons.
- Legal liability of legal persons: art. 10 UNTOC; art. 26 UNCAC).
- Article 43, paragraph 1 UNCAC: international cooperation also in relation to civil and administrative proceedings relating to corruption.



Transfer of persons under detention or for enforcing a sentence (role of PMSCs in the field of security management of prison capacities)

- Transfer of sentenced persons (art. 17 UNTOC, art. 45 UNCAC)
- Mutual legal assistance: transfer of detained persons to provide evidence to the requesting State (art. 18, paras. 10-12 UNTOC); art. 46, paras. 10-12 UNCAC)
- Extradition: anticipated prison services in the requesting States (scrutiny and regulatory control)



UNODC and international cooperation: tools and publications

- Model Treaties (extradition; mutual assistance in criminal matters; transfer of criminal proceedings; model bilateral agreement on transfer of prisoners);
- Model laws (extradition; mutual legal assistance);
- Manual on Extradition and Mutual Assistance in Criminal Matters;
- Manual on International Cooperation for Purposes of Confiscation;
- Handbook on Transfer of Sentenced Persons;
- MLA Request Writer Tool;
- Legislative Guide UNTOC;
- Legislative Guide UNCAC;
- UNCAC State of Implementation Guide;
- SHERLOC Knowledge Management Portal;
- Directories of Central Authorities.



UNODC and international cooperation: tools and publications

- <http://www.unodc.org/unodc/en/international-cooperation/publications.html>
- <http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>
- <http://www.unodc.org/unodc/en/treaties/CAC/legislative-guide.html>
- http://www.unodc.org/unodc/en/corruption/tools_and_publications/state_of_uncac_implementation.html
- <https://www.unodc.org/cld/v3/sherloc/>



The work in Vienna on aspects relating to civilian private security companies

- Resolution 18/2 of the Commission on Crime Prevention and Criminal Justice (2009): Mandate to establish an open-ended intergovernmental expert group to study the role of civilian private security services and their contribution to crime prevention and community safety and to consider issues relating to their oversight by competent State authorities;
- Outcome of the work of the EGM (2011) [not including private military companies (PMC) or private military and security companies (PMSC), even if part of their operations may fall within the scope of CPSS];
- UNODC study on “State regulation concerning civilian private security services and their contribution to crime prevention and community safety” (2014) [again, does not concern private military security services operating with expressly or implicitly offensive mandates].



Thank you for your attention



Contact Information:

Organized Crime and Illicit Trafficking
Branch

Division for Treaty Affairs
UNODC, Vienna

dimosthenis.chrysikos@un.org

Tel.: +43-1-26060-5586