



Geneva Centre for the Democratic Control of
Armed Forces (DCAF)

Occasional Paper - №15

**Code of Conduct:
Tool for Self-Regulation for Private Military and
Security Companies**

Nils Rosemann

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Nils Rosemann

About the Author

Nils Rosemann is Desk Officer for Human Security and Business in the Human Rights Policy Section within the Swiss Federal Department of Foreign Affairs. This paper reflects the personal views of the author alone and not necessarily those of the Swiss Federal Department of Foreign Affairs.

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List of Acronyms

BAPSC	British Association of Private Security Companies
CACI	Consolidated Analysis Center Inc.
CoC	Code of Conduct
DME	Diligence Middle East Inc.
FDFA	Swiss Federal Department of Foreign Affairs
GC	Geneva Conventions
HR	Human rights
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IFRC	International Federation of the Red Cross and Red Crescent Societies
IHL	International humanitarian law
ILO	International Labour Organisation
IMO	International Maritime Organisation
IPOA	International Peace Operations Association
OAU	Organisation of African Unity
OECD	Organisation for Economic Co-operation and Development
POW	Prisoner of war
PKK	<i>Partiya Karkerên Kurdistan</i> Kurdistan Worker's Party
PMC	Private Military Contractor
PMSC	Private Military and Security Companies
PSC	Private Security Contractor
PSCAI	Private Security Company Association of Iraq
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Code of Conduct: Tool for Self-Regulation for Private Military and Security Companies

Nils Rosemann

1. Introduction and Overview

This study aims to illustrate patterns of behavioural rules derived from corporate obligations, and to deduce from these a draft Code of Conduct (CoC) for Private Military and Security Companies (PMSCs). The purpose of a Code of Conduct for Private Military and Security Companies is to oblige such companies to comply with international human rights standards and the norms of international humanitarian law (IHL), thus improving the protection of human rights. In addition to drawing up a CoC together with implementation and monitoring mechanisms, this study aims to list the requirements of the relevant industry on the one hand, as well as of the stakeholders in politics and civil society on the other. It will then compare the divergence between the two in order to assess the potential success of an initiative for the recognition of a CoC for Private Military and Security Companies. Finally, this study will draw up specific options of action and recommendations related to the process of adopting a CoC.

Codes of conduct (CoCs) are self-imposed corporate obligations for the adoption of normative, and therefore not necessarily legally enforceable, standards which are not part of the original core business objectives of the company. Whereas the assumption of material duties is voluntary, monitoring of the implementation and compliance with said duties is subject to a binding procedure. The voluntary adoption of international standards and the subjugation to an external implementation and monitoring procedure does not replace existing rules of public and private responsibility; instead, it complements them.

A CoC for Private and Military Security Companies (PMSCs) would aim to oblige such companies to comply with human rights principles and standards of IHL, and to provide oversight with an implementation and enforcement mechanism. The advantage of the CoC resides in the fact that these standards serve as a yardstick for entrepreneurial action on the basis of self-imposed corporate obligations, independently of any discussion of companies' direct duty to respect, protect and comply with human rights. A CoC for PMSCs creates clarity concerning the substance and extent of adopted and recognised duties. It serves to confirm and specify these duties, and it defines principles of action for companies and possible framework conditions of government regulation and action models in regards to PMSCs' activities and services.

A CoC for PMSCs for the respect of and compliance with international human rights standards and the norms of IHL can therefore only be of value if it transcends

applicable law, expresses norms in more concrete terms, and closes gaps with regard to regulation and implementation. Above and beyond this, a CoC should register the interests of companies, stakeholders and groups in civil society, and combine them in a political initiative. The more these various interests and factors are respected, the greater the chances of a CoC to succeed.

Rules are in the interest of companies since they clarify what is expected of the latter with regard to the respect of human rights and in the context of IHL. A CoC leads to predictability and equal competitive conditions. There is no clarity concerning the immediate application of the normative standards of the protection of human rights and IHL in the case of PMSCs; and even if there were such clarity, there are still no procedures for the creation of responsibility and accountability. A CoC would not only remedy the lack of clarity regarding the application and binding nature of existing standards, but also even out the differences between national levels of protection from human rights violations, as well as removing implementation deficits and closing protection gaps.

Thus the extent of corporate obligations laid down in a CoC for PMSCs must not arise from abstract notions such as “region of conflict” or “armed conflict”, but from their actual or potential perceived impact on human rights. If norms can be ascertained then a CoC can offer standards by which to judge these companies. In addition to the formulation of individual standards, their promulgation and explanation in client-specific terms is also an important constituent of a CoC.

Before a CoC can be translated into reality, companies will have to implement it internally. This would likely necessitate changes in management, communication channels and in-house accountability.

The operationalisation of the CoC will transform an abstract standard into a concrete norm of conduct, whose violation should have consequences. The binding nature of the obligations thus assumed, however, depends on how these obligations are monitored in-house and on how any infractions are penalised. Too great a discrepancy between the normative claims of formulated standards and the reality of a company’s compliance with them will always give rise to criticism and ultimately to the ineffectiveness of corporate obligations.

The adoption of normative standards and the modification of corporate activities is a process. A CoC for PMSCs should support this process by subjecting its binding nature to a procedure that is limited in time, while reaffirming the fundamental binding nature of the international standards on which it is based.

International initiatives such as a CoC for PMSCs consolidate political will, represent the concerns of civil society, and influence companies’ activities by placing them within a framework. To translate this idea into practice, a CoC requires three things: the companies’ readiness to cooperate, the recognition of the initiative by circles that are critical of such companies, and the political will of a lead nation. An institutional connection to existing procedures or organisations may be helpful when it comes to combining these three elements.

2. Codes of Conduct: Corporate Obligations

Codes of conduct are self-imposed corporate obligations that impose normative standards which are not part of a company's original core business. From a corporate point of view, codes of conduct are part of PR work, risk management and a company's socio-political contributions. These are what are usually described as corporate citizenship, corporate social responsibility, patronage or philanthropy.

A CoC for Private and Military Security Companies (PMSCs) would aim to oblige such companies to comply with duties arising from human rights and IHL standards, and to equip these duties with an implementation and enforcement mechanism. The advantage of the CoC resides in the fact that these standards serve as a yardstick for entrepreneurial action on the basis of self-imposed corporate obligations, quite independent of any discussion of these companies' direct duty to respect, protect and comply with human rights.

A CoC for Private and Military Security Companies offers clarity to the substance and extent of adopted and recognised duties. It serves to confirm and specify these duties, and it defines principles of action for companies as well as a possible framework of government regulation and action with respect to PMSCs' activities and services. In order to guarantee the universal character of the international standards included in codes of conduct despite their voluntary – and thus selective – acceptance by companies, a suitable implementation and monitoring mechanism should be created in which violations of these standards both inside and outside a company can be addressed, discussed and ultimately also penalised. In this way, a widely recognised CoC provides an international measure strengthening the universal claim to the validity of indivisible and inalienable human rights standards. It can do so with the previously mentioned procedures for their implementation and respect; thus negating the cumbersome and lengthy path of making these standards binding for companies through international law.

3. Private Military and Security Companies: Activities and Market

The purpose of a CoC is to influence the behaviour of companies in a certain market. As companies are established to generate profit through goods and services, in the longer term, the objective is to maximise and safeguard profits.¹

Markets are created and guaranteed by government regulation and deregulation.² For services in the field of security and military matters, it becomes clear how the

¹ Friedman, Milton, *Capitalism and Freedom*, (Chicago 1962), 12.

² See among others Rau, Johannes 'Chance, nicht Schicksal - die Globalisierung politisch gestalten' (Speech, Berlin Museum for Communication, 13 May 2002) on www.bundespraesident.de. Other voices: Friedman, Thomas L, *The Lexus and the Olive Tree - Understanding Globalization*, (New York: Farrar, Straus, Giroux, 1999) 'I feel about globalization a lot like I feel about the dawn. Generally speaking, I think it is a good thing that the sun comes up every morning. It does more good than harm. But even if I didn't much care for the dawn there isn't much I could do about it'., xviii.

protection of the public interest has been changed as a consequence of globalisation and a concomitant change in the conception of government. Its elements – the internal maintenance of law and order by the police and the secret services, and the external protection of the existence and enforcement of interests by military force and threat potential, as well as information gathering by the secret services – are no longer perceived as core government tasks.³ The reduction of government tasks by means of outsourcing and public/private partnerships has resulted in a situation whereby companies are offering military, security and intelligence services. Whereas in the military context, the step from product to service was rather small, security and intelligence services as “business ideas” is quite a new phenomenon. In this field, special mention may be made of companies such as Sweden’s Securitas or Germany’s Pedus (Peter Dusmann), not forgetting those US and UK prisons that are already run by private firms.

These national developments, combined with global liberalisation and the removal of barriers for border-crossing goods and services, have resulted in the development of an international market, in which PMSCs do not only offer their services to government and public institutions. In fact, the growing global influence and the international role of non-government actors such as companies, non-governmental organisations (NGOs) and international organisations means that these bodies, too, are availing themselves of private security and intelligence companies with increasing frequency.

The central element of guaranteeing the security of government institutions, the population and property, necessitates a higher degree of knowledge of actual or potential risks. Security requires knowledge-based, proactive and reactive action. Transparency and openness usually impede this advantage. It is in the nature of things that information about private military and security companies and about private intelligence companies, which also have to be taken into account in this study, is rare.⁴ Usually, it is the result of selective criticisms voiced by civil society or a fear of private armies and uncontrolled bands of mercenaries. Work undertaken by investigative journalists⁵ or specialised academics⁶ is usually more helpful.

It may be assumed that the number of PMSCs has reached four digits by now if the national recruiting offices in developing and emerging countries are taken into account. The Business & Human Rights Resource Centre in London lists companies with a positive or negative relation to human rights according to information it has received. It names 59 military/defence companies, 39 security companies, and four companies that run prisons. Our own comparison with existing information and further research lists some 250 relevant companies.

³ Sullivan, John P., Robert J. Bunker, ‘Multilateral Counter-Insurgency Networks’, *Low Intensity Conflict & Law Enforcement*, 11, No. 2/3 (Winter 2002): 353-368.

⁴ Known private intelligence services are SAIC, Kroll, Booz Allen Hamilton, Monitor Group, SOS International, Stratfor, Jane Information Group, and Economist Intelligence Unit.

⁵ See work published at www.publicintegrity.org.

⁶ Singer, P. W., ‘War, profits and the vacuum of law: privatized military firms and international law’, *Columbia Journal of Transnational Law*, 42, no. 2 (2004), 522-24, http://www.columbia.edu/cu/jtl/Vol_42_2_files/singer.html.

The UN Human Rights Council's Working Group on the Use of Mercenaries estimates that the market volume amounts to up to USD 100bn.⁷ About 70% of the companies are based in the USA and the UK.⁸ If we take into account that PMSCs primarily participate in defence budgets, then present-day (October 2007) figures for US military expenditure on Iraq reporting USD 556bn show that this increase is also reflected in corporate profits. Corporations with links to PMSCs such as General Dynamics reported a 19% increase in profits, and Lockheed Martins reported a 34% increase in profits to USD 778m and a turnover of USD 41.75bn. However, PMSCs such as Northrop Grumman are also growing at a rate of 15% in information and services, and 7% in electronics.⁹ Other PMSCs, however, do not only have a share of the defence budget; for example their services also appear in the books of other areas, such as reconstruction costs.¹⁰

Even though estimates of the number of firms and actual personnel – as in Iraq – diverge widely, it must be noted that the private market for military and security services is a market with a high growth rate.¹¹ Supply and demand are determined by the state, which guarantees the existence of the market and stakes out the extent and the lawfulness or unlawfulness of services, and by outsourcing, whose customer is the state. Private industry, organisations of civil society, and institutions of international organisations also avail themselves of PMSCs' services. For a CoC, which is intended to try to allocate a market value to human rights standards and the precepts of IHL thereby ensuring that companies will align their activities with these standards by means of self-regulation, these various contractual constellations are as important as the market volume and market potential as an incentive for companies to enter and participate in the market. Growth and profit opportunities remain the most important motivations for entrepreneurial action. If a market displays such growth potential and profit opportunities, but participation in it is subject to certain minimum standards through regulation or self-imposed obligations, an entrepreneurial cost/benefit analysis will be conducted. A CoC for PMSCs can only be successful if the benefits of limiting entrepreneurial leeway through normative human rights standards outweighs the profit opportunities offered by non-compliance. In other words, human rights and the standards of IHL must be accorded a market value.

⁷ An estimate that has been constantly proved right ever since it was propounded by Singer, P.W., *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell Studies in Security Affairs, 2004).

⁸ Representatives of the UN Working Group at meeting 'Dialogue on private military and security companies and human rights' at the Business & Human Rights Resource Centre, London, 8 May 2007, <http://www.business-humanrights.org/Links/Repository/978963/jump>.

⁹ Clifton, Eli, As Iraq Costs Soar, Contractors Earn Record Profits', *Inter Press Service*, 2 August, 2007.

¹⁰ The US American General Inspector for Reconstruction in Iraq estimates that this amounts to 12.5 % or about USD 3.8bn. See Congress Hearing of 7 February 2007, <http://oversight.house.gov/documents/20070207112331-22533.pdf>.

¹¹ In 2006, PASCI produced an estimate of 181 companies with 48,000 staff, whereas the US Ministry of Defense arrived at 25,000 employees in 60 firms. See Committee on Government Reform, Subcommittee on 'National Security, International Relations, and Emerging Threats', *Hearings on Private Security Firms: Standards, Cooperation and Coordination*, June 13, 2006. / Government Accountability Office, *Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers*, GAO-05-73 7, July 2005. Quoted on the basis of Committee on Oversight and Government Reform, *Memorandum 'Additional Information for Hearing on Private Security Contractors'* 7 February, 2007, <http://oversight.house.gov/documents/20070207112331-22533.pdf>.

4. Private Military and Security Companies: Definition Criteria

Definitions enhance clarity and improve communication. They set limits and provide order. A definition also specifies the circle of potential addressees of a CoC. A definition of private military and security companies should take into consideration the wealth of activities and the changes in the market, and it should be inclusive. Definitions and differentiations should therefore be as specific as necessary yet as open as possible in order to attract large numbers of companies to subscribe to the CoC. This way it will be able to cover the greatest possible number of situations that are potentially relevant in terms of human rights and the obligation to respect IHL.

A definition should include the corporate form of private organisation and the company's own intention to generate profit in order to delimit the services on offer from the government's protection of the public interest and from its military, security and intelligence activities. It is useful in this context to formulate the "pursuit of profit" in neutral terms by referring to "contractors". The term "services" guarantees a distinction from companies that manufacture weapons and military technology (goods). Whereas the notion of military services in the sense of combat activities should be used with some restraint, the notion of security services should be defined broadly in order to include human, economic and, in parts, ecological security and sustainability.

Finally, it is important for a definition of PMSCs that they are referred to as legally established entities in order to differentiate them from private individuals and groups of people. In combination with the criterion of the pursuit of profit, this provides the necessary delimitation from other networks (research institutions, think tanks, lobbyists) and the introduction of a possible approach to regulation with a view to the establishment and approval of a company as a legal entity. The last criterion, in particular, is important for delimitation from the informal/criminal sector, from prohibited mercenary activities and terror networks of non-government actors such as al-Qaeda, the Taliban or so-called "liberation armies".

On this basis, the following definition of the CoC is useful: 'Private Military and Security Contractors (PMSCs) are legally established entities that provide military and/or security services, including security-relevant information, training, logistical support, equipment procurement, intelligence gathering and risk management, on a contractual basis'. In an additional paragraph, the contractual relationship should be defined as follows: 'A contract is any agreement, such as a prime contract, a subcontract at any tier under any prime contract, or a task order issued under a task or delivery order contract'.

5. Codes of Conduct for Overcoming Regulation and Implementation Shortcomings

Codes of Conduct can help to overcome shortcomings in the applicability of human rights and IHL, which may occur due to a failure to meet legal formalities or which may have their origin in the failure to implement and enforce existing norms.

5.1 Scope of Evaluation

The behaviour of companies in general and of private military and security corporations (PMSCs) in particular may be considered in the context of various sets of regulations. The first is that of international law, in which context we shall consider the extent to which the acts of PMSCs may be attributed to States. This way, in case of violations, the legal consequences of responsibility under international law can be determined in accordance with the principles of the State responsibility.¹² Also to be determined in accordance with international law is the ascertainment of war crimes and crimes against humanity by individuals, as the basis for individual responsibility under international criminal law.¹³ Finally other questions that need to be determined in the framework of international law include the extent to which PMSCs are directly bound by the normative standards of human rights protection and IHL standards, to what existing procedures violations of these standards are subject, or what additional procedures need to be created for the determination of responsibility and accountability so that any shortcomings at the level of implementation can be overcome.

In addition to international law, PMSCs can typically be held responsible for their actions in the context of national regulations, in terms of both civil (tort law) and penal norms. There is also the question of the country of domicile, i.e. the country in which a PMSC has its registered office. Another question concerns the laws of the countries of which a PMSC's employees are citizens. Furthermore, acts may also be judged in accordance with the laws of the land in which they are committed. Finally, the acts of PMSCs are equally subject to legal scrutiny in countries that prosecute certain crimes regardless of the above mentioned points of reference (extraterritorial jurisdiction).

5.2 Rules for PMSCs: Standards of Behaviour and Implementation Standards

Before proceeding further it is important to understand the distinction between the primary norms and secondary norms of international law.¹⁴ Primary norms are

¹² Resolution of the General Assembly, 'Principles of State responsibility', Annex in *Responsibility of States for internationally wrongful acts*, U.N. Doc. A/RES/56/83, 12 December 2001.

¹³ International Criminal Court, *Rome Statute*, Article 8, 25.

¹⁴ The distinction between primary and secondary norms adopted by the International Law Commission (ILC) in its analysis of State responsibility has its origin in Hart's legal theory. See H.L.A. Hart, *The Concept of Law*, (London: Oxford University Press, 1961).

norms and standards that describe acts or omissions and thus either define general obligations or concrete duties in the context of human rights or IHL. The secondary norms of international law, on the other hand, are the procedural rules that define the creation or implementation of primary norms. Procedural norms for the implementation of human rights duties can be formulated as general principles of accountability, or indeed as concrete procedures in the context of responsibility.

The following example should help to clarify this distinction between primary norms and secondary norms. The Rome Statute refers only to the individual responsibility of natural persons for war crimes and crimes against humanity.¹⁵ If, for example, one considers the primary norms underlying the conventions banning genocide¹⁶ and slavery¹⁷ it becomes clear that the obligation of vigilance with regard to the prohibition of slavery and genocide existed prior to the creation of an international enforcement procedure (secondary norms). Until the creation of the Rome Statute, secondary norms of enforcement and individual responsibility were the preserve of national legal systems. In so far as the obligations of companies in general and PMSCs in particular are concerned, this means that it cannot be concluded that in the absence of an international procedure (secondary norms) there is no obligation to observe international human rights standards and IHL norms (primary norms) and the duties that these impose. Above all, this points to the binding nature of the ban on genocide for everyone, regardless of function or State service, and that non-State actors can also be bound by human rights standards and IHL norms.¹⁸

5.3 Obligations of PMSCs to Respect Human Rights and IHL

International law is a reactive legal system, which nowadays in the area of human rights protection extends the primary norms, formulated as the material duties of States, to new potential violators in order to improve the protection of victims. We should examine the activities of non-state actors, relevant to the enjoyment of human rights and respect of human dignity, and to international human rights standards, regardless of legal debates and scholars discussions about international law. Corporations themselves are confronted with campaigns directed against them and claims of human rights violations, and business associations themselves have recognized within the United Nations Human Rights Council that corporations have a responsibility to respect human rights; in short a responsibility to restrain from harming human rights of others.¹⁹

¹⁵ See Article 25 of the *Rome Statute, Text of the Rome Statute* circulated as document A/CONF.183/9 of 17 July 1998 and corrected by procès-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002.

¹⁶ UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, Article I. Resolution 260 A (III) 9 December, 1948.

¹⁷ League of Nations, *Slavery Convention*, Article I., Geneva 25 September, 1926.

¹⁸ UN General Assembly, *Convention on Genocide*, Article IV, Resolution 260 A (III): 'Persons committing genocide ... shall be punished, whether they are constitutional responsible rulers, public officials or private individuals'.

¹⁹ International Chamber of Commerce, International Organization of Employers and Business and Industry Advisory Committee to the OECD, *Joint initial views to the Eighth Session of the Human Rights Council on the Third report of the Special Representative of the UN Secretary-General on Business and Human Rights*, May 2008.

One of the qualifying criteria for this broader definition of who is subject to the norms – as applied to non-State actors such as companies directly – is the actual or potential influence on a human rights situation.²⁰ This obligation of non-State actors to respect State standards is supported by the view that the effective control of and/or influence on a human rights situation arises from the obligation to respect fundamental international standards.²¹ In other words the extent of the duties to be observed follows from their position in the jurisdiction of international law.

5.3.1 PMSCs and the privileges of IHL

When talking about shortcomings in relation to the protection of human rights and IHL, it is much less a question of the legal position of companies and their employees than of their attitude to the relevant duties. Therefore, from the point of view of a CoC for PMSCs, the granting of privileges as a prisoner of war (POW) in relation to the status of combatant is much less important than the right as a belligerent to be able to participate in hostilities, within the limits of IHL, in the first place.²² This is because these limits define the special duty to respect IHL and apply to PMSCs only when they can be classified as a warring party.

PMSCs: combatants or civilians?

It is also worth noting that IHL norms are applicable to the acts of natural persons and States, but not to the actions of legal entities. This shortcoming would be overcome by a CoC extending the obligations to warring parties and to legal entities acting on their behalf, such as PMSCs. The CoC adopted by the International Federation of Red Cross and Red Crescent Societies is an attempt to overcome this shortcoming to some extent through the voluntary observance of IHL standards by PMSCs.²³

As already stated, a CoC is intended to overcome shortcomings in the protection of human rights. In so far as the duties of primary norms are concerned, this can for example be accomplished by the application of existing standards and norms

²⁰ In accordance with the norms, the secondary responsibility of transnational corporations and other business enterprises in the area of human rights follow from the primary responsibility of the State for the respect, protection and fulfilment of human rights, thus: 'within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law ...', *Norms on the responsibility of transnational corporations and other business enterprises with regard to human rights*, Article I, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003.

²¹ For the area of influence, see Human Rights Committee: General Comment No. 31 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' HRI/GEN.1/Rev.7, 192, notes 10, 12; for the validity of IHL see basic text, for a comprehensive view, Fleck, Dieter, 'Humanitarian Protection against Non-State', *Verhandeln für den Frieden, Liber Amicorum Tono Eitel*, (eds.) Jochen A. Frowein et al. (Berlin: Springer, 2003), p. 78.

²² See *Geneva Convention relative to the Treatment of Prisoners of War*, adopted 12 August, 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War (Geneva), 1949 and entered into force on October 21, 1950.

²³ CoC for International Red Cross and Red Crescent Movement and NGOs in Disaster Relief: <http://www.ncciraq.org/spip.php?article218>.

to comparable new situations, as well as by the creation of new norms. For this reason, whether the employees of PMSCs have the status of combatants or that of belligerents is significant, as then the individual duties applicable would merely have to be formulated for the company as a whole. If the employees are not combatants, then extending the duties under IHL to PMSCs is only justified when the employees de facto amount to belligerents, or if this is required for the unity of the international legal system.

PMSC employees do not usually satisfy the legal definition (de jure) of combatants, which applies primarily to regular armed forces.²⁴ Also included in this definition are those persons subject to the internal chain of command and internal disciplinary system²⁵ or who have been integrated into the regular armed forces as paramilitary units.²⁶ PMSCs do not usually fulfil these requirements. So they cannot be counted as (de jure) combatants – as a militia, volunteer force or liberation movement – in that they are not (cumulatively) subject to a command structure, do not bear distinctive military insignia or carry weapons openly, and their acts comply with the requirements of IHL.²⁷

Lacking the privileges of combatants, PMSCs have no right to commit acts of war and thus do not enjoy the immunity of combatants with respect to the killings, property damage or bodily harm allowed in the context of IHL²⁸, it being understood that disproportionate hostilities and violence against civilians are prohibited in all circumstances.²⁹

In cases where PMSC employees are placed directly under army contract and supplied with special identity cards reflecting this relationship, if taken prisoner they will be granted the privileged treatment due to prisoners of war as per Article 4, Para a, Nr. 4. They do not however have the right to participate in acts of war.³⁰ It should be emphasised in this context that the contract with the PMSC violates the

²⁴ *Geneva Convention (III) relative to the Treatment of Prisoners of War* Article 4 A Para. 1.

²⁵ *Additional Protocol to the Geneva Conventions* of August 12, 1949 Article 43 Para. 1, and relating to the *Protection of Victims of International Armed Conflicts* (hereinafter quoted as *Protocol I*), adopted on June 8, 1977 by the Diplomatic Conference on the reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, entered into force on December 7, 1978.

²⁶ Article 43 Para. 3 *Protocol I*.

²⁷ *Convention (IV) respecting the Laws and Customs of War on Land* Article 1 of Annex Section I and its annex, *Regulations concerning the Laws and Customs of War on Land*, The Hague, 18 October 1907, in D.Schindler and J.Toman, *The Laws of Armed Conflicts*, (Martinus Nihjoff : 1988), pp.69-93; *Geneva Convention (III) relative to the Treatment of Prisoners of War*.

²⁸ *Protocol I* Article 44 Para. 3 Sentence 3 and Article 37; *Additional Protocol to the Geneva conventions of 1949* Article 6 Para. 5, and relating to the *Protection of Victims of Non-International Armed Conflicts* (hereinafter quoted as *Protocol II*), adopted on June 8, 1977 by the Diplomatic Conference on the reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, entered into force on December 7, 1978: 'At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained'.

²⁹ *Convention (IV) Laws of War on Land* Annex Section II annex: *Regulations*, The Hague, 18 October 1907, Schindler and Toman, *The Laws of Armed Conflicts*, 69-93.

³⁰ Article 4 (A): 'Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into power of the enemy: ... 4: Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card'.

direct attachment to the army. In cases where PMSC employees take part in armed conflicts, they lose all claim to protection as civilians³¹, may be held to account under criminal law, and enjoy only limited protection as non-combatants.³²

A CoC extending the duty to respect IHL to employees of PMSCs would clarify the situation as to the validity of international norms and would have an additional advantage for these employees in that the formalisation of their participation in acts of war might in certain cases make it possible to grant them the privileged status of combatants.³³

PMSCs: mercenaries or corporations?

As already noted, when the employees of private military security companies are accorded the immunities of IHL as combatants, their human rights duties are reduced. However, in those hypothetical cases in which employees of PMSCs meet the requirements as de facto combatants, if they are mercenaries they lose the associated privileges.³⁴

To begin with, it is doubtful that the current definition of mercenaries can really be applied to PMSCs as legal entities in this context. Whereas international protection mechanisms link the status of mercenaries exclusively to natural persons and their acts³⁵, the relevant definition of the Organisation of African Unity goes further and includes organisations and legal entities of all types.³⁶

It is often assumed – with reference to the work of the UN Human Rights Council Working Group on the Use of Mercenaries – that PMSCs are all mercenaries. The companies themselves reject this accusation.³⁷ This view is not accepted in the context of the mandate of the above mentioned Working Group either.³⁸ The task of the working group is to develop new standards, general guidelines and fundamental principles, to monitor and study the activities of PMSCs and their influence on human rights, and on this basis to propose fundamental international

³¹ Article 51 Para. 3 *Protocol I*.

³² Article 45 Para. 3 Sentence 3 and Article 75 *Protocol I*.

³³ A CoC can only stipulate voluntary commitments with regard to obligations, It cannot create rights in the context of IHL. The latter would require a corresponding enlargement of IHL provisions.

³⁴ Article 47 *Protocol I*.

³⁵ Article 47 Para. 2 *Protocol I*; Article 1 *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*, adopted by General Assembly resolution 44/34 of December 4, 1989 and entered into force on October 20, 2001.

³⁶ Organisation for African Unity, *Convention of the OAU for the Elimination of Mercenarism in Africa*, Article 1 Para. 2: 'The crime of mercenarism is committed by the individual, group or association, representative of a State or the State itself'; Article 1 Para. 3: 'Any person, natural or juridical who commits the crime of mercenarism ... commits an Offence considered as a crime against peace and security in Africa and shall be punished as such', Libreville, 3 July 1977.

³⁷ Erik Prince (Chairman, the Prince Group, LLC and Blackwater USA) during the Hearing on Private Security Contracting in Iraq and Afghanistan by Congress Committee on Oversight and Governmental Reform 'A lot of people call us mercenaries, ... We are Americans, working for Americans, protecting Americans', <http://oversight.house.gov/story.asp?ID=1513>.

³⁸ United Nations Human Rights Council (HRC), Resolution 2005/2 *The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, adopted 7 April 2005.

principles promoting the respect for human rights.³⁹ According to this view, the activities of PMSCs could simply be new forms of mercenary activity⁴⁰ that are not included in the definition recognised in international law. In this sense the task of the Working Group is not to review existing standards or to analogously apply existing norms to PMSCs⁴¹, but rather is part of the general mandate of the Human Rights Council to contribute to improving the protection of human rights through consultation and the identification of ways in which international law could and should be further developed.⁴² The point of view that PMSCs cannot automatically be assumed to be mercenaries is confirmed in the UN General Assembly's request to member states to oppose the recruitment, training and financing of mercenaries by PMSCs.⁴³ A CoC could remove the uncertainties in the classification of PMSC activities by including a ban on mercenaries.

It must be noted however that even in relation to natural persons, the definition of a mercenary has shown itself to be of little practical use.⁴⁴ A mercenary is someone who allows himself to be recruited for financial gain as a combatant in an armed conflict, and is assured of payment at a higher rate than that of a regular soldier, whose nationality is not that of the warring parties and who is not a member of the regular armed forces.⁴⁵ Apart from the fact that these criteria are rarely met in their entirety, the simple fact of being a national or being granted temporary citizenship by a party to the conflict renders the definition inapplicable. Finally the relevant international law treaties have been neither institutionalised nor implemented, and even the Rome Statute foresees no individual culpability for being a mercenary.

³⁹ Article 12 HRC Res. 2005/4: '*Requests the working group ... (a) To elaborate and present concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights ... (e) To monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities*'.

⁴⁰ Article 17 HRC Res. 2005/4: '*Requests the working group to take into account, in the discharge of its mandate, that mercenary activities are continuing to occur in many parts of the world and are taking on new forms, manifestations and modalities, and in this regard requests its members to pay particular attention to the impact of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights by everyone and every people and, in particular, on the exercise of the right of peoples to self-determination*'.

⁴¹ United Nations General Assembly, Resolution 60/251 Human Rights Council, adopted on March 15, 2006: Article 2: '*Decides that the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner; 3. Decides also that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system*'.

⁴² United Nations General Assembly Resolution 60/251 Article 5: '*Decides that the Council shall, inter alia: ... (b) Serve as a forum for dialogue on thematic issues on all human rights; (c) Make recommendations to the General Assembly for the further development of international law in the field of human rights; ... (i) Make recommendations with regard to the promotion and protection of human rights*'.

⁴³ United Nations General Assembly Resolution 61/151, *Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, adopted December 19, 2006, Article 5: '*5. Requests all States to exercise the utmost vigilance against any kind of recruitment, training, hiring or financing of mercenaries by private companies offering international military consultancy and security services, as well as to impose a specific ban on such companies intervening in armed conflicts or actions to destabilize constitutional regimes*'.

⁴⁴ Schimmel, Constanze A., 'Der Einsatz privater Militärunternehmen - völkerrechtliche Einordnung, Regulierung und Verantwortlichkeiten', *Zeitschrift für Menschenrechte*, Edition 1, Heft 1, (2007), 99-111.

⁴⁵ *International Convention against Mercenaries*, Article 47 Para. 2 Protocol I; Article 1; *OAU Convention for the Elimination of Mercenarism* Article 1 Para. 1.

5.3.2 Direct human rights duties of PMSCs

As already stated, PMSC members' duty to respect the provisions of IHL varies depending on their conformity to certain formal criteria. If they are de jure or de facto combatants they may fight, kill and destroy property only within the limits of IHL. If on the other hand they are merely accompanying staff, then as civilians they may not take part in acts of war. The same applies to PMSC employees who happen to be mercenaries, and therefore do not have the benefit of the immunity of combatants and as such are guilty of a crime in international law. Human rights duties arise from what actual influence third parties have on the ability to observe a human right, instead of from formal criteria.

Human rights attempts to protect various aspects of human dignity and individual freedom reflect a balancing of 'legal claims, liberties, powers and immunities', which as formulated in international law can be subdivided into 'claim rights, integrity rights, service rights, independence rights and freedoms'.⁴⁶ Human rights standards thus have a legal dimension in respect of how they are formulated and implemented at the national, regional and international levels in legal and quasi-legal proceedings. Human rights also have a social dimension when their observance has a legitimising effect, and a moral dimension when violations lead to condemnation and criticism. The same can be said of the political dimension of human rights, which above all reflects the nature of human rights as a standard of international relations. Finally, human rights also have an economic dimension, when their guarantee – for example the right to due process of law through an independent judicial system – or their implementation – for example the implementation of social human rights – involve certain financial costs. The observance of human rights – for example in the prohibition of slavery and of forced labour – also has an economic dimension, since they can be seen as setting legal limits to profit making.

In formulating a CoC for the observance of human rights by PMSCs, academic discussion of the direct obligation of non-State actors to respect human rights standards that have been agreed between States should be avoided.⁴⁷ The purpose of the CoC is to ensure that these standards are recognised, regardless of the direct or indirect applicability of human rights to businesses. However, since the binding nature of human rights cannot entirely be ignored, a CoC should acknowledge from the outset the lasting validity of human rights.

As an aid to this line of argument, there is the aforementioned distinction between general human rights obligations and concrete duties as primary norms and the secondary, implementing, norms of responsibilities and general accountabilities that serve them. By combining this distinction with the many dimensions of human rights such as legal, social, political, moral and economic standards, one arrives at a variety of levels of duties and protective and implementation procedures. Thus,

⁴⁶ Asbjorn Eide, 'Right to adequate food as a human right', *OHCHR Studies Series 1*, 12.

⁴⁷ Rosemann, Nils, 'The UN Norms on Corporate Human Rights Responsibilities - An Innovating Instrument to Strengthen Business' Human Rights Performance', *Dialogue on Globalization*, No. 20 (August 2005), (Geneva: Friedrich Ebert Foundation 2005).

for example, with regard to the duties of PMSCs to respect human rights, one arrives at the conclusion that the legal standards agreed among States are legal in character, although legal procedures for their implementation at the international level are often lacking.⁴⁸ In contrast, the moral and ethical duties to respect benefit from full international recognition and correspond to discursive procedures, for example in the framework of the work of the Special Procedures of the Human Rights Council.

A CoC should maintain this distinction. This would make it possible, in a way that is independent from the recognised legal or moral dimension, to formulate a duty to respect human rights and subsequently assign it to a formalised procedure. For the practical implementation of the CoC it may in any case be necessary to develop multi-step models within a certain timeframe., This way PMSCs could for example pledge to respect a number of core norms to begin with; after a certain time, all the norms – including e.g. those of a more social or moral dimension – would become obligatory.

5.4 Responsibilities of PMSCs: Own System of Responsibility in Addition to State and Individual Attribution Rules

The responsibility of States as the original subjects of international law is at the heart of the development of international responsibility procedures, i.e. the determination of and the legal consequences of a violation of international law norms and standards. The basis of this concept is the principle that sovereignty in international relations is subject to appropriate rules giving rise to obligations, the violation of which evokes responsibility under international law.⁴⁹ In accordance with the principles developed by the International Law Commission, a breach of duty creates a new legal relationship between the violating party and the affected subject of international law, the object of which is the restoration of a situation compatible with international law by means of rectification or reparation.⁵⁰

The changing power monopoly as the core of a classical understanding of sovereignty should be the starting point for discussion of a CoC for PMSCs to ensure respect for human rights standards and IHL norms. The shortcomings that are due to the outsourcing of State functions must be overcome in the interest of the coherence and unity of the international legal system. This can be achieved by attributing activities, and also recorded violations of human rights and IHL by PMSCs where appropriate, to States. Violations of international law can be imputed

⁴⁸ ILO, *Declaration on Fundamental Principles and Rights at Work and its Follow-up*, adopted at the 86th session, 18 June 1998; ILO Doc. GB.279/12 http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE?var_language=EN and *OECD Guidelines for Multinational Enterprises, Global Instruments for Corporate Responsibility, Annual Report 2001*, (Paris: 2001), Annex II, 127.

⁴⁹ Expressly in the case of the *S.S. Wimbledon* (UK, France, Italy, Japan vs. Germany), 1923 P.C.I.J. (ser. A) No. 1, at 25.

⁵⁰ United Nations, *Commentaries to the draft articles on Responsibility of States for internationally wrongful acts adopted by the International Law Commission at its Fifty-third session* (2001, 59) in *Report of the International Law Commission on the work of its Fifty-third session, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10)*, chp.IV.E.1; UN Doc. A/56/19; Accepted in the form of Resolution 56/83 of the UN General Assembly of 21 December 2001, UN Doc. A/RES/56/83.

to a State, in accordance with the principles of State responsibility, if they are made by State organs or individuals or legal entities commissioned or empowered by the State.⁵¹ The International Law Commission expressly envisages an imputation of this nature in the case of the privatisation of prisons.⁵²

In exceptional situations, empowerment can be waived as a prerequisite for imputation when non-State actors perform certain functions, for example in the interest of maintaining public order or in the absence of State structures.⁵³ In such exceptional cases however, the absence of State imposed order must be of a temporary nature. The following example may help to illustrate this rule of imputation. Confronted with an insurrection or a natural disaster, the operator of a private airport decides to bring in a PMSC in the short term to ensure the clearance of passengers and regulation of air traffic. This company resorts to torture – for instance in the questioning of suspicious passengers. Once the state of emergency has ended, the actions of the operator will be imputed to the State. If the activities of PMSCs are not a matter of public interest however – the surveillance of private facilities in Africa’s conflict regions (Democratic Republic of Congo, Liberia, Ivory Coast) for example – or the absence of State structures is not temporary, then such activities may not be imputed to the State. Another example of lack of grounds for imputation is a failed military coup. If, for example, the coup of 23 August 2004 in Equatorial Guinea attempted by the two PMSCs, Executive Outcomes and Meteoric Tactical Solution, had succeeded and if the coup attempt had involved IHL violations, these would have been imputable to the new government.⁵⁴ If on the other hand there are human rights violations and breaches of IHL and the perpetrators do not succeed in seizing power (e.g. the Kurdistan Worker’s Party aka PKK in Turkey), the violations in question cannot be imputed to the State and are not subject to any proceedings under international law.⁵⁵ The International Law Commission determines the need for additional systems of responsibility in cases where imputation to a State is not possible.⁵⁶

6. Assessment Criteria: Human Rights and IHL as Standards

A CoC for PMSCs for the respect of and compliance with international human rights standards and the norms of IHL can therefore only be of value if it can hold PMSCs accountable for violations of human rights, expresses norms in more concrete terms, and closes gaps with regard to regulation and implementation. Above and beyond this, a CoC should take into account the interests of companies, stakeholders and groups in civil society, and combine them in a single political

⁵¹ *Draft articles on Responsibility of States for Internationally Wrongful Acts*, Article 5.

⁵² Comment 2 to Article 5.

⁵³ *Draft articles on Responsibility of States*, Article 9.

⁵⁴ For background, see Wilson, Jamie and Pallister, David, ‘Mercenaries, money and political connections’, *The Guardian*, 26 August, 2004, <http://news.bbc.co.uk/2/hi/business/3996243.stm>.

⁵⁵ *Responsibility of States*, Article 10.

⁵⁶ Comment 16 to Article 10.

initiative. The higher the number of these various group interests and factors are taken into account, the greater the chances of a CoC to succeed.

As a prerequisite for a CoC intended to improve the protection of human rights and the respect of IHL, the activities of private military and security companies can be assessed according to the criteria provided by the standards stipulated in the generally recognised International Bill of Human Rights,⁵⁷ as well as the further internationally formulated requirements⁵⁸ for companies to comply with human rights and IHL.

Whereas the adoption of a CoC is in principle voluntary, compliance with its precepts is no longer so. For this reason, any obligations laid down in the CoC should be formulated as bindingly as possible in order to be effective. With regard to the wording, the view has prevailed that “shall” is used for obligations that originate from a binding international standard and the imperative is to be formulated in an instructing manner.⁵⁹ Conversely, “should” is used if the claim to applicability is more normative or moral in nature and the imperative is less categorical and more likely to be associated with a desirable state of affairs.⁶⁰ The CoC will adopt this distinction.

6.1 Examination of Accessible Comments and Codes of Conduct

Douglas Brooks, the President of the International Peace Operations Association (IPOA) declared in the Association’s own *Journal of International Peace Operations*: “There is an ingrained belief among many critics of the peace and stability industry that the industry actually profits from inadequate accountability, a belief based on emotional assumptions, not logical thought. ... As an industry, we must be clear: whether we are talking about companies or individual contractors, effective accountability benefits the industry...”⁶¹ The IPOA is a lobby and interest organisation that seems to have become aware of the fact that the recognition of rules will safeguard continued existence of the industry in the longer term and does not limit entrepreneurial action, but directs it. Similarly, the Private Security Company Association of Iraq (PSCAI) is committed to the reinforcement of existing regulations and the possible concretisation and further development of PMSC accountability in Iraq.⁶²

⁵⁷ *The International Bill of Human Rights* includes the *Universal Declaration of Human Rights* of 10 December 1948 (GA RES 217 A (III)), the *International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights*, as well as its 1st Additional Protocol of 10 December 1966 (GA RES 2200 A (XXI)) and its 2nd Additional Protocol (Death Penalty) of 15 December 1989 (GA RES 44/128).

⁵⁸ What must be taken into account here first of all are the normative standards drawn up in cooperation with governments, ILO Core Work Standards, ILO Doc. GB.279/12, ILO, and the *OECD’s Guidelines for Multinational Enterprises*.

⁵⁹ See Andrew Clapham who advocates the use of “should” as most binding in nature in: Clapham, Andrew, *Human Rights Obligations of Non-State Actors*, (London: Oxford University Press, 2006), 74.

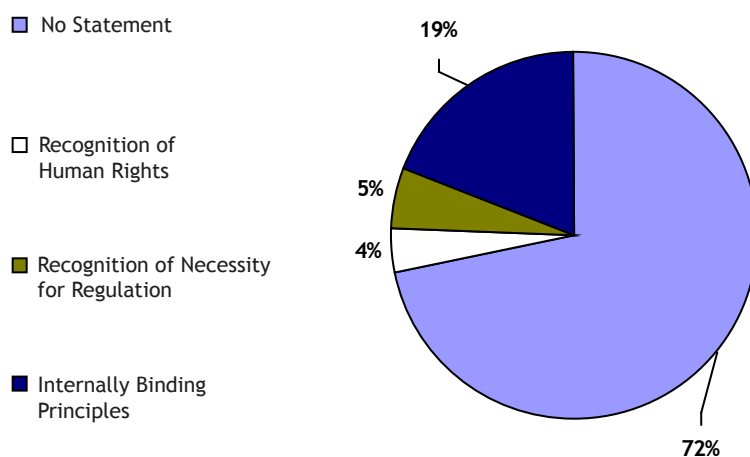
⁶⁰ See Paragraph 8 of the *Report about International Consultation on the Draft basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law* (September 30 - October 01, 2002), U.N. Doc. E/CN.4/2003/63. Also clearly expressed in Paragraph 16 of the *Report of the Second Consultative Meeting on the basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law* (October 20, 21, 23, 2003), U.N. Doc. E/CN.4/2004/75 (Annex).

⁶¹ Brooks, Doug, “Presidents Message”, *Journal of International Peace Organizations*, 2, No.5 (March-April 2007), 4.

⁶² Private Security Company Association of Iraq, ‘Private Security Company Association of Iraq reaffirms its

Discussions with representatives of PMSCs reveal time and again that when it comes to individual cases that are taken up by the media – Blackwater in Iraq being a case in point – PMSCs are uncertain about how to react to criticism of their activities. Many of the companies that are active in Iraq are members of the PSCAI, which has drawn up its own guidelines. Some companies also have codes of conduct of their own. Our own examination of mission statements and websites of 235 PMSCs has revealed that a mere 30.6% (72 of the companies) profess their compliance with normative and ethical values. 3.8% (nine companies) expressly advocate the recognition of human rights, and 5.1% (12 companies) acknowledge the necessity of their activities being regulated. Only 18.7% (44 companies) are prepared to formulate their adherence to values in a CoC or in terms of internally binding principles. See the following graph for an illustration of these findings.

Statements of PMSCs in Regard to Normative or Ethical Values

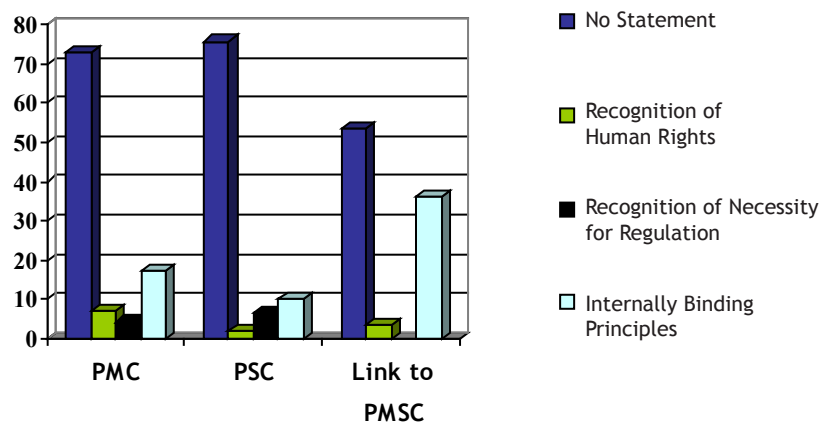


If a distinction is made between the services provided by Private Military Contractors (PMCs), Private Security Contractors (PSCs) and companies with links to PMSCs, then 19 out of 70 PMCs (27.1%) profess their compliance with values, of which five companies (7.1%) refer to human rights and three companies (4.3%) regard regulation as necessary. Only 17.1% (12 PMCs) formulate their adherence to values as a CoC. The picture among the 107 PSCs examined was comparable: 24.3% (26 companies) profess their compliance with moral or ethical values, and 10.3% are prepared to make these values internally binding through a CoC. 1.9% of the PSCs (two companies) expressly refer to the respect of human rights, and 6.5% (seven companies) are in favour of regulation. If less than 30% of PMCs and PSCs acknowledge normative standards, then almost half of the companies with

commitment for increased transparency and accountability' Press Release of September 17, 2007: 'Baghdad, Iraq -The PSCAI is committed to furthering professionalism, transparency and accountability within the private security industry operating in Iraq. The PSCAI endeavours to continuously reaffirm these important goals. ... The PSCAI will work closely with its members, the private security industry, Iraqi and Coalition officials in continuing its goal of furthering transparency and accountability'. http://www.psc.ai.org/Docs/Press_Release_PSCAI_9_17_07.

links to PMSCs advocate such values. 27 out of the 58 companies that have links to PMSCs or provide auxiliary military and security services (46.5%) profess their compliance with additional values, and 21 companies (36.2%) are prepared to make these values internally binding through a CoC. In contrast with the high number of companies standing up for normative values, only 3.4% (two companies) refer to the recognition of human rights, and the same number considers further regulation of their activities to be necessary. Again, the following graph illustrates these findings.

Differences In Regard To Normative Or Ethical Statements Between Specific Services



Although this is our own collection and evaluation of mission statements and codes of conduct, it may well be the most extensive of its kind. The evaluation does not include companies which neither provide access to primary sources nor can be assessed through secondary sources. In particular, this concerns companies that work in the margins of legality or in the informal sector, or companies from developing and emerging countries, whose transparency cannot be compared with that of companies operating from industrial nations.

Nonetheless, these statistical observations are significant in three respects. To start with, it must be noted that it is primarily companies focusing on activities outside military and security services that profess the respect of general, normative values in addition to compliance with the law; they do so four times as often as PSCs and twice as often as PMCs. Conversely, in comparison with the companies that have links to military and security services and companies, twice as many PMCs advocate the respect of human rights and twice as many PSCs consider additional regulation of their activities to be necessary. It can be inferred from this that PMCs tend to be against any limitation of their scope of action but are more prepared to accept human rights as the baseline of their activities. With regard to PSCs, it can be deduced that their doubly high willingness to accept regulation can also be perceived as a reaction to increasingly critical observations of their activities.

If the mission statements of individual companies are compared, these conclusions are corroborated, but they also reveal how different these statements and the willingness to accept binding precepts are. The British Aegis – specialists in risk

management⁶³ and Diligence Middle East⁶⁴ expressly recognise the necessity of regulations but do not have a CoC themselves. The same applies to the security firm of Hill & Associates Ltd. from Hong Kong, which does not profess compliance with values and does not have a CoC but offers consultancy in the field of corporate social responsibility.⁶⁵ A similar case is the American Carlyle Group, whose Managing Director for Washington D.C. is a member of the Investment Committee of the Carnegie Council on Ethics and International Affairs (N.Y.), even though Carlyle does not profess to adhere to ethical values.⁶⁶ On the other hand, the substance and effect of individual value statements provided by PMSCs are also questionable. The American PSC Omniplex World Service Corporation uses the Ten Commandments as the fundamental principle of its operations.⁶⁷ Blackwater Greystone, which is a company of the American Prince Group, advertises its membership of Global Compact, yet does not only have no CoC but has repeatedly been the object of public criticism, particularly for its activities in Iraq.⁶⁸ The American PSC California Analysis Center Inc. International (CACI) may have various codes of conduct and internal rules of conduct however, they were not able to prevent the company's employees from torturing inmates of Abu Ghraib or being the cause of such torture.⁶⁹ Even if a reference to the Voluntary Principles on Human Rights and Security⁷⁰ by the UK- and UAE-based Olive Security Group⁷¹ and the British company Hart (Land, Sea & Air Security)⁷² must be welcomed, neither the principles themselves nor the corporate references are accompanied by implementation and monitoring mechanisms. All in all, only one company, namely the UK's VT Group, refers to external audits, which are carried out by the Global Reporting Initiative.⁷³ If there are any monitoring mechanisms for self-imposed obligations, then they are largely the companies' own reporting systems or internal communication channels.

6.2 Conclusions for a General Code of Conduct for PMSCs

A CoC that refers to international law can bridge the above mentioned gaps between individual codes of conduct and between the lacking profession of adherence to international standards, mission statements and codes of conduct, and it can integrate the standards adopted into a uniform monitoring procedure. In contrast

⁶³ Aegis Defence Services, 'FAQ', <http://www.aegisworld.com/aegis-faq.html>.

⁶⁴ Diligence Middle East, 'Certifications', <http://www.diligencemiddleeast.com/index.cfm?fuseaction=section.home&tid=16>.

⁶⁵ Hill & Associates, 'Core Practice Areas', <http://www.hill-assoc.com/web/Portal?xml=company/company&fid=104>.

⁶⁶ The Carlyle Group, 'Home Page', <http://www.carlyle.com/>.

⁶⁷ Omniplex Co., 'About Us - Values', <http://www.omniplex.com/values.cfm>.

⁶⁸ Greystone Ltd., 'Home Page', <http://www.greystone-ltd.com/>.

⁶⁹ CACI Inc., 'Standards of Ethics and Business Conduct', http://www.caci.com/about/corp_gov/ethics.shtml.

⁷⁰ The Voluntary Principles Initiative, 'Home Page', <http://www.voluntaryprinciples.org/>.

⁷¹ The Olive Group, 'Home Page', <http://www.olivesecurity.com/>.

⁷² Hart Security, 'Home Page', <http://www.hartsecurity.com/>.

⁷³ VT Group, 'Corporate Responsibility', <http://www.vtplc.com/Display.aspx?MasterId=b37357f0-6e2e-4fa6-bf7c-7845a4e88dcc&NavigationId=875>.

with existing codes of conduct of professional associations such as PSCAI, the British Association of Private Security Companies (BAPSC) and IPOA, a CoC should contain its binding implementation in an in-house CoC, publication of the company's adoption of it and of the fact that personnel are trained according to the rules and principles of the CoC. After all, it is primarily in-house implementation and rehearsal that reduces violations of standards based on ignorance and thus ensures that the CoC is not only aimed at the outside but actually has an impact on internal processes.

7. Code of Conduct for PMSCs: Potential and Interest

7.1 In the Interest of Corporations

While most companies are aware of the fact that they are not operating in a legal vacuum, there is often uncertainty as to the rules in force – particularly in conflict regions –and not infrequently a degree of ignorance with regard to international standards.⁷⁴ This uncertainty on the part of companies with regard to the multiplicity of standards and their relevance is aggravated by the somewhat selective activism of NGOs and lobby groups. Here it is in the interest of companies to have uniform, binding standards, as established in a CoC and its associated voluntary agreement. Furthermore it is also in the interest of the majority of PMSCs that accept some form of regulation⁷⁵ to make the existing rules more concrete, and not to see more specific self-regulation as an excuse for avoiding accountability to state regulation.⁷⁶

An additional advantage for companies that accept a CoC is the limitation of liability. A CoC can be seen as a manifestation of special diligence, which will influence judgement as to guilt and negligence. Indeed it is rare for violations of (human)

⁷⁴ Diligence Middle East (DME) statement: 'DME recognises the need for regulation and accountability within the security industry in Iraq. The potential damage from the misconduct or un-ethical practices of a few disreputable organisations or individuals has been demonstrated in the past, resulting in negative media coverage to other companies. With so much international attention focused on this region, and the necessary scrutiny demanded by the general public at home over the spending of public funds on reconstruction financial assistance, it is necessary for all security providers to take an active role in ensuring that only responsible organisations are able to operate in Iraq. This is essential to protect the interests and reputations of ourselves and our clients', <http://www.diligencemiddleeast.com>.

⁷⁵ ArmorGoup, *Regulation - an ArmorGroup perspective*, 'Frequently Asked Questions': 'Question - Are you regulated? Answer - There is currently no statutory regulation of UK or US PSCs. However, ArmorGroup has a clearly defined, written ethical policy. We believe that our procedures and ethical standards are the highest in the industry and we work diligently to ensure this remains the case. We also have stringent procedures in place to ensure our employees act at all times within the relevant international and local legal frameworks. ArmorGroup believes regulation is the key to industry recognition and is co-operating closely with the UK Government, the SIA and the BAPSC to introduce suitable regulation for the industry. ArmorGroup is also an acknowledged market leader in the demand for industry standards and regulation, having published and widely disseminated the first concrete proposals for regulation of its industry' September 2004. <http://www.armorgroup.com/mediacentre/faqs/#q6>.

⁷⁶ The Surveillance Group: 'We constantly source and develop cutting edge equipment, procedures and techniques to deliver solutions that allow us to work within these regulations, to gather evidence that would not be possible using more traditional methods', http://www.thesurveillancegroup.co.uk/about_surveillance_group.htm.

rights to be corporate policy, being the result rather of employees failing to follow the rules. Standards for the behaviour of employees and management are in the interest of corporations to the extent that in the case of violations their liability will usually be of a limited nature if they can prove that they have complied with their duty of oversight. A CoC helps to define rules of behaviour as well as oversight responsibilities and procedures, and to put them into practice.

Following enactment of the *Sarbanes-Oxley Act* a result of the Enron crisis in the USA, corporations are adopting Codes of Conduct with ever greater frequency to prove to the world at large that they are implementing their legal duties as a corporation. Compliance also makes them more attractive in the capital market, since there is also an increasing number of sustainability indices, attracting an ever growing level of investment. One example of the growth of investment in accordance with ethical or ecological standards, rather than entirely profit-oriented, is the FTSE4Good index series. Disinvestment campaigns are another approach, in relation to Sudan for example. Companies that expressly accept a CoC not infrequently use their acceptance to project a better image and to limit criticism of their activities.

One big advantage for PMSCs that accept State regulation or that otherwise favour self-regulation, is to be able to distance themselves from the informal sector, i.e. individual and corporate activities that can be defined by the absence of a formal legal relationship between employer and employee, contractor and service provider or employer and State (regulation) authorities.⁷⁷ In so far as PMSCs are concerned a distinction must be made between the illegal performance of legal military and security services (e.g. in the form of disallowed subcontracts) and the provision of illegal services (e.g. mercenarism or contract killings).⁷⁸

7.2 Third Party Interests: Acceptance of the Criticism of PMSCs

The normative promotion of compliance with human rights by non-state actors, as applied to most corporations, often makes use of the argument of their power or influence.⁷⁹ Voluntary Codes of Conduct are thus subject to the criticism that these are self-serving creations of the companies themselves, rather than intended to promote respect for normative standards.⁸⁰ The Global Compact between the

⁷⁷ ILO, *Conclusions of the ILO Resolution concerning decent work and the informal economy*, Article 2, from the Nineties Session of the International Labour Conference (2002), in *Provisional Record 25 of Nineties Session*, Geneva 2002 <http://www.ilo.org/public/english/wcsdg/globali/infeconomy.pdf>.

⁷⁸ General distinction made in *ILO Report of the Committee on the Informal Economy (Report VI) to the 90th International Labour Conference* (2002), in *Provisional Record 25*, Geneva 2002, ILO.

⁷⁹ As for example the BUND/Friends of the Earth campaign 'Don't let big business rule the world' at the UN World Summit on Sustainability in Johannesburg(2002) http://www.foe.co.uk/resource/press_releases/20020601000115.html, or the 'Public Eye Awards' campaign in *Kritik am Weltwirtschaftsforum* (World Economic Forum, Davos), http://www.evb.ch/index.cfm?page_id=1845&archive=none, also promotion of the NGO network ESCR-Net with regard to the UN High Commissioner for Human Rights, *Steps toward Corporate Accountability for Human Rights: ESCR-Net Report to OHCHR on the Human Rights Responsibilities of Business*, http://www.escri-net.org/usr_doc/ESCR-et_Collective_Submission_to_OHCHR_-_Sept_2004.doc. In relation to food security and the role of multinational corporations, ActionAid, 'Corporate Abuse Many transnational food and agriculture corporations have become so large and powerful that they are threatening the rights of poor farmers and rural communities in developing countries', <http://www.actionaid.org/main.aspx?PageID=189>.

⁸⁰ Blackett, Adelle, 'Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes

United Nations, subsidiary organisations and corporations in particular has become the bogeyman in initiatives critical of globalisation and other forms of activism.⁸¹ According to this view self-imposed corporate norms of behaviour with regard to human rights are subject to fundamental abuse, the corporations' interest of obtaining a comparative cost advantage through lower social, work and environmental standards taking precedence over compliance with human rights standards. For this reason, it is asserted, the United Nations should not base cooperation with the private sector on voluntary principles.⁸²

The opposing view, that Codes of Conduct are a useful adjunct, when not seen as a substitute for the necessary international imposition of norms, is more conciliatory.⁸³ It is mainly the NGOs that traditionally enjoy good relations with business that see the creation of binding standards as a result of the success of voluntary obligations rather of their failure.⁸⁴

This is not the place for a detailed explanation of the background to this criticism and whether or not it is justified. However according to a pioneering study by the firm of consultants SustainAbility⁸⁵ such campaigns, which are mainly the work of NGOs, are a self-serving attempt to defend their share of a market worth USD 1 trillion. Furthermore, by cooperating with corporations these NGOs hope to be among the recipients of donations and grants worth billion of dollars.⁸⁶ Self interest not infrequently leads to a similar selectivity when it comes to campaigns aimed at consumers, for example with regard to corporations' respect for human rights according to certain critics.⁸⁷

In so far as PMSCs are concerned, this above mentioned general criticism by NGOs serves as the basis for rejection of any efforts to privatise the fundamental monopoly of the use of force by the State. Already prior to the public debate on PMSCs and

of Corporate Conduct', *Indiana Journal of Global Legal Studies*, 8, No. 2 (Spring 2001), 401.

⁸¹ Global Policy Forum Europe (Ed.), 'Whose Partnership for whose Development? - Corporate Accountability in the UN System beyond the Global Compact' (Speaking Notes of a Hearing at the United Nations, Geneva, 4 July 2007, sponsored by CETIM, Global Policy Forum, Berne Declaration, Greenpeace International, Misereor and Corporate Accountability International), <http://www.globalpolicy.org/reform/business/2007/0801whosepartnership.pdf>.

⁸² Zammit, Ann, *Development at Risk: Rethinking UN-Business Partnerships*, (Geneva: South Centre 2003).

⁸³ See 'General criticism of voluntary agreements and normative standards of ESCR-Net: Joint Submission to OHCHR on the Human Rights Responsibilities of Business', http://www.eschr-net.org/usr_doc/Joint_Submission_to_OHCHR_-_September_2004.pdf.

⁸⁴ Worth mentioning here in particular are Human Rights Watch and Mary Robinson's Business Leader Initiative for Human Rights and Amnesty International. In the latter case, see the contribution of Secretary-General Irene Khan at the Global Compact Summit of 5 July 2007.

⁸⁵ SustainAbility, 'The 21st Century NGO: In the Market for Change', 2003, <http://www.sustainability.com/insight/research-article.asp?id=51>.

⁸⁶ In 2005 the grants made by the 100 leading companies listed on the New York Stock Exchange amounted to an estimated USD 1.9 billion. See Balloe, Seb, 'Campaigners get into the business of business', *The Guardian*, 28 November 2005.

⁸⁷ EarthRights, which heads the 'Alliance for a Corporate Free United Nations' campaign http://www.earthrights.org/site_blurbs/alliance_for_a_corporate-free_un.html and criticises Nestlé's membership in the Global Compact is nonetheless quite willing to finance itself almost exclusively with the funds of corporate foundations including the Family Frankel Foundation, financed by the sale of the Frankel & Co advertising agency whose clients included McDonalds (Happy Meal), United Airlines (fly Business), etc. Global Exchange, which led the campaign against Starbucks is now its partner for fair trade coffee. Following its Brent Spar campaign Greenpeace became Shell's preferred partner. See Ford, Peter, 'NGOs: More than Flower Power - Nongovernmental Groups that Wield Nearly \$1 Trillion Shift Tactics to Work with Business for Fair Trade', *Christian Science Monitor*, 11 July 2003.

their role in the war in Iraq – beginning with involvement in the Abu Ghraib torture scandal⁸⁸ – basic conceptual approaches at the end of the 1990s reveal a certain preoccupation. Titles such as *Military Expertise for Sale*⁸⁹, *Soldiers of Fortune Ltd.: A Profile of Today's Private Sector Corporate Mercenary Firms*⁹⁰ or *Outsourcing War*⁹¹ are three examples of the wealth of articles that have appeared.⁹²

While criticism of PMSCs predominates and fears that the old style mercenarism has taken a new form have made their way to the United Nations⁹³, what is peculiar about this issue is that the debate and the growing awareness at the political level has been preceded by a wider academic and interest-based discussion within civil society.⁹⁴ In the meantime it must be admitted the networks⁹⁵ and NGOs⁹⁶, spurred no doubt by the participation of PMSCs in military violence in Iraq and the work of the Human Rights Council's Working Group on modern mercenarism, have begun strategic lobbying against PMSCs. The nature and timing of these efforts however clearly reflect the adoption of legislative measures⁹⁷ as well as Switzerland's intergovernmental initiative on pertinent legal obligations of states while contracting PMSCs and best contracting practices, mentioned in section 9.2 'Integration in the Swiss intergovernmental initiative'. The advantage of a proactive approach versus reactive efforts at regulation is that the companies participating will feel they are more able to influence the process. Furthermore the prior adoption of political measures would help to mitigate criticism from civil society in regards to such an initiative, in the absence of its own proposals and ideas.

7.3 Codes of Conduct Help to Overcome Shortcomings at the Level of Regulation and Implementation

Codes of Conduct can help to overcome shortcomings in the protection of human rights and IHL, which may occur either because of a lack of the appropriate rules or

⁸⁸ Rosemann, Nils, 'The Privatization of Human Rights Violations - Business' Impunity or Corporate Responsibility? The Case of Human Rights Abuses and Torture in Iraq', *Non-State Actors and International Law*, Vol. 5, (2005), 77-100.

⁸⁹ Grant, B.D., 'U.S. Military for Sale: Private Military Consultants as a Toll of Foreign Policy', *Strategy Essay Competition 1998*, US National Defense University, www.privatemilitary.org/academic.html.

⁹⁰ Isenberg, D., *Soldiers of Fortune Ltd.: A Profile of Today's Private Sector Corporate Mercenary Firms*, (Centre for Defence Information: November 1997).

⁹¹ Shaerer, D., 'Outsourcing War', *Foreign Policy*, (Fall 1998), www.fsa.ulaval.ca/personnel/vernag/EH/F/cons/lectures/mercenaries.htm.

⁹² Here, above all Singer, P.W. *Corporate Warriors*, Guinote, Filipa, 'Private Military Firms and the State Sharing Responsibility for Violations of Human Rights and Humanitarian Law', *European Master's Degree in Human Rights and Democratisation Awarded Theses of the Academic Year 2004/2005*, Marsilo Editori, (Venice 2006), 17-101.

⁹³ United Nations Commission on Human Rights, Resolution 2005/2 *The use of mercenaries*, UN Doc. E/CN.4/RES/2005/2

⁹⁴ U.K. Parliament, 'Return to an Address of the Honourable the House of Commons dated 12th February 2002 for a Paper, entitled: Private Military Companies: Options for Regulation', *Green Book*, (House of Commons, 12 February 2002), <http://www.fco.gov.uk/Files/kfile/mercenaries,0.pdf>.

⁹⁵ Business & Human Rights, <http://www.business-humanrights.org/Home>.

⁹⁶ Human Rights First, 'Program on Law and Security', http://www.humanrightsfirst.org/us_law/us_law.asp.

⁹⁷ For example regulation in the UK under the *Private Security Industry Act*; in the USA under the *US Arms Export Control Act of 1968* (22 US 39-1) and in South Africa under the *Regulation of Foreign Military Assistance Bill of 1997*.

which may have their origin in the failure to implement existing standards. As already stated, the acts of PMSCs can be imputed to States so that in cases of violation the legal consequences of responsibility under international law can be determined in accordance with the principles of the responsibility of States.⁹⁸ Also to be determined in accordance with international law is the ascertainment of war crimes and crimes against humanity by individuals, as the basis for individual responsibility under international criminal law.⁹⁹ The extent to which PMSCs are directly bound by the normative standards of human rights protection and IHL standards is not clear, and even if it were the necessary procedures for the determination of responsibility and accountability are lacking.

A CoC can also dispel uncertainty concerning the applicability of existing norms and their binding nature, while eliminating national differences in the level of protection from human rights violations and ensuring implementation.

7.4 Codes of Conduct for PMSCs and the Mercenary Question

As mentioned in 5.3.1.2 ‘PMSCs: Mercenaries or Corporations?’, international standards are based on the assumption that the term “mercenary” applies exclusively to natural persons and their acts and it has shown itself to be of little practical value.

A CoC for PMSCs might define their activities as illegal mercenarism. It would thus have to adopt as its own the relevant international norms for legal entities contained in the Convention of the OAU. There would thus be little difference between a corporation, the fundamental purpose of which is to make a profit and secure its place in the market, and an individual mercenary. However since such a formulation equates what is a company’s proprietary right with a criminal offence, it should be avoided. PMSCs’ earnings are a function of other actors’ need for security – be these States, NGOs or international organisations. The definition of a PMSC’s profit motive as mercenary is thus concomitant with its fundamental purpose as a corporation. Making this punishable – since mercenarism is an international crime – would amount to a *reductio ad absurdum* of the purpose of a CoC, i.e. to define a legitimate field of activity for PMSCs, since the end result must be to ban PMSCs. Likewise the provisions of IHL do not prohibit mercenarism even while denying it any privileges. As far as a CoC is concerned, it might serve as an incentive not to hire mercenaries by banning mercenarism, or to link the demand of payment for services to a soldier’s pay. This latter however would seem better defined as one of the functions of public procurement.

⁹⁸ UN General Assembly, ‘Principles of State responsibility’, Annex *Responsibility of States*, U.N. Doc. A/RES/56/83.

⁹⁹ ICC, *Rome Statute*, Article 8, 25.

8. Components of a Code of Conduct

8.1 Duties as an Integral Part of a Code of Conduct

The aim of a CoC for PMSCs is first of all to formulate duties to respect for businesses based on international standards of human rights protection and IHL. Establishing normative standards is important, since their subsequent implementation ought to serve to safeguard those standards. The criticism directed at the Kimberley Process demonstrates how a lack of a substantial concept fails to help the affected communities. The Kimberley Process entails tracking diamonds from mining to sale (certification and tracking system). If a diamond comes from a conflict region, it should be excluded from sale on the world market. A “blood diamond” embargo was imposed upon Liberia by the Security Council due to lack of a certification system – with reference to the Kimberley Process. Once an appropriate tracking system had been created, the embargo was lifted. How much of the diamond mining benefits the local communities, or whether worker’s rights are observed, is not of interest as far as the Kimberley Process is concerned.

Thus the extent of companies’ duties within a PMSC CoC has to arise not from abstract terms such as conflict region or warlike conflicts, but from their actual or potential effect (sphere of influence) on the ability to observe a particular human right.¹⁰⁰ In other words a CoC will define guidelines for due diligence of management practices that will help to assess the human rights impact of activities and to avoid infringements of human rights and rules of IHL. Therefore, in addition to formulating individual standards, an important component of a CoC is the ability to communicate them and illustrate them in a manner tailored to the specific clientele.

Individual human rights duties within a CoC ought to be formulated using a human rights approach, i.e. an examination of the actual or predicted immediate potential harm or protection from the perspective of the victim/person benefiting. Thus, certain areas of applicability without any immediate human rights relevance – such as norms of awarding contracts and bidding process norms, standards of contract negotiation (fairness principle), anti-trust and corruption rules, regulations for dealing with conflicts of interests, rules of accounting or rules for business activities in the event of national or international embargos, boycotts or restrictive trade practices – do not as a matter of principle fall within a CoC intended to ensure that human rights standards and/or norms of IHL are observed. Of course, these areas may be included in the CoC if it is in the interests of the PMSCs, of States or other interested parties and if it would improve the chances of adoption and acceptance

¹⁰⁰ United Nations Office of the High Commissioner for Human Rights, *Report on the responsibilities of transnational corporations and related business enterprises with regard to human rights*, 15 February, 2005, U.N. Co. E/ CN.4/2005/91; Para. 38, ‘The notion of “sphere of influence” could be useful in clarifying the extent to which business entities should “support” human rights and “make sure they are not complicit in human rights abuses” by setting limits on responsibilities according to a business entity’s power to act. Importantly, “sphere of influence” could help clarify the boundaries of responsibilities of business entities in relation to other entities in the supply chain such as subsidiaries, agents, suppliers and buyers by guiding an assessment of the degree of influence that one company exerts over a partner in its contractual relationship - and therefore the extent to which it is responsible for the acts or omissions or a subsidiary or a partner down the supply chain’.

of the CoC. However, the proposal connected with the present feasibility study does not initially discuss these areas of applicability.

8.1.1 Protection of the right to life and bodily integrity

The biggest points of intersection shared by human rights standards and IHL norms are to be found in the right to life¹⁰¹, in bodily integrity¹⁰², in the ban on torture¹⁰³, in the right to freedom of movement¹⁰⁴ and the ban on discrimination.¹⁰⁵ The right to life and bodily integrity should be focused around regulations on the use of violence and the control of firearms, which must solely be allowed in self-defence or in emergency assistance if defending third persons. The issue of recognising permissible offensive actions provided as military services will be problematic for the CoC. An absolute ban on military offensive services paralleling the ban on mercenaries is not considered practicable, since it does not take current developments into consideration and would exclude a part of PMSCs' services, with the result that PMSCs would not recognise the CoC.¹⁰⁶ In contrast, the ban on torture must be formulated in absolute terms and no restrictions should be placed on the individual right to freedom of movement, as PMSCs are not supposed to perform any police or law enforcement duties. PMSC should merely have the general right under civil law to detain suspicious persons.

8.1.2 Protection of employment rights

As previously stated, a CoC may also have the objective of creating a distinction within the informal economy, since human rights abuses frequently occur in the operating process within the informal economy.¹⁰⁷ First and foremost the lack of social security, discrimination and child labour need to be addressed.¹⁰⁸ Thus, in

¹⁰¹ *Universal Declaration of Human Rights (UDHR)*, 'Right to life' Article 3, adopted by General Assembly Resolution 217 A (III) of December 10, 1948), Article 6 *ICCPR*, Common Article 3 a) to *Geneva Convention I-IV*.

¹⁰² *UDHR* 'Right to personal integrity' Article 3, *ICCPR* Article 9, Common Article 3 a) to *Geneva Convention I-IV*.

¹⁰³ *UDHR* 'Freedom from torture and degrading treatment' Article 5, *ICCPR* Article 7, *International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* adopted by General Assembly Resolution 39/46 of December 10, 1984 and entered into force on June 26, 1987, Common Article 3 a) and c) to *Geneva Convention I-IV*.

¹⁰⁴ *UDHR* Article 9, *ICCPR* Article 9 Para. 1, Sentence 2, Common Article 3 b) to *Geneva Convention I-IV*.

¹⁰⁵ *UDHR* 'Right to be free from discrimination' Articles 2 and 7, *ICESCR* Article 2 Para. 2 and 3, *ICCPR* Article 2 Para. 1 and 3, *International Convention on the Elimination of All Forms of Racial Discrimination* adopted by General Assembly Resolution 2106 A (XX) of December 21, 1965 and entered into force on January 4, 1969.

¹⁰⁶ See for such request *Voluntary Principles on Security and Human Rights*: 'Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities. Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only', <http://www.voluntaryprinciples.org/>.

¹⁰⁷ World Commission on the Social Dimension of Globalization, *A Fair Globalization - Creating Opportunities for All*, ILO (Eds.), (Geneva: ILO, 2004) 3; ILO, *Decent Work in the Informal Economy, Report VI, International Labour Conference, 90th Session*, (Geneva, ILO, June 2002)

¹⁰⁸ ILO, 'Resolution concerning decent work and the informal economy, of the 90th sitting of the International Labour Conference (2002)', Articles 10, 20, 23 of the conclusions, *Provisional Record 25 of Nineties Session, Geneva 2002*, <http://www.ilo.org/public/english/wcsdgd/globali/infeconomy.pdf>.

addition to the areas of protection common to human rights and IHL, the ban on child labour and the ILO's core labour norms – i.e. the ban on forced labour, freedom from discrimination in the workplace and the right to equal wages, the freedom to enter a trade union and the right to collective bargaining – should be the subject of a CoC. This inclusion would thereby guarantee basic employment standards within the PMSCs and guarantee the human rights of the employees within the operating process.¹⁰⁹

8.1.3 Ban on corruption

The CoC should contain a statement on the ban on corruption.¹¹⁰ An indication of the behaviour that is expected of PMSCs could be a reflection of the Codes of Conduct applying to civil servants, according to which businesses are not supposed to have any political activities that solely serve commercial aims, and are not supposed to give any gifts to public officials with the aim of receiving a service in return.¹¹¹

8.1.4 Gender-specific violence

In view of PMSCs' volatile area of operations and of the particular threat to women and girls in conflict and war zones, the CoC should determine particular, gender-specific duties to respect and bans on sexual violence and exploitation.¹¹²

8.2 Implementation of Obligations: Procedures Regarding PMSC Accountability and Responsibility

Based on the explanations made above it should be clear that, for a CoC, the recognition of human rights standards and IHL norms should not be so controversial,

¹⁰⁹ In accordance to the *ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*, adopted on November 16, 1997 and revised by November 17, 2000 (www.ilo.org (2005-09-23) in connection with the *ILO Declaration on Fundamental Principles and the Rights at Work and its Follow Up*, adopted on June 18, 1998 the fundamental labour standards are: prohibition and abolishment of forced labour (ILO Conventions 29 and 105), prohibition of discrimination and unequal remuneration (ILO Conventions 100 and 111), the ban on child labour (ILO Conventions 138 and 182), the affirmation of the freedom of association and the right to collective bargaining (ILO Conventions 87 and 98).

¹¹⁰ UN, *United Nations Convention against Corruption*, adopted by General Assembly Resolution 58/4 of October 31, 2003 and entered into force on December 14, 2005.

¹¹¹ United Nations General Assembly, *Action against Corruption* Resolution 51/59 of January 28, 1997; *International Code of Conduct of Public Officials* Annex, U.N. Doc. A/RES/51/59, Article 5: 'Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest. In situations of possible or perceived conflict of interest between the duties and private interests of public officials, they shall comply with the measures established to reduce or eliminate such conflict of interest', Article 9: 'Public officials shall not solicit or receive directly or indirectly any gift or other favour that may influence the exercise of their functions, the performance of their duties or their judgement'.

¹¹² Security Council Resolution 1325 (2000) of October 31, 2000, Para. 10: 'The Security Council *Calls on* all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict'; Para. 11: 'The Security Council *Calls upon* all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design, and recalls its resolutions 1208 (1998) of 19 November 1998 and 1296 (2000) of 19 April 2000'.

but rather the central issue should be their application and implementation. The operationalisation of a CoC turns an abstract standard into a concrete behavioural norm that ought to entail consequences if breached. It must be emphasised that the voluntary adoption of international standards and the subjection to an external implementation and control procedure complement and do not replace the existing rules of imputing State and individual responsibility. However, a company's internal monitoring of its implementation will make or break the binding nature of the assumed duties and the punishment of violations.

8.2.1 Changing the company structure

Management and staff

The aim of a CoC is to achieve the protection of human rights by having PMSCs adopt relevant duties to respect and protect human rights. In order for the CoC to make the transition from paper to reality, businesses have to implement it internally, which would almost certainly entail changes in management, in ways of communication and in internal company accountability. For this reason, the CoC needs to provide a statement on how it is to be implemented in order to achieve the greatest degree of cohesion between the individual implementations. The first focus should be the recruitment, initial and ongoing training of employees and other personnel such as company management, internal supervisory staff and external consultants. A prerequisite for communicating breaches of the CoC is an internal attitude towards reporting that does not cast the person reporting as an informer, but encourages a discussion of corporate operations (whistleblower policy). A duty to report to and cooperate with State judicial authorities is also required.

Human rights impact assessment

As a further step towards implementation, a CoC ought to stipulate a procedure for companies in which the companies investigate the consequences of their own actions on the observance of human rights and the respect for IHL. This type of human rights impact evaluation¹¹³ not only serves to avoid possible violations of human rights or of bans within IHL and/or to reduce the risk of breaching the standards out of ignorance, but also strengthens businesses' positive contributions to the observance of individual human rights.¹¹⁴ Companies' judgment of their own actions should start with the description of the planned activity and the investigation of general human rights frameworks and IHL norms.¹¹⁵ In this

¹¹³ United Nations Office of the High Commissioner for Human Rights, *Report on the responsibilities of transnational corporations* U.N. Doc. E/CN.4/2005/91 Para. 51; United Nations Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Report Human rights impact assessments - resolving key methodological questions* of February 5, 2007, U.N. Doc. A/HRC/4/74.

¹¹⁴ United Nations Office of the High Commissioner for Human Rights, *Report on the sectoral consultation entitled 'Human rights and the extractive industry' 10-11 November 2005*, of February 19, 2006; U.N. Doc. E/CN.4/2006/92; Para. 26 lit. g).

¹¹⁵ Rights & Development - Independent Centre for Human Rights and Democratic Development, *Human Rights*

case, international, regional and national norms are just as important as corporate behaviour principles and components of contracts.¹¹⁶ In principle, the participation of stakeholders – e.g. those actually or potentially affected, local communities, employee agencies, NGOs or independent experts – is a set component of such investigations, both to assess human rights violations, and to provide transparency and participatory evaluation of actual or alleged impact on human rights standards and norms of IHL.¹¹⁷

Duty to inform, educate and provide reparation

A central factor in a human rights-based approach to developing a CoC for PMSCs on how to respect human rights and IHL norms is that the creation of mechanisms of implementation and systems of accountability has to be oriented towards the human right requiring protection from the perspective of the victim. If the aim is to avoid human rights violations, the areas to be protected need to be defined broadly and in an action oriented manner, before the activity is started. In contrast, the focus of an inspection during or after performance of services is firstly the universal duty to provide information, so as the determination of whether or not a rights violation occurred is made within a transparent and participatory procedure.¹¹⁸ The aim of the procedure has to be to end the human rights violation and any breach of IHL, to eliminate any repeat offending and to deal with the consequences of a breach of regulations.¹¹⁹ Most human rights violations cannot be undone, which is why the forms of reparation and remedy ought to be of a material and moral kind. In addition to restitution and financial compensation and rehabilitation, there may be other forms of making amends to the victim that may be suitable such as public apologies and memorial services, guaranteeing that repeat offending be excluded by changing company practice, or fines through to the suspension of business operations.¹²⁰

Transparency and participation vs. secrecy

With regard to PMSCs, these fundamental principles of transparency and participation are to be viewed in a restricted sense, since legally operating PMSCs perform defensive missions in often highly sensitive and volatile regions. Relinquishing

Impact Assessments for Foreign Investment Projects Learning from Community Experiences in the Philippines, Tibet, the Democratic Republic of Congo, Argentina, and Peru; Montreal 2007, 18.

¹¹⁶ United Nations Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Human rights impact assessments*, U.N. Doc. A/HRC/4/74; Para. 11.

¹¹⁷ International Business Leader Forum & International Financial Corporation, *Guide to human rights impact assessment and management* (Road-Testing Draft, June 2007) <http://www.iblf.org/resources/general.jsp?id=123946>.

¹¹⁸ United Nations Commission on Human Rights, *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*, Annex to Human Rights Resolution 2005/35 of April 19, 2005, Article 11c, 24.

¹¹⁹ *Principles of State responsibility*, Annex to Resolution of the General Assembly *Responsibility of States* U.N. Doc. A/RES/56/83, Articles 30 and 31.

¹²⁰ United Nations HRC, *General Comment on Article 2 The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, adopted at 2187th meeting on 29 March 2004, Para. 16 U.N. Doc. CCPR/C/74/CRP.4/Rev.6.

their intelligence advantage at the expense of a human rights impact assessment may to some extent result in an increase in the level of threat; yet whatever the case it would impede the recognition of a CoC. There are two possible ways of solving this dilemma. The first is that an advisory examining commission sworn to professional secrecy could be created within the framework of a CoC, consisting of civil society and trade union representatives, members of parliament and industry representatives to assess the military and security services before they begin, lay out a framework of action, and create an internal monitoring mechanism. The other option would be that if the said PMSC services might involve an infringement, an assessment could be carried out afterwards that examines the different forms of conduct.¹²¹

8.2.2 External monitoring of implementation and compliance

The practical consequences – increased observance and application of international standards – as well as support for a CoC as an international instrument to improve the protection of human rights and the observance of IHL are dependent upon the existence of a monitoring procedure that is acceptable and practicable for companies and stakeholders. The procedure ought to be underpinned by universal human rights standards and IHL norms, and not by special interests. If the discrepancy between the normative requirement and reality is too great, it always results in criticism, and ultimately to any corporate self-imposed obligations being ineffective.

Institutionalisation

The sine qua non of an independent monitoring and assessment of both implementation of and compliance with the CoC is an institutional foundation. Examples of an institutional foundation can be seen in corporate standards such as the Global Compact¹²², the Organisation for Economic Co-operation and Development's (OECD) guidelines¹²³, the International Labour Organisation's (ILO) fundamental employment norms¹²⁴ and the Kimberley Process.¹²⁵ The advantage of such initiatives is an institutional memory and the potential that the individual bodies – such as offices or experts – might bring about an increase in practical commitment. The disadvantage is the sluggishness of decision-making entailed by bureaucratisation. An example of this is the lack of basic principles of operation, for instance the lack of policy for dealing with inactive members in the Global Compact, the national differences regarding the OECD Focal Points or the sluggish application of the Kimberley Process in the UN Security Council. There is some

¹²¹ Regarding *ex ante* / *ex post* evaluation, see Dutch Humanist Committee on Human Rights, 'Human Rights Impact Assessment' <http://www.humanrightsimpact.org/hria-guide/overview/>.

¹²² UN, 'UN Global Compact', <http://www.unglobalcompact.org/>.

¹²³ OECD, 'OECD Guidelines for Multinational Enterprises, Global Instruments for Corporate Responsibility', *Annual Report 2001*, (Paris: OECD, 2001), Annex II, 127.

¹²⁴ ILO, *Declaration on Fundamental Principles*, ILO.

¹²⁵ 'Kimberley Process', <http://www.kimberleyprocess.com>.

marginal institutionalisation to be found in the case of the Voluntary Principles on Security and Human Rights¹²⁶, the Extractive Industry Transparency Initiative¹²⁷ or the Equator Principles.¹²⁸

Independent judgment via participation of external stakeholder groups

It is also important for the institutionalisation process that external stakeholder groups take part in the revision process. Initially, revision and monitoring bodies are made up of members of a CoC. PSCAI, BAPSC and IPOA are associations exclusively for stakeholders; membership is reserved for PMSCs. IPOA implements its CoC via a Standards Committee and reserves the right to terminate membership should the CoC or the decisions of the Standards Committee be violated. Such decisions have as yet not been made public. There was internal discussion regarding the facts of the case when, following the start of a routine check of the member Blackwater, it unilaterally terminated the collaboration. In contrast, although compulsory sanctions are mentioned, the BAPSC CoC does not state what would lead to such sanctions. The same can be said of PSCAI, who have not adopted any implementation or sanction mechanisms into their CoC whatsoever.

If one looks at other initiatives, such as the Global Compact, the Kimberley Process, Voluntary Principles on Security and Human Rights and the Extractive Industry Transparency Initiative, these represent so-called multi-stakeholder processes involving companies, States and civil society lobby groups. However, multi-stakeholder processes cannot be equated with independent monitoring. The participation of NGOs, such as Global Witness in the Kimberley Process, does not at the same time mean that compliance with decisions is monitored externally. Rather, in the Kimberley Process there is an internally appointed group of experts – which in the case of Côte d'Ivoire is continually being criticised, since the interests of neighbouring States are reflected in the experts' assessment of the situation.

However, an initiative does not necessarily need to have broad scale participation from the very outset. For instance, if one considers the Equator Principles developed by the World Bank subsidiary International Finance Corporation as performance standards for banks, credit institutions and financial service providers, one notices that they do not have any concept of membership. Nor is there any membership in relation to the OECD guidelines besides States' membership in the OECD. Yet business associations and trade unions do have some influence on the responsible national offices. There are no civil society associations either but, again, industry associations and labour organisations are involved in the three-tier process of the ILO.

¹²⁶ 'Voluntary Principles on Security and Human Rights', <http://www.voluntaryprinciples.org/>.

¹²⁷ 'Extractive Industry Transparency Initiative', <http://www.eitransparency.org/>.

¹²⁸ 'Equator Principles', <http://www.equator-principles.com/index.html>.

8.2.3 Reporting system

In addition to the investigation of possible violations, the regular monitoring of compliance is of similar importance. A periodic reporting system – in which reports are made on the company’s internal implementation of the CoC and on possible breaches or investigations – would be useful. Similar to the State reporting procedure laid down in the human rights accords, it is the duty of a monitoring body to provide concluding observations or even concluding recommendations, the implementation of which would then be detailed in the next report. If different reports from PMSCs demonstrate a pattern in certain regional threat levels or show that certain corporate practices have a particular human rights relevance, it should be the task of the monitoring body to provide general recommendations and statements that are obligatory for all the members of a CoC.

Ultimately the aim of a CoC is to call companies to account when violations of human rights or of IHL have been determined. A CoC should differentiate itself from the principles of individual criminal responsibility. While the focus is on the culpability of the individual perpetrator when determining individual responsibility, this should not be taken into consideration in the case of legal persons such as PMSCs. The principle of the guilty party should be replaced by establishing that the breaches are part of a company’s sphere of influence and that they could have been avoided by complying with the CoC. Once a violation of the CoC has been determined, the system of restitution vis-à-vis the victim detailed above should be applied. In addition, fines should be imposed on the company by way of which e.g. the institutional body set up to administer the CoC or even a victim fund could be created through which payments could be made to victims, if for example the PMSC no longer exists. Should a PMSC concerned not fulfil the instructions of the monitoring body, fines, the threat of membership termination and/or exclusion from the CoC ought to bring about behaviour that conforms with the decisions and the CoC.

8.2.4 Duty of restitution and “retention fund”

It must be noted – particularly with regard to potential restitutive damage claims, fines and penalty payments – that companies can limit their liability to certain amounts. However, this kind of limitation of liability would be contrary to the aim of the CoC and/or its implementation. For this reason, membership in the CoC ought to be made contingent upon the payment of retention money. The money could be used to settle claims in the event of insolvency at the time of the CoC violation. The size of the mandatory payment into a potential “retention fund” could be based on the scope of the individual contracts, annual turnover or profits. These kinds of funds already exist vis-à-vis civil law liability requirements, guaranteeing victim protection beyond the risks of insolvency or the existence of the company breaching its duties.¹²⁹

¹²⁹ International Maritime Organisation (IMO), *International Convention on Civil Liability for Bunker Oil Pollution Damage*, adopted on March 23, 2001.

8.2.5 Punitive measures

The exclusion from the CoC ought to be of market relevance, since membership in the CoC should be a prerequisite for the awarding of public and private contracts as well as being a certification system guaranteed by the State. Moreover, finance market mechanisms – such as investment rankings referencing companies' social, environmental or sustainability performance – ought to only list PMSCs and their contractual partners if they comply with the CoC.

9. Initialisation Process and Recommendations

9.1 Multi-Stage Procedure

Those initialising the CoC ought to consider the fact that the while a more binding CoC would increase acceptance by critics of PMSCs and increase the value of norms in prosecuting violations, companies themselves might be reluctant to join. Changing corporate structures, taking on additional reporting obligations as well as monitoring and responsibility mechanisms require time and the trust of the acting parties. The implementation mechanisms have to consider that companies in general and PMSCs in particular are influenced by some uncertainty as to which standards apply to them and which do not. Public criticism and a few black sheep do not exactly contribute to creating an unbiased atmosphere in which PMSCs can openly discuss their own shortcomings. PMSCs' observance of human rights starts with being informed of their own duties and with changing patterns of behaviour and activities relevant to human rights if need be. To this end, safe havens are needed in which companies acknowledge that the observance of human rights is not only a commitment that attracts media attention, but that it is also in the companies' own interests.

A CoC for PMSCs ought to support this acknowledgment process by establishing a procedure in which the CoC becomes binding in successive stages. There are two possible models. The first would be that PMSCs commit themselves, not to all the material duties, but to a certain set of core duties in a start-up and implementation phase. These core duties would be subject to the entire implementation mechanism. Following the first phase, the company would have to decide to either recognise the CoC in its entirety or terminate its membership. In the second model, all the material duties are already recognised in the first phase, however the company solely has to report on its compliance and implementation during this beginning phase. There is no assessment or prosecution of violations. A variation on the second model would be to exclude independent experts or to restrict individual complaints in the first phase. Finally, a combination of both models would be possible, which gives us multiple opportunities for getting PMSCs interested in the CoC.

9.2 Integration in the Swiss Intergovernmental Initiative

On 15 September 2008, 17 States and the International Committee of the Red Cross (ICRC) finalised the Montreux Document – a text, negotiated among states, containing rules and good practices relating to private military and security companies operating in armed conflict.¹³⁰ The initiative for this document, which is the first of its kind, was launched jointly by Switzerland and the ICRC in 2006 and is related to a mandate by the Swiss parliament for a intergovernmental initiative.

In reply to the Stähelin Postulate of 1 June 2004,¹³¹ the Federal Council passed a report on private security and military firms on 2 December 2005 proposing courses of action for Swiss internal and foreign policy, and instructing the Swiss Federal Department of foreign Affairs (FDFA) to implement them.¹³² In the report the Federal Council concluded that there was a lack of international dialogue and/or intergovernmental process in which to discuss suitable measures to improve the respect for IHL and human rights on the part of PMSCs. Based on this conclusion, and partly in collaboration with the ICRC, the Federal Council encouraged an international dialogue to pursue, in particular, the three following objectives:

- Promotion of an intergovernmental dialogue on the challenges associated with private military and security corporations' operations;
- Endorsement and specification of the duties of States and other actors according to international law, especially in the area of IHL and human rights;
- Assessment of options and regulation models as well as other suitable measures at the national, regional and international level.

These objectives were included in the Wyss motion, advocated by the Security Policy Commission and the Federal Council, and adopted in Switzerland's Council of States on 15 December 2005.¹³³ Based on this, the Swiss Federal Department of Justice and Police elaborated an ordinance that set 'minimum standards for private security corporation operations in cases where the Confederation is entitled to delegate security duties to them'.¹³⁴ This ordinance passed by the Federal Council on 31 October 2007 is said to have ramifications even on the international security market.¹³⁵ In this regard, the CoC would have the advantage in that it does not refer

¹³⁰ *Montreux Document on pertinent legal obligations and good practices for states related to operations of private military and security companies during armed conflict*, Montreux, 17 September 2008, <http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/intla/humlaw.Par.0056.File.tmp/Montreux%20Document.pdf>.

¹³¹ Stähelin Postulate 04.3267 of 1 June 2004, adopted by the Council of States on 22 September 2004, *Ministerial Bulletin 2004*, 483.

¹³² *Report of Federal Council on private military and security corporations* (German language) (in reply to Stähelin Postulate 04.3267 of 1 June 2004. 'Private security corporations') of 2 December 2005 <http://www.admin.ch/ch/d/ff/2006/623.pdf>.

¹³³ Motion Wyss Ursula 04.3796 of 15 December 2005, 'Inclusion of internationally applicable regulations for private military and security corporations', *Ministerial Bulletin 2005*, 1969.

¹³⁴ 'Ordinance on the employment of private security firms by the Confederation' (Ordinance on the employment of private security firms, 'VES'), *Official compilation of Federal legislation (AS)*, 2007, 0633.

¹³⁵ According to the Swiss Federal Dept. of Justice and Police during presentation of Ordinance on 31 October 2007, see 'Standards for private security firms such as ... Blackwater influence Swiss legislation', *Neue Züricher Zeitung*, 1 November 2007.

to national laws but to international standards, which is closer to the objective of the intergovernmental initiative.

In addition to the intergovernmental initiative's current conclusion with intergovernmental standards and towards defining best contracting practices from the governmental perspective, the CoC has the potential to become a standard reference for awarding contracts and contracting practice, and thus it has a direct relation to clarifying State duties as per the current discussion within the intergovernmental initiative.

Ultimately there is the possibility that recognition of the CoC could act as a prerequisite in the licensing process, corresponding with the issue of States' regulatory duty, also being discussed in the context of the intergovernmental initiative. For these reasons, the CoC ought to be considered an integral component of the intergovernmental initiative.

Finally a CoC would make principles agreed among governments for the specific case of armed conflicts applicable for pre- or post-conflict situations as well as contractual relationships between PMSCs and clients other than states.

9.3 Basic Conditions for an International Initiative

International initiatives that attempt to get companies involved in regulating their own activities while dealing with political and civil society sensibilities, require three things: the companies' willingness to cooperate, recognition of the initiative in company-critical circles and the political willpower of a lead nation.

Company willingness is the result of both company interests and sensibilities being included in the framework of the initialisation process. Negative examples in this regard are the norms of corporate responsibility drafted by the sub-commission of the then UN Human Rights Commission¹³⁶, which became the subject of criticism not so much due to the provisions they contained but rather due to the exclusive process by which they came about – being drafted by an expert and unilaterally supported by civil society representatives.¹³⁷ Inclusive initiatives, such as the initiation of the Global Compact¹³⁸ at the World Economic Forum or the involvement of banks and finance institutions as the relevant addressees of the Equator Principles,¹³⁹ are examples of successful launches of initiatives.

Frequently, pressure from civil society or consumer behaviour can also be helpful, as demonstrated by the manifold labelling campaigns, most especially the Kimberley

¹³⁶ *Norms on the responsibility of transnational corporations and other business enterprises with regard to human right* UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 of 26 August 2003; (translation by United Nations German translation service), in *Blue Series No. 88*, German United Nations Society (Ed.), (Berlin: 2004).

¹³⁷ See Rosemann, Nils, 'Business Human Rights Obligations - The Norms of the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights', *Nordic Journal of Human Rights*, 23, No. 1:2005 (April 2005), 47(55).

¹³⁸ 'Global Compact', globalcompact.org.

¹³⁹ 'Equator Principles', equatorprinciples.org.

Process, particularly relevant due to its relation to economies of violence.¹⁴⁰ The Process is also an apt example of another supporting factor when an initiative, such as a CoC, is launched: the recognition of the Kimberley Process as a management standard was positively affected by its institutional grounding within the European Union and the UN Security Council's constant referencing and application of it when judging the illegal exploitation of natural resources in crisis areas and warzones. The same can be said of the Global Compact's connection to the UN, especially to the General Secretariat and the UNDP. An institutional grounding of this type can come from existing organisations per se, such as the OECD guidelines¹⁴¹ and the ILO's core labour norms.¹⁴² A connection to a regional or international organisation in particular also guarantees the involvement of civil society structures such as NGOs, and not infrequently makes a procedure to establish and implement an initiative available.

In view of the above, the Global Compact, the OECD or the ILO might come into consideration as potential fora. The UN Human Rights Council's working group on modern forms of mercenarism would also come into consideration, from the point of view that it is mandated to submit appropriate proposals. However, there is a risk that this would entail a counterproductive politicisation of the issue. If one regards the CoC as being more like a technical component, professional organisations such as United Nations Conference on Trade and Development (UNCTAD)¹⁴³ or United Nations Commission on International Trade Law (UNCITRAL)¹⁴⁴, which have experience in drafting regulation frameworks and Codes of Conduct, could serve as sufficient means to internationalize the CoC.

Nevertheless the link to an existing institutional or organisation could also be inappropriate for the start of an initiative. If one's foremost objective is to provide the aforementioned safe haven for discussions, the Voluntary Principles on Security and Human Rights¹⁴⁵ and Extractive Industry Transparency Initiative¹⁴⁶ processes demonstrate the importance of having a strong leading nation and the inclusion of important supporting countries within the process.

From the above points of view, a connection with the intergovernmental initiative – at least with the cooperation partners and directions of discussion created therein – again becomes apparent. The interests and the role of the ICRC or even the national federation of Red Cross and Red Crescent organisations ought to be examined, since they help to formalise the participation of civil society.

¹⁴⁰ 'Kimberley Process', kimberleyprocess.org.

¹⁴¹ OECD, 'OECD Guidelines', *Annual Report 2001*, Annex II 127(127).

¹⁴² ILO Declaration, ILO.

¹⁴³ United Nations Conference on Trade and Development (UNCTAD), <http://www.unctad.org>.

¹⁴⁴ United Nations Commission on International Trade Law (UNCITRAL), <http://www.uncitral.org>.

¹⁴⁵ 'Voluntary Principles', <http://www.voluntaryprinciples.org/>.

¹⁴⁶ 'Extractive Initiative', <http://www.eitransparency.org/>.

9.4 Possible Problems in Implementation

To conclude, it remains to be stated that the binding formulation of the CoC may initially have an effect of scaring firms away. The majority of PMSCs will have a critical attitude towards such a comprehensive CoC. The problem could be solved by allowing the recognition of the CoC and its integration in management practice in the first phase, followed by the second phase where reporting and compliance mechanisms are added.. An integral component of this dialogue could be the so-called road testing of the principles and standards contained in the CoC, as is the case with UN norms of corporate responsibility in the Business Leader Initiative on Human Rights.¹⁴⁷

The rigidity of the standards could pose a further problem. General principles are more likely to be recognised than concrete duties. However, should the rigidity of the standards and duties of implementation be sacrificed, and should the compliance committee not just provide an interpretation when assessing the individual case as in continental legal philosophy but concurrently create norms by specifying concrete general precepts as in Anglo-American legal philosophy, PMSCs would be robbed of participation in the recognition process, which would reduce their willingness to commit themselves.

¹⁴⁷ 'Business Leaders Initiative on Human Rights', <http://www.blihr.org>.

Annex 1. Proposed Elements of a Code of Conduct for Private Military and Security Companies

Preamble

Noting, that recognition of human rights and the obligations of a company towards the people who are affected by its business practices, its employees, its customers and suppliers, its shareholders, the wider community and to the environment provides an important foundation upon which responsible corporate activities can be based.

Source: Partly drawn from CoC BAE – United Defense.

Noting, that all business should be conducted in accordance with the laws, regulations and corporate standards of business conduct of the countries where they operate, the countries of their corporations and of their employees' origin.

Source: Partly drawn from Toifor & Northrop Grumman.

Noting, that private military and security contractors and service providers (hereinafter PMSCs) frequently operate in high risk areas where national regulations are non-existent, underdeveloped or poorly implemented, and should in such circumstances adhere to international human rights standards such as the International Bill of Human Rights, core labour standards, and norms of international humanitarian law through a self-commitment to these universal principles until such laws and regulations are in force.

Source: Partly drawn from Toifor, CoEES & uni Principles.

Noting, that due to the services provided in volatile environments, especially in post-conflict societies, PMSC are possibly linked to international human rights issues and concerns, and should therefore promote the development of appropriate regulations, and further standard-setting and implementation at the national and international level.

Source: Partly drawn from CoEES & uni Principle 1 & UN Norms Preamble.

Noting, that accountability and transparency should be the guiding principles for PMSC and their personnel, this CoC makes international human rights standards and norms of international humanitarian law mandatory for PMSC to enable them to avoid human rights violations and to maximise their positive contribution to peace, stability and development.

Source: Partly drawn from Global Compact.

General principles

While governments have the primary responsibility to promote and protect human rights, this Code of Conduct obliges PMSC to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights and international humanitarian law.

Commentary: Drawn from the UN Norms, Voluntary Principles and Global Compact, this paragraph is a usual statement on shared responsibility between public authorities, directly bound by international human rights standards and non state actors, morally obliged to restrain from harming human rights and to enable the enjoyment of human rights in their respected areas of activities. The term "spheres of influence" might become controversial because it is a blurred term. In that case "within their activities" might become a valid substitute.

This CoC requires PMSCs to recognize and respect applicable norms of international law, national laws and regulations, as well as administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and the prohibition of corruption, and the authority of the countries where the enterprises and their employees are registered or operate.

Source: First part partly drawn from Voluntary Principles second part of UN Norms Principle 10.

This CoC contains general guidelines for conducting the business of companies consistent with the highest standards of business behaviour. To the extent that this code requires a higher standard than that required by commercial practice or applicable laws, rules or regulations, signatories will adhere to these higher standards.

Source: Partly drawn from BA – United Defense.

Compliance with and effective enforcement of this CoC and the enshrined standards is one of the key obligations under this CoC, which serves therefore as a resource and a tool for PMSCs when they need information or guidance before making a decision or taking an action. While the code cannot possibly cover every subject matter or situation, PMSCs and their personnel who read, understand and follow it will act in accordance with the legal, moral, ethical, social and political requirements of international law.

Source: Partly drawn from CSC, Fluor Corp. & BAE – United Defense.

General obligations

PMSC shall not commit human rights violations and should therefore not enter into contracts for the provision of services that would conflict with applicable human rights legislation or regional and international human rights standards.

Source: Partly drawn from BAPSC Principle 4 & 5.

Considering, that all parties to a conflict are obliged to observe applicable international humanitarian law, PMSC shall not engage or be complicit in, nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.

Source: First part partly drawn from Voluntary Principles and second part UN Norms Principle 3.

PMSCs shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights.

Source: Partly drawn from UN Norms Principle 11.

PMSCs shall at all times fulfil the duty imposed upon them by contract, by applying all relevant standards of national and international law and guidelines of this CoC, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Source: Partly drawn from UN CoC Law Enforcement – Article 1.

PMSCs may use force only when strictly necessary and to an extent required for the performance of their duty and proportional to the threat. In any event, PMSCs may use force, in particular intentional lethal use of firearms, only when strictly unavoidable to protect life in self-defence or in the defence of others, and in accordance with the contractual rules of

engagement and responsible business practices such as those defined in this CoC, national regulations and international standards.

Source: Partly drawn from UN Basic Principles Use of Firearms Principle 9, UN CoC Law Enforcement Article 3 and IPOA Principle 9.2.2.

PMSCs are obliged to take into account established policies in the countries where they operate, and consider the views, cultural, social and local interests of other stakeholders and the wider community, in particular of interest groups of people affected by its services, in all their operations.

Source: Partly drawn from OECD Guidelines & Compass Group.

Specific obligations towards the wider community

Right to life and to liberty and security of person

PMSCs shall respect the right to life, to liberty and security of person and shall in particular not engage in crimes such as murder, manslaughter, mutilation, bodily harm or assault.

Commentary: reference to Geneva Convention I Article 3 (lit a).

PMSCs shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious grave threat to life.

Source: Partly drawn from UN Basic Principles Use of Firearms Principle 9.

In the circumstances provided for above, PMSCs shall identify themselves and their weapons as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the employee at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

Source: Partly drawn from UN Basic Principles Use of Firearms Principle 10.

Prohibition of torture and ill-treatment

PMSCs have to respect the right of everyone to be free from torture, cruel treatment, outrages upon personal dignity, in particular humiliating and degrading treatment.

Source: Partly drawn from reference to Geneva Convention I Article 3 lit c and CAT.

PMSCs shall not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may they invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Source: Partly drawn from UN CoC Law Enforcement Article 5.

Protection of individual rights and freedoms

Everyone shall enjoy general protection against dangers arising from services provided by PMSCs. PMSCs shall therefore in particular not take hostages or deprive personal liberties, such as, among other things, the freedom of movement, the right to privacy, property rights and entitlements.

Commentary: Drawn from IHL and with this general formulation it will leave open the later clarification of human rights standards and prohibition in IHL (e.g. Geneva Convention Add. Protocol II, Art. 13ff).

Gender sensitivity

PMSCs and their employees should take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict, as well as to take into account the particular needs of women and girls in armed conflict and post-conflict societies.

Commentary: Def. Gender-sensitivity in accordance with SC & GA.

Specific obligations towards personnel

Human rights at the workplace

PMSCs shall respect core labour standards such as the prohibition and abolition of forced labour, prohibition of discrimination and unequal remuneration, the ban on child labour, the freedom of association and the right to collective bargaining.

Prohibition of child labour

PMSCs shall respect the rights of children to be protected from economic exploitation and should uphold the effective abolition of child labour.

Source: Partly drawn from UN Norms Principle 5.

Prohibition of slavery and forced labour

PMSCs shall not use forced or compulsory labour and should uphold the elimination of all forms of forced and compulsory labour.

Source: Partly drawn from Global Compact Principles 4 & 5, UN Norms Principle 5.

Freedom of association and collective bargaining

PMSCs shall ensure freedom of association and effective recognition of the right to collective bargaining by protecting the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without distinction, previous authorisation, or interference, for the protection of their employment interests and for other collective bargaining purposes as provided for in national legislation and international standards.

Source: Partly drawn from UN Norms Principle 9.

Safe and healthy work environment

PMSCs shall provide a safe and healthy working environment. Recognizing the often high levels of risk inherent to business operations in conflict/post-conflict environments, PMSCs shall ensure that all reasonable precautions are taken to protect relevant staff in high risk and/or life-threatening operations including the provision of protective equipment, adequate weapons and ammunition, medical support and insurance.

Source: Partly drawn from UN Norms Principle 7, BAPSC Principle 3, IPOA Principle 5.1.

Specific obligations towards its management structure

Freedom from discrimination

PMSCs shall ensure equality of opportunity and treatment, as provided in the relevant international instruments and national legislation as well as international human rights law, for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age or other status of the individual unrelated to the inherent requirements to perform their duty.

Commentary: Principles of non-discrimination apply internally in regard to employees and other personnel as well as externally in regard to interaction with contractors, individuals and local communities. This formulation is in accordance with CERD and drawn from UN Norms Principle 2.

Selection of employees

PMSCs shall keep employment records about personnel services and individual performance in regard to international standards as outlined in this CoC.

PMSCs shall not employ individuals credibly implicated in human rights abuses to provide security services. Furthermore, PMSCs should provide that all their employees are in good legal standing in their respective countries of citizenship as well as in other countries of present or previous operation.

Source: Partly drawn from Voluntary Principles.

PMSCs shall ensure that all personnel are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions. Their continued ability to perform its duties in accordance with this CoC and the enshrined standards shall be addressed as an element of periodic review and subject of personal employment and service records.

Source: Partly drawn from CSC.

Training of employees

PMSC shall ensure that all employees receive continuous and thorough professional training and are tested in accordance with appropriate proficiency standards in the use of force. Those employees who are required to carry firearms should be authorised to do so only upon completion of special training in their use.

The training shall be based upon this CoC and shall give special attention to issues of ethics and human rights, especially in the security services, investigative processes, and to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. PMSCs shall review their training programmes and operational procedures in the light of particular incidents.

PMSC shall make stress counselling available to employees who are involved in situations where force and firearms are used.

Disciplinary structure and cooperation with public law enforcement agencies

After engagement, PMSCs shall fully cooperate, in particular in a transparent and participatory manner, with national and international investigations of human rights violations or violations of international humanitarian law.

In case of individual violations of this CoC, PMSCs shall inform public law enforcement officials in the country of operation and the country of origin of the employee and the corporation.

Apart from public investigation PMSCs shall require independent investigation of unlawful or abusive behaviour and take appropriate, gradual disciplinary action, including termination of employment in case of credible evidence of unlawful or abusive behaviour. PMSCs shall keep personal records about such procedures, findings and disciplinary measures.

Whistleblower policy

PMSCs shall establish procedures for reporting deficiencies and concerns and for whistleblowing that encourage personnel with reason to believe that a violation of this CoC has occurred or is about to occur to report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power. PMSCs shall ensure that whistleblowers who report wrongdoings are protected from inappropriate disciplinary steps and that matters raised are considered and acted upon without delay.

Source: Partly drawn from National Security Whistleblower Coalition, UN CoC Law Enforcement – Article 8 and ArmorGroup.

Corruption

PMSCs shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, any member of the armed forces or security forces, or any other individual or organisation.

Source: Partly drawn from UN Norms Principle 11.

Gender sensitivity

PMSCs are further obliged to set up internal structures in which any employee who believes that he or she has been harassed is able to raise and address the matter and will be investigated without delay, impartially and confidentially.

Source: Partly drawn from G4S.

Implementation

Application of the Code of Conduct

This CoC will apply to PMSCs that endorse its principles by sending a letter from the Chief Executive Officer, including the endorsement by the board, to the Compliance Committee, expressing support for the CoC including an elaboration of its inclusion. The CoC further applies to all parties to contracts in which this CoC is explicitly incorporated.

Source: Partly drawn from Global Compact.

Obligations of PMSC in this CoC will apply to the corporation as a legal entity and all its personnel, including management, such as chief executive officer, directors, members of the board, and employees, consultants and / or any person assigned to perform work for the PMSC, notwithstanding any enumeration.

Incorporation of Code of Conduct

Adherence to this CoC and the principles enshrined in it is essential to the continued vitality of the Code. As an initial step towards implementing this CoC, each PMSC shall adopt, disseminate and implement internal rules of operation in compliance with this Code and the principles set forth in it.

Source: Partly drawn from CSC & UN Norms Principle 15.

Inclusion of Code of Conduct

PMSCs have the obligation to select vendors, suppliers, and subcontractors who will adhere to this CoC or similar ethical standards and commitments to quality products and services. Therefore, PMSCs should observe the policies of contractors regarding ethical conduct and human rights. Where appropriate, this CoC should be made an integral part of contractual agreements. Furthermore, PMSCs should encourage - among others - business partners, suppliers and subcontractors, to apply this CoC in their activities and sphere of influence.

Source: Partly drawn from 3D, Voluntary Principles & OECD Guidelines No. 10.

PMSCs who provide services which could potentially become involved in armed hostilities will have appropriate “Rules of Engagement” in compliance with this CoC and the principles set forth in it established with their clients before deployment, and shall work with their client to make any necessary modifications in case that threat levels or the political situation substantially change.

Source: Partly drawn from IPOA Principles 9.2.1.

Human rights assessment

Before engaging in services, PMSCs shall address, as appropriate in accordance with this CoC and the principles set forth in it, the impact of the future service on the availability and performance of human rights. PMSCs shall therefore consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security.

Commentary: Awareness of past abuses and allegations will help PMSCs to avoid recurrences as well as to promote accountability. Also, identification of the capability of the above entities to respond to situations of violence in a lawful manner (i.e., consistent with applicable international standards) allows PMSCs to develop appropriate measures in operating environments. (Equator Principles 2).

The Assessment should also propose mitigation and management measures relevant and appropriate to the nature and scale of the proposed project. The assessment should be in written form and possibly public. In cases of confidentiality of services or in cases where confidentiality is a precondition for the required service PMSCs are obliged to keep a record of the assessment and to make it available in case of incidents, including human rights abuses or violations of international humanitarian law.

Source: Partly drawn from Equator Principles 2.

Control mechanism

Independent Monitoring

Effective, transparent, accessible and independent monitoring and accountability mechanisms are an integral feature of human rights protection and implementation of international humanitarian law. While internal means of implementation, such as monitoring, accountability mechanisms and effective whistleblower policies play a vital role, they should be supplemented by a common mechanism that is independent of each PMSC.

Source: Partly drawn from Draft Guidelines on the Right to Health.

Compliance Committee

The CoC will be monitored by a Compliance Committee, consisting of members of the CoC and the same number of representatives of Governments, of home countries of either employees or PMSC, and countries of operation, as well as appointed experts from science, business or civil society. The Compliance Committee will be able to appoint further eminent outside advisers to assist its members in complex cases.

Source: Partly drawn from Control Risk Group.

The Compliance Committee will assess the impact of PMSC strategies, policies, programmes, contracts and activities in regard to international human rights standards and international humanitarian law, and will monitor, and hold PMSC to account in relation to this CoC.

Source: Partly drawn from Draft Guidelines on the Right to Health.

The Compliance Committee will give advice to members if an opinion or judgement is needed to assess the meaning and implications of this CoC or whether a factual or potential violation of this code could occur in a specific incidence.

The Compliance Committee will study the reports submitted by members of the CoC. It shall further comment on the reports after hearing the PMSC and respective Governments engaged in activities and performance of the PMSC. The Compliance Committee should be further able to make general comments and recommendations to the members of the CoC, which have to be approved by all members in order to be incorporated into future performances.

The Compliance Committee should receive communications from non-members of the CoC, including clients, contractors and sub-contractors, employees, governments, civil society or other stakeholders in regard to the performance of this CoC by a specific member.

Procedures

PMSCs are subject to the Compliance Committee's findings in regard to alleged or actual non-compliance of this CoC. The Compliance Committee shall initiate putative payments if reports are not due on time or in accordance with the reporting standards set out in this Code.

After an alleged or actual violation of the CoC, the PMSC is obliged to halt the contested activity and cooperate in a transparent, cooperative and participatory investigation. This cooperation includes the submission of the impact assessment in regard to the contested activity as well as information about the implementation and incorporation of the CoC into the performance under review. After conclusion of the findings and hearings the Compliance Committee must give a final recommendation which has to be implemented by the PMSC. These recommendations might include means of reparation and remedy, including restitution, rehabilitation and forms of apology.

The Compliance Committee should further initiate putative payments in order to maintain surveillance of implementation of rulings and recommendations.

For the duration of this dispute settlement and until the final recommendation of the Compliance Committee, national or international jurisdiction is suspended. If parties to the dispute accept the final recommendation, further legal disputes are excluded.

Reporting

PMSCs shall periodically report on the implementation of this CoC and recommendations by the Compliance Committee.

PMSCs should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as whole and, where appropriate, along business lines or geographic areas. The disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

Source: Partly drawn from OECD Guidelines on Disclosure.

Transition

For an initial period of time, members of the CoC are able to report only on the internal implementation of this CoC and / or on the performance in regard to the core principles, such as respect for the right to life, personal security, freedom from torture and the principle of non-discrimination. For this period of time, communications with, as well as the findings and recommendations of the Compliance Committee, are confidential.

For a second period of time, members of the CoC are obliged to report on the full implementation and incorporation of the CoC, while communications with, as well as the findings and recommendations of the Compliance Committee are confidential.

After this period of transition, members of the CoC have the duty to comply fully with the code and the principles set forth in it and the measures of implementation.

Saving clause

Nothing in this CoC shall be construed as diminishing, restricting, or adversely affecting the obligations of States in regard to national, regional or international human rights and international humanitarian law, nor shall they be construed as diminishing, restricting, or adversely affecting more protective principles and standards, nor shall they be construed as diminishing, restricting, or adversely affecting other obligations or responsibilities of corporations, in particular PMSC, in fields other than human rights.

Source: Partly drawn from UN Norms Principle 19.

Failure to comply

Members to this CoC who fail to uphold any provision contained in this Code or any finding or recommendation by the Compliance Committee may be subject to dismissal from its membership

Definitions

Private Military and Security Contractors (PMSCs) are legally established entities that provide military and / or security services, including security relevant information, training, logistical support, equipment procurement, intelligence gathering and risk management, on a contractual basis.

Commentary: This service / activity based definition, focuses on the services provided, while taking the legal personality and the contractual basis for assigned services as a precondition. This will exclude informal sector structures and non-commercial activities as well as liberation movements / established resistance armies.

Contract is any agreement, such as a prime contract, a subcontract at any tier under any prime contract, or a task order issued under a task or delivery order contract.

Source: Drawn from relevant legislation, such as U.S. MEJA.

Complicity exists in cases of practical assistance, being given to the perpetrator and having a substantial effect on the commission of the violation and is given with knowledge about it.

Source: Drawn from the UNUCAL Case under ATCA in US Court.

Harassment can be defined as unwanted behaviour, which a person finds intimidating, upsetting, embarrassing, humiliating or offensive. Conduct involving the harassment (racial, sexual or of any other kind) of any employee is unacceptable.

Source: Partly drawn from G4S.

Annex 2. Current PMSC-Recognised Standards

The following table, based on mission statements and websites of selected PMSCs, shows current recognition of international human rights standards as well as status of current implementation, acknowledgment of further regulation and brief comments on company statements and sources. Simple mentions are marked with an X, otherwise further descriptions are given with blanks indicating no mention of the respective standard.

Corporation	IHL	HR	Specific Human Rights	Gender Perspective	Respect of Law	Acceptance of Further Regulation	Compliance or Implementation Mechanism	Comments on Statement and Source
3D Global Solutions					X			Statement on values
AECOM			Safety at workplace	Reference on diversity of workforce				Statement on values
AEGIS - Specialist Risk Management						X		FAQ (support of BAPSC)
ArmorGroup International PLC		UDHR	Position paper on employers care	Non-discrimination at workplace	X	Reference to Swiss Initiative		Statement on regulation and ethical standards
Alfagates								Reference to GC
ATCO Group (ATCO Frontec)			Safety at workplace		Environmental			Corporate commitment
ATK			Safety at workplace					Business Ethics Code of Conduct
BAE Systems (Tochter: United Defense Industries U.S.A.)			Value of individual employee				Complaint Mechanism via Ethics Committee - Monitoring by "The Corporate Citizen-ship Company" - Dow Jones Sustainability Index (Intl. & Europe)	Statement of Ethical Business Conduct
BAE - United Defense			Rights of employees		X		Ethics Advisor reports to Audit and Ethics committee	CoC (36 pages)
Bechtel			Safety at workplace	Respect for diversity	X		Reporting via Ethics Helpline	Bechtel Business Ethics
Blackwater USA								Core Values (Reference to IPOA CoC)

Corporation	IHL	HR	Specific Human Rights	Gender Perspective	Respect of Law	Acceptance of Further Regulation	Compliance or Implementation Mechanism	Comments on Statement and Source
Boeing			Safety		X		Ethics Advisor & Ethics Line	Ethical Business Guidelines
CACI			Just working environment	Reference on sexual harassment	X		Corporate Ombudsman	Code of Ethics
Civilian Police International			Respect of rights of countries, individuals, communities					Statement
Compass Group		UDHR & GC	X	X	X		Internal general reporting	Code of Ethics
Control Risks Group		UDHR	Rights of employees		X		Ethics Committee	Code of Conduct
CSC				Prohibition of harassment	X		Audit Committee	Code of Ethics
CUBIC Corporation					X		Ethics Hotline & Director of Audit & Committee	Code of Ethical Principles
Custer Battles, LLC								Statement with reference to ethical framework
DMI - Diligence Middle East						X		Statement with reference to CoC of PSCAI
DynCorp International Ltd.			Safety regulations		X		Reporting hotline	Code of Conduct
Dynsec Group					X			Statement on morale, legal and ethical commitment
ERINYS: The International Security Service and Risk Company			- International Sec. & Health Standards - Collective Rights	Principles of non-discrimination	X			- Corporate Governance - Code of Ethics

Corporation	IHL	HR	Specific Human Rights	Gender Perspective	Respect of Law	Acceptance of Further Regulation	Compliance or Implementation Mechanism	Comments on Statement and Source
Fluor			Labour rights	- Non-discrimination - Prohibition on sexual entertainment - Equal employment & prohibition of harassment	X			Code of Conduct
Fulcrum International Group	Intl. Law	Intl. Law			X		Relevance of national jurisdiction	Management statement
G4S - Group 4 Securicor	Intl. Law	UDHR & Intl. Law	- Freedom of association, - Collective bargaining, - No forced labour - Principles of non-discrimination	Non-discrimination	X		Internal communication	Statement on ethical policy
Ge2B					X			Statement on ethical policy
General Dynamics			Safe workplace regulations	- Non-discrimination - Anti-harassment policy	X			Code of Conduct
GEOS The European Risk Management Solution		X	Reference to Intl. Labour laws					- Ethics Code - Reference to membership of GC
Geo Group		National human rights law	Health and safety standards	- Non-discrimination - Anti-harassment policy				Code of Conduct
Groupe EHC, LLC	GC				X			- Charter of Ethics - Obligation to refrain from conflict

Corporation	IHL	HR	Specific Human Rights	Gender Perspective	Respect of Law	Acceptance of Further Regulation	Compliance or Implementation Mechanism	Comments on Statement and Source
IAP Worldwide Service			Health and safety at workplace	Non-discrimination				Statement on values & ethics
Halliburton			- Equal employment - Health & safe workplace	Anti-harassment policy			Internal communication (help-line)	Code of Conduct
HART Land Sea & Air Security	CoC IFRC	Voluntary principles			X			Code of Conduct
Kalyx								Activities only in countries that are democratic and where death penalty is illegal
KKB (Kellog Brown, Root)				Non-discrimination	X		Policy Committee for administration of CoC	Corporate Governance Guidelines
L-3 Titan (MPRI)			Health and safety at workplace	Principle of equality	X		Compliance Officer & Committee	Code of Ethics
Lockheed Martin			Health and safety at workplace		X		Internal Audit Committee	Code of Ethics
March Security					X			Statement
MMC - Marsh & McLennan Companies				Non-discrimination	X			Code of Bus. Conduct and Ethics
Northrop Grumman					X		Business Code Officer & Corporate OpenLine	Mission statement
Olive Security / Olive Group							Ethical Committee	Reference to CoC but not on website

Corporation	IHL	HR	Specific Human Rights	Gender Perspective	Respect of Law	Acceptance of Further Regulation	Compliance or Implementation Mechanism	Comments on Statement and Source
Omniplex								Statement: "The most substantive, and historical, resource for understanding the societal premise for "Right and Wrong" and "Good and Evil" is the Bible."
Oriel Solutions								Code of Ethics is a reference to BAPSC CoC
Pacific Architects and Engineers (Now a Lockheed Martin Company)								"Basic Statement" about membership in Global Compact
PAGE Protective Services					X			General reference to CoC
Paratus Worldwide Service								General ethical statement
Prevent International					X			Statement
QinetiQ Group		X		Principle of equality	X		Internal communication	Statement
RTI International			- Equal employment - Health & safe workplace	Anti-harassment policy	X		Internal communication (Chief Ethics Officer)	Code of Conduct
SAIC - Science Applications International Corporation								Mission statement with reference to general ethical standards
SCG - International Risk					Reference to lawful activities			Corporate profile

Corporation	IHL	HR	Specific Human Rights	Gender Perspective	Respect of Law	Acceptance of Further Regulation	Compliance or Implementation Mechanism	Comments on Statement and Source
Securitas		UDHR	ILO Fundamental Principles and the rights at work		X			- Code of Conduct - Agreement with University (Union Association) - IHL & HR listed as obligation
SECOPEX	GC	UDHR & relevant UN & EU regulation	Basic ILO Conventions		X		- Internal - Engagement with unions	- Code of Ethics - Explicitly mentioned international convention against the recruitment, use, financing and training of mercenaries
Serco Group		UDHR	- Equal employment - Health & safe workplace	Anti-harassment policy	X		Internal	Corporate standards
Sharp End International	Intl. Law	Intl. Law			X			Code of Ethics
SPX Corporation			- Equal employment - Health & safe workplace		X		Internal	Code of Business Conduct
Team Savant	GC	UDHR			X			Statement-Further reference to Global Compact & Voluntary Principles
Thales Group	Intl. Regulation	Intl. Regulation			X			Statement-Reference to membership of Global Compact
Toifor - Global Life Support Service		UDHR	Workplace & freedom of association	Non-discrimination & sexual harassment	X	Updated monitoring on developments	Internal reporting	Code of Conduct
TRAG - The Risk Advisory Group = Janusaian Security Risk Management					X			Statement on ethics & law

Corporation	IHL	HR	Specific Human Rights	Gender Perspective	Respect of Law	Acceptance of Further Regulation	Compliance or Implementation Mechanism	Comments on Statement and Source
Triple Canopy			- Equal employment - Health & safe workplace		X		Internal (compliance officer)	Code of Conduct
Unity Resource Group				Statement of equality				Statement on values
UTC Fire & Security a United Technology Company			- Equal employment - Health & safe workplace		X		Internal	Code of Conduct
VT Group					X		Global Reporting Initiative	Code of Conduct
Westminster International		Human Rights Act			X			Statement about "Ethics in Action"
WorleyParson			- Equal employment - Health & safe workplace	Anti-harassment policy	X		Internal Audit & Risk Committee	- Statement of Risk Management - Code of Conduct



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Geneva Centre for the Democratic Control of Armed Forces (DCAF):
rue de Chantepoulet 11, PO Box 1360, CH-1211 Geneva 1, Switzerland
Tel: + 41 22 741 77 00; fax: + 41 22 741 77 05; e-mail: info@dcaf.ch