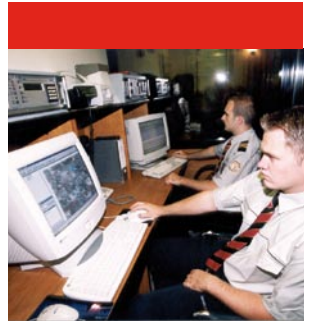
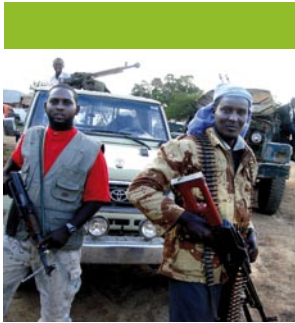




Small Arms and Private Security Companies Parliamentary Handbook 2010





The Parliamentary Forum on Small Arms and Light Weapons supports parliamentarians in their small arms related work, contributes to the advancement of the small arms agenda, and provides space for parliamentarians and civil society to meet and join forces.

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Armed private security - a global trend



In October 2007 the Board of the Parliamentary Forum on Small Arms and Light Weapons adopted a Policy Statement on Small Arms and Light Weapons and the Privatization of the Security Sector. The Forum acknowledged the negative impact that the private security sector can have, if unregulated, on security governance, fundamental human rights and the rule of law. Therefore the Forum is now ready to engage with parliaments and parliamentarians across all regions to jointly address these challenges, and to ensure that we place the control and use of weapons by Private Security Companies firmly within the Small Arms and Light Weapons agenda.

The Forum recognises that the privatisation of security can often make a valuable contribution by increasing the state's and public institution's effectiveness in the realm of security. Yet it is the lack of legitimacy and accountability that has resulted in cause for concern, hence the requirement for effective oversight mechanisms. This handbook does not elaborate on the positive contributions that Private Security Companies make to public security; it focuses on the risks involved of having a weak or inadequate legal framework for these expanding activities

The privatization of the security sector is a very important issue related to democracy, which is why we – the politicians – have a duty to become involved with it. We, as the representatives of the people, are one of the most relevant actors in this area and must act as guarantors of law and effective human rights.

I hope that this handbook will provide parliamentarians with background information that they may need to take an effective parliamentary interest in this important national and global issue.

Daisy Tourné

31 January 2010

Member of Parliament of Uruguay and
President of the Parliamentary Forum on SALW 2006 - 2007



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Acronyms

AU	African Union
DAC	Development Assistance Committee of OECD
MoD	Ministry of Defence
MoI	Ministry of Internal Affairs
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
PMC	Private Military Companies
PMSC	Private Military and Security Companies
PSC	Private Security Companies
RRU	Rapid Response Unit
SALW	Small Arms and Light Weapons
SSR	Security System Reform ¹

¹ Alternatively Security Sector Reform. The terms are used interchangeably.



Small Arms² and PSC Parliamentary Handbook

1 What are Private Security Companies?

The work of Private Security Companies (PSCs) covers a broad spectrum of security services. Contracted services include but are not limited to; armed and unarmed guards, security training, security management consulting as well as logistics, risk management, governance and reconstruction. The principal private security contractors can be identified as follows:

- Mercenaries: Individuals fighting for and motivated by private gain.
- Private Military Companies (PMC): Registered businesses with a corporate structure that offer specialised services related to war and conflict.
- Private Security Companies (PSC): These share the same corporate attributes and structures as Private Military Companies. The major difference is that Private Security Companies are primarily concerned with crime prevention and public order services.

Roles of PSC

- Armed Guarding
- Close Protection
- Humanitarian Aid Protection
- Industrial Espionage
- Mobile Armed Escorts
- Private Investigations
- Rapid Response Units
- Security Logistic Support
- Security Management
- Security Training
- Static Site Protection
- Surveillance

Although a distinction of the above-mentioned actors can be analytically beneficial, operational experience shows that private security is interlinked. For example, mercenaries are at times hired by PMCs and PSCs. Further, the engagement of PSCs can have serious impact on an ongoing conflict, making the boundaries between protective and combat related services blurred.

2 The Use of Private Security Companies

Central to all PSCs is that they operate in contexts where the State lacks the capacities and/or resources to provide effective security for its citizens and its institutions. In South Africa private security guards exceed the police force in numbers. This is also true for the US, the UK, Israel and Germany. In Eastern Europe the private security industry is a major employer and security provider. Contrary to public belief, not

² For the purposes of this handbook the term 'Small Arms' includes small arms, light weapons, ammunition and explosives of 100mm calibre and below.



only governments but also international organisations, NGOs, humanitarian agencies, international media and multinational corporations all contract PSCs.

Accusations of misconduct and unprofessionalism, or inappropriate links between PSC and political parties, ethnic groups, paramilitaries or criminal groups are all too frequent. In countries in Africa where armed conflict rages, often without clear political or ideological objectives, privately contracted individuals continue to be key components of the conflict landscape. For example, in Somalia, private security contractors have evolved into an informal sector and it is widely understood that using PSCs is the only way for international actors to implement their projects. Armed guards and escorts are omnipresent. Just as in Chechnya and Ingushetia these paid security services are typically based on arrangements with local groups, and it is understood that failure to hire them will result in attacks.

Contrary to the notion of security being a public good, Latin America is an example of how in many cases security is conditioned by wealth. Corruption of the police force and the perception of the ineffectiveness of the existing security providers are both reinforced by citizens turning to private security companies. Humanitarian organisations in the politically stable context of Central America, have reported that the local security culture dictates armed protection, in which doing without arms would render organisations as 'soft targets'.

The private security industry can sometimes have unjustified leverage in security sector development as well as challenging law enforcement work and undermining the notion of universal access to security and justice. The lack of control and oversight of PSCs can lead to the exacerbation of the root causes of a conflict, contribute to abuses of human rights, the movement of populations, and sometimes the outright collapse of affected States.

3 What are the linkages between Small Arms and Private Security Companies?

In 1977 the Organisation of African Unity (now the African Union) adopted the *Convention for the Elimination of Mercenaries in Africa*. In 1998 the UN General Assembly adopted the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* making mercenary activities illegal. Due to the vague definitions in the Conventions neither of these are applicable to the contemporary work of PSCs. This is also true in situations when PSCs have been hired for combat in conflict contexts. The international legal parameters for the private security sector continue being notably unclear.



However, an attempt to overcome this vacuum has been initiated. In 2008 the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict*³ was agreed by 17 States. The Montreux Document is the first international document to describe international law as it applies to the activities of private military and security companies (PMSCs), whenever these are present in the context of an armed conflict. Although the Montreux Document is not legally binding it does underline that international law, in particular international humanitarian law and human rights law, does have a bearing on private security contractors.

4 What are the linkages between Small Arms Control and Private Security Companies?

There has been a dramatic increase in the number of PSC providers and services offered over the last decade, with the roles of PSCs growing in the development and implementation of security services. There is little evidence to suggest that this growth is anywhere near levelling off or decreasing. This increase of PSC may be linked to an increase of armed individuals delivering contracted security services, which in turn can have negative impacts on the society as a whole.

Theoretically PSC employees should be subject to domestic criminal law and civil liability in the contracting country, the country of operation and the employee's country of citizenship. However, the absence of rules governing PSCs undermines enforcement. In the context of SALW control the lack of oversight and accountability of armed private security personnel can have long lasting negative impacts on the security environment. Furthermore, the issue of minimal use of force and the use of less-lethal weapons is central to the discussion about small arms and private security contractors. Policy makers and the public must see the question of using less-lethal weapons as an alternative to the use of deadly force, rather than a lesser step in the context of security.

Recent operational experience from SALW Control programmes has identified a range of areas within a SALW control framework which are linked to PSCs and the improved professionalism of PSCs:

³ The Montreux Document is divided into two parts. Part I differentiates between contracting states, territorial states and home states. For each category of states, Part I recalls pertinent international legal obligations according to international humanitarian law and human rights law. The question of attribution of private conduct to the state under with customary international law is also addressed. In addition, Part I devotes sections to the pertinent international legal obligations of 'all other States', to the duties of PMSCs and their personnel, as well as to questions of superior responsibility. Part II of the Montreux Document also differentiates between contracting States, territorial States and home States. The good practices draw largely from existing practices of States not only directly with regard to PMSCs but also, for instance, from existing regulations for arms and armed services. They range from introducing transparent licensing regimes to ensuring better supervision and accountability - so that only PMSCs which are likely to respect international humanitarian law and human rights law, through appropriate training, internal procedures and supervision, can provide services during armed conflict.



Areas	Issues	Remarks
Regulation	<ul style="list-style-type: none"> The establishment of international industry standards. A legal framework defining the roles of private and public security providers, establishing background checks of owners/employees. Development of licensing systems that are time-sensitive. Procurement policies should include financial and criminal sanctions. 	Regulatory authorities and the PSC sector should be involved. This should discourage ethnic orientation and affiliation with paramilitaries or rebels. Links with political parties should be prohibited. Personnel should be licensed according to objective criteria.
Control	<ul style="list-style-type: none"> Establish laws with strict guidelines for the use of minimal force of security providers. Initiating and proposing improved international agreements. 	Less-lethal weapons should be encouraged. Regular inspections of PSC armories should be instituted.
Oversight	<ul style="list-style-type: none"> Oversight processes should be monitored and reviewed regularly States should establish and oversee training for PSC staff that includes international humanitarian law, human rights law, first aid and gender issues. Laws should establish minimum requirements for transparency and accountability 	Complaints of illegal behaviour by PSCs should be investigated promptly;
Synergies	<ul style="list-style-type: none"> The issue of PSCs should be incorporated into all SSR and SALW control programmes. 	SALW Surveys should include the subject of PSCs.

Table 1: PSC regulation in the context of SALW control

5 The role of parliaments in the Small Arms and Private Security Companies issue

To cement human security within State's security agenda and to ensure that PSCs are subject to the rule of law there is a requirement for effective and efficient executive bodies. This requires representation and accountability: two of the core functions of parliaments. Parliaments connect citizens with the State and can hold governments to account for their actions or lack of action. Parliament is a natural place for mediation, where competing points of view can be articulated and where dialogue can build consensus. These core functions are essential in mitigating and resolving human security issues.

The effective control and management of small arms linked to the agenda of regulating PSCs also fall within these responsibilities, and parliaments are strategically positioned in assisting government in formulating and then monitoring the small arms control and relevant PSCs management policies. Key areas where parliaments may exercise their power and influence include:

- **Establishment of an effective legislative framework.** In all countries that PSCs operate from or in, legislation governing their activities is often weak. Regulation at the national level is key to achieving effective control of the PSCs. In this regard Parliaments have a crucial role to play. They may also play a role at the international level by initiating or proposing improved international agreements.
- **Oversight and accountability of the private security sector.** Parliaments should ensure that the parliamentary committee on security and defence engages with the government and relevant regulation bodies in continuous debate on the regulation of the private security industry.
- **Introduce a regulatory system.** Parliaments are in a strategic position to support the introduction of a regulatory system to administrate the implantation of relevant legislation, and in particular, the registering and licensing of individuals and private security companies.
- **Endorsement of the Montreux Document.**⁴ Parliaments should make it a national priority to endorse the Montreux Document, which contains rules and good practice relation to PMCs and PSCs operating in armed conflict settings. The Montreux Document is intended to promote respect for international humanitarian law and human rights law. The provisions of the document and other relevant agreements should be incorporated into appropriate and timely domestic legislation and then implemented.⁵

6 The role of parliamentarians in the Small Arms and Private Security Company issue

There is little evidence that the growth of private security contractors will decrease. This situation is raising many difficult governance and policy challenges in terms of governance and accountability. Policy making on small arm issues will require the understanding of which role PSCs play and how to best regulate them. Parliamentarians have at their disposal many effective instruments that they can apply to address the issue of PSCs and small arms:

⁴ Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict

⁵ A list of Resolutions, instruments, frameworks and agreements on tackling the issue of Small Arms and SSR is at Annex B. This list does not include single thematic issue resolutions etc within the wider framework of SSR. Parliamentary Forum Handbooks on SALW and Conventional Ammunition Stockpiles provide the detailed references on these specific issues.



- Parliamentarians in their **representative role** can raise issues of concern, (the impact of unregulated PSCs, the consequences of armed PSC personnel etc), with the executive. They can then raise awareness of the issue with the media, and within their constituency and civil society, by identifying threats posed by the unregulated PSC. Scrutiny by the media and civil society has proven to be one of the most effective ways to control the private security industry. Further, parliamentarians may influence the government to act by making a political issue of the effective control and management of small arms within the framework of private security in general and PSCs in particular.
- Parliamentarians in their **legislative role** can introduce new legislation, or propose a thorough review of existing legislation on SALW related issues linked to PSCs.
- Parliamentarians in their **oversight role** can ensure that the executive honours and implements its international commitments (e.g. treaties, conventions etc). They may also play a role at the international level by encouraging their governments to enter and initiate negotiations for international agreements. They should also ensure that the issue is considered regularly and effectively by the relevant parliamentary committees, and that appropriate budgetary levels are allocated to the issue by the Ministry of Finance.

Annex C suggests a more detailed range of activities that parliamentarians may engage in to support the regulation of PSCs within small arms control and armed violence reduction initiatives and activities.



Annex A - Small arms and PSC definitions⁶

Close protection

The provision of armed or unarmed personal protection to an individual (the principal).

Immunity agreement

A legal agreement, between states, or between states and companies, which exempt private security companies from prosecution under the laws of the country in which it operates.

Mercenary

Individual combatants fighting in foreign conflicts for financial gain.

Note: Mercenaries are defined within international humanitarian law. There are United Nations and Organization of African Unity Conventions⁶ that ban their use.

Private Military Company (PMC)

A company that provides military services for profit.

Note: This normally can vary from the offer of fighting through to military training and logistics support.

Private Security Company (PSC)

A company that provides security services (generally of a police type) for profit to other organisations and/or individuals.

Rapid Response Units (RRU)

Mobile units that respond to a specific situation or incident.

SALW Control

Activities that, together, aim to reduce the social, economic and environmental impact of uncontrolled SALW proliferation and possession.

Note: These activities include cross-border control issues, legislative and regulatory measures, SALW awareness and communications strategies, SALW collection and destruction operations, SALW survey and the management of information and SALW stockpile management.

⁶ These definitions have been primarily obtained from ISACS 01.20 *Glossary of terms and definitions*.



SALW Survey

A systematic and logical process to determine the nature and extent of SALW spread and impact within a region, nation or community in order to provide accurate data and information for a safe, effective and efficient intervention by an appropriate organisation.

Note: The following terms have been used in the past, though the preferred one is as indicated above: 'national assessment', 'base-line assessment' and 'mapping'.

Small Arms and Light Weapons (SALW)

Any man-portable lethal weapon, (including its ammunition), that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas.

Note: Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899.

Note: 'Small arms' are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns.

Note: 'Light weapons' are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.

Static Security

The security of fixed assets, normally a building or a warehouse.

Annex B - International resolutions, agreements, frameworks and instruments

Resolutions, instruments, frameworks and agreements that relate directly to the tackling of the Small Arms and GPSC issue are very limited. Although there are a wider range of resolutions, frameworks, agreements and instruments relating to SALW; these can be found in the SALW Parliamentary Handbook⁷

RESOLUTION, FRAMEWORK, INSTRUMENT OR REPORT	SUMMARY
<p>The Montreux Document on Operations of Private Military and Security Companies. 2008.</p>	<p>17 States⁸ finalised the so-called 'Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict'. The Montreux Document is the first international document to describe international law as it applies to the activities of private military and security companies (PMSCs) whenever these are present in the context of an armed conflict. It also contains a compilation of good practices designed to assist states in implementing their obligations under international law through a series of national measures.</p>
<p>UNGA International Convention against the Recruitment, Use, Financing and Training of Mercenaries. 1998.</p>	<p>Mandates that State parties have an obligation to adopt the provision of the Convention in national laws for them to enter into effect. The definition of mercenaries is vague, a small number of countries have ratified it. None of the major Western powers are signatories.</p>
<p>UNGA Resolution 34/169 Code of Conduct for Law Enforcement Officials. 2009.</p>	<p>The resolution in which the Code was adopted states that the functions of law enforcement in the defence of public order, and the manner in which those functions are exercised, has a direct impact on the quality of life for individuals, as well as for society as a whole. The code enshrines the norms that the functioning of law enforcement services is essential not only for an effective criminal justice policy but also for the protection of the fundamental human rights of individuals.</p>
<p>UNHCR Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁹. 1990.</p>	<p>Outlines the international norm that as far as possible, non-violent means must be used before shots are fired. Where the use of guns is unavoidable, law-enforcement officers are supposed to exercise restraint in proportion to the seriousness of the offence and respect and preserve human life.</p>

⁷ SALW Parliamentary Handbook. SALW PF and SEESAC. ISBN 86-7728-033-2. 30 October 2006.

⁸ Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom, Ukraine, and the United States of America

⁹ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.



Annex C – What you can do as a parliamentarian

AREA	PARLIAMENTARIANS' ROLES		
	REPRESENTATIVE	LEGISLATIVE	OVERSIGHT
<p>Legislation and Regulation</p>	<ul style="list-style-type: none"> ■ Engage with relevant stakeholders in the discussion of developing a licensing system with audits of the services delivered by PSCs; minimum requirements for PSC licensing in regard to employment of staff; corporate structure, competencies and its policy towards the law on armed conflict and human rights. ■ Support the Montreux Document on Private Military and Security Companies. 	<ul style="list-style-type: none"> ■ Establish a process to develop legislation to regulate PSCs including: <ul style="list-style-type: none"> ■ Clear definition of what constitutes a PSC; ■ Subject their activity both domestically and internationally, to national criminal and civil liabilities; ■ Regulate all stages of contract management including subcontracting, financial auditing and public procurement; ■ Standard corporate requirements such as business registration, qualifications of personnel and recordkeeping of employment activity; and ■ Identify the ministry or agency responsible for the regulation and oversight of PSCs. ■ Other laws relevant to state security services should also apply to private security services. ■ Legislation should have extra-territorial dimensions to regulate companies working abroad. 	<ul style="list-style-type: none"> ■ International Human Rights Treaties provide petition and reporting systems to which states can refer when taking measures to protect their citizens from Human Rights violations by local or foreign PSCs. ■ Develop guidelines that outline when it is appropriate to use PSCs and when to use police to ensure complementarity.



AREA	PARLIAMENTARIANS' ROLES		
	REPRESENTATIVE	LEGISLATIVE	OVERSIGHT
Oversight and Enforcement	<ul style="list-style-type: none"> Lobby employers of PSC to only employ companies that adhere to best practice. 	<ul style="list-style-type: none"> Review existing monitoring mechanisms to ensure adequate oversight of the PSCs. 	<ul style="list-style-type: none"> Support other institutions and watchdogs in the oversight of the work of PSCs. Monitor the government's action taken when illegal behaviour has been reported.
Licensing and Use of Weapons	<ul style="list-style-type: none"> Engage in public debate about using less-lethal weapons as an alternative to the use of deadly force rather than a lesser step. 	<ul style="list-style-type: none"> Strict and detailed guidelines should be developed for the use of minimal force in accordance with international practice. This should cover the use of firearms and less-lethal weapons systems such as batons and shock equipment. 	<ul style="list-style-type: none"> Support inspections of PSC armouries to ensure that weapons and ammunition are stored in secure conditions and adequate accounting mechanisms in place.
Training and Professionalism	<ul style="list-style-type: none"> Ensure that all State agencies involved with PSC are aware of international standards and practices. Law Enforcement Officials should give special focus to the <i>UN Code of Conduct for Law Enforcement Officials</i> and the <i>UN Basic Principles on the Use of Force and Firearms</i>. 	<ul style="list-style-type: none"> Explore possibility to legislate that licensing of PSC personnel should be conditional to the successful completion of government approved training. 	<ul style="list-style-type: none"> Demand government to establish and effectively oversee a training regime for PSC staff. Training should include relevant international humanitarian law, human rights, religious issues, gender issues and relevant practical subjects such as first aid.



AREA	PARLIAMENTARIANS' ROLES		
	REPRESENTATIVE	LEGISLATIVE	OVERSIGHT
Transparency and Accountability	<ul style="list-style-type: none"> Discuss introducing measures for self regulations with private security industry representatives, (for example codes of conduct). 	<ul style="list-style-type: none"> Ensure that the legal framework distinguishes the roles of private and public security providers. Direct links between PSCs and political parties should be prohibited. Laws should lay out basic minimum requirements for the transparency and accountability of private security company operations, ranging from internal systems of governance (e.g. rulebooks, responsibilities of boards of governors, staff recruitment, training and conduct) to financial and contractual matters (e.g. duties of public disclosure; company structures, issues of ownership and interest). 	<ul style="list-style-type: none"> Monitor that background checks of PSC owners and employees are conducted, including checks on close family members in order to discourage criminals to operate in the private security sector.
Procurement	<ul style="list-style-type: none"> Ensure that the government takes responsibility to effectively regulate PSCs. Support other national institutions such as the ombudsman's offices to scrutinize the sector in this area. 	<ul style="list-style-type: none"> Engage with government to establish clear contracting policies with financial and criminal penalties for breach of contract. Contracts should be put out to tender and awarded on criteria that require issues other than cost to be taken into account, including strict adherence to national and international law on the use of force. Safeguards should be put in place to minimize the risk of contracts being awarded on the basis of political influence. 	<ul style="list-style-type: none"> Monitor that procurement policy and practice should be excluding companies with known links to political parties, organized crime cartels or paramilitaries.



Annex D – Useful Small Arms and PSC publications

D.1 Policy recommendations and overview

ORGANIZATION	AUTHOR	PUBLICATION
OECD DAC (2001)	Wood B et al	<i>OECD DAC Guidelines – Helping Prevent Armed Conflict.</i>
Oxford University Press (2007)	Chesterman C and Lehnardt C (eds.)	<i>From Mercenaries to Market: The Rise and Regulation of Private Military Companies.</i>

D.2 Selected background reading

ORGANIZATION	AUTHOR	PUBLICATION
DCAF (2005)	Schreier F and Caparini M O	<i>Privatising Security: Law, Practice and Governance of Private Military and Security Companies.</i>
SEESAC (2006)	International Alert and Saferworld	<i>SALW and Private Security Companies in South Eastern Europe: A Cause or Effect of Insecurity?</i>
DCAF (2008)	Alexandra A, Caparini M and Baker D P (eds.)	<i>Private Military Companies: Ethics, Policies and Civil-Military Relations.</i>
Oxford University Press (2007)	Chesterman S and Lehnardt C (eds.)	<i>From Mercenaries to Market: The Rise and Regulation of Private Military Companies</i>
Oxford University Press (2007)	Bearpark A and Schulz S	<i>The Regulation of the Private Security Industry and the Future of the Market. (In Chesterman S and Lehnardt C).</i>
Oxford University Press (2007)	Caparini M	<i>Domestic Regulation: Licensing Regimes for the Export of Military Goods and Services. (In Chesterman S and Lehnardt C).</i>

D.3 Internet Resource

Resource for the Regulations on Private Military and Security Companies (PMSCs)
<http://www.privatesecurityregulation.net>

