**The International Code of Conduct for Private Security Service Providers and**

**Rules for the Use of Force**

Christopher T. Mayer[[1]](#footnote-1)

Summary: The new International Code of Conduct for Private Security Service Providers (ICoC) requires companies to operate in accordance with published rules for the use of force (RUF). The ICoC also describes principles to be observed when formulating such RUF. These principles are consistent with existing U.S. Government policies and procedures for the RUF as it applies to contract security services.

 Complex environments in many regions of the world overwhelm the ability of governments to respond to crises and meet the essential needs of their populations. Even where governments have not entirely collapsed, the rule of law can be severely damaged, and normal public safety mechanisms may no longer function. In these cases, commercial security services may be necessary to safeguard the lives of those providing relief, early recovery, and the reconstruction of critical infrastructure necessary for the survival of the civilian population. Because provision of necessary protection may involve the use of force, including deadly force, precautions are necessary to mitigate the risk that these protective services might create further insecurity and adversely affect the restoration of the rule of law. These precautions include effective rules for the use of force (RUF). The recently published International Code of Conduct for Private Security Service Providers (ICoC) requires participating companies to adhere to approved RUF and describes principles to be observed in developing such rules. The ICoC is an industry-led, government-supported document published by the Swiss Government and endorsed by more than 50 major international private security providers. The ICoC is an interim step in the application of *The Montreux Document on pertinent international obligations and good practices for States related to operations of private military and security companies during armed conflict* (hereinafter, the “Montreux Document”).[[2]](#footnote-2) The Montreux Document, an initiative co-sponsored by the Swiss Government and the International Committee of the Red Cross (ICRC), with 35 endorsing States, established a framework for responsible use of private security services. The principles described in the ICoC and the Montreux Document are consistent with current U.S. policies on civilian use of deadly force and existing RUF published by the U.S. Government for use by contract security personnel.

 The ICoC describes the following minimum requirements for RUF: [[3]](#footnote-3)

* to take all reasonable steps to avoid the use of force;
* to use force in a manner consistent with applicable law, not to exceed the force that is strictly necessary, proportionate to the threat and appropriate to the situation; and
* not to use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life.

 These requirements are consistent with current U.S. policy for security personnel, including contractors. Armed private security providers are civilians under international law, and they may use force when exercising the inherent right of self-defense. Department of Defense Directive 5210.56, “Carrying of Firearms, Non-Lethal Weapons, and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities,” provides that deadly force may be used in self-defense “[w]hen there is reasonable belief that a person(s) poses an imminent threat of death or serious bodily harm” to the individual or “other DoD persons in the vicinity,” or to “non-DoD persons in the vicinity when directly related to the assigned activity or mission.”[[4]](#footnote-4) For contract security providers, self-defense actions may be conducted on behalf of persons specified under the terms of the contract[[5]](#footnote-5) and in defense of other persons facing imminent threat of death or serious bodily harm such as murder, armed robbery, or aggravated assault.[[6]](#footnote-6)

 The defense of others may also include the use of force, up to and including deadly force, to protect inherently dangerous property from theft or sabotage. This is property that could create an imminent threat of death or serious bodily harm in the possession of an unauthorized individual.[[7]](#footnote-7) Under certain circumstances, as specified by appropriate legal authority, defense of others may include the protection of critical infrastructure vital to public health or safety, the damage to which would also create an imminent threat of death or serious bodily harm.[[8]](#footnote-8) Generally, the use of force to protect property is limited to non-lethal means. If, however, an attack against property results in an imminent threat of death or serious injury to the personnel charged with protecting that property or others in the vicinity, the use of deadly force to protect it may be authorized.

 The inherent right of self-defense continues to exist in conditions of armed conflict. The use of force in response to unlawful violence does not violate the civilian status of private security service providers, even if the attackers are members of hostile armed forces. This view is consistent with the ICRC’s *Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law*.[[9]](#footnote-9) Private security service providers are civilians; in an armed conflict, they do not enjoy the combatant’s privilege provided members of military forces of a government. To preserve the civilian status of these contractors and to safeguard the human rights of the broader civilian population, application of force must be consistent with the law of the State where they are operating, U.S. law, and the policy of the agency for which they are working. Well-designed RUF, approved by competent national authorities, provide private security personnel and those employing them with the authorizations for and limitations on applying that force.

 Within the context of contingency operations, RUF differ from the more familiar rules of engagement (ROE). ROE are directives delineating the circumstances and limitations for military forces to initiate or continue combat engagement with other forces.[[10]](#footnote-10) RUF, on the other hand, are rules for the protection of people, activity, and property from criminal activity and other violence not allowed under the laws and customs of war. U.S. policy regards the use of force as a continuum of appropriate responses to various levels of threat. This continuum contains escalation of force alternatives such as avoidance, verbal or visual persuasion and warning, the use of non-lethal measures or weapons, and finally, deadly force.[[11]](#footnote-11) Deadly force is justified only under conditions of necessity and used only when lesser means cannot be reasonably employed, have failed, or would be likely to fail, and the risk of death or serious bodily harm to innocent persons is not significantly increased by its use.[[12]](#footnote-12) RUF are published by commanders and directors at appropriate levels of national authority, with appropriate legal review. Typically, RUF for use during U.S. security operations include the following elements:

* All individuals have an inherent right of self-defense and the defense of others;
* Minimum force necessary and proportional to the threat is used;
* Deadly force is used only:
	+ For immediate threat of death or serious bodily injury to self or others;
	+ For defense of persons under protection; and
	+ To prevent theft, damage, or destruction of firearms, ammunition, explosives, or other property designated as inherently dangerous or as critical infrastructure.

 Although the use of force may be characterized as a continuum of appropriate responses, there is no requirement to increase force sequentially. The decision regarding the appropriate level of force to be used in self-defense or the defense of others is made according to what is reasonable to the person facing the threat at the time it is encountered.[[13]](#footnote-13)

 Promulgating effective RUF is not sufficient. Persons authorized to use force, whether military, public safety personnel, or private security contractors, must have adequate training in the rules themselves and the practical application of these rules, and must demonstrate proficiency in the lethal and non-lethal weapons that will be used. These training requirements are addressed in the ICoC and reflect similar provisions in the Montreux Document.[[14]](#footnote-14) U.S. policy requires initial and recurring training for contracted security personnel in rules for the use of force, the law of armed conflict, and relevant human rights law, and it requires academic instruction, mechanical training, and demonstrated proficiency in the weapons that the contractor is authorized to carry.[[15]](#footnote-15) Minimally, this training must meet standards already in place for members of the Armed Forces or the State Department who are assigned to perform similar security services.[[16]](#footnote-16) As the process of developing international standards for private security services continues, these training requirements will be specified by international standard and will be subject to independent monitoring and validation.

 In many regions of the world gripped by violence that overwhelms the capacity of the affected government to maintain order and the security of the civilian population, private security services may be essential to enable relief, reconstruction, recovery, and economic activity. The use of force by these security providers must be consistent with their civilian status and applied in a way that supports the restoration of the rule of law and the basic human rights of the affected population. The use of force by private security service providers is based on the inherent right of self-defense. In exercising this right, steps must be taken to minimize the potential for inadvertent harm that might be caused by the use of weapons by security forces. Rules for the use of force are an important means for understanding and exercising the right of self-defense. The International Code of Conduct for Private Security Service Providers describes principles to guide the development of such rules. U.S. policy for the use of force by security forces is consistent with those principles. When properly trained, applied, and enforced, such RUF will support the restoration of the rule of law and the protection of human rights.

1. Director, Armed Contingency Contractor Policy and Programs, Office of the Deputy Assistant Secretary of Defense (Program Support). The views expressed herein are the personal views of the author, and may not necessarily reflect an official position of the Department of Defense or any other agency of the United States Government. [↑](#footnote-ref-1)
2. Release of the Montreux Document, Swiss Federal Department of Foreign Affairs, <http://www.eda.admin.ch/eda/en/home/topics/intla/humlaw/pse/psechi.html>, accessed November 8, 2010. [↑](#footnote-ref-2)
3. International Code of Conduct for Private Security Service Providers, November 2010, Section 31, available at: <http://dcafdev.ethz.ch/content/download/603/7059/version/1/file/PSC%20-%202010-10-08%20-%20International%20Code%20of%20Conduct_final.pdf>, accessed November 8, 2010. [↑](#footnote-ref-3)
4. DoD Directive 5210.56, *Carrying of Firearms, Non-Lethal Weapons, and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities*, Department of Defense, Washington, DC, March 2010, Enclosure 2, para. 4.d. [↑](#footnote-ref-4)
5. USCENTCOM Policy and Delegation of Authority for Personal Protection and Contract Security Service Arming of DoD Civilian Personnel and Contractors for Afghanistan, August 2010, para. 4.d.2. [↑](#footnote-ref-5)
6. DoD Directive 5210.56, Enclosure 2, para. 4.d.(6). [↑](#footnote-ref-6)
7. Id at , Glossary, Part II, p. 14. [↑](#footnote-ref-7)
8. Id at Enclosure 2, para. 4.d.(5). [↑](#footnote-ref-8)
9. *Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law*, Nils Mezler, International Committee of the Red Cross, Geneva, May 2009, p.61. [↑](#footnote-ref-9)
10. Rules of Engagement Handbook, Alan Cole, et alia, International Institute of Humanitarian Law, San Remo, Italy, November 2009, p.1 [↑](#footnote-ref-10)
11. Army Regulation 190-14, Carrying of Firearms and Use of Force for Law Enforcement and Security Duties, March 12, 1993, para. 3-1, b. The continuum is primarily a training tool for identifying possible responses to a threat. [↑](#footnote-ref-11)
12. DoD Directive 5210.56, Enclosure 2, para. 4.b. [↑](#footnote-ref-12)
13. Id at Enclosure 2, paras. 3 and 4 . [↑](#footnote-ref-13)
14. Montreux Document, Part II, Clauses 10 and 14. [↑](#footnote-ref-14)
15. CFR 32, Part 159, Interim Final Rule, Private Security Contractors (PSCs) Operating in Contingency Operations, Federal Register/ Vol. 74, No. 136 / Friday, July 17, 2009; DoD Directive 5210.56 at Enclosure 2, para. 1.b.(3). [↑](#footnote-ref-15)
16. Id. [↑](#footnote-ref-16)