Ladies and Gentlemen,
Distinguished Colleagues,

Thank you for the invitation and for the possibility to present the initiative, which Switzerland, in close cooperation with the International Committee of the Red Cross (ICRC), has launched in order to promote respect for international humanitarian law and human rights with regard to private military and security companies (PMCs/PSCs) operating in conflict areas.

**Background to the Swiss Initiative**

Since the 1990s, PMCs/PSCs have increasingly been used for logistical, technical, security and also military tasks in conflicts across the globe. Well known are the examples of the conflicts in Iraq and Afghanistan, where tens of thousands of private security contractors have been used. In many other conflicts, and periods or areas where insecurity reigns, including in Africa, such companies have been used by various actors, including states, international organisations, transnational businesses and humanitarian actors, to gain security.

However, private security companies are not only used in times of conflict. In fact, the overwhelming part of private security services takes place in times of peace, or in periods or areas just below the armed conflict threshold, where insecurity reigns for various reasons, such as common criminality. This is true for Africa, with, for instance, tens of thousands of security personnel in South Africa; this is true for Europe, including Switzerland; and this is true for many other countries world wide.

Observers generally agree that transnational and probably also domestic military and security services will increasingly be used in the foreseeable future.

However, private security may have both a considerably positive as well as a negative impact on human rights and human security. As private security may involve the potential use of force and lead to lethal injuries, their extensive
use raises several issues. How, for instance, does one ensure appropriate control over the services and the accountability of the companies and individuals concerned?

In Europe, many states, though by far not all, have regulated the domestic private security sector. In Switzerland, while regulation exists in some of our cantons (Switzerland is a federal State), in others the sector is not regulated. However, the Swiss government has advised the cantons to consider regulating the domestic private security sector.

On the other hand, up to now, very few countries, among others South Africa, have regulated the trans-national security industry. As these companies often operate in fragile states, where the law enforcement institutions are still weak, particular attention is required from the clients and other actors to ensure appropriate accountability. This is why a number of countries, including Switzerland, are currently also considering regulating the transnational private security industry. Nonetheless, so far, there has been very little inter-governmental exchange on the subject.

This is why Switzerland, in cooperation with the ICRC, have initiated an inter-governmental dialogue on how to ensure and promote increased respect for international humanitarian law and human rights by states and companies with regard to the operation of PMCs/PSCs in conflict areas, with a focus on the trans-national sector.

**Objectives of the Swiss Initiative**

This initiative which-I must point this out again-is conducted in cooperation with the ICRC, has three main objectives, namely:

- To contribute to an inter-governmental exchange on the challenges posed by the use of PMCs/PSCs
- To re-affirm and clarify the existing obligations of states and other actors under international law, in particular under international humanitarian and human rights law
- To study options of regulation and other appropriate measures at the national and, where possible, at regional or at international level, and possibly elaborate good practices for states, in order to assist them to meet their responsibilities under international law.
The discussion of issues arising from resorting to PMCs/PSCs and of ways of promoting respect for international humanitarian law and human rights, is not intended to legitimise the use of such companies. We do not endorse their use. However, given the fact that these actors have become a reality in a number of conflicts, the envisaged process aims to prevent or reduce potential adverse consequences.

As a first step, Switzerland invited governmental experts from states with particular experience on the topic as well as representatives of the industry, academics and other experts to two informal workshops which took place last year. Objectives of the meetings were to discuss the issues, reflect on possible answers and to elaborate some best practices. Participants were governmental experts from states that contract PMCs/PSCs, the states of nationality of these companies as well as states on whose territory private companies operate. Among others, representatives of states such as Afghanistan, Iraq, Canada, France, the UK and the US participated in the meetings. Countries from Africa were represented by Angola, Sierra Leone and South Africa.

**The outcome of the expert meetings**

One central conclusion of the various presentations and discussions at these meetings on the applicable law was that international legal obligations cannot and must not be circumvented by states through the use of PMCs/PSCs. Moreover, violations of international law by PMCs/PSCs may, under certain circumstances, become the contracting state’s responsibility.

A first obligation under international law that must not be circumvented by the use of private actors is the prohibition of the use of force against another state, which constitutes a cornerstone of international law.

As the employees of such companies are often presented as ‘modern mercenaries’, this issue was also addressed. Since the issue of mercenarism only relates to a small part of the contemporary phenomenon of PMCs/PSCs, however, there was general agreement that it should not be the focus of the initiative.

While some states are bound by the AU Convention of 1977 for the Elimination of Mercenarism in Africa and the UN Convention of 1989 against the Recruitment, Use, Financing and Training of Mercenaries, there is no universal prohibition of mercenarism.
Moreover, as the distinguished representative of the ICRC explained this morning, states have the obligation to respect and ensure respect for international humanitarian law (IHL).

Besides IHL, international human rights law (ICCPR) and soft law standards (eg the UN Code of Conduct for Law Enforcement Officials or the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials) may also be of relevance to the activities of PMCs/PSCs. Moreover, individuals who commit serious violations of international humanitarian law or gross violations of human rights, may incur criminal responsibility directly under international law and may be prosecuted by national or international tribunals.

 Regulation (and contracting standards)

While the existing international and national (eg criminal law) legal framework addresses many issues raised by PMCs/PSCs, the key challenge in practice remains how to enforce and ensure respect for the relevant standards by all actors. In this context, there seemed to be general agreement that regulation may serve to address these issues. It is therefore an aim of the Swiss Initiative to elaborate, through an inter-governmental process, best state practices on how to address the issue, and to develop regulatory options at national or maybe even regional level.

 Contracting states and other ‘clients’

At the meetings, as well as in other exchanges, different options of elements of regulation were brought up. Possible aspects that may be considered by ‘clients’ who contract such companies include requiring the company by the terms of the contract to:

- Vet its employees (background checks)
- Adequately train its employees in all laws applicable to security services as well as where applicable-in human rights law and IHL, provide training in de-escalation, and training in the responsible use of weapons, etc.
- Adopt standard operating procedures and rules of engagement in compliance with national and international law and in accordance with their mandate under the contract
• Provide for internal disciplinary sanctions and take measures to allow affected persons to complain about misconduct

• Obtain the approval of the ‘client’ for any sub-contracting of contract tasks

Another possible aspect that may be considered when contracting such companies is the introduction of measures to monitor performance and enforce compliance with the contract and the law (e.g. supervision of performance, sanctions for violation of the contract, and in the case of states, ensuring there is a system to bring to justice alleged perpetrators of international crimes).

In Switzerland, for instance, we have created an inter-ministerial working group to study criteria and guidelines to be applied when governmental authorities contract private security companies, at home and abroad. A first draft of a directive is currently being finalised by my colleagues in Berne.

**Territorial (‘host’) states**

Regulation may also be considered by states on whose territory PMCs/PSCs operate to control the provision of armed services and ensure accountability of PMCs/PSCs and their staff on their territory. Options of elements for national regulation that were discussed included the following:

• A requirement to obtain a general operating licence for companies to provide specified security/military services in the state’s territory

• Determining specific activities that PMCs/PSCs can be licensed to carry out within the state’s territory

• Conditions for the approval of licenses for specific activities

• Establishing systems for monitoring compliance and measures to promote transparency

Sanctions for operating without registration or license or in violation thereof

• Establishing mechanisms for holding perpetrators of crimes accountable under law

• In Switzerland, several cantons are currently considering adopting regulations to control the operations of PSCs.
‘Home states’

Several of the elements I have just mentioned with regard to territorial states, were considered as potentially relevant in a regulatory framework that could be adopted by the states of nationality of PMCs/PSCs offering services in conflict situations abroad.

While the export of arms is regulated in most states, the export of military or security services generally is not. Experts have suggested that existing arms export regulations, be they national or international, such as the EU Code of Conduct on Armament Exports, could serve as a model or even be extended to cover the export of military services (maybe even armed security services) as well. Reflection along those lines is also taking place in Switzerland.

The way forward

Participants at the Swiss Initiative’s two expert meetings have expressed interest to further study options of regulatory models and to elaborate, on the basis of existing obligations, good practices for states with regard to possible elements of national (or other) regulation and contracts. Advantages of an inter-governmental dialogue include harmonisation and coherent approaches in different countries, which will lead, inter alia, to a level playing field and render it more difficult for PMCs/PSCs to escape national controls.

Switzerland and the ICRC will continue the inter-governmental exchange on the issue and elaborate good practices for states to meet their obligations under IHL and human rights law. The perspective and experience of African governments and experts is of particular interest and importance to us.

We hope that the Swiss Initiative will make a valuable contribution to the exchange on the issue of PMCs/PSCs. It is hoped that the best practices studied and elaborated on, will stimulate reflection and the consideration of regulation also in the regional organisations and states on your continent.

Further information about the Initiative, which you may take with you, is available here in this room, as well as on the website dedicated to the Swiss Initiative.

I thank you very much for your attention.