



REGULATING THE USE OF FORCE BY PRIVATE SECURITY PROVIDERS

A GUIDANCE TOOL FOR STATES

BASIC PRINCIPLES AND REQUIREMENTS FOR STATE REGULATORY FRAMEWORKS
ON THE USE OF FORCE BY PRIVATE SECURITY PROVIDERS



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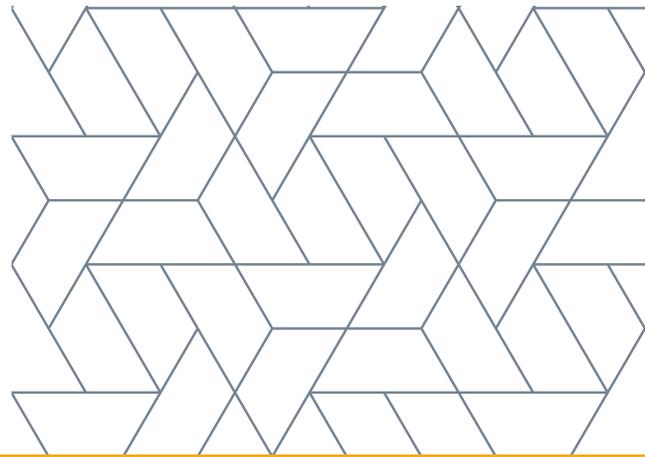
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FRAMEWORKS ON THE USE OF FORCE BY PRIVATE SECURITY PROVIDERS





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INTRODUCTION

The use of force¹ is traditionally understood as a State prerogative, normally exercised by **law enforcement officials**, who may use force - but only when required (and allowed) by the State's national law and the State's international legal obligations. National legislation should clearly outline the parameters of the use of force by law enforcement officials,² usually conducted via laws, bylaws, and additional regulations when necessary, to ensure that this function is framed by due oversight and accountability structures. In armed conflict situations, the use of force is also regulated by international humanitarian law.

In recent years, private security providers (PSPs)³ have been increasingly permitted by law⁴ to provide security services for private clients and have also been increasingly contracted by States themselves. The provision of security services, inherently, includes a possible need to use force, without which security cannot be ensured. However, using force bears the risk of abuses and misconduct. It has the potential to impact heavily on the human rights of affected persons. Thus, by legalizing the provision of security services by private actors, States have a responsibility to put in place legal frameworks that establish clear boundaries on any potential use of force, in accordance with international human rights law and international humanitarian law (when applicable).⁵ The legal framework should be accompanied by appropriate oversight and accountability structures to ensure compliance with the law. When it comes to PSPs, use of force legislation and oversight and accountability structures are often very rudimentary or non-existent, be it at the national, regional, or international level.⁶ Due to a lack of specific rules, security providers as well as regulators have a tendency to apply by analogy the rules on use of force applicable to law enforcement officials.⁷ **However, the extent to which**

force can be exercised by private security providers and the limitations that should be taken into account may be fundamentally different from those of law enforcement officers for a number of reasons:

First, law enforcement officers are authorised to use force for the achievement of legitimate law enforcement objectives, in order to be able to fulfil their responsibilities within the limits of the domestic legal framework.⁸ In contrast, for private security providers, the legal basis to use force is the same as for any citizen, meaning that **the use of force by private security providers must be guided by the personal right to self-defence**⁹ unless explicitly authorised by law to perform wider tasks. The right to self-defence is a general principle of law, and is recognized in all the world's major legal systems.¹⁰ For instance, when providing security to large events, PSPs do not have a broader mandate to use force than any private individual would have. Instead, their

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SECURITY AND
HUMAN RIGHTS
RISKS.**

duty is to fulfil their contract to provide security for the contracting party.

Secondly, when performing private security services, the mandate of PSPs is linked to a contract and limited by the contractual clauses therein. **No general mandate to ensure public security beyond the objectives of the contract can be inferred**, even when the State is the client issuing the contract. Law enforcement officials on the other hand usually do have such a public security mandate and may use force when exercising that duty.¹¹ This role confers additional powers such as arrest and detention, which should be reserved for law enforcement security officials only.

Additionally, tasks mandated by a private security contract **lack the legitimacy, oversight and accountability mechanisms** that apply to tasks exercised by public security structures within a State. For example, monitoring and reporting processes, the responsibilities of hierarchies of superior personnel, and judicial structures and mechanisms are not as clearly identified as for law enforcement officials.¹²

In practice, the above-mentioned differences mean that when law enforcement standards are applied by analogy to the use of force by PSPs, this may result in risks to human rights compliance. Specific rules and regulations to guide the actions of PSPs and ensure public oversight and accountability structures for their use of force are therefore necessary.¹³

The international community has elaborated standards to help guide States in ensuring human rights compliance for use of force by law enforcement, paying close attention to the protection of the right to life and to the security of the person, and the prevention of torture and other ill-treatment:

- **United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UNBPUFF, 1990)**: A framework that reflects the basic standards that law enforcement officials should apply in carrying out their duties. This notably includes applying non-violent means as far as possible, before resorting to the use of force and firearms.
- **United Nations Code of Conduct for Law Enforcement Officials (UNCICLEO, 1979)**: A code that outlines restrictions on the use of force but also addresses broader issues of detention, protecting human rights, anti-corruption, and securing medical care.

What kinds of security activities should States restrict to public security forces?

Certain tasks which are restricted to law enforcement officials require extra training and knowledge, including how to approach and handle a situation, as well as proper procedures and oversight if incidents occur. For example, managing risks from demonstrations or protests is a task for which PSPs are generally not adequately trained. As a result, PSPs may handle such situations in ways that escalate rather than de-escalate the situation. To have PSPs in charge of persons in detention, for which they have not been trained nor have appropriate equipment and structures, puts the rights of detainees at risk.¹⁴ In all these cases, human rights obligations are less clear-cut for PSPs as private actors than for law enforcement officials as authorities of the State. This is reflected in the UNBPUFF and UNCICLEO, which set out potential tasks and discretions, but additionally aim to offset the human rights risks of those tasks, and of using force, by providing safeguards and checks on the execution of tasks. PSPs are not necessarily able to adhere to similar safeguards and checks, nor are they subject to the same level of control and therefore should not have the same responsibilities.¹⁵

USERS OF THIS GUIDANCE

This guidance is intended for national actors who seek to update or develop national regulatory frameworks concerning the use of force by PSPs, including parliamentarians, law and policy-makers, ministries, regulatory authorities, and oversight bodies.

States have the primary **obligation to protect human rights, including the right to life.**¹⁶ States must implement this protection within their jurisdiction through stringent legislation and regulation of PSPs,¹⁷ recognizing the specific challenges that may be faced by people at heightened risk of vulnerability or marginalisation, such as women and children.¹⁸ In order to comply with the State's obligation to ensure respect for human rights, this legislation and regulation should contain more elaborate requirements and oversight than those imposed on ordinary citizens, since PSPs are well-organised, use technical equipment, and are involved in tasks related to the use of force. In carrying out their contracts, they will encounter situations in which they are in the position to adversely affect human rights more regularly than an average citizen.

Hence, the requirements which the State needs to implement should include boundaries on what types of services PSPs can provide, what weapons they can own and use, and what operational criteria they need to comply with. This will include limitations on the potential use of force by PSP personnel. **National regulation should include additional requirements for companies that relate to actions before, during, and after the potential use of force.**¹⁹ Prohibitions and minimum standards of behaviour should be included in law, and specific requirements should be included in authorisation, licensing, and contracting criteria.²⁰

It is important to note that currently there are no universally agreed standards for PSPs, including on use of force. However, bringing together several international standards developed regarding private security governance and business and human rights, as well as using some law enforcement principles by analogy as far as relevant, this guidance aims to set a clear baseline with regards to use of force requirements for PSPs. This guidance is intended to be used by States in their regulatory frameworks.²¹ It should be noted that if the conduct of the PSP is attributable to the State, State obligations are applicable.²²

This guidance provides a baseline and a reminder of issues that need to be addressed when it comes to regulating the use of force by private security providers. However, it should be noted that this guidance is not prescriptive. This guidance does not endorse nor legitimize the existence of the private security industry, nor does it endorse or legitimize the practice of contracting PSPs. Certain matters must be determined by each State in their sovereign power; for example States are the ones to set out the determination of services (which services can be provided by PSPs) and the range of criteria that determine whether the use of force in self-defence would be justified.²³

Although this guidance is primarily intended for national regulators and other State actors, other stakeholders are also encouraged to use this tool: for example civil society concerned with monitoring and ensuring accountability or PSPs developing internal regulations, policies and operational procedures.

This Guidance Tool concerns PSPs in law enforcement contexts and does not discuss the use of force by PSPs in the conduct of hostilities.

HOW TO USE THIS GUIDANCE

This Guidance Tool is intended to support States in regulating the use of force by PSPs. The standards, requirements, and good practices contained in this Tool should be incorporated in national legislation, regulations, by-laws, as well as criteria for licensing, authorisation and registration. Additionally, States can use this Tool to inform their procurement processes when contracting the services of PSPs. This Guidance will not address situations where international humanitarian law applies. Rather, the Tool refers to the private provision of security services in law enforcement contexts. The use of force by private entities in the conduct of hostilities will not be discussed.

The Tool is composed of the following sections:

Checklist of Good Practices

This checklist is intended to support States in the development and updating of national laws on the use of force by PSPs. The checklist is a companion to Sections 1, 2 and 3 and is intended as a practical, user-friendly reference guide for regulatory efforts.

1 Definitions and Basic Principles

This section sets out the principles that should be considered in all situations and should be internalised ahead of the planning of PSP operations potentially involving the use of force. They should inform all steps in the conceptualizing and planning of operations and in the drafting of rules and policies. The basic principles align largely with those applicable to the use of force by law enforcement officials. However, this document will illustrate how they specifically apply to PSPs.

2 Scenarios for the Use of Force

Since the basic principles are explained in abstract, this section sets out how they are practically applicable and should be operationalised in common situations in which force is used. For each situation it outlines how the different basic principles should influence behaviour and what limits apply to operations in each of these scenarios.

- **Situation 1:** Self-defence and defence of others;
- **Situation 2:** Defence of property;
- **Situation 3:** Crowd Control

3 Operational Requirements

This section sets out the requirements that should be fulfilled to implement rules on use of force in practice in an effective manner. They refer to stages surrounding the actual activities and operations of PSPs, namely:

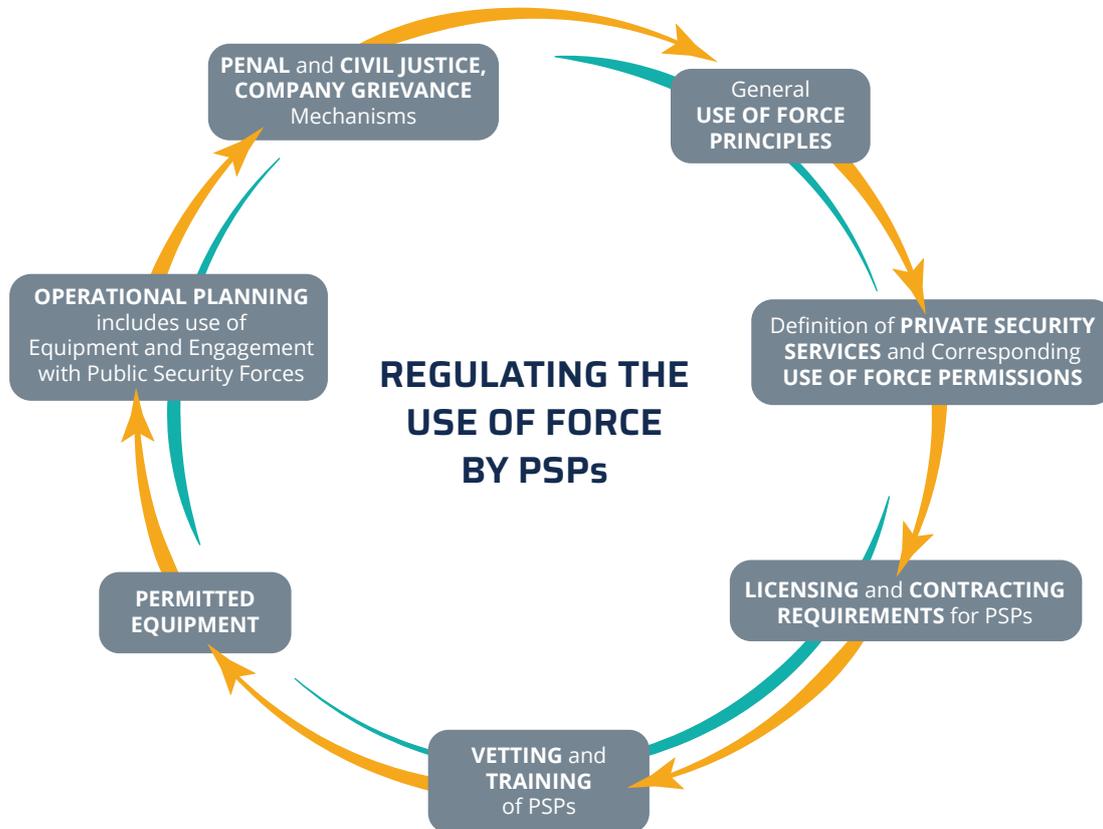
- Before activities and operations begin (including operational planning, vetting, training);
- During activities and operations (including monitoring, deployment strategy, apprehension and detention);
- After activities and operations (including reporting and investigation, remedy, accountability).



Checklist of Good Practices

This checklist supports States in developing and updating national laws and regulatory processes on the use of force by PSPs. The checklist is a companion to Sections 1, 2 and 3 and is a practical, user-friendly guide for regulatory efforts.

CHECKLIST OF GOOD PRACTICES



General Use of Force Principles

General use of force principles should include detailed rules such as self-defence and the prohibition to use force beyond self-defence or the defence of others. The **principle of self-defence and defence of others** is likely set out in the national law already; however, this may be a helpful reminder of what the regulation of the use of force by PSPs is based on.

The principles of legality, necessity, proportionality, and precaution are core requirements for the use of force by PSPs. These should be enshrined in national laws that clearly indicated if/when use of force is permitted.

The **use of force continuum** must be incorporated in a use of force by-law, manual or regulation.



Definition of private security services and corresponding Use of Force permissions

Within the definition of allowed and/or prohibited services, legislation should specify that **PSPs cannot be mandated by contract to facilitate peaceful assembly** and cannot be hired to provide security for demonstrations, protests or similar crowds.

The concerns with PSPs performing crowd control notwithstanding, **training** should cover the basic principles around the lawful use of force if such a situation develops.

Apprehension/arrest by PSPs should be prohibited by law, except in self defence or defence of others against an imminent threat or violence or following an attack or crime committed against PSP personnel, client, or property under protection of the PSP. In these cases, human rights-compliant treatment should be defined in by-laws and such rules should be included in internal company policies.

Detention by PSPs should be prohibited by legislation except when specifically contracted by the State and trained in the applicable domestic and international law.



Licensing and contracting requirements for PSCs

When mandated to exercise inherently governmental functions, the restrictions on the actions of the PSP, particularly regarding the use of force, will at minimum be those applicable to the State's law enforcement officials. The **mandate, mission and limitations** of the PSP's role should be clearly set out in a written agreement between the PSP and the contracting party.

Licensing and contracting criteria should include:

- Requirements that companies include the use of force continuum in **policies and training**.
- Requirements that companies institute **policies on equipment**, especially firearms (their storage, use, disposal).
- Procedures and policies by companies that set out **supervisory and monitoring tasks** through management structures, divisions of roles and responsibilities, and protective risk management procedures.
- Requirements that companies apply **additional standards** to groups or populations at heightened risk of vulnerability, such as women and children.⁵⁶



Vetting of PSPs

National laws should include obligations for private security companies to vet personnel. Vetting and ongoing assessment requirements must be included in **licensing criteria** and **contracting criteria**.

- Legislation, policies and procedures must ensure **due diligence in selecting personnel**, which implies establishing procedures that ensure “verifiable” vetting and background screening, followed by an ongoing performance review. During the hiring process, effective vetting procedures include an assessment of prior employment records and available government records. Candidates should be excluded for records of past serious crime, notably violations of national criminal law, international human rights law and international humanitarian law. Candidates should be excluded for records of sexual exploitation and abuse, gender-based violence, or violence against children.
- States should have specific policies and procedures **to verify licenses and the suitability** of PSP personnel to bear arms on duty. PSP staff should demonstrate reliable records of not having been involved in serious crime and/or not being dishonourably discharged from public security or armed forces.
- Due diligence in selection and vetting is also required for **subcontractors and their personnel**.
- National laws should contain prohibitions to hire private security personnel under 18 years old. **Ongoing assessments** of the personnel’s ability to perform duties, including regular evaluation of physical and mental fitness and social behaviours towards other personnel and the local population.



Training Requirements for PSPs

States should mandate obligatory **training of private security personnel** in national laws. Training agencies or centres should be mandated to include the relevant **training curricula and modules**. States can formulate this in a by-law or specific training manual.

- **Adequate training of personnel on national law and applicable international human rights law and standards, especially regarding the use of force** | Training must cover concepts of the right to life, security of the person, and freedom from torture and cruel, inhuman or degrading treatment. Strong emphasis should be made on personal accountability for use of force. Training should also include sessions on gender equality, the prohibition of sexual exploitation and abuse and gender-based violence, as well as sessions on the treatment of children.
- **Weapons training** | States must mandate adequate prior training of personnel who are authorised to bear weapons to conduct duties, including training with the specific authorised weapon. This training must also include the rules on weapons management and rules on storage.
- **Competence-based training** | States should mandate training on concepts and processes such as human rights risk management, hostile environment, local culture, gender age, and religious considerations, de-escalation of situations, incident reporting, communications and handling of complaints by citizens, in particular by transmitting them to the appropriate authority. The importance of communication, constraint and specific treatment of individuals in vulnerable situations should be included.
- **Medical and psychological health** | States should mandate awareness training on health issues, including first aid, as well as support services for PSPs such as counselling and stress management.



Permitted equipment

National laws should determine the situation in which weapons are allowed, as well as the type of weapons that may be carried by PSPs. Further specification about weapons management and storage should be determined in by-laws.

- **Authorisations** | Companies should acquire and maintain required authorisations and licenses to possess and use equipment, weapons and ammunition and ensure personnel only possess and use legal weapons.
- **Safe storage** | Effective weapons and ammunitions management include secure storage, controls, records, identification systems and correct disposal.
- **Appropriateness for each situation** | Companies must provide its personnel with various types of equipment and/or weapons and ammunitions to allow for a differentiated use of force, including “less-lethal” weapons.
- **Control and tracking** | Companies must establish procedures and records for procurement, and traceability of relevant equipment, in particular weapons and ammunition.
- **Protection of personnel** | Companies must provide personnel with protective equipment, which can avoid or at least minimise the need to respond to a threatening situation with force.
- **Identification** | Private security personnel will bear recognisable uniforms or insignias so that no doubt about their functions may arise. ID cards must be provided according to a format determined by the national regulatory authority.
- **PSPs and their means of transport should be identifiable** whenever on duty (this relates both to the first element of the use of force continuum - presence as deterrence - and to the question of accountability).



Operational planning, including use of equipment and engagement with public security forces

The State should require that PSPs implement effective operational procedures and policies

- **Facilitate adequate working conditions** | Companies must ensure a safe and healthy working environment for male and female PSPs, including fair and non-discriminatory working conditions, adequate and continuous training, assessment and mitigation of risks of injury, and appropriate and adequate equipment.
- **Preventive approach** | Companies must adopt a preventive approach to the use of force in their planning. They must establish procedures around risk assessments, avoiding escalation, and on the use of force continuum. Companies must implement policies and mechanisms to prevent and address sexual exploitation and abuse and gender-based violence. Companies should develop procedures on the use and carriage of weapons by PSC personnel, in line with the use of force continuum.

- Procedures and decision making on use of force must be informed by **legality, necessity, proportionality, precaution and accountability** as described for the three different scenarios.
- **Coordination with public security** | Prior to considering private security activities and operations in which force may be used, the PSP should be required to engage with the relevant law enforcement officials to ensure that public security is aware of the PSP's operations. PSPs should discuss risks, with law enforcement officials and if needed, enter into an agreement on the rules of coordination. States should consider formalizing this in a mandatory protocol of engagement, an MoU or another form of official coordination.



Penal and civil justice, company grievance mechanisms

States must equip the **judicial system** to handle complaints against PSPs and their personnel regarding the use of force and provide sufficient judicial and non-judicial mechanisms to achieve accountability of PSPs and their personnel. National legal frameworks must include remedy for violations.

States should require companies to have fair and accessible company grievance mechanisms that will be accountable for ensuring victims can obtain **recourse for remedy** and when appropriate, will refer unlawful conduct or unlawful use of force to the national authorities.

States should require that **both State and company grievance mechanisms are accessible, responsive, and accountable** to groups or populations at heightened risk of vulnerability or marginalisation, such as women and children.⁵⁷

States must ensure respect of human rights by implementing procedures for **investigation, prosecution and extradition**.

SECTION

1



Definitions and Basic Principles

APPLICABLE IN ALL SITUATIONS

This section sets out the key concepts regarding the use of force by private security providers. These principles should be internalized by States in regulating the conduct of PSPs and the services they provide.

Defensive Force

As a starting point, PSP personnel can only use defensive force. In other words, the use of force in a manner that is offensive, pre-emptive or anticipatory is strictly forbidden for private security providers.

GUIDANCE FOR REGULATORS

When determining what type of security tasks or services that PSPs are legally permitted to provide, States should allow PSPs to use force only in a defensive manner.

Legality

Legality means that the execution of tasks involving the use of force by PSPs must be authorised and limited by the relevant national law and by-laws. Such laws may come from the State on whose territory the operations take place. If there are no regulations in the territorial State, responsibilities to protect human rights extraterritorially may still exist for another State, such as for the home State or a contracting State of a PSP which is acting abroad.²⁴ The legal requirements of different States may apply in parallel. Moreover, legality also means that the authorising law must comply with international human rights law and should respect international standards, norms and good practices. If the contract between the PSP

and the client exceeds the boundaries of the law in terms of discretion to use force or weapons, that part of the contract shall be deemed invalid, as the law of the States having jurisdiction will always prevail over private contracts.

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Because of the requirement of legality, the State should develop a legal framework to define which actors may be allowed to use force, which actors can provide security services, and the limitations within which contracts on security services should operate.

Legality and firearms

Too often, the use of force is confused with the use of firearms. However, different prerequisites apply, similarly to the way the use of force and firearms for law enforcement purposes is regulated.²⁵ First, the possibility to carry and use firearms at all, as well as the type of firearms that can be used, will depend on the national law. Second, under international law the thresholds for allowing the use of force and for allowing the use of firearms are very different. Hence, when considering the possibil-

ity that force may be needed, the PSP may need to address the situation with measures other than firearms. Recourse to firearms will only be lawful where the national law criteria on carrying arms, registration and licensing are met; when they are used as a means of last resort in the specific situation of self-defence; and when the strict criteria of necessity and proportionality are met. The right of self-defence does not in itself imply or confer a right or a duty to use a weapon for self-defence purposes.

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In planning and equipping PSPs ahead of operations, the relevant general firearms and weapons laws also inform the limitations of what sort of equipment can be used.

Legislation on PSPs should specifically set out if and when firearms can be used and under what conditions, and stipulate registration, licencing, training and storage management criteria in further regulation.

Necessity

Any use of force must meet the requirement of necessity, as it relates to the principle of self-defence. This is a factual assessment of cause and effect, that evaluates whether force is the only viable alternative in a specific case, and if so, how much force is the least harmful means available at the time to achieve the desired and lawful outcome. In the case of use of force by a PSP, the desired lawful outcome is the defence of life or the life of others or prevention of serious injury.²⁶ The requirement of necessity raises the question of whether the threat could not be averted by resorting to less harmful means, keeping in mind the departure point that there is a primary obligation to use non-violent means first.²⁷ In the case of private security providers, the principle of necessity

must be understood as being more constraining than for public security forces given the more restricted security mandate of private actors. It also means that the level of force is continuously adapted to that of the adversary. When the need to use force ends, no further force may be applied. Necessity thus means that the force used must be reasonable in terms of intensity and duration.

GUIDANCE FOR REGULATORS

The principle of necessity is a core requirement for every use of force of PSPs and should be enshrined in national law, to be used as a determining factor of when a use of force may be legal.

Proportionality

Any use of force has to be proportionate to the threat addressed. Proportionality necessitates a value judgment that balances whether the harm that can be expected to result from the use of force is justifiable in relation to the expected benefit, namely neutralising a threat to life. Hence, force may be necessary but not proportionate, and vice versa. The principle of proportionality must be interpreted in narrow terms, with the benefits being understood as strictly referring to the de-escalation of the situation, the neutralisation of the threat and/or the protection of life or against injury.

GUIDANCE FOR REGULATORS

The principle of proportionality is a core requirement for every use of force by PSPs and should be enshrined in national law, to be used as a determining factor of when use of force may be legal.

**PROPORTIONALITY:
THE HARM RESULTING FROM THE USE OF
FORCE IS ONLY JUSTIFIABLE IF IT LEADS TO
NEUTRALISING A THREAT TO SOMEONE'S
LIFE.**

Precaution

Precaution means that careful planning is needed to avoid the use of force and to minimise the risks to others. It is a principle that informs a number of pre-engagement requirements, such as the vetting and training of personnel or ensuring that adapted equipment and less-lethal techniques are available to security personnel. This also covers the establishment of and compliance with appropriate standards and policies, such as policies to implement industry standards, compliance with the licensing and registration systems for the PSP, its personnel and their equipment, as well as with the strict regulation of arms use and possession.

Those pre-engagement requirements are indispensable for ensuring that the principles of necessity and proportionality can be complied with, offering PSP

personnel with the correct set-up to apply just the right amount of force needed to meet the threat. At the same time, precaution sets an obligation to adequately plan and anticipate any possible occurrences, and a responsibility for PSPs to plan operations carefully, including by engaging with public security forces before the planning of an operation, if possible by formalizing the arrangements between PSPs and public forces.²⁸

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The principle of precaution is a core requirement for every use of force by PSPs and should be enshrined in national law governing the use of force, to be used as a determining factor of when use of force may be legal.

Relationship with the State and Public Security

The State has an obligation to regulate and monitor the use of force in society. Therefore, it is paramount for public security such as police or armed forces to be constantly involved in and aware of private security activities in order to be able to intervene when necessary and prevent any unlawful force from being used. Also, the discretion of the PSP to legally use force may in certain circumstances be further limited if State public security actors are available in the situation. This could occur in particular in a situation where use of force leads to apprehension of a person or crowd control.

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Prior to considering operations in which force may be used, the PSP should be required to engage with the relevant law enforcement officials to ensure awareness of the PSP's operations and discuss risks. States should consider formalizing this in a protocol of engagement, an MoU or other type of formal public-private security coordination agreement.

If the PSP is authorised and mandated by the State to exercise governmental authority, empowered to do so by law, their operations are attributable to the State and they may engage the State's responsibility, including on the international level.²⁹ This may also be the case if the conduct of the PSP is directed or controlled by the State.³⁰ In that case, all acts of the PSP undertaken in the execution of the mandate given by the State will be considered as State acts, and the State will be responsible for any violations of human rights that may occur.³¹

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When mandated to exercise inherently governmental functions, the limits on the PSP regarding the use of force should be more restrictive than for the State's law enforcement officials. Regulations applicable to mandated PSPs should be specified in the agreement (for example contract or license) between parties to ensure that the mandate, mission and limitations are clear.

SECTION

2



Scenarios for the Use of Force

OPERATIONALISING BASIC PRINCIPLES
ON THE USE OF FORCE

This section sets out how the basic principles are applicable to common situations in which force is used. The section also shows how these principles should be operationalised.

SITUATION 1

Self-defence and defence of others

Private security providers may use force in self-defence or defence of others where it is necessary against the imminent³² threat of death or serious injury .

The right to self-defence of private persons is well established as a general principle of law and can be found in any major legal system, although it

may be restricted in different ways.³³ Nevertheless, a number of similar core requirements can be distilled across different national legal systems. For example, self-defence responding to an imminent attack should be necessary and proportionate.³⁴

Self-defence in relation to contractual obligations of PSPs

The right to self-defence pertains to all citizens and is therefore not linked to the specific activities of the private security provider. It means that private security providers do not have any special rights under this principle.

Application of proportionality and necessity

The legitimate use of force by PSPs is based on the principle of self-defence and defence of others, and does not extend to the prevention of the perpetration of grave crimes, unless these crimes can imminently result in death or serious injury.³⁵

Self-defence or defence of others against the imminent threat of death or serious injury is the only situation in which potentially lethal force may be proportionate and necessary.

Application of legality and the use of firearms

The situation of self-defence or defence of others from a threat to life or serious injury, is the only situation in which the use of firearms by PSPs may be permitted, provided that their use falls within the parameters of the law³⁶ and is in line with the general principles and the use of force continuum.³⁷ Additional requirements during the operations when using firearms are outlined below.

GUIDANCE FOR REGULATORS

The principle of self-defence and defence of others is likely enshrined in the national law already. Explicitly referring to the principle and its prerequisites within the PSP law may be a helpful reminder of what rules the use of force by PSPs is based on.

SITUATION 2

Defence of property

Defence of property in relation to contractual obligations of PSPs

Using force to defend property is limited to property that is in one's lawful possession. Being contracted to defend such property by its rightful owner would put private security providers in a position to use force for this purpose, albeit limited to non-lethal force without firearms. Use of force to protect public goods which a PSP is not contracted to defend, falls outside the scope of permissible tasks

Use of force in defence of property is only allowed insofar as it concerns private property for which the PSP is contracted by the owner to secure or defend (an 'unlawful attack against a protected interest' outlined in situation 1). The use of force in this situation is governed by national law, as well as within the parameters of national law and international human rights law.

Application of proportionality and necessity

The use of lethal or potentially lethal force to protect property does not meet the proportionality requirement.

However, when the threat to property turns into an imminent threat of death or serious injury, this turns into a 'Situation 1' where a security provider should prevent an imminent threat to life or serious bodily harm. For instance, attacks on certain sensitive critical infrastructure sites may qualify as a 'Situation 1' scenario.

GUIDANCE FOR REGULATORS

States should ensure that national laws clearly outline if PSPs are permitted to use force for the defence of property, insofar as the use of force continuum and the principles of proportionality and necessity are respected. This could include prohibiting PSPs from patrolling, arresting, carrying and using firearms, special devices and any other material normally reserved for the military and the police.

SITUATION 3

Crowd control, demonstrations, and peaceful assembly

The mandate of PSPs is normally the protection of property or individuals, not the management of assembly (unless directly contracted by the State for this purpose, in which case the PSP is under State authority).³⁸ Hence, private security providers should defer any situation requiring the management of an assembly to law enforcement officials.³⁹ The contractual responsibility of private security providers in the context of assembly is not to facilitate the right to freedom of peaceful assembly, but rather to protect the property or personnel of the contracting party. The protection of the rights and safety of the public more broadly remains the duty and function of the State.⁴⁰

Nonetheless, there may be situations where law enforcement is not available or when violence in a demonstration or assembly erupts unexpectedly. In such cases, PSPs must remember that they are not a substitute for law enforcement officials. PSPs must continue to base their engagement on the paradigm of the right to self-defence or defence of property only.

Application of proportionality and necessity

- Crowd control generally should generally not be contracted out to PSPs. States should restrict crowd control to PSPs only when law enforcement officials is unavailable or absent.
- Force should never be used against a crowd and must always be directed against the individuals who pose an imminent threat of harm;
- The use of force by private security providers to disperse a crowd is contrary to the principle of proportionality, unless the crowd poses an imminent threat of death or serious injury.

Application of precaution

The principle of precaution in this situation can be applied through the planning of activities where a demonstration or peaceful assembly may be expected to happen. As mentioned above, crowd control of peaceful assembly should not be a service that private security providers are deployed for. Rather, PSPs are contracted to protect the property of the contracting party. However, if PSPs are aware such a situation may develop and if law enforcement officials are not available, a comprehensive planning process for that occurrence is crucial. PSPs should ensure diversion of the crowd. In practice this means that the planning should envisage a set-up where the crowd is filtered and channelled to a wider or diverse area, is not driven into a corner, and has a free exit route as an alternative to confrontations with security personnel.

GUIDANCE FOR REGULATORS

Within the definition of **allowed and/or prohibited services**, the PSP law should specify that PSPs cannot be mandated by contract to engage in crowd control and cannot be hired to provide security for assemblies, manifestations or similar crowds.

Training criteria should include the prohibition to perform crowd control, but also on the application of the basic principles if such a situation nevertheless develops.

SECTION

3



Operational Requirements

This section sets out guidance for States on regulating PSPs before, during, and after activities and operations, namely: operational planning, vetting, training, monitoring, apprehension and detention, reporting and investigation, remedy and accountability.

BEFORE ACTIVITIES AND OPERATIONS BEGIN

Vetting of private security personnel

To apply the principle of precaution, private security personnel should be duly vetted before being selected, in particular personnel assigned to tasks where use of force is likely.

Persons hired for private security functions should have reliably attested records of not having been involved in serious crimes, or abuse, exploitation or violence against children, or human rights violations,⁴¹ or been dishonourably discharged from armed or security forces. If such record/assurances cannot be given/obtained, such persons need to be excluded from private security functions, particularly from those functions potentially employing force.

GUIDANCE FOR REGULATORS

The obligation to duly vet personnel should be **included in the law**. The manner in which vetting should be done can be further specified in **licencing** and **contracting criteria**.

When vetting PSPs that are permitted to use force, companies should include the following good practices (at minimum):

- Policies and procedures to ensure **due diligence in selecting personnel**, which implies establishing procedures that ensure “verifiable” vetting, and background screening, followed by ongoing performance review. This includes an assessment of prior employment records and available government records during the hiring process, ensuring exclusion on the basis of past serious crime and verification if other unlawful conduct was appropriately remedied;
- Specific policies and procedures **to verify licenses and suitability** of personnel to carry arms when on duty, including a reliable record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces;

- Due diligence in selection and vetting required for **subcontractors and their personnel**;
- A prohibition to hire persons under 18 years old;
- **Ongoing assessments** of the personnel’s ability to perform duties, including regular evaluation of physical and mental fitness and social behaviours towards other personnel and the local population.

GUIDANCE FOR REGULATORS

The above vetting requirements should be included in **licencing criteria** and **contracting criteria**. The PSP should be required to undertake such vetting procedures of its personnel.

Training of private security personnel

All PSP personnel should be adequately trained to comply with use of force guidelines, and with national law and international human rights standards. Subcontractors and their personnel should also have the same training requirements. All personnel bearing arms require training prior to deployment in order to adequately conduct their duties. Additional specialised training may be needed if a certain deployment requires the use of a specific type of weapons. In addition to competence-based training, training should include the following: 1) theory; 2) case studies in the classroom; and 3) realistic scenario-based simulations outside the classroom. Changing behaviour and reflexes can only be achieved by exposing trained staff to simulations resembling real-life situations.

Training of private security personnel that may use force includes as a minimum:

- **Training on the applicable legal framework, including both national law and international human rights law and standards:** In particular, the right to life, security of the person, and freedom from torture and cruel, inhuman or degrading treatment should be included. Training should include sessions on the treatment of children and prevention of sexual exploitation and abuse as well as gender-based violence. Strong emphasis should be placed on personal accountability for use of force. Training could also include relevant elements of international humanitarian law and international criminal law to understand their relation to the PSPs' work;
- **Weapons training:** adequate prior training of personnel who are authorised to bear weapons to conduct duties, including training with the specific weapon that would be used, is needed. This training shall also include the rules on weapons management and storage;
- **Competence-based training:** includes matters such as human rights risk management, local culture, age, gender and religious considerations, de-escalation of situations, incident reporting, communications and handling of complaints by citizens, by transmitting them to the appropriate authority. Training should include the importance of communication, restraint and specific treatment of men and women in vulnerable situations;
- **Hostile environment training;**
- **Medical and psychological health** awareness training on health issues of men and women, including first aid care, mental health, occupational safety, and other support.

Training credentials should be recorded and testified to on the PSPs personnel's ID card. The PSP should keep records to demonstrate attendance and results of all professional training sessions.

GUIDANCE FOR REGULATORS

Within the national law, States should require that PSP personnel undergo adequate and effective training. Training criteria and modules should be clarified in a by-law or specific training manual. States should also require private security personnel to undertake refresher training.

States should require companies to include the above elements in their training curricula. States should include these requirements in their **licensing and contracting criteria**.

Operational planning

All operations must be planned in a way that ensures all reasonable steps have been taken to avoid the escalation to the use of force. The prior assessment of risks, adequate training and the equipment of personnel must play a key role in the operational planning process. This also includes procedures regarding the authorisation for the use and carrying of weapons by PSP personnel, the establishment of a use of force continuum and the creation of policies on the use of "less-lethal" weapons. Procedures must also be established to regulate all possible scenarios where the use of force may be required. Operational planning is crucial to comply with the precaution principle.

Obligations for companies include:

- **Preventive approach:** PSPs should establish procedures to proactively prevent, mitigate and respond to the risk of using force, with the help of risk assessments. Companies should also take precautions against harmful effects on bystanders;
- **Establish procedures:** PSPs should implement internal use of force procedures and policies, based on applicable law and international standards. These should include procedures authorising the use and carriage of weapons by PSC personnel, and a use of force continuum (see page 27 for detail);
- Procedures and decision making on use of force should be informed by **legality, necessity,**

proportionality, precaution and accountability as described above specifically for different scenarios;

- **Facilitate sound working conditions:** a safe and healthy working environment should be ensured for male and female PSP personnel, including a gender-sensitive assessment of the risks of injury and the provision of training and equipment adequate for the circumstances they may encounter;
- **Deployment strategy:** The deployment strategy should take into account the availability and appropriateness of requesting support from public security forces, and should formalize coordination with public security forces where appropriate.

GUIDANCE FOR REGULATORS

The State should require that PSPs have procedures and policies in place that enable effective operational planning. These requirements should be part of the **licencing and contracting criteria**.

Weapons, equipment and physical barriers

Rules regarding equipment ensure that PSP personnel have the appropriate type of equipment or weapons, for which they are trained and licensed. This includes protective equipment and “less lethal” weapons. It also includes making sure firearms are stored securely and do not come into unauthorised and inappropriate hands, potentially leading to excessive or indiscriminate use of force. The correct equipment will facilitate compliance with the use of force continuum.

- **Authorisations:** a company should acquire and maintain required authorisations and licenses to possess, transport and use equipment, weapons and ammunition and to ensure personnel only possess and use weapons which are legal;

- **Proper storage:** adequate weapons and ammunitions management include safe and secure storage, controls, records, identification systems and correct disposal;
- **Appropriateness for each situation:** a company should provide its personnel with various types of equipment and / or weapons and ammunitions to allow for a differentiated use of force, including “less-lethal” weapons;
- **Control and tracking:** a company should establish procedures and records for procurement and traceability of relevant equipment, in particular weapons and ammunition;
- **Protection of personnel:** a company should provide personnel with protective equipment, which can limit the need to respond to a threatening situation with force;
- **Identification:** private security personnel will bear recognisable clothes or insignia so that no doubt about their functions may arise. ID cards should be provided according to a format determined by the national regulation authority. PSP vehicles should also be identifiable (this relates both to the first element of the use of force continuum – presence as deterrence – and to the question of accountability).

GUIDANCE FOR REGULATORS

The situation in which weapons are allowed, as well as the type of weapons that can be carried by PSPs, should be determined by law. Further specification about weapons management and storage should be determined in by-laws.

States should require PSPs to develop policies related to the types of equipment as well as who can carry them. Proper storage should be required by the State in **licencing criteria and contracting criteria**

Use of Force Continuum

The goal is always de-escalation

Each action must constantly be adapted in proportion to the assessed threat, taking on a preventive approach to de-escalate the situation.



DURING ACTIVITIES AND OPERATIONS

Use of Force Continuum

The basic principles outlined above are captured in a practical manner in the use of force continuum which should be applied each time force is used. Whenever force is used, the assessment of necessary force is not a static evaluation, and a **graduated response** should be employed according to the use of force continuum. This is a practical result of the proportionality principle. It is important to note from the outset that lethal force and the use of firearms may only be justified in situations of defence of life or against serious injury.

A graduated response, however, does not release the private security provider from the **obligation to attempt to de-escalate a situation**. The provider should not just act in response to the increase in violence by the threatening individual/s but should continuously seek to de-escalate and defuse a situation. This also means that a purely reactive response is not

appropriate – rather, a proactive approach to influence a situation has to be taken.

The continuum also implies that **each gradation of force may call for a different tool or weapon**. It is not possible to categorize different weapons in different stages of the use of force continuum, as their effects will largely depend on how they are used.⁴² There is a significant discussion and debate regarding ‘less lethal weapons;’ just because a weapon is labelled ‘less lethal’ does not necessarily mean it is less harmful or less prone to abuse.⁴³

It should also be taken into consideration that a situation may require different approaches, depending on **whom the PSPs deals with**; the type of person or group or their state of mind or mental health may call for a response with very little aggression, while at other times an aggressive attitude may be a deterrent preventing further escalation.⁴⁴

Use of force continuums may vary, but should include the following steps:⁴⁵

1 Presence as Deterrence

- ▶ The sole presence of security personnel serves to deter individuals or groups from engaging in conduct that might require the use of force in response;
- ▶ This is a preventive measure, which is only effective in the absence of an imminent threat to life or limb or where the risk is only latent.

2 Verbal Warning & Opportunity to Retreat

- ▶ Shouting to the individual to desist from the conduct and warning that otherwise force will have to be used;
- ▶ This is a non-physical means, only effective with enough time or sufficient distance from the individual/the group;
- ▶ This may include negotiation with the individual;
- ▶ The goal is de-escalation and deflation of the situation.

3 Empty-Hand Control

- ▶ This is the use of bodily force to gain control of a situation, without the use of any weapon or another type of defensive gear;
- ▶ Use bare-hand physical restraint techniques and deployment of barriers including blocking access, or apprehension.

4 “Less-Lethal” Methods and Weapons:⁴⁶

- ▶ Use of methods and weapons intended to force the individual to stop the behaviour which forms a threat, and to gain control of the person and the situation more generally;
- ▶ The goal is to incapacitate or deter the person forming a threat;
- ▶ Includes only those methods and weapons allowed by law for PSPs, as well as the use of physical restraint techniques intended to immobilize or deter the individual while avoiding, as much as possible, the infliction of injury
- ▶ “Less-lethal” weapons are designed for the use of force without causing death. However, these may be fatal if used incorrectly or used against someone with certain medical conditions. Thus, they should only be carried and used following rigorous testing of the equipment and training of the personnel. Moreover, less-lethal weapons should be carefully directed at the threat to avoid causing injury or harm to bystanders.
- ▶ *Advancing to the next stage of the continuum (i.e. towards the use of potentially lethal force and firearms) is not allowed except in self-defence or defence of others where necessary against the imminent threat of death or serious injury.*

5 Threat of Potentially Lethal Force and Firearms:

- ▶ Showing firearm or other weapon and indicating the intention to use it if the individual does not immediately cease his/her violent or offensive action;
- ▶ This is time-sensitive. Situations of rapid escalation might not allow for such a prior warning, but all reasonable means should always be taken to notify the assailant and give her/him a chance to surrender before using potentially lethal force/firearms.

6 Potentially Lethal Force as last resort:

- ▶ Use of potentially lethal weapons to stop the imminent threat to life or serious injury to a person;
- ▶ Only when absolutely necessary/unavoidable and when no other means are available;
- ▶ Proportionality requires that potentially lethal force/firearms be used only in case of a threat to life or of serious injury to a person. Never in defence of property or an animal;
- ▶ Precaution requires that all measures be taken to minimise the risk to the safety of bystanders (including rigorous prior training and testing of equipment) and that the force be carefully directed.

In order to ensure accountability, further requirements regarding first aid, informing the correct authorities, and reporting come into play directly after engaging in use of force (see Section 3: After Activities and Operations).

GUIDANCE FOR REGULATORS

The use of force continuum should be incorporated in a use of force **by-law, manual or regulation.**

The inclusion of the use of force continuum in policies and training should be a requirement set for PSPs in **licencing and contract-ing criteria.**

Additional obligations when using firearms

Additional criteria when using firearms include that the personnel must:⁴⁷

- 1 Identify him-/herself and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place them at a risk of death or serious injury, or would create such a risk to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident;
- 2 Minimize damage and injury;
- 3 Provide medical assistance when injuries have been sustained;
- 4 Notify the appropriate authorities.

GUIDANCE FOR REGULATORS

States should incorporate additional criteria for using firearms into **the law or by-law** on the use of force. States should also require firearms licensing and training.

States should require companies to establish procedures and policies that set out internal supervision and monitoring through management structures, division of roles and responsibilities, and protective risk management procedures.

Supervision and monitoring

During the deployment of PSP personnel, performance should be monitored throughout by the PSP, to ensure professional and appropriate conduct. Any operation which may require the use of force should be closely supervised and monitored by management to ensure that the use of force, if required, is permissible and appropriate in the circumstances. The role of management monitoring the operation is to ensure that the operational plan is followed correctly, that all reasonable steps to avoid the use of force are taken by the deployed personnel, and that the use of force continuum is applied wherever required. Supervision and monitoring also serve to reprimand and reorient the PSP personnel who might diverge from the operational plan, those who may be tempted to resort to the use of force when not necessary, or those who have been accused of misconduct. Throughout the operation, the responsibility of the management is to ensure the respect of the principles of necessity, proportionality and precaution and to adopt means and measures to ensure that those principles are upheld. In cases where this fails, managers are responsible for ensuring accountability. Proper supervision and monitoring will play a crucial role after the operation, whenever an incident involving the use of force might require reporting, investigation or disciplinary sanctions.

Failure to adequately supervise or monitor PSP personnel during an operation that involves or potentially requires the use of force might engage the responsibility and accountability of those in management positions.

The company should:

- Establish and maintain a **clearly defined management structure**. Responsibilities should be clearly defined, documented and communicated. Roles should include tasks such as monitoring, coordination and supervisory responsibilities, as well as planning, security, incident management, response and/or recovery. Roles should be paired with appropriate authority, adequate resources and rehearsed operational plans and procedures to effectively deal with disruptive and undesirable events;
- Establish **communication procedures** to share information about the security team activity, its

location, and its operational and logistical status, the relevant threat information and incident reporting to company management, clients, other private security teams and relevant authorities;

- Establish and implement procedures to support the **protection of people, assets and other security related functions**, including managing risks;
- Establish and implement procedures to 1) identify undesirable or disruptive events, 2) define how the PSP prevents, mitigates and responds to undesirable or disruptive events, and 3) document how the PSP will proactively prevent, mitigate and respond to such events.

Apprehension by private security personnel

As a general rule, PSP personnel should not apprehend individuals. However, in exceptional circumstances it may occur, namely (1) when in self-defence or defence of others against an imminent threat or violence; or (2) following an attack or crime committed against PSP personnel, client or property under the protection of the PSP.⁴⁸ National law may specify this further. Since any apprehension restricts an individual's right to liberty (and may amount to abduction), the State has a duty to clearly regulate and restrict these exceptional situations. Against the background of applicable national and international law, PSP operations should follow clear standards, including the following:

- In the case of apprehension, the PSP personnel must hand over the individual to the State authority as soon as possible;
- Operational procedures should link to the applicable law under which such individual may be apprehended and detained, the rules on the treatment of an apprehended individual, and the rules on the transfer to State custody. In some countries there may be a possibility to conduct a citizen's arrest. National laws and regulations apply;
- As a minimum, PSP personnel must treat apprehended persons humanely: with respect and dignity, demonstrating particular care for individuals in vulnerable situations. In the case of apprehension of a person under the age of 18, the UN Rules for the Protection of Juveniles Deprived of their Liberty must be adhered to.

GUIDANCE FOR REGULATORS

Apprehension by PSPs should be prohibited by law, except in the circumstances outlined above. For those circumstances, minimum treatment should be defined in by-laws and such behaviour should be included in internal company policies through licencing criteria.

Detention by private security personnel

Detention is an intrinsic State function which, due to its far-reaching infringement on personal freedoms, cannot be performed by private actors under their own responsibility. If the State authorises private actors to take up such functions, responsibility for the persons detained remains with the State (in addition to the responsibility of the PSP and their personnel under domestic civil and criminal law).⁴⁹

The guarding or transportation of detainees by PSP personnel shall only be permitted when two cumulative conditions are met. First, the PSP must have been specifically contracted to do so by the State; and, second, the PSP personnel must have been trained in the applicable domestic and international law,⁵⁰ including Articles 7, 9, and 10 of the ICCPR, the CCLEO and UNBPFF, and the Mandela Rules.⁵¹ Interrogation of detainees cannot be performed by PSPs, as this remains a prerogative of the State. At a maximum, PSP's may verify the identities of persons, but such information can only be given voluntarily.

GUIDANCE FOR REGULATORS

Detention by PSPs should be prohibited by law except when specifically contracted to do so by the State and trained in the applicable domestic and international law.

AFTER ACTIVITIES AND OPERATIONS

Accountability of PSPs and PSP personnel

In order to prevent impunity, the principle of accountability is intended to ensure that incidents involving the use of force are diligently reported and investigated, that any abuse of power is punished, and that victims are adequately compensated.⁵² Several of the requirements that apply during all stages of the security operation, from the planning to the debriefing, aim to ensure accountability, such as monitoring and the wearing of IDs.

- Procedures need to be put in place to ensure that any incident involving the use of force can be easily traced back to its authors and the circumstances surrounding such an incident can be promptly evaluated.
- To ensure accountability, all the procedures, orders and reports should be done in writing.

States need to ensure that a judicial system is available to provide accountability for possible wrongdoing of PSPs. In order to ensure effective implementation of rules on the use of force, States should ensure that incidents or complaints are addressed, including through penal or administrative procedures.

The possibility to hold companies accountable should exist within national law. At the very least, national law should stipulate that one or more individuals can be held personally accountable. An independent complaints authority, which can for example be located within the regulatory authority, should be mandated to monitor behaviour and address incidents and complaints that are not addressed by the State's judicial system or are administrative by nature.

GUIDANCE FOR REGULATORS

States should ensure the judicial system has the capacity to handle complaints against PSPs and their personnel. States should develop and support **judicial and non-judicial accountability and remedy mechanisms.**

Incident reporting and investigation

States have the primary responsibility to investigate, prosecute or extradite for prosecution persons suspected of committing crimes under national and international law.⁵³ In order to implement their obligation to protect human rights, it is necessary to investigate and prosecute potential violations of national laws that aim to protect the right to life. Additionally, the State should ensure that PSPs establish, implement and maintain procedures for the reporting and investigation of any incident, as without such reporting accountability is not possible. In the case of incidents involving the use of force or the use of weapons, any casualties, physical injuries or allegations of abuse have to be promptly reported to the State authorities.

The PSP should monitor, and investigate, take disciplinary sanctions and provide remedies where required. Investigations must be conducted expeditiously and impartially, with due consideration to confidentiality and restrictions imposed by national law. The investigation must aim to establish what happened, identify the root causes and determine the corrective and preventative actions that may be taken, including disciplinary sanctions and vetting as required. All incidents investigated shall be reported to the competent authorities.

Companies should:

- Report any crimes or reasonable suspicion of crimes, including international crimes, to competent authorities;
- Prepare incident reports whenever PSP personnel are involved in using a weapon;
- Establish incident monitoring, reporting, investigation, disciplinary arrangements and remediation procedures, particularly for cases involving the use of force and/or weapons;

- Companies must communicate complaint and grievance procedures to internal and external stakeholders, minimize obstacles to the access of such procedures, particularly for groups or persons at heightened risk of vulnerability or marginalisation, such as women and children. Companies must make their complaint and grievance procedures accessible, such as by making them publicly available on a website.

GUIDANCE FOR REGULATORS

States have an obligation to ensure human rights through investigation, prosecution and extradition, which should be included in national law. Reporting requirements for PSPs should be specified in licencing and contracting criteria.

Effective remedy procedures

The State authority mandated to monitor behaviour and address incidents and complaints, should be able to award administrative penalties or, if necessary, refer to a penal court. Such penal procedures should result in remedies for victims when appropriate.

Additionally, PSPs are required to establish, implement and maintain internal and external complaint and grievance procedures to document and address

grievances related to violations of international, national and local laws and non-compliance with international standards, including human rights.⁵⁴ Such complaints and grievances need to be duly investigated and, if fault found, compensation and redress given to the affected parties.⁵⁵ To fulfill this obligation to provide adequate remedy to affected parties, PSPs have a duty to ensure that they have sufficient financial capacity at all times to meet reasonably anticipated liabilities for damages to any person in respect of personal injury, death or damage to property. Companies will also need to comply with the decision of national judicial authorities regarding the award of remedies or compensation;

GUIDANCE FOR REGULATORS

States' legal frameworks should set out remedies for violations.

Requirements for **effective and accessible** company grievance mechanisms should be included in licencing and contracting criteria.

ANNEX 1

Endnotes

- 1 ICRC (2015), *The use of force in law enforcement operations*. Use of force is any physical constraint imposed on a person, ranging from physical restraint by hand or with a restraining device to use of firearms or other weapons.
- 2 UN (1990), *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.
- 3 The term 'private security provider' or 'PSP' will be used in this guidance to indicate that the guidance is useful to instruct conduct not only of private security companies, but also of any private actor performing security services, such as security units of multinational companies or individuals. This guidance does not take any position on the legitimacy of the use of PSP and the type of services they may provide, which should be determined by the State.
- 4 The private security sector does include providers who operate outside the realms of their national laws. This paper will not regard the black market of private security companies in any different manner, but will merely set out what parameters should be set by national law in which PSPs should operate.
- 5 The State has an obligation to protect the right to life, universally recognized in i.e. Art. 6 ICCPR Art. 4 Afr.CHPR, Art. 2 ECHR, Art. 4.1 ACHR, which must be protected by the State, but the protection of other rights such as the prohibition of torture and other cruel, inhuman or degrading treatment may also be of relevance. The State's obligation to ensure that private actors do not abuse the human rights of others is further outlined in the UN Human Rights Council Report by John Ruggie (2008), *Protect, respect and remedy : a framework for business and human rights : report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/8/5* (hereafter: UNGPs) in particular Principles 1,2, 3 and 11.
- 6 On the international level, a few documents have been developed over the past decade which aim to clarify some of the rules for PSPs, however mostly on a voluntary basis, and without going into much detail on the UoF. See for example Montreux Document, Part II - Good Practices relating to private military and security companies, Nr. 10 lit. a), 12 lit. a), 18, 35 lit. a), 37 lit. a), 43, 60 lit. a); , International Code of Conduct Art. 29-32, Art. 59 lit. b) & c);ANSI-ASIS PSC1 Art 0.1 lit. h), Art. 9.5.2, Art. A.2.2. lit. c) & d), Art. A.9.3. par. 3 lit. a), Art. A.9.5.3., Annex C and ISO 18788 Art. 0.1 lit. h), Art. 3.76, Art. 8.3(see also Annex I). On the national level, some national laws address UoF of PSPs in more detail – see for example Art. 32 par. 2 lit. e) and Art. 35 Switzerland's Federal Act on Private Security Services provided Abroad. Other national regulations on PMSCs do so only in a rudimentary manner. See for example Kenya and Ecuador, where the use of force is only briefly touched upon in a set of regulatory documents, e.g. *Reglamento a la Ley de vigilancia y seguridad privada* Art. 16 (uso de armas) or the Private Security Regulation Bill Art. 24.
- 7 *International Code of Conduct for Private Security Service Providers (ICoC)* Art. 32; Voluntary Principles on Business and Human Rights (2013), Consultation and Advice, par. 2; ISO Standard 18788 *Management system for private security operations – Requirements with guidance for use*, Art. 8.3.1, par. 4, Art. 8.3.6).
- 8 ICRC (2015), *To Serve and to Protect* p. 42, p. 135; commentary on UN (1979), *Code of Conduct for Law Enforcement Officials*, Art. 3: Use of Force is allowed when reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used).
- 9 See Hessbruegge, J.A. (2017), *Human Rights and Personal Self-Defense in International Law*, Oxford University Press, p. 89 -90 & p. 239 a.o.; On self-defence as a general principle and a right sui generis, and as a right for personal self-defence for private persons.
- 10 *Ibid*, p. 58-59.
- 11 UN (1979), *Code of Conduct for Law Enforcement Officials*, Art. 3: only use force for execution of duty.
- 12 UN (1990), *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Art. 22-24.
- 13 UNOHCHR (2016), *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the right to life and the use of force by private security providers in law enforcement contexts*, A/HRC/32/39, §75.
- 14 Even more, the State has an obligation to protect inmates against violations of third persons, including of private security companies, see i.a. Geneva Academy Brief 6, p.15 Geneva Academy briefing Nr. 6 on "What amounts to 'a serious violation of international human rights law?'"
- 15 UN (1979), *Code of Conduct for Law Enforcement Officials*, and UN (1990), *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Art. 19-20.
- 16 See footnote 4.
- 17 (2008) Montreux Document, Part One, Obligation 4, 10, 15 and 19; UNGPs *op. cit.* 5 Principles 1,2, 3 and 11. International human rights law imposes an obligation on States to protect with due diligence persons in the human rights of persons in their territory, in particular the right to life and right to physical security.
- 18 UN Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect, Remedy, Principle 3 Commentary.
- 19 This obligation stems from human rights treaties which need to be implemented in national law, see notes 4. and 11 above.
- 20 *Ibid*.
- 21 See Annex I reference documents, which sets out several types of documents of influence.
- 22 See below p. 7.
- 23 See for example Nigeria's (1986) *Private Guard Companies Act*, Part III, Art. 20-24, in which only a few disallowed services for PSPs are

- mentioned with no reference to the use of arms; in Argentina's (2006) *Ley Federal De Seguridad Privada*, Chap. IV, Art. 33, par. VII, there is no mention of self-defence. The legislation demands a 'responsible use of arms' by their carriers. In comparison, in Germany's law on private security providers - § 34a Bewachungsgewerbe, (1994), par. 5 - the use of force is strictly limited to situations of self-defence.
- 24 (2008) Montreux Document, Preface, par. 9, lit. c)-e): 'Territorial States' are States on whose territory PMSCs operate; 'Contracting States' are States that directly contract for the services of PMSCs, including, as appropriate, where such a PMSC subcontracts with another PMSC'; 'Home States' are States of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, then the State where the PMSC has its principal place of management is the 'Home State'.
- 25 See e.g. UN (1979), *Code of Conduct for Law Enforcement Officials*, Art. 3 commentary c).
- 26 As defined below in "Situation 1."
- 27 BPUFF, op.cit. 2, Article 4.
- 28 See above section 2 and UN Human Rights Council (2016), *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the right to life and the use of force by private security providers in law enforcement contexts*, A/HRC/32/39, §84.
- 29 International Law Commission (2001), *Draft Articles on Responsibility of States for Internationally Wrongful Acts (DASR)*, Art. 5 and Art. 7., Supplement No. 10 (A/56/10), chp.IV.E.1.
- 30 *Ibid*, Art 8.
- 31 *Ibid*, Art 5, 7 and 8.
- 32 In the context of law enforcement, 'imminent' means an immediate threat of harm to one or more individuals. Imminence is normally measured in seconds rather than hours. There is a clear element of temporal and physical proximity, although their exact scope will vary depending on the context. Relevant considerations include the apparent intent of the assailant to cause great bodily injury or death, the means at her/his disposal, her/his ability to act and the existence of an opportunity to act. This definition may be used by analogy for PSPs.
- 33 Self-defence is also often found in criminal law as an exculpatory criterion, which is a related but different concept.
- 34 Hessbruegge, J.A. (2017), *Human Rights and Personal Self-Defence in International Law*, Oxford University Press, p. 63.
- 35 UN (1990), *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Art. 9. This distinguishes them from law enforcement officials in the context of law enforcement as stated at Article 9.
- 36 There may be exceptions to this determined in national laws with regard to the protection of private property.
- 37 Whenever force is used, the assessment of the necessary force is not a static evaluation, and a graduated response should be employed according to a use of force continuum. This is a practical result of the proportionality principle. It is important to note from the outset that lethal force and the use of firearms may only be justified in situations of defence of life or against serious injury. This will be elaborated on in Section 3: During Activities and Operations.
- 38 See also : UN Human Rights Council (2016), *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the right to life and the use of force by private security providers in law enforcement contexts*, (A/HRC/32/39) § 85.
- 39 Hessbruegge, *op cit* 8, p. 274.
- 40 UN Human Rights Council (2016), *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the right to life and the use of force by private security providers in law enforcement contexts*, (A/HRC/32/39).
- 41 Serious crimes and serious human rights violation should be defined in the national law. On the international level, for analysis on this terminology see Geneva Academy of International Humanitarian and Law and Human Rights (2014), *What amounts to 'a serious violation of international human rights law'? An analysis of practice and expert opinion for the purpose of the 2013 Arms Trade Treaty*, Briefing no. 6, p. 5. It is important to be aware that official legal or criminal records may not always include all types of behaviours that are not desirable such as domestic violence records. A broad approach to sources of vetting should therefore be encouraged in licensing criteria.
- 42 UN, Office of the High Commissioner for Human Rights, *Guidance on Less-Lethal Weapons in Law Enforcement*, Geneva, October 2019, paras. 2.9, 9.12 ;The weapons are called less-lethal as they can constitute a less dangerous alternative to fire-arms. However, less-lethal weapons and related equipment may still cause death or serious injury, especially if they are not used in accordance with specifications, general principles on the use of force, and fundamental human rights. See also Amnesty International (2015), *The human rights impact of less lethal weapons and other law enforcement equipment*, p. 4-5.
- 43 *Ibid*.
- 44 Amnesty International (2015), *The human rights impact of less lethal weapons and other law enforcement equipment*, p. 103.
- 45 International Committee of the Red Cross (2017), *To Serve and Protect: Human Rights and Humanitarian Law for Police and Security Forces*, 2nd ed, Anja Bienert, p, 269.
- 46 Geneva Academy of International Law, *Geneva Guidelines on Less-Lethal Weapons and Related Equipment in Law Enforcement, Text for Consultation*, 1 October 2018.
- 47 UN (1990), *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, op.cit. 2, based on Par. 10.
- 48 (2010), *International Code of Conduct for Private Security Service Providers (ICoC)*, Art.34.
- 49 DASR *op. cit.* 22; Hessbruegge op.cit. 8.
- 50 ICoC *op.cit.*33., § 33.
- 51 UN (2015), *Standard Minimum Rules for the Treatment of Prisoners* UN-Doc A/Res/70/175 on 17.
- 52 (2008), *Montreux Document*, Part One, Obligation. 4, 10, and 15.
- 53 (2008), *Montreux Document*, Part One, Obligation 4, 6, 10, 12, and 15. 17.
- 54 See ICoC *op cit.* 33, §66 and 67, UNGPs 30 and 31, PSC.1 and ISO 18788 §.
- 55 ICoCA, *Interpretative Guidance Developing and operating fair and accessible company grievance mechanisms that offer effective remedies*.
- 56 UN Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect, Remedy, Principle 12 Commentary.
- 57 *Ibid.*, Principle 6 Commentary.

ANNEX 2

REFERENCE DOCUMENTS

International Human Rights Law

- The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948;
- The International Covenant on Civil and Political Rights of 1966;
- The International Covenant on Economic, Social and Cultural Rights of 1966;
- The Convention on the Elimination of All Forms of Discrimination against Women adopted in 1979.
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment of 1984;
- The Convention on the Rights of the Child of 1989;
- Beijing Declaration and Platform for Action of 1995.

Soft Law for Law Enforcement

- UN General Assembly, Code of Conduct for Law Enforcement Officials, 1979, A/RES/34/169;
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990;
- UN Human Rights Council, Protect, respect and remedy: a framework for business and human rights: report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, 2008, A/HRC/8/5;
- The United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015, A/Res/70/175;

- 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, 2008;
- Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011;
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990, A/Res/45/113.

Industry Standards and Multi-Stakeholder Initiatives

- ANSI/ASIS PSC.1-2012 (and its 2017 reviewed edition) Management System for Quality of Private Security Company Operations;
- ISO 18788: 2015 Management system for private security operations;
- International Code of Conduct for Private Security Service Providers, 2010;
- Voluntary Principles on Security and Human Rights, 2000.

Other

- Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the right to life and the use of force by private security providers in law enforcement contexts, 2016, A/HRC/32/39;
- The Child Rights and Security Checklist.

