

Beyond Market Forces Regulating the Global Security Industry



James Cockayne with
Emily Speers Mears, Iveta Cherneva, Alison Gurin,
Sheila Oviedo, and Dylan Yaeger

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To DJHC, for KYHSO

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Acronyms

B+HR	Business and Human Rights
BAPSC	British Association of Private Security Companies
BCRCs	Basel Convention Regional Centres for Training and Technology Transfer
BIAC	OECD Business and Industry Advisory Committee
BiH	Bosnia and Herzegovina
CAAC	Children and armed conflict
CARE Process	CARE (Caring, Awareness, Responsible, Ethical) Process (within the ICTI Framework)
CAS	Court of Arbitration for Sport
CIME	OECD Committee on International Investment and Multinational Enterprises
CoESS	Confederation of European Security Services
CPA	Coalition Provisional Authority in Iraq
CRA	Credit ratings agency
CSR	Corporate social responsibility
CWC	<i>Chemical Weapons Convention</i>
EITI	Extractive Industries Transparency Initiative
EPs	Equator Principles
ESM	Environmentally sound management (in the Toxic Waste Convention framework)
EU	European Union
FATF	Financial Action Task Force

FLA	Fair Labor Association
FSRB	FATF-Style Regional Body
G7, G8	Group of Seven industrialized countries, now the Group of Eight
GRI	Global Reporting Initiative
GSI	Global Security Industry—the industry made up of PMSCs
HAP	Humanitarian Accountability Partnership
ICAS	International Council of Arbitration for Sport
ICRC	International Committee of the Red Cross
ICTI	International Council of Toy Industries
IFC	International Finance Corporation
IHL	International Humanitarian Law
ILO	International Labour Organization
IMF	International Monetary Fund
IPOA	International Peace Operations Association
IOC	International Olympic Committee
ISO	International Organization for Standardization
KP	Kimberley Process
KPCS	Kimberley Process Certification Scheme
MBT	1997 Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on Their Destruction (Mine Ban Treaty)
MNE	Multinational enterprise
MRM	Monitoring and reporting mechanism (within the children in armed conflict framework)

NCCT	Non-Cooperative Country and Territory (within the FATF framework)
NCP	National contact point (within the OECD MNE guidelines framework)
NGO	Nongovernmental organization
OECD	Organization for Economic Cooperation and Development
OIE	World Organization for Animal Health
OPCW	Organization for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Cooperation in Europe
PSCAI	Private Security Company Association of Iraq
SAI	Social Accountability International
SPS Agreement	Sanitary and Phytosanitary Agreement of the World Trade Organization
TUAC	OECD Trade Union Advisory Committee
UNSC	United Nations Security Council
UNSCWG	United Nations Security Council Working Group (within the children and armed conflict framework)
UNWG	United Nations Human Rights Council Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination
VPSHR	Voluntary Principles on Security and Human Rights
WTO	World Trade Organization
WTO TBT	World Trade Organization Agreement on Technical Barriers to Trade

Glossary

Definitions were established by the research team for use throughout the study.

Acquis

*Literally French for “asset.” In Europe, the term is used to describe the *acquis communautaire*—the total body of EU law, regulations, and standards so far acquired through continuous development by the EU’s membership and institutions, including its courts and political decision-making bodies. The term is also used by the WTO, OSCE, Council of Europe, and OECD to refer to their own evolving bodies of standards.*

Agent

Any institution exercising implementation or enforcement authority delegated by participants within a framework.

Enforcement

Any activities within a framework designed to promote conduct by participants that abides by the frameworks’ standards through responses to specific incidents of apparent noncompliance, such as accountability measures, dispute resolution, and adoption of sanctions or remedial measures.

Framework

Any standards implementation or enforcement framework (SIEF) that extends beyond purely national state-based regulation.

Grievance mechanism

Any institutionalized accountability mechanism within a framework designed to address the grievances of framework participants, or affected third parties, arising from alleged noncompliance with the framework’s standards.

Implementation

Any activities within a framework designed to promote conduct by participants that abides by the framework's standards and prevent noncompliance, such as training, incorporation of standards into internal practices and procedures, adoption of domestic legislation, or monitoring.

OECD MNE Guidelines

Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development

Participants

Any state or nonstate entity formally participating in a SIEF.

PMSC

*Private military and security company—any company offering, on a commercial basis, services related to the provision, training, coordination, or direction of security personnel, or reform of their institutions.**

SIEF

Standards implementation and enforcement framework—any framework addressed in this study.

Standards

Any norms of conduct and/or performance that a framework seeks to promote.

Systems monitoring mechanism

Any arrangement within a framework designed to monitor systemic

* This definition is adapted from those used by the BAPSC, IPOA, and the Swiss Initiative. It is deliberately broad, in order not to prejudice any particular approach to regulating the closely related services offered by military-oriented companies and those that focus more on service provision in nonmilitary (i.e., security) contexts. The personnel carrying out these functions may be, but need not be, armed.

compliance by participants with framework standards. Systems monitoring mechanisms can be contrasted with incident response mechanisms, which often include a grievance mechanism.

Executive Summary

In late 2008, seventeen states, including the US, UK, China, Iraq, Afghanistan, and others, endorsed 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). This provides important guidance to states in regulating private military and security companies (PMSCs). However, there is a need to do more, to provide increased guidance to the industry and ensure standards are enforced.

The arrival of a new administration in the United States offers a unique opportunity for rethinking the global regulation and accountability of private military and security companies. There are positive signs that the Obama administration will step up efforts to improve regulation, both domestically and internationally. There are also signs that other states, such as Switzerland, the UK, and Canada, are willing to do more. Yet domestic regulation is not enough, because the industry is increasingly global. Even many of the PMSCs employed by the US government are incorporated off-shore, and recruit third-country nationals whom the PMSCs then deploy overseas without their ever having entered US jurisdiction.

What is needed is a roadmap toward effective international regulation. There are now adequate standards in place for a global standards implementation and enforcement framework to be developed.¹ What is lacking is an understanding of the options available for implementing and enforcing these standards. This feasibility study examines these options and provides five blueprints for the development of a global framework.

INTRODUCTION AND OVERVIEW

In late 2007 and early 2008, governments and industry actors expressed interest in the International Peace Institute (IPI) carrying

out a study on how to improve international regulation of PMSCs by combining governmental initiatives with industry self-regulation.

The aims of this feasibility study are as follows:

- i) to better expose all stakeholders in the global security industry (GSI)—states, industry, and civil society and GSI clients, financiers, and affected communities—to the wide variety of approaches used to implement and enforce standards in other global industries; and
- ii) to identify options for combining components of these other frameworks in ways that will assist states in regulating the global security industry, by supplementing and reinforcing existing state regulation.

The study's aim is to catalyze thinking on the urgent need for better regulation of the global security industry—and the practical and policy issues involved. The study therefore provides five options for the development of a global framework. However, **the study does not aim to develop a preferred model for a framework for the industry or to prescribe standards for the industry.** Instead, the study aims to foster reflection within all relevant stakeholder groups—governments, industry, and civil society—on their own positions regarding possible approaches to the implementation and enforcement of standards in the global security industry, better to prepare the ground for informed dialogue. In that sense, the study is intended to serve as a **reference document** for stakeholders.

Chapter One identifies the regulatory problem, namely the violation of human rights and noncompliance with international humanitarian law (IHL) by the global security industry. Chapter 1 explains why a standards implementation and enforcement framework is needed to address this problem, and explains the methodology used in preparing the study, including definitions of key terms that appear throughout.

Chapter Two provides a more detailed explanation of why existing regulation does not adequately safeguard against the violation of human rights and noncompliance with IHL by the global security industry. This Chapter discusses national, industry-level, intergovern-

mental, and civil society approaches.

Chapter Three sets out four design principles that will shape effective standards implementation and enforcement in the GSI. These design principles offer an assessment of what effective regulation would need to offer to each set of stakeholders; the principles are then used to guide the study's evaluation of standards implementation and enforcement in other industries and existing GSI-relevant frameworks.

Specifically, the study highlights the following:

- i) the need to assist states to discharge their legal duty to protect human rights;
- ii) the need to involve all relevant GSI stakeholders, including states;
- iii) the need to use “smart incentives” to encourage stakeholder involvement and influence their conduct; and
- iv) the need to improve PMSCs' accountability to clients, the communities the PMSCs operate in, and other stakeholders.

Chapters Four to Nine use these four design principles to present analyses of thirty standards implementation and enforcement frameworks in a range of global industries, including the financial, extractive, textile and apparel, chemical, toy, toxic waste disposal, sporting, and veterinary sectors. Each of the thirty sections in Chapters 4 through 9 begins with a brief summary of analysis of lessons for the GSI.

Chapter Ten offers a series of conclusions and recommendations. It identifies and describes five different blueprints that could be applied to the GSI, based on existing standards, namely (1) a watchdog, (2) an accreditation regime, (3) an arbitral tribunal, (4) a harmonization scheme, and (5) a GSI club. This Chapter outlines the governance structure, financing, barriers to development, and added value of each blueprint. Chapter 10 also suggests that it may be necessary to combine different blueprints to construct one overall effective framework. A final section sets out the three steps that stakeholders need to take in order to realize such a comprehensive

global framework for the GSI based on these blueprints.

In the last decade, commercially-organized security personnel have become an increasingly common sight around the world, from protecting shopping malls in the American Midwest to providing convoy security in the Middle East. These personnel are the increasingly visible side of an industry that provides a wide range of services related to the provision, training, coordination, and direction of security personnel, and reform of their institutions.

In many cases, small local contractors and large multinational companies are connected, through subcontracting arrangements, joint ventures, personnel movements, and subsidiary structures. Together, they form a complex web of commercial providers of guarding and protection services; operational support in combat, intelligence, interrogation, and prisoner detention services; and advice to, training, and reform of local forces and security personnel. These contractors and companies form, in other words, a global security industry.

The global security industry has undergone particularly dramatic growth following the US-led military campaigns in Iraq and Afghanistan. In the ensuing years, this industry has received particular attention regarding its perceived lack of respect for human rights and IHL, as well as labor rights and other standards relating to corporate responsibility. Evidence of industry violations of these standards remains partial, disputed, and problematic. However, the persistence and plausibility of such allegations have not been effectively matched by improved regulation and accountability, either on the part of states, which bear the primary duty of regulation, or from other stakeholders in the GSI. Indeed, existing regulation of the industry has received widespread criticism, including for a lack of transparency and—in particular—a lack of appropriate accountability for violation of human rights and IHL by PMSC personnel.

These criticisms get to the heart of the **regulatory problem: the lack of industry-wide standards to protect human rights and ensure respect for IHL and effective arrangements for the implementation and enforcement of such standards.** Collaborative regulatory action is clearly needed to secure the future of the industry—or at least to

secure the human rights of those it affects, so long as the industry continues to thrive in a free market. Such collaborative regulatory action is clearly in the interests of not only those affected by the conduct of the industry but also those with financial, political, or personal stakes in it.

This study's call to improve the implementation and enforcement of human rights and IHL, as well as other standards in the global security industry, should therefore be understood not only as one part of a larger effort to mitigate the risk of further human rights violations by PMSCs but also as an attempt to harness the potentially positive contribution to security, development, good governance, and even the enjoyment of human rights, that such an industry—if effectively regulated—has the capacity to offer.

As is demonstrated below, national regulation, company codes, intergovernmental efforts, and civil society initiatives have all, so far, fallen short in remedying these failings. Reliance on the invisible hand of market forces to achieve effective regulation does not seem to have protected all stakeholders' interests. Among others, the UN Special Representative on Business and Human Rights, Professor John Ruggie, has pointed to the need for the general lessons of business and human rights to be applied in considering the specific question of how to improve regulation of PMSCs, including through international and multistakeholder arrangements.² We need to go beyond unilateral state regulation and beyond market forces.

This study argues for a **global framework to identify, implement, and enforce relevant standards across the industry, assisting states to achieve effective regulation.** Such a standards implementation and enforcement framework (SIEF) would have both a preventive and a remedial aspect: the framework would ensure behavior in compliance with national and international legal norms, as well as ensure accountability in cases of noncompliance. Such a framework would thus assist industry in discharging its responsibility to respect human rights and states in discharging their legal duty to protect human rights, as well as states' and industry's shared obligation to remedy human rights violations. In addition, such a framework could harness—and supplement—existing efforts to achieve this outcome.

The Limits of Existing Efforts to Implement and Enforce Standards in the GSI—and How They Could be Supplemented by a Global Framework

State Efforts

There are two main problems with existing state efforts to regulate the GSI. The first relates to the inadequate substantive and geographic reach of existing regulation. The second relates to the lack of effective enforcement of regulatory instruments that are in place, particularly in the area of human rights law and IHL. Given states' fundamental legal duty to protect, states should take steps to overcome and remedy these shortcomings; but given the global nature of the industry, that is something states may find they cannot do by acting alone—or even together, absent support from industry and civil society.

At present, the most developed efforts to implement and enforce standards within the GSI are occurring at the level of **home and contracting state** regulation. However, home states lack the regulatory reach to effectively implement and enforce human rights and other standards in their PMSCs' off-shore operations. In addition, many of the major home states for the GSI—such as the US and UK—are also themselves major contracting states. Contracting states are open to charges of conflict of interest in their dealings with the GSI, since contracting states are not only the watchdogs for but also often the major clients of the industry. These states may have justified interests in limiting industry transparency (such as national security concerns). However, in protecting their own interests, these states may unhelpfully—if unwittingly—limit transparency for other industry clients (such as extractive companies and humanitarian organizations). This leads not only to a lack of effective enforcement of existing legal obligations but also to a weakening of the effectiveness of market forces as a regulatory mechanism in the GSI.

Most existing home- and contracting-state-based regulation displays a bias toward single-state contracting arrangements, with little attention paid to the increasingly off-shore nature of PMSC recruiting, organization, and contract performance. Even where national regulatory frameworks are relatively developed—as in the US and South Africa—states confront challenges in monitoring,

oversight, and accountability for the industry's off-shore activities. Perhaps due to concerns about how to ensure any such regulation is actually effective, the UK, another significant exporting hub within the GSI, has a notably light-touch regulatory framework.

States where PMSCs operate (**territorial states**), such as Colombia, Afghanistan, and Iraq, have also begun to exercise their regulatory authority. However, given that many of these states are wracked by insecurity or have weak governance arrangements, the states lack enforcement power.

What this all makes clear is that PMSCs operating transnationally can easily escape domestic regulation. Numerous obstacles to effective regulation through and by states remain in areas such as extraterritorial jurisdiction, evidence collection, and adaptation of public norms to private business relationships. In addition, the emergence of uncoordinated frameworks at the national level may in fact play into the hands of those PMSCs that seek to avoid effective oversight. In some parts of the world, there is significant evidence of PMSCs being closely linked to organized crime³ and activities that fuel violent conflict, such as trafficking in resources and arms. Given the mobility of personnel within the industry, it is difficult—absent effective international standards and a global framework for their implementation and enforcement—to insulate some parts of the industry from the pernicious effects of such conduct in other parts of the industry.

Industry Efforts

Some PMSCs have long recognized the importance of guidance on what standards they are expected to abide by and how. They have, consequently, developed an array of internal management systems, ethics programs, and controls on the use of force—both individually, and in cooperation, for example, through the British Association of Private Security Companies (BAPSC), International Peace Operations Association (IPOA), and Private Security Company Association of Iraq (PSCAI).⁴

Yet these efforts have gained only limited traction and done little to ensure effective remedying of human rights violations by industry actors. They are heavily criticized by civil society groups for failing to provide effective and transparent enforcement arrangements. Indeed,

the gravity of some allegations about PMSC conduct may make state involvement necessary, if not inevitable—through recourse to criminal courts guaranteeing a right to fair trial and due process.

IPI's nonscientific examination of more than forty PMSCs found that many PMSCs profess to support external ethical standards in their publicity materials and on their websites. Some also have in place implementation frameworks for other internal standards, which are supervised and/or managed at the senior management level. These may include strict hiring and vetting policies and guidelines on contracts requiring the provision of armed security services, as well as on how personnel may use—and must report the use of—force.

However, the actual level of commitment to any external ethical standard is almost always highly ambiguous. PMSCs' internal standards and enforcement arrangements also betray a number of weaknesses. For example, the standards rarely cover subcontractors. And, even more importantly, no PMSC examined had an effective and transparent grievance mechanism that could be accessed by third parties that would meet the benchmarks identified by the UN Special Representative on Business and Human Rights.⁵ And none have provided transparent arrangements for referring allegations of serious human rights or IHL violations by PMSC personnel to relevant state authorities.

Similar concerns arise in relation to PMSC industry associations. Of the two largest, at present, the BAPSC provides only broad standards in the form of a charter, though the BAPSC is currently working with its membership to develop more detailed operational guidance, in the form of a private BAPSC standard. The BAPSC currently offers no formal grievance mechanism for dealing with complaints about members' conduct. The IPOA does have an enforcement mechanism, but this lacks transparency and appears highly partial, given that it leaves enforcement of the IPOA code of conduct to the unfettered discretion of IPOA membership. Nor does the enforcement mechanism give any formal role to states and civil society in enforcing standards.

The global security industry cannot effectively implement and enforce human rights and IHL standards on its own: industry-only

efforts will lack credibility in the eyes of the broader public, especially if such efforts do not lead to credible and impartial enforcement action against PMSC personnel alleged to be involved in serious violations of human rights and IHL. But the internal standards arrangements developed by some PMSCs and industry associations could provide a starting point for supplementing state regulation and preventing violations of human rights and IHL being committed in the first place. Such internal standards may, therefore, need to be connected to or folded into a global framework if it is to add value for industry stakeholders.

Intergovernmental Efforts

Intergovernmental efforts to regulate mercenaries, for example, through the United Nations, have been rife with political tensions resulting from the role of mercenarism in colonial history. This legacy of tension has prevented formal intergovernmental mechanisms from dealing effectively with the complex issue of regulation of the GSI.

The efforts of the **UN Human Rights Council's Working Group on Mercenaries** remain hamstrung by the baseline unwillingness of PMSCs and exporting states to see PMSCs likened to mercenaries, and treated as an inherent threat to human rights. The working group has made progress in some key areas—especially in relation to recruiting and the impact of personnel returning from working with PMSCs in conflict zones to their home communities—and the working group could serve an important role in developing the kind of global frameworks discussed here. But the working group currently lacks the resources, access to PMSCs, territorial, and exporting states, and their enforcement power that the group would need to develop a framework for consensual regulation of the industry, at the multilateral level, acting alone.

The **Swiss Initiative** provides the most significant contemporary international effort to improve standards implementation and enforcement within the GSI. In September 2008, the Swiss Initiative's Montreux Document was agreed to by seventeen states—notably including Afghanistan, China, France, Germany, Iraq, the UK, the US, Sierra Leone, and South Africa. The Montreux Document contains a reaffirmation of existing international law obligations and more than

seventy good practices for states in contracting and regulating PMSCs. The Montreux Document is explicitly nonbinding, and contains no new legal obligations. It is also limited to states' dealings with PMSCs in armed conflict. However, the Montreux Document will serve as the most coherent, precise, and consensually-developed statement of "good practice" relating to this industry that is supported by multiple states. Thus, the Montreux Document could form the basis for standards implementation and enforcement in any of the five global framework blueprints put forward in this study.

Civil Society Efforts

Civil society actors have been involved in efforts to improve standards implementation within the industry in a number of ways, predominantly through monitoring PMSC behavior. Nongovernmental organizations (NGOs) have participated in single-country efforts to strengthen the operational link between security and human rights, including through the Sarajevo Process and the Voluntary Principles on Security and Human Rights (both of which are discussed at more length in Part Two). Some NGOs also assisted in industry efforts to raise standards or, in the case of the Business & Human Rights Resource Centre (BHRRRC), provided a public platform for engaging companies directly when specific concerns arise relating to PMSC conduct.

But the sanctioning levers to which civil society sometimes has access—public sentiment and purchasing power—will require significant mobilization before they have any real impact on this industry, since most major industry clients (such as governments and extractive industries) are not easily moved by public pressure, and information about standards violations (which often occur off-shore) is generally ambiguous and difficult to access. Civil society activism nevertheless has an important role to play in raising public awareness of violations of human rights and IHL and the failure to adequately remedy such violations.

Research and policy institutions in the US and Europe have also conducted important research on the issue of PMSC regulation. However, in order for their full import to be effectively realized, these efforts need to feed into a regulatory process. At present, there is no

broad process working with stakeholders to think through the practical issues regarding different regulatory options and build a coherent global framework of improved standards implementation and enforcement. This study's blueprints advance a number of different ideas for how civil society might be involved in the development, and the operation of, such a global framework.

FIVE GLOBAL FRAMEWORK BLUEPRINTS

Any effective standards implementation and enforcement framework will need to be based on the fundamental state legal duty to protect human rights, the corporate responsibility to respect these rights, and the shared obligation to provide access to a remedy in the case of violations.⁶ While no single stakeholder group is in a position to provide credible, effective standards implementation and enforcement for the industry on its own, each stakeholder group—states, industry, the industry's clients, and civil society groups—brings something to the table. Together or separately, they may need to develop different components of a larger framework that, over time, fosters convergence toward effective implementation and enforcement of shared standards. Part Three of this study fleshes out five blueprints for what such a global framework—or components of a framework—might look like.

The Design Principles Behind These Blueprints

Chapter Three of this study identifies four characteristics of a global standards implementation and enforcement framework that would help stakeholders overcome the limitations of existing regulation. These are **the design principles of an effective global framework**. They are as follows:

1. The need to assist states to discharge their legal duty to protect human rights;
2. The need to involve all other relevant GSI stakeholders;
3. The need to use smart incentives to encourage stakeholder involvement and influence their conduct; and
4. The need to improve PMSCs' accountability to clients, the

communities PMSCs operate in, and other GSI stakeholders.

Some of the blueprints focus more on these design principles, and some less. Accordingly, it may be necessary to combine different blueprints to construct one overall effective framework that discharges all of these principles.

However, the nature of some PMSC misconduct—specifically relating to serious human rights violations—also makes clear that any framework constructed according to these design principles should be able to plug into state enforcement mechanisms. **Many PMSC human rights violations may need to be adjudicated in state courts through fair trial subject to due process.** Any global framework ought to assist effective judicial determination of human rights violations, even if that leaves room for more informal dispute resolution and remedial arrangements in relation to labor and contract disputes. Existing arrangements such as the OECD’s National Contact Points for implementation of the Guidelines for Multinational Enterprises may serve such a purpose, but may not prove adequate for dealing with allegations of serious violations of human rights (such as violation of the right to life) that recur in relation to the GSI.

Furthermore, while adequate standards now exist for effective transnational standards implementation and enforcement, further elaboration and operationalization of these standards may still be useful. In particular, a global code of conduct would amplify the standards in the Montreux Document (which addresses only states and situations of armed conflict). Such a **code of conduct** could help create greater market transparency and performance accountability, and is therefore likely to be welcomed by many parts of the industry, their clients, civil society, and states.⁷

Learning from Other Frameworks

This study undertook analyses of thirty standards implementation and enforcement frameworks, drawn from a range of industries, including the global security industry. The study cast a wide net in selecting frameworks for review, in order to maximize chances of identifying useful components for a global framework for the GSI. The study addresses frameworks in the financial, extractive, textile and apparel, chemical, toy, toxic waste disposal, sporting, and veterinary

sectors, as well as the global security industry. Selections range from the antislavery courts of the nineteenth century to the World Organization for Animal Health (OIE), established in the 1920s, as well as a range of business and human rights frameworks such as the UN Global Compact, the Voluntary Principles on Security and Human Rights (VPSHR), and accreditation, certification, and licensing regimes.

In evaluating these frameworks, **this study does not seek to pass judgment on their effectiveness**—only to identify what insights the frameworks’ structures, histories, and activities may provide for improved standards implementation and enforcement in the GSI. **Analysis of the insights that each of these frameworks holds for the GSI is contained at the beginning of the section discussing each separate framework in Part Two.**

Across the thirty frameworks examined, this study identifies five types of different frameworks that could be applied to the GSI:

1. the **watchdog**;
2. the **accreditation regime**;
3. the **court or arbitral tribunal**;
4. the **harmonization scheme**; and
5. the **club**.

This study describes how each of these frameworks might feasibly be applied to the GSI, and how these blueprints would add value to existing state, industry, and civil society regulatory efforts. This study outlines the governance structure, financing, barriers to development, and added value of each blueprint.

What Next? Three Steps Toward Realizing a Global Framework

A global framework to assist states in regulating the global security industry could be put in place quickly, based on the standards that already exist. The blueprints identified above and described in Chapter Three are intended as discussion-starters for how this might come about. All three main stakeholder groups—states, industry, and

civil society—have an interest in considering whether it may be possible to develop a comprehensive global framework. As one PMSC noted in its comments on a draft of this study,

*responsible industry players welcome ... improved regulation of the industry, more closely defined legal status for companies and staff working in the field, and effective mechanisms for company and individual accountability... Aside from the clear ethical imperative ... we are also mindful of the business benefits of differentiation and improved perception of the sector.*⁸

IPI recommends that stakeholders in the GSI take three steps to develop a comprehensive global framework based on the blueprints detailed below: (1) consult within stakeholder groups on framework options, (2) agree on the negotiation process, and (3) negotiate. These steps are based on a reading of what is politically feasible, as well as normative guidance drawn from the International Organization for Standardization, the WTO Technical Barriers to Trade Agreement, and other sources on how such frameworks affecting global business ought to be developed.

PART ONE:
**The Challenge of Regulating the
Global Security Industry**

Chapter One

INTRODUCTION

WHAT IS THE GLOBAL SECURITY INDUSTRY (GSI)?

In the last decade, commercially organized security personnel have become an increasingly common sight around the world, from protecting shopping malls in the American Midwest to providing convoy security in the Middle East. They are the increasingly visible side of an industry that provides a wide range of services related to the provision, training, coordination, and direction of such personnel, in both military and nonmilitary (i.e., security) contexts. In some cases, the private military and security companies (PMSCs) that provide these services are small outfits, organized on a local scale. In other cases, PMSCs have become large multinationals, drawing recruits from around the world and moving them into conflict and crisis zones—or even simply areas of high crime—to provide security to oil company executives, humanitarian organizations' premises, diplomats, and even military bases. In many cases, small local contractors and large multinational companies are connected, through subcontracting arrangements, joint ventures, personnel movements, and subsidiary structures. Together, they form a complex web of commercial providers of guarding and protection services; operational support in combat, intelligence, interrogation, and prisoner detention services; and advice to or training of local forces and security personnel. PMSCs form, in other words, a global security industry.

The global security industry has undergone particularly dramatic growth following the US-led military campaigns in Iraq and Afghanistan. There are a number of reasons for this growth: the demobilization of former Cold War troops; the availability of global-

ized transport, information management, and marketing technologies facilitating the global organization and projection of military power and security services; the popularity of the privatization of government services in Western democracies; and the export of that Washington consensus model of small government to developing countries through bilateral and multilateral overseas development assistance.

Today, PMSCs fulfill a range of functions such as private policing;¹ protection of diplomatic, military, business, and humanitarian personnel in conflict zones;² provision of detention services;³ military training and reform services;⁴ counternarcotics;⁵ and even counterinsurgency⁶ and intelligence operations.⁷ In recent years, private companies have also ventured into security sector reform and the training of indigenous security forces.⁸

Yet the size of the industry is notoriously hard to pin down, since there is no common definition of where the industry begins and ends, in terms of its geography and in terms of the service-providers the industry encompasses. Even figures that have attained some authority, such as Peter Singer's estimate of annual global industry revenues of \$100 billion, date quickly.⁹ Still, it is unquestionable that the sector has grown significantly, and constitutes a major global industry, by any measure. The US Government Accountability Office (GAO) reported in 2006 that in Iraq contracts for private security services by US government agencies and reconstruction contractors alone amounted to more than \$760 million between March 2003 and December 2004.¹⁰ By most estimates, US-based PMSCs easily constitute the largest share of the global market (with a very high percentage of their revenues coming from US government contracts), with UK-based PMSCs forming a second major cohort (with most of their revenues coming from private clients, especially the extractive industries). Israeli PMSCs are also increasingly significant players. However, there is a surprising absence of methodologically rigorous analysis of the size of the industry, with most estimates paying scant attention to the burgeoning transborder security markets in Eastern Europe, Latin America, the Middle East, and Africa.¹¹

WHAT IS THE REGULATORY PROBLEM?

Where the industry has received particular attention, however, is regarding its perceived lack of respect for human rights and international humanitarian law (IHL), as well as labor rights and other standards relating to corporate responsibility. Evidence of industry violations of these standards remains partial, disputed, and problematic. However, the global security industry is almost unique among global industries in its trade in force, which makes the industry particularly worthy of close scrutiny. The persistence and plausibility (if not complete infallibility) of such allegations have not been effectively matched by improved regulation and accountability, either on the part of states, which bear the primary duty of regulation, or from other stakeholders in the GSI. Indeed, regulation of the industry has received widespread criticism in recent years.¹² The limitations of existing national, industry-based, intergovernmental, and civil society efforts to remedy this criticism are explored at more length in Chapter Two. This section highlights the major criticisms of regulation of the GSI in recent years. While the veracity of any one of these claims individually is not assessed, their volume and intensity point to a critical lack of effective implementation and enforcement of existing regulation.

National regulation has been criticized, *inter alia*, for the following:

- failing to curb serious violations of human rights and international humanitarian law because of a lack of appropriate enforcement capacity;
- failing to address systematic labor rights violations by some PMSCs;
- being poorly supported by administrative resources and bureaucratic incentives;¹³
- legislation being outdated and failing to account for the realities of the contemporary industry;
- failing to effectively regulate the industry's off-shore activities and as a result amounting to little more than symbolic regulation;¹⁴

- in the case of exporting states' regulation, serving their interests at the expense of those of territorial states and their communities;
- in the case of territorial states' regulation, being unenforceable against foreign companies that can easily elude the legal systems;
- failing to provide operational guidance to the industry;
- in the case of criminal sanctions, coming after the fact, and not preventing violations of human rights, IHL, or other standards in the first place;
- an excessive orientation toward single-state client/contractor relationships that fails to deal with the complexities of the industry's global web of subcontractors; and
- failing to address the role of some PMSCs in organized crime and trafficking.

Industry self-regulation is often criticized for the following:

- being an inappropriate forum for dealing with serious violations of human rights and IHL;
- lacking credible monitoring and enforcement arrangements;
- being self-serving;
- providing inadequate transparency and accountability in market dealings;
- failing to consider the interests and needs of third parties, such as the communities from which PMSC personnel are recruited, or the communities in which they conduct their operations; and
- lacking support from states.

Intergovernmental efforts to regulate the GSI are criticized for the following:

- failing adequately to distinguish between the nature, role, and impacts of mercenarism and the nature, role, and

impacts of PMSC activity;¹⁵

- fragmentation and regulatory incoherence;
- failing to address the fact that international law does not directly bind private corporations;
- failing to address the weak capacity of states to enforce international standards;
- failing to address the interests and needs of third parties, such as the communities from which PMSC personnel are recruited, or the communities in which they conduct their operations, or victims of violations committed by PMSCs.

Taken together, the volume, intensity, and breadth of these criticisms indicate a growing dissatisfaction from a wide number of quarters with existing regulation of the GSI. Of primary importance—at both an ethical level and in terms of the future stability of the industry—is the overall perceived absence of accountability for violations of human rights and IHL by PMSC personnel. The failure to regulate and hold PMSCs and their personnel accountable is seen as having led to torture, illegal use of force, extrajudicial killings, accidental deaths, and injury to persons and property, as well as dubious labor practices. This leads to a perception that the industry and its clients not only fail to protect (or even simply to respect) human rights and IHL but also fail adequately to remedy their violation. This, in turn, leads to a sense that the industry does not contribute to public security, but actually risks creating public insecurity, because of a generic disrespect for standards and law. The heart of the regulatory problem is thus the lack of industry-wide standards to protect human rights and ensure respect for IHL, and effective arrangements for their implementation and enforcement.

Even if this perception is overstated, the mere fact that there is such a perception, and that it is widespread, remains a problem for all stakeholders. Such a perception undermines confidence in the industry, including from investors, who fear that a future regulatory backlash may one day reimpose the costs of PMSC behavior that the industry has, to date, externalized. Seen from this perspective, the implementation and enforcement of effective standards will not only help protect third parties from harms caused by PMSCs but also

protect stakeholders in the industry itself, by reducing PMSCs' potential exposure to future liability or shifts in underlying business costs caused by regulatory movement.

For states, a well-regulated industry might serve an important role in helping them to responsibly exercise their monopoly on legitimate violence—but should also be carefully controlled, or it may threaten that monopoly. For the industry, improved regulation might promise greater certainty in the future parameters of their market, secure investments from political risk, reduce their exposure to future liability, help reduce the costs of capital, and reduce administrative costs through regulatory harmonization.¹⁶ And for civil society, more effective regulation would involve improving transparency and accountability in the industry—particularly for the harms some industry actors cause to third parties, including through serious violations of human rights and IHL.

Whether for commercial reasons or out of more basic ethical motivations, collaborative regulatory action is thus clearly needed to secure the future of the industry, and the interests of all those with a stake in it. This study's call to improve the implementation and enforcement of human rights and IHL, as well as other standards in the global security industry, should therefore be understood not only as one part of a larger effort to mitigate the risk of further human rights violations by PMSCs, but also as an attempt to harness the potentially positive contribution to security, development, good governance, and even the enjoyment of human rights, that such an industry—if effectively regulated—has the capacity to offer.

The current approach to regulation, relying on a mixture of market forces and unilateral national regulation, is failing. Additional measures are needed to ensure effective standards implementation and enforcement across the industry, and around the globe. We need to go beyond unilateral state regulation and beyond market forces.

WHY A STANDARDS IMPLEMENTATION AND ENFORCEMENT FRAMEWORK?

This study aims to identify components that might be used to put together a global framework that addresses the regulatory problem

identified above, by supplementing states' and other stakeholders' existing efforts to regulate the industry. Such a standards implementation and enforcement framework (SIEF) would have both a preventive and a remedial aspect: this framework would encourage behavior in compliance with national and international legal norms, as well as ensure accountability in cases of noncompliance. Such a framework would thus assist industry in discharging its responsibility to respect human rights and states in discharging their legal duty to protect human rights, as well as states' and industry's shared obligation to remedy human rights violations.¹⁷

The definition of standards employed in this study is intentionally loose (see the definitions in the glossary at the beginning of this study). Standards may derive from existing legal institutions, including human rights and IHL, but standards may also cover other aspects of the behavior of global security industry that are not directly descended from human rights and IHL, such as employment and labor practices. This study argues that respect for such standards will help prevent violations of human rights and IHL and help to address the central problem of the industry—that it is perceived as being disrespectful of standards generally. Chapter Ten puts forward some suggestions for how such globally-agreed standards could be negotiated, or even crystallized in the form of a global code of conduct for the GSI.

In recent years, talk of the need to improve regulation of this global security industry has focused on improving domestic regulatory frameworks, such as government-operated licensing and judicial accountability mechanisms. There are positive signs that the Obama administration will step up efforts to improve regulation, both domestically and internationally. And there are signs that other states, such as Switzerland, the UK, and Canada, are willing to do more. But, as Chapter Two demonstrates, states acting individually cannot regulate a global industry that often operates across borders and in areas where the reach of national law enforcement institutions is limited. The use of other frameworks—with intergovernmental, nonjudicial, and perhaps even nongovernmental aspects—is needed to supplement and reinforce state regulation, and ensure industry respect for this regulation.

Indeed, as is explored more throughout the remainder of this study, developing a comprehensive framework for standards implementation and enforcement in the global security industry to support state regulation may require efforts on multiple fronts, which might, ultimately, coalesce into a complementary or interlocking framework that unlocks existing blockages to effective standards implementation and enforcement in the industry.

Some states may welcome non-state-based and multistakeholder efforts precisely because the states' own regulatory capacities are weak, and the states see those activities as helpful in discharging their own legal duty to ensure effective implementation and enforcement of human rights and IHL standards. This is reflected in the recent move by the Afghan government to refer to the International Peace Operations Association (IPOA) code of conduct as a source of standards in the government's own domestic regulatory arrangements. It is also reflected in the cooperation of developed states such as the US and UK with a number of frameworks described in Part Two, such as the Voluntary Principles on Security and Human Rights (VPSHR), the Kimberley Process, the Toxic Waste Convention, the Organization for the Prohibition of Chemical Weapons (OPCW), the World Organization for Animal Health (OIE), and even the Fair Labor Association (FLA). Chapter Three addresses the specific ways in which a standards implementation and enforcement framework would benefit states by supplementing state regulation. However, it is also worth outlining the benefits for other stakeholders—for a SIEF is in the interests of all GSI stakeholders: states, industry, civil society, communities affected by PMSC activity, international organizations, and the industry's clients and financiers. As Chapter Three explains, the involvement of relevant stakeholders in the GSI is essential if a global framework is to have legitimacy and to be effective. But there are also clear reasons why stakeholders should want to get involved.

Of course, **industry actors** have much to gain from any effort to clarify standards. The emerging international web of criminal and civil liability for corporations implicated in human rights and IHL violations¹⁸ puts a premium for PMSCs on clarifying state and public expectations of their operational performance, to reduce their exposure to future liability. The industry may seek to pre-empt state

efforts, or to shape subsequent state efforts, by developing an industry-led standard—as occurred in the project financing and private banking industries (Equator Principles and Wolfsberg Principles, respectively). Indeed, this is one way of reading the role of the BAPSC and IPOA (discussed more extensively in Part Two).

Harmonized standards can also help reduce multinational corporations' administrative costs and create internal efficiencies through facilitating access to lowest-price supplies, wherever in the world they are found, as well as contributing to economies of scale. If these standards are rolled into shared implementation, monitoring, or enforcement arrangements, this could further reduce the regulatory burden each company faces. Efforts to drive up standards and remove bad apples from the market can contribute to increased public support, shoring up investments, reducing political risk and their exposure to future liability, and reducing the cost of capital. For the industry, improved regulation might therefore promise greater certainty in the future parameters of their market.¹⁹

Yet not all industry actors have the same incentives to seek improved transparency and accountability. Larger players may more readily welcome raised standards than smaller players, given implementation costs. Thus, any efforts to improve standards implementation and enforcement need to guard against creating insuperable barriers to the market for such small players. And players that have a strong relationship with a regulator that is also a client, as is the case with many of the major US PMSCs, may in fact benefit from a lack of transparency in the market—as may their client. Other players in the industry may, therefore, seek increased transparency in part as a means to level a playing field that they see as tipped to their disadvantage.

As is explored more in Part Two, civil society actors have participated in a number of standards frameworks for other industries that have demonstrated a capacity to stand in for absent or ineffectual state authority (for example, in the regulation of off-shore sweatshop labor practices). But problems of lax standards implementation in the GSI seem to arise not simply from situations where there is not enough state; in some situations, the problem appears, in fact, to arise from there being too much state, with the state in question shielding PMSCs

from accountability. Civil society actors may prove particularly concerned about any framework providing a fig leaf for lax or self-interested state regulation.

Civil society actors therefore seem more likely to be persuaded to participate in a global framework if it promises to: i) drive up states' own standards implementation and enforcement efforts or ii) create new avenues for standards implementation—and especially standards enforcement—going beyond what states seem capable of offering. Chapter Three makes the case for how a global framework might do this.

Civil society is especially likely to emphasize the importance of involving **affected communities**. Upstream communities from which PMSCs recruit (such as communities in Latin America, Nepal, and Fiji) would need a voice in negotiating any framework, as would downstream communities where PMSCs operate (such as communities in Iraq, Afghanistan, and Africa). The activities of PMSCs have the greatest effect on these communities—and yet they are the most underrepresented in debates about regulation. Indeed, in very few cases is it known how these communities are affected, or how they would like PMSC activities to be regulated. Ensuring that representatives of such communities are present at and can meaningfully participate in framework development discussions and ongoing governance may require significant resource assistance from states, the industry, and/or private foundations.

International organizations, including the UN, EU, OSCE, NATO, and other regional arrangements, also have an interest in being involved in any framework development process. A framework could be mutually reinforcing, strengthening the activities of these organizations regarding PMSCs and avoiding the danger of the emergence of competing processes. In particular, it may be appropriate to ask the chair of the UN Working Group on Mercenaries, the Special Representative of the Secretary-General on Business and Human Rights, and the UN Special Rapporteur on Extra-judicial Killings to play a role. And given the particular role of the International Committee of the Red Cross (ICRC) as the state-backed guardian of international humanitarian law, the ICRC should also be afforded a role that the organization is comfortable with, whether to observe the

process or to shape it more actively. Such individuals and organizations might also usefully be given a role in the ongoing governance or operation of any framework.

And some international organizations may also, similar to states and **other GSI clients** such as humanitarian organizations and extractive industry companies, be looking for guidance on how to vet and hire PMSCs to make sure that they respect human rights and IHL, as well as other legal norms of employment and labor rights and best practices generally. This in turn could encourage PMSCs to upgrade their standards to meet client requirements. The Sarajevo Process, which is looked at in Chapter Nine, is notable for offering such guidelines to clients, and provides a starting point for how any global framework might go about doing so.

The GSI's **financiers and insurers** may also be interested in being involved in a standards implementation and enforcement framework—or supporting it at the very least—to ensure the soundness of their investments, and to reduce regulatory fragmentation across different national jurisdictions. This seems particularly pertinent given the increasing interest in ethical investment and corporate social responsibility.

In recent years, the power of a wide array of multinational enterprises (MNEs) within the globalized economy has produced a broad movement calling on business to respect human rights, and to use the influence business wields to ensure that other powerful actors—including states—abide by their human rights obligations. This worldwide discussion led to the appointment, in 2005, of Professor John Ruggie to the post of Special Representative of the United Nations Secretary-General on human rights and transnational corporations and other business enterprises. Professor Ruggie's 2008 report to the UN Human Rights Council affirmed the state's legal duty to protect human rights as the "bedrock" of effective regulation of global industry, but also recognized that "meeting business and human rights challenges also requires the active participation of business directly."²⁰ Yet discussions of improved regulation of the global security industry remain notably disconnected from this broader discussion of business and human rights.

With the renewal of Ruggie's mandate by the Human Rights Council for three years, it seems likely that states and global business will continue to focus significant attention on how to discharge the state legal duty to protect and industry responsibility to respect human rights in specific global industries. Ruggie has on previous occasions pointed to the need for the general lessons of business and human rights to be applied in considering the specific question of how to improve regulation of PMSCs and the global security industry. His 2007 report to the UN Human Rights Council suggested that the Voluntary Principles on Security and Human Rights, which deal with the use of public and private security providers by the extractive industries, could inspire parallel efforts in related fields, "such as the rules regarding private security forces,"²¹ and specifically referred to the Swiss Initiative, in cooperation with the ICRC, on private military and security companies (discussed in Chapter Two of this study).

The conclusion in September 2008 of the Swiss Initiative's intergovernmental Montreux Process, which focuses on providing guidance to governments in dealing with PMSCs in armed conflict, provides a significant opportunity for thinking about what other components may be needed to build a comprehensive framework for standards implementation and enforcement across the global security industry. Such a framework might involve one overarching multistakeholder initiative. But it might, equally, involve a series of complementary processes or projects, each creating or controlling a different set of levers influencing the conduct of a different set of stakeholders in the global security industry.

The Montreux Document that emerged from the Swiss Initiative provides important guidance to states. And it seems to provide the basic standards for a standards implementation and enforcement framework, to be established without further ado. However, similar guidance tailored to the industry itself is currently lacking. Industry actors have voiced interest in more detailed guidance from states on the practical aspects of managing personnel in the field in compliance with human rights and IHL. As one PMSC noted in its comments on a draft of this study, "responsible industry players welcome ... improved regulation of the industry, more closely defined legal status for companies and staff working in the field, and effective mechanisms

for company and individual accountability... Aside from the clear ethical imperative ... we are also mindful of the business benefits of differentiation and improved perception of the sector.”²²

In the meantime, reliance on the invisible hand of market forces to achieve effective regulation does not seem to have protected the interests of all stakeholders in the GSI. The absence of effective standards enforcement arrangements, whether at the national or international level, casts a pall over the industry as a whole, exposing it to claims that it does not respect human rights or other relevant professional standards.

ABOUT THIS FEASIBILITY STUDY

It is against this background that, in late 2007 and early 2008, a small number of governments and leading security industry actors expressed interest in the International Peace Institute (IPI) carrying out a study to provide fresh thinking on how standards implementation and enforcement might be moved forward through efforts at the international level.

The approach IPI has adopted in carrying out this study is not to try to identify the ideal form that regulation might take. Rather, this study seeks the following:

- i) to better expose all stakeholders in the global security industry (GSI)—states, industry, and civil society, as well as GSI clients, financiers, and affected communities—to the wide variety of approaches used to implement and enforce standards in other global industries; and
- ii) to identify options for combining components of these other frameworks in ways that will assist states in regulating the global security industry, by supplementing and reinforcing existing state regulation.

This study aims to catalyze thinking on the urgent need for better regulation of the global security industry—and the practical and policy issues involved. The study’s aim is not to develop a preferred model for a framework for the industry, or to prescribe standards for the industry. Instead, the study aims to foster reflection within all

relevant stakeholder groups—governments, industry, and civil society—on *their own* positions regarding possible approaches to the implementation and enforcement of standards in the global security industry, better to prepare the ground for informed dialogue among these groups in 2009 and beyond. In that sense, the study is intended to serve as a reference document for stakeholders if and when they move to construct a global framework for implementing and enforcing standards in the industry. Such a framework could be established immediately, based on existing standards such as the Montreux Document.

Chapter Two of the study provides a more detailed explanation of why existing national, industry-level, intergovernmental, and civil society regulation does not adequately safeguard against the violation of human rights and noncompliance with IHL by the global security industry. Based on that discussion, Chapter Three identifies four design principles of effective standards implementation and enforcement for the GSI. Specifically, Chapter Three highlights the following: (1) the need to assist states to discharge their legal duty to protect human rights; (2) the need to involve all other relevant GSI stakeholders; (3) the need to use smart incentives to encourage stakeholder involvement and influence their conduct; and (4) the need to improve PMSCs' accountability to clients, the communities they operate in, and other GSI stakeholders. These design principles then guide the evaluation of standards implementation and enforcement in other industries, and existing GSI-relevant frameworks, carried out in Part Two. This part of the study provides analysis of thirty standards implementation and enforcement frameworks, in order to understand how each of the frameworks established industry-wide standards and effective arrangements for their implementation and enforcement, and what lessons can be learned from their experiences. Chapter Ten presents the study's conclusions, highlighting five blueprints that may be useful for thinking through how to develop a global framework to assist states in regulating the global security industry, and recommending three steps that stakeholders should take to do so.

Frameworks covered in the study

Part Two of this study provides analyses of thirty standards implementation and enforcement frameworks, drawn from a range of

industries, including the global security industry, which all extend beyond national state-based regulation. Since this study aims to encourage GSI stakeholders to think through a range of regulatory options and to provide a basis for future discussions among stakeholders about how to move regulatory arrangements forward, a wide net was cast in selecting frameworks for review. Doing so maximized chances of identifying useful components for a framework for the global security industry. However, this study does not aim to provide a comprehensive mapping of every available framework.²³ Instead, this study focuses on thirty frameworks that are particularly relevant in understanding how to improve regulation of the global security industry. They deal with either: (1) the implementation or enforcement of standards in an international business or security activity or (2) the application of international norms to business or security activities provided on a localized basis.

The triggers for the development of these standards implementation and enforcement frameworks and the forms these frameworks take vary greatly. The frameworks have widely divergent governance structures, depending not only on which stakeholders developed the frameworks and participate in them but also depending upon whether they focus on preventive implementation of standards or responsive enforcement of standards following allegations of specific grievances.

Many of the frameworks addressed in Part Two combine different components of the following three categories:

1. **Industry-led frameworks** (such as the BAPSC, Court of Arbitration for Sport [CAS], International Council of Toy Industries [ICTI], International Peace Operations Association [IPOA], the Sarajevo Process, and Wolfsberg Group) tend to be voluntary, and focus on standards implementation. Frameworks often emerge in response to a demand from industry for operational guidance, to secure the future of the industry, protect it from the shadow of civil society activism or consumer pressures, or simply to overcome transboundary regulatory conflicts. However, while industry-led frameworks may acknowledge the corporate responsibility to respect rights, such frameworks are generally weak on standards enforcement and lack the

robust and impartial grievance mechanisms that may be needed to transparently address accusations of noncompliance with their standards, let alone provide adequate remedies for serious violations of human rights by industry members.

2. **Intergovernmental frameworks** (such as the EU Code of Conduct on Arms Exports, Financial Action Task Force [FATF], Kimberley Process, OIE, OPCW, and *Toxic Waste Convention*) often emerge from states' realization of their inherent inability to unilaterally regulate a transboundary industry. Because of these frameworks' access to state law enforcement power and the capacity-building resources of the states, intergovernmental frameworks can be highly effective. Since they operate through decentralized implementation arrangements, and often lack hierarchical enforcement arrangements, their success may depend on linking national implementation to positive incentives such as industry's access to export markets (as has occurred in the FATF, Kimberley Process, OIE, OPCW, and *Toxic Waste Convention*).
3. **Civil society** has also proved highly effective in creating the public pressure that has led to the development of many of these frameworks. In certain cases (such as Geneva Call, ICRC, and the UN's framework for addressing children and armed conflict), civil society and international actors have built nongovernmental watchdog institutions that states have tolerated—or even blessed—to implement highly legitimate international norms.

Preparation of the study

The study was prepared between June 2008 and February 2009 by a group of researchers led by James Cockayne of the IPI in New York. For each of the thirty frameworks addressed in Part Two of the study, one researcher prepared a memorandum addressing all the questions posed in the analytical template set out below, working from internet, print, and other public sources. This memorandum was then discussed within the research team, which conducted additional

research wherever necessary, including through e-mail correspondence and/or telephone or in-person interviews with key actors within the framework in question.

Drafts of the study also underwent significant consultation before this final version was published. Two troubleshooting workshops were held with civil society experts, one in New York on Monday, August 18, 2008, and one in London at the International Business Leaders' Forum on Tuesday, September 2, 2008. A draft version of the study was posted on IPI's website (at www.ipinst.org/gsi) on September 8, 2008, and comment was invited from the public. By October 31, 2008, more than fifteen comments had been received, including from PMSCs, the IPOA, BAPSC, two members of the UN Working Group on Mercenaries, and Amnesty International. These comments were also posted publicly on IPI's website.

Key terms

This study uses common terms to describe a wide array of industry-led, intergovernmental, and civil society-spurred frameworks. A full glossary of recurring terms and acronyms is provided at the beginning of the study, on pp. x-xii. Definitions of some of the key terms used to facilitate comparison between these very diverse frameworks are highlighted here.

- **Private Military and Security Companies (PMSCs):** any company offering, on a commercial basis, services related to the provision, training, coordination, or direction of security personnel, or reform of their institutions.²⁴
- **Framework:** any standards implementation or enforcement framework (SIEF) that extends beyond purely national state-based regulation. "SIEF" and "framework" are used interchangeably, but "framework" is more common in Part Two when discussing a specific framework. "Mechanism" was avoided because this term is often used in the business and human rights discourse to relate specifically to grievance or accountability mechanisms.
- **Standards:** any norms of conduct and/or performance that a framework seeks to promote.²⁵ The frameworks addressed in

this study often promote standards based on human rights, but some also promote norms designed to improve public or private security without specific reference to human rights, including through, e.g., preventing money-laundering or the financing of terrorism (FATF), preventing the transmission of animal-borne diseases (OIE), or prohibiting the possession and use of chemical weapons (OPCW). Some of the frameworks addressed do not include specific articulations of standards but are clearly designed to promote a certain set of standards: for example, the Clear Voice HotlineSM is intended to promote labor rights and related human rights.

- **Participants:** any state or nonstate entity formally participating in a SIEF. In the SIEFs discussed here, these include states, businesses, charitable humanitarian organizations, international organizations, trade unions, and nonstate armed groups.
- **Agent:** any institution exercising implementation or enforcement authority delegated by participants within a framework. These can include secretariat bodies that represent the framework as a whole, or third-party agents that perform specific implementation or enforcement tasks, such as systems monitoring or grievance arbitration.
- **Implementation:** any activities within a framework designed to promote conduct by participants that abides by the framework's standards and prevents noncompliance, such as training, incorporation of standards into internal practices and procedures, adoption of domestic legislation, or monitoring.
- **Enforcement:** any activities within a framework designed to promote conduct by participants that abides by the frameworks' standards through responses to specific incidents of apparent noncompliance, such as accountability measures, dispute resolution, and adoption of sanctions or remedial measures.
- **Systems Monitoring Mechanism:** any arrangement within a framework designed to monitor systemic compliance by

participants with framework standards. This can include random inspections by accredited third parties (FLA), continuous oversight by an agent with defined standing monitoring authority (ICRC), or self-reporting mechanisms (VPSHR, Extractive Industries Transparency Initiative [EITI]). Systems monitoring mechanisms can be contrasted with incident response mechanisms, which often include a grievance mechanism.

- **Grievance Mechanism:** any institutionalized accountability mechanism within a framework designed to address the grievances of framework participants, or affected third parties, arising from alleged noncompliance with the framework's standards. Since this study addresses a wide range of frameworks, some going beyond the scope of existing inquiry within the business and human rights discourse, use of this term is slightly broader than in that discussion. Whereas many commentators in that field (e.g., Rees and Vermijs 2008) use this term specifically to refer to nonjudicial mechanisms, in this study, grievance mechanism may in certain cases also refer to judicial mechanisms (such as the nineteenth-century antislavery courts, the current Court of Arbitration for Sport, or national judicial systems). This broader use of the term is necessary because of the central role of state-sanctioning power in any effective regulation of the GSI, given the central role of states as GSI clients—not to mention their fundamental legal duty to protect.

The study also refers to five types into which these frameworks seem to fall—whether their membership is limited to states, to industry actors, to civil society actors, or involves a mixture of all three. These five types are watchdogs, accreditation regimes, courts and tribunals, harmonization schemes, and clubs. No single framework necessarily falls neatly into any one of these categories. But, as is explored further in Chapter Ten, developing a blueprint for how each of these five different types of frameworks might be applied to the GSI—some combination of different approaches may be necessary to address all the different interests at stake in the effective regulation of this industry.

Analytical Template

Used in the preparation of Part Two of the study²⁶

1. **Story: what is the story behind the development of the framework?**
 - a. A brief description of the framework, including name, location of HQ, date of establishment, and general outline of how it operates.
 - b. What was the provenance of the framework? How was it negotiated or developed? By which stakeholders? How were those negotiations financed and organized?
2. **Scope: what scope of activities does the framework address?**
 - a. Which business activities are addressed by this framework? Does the framework address nonbusiness activities? Does the framework address the behavior of participants in the framework toward third-party beneficiaries (e.g., local communities, retail consumers)?
 - b. Which business actors are addressed? Does the framework address or directly involve nonbusiness actors?
 - c. Are there other limitations on participation in its scope or reach? Are there geographic limitations? Are there specified criteria for participation or membership in the framework?
3. **Stakeholders: what stakeholders participate in the framework?**
 - a. What is the governance structure of the framework? How is its strategic direction set?
 - b. Who participates in the framework and how?
 - c. How is the framework publicized? What education/information is provided to whom about the existence of the framework and how it operates?
 - d. Are there stakeholders (i.e., individuals or groups whose interests are directly and systematically affected by the members of or participants in the framework) who do not participate in the framework?

4. **Standards: what standards does the framework implement or enforce?**
 - a. What is the source of the standards that the framework promotes and/or implements and/or enforces?
 - b. Are the framework's standards based on human rights law, international humanitarian law, voluntary standards, administrative standards, or some other source?
 - c. Do the standards focus on particular rights? If so, are these labor rights (or other rights relating to the relationship between the businesses' employees and the business) or other rights (especially those relating to the interests of third parties)?
 - d. Are the standards simply referred to generically? Are there references to specific legal or other provisions (or to specific rights or obligations)? And/or are they adapted to the specific context in which the business operates?
 - e. Is there a process for revising or updating the standards that the framework promotes and/or implements and/or enforces?
 - f. How are the standards promoted, implemented and/or monitored? [N.B. Grievance mechanisms are dealt with separately below.]
5. **Sanctions: what sanctioning power and incentives are involved?**
 - a. What positive incentives are provided for participants in the framework to implement its standards?
 - b. What happens if allegations arise that a participant in the framework has violated one of the standards? Is there a formal grievance mechanism?
 - c. Who can activate this mechanism? How? Are there limits on the time within which the mechanism can be activated?
 - d. Is there any resource assistance provided to grievance-bringers?
 - e. Does the mechanism conduct its own investigations or inquiries into the allegations? If so, how does it access information?

- f. What provision is made (if any) for transparency in the bringing of and response to these allegations?
 - g. How is proprietary information or sensitive security information of framework participants, or third parties (such as states) protected?
 - h. How is the security of the person activating the grievance mechanism protected? Is there provision for anonymity, or redaction of identifying information? Are there any measures to ensure nonretaliation against complainants?
 - i. How are allegations resolved? Through arbitration, mediation, bilateral negotiation, or adjudication? Is there a provision for appeal?
 - j. What is the range of possible outcomes from this grievance mechanism? What negative sanctions can be imposed? How are these negative sanctions enforced?
 - k. What positive incentives does the mechanism hold out for effective standards implementation in response to allegations of the breach of the framework's standards? How are these positive incentives provided? Is future behavior monitored?
 - l. What provision is made for reference of the dispute or information to other grievance mechanisms, including state authorities?
- 6. Support: what political and financial support—and what criticisms—does the framework receive?**
- a. Who runs the framework on a day-to-day basis? How is it financed (e.g., who are the financial supporters)?
 - b. What other forms of political or other sponsorship does the framework receive (i.e., state support or acquiescence)?
 - c. How has the framework fared since it was established? What is its current status? How many participants or members are there? How many allegations or complaints does the grievance mechanism receive (if one exists)?
 - d. What are the major criticisms of the framework (e.g., support, legitimacy, accessibility, predictability, impartiality, transparency, whether it meets the public interest, etc.), and by whom?

Chapter Two

Existing Efforts to Implement and Enforce Standards in the Global Security Industry—and Their Limits

A raft of initiatives has emerged in the last decade intended to improve the implementation and enforcement of certain standards—especially human rights and IHL standards—by the global security industry. This is perhaps unsurprising given the size and significance of the industry, its use of force, and recurring allegations of violations of human rights and noncompliance with IHL. Chapter One provided a brief overview of some of the major criticisms of national, industry-led, and intergovernmental regulation of the industry to date. This part of the study provides a more detailed explanation of why existing approaches to standards implementation and enforcement are falling short. This Chapter discusses state-level, industry-level, intergovernmental, and civil society approaches. The aim is not to provide a comprehensive description or analysis of these arrangements, many of which are evolving quickly,¹ but simply to acquaint the reader with existing efforts to improve standards implementation and enforcement arrangements within the industry—so that their limits, and the need for supplementary initiatives, as well as what form these might take, are more clear.

STATE EFFORTS

There are two main problems with existing state efforts to regulate the GSI. The first relates to the inadequate substantive and geographic reach of existing regulation. The second relates to the lack of effective enforcement of regulatory instruments that are in place, particularly

in the area of human rights law and IHL. Given states' fundamental legal duty to protect, these shortcomings need to be remedied; but given the transnational nature of the industry, that is something states cannot do alone.

Home and Contracting State Regulation

At present, the most developed efforts to strengthen regulation of PMSCs are those at the national level, particularly in two states that are seen as the home of many PMSCs: the US and South Africa.

In the US, which is both a major home state and a major contracting state, a web of approximately fifty federal and state laws may be applicable to PMSC personnel.² US laws cover a range of PMSC activities including firearms acquisitions and training of foreign nationals by US companies, and increasingly speak directly to such issues as PMSC compliance with the laws of war. However, no single statute covers the activities of PMSCs in their entirety, and the regulatory web that does exist is largely premised on the assumption that PMSCs themselves, and their personnel, are subject to effective regulatory control by US government actors. The weaknesses of that presumption are well-known. For example, to date only two successful criminal prosecutions have been brought against contractors in Iraq and Afghanistan—despite numerous credible reports of PMSC personnel violating human rights and international humanitarian law. Despite a gradual extension of US civilian and military criminal jurisdiction over PMSCs operating overseas, much of this remains “law on the books.” The US government lacks the necessary internal arrangements (for example, for investigating PMSC infractions in war zones) and cooperation agreements with foreign partners to bring this law to life.³

These weaknesses may in fact be symptomatic of larger deficiencies in the US and other national regulatory approaches to PMSCs—and of the inherent limitations of single-state law enforcement as a mechanism for leveling a global industrial playing field, and ensuring effective off-shore standards implementation and enforcement. Most existing home and contracting state regulation displays a bias toward single-state contracting arrangements, with little attention paid to the increasingly globalized nature of PMSC value chains. In the US, for

example, almost all regulatory arrangements are designed to deal with contracts between US government agencies (especially the Department of Defense) and US-based PMSCs.⁴ This is understandable, since this arrangement forms a very large—and conspicuous—part of the GSI market as a whole. Yet as a result, the more global aspects of the industry—including the use by US PMSCs of off-shore shell companies and foreign subsidiaries, their off-shore recruiting of foreign personnel, and their performance of contracts for private and foreign clients in foreign territory—receive little attention. All of this weakens the effectiveness of the existing US regulatory framework. Yet any attempt by the US to impose US jurisdiction on the global security industry without making arrangements for the participation of other interested states and stakeholders would probably prove ineffective—or even meet with significant opposition from other states.

So much is made clear by states' reactions to the South African government's attempts to unilaterally regulate the participation of South African nationals in the global security industry, including outside South Africa. South Africa's 1998 Regulation of Foreign Military Assistance Act was perhaps the most far-reaching and comprehensive national legislation directly dealing with PMSCs at that time,⁵ but was also seen as largely ineffective, given the significant role of South African personnel in foreign wars on the African continent and in the Middle East, especially in Iraq since 2003. While many have hailed the fact that Executive Outcomes was dissolved following the adoption of the 1998 act as evidence of its effectiveness, this in fact overlooks the extent to which personnel involved in Executive Outcomes simply moved off-shore, setting up new private security ventures in London and throughout Africa.

The South African government's attempts to update the law and strengthen its enforcement arrangements, resulting in the 2006 Act on the Prohibition of Mercenary Activities, met with significant opposition in some government quarters. The UK government, in particular, was concerned at the prospect that thousands of South African nationals who had served in the UK armed forces risked losing their South African citizenship, effectively becoming stateless, if they continued to serve. Again, the South African experience points to the difficulties of unilateral regulation of a global industry, and the ease

with which industry actors can engage in regulatory arbitrage by moving off-shore.

It is notable that other major home and/or contracting states, such as the UK and Israel, do not have equivalent regulatory arrangements. Some states have legislation in place to deal with service by their nationals in foreign wars (whether as mercenaries or otherwise), but few are tailored specifically to the realities of the contemporary global security industry. The UK 1870 Foreign Enlistment Act⁶ long ago proved difficult to enforce, and the 2001 Private Security Industry Act provides an administrative framework directed solely at the domestic (not the export) market. In 2002, the UK Foreign and Commonwealth Office released a green paper outlining options for regulating PMSCs, following scandals involving a British-owned PMSC, Sandline International, in Sierra Leone and Papua New Guinea. As of December 2008, this had not resulted in any formal legislative proposal by the UK government—a fact that was recently criticized by the UK House of Commons Foreign Affairs Committee,⁷ as well as civil society actors such as London-based NGO War on Want⁸ and Amnesty International UK. However, in April 2009, the UK government launched a public consultation to consider options for regulating the industry, focussing on self-regulation through the British Association of Private Security Companies (BAPSC). We hope this study will provide a useful contribution to that discussion.

Territorial State Regulation

Most recently, states in which PMSCs operate have also begun to exercise their regulatory authority. But given that many of these states are wracked by insecurity or have weak governance arrangements, that regulatory authority is often contested—and not always easily enforced. The Colombian government is actively participating in a multistakeholder effort to implement the Voluntary Principles on Security and Human Rights in the extractive industry in Colombia, which will partially regulate that country's domestic security market (see Chapter Seven below). The Afghan Ministry of the Interior has released an administrative directive that requires local PMSCs to adhere to IPOA standards,⁹ while the Iraqi government is in the process of formulating its own legislation on PMSCs.

Yet the reality is that these national legislative frameworks remain insufficient to ensure that PMSCs respect human rights and international humanitarian law, because these states lack enforcement power. In addition, many of the PMSCs operating in these countries have long off-shore tails, which may lead to the doors of other states, with their own interests in protecting their companies. In the infamous incident in which Blackwater operatives are said to have killed sixteen Iraqi civilians in Nisoor Square in September 2007, at least two states (the US and Iraq) had legislative frameworks that governed the situation.¹⁰ And while charges have recently been brought in the US against six Blackwater guards in relation to the incident, the prospects of success in that case and the possibly exceptional nature of the prosecution highlight the weakness of Iraqi control of PMSCs on Iraqi territory.

The Limitations of State Regulation

What this all makes clear is that PMSCs operating transnationally can easily escape domestic regulation. Numerous obstacles to effective regulation through and by states remain regarding issues such as extraterritorial jurisdiction, evidence collection, and adaptation of public norms to private business relationships. In fact, the emergence of uncoordinated frameworks at the national level may play into the hands of those PMSCs that seek to avoid effective oversight. In some parts of the world, there is significant evidence of PMSCs being closely linked to organized crime¹¹ and activities that fuel violent conflict, such as trafficking in resources and arms. Given the mobility of personnel within the industry, it is difficult—absent effective international standards and oversight—to insulate some parts of the industry from this pernicious conduct.

At the very least, this seems to point the need for states to better coordinate their own efforts at standards implementation and enforcement. The Montreux Document will assist in this, because it represents the first intergovernmental agreement of what constitutes good practice by states in dealing with PMSCs—even if that agreement is purely political and nonbinding, and is limited to situations of armed conflict. These standards could, if states so chose, become the basis for a more concerted effort to develop a harmonization scheme, similar to those of the EU Code of Conduct on Arms

Exports, OECD MNE Guidelines, OIE, or the *Toxic Waste Convention* (all discussed in Chapters Eight and Nine below). More ambitiously, states might even adopt a collaborative peer review approach, similar to that found in the FATF or the Kimberley Process, designed to develop a shared *acquis*¹² to assist their own domestic implementation of standards in regulating the GSI.

However, many of the major home states for the GSI—such as the US and the UK—are also major contracting states. Contracting states are open to charges of conflicts of interest in their dealings with the GSI, since these states are not only the watchdogs for but also major clients of the industry. While, in some cases, states may have justified interests in limiting industry transparency—such as national security concerns—this can also limit transparency for other industry clients and stakeholders (such as extractive companies and humanitarian organizations, or insurance firms). This leads not only to a lack of effective enforcement of existing legal obligations but also to a weakening of the effectiveness of market forces as a regulatory mechanism in the GSI.

Chapter Three of the study reflects further on the added value that a comprehensive framework for the industry should contribute to state legislation, so that the framework assists states in discharging their legal duty to protect, rather than impeding them. And Chapters Four to Nine examine a number of frameworks that provide guidance on how such an intergovernmental approach might be developed further, and what role states might play in a standards implementation and enforcement framework.

INDUSTRY EFFORTS

This section now turns to initial attempts to develop standards on the part of the industry itself. While these indicate an attempt on the part of some PMSCs to discharge the corporate responsibility to respect human rights and to drive up industry standards more generally, these efforts have gained only limited traction, and done little to ensure effective remedying of human rights violations by industry actors. As a result, PMSCs have not been able to overcome perceptions that the industry is poorly regulated and disrespectful of standards and law. At

times, the apparently self-serving nature of some of these industry efforts may in fact have contributed to that perception.

Despite the wild reputation of some of the more conspicuous PMSCs, it has to be acknowledged that other PMSCs have long recognized the importance to their businesses of effective internal management systems, ethics programs, and controls on the use of force—even if judgment is reserved on the legitimacy of any specific services the PMSCs offer as part of their business models. And public reactions to events such as the killings in Nisoor Square in September 2007 have made even more clear to many industry actors that the long-term viability of the industry lies in PMSCs demonstrating their ability to serve as agents of public order and security, and not as a threat to it. This may require a concerted effort to raise standards across the industry, increasing both transparency and accountability.

Evaluation of the efforts of *individual* PMSCs to implement and enforce standards has received surprisingly little attention in the literature.¹³ To accurately discern what individual PMSCs could contribute to a larger framework—as well as what such a framework would add to existing state-based regulation—an assessment of what individual PMSCs have actually achieved in terms of internal standards implementation and enforcement is important.

The following analysis is based on a nonscientific examination of more than forty PMSCs associated with three major industry associations discussed in Chapter Seven: IPOA, BAPSC, and PSCAI.¹⁴ All of the companies examined fall within the definition of PMSC used in this study.¹⁵ All advertise operational experience in conflict zones or areas with a high level of risk, including Iraq, Afghanistan, Colombia, Pakistan, and Sudan—and are thus likely to be operating in areas where there is a heightened need for systems ensuring respect for human rights and international humanitarian law.

Most of these PMSCs are aware of the utility of ethical standards, at least on paper, with most professing to support and/or respect external ethical standards ranging from those mandated by their respective trade association to the Voluntary Principles on Security and Human Rights and the *Universal Declaration on Human Rights* (1948). This commitment is usually reflected in a statement on the

PMSC's website, and in its published promotional materials. However, the level of commitment to any given particular standard is almost always highly ambiguous. It is typically unclear if PMSCs actually implement the standard they purport to adhere to or if they have taken measures to ensure compliance by personnel with this standard.

However, this study's analysis also indicates that many PMSCs do have in place implementation frameworks for other standards—such as internal codes of conduct, operating procedures, and other internal guidance notes—that indirectly support the implementation of these external, human rights-oriented standards. An examination of the publicly available documents of six major PMSCs—Control Risks Group, Hart Security, G4 Securicor, DynCorp, Triple Canopy, and Erinys (UK) Ltd.—suggested, and subsequent interviews appear to confirm, that many existing internal frameworks have been developed following—or in anticipation of—regulatory efforts by government. It is therefore unsurprising that many existing corporate frameworks focus on workplace and labor rights, since this is where government attention has largely focused, to date.¹⁶

It is clear that some of these businesses have, also taken these steps as part of their efforts to deliver high-quality services, based on their own internal corporate culture and perception of what indicates such quality. However, such businesses appear, at present, to be a minority in the industry. Through their own regulatory arrangements, governments can in fact help shape industry-wide perceptions of quality, and extend the preventive approach adopted by leading companies to others in the industry.

Some frameworks do pay attention to the rights of third parties that might be harmed by PMSC conduct during operations, especially through strict guidance on hiring and vetting policies. They also contain guidelines on when the company in question will accept a contract requiring it to provide armed security services, and how its personnel may use—and must report the use of—force.¹⁷

These PMSC codes of conduct and internal standards frameworks generally cover all company personnel, including the board of directors and senior management, as well as contractual staff and consultants, suppliers, agents, and other business partners. However,

these frameworks rarely appear to cover subcontractors. They generically address all corporate and operational activities, and their implementation is supervised and/or managed at the senior management level, either in the form of a formal ethics committee or by a senior human resources or legal official. Some also adopt more creative approaches: Triple Canopy will bring in a third-party assessor for its next scheduled assessment in the latter part of 2008 and has engaged the services of an “independent Inspector General” to monitor compliance.¹⁸

Most of the companies analyzed publicized their standards frameworks widely within the company—through intranet sites and induction protocols. Some frameworks go further. For example, Control Risks specifically mandates training for its employees and subcontractors,¹⁹ G4 Securicor aims to incorporate its business ethics policy into employment contracts,²⁰ Triple Canopy requires senior managers to explain its code of conduct and business ethics to illiterate personnel,²¹ and Erinys (UK) Ltd. has issued an aide mémoire to all staff.²²

The Limitations of Industry Efforts

The limitations of existing corporate arrangements can be discerned by a description of the best practice of one large PMSC that has drawn up a framework to implement the Voluntary Principles on Security and Human Rights (VPSHR) framework into the PMSC’s own organizational arrangements, in part to prepare for contracts with extractive industry clients participating in the VPSHR framework (see Chapter Seven below). The implementation is carried out through training for its staff and subcontractors, and by integrating human rights issues into project design and contracting decisions.

As commendable as this is, the documents made available to us on a confidential basis stop short of the PMSC considering how it will deal with the prospective or actual implication of its own personnel in human rights abuses, either through their own conduct or through its contractual partners.²³ Only in the rarest of cases (only one examined) does the PMSC, for example, consider what arrangements ought be in place for dealing with grievances by third parties harmed by its conduct (or the conduct of its subcontractors or contracted project

partners), or create protocols for sharing information with local or foreign law enforcement authorities relating to such claims. Similar to many PMSC internal standards frameworks, theirs simply requires employees to cooperate with national investigations on acts of misconduct, without clarifying what such cooperation might involve, how it would be reconciled with any nondisclosure obligations, protection of proprietary information, or what remedial steps the company might subsequently take.

Indeed, the disparity between PMSCs' enforcement arrangements for internal and external stakeholders is particularly notable, especially the availability of grievance mechanisms. Most internal reporting systems involve the delivery of complaints through line managers or confidential company hotlines or e-mail addresses²⁴ (although the effectiveness of those hotlines is unclear²⁵). Some PMSCs make these grievance mechanisms available to subcontractors. However, of those PMSCs examined, only Triple Canopy officially makes its existing compliance hotline and compliance e-mail accessible to members of affected or host communities.²⁶ None of the frameworks examined have in place any grievance mechanism allowing third-party access to mechanisms for resolving concerns about the behavior of PMSC personnel that would come close to meeting the standards identified by Professor John Ruggie, the Special Representative of the UN Secretary-General on Business and Human Rights, in his report to the UN Human Rights Council.²⁷ And none have provided transparent arrangements for referring allegations of serious human rights or IHL violations by their personnel to relevant state authorities.

Many PMSC standards implementation and enforcement arrangements include provisions explicitly requiring the PMSC to adopt a position of nonretaliation against employee complainants. Such statements are required by law in the US. However, War on Want suggests that there have been a number of cases in which PMSCs have retaliated against PMSC employees who have reported violations of human rights law by company personnel.²⁸ Litigation currently in the US courts includes similar allegations.

In sum, there appear to be numerous weaknesses in PMSCs' internal standards implementation and enforcement arrangements. As another researcher has argued, PMSCs often rely on overly broad

language, lack effective monitoring arrangements, and do not provide effective enforcement mechanisms.²⁹ Many PMSCs are taking steps to improve their internal standards; yet even these PMSCs are arguably weak in providing effective and credible grievance mechanisms to third parties whom these organizations may harm.

Of course, that is no easy thing in insecure situations such as conflict zones—but all the more need, therefore, for guidance from states, civil society, and other industry actors, on what companies are expected to do. Of course, ultimately it is not the behavior of these self-selecting industry leaders that the industry's reputation needs to be protected against, but the conduct of other PMSCs, which do not even take these limited measures to respect human rights and IHL.

The global security industry cannot effectively implement and enforce human rights and IHL standards on its own: industry-only efforts will lack credibility in the eyes of the broader public, especially if they do not lead to credible and impartial enforcement action against PMSC personnel alleged to be involved in serious violations of human rights and IHL. But the internal standards arrangements developed by some PMSCs could provide a starting point for supplementing state regulation and preventing violations of human rights and IHL being committed in the first place. These arrangements may, therefore, need to be connected or folded into a global framework if it is to add value for industry stakeholders.³⁰

INTERGOVERNMENTAL AND CIVIL SOCIETY EFFORTS

As argued above, states lack the regulatory reach to effectively implement and enforce human rights and IHL, and other relevant industry standards, in PMSCs' off-shore operations—if they act alone. State regulation might gain credibility if it were undertaken collaboratively, through an intergovernmental arrangement. But the prospects of any such sufficiently broad and deep intergovernmental arrangements seem dim, given the deep political divides that continue to exist over this issue. To understand these divides, it is first necessary to examine the history of this issue at the intergovernmental level. This section also looks at more recent intergovernmental efforts to regulate

PMSCs, as well as how civil society has sought to supplement these efforts.

Early Intergovernmental Efforts

Perhaps the most important of these efforts to generate intergovernmental regulation of this global industry have occurred within the United Nations. But understanding the dynamics—and limitations—of efforts within the UN to deal with PMSCs requires an understanding of how, in the past, the member states of the UN have approached the highly divisive issue of mercenarism.

Early treatments of the mercenary issue in the General Assembly and the Security Council in the 1960s and 1970s represented efforts by newly decolonized states, particularly in Africa, to assert their sovereignty, wary of what they saw as attempts by their former colonizers to mount new interventions through covert sponsorship of mercenary groups. In some cases—most notably in the 1960s in the Democratic Republic of the Congo, where the Belgian government facilitated the activities of mercenaries aligned with major Belgian mining interests—these suspicions were entirely justified. Indeed, in the Democratic Republic of the Congo, UN peacekeeping forces ended up in a hot war with mercenary forces supporting the Katanga secessionists—and the UN forces won.

The Cuban government was at the forefront throughout the 1970s and 1980s of attempts to portray mercenarism as an inherent threat to the right of self-determination, particularly through annual debates on the topic in the UN Commission on Human Rights, many aiming to produce an outright ban on mercenarism and any activity that resembled it.³¹ Cuba's own interest was spurred by the incident at Bay of Pigs, which Cuba sought to characterize as a classic case of Western aggression carried out by mercenary proxies. The rallying efforts of Cuba and a number of other nonaligned governments ultimately led to enough support within the UN Commission on Human Rights to enable the establishment of a Special Rapporteur on this issue in 1987, despite the heated objections of the Western European and Other Group (one of the political blocs within the UN membership).

While much of the rhetoric of this period took on an ideological hue, presenting the mercenary issue as setting Western capitalist

nations against developing countries seeking to exercise their right of self-determination, the reality was often more nuanced and complex. This complexity ultimately thwarted efforts to build consensus around an intergovernmental ban on the activities of mercenaries—let alone on the security services offered by many PMSCs to legitimate governments. Too many governments, regardless of their alignment, continued to see utility in leaving themselves some wiggle room to work with globalized commercial military and security service providers, while seeking to deny that opportunity to others (especially rebel groups).

The reality that states wanted to leave room for some continued global trade in these services, even as the states stood against outright mercenarism, was evident in the provisions of a number of conventions that emerged during the 1970s and 1980s. The fact that there are a number of different norms, each drawing a slightly different line between what activities ought to be banned, and what allowed, reflects the lack of broad international consensus on this issue—which even today undermines the prospects of a purely intergovernmental approach to regulation of the industry at the global level. The first of these norms was provided by Article 47 of the *First Additional Protocol* to the 1949 *Geneva Conventions*, concluded in 1977.³² Its bars on mercenary activity could easily be defeated by such simple devices as enlisting mercenaries into national armed forces.³³ Based on this and similar deficiencies, one military historian famously proclaimed that “any mercenary who cannot exclude himself from this definition deserves to be shot—and his lawyer with him!”³⁴ Later in 1977, the Council of Ministers of the Organization for African Unity (OAU) adopted a *Convention for the Elimination of Mercenarism in Africa* at its twenty-ninth session in Libreville (the “OAU Convention”).³⁵ The text took Article 47 of the *First Additional Protocol* as its starting point, but sought to impose a more stringent regional standard.³⁶

These two texts provided the starting point for further negotiations within the UN on a compromise approach, with many European states keen to support the development of a regime that would go beyond the presumption that the industry necessarily violated human rights and the right to self-determination. By 1989, working in the Sixth Committee of the United Nations General Assembly, states had

agreed on the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*.³⁷ Unfortunately, the International Convention did not cure the shortcomings of the two earlier texts, but rather married them: unable to find a third way, states opted instead to jam together key provisions from the two earlier texts, providing a messy normative framework that few states considered provided any real added value over the sources from which it was grafted. To this day, only thirty states have ratified the International Convention.

The UN Working Group

By the late 1990s, the UN Human Rights Commission faced increasingly loud calls from civil society either to abandon the topic of mercenarism or alternatively to refocus the mandate of the Special Rapporteur to deal with the emerging phenomenon of PMSCs. In 2005, the Special Rapporteur's position was terminated by the UN Commission on Human Rights,³⁸ to be replaced by a working group with a mandate more specifically tailored to look at the PMSC issue.³⁹ The UN Working Group (UNWG) has focused much-needed attention in the wake of the Iraq war on PMSCs' off-shore recruiting methods and the patchy respect of some PMSCs for their workers' human rights, as well as establishing a simple mechanism for individuals to lodge complaints against PMSCs.⁴⁰

The working group is developing an increasingly constructive relationship with some key PMSCs, their industry associations, and even some governments in key export states.⁴¹ But there are also still deep veins of skepticism within the GSI and in some exporting states, because of the historical roots of the mandate and a perception that it views the GSI in inherently negative terms. This is in part linked to the very title of the working group, with its reference to mercenaries—a term from which much of the GSI wishes to distance itself. But it is also linked to the tone and content of some of its reports, which some in the GSI perceive as taking the position that the industry inherently erodes the state monopoly on force and undermines human rights. This suggests to some that the UNWG is unwilling to explore the possibility that—properly regulated—the GSI might actually enhance state capacity.

As a result, there remain limitations on the capacity of the UNWG to serve in the role of honest broker for international standards for the industry that will receive widespread support. These limitations might be overcome, if an effort were made to provide the additional resources the UNWG would need to ensure its analysis and policy prescriptions were based on robust evidence and fine-grained legal and factual analysis.

This would require significant additional civil society and governmental support—in cash, in kind, and in political support—to the UNWG. At present, the UNWG lacks the resources, access to PMSCs and their personnel, territorial and exporting state officials, and other expertise that the working group would need to conduct comprehensive and credible assessments of specific grievances brought to its attention. The UNWG is conducting a series of regional consultations (beginning in Panama [December 2007] and continuing in Russia [October 2008]) that could provide an occasion for such support and engagement. And the UNWG could serve an important role in developing—or even participating in—the kind of global frameworks discussed in Chapter Ten.

Additionally, the UNWG now has a mandate from the UN Human Rights Council to develop international legal instruments regulating the industry. Absent support for this process—and a willingness on all sides to engage in a collaborative and shared approach—there is a real danger of the emergence of competing processes to develop international standards, given the ground already covered by the Swiss Initiative (detailed below). Multiple processes might, of course, prove reinforcing, if they sound similar notes; but they might also become instrumentalized by different political actors, and end up working against each other.

Other authoritative actors, including from within the UN system, are increasingly lending their voices to the call for improved regulation. Both the Special Representative of the Secretary-General on Business and Human Rights, John Ruggie, and the UN Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions, Philip Alston, have recently made statements to this effect.⁴² Yet ultimately, the UN is a state-based organization focused on providing a venue for the contending politics of states, and does not offer an

obvious venue for the kind of multistakeholder consultation and negotiation process that may be needed to generate buy-in to a global framework by the industry itself.⁴³ If states did develop consensus on a broad approach—especially if it included the UNWG—there is, however, little doubt that industry actors would quickly associate themselves with that process.

The Swiss Initiative

In the absence of the necessary support (political and material) for the UN to become the primary forum for states to develop more detailed regulation, the most significant contemporary international efforts to improve standards implementation and enforcement within the global security industry are now occurring outside the UN. Particularly notable has been the process driven by the Legal Division of the Swiss Foreign Ministry with the cooperation of the International Committee of the Red Cross.⁴⁴

This Swiss Initiative is an intergovernmental process that, since 2006, has worked to produce a document affirming states' existing international legal obligations in dealing with PMSCs and document good practices for states in discharging those obligations.⁴⁵ On September 17, 2008, seventeen states⁴⁶—notably including Afghanistan, China, France, Iraq, the UK, the US, Sierra Leone, and South Africa—by acclamation, agreed upon the Montreux Document. This contains a reaffirmation of existing international legal obligations and identifies more than seventy good practices for contracting, territorial (host), and home (national) states in armed conflict. The document was drafted over three years by a variety of governmental, nongovernmental, and industry experts.⁴⁷

The Montreux Document does not develop new institutional machinery for implementing or enforcing standards, instead recognizing the wide discretion of states in implementing their existing international legal obligations. The Montreux Document is also limited to states' dealings with PMSCs in armed conflict. However, the Montreux Document serves as the most coherent, precise, and consensually-developed statement of “good practice” supported by multiple states. The document's precision and its expected widespread geographic support make it a promising source

of standards that might form the basis for any effort to develop a comprehensive global framework for this industry.

Civil society efforts

Civil society has significant power to draw attention to violations of human rights and IHL by the global security industry, as well as noncompliance with other standards. But the sanctioning levers to which civil society sometimes has access—public sentiment and consumer purchasing power—will require significant mobilization before they have any real impact on this industry. Unlike some of the mass consumption markets—for example, for apparel and footwear—addressed by the frameworks discussed in Part Two (below), consumption power over the GSI lies in the hands of a small number of consumers, many of them state executives who seem disinclined to support radically greater transparency in this market. However, Part Two also shows that, in some cases, industries that have no direct relationship with a mass consumption market (such as private banking and project financing) may nevertheless be influenced by civil society movements designed to call attention to the costs of ineffective regulation. In the extractive industry, for example, civil society activism has induced a number of states to bring greater transparency to their dealings with extractive industry companies.

A broad awareness of the costs of poor regulation in the global security industry may already be emerging, particularly around the questions of unjustified uses of force, and—at least in the US—overpricing and fraud. These issues are both at the heart of the mandate of the Commission on Wartime Contracting established by the US Congress to look at US contracting in Afghanistan and Iraq.

However, for many in the general public, the violations of human rights and IHL committed by PMSCs in conflict zones remain less clear-cut, and their connection to specific products or consumer benefits less self-evident, than do violations of rights in other industries, such as by extractive industries operating in conflict zones. Civil society may, therefore, need to do more to raise public awareness of such violations by the GSI, and the failure to adequately remedy them, before it can exert leverage over governments and other GSI clients. Of course, civil society actors are also sometimes clients of the

industry—so civil society actors may initially choose to use their own purchasing power to try to shape industry conduct, especially as the Iraq boom slows and the industry turns increasingly to postconflict security sector reform and humanitarian assistance as sources of new revenues.⁴⁸

The task of documenting and assessing industry activity falls to activist organizations, academic institutions, and think tanks. A number of civil society efforts are already afoot to improve respect for human rights, IHL, and other standards within the industry, largely through monitoring industry behavior and seeking to clarify the legal framework within which the industry operates. Groups such as Human Rights First, Amnesty International, SwissPeace, and War on Want have published detailed studies documenting evidence of human rights violations by actors engaged with the industry and/or attitudes of local populations to PMSCs, directly lobbied their governments, and, in the case of War on Want in the UK and the Center for Constitutional Rights in the US, even engaged in litigation, to support their call for improved standards implementation and enforcement in the industry. Some groups, such as International Alert and Saferworld have been actively involved in single-country efforts to strengthen the operational link between security and human rights.⁴⁹ A number of NGOs have also participated in industry efforts to raise standards.⁵⁰

The Business & Human Rights Resource Centre (BHRRC) has contributed to this informal civil society monitoring in a particularly notable way. BHRRC provides a public allegations website that seeks responses from companies to allegations of misconduct.⁵¹ This platform, which aims to ensure that coverage is balanced, and encourages companies to address concerns raised by civil society, has a section dedicated to PMSCs.⁵² BHRRC has posted the responses of a number of PMSCs to allegations raised in NGO publications,⁵³ as well as related to the trophy video publicly linked to Aegis Defense Services Ltd. in February 2008.

Research and policy institutions have also conducted important research on the issue of PMSC regulation. Princeton University's Program on Law and Public Affairs convened two meetings in 2007 and 2008, one producing an influential report that fed into discussions in Washington, DC, regarding reform of the US accountability

framework for military contractors. The Privatization of Foreign Policy Initiative⁵⁴ is examining the growing influence of nonstate actors in the conduct and implementation of US foreign policy. New York University's Institute for International Law and Justice published the "Greentree Notes," which provided a significant milestone in collaborative efforts to develop a multistakeholder framework.⁵⁵ The Geneva Centre for the Democratic Control of Armed Forces has developed a website on existing regulations governing PMSCs and their activities,⁵⁶ and is actively assisting a number of states, including host states, to improve their own national regulatory arrangements. In addition, a consortium of European universities, known as PrivWar, is undertaking a series of interlocking research projects designed to clarify the legal framework within which the industry operates, and perhaps develop a European approach to regulation.

All of these are important initiatives that may feed into a larger process to construct a coherent standards implementation and enforcement framework at the global level. But because of the limited leverage of civil society, none seem likely to generate such a process—on their own.

To understand how such a process might emerge requires thinking more precisely about what will bring different stakeholders to the table. It is to that task that this study now turns.

Chapter Three

What Kind of Framework is Feasible for the Global Security Industry?

Any effective global framework will need to be based on the fundamental state legal duty to protect human rights, the corporate responsibility to respect these rights, and the shared obligation to provide access to a remedy in the case of violations.¹ As Chapter Two shows, neither unilateral state regulation nor unilateral industry self-regulation, even if backed up by market forces, will be enough to ensure the protection of human rights and IHL—and an end to the perception of the industry as a source of insecurity, rather than a partner for security. We need to go beyond unilateral state and industry regulation and beyond market forces.

Each stakeholder group—states, industry, the industry’s clients (including public and private clients ranging from the extractive industry to humanitarian organizations), and civil society groups (representing affected upstream and downstream communities, or simply advocating for effective provision of public goods such as human rights)—brings something to the table. Each group has a particular interest in improved standards implementation or enforcement, and each group controls different forms of leverage that might serve that objective.

This part of the study looks more closely at how the limitations of existing arrangements, discussed in Chapter Two, help to clarify what would be needed in a global framework for it to be seen as adding value by different stakeholders—and therefore acceptable to them. In this sense, these are the design principles of a feasible global framework.

DESIGN PRINCIPLES FOR A FEASIBLE GLOBAL FRAMEWORK

This study identifies four characteristics of a global standards implementation and enforcement framework that would help stakeholders to overcome the limitations of existing regulation. These design principles guide analysis of the thirty existing frameworks examined in Part Two.

Specifically, this study highlights the following:

1. The need to assist states to discharge their legal duty to protect human rights;
2. The need to involve all other relevant GSI stakeholders;
3. The need to use smart incentives to encourage stakeholder involvement and influence their conduct; and
4. The need to improve PMSCs' accountability to clients, the communities PMSCs operate in, and other GSI stakeholders.

Assist States to Discharge their Duty to Protect Human Rights

1. **To be feasible, a global framework must assist states to discharge their legal duty to protect human rights.**

Any effort to implement and enforce standards within the global security industry needs to involve states. No other actors have the capacity or the authority to effectively remedy serious violations of human rights and IHL. Indeed, as both Professor Ruggie and the Swiss Initiative have been at pains to emphasize, states have a fundamental international legal responsibility for ensuring the industry respects human rights and international humanitarian law. States also stand in the key position to shape market ecology² and link market access to respect for human rights and international humanitarian law, and other standards. They can do this by reshaping their own practices in military and domestic security procurement, bilateral and multilateral development assistance, and humanitarian financing decisions. And the brief survey of available PMSC codes of conduct in Chapter Two suggests that most of these have developed in response to or anticipation of—

or at least been significantly shaped by—government regulatory pressures. Governments can in fact help shape industry-wide perceptions of quality, and extend the preventive approach adopted by leading companies to others in the industry, through their own regulatory arrangements.

However, as Chapter Two demonstrates, existing state legislation falls short in many respects, or is inadequately enforced. Any global framework cannot detract from these norms—it should bolster them. A global framework could address both of the problems afflicting state regulation identified in Chapter Two. With respect to the first, **a global framework could help to improve existing legislation**, by offering a forum for discussion and sharing of best practice among the industry, civil society, and states. As is explored in Chapter Nine, some industry associations have begun to serve such a role, but they lack the transnational authority that a global framework might offer.

Moreover, such a framework's own attempts to develop effective standards could feed back into the improvement of existing legislation at the national level. In some industries, standards have even come before regulation, and only later been codified. The Sarajevo Process examined in Chapter Nine was an attempt to put standards in place for the private security industry in Bosnia and Herzegovina that could serve as the model for state regulation. While this is not necessarily a preferred strategy for the GSI, regulatory schemes that are based on industry practice tend to be more effective in ensuring compliance.³

A global framework could also strengthen existing legislation by supporting its implementation and enforcement. Such a global framework could provide guidance to PMSCs on how effectively to integrate existing regulation into their own operating procedures. In this way, the global framework could also play a **preventive role**—by encouraging industry respect for legal norms, it would be likely to prevent violations from occurring in the first place. In a sense, criminal sanctions are inherently limited in that they come after the fact. A global framework that had a preventive aspect would thus assist states to discharge their legal duty to protect human rights.

With respect to the second problem, a global framework should **help improve enforcement of state legislation** for both states that have weak regulatory capacities and those whose enforcement capacity is strong. Any global framework may, therefore, need to pay particular attention to state capacity-building assistance as a positive incentive for numerous stakeholders to support it. A number of the frameworks discussed in Part Two provide precedents for such arrangements.

The global framework should ultimately also enable those states that already have sophisticated enforcement capacity to deal with the GSI in ways that they cannot on their own, facilitating their access to relevant information, evidence, and personnel, and reducing their regulatory burden by preventing criminal conduct or dealing with noncriminal misconduct in ways that reduce the burden on state law enforcement apparatus. Such states might also stand to benefit from the creation of a level playing field through harmonization of domestic regulatory arrangements and coordination of enforcement jurisdiction. As the analysis in Part Two explores in more detail, there are many precedents for states working together to develop coordinated, or even common, standards enforcement arrangements, from the antislavery courts of the nineteenth century to the arrangements under the OPCW—and many directly address the implementation and enforcement of human rights in global industries. Additional incentives for states would include the following: (1) improved information-sharing with foreign states and foreign markets, leading to improved military interoperability within existing military alliances such as NATO, and overall increased collective security; (2) improved market transparency and market signaling, helping to reduce pricing abuses, procurement transaction costs, and market fraud; (3) clarification of regulatory responsibilities with other market actors, reducing political risk and streamlining domestic judicial accountability; and (4) broader regulatory burden-sharing.

Moreover, some GSI-related violations, such as labor violations, contract violations, and commercial fraud could be addressed by a graduated or tiered dispute resolution mechanism,

or by shared judicial, arbitral, or quasi-judicial dispute resolution arrangements. The possibility of such a grievance mechanism is discussed further below (under [4]), and Chapter Ten looks at how a GSI arbitral tribunal would work. This might further reduce states' regulatory burden, while assisting them to discharge their fundamental regulatory responsibility.

Involve All Stakeholders

2. To be feasible, a global framework must involve all other relevant stakeholders in the GSI.

To be effective and feasible, a global framework will also need to involve other relevant stakeholders in its development process and possibly also its operation. It is not only states, but also industry, civil society, affected communities, international organizations, the GSI's clientele, financiers, and insurers that have stakes in this industry, and therefore an interest in becoming involved in a global standards implementation and enforcement framework. However, their participation—whatever form it may ultimately take—is also essential for a framework's chances of effective operation and survival. As Part Two reveals, frameworks that are not inclusive suffer in their attempts to implement and enforce standards. Only with the support and involvement of all stakeholders is it possible to envisage a feasible and legitimate global framework that is effective in implementing and enforcing standards.

Of course, a framework cannot include literally every single stakeholder. How representatives from each relevant stakeholder group might be selected for participation in different parts of such a framework is considered in Chapter Ten. In addition, a global framework will need to avoid the difficulties experienced by some of those frameworks reviewed in Part Two, which have found themselves hampered by the presence of too many conflicting voices at the table. A global framework will therefore need to build consensus. The best way of doing that is through a collaborative, inclusive process.

The framework will also need access to forms of authority and expertise that give it legitimacy in the eyes of both participants

and third parties. Any effective global framework will need access to specialized expertise in how the industry actually operates on the ground—and in human rights and international humanitarian law. Chapter Four argues that the special expertise of the ICRC as guardian of IHL could contribute to the forging of such a framework. But, depending on the scope of activities addressed by any global framework, it may also need to connect enforcement power within a global framework to expertise in GSI personnel management and labor rights issues.

Of course, neither gaining access to such expertise nor providing a forum in which representatives of all relevant stakeholders can participate will be without cost. Any global framework will need to build such costs into its operating structure. As experiences in the humanitarian sector have shown (see Chapter Six below), ultimately, the responsibility for bearing these costs may fall on donors—although in a for-profit industry such as the GSI, there may be ways for industry to be induced to directly subsidize such arrangements. Such costs are clearly justifiable to corporate shareholders, since the costs represent an investment in the legitimacy—and future—of the industry as a whole. Other global industries have already understood this logic, ranging from the chemical industry (which supported the development of the OPCW) to the diamond industry (which was persuaded to support the Kimberley Process). Whether stakeholders in the GSI are ready to contemplate the long-term benefits that will accrue from ongoing investment in the implementation and enforcement of comprehensive standards for the GSI remains to be seen. Chapter Ten considers what the specific costs of different parts of such a global framework might be.

Use Smart Incentives to Achieve Implementation

3. **To be feasible, a global framework will need to use smart incentives to influence stakeholder conduct that include—but also go beyond—market forces.**

To win the support of each of these different stakeholder groups—and, thus, to be feasible—any global framework will need to

provide specific incentives for participation.

Market forces are among those incentives. Part Two explores a number of ways in which states and other stakeholders have, in the past, linked market access and market signaling arrangements to respect for human rights and international humanitarian law, and other standards. These include blacklists, whitelists, intergovernmental trade restrictions, and auditing, certification, licensing, and ratings arrangements. Chapter Ten explains how such experiences might be adapted—right now—to the GSI.

Such an approach may not have to be led by states. If a group of industry actors, including clients, control a sufficiently large market share, they may also be able to impose market discipline through agreeing on a standard that states (and international organizations) can later buy into through more or less formal adoption or whitelisting arrangements (e.g., Wolfsberg, Equator). And frameworks (such as the Business Social Compliance Initiative [BSCI], CAS, and OIE) that provide for the ongoing expansion of their influence through having participants incorporate framework standards and grievance mechanisms into their own contracts, articles of association, and other arrangements are also particularly successful in shaping industry behavior.

But we should also think beyond market forces, to other incentives, such as arbitration arrangements and the shadow of judicial sanctions at the international level (or coordinated through decentralized national enforcement). There may be particular benefits from considering arrangements that will generate **an authoritative *acquis*** around standards implementation arrangements. A number of the blueprints put forward in Part Two contains provisions for the development of such an *acquis*.

A framework could also create a **community of learning** built on mutual respect and trust among participants from whichever stakeholder groups the participants are drawn. Indeed, the analysis in Part Two suggests that standards implementation and enforcement frameworks have the greatest legitimacy when they are highly participatory. This allows the sharing of best practices,

their internalization, and the evolution of the framework over time. It can also promote the provision of assistance to stakeholders to build their own capacity. Such assistance could helpfully be directed toward the industry itself, to assist it in implementing and enforcing human rights and IHL, independent of and supplementary to state regulatory activity. Frameworks such as the BSCI, Social Accountability International (SAI), and FLA provide precedents for such an approach. And, as the case of the ILO Tripartite mechanism demonstrates, technical assistance can be used as an incentive to secure implementation.⁴

Improve Accountability to Stakeholders

4. **To be feasible, a global framework must also improve PMSCs' accountability to clients, the communities they operate in, and other stakeholders.**

Since the basic regulatory problem for the GSI is the perception of a lack of implementation and enforcement of standards, improved accountability of PMSCs will lie at the heart of more effective regulation. An effective global framework **must improve clients', regulators', and other stakeholders' access to information about PMSC performance in the field**, which will in turn facilitate their own use of enforcement and market power to realize accountability. As is explored further in Parts Two and Three, this might be achieved through a variety of reporting, consultation, and tiered and interlocking informal dispute resolution arrangements.

In particular, GSI stakeholders should ensure that any framework ensures access to grievance mechanisms that satisfy all the criteria identified by Professor Ruggie in his 2008 report to the UN Human Rights Council:

- *Legitimacy* – “a mechanism must have clear, transparent and sufficiently independent governance structures to ensure that no party to a particular grievance process can interfere with the fair conduct of that process”;
- *Accessibility* – “a mechanism must be publicized to those who may wish to access it and provide adequate assistance

for aggrieved parties who may face barriers to access, including [but not limited to] language, literacy, awareness, finance, distance, or fear of reprisal”;

- *Predictability* – “a mechanism must provide a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome”;
- *Equity* – “a mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms”;
- *Rights-compatibility* – “a mechanism must ensure that its outcomes and remedies accord with internationally recognized human rights standards” (notwithstanding the fact that the fundamental responsibility to protect human rights lies with states); and
- *Transparency* – “a mechanism must provide sufficient transparency of process and outcome to meet the public interest concerns at stake and should presume transparency wherever possible; non-State mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes.”⁵

Affected communities (in particular) currently have access to no such grievance mechanism. This particular element should be a central objective of any multistakeholder effort to develop a global framework.

Yet it is also very important to recognize the limits of such an informal grievance mechanism. Some violations (such as contractual and labor disputes, or commercial fraud) may be amenable to the kind of graduated or tiered grievance mechanisms offered by the Fair Labor Association and Social Accountability International. Existing arrangements such as the OECD’s National Contact Points for implementation of the Guidelines for Multinational Enterprises may also serve such a purpose. In other

cases, disputes may lend themselves to shared judicial, arbitral, or quasi-judicial dispute resolution arrangements such as those of the Court of Arbitration for Sport or the International Labour Organization's Tripartite mechanism (all discussed below in Chapter Five).

However, the nature of some PMSC misconduct—specifically relating to serious human rights violations—is not amenable to such arrangements. **PMSCs' human rights violations should ultimately be adjudicated in state courts through fair trial subject to due process.** Any global framework should assist effective judicial adjudication of human rights violations, even if that leaves room for more informal dispute resolution arrangements in relation to labor and contract disputes. Existing arrangements such as the OECD's National Contact Points for implementation of the Guidelines for Multinational Enterprises may serve such a purpose, but may not prove adequate to deal with allegations of serious violations of human rights (such as violation of the right to life) that recur in relation to the GSI.

PART TWO:
Learning from Other Frameworks

This part of the study provides analyses of thirty standards implementation and enforcement frameworks, drawn from a range of industries, including the financial, extractive, textile and apparel, chemical, toy, toxic waste disposal, sporting and veterinary sectors, and the global security industry. This analysis was undertaken in order to understand how each of the frameworks established industry-wide standards and effective arrangements for their implementation and enforcement, and what lessons can be learned from their experiences.

Each section examines six aspects of a given framework:

- **Story:** what is the *story* behind the development of the framework?
- **Scope:** what *scope* of activities does the framework address?
- **Stakeholders:** what *stakeholders* participate in the framework?
- **Standards:** what *standards* does the framework implement or enforce?
- **Sanctions:** what *sanctioning* power and incentives are involved?
- **Support:** what political and financial *support*—and what criticisms—does the framework receive?

For a more detailed explanation of the methodology used to prepare this part of the study, please see Preparation of the study, in Chapter One.

Chapter Four

Watchdogs

GENEVA CALL

www.genevacall.org

Analysis of Lessons for the Global Security Industry:

- Geneva Call demonstrates the feasibility of an independent NGO working with nonstate armed actors to facilitate and oversee their implementation of specific norms of international humanitarian law at the operational level.
- Geneva Call's success as a watchdog stems in part from the NGO's reliance on highly legitimate standards (the norms found in the 1997 Ottawa Treaty banning antipersonnel mines), and in part from the tolerance—and even support—of governmental actors.
- However, Geneva Call's success also stems in part from its own credibility as an honest broker working with a wide range of stakeholders. This seems likely to be an important element in any effort to develop an effective global framework for the GSI, given the varying positions of different stakeholders.
- Given the key role of states as PMSC clients, however, any such watchdog for the GSI would also need the trust and cooperation of contracting and territorial states and civil society actors, and not just PMSCs themselves, if the group were to effectively carry out an assistance and monitoring role similar to that played by Geneva Call.

Story

Geneva Call is an international humanitarian organization based in Geneva, Switzerland, dedicated to engaging armed nonstate actors to promote respect for humanitarian norms, starting with the ban on antipersonnel (AP) mines.¹ The 1997 Ottawa Treaty banning AP mines (Mine Ban Treaty or MBT) provides a framework for states to voluntarily accept a prohibition on AP mines but has no equivalent mechanism for nonstate actors. Geneva Call provides that missing framework. Working with Geneva Call, nonstate armed groups express adherence to the norms embodied in the 1997 treaty through their signature of a “Deed of Commitment.” The government of the Republic and Canton of Geneva serves as the guardian of these Deeds. Thirty-five armed groups in Burundi, India, Iran, Iraq, Myanmar, the Philippines, Somalia, Sudan, Turkey, and Western Sahara have agreed to abide by the MBT norms through this mechanism. Following the signing of the Deed of Commitment, Geneva Call monitors the group’s implementation of that commitment, including occasionally through inspections.

Scope

Geneva Call works with “any armed actor operating outside state control that uses force to achieve its political/quasi-political objectives,” in Asia, Africa, Latin America, the Middle East, Europe, and the south Caucasus.²

Stakeholders

Armed nonstate actors participate in the framework by signing a Deed of Commitment. Signatory groups commit themselves to the following: (1) a total prohibition on the use, production, acquisition, transfer, and stockpiling of AP mines and other victim-activated explosive devices, under any circumstances; (2) destroying stockpiles, clearing mines, providing assistance to victims, and promoting awareness of the ban; (3) allowing and cooperating in the monitoring and verification of their commitments by Geneva Call; (4) issuing the necessary orders to commanders and to the rank and file for the implementation and enforcement of their commitments; and (5) treating their commitment as one step in a broader commitment to the ideal of humanitarian norms.³

Geneva Call initiates dialogue with potential signatories through personal contacts or through third parties, such as conflict experts, members of diasporas, local antimine campaigns, and other local NGOs. Decisions to engage a group are made after a thorough analysis of the group (its character, objectives, leadership, internal structure, past practices, etc.) by the Geneva Call secretariat, as well as an assessment of the dynamics of the conflict the group is involved in, and of other factors such as the group's ability and willingness to implement the obligations contained in the Deed of Commitment.⁴

Since its creation in 2000, Geneva Call has engaged about sixty such groups in seventeen countries. These efforts were in most cases conducted in partnership with national campaigns to ban landmines and/or other local NGOs.⁵ Thirty-five groups have signed the Deed of Commitment: twenty in Africa (Burundi, Somalia, Sudan, and Western Sahara), eleven in Asia (India, Myanmar, and the Philippines), one in Europe (Turkey), and two in the Middle East (Iraq and Iran).⁶

Geneva Call also undertakes significant efforts to work with the governments on whose territories these groups are operating. These outreach efforts help to ensure that the government accepts the group's participation in the framework, recognizing the benefits it brings. For example, in 2007, the government of Turkey accused the Konga Gel of using landmines, which triggered a response and investigation carried out by Geneva Call.⁷

Standards

The Geneva Call framework picks up and adapts the specific norms of the 1997 Ottawa Treaty, which were designed for implementation by states. Paragraph 7 of the preamble of the Deed of Commitment signed by nonstate armed groups refers to their acceptance "that international humanitarian law and human rights apply to and oblige all parties to armed conflicts."⁸ Geneva Call's own activities are premised on fundamental humanitarian principles, such as independence, impartiality, and neutrality.

Geneva Call monitors implementation through the following: (1) signatory self-monitoring and self-reporting, (2) third-party monitoring, and (3) field missions.⁹ Sixteen signatories have

established mine action coordination structures or appointed focal persons to follow up on the implementation of the Deed. Additionally, fourteen signatories have reportedly carried out mine clearance and related operations (mapping, marking, and surveying) and/or cooperated with international and local specialized organizations to do so. In other cases, Geneva Call steps in to provide training on the mine ban, facilitate technical assistance from specialized organizations, and promote mine action intervention in areas controlled by signatory groups.¹⁰

As of October 2007, twenty-nine of thirty-four signatories had reported to Geneva Call on the measures they had taken to implement their commitments, in accordance with Article 3 of the Deed of Commitment. Signatories report on the status of enforcement measures (orders, training, and disciplinary sanctions); the compliance challenges faced; the numbers, types, and locations of stockpiled mines; actions taken to clear mined areas, to destroy stockpiles, to warn the population, and to assist victims; and any other commitments undertaken to respect humanitarian norms. Reporting also includes details on the general landmine situation, recent mine incidents and casualties, mine action efforts, and any assistance needs.¹¹

Third-party monitoring relies on a wide network of independent international and local organizations in the field, which are familiar with the local situation. Third-party organizations can draw Geneva Call's attention to mine incidents and have helped to assess the credibility of allegations, and have also encouraged compliance with the Deed of Commitment by signatories.¹²

Geneva Call has also carried out follow-up visits and two field verification missions. Based on Article 3 of the Deed, the organization can, on its own initiative, decide to send a field mission to evaluate a signatory's implementation of its commitments. No further approval is required from the group, since consent is granted at the time of signing the Deed—though cooperation may be required from the territorial government. As of October 2007, Geneva Call and its partners had visited areas under the control or operation of twenty signatories. Most of these visits are routine missions to review progress or assist in the implementation of the Deed of Commitment,

with regard to mine ban education, stockpile destruction, or other assistance activities. Geneva Call has also conducted two field verification missions: in Mindanao, southern Philippines, to investigate allegations of mine use by the Moro Islamic Liberation Front (MILF) in April 2002, and in July–August 2004 in northeast Somalia/Puntland to verify reports of mine acquisition from Ethiopia.¹³

Sanctions

According to Geneva Call, armed nonstate actors have a number of reasons to sign the Deed of Commitment: to protect members of their constituency (civilians or soldiers); to improve the stability and quality of life for people living in the areas under their authority or de facto control, by destroying mines and removing the fear of mines; to make it possible for mine action programs to be launched in the areas in which mines are active; and to demonstrate the actors' capacity to uphold principles of humanitarian law.¹⁴ Signing the Deed also gives groups subsidized access to technical assistance to deal with mine stockpiles. A group's signing of the Deed can also lead to the territorial state where the group is operating reciprocating by signing the 1997 MBT, as has occurred in Burundi, Iraq, Sudan, and Somalia.¹⁵

On-site verification missions can also lead to clarification of the nature of a group's commitment to the Deed,¹⁶ or reinforcement of this commitment. The Mindanao mission combined foreign and domestic military expertise, undertaking site visits to verify alleged mine use. The mission established that the group had used "string-pulled" improvised devices for the defense of its camps against attacks by government forces. The devices are prohibited under the Deed of Commitment. Consequently, the MILF agreed to no longer employ string-pulled improvised devices under any circumstances.¹⁷ In Puntland, following reports by a UN arms embargo monitoring group that Ethiopia had provided 180 AP mines and other unspecified landmines to Puntland's armed forces, a Geneva Call team inspected a number of sites and secured a pledge from the Puntland authorities to complete an inventory of AP mine stocks in all military camps.¹⁸

Support

Geneva Call receives financial assistance from the governments of Switzerland, Italy, UK, Norway, Australia, Spain, Germany, Denmark,

Lithuania, the Republic and Canton of Geneva, the European Commission, UNICEF, and a number of other NGOs and research institutes.¹⁹ Geneva Call also works in close partnership with national mine-ban campaigns, mine action NGOs, academics, conflict analysts, Landmine Monitor researchers, various UN agencies, donor governments, legal experts, relief and development agencies, and other local, regional, and international institutions. Geneva Call has also received political support from the European Parliament and the UN.²⁰

Nevertheless, the framework's effectiveness is limited by the fact that it works on a voluntary basis. Many relevant groups remain outside the framework, including major mine users and producers, such as Colombian guerrillas and a number of Burmese armed opposition groups. Moreover, many of the groups within the framework retain large stocks of AP mines in territory under the groups' control.²¹

The reach of the framework is also hampered by some states that fear that these groups are somehow legitimized by signing Geneva Call's Deed of Commitment. Additionally, the Deed puts those states that have not signed the ban in a defensive position because they lose some of their justification for having resisted doing so. (Some states have subsequently signed the MBT.) States have restricted Geneva Call's work by denunciation, and by refusing to grant visas and other travel permissions to Geneva Call's international staff.²² Insecurity, lack of financial resources, and internal divisions within nonstate armed groups have also negatively impacted Geneva Call's work.²³

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)

www.icrc.org

Analysis of Lessons for the Global Security Industry:

- The ICRC could contribute its expertise in international humanitarian law to a global framework, and such a contribution would be a great asset to any framework.

- The ICRC was established by a group of private citizens in the 1860s, working closely with states, as a framework for improving humanitarian response on the battlefield. Over time, the ICRC's humanitarian role has grown, and the ICRC has been given a specific role by states to protect victims of armed conflict and to be the guardian of international humanitarian law. That guardianship role gives the ICRC some of the characteristics of other watchdogs created by civil society and the international community and tolerated or blessed by governments, such as Geneva Call and the framework dealing with children and armed conflict within the UN.
- However, the ICRC enjoys a unique status, conferred by the Geneva Conventions, and has unique experience in working with parties to conflicts to promote the implementation of international humanitarian law (IHL) standards—and not simply calling the parties out when they fall short. Any attempt to develop a global framework should consider, through dialogue with the ICRC, how to make the most of that experience, and its role as a guardian of IHL, in relation to the global security industry—without jeopardizing ICRC's impartiality, independence, and neutrality, or the confidentiality of its operations.
- Yet the ICRC will not, on its own, provide a comprehensive global framework for the global security industry, for at least three reasons: (1) the ICRC's focus is on humanitarian action and humanitarian law, and so the ICRC will not necessarily address compliance with other standards, such as labor rights, broader human rights, or transparency in contracting PMSCs; (2) the ICRC seems unlikely to move beyond broad IHL-promotion activities to directly working with PMSCs to improve their internal implementation arrangements (such as standard operating procedures), absent an existing framework for accountability; and (3) the ICRC is deliberately, and appropriately, shielded from involvement in judicial enforcement of international humanitarian law, in order to protect the confidentiality of the ICRC's dialogue with states and armed groups.
- Any global framework for the global security industry should therefore recognize the unique and crucial role that the ICRC

will play in promoting respect for IHL, and should seek to supplement those activities and capitalize on the ICRC's expertise.

Story

The International Committee of the Red Cross (ICRC) is an independent, neutral organization headquartered in Geneva that ensures humanitarian protection and assistance for victims of war and armed violence and serves as a guardian of international humanitarian law (IHL). Similar to many of the other frameworks addressed in this study, the ICRC began its life as the initiative of a group of private citizens, determined to place limits on human suffering.²⁴ However, the ICRC's unique status in international law derives in part from the ICRC's recognition by intergovernmental treaties beginning in the 1860s (and now mainly from the *Geneva Conventions of 1949* and the *Additional Protocols of 1977*) and from the practice—and confidence—the ICRC has developed through working discreetly with states and nonstate armed groups since. The ICRC enjoys a unique level of trust among governments and nonstate armed groups, and has a uniquely long-standing experience in implementing the standards of IHL.

This makes the ICRC an obvious contender to play a key role in promoting PMSC respect for IHL. The ICRC's public statements suggest it has indeed begun to contemplate such a role. At the same time, the ICRC's unique position as a promoter of IHL standards seems in part to derive from its deliberate shielding from criminal enforcement activity: only as a last resort will the ICRC publicize violations of IHL by belligerent parties, and it has been specifically exempted from obligations of testimony, for example in the International Criminal Court (ICC). These exemptions help ensure that the ICRC enjoys the ongoing confidence of the belligerent parties with which the ICRC works to promote IHL. But these exemptions may also point to the limited role the ICRC can play in any global framework for the global security industry.

The ICRC has played a key role in the Swiss Initiative (discussed in Chapter Two of this study), which seeks to recall states' existing legal obligations and promote good practice in dealing with PMSCs.

However, the ICRC has also apparently contemplated a limited role in engaging PMSCs directly to encourage their respect for IHL.²⁵ This section considers the prospects of such an approach.

Scope

The ICRC's engagement with PMSCs is based on its humanitarian mandate, and its consequent interest in "finding ways of bringing about greater compliance with IHL."²⁶ The ICRC argues that

"While the presence of these companies in conflict situations is not new, their numbers have grown and, more significantly, the nature of their activities has changed. In addition to the more traditional logistical support, [PMSCs] have been involved more and more in activities that bring them close to the heart of military operations—and thereby into close proximity to persons protected by IHL. These activities include protecting military personnel and assets, training and advising armed forces, maintaining weapons systems, interrogating detainees and sometimes even fighting."²⁷

The ICRC apparently sees PMSCs as increasingly relevant to a number of areas of its work, including protecting civilians in the field and promoting respect for IHL (by PMSCs and by the states that hire, host, or export them). PMSCs are also relevant to the efforts of the ICRC to clarify how armed groups ought to distinguish between civilians and combatants, and in particular when an individual can be understood to be directly participating in hostilities.²⁸ In addition, the ICRC has also, on rare occasions, paid groups for armed security services.²⁹ However, while the ICRC does seek to protect the rights and entitlements of PMSC personnel under IHL, the ICRC has not taken an active interest in promoting respect for other internationally-recognized rights that may be relevant to PMSC personnel, such as labor rights—since they are beyond the scope of the ICRC's mandate.

Traditionally, the ICRC has worked discreetly with parties to armed conflict to promote their respect for IHL, and in particular to ensure humanitarian access and the protection of civilians. Only if a party proves particularly intractable in failing to cease or remedy violations of IHL will the ICRC make any public pronouncement on such violations. Otherwise, the ICRC's dialogue with parties remains strictly confidential.

Stakeholders

The ICRC's approach to promoting respect for IHL by PMSCs appears to involve working as much with the states that hire, host, and regulate PMSCs as with PMSCs themselves. To date, the primary objective appears to have been to ensure that states exercise their responsibilities over PMSCs and to encourage them to take appropriate measures to ensure respect for IHL, particularly through effective regulation.³⁰ The ICRC's cooperation with the Swiss government in the Swiss Initiative should be understood in this way.

In parallel, the ICRC engages with PMSCs directly to promote their respect for IHL. The ICRC aims, through dialogue with industry representatives, to ensure that companies and their staff respect IHL and that they are aware of, and understand, the ICRC's mandate, activities, and modus operandi. The ICRC also publicizes reports and studies focused on the issue.³¹

Yet the ICRC also seems hesitant, for the time being, to take a hands-on role in advising and training PMSC personnel in IHL (as the ICRC does with some governmental armed forces and some nonstate armed groups). One ICRC official has explicitly stated that “[t]he responsibility for educating and training [PMSC] employees in the content and application of IHL lies primarily with the company itself and with the states who hire them. The ICRC should in no way take the place of the company or the state—but we are ready to discuss the possibility of advising them on how they can implement this responsibility.”³²

Standards

The ICRC promotes the application of IHL. However, the ICRC also emphasizes that domestic regulation may provide the best means to ensure PMSC respect for IHL.

Sanctions

Traditionally, the ICRC does not play a role in enforcing IHL through accountability arrangements. Where the ICRC identifies apparent violations of IHL by armed forces, the ICRC engages in confidential dialogue with that group to achieve a remedy.³³ This helps ensure the ICRC continued access to the parties, and to those in those parties'

power. Indeed, so central is this shielding of the ICRC from enforcement activity that its staff are now recognized as enjoying a unique privilege in international law from testimony before domestic and international courts.³⁴

Support

The ICRC receives very widespread support around the world. The Geneva Conventions, of which ICRC is the guardian, are now universally ratified. Notwithstanding recent criticisms from some quarters in the US,³⁵ the ICRC continues to receive very deep financial support from the US and other Western powers: 205 million Swiss francs a year from the US, 111 million a year from the European Commission, and 106 million a year from the UK.³⁶

This suggests that the ICRC might serve an important role in promoting respect for IHL by PMSCs, including the protection of PMSC personnel themselves in certain circumstances. The ICRC seems likely to continue its quiet IHL-promotion activities, particularly through supporting states' own efforts better to regulate PMSCs and through dialogue with the industry. The ICRC might also support a global framework that built on such efforts—for example, by lending its expertise to state-backed monitoring arrangements within such a global framework, or by participating as an observer (as the ICRC does in the VPSHR). In any event, the ICRC is unlikely to participate actively in any mechanism that would point publicly to wrongdoing by PMSCs. Any global framework should certainly recognize the unique and crucial role that the ICRC will play in promoting respect for IHL, and should seek to supplement those activities and capitalize on the ICRC's expertise, rather than seek to compete with the ICRC.

CHILDREN AND ARMED CONFLICT (CAAC)

www.un.org/children/conflict

Analysis of Lessons for the Global Security Industry:

- In the mid-1990s, influenced by civil society activism, member states of the United Nations and its Secretariat began to develop

the components of a framework for monitoring compliance with norms against the involvement of children in armed conflict. Similar to the ICRC and Geneva Call, the resulting UN framework seems to demonstrate the possibility of civil society activism leading to the creation of a specialized global watchdog—in this case, the UN Secretary-General’s Special Representative—to help monitor and drive forward implementation of human rights at the local level.

- But the UN framework also goes further, with interlocking components including an intergovernmental body created by the UN Security Council, with the capacity to impose specific legal sanctions on individuals and groups it identifies as failing to implement these standards. This intergovernmental body, in turn, draws on information provided by civil society and UN country teams. This interlocking arrangement points to the possibility of different stakeholders using their own forms of leverage to develop a range of complementary institutions, which together form a comprehensive framework for standards implementation and enforcement.
- The UN’s arrangements for dealing with children and armed conflict also provide an innovative example of how the UN can marry its moral authority with the shadow of specific sanctions to protect human rights during armed conflict. But while there is likely to be broad support among UN member states for the general position that PMSC personnel must respect human rights and international humanitarian law, it is unlikely that any machinery analogous to that described here could be developed within the UN to address PMSC conduct. The five permanent members of the Security Council seem extremely unlikely to support such a mechanism as an outgrowth of the Security Council. And without the legal sanctioning power of the Security Council, any such machinery—for example, any attempt to extend the mandate of the UN Working Group on Mercenaries established by the UN Human Rights Council (discussed in Chapter Two above)—would likely be less effective than that described here for child soldiers.

Story

In the last decade, the United Nations has developed—more by accident than design—a complex framework for protecting the rights of children in armed conflict (known by the shorthand CAAC, for children and armed conflict). Building on emerging jurisprudence from UN-backed courts such as the Special Court for Sierra Leone, UN agencies and member states have developed three institutional mechanisms to try to implement and enforce norms protecting children in armed conflict, with special focus on the use and recruitment of child soldiers. The first mechanism is the position of Special Representative of the UN Secretary-General on Children and Armed Conflict, created in 1998. The second mechanism is the UN Security Council Working Group on Children and Armed Conflict (UNSCWG), established following UNSC Resolution 1612 (2005).³⁷ Both the UNSCWG and the Special Representative work with a UN coordination group (the interagency UN Task Forces on Children and Armed Conflict) and international and national NGOs. In specific cases, the UN establishes a third institutional mechanism: a monitoring and reporting mechanism (MRM), to monitor and report on violations of children's rights. In particular, all of this institutional machinery focuses on the use and recruitment of child soldiers.

In the twelve countries to date in which the MRM has been applied, UN peacekeeping missions and UN country teams establish interagency taskforces to regularly monitor and report on violations committed by armed forces and groups against children. This information is shared with the UNSCWG. Based on the information the UNSCWG receives, it makes recommendations to the Security Council for action on a range of fronts including engaging with parties that use child soldiers, and involving other actors including peacekeeping missions. In 2006, the UNSCWG developed a “toolkit” of potential actions, including sanctions.³⁸

This framework grows out of a civil-society-led movement that emerged in the 1980s. NGOs, organized as the NGO Working Group on the *Convention on the Rights of the Child*, and later under the aegis of the Coalition to Stop the Use of Child Soldiers, made significant progress in influencing public opinion.³⁹ The international community was further galvanized by the 1996 report to the UN by

Graça Machel on *The Impact of Armed Conflict on Children*.⁴⁰ In the late 1990s and early twenty-first century, this support found expression in a number of international instruments and judicial decisions.⁴¹ These culminated in the 2000 adoption of the *Optional Protocol to the Convention on the Rights of the Child*, establishing eighteen as the minimum age for participation in armed conflict, for compulsory or forced recruitment, and for any recruitment by nongovernmental armed groups.⁴² Additionally, there have now been six UNSC Resolutions on Children and Armed Conflict in 1999 (1261), 2000 (1314), 2001 (1379), 2003 (1460), 2004 (1539), and 2005 (1612).

Scope

The UNSCWG and MRM have focused on the situation for children in twelve countries: Burundi, Chad, Colombia,⁴³ Côte d'Ivoire, the Democratic Republic of the Congo, Myanmar, Nepal, the Philippines, Sri Lanka, Somalia, the Sudan, and Uganda. What is particularly notable about this list is that it includes a number of countries—such as Sri Lanka and, at the time, Myanmar—where the situation as a whole was not formally on the agenda of the UN Security Council. The permanent representatives to the UN of the countries addressed are invited to present the point of view of their governments and engage in “an exchange of views” at the UNSCWG’s meetings.

The MRM monitors the following six grave abuses: (1) killing or maiming of children, (2) recruiting or using child soldiers, (3) attacks against schools or hospitals, (4) rape and other grave sexual violence against children, (5) abduction of children, and (6) denial of humanitarian access to children. The UNSCWG also addresses other related matters, such as the involvement of children in disarmament, demobilization, and reintegration (DDR) processes.

The countries listed above are not the only countries monitored for the use and recruitment of child soldiers by the UN. The Office of the Special Representative reports on child soldiers worldwide, and the Secretary-General reports to the Security Council on children and armed conflict on a regular, thematic basis.⁴⁴ However, only the twelve countries listed are subject to any active, institutionalized implementation and enforcement activity for preventing their use.

Stakeholders

The UNSCWG consists of the fifteen Security Council members at that time. The UNSCWG meets approximately every two months in closed session. The UNSCWG's recommendations are then passed on to the Security Council, which gives the UNSCWG its mandate and sets its strategic direction. The MRM delegates monitoring and reporting to its country taskforces. The process for sharing the information collected through the MRM is as follows: a country taskforce submits information to the Office of the Special Representative; who then submits this information to the Secretary-General; who submits a report to the UNSCWG; which then considers the report and makes recommendations for action by the Security Council.⁴⁵

The CAAC mechanisms are publicized through the UN, its member states, and through its nongovernmental partners, such as the Coalition to Stop the Use of Child Soldiers. France, whose permanent representative heads the UNSCWG, is particularly active in publicizing the mechanisms. In 2007, it initiated the Paris Principles, best practice guidelines "for preventing [sic], liberating and reintegrating children associated with armed groups and forces."⁴⁶ Security Council member states, UN agencies, international NGOs and local partners, and those parties accused of using and recruiting child soldiers in the twelve states that are currently the focus of the mechanisms all participate in these mechanisms to varying extents. Child soldiers themselves do not participate in the framework, although their opinions and testimonies are sought through the MRM.⁴⁷

Standards

The UN children in armed conflict framework is based on the following international standards and laws: *UN Convention on the Rights of the Child* (1989) and its *Optional Protocol on the Involvement of Children in Armed Conflict* (2000), *Rome Statute of the International Criminal Court (ICC)* (1998), *ILO Convention 182 concerning the Prohibition and Immediate Action for Eliminating of the Worst Forms of Child Labour* (1999), *African Charter on the Rights and Welfare of the African Child* (1999), the *Geneva Conventions* (1949) and their two

Additional Protocols (1977), and Security Council Resolutions 1261 (1999), 1314 (2001), 1379 (2001), 1460 (2003), 1539 (2004), and 1612 (2005), all of which are devoted to the subject of children and armed conflict.⁴⁸

The relevant institutions also invoke national legislation, concrete commitments on children and armed conflict entered into by parties to conflict, peace accords incorporating children and armed conflict commitments, and traditional societal norms governing the conduct of warfare.⁴⁹

Sanctions

The twelve countries that are currently the focus of the UN child soldiers framework are frequently said to be on a blacklist—a term that in and of itself serves as something of a negative sanction. Their eventual removal from this blacklist is thus a positive incentive for ending their use of child soldiers. International assistance for DDR programs devised in collaboration with the UNSCWG and UN agencies and local and international NGOs are supposed to function as further positive incentives. However, this support is not always forthcoming or effectively implemented.⁵⁰

Parties that demonstrate “insufficient progress” in ending their use of child soldiers may also ultimately be subject to sanctions. These could include “imposition of travel restrictions on leaders and their exclusion from any governance structures and amnesty provisions, the imposition of arms embargoes, a ban on military assistance and restrictions on the flow of financial resources to the parties concerned.”⁵¹ For example, in 2006, the Security Council placed a travel ban on an armed group leader in Côte d’Ivoire and sought to subject leaders in the DRC to travel bans and asset freezing.

Support

According to its own reports, the UNSCWG is making good progress. For example, the UNSCWG announced that developments in the Côte d’Ivoire “showed that the Group’s determination to ensure compliance with resolution 1612 (2005), together with the threat of sanctions, had worked.”⁵² Groups in Sri Lanka and Côte d’Ivoire are working with the UN to develop and implement time-bound action plans to release

children and prevent their recruitment. Ethnic armed groups in Myanmar have agreed to do the same. However, the UNSCWG concedes that “a significant excess workload for the Group [...] may have prevented it from monitoring the implementation of its conclusions more methodically.”⁵³

The UNSCWG’s ability to achieve effective implementation is also constrained. The UNSCWG does not itself undertake implementation or prevention activities, but instead serves as a committee that lends weight to and steers the activities of the various UN and interagency coalitions operating in each of the respective countries on its list.

Still, it is important not to understate the normative influence of the UN CAAC mechanisms. The Coalition to Stop the Use of Child Soldiers observes that the public naming of certain armed groups in the UN Secretary-General’s regular reports to the Security Council on children and armed conflict has encouraged several groups to renounce the practice and cooperate with the UN to prevent it.⁵⁴ The Coalition to Stop the Use of Child Soldiers compliments the MRM for having prompted more systematic data collection, focused attention and resources on selected situations, and created entry points for dialogue by humanitarian actors. Nonetheless, the organization’s conclusion voices the views of many: “Undoubtedly more could be achieved.”⁵⁵ And many also point out that the use of child soldiers is more likely to end as conflicts end rather than as a result of any actions or initiatives to end child soldier recruitment and use.⁵⁶

Chapter Five

Courts and Tribunals

ANTISLAVERY COURTS

Analysis of Lessons for the Global Security Industry:

- The little known antislavery courts established by the UK, Spain, Portugal, the Netherlands, Brazil, and the US in the nineteenth century offer an important precedent. They show how states can engage in cooperative action to pool jurisdiction to ensure accountability for human rights violations by a global industry.
- In that sense, the antislavery courts stand in stark contrast to the very limited contemporary efforts by states to coordinate their enforcement jurisdiction over PMSCs, which has caused significant confusion for the industry¹ and undermined the effective enforcement of human rights and international humanitarian law (IHL).
- An intergovernmental initiative driven by the UK government, the antislavery courts were intended to level the playing field for British industry by enlisting other states' navies and judiciaries in the enforcement of the prohibition on the slave trade. These courts represent an early example of how an intergovernmental initiative to regulate a global industry can at the same time help states to discharge their legal duty to protect human rights.
- The antislavery courts also offer important lessons for the GSI about how sensitive issues of national security—such as inspections of company property by military personnel—can be effectively integrated with intergovernmental judicial institutions operating in the field, and how the use of financial incentives can encourage decentralized human rights enforcement.

Story

The world's first international courts designed to specifically address human rights violations were created in 1817 through a series of bilateral treaties between Britain and several other countries. The courts sat on a permanent basis and applied international law to protect the human rights of third parties from a specific global industry, the slave trade. These courts were located in Freetown, Havana, Rio de Janeiro, and Suriname; others were later found in Cape Town and even New York.² The courts heard more than 600 cases and freed almost 80,000 slaves.³

The UK was the main instigator of the antislave trade treaties that led to the creation of the courts. With the passing of the 1807 Act for the Abolition of the Slave Trade, it became in the country's economic self-interest to discourage other countries from trading in slaves.⁴ To suppress the slave trade, Britain initially used provisions under the Law of Nations to search foreign flagged vessels on the high seas during times of war. Slaves found aboard enemy ships, or the ships of neutrals, were declared lawful prize and were released. The end of the Napoleonic wars in 1814–15 meant that Britain no longer had access to this mechanism, and in 1817, Britain signed treaties with the Netherlands, Portugal, and Spain to allow mutual rights of search and seizure, and to set up mixed civil (admiralty) jurisdiction courts to try and condemn slave ships.⁵

Scope

The treaties prohibited the slave trade by nationals of signatory countries (sometimes with geographic restrictions). These treaties contained enforcement provisions including the granting of a reciprocal right to search one another's ships on the high seas, and to seize them if they were found to be carrying slaves.⁶ The treaties specified that cases should be resolved in twenty days. The court in Freetown heard the most cases because of its location on the west coast of Africa, where the majority of captures took place, and because of the British colonial authorities' favorable attitude toward the court's activities. However, relaxed enforcement by certain local officials allowed many would-be violators to avoid prosecution, and the initial nonparticipation of France and the US allowed slave ships flying an

American or French flag to avoid the framework altogether.

Stakeholders

The courts consisted of a judge and an arbitrator from each of the two signatory countries. In the event of a disagreement between the judges, one of the arbitrators was chosen by lottery to rule on the dispute. The vast majority of cases resulted in condemnation of the detained vessels. Crews from condemned ships were repatriated and, at the discretion of their country, tried criminally; the antislavery courts themselves did not hold any criminal jurisdiction. Financial incentives played a major role in getting the Spanish and Portuguese governments to agree to the treaties—Britain literally paid the governments to sign. Financial incentives also played an important role in the implementation of the treaties: officers who captured vessels that were then condemned by the courts were entitled to a share of the money (the prize) made from the sale of the vessel.

Standards

The treaties contained annexes specifying the judicial procedure, and fair trial was ensured (inter alia) by the provision of legal assistance for the captured crew's defense. However, the judges were not always entirely independent, taking direction from their home governments on specific issues. When slaves were found on board, cases were generally straightforward, and ships were condemned. However, cases gradually became more complicated as judges were forced to deal with ships that no longer had slaves aboard, but clearly had been transporting them (often determined by the smell), or ships carrying the accoutrements necessary for participating in the slave trade, such as manacles and chains, that had yet to pick up their cargo.⁷

Sanctions

Condemned ships were auctioned off, and the proceeds split between the two governments, with some money covering court expenses and a substantial portion going to the capturing ship's officers. In this way, positive financial incentives existed for sailors to uphold the newly signed treaties.⁸ The antislavery courts had no criminal jurisdiction and were not legally allowed to detain or punish slave crews. Some crew members were, nonetheless, detained by the authorities where

the courts were located before being repatriated. In a minority of cases, these crews were tried on their return home.⁹

Support

The British government was the major sponsor—politically, economically and morally—of this framework. The Dutch, Spanish, and Portuguese signed on first, followed by the Brazilians and, eventually, in 1862, the US.¹⁰

COURT OF ARBITRATION FOR SPORT (CAS)

www.tas-cas.org

Analysis of Lessons for the Global Security Industry:

- The Court of Arbitration for Sport is a shared arbitral body established by the International Olympic Committee for use by a wide range of sporting associations and governance bodies, and their commercial stakeholders. A classic case of industry-led harmonization in the absence of state regulation, the CAS emerged in the 1980s in response to concerns about the lack of independence and limited expertise of sporting bodies' own dispute resolution mechanisms, and the lack of consistency between them.
- The CAS demonstrates that an independent dispute resolution body can play an important role in bringing key stakeholders within one standards framework, even if recourse to that body is voluntary, is not open to third-party stakeholders, and does not entail significant state involvement. The inclusion in private contracts and associational documents of clauses referring disputes to this body could provide an underpinning for this framework.
- Similar to the experiences with the antislavery courts and the International Labour Organization's Tripartite Declaration mechanism, the CAS also highlights that the feasibility of such a framework depends in part on the existence of underlying standards that many different stakeholders consider to be credible.

- In addition, the credibility of the framework seems to stem in part from the shadow of state jurisdiction that looms over the framework, through the possibility of ultimate appeal on narrow grounds from the CAS to the Swiss Federal Tribunal. Any international arbitral body for the global security industry would need to be tailored to interface with state sanctioning power—especially states’ criminal jurisdiction—if the body were to be perceived as adding value to state regulation. Also, any such body would not be an appropriate forum for dealing with serious violations of human rights and IHL.

Story

The Court of Arbitration for Sport (CAS) is an international arbitral tribunal that facilitates the settlement of sports-related disputes through arbitration or mediation. The CAS, which is independent of any sports organization, was created in 1984. Its head office is in Lausanne, Switzerland. The CAS includes nearly 300 arbitrators from eighty-seven countries, chosen for their specialist knowledge of arbitration and sports law. Around 200 cases are received by the CAS every year.

The early 1980s saw a number of leading sporting associations consider the need for an authoritative, independent sports dispute resolution mechanism. In 1981, soon after election as International Olympic Committee (IOC) president, Juan Antonio Samaranch proposed the creation of a global sports-specific jurisdiction. The following year at the IOC Session held in Rome, IOC member Judge Kéba Mbaye, who was then a judge at the International Court of Justice in the Hague, chaired a working group tasked with preparing the statutes of what would quickly become the CAS. In 1983, the IOC officially ratified the statutes of the CAS, which came into force on June 30, 1984. While the IOC initially bore the operating costs of the CAS, it was established that the jurisdiction of the CAS should in no way be imposed on athletes or federations, but remain freely available to the parties. Since 1994, the CAS has been under the financial and organizational authority of the International Council of Arbitration for Sport (ICAS), which was created in response to concerns that the CAS was insufficiently independent of the IOC.¹¹

Scope

The CAS framework treats sports-related disputes as arising from a global business, and deals with both “on-field” and “off-field” activities “related to or connected to sport.”¹²

The CAS hears two types of disputes: those of a commercial nature, and those of a disciplinary nature. The first category involves disputes relating to the execution of contracts, sponsorship, the sale of television rights, the staging of sports events, player transfers, and relations between players or coaches and clubs and/or agents, as well as civil liability issues (e.g., an accident to an athlete during a sports competition). The second category involves disputes between parties that have incorporated a CAS arbitration clause in their contract or relating to the activities of a federation, association, or sports-related body whose constitution provides for an appeal to the CAS. All Olympic international federations and many National Olympic Committees have recognized the jurisdiction of the Court of Arbitration for Sport and included in their statutes an arbitration clause referring disputes to the CAS. Since the World Conference on Doping in Sport, held in March 2003, the CAS has been recognized as the appeals body for all international doping-related disputes.¹³

The CAS is governed by the Code of Sports-related Arbitration, which establishes rules for four distinct procedures: the ordinary arbitration procedure; the appeals arbitration procedure; the advisory procedure, which is noncontentious and allows certain sports bodies to seek advisory opinions from the CAS; and the mediation procedure.

The CAS contains an “Ordinary Arbitration Division,” for sole-instance disputes submitted to the CAS, and an “Appeals Arbitration Division,” for disputes resulting from final-instance decisions taken by sports organizations. Each division is headed by a president. The role of each president is to take charge of the first arbitration operations once the procedure is under way and before the panels of arbitrators are appointed. Once nominated according to a preset procedure, the arbitrators subsequently take charge of the procedure.

Stakeholders

ICAS oversees the CAS and appoints arbitrators, approves the CAS budget, and amends the code. The ICAS is composed of twenty individuals: three appointed by the Summer Olympic international federations, one by the Winter Olympic international federations, four by the Association of the National Olympic Committees, four by the International Olympic Committee, four by these preceding twelve members and four independents appointed by the preceding sixteen members.¹⁴ All members must be high-level jurists well acquainted with the issues of arbitration and sports law.

The roster of 275 CAS arbitrators is appointed for a renewable term of four years. The code stipulates that ICAS must appoint only “personalities with a legal training and who possess recognized competence with regard to sport.” The ICAS also appoints arbitrators “with a view to safeguarding the interests of the athletes,”¹⁵ as well as arbitrators chosen from among personalities independent of sports organizations. CAS arbitrators are required on appointment to sign a declaration that they will carry out their functions with objectivity and independence. The arbitrators can sit on panels called upon to rule under both procedures. CAS panels are composed either of a single arbitrator or of three. All arbitrators are bound by the duty of confidentiality and may not reveal any information connected with the parties, the dispute, or the proceedings themselves.

Standards

The arbitral procedure itself is governed by the Code of Sports-related Arbitration. The parties are free to agree on the law applicable to the merits of the dispute by the CAS. Failing such agreement, Swiss law applies. In the context of the appeals procedure, the arbitrators rule based on the regulations of the body concerned by the appeal and the law of the country in which the body is domiciled. Any revisions to the Code are made by ICAS.

Sanctions

As an arbitral panel, the CAS does not conduct its own investigations but relies on written and oral submissions from the parties. The mediation procedure follows the pattern decided by the parties.

Failing agreement on this, the CAS mediator decides the procedure to be followed. The ordinary arbitration procedure is confidential. The final awards and any other information connected with the dispute are made public only at the discretion of the parties involved. No specific provisions exist to render the process more transparent. CAS decisions can be appealed to the Swiss Federal Tribunal on narrow grounds including lack of jurisdiction, violation of elementary procedural rules, or incompatibility with public policy.¹⁶

Support

The IOC remains the largest financial supporter of the CAS. The framework is also underpinned by support from the wide range of sport-related bodies that refer disputes to it. In addition, the Swiss Government plays an important role by allowing appeals from the CAS to the Swiss Federal Tribunal. Yet despite this array of support, the CAS is sometimes criticized for its lack of transparency, a lack of tailoring to specific sports, as well as a lack of independence from the IOC—although since the creation of the ICAS the issue of independence has been less prominent.

INTERNATIONAL LABOUR ORGANIZATION TRIPARTITE DECLARATION

www.ilo.org/public/english/employment/multi/tripartite/index.htm

Analysis of Lessons for the Global Security Industry:

- The International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises (MNEs) emerged as the result of pressure from workers' groups and civil society on governments to clarify the social role of MNEs, during an earlier period of globalization in the 1960s and 1970s. Given the strong pressure on MNEs from some states and civil society movements, industry sought clarification of states' expectations in an effort to create greater certainty for market investors and create a more level playing field. The Tripartite Declaration represented an important milestone in clarifying expectations of MNE relations with host states, when it was adopted in 1977.

- The ILO Tripartite Declaration is notable for its use of positive incentives to engage companies and facilitate their compliance with host states' expectations, through providing technical assistance and operational guidance.
- The framework is of limited, but clear, direct utility to the GSI. The framework offers an interpretation procedure which might be of some assistance to PMSC personnel seeking to protect their labor rights. But the Declaration's narrow focus on labor rights, and the limitations on the "receivability" of interpretation requests, suggests that this will rarely serve as a forum of choice for resolving GSI-related disputes.
- The ILO Tripartite Declaration interpretation procedure may also be of utility as a precedent for an industry-wide arbitral tribunal for dealing with labor disputes regarding agreed standards, perhaps based on those of the ILO.

Story

The International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises (MNEs) and Social Policy aims to encourage "the positive contribution that multinationals can make to economic and social progress and to minimize and resolve the difficulties arising from their operations."¹⁷ The Principles are voluntary and rely on social dialogue; they aim to guide multinationals, governments, employers', and workers' organizations in adopting social policies and in developing good practices.¹⁸ Guidance is provided in part by an interpretation procedure, which can be triggered by a government, a workers', or employers' organization if a dispute on the application of the Declaration arises in an "actual situation."

Scope

The ILO governing body has set up various organs to evaluate the impact of the Declaration. The application of the Principles is monitored through follow-up surveys,¹⁹ with reporting following a thematic and subregional approach.²⁰ The Governing Body Subcommittee on Multinational Enterprises promotes the Principles²¹

through tripartite seminars. The framework is further supported by two initiatives: a project on *Sustainable Development through the Global Compact* and a project on *Piloting CSR through globally agreed guidelines*.²² The ILO also organizes numerous small seminars to discuss the role and impact of MNEs in specific jurisdictions.

Stakeholders

The Declaration of Principles was drafted by experts and representatives of government, employers', and workers' organizations in the mid-1970s, and agreed to in 1977. The Declaration addresses these stakeholders and MNEs alone; it does not offer a framework for other actors within host communities, such as groups affected by the environmental or social impacts of an MNE's operations, to bring grievances.

Standards

The Principles, although voluntary, are based on international labor law and rights, and cover employment, training, conditions of work and life, and industrial relations.²³ The Declaration was revised in 2000 to include the ILO Fundamental Principles and Rights at Work, including the minimum age and child labor standards of the ILO conventions and the corresponding recommendations. A 2006 update also references other ILO instruments, and includes a specific recommendation to encourage MNEs to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor.²⁴

Sanctions

Although the Declaration is of voluntary nonbinding character, an interpretation procedure approved by the governing body in 1980 and revised in 1986 provides for the submission of requests for interpretation in cases of dispute on the meaning or application of its provisions. The procedure is promotional in nature, in the sense that the procedure seeks to facilitate and promote application of the Declaration; the procedure does not provide for the imposition of sanctions.

The procedure is activated by a government, a workers' organiza-

tion, an employers' organization, or an MNE filling out a form to request an interpretation of the Declaration, relating to a specific case.²⁵ The office within the ILO that supports that particular Declaration then notifies the other relevant parties, and the request is examined by the Governing Body Subcommittee on Multinational Enterprises, composed of twenty-four members (divided evenly between government, employer, and worker representatives),²⁶ which may unanimously receive the request or pass the request on to the full governing body for a decision on "receivability."²⁷ If the request is found to be receivable, the office then prepares a draft "reply" in consultation with the officers of the Subcommittee on Multinational Enterprises.²⁸ If this draft is approved, it is referred to the governing body for decision.²⁹ If the draft is not approved, no interpretation is issued. A reply approved by the governing body is then forwarded to the parties concerned and published in the Official Bulletin and the electronic ILOLEX of the International Labour Office.³⁰

To be "receivable," a request must: (1) arise from an "actual situation," in which (2) two or more parties to which the Declaration is commended (governments, workers' and employers' organizations, and MNEs) disagree on the meaning of specific provisions of the Declaration; (3) be requested by a government of a member state of the ILO, certain employers', and workers' organizations; and (4) not replicate existing national or ILO procedures.³¹ Notably, there is no requirement for parties to the Declaration to exhaust all possible local remedies before pursuing an interpretation of the Declaration, because the Declaration is totally separate from national laws and no hierarchy exists between the two.³²

Support

According to the ILO, the Declaration is "the only truly international tripartite consensus on what would be a desirable behavior of enterprises with regard to labor and social policy areas." It usefully engages companies by combining technical assistance with political pressure but separating the two processes. This engaged approach, including providing companies with support for standards implementation, such as knowledge training, has been commended as a "constructive promotional method [that] is a useful tool in seeking a positive response... [and] helps to improve the observance of

standards far more than mere recital of neglected obligations.”³³ However, the efforts at encouraging standards implementation are not matched by its standards enforcement mechanism. To date, only five cases have been decided by the interpretation procedure.³⁴

Chapter Six

Accreditation Regimes

KIMBERLEY PROCESS (KP)

www.kimberleyprocess.com

Analysis of Lessons for the Global Security Industry:

- The Kimberley Process (KP) was formed by states, ultimately with the support of industry and civil society, in response to concerns about the role of the global trade in rough diamonds in supporting conflict and human rights violations. The Kimberley Process provides a pre-eminent example of how states, industry, and civil society can work together to drive up standards in a global industry with sensitive security and commercial aspects, through a global certification or licensing regime.
- While the diamond industry was initially reluctant to participate, it was gradually persuaded that the long-term benefits of increased market transparency—including the resulting legitimacy that accrued to the industry as a whole—outweighed the costs, including the loss of illegitimate business.
- The effectiveness of the framework stems in part from the high legitimacy the framework enjoys among states, having grown out of enforcement efforts led by the UN Security Council, and having received the blessing of both the UN General Assembly and the World Trade Organization.
- The story behind the KP also suggests that such collaborative frameworks are likely to emerge where there is concerted pressure for improved market regulation, and where that pressure is led by states. The KP shows how states can use their

power over the market to shape market ecology. The KP also shows how international harmonization can be married to national implementation and peer review mechanisms.

- The KP focuses on standards implementation, rather than enforcement in response to specific grievances. As a result, the KP may provide a model for how states could share practice and drive up standards on national regulation of the global security industry, and therefore how a global framework could supplement state regulation. But the KP offers limited guidance in developing an accountability and enforcement framework that could effectively respond to specific grievances.

Story

The Kimberley Process (KP) is a joint certification framework established by governments, industry, and civil society in November 2002 to stem the flow of “conflict diamonds.”¹ Participants in the KP include states, regional organizations, the diamond industry, and civil society groups.

In 1998, the NGO Global Witness published a report highlighting the role played by the illicit sale of rough diamonds in fueling armed conflict and human rights violations in Angola. Later that year, the UN Security Council responded by banning trade in rough diamonds with Angola,² and in 2002, the UN Security Council subjected Sierra Leone to similar embargoes. Other countries, such as Guinea and Côte d’Ivoire, attempted to create their own national certification schemes to protect their legitimate diamond trade, but it became apparent that the hodgepodge of schemes was insufficient to end the sale of conflict diamonds and underpin consumer confidence in the market. In 2001, the UN General Assembly passed a resolution that encouraged the international community to develop a simple and workable international certification scheme for rough diamonds.³ Leading industry players were convinced by states that it was in the players’ interest to marginalize the trade in rough diamonds, which formed only a very small percentage of their overall revenues, to protect their legitimate business.⁴

Since May 2000, three of the largest diamond producers (Botswana, Namibia, and South Africa), three of the largest traders

and consumers (US, Belgium, and the UK) and representatives from industry and civil society had in fact been conducting informal exploratory talks on a global certification scheme. The negotiation process expanded over successive rounds until November 5, 2002, when fifty-four governments, the European Community (on behalf of its member states), the worldwide diamond industry, and NGOs representing more than 100 civil society groups adopted the KP Certification Scheme (KPCS). The KPCS is not a legally binding treaty among states but rather a set of politically-binding minimum common standards, enacted by each state through its own national legislation.⁵

Scope

The framework is a certification scheme that functions much like a trade restriction.⁶ A participant in the KP agrees that no rough diamond export from or import into the participant's territory will be allowed without a KP certificate and that the participant will not trade in rough diamonds with nonparticipants. Participation in the KP is granted only after the KPCS principles have been implemented into domestic law.⁷ Participant countries must make information available to other participating countries outlining how the requirements of the certification scheme are being implemented within their respective jurisdictions.⁸ In the event of disagreements regarding effective implementation by participating countries, the chair of the KP may recommend "review missions" to verify compliance.⁹ The KP considers that it has a mandate from the United Nations General Assembly to be inclusive:¹⁰ all countries with a stake in the diamond business are encouraged to join.

Stakeholders

The KP is made up of participants (states or regional economic integration organizations for which the certification scheme is effective) and observers (representatives of civil society, the diamond industry, international organizations, and nonparticipating governments invited to take part in plenary meetings). Consumers and labor communities are not directly involved. As of September 2007, forty-eight participants representing seventy-four countries were involved in the KP, with the European Community counting as a single partic-

ipant. The diamond industry, through the World Diamond Council, and civil society groups (currently Global Witness and Partnership Africa Canada) are also integral observers of the KP.

Participants and observers meet twice a year at intersessional and plenary meetings, as well as on a regular basis in working groups and committees, to discuss the effectiveness of the certification scheme. The KP has no permanent staff or permanent offices; it is chaired by participating countries on a rotating basis. The KP is publicized through its website and the independent work of its participants and observers, and does not publicize directly to consumers.

Standards

The KPCS imposes extensive technical and administrative requirements on how participants trade in diamonds, in particular relating to certificates of origin for diamond shipments, for which the KPCS lists minimum standards. These are voluntary standards developed through negotiations between states, industry, and civil society. The underlying philosophy of the KP is that compliance with these standards will help protect human rights generally.

Participants' implementation of the certification scheme is monitored through annual reports by state participants and by regular exchange and analysis of statistical data between participants and observers.¹¹ At the annual plenary meeting, each participant presents a report illustrating how the certification scheme is being implemented in their respective jurisdictions. If further clarification is needed, other participants may request additional information or review missions, in the case of "significant noncompliance." These missions are conducted with the consent of the participant concerned and in consultation with all participants.¹² This has led to charges that the KP's monitoring process does not ensure effective implementation by state participants.¹³

Observers monitor the effectiveness of the certification scheme, and provide technical and administrative expertise. There are currently three main KP observers: the World Diamond Council, Global Witness, and Partnership Africa Canada. The ad hoc working group on review publishes a triennial "third-year review" that examines the KPCS and is made available on the KP website. This

collaborative approach suggests the rudimentary basis of a “community of learning,” allowing states to share good practice in the administration of the diamond trade.

Sanctions

The major incentive for participation in the KP is the ability to trade diamonds with other KP members. In the event that an issue regarding the implementation of the KPCS arises, concerned participants may approach the current chair of the KP, who is to inform all participants without delay about the said concern and enter into dialogue on how to address it. Discussions relating to any compliance matter are confidential. If compliance verification measures such as a review mission are initiated, the KP produces a report within three weeks, which is posted on a restricted access KPCS website. Participants may also post their own comments on this restricted website. The explicit goal of this procedure is to create dialogue among participants on how to address the compliance issue. If the compliance issue is not addressed to the satisfaction of both the chair and the participant raising the issue, removal from the KP is possible.¹⁴ Decisions are reached by consensus; in the event that no consensus exists, the chair is to conduct “consultations” with other participants.¹⁵ While suspension remains a possibility, the KP does not contain well-developed policies and procedures for addressing situations of noncompliance.¹⁶

Support

The KPCS operates based on volunteer working arrangements without a permanent secretariat or other professional support. The KP is run by a chair who oversees the implementation of the KPCS, the operations of the working groups and committees, and general administration. The chair rotates annually among the state participants and is selected at the annual plenary meeting. All funding comes from member states. However, the KP identified funding and resource requirements as one of four priority issues in 2007.¹⁷ The KP has received significant political backing from the UNSC and the UN General Assembly.¹⁸ But, ultimately, the KP is a purely voluntary arrangement, and has little scope for addressing grievances unless its members are willing to cooperate, as Venezuela’s noncooperation with

a monitoring inspection demonstrated in 2008.

SOCIAL ACCOUNTABILITY INTERNATIONAL (SAI)

www.sa-intl.org and www.saasaccreditation.org

Analysis of Lessons for the Global Security Industry:

- Social Accountability International (SAI) is a joint initiative of civil society and industry intended to improve the implementation and enforcement of labor standards in apparel and textile factories—and other manufacturing workplaces—worldwide. SAI offers a framework for facility certification against workplace standards based on international norms. SAI resembles a number of other supply chain certification frameworks addressed in this study, such as the Fair Labor Association (FLA) and Business Social Compliance Initiative (BSCI). Compared to these other frameworks, however, SAI offers a comparatively robust grievance mechanism arrangement.
- Yet, similar to those accreditation arrangements, it is questionable whether the framework offers sufficiently strong positive (branding) and negative (de-certification) incentives to have a major impact on industry behavior. SA8000, SAI's workplace standard, certifies facilities, not products or companies, and is thus far removed from consumers' boycott power.
- Similar to the other certification frameworks addressed in this study, SAI also seems to highlight the challenges of applying a fixed-facility audit and certification model to the global security industry, given the insecure environments in which PMSCs operate.

Story

Social Accountability International (SAI) is a nonprofit organization established in 1997 that aims to improve workplace standards through a framework for facility certification.¹⁹ Facilities' operations and management are evaluated against the voluntary Social Accountability 8000 standard (SA8000). There are currently 1,683 SA8000-certified facilities in sixty-four countries and across sixty-one industries, as well

as seventeen accredited certification bodies.²⁰ In 2007, the Social Accountability Accreditation Services (SAAS) was established to accredit and monitor the organizations that certify facilities against SAI's standards.²¹ SAI contracts SAAS, which is independent but affiliated, for this accreditation work.

Scope

SA8000 “can apply to companies, NGOs, consulting firms, suppliers, and subcontractors in any industry in any country (except Myanmar), if [the organization] meets the requirements set out in the Standard.”²² Currently, the apparel and textile industries have the greatest number of certifications (234 and 134, respectively).²³ SA8000 was explicitly not designed for the extractive industries.²⁴ The SAI/SAAS framework does not provide for the certification of companies or products per se, but rather the workplace facility itself.

Stakeholders

SAI is overseen by a small board of directors, elected for three-year terms. An additional advisory board made up of representatives from a variety of stakeholder groups provides impartial expert advice regarding the drafting, operation, policy, and development of SA8000. The advisory board may include up to twenty-five members; its chair is appointed by the president of SAI. A nominating committee proposes further members to the board; they are elected by majority vote. SAI is also involved in research, training, and capacity building, in an effort to promote “understanding and implementation” of workplace standards worldwide.²⁵ In this capacity, SAI works with organic, fair trade, and environmental organizations among others, and is also undertaking efforts to harmonize SAI, Fair Labor Association (FLA), International Social and Environmental Labeling (ISEAL), and related standards and accreditation bodies through mutual recognition and joint auditing.²⁶

Standards

SA8000 is the heart of the SAI framework. SA8000 provides a standard for evidence-based verification of a facility's arrangements relating to child labor, forced labor, health and safety, freedom of association and collective bargaining, discrimination, discipline, working hours,

compensation, and management systems.²⁷ SA8000 is a voluntary standard based on international workplace norms found in ILO conventions, the *Universal Declaration of Human Rights*, the *UN Convention on the Rights of the Child*, and national labor laws. SA8000 also states that all companies shall comply with all national laws and prevailing industry standards. Where they conflict, companies are expected to apply the standards that are the most stringent. The SAI advisory board is responsible for reviewing both the standards and audit procedures,²⁸ and includes a committee on standard revision. The last revision, which occurred in 2007, entailed an extensive consultative process that involved a wide range of stakeholders. Revisions are conducted through procedures reviewed by the ISEAL Alliance.

SAAS accredits certification bodies to audit specific workplace facilities for compliance with SA8000, and certify them if they are compliant. Certification lasts for three years, with surveillance audits occurring throughout the three-year period.²⁹ These are ongoing reviews of the certified facility's quality management system to ensure continuous improvement in meeting the standard.

Sanctions

SAI argues that businesses whose facilities receive SA8000 certification gain the inherent benefits of a humane workplace, as well as enhanced company brand reputation, improved employee recruitment, retention and performance, and better supply chain management.³⁰ SAAS publishes a list of certified facilities on its website. Facilities may display their certificate, but individual products cannot be labeled as the certification represents a workplace process, not product certification.³¹

The framework also provides a formal grievance mechanism, which follows a three-step process: through the facility in question, then through the certifying body, and finally through the SAAS itself.³² Any interested party may make a complaint, including workers at certified facilities; but most complaints come through trade unions or NGOs.³³ SAAS deals with complaints regarding the performance of a certified facility, as well as complaints regarding the performance of the certifying bodies themselves.

SA8000 certification requires each certified facility to have an elected SA8000 worker representative to assist complainants and an internal complaints mechanism.³⁴ No additional resource assistance is provided to grievance-bringers. All complaints must be made in writing and include objective evidence of noncompliance with the SA8000 standard,³⁵ such as witness testimony or documented violations. Complaints may be lodged anonymously, or workers may identify themselves and any co-complainant who wishes to be identified. Certification bodies are required to protect the anonymity of any witnesses unless they choose to be known.³⁶

The facility that is the subject of the complaint must respond within a reasonable period of time. The response must include a root cause analysis, and list corrective action and action taken to prevent a recurrence. If the complainant is not satisfied with the results of this process, then a complaint may be brought to the certifying body. The certifying body must report back to the complainant and the SAAS with its conclusions. If major breaches of the SA8000 standard are found, a remediation plan is identified, and its implementation monitored. If the necessary corrective action is not taken by the facility, then the SAAS must ensure that the certifying body suspends or withdraws the facility's certification.³⁷ If the complainant is not satisfied with the certification body's investigation, a complaint may be filed directly with the SAAS. As a last resort, the SAAS can conduct its own investigations, including unscheduled facility audits if the complaint processes of the facility in question and the certification body have not satisfactorily addressed the complaint. Grievances may also be lodged simultaneously at the certification body and the SAAS level; if this occurs, the SAAS will monitor how the certification body deals with the complaint, and may intervene to conduct its own investigation. In the case of a complaint against a certification body, the SAAS will take measures to remove or suspend the body's accreditation.³⁸ The SAAS decisions may be appealed by certification bodies within thirty days.³⁹ SAI posts the existence of a complaint on its website. Once the process has been concluded, a summary of the basis of the complaint, the actions taken and the final outcome are posted on the SAAS website.⁴⁰ All member facilities and certification bodies must keep a record of the complaint for no less than ten years. Nine

complaints were lodged in 2006, and there have been a total of twenty since the inception of the SAAS.⁴¹

Support

The work of SAI is funded on earned revenue and grants from the US government, as well as by private foundations.⁴²

FAIR LABOR ASSOCIATION (FLA)

www.fairlabor.org

Analysis of Lessons for the Global Security Industry:

- The Fair Labor Association (FLA) emerged out of an initiative led by the US government, in response to civil society pressure on the apparel and garment industry, to end the use of sweatshop labor.
- The FLA provides an important source of insight for the global security industry. The FLA shows how an association of companies and NGOs can implement human rights throughout global supply chains using cooperative monitoring arrangements, even in places where state regulatory authority is weak and companies are concerned about commercial confidentiality and proprietary information.
- The FLA's system of accreditation of third-party monitors that undertake spot inspections of member company factories, and the factories of suppliers to member universities and colleges, is particularly instructive. However, it may prove difficult to adapt this model to the GSI because: (1) in some places, state regulatory authority will be so weak that the dangers to third-party monitors may make field inspections unworkable; and (2) in other places, the regulatory authority of contracting states will be so strong that they will not agree to third-party monitoring, because of national security concerns.
- The FLA's four-step remediation process also provides an important model for a graduated grievance mechanism, allowing the participant to take remedial measures before the framework's

central agent becomes involved. However, given the likelihood of allegations of criminal conduct in the global security industry, any analogous process would also need to allow for the reference of grievances to state law enforcement authorities—which the FLA does not currently appear to contemplate.

- The evolution of the FLA over time—in part under pressure from splinter groups such as the Worker Rights Consortium (WRC), which provides a similar framework with additional focus on labor union involvement—also provides important lessons for the GSI regarding the need for such frameworks: (1) to have a flexible governance structure that allows for evolution and (2) to leave space for each stakeholder group to exert its own leverage through differentiated and complementary functions within a larger regulatory scheme.

Story

The Fair Labor Association (FLA), established in 1999 and headquartered in Washington, DC, is a nonprofit organization dedicated to ending sweatshop conditions in factories worldwide and building innovative and sustainable solutions to abusive labor conditions. The FLA framework involves more than 200 universities and colleges, more than twenty affiliated brand-name companies (including Nike and Adidas), and NGOs. The FLA indirectly monitors the working conditions of more than 3.76 million workers in the apparel and other industries. The FLA oversees independent monitors that perform unannounced inspections of supplier factories. Member companies of the FLA agree to one unannounced inspection by these monitors per year.

The FLA emerged in the mid-1990s as the eradication of apparel sweatshops became a hot button political issue.⁴³ Celebrity-endorsed clothing lines, including Nike (endorsed by Michael Jordan), were reported to employ sweatshop labor. Media attention was overwhelmingly negative and generated the political currency needed to attempt to eliminate apparel industry reliance on sweatshops. In July 1996, Robert Reich, then US secretary of labor, and Kathie Lee Gifford, a US television celebrity, held a “Fashion Industry Forum,” which brought together retailers, manufacturers, designers, workers, labor organiza-

tions, consumer advocates, and celebrity endorsers to discuss ways to eradicate sweatshops. The following month, Reich formed the White House Apparel Industry Partnership, a voluntary taskforce of eighteen members, to identify an industry-wide strategy to eliminate apparel sweatshops worldwide. The taskforce included manufacturers, consumers, corporate social responsibility and human rights organizations, and labor unions. On April 14, 1997, the Partnership issued a report to US President Bill Clinton containing a “Workplace Code of Conduct” and “Principles of Monitoring” for the apparel industry. The FLA was established to oversee compliance with the code and principles in 1998.

Scope

The FLA began as a monitor for the apparel and footwear industries, but today the FLA also addresses production processes for consumer products containing a university or college logo. The FLA includes more than 200 colleges and universities and their suppliers (the companies that produce the goods in question), which are required to become licensees.⁴⁴ When a company wants to participate in the FLA, the company submits an application that includes a proposed plan for internal and independent (external) monitoring. Both companies and collegiate licensees must also adopt a code that meets or exceeds the FLA Workplace Code of Conduct. The FLA does not have geographic limitations but is a US-based initiative and currently only includes US and Canadian colleges and universities.

All member companies and licensees agree to: (1) adopt and communicate the Workplace Code of Conduct to workers and management at all applicable facilities; (2) train internal compliance staff to monitor and remediate noncompliance issues; (3) conduct internal monitoring of applicable facilities; (4) submit to unannounced, independent external monitoring visits to factories throughout its supply chain; (5) remedy noncompliance in a timely manner; (6) act to prevent persistent patterns of noncompliance, or instances of serious noncompliance; (7) collect and manage compliance information effectively; (8) provide workers with confidential channels to report on noncompliance issues to the company; (9) consult with NGOs, unions, and other local experts in its work; and (10) pay FLA dues and meet other procedural and administrative

requirements.

Stakeholders

The FLA is governed by a board of directors composed of six industry representatives selected by the participating companies, six labor/NGO representatives selected by a majority of currently-serving labor/NGO directors, six university representatives selected by an FLA University Advisory Council, and a chair.⁴⁵ The association employs a full-time professional staff, including a president, who is responsible for the operation of the FLA.

The FLA provides both a framework for standards implementation and monitoring, which is run by unannounced audits at member company and licensee factories, and a grievance mechanism, which allows any individual or group—such as a community organization, NGO, union, or relative of a worker—to file a third-party complaint with the FLA on behalf of one or more workers employed at a factory producing for FLA companies. The FLA raises awareness of the third-party complaint through informational meetings and consultation forums. Information and complaint forms in various languages are available on the FLA's website.

Standards

The FLA Workplace Code of Conduct provides a tailored set of labor rights standards that are grounded in the provisions of the core ILO *Conventions*. The Code of Conduct addresses forced labor, child labor, harassment or abuse, discrimination, health and safety concerns, freedom of association and collective bargaining, wages and benefits, hours of work, and overtime compensation. FLA companies agree to implement a code of conduct no weaker than the FLA Code of Conduct in their own operations—including their supply chains. FLA-affiliated universities and colleges require their licensees to abide by it as well.

The framework is intended to supplement rather than replace or undermine internal grievance mechanisms at the factory or business level, or legal processes at the state level. The framework protects legal norms, such as minimum wage requirements and prohibitions against child labor, which may also be enforced through these other

mechanisms. The Workplace Code of Conduct states that it does not replace local labor laws and is to be understood in addition to all local laws. Furthermore, the Code of Conduct explicitly states that in the case of differences or conflicts, the higher standard shall prevail.⁴⁶

The board of directors is responsible for the amendment of the workplace code or the monitoring principles, which can be accomplished only by a two-thirds vote of the board and two-thirds support of each of the industry, NGO/labor, and university groups represented on the board.⁴⁷

Sanctions

The major positive incentive for participation in the FLA is branding: the participating company may communicate to the public that its products are in compliance with the FLA standards and has the right to use the service mark.

Where allegations arise of violations of a company's code of conduct, the FLA provides a formal third-party complaint process. This process receives an average of ten complaints a year, which can be lodged by any person, group, or organization with regard to any FLA-affiliated company, supplier, or university licensee. A complaint must relate to a case of serious noncompliance with the FLA Code of Conduct or Principles of Monitoring, which could not be resolved through other channels. Complaints can be submitted in writing or (initially) by phone. Complainants must provide information about the factory involved, specific and verifiable information on the noncompliance, and details of any prior report of the complaint to the factory or another body.⁴⁸

The FLA response involves four steps.⁴⁹ In Step 1, the FLA assesses the reliability and relevance of the complaint. In Step 2, the FLA provides the FLA-affiliated company or licensee with the allegations of noncompliance at the sourcing factory. The company or licensee has forty-five days to investigate the allegations and, if verified, remedy the noncompliance. The FLA-affiliated company must then report back to the FLA executive director. Where this process does not achieve a satisfactory outcome (i.e., there is no agreement on noncompliance issues and/or remediation and/or the dispute continues), the FLA moves the complaint to Step 3, in which the FLA proactively initiates

a process of remedying the problem at the factory. This may take the form of an independent external investigation, mediation process, or arbitration process, depending on the situation. In Step 4, the company works with the FLA to develop an appropriate remediation plan and monitor its implementation. Ultimately, the FLA board of directors makes decisions regarding expulsion of the participant from the association.

The complainant is kept informed at every step of this process and is asked to acknowledge and verify any remedial actions and improvements in the workplace. The FLA reports publicly on the process and on remediation results for cases that move beyond Step 2 of the complaint process. Upon request, the FLA will keep the complainant's identity confidential from the FLA-affiliated company as well as from the supplier involved. Remediation and other agreements can be monitored and may, where agreed, be subject to additional enforcement provisions. In one instance, the parties agreed to submit any disputes over the implementation of the settlement to arbitration. It is not clear whether the FLA makes provision for allegations of criminal conduct to be referred to appropriate state authorities.

Support

The FLA benefits from strong support on university and college campuses. The FLA continues to benefit from the political backing of US governmental authorities, including the White House, and continues to receive some funding from the US Department of State, as well as from private philanthropic foundations.⁵⁰ However, the FLA is primarily funded by the brands it seeks to monitor. This makes its legitimacy as an effective monitoring tool questionable.

Critics argue that an association with greater independence is needed to effectively monitor the industry.⁵¹ Some go so far as to suggest that the FLA's reliance on nongovernmental monitoring works to the benefit of industry, by freeing it from both state regulation (such as criminal investigation and enforcement) and union organizing.⁵² The FLA's Workplace Code of Conduct is also criticized for not being stringent enough, in particular in relation to workers' rights. The Code of Conduct mandates a minimum wage as opposed to a "living wage."⁵³ The FLA Charter, while requiring freedom of

association and collective bargaining, contains a caveat allowing for the inclusion of countries that prohibit unionization, such as China.

These criticisms have existed since the organization's birth. In fact, of the eighteen members of the White House Apparel Industry Partnership, nine initially refused to sign on to the FLA (although since then six members of this splinter group have returned to the fold).⁵⁴ The FLA faces competition on university campuses from organizations such as the Worker Rights Consortium—which resulted from this splinter group—which imposes more stringent standards, does not take funding from industry, and gives a greater voice to labor unions. The FLA is seen by some to characterize certain overarching fears regarding nongovernmental systems of monitoring, namely that they will preempt or “crowd out” workers’ organizing efforts, or provide consumers with a false sense that problems have been solved.

But in fact, the FLA and WRC, in some senses, play complementary and reinforcing roles: the FLA can be understood as primarily oriented toward the stakeholder group (industry) that naturally focuses on standards implementation; in contrast, the WRC is oriented toward standards enforcement, and often works with civil society organizations such as labor unions that have particularly strong capacity to assist victims of workers’ rights violations to remedy their grievances. Indeed, there is increasing collaboration between the FLA and WRC, with increasing effort being given to harmonize the standards that the two groups will, through these differentiated and complementary roles, help to ensure are respected.

BUSINESS SOCIAL COMPLIANCE INITIATIVE (BSCI)

www.bsci-eu.org

Analysis of Lessons for the Global Security Industry:

- The Business Social Compliance Initiative (BSCI) is an industry-led framework designed to preempt and shape intergovernmental regulation of the retail, manufacturing, and import-export industries in Europe. The BSCI emerged in response to suggestions that the European Commission might seek to impose a mandatory EU corporate social responsibility

framework for supply chains. At the same time, the BSCI aimed to respond to civil society criticisms of poor workplace standards in retailers' supply chains, through voluntary self-regulation.

- Like many of the industry-led frameworks considered in this study, the BSCI seems to skirt a fine line between being used as a fig leaf for avoiding state regulation and inspiring a general and commendable push to drive up standards in underregulated industries.
- However, the BSCI does provide an important example of a number of aspects of a standards implementation and enforcement framework (SIEF) that recur throughout this study. These include the following: (1) a developmental model for standards implementation, which aims to assist participants to improve their internal standards implementation capacity over time,⁵⁵ (2) the use of third-party audits to reduce each participant's regulatory burden, and (3) the linking of framework standards to the contracting behavior of participants.
- More unusual is the BSCI's requirement that participants integrate two-thirds of their suppliers into the framework within three years, encouraging the implementation of the standards throughout interconnected industries and long supply chains. This may be an important model for the GSI to consider in dealing with PMSCs' subcontractors, which form a web stretching around the world.
- However, similar to other audit-based frameworks, the BSCI suffers from civil society criticism that the auditing arrangements are not sufficiently independent.

Story

The Business Social Compliance Initiative (BSCI) is a company-led framework that assists companies in the retail, manufacturing, and import-export industry and companies upstream in their supply chains to improve labor conditions. Formed in March 2003 in response to a European Commission green paper that suggested the possibility of creating a European corporate social responsibility framework,⁵⁶ the BSCI is made up of more than 140 members, mostly

European retailers that also belong to the Brussels-based Foreign Trade Association for European commerce. The framework also covers supplier companies in Bangladesh, Bulgaria, China, Vietnam, South Africa, Romania, Morocco, India, Pakistan, the Philippines, and Turkey.

The BSCI was formed by the Foreign Trade Association as a platform for upholding management, labor, and human rights standards, but through a voluntary process that would raise participants' standards over time—rather than a mandatory, government-led regulatory arrangement that imposed immediate trade restrictions.⁵⁷ The BSCI initially covered the textiles and shoe industry, but has expanded to include construction materials, cutlery, toys, jewelry, accessories, and bed linens.

Scope

The BSCI promotes standardized internal management tools to enable companies to demonstrate and monitor supply chain compliance with labor standards. These tools include the BSCI Code of Conduct, the BSCI Self-Assessment, the BSCI Audit Questionnaire, and the BSCI Supplier Database. The BSCI promotes these standards through training programs and workshops for members and suppliers as well as through the media.

Stakeholders

There are two types of participants in the BSCI. Regular members are those that are directly involved in the supply chain (i.e., retail, trading, and manufacturing companies); associate members have an interest in the process but are not actively involved. Regular members must commit to integrating two thirds of their suppliers into the BSCI framework within three years of joining the BSCI, by including them in a BSCI Supplier Database, encouraging them to participate in BSCI training sessions and activities, incorporating the BSCI Code of Conduct into supply chain contracts, and having the suppliers undergo a BSCI-recognized audit.⁵⁸

The members' assembly provides the strategic direction for the BSCI. The primary areas of responsibility include budget, activities, and membership. Decisions are reached by a vote of a simple majority

during assembly meetings convened at least twice a year.⁵⁹ Only regular members have voting rights in the assembly. Membership applications are processed by the supervisory council, which consists of three regular members and a member of the executive office. The council also monitors the commitments of BSCI members, and represents BSCI at public and official occasions.

External stakeholders are represented in the framework through the stakeholder board, which is composed of twelve representatives from trade unions, NGOs, institutions, suppliers, the EU Commission, consumer organizations, and members. The board initiates, approves, and advises the members' assembly on policy and systemic questions.⁶⁰ Decisions are reached through a simple majority vote. The board's members are given access to the internal documents of BSCI member companies in areas within its purview, subject to a confidentiality agreement.⁶¹

At the supplier country level, BSCI organizes stakeholder roundtables, consisting of government authorities, business organizations, trade unions, NGOs, academia, auditors, and other interested organizations, as well as BSCI members.⁶²

Standards

BSCI standards are primarily management standards that members are encouraged to adhere to in internal procedures. They also provide guidelines for best practice. BSCI standards must be incorporated into business contracts between BSCI members and their suppliers. The primary sources of the BSCI standards are the *ILO Conventions and Recommendations*, the *Universal Declaration on Human Rights* (1948), *UN Convention on the Rights of the Child* (1989), *UN Convention on the Elimination of All Forms of Discrimination against Women* (1979), *OECD Guidelines for Multinational Enterprises* (1976), and the *UN Global Compact* (2000).

A key element in the standards monitoring process is the auditing scheme. This ensures that suppliers implement BSCI standards in their production facilities. Audits can be commissioned by a BSCI member firm or by a supplier.⁶³ An audit is conducted by an organization that has been accredited by Social Accountability International (SAI). It follows a set of BSCI guidelines for assessing company

compliance. This reliance on commissioned audits has attracted criticism from civil society commentators.⁶⁴

Deficiencies found during an audit are addressed through corrective measures agreed upon by the auditor and the subject of the audit. They must be implemented within twelve months. A reaudit is conducted to monitor implementation. If implementation is deemed inadequate, the supplier is given another opportunity to pursue implementation. An audit procedure is then repeated every three years.⁶⁵ Corrective measures to address noncompliance with minimum BSCI social standards are mandatory, but those that address best practice deficiencies are voluntary.

Sanctions

Compliance with BSCI standards is linked to access to the European market, and this serves as the key incentive for suppliers to conform to the standards. The BSCI supplier database contains information on compliance that can be viewed by all BSCI members, and may influence the business decisions of BSCI members. While the BSCI is committed to assisting suppliers in meeting BSCI standards, failure to apply corrective measures within an agreed period of time can lead to the termination of business relations between a BSCI member and a supplier. This is a last resort.⁶⁶ It is not known how often this sanction is applied. The BSCI has no formal grievance mechanism. However, the BSCI is considering the establishment of a complaints mechanism within the BSCI monitoring system, which would operate through local roundtable discussions.⁶⁷

Support

In a study released in 2005, the Clean Clothes Campaign presented a number of criticisms of the framework, including its failure to provide a credible verification scheme, the low level of participation of external stakeholders, the lack of credibility of auditing arrangements, the absence of a complaints mechanism, and the lack of transparency.⁶⁸

INTERNATIONAL COUNCIL OF TOY INDUSTRIES (ICTI)

www.toy-icti.org

Analysis of Lessons for the Global Security Industry:

- The International Council of Toy Industries' (ICTI) factory certification framework resembles a number of other factory certification schemes addressed by this study (including those offered by the Fair Labor Association [FLA] and the Business Social Compliance Initiative [BSCI]). And like them, ICTI emerged out of an effort by industry to respond to civil society pressure and a perceived incoherence in the guidance provided by states.
- Similar to the BSCI, the ICTI framework encourages the promotion of its standards throughout the supply chain by requiring participants to gradually increase their reliance on certified suppliers, with a time horizon in place.
- Another notable feature of the framework is that it offers not only a seal of compliance to compliant factories but also a seal of commitment to clients that work only with compliant factories.

Story

The International Council of Toy Industries (ICTI) was established in 1975 as a global trade association with national toy trade associations as members. ICTI is an industry-led initiative designed to harmonize standards and ensure compliance with safety and labor standards through industry self-regulation. At the time that ICTI formed, emerging toy safety standards in the US were creating market barriers and provided inchoate guidance for industry in terms of compliance. The establishment of the ICTI was seen as an opportunity to harmonize these emerging standards and to make them applicable to new products in development.⁶⁹ ICTI provided guidance to the industry on these standards and went further in developing standards that spoke not only to toy safety concerns but also to considerations for labor rights.

ICTI members initially agreed on a single global safety standard covering the mechanical and physical properties of toys.⁷⁰ By 1985,

ICTI had received nonvoting status at the ISO, and in 1989, ICTI played a role in implementing the European toy safety directive. In 1991, ICTI's first code of conduct was adopted unanimously by members at an annual meeting in Toronto. The first ICTI Code of Business Practices was adopted in 1995, establishing standards for labor practices in the toy industry. The Code has since been revised three times, and in 2002 members agreed to launch a worldwide auditing process to implement the Code, with a principal focus in China, through the ICTI CARE Process.

The ICTI CARE Process is designed to ensure compliance with labor rights through an internal standards implementation mechanism based on auditing and monitoring of factory conditions. These efforts are designed to insulate the toy industry from state regulation, as well as from the kind of civil society criticism that has challenged the footwear and apparel industries following public exposure of labor rights violations throughout the supply chain. The CARE (Caring, Awareness, Responsible, Ethical) Process promotes ethical manufacturing in the toy industry supply chain, covering fair labor treatment and employee health and safety, through the implementation of the ICTI Code of Business Practices. The CARE Process aims to “provide a single, fair, thorough and consistent program”⁷¹ to monitor factory compliance with the Code, offering a monitoring protocol and a guidance document, as well as independent factory audits. The initial focus of the CARE Process is in China (including Hong Kong and Macau), where approximately 75 percent of the world's toys are manufactured, but ICTI intends eventually to take the program worldwide.

Scope

The ICTI CARE Process seeks to ensure toy industry factory compliance with fair labor standards, including employee health and safety, through implementation of the ICTI Code of Business Practices. The CARE Process encourages—but does not require—buyers as well as retailers to contract exclusively with compliant factories. Any toy factory that wishes to subscribe to the CARE Process may do so. A summary of labor and workplace standards and a hotline phone number (established in October 2007) are distributed to workers in participating factories.⁷²

Stakeholders

The general management of ICTI is carried out by the president and secretary. The presidency is rotated every three years; ICTI's permanent secretariat is located in New York. As of December 2007, ICTI included toy industry associations from the following countries: Australia, Austria, Brazil, Canada, China, Chinese Taipei, Denmark, France, Germany, Hong Kong, Hungary, India, Italy, Japan, Mexico, the Netherlands, Russia, Spain, Sweden, Switzerland, the UK, and the US.⁷³ Annual meetings are hosted by members on a rotating basis.

The entire CARE Process is overseen by the ICTI CARE Foundation, a nonprofit association that acts as an independent body.⁷⁴ The governance board of the ICTI CARE Foundation is the supreme decision-making body of the CARE Process, while the president/CEO is mandated by the governance board as the leader of the process. The president/CEO makes strategic decisions in consultation with the chair of the governance board. The foundation also includes a technical advisory board to provide technical expertise and quality control to the ICTI CARE Process, according to the principles and procedures as set out by the governance board.

Standards

The ICTI Code of business practices references ILO Core Labor Standards and requires participating factories to abide by local laws.⁷⁵ The Code is reviewed every five years to ensure that it reflects business realities and best practice in the toy industry.

Factories that participate in the CARE Process are subject to an audit by an external auditing firm, accredited by ICTI. If they are found to be in compliance with the ICTI Code of business practices, they receive a seal of compliance, which is renewed annually through additional auditing. If they are found to be noncompliant, they agree to a corrective action plan. Under the ICTI "date certain" program, toy brands and retailers commit to a specific, future date by which they agree to contract exclusively from factories engaged in the CARE Process, either those that have a seal of compliance or have completed an initial audit and agreed to a corrective action plan to remedy any identified violations. Brands and retailers who are "date certain" receive a seal of commitment.

Sanctions

ICTI presents engagement in the CARE Process as offering a business advantage for toy brands, since advertisement of compliance with the process could attract consumers, and since the process also acts as a preventive measure against negative publicity resulting from violations of fair labor or safety standards.

The CARE Process also provides a complaints hotline, which is currently active in thirty-five factories in China. Any workplace concern can be brought to the ICTI CARE Process, regardless of whether or not the concern represents a breach of the ICTI code. When the complaint does in fact relate to a case of noncompliance with the ICTI code, complainants are encouraged to find other colleagues to use the hotline service to corroborate the incident.⁷⁶ There is no time limit on bringing complaints.

CARE Process staff in China conduct investigations of complaints through contacts with workers and through local NGO sources. When there is evidence of a breach, results of the investigation are brought to factory management. If a factory is found to be in breach of the code, the factory is placed on one year of probation, if the company accepts the probationary agreement. The ICTI website lists factories on probation. Factories are decertified and lose their seal of compliance if they fail to remedy the cause of the breach during the one-year probationary period. Brands and retailers that continue to contract with decertified factories risk losing their seal of commitment.⁷⁷

Support

The CARE Process is financed through fees paid by participating factories, including auditing and certification fees. Since the CARE Process is still in its initial phase and is not yet financially self-sustaining, the ICTI CARE Foundation raises supplemental financing through fundraising. Major donors include individuals, national toy trade associations, and prominent toy brands. This fundraising is specifically “intended only as an interim solution to cover costs of the operation until the process is self-sustainable based on its own revenue model.”⁷⁸ Fundraising may continue in additional initial phases when the ICTI CARE Process expands into new markets beyond China.

HUMANITARIAN ACCOUNTABILITY FRAMEWORKS

www.hapinternational.org and www.sphereproject.org and
www.alnap.org

Analysis of Lessons for the Global Security Industry:

- The structural similarities between the humanitarian sector and the GSI are important. Both draw staff from around the world, and move them into conflict and crisis zones where governance is weak and local communities are vulnerable. Both have supply and human resource chains stretching across multiple jurisdictions. And both have faced criticism for failing to ensure the accountability of their staff and service providers for violating human rights.
- Humanitarian actors have gone to some lengths since the mid-1990s to develop accountability arrangements, even contemplating an industry ombudsperson at one point—as BAPSC has recently suggested the GSI might. Yet despite these efforts, even now humanitarian codes of conduct and standards for best practices are reported to be perceived by some staff as mere formalities for employment, and lack effective enforcement. And beneficiary communities may continue to lack access to effective grievance mechanisms.
- Nevertheless, the humanitarian sector is finding innovative ways to ensure the views of affected communities are heard, for example, by guaranteeing positions on the board of a major accountability framework to representatives of intended beneficiary communities.
- The certification and standards implementation arrangements that the humanitarian sector has developed do not seem to have translated—yet—into effective monitoring of implementation, in part because organizations are not budgeting for the costs of monitoring. And donors are apparently not requiring organizations to do so—and are often contributing their own monitoring requirements to an already heavy load.
- A plethora of accountability initiatives may in fact be pulling the sector away from convergence, creating unsustainable

monitoring and administrative burdens for field staff and undercutting the effectiveness of accountability efforts.

- This sector's experiences also suggest that any GSI sector-wide grievance mechanism will need careful design: it will need to ensure access to specific expertise in those types of grievances that are likely to arise from the industry, or it may prove ill equipped to effectively handle complaints; and incentives for resorting to local grievance mechanisms will need to be carefully balanced with rights of appeal to higher regional- and/or global-level grievance mechanisms, so that international components do not supplant—but rather supplement—the development of host-state dispute-resolution capacity.

Story

No single standards implementation and enforcement framework covers the entire humanitarian sector.⁷⁹ Over the past decade, a number of initiatives have emerged that aim to improve standards in the delivery of humanitarian assistance, and especially the accountability of humanitarian assistance providers to both funders and beneficiary communities. This section examines some of these frameworks, focusing particularly on the Humanitarian Accountability Partnership—International (HAP).

HAP's purpose is to make "humanitarian action accountable to its intended beneficiaries through self-regulation, compliance verification and quality assurance certification." HAP's members are accredited not-for-profit organizations from across the world whose core activities include operational relief and humanitarian assistance activities, as well as some government development agencies. They are held to the 2003 HAP Principles of Accountability and the 2007 HAP Standard in Humanitarian Accountability and Quality Management.

HAP should be understood in the context of other humanitarian standards projects that took shape around the same time. The Sphere Project, also started in 1997, aims to advance minimum standards for use in humanitarian emergencies, through its handbook, the *Humanitarian Charter and Minimum Standards in Disaster Response*.⁸⁰ The Sphere Project was launched by a group of humanitarian NGOs and the Red Cross and Red Crescent movement. The Sphere Project's

standards are entirely voluntary, and they are promoted through the Sphere office, based in Geneva at the International Federation of the Red Cross (IFRC). Additionally, the Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP) is an interagency active learning membership network that also began in 1997. Of the organizations reviewed here, HAP has the most developed framework: as well as conducting research on improving accountability, and monitoring the compliance of its members with the HAP Principles of Accountability, HAP contains nascent accreditation and certification processes and a complaints mechanism. The other frameworks better fit the description of networks in their structure and organization.

All of these efforts grew out of a realization within the humanitarian and donor communities in the mid-1990s of the need to demonstrate the effective use of the increasingly large sums passing through the hands of humanitarian assistance organizations.⁸¹ This was in part the consequence of specific instances in which humanitarian aid was co-opted by parties responsible for the humanitarian crisis. In some cases, the delivery of humanitarian aid was even accused of prolonging conflicts. While these realizations prompted an extensive period of self-examination that was led by humanitarian actors themselves, it was also driven by donor requirements, as compassion became “discredited.”⁸² However, while donors may encourage compliance with specific initiatives such as ALNAP, Sphere, and HAP, donors have often preferred to develop their own accountability checklists when disbursing aid.

Recent scandals such as the sexual exploitation and abuse by aid workers uncovered by Save the Children UK and the UN in West Africa, have prompted humanitarian accountability frameworks to address more specific concerns regarding the rights of beneficiaries than just general accountability. These scandals have also further underscored the need for grievance mechanisms, and the complaints mechanism arm of HAP was developed in this context.⁸³ Cases such as that of the French NGO Zoe’s Ark, whose personnel were arrested for preparing to remove 103 children from the African continent, has for many further corroborated the need for improved standards and accreditation for this global industry.⁸⁴

HAP is the end result of the “Humanitarian Ombudsman Project” initiated in 1997 at the World Disasters Forum.⁸⁵ The project faltered due to the difficulty of finding an organization willing to monitor and represent it that could be guaranteed sufficient support from the sector.⁸⁶ Instead, the Humanitarian Accountability Project was launched in 2001, and in 2003 this became the Humanitarian Accountability Partnership. Since then, it has attempted to develop its credibility as an organization capable of monitoring the humanitarian sphere. To strengthen this process, in 2007 the International Council of Volunteer Agencies’ (ICVA) Building Safer Organisations merged with HAP to become the organization’s complaints handling unit.⁸⁷

Scope

The HAP principles and standard and the certification process are targeted at all humanitarian agencies. Full membership in HAP is limited to organizations: (1) whose core activities, or whose members’ core activities, include operational relief and humanitarian assistance activities; (2) which are legally registered or recognized as a not-for-profit organization in the country where they have their headquarters; and (3) meet the requirements for financial accountability under the law in the country where they have their headquarters. HAP also takes on associate members, including the UK’s Department for International Development. To gain associate membership in HAP, an agency simply has to show that its activities and management practices are consistent with and supportive of HAP’s vision, purposes, and objectives. Associate members may not vote at general meetings, and their representatives may not stand for the board.

HAP addresses the behavior of agencies toward beneficiaries of humanitarian action and local communities, and the behavior of individual staff. This approach stems from the recognition that “[h]umanitarian agencies exercise significant financial, technical[,] and logistical power in their mission to save lives and reduce suffering. In contracts, disaster survivors have no formal control and often little influence over emergency relief agencies, making it difficult for [them] to hold these aid agencies to account.”⁸⁸ In effect, HAP serves as a “not-quite ombudsman” to the humanitarian sector.⁸⁹

Stakeholders

HAP is governed by a general assembly consisting of members and associate members. The assembly is charged with reviewing HAP's financial operations, approving the board's annual report, formulating fundamental policy principles and objectives, reviewing the HAP accountability principles, appointing working groups and committee members, delegating tasks and reviewing their progress, and electing board members. The board, appointed by the general assembly, is responsible for overseeing HAP's strategic direction. The board is composed of a maximum of twelve members. Two-thirds represent agencies that are full members of HAP; the remaining one third are independent members. The board meets twice yearly. The board must constitutionally include at least two members drawn from "beneficiary communities."⁹⁰ HAP's work is supported and publicized by a small secretariat, based in Geneva. HAP's work is also publicized through its website, training, and workshops.

HAP engages other stakeholders through consultations with local communities and beneficiaries as part of its certification and accreditation process, and mandates that member agencies consult with beneficiaries as part of their own monitoring processes. In addition, HAP coordinates closely and regularly with Sphere, ALNAP, and other humanitarian accountability networks.

The involvement of intended beneficiaries of humanitarian action remains challenging, since by definition they are unlikely to have easy access to the time and resources required to articulate their own needs and opinions to humanitarian assistance providers. A number of observers have advanced the critique that, as a result, "[h]umanitarians ... view themselves as accountable to the donors rather than to the beneficiaries."⁹¹ Immediate beneficiaries may also be reluctant to criticize the provision of aid, lest it diminishes.⁹² HAP seeks to rectify this situation through concepts such as beneficiary based consultation (BBC) and through emphasizing NGOs' own duty to seek the input of their beneficiaries. One hundred and three beneficiaries and field managers were involved in the development of the HAP standard.⁹³

Standards

The HAP standard puts forward six performance benchmarks for

humanitarian action: (1) establishing a humanitarian quality management system, (2) transparency, (3) enabling representatives of beneficiaries to participate in program decisions, (4) evaluating and improving the competencies of staff, (5) implementing accessible and safe complaints handling procedures, and (6) making continual improvements in their humanitarian quality management system.

HAP's standard and principles are implemented through a certification scheme, involving the formal evaluation of an agency against the HAP standard.⁹⁴ Organizations apply for certification through the HAP certification and accreditation board, submitting an application file that is reviewed by an audit team. An audit is then carried out both at the head office and at one or more project sites selected by the audit team. Agencies may approach HAP before they meet the requirements of the HAP standard to solicit assistance in improving their systems to meet HAP's certification requirements. If the board finds minor nonconformities in the audit process, this will not usually result in a delay of recommendation for certification, but will require corrective action within a specified timeframe. The certification and accreditation board is also responsible for monitoring usage of the certification mark/certificate. The agency seeking certification is expected to cover the costs of the review.⁹⁵

HAP's standards are fundamentally based on the humanitarian principles of humanity, impartiality, neutrality, and independence,⁹⁶ and reaffirm international humanitarian law and international human rights law. The standards also refer to the domestic legal standards of the country where the crisis is taking place and the domestic legal standards of the humanitarian actors' country of origin. In addition, the standards acknowledge standards and references at the interagency or "sector-wide" level such as the Humanitarian Charter and the Red Cross and NGO Code of Conduct. Finally, HAP standards acknowledge standards and references at the organizational level: those set out by an NGO's own mission and mandate.

Sanctions

The HAP framework offers no specific financial or other incentives to join. The major benefits are expected to flow from branding, market signaling, and, perhaps more significantly, improvements in the

achievement of the agency's humanitarian objectives, through improved service delivery.

To date, the HAP framework has not focused significantly on grievance mechanisms. HAP members must provide annual reports on their compliance with the principles and standard, and the HAP general assembly is broadly charged with monitoring noncompliance. HAP Standard Benchmark 5 stipulates that each agency "shall establish and implement complaints-handling procedures that are effective, accessible and safe for intended beneficiaries, disaster-affected communities, agency staff, humanitarian partners and other specified bodies."

However, there is reason to believe such organization-based grievance mechanisms are ineffective. In 2008, HAP published a study looking into beneficiary awareness and use of such complaints mechanisms, which found that accountability procedures were either not in place or not known about. For example, complaints mechanisms were often limited to dropping a note in a complaints box or reporting to an individual or chain of people, each of whom would have to choose to take the complaint seriously and pass it "up" for action. This was unlikely to happen as information about the complaints box was not widely available. The author also found that organizations' codes of conduct were often seen as mere formalities in accepting employment.⁹⁷

To provide a sector-wide remedy, HAP has established a complaints mechanism—but it is still in its infancy. In 2006, the framework's complaints standing committee received no complaints at all, which the HAP annual report for that year attributed to the absence of developed complaints generating arrangements (with most beneficiaries still being unaware of the opportunity to register complaints), a lack of publicity about the complaints handling procedure, and the absence of necessary expertise to investigate complex matters such as allegations of sexual exploitation and abuse by humanitarian personnel. In 2006, HAP merged its complaints handling procedure with the ICVA's Building Safer Organisations to overcome this incapacity.

Support

It is important to note that the humanitarian sector appears to be particularly keen on self-evaluation, especially when compared to other industries such as the global security industry. One report suggests that the sector is self-critical to the point of conducting more monitoring procedures than the sector has the capacity to follow up.⁹⁸ Indeed, the plethora of accountability initiatives seems to point to a diffusion of efforts, rather than a convergence around shared standards. According to HAP's 2006 annual report, field staff were at that time being asked to participate in a HAP accountability audit, a Steering Committee for Humanitarian Response (SCHR) accountability peer review, a People in Aid Code audit, an early childhood development real-time participatory evaluation, a Disaster Emergency Committee (DEC) Code of Conduct compliance evaluation, an ALNAP joint-evaluation, a Sphere implementation review, an IACS Guidelines on the prevention of sexual exploitation implementation audit, and an accreditation process under the UN cluster initiative. These accountability procedures overlap, and sap each other's legitimacy and effectiveness.

In terms of funding humanitarian accountability generally, agencies do not often factor relevant monitoring costs into budgeting. This leads to standards being invoked in designing and describing programs, without being followed through on the ground.⁹⁹ This points to the importance of monitoring costs being built into contracts—and being borne by funders, such as donor states. However, many donors that fund HAP also add on their own accountability requirements when the donors fund humanitarian service providers, underlining the importance of standards being streamlined.

CREDIT RATING AGENCIES

www.standardandpoors.com and www.moodys.com and www.fitchratings.com

Analysis of Lessons for the Global Security Industry:

- Credit rating agencies are a classic example of states empowering

third-party actors—in this case, private companies—to improve standards implementation and enforcement. The bankruptcy of the Penn Central Transportation Company in 1970 (the largest corporate bankruptcy in American history up until that time) shocked the American financial system, leading the financial industry and general public to call for improved regulation, particularly through increased market transparency. Wary of the regulatory burden involved, the US government delegated the task of controlling access to the debt market to competing, private ratings agencies.

- An independent rating agency for the GSI empowered by multiple states could similarly help overcome an absence of market transparency. An independent rating agency would help to overcome charges of conflicts of interest in state regulation of the GSI market. However, such a rating agency would be effective only if states and other PMSC clients were willing to tie their PMSC-hiring decisions to ratings issued by such an expert agency. This would, in effect, give a GSI rating agency a role as a quasi-licensor.
- But a rating agency that stopped short of issuing specific licenses could also be a possibility, since such an agency could rate PMSCs on a number of different indicators (such as internal management practices, respect for IHL and human rights, responsiveness to local communities, understanding of humanitarian security models, or respect for labor rights)—and clients could be given discretion as to how they weighted different indicators in their own hiring (and territorial or export licensing) decisions.
- A state-funded rating agency would avoid the conflict-of-interest charges leveled at the credit ratings agencies discussed below, which charge those seeking market access (i.e., companies) for their own ratings. Ratings indicators could be drawn from existing standards, such as the forthcoming Swiss Initiative Montreux Document providing good practice for states dealing with PMSCs or documents associated with the Voluntary Principles on Security and Human Rights.

- Another benefit of this approach would be that both public and private clients could rely on the same ratings in making their own hiring (and other regulatory) decisions. In addition, a ratings system would increase market transparency and drive up standards. While this approach might depend on a level of competition and substitutability among PMSCs that may not be present in all theaters of operation (given the need for some PMSCs and their operatives to have state-issued security clearances, for example, or the preferences of particular territorial governments), it might help foster such competition through improved transparency.
- Any rating agency would play an ongoing monitoring role, reassessing PMSCs' ratings on a regular basis. The GSI would need to consider how unproven allegations of violations of agreed standards would affect a PMSC's ratings. The agency might not have to make any determinative ruling on the veracity of the ruling, since the mere allegation may represent a form of reputational risk and liability exposure that might be relevant to client's decisions. But this would require careful thought. And clients would also need to consider how downgrades in a PMSC's ratings would affect existing contracts with that PMSC.
- Any group of clients could in fact create such an agency, if they were prepared to agree among themselves to institute such a system. However, without industry or state support, accessing the information that will be needed to create reliable ratings will be difficult.

Story

A credit rating agency (CRA) assigns ratings for issuers of certain types of debt obligations. CRAs act as gatekeepers to the debt market, and thus play an important role as informal licensors for entry into that market, as well as providing ongoing sanctioning power through their reviews of those ratings. CRAs represent an important example of how states can delegate licensing, monitoring, and assessment authority to an expert, private agent. Three major CRAs—Standard and Poor's (S&P), Moody's, and Fitch—have a combined market share of more than 95 percent of the CRA industry.¹⁰⁰ They gained their role

as gatekeepers to the debt market in the 1970s when, following the shock bankruptcy of Penn Central (then the largest corporate bankruptcy in the US), the US Securities and Exchange Commission (SEC) decided to penalize brokers for holding bonds that were less than “investment grade,” and to delegate the task of determining whether bonds were investment grade to three for-profit companies (reasoning that the competition and profit motive would ensure high-quality analysis).¹⁰¹ The SEC designated Moody’s, S&P, and Fitch as nationally recognized statistical rating organizations. Although it is possible for other firms to receive such a designation, they have found it difficult to capture sustainable market share.¹⁰² While the CRAs were expected by the SEC to protect investors’ interests, the CRAs soon began charging debt issuers for ratings, taking on a role as quasi-licensors of access to the debt market and opening themselves to charges of a conflict of interest.¹⁰³

Scope

The CRAs rate securities issued by companies, special purpose entities, state and local governments, nonprofit organizations, or national governments issuing debt-like securities (i.e., bonds) that can be traded on secondary markets.

Stakeholders

Issuers use credit ratings to help them attribute a value to the bonds they are issuing. Investment banks and brokers use the ratings in calculating the collective risk of all their investments, and government regulators use credit ratings for regulatory purposes. The CRAs themselves are publicly traded companies that have a responsibility to their shareholders, but not to those clients or third parties that rely on the CRAs’ ratings.

Standards

CRAs have different methodologies for formulating ratings, some of which are more transparent than others.¹⁰⁴ Ratings represent an assessment of a debt issuer’s ability to repay loans. But as the forms of debt that CRAs rate have become more complex and the probability of repayment has become tied in complex ways to forecasts of market movements, ratings have also taken on a role as indicators of CRAs’

own assessment of market conditions.

Sanctions

Companies that receive a credit rating below the top grade are essentially frozen out of the market for commercial paper traded by the largest investors, such as mutual funds—since the SEC prohibits such companies from investing more than 5 percent of their funds in anything but “first tier” debt.¹⁰⁵ Thus, CRAs wield very real sanctioning power over companies, through the CRAs’ assessment of companies’ market performance to date and likely future performance. Downgrading an issuer’s credit rating, be it a business or a country, can send a stock reeling and collapse a country’s economy.

Support

CRAs’ power derives from their delegation of public regulatory authority. However, their operations are funded and underwritten by private issuers, which purchase the ratings the CRAs supply. Debt issuers around the world—from small companies to large governments—rely on and participate in this framework. Most criticisms of the framework revolve around disparities between CRA ratings and market performance, especially where CRAs are slow to downgrade ratings despite a collapse of market confidence in a company.¹⁰⁶ Other criticisms suggest the industry lacks competition, and that the system contains a conflict of interest, since CRAs are funded by the companies the CRAs rate.¹⁰⁷

Chapter Seven

Clubs

INTERNATIONAL PEACE OPERATIONS ASSOCIATION (IPOA)

www.ipoaonline.org

Analysis of Lessons for the Global Security Industry:

- The International Peace Operations Association (IPOA) is a US-based trade association for a range of PMSCs and related companies. IPOA was formed in 2000–2001 to provide a framework for corporate coordination and to improve industry standards.
- IPOA pioneered standards implementation and enforcement arrangements for this industry. IPOA remains one of the leading trade associations relevant to the global security industry, and continues to offer an important vehicle for standards implementation. IPOA will clearly be a key player in any effort to develop an effective global framework.
- At the same time, IPOA has been criticized by groups such as Amnesty International for a lack of transparency and impartiality in its Enforcement Mechanism since the incident in Nisoor Square in which sixteen Iraqi civilians were killed—and in which IPOA's then-member company, Blackwater, was implicated. These criticisms are typical of those leveled at associations that resemble clubs, in which the membership collectively exercises standards enforcement power, and where the membership excludes key stakeholders.
- The absence of direct participation within the IPOA framework

by states and civil society representatives means that IPOA will not provide a sufficient vehicle to bring transparency and accountability to the global security industry, on its own. IPOA appears implicitly to acknowledge this in its own support for effective state regulation.

Story

The International Peace Operations Association (IPOA) is a US-based trade association of PMSCs and other companies operating in the “peace and stability industry.” IPOA provides a voluntary framework, with no formal underpinning in state regulation.

IPOA was established by Doug Brooks, its current president, as a result of his experiences in Sierra Leone in the late 1990s. Brooks developed the Code of Conduct in Freetown in late 2000 with the input of national and international nongovernmental organizations (NGOs) and lawyers.¹ Between 2001 and 2005, IPOA was primarily run by Brooks and a small staff. In 2005, governance was handed over to sixteen member companies, with Brooks continuing in an executive function.² By June 2008, IPOA had grown to forty-four member companies, primarily based in the US.³

The association’s major source of financial sponsorship is the annual membership dues paid by all IPOA member companies. PMSCs represent a minority (roughly 20 percent) of IPOA’s membership.⁴ Other IPOA members provide logistics support, training, intelligence, de-mining, medical support, reconstruction and development, and legal services in conflict, postconflict, and natural disaster situations.

IPOA member companies agree to abide by the IPOA Code of Conduct. The Code contains broad principles on human rights, transparency, accountability, ethics, client activity, worker safety, labor rights, insurance, rules of engagement, support of international organizations and civil society reconstruction, arms control, and the use of affiliates and/or subcontractors. IPOA fields complaints about member activities through a formal Enforcement Mechanism, which is controlled by a Standards Committee made up of member companies. Absent any formal delegation of governmental authority, IPOA does not have legal standing to compel full compliance to the

Code, nor does IPOA have a formal systems monitoring mechanism to provide ongoing oversight of member company activities.

Scope

In some ways, IPOA functions much like a club, promoting the work of its forty-four member companies and sharing information among them. Membership in IPOA is open to all commercial entities involved in peace and stability operations and postconflict reconstruction in all parts of the world, though acceptance into IPOA is conditional on approval by IPOA's Membership Committee. The Membership Committee is made up of representatives from existing member companies.

The primary criterion for membership is reputation. An applicant company is examined by the Membership Committee to ensure that the company has not engaged in practices that would embarrass the association and the members. Industry actors themselves vet the applicants on the assumption that most players know each other either through previous association or by "industry reputation." A third-party audit⁵ was briefly used by the Membership Committee, but was discontinued on the basis that the findings were seen as unnecessary for a determination of the applicant's reputation, as well as resource constraints.⁶ A secondary criterion for membership is the ability to pay membership dues.

Brooks originally envisioned the IPOA as an inclusive enterprise that would accept all PMSCs in order to raise their standards after they had joined the association. The members eventually opted for a filtering mechanism (the Membership Committee) to ensure that potential members practice ethical standards before they are inducted into IPOA.⁷

Stakeholders

IPOA's strategic direction was initially set by its founder, with member companies gradually assuming more control. IPOA now operates through an overall board and four committees: Executive, Membership and Finance, Standards, and Government and Legal Affairs. Participation in these committees is open to all member companies. Participants are elected by current committee members,

but cannot serve on more than one committee simultaneously (unless they serve as chair of a committee). This is intended to ensure a broad representation of member company views in committee decisions.

States, civil society actors, and representatives of the communities in which IPOA member companies operate have no direct role in the governance or daily working of the IPOA framework. They may, however, bring a complaint through the Enforcement Mechanism, detailed below. And IPOA regularly consults civil society actors in efforts to update and improve its standards, and engages the actors in simulations designed to test its standards and improve arrangements for their enforcement.

IPOA is publicized through its website (<http://ipoaonline.org/php>), where information on the Code of Conduct and Enforcement Mechanism can also be accessed. The Code is available in eight languages (English, Arabic, German, Spanish, French, Swedish, Russian, and Mandarin); the Enforcement Mechanism text currently appears only in English. IPOA also publishes the *Journal of International Peace Operations*, contributes to external publications and participates in and hosts dialogues with government, NGOs, and academia, including an annual summit.

Standards

IPOA's Code of Conduct consists of general commitments regarding the standards of conduct IPOA members will adopt. The Code's provisions are broadly based on principles found in international law, adapted to apply to PMSCs, but as one Amnesty International USA official has put it, the Code "lacks teeth." Absent detailed implementation guidelines, benchmarks for measuring achievements (or lack thereof), or effective monitoring, reporting, oversight, and enforcement systems, the Code is essentially a statement of aspirations.⁸ Nonetheless, adherence to the Code was recently made a precondition for PMSCs operating in Afghanistan, in an administrative directive issued by the Ministry of Defense.⁹

Paragraph 1.1 of the IPOA Code of Conduct states in broad language that "[in]all their operations, Signatories will respect the dignity of all human beings and strictly adhere to all relevant international laws and protocols on human rights."¹⁰ Paragraph 1.2. states that

“[i]n all their operations, Signatories will take every practicable measure to minimize loss of life and destruction of property.”¹¹ Section 9.2.2 states: “[a]ll Rules of Engagement should be in compliance with international humanitarian law and human rights law and emphasize appropriate restraint and caution to minimize casualties and damage, while preserving a person’s inherent right of self-defense. Signatories pledge, when necessary, to use force that is proportional to the threat.”¹²

The Code also picks up language found in other international treaties. For example, the International Labour Organization standard on the minimum age of labor is adopted in paragraph 6. The Code purports to commit signatories to the *Universal Declaration of Human Rights* (1948), *Geneva Conventions* (1949), *Convention Against Torture* (1975), *Protocols Additional to the Geneva Conventions* (1977), *Chemical Weapons Convention* (1993), and the *Voluntary Principles on Security and Human Rights* (2000).¹³ Other provisions address principles of transparency and accountability, operational and safety standards, arms control standards, contractual obligations, insurance standards, and ethics.

The Code of Conduct, now undergoing its twelfth revision, was initially formulated in 2000 by a group of human rights groups, lawyers, and humanitarian organizations. Brooks sent out early versions of the Code to more than 100 personal contacts in the security industry, government, and civil society for comment.¹⁴ The Code is regularly revised through a process of consultation now set to occur every two years, with member companies and third-party stakeholders, including a number of international human rights organizations.

IPOA relies on its members to implement the standards reflected in the Code of Conduct. IPOA has no systems monitoring mechanism for proactively ensuring their implementation. IPOA does provide fee-for-service training sessions, available to member companies at a substantial discount. At present, IPOA runs two training programs: “Humanitarian Standards and Conflict” to implement the Code of Conduct in complex emergencies and “Combating Trafficking in Persons US Federal Acquisition Regulations (FAR) Compliance Training for Government Contractors,” intended to aid PMSCs in

fulfilling the FAR, which govern contracting with the US government. These training sessions are targeted at policymakers, legal counsel, and/or human resources managers, rather than field operatives. IPOA staff also provide ad hoc direct advice to IPOA member companies. On one occasion, an IPOA staff member was invited to the headquarters of a US-based PMSC to provide training for its employees, which was filmed and streamed over the internet for other employees in the field. The company applied web technology to monitor field employee participation in the training.¹⁵

Sanctions

The IPOA framework offers no specific positive incentives for joining or for compliance with standards detailed in the Code of Conduct. Generic incentives include branding value; access to IPOA training and expertise; representation of member companies' views by IPOA staff to government, media, and academia; and the ability to protect the reputation of the industry through participation in IPOA's work, including its committees—and IPOA's Enforcement Mechanism.¹⁶

The Enforcement Mechanism provides a process for receiving and considering complaints, made by anyone writing in English,¹⁷ regarding member company compliance with the Code of Conduct. The Enforcement Mechanism is managed by the Standards Committee (composed of representatives of other member companies) and the chief liaison officer (CLO), who is drawn from the paid IPOA staff.¹⁸ Complaints are received by the CLO, who reports a complaint to the chair of the Standards Committee within seven days of receipt.¹⁹ The chair convenes an ad hoc taskforce (made up of the chair and two other representatives from IPOA member companies serving on the Standards Committee) that considers the complaint, and may request additional information from the complainant or the member company. The review must be completed within thirty days. A complaint that is determined to have merit is elevated to the Standards Committee for full deliberation.²⁰

Cooperation with the taskforce is, however, voluntary: member companies that are subjects of complaints are not strictly required by the Code of Conduct or Enforcement Mechanism to cooperate with an IPOA investigation. IPOA cannot compel the release of informa-

tion, and IPOA staff have acknowledged a previous case wherein a member company refused to provide information to the taskforce and IPOA was unable to compel the company to do so.²¹

The Enforcement Mechanism also suffers somewhat from a lack of transparency, which could create a perception that the Mechanism is weighted against complainants and in favor of member companies. As of the date of this writing, while the submissions of complainants are deemed public unless a specific request for confidentiality is received, all submissions by member companies are automatically deemed confidential unless the member company formally waives confidentiality.²² Complaints are publicized only if the board ultimately votes to expel a company from IPOA based on “transgressions of the Code of Conduct.”²³ And IPOA staff, members of the Standards Committee and the Executive Committee must sign a nondisclosure agreement (NDA) before participating in the Enforcement Mechanism.

IPOA stresses that these arrangements are necessary to protect the legitimate interests of member companies against frivolous and unwarranted allegations—while bringing an unprecedented level of transparency to the industry’s standards enforcement processes. IPOA argues that immediate public reporting of complaints against members may be prejudicial to members, especially if a complaint is eventually found to be unsubstantiated. IPOA argues that “the confidentiality provision is grounded in the principle of ‘innocent unless proven guilty,’”²⁴ and that nothing precludes an accused company from publicizing the investigation process, if the company decides to do so for reputational reasons. And IPOA notes that, on a case-by-case basis, it issues reminders to members based on a complaint with grave implications for the industry—for example, regarding the trafficking of firearms to Afghanistan.²⁵

Still, the Enforcement Mechanism does not specify criteria for assessing the validity of complaints. In fact, the Standards Committee—made up of peer companies of the subject company—retains unfettered discretion in considering the complaint. The subject company of the complaint is invited to attend the full committee hearing, which is held in private, but the complainant is not. A decision is adopted by the committee by majority vote. A complaint

that is not resolved by the Committee within sixty days is forwarded to the IPOA board.²⁶ As a result, a grave complaint could result in no sanctions, while a less serious complaint could lead to very substantial sanctions. The Standards Committee provides no written, reasoned decision, and the basis for the Committee's decision is not made public. The decision by the ad hoc taskforce whether or not to pass the matter to the full Standards Committee can be taken to an Appeals Committee, and the subject company can appeal the standards committee's decision—but a complainant cannot.²⁷

While there are no known incidents in which retaliation has occurred against the complainant, the Enforcement Mechanism currently says little on this issue. The CLO can, if requested by the complainant, keep their identifying details confidential.²⁸ Absent such a request, there are no specific provisions in the Enforcement Mechanism for ensuring nonretaliation against complaints made through the Enforcement Mechanism. IPOA points out that there are numerous laws that already address this issue,²⁹ but it is not clear that those laws extend protection against retaliation for complaints made through private (i.e., nonstatutory) complaints mechanisms such as this.

Additionally, it remains unclear the extent to which the elaborate formal arrangements put in place by IPOA are in fact used in practice. Since the Enforcement Mechanism and the formal grievance procedure were created in 2006, the Standards Committee has received a total of five complaints.³⁰ Most were labor rights complaints. The Standards Committee has received no complaints from third parties about incidents involving IPOA members' treatment of civilians in Iraq.³¹

This was particularly notable in September 2007, when personnel of Blackwater USA, then an IPOA member company, were implicated in the death of seventeen Iraqi civilians in Baghdad.³² The Executive Committee authorized the standards committee to initiate an independent review process³³—apparently absent the third-party complaint that is normally expected to trigger the Enforcement Mechanism. This review was announced on October 8, 2007. Blackwater USA withdrew from IPOA on October 10, 2007, leading to the termination of the review.³⁴ Sources involved in this process

indicate that other member companies privately pressured Blackwater to withdraw from IPOA to avoid a review that would damage the reputation of all IPOA member companies.³⁵ Blackwater's contract with the US Department of State was renewed in April 2008, suggesting it that the company's withdrawal from IPOA had no real impact on its ability to contract with the US government.³⁶

The Standards Committee also retains wide discretion in defining and implementing negative sanctions in response to a complaint. These purportedly range from unspecified corrective measures to probation and, ultimately, expulsion from IPOA. Probation subjects the member company to increased scrutiny of its activities by a three-member Compliance and Monitoring Committee whose members are appointed by the Standards Committee chair.³⁷ A decision to expel has to be ratified by two-thirds majority of the IPOA Executive Committee.³⁸ To date, there have been no expulsions resulting from complaints.

It is unclear how IPOA will handle information alleging conduct that may be of a criminal nature. The Enforcement Mechanism currently allows for its processes to be suspended while the subject matter of a complaint received by the CLO is subject to formal litigation.³⁹ But it appears unlikely that IPOA staff would proactively share information indicating a likelihood of criminal conduct with appropriate governmental authorities, given the confidentiality obligations imposed by the Enforcement Mechanism, and the service culture that appears to underpin IPOA operations—absent any clarification of its staff's positive reporting obligations. When queried on this, IPOA staff rightly indicate that "IPOA would be obliged to disclose information to state authorities if the Association was served a subpoena."⁴⁰ However, in its formal comments on an earlier draft of this study, IPOA queried "the presumption" underlying this statement, which it understood as seeming "to imply that IPOA staff would not be appropriately forthcoming with information."⁴¹

The Enforcement Mechanism document does recognize that IPOA members and staff must abide by all national laws and judicial procedures.⁴² Moreover, under the code "[s]ignatories pledge, to the extent possible and subject to contractual and legal limitations, to fully cooperate with official investigations into allegations of contractual

violations and violations of international humanitarian law and human rights law.”⁴³ The specific modalities for cooperation between IPOA and official bodies remain unclear.

It is notable, however, that earlier versions of the IPOA Code of Conduct also seemed to contemplate member company cooperation with the promotion and protection roles of the International Committee of the Red Cross. According to an earlier Section 2.2., “[s]ignatories engaged in peace or stability operations pledge, to the extent possible and subject to contractual and legal limitations, to be open and forthcoming with the International Committee of the Red Cross and other relevant authorities on the nature of their operations and any conflicts of interest that might in any way be perceived as influencing their current or potential ventures.”⁴⁴ But this provision was recently removed, in part to avoid any suggestion that the ICRC endorses IPOA or its enforcement arrangements.

Support

IPOA is funded through annual membership dues by member companies (58 percent of the total revenues of \$471,050.25 in 2006–2007), events income (12 percent), advertising sales (11 percent), subscriptions to its bimonthly *Journal of International Peace Operations*, and a small share of contributions and grants.⁴⁵ PMSCs pay an annual fee of \$15,000 while logistics and support companies pay \$5,000.⁴⁶ Total expenses amounted to \$428,989.26, of which employee expenses constituted 54 percent and administrative expenses 29 percent. (IPOA registered a loss of \$42,857.35 for financial year 2006–2007.⁴⁷)

While states have no formal role in the IPOA framework, there does appear to be regular informal contact between a number of branches of the US government and IPOA—which is unsurprising given IPOA’s role as a trade advocacy organization for the industry. In 2007, US congressional offices, such as the offices of Congressman David Price, Congressman Christopher Shays, Congressman Chris Smith, and Senator Sam Brownback sponsored roundtables hosted by IPOA or spoke at IPOA conferences. Experts from the US Departments of Defense, Justice, and State also assisted IPOA in designing its “Combating Trafficking in Persons Training,” which took

place in July 2007. And US government actors have attended simulation exercises designed to test the Enforcement Mechanism detailed above. Civil society groups such as Amnesty International, Human Rights First, US Institute of Peace, Fund for Peace, and the Coalition for Government Procurement are likewise consulted by IPOA in its efforts to improve the Code of Conduct, but play no formal role in the IPOA's day-to-day operations or governance.

VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS (VPSHR)

www.voluntaryprinciples.org

Analysis of Lessons for the Global Security Industry:

- The Voluntary Principles on Security and Human Rights (VPSHR) will likely form a key forum for discussing a specific aspect of improved standards implementation and enforcement for the GSI—the behavior of PMSCs, particularly their responsibility to respect human rights, while in the employ of the extractive industry. And the structure of the VPSHR, and the global community of learning and innovation the VPSHR is beginning to generate, offers many rich lessons to the global security industry and its clients, including states.
- The VPSHR provide guidance on three aspects of extractive industry companies' security operations: (1) risk assessments, (2) interactions between companies and public security forces, and (3) interactions between companies and private security forces.
- They were developed under the leadership of the US and UK governments, with support from major extractive industry companies. These companies saw the Voluntary Principles as providing useful operational guidance, and states saw the VPSHR as a useful step in responding to allegations of the extractive industry's complicity in human rights abuses.
- Next to the Sarajevo Process, the VPSHR are the closest thing available to a client-focused standards implementation framework. The VPSHR have been referred to in a number of

subsequent standards-development initiatives, including the Sarajevo Process and the Swiss Initiative.

- However, unlike the Sarajevo Process, the VPSHR benefit from the significant involvement of a number of home and some host states of extractive industry companies and PMSCs, including the US and UK, and significant ongoing involvement of civil society actors.
- As a result, although the Voluntary Principles process has at times been rocky in the last few years, and has come under fire for patchy implementation because of different conceptions among different stakeholders about how, and how quickly, the process should move forward—it has increasingly emerged as an important platform for standards implementation.
- The VPSHR are increasingly serving as a platform for highly contextualized and tailored innovation in standards implementation through collaboration by local and foreign stakeholders. And, in some cases, the VPSHR may lay the foundations for direct dialogue between industry and civil society to resolve disputes as and where they arise.
- Increasingly, these local and global discussions may be connecting up to form a global community of learning, producing flexible tools such as the performance indicators recently developed by International Alert.

Story

The Voluntary Principles on Security and Human Rights (VPSHR) are voluntary guidelines for states and companies designed to integrate respect for human rights into extractive industry operations. Formulated in 2000 under joint US-UK leadership, the VPSHR framework as of early 2009 included five states, eighteen private companies, seven NGOs, and three observers at the global level. The VPSHR process was convened in part in response to criticism directed at Western oil and gas firms, which were being accused of being complicit in, or contributing to human rights abuses in developing countries, including Angola, Colombia, Indonesia, and Nigeria.

The VPSHR has also spawned a variety of national-level spin-offs

known as “in-country processes,” notably in Indonesia, Colombia, and Nigeria.⁴⁸ These are supported by the VPSHR state participants’ in-country representation, as well as local stakeholders. And the VPSHR framework has also been incorporated into some private contractual arrangements.

The VPSHR were developed in less than a year by the US State Department and the UK Foreign and Commonwealth Office. Together, they held an initial meeting in London in March 2000 with Freeport McMoRan, Shell, British Petroleum, Rio Tinto, Chevron, and Texaco (eventually merged as ChevronTexaco), as well as NGOs including Amnesty International, Human Rights Watch, and International Alert. The US and the UK governments were driven to convene the process for at least two reasons. Neither wanted to see American and British extractive companies accused of complicity in human rights abuses and their respective governments accused of not doing enough to prevent it, and both had an interest in ensuring that their flag companies would continue to operate in resource-rich countries. Private companies, meanwhile, saw the Voluntary Principles as providing a “social license” to continue operating in these countries.⁴⁹

The VPSHR set guidelines for companies to maintain “the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms.”⁵⁰ Participants commit not only to generally respect human rights in working with both public and private security forces but also, more specifically, to act consistently with the laws of the host country, promote the observance of international law enforcement principles (particularly with regard to the use of force), engage civil society as well as the host and home governments to contribute to the welfare of the local community, share experiences, and support security sector reform, institutional capacity-building, and strengthening the rule of law.⁵¹ The VPSHR set guidelines for risk assessments and companies’ interactions with both public and private security forces.

The VPSHR were initially formulated as a purely voluntary initiative. But NGOs soon documented evidence of the alleged complicity of participant oil companies in continuing human rights abuses in the Niger Delta, arguing that this demonstrated the need for compliance

machinery within the initiative.⁵² Partly as a result of this pressure, the VPSHR members agreed in 2007 to institute formal membership criteria—including annual disclosure by each participant of its efforts to implement the VPSHR—as well as an internal dispute resolution process. A participant that fails to comply with the reporting requirement or refuses to engage with other participants will be considered “inactive” and unable to exercise its rights as a participant. Disputes are to be settled initially through dialogue or through consultations among the VPSHR membership. The process also allows for sanctions on an erring participant, including expulsion from the VPSHR.

However, implementation of the VPSHR has taken different paths in different contexts. In Colombia, reviewed below, a number of positive steps have been taken under governmental leadership. Elsewhere, British Petroleum (BP) has been particularly active, drawing up a set of standards and launching initiatives in compliance with the Voluntary Principles in its liquefied natural gas (LNG) project in Indonesia, as well as for the Baku-Tbilisi-Ceyhan (BTC) pipeline in the Caucasus.⁵³ In contrast, in the absence of sufficiently strong governmental or corporate leadership, the in-country process in Nigeria has made less headway.

Nevertheless, the VPSHR are often an important reference point in international business and human rights discussions. The International Finance Corporation is conducting a scoping study relating to providing generalized implementation guidelines for the VPSHR. And World Bank Group advisers have informally recognized the need for companies to follow the principles in the companies’ operations, especially in areas of conflict such as the Niger Delta.⁵⁴

Scope

The VPSHR specifically address security management in the extractive industries (e.g., mining, oil, and gas). The principles generally aim to mitigate the risks that may result from security policies and the activities of security personnel on local communities. The principles directly address participant companies’ corporate management, employees, and relations with security providers. PMSCs do not formally participate in the framework, but their conduct may be influenced by participant extractive companies’ requirements of them,

to ensure their own compliance with the VPSHR.

Participants have taken very different approaches to implementation of the VPSHR. Some of these local and company-specific efforts are described in detail below (under Support). However, weaknesses in some participants' efforts to implement the VPSHR led to strong criticism by some NGOs, including some that are members of the VPSHR plenary. In May 2007, the governance working group of the VPSHR was tasked by the plenary with clarifying the roles and responsibilities of all actors involved in the VPSHR process, including in relation to implementation.

In 2008, on its own initiative, International Alert published a set of "Performance Indicators for the Voluntary Principles on Security and Human Rights."⁵⁵ These performance indicators provide a set of quantitative and qualitative benchmarks to gauge the level of implementation of the VPSHR. Indicators 1 to 3 require evidence that participants have conducted risk assessments on the impact of the participants' operations on human rights through meaningful engagement with external stakeholders. Indicators 4 to 7 require participants to demonstrate that they have put in place the legal, contractual, and operational framework upon which the VPSHR will be implemented in their interactions with public and private security personnel. Indicators 8 and 9 cover the monitoring of the human rights records of private and public security personnel as well as evidence that broad monitoring mechanisms are in place to ensure compliance with human rights law. Indicator 10 requires evidence of oversight of equipment transfers to ensure that these do not become instruments for human rights violations. Indicator 11 requires participants to demonstrate the extent of their willingness to report human rights abuses by private and public personnel or other actors in their areas of operations.

Stakeholders

Before April 2006, participation in the VPSHR was limited to companies and NGOs whose home governments were participants in the framework. Since then, participation has been opened up to all companies in the extractive industry regardless of whether their home state is also a participant. The same applies for NGOs. States are also

encouraged to join the framework, although as of early 2009 only five had signed up—the US, UK, the Netherlands, Norway, and most recently, Canada. The VPSHR counts eighteen participating companies, seven NGOs, and three observers (including the International Committee of the Red Cross).

Formal participation criteria were adopted following a May 2007 plenary, and participation in the VPSHR now requires unanimous agreement among existing participants. The criteria for deciding the merits of an application have not been made public. However, if an application is denied, the participant that objected to the application is required to inform the applicant of its objection and the reason(s) for its decision. Decisions can be appealed to the VPSHR steering committee, and the committee is required to report the fact of such an appeal to the participants.⁵⁶

Participants in the VPSHR framework hold an annual plenary meeting to set the strategic direction of the framework. Their work-plans are carried out by a steering committee whose membership is rotated among the participants annually. The steering committee also manages the membership process, oversees the activation of the internal grievance mechanism, and monitors the compliance of plenary recommendations. Two NGOs, the International Business Leaders Forum (IBLF) and Business for Social Responsibility (BSR) act as a joint secretariat. There are two working groups within the VPSHR, the Governance Working Group and the Reporting Criteria Working Group. A third group is discussing the feasibility of an in-country process in Nigeria. The Governance Working Group reviews the structure of the Voluntary Principles and the Reporting Criteria Working Group reviews draft reporting guidelines, overseeing participants' mandatory annual reports of implementation activities, and sharing information among participants. All of the working groups' recommendations are subject to the review and approval of the plenary.

Participants are expected to promote the VPSHR, implement or assist in their implementation, attend VPSHR plenaries and other in-country meetings, report annually on their efforts to implement the VPSHR, and participate in dialogue with other VPSHR participants, including on specific implementation issues. Failure to do so may lead

to a participant being deemed “inactive” by the other participants.

Standards

The VPSHR are intended to ensure that extractive industry projects respect internationally recognized human rights in their security operations. The VPSHR cite the *Universal Declaration of Human Rights* (1948), international humanitarian law, the UN Code of Conduct for Law Enforcement Officials (1979), and the UN Basic Principles on the Use of Force and Firearms of Law Enforcement Officials (1990). The VPSHR provide guidance on three aspects of security operations: (1) risk assessments, (2) interactions between companies and public security forces, and (3) interactions between companies and private security forces.

VPSHR participants are expected to conduct risk assessments before mounting security operations based on political, economic, cultural, and social factors. Participants are expected to consider the root causes of security threats in their area of operations, the human rights records and reputation of public and private security, the capacity of prosecuting authorities to implement the rule of law and hold accountable those who violate human rights and humanitarian laws, as well as the impact of equipment transfers on human rights.⁵⁷

Secondly, the VPSHR require companies to engage with local authorities and to take measures (e.g., consultations with authorities, training of public security personnel) to ensure that their use of public security does not result in human rights abuses and remains in accordance with national and international laws. If human rights violations are committed by public security personnel, companies are required to report these violations to the appropriate government agency and to encourage investigation and appropriate action to prevent recurrence.⁵⁸

The VPSHR similarly require companies to ensure that the use of private security contractors does not lead to human rights violations. Companies are required to ensure that private security contractors adhere to the VPSHR, that their activities are in accordance with national and international laws, that they maintain a high level of training and professional capability, that contractors use force only for defensive purposes, and that companies investigate the use of force as

well as allegations of human rights violations of private security personnel.⁵⁹

The Voluntary Principles also explicitly require strict adherence to the laws and regulations of the host country, and recognize the preeminence of national laws.

Sanctions

The Voluntary Principles participation criteria suggest that active status in the VPSHR process is a positive incentive for participants in the VPSHR to implement the principles. Failure to comply with the mandatory reporting requirement results in a participant being automatically listed as inactive.⁶⁰

Participants are permitted to raise concerns regarding whether any other participant has met the participation criteria, as well as concerns regarding sustained lack of efforts to implement the Voluntary Principles.⁶¹ The VPSHR responds to such concerns with a system designed to “strengthen and deepen the Voluntary Principles and ... not primarily ... to punish violators.”⁶²

A participant with a concern can initiate a “direct dialogue” to address the concern. If this process is not successful, the participant can turn to the Steering Committee. The committee determines if a concern involves a member of the Steering Committee. If it does, the member will be replaced by its immediate predecessor on the committee while the concern is being resolved. There do not appear to be any formal criteria established to determine the validity of a concern, beyond the consideration of whether further deliberations will enhance the VPSHR process. Any determination to take the issue forward must be unanimous.

If a concern is deemed valid, the committee is required to refer the concern to the secretariat within sixty days from the time the committee received the complaint. The secretariat facilitates consultations between the participants concerned in the dispute. The participants may then present the dispute to the plenary within six months, for further deliberations and further action, premised on “whether it will deepen and strengthen the Voluntary Principles.”⁶³ A recommendation for expulsion is subject to a consensus within the plenary. All

other recommendations are subject to a vote of a supermajority (66 percent) of government participants, and simple majorities (51 percent) of both NGO and company participants.⁶⁴ Compliance with the plenary's recommendations is monitored by the Steering Committee.⁶⁵

If a participant categorically refuses to engage with other participants, its status may be changed from active to inactive, except in situations where a concern is about to become or is the subject of ongoing litigation.⁶⁶ There are no stated provisions for transparency in the bringing of and response to concerns. The Voluntary Principles participation criteria mandate that all proceedings in the VPSHR are confidential unless disclosure is required by a valid legal process or by law.⁶⁷

The VPSHR do not contain arrangements for nonparticipants to lodge complaints, although some NGO participants may seek to serve as conduits for such complaints, and some of the localized and private spin-offs from the VPSHR do seem to provide for such grievance mechanisms.

Support

The VPSHR maintain a secretariat jointly managed by two NGOs, the IBLF and the BSR. The secretariat functions are conducted "in association" with the four participant governments. Secretariat activities are financed by governments and companies. The US State Department financed the establishment of the VPSHR website.

This global process appears to have spawned an interesting innovation at the company and local level, as evidenced by—as just two examples of many—the efforts of BP and an "in-country process" in Colombia.⁶⁸

BP, one of the first participants in the VPSHR process, has incorporated the VPSHR into BP's integrated social programs for its Tangguh liquefied natural gas project in Bintuni Bay in Indonesia's West Papua province. The development is undertaken through a production sharing contract with the Indonesian government's BP Migas.

BP launched the Tangguh LNG project amid political controversy

and security challenges across the entire Papua region, which was annexed by Indonesia in 1963.⁶⁹ West Papua has an active liberation movement, the Free Papua Movement (OPM), which has fought for independence from Indonesia since its formation in 1965. NGOs as well as some governmental actors have suggested that the Indonesian government may have used the separatist movement as a pretext for violating human rights and suppressing civil liberties in the region.⁷⁰

To address concerns that BP was complicit in Indonesian human rights violations in the region, BP used the VPSHR framework as a basis for security management, in both planning and operating the LNG project. BP's "Integrated Community-Based Security concept," which provides an overall framework for the project's security management, was developed using the Voluntary Principles as a guide. PMSC provision of site perimeter security is just one aspect of this overall concept. PMSCs have also dealt with minor incidents inside the project site, such as civil disturbance and employee misbehavior. BP has incorporated the VPSHR into its contracts with the PMSCs it uses for on-site security.⁷¹ In addition, BP security also conducts periodic audits of its security providers.

BP also provides a grievance mechanism, which local stakeholders can use to complain about any aspect of BP's activity in Tangguh, including the conduct of the PMSCs BP employs. This grievance mechanism incorporates a detailed Tangguh project security procedure, activated by allegations of potential human rights violations by public and private security. The procedure explicitly states that "an incident involving a possible human rights violation should be treated with the same sense of urgency and attention as a major environmental or safety incident."⁷² The procedure can be activated if the company receives a complaint of a human rights violation through the formal grievance mechanism or if an allegation is made outside the formal grievance mechanism, such as one that is reported by media, employees, and/or NGOs.⁷³ A separate grievance mechanism is in place for all employees of BP; its OpenTalk mechanism allows employees to anonymously report violations of the BP code of conduct and other irregularities.

Since 2002, the implementation of the above Tangguh VPSHR arrangements has been monitored annually by a four-member

advisory panel commissioned by BP. This panel is composed of former US Senator George Mitchell (chair), Lord Hannay of Chiswick from the UK, Ambassador Sabam Siagian from Jakarta, and Reverend Herman Saud from Jayapura, Papua. After every audit, the Panel releases a report, to which BP responds. Separate human rights and security assessments are conducted by an additional set of monitors, including two individuals, Gare Smith and Bennett Freeman, who were closely involved in developing the VPSHR framework as a whole.

BP has also placed the VPSHR at the heart of its security arrangements in the development of the BTC oil pipeline. BP has a 30 percent stake in an international consortium that obtained the rights to build this 1,769-kilometer pipeline from Baku, in Azerbaijan, through Tbilisi in Georgia, to Ceyhan on the Turkish Mediterranean coast. BP operates the pipeline, on which construction commenced in 2003, and through which the first oil exports flowed in 2006.

Security for the pipeline is primarily handled by the governments of Azerbaijan, Georgia, and Turkey, countries whose security forces have been criticized for their negative human rights records. The use of PMSC personnel is limited to personnel campsites and equipment storage facilities. BP has implemented the VPSHR in project planning through a mix of multilateral agreements with the host governments, contractual agreements with third-party service providers, and a unilateral legally-binding undertaking.⁷⁴ BP has also commissioned Gare Smith to undertake site visits to assess implementation of the VPSHR framework within the project. The resulting evaluations are available to the public online.

In contrast to BP's company-led implementation, a multistakeholder approach to on-site implementation of the VPSHR framework is evident in Colombia. In October 2003, Colombia established the National Committee on the Voluntary Principles⁷⁵ and launched an "in-country process" for implementation of the VPSHR. The National Committee is composed of a number of multinational oil companies, the embassies of the UK, US, and Norway, Ecopetrol (Colombia's national oil company), Asociación Colombiana del Petroleo (the trade association of oil and gas companies in Colombia), and Colombian government officials headed by the Colombian vice president. A number of local and international NGOs, including International

Alert, have also been involved in the Colombia Process.

The VPSHR in-country process in Colombia is nonbinding. The Colombia Process has no enforcement mechanism to address violations of the Colombia-specific VPSHR guidelines, and the Colombia process is not covered by the VPSHR's internal dispute resolution mechanism. Yet a number of multinational companies in Colombia are currently using the Colombia Process to improve security management at their worksites. The Colombia Process has also added two distinct elements to the VPSHR based on local conditions: prohibitions on violence against of trade union leaders and extortion.

Separate initiatives have also emerged in Colombia that draw on the experience of negotiating the Colombia Process and applying the VPSHR. The "Guide for Risk Assessments for Companies in the Extractive Sector in Colombia" prescribes guidelines on how to mitigate risk and neutralize threats while respecting human rights.⁷⁶ Since 2003, regional risk assessments of provinces where companies are exploring for oil and gas have been jointly conducted by the Colombian military and police, judicial officials, and the security managers of oil and gas companies. In 2005, the chief of the Colombian armed forces issued a directive that mandated the regular conduct of risk assessment workshops in the extractive sector in Colombia.⁷⁷ A state-backed set of human rights guidelines for private security companies also emerged out of these discussions. This ninety-page document outlines the role of PMSCs in Colombia, defines the conditions for the use of force and the use of firearms, and identifies the obligations of private security contractors to their clients in the oil and gas sectors and to the state.⁷⁸

Yet it remains unclear whether all of this standards-development activity in Colombia has in fact led to implementation and enforcement.⁷⁹ Some commentators argue that a number of extractive companies continue to be linked to paramilitary troops that have attacked community-based groups critical of the activities of multinational companies.⁸⁰

This points to deeper concerns, at both the local and global levels, about how easily the VPSHR can create the appearance of respect for

human rights, without strong implementation and effective enforcement measures. Some nonparticipant companies appear to be free-riding, by invoking the VPSHR without formally participating in the institutional aspects of the framework and thus not submitting to any formal monitoring, enforcement, or even assessment process. This can have positive impacts: one nonparticipating PMSC has used the VPSHR as a basis for its own internal human rights guidance, and a number of extractive industry participants in the VPSHR also seem to be encouraging PMSCs to think about this option. However, free-riding may, in the long term, undermine the credibility of the VPSHR framework.

Indeed, over the years, a number of criticisms of the VPSHR have been raised by participants within the framework, especially NGOs. These issues relate primarily to the framework's perceived lack of implementation and enforcement machinery. Some of these concerns were addressed by the introduction of the Voluntary Principles participation criteria, although a number of issues, largely relating to the way in which the Voluntary Principles are structured, remain unresolved.

Human Rights Watch argues that the case-by-case approach adopted by the grievance mechanism still does not effectively address the question of companies' inconsistent compliance with the VPSHR. Under the existing grievance mechanism arrangements, participants are held accountable for specific violations, but no mechanism exists to ensure that violations are not widespread or systemic throughout the organization.⁸¹ Some NGOs also criticize the framework's lack of transparency. Meetings of the VPSHR are held in private, and proceedings are confidential. The framework has been criticized as too inward-looking and focused on internal governance.⁸²

This may be related to concerns in some quarters about the framework's politicization. The VPSHR has been criticized for being "stymied with politics and distrust,"⁸³ particularly between company participants and NGOs. In fact, the VPSHR was pioneered by governments and industry, with NGOs being folded in quickly thereafter. Some company participants perceived NGOs to be "reluctant to engage constructively on the Voluntary Principles" because the NGOs "may be afraid of damaging their reputation by engaging with

corporations.”⁸⁴ Companies may also have felt uncomfortable disclosing information to NGOs for fear that it would be exploited; NGO involvement has been minimal in the implementation of the principles at the company level.⁸⁵ Nevertheless, it is clear that the multistakeholder approach has helped to differentiate the VPSHR from other processes with more exclusive membership, and that the VPSHR have—after some frank discussions in recent years—found ways to reconcile the different perspectives of different stakeholder groups. All of the challenges that the VPSHR have confronted in multistakeholder participation may also be at play in regulating the GSI—but so, too, may all the opportunities that come from it.

Some critics have taken issue with the variations in approaches to—and speeds of—VPSHR implementation.⁸⁶ These critics argue that the lack of implementing guidelines and ambiguous language of the principles, among other factors, allows for these variations.⁸⁷ Company participants have noted that the vague language of the principles has led to confusion regarding how best to proceed with implementation and monitoring compliance. Company participants have also noted that while the VPSHR framework is supported at the top levels of the five government participants, support by their embassies has been inconsistent.⁸⁸ In addition, there has been only weak progress in incorporating more states into the framework since 2003.

It must also be noted that of the three areas where the VPSHR provides guidance, company dealings with PMSCs appear to entail weak expectations of external accountability. For instance, uses of force and allegations of human rights violations by private security contractors are only required to be investigated internally by the client company. Reporting an incident involving PMSC personnel to the local authorities appears to be at the discretion of the company and/or the private security firm. Some companies have used the VPSHR as the basis for structuring arrangements for passing on such information—but this is a purely voluntary arrangement.⁸⁹ At the same time, this may reflect that the VPSHR provide a platform for effective dialogue, especially at the local level, between industry and civil society, to deal with specific disputes as they arise.

BRITISH ASSOCIATION OF PRIVATE SECURITY COMPANIES (BAPSC)

www.bapsc.org.uk

Analysis of Lessons for the Global Security Industry:

- The British Association of Private Security Companies (BAPSC) provides an important voice for PMSCs in the second-largest national export market in the global security industry. The BAPSC was established by industry in 2006, with an eye to securing the industry's future after Iraq, and in the absence of specific guidance from the UK government on appropriate conduct in industry operations.
- It will be an important interlocutor in the development of any global framework for the global security industry, not least because UK-based PMSCs rely much more heavily on revenues from private clients (especially the extractive industry) than do US-based PMSCs (which tend to work more closely with governmental clients). This makes reliance on state-based standards implementation and enforcement through government procurement regulations less feasible in the UK than in the US.
- Statements from the BAPSC director-general, Andrew Bearpark, make clear BAPSC's willingness to engage with other actors, including civil society both in the UK and beyond, to develop a more sophisticated global framework, especially absent direct national regulation by the UK government.
- In the absence of such state regulation, the BAPSC may need to work even more closely than it already does with civil society actors and foreign states to develop credible standards, which could themselves provide a starting point for state legislation.
- At present, the BAPSC provides only broad standards in the form of a charter, though the organization is currently working with its membership to develop more detailed operational guidance, in the form of a private BAPSC standard. Both the charter and the draft standard currently lack any formal systems monitoring or grievance mechanism.

Story

The British Association of Private Security Companies (BAPSC) is a trade association of UK-based firms that provide security services internationally. Established in 2006, the BAPSC has six members that have completed the full membership process, with more than twenty other companies claiming other forms of membership. The BAPSC is based in London. The BAPSC advocates the implementation of high standards for the private security industry as well as the imposition of industry-specific regulation, at industry, national, and international levels.⁹⁰ States, argues its Director-General, Andrew Bearpark, “are the most credible actors to ensure that regulation is comprehensive, compatible with regulatory frameworks in other countries, and most, importantly, enforceable.”⁹¹ Bearpark has countenanced intrusive forms of state-based regulation, including the creation of a UK ombudsperson to oversee the industry,⁹² as well as compulsory training courses for PMSCs, scheduled and unscheduled audits, and the application of sanctions and fines if companies fail these audits.⁹³ But he recognizes that state regulation is potentially complicated, and may take some time to come into effect. Hence, the BAPSC promotes self-regulation as an interim option for the industry.

At present, the BAPSC framework involves PMSCs voluntarily signing up to the BAPSC Charter, without ongoing systems monitoring or any shared grievance mechanism. The BAPSC charter contains broad commitments relating to human rights law, ethical operations, labor rights, and the use of firearms in the field of operations. The charter also explicitly states the BAPSC’s commitment to transparency and adherence to international humanitarian law and human rights law.

Full membership of the BAPSC requires compliance with BAPSC “Corporate Standards,” a set of criteria relating to corporate management practice contained in a self-assessment workbook (SAW) that applicants are required to fill out during the application process. The standards are based on standards set by the UK’s Security Industry Authority (SIA),⁹⁴ and only marginally address issues such as compliance with human rights law and remedying harm to third parties. However, the BAPSC is also currently developing a BAPSC standard, which seeks to provide more precise operational guidance than the

Charter.⁹⁵ The standard, and the related implementation and enforcement machinery currently under discussion, are described in more detail below.

The BAPSC was formed as a result of “the realization among a number of leading UK private security firms that there was an urgent need to raise standards of operation and advocate self-regulation.”⁹⁶ There is currently no legislation directly governing the export of armed security services from the UK although continued calls for regulation have come from civil society groups, members of parliament, and even industry players themselves.⁹⁷ These calls were prompted by the “Arms to Africa affair” in 1998.⁹⁸ In February 2002, the Foreign and Commonwealth Office (FCO) released a Green Paper on possible options for regulating private military companies.⁹⁹ The paper was drafted in response to a request by the House of Commons Foreign Affairs Committee and became the basis for a number of recommendations by members of the committee. The Paper has not, at the time of writing (August 2008), resulted in any formal legislative proposal by the UK government—a fact that was recently criticized by the committee,¹⁰⁰ as well as civil society actors such as War on Want¹⁰¹ and Amnesty International UK. In April 2009, the UK government proposed formalizing BAPSC's role as a vehicle for industry self-regulation.

The idea for a trade association for PMSCs grew out of a conference at the Royal United Services Institute (RUSI)¹⁰² in December 2004 on the British experience in Iraq. In January 2005, a group of eight PMSCs (Aegis Defense Services Ltd., ArmorGroup International, Control Risks Group, Erinys (UK) Ltd., Hart Security,¹⁰³ Janusian Security Risk Management, Olive Group, Global Strategies Group),¹⁰⁴ worked with Andrew Bearpark—former private secretary to Margaret Thatcher, the former British prime minister, and a former UK government official in development roles and with the Coalition Provisional Authority (CPA) in Iraq—to convene a discussion and agreed to form an association. The group had an initial working fund of 40,000 pounds raised from contributions of 5,000 pounds per company.¹⁰⁵ This was used to set up the organization and establish relationships with UK government agencies such as the FCO, the Ministry of Defense, the Department for International Development, and other

related organizations including the British Security Industry Association (BSIA) and the US-based International Peace Operations Association. The FCO, which was then set to launch a review of the 2002 Green Paper, welcomed the opportunity to deal with one industry association rather than having to speak to individual companies.¹⁰⁶ The FCO's main guidance to the BAPSC was that the association should include a wide range of industry actors, and that it ought to take into consideration the interests of smaller companies.¹⁰⁷ The BAPSC was then launched in February 2006.

Scope

The BAPSC's membership is restricted to companies with a legal presence in the UK. Membership is conditional on the payment of annual dues.¹⁰⁸ Of the BAPSC's thirty-five members, six are full members,¹⁰⁹ and the rest are provisional or associate members. Applicants are registered as provisional members once they have met the basic criteria and paid the membership fee. The membership committee approves provisional membership for the applicant. Provisional members enjoy membership benefits while the validation process is being undertaken.¹¹⁰

Full membership is contingent on a company's "willingness and ability to demonstrate good practice and a commitment to maintaining standards."¹¹¹ This is achieved through a membership vetting process.¹¹² The membership criteria are as follows: (1) legal presence in the UK, (2) providing armed private security services, (3) adherence to BAPSC standards, (4) assurance of directors' noncriminal history, and (5) demonstration of corporate best practice as demonstrated by filling out the SAW and due diligence documentation.¹¹³ The SAW examines the company's strategy, service delivery processes, commercial relationship management, financial management, resources, personnel management, leadership, performance management, and corporate social responsibility (CSR). Full members are required to demonstrate that they actively manage the impact of their services on society, and that they manage waste and nonrenewable resources in a socially responsible way, through a defined CSR policy. Full members must also actively promote and improve the reputation of the security industry with the local community and with clients. The CSR criteria do not provide specific benchmarks for

determining whether an applicant fulfills these requirements.

Vetting of the SAW is conducted by two external consultants who review the documentation provided by an applicant company and conduct an on-site inspection of the company's headquarters. The use of external consultants is intended to ensure that vetting is impartial. If the application is turned down, an applicant may file an appeal with the Membership Committee.

Stakeholders

The majority of the BAPSC's thirty-five members are companies that provide armed security services¹¹⁴ to public, private, and nonprofit clients. A few members (listed as associate members) provide support services such as logistics, finance, and legal assistance. The Charter and the nascent BAPSC standard are primarily concerned with internal management practices, but also refer marginally to effects on third parties.

The BAPSC's direction is set primarily by Bearpark, working with Penny Beels, the Deputy Director-General.¹¹⁵ States are not directly involved, though the BAPSC aims to consult the UK government at every stage of the standards development and implementation process.¹¹⁶ Civil society groups were not directly involved in the formation of the BAPSC or in the drafting of its Charter. However, some are currently being consulted in the development of the BAPSC standard and may participate in redrafting the working document in the coming months.¹¹⁷

Standards

The Charter requires members to “decline to accept contracts for the provision of security services where to do so will conflict with applicable human rights legislation”;¹¹⁸ “decline to provide security services where there is a likelihood of the provision involving criminal activity”;¹¹⁹ “decline to provide security services in circumstances where there is a possibility that those services might adversely affect the military or political balance in the country of delivery”;¹²⁰ and “decline to provide lethal equipment to governments or private bodies in circumstances where there is a possibility that human rights will be infringed.”¹²¹

The draft BAPSC standard is a set of guidelines covering a range of activities relating to the provision of private security services, such as contract arrangements, personnel recruitment screening, personnel training, human resource management, personnel safety, subcontracting services, and weapons management, among others. The draft requires members to abide by various aspects of international law, and to train all deployed operational staff accordingly.

Sanctions

The BAPSC claims that adherence to its standards enables members to maintain a good reputation that, in turn, will help them gain contracts. “In order to create new markets and in order to increase their individual market shares the companies depend heavily on their public image. This is particularly true for British PMSCs who, unlike their US counterparts, cannot rely on public contracts to remain in business.”¹²² (British PMSCs receive a far greater portion of their revenues from private clients, especially in the extractive industry.)

However, the BAPSC currently lacks an ongoing systems monitoring mechanism and any kind of formal grievance mechanism. On the two occasions on which the BAPSC has received complaints relating to member companies, it has dealt with them informally. The first complaint involved a potential breach of the BAPSC Charter.¹²³ The second complaint also involved a contract but was not accepted by the BAPSC Director-General because the complainant refused to vouch for the complaint. This complaint was eventually withdrawn.¹²⁴

Support

The draft BAPSC standard does contemplate more detailed reporting arrangements, but remains only a draft.¹²⁵ It is unclear what authority the organization would have to ensure its effective implementation. Although the BAPSC is known to maintain close, ongoing informal relations with relevant governmental agencies, it does not have any formal mandate to undertake enforcement action with its members. (This may change following a UK government proposal in April 2009.) Bearpark indicates that the BAPSC’s current annual income is not sufficient to finance an effective investigative mechanism.¹²⁶

It also remains unclear whether third parties would be entitled to

bring their own grievances to the BAPSC, absent a member company reporting the incident to relevant authorities. Though the current draft standard appears to contemplate such reporting arrangements, it also remains unclear how willing member companies, will ultimately prove to report such incidents.

WOLFSBERG GROUP

www.wolfsberg-principles.com

Analysis of Lessons for the Global Security Industry:

- As is arguably the case with the global security industry today, in the late 1990s the private banking industry confronted a difficult situation, combining: (1) public and governmental pressure to ensure the industry did not support bad actors (in their case, drug traffickers and terrorists), (2) governments unwilling to provide operational guidance to the industry, and (3) disparate national regulation that seemed to play into the hands of these bad actors by allowing them to engage in cross-border regulatory arbitrage.
- In response, nine (later growing to eleven) of the largest private banks from around the world formed a loose private association—the Wolfsberg Group—to draft shared guidelines, which the banks implement in their own operations worldwide. These guidelines effectively serve as a global private standard, preempting national and international regulation, and harmonizing standards in a manner designed to dovetail with states' own collaborative initiatives, such as the Financial Action Task Force (FATF below).
- The effectiveness and influence of this private standard are in part underpinned by the global market share of those implementing it (roughly 60 percent). Given the competitive structure of the market, it is unsurprising that some banks were reluctant to join; but once they were convinced, the process has snowballed and now serves as a de facto standard for the industry.

- An analogous code of conduct, implemented by an industry-led club, could represent an important step toward a global framework for the GSI, if it were supported by a group of companies with a significant market share, and derived from the international legal obligations of human rights and IHL.
- Such a global private standard might, in time, be picked up by national regulators as the basis for an agreed whitelist, similar in some ways to the quasi-licensing arrangements supported by credit rating agencies, discussed earlier in this study. Regulators would in that case need to broaden participation in the framework and offer assistance to build smaller companies' internal implementation capacity, to avoid charges that such an arrangement represented a discriminatory market restriction.
- As with any other club's code of conduct, however, its credibility would also turn on it being linked to meaningful enforcement—especially the enforcement power of states.

Story

The Wolfsberg Group is an association of eleven private banks that aims to develop financial services industry standards relating to anti-money-laundering, anticorruption, and countering terrorist financing. In response to pressure from regulators and indications that governments would not provide operational guidance, the Wolfsberg Group first convened in 2000 at the Château Wolfsberg in northeastern Switzerland to work on drafting anti-money-laundering guidelines for private banking.¹²⁷ The Wolfsberg Group aimed to overcome disparities in national regulation, which worked against the objective of ending the illicit use of private banking by allowing bad actors to engage in regulatory arbitrage. The meeting took place in the company of representatives from Transparency International. Since 2000, the principles and other Wolfsberg Group publications have become the de facto international standard for the global private banking industry.

Scope

The anti-money-laundering principles for private banking were published in October 2000 and revised in May 2002. Since then, the

Wolfsberg Group has published statements on the financing of terrorism, correspondent banking, monitoring, screening and searching, due diligence, international wire transfers, and the recovery of assets tainted by corruption.¹²⁸

Stakeholders

The members of the Wolfsberg Group are ABN AMRO Bank NV, Bank of Tokyo-Mitsubishi, Ltd., Barclays Bank plc, Banco Santander Central Hispano, S.A., JPMorgan Chase Bank, Citigroup, Credit Suisse Group, Deutsche Bank AG, Goldman Sachs, HSBC Holdings plc, Société Générale, and UBS AG.¹²⁹ These banks make up more than 60 percent of the private banking world market.¹³⁰ Banks were invited to join the group based on their market share and geographic presence.¹³¹ Some banks needed significant persuasion to join the process.¹³² The Wolfsberg Group has worked with other stakeholders on specific practice areas in shaping its principles and publications. With regard to its statement on corruption, for example, the Wolfsberg Group adopted a multistakeholder approach facilitating dialogue with: (1) governments and their agencies, (2) governments and international bodies, (3) law enforcement and financial intelligence units, (4) regulators and supervisors, and (5) civil society and nongovernmental organizations.¹³³

Standards

The framework promotes principles and standards designed to protect private banks against involvement in financing terrorism, corruption, and money-laundering.¹³⁴ The principles are voluntary and lack an enforcement mechanism; the framework relies on each participant implementing the principles in its internal practice. Crucially, the participants do so worldwide, including in offshore banking centers.

Sanctions

The framework has arguably created a level playing field. Harmonization reduced administrative costs for private banks and investors, and has helped state regulators guard against regulatory arbitrage.¹³⁵ State regulators meet frequently with Wolfsberg Group members to monitor the development and implementation of its

standards.¹³⁶ At present, however, there is no formal enforcement mechanism for these standards. The Wolfsberg Group believes its standards might serve as the basis for a more formal regulatory arrangement backed by states, for example, providing a whitelist of financial institutions with which national and/or international financial institutions (such as central banks or the World Bank) will conduct certain financial transactions.¹³⁷

Support

Although the Wolfsberg Group is supported by regulators in major jurisdictions, it is criticized by other nonparticipating financial institutions as an elitist club that risks creating a discriminatory, two-tier system.¹³⁸ It may be important, in time, to broaden participation in the framework, to ensure that it is not perceived as creating a discriminatory market restriction. And, in certain cases, regulators may need to provide capacity-building assistance to allow smaller financial institutions adequate opportunity to develop the internal systems needed to implement these standards.

PRIVATE SECURITY COMPANY ASSOCIATION OF IRAQ (PSCAI)

www.psc.ai.org

Analysis of Lessons for the Global Security Industry:

- The Private Security Company Association of Iraq (PSCAI) is an industry-actor coordination mechanism formed by PMSCs in Iraq to fill a vacuum left by the dissolution of the Coalition Provisional Authority's Private Security Company Working Group in June 2004.
- The PSCAI serves as a useful facilitator of dialogue on PMSC operational issues in Iraq. In this respect, PSCAI may provide a useful model for associations of PMSCs operating in specific countries.
- However, there is no evidence that the PSCAI serves—or seeks to serve—a significant role in supplementing the state legal duty to protect and encouraging industry respect for human rights or

international humanitarian law, or other industry standards. PSCAI does not appear to have any role in monitoring its members' implementation of any standards (whether technical or relating to human rights), and does not provide any mechanisms to which third parties or employees claiming harm by PMSC conduct such as violations of human rights and IHL could bring grievances.

Story

The Private Security Company Association of Iraq (PSCAI) is an Iraq-based PMSC trade association, operating in the International Zone of Baghdad and in Washington, DC. With the dissolution of the Coalition Provisional Authority (CPA) in June 2004, the office within the CPA (the Private Security Company Working Group) that was responsible for all matters relating to private security companies was also dissolved. The PSCAI was formed as a coordinating mechanism to fill this vacuum in August 2004. The PSCAI focuses on information-sharing among and advocacy on behalf of PMSCs operating in Iraq. The PSCAI seeks to serve as an informal liaison between the Multi-National Force–Iraq (MNF-I), the government of Iraq, the coalition governments, and the PSCAI's forty member companies. While primarily an operationally focused organization, the PSCAI does advocate on behalf of the industry internationally. The PSCAI is led by Lawrence Peter, who founded it after leaving the service of the Coalition Provisional Authority (CPA) when it was dissolved in mid-2004.

Scope

The PSCAI provides information on and coordination of PMSC operations, addressing issues such as Iraqi registration of PMSCs, vehicle licensing, Ministry of Interior (MOI) licensing,¹³⁹ Kurdistan Regional Government (KRG) licensing, weapons licensing, and CPA documents. Membership is open to PMSCs operating in Iraq, but is purportedly conditional upon compliance with the PSCAI Charter and Code of Conduct, adherence to CPA memos and orders (specifically CPA Memo 17, CPA Order 3, CPA Order 17 and CPA Order 100), regular training of personnel on the Rules for Use of Force, incident reporting, and registration.¹⁴⁰ However, since the PSCAI Charter and

Code of Conduct are not publicly available, it remains unclear to what extent PSCAI endeavors to ensure its members comply with human rights standards.

Stakeholders

The PSCAI is led by a director (Peter) and a deputy director, overseen by a seven-member board of directors serving six-month terms, elected from representatives of member companies.¹⁴¹ The PSCAI holds a monthly plenary meeting, typically attended by member companies operating in Iraq, as well as by representatives of the Iraq Ministry of Interior (MoI), US Embassy Regional Security Office (RSO), Joint Area Support Group Central (JASG-C), MNF-I, Multi-National Corp Iraq (MNCI), the MNCI Contractor Operations Center (CONOC), the MNF-I Contractor Procedures Oversight Division (CPOD), USAF International Zone Police, Project & Contracting Office (PCO) Logistics, Logistics Movement Control Center (LMCC), and the Joint Contracting Command Iraq and Afghanistan (JCC-IA).¹⁴²

Standards

The PSCAI purports to assist the implementation of relevant standards among PMSCs operating in Iraq, including the law of Iraq and relevant rules on the use of force. However, there is currently no publicly available evidence that the PSCAI serves a significant role in enforcing human-rights-related standards (including rules on the use of force) or even implementing operational standards beyond playing the role of information clearinghouse.

Sanctions

The primary incentive for participation in the PSCAI appears to be the access to operational information the PSCAI provides, in particular relating to registration through the Iraqi MoI. Since the PSCAI is apparently not involved in the enforcement of any standards, the PSCAI does not wield any sanctioning authority over member companies.

Support

While the PSCAI is not formally backed by any state, the PSCAI is

clearly accepted by the government of Iraq, the US, and other Coalition governments as a useful interlocutor representing PMSCs in Baghdad. In this respect, the PSCAI appears to have served as a model for the establishment of a Private Security Companies Association of Afghanistan (PSCAA).¹⁴³

Chapter Eight

Harmonization Schemes I

This Chapter examines a mixture of state and business-oriented harmonization schemes. All of them involve the establishment of some kind of centralized “agent” that undertakes—and often drives forward—the implementation of the harmonized standards within the scheme. In the next Chapter, we examine a group of harmonization schemes which rely instead on the participants to drive forward the implementation of the harmonized standards. We have separated these harmonization schemes in this way to highlight the different allocation of risks, responsibilities, and authority which results from the establishment of a centralized or collective implementing “agent.”

GLOBAL COMPACT

www.unglobalcompact.org

Analysis of Lessons for the Global Security Industry:

- The United Nations Global Compact was originally developed under the leadership of Kofi Annan and John Ruggie, as a broad framework intended to facilitate companies’ attempts to serve as responsible social actors in the context of globalization.
- While supported by states and international organizations, the Global Compact’s focus on company implementation of standards has subsequently led to the group having limited enforcement power. As a result, the Global Compact has been criticized for failing to ensure member company implementation of the ten principles that the Global Compact promotes.
- Nevertheless, the Global Compact represents an important

example of a broad framework for convergence among businesses around best practices, through overlapping local and global communities of learning, developing a shared understanding of the techniques and processes needed to implement human rights and other, broader, corporate social responsibility standards.

Story

The Global Compact, established in 2000, encourages businesses worldwide to adopt sustainable and socially responsible policies and practices. Describing itself as the world's "largest voluntary corporate responsibility initiative,"¹ the Global Compact was launched with the support and participation of multinational companies, global trade unions, and civil society organizations. At present, the Global Compact consists of more than 4,300 businesses in 120 countries. Member companies align their operations and strategies with ten principles based on "universally accepted" norms in the area of human rights, labor, the environment, and anticorruption. The companies share experiences and best practices through local networks and a global movement, creating overlapping communities of learning.²

The Global Compact has two objectives: first, mainstreaming its ten principles in business activities around the world and, second, catalyzing actions in support of broader UN goals, such as the Millennium Development Goals. The UN Global Compact Office at the UN Secretariat in New York is formally entrusted with the support and overall management of the Global Compact, while six UN agencies also play key roles in promoting its work: the Office of the High Commissioner for Human Rights (OHCHR), the International Labour Organization (ILO), the United Nations Environment Programme (UNEP), the United Nations Office on Drugs and Crime (UNODC), the United Nations Development Programme (UNDP), and the United Nations Industrial Development Organization (UNIDO).³

The Global Compact emerged under the leadership of former UN Secretary-General Kofi Annan, and his then Assistant Secretary-General for Strategic Planning, John Ruggie, following conversations with business executives in 1997 and 1998, particularly the

International Chamber of Commerce. The Global Compact is intended to represent the coming together of the UN and the business community.⁴ The Global Compact seeks to humanize globalization by reflecting the values of social community that markets require to function and flourish.

Scope

The Global Compact is open to businesses operating in any industry sector worldwide, except those companies involved in the trade in antipersonnel mines. Participating companies must have at least ten employees. Companies that are the subject of a UN sanction or that have been blacklisted by UN Procurement may not participate. The Global Compact asks companies to embrace, support, and enact, within their sphere of influence, a set of core values in the areas of human rights, labor standards, the environment, and anticorruption.⁵

Stakeholders

A twenty-member board with representatives from business, civil society, labor, and the UN provides ongoing strategic and policy advice for the framework as a whole. The Global Compact Office maintains a website with numerous publications that explain what is expected of member companies, and provides a platform for disseminating experiences in implementing the Global Compact's principles. The Global Compact also holds workshops and other events around the world, and encourages local events through its local networks, made up of participating companies operating in a specific locale.

Local networks are responsible for creating opportunities for multistakeholder engagement and collective action, undertaking grassroots education and public relations, and promoting action in support of broader UN objectives (such as the Millennium Development Goals). Local networks are intended to deepen the learning experience of all participants through their own activities and events, and are brought together annually in a Local Networks Forum. Governments also play a central role, promoting the Global Compact to companies that are based or operate in the governments' countries, hosting events, encouraging related national activities, providing support to local networks, and funding the work of the Global Compact Office through voluntary contributions.⁶

Standards

The Global Compact's ten principles represent a set core of values tailored specifically for the Global Compact, but derived from the *Universal Declaration of Human Rights* (1948), the ILO's *Declaration on Fundamental Principles and Rights at Work* (1998), the *Rio Declaration on Environment and Development* (1992), and the *United Nations Convention against Corruption* (2003). Four are labor standards that deal with the relationship between employer and employee, while the other six principles deal with the relationship between the participating company and third-party beneficiaries, in the areas of human rights, environment, and corruption. Since the Global Compact is open to businesses in almost every industry, the ten principles are not adapted to the specifics of any one industry, but stated in broad terms.⁷

The Global Compact promotes implementation of the principles through several mechanisms, such as policy dialogues, learning, local networks, and partnership projects. The Global Compact is not a regulatory instrument—it does not police, enforce, or measure the behavior or actions of companies. Rather, the Global Compact relies on public accountability, transparency, and the enlightened self-interest of companies, labor, and civil society to initiate and share experiences and substantive actions in pursuing the principles upon which the Global Compact is based.

Sanctions

The major positive incentive for participation in the Global Compact is the loose association with the UN brand that participation allows. The Global Compact has created its own logo, which member companies in good standing may associate with themselves and their products.

Following criticisms that some companies were free-riding by using the logo without undertaking significant implementation activity, the Global Compact adopted a set of “integrity measures.” These measures require member companies to report their implementation activities through an annual “communication of progress.” Member companies also address allegations of systematic or egregious abuse of the company's association with the UN. Between 2000 and

November 2007, the Global Compact handled fifty-six complaints through these measures.⁸

Any individual, group, or organization can register a complaint against a member company under the measures. The procedure aims primarily to generate a response from the company in question rather than being a full-fledged grievance mechanism. There are no explicit time limits on when allegations may be brought as long as they are not deemed frivolous. The company has to respond within three months of first being contacted by the Global Compact. If the company does not respect the time limits, it may be designated as “noncommunicating,” and identified as such on the Global Compact website. The Global Compact office may remove the company from the list of participants on the Global Compact website if the company’s presence there is considered detrimental to the Global Compact’s reputation and integrity. Failure to engage in dialogue on the matter can result in the Global Compact office designating the company “inactive” (i.e., no longer a full Global Compact participant). This designation will be reversed only after the company has adequately addressed the matter.

The Global Compact does not conduct its own investigation into any allegations. The Global Compact office is, however, able to offer guidance and assistance in support of remediation in line with the ten principles, or even: (1) use its own good offices to encourage resolution of the matter; (2) ask the relevant country/regional Global Compact network, or other Global Compact participant organization, to assist with resolution; (3) refer the matter to one or more of the UN entities that are the guardians of the Global Compact principles for advice, assistance, or action; (4) share information with the parties about the specific instance procedures of the OECD Guidelines for Multinational Enterprises and, in the case of matters relating to the labor principles, the interpretation procedure under the ILO *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*; and (5) refer the matter to the Global Compact board, drawing in particular on the expertise and recommendations of its business members. There does not seem to be any provision for allegations to be referred to relevant state enforcement authorities.⁹

While these processes are ongoing, they are expected to remain confidential. Their goal is to initiate dialogue between the company

and the person raising the concern, especially where other efforts to obtain a company response have failed. The Global Compact argues that it does not have the mandate or resources to monitor or measure participants' performance, and that the framework is not intended to operate as an enforceable code of conduct.¹⁰

Support

The Global Compact accepts core funding from government donors on a voluntary basis. The Global Compact also encourages financial contributions and sponsorship to support noncore activities through the Foundation for the Global Compact, which allows business to financially support the initiative. All companies participating in the Global Compact are asked to make an annual voluntary contribution to the foundation.

The Global Compact has received the political support of a wide group of states, reflected in its endorsement by the UN General Assembly.¹¹ But the Global Compact has also been criticized by some civil society actors for its lack of sanctioning authority, given the requirement that abuses be “systemic or egregious” before companies are subjected to the integrity measures, and the dominant influence of business within the framework.¹²

OIE (WORLD ORGANIZATION FOR ANIMAL HEALTH)

www.oie.int

Analysis of Lessons for the Global Security Industry:

- Perhaps surprisingly, the World Organization for Animal Health (OIE, formerly the International Office of Epizootics) is a framework rich in lessons for the GSI. This becomes less surprising when one realizes that, similar to animal health, public security is a global public good that may be unintentionally threatened by a private transnational trade facilitated by globalization.
- The OIE is the source of highly influential standards for the national regulation of animal health. The OIE was established in the 1920s when European governments realized that they could

not, on their own, adequately regulate transboundary animal-borne disease, given the increasing globalization of livestock movements.

- The OIE's standards have become particularly influential through connection to broader market access regimes: they now are mandatory for member states of the World Trade Organization. As a result, many of the free-riding and tragedy-of-the-commons problems associated with public goods are avoided, because states have a specific incentive to invest in animal health: market access.
- The OIE standards are also made more influential because the OIE is highly networked: its standards have been picked up and adopted by a range of other intergovernmental and private industry organizations for incorporation into their own frameworks, governing everything from air transport to horseracing.
- The OIE's networking strategy and member-state reporting arrangements render the OIE an information-sharing platform for a wide range of public and private stakeholders. This, in turn, allows the OIE not only to serve as a provider of best practice guidelines for its membership, creating a community of learning, but also to collate worldwide information, and analyze trends and risks. This makes the OIE an unparalleled source of systemic information and a guardian of collective interests.
- Nevertheless, because compliance with OIE standards is linked to market access, through the WTO regime, states have strong incentives to underreport noncompliance, lest their market access be restricted. This points to the need to (1) impose even stronger negative incentives for such underreporting and (2) provide assistance to states that struggle to implement global standards. This assistance will build domestic capacity and allow states to participate fully in the governance of the framework. Absent such assistance, there is a risk of creating a two-tier system, undermining the credibility of the framework as a whole.
- The difficulty in adapting these lessons to the GSI lies in the fact that, unlike animal diseases, the harms inflicted by PMSC

misconduct—such as violations of human rights—may not be perceived as contagious. They are unlikely to be travel beyond communities with little access to grievance remedies or control over other incentives that might improve PMSC conduct, such as market access. This may be an argument for creating grievance mechanisms that allow those affected to draw attention to PMSC violations of human rights and IHL, as well as other forms of PMSC misconduct when this is not addressed by states, or as a prelude to state criminal law proceedings.¹³

- But this perception—that the harms caused by PMSC conduct are not “contagious”—may also prove, ultimately, to be a misunderstanding of the long-reaching effect of these harms. As recent experiences in the Middle East demonstrate, over time, perceived violations of third parties’ human rights by PMSCs may in fact cause regional destabilization and reputational harm that—similar to transmissible animal diseases—are not easily contained by national borders.

Story

Similar to the global security industry, the international trade in animals and animal products involves transboundary private trade, often by large multinational enterprises (MNEs) that are subject—due to justifiable sovereignty concerns—to highly fragmented national regulatory arrangements. And, similar to the international animal trade, the global security industry may have rapid and significant unexpected effects on public welfare. This section briefly examines the OIE. The OIE is an intergovernmental organization responsible for improving animal health worldwide, with 172 member countries and territories.¹⁴ The OIE is the key international standard setting agency in the area of animal health. The influence of the OIE’s standards, set out in its aquatic and terrestrial animal health codes and manuals,¹⁵ has been strengthened by their adoption as benchmarks in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.¹⁶ This incorporation, as a benchmark in balancing the competing interests of free trade and animal (and human) health, has created a significant positive incentive for compliance with the standards: market access.

The OIE's mission is "[t]o improve the health and the welfare of animals all over the world regardless of the cultural practices or the economic situations in member countries."¹⁷ The OIE aims to ensure transparency in the reporting and tracking of global animal diseases; collect, analyze, and disseminate veterinary scientific information; encourage international solidarity in controlling animal diseases; safeguard world trade by publishing health standards for international trade in animals and animal products; improve the legal framework and resources of national veterinary services; provide a better guarantee of food of animal origin; and to promote animal welfare through a science-based approach.¹⁸ The OIE also assesses and verifies the status of member countries for freedom from four diseases: foot and mouth disease (FMD), bovine spongiform encephalopathy (BSE), rinderpest, and contagious bovine pleuropneumonia.¹⁹ While the OIE is the international-standard-setting body for animal health matters, it is not an enforcement body. The OIE can offer only nonmandatory recommendations and cannot impose punitive sanctions on members that do not comply with their obligations.

Nevertheless, the OIE's standards have become pervasive in part because it has deliberately adopted a networking strategy. Many of the OIE's animal health promotion efforts occur through partnerships with thirty-six international and regional organizations, including the International Federation for Animal Health (IFAH), the Food and Agricultural Organization of the UN (FAO), the World Health Organization (WHO), and the World Veterinary Association (WVA).²⁰ Thus, the OIE links into an emerging global surveillance system for the biosphere. The OIE deliberately avoids claiming exclusive jurisdiction over these issues. For example, the World Conservation Union (IUCN) has developed detailed guidelines to minimize disease risks associated with the intentional movement of wildlife for conservation or game management purposes.²¹

This networking strategy gave the OIE a new lease on life. Originally established in 1924 in direct response to the reemergence of rinderpest in Belgium in 1922,²² the OIE survived the establishment of the FAO and WHO as UN agencies, in part by signing agreements demarcating areas of responsibility. As trade grew, the OIE steadily

gained influence. In 1998, the OIE signed an agreement with the WTO, and the OIE's membership increased substantially. The private nature of most of this trade, and the ways in which globalization facilitates the transmission of animal disease, created strong incentives to accept OIE standards as the foundation of an overarching regulatory framework.²³

Scope

The OIE addresses every aspect of animal welfare. The OIE provides information about disease outbreaks, and coordinates studies and surveillance of disease. The OIE's Collaborating Centre for animal disease surveillance systems and risk analysis, and its Collaborating Centres for surveillance, diagnosis, control, and epidemiology of animal diseases, all serve important information-sharing purposes. These centers give the OIE access to the data it needs to provide cutting-edge analysis to its membership.²⁴

The OIE provides standards used for the harmonization of trade regulations in animals and animal products. The OIE's inter-regional and international reporting systems inform officials of the entry and spread of pests, and diseases of concern. The OIE also works with national veterinary services to build their capacity to monitor, treat, and report diseases. Veterinary activities are covered by the OIE's World Animal Health and Welfare Fund, established in 2004 and implemented in partnership with the FAO.²⁵

Stakeholders

The OIE is a membership organization, and its members are 172 states and territories. Membership is limited to states that prove their compliance with the OIE's standards, although there seems to be some political influence over membership status.²⁶ Private actors—including commercial actors and scientific researchers—do not control the OIE's governance, though they do provide important input into the OIE's operation. For example, the permanent animal welfare working group develops basic scientific texts for developing animal welfare norms. It draws upon veterinary experts from the five OIE regions, as well as the research community, industry, and animal welfare NGOs.²⁷

The OIE is overseen by an international committee, consisting of delegates designated by the governments of all member countries, and meeting once a year. The general session of the international committee lasts five days and is held yearly in May in Paris. Each country on the international committee is accorded one vote. The main functions of the international committee are to adopt international standards in the field of animal health, especially for international trade; to adopt resolutions to control major animal diseases; to elect the members of the governing bodies of the OIE (president and vice president of the committee, members of the administrative commission, regional, and specialist commissions); to appoint the director general of the OIE; to examine and approve the annual report of activities and the financial report of the director general and the annual budget of the OIE.

The resolutions passed by the international committee are developed with the support of ten commissions elected by the delegates: an administrative commission, five regional commissions, and four specialist technical commissions. The work of the international committee is prepared by the administrative commission, which consists of nine delegates, and meets under the chairmanship of the president of the committee each year in February and May.

Member countries report on the animal health situation in their countries, and comply with OIE standards by incorporating them into the countries' national and regional regulations. Moreover, on request, an exporting country is obligated to supply an importing country with information on the exporting country's animal health situation, the structure of its veterinary services and other competent authorities, the authority that they exercise, and the disease surveillance systems the exporting country has in place. The importing country must reciprocate by supplying the equivalent.

Standards

The OIE's standards and codes ensure the sanitary safety of international trade in terrestrial animals (mammals, birds, and bees), aquatic animals (fish, mollusks, and crustaceans), and animal products. This assurance is achieved through detailing health measures used by veterinary services or other competent authorities of importing and

exporting countries in establishing health regulations for the safe import of animals and animal products. The OIE revises its standards to reflect changes in the best available scientific information.

OIE standards rely on voluntary compliance—although WTO members are bound by the SPS Agreement to implement OIE standards. Many industries have also adopted these standards. For example, both the International Federation of Horseracing Authorities and the International Air Transport Association adopt OIE standards in their rules.²⁸ The associations rely on reporting by member states. However, many states have chosen not to report outbreaks or noncompliance.

Sanctions

The OIE operates under the assumption that it is in the interests of all states and other stakeholders to prevent the spread of animal diseases. The negative consequences of neglecting to monitor serve as a negative sanction, and a further incentive for collaboration. M.J. Otte notes that “the public good nature of prevention and control of transboundary animal diseases calls for collectively agreed, funded and managed responses.”²⁹ Yet the OIE framework is remarkable for overcoming free-riding problems associated with public goods by creating a positive incentive for investment in preventing and controlling diseases: market access. Linking OIE standards to WTO’s SPS Agreements creates concrete economic incentives for participating countries.

However, this does not always prevent individual nations from dealing with transboundary diseases at a national level alone. Since the outbreak of disease threatens to cut states’ market access, there may in fact be strong incentives for states not to report such outbreaks.³⁰ The effectiveness of OIE standards, therefore, depends on mutual surveillance by member countries.

OIE offers a voluntary dispute settlement mechanism to mediate trade conflicts between OIE members. A member country may formally or informally lodge a complaint against another country if that country is not meeting its OIE obligations, or is not adhering to the provisions of the WTO SPS Agreement. The OIE may provide a mediator. This requires the agreement of both parties, and outcomes

are not legally binding unless both parties agree to this in advance. The cost of the mediation is covered by the disputing parties. OIE mediation is conducted by experts selected by the OIE. Member states are required to provide such information as is requested by the experts. After consultation, these experts submit a confidential report on their conclusions and recommendations to the OIE director-general, who transmits it to both parties. There is no provision for appeal, though parties may proceed to a formal WTO dispute settlement, if they are WTO member states. However, “[w]hile the outcomes of the OIE mechanism are nonbinding and confidential, the views of the OIE and its experts would be expected to substantially influence any subsequent dispute settlement discussions in the WTO.”³¹

Support

The OIE’s financial resources are derived principally from membership dues supplemented by voluntary project financing from member countries and territories and international organizations such as the European Commission, World Bank, and OECD. OIE membership has grown substantially in recent years, following the growth in World Bank memberships.

Some commentators note that the OIE standards, through the SPS Agreement, restrict market access and disadvantage states with weak governance systems.³² Accordingly, the imposition of these standards should be accompanied by significant investment in capacity-building assistance to such countries, to ensure they are not permanently excluded from world trade. Similarly, many such states lack the resources needed to participate in the OIE;³³ their participation should be assisted by better endowed sources.

CLEAR VOICE HOTLINESM SERVICE

www.clearvoicehotline.net

Analysis of Lessons for the Global Security Industry:

- The Clear Voice framework provides an interesting model of a shared grievance mechanism for employees of multiple

companies to report abuses of workers' rights. This framework highlights the importance of companies not relying only on internal grievance processes but also making space for external parties in whom employees may repose greater confidence.

- Given the limitations of existing grievance mechanisms within PMSCs identified in Chapter Two of this study, this may be a useful model for PMSCs to consider. It might, however, prove difficult to adapt to the context of the GSI, given the sensitivity of much workplace-related information in that industry, and of course the inappropriateness of a nonjudicial grievance mechanism for dealing with serious violations of human rights and IHL.
- On their own, such hotlines seem unlikely to satisfy all the benchmarks for grievance mechanisms identified by the UN Secretary-General's Special Representative on business and human rights, in a report to the UN Human Rights Council.³⁴ Any such hotline arrangement should be seen only as the first component of a larger dispute resolution mechanism.

Story

Increased public awareness of abuses of workers' rights in global manufacturing has resulted in efforts by a number of industries to improve workplace compliance with labor rights throughout the industries' supply chains. However, efforts across various industries to ensure social compliance are often inconsistent and lack robustness. Auditing for so-called social compliance is often viewed by factories as redundant or ineffective, while factories themselves often lack strong internal grievance mechanisms. To address some such concerns, Clear Voice HotlineSM Service (Clear Voice) was established in October 2007 as a confidential channel for information facilitation among factory workers, senior management, and brand companies across multiple factory-based industries. The Clear Voice Hotline also aims to serve as a harmonization tool to assist buyers and factories in ensuring that their social compliance systems are robust and effective, by strengthening factories' internal grievance mechanisms and by serving as a source of information exchange between factories and buyers, thereby reducing the need for auditing by buyer companies. Clear Voice was

developed independently, with industry support, by Doug Cahn of the Cahn Group, LLC, a former vice president of the human rights programs at Reebok International, who works as a consultant to industry on social compliance.

The central component of Clear Voice is the confidential hotline for reporting grievances related to working conditions, made available to factory workers whose factories subscribe to the service. When necessary, Clear Voice will communicate a worker's concerns to factory management, while protecting the anonymity of the worker. Clear Voice also provides training to factory senior management on responding to workers' concerns and strengthening internal grievance mechanisms and strengthening labor standards. The information that Clear Voice collects on workers' grievances is aggregated and provided to buyer companies as a tool for assessing factory compliance with companies' own codes of conduct. Factories that subscribe to Clear Voice pay a membership fee for access to the service and training of the factories' senior management.

Scope

Clear Voice aims to better enable factories to comply with their own or a buyer's code of conduct by providing a confidential channel of communication that allows workers to report instances of noncompliance. However, a worker at a subscriber factory can call the hotline service regarding any issue related to working conditions. Any factory may subscribe to the Clear Voice HotlineSM Service. However, Clear Voice is currently active only in Latin America, principally in Central America and Mexico. Eventually, Clear Voice plans to expand to new markets in Asia and Eastern Europe.

Stakeholders

The Clear Voice central office oversees reporting, confidentiality protocols, and anonymity for complainants.³⁵ Factories subscribe to the Clear Voice HotlineSM Service, which enables their workers to have access to the confidential hotline for reporting grievances. Clear Voice also offers training to senior management at subscriber factories on developing robust internal labor standards programs. Subscriber companies are provided with an orientation briefing for workers and managers. Posters must be put up in subscriber factories, and workers

are provided with flyers containing information on the main features of the services, contact information for reporting grievances, and the guarantee of confidentiality. Clear Voice representatives visit factories to remind workers of the service.³⁶

Outside organizations can participate in the process only with the express permission of the parties concerned.³⁷ Participation is based on individual companies: unless a factory is a subscriber, the factory is not eligible to participate in the service, even if the factory is within the supply chain of a brand or retailer whose other suppliers are subscribers. Trade associations also do not participate in the framework. Labor unions cannot bring complaints to Clear Voice on a worker's behalf and are generally excluded from participation in the framework.

Standards

Clear Voice encourages factory compliance with buyer company codes of conduct. Training for factory senior management is focused on compliance with such codes. For most subscriber factories, buyer company code of conduct standards tend to focus on core labor rights in the ILO Conventions.³⁸ However, workers can use the Clear Voice Hotline for complaints related to any aspect of working conditions.

Sanctions

The Clear Voice HotlineSM Service is available either through a confidential telephone hotline or through the internet. Clear Voice representatives in the region speak the local language and are trained in local cultural norms. The representative who receives a complaint first encourages the worker to use the factory's internal grievance mechanism. If the worker chooses, Clear Voice will contact factory management with the complaint, keeping the worker's identity confidential. Buyers are provided with periodic aggregated reports from Clear Voice informing them of any major grievances in the supply chain. Only "significant" specific instances of worker grievances are shared with buyers. Clear Voice is mainly an information facilitation process and does not seek to sanction factories that are found to be noncompliant with buyer company codes of conduct. However, if factories are found to be guilty of retaliation against a complainant, the buyer company will immediately be notified, and the

Clear Voice service will be terminated for that factory. Information on complaints and remediation efforts are shared publicly only with the express permission of the parties.

Factories that subscribe to Clear Voice receive training on strengthening internal grievance mechanisms. Signing up for Clear Voice can demonstrate a commitment to minimum labor standards, which is attractive to buyers. Buyer companies that encourage factories in their supply chain to use Clear Voice have the incentive of receiving regular reporting to fill the gaps in their own monitoring.

Support

The Clear Voice framework is sustained by the fees of participating factories and buyers.

ORGANIZATION FOR THE PROHIBITION OF CHEMICAL WEAPONS (OPCW)

www.opcw.org

Analysis of Lessons for the Global Security Industry:

- The *Chemical Weapons Convention* (CWC), implemented by the Organization for the Prohibition of Chemical Weapons (OPCW), represents a far-reaching multilateral treaty based on a partnership between states and the global chemical industry, designed to protect the legitimate aspects of that industry and eradicate the production and use of chemical weapons.
- While the chemical industry was initially reluctant to participate in the OPCW, the industry was gradually persuaded that the long-term benefits of increased market transparency—including the resulting legitimacy that accrued to the industry as a whole—outweighed the costs, including the loss of illegitimate business.
- The CWC/OPCW framework consequently functions—similar to the Kimberley Process or the Toxic Waste Convention—through a restriction on market access implemented by states, married to an inspections regime relying on state-industry

partnership. This model has obvious potential applicability to the GSI.

Story

The Organization for the Prohibition of Chemical Weapons (OPCW) was established in 1993. It is headquartered in the Hague and is responsible for the implementation of the *Chemical Weapons Convention* (CWC). One hundred eighty-three states are parties to the CWC and therefore members of the OPCW.

The dual-use nature of the materials and equipment covered by the CWC necessitates thorough on-site inspections of civilian chemical industrial facilities, to ensure they are not being used for illegitimate military purposes. Historically, parts of the civilian chemical industry have played a major role in producing chemical weapons.³⁹ One of the key factors to the eventual successful negotiation of the CWC was the active involvement of industry in the process of developing a convention to which only states are parties.⁴⁰ This did not at first seem feasible: industry and governments had become increasingly antagonistic through the 1970s and 1980s as governments imposed more onerous safety and environmental regulation.⁴¹ The industry viewed the issue of chemical weapons as a “niche problem” that did not really implicate them. But attitudes shifted following Iraq’s use of chemical weapons against Iran and Libya’s attempts to acquire chemical weapons.⁴²

The civilian chemical industry, particularly in Japan and the United States, was alarmed when reports indicated that the source of the chemical weapons used by Iraq was not the military complex of the Soviet Union, as was originally thought, but rather the international market.⁴³ Fearing a public relations disaster, and responding to surveys in the United States that showed that the image of the chemical industry was worse than that of tobacco, the industry felt compelled to become more proactive.⁴⁴ By the late 1980s, industry lobbyists were presenting proposals for improved national and international regulation to governments in the US and beyond. Notably, NGOs served as an essential go-between for government and industry: NGOs such as the Stockholm International Peace Research Institute (SIPRI) facilitated interaction between the two groups and

undertook research that made the case that an effective CWC could not be achieved without industry involvement.⁴⁵

After a decade of negotiations, the Conference on Disarmament agreed to the text of the CWC, which was adopted by the United Nations General Assembly in November 1992.⁴⁶ The CWC established the OPCW with a mandate to ensure the implementation of the CWC's provisions and to provide a forum for consultation and cooperation among states parties. The OPCW is charged with monitoring the destruction of existing stocks of chemical weapons and the facilities used to produce chemical weapons, as well as checking industrial sites to ensure that chemicals monitored under the CWC are used in accordance with the chemical weapons ban. The OPCW also promotes cooperation in the peaceful application of chemistry for the public good. Each member state establishes a national authority that serves as the national focal point for effective cooperation with the OPCW and other states parties.

Scope

The CWC prohibits all development, production, acquisition, stockpiling, transfer, and use of chemical weapons. The scope, obligations of states parties, and the verification system for the CWC's implementation are unprecedented. The six states parties that have declared chemical weapons must destroy more than 8,670,000 items—containing, in total, more than 71,000 metric tonnes of extremely toxic chemical agents.⁴⁷ The CWC also contains provisions on assistance for a state party that is attacked or threatened with attack by chemical weapons.

The OPCW is the watchdog agency that implements the CWC. The OPCW is mandated to verify the destruction of the declared chemical weapons stockpiles of member countries within stipulated deadlines. OPCW inspectors have conducted more than 5,500 inspections of chemical industry sites.⁴⁸ Implementation of the CWC is conducted through OPCW working with the member state's "National Authorities."⁴⁹ The National Authority, created by each member state, accompanies OPCW inspectors to relevant sites; the National Authorities submit initial and annual declarations; assist and protect those states parties that are threatened by, or have suffered,

chemical attacks; and foster the peaceful uses of chemistry.⁵⁰ Every state party must implement the provisions under the CWC at the national level, including by enacting penal legislation for all the prohibited activities.

Stakeholders

The OPCW is located in the Hague. OPCW member states represent approximately 98 percent of the global population and landmass, and 98 percent of the worldwide chemical industry.⁵¹

Early in the negotiation process, it became clear that without any capacity to verify compliance on the part of the civilian chemical industry, any resulting treaty would be ineffective. The chemical industry was at first reluctant to embrace negotiation of the CWC, fearing that having their sites inspected for chemical weapons would bring negative publicity to their businesses and concerned at the prospect of the loss of confidential business information. International inspections of commercial facilities were at that time unprecedented.

However, the chemical industry was ultimately persuaded that verification was needed to ensure the long-term health of their industry. Defining the specifics of the verification regime thus became one of the most trying elements of the convention negotiations. Chemical industry associations were heavily involved in the negotiations process and ultimately became strong supporters of an effective and transparent verification system. Yet even after negotiations had been completed and state parties had signed on to the convention, many in the chemical industry wondered whether the verification system would be successful.⁵²

Nonetheless, the role that industry plays in the CWC grew rather than diminished after the negotiation process was completed. The civilian chemical industry plays its most vital role in facilitating the monitoring and inspections of its facilities.⁵³ Ultimately, the initial concerns of the chemical industry regarding access to proprietary knowledge have been allayed; industry involvement has continued to grow and remains part of the structure that contributes to the success of the OPCW.⁵⁴

Standards

The standards for member states are enumerated in Article 1 of the CWC. The CWC requires each state party to destroy chemical weapons and chemical-weapons-production facilities it possesses, as well as any chemical weapons it may have abandoned on the territory of another state party. Proficiency tests are conducted on member state laboratories to select, certify, and train them for the analysis of chemical-weapons-related compounds. The OPCW secretariat supports the exchange of scientific and technical information among member states and hosts meetings of the national authorities around the world.

Sanctions

The verification provisions of the CWC affect not only the military sector but also the civilian chemical industry through restrictions and obligations on the production, processing, and consumption of chemicals considered relevant to the objectives of the CWC. The provisions are verified through a combination of reporting requirements, routine on-site inspections of declared sites, and short-notice challenge inspections. OPCW inspectors verify the consistency of industrial chemical declarations and, together with the state parties, monitor the nondiversion of chemicals for activities prohibited under the CWC.⁵⁵ Legal experts have formed regional networks to facilitate the adoption of national legislation that bans and criminalizes the misuse of chemicals as weapons. The OPCW has developed an internationally unique, peer-reviewed, and certified analytical database, containing information on more than 3,400 chemical-weapons-related compounds. This database is essential for on-site verification activities of OPCW inspection teams, and is also made available to member states.

Support

The CWC is one of the twenty-five core treaties of the United Nations, adherence to which is endorsed by the Secretary-General of the United Nations.⁵⁶ The CWC was opened for signature on January 13, 1993, in Paris by the UN Secretary-General with 130 signatory states. On October 31, 1996, Hungary became the sixty-fifth state to ratify, thus triggering the entry into force of the CWC 180 days later, on April 29, 1997.

TOXIC WASTE CONVENTION

www.basel.int

Analysis of Lessons for the Global Security Industry:

- Similar to the OIE (World Organization for Animal Health), the *Toxic Waste Convention* provides a harmonization arrangement for controlling transboundary harms arising from global industry, through coordinated national-level implementation. In addition, similar to the OIE, the *Toxic Waste Convention* may provide a surprisingly useful source of guidance to efforts to develop a global framework for the GSI.
- The success of the *Toxic Waste Convention* derives from its combination of incentives and disincentives. States are prohibited from moving toxic waste to nonsignatories; but at the same time, states are given an incentive to participate in the framework because it provides an effective, regionalized platform for capacity building in environmentally sound management of such waste—including through public-private partnerships.
- Such a combination of trade restrictions and capacity-building assistance might prove effective as a basis for drawing a wide grouping of states into an analogous framework for the global security industry, which would supplement their domestic regulatory efforts.

Story

The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* (*Basel Convention*) regulates the transboundary movement and the environmentally sound management (ESM) of hazardous waste through national implementation of agreed standards. The *Basel Convention* is an intergovernmental harmonization initiative that serves as a platform for cooperation on toxic-waste transport and disposal. Notably, this framework also includes strong positive incentives for states to become part of the regime, including market access and capacity-building assistance.

The adoption of the *Basel Convention* followed a period of increased environmental regulation in industrialized countries during

the 1980s, which led to a rise in the cost of toxic-waste disposal. To avoid these increased costs, so-called toxic traders began shipping toxic waste to developing countries in Africa, Eastern Europe, and other regions. Toxic ships, such as the *Katrin B* and the *Pelicano*, which traveled from country to country searching for a place to unload hazardous waste, made headlines. International outrage over exposed incidents of toxic-waste dumping led to a call for global regulation.

The *Basel Convention* was negotiated under the auspices of the United Nations Environment Programme (UNEP) in the late 1980s before adoption in 1989. The *Basel Convention* came into force in 1992. In the first decade of the *Basel Convention's* implementation (1989–1999), efforts were focused mostly on regulating transboundary shipments. Strategic priorities for the second decade (2000–2010) place increased importance on ensuring ESM through enhanced cooperation with national authorities and regional groups.

Scope

The *Basel Convention* addresses twenty-seven categories of waste and eighteen waste streams that create hundreds of waste materials.⁵⁷ The *Basel Convention* has two pillars: the regulation of transboundary movements of hazardous waste among its parties and the obligation for parties to manage and dispose of waste through environmentally sound management (ESM). The *Basel Convention* stipulates that its parties may only make shipments to and from other signatory countries. Shipments to nonparties are illegal, as are shipments made without prior informed consent by the destination country. The *Basel Convention* requires its parties to enact national legislation to prevent and punish illegal shipments. The *Basel Convention* obliges all parties to ensure ESM and provides technical assistance to assist national authorities in doing so.

Stakeholders

The *Basel Convention* currently counts 170 countries as parties. The primary organ of the *Basel Convention* is the Conference of the Parties (COP), which sets strategic priorities and creates policy for implementation of the *Basel Convention*. The COP meets every two years and seeks decision by consensus; the COP can amend and add protocols to the *Basel Convention* if need be. The secretariat is located

in Geneva; the secretariat reports to the COP and is administered through the UNEP.

At the 2002 conference, a compliance mechanism was adopted, and a compliance committee was established. The committee consists of fifteen members drawn equally from the five UN regional groupings. *Basel Convention* Regional Centres for Training and Technology Transfer (BCRCs) facilitate regional coordination on hazardous waste management and provide training and technology transfer to assist in implementation of the *Basel Convention*. There are currently fourteen BCRCs located in the following countries: Argentina, China, Egypt, El Salvador, Indonesia, Islamic Republic of Iran, Nigeria, Russian Federation, Senegal, Slovak Republic, South Pacific Regional Environment Programme (Samoa), South Africa, Trinidad and Tobago, and Uruguay. Through the *Basel Convention* Partnerships Programme, public-private partnerships are facilitated between industry, government, civil society, and academia for constructive dialogue on effective implementation of the *Basel Convention's* ESM requirement, through information sharing, development of guidelines for best practices, and agreements or pledges of voluntary action.

Standards

The *Basel Convention* secretariat provides assistance to national authorities with the development of national legislation and helps parties build the technical capacity necessary to ensure ESM and compliance with regulations on transboundary shipments. The 2002 Strategic Plan for the Implementation of the *Basel Convention* called for a strengthening of BCRCs as regional delivery mechanisms for training and technical assistance for ESM. Special attention is paid to capacity-building needs in developing countries and countries with economies in transition. National reporting on the generation and movement of hazardous waste is required of all parties through an annual questionnaire. The secretariat compiles and presents this information in an annual report.

Sanctions

The compliance mechanism was designed to be nonconfrontational and does not impose negative sanctions. Submissions to the

committee regarding noncompliance can be made by a party regarding its own difficulties with implementation, by a party about another party's activities in contravention of the *Basel Convention*, or by the secretariat itself, which may become privy to information on implementation difficulties through national reporting. Failure to report annually can also result in activation of the compliance mechanism. The committee responds to notifications of noncompliance with advice, information on the convention, nonbinding recommendations, and, if necessary, further training and assistance to the party in question.

Support

The *Basel Convention* is funded through a trust fund made up of contributions from parties and a voluntary trust fund to assist developing countries and other countries in need of technical assistance. The BCRCs are funded by host countries through voluntary contributions and funding related to specific projects. The Partnerships and Resource Mobilization Unit of the *Basel Convention's* secretariat engages in awareness-raising with multilateral and bilateral donors on the financial needs of parties for ensuring ESM, and provides a directory of funding sources to parties and BCRCs to help identify potential donors for specific capacity-building projects related to the *Basel Convention's* implementation.

Chapter Nine

Harmonization Schemes II

This Chapter examines those harmonization schemes that we identified which rely primarily on their own participants to undertake the implementation of the standards harmonized in the scheme. Chapter Eight, by contrast, focused on those harmonization schemes that relied on agent-led implementation.

FINANCIAL ACTION TASK FORCE (FATF)

www.fatf-gafi.org

Analysis of Lessons for the Global Security Industry:

- The Financial Action Task Force (FATF) provides a pre-eminent example of how states can marry: (1) domestic regulation of a sensitive cross-border industry; with (2) peer reviews; and (3) the positive incentive of market access, in ways that encourage laggard states to improve their own domestic regulation.
- However, the FATF experience also makes clear that, to be truly effective, such a framework will need to supplement condemnation of ineffective state regulation with (4) capacity-building assistance to those states, to enable them to better regulate dangerous cross-border commercial activity. Without such assistance, the FATF has learnt, such harmonization arrangements risk being seen as elite clubs and creating resentment among those they exclude, however effective and legitimate the standards the groups enforce.
- The FATF also serves a warning to the GSI of the limitations of such harmonization arrangements: since such arrangements tend

to focus on participants' implementation of the standards, the arrangements may do little to remedy the grievances of third parties for harms resulting from ineffective implementation. One solution is for the framework to make participants' own remedying of such grievances a specific aspect of compliance with the group's own standards. Another solution might be to require that participants refer certain types of grievances to other enforcement bodies, such as state police and judicial bodies.

- This may mean that any GSI club or harmonization arrangement should adopt specific standards regarding its members' obligations (whether states or PMSCs) in the case of third-party grievances against PMSCs, especially where those grievances involve allegations of violations of human rights and international humanitarian law (IHL).

Story

The Financial Action Task Force (FATF) is an ad hoc body created by the Group of 7 (G7) countries in 1989 to draw up and implement measures to counter money-laundering and terrorist financing. The FATF is composed of thirty-two member states, two observer states, and six organizations that are classified as associate members. It includes a small secretariat based at the Organization for Economic Cooperation and Development (OECD) headquarters in Paris.

FATF aims to promote the implementation of a total of forty-nine recommendations relating to the regulation of financial transactions—forty original recommendations on money-laundering, plus nine additional recommendations on terrorist financing. Compliance with the recommendations is monitored through self-assessment and a peer-review mechanism. Failure to comply can result in a range of sanctions, including suspension of membership.

The FATF recommendations now also carry significant influence beyond the FATF membership, and are considered the global standard for countering money-laundering and terrorist financing. Nonmember states have implemented the FATF recommendations standards to avoid being classified by FATF as a “non-cooperative country and territory” (NCCT). FATF members discourage financial institutions in their countries from dealing with financial institutions

in NCCTs, because they are seen as vulnerable to money-laundering and terrorist financing.¹ This creates a positive incentive for countries that have been blacklisted to reform domestic regulation to comply with the FATF recommendations. Twenty-three countries were listed as NCCTs in 2000–2001; by October 2006, all had been de-listed. This blacklisting process has, however, been subject to intense criticism, for failing effectively to raise standards and protect the international financial system against money-laundering and for disregarding the local conditions and capabilities of countries on the blacklist.² Such criticisms have led FATF to focus increasingly on providing capacity-building assistance.³

The FATF recommendations are used as a guide by international financial institutions such as the International Monetary Fund (IMF) and the World Bank for anti-money-laundering and counterterrorist financing assessments. The FATF's monitoring process is conducted in cooperation with both institutions.

Scope

FATF aims to address all financial transactions in the banking and securities sectors. The transactions covered may be conducted through traditional channels (e.g., banks and other financial institutions, casinos, jewelry shops), and nontraditional means (e.g., the internet). The obligation to implement FATF standards rests primarily on states through their ministries of finance and related government agencies. On the implementation side, the framework addresses all government and private entities that engage in banking and quasi-banking functions, as well as entities and processes that can be used by criminal organizations and terrorist groups to transfer funds, such as real estate companies, jewelry stores, casinos, and international trade.

Stakeholders

FATF is a membership organization: its standards are implemented and enforced directly by its membership, which also provides the FATF's strategic direction.⁴ Membership is agreed by the thirty-two existing member states, based on criteria such as the strategic importance of the country, its demonstration of a commitment to undergo peer review ("mutual evaluation"), and three internal implementation steps: criminalizing money-laundering and terrorist

financing; requiring financial institutions to identify their customers, keep customer records, and report suspicious transactions; and establishing an effective financial intelligence unit.

FATF does not prescribe the specific measures that states should take. However, it expects states to have, at a minimum, the appropriate legislation to enable effective regulation and supervision of financial institutions, the measures to enable FATF's administrative and judicial authorities to share information with international counterparts, and resources allocated for anti-money-laundering and counterterrorist financing mechanisms.⁵

FATF also operates through five "FATF-style Regional Bodies" (FSRBs): the Asia Pacific Group on Money Laundering, the Caribbean Financial Action Task Force, the Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, the Financial Action Task Force on Money Laundering in South America, and the Middle East and North Africa Financial Action Task Force. Countries undergo peer reviews by other countries within their FSRB, increasing their confidence in the evaluation process.

Standards

The FATF recommendations represent international standards for state regulation of the financial sector, to ensure that financial institutions and other relevant organizations are taking the due diligence and other administrative steps needed to protect the international financial system against money-laundering and terrorist financing. They consequently supplement and reinforce a number of international instruments designed to counteract organized crime and terrorism, including the *UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988), the *UN International Convention for the Suppression of the Financing of Terrorism* (1999), and UN Security Council Resolution 1373 (2001). The recommendations have been revised on a number of occasions to ensure they deal adequately with evolving clandestine illicit financing techniques.

Member-country compliance with the FATF recommendations is monitored in two ways: self-assessment and mutual evaluation.

Every member discloses the status of its implementation of the forty-nine recommendations by replying to an annual questionnaire. The information is compiled by the FATF secretariat and analyzed by a team of assessors—legal, finance, and law-enforcement experts from the FATF member countries and the secretariat.

This annual self-assessment process is supplemented by a peer review or “mutual evaluation” mechanism, which serves as a process of mutual learning. The evaluation is conducted on-site by a four-member FATF team composed of legal, financial, and law-enforcement experts from other member countries. Over roughly two weeks, this team studies all relevant laws, regulations, and state instruments and holds comprehensive meetings with government officials and the private sector. The evaluators are guided by a set of procedures laid out by FATF in a handbook for countries and assessors to ensure fair, proper, and consistent evaluations.⁶ The findings from the mutual evaluation are compiled by the FATF secretariat, and the summary is published on the FATF website. While FATF members have agreed in principle to make these mutual evaluation reports public, the ultimate decision is left to the evaluated member country. The full findings are discussed by the FATF plenary and are made available to all FATF members and observers.

FATF is also unusual for its evaluation of nonmembers. In 2000–2001, FATF established four regional review groups (Americas, Asia/Pacific, Europe, and Africa/Middle East) that selected and evaluated forty-seven jurisdictions. Of these, twenty-three were listed as NCCTs. (No countries have since been blacklisted.) FATF teams assessed these jurisdictions’ domestic regulatory arrangements against the forty-nine FATF recommendations and provided draft reports to the jurisdictions for their comment, before finalizing the report. Jurisdictions were listed as NCCTs if the evaluation found the following: (1) loopholes in financial regulations, (2) obstacles raised by other regulatory requirements, (3) obstacles to international cooperation, and (4) inadequate resources for preventing and detecting money-laundering activities.⁷ NCCTs can be de-listed if they address these shortcomings. NCCTs’ progress in this regard is monitored by their respective review groups through the collection and analysis of an NCCT’s implementation plan and its supporting

documents, as well as through another on-site visit. An NCCT country is de-listed when its review group is satisfied with the country's reforms and when the group's recommendation for de-listing is approved by the FATF plenary, though FATF cautions that de-listing does not indicate a perfect anti-money-laundering system.

Following criticism of this process, in 2006 FATF launched a new, more collaborative monitoring system called the international cooperation review group, designed to engage more closely with vulnerable jurisdictions before condemning them. Since 2007, the FATF plenary has made warnings on deficiencies in Pakistan, Turkmenistan, São Tomé and Príncipe, Iran, Uzbekistan, and the northern part of Cyprus. In the latter three areas, FATF has directed its members to advise their financial members of the risks from these deficiencies.

Sanctions

Such potential market restrictions represent the negative sanctions that follow from blacklisting by FATF. Recommendation 21 stipulates that

[f]inancial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF recommendations. ... Where such a country continues not to apply or insufficiently applies the FATF recommendations, countries should be able to apply appropriate countermeasures.

Countermeasures entail increased surveillance of financial transactions in these countries. FATF has at various points recommended that its members apply countermeasures against Myanmar, Nauru, and Ukraine.

Support

The FATF is headed by its president, who runs the organization for a one-year term. The president is supported by a secretariat based at the OECD headquarters in Paris and is advised by the seven-member steering group. The group includes representatives of all categories of the FATF membership as well as the immediate past president and the

president-designate. The operations of the task force and those of the secretariat are funded by contributions from member-countries based on an OECD scale.

While FATF is autonomous from the G7 (now G8), the group continues to have a significant impact on FATF. The FATF recommendations are also lent particular weight by their incorporation into the practice of the IMF and World Bank, and by explicit support (under Chapter VII of the UN Charter) from the UN Security Council.⁸ However, FATF has been criticized for being “undemocratic” and suffering a “worldwide legitimacy deficit” as a result of its imposition of regulatory standards on nonmembers.⁹ At the same time, some also point out that it is difficult to ascertain the impact of FATF’s work, and suggest that it may, in fact, be ineffective in deterring the movement of illicit funds.¹⁰

EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

www.eitransparency.org

Analysis of Lessons for the Global Security Industry:

- The Extractive Industries Transparency Initiative was pioneered by the UK government, working with industry, as a response to civil society pressure following revelations of corporate complicity in host-state governmental corruption. The EITI aims to bring greater transparency to government dealings with actors in a powerful global industry.
- The EITI demonstrates that a framework backed by developed countries and multilateral institutions can assist developing country governments to build regulatory capacity.
- It also suggests that a harmonization framework that focuses on improving national regulation through states committing to follow a standardized regulatory process, rather than to specific regulatory outcomes, may add value for states, and for other stakeholders. This may be one kind of global framework that is feasible and attractive to stakeholders in the GSI.

- However, the EITI also demonstrates the limits of such a process-oriented approach, absent specific incentives for participation. Six years after its establishment, the vast majority of major extractive industry producing countries are not participants in the EITI, leading to a risk of free-riding by extractive companies: the largest extractive multinational enterprises may benefit from association with the EITI, without it having a significant effect on their operations in the countries where the enterprises actually do most of their business. The GSI should be careful to avoid a similar outcome.

Story

The Extractive Industries Transparency Initiative (EITI) is a voluntary initiative, established by the UK government in 2002 and headquartered in Oslo, Norway, which aims to improve transparency and accountability in the extractives sector through the verification and full publication of company payments and government revenues from oil, gas, and mining. The EITI creates standards that states agree to implement based on a set of principles developed by the participants in the EITI framework.

The UK government's decision to establish the EITI in 2002 was in part the result of political pressure generated by NGO exposure of the complicity of oil and banking multinational enterprises in host-state governmental corruption. In 1999, the NGO Global Witness published a report exposing how the refusal to release financial information by oil companies aided and abetted the mismanagement of funds by corrupt governments.¹¹ Global Witness, along with other NGOs, decided to mount a worldwide campaign calling for all natural resource companies to disclose their payments to governments in every country of operation.¹²

Scope

While the EITI describes itself as a “coalition of governments, companies, civil society groups, investors and international organizations,”¹³ implementation of the EITI principles is carried out by states. The EITI seeks to have fifty-three natural-resource-rich states¹⁴ in the world implement the transparency standards contained in the EITI Principles.¹⁵ To become a “candidate country,” a state must first meet

four sign-up indicators: it must issue a government announcement; commit to working with all stakeholders; appoint an implementation leader; and compose, agree, and publish a work plan.¹⁶

The EITI framework focuses largely on the process of becoming transparent. While the specifics of the implementation process depend on the particularities of each individual country, all countries must adhere to six overarching criteria,¹⁷ relating to the following: (1) publication of extractive industry payments and revenues; (2) auditing of such payments and revenues to international standards; (3) reconciliation of such payments and revenues; (4) application of these arrangements to all companies, including state-owned enterprises; (5) involvement of civil society in the design, monitoring, and evaluation of the process; and (6) a public, financially sustainable work plan for the five previous steps, with assistance from the relevant international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints. Guidance regarding the implementation process can be found in the EITI Sourcebook.¹⁸

Twenty-three countries have, so far, achieved candidate status.¹⁹ However, as the process is still in its infancy, none of these countries has yet completed a “validation” that would make them a “compliant country.” In theory, a country must be validated within two years of becoming a candidate. Upon becoming compliant, a country must be revalidated at least once every five years.

All other actors—including companies, civil society organizations, and nonimplementing countries—can become “supporters,” by making a clear public endorsement of the EITI.²⁰ Supporting companies must make a clear public commitment to the EITI, and undertake certain internal implementation measures such as assigning managerial responsibility on EITI issues within the company. Governments can also assist the initiative by providing political, technical, or financial support. Thirty-seven of the world’s largest oil, gas, and mining companies support and actively participate in the EITI process.²¹ The World Bank,²² the G8,²³ and the UN General Assembly²⁴ have also endorsed the EITI.

Stakeholders

Established in September 2006, the EITI board is responsible for the organization's overall development and strategic direction. The board makes recommendations to a biennial EITI conference, and is supported by a small EITI secretariat located in Oslo, and hosted by the government of Norway.²⁵ The secretariat is an independent body solely accountable to the EITI board.²⁶ The board consists of twenty members representing five constituency groups: implementing countries, supporting countries, civil society organizations, industry, and investment companies. The board meets two to three times a year.

Standards

The EITI operates based on twelve principles agreed to in June 2003.²⁷ The Principles address the transparency of payments made by extractive companies and revenues received by governments. The EITI does not monitor how this money is spent, or the broader social impacts of the extractive industry in implementing countries; the EITI focuses solely on transparency in financial reporting and management.

Sanctions

There are no specific incentives attached to participation in the EITI, but support for the EITI by the World Bank and bilateral donors does appear to signal improved access to international finance for implementing countries. Becoming an EITI-compliant country may also create governance conditions that inspire greater market confidence among private investors, and ultimately lead to reduced investment risk and improved creditworthiness. Increasing the amount of information in the public domain about those revenues that governments manage on behalf of citizens should also make governments more accountable. Yet, six years after its creation, the EITI's participants do not include any of the top ten producing countries of oil, gas, coal, copper, lead, nickel, aluminum, or gold.

Complaints about implementing country or supporting company conduct can be raised through the "validation" process, although this system has yet to be activated. The intention is that the validator for the candidate country will work with concerned groups to resolve these complaints. If they cannot be resolved, it should be noted in the

validator's report. Serious disagreements with regard to the validation process are to be presented to the EITI board and chair, who will try to resolve them. The board and chair have the authority to reject complaints that they consider to be trivial, vexatious, or unfounded.

The EITI has no formal grievance mechanism. Compliant countries must be reviewed every five years, which would allow for allegations of misconduct to be tested—but since there are as of yet no compliant countries, this remains hypothetical.

Support

The EITI international secretariat is responsible for turning the EITI board's policy decisions into action and for coordinating worldwide efforts in implementing the EITI framework, including between supporting countries and assistance providers such as the World Bank.²⁸ The secretariat is funded by supporting countries and supporting companies. Implementing countries pay for the validation of their EITI process.

The international community provides support both bilaterally and through the EITI Multi-Donor Trust Fund, which currently funds activities²⁹ in more than twelve countries.³⁰ This fund is managed by the World Bank, and is contingent upon country-specific grant agreements, signed between the recipient country and the World Bank, which build on the EITI Principles.

GLOBAL REPORTING INITIATIVE (GRI)

www.globalreporting.org

Analysis of Lessons for the Global Security Industry:

- The Global Reporting Initiative (GRI) is a framework developed through cooperation between civil society actors and investors, originally in North America, but expanded globally through partnership with the UN Environment Programme since 1999. The GRI provides for harmonized, voluntary corporate reporting on social, environmental, and human rights-related performance indicators.

- The GRI's guidelines offer a useful model for developing any GSI reporting mechanism as part of a broader global framework. GRI guidelines would first require tailoring to the GSI, in particular to take into account its use of force and the accusations of ongoing violations of human rights and IHL by PMSC personnel.

Story

The Global Reporting Initiative (GRI) is a private-sector-led network based in Amsterdam, which develops sustainability reporting guidelines for business entities. The GRI's aim is to help ensure that companies operate in a sustainable manner and to encourage transparency in their performance, through self-reporting against specific performance indicators. These indicators are set out in the sustainability reporting guidelines, a set of reporting principles that is currently used by more than 1,500 companies on a voluntary basis.³¹ The third version of the guidelines—known as “G3”—was released in 2006. These guidelines cover reporting on the impact of business operations on a range of sustainability issues such as the environment, society, labor, and human rights.

The GRI was originally formed in 1997 as a division of the Boston-based nonprofit group, CERES.³² The GRI released its first sustainability reporting guidelines in 2000. The GRI became a global platform through a partnership with the UN Environment Programme in 1999, after a lack of interest in the framework in North America prompted a turn to international markets.³³ The GRI was officially decoupled from CERES in 2001, and the following year, the GRI's operations moved to the Netherlands, where the group remains headquartered.

Scope

The GRI guidelines are intended to be applicable to all types of business activities conducted by private and public organizations, though the guidelines also provide for the development of tailored sector-specific standards (which currently cover food processing, airports, logistics and transportation, mining and metals). A sustainability report based on the GRI framework “discloses outcomes and results that occurred within the reporting period in the context of the

organization's commitments, strategy, and management approach." These reports can be used for "benchmarking and assessing sustainability performance with respect to laws, norms, codes, performance standards, and voluntary initiatives; demonstrating how the organization influences and is influenced by expectations about sustainable development; comparing performance within an organization and between different organizations over time."³⁴ However, the framework simply provides guidance on good reporting practices; it does not provide a framework for assessing reports once they have been issued.

Stakeholders

The framework has approximately 450 organizational stakeholders (OS), or organizations or individuals who are full members of the GRI framework, including nonprofit organizations, private corporations, think tanks and research centers, and public agencies. OS are eligible to vote and participate in the technical activities of the GRI. The GRI holds workshops and training sessions for its guidelines, as well as providing written guidance materials on the guidelines.

Standards

The guidelines were developed—and are revised—through a consensus-seeking process by a pool of participants representing a range of sectors, which constitute the working group. The working group drafts revisions, which are released for public comments for ninety days. After the public consultation phase, any comments are incorporated into the final draft, and the finalized guidelines are reviewed by two internal bodies³⁵ before the guidelines are taken to the board of directors. The revised guidelines are released after being approved by the sixteen-member GRI board.

The GRI reporting framework includes a human rights performance indicator covering investment and procurement practices, nondiscrimination, freedom of association and collective bargaining, forced and compulsory labor, security practices, and indigenous rights. The indicator protocol on security practices requires the reporting organization to: (1) identify the total number of security personnel the reporting organization employs directly, (2) report the percentage of security personnel who have received formal training in the organization's policies on—or specific procedures for—human

rights issues and their application to security, and (3) report whether training requirements also apply to third-party organizations providing security personnel.³⁶

Sanctions

The GRI framework does not specifically provide for enforcement arrangements, since it focuses on harmonizing voluntary sustainability reporting. However, the framework does leave room for certification of reports by third parties, or by GRI itself.³⁷

Support

The GRI's activities are funded by contributions from OS as well as grants from governments. Some corporate stakeholders have complained that the guidelines' indicators are too complex and require a large volume of data, which may discourage other corporate stakeholders from taking part. Some have also queried how and whether the guidelines allow for tracking and analyzing performance indicators over time.³⁸

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

www.oecd.org

Analysis of Lessons for the Global Security Industry:

- The OECD Guidelines for Multinational Enterprises were originally developed by OECD states in the 1970s to provide clarity to OECD-based multinationals in the face of fragmented guidance coming from different states on what standards were expected of multinationals' performance. But in more recent years, the Guidelines have, under pressure from civil society, been transformed into a weak grievance mechanism.
- The Guidelines now provide a potentially useful framework for addressing specific issues of noncompliance arising from the conduct of multinational PMSCs operating in or out of forty countries, including the major PMSC service exporters, through the involvement of home states. Indeed, the Guidelines have

already been successfully used to address one case of PMSC misconduct.

- The Guidelines framework provides the basis for states to share experiences and develop a community of learning with respect to regulating multinational PMSC conduct, through decentralized dispute resolution by states' National Contact Points (NCPs), and centralized interpretation by the OECD Investment Committee.
- However, (1) the lack of specificity of the Guidelines, (2) the extremely wide discretion left to participating states in organizing the National Contact Points that address specific issues of noncompliance, (3) the fact that in many cases the states that provide NCPs are themselves PMSC clients, giving rise to potential conflicts of interest, and (4) barriers to access to NCPs for third parties in theaters of PMSC operation, all suggest that the Guidelines framework will fall short of providing a sufficient framework in and of itself for impartial, credible and effective standards implementation and enforcement for the GSI. It may, however, provide a useful model of how such a decentralized harmonization arrangement might work—and what aspects of its own arrangements to avoid.

Story

The Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD MNE Guidelines) are recommendations for good business practices made by governments to multinational enterprises (MNEs) operating in or from adhering countries (and their foreign subsidiaries). These Guidelines were created in 1976 as part of the *Declaration on International Investment and Multinational Enterprises*, against the backdrop of discussions on a draft UN Code of Conduct on Transnational Corporations. Many newly-independent developing countries were concerned about their relations with MNEs. The Guidelines may have been a strategy on the part of OECD states to protect the business interests of their MNEs and maintain a strong collective bargaining position in UN code negotiations, or even to pre-empt the code, which eventually collapsed in 1992. The Guidelines have been revised on five

occasions, most recently in 2000, in response to the collapse of the Multilateral Agreement on Investment (MAI) negotiations.

The Guidelines provide voluntary principles and standards for responsible business conduct in a variety of areas including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. While the Guidelines initially served to protect the interests of MNEs through the principle of “national treatment,” in subsequent decades the focus of the Guidelines has shifted to accountability of MNEs. The chapter on environmental protection was added in 1991, following the Union Carbide industrial accident in Bhopal.³⁹

The forty adhering countries are the source of the vast majority of the world’s foreign direct investment (FDI) and the majority of the world’s largest MNEs are located in them. Each country provides a national contact point (NCP) responsible for promoting the Guidelines and addressing issues of noncompliance, known as “specific instances.”

Implementation of the Guidelines is monitored by the OECD Investment Committee (CIME), situated in Paris. MNEs are represented in the process by the Business and Industry Advisory Committee (BIAC), whose members are major business organizations in the thirty OECD member countries. The Trade Union Advisory Committee to the OECD (TUAC) represents labor; it is affiliated with fifty-eight national trade union centers in the thirty OECD countries, representing some 66 million workers. These advisory bodies are involved in monitoring and reviewing the Guidelines. NGOs also increasingly contribute to this process, particularly through OECD Watch. Their participation is, however, voluntary.

Scope

The Guidelines cover many aspects of the impacts of corporate behavior. The Guidelines directly address information disclosure, employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, competition, and taxation. The Guidelines also emphasize corporate social responsibility and state that MNEs should “[a]bstain from any improper

involvement in local political activities,”⁴⁰ and act with due consideration for human rights. The adhering countries have made a binding commitment to implement the Guidelines; however, they are nonbinding for the MNEs. The Guidelines are enforceable only among MNEs operating from the OECD member states and the ten non-OECD countries that have signed on to the Guidelines.⁴¹ To ensure as wide a scope as possible, the Guidelines abstain from providing a precise definition of a multinational enterprise, but MNEs are expected to take responsibility for the entire supply chain of their operations.

Stakeholders

The CIME oversees and offers interpretation of the Guidelines in consultation with participating countries, as well as BIAC, TUAC, and NGOs. The CIME produces an annual report on the Guidelines, and is responsible for publicizing them. Each participating state provides a National Contact Point, which the states may organize as they choose. NCPs provide a first point of contact for the Guidelines: NCPs are expected to make the Guidelines known and available through online information. It is their role to inform prospective investors (inward and outward) about the Guidelines, raise awareness about the Guidelines more generally, and respond to any enquiries about the Guidelines. NCPs are also responsible for dealing with “specific instances” of alleged noncompliance.

MNEs participate in the Guidelines through BIAC, while labor federations are represented by TUAC. Neither is expected to participate individually except with respect to a “specific instance.” MNEs are encouraged to promote the Guidelines within their own organizations and the communities in which the MNEs operate, but the extent to which they do so is unclear. BIAC publishes advisory documents on the Guidelines, which are available on its website. The TUAC publication *The OECD Guidelines on Multinationals: A Users Guide* is widely disseminated and used by NGOs, as well as labor organizations.⁴²

NGOs and civil society are invited to participate in the Guidelines framework. Oxfam, ANPED, and OECD Watch publicize the Guidelines and their associated grievance mechanisms. A number of NGOs have published “starter kits” for using the Guidelines. While

there is no civil society equivalent of BIAC or TUAC, OECD Watch has become increasingly influential in promoting the Guidelines and monitoring their implementation, to the point of taking on a watchdog role. OECD Watch has been influential in the revision of some NCP structures in the recent past, and continues to be so.⁴³

The extent to which this publicity filters down to communities where MNEs operate, particularly in developing countries, is unclear. NGOs have explicitly addressed the apparent lack of community awareness in relatively few cases.⁴⁴

Standards

The Guidelines set out general statements on responsible business conduct. Observance is voluntary and not legally enforceable. The Guidelines emphasize that obeying domestic law is the first obligation of businesses.⁴⁵ The standards address labor rights, including child labor and forced labor. The standards also touch upon general human rights, although the protection of third-party interests is not clearly defined. The Guidelines cite a number of international and legal policy frameworks, including the *Universal Declaration of Human Rights* (1948), the *ILO Declaration on Fundamental Principles and Rights at Work* (1998), and the *Rio Declaration on Environment and Development*. The Guidelines also address the rights of consumers. The right of the MNEs to operate globally, according to open market standards and nondiscriminatory government regulation, is also stressed, through the principle of national treatment.

Alongside OECD member states, BIAC and TUAC were extensively involved in drafting and reviewing the Guidelines, responsibility for which lies with the CIME. They have been revised on five occasions. During the 2000 review, NGOs were consulted with OECD Watch taking a particularly influential role. Public comment was invited via the internet.

All of the institutions involved in the OECD Guidelines are encouraged to promote and monitor the Guidelines. According to the OECD, forty-nine extractive industry companies now cite the Guidelines.⁴⁶ However, citing the Guidelines does not always translate into implementation. Civil society groups, such as OECD Watch, have monitored effectively, if only episodically.

The Guidelines are criticized for being vague, and leaving the NCPs too much room for interpretation. Weak wording makes it easier for NCPs to summarily reject “specific instances.” The Canadian NCP refused to investigate alleged violations of human rights by Anvil in the Democratic Republic of the Congo, claiming that it would overstep its role in doing so, although the NGO Sherpa points out that the information supplied would not require the NCP to further investigate.⁴⁷ The Guidelines urge MNEs to “respect human rights,” rather than to abide by a specific set of standards and obligations. This could explain why cases brought based on the Guidelines’ general principles have been much more likely to collapse. Cases that invoke the employment and industrial relations section of the Guidelines, which are based on the ILO’s detailed set of standards, are far more likely to succeed.

Sanctions

There are no incentives for MNEs to implement the Guidelines’ standards, beyond reputational benefits and improved standards of corporate governance. Where allegations arise of MNEs not respecting the Guidelines, complainants may take the “specific instance” to the NCP of the state where the grievance occurred or of the home state of the MNE (or its subsidiary) in question. Any “interested party” can in theory activate this mechanism. There are no limits on the time within which the mechanism can be activated. No resource assistance is provided to grievance-bringers. However, NCPs subsidize the costs. After an issue is brought to the attention of the NCP, it carries out an investigation, and if necessary requests information from the complainant, the accused company, or other sources. The NCP may also hold meetings with either party. Allegations are resolved through mediation led by the NCP, which may consult with the CIME.

While states enjoy wide discretion in how they organize their NCPs, the Guidelines require NCPs to adhere to four principles: accessibility, transparency, visibility, and accountability. Yet there are concerns about whether the framework as a whole respects these principles. Accessibility is sometimes limited to the appeal level because grievance-bringers can access the CIME only through a trade union or business council. The confidentiality of the proceedings renders transparency an issue. Once the proceedings are concluded,

the results are publicly available, “unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.”⁴⁸ There is no specific provision for protecting the identity of the grievance-bringer. Rees and Vermijs note that in a few cases, threats of retaliation, or participants’ perception that such a threat exists, have influenced the complaints procedure, and in one case, have made mediation impossible.⁴⁹

NCP dispute resolution can be effective. In 2005, five NGOs filed a joint complaint with the NCPs in Australia and Britain about the violation of international human rights conventions by the PMSC Global Solutions Limited in the running of Australian immigration detention centers.⁵⁰ The Australian NCP initiated a dialogue, and the company eventually agreed to ensure a greater role for external human rights experts in staff training, monitoring, and auditing.

If the parties cannot reach an agreement after mediation, the NCP is expected to make a public statement about the case, including recommendations for remedial actions taken by the company. However, these recommendations may remain confidential subject to the broad caveat described above. In 2005, the Norwegian NGO ForUM launched a complaint with the Norwegian NCP against a Norwegian engineering company, claiming its subsidiary was violating the Guidelines’ human rights standards by providing technical assistance to the US detention camp at Guantánamo Bay. The NCP ruled that the subsidiary’s activities “can be said at least partly to have affected inmates in the prison,” and “strongly encouraged” the company to draw up ethical guidelines.⁵¹ The company subsequently withdrew from Guantánamo and has since developed a code of practice.⁵²

If an NCP is suspected of incorrectly interpreted the Guidelines, or of inadequately fulfilling its responsibilities, an appeal may be lodged through the CIME. However, only an adhering country (other than the original grievance bringer), NCP, BIAC, or TUAC can lodge appeals. The Guidelines do not provide for negative sanctions. Nor is any specific provision made for the reference of the dispute to other grievance mechanisms, even where potentially criminal conduct is alleged.

The major criticisms of the Guidelines are their lack of specificity, their nonbinding nature, the lack of any enforcement mechanism, the varying quality of NCPs, and a “creeping bias toward blanket confidentiality” among NCPs.⁵³ The placement of many NCPs in the investment departments of their respective governments’ trade and finance ministries⁵⁴ has accentuated this trend, as has officials’ apparent lack of human rights and legal training.⁵⁵ Inconsistency across NCPs has also led to confusion regarding interpretation of the Guidelines. One German NGO was told it would have to produce a power of attorney before a case concerning an MNE’s operations in Indonesia could be submitted.⁵⁶

Poor handling of cases has, on occasion, served as a spur for restructuring NCPs. The UK NCP was restructured in 2006, and is now run by the joint Department for International Development (DFID)/Department of Business, Enterprise & Regulatory Reform (BERR) Trade Policy Unit (TPU) and the DFID Business Alliances team. The Dutch NCP now has two full-time employees and answers to an NCP Council. While this demonstrates a capacity for improvement, in the current state, NCP procedures remain inconsistent and often ineffective. Absent effective oversight by the CIME, improved NCP performance depends entirely on the political will of individual states. The lack of clearly specified timelines for NCPs to act upon complaints has also led to drawn-out processes: one case submitted to five NCPs in April 2003, regarding British Petroleum’s role in the Baku-Tbilisi-Ceyhan oil pipeline, is still pending.⁵⁷

Support

Since the revision in 2000, the OECD Guidelines have risen vastly in profile and status, in line with a general trend internationally toward greater corporate social responsibility.⁵⁸ This increase in prominence has been accompanied by a corresponding increase in use. Since the Guidelines were reviewed in 2000, approximately 130 cases have been raised with NCPs.⁵⁹ A report to the UN Security Council by the panel of experts appointed to investigate the illegal exploitation of natural resources and other forms of wealth in the Democratic Republic of the Congo argued (controversially) that some eighty-five MNEs operating in the country were in violation of the Guidelines.⁶⁰ The Guidelines’ framework is highly decentralized. States bear their own NCP costs. As

a result, the sophistication of NCPs varies widely between states. Centralized components of the framework, such as the CIME, are financed out of the broader state-based financing of the OECD.

EUROPEAN UNION CODE OF CONDUCT ON ARMS EXPORTS

Analysis of Lessons for the Global Security Industry:

- The European Union Code of Conduct on Arms Exports provides an example of intergovernmental harmonization arrangements designed to deal with the social impacts—including human rights impacts—of a global security-related industry.
- The story of the EU Code suggests that such intergovernmental frameworks may emerge from a combination of the following: (1) civil society pressure on governments to improve their respect for certain standards, in their dealings with security-related export industries, and (2) a realization by governments of the benefits of intergovernmental transparency and a level playing field in their own dealings with such industries.
- The EU Code's reliance on national implementation, combined with measures for information-sharing among its members, has gone some way toward creating a European political *acquis* relating to national implementation of human-rights-related criteria in export decision making.
- However, the EU Code's weakness, as an unenforceable, purely political statement, also shows the limits of such an approach to standards implementation and enforcement.
- The EU Code itself will not form the basis for effective standards implementation or enforcement in the GSI, either inside or outside the EU. This is because: (1) the EU Treaty prevents the EU from directly regulating the military trade, (2) PMSC services sometimes fall in a gray area between security and military services and so it may be difficult to determine whether they could lawfully be regulated by the EU, (3) the Code's

geographic restrictions allow easy circumvention through the use of foreign subsidiaries and re-exports, and (4) a number of governments seem likely to oppose the extension of the Code to PMSCs.

- Other steps that EU member states might take to improve their dealings with PMSCs could have positive knock-on effects throughout the global market. But these will not provide a standards implementation and enforcement framework for the GSI as a whole. And they could in fact increase the risk of trans-Atlantic regulatory fragmentation, producing regulatory arbitrage by PMSCs.

Story

Adopted on June 11, 1998, the European Union (EU) Code of Conduct on Arms Exports is a politically binding agreement under which EU member states commit to considering eight criteria when granting licenses for the export of arms from their territories. The Code aims to set high common standards for the management of and restraint in arms exports from the EU, in particular by ensuring respect for standards relating to a variety of social impacts—such as nonproliferation and conflict prevention, and including the potential impact on human rights—flowing from arms exports. It has occasionally been suggested that the Code might provide a model for regulation of the GSI—either in Europe or further afield—not least because the EU Code and related arrangements already touch on the export of a limited range of military and security services.⁶¹ This section examines the potential of the Code as the basis of a global framework for the GSI.

Scope

EU regulatory arrangements based on the Code currently cover the export of technical assistance related to weapons of mass destruction (WMDs), dual-use items, instruments of capital punishment and torture, the brokering of arms, the export of small arms and light weapons, and the export of military services to destinations under multilateral embargo.⁶² The Code requires a political commitment from EU member states regarding the manner in which they will make arms export licensing decisions, including likely impacts on human

rights in the destination state. The Code aims to “prevent the export of equipment which might be used for internal repression or international aggression, or contribute to regional instability.”⁶³

Member states are under no legal obligation to follow the standards the Code sets—although some have introduced it, or parts of it, into their national legislation. A 2004/2005 initiative sought to have the Code adopted as an EU common position, which would oblige member states to implement it in domestic law.⁶⁴ Such a change would serve a double purpose: (1) allowing challenges of national arms export decisions within national courts and (2) requiring EU accession candidate states to bring their own domestic laws into line with the EU’s *acquis* on this issue as a condition of entry into the EU. But some states remain consistently opposed to this change.

Nevertheless, as it stands, the Code and other EU regulatory arrangements do not address the export of most of the services covered by the definition of PMSCs used in this study: the provision, training, coordination, or direction of armed security personnel. As it stands, the Code deals only with exports from EU member states to destinations outside the EU. The Code’s scope is also subject to criticism because it struggles to deal with re-exports—articles finding their way via third parties to destinations to which an EU export is prohibited.⁶⁵ Were the Code framework adapted to PMSCs, this problem would also likely arise in relation to service export licenses, especially training services: once trained, an individual can easily become a trainer passing on those skills to third parties. The Code also does not cover exports by non-EU subsidiaries of EU-based companies.⁶⁶

Stakeholders

The Code was adopted by the EU Council of Ministers in the form of a nonbinding political commitment. Code-related issues are discussed through the Council’s Conventional Arms Expert Working Group, known as COARM. Under Article 8 of the code, each EU member state is obliged to circulate, in confidence, an annual report on the state’s defense exports and implementation of the Code. COARM then reviews the operation of the Code, identifies any improvements that need to be made, and provides a consolidated annual report to the EU

Council of Ministers itself. COARM has also played an important role in identifying additional areas for regulation.⁶⁷

While non-EU member states may be affected by decisions taken pursuant to the Code, they do not participate in the framework. Furthermore, as the framework is a state-centered initiative, it does not specifically involve the military and security industries affected by the Code, though their voices remain strong in domestic decision making. Nor do NGOs and civil society representatives have a mandated role within the framework.

Standards

The eight criteria of the Code take into account a range of standards, international legal obligations, principles, and political objectives.

The criteria ensure member states' respect for international obligations with regard to nonproliferation, UN Security Council sanctions, and commitments to enforce arms embargos.⁶⁸ Criterion Two seeks to ensure respect for human rights in the final destination country, by stating that member states will:

- a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression;
- b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe, or by the EU.⁶⁹

Criterion Three commits member states to considering whether arms exports will “provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.” Criterion Four requires member states to consider whether there is a “clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim,” and provides subcriteria for use in that consideration. Criterion Five relates to friendly and allied countries, and Criterion Six to the performance of the recipient country as a good citizen in the international community. Criterion Seven relates to the risks of diversion and re-export of exported arms, and Criterion Eight

addresses compatibility with the technological and economic capacity of the recipient country (to ensure they do not unduly divert resources toward defense).

Sanctions

Member states are expected to respect these criteria in making arms export licensing decisions, and must submit annual reports detailing their implementation of the Code. All but two member states publish their reports online, although member states are not required to do so by the Code.

EU members are also required to report to each other “through diplomatic channels” when an export license has been denied based on the Code criteria. If another state intends to grant a license for an “essentially identical transaction” to one denied by another member state within the past three years, the state must first consult with the state that made the denial, to learn more regarding the state’s reasons for its decision. A central database exists to store denial notifications for export license denials and of brokering license denials.⁷⁰

By facilitating communication, the Code is intended to create a “level playing field.” But this may well be mythical: having consulted, member states are free to grant an export license anyway, if they draw different conclusions from the same information. Thus, according to the World Security Institute, while both France and the UK sell “hundreds of millions of euros of military equipment to China each year,” Germany, which has much stricter national controls, exports minimal amounts.⁷¹ EU members also continue to export arms to countries involved in civil wars or committing serious human rights abuses.⁷² No grievance mechanism exists for contesting these exports. This has led to numerous calls for the Code to be made legally binding, including from the European Parliament, and has prompted efforts to develop a broader, multilateral arms trade treaty.

Support

The Code and other EU regulatory arrangements do not currently address the export of most of the services covered by the definition of PMSC used in this study: the provision, training, coordination, or direction of armed security personnel. However, the EU Code of

Conduct is recognized by a number of commentators as a potential basis or model for EU regulation of PMSC exports. In perhaps the most detailed treatment of this concept to date, Alyson Bailes and Caroline Holmqvist argue for a range of measures supplementing the Code to both restrain PMSC exports and strengthen the EU's own dealings with PMSCs (both within its territory, and beyond). They suggest supplementing any expansion of the scope of the Code to cover PMSCs with a range of measures, including the following: (1) adoption of an EU Common Position on PMSCs, following the approach taken on trafficking, which would not only restrain PMSCs exporting from EU territory but also the activities of EU nationals outside the EU; (2) "benchmarking" of domestic measures to ensure that domestic laws enforcing international humanitarian law "grip upon" PMSC personnel; and (3) the creation of a single security market within the EU, through the adoption of a European regulation standardizing national regulatory arrangements for security services.⁷³

But Bailes and Holmqvist emphasize that one of the barriers to extending such an approach to regulation of the PMSC export market is the carve-out from EU Treaty Rules for the military trade, making the distinction between export of military and export of security services crucial (since security services can be directly regulated by the EU, but military services cannot). This distinction is often extremely difficult to apply in practice,⁷⁴ and seems likely to stand as a major obstacle to the extension of the EU Code to PMSCs.

Nor do Bailes and Holmqvist discuss the position that the UK would be likely to take on European regulation of PMSC exports. This seems particularly salient, given the UK's traditionally *laissez faire* approach and the large portion of the EU market that the UK industry represents.⁷⁵

Nevertheless, as Bailes and Holmqvist point out, there are a number of steps that European governments could take to standardize their own dealings with PMSCs,⁷⁶ which may, over time, have significant knock-on effects for the broader global security industry. US-EU interoperability considerations might even, through NATO or other mechanisms, in time influence the US to align its own regulatory arrangements with those of the EU. But such an approach will not address standards implementation issues relating to PMSCs in other

parts of the global market, and would not directly address the question of third-party enforcement of GSI standards, or the provision of accessible and effective grievance mechanisms.

EQUATOR PRINCIPLES

www.equator-principles.com

Analysis of Lessons for the Global Security Industry:

- The Equator Principles (EPs) provide an example of how financial institutions can, in the absence of effective operational guidance from states, develop best-practice standards that both these institutions and the companies these institutions finance agree to implement internally and in their business practices.
- The EPs seem particularly relevant to the GSI in thinking through how it might require its subcontractors and downstream partners to comply with standards, particularly human rights and IHL, absent states effectively discharging their legal duty to protect these rights.
- The decentralized, company-level implementation approach offered by the EPs framework reduces the transaction costs involved in standards implementation, since a centralized agent is not involved. However, this decentralized arrangement also opens participants up to charges that the EPs add little by way of transparency and accountability, and may, in fact, provide a fig leaf for state inaction.
- The GSI should be guided by the experience of the EPs and other harmonization arrangements with minimal enforcement capacity to ensure that company-based standards implementation and enforcement is complemented by additional framework components to ensure transparency, accountability—and credibility.

Story

The Equator Principles (EPs) were developed as an industry response to a civil society movement pushing financial institutions to take

greater responsibility for the social and environmental costs of projects the institutions helped to finance. The movement gained considerable weight with the signing of the *Collevocchio Declaration on Financial Institutions and Sustainability* by more than 100 NGOs during the World Economic Forum in Davos in January 2003. The *Collevocchio Declaration* outlined the role and responsibility of financial institutions to ensure sustainability in project lending. The *Collevocchio Declaration* called on financial institutions to commit to six principles in project lending: sustainability, “do no harm,” responsibility, accountability, transparency, and sustainable markets and governance.

The EPs themselves are a set of voluntary guidelines designed to provide a benchmark for financial institutions in managing environmental and social concerns in project lending activities. In October 2002, a small group of international banks, including Citi, ABN AMRO, Barclays, and West LB, in conjunction with the International Finance Corporation (IFC),⁷⁷ convened in London to develop common guidelines.⁷⁸ The first set of EPs was then launched in June 2003.

At that time, civil society groups commended banks’ acknowledgement of the social and environmental costs of lending projects in developing countries and banks’ efforts to remediate harmful effects, but many felt that the EPs did not go far enough, especially in comparison to the principles outlined in the *Collevocchio Declaration*. Continuing criticism by NGOs led to the revision of the EPs in 2006, by which time they had been adopted by more than sixty-one financial institutions from twenty-four countries, operating in more than 100 countries.

Banks that adopt the EPs agree to implement them for projects the banks are financing whose total capital costs exceed \$10 million.⁷⁹ The borrower is required to conduct a social and environmental assessment (SEA), which may result in an action plan or creation of a management system for complying with the EPs. The borrower is then required to consult with local affected communities and to fully disclose the nature of the project. The borrower is also required to establish a grievance mechanism. The borrower is required to agree to independent monitoring, the results of which are shared with the

financial institutions funding the project. Each adopting financial institution agrees to report at least once a year on the implementation of the EPs in the projects that the institution funds.

Scope

The EPs provide nonbinding guidance to financial institutions on how to ensure compliance with environmental and social standards when dealing with the beneficiaries of loans for development project financing. The EPs are designed to be applicable globally and across all industries, including the extractive industry. The EPs require lenders to ensure that their borrowers engage local communities, which may be adversely affected by the development project. However, while such engagement is a requirement of compliance with the EPs, local communities are not active stakeholders in the process, in the sense that they do not have any real influence over the scope of the EPs, their methods of implementation, or the evaluation of their effectiveness.

Stakeholders

No centralized agent manages the EP framework. Since 2007, major financial institutions adopting the EPs have shared managerial roles within the EP framework, covering issues such as administration, guiding new subscribers on adoption of the EPs, developing best practices for implementing the EPs (e.g., in loan covenant language), developing reporting procedures, improving EP governance, and undertaking outreach to export credit agencies and other financial institutions and services.⁸⁰ Previously, the EPs had no formal governance structure, functioning instead on a system of self-regulation.⁸¹ NGOs do not participate in the EP framework but have been engaged extensively in consultations, particularly during the review process for the revision of the EPs in 2006–2007. The NGO BankTrack also provides ongoing monitoring of financial institution compliance with EPs.

Standards

The EPs reference the IFC's industry-specific environmental, health, and safety (EHS) guidelines, and Chapter III of the World Bank's Pollution Prevention and Abatement Handbook (PPAH), as well as the IFC Performance Standards. The EPs were updated after the IFC

reviewed and updated its performance standards in 2006. The revision process for the EPs incorporated comments from external stakeholders, including clients, NGOs, and official agencies. The consultation process included meetings with Equator Principle financial institution (EPFI) clients and industry associations, NGOs, and environmental practitioners of export credit agencies.

Sanctions

For financial institutions, adoption of the EPs can help mitigate reputational risks stemming from the social and environmental impact of development project financing in poorly regulated markets. The EPs require that individual lenders establish grievance mechanisms to deal with concerns arising from the projects the lenders finance. However, the EP framework does not provide any minimum standards for grievance mechanisms. Monitoring is left to third parties, such as the NGO BankWatch, which exercise very limited sanctioning power over these institutions.

Principle 10 requires banks to report publicly at least once a year on their EP implementation processes and experience, including the number of transactions screened, and some information regarding the results of that screening and follow-up. However, it remains unclear what would happen if banks did not abide by this principle.

Support

The EP secretariat is held, on a rotating basis, by a participating financial institution. These participating institutions also bear the costs of managing the framework, since there is no formal systems monitoring or grievance mechanism attached to the framework as a whole.

SARAJEVO PROCESS

[www.seesac.org/reports/Code of conduct.pdf](http://www.seesac.org/reports/Code%20of%20conduct.pdf) and
[www.seesac.org/reports/Procurement guidelines.pdf](http://www.seesac.org/reports/Procurement%20guidelines.pdf)

Analysis of Lessons for the Global Security Industry:

- The Sarajevo Process was developed by civil society and industry,

in response to the absence of operational guidance from states for the private security industry in southeastern Europe. The Sarajevo Process represents an important source of guidance on standards for PMSCs and their clients in postconflict countries.

- However, the absence of strong state involvement from the beginning of the Sarajevo Process may go some way to explaining the lack of follow-through since the Sarajevo Code of Conduct and Client Procurement Guidelines were adopted in 2006, which has led to the standards being only patchily implemented and not at all enforced.
- This seems to make clear the importance of state involvement as a basis for implementing and enforcing any standards—or even developing a global code of conduct—upon which other stakeholders might agree. Since state regulatory power is often weak in postconflict settings, this may point to the need for an internationally-backed institutional framework to drive the process forward, help create local ownership, and develop local regulatory capacity—much as the Voluntary Principles framework, supported by the embassies of its state participants, has created the basis for local implementation in Colombia and Indonesia.

Story

The Sarajevo Client Guidelines for the Procurement of Private Security Companies and the Sarajevo Code of Conduct for Private Security Companies are a mutually reinforcing set of standards for the private security industry and its clients. These standards were developed to enhance the conduct and regulation of the private security industry across southeastern Europe. They are the outcome of the Sarajevo Process, in which a group of client organizations and private security providers from across Bosnia and Herzegovina (BiH) met to address the unregulated growth of the private security industry in BiH and southeastern Europe.⁸² The Sarajevo Process was convened under the leadership of the UK NGO Saferworld and the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC).

Both the Guidelines and the Code of Conduct are intended to

complement national legislation, although they emerged from the recognition that such legislation may not always be adequate. They are based on European and international best practice and draw on the Voluntary Principles on Security and Human Rights.⁸³ While the Guidelines and Code of Conduct were conceived with southeast and Eastern Europe in mind, in particular BiH, they are intended to be universally applicable. They are available in both English and Bosnian.

The Guidelines outline a three-stage voluntary procedure for clients to follow when contracting with providers of private security services, in order to enhance “any fair and transparent system of procurement” for the use of PMSCs.⁸⁴ The Guidelines encourage clients to take into account a range of factors when selecting security contractors. These include standards of internal governance, quality of service, levels of training, and adherence to national legislation and a voluntary code of conduct, as well as cost.⁸⁵

The Code of Conduct consists of a set of basic standards of professionalism and service delivery for application by all employers and employees in the private security industry. The Code of Conduct includes guidelines on the selection and recruitment of workers, vocational training, health and safety at work, nondiscrimination and relations with clients, the police, and other security companies.⁸⁶

The development of the Sarajevo Process was largely driven by Saferworld and SEESAC. A 2005 study researched by Saferworld and International Alert, in collaboration with local civil society partners, provided the impetus for the Sarajevo Process.⁸⁷ The study itself followed on from the two NGOs’ earlier research on PMSCs and the proliferation of small arms.⁸⁸

The report found that there were around 200,000 private security guards working in southeastern Europe, and that in some parts of the region the number of PMSC employees significantly exceeded police personnel. The study found that the professionalism of companies varied widely across the region: in some cases, companies had inappropriate affiliations, employed untrained staff, or engaged in malpractice. Contracts were often awarded on an informal basis or on grounds of cost alone. Formal regulation was also found to diverge widely. The report concluded that a basic set of standards was needed

for both procurement and practice of PMSCs.⁸⁹

The Sarajevo Process was convened in June–July 2006 by the Centre for Security Studies⁹⁰ and Saferworld. Additional support was provided by the Office of the High Representative (OHR) and the BiH Ministry of Security (MoS).⁹¹ SEESAC, which has a mandate from the UNDP and the Stability Pact for South Eastern Europe (SCSP),⁹² provided financial backing and technical support for the initiative.⁹³

The Sarajevo Process involved forty-five stakeholders from the Bosnian government, PMSCs, the nascent Bosnian private security industry organization,⁹⁴ the policy director of the British Association of Private Security Companies (BAPSC), client groups, and international organizations.⁹⁵ In June 2006, a roundtable event was held to discuss and review a draft code and a draft set of procurement guidelines, which had been produced by Saferworld. The British PMSC Control Risks' code of practice was incorporated into the drafts.⁹⁶ A month-long consultation period and extensive revisions resulted in the Code of Conduct and the guidelines. These were launched in September 2006.

Negotiations involved the participation of local PMSCs, from both the Federation of Bosnia and Herzegovina and the Republika Srpska.⁹⁷ These PMSCs were larger players in the Bosnian private security industry.⁹⁸ One participant recalled that local PMSCs were keen to learn the vital role of standards and self-regulation for winning the confidence of overseas investors.⁹⁹

Scope

Seven PMSCs and twenty-three clients signed up formally to the Code of Conduct and Guidelines when they were launched. They were designed with the conduct and regulation of the private security industry across southeastern Europe in mind, and developed by local stakeholders in the region. However, the Code of Conduct and Guidelines are intended to be universally applicable, and adaptable to local contexts. Any PMSC client or PMSC can use the Guidelines and Code of Conduct as the template for procurement or business practices, respectively. They may also be used by any state seeking to enhance national legislation of the private security industry. This has arguably made them a useful resource for the security community and

industry in other postconflict scenarios.¹⁰⁰

Stakeholders

The Guidelines and Code of Conduct are simply voluntary standards, and no framework for their implementation or enforcement exists. They are available on SEESAC and Saferworld's websites. The launch of the Guidelines was publicized by Saferworld through press releases, as well as through an event held in Sarajevo.¹⁰¹ Clients and PMSCs that use the Guidelines and Code of Conduct are also encouraged to publicize them, both internally, by encouraging compliance with them in contracts,¹⁰² and, externally, with civil society.¹⁰³ PMSCs are also encouraged to hold subcontractors to the Code of Conduct.

Whether any PMSCs or clients do actively promote the Code of Conduct or Guidelines is doubtful.¹⁰⁴ Since the launch of the Code of Conduct and Guidelines in 2006, Saferworld has also undergone a strategic change of direction. As a result, promoting the Sarajevo Code of Conduct and Guidelines within BiH and using them as a stepping stone to establishing industry-wide regulation has become less of a priority. The organization has limited its promotion of the Code of Conduct and Guidelines to presenting them at various Swiss Initiative seminars, as well as various UN agencies.¹⁰⁵ The Code of Conduct and Guidelines focus almost exclusively on the client-contractor relationship. Other stakeholders are mentioned twice: PMSCs' effect on the general public is considered in the needs assessment in the Guidelines, and potential victims of PMSC abuse are covered by the sections in the Code of Conduct and the Guidelines on PMSC compliance with human rights law and international humanitarian law.¹⁰⁶

The inclusiveness of the process of developing the Sarajevo Code of Conduct and Guidelines is notable. The resulting sense of ownership has served an important legitimating purpose on the ground. Equally, the Guidelines are unusual for providing procurement advice for clients—an important measure to reinforce compliance with standards.

Standards

The Sarajevo Process standards are voluntary. Both the Guidelines and Code of Conduct emphasize the importance of observance of national

and international law, including international humanitarian and human rights laws.¹⁰⁷

The Guidelines and Code of Conduct are based on European and wider international best practice. At a European level, they draw heavily upon two CoESS and Uni-Europa manuals, *Selecting Best Value: A Manual for Organizations Awarding Contracts for Private Guarding Services* (1999) and *Code of Conduct and Ethics for the Private Security Sector* (2003). The international sources are the Voluntary Principles on Security and Human Rights (2000), United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), and UN Code of Conduct for Law Enforcement Officials (1979). The latter two are published in full as Annexes to the Code of Conduct. The Code of Conduct also incorporated elements of the PMSC Control Risks' own internal risk management and ethics systems.

The Code of Conduct's section on working conditions "acknowledges the crucial importance of maintaining good, safe and humane working conditions,"¹⁰⁸ according to national laws and regulatory standards. The Code of Conduct covers health and safety, equal opportunity and nondiscrimination, and pay and remuneration, and working hours. However, the Code of Conduct does not invoke international labor standards.

Sanctions

At the launch event and during the Sarajevo Process, emphasis was placed on the role of standards as a source of investor confidence.¹⁰⁹ However, the standards are not comprehensively used by PMSCs or clients in BiH.¹¹⁰

Saferworld concluded from its own evaluation of how the Code of Conduct and Guidelines are used that a government-endorsed, legally binding framework built upon the codes would be the only way to ensure changes in practice.¹¹¹ While the private security industry in BiH and other stakeholders such as the Bosnian government have expressed interest in revising and revisiting the Sarajevo standards, this remains at a rhetorical level as they lack both resources and political will.¹¹² Companies are expected to monitor their own behavior, for example by establishing an ethics committee and a

register of security incidents.¹¹³ Companies are also expected to work with other members of the industry and civil society to promote adherence to the Code of Conduct. A similar expectation is placed upon clients.

Nor is it clear that the Sarajevo Process has served to encourage reference of criminal conduct to domestic regulatory authorities, although this is stipulated by the Code of Conduct.

Support

The Code of Conduct and guidelines are not supported by an institutionalized framework, and do not currently receive active political support or any other form of sponsorship within BiH. In one publication, researchers at Saferworld, the NGO responsible for spearheading the Sarajevo Process, write about the Code of Conduct and Guidelines that their “adoption was widespread within Bosnia, laying the foundations for better self-regulation and oversight within the industry.”¹¹⁴ But in 2007, Saferworld conducted an evaluation of the Guidelines’ use. Saferworld found that the Code of Conduct and Guidelines were largely commended by the PMSCs and clients that had signed up to them at the launch. However, implementation remains minimal. When the Guidelines and Code of Conduct are used, companies tend to cherry-pick recommendations, preferring those that are easy to put into place. The response from clients was more positive: Raiffeisen Bank adopted the guidelines for use in sixteen countries. The electricity company Elektroprivreda also changed its internal policies according to the Guidelines, and updated its risk assessment. However, none had gone through the procurement process from scratch since the Guidelines’ launch.¹¹⁵

At the international level, “the guidelines are mentioned quite frequently as they are the only ones of their kind which deal specifically with the issues faced by the security community and industry in a postconflict scenario.”¹¹⁶ In an article on regulating the industry, Cottier suggests that they be used as a set of standards to be referred to in contracts.¹¹⁷ They are also included in the OECD Handbook on SSR.¹¹⁸ During the 2007 evaluation, both PMSCs and clients objected to the level of detail of the requirements, for example, the Request For Proposal,¹¹⁹ arguing that the companies lack the human resources to

fulfill many of the requirements. PMSCs also complained that they lacked the resources to train staff to a higher standard. The Code of Conduct has a section requiring PMSCs to foster a good relationship with the police, which many in the industry considered a real challenge. Relationships between companies (which the Code of Conduct refers to as well) were also strained, which is why the original industry association stalled. The section prohibiting involvement in political activities was also felt to be inconsiderate of the particular situation in BiH.¹²⁰

PART THREE:
Beyond Market Forces

Chapter Ten

Toward a Global Framework to Assist States in Regulating the Global Security Industry

Across the thirty frameworks examined in Chapters Four to Nine, five types of standards implementation and enforcement frameworks can be discerned: (1) the watchdog, (2) accreditation regimes, (3) the court or tribunal, (4) harmonization schemes, and (5) the club. These five types, set out in the table below, combine different components of implementing authority and enforcement power within a standards implementation and enforcement framework in different ways.

How each of these types might feasibly be applied to the GSI is explained below. These five blueprints are intended to serve as a basis for consultations with stakeholders to identify any common ground on a feasible global framework. However, a note of caution is needed: each type offers certain opportunities for either standards implementation or standards enforcement (or both), but each also has certain limitations or drawbacks. And none fully, on its own, will discharge the four design principles outlined in Chapter Three. **This study does not advocate that the global security industry adopt any particular one of these blueprints.** In fact, the study suggests that stakeholders consider how they each might adapt or apply these blueprints to their own, or collaborative, efforts to implement and enforce standards in the global security industry—or how functions of these different blueprints might be combined within one over-arching framework.

In outlining these blueprints, this study refers to a generic set of globally applicable GSI standards that each will implement. The exact nature of these standards will, of course, have to be defined as part of

any negotiating process, which is also outlined below. However, this study maintains that adequate standards are already in place that would enable the development of a global framework.¹

FIVE GLOBAL FRAMEWORK BLUEPRINTS

1. A GSI Watchdog

A global GSI watchdog would monitor PMSCs' compliance with globally applicable industry standards. Where it found reasonable evidence that these standards had been violated, it would refer

Five Types of Standards Implementation and Enforcement Frameworks

	Standards enforcement (responsive measures) led <i>by Agent</i>	Standards enforcement (responsive measures) undertaken <i>collectively</i>	Standards enforcement (responsive measures) undertaken <i>by participants individually</i>
Standards implementation (preventive measures) led <i>by Agent</i>	Chapter Four, <i>Watchdogs</i> : Geneva Call, ICRC, Children and Armed Conflict.	Chapter Seven <i>Clubs</i> : (Implementation partly performed by participants, partly led by the club agent; enforcement undertaken collectively by participants)	Chapter Eight, <i>Harmonization schemes—with some agent-led implementation</i> : Global Compact, OIE, Clear Voice, OPCW, Toxic Waste Convention.
Standards implementation (preventive measures) driven <i>by participants themselves</i>	Chapter Five, <i>Courts and Tribunals</i> : Anti-slavery courts, Court of Arbitration for Sport, ILO Tripartite mechanism. Chapter Six, <i>Accreditation Regimes</i> : Kimberley Process, SAI, FLA, BSCI, ICTI, Humanitarian Accountability Partnership, credit rating agencies.	IPOA, VPSHR, (BAPSC, Wolfsberg, and PSCAI with minimal enforcement capacity).	Chapter Nine, <i>Harmonization schemes—with exclusively participant-based implementation</i> : FATF, EITI, GRI, OECD MNE Guidelines, EU Code of Conduct on Arms Exports, Sarajevo Process (Equator Principles, with minimal enforcement capacity).

matters to the relevant state authority and/or publicize the matter. It could take the form of either a states-backed global GSI Ombudsman or—short of that—be established by the collective action of NGOs and industry, without state participation. Precedents for such a mechanism include the UN framework on Children and Armed Conflict, Geneva Call, and the ICRC.

How Would it Work?

Whether a states-backed global Ombudsman or a creation of NGOs and industry, a global GSI watchdog would:

- a) Act as a guardian of global GSI standards,² by:
 - monitoring compliance by PMSCs (and/or their clients, and/or state regulators) with these standards;
 - providing desk and field monitoring of areas of particular concern in which PMSCs operate, with specific investigations into particular violations of the standards. Investigations would be conducted by Panels of Experts assembled from standing lists drawn from government officials, industry, clients, and civil society;
 - providing a complaints hotline³ for whistleblowers, whose allegations could then trigger an investigation by the watchdog; and
 - publishing an annual review of industry-wide trends in compliance with the standards, and a digest of good practices in implementing and enforcing them.⁴
- b) Encourage implementation of the global GSI standards, through:
 - publicizing findings about compliance with GSI standards in specific cases, for example through a website; and
 - passing on any serious concerns or grievances regarding illegal activity, and relevant information, to the appropriate state enforcement mechanisms.

Any watchdog would have minimal standards enforcement

capacity. Were states explicitly to delegate monitoring power to it, along lines similar to the ICRC's monitoring of state and armed groups' compliance with IHL, it might be useful also to endow it with the capacity to engage in confidential dispute resolution.

Governance Structure

The watchdog would consist of a secretariat and a board. The secretariat would be responsible for the day-to-day monitoring and review functions of the watchdog. In specific cases it would assemble a panel of experts to undertake field inspections. These experts could be drawn from standing lists nominated by different stakeholder groups (states, industry, affected communities, clients and investors) according to a preagreed formula. The secretariat would require a small permanent staff of four, managed by a secretary-general.

The secretary-general would be responsible for overseeing the direction and daily operation of the secretariat and guiding its relations with industry stakeholders, including the board. He or she would be a senior, respected figure with an extensive background in corporate social responsibility, international security or human rights advocacy, and would promote the watchdog internationally and raise both diplomatic and financial support for its activities. He or she would be assisted by three staff. The director for monitoring would have primary responsibility for coordinating and running the watchdog's monitoring activities, including the complaints hotline and organization of panels of experts. The director for good practice would be responsible for developing and editing the annual review of industry compliance and good practice, and for developing related outreach activities. These officers would be backstopped by an administrative officer, one or two research assistants, and two or three clerical and administrative staff.

The board would oversee the watchdog's strategic direction, and comprise a maximum of fifteen members, all serving elected two-year terms. In a states-backed watchdog, states would hold seven seats on the board, and chair the meetings on a rotating basis. These seven seats would be distributed among contracting,

territorial, and home states. A further three seats would be held by local and international human rights NGOs and labor unions, three by representatives of the industry itself (drawn from specific PMSCs or from trade associations), and two by representatives of client and investor groups (such as extractive industry clients, humanitarian organizations and the insurance industry). These seats would be filled by elections within each group (with voting rights perhaps being tied to payment of scaled subscription fees). If states did not participate in the watchdog, the board would operate without them. In either case, the secretary-general would also serve as ex officio deputy chair of the board.

Finance

The GSI watchdog would be funded by states, private foundations, retail donations, subscriptions from electors of members of the board, and possibly also sales of its annual review. This study estimates an annual operating budget of \$1.2 million (c. \$600,000 personnel costs; \$300,000 operating costs; and \$300,000 overhead costs). Specific investigations would need separate financing, which might call for the creation of a separate strategic fund.

What are the Barriers?

The effectiveness of a watchdog will depend on (1) its access to information and (2) remedial action based on the information the watchdog brings to light.

Access to information will be facilitated by connections to civil society networks, industry participation, and especially by state support. State support might be facilitated by linking the watchdog closely to standards the states already support. A GSI watchdog could, for example, be established by states that endorse the Montreux Document, as an aid to assist them in implementing that document. Access to information will also depend on stakeholders working with the secretariat to establish careful protocols to protect national security, contractual confidentiality, individual privacy, and whistleblowers.

Effective remedial action will depend on clients, investors, and regulators having access to the watchdog's findings about compli-

ance with standards, and taking appropriate action. The watchdog could also be mandated to monitor such follow-up.

What are the Benefits?

The GSI suffers from a chronic lack of market transparency, and states find standards enforcement difficult because of limited access to reliable information about industry performance. A GSI watchdog would help fill these gaps, without jeopardizing state enforcement authority and existing market arrangements. Clarifying the reality of PMSC performance would make industry underperformers accountable to clients, investors, and regulators, while rewarding good performers.

Given that standards already exist, there are no real barriers—beyond will and finance—to the relevant GSI stakeholders setting up a watchdog at the soonest possible date.

2. A GSI Accreditation Regime

An accreditation regime that deliberately harnesses market-based incentives could be set up immediately based on the Montreux Document and the other relevant standards. The accreditation regime could be set up by the GSI and its clients either on their own or with states' backing. A credible accreditation regime would create demand for standards-compliant PMSCs, and drive up standards across the GSI. And accreditation would operate as a market signaling device, to turn demand into an incentive for compliance and accreditation.

Precedents for such a regime exist in the global apparel and manufacturing regimes, in the diamond and chemical industries, and in rudimentary form in the BAPSC and the IPOA. No such regime exists at the global level for the GSI or with the involvement of clients, investors, and regulators.

How Would it Work?

An accreditation regime would have three linked functions:

a) Certification

- To participate, PMSCs and their clients would submit a

completed checklist of compliance with the framework's standards, particularly relating to vetting of PMSCs and personnel, field management, and reporting of human rights and labor rights violations. This checklist and a preliminary desk and worksite check would serve as the basis for determining compliance with the framework standards.

- Companies and clients that fulfill these certification requirements would be provided with a certificate, which they would be permitted to use in publicity and marketing.⁵
- PMSCs would be required to integrate two thirds of their subcontractors into the framework within three years, to ensure continued certification. These subcontractors would themselves have to undergo certification.⁶

b) Auditing

- An auditing team (either supplied by the secretariat or assembled by participating NGOs) would conduct workplace and headquarters audits to evaluate participants' implementation and enforcement of agreed framework standards. These audits would be unannounced,⁷ and the auditing team would seek the input of third-party stakeholders and affected communities.
- Audits would rate participants' performance against agreed standards.
- PMSCs found to be fall below agreed ratings thresholds (on specific key standards, or on average across a range of standards) would be prescribed steps for remediation. If the PMSCs have not carried out these steps after six months (as assessed by a follow-up audit), their accreditation and certification would be subject to revocation by the board.

c) Ratings

- The ratings produced by the auditing process would be published on the regime's website and/or provided to other regime participants. This would greatly increase market transparency, and allow clients, regulators, and investors to link future contracting, regulatory, and investment decisions to these ratings.

Governance Structure

The accreditation regime would consist of a board, secretariat, and auditing teams. The secretariat would be responsible for the framework's day-to-day operations, and answerable to the board. The secretariat would promote the framework and its standards, to ensure that they became internationally recognized. The secretariat would conduct the primary certification process, and manage the activities of the auditing teams. Doing so would require a full-time staff of ten, including a secretary-general, senior and associate certification officers, senior and associate auditing officers, and finance, administrative, clerical, IT, and outreach staff.

The certification officers would be responsible for processing PMSC applications for certification, including the desk and worksite check, and, at the outset, some outreach activities promoting the framework and its standards. The auditing officers would assemble, coordinate, and manage the activities of the auditing teams, including arranging the workplace and HQ audits and coordinating the follow-up audits. All of the officers' work would be supported by finance, administrative, clerical, IT, and outreach staff, under the direction of a secretary-general. The secretary-general would also be responsible for the overall direction of the regime, relations with participants and the board, and fundraising.

Auditing teams could be assembled from lists of experts approved by the board or assembled by local NGOs according to prescribed criteria and then approved by the secretariat.

The board would oversee the regime's strategic direction, and

be composed of a maximum of fifteen members, all serving elected two-year terms. In a states-backed regime, states would hold seven seats on the board and chair the meetings on a rotating basis. These seven seats would be distributed among contracting, territorial, and home states. A further three seats would be held by local and international human rights NGOs and labor unions, three by representatives of the industry itself (drawn from specific PMSCs or from trade associations), and two by representatives of client and investor groups (such as extractive industry clients, humanitarian organizations, and the insurance industry). These seats would be filled by elections within each group. If states did not participate in the watchdog, the board would operate without them. In either case, the secretary-general would also serve as deputy chair of the board. The board would meet every six months to review the certification, auditing, and ratings process, and to decide how to deal with noncompliant participants that had not undertaken prescribed remedial measures.

Finance

The accreditation regime would levy a fee for all parts of the accreditation process. The regime would need to make sure that this fee was not a deterrent to smaller PMSCs—so the regime might use a graduated fee schedule, levying fees calibrated to the current and forecasted revenues of the applicant. Subsidy by clients and states would balance out industry membership fees, enabling the framework to maintain its independence. This study estimates that the secretariat would cost \$1.5 million per annum (c. \$900,000 for personnel costs, \$300,000 for operating costs, and \$300,000 for overhead), not including the costs of the auditing teams. These would be separately budgeted, and should be covered by fees for service.

What are the Barriers?

The Montreux Document provides important guidance on how states should expect PMSCs to vet their personnel, manage them, and deal with allegations of misconduct.⁸ These might provide the basis for an accreditation regime. However, some industry actors may seek greater specificity in these standards before the actors are

willing to participate in an accreditation regime that creates market transparency and market signaling mechanisms. Accordingly, it may be useful—though it may not be necessary—to supplement existing standards with a code of conduct, as the basis of an accreditation regime.

Effective auditing will depend on substantial buy-in from both industry and from clients, since auditing may raise significant issues of national security, client confidentiality, and privacy. Yet precedents such as those in the diamond and chemical industry demonstrate that with sufficient industry buy-in, certification, auditing, and inspection protocols can be developed that satisfy such concerns.

An accreditation regime would need to function quickly as well as effectively. It could use a tiered certification scheme, with PMSCs' compliance with the most important standards of human rights and IHL assessed first, providing a preliminary certification allowing PMSCs to bid for contracts while still applying for complete certification.

What are the Benefits?

Even a voluntary GSI accreditation regime, if robust and credible, would begin to institutionalize the connection between standards implementation, market access, and performance incentives. The regime's ratings could be picked up and used as the basis of contracting and regulating decisions by GSI clients, regulators, financiers, and civil society. In addition, the regime could be set up now based on existing standards.

3. A GSI Arbitral Tribunal

A GSI arbitral tribunal would provide an industry-tailored forum for dealing with labor, contractual, and other disputes—not including serious human rights violations—that occur in this industry across multiple jurisdictions every day. A tribunal would help create a level global playing field for the industry, reducing administrative costs and regulatory arbitrage, encouraging cross-border professionalization, and facilitating enforcement cooperation by different states. A tribunal could also generate an *acquis* of

practice encouraging rising managerial standards within PMSCs around the world. The major precedent for such a forum is the Court of Arbitration for Sport, but the tribunal could also draw on the interpretation procedure of the ILO's *Tripartite Declaration*.

Such an arbitral tribunal could be set up immediately, based on existing law and standards. Once the infrastructure and personnel were in place, the arbitral tribunal would be activated by stakeholders granting it jurisdiction over cases through references in their contracts, regulations, and investment agreements.

How Would it Work?

A GSI arbitral tribunal would serve as a forum in which contractual parties can enforce the terms of their contract, or from which state regulators could seek advisory opinions or decisions in specific cases.

- PMSCs and their clients, and PMSCs and their personnel, would specifically consent to submit to the arbitral tribunal's jurisdiction in their contracts.
- States could mandate the jurisdiction of the arbitral tribunal over certain types of labor or contractual disputes relating to the industry, regardless of such inclusion by private parties.
- These contractual and regulatory references would also give binding force to the standards—such as the relevant provisions of the Montreux Document, the ILO *Conventions* and relevant recommendations, and relevant international law, compliance with which the arbitral tribunal would assess.
- Rather than the tribunal conducting its own investigations, signatories and complainants would be required to provide information to the arbitral tribunal upon request. This information would remain confidential, unless both parties agreed to its release. The outcome of the tribunal process would be made public, though written decisions might be made available only to the parties.

- The tribunal would provide needs-based assistance for those bringing claims, which would be particularly important for PMSC employees and smaller PMSCs.
- The decisions of a GSI arbitral tribunal would be enforced through states' domestic jurisdiction, as with other international arbitration arrangements.
- An annual digest of the decisions of the tribunal could be prepared by the secretariat, as the source of an *acquis* to provide guidance to industry stakeholders.

Governance Structure

Arbitrators would be chosen for either their arbitral experience, or their GSI-related legal experience, and appointed for a renewable term of four years. Arbitrators would be entered into a database by a small secretariat, which would receive and process complaints. Both parties to the dispute would select one arbitrator from the database, and agree collectively on a third independent arbitrator, or have the third panel member appointed by the framework's secretary-general.

The secretariat would be staffed by a secretary-general overseeing the secretariat's daily operations, engaging in strategic outreach with stakeholders and representing the regime to the broader international community; one full-time administrator to provide administrative support to the arbitral process, maintain its database of arbitrators, and receive and process complaints and requests for needs-based assistance; one outreach officer responsible for developing the tribunal's website and outreach materials and dealing with the media, as well as working with the administrator to oversee assistance to parties; one counselor, with dual responsibility for providing legal advice to the secretary-general and administrator, particularly to ensure respect for the arbitral regime, and for preparing an annual digest of arbitral decisions and notes on the developing *acquis*. These four substantive positions would be supported by a director of finance and administration and two clerical staff, for a total of seven staff.

Finance

Most of the expenses related to a GSI arbitral tribunal would be borne by the parties. However, states and industry actors might be required to provide voluntary contributions to a fund to cover the costs of PMSC personnel complainants and/or small PMSCs. These contributions would also need to cover the operating costs of a small secretariat, to publicize the arbitral tribunal and encourage private parties to incorporate references to it and the standards it enforces in their private legal arrangements; maintain the lists of potential arbitrators; serve as secretarial support to the arbitral process; manage the provision of assistance to claimants; and prepare an annual digest of arbitral decisions and *acquis*. This study estimates the annual costs of such an enterprise to be approximately \$900,000 per annum (\$600,000 for personnel costs, \$150,000 for operating costs, and \$150,000 for overhead).

What are the Barriers?

A GSI arbitral tribunal would not deal directly with the key regulatory problem for the GSI: preventing and remedying PMSC violations of human rights and IHL. An arbitral tribunal may not, therefore, receive much support from civil society. However, a tribunal's encouragement of cross-border harmonization in labor management practices and facilitation of sanctioning of contractual underperformance might indirectly assist with improving respect for other standards in the GSI.

What are the Benefits?

The tribunal would offer industry-sensitive, time-efficient, and cross-border harmonized resolution of complaints regarding adherence to labor and contractual standards. The tribunal would significantly reduce transaction and dispute-resolution costs for all industry stakeholders, assist states by supplementing their domestic enforcement options, and encourage improved respect for other standards in the industry. It seems likely that any such arbitral tribunal might deal with disputes about occupational health and safety and workplace personnel management, which could have a significant effect on the upstream and downstream impacts of PMSCs.

4. A GSI Harmonization Scheme

A GSI harmonization scheme would encourage harmonization of national regulatory arrangements and/or PMSC management arrangements based on the standards codified in the Montreux Document and other agreed international standards. Such a scheme could operate on a decentralized but coordinated basis, with different states (or PMSCs) taking responsibility for championing harmonization of different aspects of state regulatory practice and PMSC performance. Partial precedents for such an approach include the UN Global Compact, the FATF, the OPCW, and the Toxic Waste Convention.

How Would it Work?

- A small secretariat would track and assist with the implementation of the Montreux Document by states, the industry, and its clients.
- States and industry participating in the harmonization scheme would assist in this by reporting to the secretariat and through it to other scheme participants. Reports could, for example, be posted on a secretariat-hosted website.
- The secretariat would also have a minimal capacity to identify and provide technical assistance for newcomers to the scheme, for example, drawing on expertise in other participating states and/or PMSCs.
- Different states would volunteer to champion harmonization in specific areas of practice, leading working groups on topics such as vetting personnel, training of PMSC personnel, dealing with third-party complaints, managing use of force and firearms, and remedying violations of human rights and IHL.

Two further elements could be added on to a harmonization scheme once it has been established. The first would involve a more formalized peer review process,⁹ which would greatly accelerate the process of national harmonization. This mutual evaluation process would be coordinated by the secretariat, and could, for example, draw on the expertise and independent assess-

ments of the UN Working Group on Mercenaries.

The second add-on would be a mutual recognition scheme, in which participating states agreed to: (1) allow only PMSCs incorporated in, or subject to the laws of, another participating state to operate on their territory, or to operate alongside government agencies operating overseas; and (2) allow PMSCs operating from their territory only to contract with or operate on the territory of other participating states.

Governance Structure

The secretariat would consist of four full-time staff. The executive director would oversee the secretariat and engage in strategic outreach with stakeholders, including where a need for assistance to improve implementation is identified. The executive director would also be responsible for the harmonization scheme's fundraising and financial management, as well as managing the voluntary trust fund detailed below. A senior adviser would engage in more routine monitoring of implementation of the Montreux Document by those states that had endorsed it and other stakeholders that had expressed support for it, and identify emerging issues for the attention of the executive director. The senior adviser would advise the executive director on strategic engagement to assist in its implementation. The executive director and senior adviser would, in turn, be assisted by an adviser, who would provide legal analysis to the secretariat and implementation assistance to stakeholders. These three officers would be supported by one administrator, responsible for overseeing the secretariat's budget, general administration, and website. Were the harmonization scheme expanded to incorporate a peer review process and a mutual recognition scheme, the secretariat would need to be expanded accordingly to provide the required administrative support.

In addition to this central secretariat, the harmonization scheme could also be advanced in a decentralized manner, and informally, with states volunteering to chair working groups focusing on specific issue areas for harmonization. This flexible approach could also allow the participation of nonstate actors in the scheme.

Alternatively, a more formal membership assembly could be established, composed only of states that have recognized each other as having adequately harmonized their domestic implementation arrangements around the agreed standards. Associate membership would be proffered to those states that aspire to drive up their standards, but need help to do so. Each state would nominate a national authority dedicated to upholding the standards, which would send a delegate to the assembly to report on the state's progress in implementing them.¹⁰

Finance

Member states would fund the secretariat with contributions graded according to their gross domestic product (GDP).¹¹ The secretariat would also receive funding from civil society. This study estimates the cost of the secretariat at roughly \$800,000 per annum. This would cover four full-time staff, travel, and office and administration costs (c. \$500,000 for personnel costs, \$150,000 for operating costs, and \$150,000 for overhead).

A voluntary trust fund would provide assistance to countries with weak regulatory capacity wishing to participate in the framework. A mechanism might also be devised for making small contributions to assist PMSCs with their implementation of the standards. The secretariat would engage in fundraising and help states identify donors for specific capacity-building projects related to standards implementation through the fund's matching function.

What are the Barriers?

States would have to follow due domestic procedure in changing any legislation in order to bring it in line with the agreed standards. In addition, appropriate assistance would have to be made available to states with weak regulatory capacity, to ensure that this scheme did not create problematic barriers to trade. The participation of such states should be a central concern of such a scheme, since more effective territorial state regulation of PMSCs will greatly reduce costs for home and contracting states, and improve GSI accountability.

What are the Benefits?

The Montreux Document has already been agreed to by seventeen states. As a result, national regulatory harmonization among these states could begin immediately. A harmonization scheme would also provide a nonpunitive means for encouraging improved practice in regulation of the industry. This global framework blueprint offers a confidential forum for states to encourage each others' improved regulation of the global security industry, as well as a platform for negotiating solutions to specific regulatory and coordination problems. The flexibility and informality of this approach will also allow international regulation to develop at different speeds on different tracks, depending on the specific needs and interests of different states and GSI stakeholders.

5. A GSI Club

A GSI club would provide a framework for states, PMSCs (and their trade association representatives), and clients to develop and implement a shared professional culture or ethic, through collectively wielded peer pressure. The club would start by encouraging its members' compliance with existing standards, such as those implied by the Montreux Document, and eventually expand to include broader industry standards (as the members agreed). Given existing standards and resources, a club could feasibly be set up by the relevant stakeholder groups immediately.

How Would it Work?

The club would:

- have a mixed membership, divided into members (clients, industry, and states) and participant observers (civil society, affected communities, GSI financiers);
- require members to report on their own regulatory and accountability arrangements;
- require PMSC members to incorporate agreed-upon standards into their internal management systems and contracts, and to establish internal monitoring and reporting mechanisms;

- deal with specific instances of noncompliance through a mixed commission, drawing decision-makers from each of the three membership groups (clients, industry, and states);
- provide guidance for members on how to implement standards and monitor developments in the global security industry generally; and
- work with existing regulatory bodies—from industry associations to regulatory mechanisms such as the VPSHR—to improve standards and standards implementation.¹²

Governance Structure

The club would consist of a members' assembly, a board, a mixed commission, and a secretariat. The members' assembly would meet semiannually to set the strategic direction of the framework and consider reporting from members and the mixed commission (discussed below). Becoming a member or a participant observer would require unanimous agreement among existing participants. Both members and participant observers would be expected to promote the club, implement or assist in the implementation of its standards, attend the members' assembly, report annually on their efforts to implement the standards at the members' assembly, and participate in dialogue with other club participants, including specific implementation issues.¹³ Participant observers could offer to assist members in their reporting. The secretariat should manage a small voluntary trust fund to be disbursed to smaller PMSCs and/or smaller states to facilitate their participation in assembly meetings.

The members' assembly would also deal with both specific cases and general recommendations, through the establishment of a subsidiary mixed commission. This would consist of representatives elected from each membership and observer group (states, industry, clients, affected communities, civil society actors, investors), to investigate specific allegations of serious violations of the club's standards, and make recommendations to the members' assembly, as well as to the relevant state authorities in the case of any violation of legal standards. Participation in the club would require cooperation with this mixed commission. The

mixed commission could issue general comments on an annual basis, drawing on the practice of club members, its investigations in specific cases, and reporting prepared by the secretariat. This would help the club to develop an *acquis* of good practice driving up standards across the industry.

The board would consist of six members (two state representatives, two industry representatives, two client representatives) and three participant observers (one civil society, one affected community, and one GSI financier representative), with participation rotated every year, through election from the members' assembly.

The secretariat would have at least four full-time staff: a secretary-general, a reporting officer, a compliance officer, and an administrator. As well as developing guidance for implementing standards and crafting reporting guidelines, the secretariat would monitor and report on developments in the GSI, and be responsible for producing an annual review of the club's activities. All of the secretariat's recommendations would be subject to the review and approval of the members assembly.

The secretary-general would work with club members to oversee its activities, improve standards and implementation, and represent the framework internationally. He or she would be responsible for fundraising for the framework's activities and the voluntary trust fund. This would be a senior position and require extensive experience internationally in security, and in managing nonprofit organizations.

The reporting officer would receive the members' reports and work with them to craft reporting guidelines, as well as providing periodic monitoring and reporting on developments in the GSI. The reporting officer would also assist in the production of the mixed commission's annual general comments and prepare the secretariat's own annual review.

The compliance officer would work in coordination with the secretary-general to provide guidance on standards implementation and monitoring and reporting mechanisms, in specific cases. He or she would also coordinate the mixed commission and

handle any specific complaints relating to member conduct.

The administrator would coordinate the semiannual members assembly and manage the club's finances and general administration.

Finance

The club would be financed by membership fees, according to a graduated scale to ensure that participation costs were not prohibitive for any GSI stakeholders. It would cost around \$1 million/annum (\$500,000 for personnel costs, \$300,000 for operating costs, and \$200,000 for overhead). This would enable the club to carry out significant research, handle reporting, manage the mixed commission and semiannual members assembly meetings, and cover the cost of staffing and running the secretariat. A separate voluntary trust fund would cover participation for smaller members in the members assembly.

What are the Barriers?

There are no legal barriers to the establishment of a GSI club. It is a soft tool for standards implementation only, one that would have no enforcement power other than peer pressure. As a result, the club could easily become a means for stakeholders to argue that they were involved in a process of improving standards implementation and enforcement, while effectively doing neither. Existing clubs such as the Voluntary Principles on Security and Human Rights already suffer similar criticisms. Given the very diverse nature of the likely membership of a GSI, a club would also be vulnerable to a weakening of the common ethic that lies at the heart of a club's power to enforce particular standards.¹⁴

What are the Benefits?

The club's participatory nature would be the key added value of a multistakeholder GSI club. In addition, the club could also provide a forum for coordinating and developing the various functions discussed in previous blueprints, including information collection, dispute resolution, and accreditation, as part of an interlocking umbrella framework.

WHAT NEXT? THREE STEPS TOWARD REALIZING A GLOBAL FRAMEWORK

This final section sets out three steps that IPI recommends stakeholders in the global security industry take to develop a global framework based on the blueprints described above. These three steps stem from a reading of what is politically feasible, and what, in process terms, is desirable—as reflected in guidance drawn from the International Organization for Standardization (ISO), Annex 3 to the World Trade Organization Technical Barriers to Trade Agreement and other sources, including the ISEAL Alliance.

Step One: Consult Within Stakeholder Groups on Framework Options

As Chapter Three of this study emphasized, the involvement of all stakeholders will be an essential contour of any feasible framework. States should work with their civil society and industry partners to convene a series of open-invitation but closed-door consultations for each stakeholder group, and specific client segments (such as humanitarian organizations, international organizations, and extractive industry and agricultural companies), to consider what kind of frameworks might be feasible.

Each consultation would consist only of stakeholders from that particular group (i.e., states only, industry only, civil society only), to encourage frank assessment of the blueprints proposed in this study and to consider what efforts the group might be prepared to undertake in the coming months to develop such a mechanism. In particular, there is a need to include representatives of smaller PMSCs, to ensure that any regulatory framework does not create barriers to entry that inappropriately reduce competition, and representatives of communities directly affected by PMSC activities.

These groupings may also be broken down into subsets to identify common concerns. For example, there may be a need to conduct more than one consultation with states, in order to disaggregate the interests of exporting, territorial, and host states, and in particular to engage and canvas the views of different regional groups. To date, African, Latin American, Middle Eastern, Eastern European, and Asian perspectives on this issue have not received adequate attention to

provide the basis for a truly multilateral arrangement.¹⁵ There may also be a need to undertake consultations with regional organizations, such as the African Union, Commonwealth of Independent States, Council of Europe, European Union, and others, each of which may have a particular perspective on the impacts of the GSI in their region, and the best path to effective standards implementation and enforcement.¹⁶

Each consultation would aim to produce a very simple statement of which blueprint(s) *might* be feasible to construct in the short term, and which options *are clearly not* feasible. With these assessments in hand, it will be clearer to all stakeholders whether there is in fact common ground on what kind of framework they consider feasible—in which case, subsequent negotiating efforts could be focused on that option.

If these assessments seem to indicate that there is no common ground, then subsequent efforts should be directed toward developing those components of a framework that each stakeholder group does consider feasible—with the possibility that these components might converge or become interlocking at a later date, as market conditions or stakeholder attitudes evolve. The consultations may also help identify whether any subgroups within each stakeholder group share an interest in working collaboratively to develop specific implementation or enforcement mechanisms.

These preparatory consultations should also aim to define in clear terms the scope of any negotiation process, and any resulting framework. Specifically, there is a need to clarify the objectives of such a framework.¹⁷ Stakeholders need to be clear about how they think the GSI would function differently once a framework was in place. This is particularly important with regard to (1) standards and (2) operation.

Stakeholders will need to ask **what standards the framework should address**. Should it focus explicitly on preventing and remedying serious violations of human rights and international humanitarian law, in the context of armed conflict, based on the Montreux Document? Or should the framework have a broader remit, addressing issues such as labor rights or contractual disputes, as do the Sarajevo Process Code of Conduct and Guidelines?

Stakeholders will also need to consider **how the framework should function**, once in operation. Should the framework focus on preventive implementation of these standards or also provide a responsive enforcement mechanism? Since different blueprints combine different measures for implementation and enforcement, this discussion could be carried out with close reference to the blueprints, leading to an agreed statement on which—if any—would be feasible.

Only by specifically naming these shared objectives will it become clear whether it is, in fact, feasible at this juncture to push toward the realization of a comprehensive framework for the GSI, or whether subsequent efforts should be channeled toward separate components, fashioned by different groups of stakeholders, which might at a later date converge or become interlocking. These discussions will also establish which stakeholders should be at the table in the development of such a framework or its components. Identifying the terms of such a consensus may require more than one meeting of each group.

Step Two: Agree on the Negotiation Process

Once the scope of any resulting framework (or any components) has been agreed on, the next question for stakeholders will be how the details of the framework can be conclusively fleshed out.

This negotiation process is itself something that stakeholders need to own, and the format of the negotiations will depend very much on what type of framework (watchdog, tribunal, club, etc.) stakeholders are trying to construct. IPI does not propose to pre-empt those discussions by proposing a specific format for those negotiations here. However, as the ISEAL Alliance states:

...the eventual success of your standard [and thus its implementation and enforcement framework] depends on meaningfully engaging key stakeholders in the standard-setting process. There are two ideas here:

- 1. There has to be a process in place to encourage stakeholder participation; and*
- 2. Participation has to be meaningful. Stakeholders need to see that they are able influence the final outcomes.*

At the very least, this means that you need to have an open and transparent process for developing the standard [and implementation and enforcement framework], and provide stakeholders with a variety of mechanisms for participating.¹⁸

Accordingly, it will be important to set out the exact terms for negotiating any comprehensive framework (or any components) as early as possible. In particular, stakeholders are encouraged to identify how different interests could be represented in any such negotiation.¹⁹ The frameworks examined in Part Two make clear that a number of approaches are conceivable, from a large-scale multistakeholder negotiation to the creation of a representative task force that negotiates a “take it or leave it” package that a larger plenary must then vote up or down, with a number of options (such as the creation of a steering committee that periodically reports back to a larger negotiating plenary for guidance and support) somewhere in between. The key issue here is to agree who should be at the table and how negotiations will proceed.

Step Three: Negotiate

Next, the chosen negotiators will have to settle standards that the framework will implement and enforce. As was argued at the beginning of this chapter, adequate standards now exist for effective transnational standards’ implementation and enforcement.²⁰ But how these standards are adopted will depend significantly on the agreed objectives of the framework (or components) and its subject-matter scope.

IPI recommends that negotiators take guidance from best practices in developing such standards, as found, for example, in the processes of the International Standards Organization,²¹ the WTO Technical Barriers to Trade Agreement, and the ISEAL Alliance Code of Good Practice.²² The WTO Technical Barriers to Trade (TBT) Agreement and its Annex 3 “Code of Good Practice for the Preparation, Adoption and Application of ‘Standards’” contain a particularly useful articulation of principles that stakeholders should consider at this step in the process:

- use of international standards when they exist, or relevant parts of them, as a basis for developing the standard;²³

- achievement of the widest possible consensus;²⁴
- avoidance of duplication of standards or overlap of work with other national or international standardizing bodies;²⁵
- development of standards that are based on performance, not internal organization;²⁶
- provision of transparency in preparation of standards, including through publication of work programs, draft standards, and other work products in multiple languages;²⁷
- provision of a period of at least sixty days for commentary by stakeholders on a draft standard, including prior announcement of when that period will fall;²⁸
- publication and ready access to the final published standard;²⁹ and
- resolution of complaints relating to the standard development process.³⁰

Negotiating these standards may require a significant level of operationalization of abstract standards and developing specific terminology, criteria, and performance indicators.³¹ In particular, a global code of conduct would help create greater market transparency and performance accountability, and is therefore likely to be welcomed by many parts of the industry, their clients, and states.³² And there may also be a need to form working groups or convene side discussions, along the way, to develop specific aspects in more detail, to feed back into the broader negotiation.

In parallel to the discussion of relevant standards, negotiators will also need to consider the institutional framework that actually implements and enforces the standards in question. The five blueprints presented here offer clear and detailed suggestions for how the blueprints might be constructed. However, it may also be useful to look to the frameworks addressed in Part Two of this study when considering membership criteria, governance, and other framework arrangements. Useful guidance is also available from a number of other sources, including the various studies prepared in connection with the Ruggie mandate.³³

Of course, any framework should be negotiated with an eye not only to how the GSI operates today, but also to how it is likely to operate tomorrow. Governance structures should be organized to allow for the extension of standards to new players in the GSI—such as PMSCs operating from China and India, as those states' export markets develop.³⁴ And the real test of a framework may be its ability to work with the local subsidiaries and joint venture vehicles that increasingly characterize the industry's operations in Africa, Latin America, the Middle East, and Asia.

Only if a framework is equipped with such flexibility will a framework ensure that human rights and IHL standards—and other relevant standards—are effectively implemented and enforced throughout the global security industry, and do not simply create a counterproductive race to the bottom.

Conclusion

It seems clear that an effective global standards implementation and enforcement framework for the global security industry is not only needed—but is also *feasible*, and could be put in place quickly, based on the standards that already exist. Chapter One of this study suggested that standards implementation and enforcement frameworks tend to emerge in response to one of three different pressures:

- industry demands for improved operational guidance;
- states' realization of the need for intergovernmental or multistakeholder responses to transboundary problems that states cannot effectively regulate alone; and
- civil society pressure, either on governments to improve regulation or on companies to improve their own performance.

In the case of the GSI, all three pressures are becoming increasingly strong. All three stakeholder groups—states, industry, and civil society—have an interest in considering whether it may be possible to develop a comprehensive framework for the global security industry. As one PMSC noted in its comments on a draft of this study,

responsible industry players welcome ... improved regulation of the industry, more closely defined legal status for companies and staff working in the field, and effective mechanisms for company and individual accountability... Aside from the clear ethical imperative ... we are also mindful of the business benefits of differentiation and improved perception of the sector.¹

Given the fundamental legal responsibility of states for ensuring the effective implementation and enforcement of standards—particularly human rights and IHL—across the GSI, states should take a leading role in driving this process forward. However, the industry also has a responsibility to respect human rights, and should do whatever it can to discharge that responsibility. Civil society actors, clients, and GSI financiers and insurers also have important roles to play in identifying those standards to which the industry ought to be

held and constructing a framework within which implementation and enforcement of these standards can more effectively occur. Ultimately, only creative collaboration among all stakeholders will lead to improved practice across the industry.

Endnotes

Executive Summary

1. The Montreux Document should also be read in conjunction with other relevant standards: the *Geneva Conventions* (1949) and *Additional Protocols* (1977), *Universal Declaration on Human Rights* (1948), the *UN Code of Conduct for Law Enforcement Officials* (1979), the *UN Basic Principles on the Use of Force* (1990), and the ILO Conventions and Recommendations. Other existing standards such as the *Voluntary Principles on Security and Human Rights* (2000) and the *Sarajevo Code of Conduct* and *Client Guidelines* (both 2006) may also be applicable to the activities of PMSCs in specific contexts.
2. See United Nations, *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, UN Doc. A/HRC/4/035, February 9, 2007a.
3. This appears to be the case particularly in southeastern Europe and Latin America.
4. A Pan African Security Association was also formed in 2008. However, it remains in its early days and has not been addressed in this study.
5. See United Nations, *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, John Ruggie, UN Doc. A/HRC/85, April 7, 2008b, p. 24.
6. See United Nations, *Protect, Respect, and Remedy*.
7. For a draft code of conduct limited to human rights and international humanitarian law (IHL), and a consideration of how such a code of conduct might be developed, see N. Rosemann, "Code of Conduct: Tool for Self-Regulation for Private Military and Security Companies," Occasional Paper No. 15, prepared for the Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2008.
8. Comments by Control Risks Group, September 30, 2008, available at www.ipinst.org/gsi .

Chapter One

1. For example, the US government contracts DynCorp to provide civilian police to UN peace operations. In another example, in Cape Town, Group 4 Securicor is engaged in a public-private partnership by the City Council and business community to police Cape Town's public spaces. See R. Abrahamsen and M. C. Williams, "Securing the City: Private Security Companies and Non-State Authority in Global Governance," *International Relations* 21, no. 2 (2007): 237–253.
2. Examples include the protection of senior coalition and UN personnel in Iraq and Afghanistan, protection of UNOPS and OSCE election staff in Afghanistan, and the protection of diplomatic and humanitarian staff around the world. A lesser-known example is the use of independent contractors to oversee refugee camp protection in the eastern Democratic Republic of the Congo following the Rwandan genocide, and more recently following other mass population movements around the world.
3. These range from domestic prisons in many OECD countries to more notorious examples such as involvement in the interrogation of prisoners at Abu Ghraib and so-called high-value terrorism suspects such as Khaled Sheikh Mohammed.
4. Well-known examples include Vinnell Corp's role in training the Saudi Arabian National Guard, DynCorp's role in reforming the Liberian military, and MPRI's role in reforming the Croatian military during the breakup of the former Yugoslavia. Lesser-known examples include Israeli companies' involvement in training the army of the Democratic Republic of the Congo and French companies' involvement in military advisory and reform services throughout francophone Africa.
5. Such as DynCorp's involvement in Colombia and Afghanistan.
6. This includes the placement of security advisers paid for by foreign governments within the Pakistani security apparatus and on the ground in Somalia to provide tactical intelligence to US and allegedly also to Ethiopian military operations.
7. S. Chesterman, "We Can't Spy . . . if We Can't Buy!": The Privatization of U.S. Intelligence Services," *European Journal of International Law* 19, no. 5 (2008): 1055-1074.
8. *State of the Peace & Stability Operations Industry* (Washington, DC: IPOA, 2006c).

9. P. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University Press, 2003).
10. *Rebuilding Iraq: Actions Still Needed to Improve the Use of Private Security Providers*, Statement of William Solis, director of Defense Capabilities and Management before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, June 13, 2006 (Washington, DC: GAO, 2006).
11. Although, see Abrahamsen and Williams, “Securing the City” and “The Globalisation of Private Security: Country Reports” on Kenya, Sierra Leone and Nigeria (Aberystwyth: University of Wales, 2005).
12. For overviews, see S. Chesterman and C. Lehnardt, eds., *From Mercenaries to Markets: The Rise and Regulation of Private Military Companies* (Oxford: Oxford University Press, 2007); C. Holmqvist, “Private Security Companies: The Case for Regulation,” SIPRI Policy Paper No. 9 (Stockholm: SIPRI, 2005); A. Alexandra, D.P. Baker, and M. Caparini, eds., *Private Military and Security Companies* (New York: Routledge, 2008).
13. See, for example, the criticism of the US arrangements in Alexandra, Baker, and Caparini, *Private Military*.
14. See, for example, the criticism of South African regulation in D. Lilly, *The Privatization of Security and Peacebuilding: A Framework for Action* (London: International Alert, 2000).
15. See K. Creutz, “Transnational Privatized Security and the International Protection of Human Rights, 19/2006” (Helsinki: Castrén Institute Research Reports, 2006).
16. On the need for greater certainty, see, for example, *Economist*, “Whose Law Must Mercenaries Obey?,” August 23, 2008.
17. Indeed, as some of his earlier writings make clear, this is the philosophical approach and understanding of effective regulation that seems to guide the mandate of Professor John Ruggie, the Secretary-General’s Special Representative on Business and Human Rights. See J. G. Ruggie, “Taking Embedded Liberalism Global: The Corporate Connection,” in *Taming Globalization: Frontiers of Governance*, edited by D. Held and M. Koenig Archibugi (Cambridge: Polity Press, 2003).
18. See Red Flags, available at www.redflags.info.
19. On the need for greater certainty, see, for example, *Economist*, “Whose Law.”

20. United Nations, *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, John Ruggie, UN Doc. A/HRC/85, April 7, 2008b, p. 14.
21. United Nations, *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, UN Doc. A/HRC/4/035, February 9, 2007a, p. 18.
22. Comments by the Control Risks Group, September 30, 2008, available at www.ipinst.org/gsi.
23. For such a mapping, see Caroline Rees and David Vermijs, *Mapping Grievance Mechanisms in the Business and Human Rights Arena*, Corporate Social Responsibility Initiative Report, No. 28 (Cambridge, MA: Harvard Kennedy School, February 2008).
24. This definition is adapted from those used by the BAPSC, IPOA, and the Swiss Initiative. It is deliberately broad, in order not to prejudice any particular approach to regulating the closely-related services offered by military-oriented companies and those that focus more on service provision in nonmilitary (i.e., security) contexts. The personnel carrying out these functions may be, but need not be, armed.
25. The ISO, in contrast, defines a standard as “a document, established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics of activities or their results, aimed at the achievement of the optimum degree of order in a given context.” See ISO/IEC Information Centre, “Standards and Regulations”, n.d., available at www.standardsinfo.net/info/livelink/fetch/2000/148478/6301438/standards_regulations.html.
26. This template draws heavily on Rees and Vermijs, *Mapping Grievance Mechanisms*.

Chapter Two

1. For such an overview, see www.privatesecurityregulation.net, run by the Geneva Centre for the Democratic Control of Armed Forces and Simon Chesterman and Cia Lehnardt, eds., *From Mercenaries to*

- Markets: The Rise and Regulation of Private Military Companies* (Oxford: Oxford University Press, 2007).
2. US GAO, *Rebuilding Iraq: DOD and State Department Have Improved Oversight and Coordination of Private Security Contractors in Iraq, but Further Actions Are Needed to Sustain Improvements (Report to Congressional Committees)* (Washington, DC: 2008).
 3. See especially Human Rights First, *Private Security Contractors at War*, Human Rights First report, February 2, 2008, available at www.humanrightsfirst.info/pdf/08115-usls-psc-final.pdf.
 4. *The Foreign Military Sales Act*, which deals with sales of military goods and services from the US to foreign governments, requires approval by the Pentagon.
 5. M. Caparini and F. Schreier, "Privatising Security: Law, Practice, and Governance of Private Military and Security Companies," Occasional Paper No. 6 (Geneva: Geneva Centre for the Democratic Control of Armed Forces, March 2005).
 6. See A. Leander, *Eroding State Authority? Private Military Companies and the Legitimate Use of Force* (Rome: Centro Militare de Studi Strategi, 2006).
 7. UK FAC, *Human Rights Annual Report 2007*, HC 533 (London: The Stationary Office Limited, July 20, 2008), pp. 33–35, available at www.parliament.uk/parliamentary_committees/foreign_affairs_committee/fac_pn_39a_07_08.cfm.
 8. War on Want, *Corporate Mercenaries: The Threat of Private Military and Security Companies*, 2006, p. 21, available at www.waronwant.org/Corporate+Mercenaries+13275.twl.
 9. See Afghanistan Ministry of Interior, *Procedure for Regulating Activities of Private Security Companies in Afghanistan*, February 2008, available at www.privatesecurityregulation.net.
 10. "At least two," because arguably the conduct in question is subject to universal jurisdiction and therefore may be investigated and prosecuted by any state.
 11. This is particularly the case in southeastern Europe and Latin America.
 12. *Acquis* is French for "asset." In Europe, the term is particularly associated with the European Union, where states are expected continuously to implement the *acquis communautaire*—the total body of EU law,

regulation, and standards so far acquired through development by the Union's membership and institutions, including its courts and political decision-making bodies. The term has also been used in the WTO context, where the Appellate Body once referred to the accumulation of law within the WTO and *General Agreement on Tariffs and Trade* (GATT) system as the *acquis gattien*. The OSCE, Council of Europe, and OECD have also all used the term to refer to their own evolving bodies of standards.

13. Although, see C. Hoppe, *Corporate Social Responsibility at the Frontline? The Case of Private Military Companies*, n.d., on file with IPI.
14. A Pan African Security Association was also formed in 2008. However, it remains in its early days and has not been addressed in this study. For a broader evaluation of PMSC mission statements and codes of conduct, see N. Rosemann, "Code of Conduct: Tool for Self-Regulation for Private Military and Security Companies," Occasional Paper No. 15, prepared for the Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2008.
15. Their association with IPOA, BAPSC, and PSCAI indicates a potential bias in our sample, since these PMSCs are presumably among those that recognize the utility of such arrangements. However, since this bias is toward those PMSCs that are likely to be among the better implementers and enforcers of human rights and IHL standards, this suggests that our conclusions about shortcomings in implementation and enforcement should in fact hold, *a fortiori*, for the broader PMSC community.
16. Notably, a new rule under the US Federal Acquisition Regulation, which took effect on December 24, 2007, requires contractors to have written codes of business ethics and conduct, to promote compliance with the code, to have a training program on the code for employees, to establish an internal reporting system, and to publicize this system among employees, among other provisions. The regulation covers contractors for awards of \$5 million and above, and for contracts to be conducted for 120 days or more.
17. See, for example, Erinys (UK), *Code of Conduct* (London, 2008), p. 17.
18. Scott Wilson, correspondence with IPI, June 26, 2008.
19. Control Risks Group, *Corporate Governance Framework* (London, n.d.).
20. Group4Securicor Plc, *Business Ethics Policy* (London, 2008).

21. Triple Canopy, *Code of Conduct and Business Ethics* (Herndon, VA: 2006).
22. Erinys (UK), *Code of Conduct*.
23. It is of course possible that such guidance is provided by documentation not made available to us, though there were no references in the documents examined to any such additional documentation or guidance.
24. See, for example, Group4Securicor Plc, *Business Ethics*.
25. For an account to the US Congress of alleged weaknesses in the hotline system of KBR (though not formally a PMSC by our definition), see L. Warren, *Contracting Abuses in Iraq: Is the Bush Administration Safeguarding American Taxpayer Dollars?*, testimony before the US Senate Democratic Policy Committee Hearing, April 28, 2008, available at <http://democrats.senate.gov/dpc/hearings/hearing42/warren.pdf>.
26. Scott Wilson, correspondence with IPI, June 26, 2008.
27. On these principles, see United Nations, *Annual Report on the Activities of the Security Council Working Group on Children and Armed Conflict, Established Pursuant to Resolution 1612 (2005) (July 1, 2007, to June 20, 2008)*, UN Doc. S/2008/455, 2008a. Some PMSCs do appear to compensate third parties for harms done to them or their property, through solatia payments. Such payments, at the unfettered discretion of the PMSC, and often justified by vague references to local cultural norms, risk serving as blood money to pay victims for their silence and are certainly no substitute for criminal proceedings.
28. War on Want, *Corporate Mercenaries*.
29. Hoppe, *Corporate Social Responsibility*.
30. For a draft code of conduct limited to human rights and IHL that incorporates elements PMSCs' own internal mission statements and codes of conduct, see Rosemann, "Code of Conduct."
31. See especially International Alert, *The Mercenary Issue at the UN Commission on Human Rights: The Need for a New Approach* (London: International Alert, 2001).
32. *Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 1125 UNTS 3, entered into force December 7, 1978.
33. The 2002 UK Green Paper on the regulation of PMSCs stated: "[a]

- number of governments including the British Government regard this definition as unworkable for practical purposes.” UK FCO, *Private Military Companies: Options for Regulation*, Return to an Address of the Honorable House of Commons (London: The Stationary Office, 2002), para. 6.
34. G. Best, *Humanity in Warfare* (London: Weidenfeld and Nicolson, 1980), p. 375.
 35. Initialed by the representatives of the OAU States at the 14th Summit Conference (Libreville, July 1977), entered into force on April 22, 1985; reprinted in G. J. Naldi, *Documents of the Organization of African Unity* (London: Mansell, 1992), p. 58.
 36. ICRC, *Commentary on the Additional Protocols of June 8, 1977 to the Geneva Convention of August 12, 1949* (Geneva, 1987), para. 1790.
 37. See P. Mourning, “Leashing the Dogs of War: Outlawing the Recruitment and Use of Mercenaries,” *Virginia Journal of International Law* 589, no. 22 (1982): 589-612.
 38. Since replaced by the UN Human Rights Council.
 39. Enrique Bernales Ballesteros was succeeded in 2004 by Shaista Shameem, who went on to serve on the new working group. The working group was established in 2005, under Resolution 2005/2 of the Commission on Human Rights.
 40. See, for example, United Nations, “Working Group on Use of Mercenaries Concludes Second Session, Addresses Private Military and Security Companies Issues,” press release, February 26, 2007b, available at www.unhchr.ch/hurricane/hurricane.nsf/view01/1D59617B2E30442FC125728E003539CD?opendocument . And see generally the homepage of the working group at www.ohchr.org/english/issues/mercenaries/index.htm .
 41. The working group conducted a visit to the UK between May 26 and 30, 2008, and has received official invitations to visit Afghanistan and the US in 2009.
 42. On Ruggie, see Chapter One above. For Alston’s comments, see P. Alston, *Press Statement of Professor Philip Alston, United Nations Human Rights Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions*, June 30, 2008, available at www.extrajudicialexecutions.org/news/united_states/Press_Statement.pdf .
 43. One important exception to this process may be the research into

humanitarian practice and standards in contracting with PMSCs currently being led by the Overseas Development Institute, but facilitated by the UN Office for the Coordination of Humanitarian Affairs. That process may demonstrate how the UN can act as a convenor bringing together state and nonstate stakeholders to develop common standards in this and similar industries.

44. See The Swiss Department of Foreign Affairs, "The Montreux Document," available at www.eda.admin.ch/psc .
45. See James Cockayne, "Regulating Private Military and Security Companies: The Content, Negotiation, Weaknesses and Promise of the Montreux Document," 13 no. 3, *Journal of Conflict and Security Law* (Winter 2008): 401-428.
46. Namely: Afghanistan, Angola, Australia, Canada, China, France, Germany, Iraq, Poland, Russia, Sierra Leone, South Africa, Sweden, Switzerland, the UK, Ukraine, and the US.
47. By way of disclosure, it should be noted that IPI was closely involved in drafting the Montreux Document.
48. See the discussion of emerging efforts by InterAction in footnote 79 in the section on humanitarian accountability partnerships in Part Two, Chapter Six.
49. International Alert and the Colombian NGO Fundacion Ideas de la Paz are actively involved in the Colombia Process of the Voluntary Principles on Security and Human Rights. Saferworld played a key role in the Sarajevo Process. See Part Two of this book, Chapter Nine.
50. Civil society groups have participated in IPOA's code of conduct simulations and are currently being consulted by the BAPSC in the process of developing the BAPSC standard/code of principles. See Part Two of this book, Chapter Seven.
51. See www.business-humanrights.org/Documents/HRFprivatesecurity .
52. Ibid.
53. See War on Want, *Corporate Mercenaries; Human Rights First, Private Security*.
54. A joint initiative by the New America Foundation and the Center for a New American Security, supported by the Ford Foundation.
55. See Institute for International Law and Justice, www.iilj.org/research/greentreenotes.asp .

56. See Private Security Regulation, www.privatesecurityregulation.net .

Chapter Three

1. See United Nations, *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, John Ruggie, UN Doc. A/HRC/85, April 7, 2008b.
2. On the role of market ecology in this industry, see D. Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2004).
3. IPI is grateful to Jolyon Ford of the Centre for International Governance & Justice, the Australian National University, for this observation.
4. Again, IPI is grateful to Jolyon Ford.
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Chapter Four

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10. Geneva Call, *Progress Report*, p. 25.
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16. Geneva Call, *Report of Mission*, pp. 7–10.
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18. Ibid.
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20. Geneva Call, *Progress Report*, p. 14.
21. Geneva Call, *Annual Report*, pp. 11–12.
22. Ibid.
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25. See ICRC, *Interview: Private Military/Security Companies Acknowledge Humanitarian Law Obligations*, November 27, 2006a, available at www.icrc.org/web/eng/siteeng0.nsf/html/private-military-companies-interview-271106?opendocument ; ICRC, *Privatisation of War: The Outsourcing of Military Tasks*, May 23, 2006b, available at www.icrc.org/Web/Eng/siteeng0.nsf/html/privatisation-war-230506 .
26. ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Document prepared by the ICRC for the 30th International Conference of the Red Cross and Red Crescent Movement, Geneva, October 2007a, Document no. 30IC/07/8.4, p. 25.
27. Ibid., p. 24.
28. See generally ICRC, *Privatisation*.

29. See J. Cockayne, *Commercial Security in Humanitarian and Post-Conflict Settings: An Exploratory Study* (New York: International Peace Academy, 2006).
30. ICRC, *Privatisation*.
31. See for example ICRC, *Interview: Private Military/Security Companies*.
32. Ibid.
33. Article 90 of the *First Additional Protocol to the Geneva Conventions* also provides for the establishment of an International Fact-Finding Commission to “enquire into any facts alleged to be a grave breach... or other serious violation” of the Protocol, and “facilitate, through its good offices, the restoration of an attitude of respect” for the *Conventions* and the *Protocol*. Yet while the Commission has been operational since 1991, it has never been activated by any state in any case.
34. See G. Rona, “The ICRC Privilege Not to Testify,” February 28, 2002, available at www.icrc.org/web/eng/siteeng0.nsf/html/5WSD9Q . And see ICC Rules of Procedure and Evidence Rule 73(4)-(6).
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40. See UNICEF, “Impact of Armed Conflict on Children,” August 1996, available at www.unicef.org/graca/ .
41. For an account, see inter alia, J. Becker, “Children as Weapons of War,”

Human Rights Watch World Report 2004, 2004, available at www.hrw.org/wr2k4/11.htm .

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45. Watchlist, *Getting It Done and Getting It Done Right: A Global Study on the United Nations-led Monitoring and Reporting Mechanism on Children and Armed Conflict* (New York: Watchlist on Children and Armed Conflict, 2008).
46. See France Diplomatie, "Children's Rights," 2008, available at www.diplomatie.gouv.fr/en/france-priorities_1/democracy-human-rights_1101/children-rights_3265/child-soldiers_3871.html .
47. Watchlist, *Getting it Done*, p. 11-17.
48. United Nations, *Children and Armed Conflict: Report of the Secretary-General*, UN Doc. A/59/695-S/2005/72, 2005a, p. 17.
49. *Ibid.*
50. Becker, "Children."
51. United Nations, *Children*, p. 13.
52. United Nations, Letter dated 11 July 2008 from the Permanent Representative of France to the United Nations to the President of the Security Council, UN Doc. S/2008/455, July 11, 2008, p. 5.
53. *Ibid.*, p. 13.
54. Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2008* (London, 2008).
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56. *Ibid.* Also see Becker, "Children."

Chapter Five

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3. This section draws substantially from Martinez, “Slave Trade”; J. S. Martinez, “Antislavery Courts,” *Yale Law Journal* 117, no. 160, available at <http://thepocketpart.org/2008/02/25/martinez.html>; and J. S. Martinez, “Antislavery Courts and the Dawn of International Human Rights Law,” *Yale Law Review* 117, no. 550 (2008b).
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5. Martinez, “Antislavery Courts and the Dawn,” p. 550.
6. Or had been carrying slaves, or were going to be. See Martinez, “Antislavery Courts and the Dawn.”
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10. *Ibid.*
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16. See Court of Arbitration for Sport, www.tas-cas.org .
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18. Ibid.
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21. ILO, “Governing Body – Subcommittee on Multinational Enterprises,” n.d., available at http://www.ilo.org/empent/Informationresources/lang--en/WCMS_101252/index.htm .
22. See for example ILO, “Governing Body – Subcommittee on Multinational Enterprises”, n.d., available at http://www.ilo.org/empent/Informationresources/lang--en/WCMS_101252/index.htm .
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24. Ibid.
25. ILO, *Form to Request Interpretation*, n.d., on file with authors.
26. Ibid.
27. Ibid. See also ILO, *Procedure for the Examination of Disputes*, ILO Official Bulletin (Geneva, ILO), 1986, Vol. LXIX, Series A, No. 3, pp. 196-197.
28. Ibid.
29. Ibid.
30. Ibid.
31. Ibid.
32. ILO, *Tripartite Declaration*.
33. E. Landy, *The Effectiveness of International Supervision: Thirty Years of ILO Experience* (London: Stevens & Sons, 1966), p. 201. IPI is grateful to Jolyon Ford for this citation.
34. See BasesWiki, International Labour Organization, June 11, 2009, available at [http://www.baseswiki.org/C_Grievance_Mechanisms/Global_Mechanisms/International_Labour_Organization_\(ILO\)](http://www.baseswiki.org/C_Grievance_Mechanisms/Global_Mechanisms/International_Labour_Organization_(ILO)) .

Chapter Six

1. The Kimberley Process website defines conflict diamonds as rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described in relevant UNSC resolutions, and as understood and recognized in United Nations, *The Role of Diamonds in Fuelling Conflict: Breaking the Link Between the Illicit Transaction of Rough Diamonds and Armed Conflict as a Contribution to Prevention and Settlement of Conflicts*, UNGA Resolution, UN Doc. A/Res/55/56, 2000, available at http://mmsd1.mms.nrcan.gc.ca/kimberleyprocess/UN_Resolution_e.pdf.
2. The rough diamonds banned by the UN resolution were under the control of the Union for the Total Independence of Angola (UNITA). The resolution allowed for the trade of diamonds certified by the legitimate government of Angola. The sanctions were labeled “targeted” or “smart” and functioned as a de facto certificate-of-origin scheme.
3. United Nations, *The Role of Diamonds*.
4. See L. Yager, *Significant Challenges Remain in Deterring Trade in Conflict Diamonds: Hearing on Illicit Diamonds, Conflict, and Terrorism: The Role of US Agencies in Fighting the Conflict Diamond Trade Before the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia Committee on Government Affairs, US Senate, 107th Congress, February 13, 2002*, available at <http://govtaff.senate.gov/021302yager.pdf>.
5. See generally A. Grant and I. Taylor, “Global Governance and Conflict Diamonds: The Kimberley Process and the Quest for Clean Gems,” *The Round Table* 93, no. 375 (2004): 385–401.
6. World Trade Organization, *Waiver Concerning Kimberley Process Certification Scheme for Rough Diamonds—Decision of May 15, 2003*, WT/L/518, Washington, DC, 2003, available at <http://docsonline.wto.org/>.
7. Kimberley Process, *Kimberley Process Certification Scheme*, 2002, IV (d), available at www.kimberleyprocess.com/background/index_en.html.
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9. *Ibid.*, VI (13).

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17. Ibid.
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21. Rees and Vermijs, *Mapping Grievance Mechanisms*.
22. Social Accountability Accreditation Services, “The Certification Process,” n.d., available at www.saasaccreditation.org/certprocess.htm .
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30. Social Accountability International, "SA8000 Certification," n.d., available at <http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=617&parentID=473>.
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35. Ibid.
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38. Social Accountability Accreditation Services, SAAS Global Procedures Guideline 304, p. 3.
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42. See Network for Good, "Social Accountability International," available at www.guidestar.org/pqShowGsReport.do?partner=networkforgood&ein=13-3960591.
43. For a more thorough discussion of the history of FLA, see L. Kaufman

- and D. Gonzalez, "Labor Standards Clash with Global Reality," *New York Times*, April 24, 2001; T. A. Hemphill, "Monitoring Global Citizenship: Industry Self-regulation at a Crossroads," *The Journal of Corporate Citizenship* 14 (2004): 81.
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72. Rees and Vermijs, *Mapping Grievance Mechanisms*, p. 34.
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76. Rees and Vermijs, *Mapping Grievance Mechanisms*, p. 34.
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97. Lattu, *To Complain*.
98. ALNAP, *Annual Review: Strengthening Monitoring in the Humanitarian Sector* (London: Overseas Development Institute, 2003).
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100. *Economist*, "Measuring the Measurers," May 31, 2007.
101. For a rich historical overview of the history of CRAs, see R. Lowenstein, "Triple-A Failure," *New York Times*, April 27, 2008.
102. There are now ten such firms recognized by the SEC.
103. See Lowenstein, "Triple-A," and J. Surowiecki, "The Dreaded Downgrade," *New Yorker*, January 7, 2002.
104. Lowenstein, "Triple-A."

105. Surowiecki, "Dreaded."
106. See Lowenstein, "Triple-A."
107. See *Economist*, "Measuring"; Lowenstein, "Triple-A"; and Surowiecki, "Dreaded." See also the transcript of the US Government's Committee on Oversight and Government Reform, Hearing on the Credit Rating Agencies and the Financial Crisis, available at <http://oversight.house.gov/story.asp?ID=2250> .

Chapter Seven

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2. These were AMECO, Armor Group, Blackwater USA, Demining Enterprises International, Evergreen International Aviation, Group EHC, Hart Security, ICI of Oregon, J3 Global Services, Main Street Supply and Logistics, Medical Support Solutions, MPRI, Pacific Architects & Engineers, Security Support Solutions, SOC-SMG, and Triple Canopy.
3. Other countries of incorporation include South Africa, Spain, Sweden, Turkey, UAE, and UK. A full list of member companies is available at <http://ipoaonline.org> .
4. This proportion may be somewhat higher, depending on how training (which this study includes in its definition of PMSC services) is understood.
5. Dun & Bradstreet (DNB), a US-based firm that produces financial risk assessments.
6. Doug Brooks and J. J. Messner, correspondence with IPI, June 26, 2008.
7. Ibid.
8. Erica Razook in Council on Foreign Relations, "Online Debate on Private Security Contractors, December 13, 2007," available at www.cfr.org/publication/15032 .
9. Doug Brooks and J. J. Messner, correspondence with IPI, June 26, 2008.
10. IPOA, *Code of Conduct*, 2006a, para. 1.1, available at http://ipoaonline.org/php/index.php?option=com_content&task=view&id=205&Itemid=175 .
11. Ibid., para. 1.2.

12. Ibid., para. 9.2.2. This recalls the test on the lawful use of force in self-defense found in customary international law, as well as in Article 51 of the UN Charter.
13. None of these instruments formally bind PMSCs as parties, though they may create specific obligations for PMSCs and their staff through customary international law.
14. Doug Brooks and J. J. Messner, correspondence with IPI, June 26, 2008.
15. Ibid.
16. Ibid.
17. IPOA, *Code*, para. 2.1. English is not a requirement but a preference. IPOA has previously received a complaint in Spanish.
18. IPOA, *Enforcement Mechanism*, 2006b, para. 1, available at http://ipoaonline.org/php/index.php?option=com_content&task=view&id=135&Itemid=135 .
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20. Ibid., paras. 3.5, 3.6.
21. Doug Brooks and J. J. Messner, correspondence with IPI, June 26, 2008.
22. IPOA, *Enforcement*, para. 8.5.
23. IPOA, *Code*, para. 8.4; Doug Brooks and J. J. Messner, correspondence with IPI, July 2, 2008.
24. Ibid.
25. The complaint that prompted this reminder was rejected by the IPOA Enforcement Mechanism on the basis that IPOA was unable to obtain additional information from the complainant, despite requests. Doug Brooks and J. J. Messner, correspondence with IPI, June 26, 2008.
26. IPOA, *Enforcement*, para. 4.
27. Ibid., paras 3.10–3.13, 3.17–3.19, 4.6–4.8.
28. Ibid., para. 2.2.3.
29. Comments of IPOA, available at www.ipinst.org/gsi.
30. Doug Brooks and J. J. Messner, correspondence with IPI, July 2, 2008.
31. Doug Brooks and J. J. Messner, correspondence with IPI, June 26, 2008.
32. J. Broder and D. Johnston, “FBI Says Guards Killed 14 Iraqis Without

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94. The BAPSC was granted exclusive permission by the SIA to base its SAW on that of the SIA. The copyright of the SAW is still held by the SIA. The completion of the BAPSC SAW does not demonstrate any association with the SIA. BAPSC, *Self-Assessment Workbook*, 2007, p. 1, available at www.bapsc.org.uk/membership-membership_criteria.asp .
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103. Hart Security did not end up joining the resultant trade association.
104. These were all companies operating in Iraq. Kroll was invited but did not attend.
105. Andrew Bearpark, interview by IPI, July 9, 2008.
106. Ibid.
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108. The BAPSC's fee structure is as follows: Company annual turnover of over £10M, £15,000 + VAT (+ £1,000-administration fee); annual turnover of between £3M and £10M, £6,000 + VAT; annual turnover of under £3M, £3,000 + VAT.
109. Aegis Defense Services Ltd, ArmorGroup International Plc, Control Risks, Erinys (UK) Ltd, Janusian Security Risk Management Plc, Olive Group.
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Chapter Eight

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Chapter Nine

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 49. Rees and Vermijs, *Mapping Grievance Mechanisms*, p. 98.
 50. International Commission of Jurists, “International Complaint Launched Against Global Solutions Ltd. Over Australian Immigration Centre,” July 12, 2005, available at www.libertysecurity.org/article320.html.
 51. Transparency International, *Using the OECD Guidelines to Tackle Corporate Corruption*, March 2008, p. 3, available at www.transparency.org/content/download/32236/493584.
 52. Norwatch, “Aker Kvaener out of Guantánamo,” January 5, 2006, available at www.norwatch.no/index.php?artikkelid=1478&back=2.
 53. P. Feeney, *Making Companies Accountable: An NGO Report on*

Implementation of the OECD Guidelines for Multinational Enterprises by National Contact Points, 2002, p. 3, available at www.oecd.org/dataoecd/16/37/2965489.pdf. Also noted by TUAC, TUAC Submission to the Annual Meeting of the National Contact Points: Analyses of the NCPs (Paris, 2007), available at www.gurn.info/topic/oecdgdll/07meetncp_en.pdf.

54. For example, the US NCP is a single department located in the Office of Investment Affairs in the State Department. TUAC argues that “the [US] NCP has not contributed positively to the resolution of a single case,” TUAC, *TUAC Submission*, para. 5.
55. TUAC notes that the Korean NCP appears to have no expertise in dealing with international labor standards and corporate social responsibility issues. *Ibid.*
56. Feeney, *Making Companies*.
57. The UK, French, German, Italian, and US NCPs. It was not possible to find information on this case after spring 2007.
58. United Nations, *Protect, Respect*; Rees and Vermijs, *Mapping Grievance Mechanisms*.
59. TUAC, *TUAC Submission*. More than eighty of these cases have been raised by trade unions, and fifty to sixty by NGOs.
60. Global Witness, *Afrimex (UK): Democratic Republic of Congo, Complaint to the UK National Contact Point Under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises* (London, 2007), available at www.globalwitness.org/media_library_detail.php/507/en/complaint_against_afrimex_uk_ltd_under_the_specifi. Following this report, the NGO Global Witness brought a “specific instance” against the mining company Afrimex.
61. See, for example, E. Krahmman, “Regulating Private Military Companies: What Role for the EU?,” *Contemporary Security Policy* 26, no. 1 (2005): 103–125; A. J. K. Bailes and C. Holmqvist, *The Increasing Role of Private Military and Security Companies*, Study for the European Parliament’s Subcommittee on Security and Defence, Doc. No. EP/EXPO/B/SEDE/FWC/2006-10/Lot4/09, 2007, p. 22.
62. Krahmman, “Regulating Military Companies”; Bailes and Holmqvist, *The Increasing Role*, p. 19. Application of EU Treaty rules to production, public procurement, and trade for military purposes is otherwise

- largely curtailed by Article 296 of the Treaty (Ibid.).
63. EU Code on Arms Exports, Preamble.
 64. R. Isbister, "EU Rethinking the Arms Export Code," *ISN Security Watch*, June 6, 2008, available at www.isn.ethz.ch/news/sw/details.cfm?ID=19050 . See also Saferworld, *Taking Control: The Case for a More Effective European Union Code of Conduct on Arms Exports* (London, 2004), pp. 30–32.
 65. Isbister, "EU Rethinking."
 66. Krahmann, "Regulating Military Companies."
 67. Ibid.
 68. Ibid., Criterion One.
 69. Ibid., Criterion Two.
 70. I. Anthony, "Militarily Relevant EU–China Trade and Technology Transfers: Issues and Problems," SIPRI paper, May 20, 2005, p. 17, available at www.sipri.org/contents/expcon/2005-0601chitechtransfer.pdf .
 71. World Security Institute, *EU Arms Exports/Code of Conduct*, March 19, 2007, available at www.wsibrussels.org/showarticle.cfm?id=201 .
 72. Amnesty International, *Undermining Global Security: The European Union's Arms Exports*, 2004, available at <http://asiapacific.amnesty.org/library/Index/ENGACT300092004?open&of=ENG-312> .
 73. Bailes and Holmqvist, *The Increasing Role*, pp. 21–22.
 74. Ibid., pp. 22–23.
 75. This, at least, is the orthodoxy. However, there is also reason to believe that some of the more recent members of the EU, and some eastern European candidate countries, are also large PMSC exporters.
 76. Bailes and Holmqvist, *The Increasing Role*, p. 23.
 77. The private development arm of the World Bank Group.
 78. N. Cappon, *The Equator Principles: Promoting Greater Responsibility in Project Financing*, 2008, p. 2, available at www.equator-principles.com/documents/equator-principles-e.pdf .
 79. The threshold was revised down from \$50 million in 2006.

80. See www.equator-principles.com/mgmt.shtml
81. S. Ellis and V. Caceres, "Equator Principles Review H2 2006: The Reformed Standards Maintain Their Momentum," *Infrastructure Journal* 42 (2007), available at www.ijonline.com/Pdf/IJ42/2-5_Equator_Principles_Review_H2_2006.pdf.
82. Saferworld, *The Sarajevo Code of Conduct for Private Security Companies* (London: Saferworld, 2006); Saferworld, *The Sarajevo Client Guidelines for the Procurement of Private Security Companies* (London: Saferworld, 2006).
83. Ibid.
84. Saferworld, *Sarajevo Code*, p. v.
85. Saferworld, *Sarajevo Guidelines*.
86. Saferworld, *Sarajevo Code*, p. iv.
87. International Alert, Saferworld, and SEESAC, *SALW and Private Security Companies in South East Europe*, 2005, available at www.seesac.org/reports/psc.pdf.
88. S. Makki and others, *Private Military Companies and the Proliferation of Small Arms: Regulating the Actors* (London: Saferworld and International Alert, 2001), available at www.saferworld.org.uk/publications.php/133/private_military_and_security_companies_and_proliferation_of_small_arms_regulating_the_actors.
89. The report recommends that "The regulatory authorities of each country and entity should work together with the most progressive members of the private security industry to introduce and implement far-reaching regulations that meet the best international standards, so as to ensure that PSCs operate in a safe and professional way." International Alert, Saferworld, and SEESAC, *SALW*, p. ii.
90. See The Center for Security Studies website, available at www.css.ba/.
91. SEESAC, "Activity Report—AR/077," 2006, available at www.seesac.org/acreports/AR76_PSC_Code_of_Conduct.doc.
92. See the SEESAC website, available at www.seesac.org/
93. Saferworld, *Sarajevo Code*; Saferworld, *Sarajevo Guidelines*, p. iv.
94. The Security Manager Association, BiH. The association has since been disbanded.

95. Sarajevo Process workshop list of participants.
96. Eric Westropp (former director of Control Risks), correspondence with IPI, July 24, 2008.
97. A. Richards and H. Smith, *Addressing the Role of Private Security Companies* (London: Saferworld, 2007a), "Addressing the Role of Private Security Companies Within Security Sector Reform Programmes," *Journal of Security Sector Management* 2, no. 1 (2007b): 1–14.
98. Robert Parker (Saferworld), interview by IPI, August 6, 2008.
99. Eric Westropp, correspondence with IPI, July 24, 2008.
100. Ibid.
101. See www.css.ba/projects/index.html
102. "Companies, and employers' organizations representing them, will encourage their clients to use private security providers that have agreed to respect the principles laid down in the Code." Saferworld, *Sarajevo Code*, p. 5.
103. Saferworld, *Sarajevo Code*, pp. 5–6.
104. Robert Parker, interview by IPI, August 6, 2008.
105. Ibid.
106. Saferworld, *Sarajevo Code*, p. 3; Saferworld, *Sarajevo Guidelines*, pp. 5, 8.
107. Saferworld, *Sarajevo Code*, p. 2; Saferworld, *Sarajevo Guidelines*, p. 8.
108. Saferworld, *Sarajevo Code*, p. 3.
109. Eric Westropp, correspondence with IPI, July 24, 2008.
110. Robert Parker, interview with IPI, August 6, 2008.
111. Ibid.
112. Ibid.
113. Saferworld, *Sarajevo Code*, pp. 5–6.
114. Richards and Smith, "Addressing the Role," p. 8.
115. Robert Parker, interview with IPI, August 6, 2008.
116. Eric Westropp, correspondence with IPI, July 24, 2008.

117. M. Cottier, “Elements for Contracting and Regulating Private Security and Military Companies,” *International Review of the Red Cross* 88, no. 863 (2006): 637–663.
118. OECD, *OECD DAC Handbook on Security System Reform: Supporting Security and Justice* (Paris, 2007), available at www.oecd.org/dataoecd/43/25/38406485.pdf.
119. Saferworld, *Sarajevo Guidelines*, p. 4.
120. Robert Parker, interview with IPI, August 6, 2008.

Chapter Ten

1. These are the Montreux Document and other relevant standards: the *Geneva Conventions* (1949) and *Additional Protocols* (1977), *Universal Declaration on Human Rights* (1948), the UN Code of Conduct for Law Enforcement Officials (1979), the UN Basic Principles on the Use of Force (1990), and the ILO *Conventions* and Recommendations. Other existing standards such as the VPSHR, and the Sarajevo Code of Conduct and Client Guidelines, may also be applicable in specific contexts.
2. In the style of the UN Framework on Children and Armed Conflict, Geneva Call, and the ICRC.
3. Similar to those established by the ICTI CARE Process and Clear Voice.
4. In promoting good practices, it would resemble another watchdog, the NGO Transparency International (TI). TI works with governments, businesses, civil society groups and other stakeholders to promote transparency in elections, public administration, procurement and business. However, unlike the GSI watchdog proposed here, TI does not investigate allegations of corruption or expose individual cases. See www.transparency.org.
5. As is the case with the Global Compact logo and ICTI.
6. As is required by the Business Social Compliance Initiative and ICTI.
7. Like those of the Fair Labor Association.
8. Montreux Document on Private Military and Security Companies, Part II: Procedure for the Selection and Contracting of PMSCs. Available at www.eda.admin.ch/psc.

9. Such as that developed by the FATF.
10. Like the OPCW.
11. This funding structure is modeled on that of the *Toxic Waste Convention*.
12. As does the BAPSC.
13. The club's membership application structure and participation requirements draw on those of the VPSHR.
14. As is evident in the case of the VPSHR.
15. The Montreux Document, for example, was ultimately endorsed by nine states from the Western European and Other Group (Australia, Austria, Canada, France, Germany, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and the United States of America), three African states (Angola, Sierra Leone, and South Africa), no Latin American states, two Middle Eastern states (Afghanistan and Iraq), two Eastern European states (Poland and Ukraine), and one Asian state (China).
16. The Organization for African Unity, for example, took a stand against mercenarism—but the policy position of its successor organization, the African Union, remains indeterminate. There is a likelihood that the GSI will play an increasing role in the continent's peace and security, given the growth of an African security industry (on which, see R. Abrahamsen and M. C. Williams, "Securing the City: Private Security Companies and Non-State Authority in Global Governance," *International Relations* 21, no. 2 (2007): 237–253), the likely reliance of the US Africa Command (AFRICOM) on contractors, and the likely reliance of the African Standby Force on contractors in roles ranging from training to transport and logistics support. The Council of Europe has also become increasingly vocal on this issue, addressing the regulation of PMSCs in its *2008 Astana Declaration*. And the Commonwealth of Independent States adopted a relevant model law, *On Counteracting Mercenarism*, as early as 2005.
117. See ISEAL Alliance, *ISEAL Emerging Initiatives: Module 1—Overview* (London, 2007), p. 9.
18. ISEAL Alliance, *ISEAL Emerging*, p. 13. See also ISO, "How Are ISO Standards Developed?" 2008b, available at www.iso.org/iso/standards_development/processes_and_procedures/how_are_standards_developed.htm.

19. This may require, for example, financial support to ensure the participation of affected communities in the Framework development process. There are a number of precedents for such an approach. For example, the Working Group on Social Responsibility that is developing ISO 26000 has established a voluntary trust fund to sponsor the participation of a broad range of external stakeholders in the development of the standard, as well as activities designed to raise awareness of the standards development process. The trust fund receives donations from both states and corporations.
20. See note 1 above.
21. See, for example, ISO Guide 2 on Standardization.
22. While existing standardization institutions, such as the ISO, may have relevant experience in shaping such a process, it seems unlikely that any would prove an appropriate forum for the actual negotiation of a GSI standard and any subsequent Framework. The ISO, for example, deals with the harmonization of highly technical standards, and has not served as a forum for developing multistakeholder arrangements centrally involving states' political, foreign policy, and defense institutions (rather than their technical and scientific establishments). Moreover, since the ISO agrees on standards through a majority vote of its plenary of national representatives, it seems unlikely that many states—or the ISO itself—would be willing to sacrifice the carefully-won apolitical space it occupies by introducing this topic into its deliberations. Nevertheless, ISO experiences may be highly relevant at a number of points in this negotiation. Both ISO 28000, dealing with management standards for the security of the supply chain, and ISO 26000, a standard on Social Responsibility that ISO is currently developing, may offer useful guidance in developing GSI standards. ISO 26000 is not, however, intended to apply to government agencies in the exercise of their executive, legislative, or judicial powers: ISO, *Draft*, p. vi.
23. See WTO TBT Agreement Arts 2.4, 2.9, 5.4, 12.4, and Annex 3 para. F.
24. *Ibid.*, Annex 1, para. 2 and Annex 3 para. H.
25. *Ibid.*, Art. 13.3 and Annex 3 para. H.
26. *Ibid.*, Art. 2.8 and Annex 3 para. I.
27. *Ibid.*, Annex 3 paras J, M and P.
28. *Ibid.*, Annex 3 paras L and N.

29. Ibid., Arts. 2.9.1, 2.11, 5.6.1, 5.8, and Annex 3 para. O.
30. Ibid., Annex 3 para. Q.
31. ISEAL Alliance, *ISEAL Emerging*, p. 12.
32. See N. Rosemann, “Code of Conduct: Tool for Self-Regulation for Private Military and Security Companies,” Occasional Paper No. 15, prepared for the Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2008 for some initial thinking on the possible content of such a code of conduct if limited to human rights and IHL, and thoughts on how it might be developed.
33. See, for example, Brown, “Principles.”
34. On the domestic Chinese security market, see M. Dutton, “Toward a Government of the Contract: Policing in the Era of Reform,” in *Crime, Punishment, and Policing in China: Crime, Control, and Modernity in China*, edited by Børge Bakken (Lanham, MD: Rowman & Littlefield, 2005), pp. 215–234.

Conclusion

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*Comprehensive and clear. This isn't just a contribution to the debate - it is the debate. **Entering this debate without reading this first would be foolhardy.** The single clearest, most comprehensive study on the regulation of PMSCs I have seen in my five years at the British Association of Private Security Companies (BAPSC). I congratulate the authors.*

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CHRISTOPHER AVERY, Director, Business & Human Rights Resource Centre

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and “*Private Security, Public Order*”

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SALIL TRIPATHI, Director, Human Rights Policy,
The Institute for Human Rights and Business

