

# BEYOND MARKET FORCES

## A Feasibility Study for a Standards Implementation and Enforcement Framework for the Global Security Industry

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8 SEPTEMBER 2008

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## SUMMARY OF 'LESSONS' FROM PART IV

### 1. ANTI-SLAVERY COURTS

- *The little known anti-slavery courts established by the U.K., Spain, Portugal, Netherlands, Brazil and the U.S. in the 19<sup>th</sup> century offer an important precedent for cooperative action by states to pool jurisdiction to ensure accountability for human rights violations by global industry.*
- *In that sense, they stand in stark contrast to the very limited contemporary efforts by states to coordinate their enforcement jurisdiction over PMSCs, which has caused significant confusion for the industry and undermined the effective enforcement of human rights and international humanitarian law (IHL).*
- *An intergovernmental initiative driven by the U.K. government, they were intended to level the playing-field for British industry by enlisting other states' navies and judiciaries in the enforcement of the prohibition on the slave trade. They represent an early example of how an intergovernmental initiative to regulate a global industry can at the same time effectively ensure respect for human rights.*
- *The Anti-Slavery Courts also offer important insights into how sensitive issues of national security – such as inspections of company property by military personnel – can be handled by intergovernmental judicial institutions operating 'in the field', and how the use of financial incentives can encourage decentralized human rights enforcement.*

## 2. BRITISH ASSOCIATION OF PRIVATE SECURITY COMPANIES (BAPSC)

[www.bapsc.org.uk](http://www.bapsc.org.uk)

- *The British Association of Private Security Companies (BAPSC) provides an important voice for PMSCs in the second-largest national export market in the Global Security Industry. It was established by industry in 2006, with an eye to securing the industry's future after Iraq, and in the absence of specific guidance from the U.K. government on how appropriate conduct in industry operations.*
- *It will be an important interlocutor in the development of any Standards Implementation and Enforcement Framework for the industry, not least because U.K.-based PMSCs rely much more heavily on revenues from private clients (especially the extractive industry) than do U.S.-based PMSCs (which tend to work more closely with governmental clients). This makes a reliance on state-based standards implementation and enforcement through government procurement regulations less feasible in the U.K. than in the U.S.*
- *Statements from the BAPSC Director-General, Andrew Bearpark, make clear BAPSC's willingness to engage with other actors, including civil society both in the U.K. and beyond, to develop a more sophisticated Standards Implementation and Enforcement Framework, especially absent any direct national regulation by the U.K. government.*
- *In the absence of such state regulation, the BAPSC may need to work even more closely than it already does with civil society actors and foreign states to develop credible standards enforcement mechanisms.*
- *At present, the BAPSC provides only broad standards in the form of a Charter, though it is currently working with its membership to develop more detailed operational guidance, in the form of a private BAPSC Standard. Both the Charter and the draft Standard currently lack any formal Systems Monitoring or Grievance Mechanism.*

## 3. BUSINESS SOCIAL COMPLIANCE INITIATIVE (BSCI)

[www.bsci-eu.org](http://www.bsci-eu.org)

- *The Business Social Compliance Initiative (BSCI) is an industry-led Framework designed to preempt and shape intergovernmental regulation of the retail, manufacturing and import-export industries in Europe. BSCI emerged in response to suggestions that the European Commission might seek to impose a mandatory EU corporate social responsibility Framework for supply chains. At the same time, it aimed to respond to civil society criticisms of poor workplace standards in retailers' supply chains, through voluntary self-regulation.*
- *BSCI provides an important example of a number of aspects of a Standards Implementation and Enforcement Framework (SIEF) that recur throughout this Study. These include: 1) a developmental model for standards implementation, which aims to assist Participants to improve their internal standards implementation capacity over time; 2) the use of third-party audits to reduce each Participant's regulatory burden; 3) and the linking of Framework standards to the contracting behavior of Participants.*
- *More unusual is BSCI's requirement that Participants integrate two thirds of their suppliers into the Framework within three years, encouraging the implementation of the standards*

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*throughout interconnected industries. This may be an important model for the GSI to consider in dealing with PMSCs' sub-contractors, which form a web stretching around the world across numerous state jurisdictions.*

- *But like other audit-based Frameworks, BSCI suffers from civil society criticism that auditing arrangements are not sufficiently independent.*

#### **4. CHILDREN AND ARMED CONFLICT**

[www.un.org/children/conflict](http://www.un.org/children/conflict)

- *In the mid-1990s, influenced by civil society activism, the United Nations began to develop a Framework for monitoring compliance by states and non-state armed groups with norms against the involvement of children in armed conflict. Like the ICRC and Geneva Call, the resulting UN Framework seems to demonstrate the possibility of civil society activism leading to the creation of a specialized global 'watchdog' – in this case the UN Secretary-General's Special Representative – to help monitor and drive forward implementation of human rights at the 'local' level.*
- *But the UN Framework also goes further, with interlocking components including an intergovernmental body created by the UN Security Council, with the capacity to impose specific legal sanctions on individuals and groups it identifies as failing to implement these standards. This intergovernmental body in turn draws on information provided by civil society and UN Country Teams. This interlocking arrangement points to the possibility of different stakeholders using their own forms of leverage to develop a range of complementary institutions, which together form a comprehensive 'Framework' for standards implementation and enforcement.*
- *The UN's arrangements for dealing with Children and Armed Conflict also provide an innovative example of how the UN can marry its moral authority with the shadow of specific sanctions to protect human rights during armed conflict. But while there is likely to be broad support amongst UN member states for the general position that PMSC personnel must respect human rights and international humanitarian law, it is unlikely that any machinery analogous to that described here could be developed within the UN to address PMSC conduct. The five Permanent Members of the Security Council seem extremely unlikely to support such a mechanism as an outgrowth of the Security Council. And without the legal sanctioning power of the Security Council, any such machinery – for example any attempt to extend the mandate of the UN Working Group on Mercenaries established by the UN Human Rights Council – would likely be less effective than that described here for child soldiers.*

#### **5. CLEAR VOICE HOTLINE SERVICE**

[www.clearvoicehotline.net](http://www.clearvoicehotline.net)

- *The Clear Voice Framework provides an interesting model of a shared Grievance Mechanism for employees of multiple companies. It highlights the importance of companies not relying only on internal grievance processes, but also making space for external parties in whom employees may repose greater confidence.*

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- *Given our analysis of the limitations of existing Grievance Mechanisms within PMSCs in Part II of this Study, this may be a useful model for PMSCs to study, even if it were to prove difficult to adapt to the context of the Global Security Industry, given the sensitivity of much workplace-related information in that industry.*
- *At the same time, any such ‘hotline’ arrangement should be seen only as the first component of a larger dispute resolution mechanism. On their own, such hotlines seem unlikely to meet the thresholds of credibility identified by the UN Secretary-General’s Special Representative on Business and Human Rights, in his latest report to the UN Human Rights Council.*

## **6. COURT OF ARBITRATION FOR SPORT (CAS)**

[www.tas-cas.org](http://www.tas-cas.org)

- *The Court of Arbitration for Sport is a shared arbitral body established by the International Olympic Committee for use by a wide range of sporting associations and governance bodies, and their commercial stakeholders. A classic case of industry-led harmonization in the absence of state regulation, it emerged in the 1980s in response to concerns about the lack of independence and limited expertise of sporting bodies’ own dispute resolution mechanisms, and the lack of consistency between them.*
- *It provides a model for the creation of a common dispute resolution and grievance mechanism accessible by the diverse range of stakeholders engaged in a global industry.*
- *The CAS demonstrates that an independent dispute resolution body can play an important role in bringing diverse stakeholders within one standards Framework, even if recourse to that body is voluntary, and without significant state involvement. The inclusion of clauses referring disputes to that body in private contracts and associational documents could prove adequate to underpin such a Framework.*
- *Like the experiences with the Anti-Slavery Courts and the International Labour Organization’s Tripartite Declaration mechanism, the CAS also highlights that the feasibility of such a Framework depends in part on the existence of underlying standards that many different stakeholders consider to be credible.*
- *In addition, the credibility of the Framework seems to stem in part from the shadow of state jurisdiction that looms over it, through the possibility of ultimate appeal on narrow grounds from the CAS to the Swiss Federal Tribunal. Given the gravity of the human rights violations that PMSCs may become involved in, it seems very likely that any international arbitral body for the Global Security Industry would need to be tailored to interface with state sanctioning power – especially states’ criminal jurisdiction – if it were to be perceived as credibly adding additional value to state regulation by those states, or by other stakeholders.*

## **7. CREDIT RATING AGENCIES**

[www.standardandpoors.com](http://www.standardandpoors.com) and [www.moodys.com](http://www.moodys.com) and [www.fitchratings.com](http://www.fitchratings.com)

- *Credit Rating Agencies are a classic example of improved standards implementation and enforcement in response to market failure. The bankruptcy of the Penn Central railroad (the*

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*largest corporate bankruptcy in American history up until that time) shocked the American financial system, leading the financial industry and general public to call for improved regulation, particularly through increased market transparency. Wary of the regulatory burden involved, the U.S. government delegated the task of controlling access to the debt market to competing, private ratings agencies.*

- *An independent rating agency for the GSI empowered by multiple states could similarly help overcome an absence of market transparency. It would help to overcome charges of conflicts of interest in state regulation of the GSI market. However, it would only be feasible if states and other PMSC clients were willing to tie their PMSC-hiring decisions to ratings issued by such an expert agency. This would, in effect, give a GSI rating agency a role as a quasi-licensor. But a rating agency that stopped short of issuing specific licenses could also be a possibility, since such an agency could rate PMSCs on a number of different indicators (such as internal management practices, respect for IHL and human rights, responsiveness to local communities, understanding of humanitarian security models, and respect for labor rights) – and clients could be given discretion as to how they weighted different indicators in their own hiring (and territorial licensing) decisions.*
- *A state-funded rating agency would avoid the conflict-of-interest charges leveled at the credit ratings agencies discussed below, which charge those seeking market access (i.e. companies) for their own ratings. Ratings indicators could be drawn from existing standards, such as the forthcoming Swiss Initiative document providing good practice for states dealing with PMSCs, or documents associated with the Voluntary Principles on Security and Human Rights.*
- *Another benefit of this approach would be that both public and private clients could rely on the same ratings in making their own hiring (and other regulatory) decisions. And a ratings system would also increase market transparency. And while it might depend on a level of competition and substitutability between PMSCs that may not be present in all theaters of operation (given the need for some PMSCs and their operatives to have state-issued security clearances, for example), it might help foster such competition.*
- *Any rating agency would play an ongoing monitoring role, reassessing PMSCs' ratings on a regular basis. The GSI would need to consider how unproven allegations of violations of agreed standards would affect a PMSC's ratings. The agency might not have to make any determinative ruling on the veracity of the ruling, since the mere allegation may represent a form of reputational risk and liability exposure that might be relevant to client's decisions. But this would require careful thought. And clients would also need to consider how downgrades in a PMSC's ratings would affect existing contracts with that PMSC.*
- *Any group of clients could in fact create such an agency – and some humanitarian organizations may in fact already be moving to do so.*

## **8. EQUATOR PRINCIPLES**

[www.equator-principles.com](http://www.equator-principles.com)

- *The Equator Principles (EPs) provide an example of how industry can, in the absence of effective operational guidance from states, develop a Code of Conduct or best-practice*

*standards that companies agree to implement internally and in their own dealings with clients and beneficiaries.*

- *They seem particularly relevant to the GSI in thinking through how an industry can deal with claims that it should require its sub-contractors and downstream partners to comply with human rights standards.*
- *The decentralized, company-level implementation approach the EPs Framework offers reduces the transaction costs involved in standards implementation, since a centralized agent is not involved. However, this decentralized arrangement also opens Participants up to charges that the 'Code' adds little by way of transparency and accountability, and may in fact provide a fig-leaf for state inaction.*
- *The GSI should be guided by the experience of the Equator Principles, and other Codes of Conduct, to ensure that company-based implementation and enforcement is complemented by additional Framework components to ensure transparency, accountability – and credibility.*

## **9. EUROPEAN UNION CODE OF CONDUCT ON ARMS EXPORTS**

- *The European Union Code of Conduct on Arms Exports provides an example of intergovernmental harmonization arrangements designed to deal with the social impacts – including human rights impacts – of a global security-related industry.*
- *The story of the EU Code suggest that such intergovernmental Frameworks may emerge from a combination of: 1) civil society pressure for improved respect by governments for certain standards, in their dealings with security-related export industries; and 2) a realization by governments of the benefits of intergovernmental transparency and a level playing-field in their own dealings with such industries.*
- *But its weakness, as an unenforceable, purely political statement, also shows the limits of such an approach to standards implementation and enforcement.*
- *Its reliance on national implementation, combined with measures for information-sharing amongst its members, has gone some way towards creating a European 'acquis' relating to national implementation of human rights-related criteria in export decision-making.*
- *The Code itself will form the basis for effective standards implementation or enforcement in the GSI, either inside or outside the EU. This is because: 1) the EU Treaty prevents the EU from directly regulating the military trade; 2) PMSC services sometimes fall in a grey area between security and military services and so it may be difficult to determine whether they could lawfully be regulated by the EU; 3) the Code's geographical restrictions allow easy circumvention through the use of foreign subsidiaries and re-exports; and 4) a number of governments seem likely to oppose the extension of the Code to PMSCs.*
- *Other steps that EU Member States might take to improve their dealings with PMSCs could have knock-on effects throughout the global market. But these will not provide a Standards Implementation and Enforcement Framework for the Global Security Industry as a whole. And they could in fact increase the risk of trans-Atlantic regulatory fragmentation, producing regulatory arbitrage by PMSCs.*

## 10. EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

[eitransparency.org](http://eitransparency.org)

- *The Extractive Industries Transparency Initiative was pioneered by the U.K. government, working with industry, as a response to civil society pressure following revelations of corporate complicity in host state governmental corruption. It specifically aims to bring greater transparency to government dealings with actors in a powerful global industry.*
- *The EITI demonstrates that a Framework backed by developed countries and multilateral institutions can assist developing country governments to build regulatory capacity.*
- *It also suggests that a global Framework that focuses on improving national regulation through states committing to follow a standardized regulatory process, rather than to specific regulatory outcomes, may add value for states, and for other stakeholders. This may be one kind of global Framework that is both feasible and attractive to stakeholders in the GSI.*
- *But the EITI also demonstrates the limits of such a ‘process-oriented’ approach, absent specific positive incentives for participation. Six years after its establishment, the vast majority of major extractive industry producing countries are not Participants in the EITI, leading to a risk of free-riding by extractive companies: the largest extractive multinational enterprises may benefit from association with the EITI, without it significantly impacting on their operations in the countries where they actually do most of their business. The GSI should be careful to avoid a similar outcome.*

## 11. FAIR LABOR ASSOCIATION (FLA)

[www.fairlabor.org](http://www.fairlabor.org)

- *The Fair Labor Association (FLA) emerged out of an initiative led by the U.S. government, in response to civil society pressure on the apparel and garment industry to end the use of sweatshop labor.*
- *The FLA provides an important source of insight for the Global Security Industry. It shows how an association of companies and NGOs can implement human rights throughout global supply chains through cooperative monitoring arrangements, even in places where state regulatory authority is weak and companies are concerned about commercial confidentiality and proprietary knowledge.*
- *The FLA’s system of accreditation of third-party monitors that undertake spot inspections of member company factories and the factories of suppliers to member universities and colleges is particularly instructive. However, it may prove difficult to adapt this model to the Global Security Industry because: 1) in some places, state regulatory authority will be so weak that the dangers to third-party monitors may make field inspections unworkable; and 2) in other places, the regulatory authority of contracting states will be so strong that they will not agree to third-party monitoring, because of national security concerns.*
- *The FLA’s 4 Step Remediation process also provides an important model for a graduated Grievance Mechanism, allowing the Participant to take remedial measures before the Framework’s central agent becomes involved. But given the likelihood of allegations of criminal conduct in the Global Security Industry, any analogous process would also need to*

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*allow for the reference of grievances to state law enforcement authorities – which the FLA does not currently appear to contemplate.*

- *The evolution of the FLA over time – in part under pressure from splinter groups such as the Workers Rights Consortium, which provides a similar Framework with additional focus on labor union involvement – also provides important insights for the GSI regarding the importance of such Frameworks: 1) having a flexible governance structure that allows for evolution; and 2) leaving space for each stakeholder group to exert its own leverage through differentiated and complementary functions within a larger, implicit Framework.*

## **12. FINANCIAL ACTION TASK FORCE (FATF)**

[www.fatf-gafi.org](http://www.fatf-gafi.org)

- *The Financial Action Task Force (FATF) provides a pre-eminent example of how states can marry: 1) domestic regulation of a sensitive cross-border industry; with 2) peer reviews and 3) the positive incentive of market access, in ways that encourage laggard states to improve their own domestic regulation.*
- *However, the FATF experience also makes clear that to be truly effective, such a Framework must supplement condemnation of ineffective state regulation with 4) capacity-building assistance to those states, to enable them to better regulate dangerous cross-border commercial activity. Without such assistance, the FATF has learnt, such arrangements risk being seen as elite ‘clubs’ and creating resentment amongst those they exclude, however effective and legitimate the standards they enforce.*
- *FATF also serves a warning to the GSI of the limitations of such clubs, whether their membership comprises states, companies, or a multistakeholder grouping: since such clubs tend to focus on Participants’ implementation of the club’s standards, they may do little to remedy the grievances of third parties for harms resulting from ineffective implementation, unless the club makes Participants’ own remedying of such grievances a specific part of their own standards.*
- *This may mean that any GSI ‘Club’ should adopt specific standards on what its members (whether states or PMSCs) are expected to do to remedy third party grievances against PMSCs, especially where those grievances involve allegations of violations of human rights and IHL.*

## **13. GENEVA CALL**

[www.genevacall.org](http://www.genevacall.org)

- *Geneva Call demonstrates the feasibility of an independent NGO working with non-state armed actors to facilitate and oversee their implementation of specific norms of international humanitarian law, at the operational level.*
- *Its success as a ‘Watchdog’ stems in part from its reliance on highly legitimate standards (the norms found in the 1997 Ottawa Treaty banning anti-personnel mines), and in part from the tolerance – and even support – of governmental actors.*

- *But its success also stems in part its own credibility as an honest-broker working with a wide range of stakeholders. This seems likely to be an important element in any effort to develop an effective Standards Implementation and Enforcement Framework for the Global Security Industry, given the varying positions of different stakeholders. Given the key role of states as PMSC clients, however, any such ‘agent’ for the Global Security Industry would also need the trust and cooperation of contracting and territorial states, and not just PMSCs themselves, if it were to effectively carry out an assistance and monitoring role.*

#### **14. GLOBAL COMPACT**

[www.unglobalcompact.org](http://www.unglobalcompact.org)

- *The United Nations Global Compact was developed under the leadership of Kofi Annan and John Ruggie, as a broad Framework intended to facilitate companies serving as responsible social actors in the context of globalization.*
- *While supported by states and international organizations, its focus on company implementation of standards has led to it having limited enforcement power. As a result, it has been criticized for failing to ensure member company implementation of the 10 Principles it promotes.*
- *Nevertheless, the Global Compact represents an important example of a broad Framework for convergence amongst business around best practices, through overlapping local and global ‘communities of learning’ developing a shared understanding of the techniques and processes needed to implement human rights and other standards.*

#### **15. GLOBAL REPORTING INITIATIVE (GRI)**

[www.globalreporting.org](http://www.globalreporting.org)

- *The Global Reporting Initiative is a Framework developed by cooperation between civil society actors and investors, originally in North America, but expanded globally through partnership with the UN Environment Program since 1999. It provides for harmonized, voluntary corporate reporting on social, environmental and human rights-related performance indicators.*
- *Its Guidelines offer a useful model for developing any Global Security Industry reporting mechanism. GRI Guidelines would first require tailoring to the GSI.*

#### **16. HUMANITARIAN ACCOUNTABILITY FRAMEWORKS**

[www.hapinternational.org](http://www.hapinternational.org) and [www.sphereproject.org](http://www.sphereproject.org) and [www.alnap.org](http://www.alnap.org)

- *The structural similarities between the humanitarian sector and the Global Security Industry are important. Both draw staff from around the world, and move them into conflict and crisis zones where governance is weak and local communities are vulnerable. Both have supply and human resource chains stretching across multiple jurisdictions. And both have faced criticism for failing to ensure the accountability of their staff and corporate actors for violating human rights.*

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- *Humanitarian actors have gone to some lengths since the mid-1990s to develop accountability arrangements, even contemplating an industry Ombudsperson at one point – as BAPSC has recently suggested the Global Security Industry might. Yet despite these efforts, even now humanitarian Codes of Conduct are reported to be perceived by some staff as mere formalities for employment, and lack effective enforcement. And beneficiary communities may continue to lack access to effective Grievance Mechanisms.*
- *Nevertheless, the humanitarian sector is finding innovative ways to ensure the views of affected communities are heard, for example by guaranteeing positions of the Board of a major accountability Framework to representatives of intended beneficiary communities.*
- *The certification and standards implementation arrangements that the humanitarian sector has developed do not seem to have translated – yet – into effective monitoring of implementation, in part because organizations are not budgeting for the costs of monitoring. And donors are apparently not requiring them to do so – and are often contributing their own monitoring requirements to an already heavy load.*
- *A plethora of accountability initiatives may in fact be pulling the sector away from convergence, creating unsustainable monitoring and administrative burdens for field staff and undercutting the effectiveness of accountability efforts.*
- *This sector’s experiences also suggest that any GSI sector-wide Grievance Mechanism will need careful design: it will need to ensure access to specific expertise in those types of grievances that are likely to arise from the industry, or it may prove ill-equipped to effectively handle complaints; and incentives for resort to local Grievance Mechanisms will need to be carefully balanced with rights of appeal to higher regional and/or global level Grievance Mechanisms, so that international components do not supplant – but rather supplement – the development of local dispute resolution capacity.*

## **17. INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)**

[www.icrc.org](http://www.icrc.org)

- *The ICRC will be an essential component of any effective GSI Framework. But it cannot provide that Framework on its own.*
- *The International Committee of the Red Cross (ICRC) was established by a group of private citizens in the 1860s, working closely with states, as a Framework for improving humanitarian response on the battlefield. Over time, its humanitarian role has grown, and it has been given a specific role by states as the guardian of international humanitarian law. That ‘guardianship’ role gives it some of the characteristics of other ‘watchdogs’ created by civil society and the international community and tolerated or blessed by governments, such as Geneva Call and the Framework dealing with Children and Armed Conflict within the UN.*
- *However, the ICRC enjoys unique confidence and has unique experience in working with armed groups to promote the implementation of international humanitarian law (IHL) standards. Any attempt to develop a GSI Framework must consider, through dialogue with the ICRC, how to make the most of that experience, and its role as a guardian of IHL, without jeopardizing its impartiality, independence and neutrality, or the confidentiality of its operations.*

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- *Yet the ICRC will not, on its own, provide a comprehensive Standards Implementation and Enforcement Framework for the Global Security Industry, for at least three reasons: 1) its focus is on humanitarian action, and so the ICRC will not necessarily address compliance with other standards, such as labor rights, or transparency in contracting PMSCs; 2) the ICRC seems unlikely to move beyond broad IHL-promotion activities to directly working with PMSCs to improve their internal human rights implementation arrangements (such as standard operating procedures), absent a specific mandate from states, which seems unlikely to be forthcoming; and 3) the ICRC is deliberately, and appropriately, shielded from involvement in judicial enforcement of international humanitarian law, in order to protect the confidentiality of its dialogue with states and armed groups.*
- *Any Framework for the Global Security Industry should therefore recognize the unique and crucial role that the ICRC will play in promoting respect for IHL, and should seek to supplement those activities and capitalize on the ICRC’s expertise, rather than seek to compete with it.*

## **18. INTERNATIONAL COUNCIL OF TOY INDUSTRIES (ICTI)**

[www.toy-icti.org](http://www.toy-icti.org)

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

## **19. INTERNATIONAL LABOUR ORGANIZATION TRIPARTITE DECLARATION**

[www.ilo.org/public/english/employment/multi/tripartite/index.htm](http://www.ilo.org/public/english/employment/multi/tripartite/index.htm)

- *The International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises (MNEs) emerged as the result of pressure from workers’ groups and civil society on governments to clarify the social role of MNEs, during an earlier period of globalization in the 1960s and 1970s. Given the strong pressure on MNEs from some states and civil society movements, industry sought clarification of states’ expectations in an effort to create greater certainty for market investors and create a more level playing-field. The Tripartite Declaration represented an important milestone in clarifying expectations of MNE relations with host states, when it was adopted in 1977.*
- *The Framework is of limited, but clear, direct utility to the GSI. It offers an Interpretation Procedure which might be of some assistance to PMSC personnel seeking to protect their labor rights. But the Declaration’s narrow focus on labor rights, and the limitations on the*

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*“receivability” of interpretation requests suggests that this will rarely serve as a forum of choice for resolving GSI-related disputes.*

- *The ILO Tripartite Declaration Interpretation Procedure may be of more utility as a precedent of how the type of Frameworks we have labeled as ‘Courts and Tribunals’ (which also encompasses the Court of Arbitration for Sport, and the Anti-Slavery Courts, in this Study) gains legitimacy from the inclusion of representatives of each stakeholder group.*
- *This may indicate utility in the GSI considering an industry-wide Grievance Mechanism operating as a ‘mixed commission’ of state, industry and civil society representatives – an idea we explore in Part V of the Study.*

## **20. INTERNATIONAL PEACE OPERATIONS ASSOCIATION (IPOA)**

[ipoaonline.org](http://ipoaonline.org)

- *The International Peace Operations Association (IPOA) is a U.S.-based trade association for a range of PMSCs and related companies. It was formed in 2000-2001 to provide a framework for corporate coordination and to improve industry standards.*
- *IPOA pioneered standards implementation and enforcement arrangements for this industry. It remains one of the leading trade associations relevant to the Global Security Industry, and continues to offer an important vehicle for standards implementation. It will clearly be a key player in any effort to develop an effective GSI Framework.*
- *At the same time, the criticisms made of IPOA regarding the lack of transparency and impartiality in its Enforcement Mechanism since the incident in Nisoor Square – in which its then-member company, Blackwater, was implicated – are typical of the criticisms leveled at associations that resemble clubs, where the membership collectively exercises standards enforcement power, and where that membership excludes key stakeholders.*
- *The absence of direct Participation within the IPOA Framework by states and civil society representatives means that IPOA will not provide a sufficient vehicle to bring transparency and accountability to the Global Security Industry, on its own. IPOA appears implicitly to acknowledge this in its own support for effective state regulation.*

## **21. KIMBERLEY PROCESS**

[www.kimberleyprocess.com](http://www.kimberleyprocess.com)

- *The Kimberley Process (KP) was formed by states, ultimately with the support of industry and civil society, in response to concerns about the role of the global trade in rough diamonds in supporting conflict and human rights violations. It provides a pre-eminent example of how states, industry and civil society can work together to drive up standards in a global industry with sensitive security and commercial aspects, through a global certification or licensing regime.*
- *While the diamond industry was initially reluctant to participate in the envisaged transparency measures, it was gradually persuaded that the long-term benefits of increased market*

*transparency – including the resulting legitimacy that accrued to the industry as a whole – outweighed the costs – including the loss of illegitimate business.*

- *The effectiveness of the Framework stems in part from the high legitimacy it enjoys amongst states, having grown out of enforcement efforts led by the UN Security Council, and having received the blessing of both the UN General Assembly and the World Trade Organization.*
- *The story behind the KP also suggests that such collaborative Frameworks are likely to emerge where there is concerted pressure for improved market regulation, led by states. The KP shows how states can use their market power to shape market ecology. The KP also shows how international harmonization can be married to national implementation and peer review mechanisms.*
- *The KP focuses on standards implementation, rather than enforcement in response to specific grievances. As a result, it may provide a model for how states could share practice and drive up standards on national regulation of the Global Security Industry. But it offers limited guidance in developing an accountability and enforcement framework that could effectively respond to specific grievances.*

## **22. OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES**

[www.oecd.org](http://www.oecd.org)

- *The OECD Guidelines for Multinational Enterprises were originally developed by OECD states in the 1970s, to provide clarity to OECD-based multinationals in the face of fragmented guidance coming from different states on what standards were expected of them. But in more recent years, the Guidelines have, under pressure from civil society, been transformed into a weak Grievance Mechanism.*
- *The Guidelines now provide a potentially useful Framework for addressing specific issues of non-compliance arising from the conduct of multinational PMSCs operating in or out of 40 countries, including the major PMSC service exporters. Indeed, they have already been successfully used to address PMSC conduct in one case.*
- *The Guidelines Framework provides the basis for states to share experiences and develop a ‘community of learning’ with respect to regulating multinational PMSC conduct, through decentralized dispute resolution by states’ National Contact Points, and centralized interpretation by the OECD Investment Committee.*
- *However, 1) the lack of specificity of the Guidelines; 2) the extremely wide discretion left to participating states in organizing the National Contact Points that address specific issues of non-compliance; 3) the fact that in many cases the states that provide NCPs are themselves PMSC clients, giving rise to potential conflicts of interest; and 4) barriers to access to NCPs for third parties in theaters of PMSC operation, all suggest that the Guidelines Framework will fall short of providing a sufficient Framework in and of itself for impartial, credible and effective standards implementation and enforcement for the Global Security Industry. It may, however, provide a useful model of how such a decentralized harmonization arrangement might work.*

## 23. OIE (WORLD ORGANISATION FOR ANIMAL HEALTH)

[www.oie.int](http://www.oie.int)

- *Perhaps surprisingly, the World Organisation for Animal Health (OIE) is a Framework rich in lessons for the Global Security Industry. This becomes less surprising when one realizes that like animal health, public security is a global public good that may be unintentionally threatened by a private transnational trade facilitated by globalization.*
- *The OIE is the source of highly influential standards for the national regulation of animal health. It was established in the 1920s when European governments realized that they could not, on their own, adequately regulate transboundary animal-borne disease, given the increasing globalization of livestock movements. The OIE's standards have since become particularly influential through connection to broader market access regimes: they are mandatory for member states of the World Trade Organization. As a result, many of the free-riding and 'tragedy of the commons' problems associated with public goods are avoided, because states have a specific incentive to invest in animal health: market access.*
- *The OIE standards are also made more influential because the OIE is highly 'networked': its standards have been picked up and adopted by a range of other intergovernmental and private industry organizations for incorporation into their own Frameworks, governing everything from air transport to horseracing.*
- *The OIE's networking strategy and member state reporting arrangements render it an information sharing platform for a wide range of public and private stakeholders. This, in turn, allows it not only to serve as a source of best practice for its membership, creating a community of learning, but also to collate worldwide information, and analyze trends and risks. This makes the OIE a source of systemic information and a guardian of collective interests that no single member could be.*
- *Nevertheless, because compliance with OIE standards is linked to market access, through the WTO regime, states have strong incentives to under-report non-compliance, lest their market access is restricted. This points to the need to: 1) impose even stronger negative incentives for such underreporting; and 2) provide assistance to states that struggle to implement global standards. This assistance will build domestic capacity and allow them to participate fully in the governance of the Framework. Absent such assistance, there is a risk of creating a two-tiered system, undermining the credibility of the Framework as a whole.*
- *The difficulty in adapting these lessons to the Global Security Industry lies in the fact that, unlike animal diseases, the harms inflicted by PMSC misconduct may be perceived as unlikely to travel. The harms will likely be seen as highly localized, and as inflicted on communities with little access to grievance remedies or control over other incentives which might improve PMSC conduct, such as market access. This may be an argument for creating Grievance Mechanisms that allow those affected to better express the costs of the harms inflicted upon them, and begin to re-impose the costs of PMSC misconduct on those PMSCs.*
- *But it may also prove, ultimately, to be a misunderstanding of the nature of the harms caused by PMSC 'misconduct'. As recent experiences in the Middle East demonstrate, over time, violations of third parties' human rights may in fact cause regional destabilization and*

*reputational harm that – like transmissible animal diseases – are not easily contained by national borders*

## **24. ORGANIZATION FOR THE PROHIBITION OF CHEMICAL WEAPONS (OPCW)**

[www.opcw.org](http://www.opcw.org)

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

## **25. PRIVATE SECURITY COMPANY ASSOCIATION OF IRAQ (PSCAI)**

[www.psc.ai.org](http://www.psc.ai.org)

- *The Private Security Company Association of Iraq (PSCAI) is a clearinghouse and industry-actor coordination mechanism formed by PMSCs in Iraq to fill a vacuum left by the dissolution of the Coalition Provisional Authority's Private Security Company Working Group in June 2004.*
- *PSCAI serves as a useful facilitator of dialogue on PMSC operational issues in Iraq. In this respect, it may provide a useful model for associations of PMSCs operating in specific countries.*
- *But there is no evidence that PSCAI serves an effective implementing or enforcing role relating to human rights or international humanitarian law. PSCAI does not appear to have any role in monitoring its members' implementation of any standards (whether technical or relating to human rights), and does not provide any mechanisms to which third parties or employees claiming harm by PMSC conduct could bring grievances.*

## **26. SARAJEVO PROCESS**

[www.seesac.org/reports/Code of conduct.pdf](http://www.seesac.org/reports/Code_of_conduct.pdf) and

[www.seesac.org/reports/Procurement guidelines.pdf](http://www.seesac.org/reports/Procurement_guidelines.pdf)

- *The Sarajevo Process was developed by civil society and industry, in response to the absence of operational guidance from states for the private security industry in South-Eastern Europe. It*

[www.ipinst.org/GSI](http://www.ipinst.org/GSI)

Public comments welcome at [cockayne@ipinst.org](mailto:cockayne@ipinst.org).

*represents an important source of guidance on standards for PMSCs and their clients in post-conflict countries.*

- *But the absence of strong state involvement from the beginning of the Sarajevo Process may go some way to explaining the lack of follow-through since the Sarajevo Code of Conduct and Client Procurement Guidelines were adopted in 2006, which has led to the standards being only patchily implemented and not at all ‘enforced’.*
- *This seems to make clear the importance of state involvement as a basis for implementing and enforcing any standards – or ‘Code of Conduct’ – civil society and the industry might agree. Since state regulatory power is often weak in post-conflict settings, this may point to the need for an internationally-backed institutional framework to drive the process forward, help create local ownership, and develop local regulatory capacity – much as the Voluntary Principles Framework, supported by the embassies of its state participants, has created the basis for local implementation in Colombia and Indonesia.*

## **27. SOCIAL ACCOUNTABILITY INTERNATIONAL (SAI)**

[www.sa-intl.org](http://www.sa-intl.org) and [www.saasaccreditation.org](http://www.saasaccreditation.org)

- *Social Accountability International (SAI) is a joint initiative of civil society and industry intended to improve the implementation and enforcement of labor standards in apparel and textile factories – and other industries – worldwide. SAI offers a Framework for facility certification against workplace standards based on international norms. It resembles a number of other supply-chain certification Frameworks addressed in this Study, such as the Fair Labor Association (FLA) and Business Social Compliance Initiative (BSCI). Compared to these other Frameworks, however, SAI offers a comparatively robust Grievance Mechanism arrangement.*
- *Yet like those accreditation arrangements, it is questionable whether the Framework offers sufficiently strong positive (branding) and negative (de-certification) incentives to have a major impact on industry behavior. SA8000, SAI’s workplace standard, certifies facilities, not products or companies, and is thus far removed from consumers’ boycott power.*
- *Like the other certification Frameworks addressed in this Study, SAI also seems to highlight the challenges of applying a fixed-facility audit and certification model to the Global Security Industry, given the insecure environments in which it operates.*

## **28. TOXIC WASTE CONVENTION**

[www.basel.int](http://www.basel.int)

- *Like the OIE, the Toxic Waste Convention provides a Harmonization Arrangement for controlling transboundary harms arising from global industry, through coordinated national-level implementation. And like the OIE, the Toxic Waste Convention may provide a surprisingly useful source of guidance to efforts to develop a Standards Implementation and Enforcement Framework for the Global Security Industry.*
- *The success of the Toxic Waste Convention derives from its combination of positive and negative incentives. States are prohibited from moving toxic waste to non-signatories; but at*

*the same time they are given an incentive to participate in the Framework because it provides an effective, regionalized platform for capacity-building in environmentally sound management of such waste – including through public-private partnerships.*

- *Such a combination of trade restrictions and capacity building assistance might prove effective as a basis for drawing a wide grouping of states into an analogous Framework for the Global Security Industry*

## **29. VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS**

[www.voluntaryprinciples.org](http://www.voluntaryprinciples.org)

- *The Voluntary Principles on Security and Human Rights (VPSHR) will likely form a key forum for discussing a specific aspect of improved standards implementation and enforcement for the GSI – the behavior of PMSCs while in the employ of the extractive industry. And the structure of the VPSHR, and the global community of learning and innovation it is generating, offer many rich lessons to the GSI in working with other clients, including states.*
- *The VPSHR provide guidance on three aspects of extractive industry companies' security operations: 1) risk assessments; 2) interactions between companies and public security forces; and 3) interactions between companies and private security forces.*
- *They were developed under the leadership of the U.S. and U.K., with support from major extractive industry companies. These companies saw them as providing useful operational guidance, and states saw them as a useful step in responding to allegations of the extractive industry's complicity in human rights abuses.*
- *Next to the Sarajevo Process, they are the closest thing available to a client-focused standards implementation Framework. The VPSHR have been referred to in a number of subsequent standards-development initiatives, including the Sarajevo Process and the Swiss Initiative.*
- *But unlike the Sarajevo Process, they benefit from the significant involvement of a number of home states of extractive industry companies and PMSCs, including the U.S. and U.K., and significant ongoing involvement of civil society actors.*
- *As a result, while the Voluntary Principles process has at times been rocky, and has come under fire for patchy implementation – because of different conceptions amongst different stakeholders about how, and how quickly, it should move forward – it has increasingly emerged as a platform for highly contextualized and tailored innovation in standards implementation through collaboration by local and foreign stakeholders.*
- *And in some cases, it may lay the foundations for direct dialogue between industry and civil society to resolve disputes as and when they arise.*
- *Increasingly, these local and global discussions may be connecting up to form a global 'community of learning', producing flexible tools such as the "Performance Indicators" recently developed by International Alert.*

### 30. WOLFSBERG GROUP

[www.wolfsberg-principles.com](http://www.wolfsberg-principles.com)

- *As is arguably the case with the Global Security Industry today, in the late 1990s the private banking industry confronted a difficult situation, combining: 1) public and governmental pressure to ensure the industry did not support ‘bad actors’ (in their case, drug traffickers and terrorists); 2) governments unwilling to provide operational guidance to the industry; and 3) disparate national regulation that seemed to play into the hands of these ‘bad actors’ by allowing them to engage in cross-border regulatory arbitrage.*
- *In response, nine (later growing to 11) of the largest private banks from around the world formed a loose private association – the Wolfsberg Group – to draft shared guidelines, which they implement in their own operations, worldwide. Consequently, these guidelines effectively serve as a global ‘private standard’, pre-empting national and international regulation, and harmonizing standards in a manner designed to dovetail with states’ own collaborative initiatives, such as the Financial Action Task Force (FATF, addressed earlier in this Study).*
- *The effectiveness and influence of this private standard is in part underpinned by the global market share of those implementing it (roughly 60 per cent). Given the competitive structure of the market, it is unsurprising that some banks were reluctant to join; but once they were convinced, the process has snowballed and now serves as a de facto standard for the industry.*
- *An analogous ‘Code of Conduct’ could form a useful component of a Framework for the Global Security Industry, if it were supported by a group of companies with a significant market share, and reflected human rights and IHL standards that enjoyed legitimacy amongst other stakeholders. Such a global private standard might, in time, be picked up by national regulators as the basis for an agreed ‘white list’, similar in some ways to the quasi-licensing arrangements supported by credit rating agencies, discussed earlier in this Study. Regulators would in that case need to broaden participation in the Framework and offer assistance to build smaller companies’ internal implementation capacity, to avoid charges that such an arrangement represented a discriminatory market restriction.*
- *But, like any other ‘Code of Conduct’, such an approach would enjoy significantly greater legitimacy if it was also linked to meaningful enforcement components within an over-arching Framework – especially the enforcement power of states.*