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949th Meeting of the OSCE Forum for Security Co-operation Security Dialogue on Private Military and Security Companies

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I. Introduction

Thank you for the opportunity to speak at the OSCE Forum for Security Co-operation. I plan to address one key element of the broader topic of private military and security companies. Building on prior discussions at the OSCE, I will focus specifically on international efforts to promote the responsible provision of private security services.

II. Defining Terms

Private military and security companies engage in a wide range of activities. For example, the Montreux Document, defines private military and security companies as “private business entities that provide military and/or security services, irrespective of how they describe themselves,” and goes on to say that “military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.”

The various services provided by private military and security companies can raise distinct challenges and necessitate different regulatory approaches. For the purpose of these remarks, I will be focusing narrowly on a subset of the broader industry, and will speak specifically about private security companies, defined essentially as companies engaged in guarding and protecting persons and objects.

It is important to distinguish the provision of ordinary security services from that of combat. In some circumstances, armed guards, at a superficial level, can

resemble those engaged in combat operations, particularly when the guards are operating in a conflict zone. Like soldiers, private military and security contractors may be asked to operate in dangerous or even hostile environments and may be armed. But crucially important, the circumstances in which they are ordinarily expected to use force, *i.e.* guarding and protecting persons and objects, are significantly different from those of States' regular armed forces. Contractor personnel providing services to the United States are prohibited from engaging in combat operations or operational command or control of military forces. These private security companies should therefore not be confused and conflated with the functions of States' armed forces or mercenaries.

To be clear, using private security companies to provide protection is a legitimate, and often necessary, means to support critical operations in high-risk environments where the use of a State's armed forces or permanent employees is unavailable or insufficient. That said, we recognize that there are inherent risks in providing security services in conflict and post-conflict environments, and that it is important to take steps to mitigate those risks. For example, when the United States contracts for private security companies to protect its activities in areas of instability and conflict, the contracts provide extensive requirements related to compliance with provisions of applicable law, including those related to the protection of human rights.

Today, I will be addressing issues pertaining to responsible private security companies that are hired by States, as well as by non-governmental organizations and international organizations, to protect personnel and property in complex operating environments.

III. Background on the Montreux Document and the International Code of Conduct Association

The starting point at the international level for promoting appropriate regulation and oversight of PMSCs is the Montreux Document. As we heard from our Swiss colleague, the Montreux Document describes existing legal obligations regarding PMSCs and lists recommended good practices for States in the regulation of PMSCs and their services. The Montreux Document is not a binding international agreement, but the U.S. Government recognizes the existing legal obligations described in the document and the value of its recommended good practices. The United States remains a strong supporter of the Montreux Document. We believe that national regulation of PMSCs consistent with the Montreux Document is

critical for promoting good practices and ensuring accountability in cases of misconduct.

The OSCE has been a Montreux Document participant since 2013, and most of its participating States are familiar with the Montreux Document itself and the Montreux Document Forum. Some States may, however, be less familiar with the International Code of Conduct for Private Security Service Providers' Association, or ICoCA. The ICoCA is a multi-stakeholder association governed by representatives from private security companies, civil society organizations, and governments. The purpose of the ICoCA is to promote, govern, and oversee implementation of the International Code of Conduct for Private Security Service Providers. The Code sets out principles for private security companies based on international human rights law and international humanitarian law, including the prohibition of torture and human trafficking. The ICoCA is dedicated to promoting the responsible provision of security services through the certification and monitoring of Member companies and the oversight of effective procedures for handling complaints of alleged Code violations. It is the only international multi-stakeholder organization working towards raising standards within the private security industry globally with a particular focus on complex environments.

IV. The Role of the International Code of Conduct Association

The U.S. Government strongly supports the work of the International Code of Conduct Association. We believe that the core ICoCA functions – a combination of certification, monitoring (including field monitoring), and a third-party complaint process – have the potential to raise the level of performance across the industry of Private Security Companies and other Private Security Service Providers (PSCs). ICoCA-certified PSCs should have a market advantage because that membership indicates that they have been audited and found compliant with the Code of Conduct's provisions and have committed to being transparent and accountable through the ICoCA's monitoring and complaint process. This market pressure should give companies an incentive to improve their practices, as clients, media, and the public in general will have access to an effective tool for distinguishing between companies based on their performance and conduct.

States obviously play a vital role in ensuring that PSCs that they direct or control in the provision of security services comply with the States' respective obligations under international humanitarian law and international human rights law, as applicable, and adhere to vetted management practices. Membership in the ICoCA, as well as certification to established international management standards, can

serve as effective tools for contracting States, territorial States, and home States. For instance, States that wish to hire PSCs can require them to be certified to a standard in order to bid on government contracts, and territorial States could similarly incorporate ICoCA membership or independent certification within their licensing framework. As an example, only ICoCA-member PSCs are eligible to compete for the U.S. Department of State's worldwide protective services contracts.

The International Code of Conduct Association is in no way a substitute for effective regulation of private security companies at the national level, which remains critical. The United States has previously shared information on our own national practice in this regard. But even though the ICoCA cannot not replace effective national regulation of the security services industry, we believe that participation in the ICoCA and PSCs adherence to the Code of Conduct can complement national regulation by States and make a significant contribution toward promoting the responsible provision of security services. We are beginning to see how initiatives such as the International Code of Conduct, and various applicable performance standards, will translate into practice and how contracting policies and national regulatory regimes may increasingly take advantage of these tools. With these developments, respect for human rights and the rule of law is being strengthened through collaboration between the relevant stakeholders.

V. Conclusion

We encourage other States to become members of the Association and to participate actively in the ICoCA process. Membership in the Association allows Governments to contribute to strengthening this initiative, and in turn further their policy goals in the areas of business and human rights and security sector governance.