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# Private Military and Security Companies: Industry-Led Self-Regulatory Initiatives versus State-Led Containment Strategies

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# List of Acronyms

<b>ANSI</b>	American National Standard Institute
<b>ASIS</b>	American Society for Industrial Security
<b>CFA</b>	Ceasefire Agreement
<b>DCAF</b>	Geneva Centre for the Democratic Control of Armed Forces
<b>DIS</b>	Draft International Standard
<b>EU</b>	European Union
<b>FDIS</b>	Final Draft International Standard
<b>ICoC</b>	International Code of Conduct
<b>ICoCA</b>	International Code of Conduct Association
<b>ICRC</b>	International Committee of the Red Cross
<b>IHL</b>	International Humanitarian Law
<b>ISO</b>	International Organization for Standardization
<b>ISO TC</b>	ISO Technical Committee
<b>MD</b>	Montreux Document
<b>NATO</b>	North Atlantic Treaty Organization
<b>NGO</b>	Non-Governmental Organization
<b>NWI</b>	New Work Item
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>PMC</b>	Private Military Company
<b>PMSC</b>	Private Military and Security Company
<b>POW</b>	Prisoner of War
<b>PSC</b>	Private Security Company
<b>SOFA</b>	Status of Forces Agreement
<b>UAE</b>	United Arab Emirates
<b>UN</b>	United Nations
<b>UK</b>	United Kingdom
<b>USA</b>	United States of America
<b>WPS</b>	Worldwide Protective Services

## Preface

The increasing privatization of security is a central feature of the way in which the control and oversight of armed force is currently being recalibrated – requiring no less than a comprehensive rethinking of the relationship between the state and the individual citizen. Studying armed actors and their functions has been an intrinsic part of the CCDP research agenda, and we thus welcome the useful contribution by Raymond Saner on this important topic.

The Working Paper focuses on recent self-regulatory guidelines that have been created by private military and security companies (PMSCs) in order to deter calls for stricter regulations of the industry. This self-imposed quasi-regulatory space counters other international efforts – notably the Montreux Document and the International Code of Conduct – which seek to strengthen the resolve of states and PMSCs to uphold and respect international humanitarian law (IHL) and human rights. This “battle of influence” over the regulation of the use of force, Saner contends, leads to rising tensions between stakeholders who form coalitions consisting of states, PMSCs, and civil society actors on either side of the regulation cleavage. The paper calls for new measures that continue to build on IHL and the Geneva Conventions, but that go beyond the current regulatory positions of existing international initiatives.

This publication, somewhat exceptionally, was not generated from the CCDP's own research activities. But given the timeliness of Raymond Saner's contribution and the urgency of the topic, we thought it worthwhile to continue the CCDP conversation by publishing this paper in our series. Needless to say, the CCDP cannot take credit for the substance of the paper nor the recommendations it brings forward.

Keith Krause  
CCDP Director

Geneva, June 2015

# Introduction

The transitions from the colonial to post-colonial and from Cold War to post-Cold War eras have resulted in today's multi-polar geopolitical reality which is characterized by increasingly divergent definitions of diplomacy, sovereignty, and warfare. Concomitant with this blurring of terms, there has been a proliferation of non-state actors in important areas of international relations including trade, communication, finance, and security (Saner and Yiu, 2002).<sup>1</sup>

This “blurring of boundaries” has made it harder to ensure that international humanitarian conventions such as the Geneva Conventions, Human Rights Laws, and the Conventions on the Protection of Refugees are being respected and implemented by the signatory governments.

Commenting on the need to engage with armed non-state actors in order to encourage respect for humanitarian norms, Andrew Clapham notes:

*The exclusion of armed groups from the normal treaty-making process, and their subsequent inability to become parties to the relevant treaties, mean that alternative non-legal regimes have had to be adopted. These regimes, whether established by the UN Security Council, the UN Human Rights Council, NGOs, or by national truth commissions, operate in a grey zone between law and politics: relying on international legal principles for the normative framework, and remaining dependent on political pressures, rather than courts, for the enforcement of these norms.*<sup>2</sup>

Focusing on one group of armed non-state actors, namely PMSCs, James Cockayne writes:

*There is now a network of military entrepreneurs operating around the world, recruiting in one country, headquartered in a second, contracted to a third, perhaps operating weapons in a fourth to carry out attacks in a fifth.*<sup>3</sup>

The study “Corporate Mercenaries” by Fabien Mathieu and Nick Dearden gives examples that highlight the high risks for states and civil society that stem from the increasing use of PMSCs, by governments such as those of the USA and the UK. A few examples cited in the report are:

*In Saudi Arabia, US-based PMSCs play a key role in protecting the monarchy from unrest. Until recently BDM, parent of Vinnell, provided logistics, intelligence and maintenance services to the Saudi air force. Vinnell itself trains the Saudi national guard, while Booz Allen Hamilton runs the military staff college. SAIC supports the navy and air defences, and O Gara protects the Saudi royal family and trains local security forces.*

*In East Timor, Australian forces leading the UN Transitional Administration peacekeeping force in 1999 depended on logistics outsourced to PMSCs, while the UN employed private intelligence and security firms to assist.*<sup>4</sup>

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- 1 Saner, Raymond and Lichia Yiu. 2003. *International Economic Diplomacy: Mutations in Post-modern Times*. Discussion Papers in Diplomacy No. 84. The Hague: Clingendael Institute of International Relations, pp. 1-37.
  - 2 Clapham, Andrew and Paola Gaeta, eds. 2014. *The Oxford Handbook of International Law in Armed Conflict*. Oxford: Oxford University Press, p. 706.
  - 3 Cockayne, James. 2014. *Private Military and Security Companies*, in Clapham, Andrew and Paola Gaeta, eds. *The Oxford Handbook of International Law in Armed Conflict*, Oxford: Oxford University Press, p. 625.
  - 4 Mathieu, Fabien and Nick Dearden. 2006. *Corporate Mercenaries: The Threat of Private Military and Security Companies*. London: War on Want, p. 4.

Commenting on the US war on terror, Amnesty USA (2015) stated

*that the number of contractors being deployed in Afghanistan and Iraq exceeded the number of US military personnel and that contracted companies have also served in more sensitive roles, such as interrogation and translating during questioning of alleged terrorist suspects.*<sup>5</sup>

The private military industry fulfils a range of supportive functions and is often split into two sectors, Private Military Companies (PMCs) and Private Security Companies (PSCs). The former offers services such as military base guarding and explosive ordnance disposal, while the latter mostly deals with security consulting and investigative services.<sup>6</sup> However, the lines between PMCs and PSCs are not always clear cut, since both types of companies at times offer services in the two subfields – thus making the identification of main activities difficult to ascertain, as described below.

PMSCs have played an important role in war making and related security activities, and will most likely play an even larger role in the coming years. This Working Paper discusses the tensions between the PMSC industry, their client governments and supportive NGOs vis-à-vis other governments and NGOs that want to limit the use of PMSCs in order to ensure continued application and respect of IHL and human rights. The tensions between these two groups will be discussed in the subsequent sections.

This paper focuses more on the PMSC industry than on state-led containment strategies because information about the leading PMSCs and their commercial structures is less known to the public. What is not included in this paper are other forms of war making and violence, such as local and violent non-state actors (armed rebel groups, hostage-taking criminal gangs, violent religiously-oriented extremist groups, etc.); quasi-independent political “volunteer” groups dispatched from a government army to fight in another country; or the financial support given to religious extremist groups fighting regional wars (e.g. the financing of ISIS in Syria by some Gulf states). Moreover, this study does not include conventional mercenaries, nor their “legitimized” colleagues such as the French Legionnaires and other such organized armed groups (e.g. armed Taliban fighters from Pakistan engaging in combat in Afghanistan against local Afghan government forces). All of the above-mentioned armed non-state actors require separate studies and in-depth discussions about the current regulatory oversight and possible ability to sanction them based on violation or non-compliance with existing principles such as IHL and human rights.

Hence, the term PMSC as used in this study pertains solely to the commercially-oriented providers that offer their military and security services to state actors. The term Private Security Company and the term Private Military Company are interchangeable and illustrate the fact that some PMCs and PSCs often work on similar contracts and for similar clients. Additionally, such companies often have diversified business structures that encompass military and security-based services that are kept apart from the budgets and reporting of the core company through sophisticated holding and subsidiary arrangements. These organizational structures are often transnational, making it difficult to assess the full nature of more globalized PMSCs.

5 Amnesty International USA. *Private Military and Security Companies – The Cost of Outsourcing War*. Undated, retrieved from website of Amnesty USA: <<http://www.amnestyusa.org/our-work/issues/military-police-and-arms/private-military-and-security-companies>>.

6 Krahmann, Elke and Aida Abzhaparova. 2010. *The Regulation of Private Military and Security Services in the European Union: Current Policies and Future Options*. EUI Working Papers, Academy of European Law. Florence: European University Institute, p. 6.

# Definitions and Use of Private Military and Security Companies

Arguably, since the rise of nationalism, the state has borne the responsibility of a legitimate monopoly of force. From Nozick's description of how the emergence of one dominant protective agency leads to the ideal minimalist state<sup>7</sup> to Weber's normative claim that the state is the lone depository of lawful violence,<sup>8</sup> it is an accepted element of mainstream tenets of philosophy and international law that national armies fight on behalf of nations. However, entities that operate internationally, including states, have found it advantageous to delegate the protective role of the state military to the private sector.

The US Government broadly defines PMSCs as “persons or businesses... that provide products or services [to the military] for monetary compensation”.<sup>9</sup> Although Moshe Schwartz agrees that private security can broadly be considered as the delivery of militarily supportive services from a private company to a state army, a more precise legal definition of a PMSC has not yet been agreed upon.<sup>10</sup>

State militaries are legally responsible to the state and society and operate under a strict code of conduct, as described in the Geneva Conventions and 1907 Hague Convention Regulations. They are also liable under national codes of military justice and are regularly scrutinized by public opinion.<sup>11</sup> In contrast, PMSC employees report solely to the principals of their company regardless of their national or ideological background.<sup>12</sup> These private sector actors function under no consistent sense of loyalty or commitment to a cause (which has long embroidered the military profession with respect and prestige).<sup>13</sup>

To whom PMSCs are accountable is a crucial question – e.g. accountable only to their clients (governments and their agencies), to IHL and humanitarian rules, or to some in-between regulatory space (see the example below on the new PMSC ISO standard). The latter of the three could give PMSCs opportunities to operate within quasi-legal and quasi-regulated conditions without being accountable to IHL and human rights agreements, in contrast to a state army and state security officers.

The following section gives a detailed example of how the PMSC industry is attempting to create quasi-regulatory mechanisms that could provide the industry with a grey area of regulatory space. Doing so could dilute accountability and soften requirements with regards to respect and implementation of international humanitarian law and principles.

7 Nozick, Robert. 1977. *Anarchy, State, and Utopia*. New York: Basic Books.

8 Weber, Max. 1970. "Politics as a Vocation", in *From Max Weber: Essays in Sociology*. London: Routledge & Kegan Paul.

9 Nimkar, Ruta. 2009. "From Bosnia to Baghdad: The Case for Regulating Private Military and Security Companies", *Princeton Journal of Public and International Affairs*, Vol. 20, pp. 1-24.

10 Schwartz, Moshe. 2009. *The Department of Defense's Use of Private Security Contractors in Iraq and Afghanistan: Background, Analysis, and Options for Congress*. Darby, Pennsylvania: Diane Publishing.

11 Dogru, Ali Kemal. 2010. *Outsourcing, Managing, Supervising, and Regulating Private Military Companies in Contingency Operations*. Monterey, California: Naval Postgraduate School, p. 3.

12 Singer, Peter Warren. 2003. *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca, New York: Cornell University Press, p. 154.

13 Dogru, Ali Kemal. 2010. *Outsourcing, Managing, Supervising, and Regulating Private Military Companies in Contingency Operations*. Monterey California: Naval Postgraduate School, p. 5.

Differentiating PMSCs from armed services conducted by the state still does not provide a clear idea of their space in the international field. The idea that PMSCs provide military services solely for monetary compensation legally defines them as criminals, no different from soldiers of fortune or mercenaries. The United Nations, while employing many PSCs for peacekeeping and humanitarian operations, believes that “the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States”.<sup>14</sup> Thus it is clear that a cogent difference between PSCs, PMCs and mercenaries needs to be identified at least for the sake of coherent international governance.

Rona Gabor, representing the UN Working Group on the use of Mercenaries at the Montreux + 5 conference in December 2013, remarked that

*[the] Working Group has made every effort to clearly distinguish mercenaries whose activities are prohibited under international law from private military and security actors who operate within a legal framework.*<sup>15</sup>

Protocol I of the Geneva Conventions lists six criteria that an entity must fulfil to be considered a mercenary. These criteria include individuals who are “motivated to take part in the hostilities essentially by the desire for private gain and ... [are] promised ... material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party.”<sup>16</sup> While this is broadly applicable to PMSC employees, criteria such as “specially recruited locally or abroad in order to fight in an armed conflict,” and thus “take a direct part in the hostilities,” do not necessarily apply to all PMSCs, particularly to those that deal with logistics or armed security.

<sup>14</sup> United Nations. 1989. *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*. General Assembly Resolution 44/34, 4 December 1989.

<sup>15</sup> Gabor Rona. *Remarks by Gabor Rona*, speech delivered at UN Working Group on the Use of Mercenaries, Montreux + 5 Conference, Montreux 11-13 December 2013. Retrieved from <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14105&LangID=E>> .

<sup>16</sup> *Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, Geneva, 8 June 1977, Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts. Bern: Federal Department of Foreign Affairs, 1978.

# The PMSC Industry

Market information describing the PMSC industry is scarce and difficult to find, with data alternating between being publically available and highly confidential. This is especially true for the PMSC industry in developing countries, possibly due to a lack of accountability and transparency mechanisms. Several large PMSCs operate transnationally, including in countries with less stringent rules regarding the transparency of commercial and legal data. This is further complicated by the fact that many such companies (and particularly smaller PMSCs) may be headquartered in one country while holding a branch or representative office in another. For instance, a PMSC might have a minority equity share in a local company in a country that does not require the publication of business records, and thus the full picture of the diversified business operation cannot be corroborated with other data. Internalization also takes the form of silent partnerships, non-equity investments, third party participation, and other means of diversification, which further complicates the quest for a comprehensive view of global PMSC operations.<sup>17</sup>

Estimates of both the total value of the PMSC industry, and the number of companies within it, vary greatly. For instance, Sonia Fenazzi cites Swiss government sources that estimate the total turnover of the PMSC industry at CHF 930 million (approximately USD 1029 million), with hundreds of thousands of individuals employed, while an anonymous French government source has been cited estimating the industry's worth at USD 400 billion with millions of employees and 6500 companies worldwide.<sup>18</sup>

Analysing the 50 largest known PMSCs, the findings reveal interesting trends and features.<sup>19</sup> With regard to legal registration, a majority of the 50 largest known PMSCs are registered in the USA (27) and the UK (12). The remaining PMSCs are spread between South Africa (2), Sweden (2), Israel (2), Canada (1), the Dominican Republic (1), the Netherlands (1), Australia (1), and Spain (1). Of these 50, 30 are multi-functional (security and non-security business units), 31 are privately held companies, and only 18 have signed the International Code of Conduct (ICoC) which is based on the Montreux Document (MD). The following section will discuss the MD and the ICoC in more detail.

The ten largest known PMSCs are Academi (USA), Aegis Defence Services (UK), DynCorp Int. (USA), G4S (UK), L-3 MPRI Inc. (USA), Vinnell Corp. (USA), BAH (USA), Garda World Securities (Canada), Prosegur (Spain), and Kellogg, Brown & Root (KBR Inc.) (USA). Four of the ten companies have legal headquarters in a different territory than their commercial headquarters, seven are privately held companies, and half of them have signed the ICoC (see Table 1).

The countries of operation and of the clients of these 10 largest known PMSCs were found to be widely spread across continents and encompass governments, multinational companies, UN agencies, and large NGOs (table 2).

17 For examples of non-equity foreign investment see Arquit, Anne, Jonathan Gage and Raymond Saner. 2011. *Levers to Enhance TNC Contributions to Low-Carbon Development - Drivers, Determinants and Policy Implications*. Geneva: CSEND/DiplomacyDialogue. Retrieved from <<http://www.diplomacydialogue.org/publications/environmental-diplomacy/99-levers-to-enhance-tnc-contributions-to-low-carbon-development-drivers-determinants-and-policy-implications.html>> .

18 Sonia Fenazzi. 2013. *Private Armies Enter Judicial Cross Hairs*, article published on SwissInfo, 24 February 2013. Accessed on 15 August 2014 from <<http://www.swissinfo.ch/eng/private-armies-enter-judicial-cross-hairs/35057486>> .

19 Author's own calculations and estimates.

A further analysis of the top 10 known PMSCs shows that these companies offer the following services: Advising/consulting (9/10), armed protection (9/10), military training (6/10), surveillance/intelligence (4/10), cyber security (3/10), logistical support (10/10) and technical support (7/10) (Table 3).

As is evident from the analysis above, the market for PMSCs is large and considerably globalized despite the majority of the companies having Anglo-American origins. The remainder of the top 50 list also includes PMSCs mostly from Western OECD member countries, such as Spain, the Netherlands and Israel. The number and significance of PMSCs registered in BRIC countries is unknown and publically available data can only be found for PMSCs registered in South Africa and the Dominican Republic.

One can only hypothesize at how many more PMSCs operate in other countries, be it for emerging or transition country governments or transnational enterprise clients. Because of the scarcity of information on PMSCs, particularly in developing countries, the aforementioned figures only convey a picture of what is known and are therefore indicative rather than authoritative.

# Self-Regulatory Initiatives by PMSCs

Faced with growing public criticism and increased scrutiny by governments and international organizations, some of the leaders of the PMSC industry decided to launch a self-regulatory exercise. Arguably, this could be interpreted as a preventive action faced with the risk of tighter regulations being installed. The first move toward self-regulation was launched in the USA, the country with the highest number of large PMSCs. Very quickly, a new US ISO quality standard was developed for the PMSC industry by the industry association ASIS, and in close cooperation with the US standard organization ANSI (American National Standard Institute). The US ISO standard was officially adopted in 2012; the Sié Chéou-Kang Center at the University of Denver describes the details of the new quality standard and its adoption in the US and UK as follows:

## **Industry Regulation**

### **ANSI/ASIS International Standards**

*Founded in 1955, ASIS is a society of individual security professionals dedicated to increasing the effectiveness and productivity of security professionals by developing educational programs and materials. ASIS is an ANSI-accredited Standards Developing Organization, and within ASIS the ASIS Commission on Standards and Guidelines works with national and international standards-setting organizations and industry representatives to develop voluntary standards and guidelines for security professionals. With funding from the U.S. Department of Defence, the ASIS Commission on Standards is currently promulgating four sets of standards for private security companies.*

*PSC.1 - Management System for Quality of Private Security Company Operations - Requirements with Guidance*

*PSC.2 - Conformity Assessment and Auditing Management Systems for Quality of Private Security Company Operation*

*PSC.3 - Maturity Model for the Phased Implementation of a Quality Assurance Management System for Private Security Service Providers*

*PSC.4 - Quality Assurance and Security Management for Private Security Company's [sic.] Operating in the Maritime Environment*

### **ASIS/ANSI PSC.1 Adoption by Countries**

*Two countries have adopted ASIS standards for their private security contracting. After the approval by ANSI of ASIS PSC.1 in May of 2012, the United States Department of Defence adopted the standard. The U.S. specifies in its DFARS regulations that all contracts with private security providers must use PSC.1. In December of 2012, the United Kingdom announced that PSC.1 would be the standard for all its future private security contracts.<sup>20</sup>*

As a next step, stakeholders of the American PMSC industry, with support from their PSC business partners in the UK, requested the ISO secretariat in Geneva to circulate an ANSI/US request for the creation of a new working group in charge of developing an ISO PSC standard that could be approved by the entire international membership of the ISO. The request for a new standard, or (in ISO terminology) a "New Work Item" (NWI), was firstly vetted by the ISO management board. However, once the ISO secretariat confirmed that the request was compliant with the ISO's core mission and mandate, it was submitted for voting by all international members of the ISO family of National Standard Organizations.

<sup>20</sup> Sié Chéou-Khang Center for International Security and Diplomacy, undated, *Private Security Monitor – Industry Initiatives* – ASIS. Retrieved from <[http://psm.du.edu/industry\\_initiatives/asis\\_international.html](http://psm.du.edu/industry_initiatives/asis_international.html)>.

The NWI was labelled ISO/PSC 284 and a proposal was handed to the ISO membership describing how the drafting of this new standard should be organized. Communications from the ISO secretariat clarified that the US ANSI organization would provide the convenor (secretary in charge of the NWI) and secretarial support for the drafting process. A New Work Item, in ISO terminology, means starting at 0 points leading progressively to a final document with 60 points called an ISO standard. From 0 to 60 points, an NWI undergoes several rounds of drafting, voting, and amending until it gets approved through voting as an FDIS (Final Draft International Standard).

Most importantly, the ISO secretariat noted that the basis of the NWI should be the ASIS/ANSI standard, and that the process to approve the future international ISO standard (PSC 284) should start at the technical level of a Draft International Standard (DIS). This means beginning at point 40 out of a total 60 point stage, then leading to a Final Draft International Standard (FDIS).<sup>21</sup> The time frame given to reach the final stage was one year, provided that the international ISO membership voted in favour of the DIS and FDIS.

With admirable speed and great efficiency, the first meeting of the ISO PSC 284 was held on 9-10 December 2013 in the same hotel where the subsequent Montreux Document + 5 conference was held from 11-12 December 2013. The convenor of ISO PCS 284 was very effective in moving the working group forward in its drafting endeavour and efficient regarding conference organization, management, and the use of IT communication technology.

The members of the working group then decided to change the name of the draft standard, and with impressive speed the working group submitted a request to the ISO Technical Management Board in Geneva for a change of title and scope, which was quickly obtained. The name of the new international standard was changed to read "Management System for Private Security Operations: Requirements with Guidance"; it aims to provide principles and requirements for a Security Operations Management System. The new title reads less technical and makes it easier for later branding.

A second work meeting was held in Washington DC, hosted by ANSI and conducted in person and virtually (via WebEx) on 11-12 August 2014. Subsequently, the group worked on a draft DIS of the ISO PSC 284. The DIS draft made extensive reference to the Montreux Document, the International Code of Conduct, and international humanitarian and human rights law.

The first two working group meetings in December 2013 and August 2014 were attended by a limited group of country delegations mostly from the USA, the UK, France, and Sweden as well as a small number of single country representatives. During these meetings, the author of this paper acted as representative of SNV, the Swiss ISO organization. Besides representing a very limited sample of national ISO organizations, the small number of national delegations is indicative of who has interests in the topic, as more than half of the participants were from the USA and the UK, the countries with the greatest number of PMSC headquarters. Another important characteristic is the fact that this new ISO standard will only be applicable for certification of PSCs and not PMCs, the companies considered by many as being too close to being "mercenaries". However, as shown in the previous section, many of the large PMSCs show double functionality operating units which serve in military context while others operate as non-combat security units.

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<sup>21</sup> International Organization for Standardization. *International harmonized stage codes*, undated. Retrieved from <[http://www.iso.org/iso/stages\\_table.htm](http://www.iso.org/iso/stages_table.htm)>.

Voting on the DIS text of the standard started in December 2014 and was concluded by 10 March 2015, when the DIS was approved by the membership and declared valid. Of the 15 participating members (P-members), six voted in favour (Australia, Egypt, France, Sweden, UK, and USA) and two voted against the DIS (Germany and Spain) while seven P-members abstained (Austria, Barbados, Belgium, Italy, Netherlands, Poland and Switzerland). The DIS was hence approved based on a very small number of just six approving members out of a total of 119 ISO members with full membership status with voting rights (not included are members with non-voting right status such as correspondent and subscriber members). The fast-track process towards the final step of approval, however, soon ran into procedural difficulties. In view of what the ISO Technical Management Board considers a rise of global insecurity, it proposed to merge several security-focused ISO standards into the ISO Technical Committee (TC) 292, whose overall scope is security. The decision to integrate related standards into TC 292 led to the merger of TC 8 (ISO 28000 series – Security management systems for the supply chain); TC 223 (Societal security); TC 247 (Fraud countermeasures and controls) and PC 284 (Management systems for private security operators) which was given a new ISO number, namely ISO DIS 18788.

A third meeting was held on 14-17 April 2015 in London and hosted by the British Standard Institute. The objective of this meeting was to discuss 14 pages of comments and amendments submitted by the member organizations as part of the DIS voting process – some of which are currently being integrated into the text.

The working group decided to forego the option of going through a final round of voting once amendments of the DIS will have been made (a process previously referred to as FDIS), and will instead send the amended DIS to the ISO secretariat for it to be declared final and ready for publication. Once the ISO secretariat will publish it, which is expected to happen in the third quarter of 2015, the standard will be available for certification of PSCs.

The surprising decision to integrate security-related standards into TC 292 offers this industry an opportunity to be less visible, and hence less exposed to possible criticism as it will be part of a larger group of standards, which neutralizes potential scrutiny of PMCs' subsidiaries operating in countries with weak governance practice.

The merger into TC 292 also offers the possibility to reinterpret the scope of ISO 18788. The French contribution to the enlarged TC 292 has been to call for some form of “homeland security”.<sup>22</sup> A British communication suggests the need to distinguish between security services in urban/industrial settings and those in fragile or unstable environments, while a communication by Australia suggests a longer list of the many kinds of security risks that could be addressed by PSCs.<sup>23</sup>

What is worrisome, however, is the fact that six member countries could push through a new and politically very sensitive ISO standard following the established voting rules of the ISO.<sup>24</sup> There are 119 ISO member states with full voting rights! It is highly probable that many member states did not notice the emergence of this new standard, nor did they follow the drafting in detail.

The speed at which the new standard has been developed is remarkable, as it will only have taken two years to complete and likely become available for global certification by the autumn of 2015. In contrast, the Montreux Document is currently only valid in 50 states and three international organizations. CEN, the European committee for standardization, started its own

<sup>22</sup> ISO/TC 292, N 48, 24 February 2015.

<sup>23</sup> ISO/TC 292, N 42, 2 February and N 43, 13 February 2015.

<sup>24</sup> ISO/PC 284, N 116 Ballots and Comments, 17 March 2015.

technical committee called “CENT/TV Private Security Services” on 19 November 2014 and will also attempt to create its own certification standard for PSCs. In view of this remarkable speed of self-regulation by the industry, governments should take note of the revised scope of the new ISO standard and the statement that it

*provides a business and risk management framework for organizations conducting or contracting security operations and related activities while demonstrating:*

*Conduct of professional security operations to meet the requirements of clients and other stakeholders; Accountability to law and respect for human rights; and Consistency with voluntary commitment to which it subscribes.<sup>25</sup>*

However, no mention is made of “accountability towards international humanitarian law”, and “respect for human rights” is formulated as a general suggestion not as a requirement (normally indicated as “shall” in ISO requirement standards).

The PMSC industry has shown remarkable mastery by creating a self-regulatory instrument which benefits from the legitimization of being part of the ISO family of standards at a time when the PMSC industry has come under growing criticism and scrutiny by civil society organizations. Baum and McGahan (2013) analysed the industry’s resilience to such criticism and concluded that:

*Military entrepreneurs demonstrated PMSCs’ efficacy, articulated faults of international and military practise and norms, expressed PMSCs’ ability to address these faults and support sovereign interests, and reframed, reoriented and regulated PMSCs’ activities to address critical concerns.*

*PMSCs gained legitimacy through a series of events that reconfigured the military field, reinforced by broader institutional shifts including privatization, since the end of the Cold War. Some of these field-reconfiguring events had unanticipated consequences for the deployment of military capabilities – consequences that were actively constructed and reinforced by the activities of institutional entrepreneurs.<sup>26</sup>*

The PMSC industry has presented an astonishing ability to protect itself from regulatory sanctions by showing evidence of entrepreneurial efforts, such as the creation of the new ISO standard described above. This suggests that the industry has the ability to fend off criticism and create a new quasi-regulatory space that it can use to counter attempts to tighten regulation through new inter-governmental initiatives such as the Montreux Document and the related ICoC described below.

<sup>25</sup> ISO/PC 284, N39, 2nd Working Draft, 8 November 2014, p. 19.

<sup>26</sup> Baum, Joel and Anita McGahan. 2013. “The Reorganization of Legitimate Violence: The Contested Terrain of the Private Military and Security Industry During the Post-Cold War Era”, *Research in Organizational Behaviour* Vol. 33, pp. 3-37, at pp. 34-35.

# Countermeasures by States and International Humanitarian Organizations

The increase in the use of PMCs and PSCs around the world has far outpaced the development of intergovernmental regulatory structures. The evolution of defence technology suggests that the nature of PMSCs themselves may continually change, requiring a constantly evolving monitoring technique to keep abreast of the changes. A group of nation states have collaborated to create joint regulatory frameworks that intend to close any notion of a legal vacuum for transnational PMSCs:

## The Montreux Document

Under the leadership of the Swiss government, and in collaboration with the International Committee of the Red Cross (ICRC), the Montreux Document was drafted in 2008 and ratified by 17 countries as the first internationally significant document pertaining directly to PSCs. As of June 2015, ratification has grown to 52 as well as three international organizations, namely the supranational EU, the OSCE, and NATO.<sup>27</sup>

The official name of the document is *The Montreux Document: On pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict*.<sup>28</sup> It is divided into two parts – the first recalling the obligations of the contracting, territorial, and home states, under international humanitarian and human rights law, and the second outlining guidelines for national measures to improve accountability, transparency, and overall regulation of PSCs.

Mandated by the Swiss government, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) organized regional conferences to disseminate the content and intention of the MD with the goal of increasing its membership. Regional conferences were held in Latin America, Central Asia, and South East Asia during the period of 2011-2014, and in 2013 a special conference was organized in Montreux to celebrate the first five years of the Montreux Document.

## ICoC

As a second step, an International Code of Conduct for Private Security Providers (ICoC) was elaborated to include PMSCs in order to create an industry mechanism to help PMSCs conduct their business within the boundaries of IHL and human rights.

The ICoC is a multi-stakeholder initiative convened by the Swiss government. It aims to define principles and standards of the private security industry based on human rights and international humanitarian law, as well as to improve accountability of the industry by establishing an external independent oversight mechanism. The Articles of Association seek to establish this mechanism which will include certification, auditing, monitoring, and

<sup>27</sup> Swiss Federal Department of Foreign Affairs. 2015. *Participating States of the Montreux Document*. Retrieved from <<https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/participating-states.html>> .

<sup>28</sup> Swiss Confederation and the ICRC. 2008. *The Montreux Document*. Retrieved from <[https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0996.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf)> .

reporting. By signing the ICoC, signatory companies publicly commit to operating within it, and are expected to seek to become members of the Code, which began functioning by mid-2013.

The Preamble of the Code lists eight points that make reference to the Montreux Document and to the United Nations Guiding Principles on Business and Human Rights for implementing the UN “Protect, Respect and Remedy” framework. Point 7 of the Code specifies applications that have direct bearing on the previously discussed efforts by the PMSC industry to create its own certifiable standard, and states that:

*those establishing this Code recognize that this Code acts as a founding instrument for a broader initiative to create better governance, compliance and accountability. Recognizing that further effort is necessary to implement effectively the principles of this Code, Signatory Companies accordingly commit to work with states, other Signatory Companies, Clients and other relevant stakeholders after initial endorsement of this Code to, within 18 months:*

*a) Establish objective and measurable standards for providing Security Services based upon this Code, with the objective of realizing common and internationally-recognized operational and business practice standards; and*

*b) Establish external independent mechanisms for effective governance and oversight, which will include Certification of Signatory Companies' compliance with the Code's principles and the standards derived from the Code, beginning with adequate policies and procedures, Auditing and Monitoring of their work in the field, including Reporting, and execution of a mechanism to address alleged violations of the Code's principles or the standards derived from the Code.<sup>29</sup>*

## **ICoCA**

A further step towards institutionalizing the ICoC was taken in February 2013 with the creation of the Association of the ICoC (abbreviated ICoCA).<sup>30</sup> Membership of the ICoC Association consists of States or intergovernmental organizations, private security companies, and civil society organizations – also referred to as the three stakeholder groups.<sup>31</sup> All the member states of the ICoCA also support the Montreux Document, and include states with many PMSC headquarters.

The main bodies of the Association are the General Assembly, the Board of Directors, and a Secretariat that is currently supported by DCAF. The General Assembly and the Board of Directors are supposed to represent each of the three pillars of promoting, governing, and overseeing implementation of the ICoC through the following methods:

1. Certification of member companies,
2. Monitoring member companies, and
3. Handling complaints of alleged violations of the code of conduct.

<sup>29</sup> International Code of Conduct Association. 2010. *The International Code of Conduct for Private Security Service Providers*. Retrieved from <[http://icoca.ch/en/the\\_icoc](http://icoca.ch/en/the_icoc)>.

<sup>30</sup> International Code of Conduct Association. *Homepage – The Code – History*. Retrieved from <<http://www.icoca.ch/en/icoc-association>>.

<sup>31</sup> For more information about membership of the ICoCA see <<http://www.icoca.ch/en/membership>>.

## Colliding Regulatory Initiatives

The quick effort by the PMSC industry to create its own self-regulatory standard appears to collide with the initiative of governments under the umbrella of the Montreux Document, and even more so with the subsequent creation of the ICoC, and later the ICoCA.

A media note by the Office of the Spokesperson of the US State Department mirrors the collision of the two regulatory initiatives. The media note is titled “State Department to Incorporate International Code of Conduct into Worldwide Protective Services Contracts” and dated 16 August 2013:

*The Department of State recognizes and appreciates the progress made on the development of the ICoC and the pending establishment of an ICoC Association. As long as the ICoC process moves forward as expected and the association attracts significant industry participation, the Bureau of Diplomatic Security (DS) anticipates incorporating membership in the ICoC Association as a requirement in the bidding process for the successor contract to the Worldwide Protective Services (WPS) program. DS also anticipates that the successor contract to WPS will require demonstrated conformance with the ANSI/ASIS PSC.1-2012 standard (Underlining added by the author).<sup>32</sup>*

The State Department's communication indicates an ambiguity on behalf of the US government. Support of the ICoC is made contingent on “attracting significant industry participation” and that PMSCs bidding for US WPS programs would have to demonstrate conformance with the ANSI/ASIS PSC 1.-2012, which is the ISO quality standard described in the previous section of this paper.

Several of the 10 largest PMSCs have not signed the ICoC (see table 1) and many of the medium-sized PMSCs have not yet signed either. There seems to be a race between the two standards and the related certification, monitoring, and auditing mechanisms. It is not clear which standard will prevail.

According to Ambassador Valentin Zellweger, “a new impetus has been given to the MD process”.<sup>33</sup> Efforts in the coming years will focus on a new dimension, namely the implementation of the MD at the national level”. To that avail, at the last meeting of the signatories of the MD, a decision was taken by the members to have regular meetings called the “Montreux Document Forum” to continue working on the implementation of the Montreux Document and to share good practices and discuss challenges regarding the regulation of PMSCs.

Concerns have been raised about the implementation challenges of the MD by Buckland and Burdzy (2013). They observe that there is a lack of precision in the ways national laws address which functions PMSCs may or may not perform, with states adopting both prescriptive and permissive approaches to the determination of services. They also offer the following assessment:

32 U.S. Department of State. 2013. *State Department to Incorporate International Code of Conduct into Worldwide Protective Services Contracts*. Media Note from the Office of the Spokesperson, dated 16 August 2013. Retrieved from <<http://www.state.gov/r/pa/prs/ps/2013/08/213212.htm>> .

33 Author's personal communication with Ambassador Valentin Zellweger, Director, Department of International Law, Swiss Federal Department of Foreign Affairs.

*What is not always clear, however, is how applicable this legislation is to the activities of PMSCs based in one state but operating abroad, either in another state or in international waters as part of maritime security operations. States can address this challenge in two ways: by clarifying that domestic legislation is applicable abroad or by separately adopting specific legislation relating to the foreign activities of PMSCs.<sup>34</sup>*

They conclude with recommendations to support the implementation of the MD, namely conducting more outreach (dissemination) activities to inform states of the intentions of the MD, create more tools such as model laws and contract templates, to do capacity building through training, and to institutionalize the MD by creating a regular dialogue where MD participants can meet. The latter recommendation has been implemented with the creation of the Montreux Document Forum. Additional efforts are scheduled to be made to address the other sensible and timely recommendations.

The preface of the MD reflects the perspective of the ICRC. It is based on the following understanding:

1. *That certain well-established rules of international law apply to States in their relations with private military and security companies (PMSCs) and their operation during armed conflict, in particular under international humanitarian law and human rights law;*
2. *That this document recalls existing legal obligations of States and PMSCs and their personnel (Part One), and provides States with good practices to promote compliance with international humanitarian law and human rights law during armed conflict (Part Two).<sup>35</sup>*

In a private communication with the author, the ICRC further clarified that although PMSCs as legal entities are not bound by IHL (unless they are parties to an armed conflict), their employees must comply with applicable IHL in situations of armed conflict. In addition, states have an obligation to ensure respect for IHL.<sup>36</sup>

According to the ICRC, the Montreux Document thus does not claim to create stronger legal frameworks for PMSCs. It argues that international laws preventing human rights abuses by PSCs already exist and that all that is legally necessary is clarification. In theory, the authors of the Montreux Document would argue that if states, beginning with those that ratified the Document, actually followed the existing international laws that govern warfare (and then built their own national frameworks to support the international standard), PSCs would be regulated substantially better than they are now. Many actors representing the PMSC industry, nation states, and concerned academics largely support this view and hence consider that there is no legal vacuum internationally with regards to the use of PMSC services.

The legal situation is neatly reported in a summary of discussions that took place at Chatham House:

*One speaker asked what the position was in a situation of armed conflict. In reply it was noted that PMCs and their personnel were bound by international humanitarian law in the same way as regular military forces, civilians and NGOs etc. If personnel had been formally*

34 Buckland, Benjamin and Anne Marie Budza. 2013. *Progress and Opportunities, Five Years On: Challenges and Recommendations for Montreux Document Endorsing States*. Geneva: DCAF, p. 6.

35 Swiss Confederation and the ICRC. 2008. *The Montreux Document*. Retrieved from <[https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0996.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf)>. Preface, points 1 and 2, p. 9 >.

36 Comments made by the legal department of ICRC provided by the office of Peter Maurer, President of the ICRC, 3 December 2014.

*incorporated into the military/security forces of the hiring State, their position would be the same as the regular forces. If, on the other hand, they were not so incorporated and nevertheless played a direct part in combat, they would lose any civilian immunity from attack and could be prosecuted for their activities. If they were captured, they would not be entitled to POW status. It was generally agreed that there was no vacuum in international law. The problems were ones of enforcement of the law, control and accountability, and of establishing an effective chain of command.<sup>37</sup>*

The fact that a clarification of IHL and human rights law is needed through documents like the MD and ICoC suggests that a considerable number of states and non-state actors no longer are cognizant of their legal obligations, or worse, may be looking for ways to soften or altogether avoid responsibility and accountability of their behaviour before, during, and after situations of armed conflict.

The main issue that needs to be addressed appears to be the lack of adequate national laws and inadequate implementation of existing laws dealing with PMSCs. The two regulatory initiatives, one being a self-regulatory quality standard created by the PMSC industry, and the other being additional explanations of existing IHL and human rights law (the Montreux Document and the ICoC), both aim to affect national law-making and legal implementation. Simply reiterating that states have to comply with existing IHL and human rights law is insufficient to address the growing regulatory tension between, on the one side, the PMSC industry and the governments that draw on it the most (e.g. USA and UK) and, on the other side, the governments and civil society organizations who prefer to see more regulatory impact at a deeper, i.e. national, level.

Countries that make extensive use of PMSCs show ambiguity about which regulatory initiative they prefer to support (see US State Department's message cited above). The statement by Deborah Avant (2008), a scholar and expert on PMSCs, fits with this ambiguity when she states that the US Department of Defense spent a whopping USD 314 billion on PMSC services in 2007, and suggests that a distinction should be made between the "puppeteers" (US government) versus the "puppets" (PMSCs like Blackwater, now called Academi).<sup>38</sup>

Elke Krahmman (2013) addresses the question of whether the increased acceptance of PMSCs indicates a transformation of the international norm regarding state monopoly on the legitimate use of armed force. Her study considered four measures to be indicative of a possible norm change namely a) changes in state behaviour, b) state responses to norm violation, c) the promulgation of varying interpretation of the norm in national and international laws and regulations, and d) changes in norm discourse. Based on her empirical analysis from the USA and its allies, she concludes that

*... the USA is leading the way towards a transformation of the international norm of the state monopoly on violence, involving a revised meaning. Although this understanding has not yet been formally implemented in international laws, it has allowed a growing number of countries to tolerate, accept and legalize the use of armed force by PMSCs in the international arena.<sup>39</sup>*

37 Chatham House. 2005. *Private Military Companies: A Legal Vacuum?*, Summary of discussions at Chatham House on 16 March 2005. Retrieved from: <<http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/il160305.pdf>>, pp. 2-3 >.

38 Avant, Deborah. 2008. "The Real Blackwater Controversy", *The San Diego Union Tribune*. Published online, 20 June 2008. Retrieved from <[http://legacy.utsandiego.com/uniontrib/20080620/news\\_lz1e20avant.html](http://legacy.utsandiego.com/uniontrib/20080620/news_lz1e20avant.html)>.

39 Krahmman, Elke. 2013. "The United States, PMSCs and the State Monopoly on Violence: Leading the Way Towards Norm Change", *Security Dialogue*, Vol. 44 (1), pp. 53-71, at p. 53.

Faced with possible re-interpretation of international norms such as humanitarian and human rights law by leading PMSC users, host countries that allow foreign PMSCs to operate on their sovereign territory could show more “local ownership”. This could be done by demonstrating sovereignty through the use of SOFAs (Status of Forces Agreements) to take more regulatory and supervisory responsibility, rather than to let foreign governments import PMSCs freely and thereby protect their security personnel from local prosecution in case of violation of humanitarian and human rights law.<sup>40</sup>

In light of the blurring of regulatory boundaries, it is important to raise the question of whether international humanitarian law will prove sufficiently strong to overcome attempts to reinterpret the rules of war-making and international conduct by states that make extensive use of PMSCs. Also considering the increasing involvement of non-state actors in local, regional, and international conflicts – be they PMSCs or other forms of combatants – one cannot help wonder whether the world is returning to a state best described as a “pre-Westphalian peace”.<sup>41</sup> If this is the case, one must consider how international humanitarian and human rights law can be entirely safeguarded as a growing number of state actors continue to transform their regulatory regimes towards a “blurring of boundaries” of war-making and of norms regulating war and armed conflict.

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40 Mason, Chuck. 2012. *Status of Forces Agreement (SOFA): What Is It, and How Has It Been Utilized?* Washington: Congressional Research Service, Summary.

41 For an overview of the Westphalian peace and its impact on diplomacy and treaty making see Meerts, Paul. 2014. *Diplomatic Negotiation: Essence and Evolution*. The Hague: Clingendael Institute of International Relations, pp. 141-162.

# Recommendations

## **Include companies that produce lethal high-technology arms in the ICoC**

While the need to regulate PMSCs also plagues supranational and international policy-making, a pressing issue with the way domestic solutions to private military and security regulation are formulated is that they are normally a legislative reaction to a past crisis. Sarah Percy wrote in an article for the ICRC that “attempts to regulate the private military and security industry have been stymied by a tendency to be constantly ‘regulating the last war’ or responding to the challenges of a previous manifestation of private force rather than dealing with the current challenges”.<sup>42</sup>

The PSMC industry has started to use cyber-weaponry and artificial intelligence to replace the role of humans in combat. This would circumvent problems with casualties, expensive employee benefits such as pensions, and perhaps even legal liability since humans are no longer the perpetrators of violence. In Singer’s bestseller “Wired for War”, he describes the pressing likelihood of electronic bodies akin to robots replacing humans on the battlefield.<sup>43</sup> Highly esteemed British physician, Professor Stephen Hawking has also warned that the use of artificial intelligence may change the conduct of warfare and that a wealth of legal conflicts may ensue as a result.<sup>44</sup> Thus, it is important that current domestic solutions to the problem of PMSC regulation are forward thinking. This recommendation suggests broadening the PSC criteria in the ICoC to accommodate this particular advancement of war technology.

The main and most rectifiable problem with the acceptance criteria for the ICoC is that the PSCs must be using humans to carry out protective services. Companies such as Boeing have large defence units with the capacity to build machinery capable of unmanned combat. They are, however, not signatories to the ICoC and have every incentive not to identify themselves as PSCs at all.

Such large corporations that provide a range of services do not want to be associated with the PMSC industry, but prefer to be viewed as suppliers and thereby remain unaccountable for the way their products are used. Since the capabilities of such companies is quickly approaching the realm of artificial intelligence, this author recommends that the criteria for joining the ICoC should be extended to suppliers of security services that do and do not include humans, but which can autonomously cause death or injury.

While the discussions above focus on the Western war industry and PMSCs that use modern technology applied to warfare, we should not forget that China has a tremendously large army of IT specialists who work on behalf of the Chinese government for civilian and military goals, an observation that also goes for Russia and its often covert PMSCs.

42 Percy, Sarah. 2012. “Regulating the private security industry: a story of regulating the last war”, *International Review of the Red Cross*, Vol. 94 (887), pp. 941-960, at p. 941.

43 Singer, Peter Warren. 2009. *Wired for War: The Robotics Revolution and Conflict in the 21st Century*. New York: Penguin Books.

44 The Independent. 2014. *Stephen Hawking: ‘Transcendence looks at the implications of artificial intelligence – but are we taking AI seriously enough?’* Published online, 1 May 2014. Retrieved from <<http://www.independent.co.uk/news/science/stephen-hawking-transcendence-looks-at-the-implications-of-artificial-intelligence-but-are-we-taking-ai-seriously-enough-9313474.html>>.

## **Regular review of states' record of compliance with IHL and additional protocols**

Taking the review process of the Human Rights Council as an example, signatory states to IHL should be reviewed on a regular basis to bring their compliance to the fore. Such a review process should include a signatory state's use of its armed forces, and the behaviour of PMSCs domiciled within the state.

This should occur on a tri-annual basis and involve an independent investigation into the respect of the Geneva Conventions both by the state and by the PMSCs that it hosts. Relevant for the regulation of PMSCs, a response to this independent report must be submitted by the reviewed state before the report is published.

Similar to the Human Rights Council review, the signatory state that is being reviewed should discuss and comment on the independent report, followed by the possibility for other signatory states and NGOs accredited to ECOSOC to make comments and ask questions to the state. In order to give "teeth" to this soft law instrument, states that allow their nationals to work for PMSCs that are found to commit gross human rights abuses shall be brought to the International Criminal Court in The Hague.

Given that the ICRC is the body in charge of the application of the Geneva Convention, it should not be asked to organize these IHL reviews, but maintain its impartiality which is very much needed to get access to victims and detainees in all parts of the world.

Instead, one could imagine that a new organization be established under the guidance of the Swiss, Dutch, and Norwegian governments who represent cities of historical humanitarian significance as for instance the Geneva Conventions and Human Rights Council (Geneva), International Court of Justice (The Hague), and peace initiatives (Oslo).

## **Oversight of PMSC-initiated ISO standard by the Montreux Document Forum**

In light of the pace of the industry's self-regulation efforts through internationally recognized ISO standards, as well as the fact that the drafting of these standards was done by the two most prominent PMSC hosting countries (UK and USA), it would be globally useful to establish an impartial organization that keeps track of the implementation of these new quality standards that will be used when contracting PMSCs. In other words, there might be overlap or contradictions between the use of ISO quality standards and the implementation of the Montreux Document, especially since several of the largest PSCs have internal units that operate as PMCs.

Neither the Montreux Document nor the ICoCA have normative legitimacy or sanction power. The upcoming ISO 18788, formerly PC 284, only applies to PSCs and hence certification might not cover the PMC activities of PMSCs. ISO certification is vulnerable to corrupt business practice, hence certifications in a fragile developing country should not be expected to be at the same level of rigour as is the case for British or American ISO certifications.

The international validity of a national ISO certification is also ambiguous – e.g. does a UK ISO 18788 certification cover all activities at global level of a UK PMSC including non-equity business relations it might have with another company abroad? In view of some countries (including the UK and the USA) that already link PMSC contracts to certifications based on ANSI/ASIS standards, it can be expected that the future ISO 18788 standard will be used by the USA, the UK, Sweden, France and other countries as the basis for issuing contracts to PMSCs.

ISO certification organs are supervised by their respective national accreditation bodies. The practice of accreditation and its subsequent rigour varies greatly from one country to another. It would therefore be wise and expedient to give the ICoCA secretariat the mandate and task to verify ISO 18788 certification and business practices of certified PMSCs, both on a regular basis and through spot-checks, and thereby act as a validation agency.

ICoCA's verification of ISO 18788 certifications should be mandated by the Montreux Document and reports on the conformity of PMSCs, which should also be submitted to the Montreux Document Forum on an annual basis.

The above recommendations should not be seen as mutually exclusive, but rather as complementary and mutually reinforcing. There should not be a war of ideas and commercial interests when it comes to the regulation of PMSCs. Rather, there should be sufficient common sense to help the sprawling PMSC industry avoid practices that breach IHL and human rights law, that are harmful to humans, and that are non-congruent with long-term goals for social, economic or environmental sustainability.

## Conclusion

The private military and security industry is a booming sector of the global economy. This has led to a situation in which regulatory governance has become more complex, and in which the boundaries between international humanitarian law and human rights law have become blurred due to the lack of strong oversight at the horizontal (global) and vertical (national and subnational) levels.

Some PMSCs have expressed commitments to the implementation of IHL and international human rights by signing up to the ICoC and ICoCA. They have done so out of a concern that PMSCs willing to take high risks may become attracted to operating in unstable countries marked by a non-respect of the Geneva Conventions and international human rights, as such operations could endanger the reputation of the PMSC industry as a whole.

However, the question remains how to regulate PMSCs and ensure the continuous implementation of the regulatory framework while also securing that governments are monitored and held accountable to their duties as signatories of the Geneva Conventions, IHL, and human rights.

It is important that the type of regulation and regulatory mechanisms that are developed can grow dynamically with the expansion of the PMSC industry. These must allow for the emergence of clear regulatory hierarchies that span all signatory countries and include oversight of the industry's self-regulatory standards and practices.

It is also important to note that there is no single ideal regulatory avenue for policy-makers. While contemporary debates surrounding solutions to this problem are based on whether national or international law is the best method, this paper suggests that PMCs and their contracting parties are able to cherry-pick which guidelines and legislation to follow. Policy-makers should therefore embrace the added strengths of policing private military and security companies with a web of complementary instruments consisting of hard and soft law mechanisms.

Finding solutions that provide sufficient freedom of action for PMSCs and their clients would be welcome, as long as state and non-state actors involved in war making and security governance demonstrate respect and comply with IHL and human rights law.

## Annexes

**Table 1:**  
Ten largest known PMSCs and their corporate profiles

<i>Company</i>	<i>Year founded</i>	<i>Legal HQs</i>	<i>Commercial HQs<sup>a</sup></i>	<i>No. of employees</i>	<i>Date of information</i>	<i>Type of company/ Marketization (USD million)</i>	<i>Revenues (USD million)</i>	<i>ICoC Sign.</i>
Academi	2011 <sup>b</sup>	Mclean, VA, USA	Mclean, VA	10,000	2013	Private	13,500	2010
Aegis Def. Serv.	2002	London, UK	Basel, Switzerland	1,001-5,000	Unknown	Private	500-1000	2010
DynCorp. Int.	1946	Fairfax, VA, USA	Fairfax, VA	27,000	2011	Private	3,047	2010
G4S	1901	London, UK	Crawley, UK	620,000	2013	Public	6,325,000	2010
L-3 MPRI Inc.	1987	Alexandria, VA, USA	Alexandria, VA	40,000	Unknown	Private	500-1000	NA
Vinnell Corp.	1985	Fairfax, VA, USA	Fairfax, VA	1,000-5,000	Unknown	Private	50-100	NA
Booz Allen Ham.	1914	Mclean, VA, USA	Mclean, VA	25,000	Unknown	Public 3'540	5,758	NA
Garda World Sec. Corp.	1995	Montreal, Canada	Dubai, UAE	45,000	Unknown	Private	1,400	2010
Prosegur	1976	Madrid, Spain	Madrid, Spain	150,000<	Unknown	Public 3'100	5,031	NA
Kellogg, Brown & Root (KBR Inc.)	1988	Houston, TX, USA	Houston, TX	14,000-27,000	2011	Public 3'506	7,420	NA

<sup>a</sup> 4 out of 10 have commercial HQs that are different from their legal HQs

<sup>b</sup> Originally founded in 1997 as Blackwater.

*Key: Private = privately held company; Public = publically held company*

**Table 3:**  
Mapping the ten largest known PMSCs by services offered

<i>Company (N=10)</i>	<i>Categories/Segments of Services</i>						
<i>PMSC</i>	<i>Advising/ Consulting</i>	<i>Armed Protection</i>	<i>Technical Support</i>	<i>Military Training</i>	<i>Surveillance Intelligence</i>	<i>Cyber Security</i>	<i>Logistical Support</i>
Academi	1	1	1	0	1	0	1
Aegis Def. Services	1	1	0	1	0	1	1
Dyn Corp. Int.	1	1	1	1	0	0	1
G4S	1	1	1	1	0	0	1
L-3 MPRI Inc.	1	1	0	1	0	1	1
Vinnell Corp.	1	1	1	1	0	0	1
Booz Allan Hamilton	1	0	1	0	1	1	1
Garda World Security Co.	1	1	1	1	1	0	1
Prosegur	0	1	0	0	0	0	1
Kellogg, Brown & Root (KBR Inc.)	1	1	1	0	1	0	1
<b>Number of companies engaged in the service segment (N=10)</b>	<b>9</b>	<b>9</b>	<b>7</b>	<b>6</b>	<b>4</b>	<b>3</b>	<b>10</b>

**Table 2:**

Ten largest known PMSCs, countries of operation, and past clients

<i>Company</i>	<i>Countries of operations</i>	<i>Past clients</i>
Academi	Mexico, Afghanistan, Israel, South Africa, Brazil, Tanzania, Kenya, Puerto Rico, Germany, Somalia, Azerbaijan, Jordan, India, Russia, West & North Africa.	Include US Navy, the Walt Disney Company, Chevron, Royal Caribbean Cruise Lines, US Pentagon, State Department and Intelligence Agencies, Monsanto, Deutsche Bank, and Barclays.
Aegis Def. Serv.	New York (USA), Maputo (Mozambique), Tripoli (Libya), Baghdad (Iraq), Riyadh (Saudi Arabia), Basra (Iraq), Kabul (Afghanistan), Nigeria, London (UK).	Include Italian Foreign Ministry, UN Agencies, London Organising Committee of the Olympic and Paralympic Games, diplomats in Northern Europe and North Africa, oil/gas client in Iraq, Nigeria and East Africa, international advisory firm in Yemen, US Department of Defense, and marine salvage firm in the Northern Arabian Gulf.
DynCorp. Int.	US and 39 other countries including Iraq, Afghanistan, Arab Gulf countries, Bolivia, Bosnia, Somalia, Angola, Haiti, Colombia and Kosovo.	Include US government departments, FBI, CIA, UNCIVPOL, UN Peacekeeping Missions, and the African Union.
G4S	Over 120 countries in six continents. Has a higher presence in high-growth developing markets.	Include Ernst & Young, Exxon Mobil, Honeywell, IBM, Intell, and the London Organizing Committee of the Olympic Games.
L-3 MPRI Inc.	80 Countries in six continents, including Equatorial Guinea and Kuwait.	While specific clients cannot be verified, evidence suggests that past clients have included commercial businesses, law enforcement agencies, and government and military bodies such as the US Army and various US federal departments.
Vinnell Corp.	Mainly Saudi Arabia and other Middle Eastern states, but has also operated in Vietnam, Iraq and Pakistan.	While specific clients cannot be verified, evidence suggests that past clients have included commercial businesses, law enforcement agencies, as well as government and military bodies such as the US Army and Saudi Arabian National Guard.
Booz Allen Ham.	69 locations across six continents including the UAE and other states in the Middle East and North Africa.	Include US civilian government agencies, commercial organizations, defence and intelligence organizations, international organizations, and non-profit organizations.
Garda World Sec. Corp.	Afghanistan, Argentina, Columbia, Haiti, Iraq, Libya, Mexico, Nigeria, Pakistan, Somalia and Yemen.	Include companies and organizations in the oil and gas, diplomatic, and infrastructure sectors.
Prosegur	17 countries in Europe, Latin America, Asia and Australia.	Include industrial, residential, and commercial companies.
Kellogg, Brown & Root (KBR Inc.)	Over six continents including in Kosovo, Afghanistan, Iraq and Cuba.	Include US military and government agencies, as well as companies in the energy, petrochemicals, and industrial and civil infrastructure sectors.

## **About the Centre on Conflict, Development and Peacebuilding (CCDP)**

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