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Commercial Security in Humanitarian and Post-Conflict Settings: An Exploratory Study

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About the Programs

IPA's State-building Program examines the legitimacy and effectiveness of international attempts to institutionalize states after conflict. IPA's Security-Development Nexus Program aims to contribute to a better understanding of the linkages between the various dimensions of violent conflicts in the contemporary era and the need for multidimensional strategies in conflict management. Research for both programs draws upon expertise from academics and policymakers, and has been conducted in close collaboration with the UN, IFIs, and bilateral donors.

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Executive Summary

About the study. Commercial security is increasingly present in humanitarian and post-conflict settings. The UN has even considered using commercial security to solve peacekeeping shortfalls. Yet using commercial security in these settings raises difficult ethical, operational and strategic questions. This exploratory study begins to describe the decentralized, ad hoc use of commercial security in these settings, in an attempt to provoke the further research and discussion needed before these questions can be adequately answered.

Senior managers of organizations operating in humanitarian and post-conflict settings currently lack understanding of the legal, reputational, operational and strategic risks associated with using commercial security. Analysis of these risks has been hindered by user embarrassment and sensitivity to negative publicity, concerns over proprietary information, users' preference for focusing attention on state incapacity rather than private capacity, and users' reticence to comment on peer groups.

The study involved forty-four interviews with senior officials, describing their organizations' relations with commercial security providers. It deals with a wide variety of users and providers, while highlighting common themes and previously obscured fault lines.

Who provides commercial security services and what are those services? There are three types of commercial security providers operating in humanitarian and post-conflict settings: international private security companies; local, informal security services; and moonlighting state security forces. The key role of commercial security is in guarding residential and office compounds and property. Commercial security providers also operate as mobile escorts, which gives them great power over users. Where that power amounts to a temporary monopoly on violence, mobile escorts can produce protection rackets. Despite industry lobbying, commercial security is rarely engaged to provide protection to third parties. One recent example, however, involved the United Nations Interim Administration Mission in Kosovo's (UNMIK)

approval of the use of private security companies to protect minority property in Kosovo. Another example is UNHCR's (the UN High Commission for Refugees) funding of refugee camp security mechanisms. Weak controls in the Goma camps may have led to significant declines in public security. But in other cases, UNHCR's experiences demonstrate how commercial security providers can foster local public security and accountable governmental authority.

International private security companies are increasingly branching out into security system support services. The North Atlantic Treaty Organisation (NATO), the United Nations (UN) and other multilateral groups have paid non-state groups for military capacity and protection in Kosovo, Afghanistan and Iraq, but only exceptionally. There is no immediate prospect of systematic use of commercial troops on the frontlines in UN-led peace operations, but there is a significant chance of increased use of private security companies for installation guarding, logistics, evacuation support, and security sector reform (SSR) work – that is, as second-rank security personnel in UN peace operations.

Why use commercial providers? Users turn to commercial security because it is seen as more efficient and responsive, and when states provide no acceptable alternative security sources.

How are providers selected? Providers are chosen through highly decentralized processes that rely on poor market information and weak sanctions and make little reference to broader social impacts. Local administrators' decisions, rather than centralized policy or procedures, determine outcomes. Arrangements for hiring a commercial security provider are very ad hoc. Choices are made on technical grounds, with little sharing of information between users about providers' performance histories, affiliations or potential for negative impacts on human rights or local public security. Many users rely on local authorities to vet providers, despite their manifest incapacity to conduct effective, impartial assessments. Hiring policies generally do not refer to international standards or broader social impacts. Users do not consider potential reputational costs from provider misconduct in other theaters.

What controls are in place? There is great variation in operational standards, depending on local conditions. References to international standards are rare and vague. Security providers use arms to create a credible deterrent threat. This can risk creating a localized arms race. Users rely on informal mechanisms to discipline providers and their staff. Where there is no credible alternative provider, price gouging and protection rackets often result. This is a sellers' market: supply is scarce and contracts are hard to enforce. Yet users do not take the measures within their reach to discipline providers, such as requiring them to submit to foreign law or enforcement mechanisms. On the contrary, centralization of administrative policies and processes is seen as micro-management. The result is significant lack of control, increasing risk for users.

Reduced control means increased risk. Reliance on commercial security reduces administrative costs because it reduces administrative control. Users of commercial security risk association with parties to an armed conflict. Given the global nature of many private security companies, it is difficult for users to accurately determine the affiliations of providers. This brings risks for humanitarian staff, aid recipients and the humanitarian system, as well as the risk of negative publicity and lost funding for users themselves as a result of providers' actions while in another's employ.

Competition and convergence. Additionally, security providers and some users will increasingly compete for security staff. But competition will be limited by different "security cultures" in the military and humanitarian sectors, until providers invest in the learning needed to develop products more attractive to the humanitarian sector. Competition will be greatest where there is greatest overlap in security models, for example in the provision of theater and regional security analysis. Competition is also producing a variety of not-for-profit security service organizations. However, competition will also lead to convergence, which risks the commercialization of the humanitarian space. Once commercialized, the humanitarian space may be politicized, nationalized and weaponized, profoundly complicating civil-military relations.

Impact on state-building and peace-building. Using commercial security to protect against "crime" can fan

"conflict" or even contribute to a crime-conflict complex. Foreign guards offer reduced risk of fanning local conflicts – but also reduced prospects of acceptance-based security. Poorly managed use of local providers can reinforce the economic, social, military and political power of specific groups at the expense of the local public. If users seek to avoid this by working directly with "public" security providers, as UNHCR does in refugee security, they risk become unwitting participants in peacebuilding and state-building. Many users are currently unaware of and unable to control their impact on state-building. For example, in Afghanistan, reliance on local warlords and militias for security for foreign personnel has helped empower them at the expense of the central government.

What can users do? Users of commercial security in humanitarian and post-conflict settings need a better understanding of the cumulative impact of that use. Headquarters usually have little control over which providers their organizations become associated with. Users lack market information and information on the social impacts of different providers. Users should develop policies within their own organizations ensuring they do not hire human rights abusers or terrorist, organized crime or other groups with negative social impacts. Users could also develop policies favoring commercial security providers that are accountable to local communities or foreign regulators, and that foster public security, for example by favoring non-predatory providers or those who include capacity-building components in their service packages. Users should improve controls on providers by: incorporating international standards into their contracts and administrative arrangements; establishing internal and external mechanisms for monitoring and reporting on providers' performance; coordinating payment policies; preferring providers susceptible to effective regulation; requiring disclosure of provider affiliations; and working to create industry frameworks. Experiences in the business community, such as with the US-UK Voluntary Principles, may prove a useful starting point.

Alternative solutions. Until users act collectively, this will be a sellers' market. In particular, users must improve their sharing of information. Creative thinking on alternative "public" security solutions, such as

funding for training in acceptance-based security, is also needed.

The path ahead for the UN. Commercial security is not going away – in fact, the UN’s interactions with commercial security providers will increase. The UN risks negative publicity, legal liability and strategic incoherence because it lacks clear policies and procedures for dealing with commercial security providers. The UN should develop standardized procurement policies and procedure for hiring commercial security providers, holding providers liable for unlawful activity. The matter requires addressing by the UN Department of Safety and Security (UNDSS), the Executive Committee on Humanitarian Affairs (ECHA), the UN Development Group (UNDG) and the Inter-Agency Standing Committee (IASC), as well as OCHA, the Office for the Coordination of Humanitarian Affairs, (in relation to civil-military relations) and the

Department of Peacekeeping Operations (Integrated Mission Planning Process, IMPP). UNDSS should consider centralizing information about commercial security providers it deals with. UN member states should also work with the International Committee of the Red Cross (ICRC) to make its “triangular strategy” effective.

The key role of donors. Donors are uniquely positioned to influence security decisions, monitor performance and discipline providers. Existing mechanisms may already provide the basis for such action by donors, for example through the ECHO Framework Partnership Agreement. Longer-term donor-driven solutions may include: donor-maintained registers of commercial security providers and their performance; baseline security standards; and rewarding socially responsible security providers through preferential treatment.

Introduction

The presence of between 15,000 and 30,000 security contractors in post-war Iraq¹ has drawn attention to the increasing presence of commercial security providers in humanitarian and post-conflict settings. Anecdotal reports of this increased presence have been surfacing for some time. In West Africa, private contractors have been intimately involved in recent United Nations (UN), ECOMOG (Economic Community of West African States Monitoring Group), United Kingdom (UK), United States (US) and French military interventions.² In the Balkans, multilaterally mandated civilian policing, protection and border monitoring roles have on occasion been outsourced to private security companies.³ And worldwide, UN and non-governmental organization (NGO) staff rely with increasing frequency on private security guards to protect them and their property, whether at home, at the office or in the field.⁴

Senior UN officials have countenanced turning to the market to solve peacekeeping shortfalls on more than one occasion,⁵ and (as this study explores) use commercial security in second-rank roles in current peace operations. The private military industry continues to

lobby for a larger role in UN peace operations.⁶

The use of commercial security in humanitarian and post-conflict situations raises difficult ethical, operational and strategic questions: is it appropriate to purchase such services? When is the purchase of such services efficient, and what risks are involved? What effects does the use of commercial security have on the “humanitarian space” and on local security, political, social and economic developments? Can the use of commercial security in humanitarian and post-conflict settings assist – or impede – state-building?

These questions have been raised on numerous occasions since the end of the Cold War, without any comprehensive resolution. In the early 1990s, the highly respected UN official and peacekeeping policy-maker Sir Brian Urquhart suggested that shortfalls in peacekeeping troops could be made up through a standing volunteer UN force;⁷ more recently, private security companies have proposed ad hoc contracts with the UN to deal with specific threats to international peace and security.⁸ Kofi Annan famously countenanced hiring such an arrangement to secure the refugee camps in eastern Zaire following the Rwandan genocide in the mid-1990s.⁹ Less famously,

¹ Michael Duffy, “When Private Armies Take to the Front Lines,” *Time* 32 (Apr. 12, 2004); Peter W. Singer, *Outsourcing War*, available at <http://www.Salon.com> (posted April 16, 2004).

² Michael Ashworth, “Privatising War, by the Executives,” *The Independent* 1 (Sept. 16, 1996); Damian Lilly, “The Privatization of Peacekeeping: Prospects and Realities,” in *Disarmament Forum, United Nations Institute for Disarmament Research*, No. 3 (2000), p. 4; UK Foreign and Commonwealth Office, *HC 577 Private Military Companies: Options for Regulation 2001-02* (London: The Stationery Office, 2002) (“UK Green Paper”), available at <http://www.fco.gov.uk/Files/kfile/mercenaries,0.pdf>, p.19, para. 57.

³ Johnathan Steele, “Private Military to Monitor Pullout,” in *The Guardian* (UK) 1 (Nov. 2, 1998); Bradley Graham, “U.S. Firm Exports Military Expertise,” *The Washington Post*, Aug. 11, 1995, A1; Bureau for International Narcotics and Law Enforcement Affairs, *The United States and International Civilian Policing (CIVPOL)*, Washington, D.C., September 20, 2002, available at <http://www.state.gov/g/inl/rls/fs/13592.htm>. Also, author interviews, January 2006.

⁴ Paul Kirk and Ivor Powell, “Private SA force for East Timor conflict,” *The Mail & Guardian*, October 19, 1999; Christopher Sperin, “Private Security Companies: A Corporate Solution to Securing Humanitarian Spaces,” in 8(1) *International Peacekeeping* (Spring 2001), pp.20-43.

⁵ Brian Urquhart, “For a U.N. Volunteer Military Force,” *New York Review of Books*, June 10, 1993, pp. 3-4; Kofi Annan, “Transcript of Press Conference by Secretary-General Kofi Annan at United Nations Headquarters on 12 June 1997,” UN Doc. SG/SM/6255. See also “Speech given by the Secretary-General at Ditchley Park,” United Kingdom, 26 June 1998, UN Doc. SG/SM/6613; UNHCR Executive Committee, “Operationalizing the ‘Ladder of Options’,” UN Doc. EC/50/SC/INF.4, 27 June 2000; and see “Exploring the Role of the Military in Refugee Camp Security: International Seminar - Summary Report,” Eynsham Hall, UK, July 10-12, 2001.

⁶ Doug Brooks, “Help for Beleguered Peacekeepers,” *The Washington Post*, June 2, 2003, A17.

⁷ Urquhart, “For a U.N. Volunteer Military Force,” pp. 3-4.

⁸ Brooks, “Help for Beleguered Peacekeepers.”

⁹ Annan, “Transcript of Press Conference by Secretary-General Kofi Annan at United Nations Headquarters on 12 June 1997.” See also “Speech given by the Secretary-General at Ditchley Park.”

the UN High Commission for Refugees (UNHCR) *did* hire foreign military advisors – and paid elements of the Zairian armed forces – to do that work. Subsequently, UNHCR – and UN member states – have repeatedly discussed hiring private security companies for such refugee security work in the future.¹⁰

While the prospect of the UN hiring private security companies as peacekeepers has continued to attract excited media and academic speculation,¹¹ the more banal – but no less significant – developments on the ground have gone largely unnoticed. This exploratory study begins to expose those developments by focusing on the practice of users of commercial security in the humanitarian space and in the immediate aftermath of conflict. By taking a deliberately – and perhaps provocatively – broad approach to the concept of “commercial security” and its use in humanitarian and post-conflict settings, the study seeks to reveal hitherto obscured trends, expose previously overlooked fault lines and provoke further research and discussion on these issues in the humanitarian assistance and peace operations communities writ large.

In particular, the study describes the highly decentralized, ad hoc manner in which the UN and other organizations operating in the humanitarian space or the immediate post-conflict environment engage with commercial security providers. As this exploratory study demonstrates, military and humanitarian actors operating in the humanitarian space increasingly turn to commercial groups to provide protective security services – whether foreign private security companies, local militias formed into informal commercial service providers or governmental elements running a sideline business. Yet we know little about how actors in the humanitarian space deal with such commercial security providers: how do they select which groups to work with? How are these deals arranged, structured and enforced? What happens when a provider does not perform its side of the bargain? What effects does the

use of commercial security have on the “humanitarian space” and on local security, political, social and economic developments? Can the use of commercial security in the humanitarian space assist – or impede – state-building?

The study draws a number of tentative but surprising conclusions, including – centrally – that engagements between commercial security providers and their users in humanitarian and post-conflict setting often occur with little involvement – let alone guidance – from assistance organizations’ headquarters, yet carry significant legal, reputational, operational and strategic risks for those organizations. This management gap should prompt senior managers and policymakers to devote greater resources to investigating the relations between commercial security providers and their own organizations, as well as their peers, with a view to learning how better to manage those relations, developing best practice and policy. The ball is in their court.

About this exploratory study

This study is a first, tentative step in attempting to answer these questions, with a view to developing best practice for users of commercial security in the humanitarian space and post-conflict settings. It does not pretend to cover all bases, or even provide a comprehensive survey of existing actors involved in this issue: it aims simply to provoke further research and discussion in the UN and beyond.

The need for an improved understanding of relations between users of commercial security and providers has been on humanitarians’ agenda for some time, yet little progress has been made since 2001, when the NGO International Alert called for discussion of the relations between humanitarian actors and private security companies to move beyond “theoretical terms” to evidence-based analysis.¹² The lack of discussion seems to result from a combination of factors:

¹⁰ UNHCR Executive Committee, “Security and the Civilian and Humanitarian Character of Refugee Camps and Settlements,” UN Doc. EC/49/SC/INF.2, 14 January 1999; UNHCR Policy Research Unit, *Ensuring the Civilian and Neutral Character of Refugee-Populated Areas: A Ladder of Options*, July 1998; and see UNHCR Executive Committee, “Operationalizing the ‘Ladder of Options’”; and see “Exploring the Role of the Military in Refugee Camp Security: International Seminar - Summary Report.”

¹¹ See, for example, Stephen Fidler, “UN: Proposal for Private Soldiers Gathers Steam,” *Financial Times* (UK), Nov. 5, 2003; Thalif Deen, “UN Rejects Private Peacekeepers,” *Inter Press News*, Aug. 27, 2004.

¹² Tony Vaux, Chris Seiple, Greg Nakano and Koenraad Van Brabant, *Humanitarian action and private security companies: opening*

- “embarrassment” among users because of the “tension between the moral or ethical high ground that they want to take... and the ethical deviations that some of these security needs require,”¹³ which even produce “feelings of horror and outrage of having to work with...private security service providers”;
- attendant “sensitivity” to the bad publicity for users that might result from them openly discussing their use of commercial providers;¹⁴
- concern about the proprietary nature of contractual information;
- a preference for focusing attention on state failures to provide security for humanitarian staff, rather than commercial solutions; and
- a consensus that security is “a prerogative of the particular agency,” not properly a matter for other organizations to comment upon.

This study attempts to move these policy discussions forward by taking some first, tentative and very limited steps towards evidence-based analysis. The study provides a description of how these commercial security providers are used in a variety of humanitarian and post-conflict settings, by both UN and non-UN users. It begins by explaining *why* users in those settings are increasingly turning to commercial security solutions. Next, it discusses *how* these commercial providers are used, looking at the roles these providers play, and how users control them. With this improved understanding of actual practice, the

study moves on to highlight a range of practical and theoretical implications, including potential impacts on the humanitarian space and questions for state-building. In a final section, the study points to specific issues that arise for different parts of the UN system and for other actors in humanitarian and post-conflict settings, including the International Committee of the Red Cross (ICRC) and donors.

Methodology

The study involved forty-four formal, semi-structured interviews with legal, policy, security and procurement officials from groups within the UN and beyond that provide military and humanitarian assistance in the humanitarian space and post-conflict settings, as well as dozens of additional informal discussions.¹⁵ These officials described their organizations’ relations with groups providing protective security services on a commercial basis in the humanitarian space or immediate post-conflict environment. The results provide anecdotal rather than statistical evidence of the nature of these relations, but because of the breadth and depth of the interviews, the resulting analysis significantly advances our understanding of the phenomenon of commercial security in humanitarian and post-conflict settings and its potential impacts.

Four aspects of the study’s research methodology require explanation, all relating to the specifically *exploratory*, rather than definitive, nature of this study.

the debate (London: International Alert, 2001), p. 9. See also Angela Raven-Roberts and Damian Lilly, *The Politicisation of Humanitarian Action and Staff Security: The Use of Private Security Companies by Humanitarian Agencies*, International Workshop Report, Tufts University, Boston, Massachusetts, 23-24 April 2001 (International Alert and Feinstein International Famine Center, 2001), available at <http://www.international-alert.org/pdf/pubsec/Tuftrep.pdf> /; and see European Commission Humanitarian Office (ECHO), *Report on Security of Humanitarian Personnel. Standards and Practices for the Security of Humanitarian Personnel and Advocacy for Humanitarian Space* (Brussels: ECHO, 2004) (hereafter “2004 ECHO Security Report”), pp. 60-61.

¹³ For a list of interviews, see Annex 1.

¹⁴ See Vaux et al., *Humanitarian action and private security companies*.

¹⁵ Interviews were held with officials from the following organizations: Canadem, European Commission Humanitarian Office, International Committee of the Red Cross, International Federation of Red Cross and Red Crescent Societies, InterAction, International Council of Volunteer Agencies (ICVA), International Organisation for Migration, Mercy Corps, Médecins Sans Frontières, North Atlantic Treaty Organisation, Organization for Security and Cooperation in Europe, Oxfam (UK), Save the Children UK, Save the Children US, UN Development Programme, UN Department of Political Affairs, UN Department of Peacekeeping Operations, UN Department of Safety and Security, UN Global Compact Office, UN High Commission for Refugees, UN Office for the Coordination of Humanitarian Assistance, UN Office of the High Commissioner for Human Rights, and UN Procurement Service. In addition, consultations occurred with the Center for Humanitarian Dialogue, Geneva Center for the Democratic Control of Armed Forces (DCAF), Foreign Affairs Canada, Graduate Institute of International Studies (Geneva), International Alert, International Peace Academy and the Swiss Foreign Ministry.

First, the study takes a deliberately broad and provocative approach to users of commercial security, treating together a wide variety of actual and potential users of commercial security, despite their very different mandates: peacekeepers, NGO humanitarian assistance providers, and even intergovernmental organizations present in post-conflict settings but lacking either a specific peacekeeping or a specific relief mandate (such as the North Atlantic Treaty Organisation, NATO, and the Organization for Security and Co-operation in Europe, OSCE). The danger with such a broad approach is in failing to recognize the significant effect that these different mandates may have on these organizations' dealings with security providers. Taking that risk is, however, justified by the almost *total* lack of data available about the daily, operational dealings of *any* of these users of commercial security in humanitarian and post-conflict settings. Treating these users together helps to draw out what data *is* available, providing a platform for future research and discussion, including by the various users themselves, which will allow further specification of how usage patterns vary across users, threat environments and regions.

Second, the research methodology takes a similar approach to the *providers* of commercial security in very different humanitarian and post-conflict settings. The Tanzanian government police that provide refugee camp security in that country for victims of conflicts in the Great Lakes region, the multi-clan escorts pulled together by the International Committee of the Red Cross in Somalia, and the private security company Control Risks Group (which has provided close protection to UN officials in Iraq¹⁶) are, undoubtedly, extremely different organizations. But again, the approach adopted here is to focus not on their differences but what is common: that in certain situations, all of them have provided protective security services in return for remuneration from groups providing assistance in humanitarian and post-conflict settings. This methodology highlights what these groups have in common, rather than what differentiates them, the

better to illuminate underlying trends in the way commercial security services are used and develop. Again, the aim is simply to get the ball rolling: further research and analytic differentiation of providers will be needed, perhaps building on the trends tentatively identified in this exploratory study.

Third, this study focuses on the perspective of users, deliberately excluding provider perspectives, for two reasons. First, those perspectives have to some extent already been made known through literature produced by providers and prior research¹⁷ – what has to this point *not* been presented in any consolidated form are the users' perspectives. Second, the primary purpose of this study is *descriptive* – to tap and map the actual practice of users of commercial security in humanitarian and post-conflict settings. While the views of providers are important in the longer-term, normative discussion of the issues raised here, it is not essential that they be canvassed in this particular, exploratory study. Moreover, many providers will be unwilling to discuss their relations with users without users' permission, so it makes sense to advance the research agenda by first testing how much those users themselves are prepared to divulge.

Finally, it is also important to note that many – though not all – of the central concerns raised in this study about the risks and potentially negative impacts of using commercial security providers in humanitarian and post-conflict settings also arise where public, state-based apparatus provide security. The aim of this study is not to compare commercial and state-provided solutions, or even to assess the relative merits of the use of either form of security in any given context; in many humanitarian and post-conflict settings, such comparisons are simply moot, because commercial solutions are the only option (apart from external intergovernmental intervention), given the absence of effective state solutions. Moreover, while state-based security solutions are problematic, the legal and bureaucratic mechanisms for disciplining them are well understood, even if not always well applied; the same

¹⁶ This protection was apparently arranged by member states, rather than a UN agency.

¹⁷ See, for example, Lt-Col. Tim Spicer OBE, *An Unorthodox Soldier: Peace and War and the Sandline Affair* 233 (1999); Christopher Spearin, "Humanitarians and Mercenaries: Partners in Security Governance?," in Elke Krahnemann, ed., *New Threats and New Actors in International Security* (Houndmills, UK, and New York, US: Palgrave, 2005).

cannot be said of market-based security solutions, creating a need for studies such as this.

The methodology chosen for this study makes a brief introduction to the diverse range of “commercial security providers” addressed in this study difficult. It is, however, worth providing a very brief sketch of the three types of provider covered. Interview subjects primarily discussed relations with two types of commercial security providers: international private security companies such as Control Risks Group, ArmorGroup, DynCorp and AEGIS, which have proliferated in the last fifteen years and tend to provide highly professionalized military and security personnel, training, advice and logistics, largely relying on management personnel from developed countries; and local security providers, often drawn from local social networks or former military or police outfits, and often with no formal, legal corporate structure, that provide guarding and escort services with an emphasis on a high-volume, low-skill labor force drawn from the local community or other developing countries. A third group that arose with unexpected frequency during interviews as providers of “commercial” services was formal governmental agencies (including military elements, paramilitaries and police) “hired out” to users in the humanitarian space or post-conflict settings.

The Turn to Commercial Security in Humanitarian and Post-Conflict Settings

The use of commercial security in humanitarian and post-conflict settings is more widespread than is often acknowledged. As one official in the UN Office for the Coordination of Humanitarian Affairs (OCHA) put it, “where before the only people you’d expect to see

occasionally with an armed guard were a high level UN official guarded by the government or UN armed guards, or indeed the occasional journalist wandering around with some thug, nowadays you’ve got a lot of local aid workers walking around with armed individuals taking care of their security and safety.”

Assistance providers in humanitarian and post-conflict settings rely increasingly on market solutions for a wide range of assistance needs.¹⁸ This extends to their security needs,¹⁹ because market-based solutions are seen as more flexible and efficient, and are considered to reduce exposure to liability. As one senior UNHCR official expressed, “[i]f you can find a qualified contractor that really does save you a lot of time and effort... Plus then they don’t become UN employees which has other costs down the line...”

Local market solutions are seen as more flexible, situationally-aware and responsive to the changing needs of groups in humanitarian and post-conflict settings. The alternative – using an organization’s own employees to provide security – is seen as cumbersome and inefficient. Turning to the market is seen as reducing: administration, training and insurance costs; the replacement costs from staff turn-over and relocation; and opportunity costs (because staff that would otherwise be tied down are freed up). Hiring contractors is seen as a way of reducing organizational exposure to liability for harm to staff and third parties, because of contractual arrangements that shift the risk to the security provider.

At the same time, many users stressed that it is necessary to turn to the market only because of the absence of acceptable state-based solutions. This is at least in part because providers of humanitarian assistance are often unwilling to receive protection from state military and security forces, in order to protect their neutrality and impartiality in the humani-

¹⁸ See Ian Smillie, *Relief and Development: The Search for Synergy* (Providence, R.I.: War and Humanitarianism Project, Brown University, 1998), pp. 35-51; and see Ruben Berrios, *Contracting for Development: The Role of For-Profit Contractors in U.S. Foreign Development Assistance* (Westport, Conn.: Praeger, 2000), pp. 25-34.

¹⁹ See Michael Bryans, Bruce D. Jones and Janice Gross Stein, *Mean Times: Humanitarian Action in Complex Political Emergencies – Stark Choices, Cruel Dilemmas: Report of the NGOs in Complex Emergencies Project* (Toronto: Program on Conflict Management and Negotiation, Center for International Studies, University of Toronto, 1999), p. 2, for an early suggestion that humanitarian NGOs look to market-based security solutions.

tarian space. Still, as I discuss later, turning to commercial security may create its own problems for perceptions of neutrality and impartiality, blurring the boundaries of the “humanitarian space.”

Roles

Guards

The key role of commercial security in humanitarian and post-conflict settings is that played by local, often informal guard forces, guarding residential and office compounds and property. It is a widespread (though not universal) practice, arranged locally. The decision to hire these forces is highly decentralized, making the extent of this practice difficult to ascertain: in many cases organizations surveyed could not indicate definitively whether their field operations used local commercial security providers to provide static security.²⁰ The pattern of administrative decentralization is common across UN and non-UN actors. In the UN, arrangements for providing local guarding services vary from outsourcing to local commercial groups, to Department of Peacekeeping Operations (DPKO) management of local staff stood up as an in-house force (as in Kosovo), through to DPKO or other UN staff playing this role themselves.

The services provided by commercial groups operating in this role are best understood through the French term “*companies de gardiennage*.” They offer control of access to offices and compounds, control identification of incoming visitors and personnel, mediate communication with the world outside the organization’s compound, and offer a light physical presence as a deterrent. Exactly how light – in particular, whether they are armed, and with what weaponry – appears, however, to depend more on custom and peer practice in a given field context than positive policy decisions at headquarters, as I explore at more length below.

Mobile escorts

Commercial security providers are used for escorting staff and property convoys more exceptionally than for static guarding purposes, but the practice is nevertheless widespread. Its extent is emphasized by the use of escorts even by the ICRC (in Somalia and the Northern Caucasus) and Médecins sans Frontières (in Somalia and Pakistan), despite both organizations’ strong general rule against the use of armed guards. In Somalia, the ICRC, starting in 1992, “built a small army out of a patchwork” of different clansmen, in an effort to ensure humanitarian access for aid convoys. This approach, which the ICRC “pioneered” was later adopted by other humanitarian (and other) groups in Somalia, helping to make commercial security a central element of the local economy.²¹ In the northern Caucasus, security is provided to numerous aid organizations by police and troops of the Ministry of the Interior of the various Russian republics, through formalized memoranda of understanding. Standard terms reportedly include the aid organizations paying a supplement to troop salaries, often amounting to roughly 100% of their salaries.

Mobile escorts have great power over their clients because alternative sources of security are not close to hand. Consequently, it is not uncommon for escorts to abandon convoys halfway through their duties, demand double payment, or seek to extract other kinds of monopoly rent. In many cases, escorts amount to little more than a protection racket.²² Interviewees suggested that such rackets are most likely to develop where a particular provider can assert an effective monopoly on violence in a specific area, even temporarily. That, in turn, seems more likely to occur where escorts are drawn from local communities, rather than foreign companies. State institutions – which come equipped with the power and authority to exert a monopoly on violence – sometimes structure

²⁰ In two cases, claims by headquarters staff that their organization, or a specific delegation, did not use commercial guards were contradicted by local staff.

²¹ See, generally, Sabrina Grosse-Kettler, *External actors in stateless Somalia: a war economy and its promoters* (Bonn International Center for Conversion, 2004).

²² See 2004 ECHO Security Report, pp. 59-60.

their relations with external actors in humanitarian and post-conflict settings in this way. Examples of escorts generating protection rackets include the protection arrangements in Somalia, northern Caucasus and northwestern Pakistan. Groups running such a business typically operate covertly, but may use more formal arrangements (such as static guarding services or state institutions) as a front.

Third-party security

To date, there are very few cases of formalized private security companies being contracted by the UN or other groups to provide protection to specific third-party, vulnerable populations, although some industry actors continue to lobby for such contracts.²³ However, on rare occasions, governmental and local groups have been remunerated to provide such protection, on a quasi-commercial basis. Those rare occasions provide significant insights into the way that the management of commercial security arrangements may affect local security, and even economic, social and political dynamics.

One recent example involved the hiring of private security companies by the United Nations Interim Administration Mission in Kosovo (UNMIK) to protect property restored to minorities in Svinjare and Obilic, using funds disbursed by the UN Development Programme (UNDP) and routed through the Kosovo Consolidated Budget. The final approval to use these groups for third-party security was given by UNMIK.

Another better documented example is UNHCR's \$8 million *Opération pour Sécurité dans les Camps* in eastern Democratic Republic of Congo (DRC) in the

mid-1990s, involving UNHCR employment of international military advisers (the "Camp Security Liaison Group" or "CSLG") to liaise with Zairian troops guarding and policing refugee camps following the Rwandan genocide.²⁴ The Zairian contingent also received a daily salary paid by UNHCR, leading some to call them "Ogata's soldiers," after the then-UN High Commissioner for Refugees, Sadaka Ogata. This quasi-commercial solution was developed by UNHCR after the possibility of directly employing a private military company to guard and demilitarize the camps was explicitly considered and rejected by the UN Secretariat and Security Council. Although the CSLG was intended by UNHCR to challenge the power of the Hutu extremists who controlled the camps, some critics suggest that those extremists captured the benefits of CSLG, using the buffer provided by CSLG against external threats (such as the Rwandan military) to consolidate their control over (and profit from) the camps. In that way, the CSLG – by failing to adequately control the practice of the Zairian troops it effectively sub-contracted security work to – arguably contributed to the resurgence of Hutu extremism in the camps, and the subsequent destabilization of the entire Great Lakes region. The experience is significant for revealing the gap between the aspirations of actors engaging commercial security providers to provide sustainable third-party security, and the reality of weak monitoring and controls in the administrative arrangements used to structure the resulting relationship.

UNHCR's subsequent funding of refugee security mechanisms in Chad, Ghana, Guinea, Nepal and Tanzania (relying on governmental agencies and local refugee groups, within the so-called "Ladder of Options" framework)²⁵ raises similar concerns about

²³ International Peace Operations Association, *Supporting the MONUC Mandate with Private Services in the Democratic Republic of Congo*, IPOA Operational Concept Paper, January 2003, p. 3, available at <http://www.IPOAonline.org>.

²⁴ Anne-Willem Bijleveld, UNHCR Director of the Bureau for Europe, seminar on "The role of the military in refugee camp security - policy and practice," 10-12 July 2000, Eynsham Hall, England; Bruce Jones, *Peacemaking in Rwanda: The Dynamics of Failure* (Boulder, Colo.: Lynne Rienner Publishers, 2001), pp. 141-142; Joel Boutroue, *Missed Opportunities: The Role of the International Community in the Return of the Rwandan Refugees from Eastern Zaire July 1994 - December 1996*, Rosemarie Rogers Working Paper #1 (Boston: Inter-University Committee on International Migration, June 1998), pp. 53-61, available at http://web.mit.edu/cis/www/migration/pubs/rrwp/1_boutroue.html; Fiona Terry, *Condemned to Repeat: the Paradox of Humanitarian Action* (Ithaca, NY: Cornell University Press, 2002); and Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2005).

²⁵ See note 10. See also Lessons Learned Unit, Department of Peacekeeping Operations, *Lessons Learned from Security Threats in Refugee Camps*, May 1999.

management and control. But UNHCR's experience also demonstrates how the use of security providers with close ties to public institutions and broad local social legitimacy may foster local public security and accountable governmental authority. In Tanzania, for example, under a memorandum of understanding between the Tanzanian Ministry of Home Affairs and UNHCR, UNHCR provides allowances, vehicles, logistical equipment, accommodation, budget support and training to Tanzanian police mandated to provide improved security in camps in western Tanzania. These police are supplemented by a community-based policing force, the *sungu sungu*. This arrangement appears to have had a broadly positive impact on refugee camp security, although questions have been raised about the possible dependency of the Tanzanian police on the package, particularly as a result of high allowances, and some crime displacement. A 2001 review of the package concluded that refugee security should be managed as part of a longer-term effort by donors to improve public policing capacity within the host country. In a logical extension of that quasi-developmental approach, UNHCR now appears to be moving towards institutionalizing a very limited security reform capacity, in the form of in-house Refugee Security Liaison Officers who will assist local authorities to develop adequate refugee security mechanisms.

Security system support

Private security companies rarely offer third-party security, though some local and governmental groups have been called on to do so; but conversely, private

security companies offer security system support services on a commercial basis in a way that those other types of provider do not.

Private security companies are slowly assuming a larger role in security system support services, including security assessments, preparation of security manuals, threat analysis, intelligence provision and comprehensive security packages. A minority of respondents (both within the UN system and outside it) acknowledged purchasing intelligence on particular security environments from commercial firms, including Control Risks Group, Global ERS and KROLL. (Much larger numbers of actors appear to rely on open-source security analysis such as that provided by International Crisis Group.) The OSCE Election Support Teams in Afghanistan have purchased comprehensive security packages from Global Risk Strategies and OLIVE. In Aceh, Control Risks Group proposed to provide a comprehensive security package for a consortium of relief groups. The Inter-Agency Security Management Network recently approved the outsourcing of flight safety information services to a private contractor. It seems likely that such trends will continue: in the view of one OCHA official, private security companies offer more by way of systemic support that "people will find less distasteful and can actually use" than is currently appreciated.

Frontline troops

Although NATO has used private security companies to provide aerial surveillance in Kosovo and force protection in Iraq,³⁰ and Provincial Reconstruction Teams and

²⁶ See Jean-Francois Durieux, "Preserving the character of refugee camps: lessons from the Kigoma refugee programme in Tanzania," Track Two 9:3 (November 2000), available online at http://ccrweb.ccr.uct.ac.za/archive/two/9_3/p25_preserving_civilian.html; Jeff Crisp, Lessons learned from the implementation of the Tanzania security package, UNHCR Evaluation and Policy Analysis Unit, UN Doc. EPAU/2001/05, May 2001.

²⁷ "Camp Security and Maintaining the Civilian and Humanitarian Character of Asylum, Agenda for Protection, Goal 4, Addressing security-related concerns more effectively, Annex," on file with the author; Crisp, *Lessons learned from the implementation of the Tanzania security package*.

²⁸ Crisp, *Lessons learned from the implementation of the Tanzania security package*, para. 33.

²⁹ See UNHCR Executive Committee, "Operationalizing the 'Ladder of Options'," para. 14.

³⁰ The Iraq contract caused heated debate in the NATO Council. NATO troops receive force protection services from a South African company, subcontracted to British firm, contracted to the Coalition, which has command and control of the base where NATO troops are accommodated. It is unclear whether the South African company has acquired the authorizations required by South African law to perform this contract lawfully.

some UN programs and agencies in Afghanistan have reportedly paid local militia commanders to provide base security,³¹ the UN's use of commercial operators "on the frontlines" appears exceptional – but not merely hypothetical. The UN (under Department of Political Affairs leadership) has used Control Risks Group and AEGIS in Iraq to provide protection to senior officials.³² In Afghanistan, the UN Office for Project Services (UNOPS) has worked closely with some private security companies in preparing elections, even going so far as issuing UN *laissez passers* to some commercial personnel.³³

Nevertheless, there is no contemplation of systematic use of commercial troops in frontline roles in UN-led peace operations.³⁴ (UN-mandated operations, such as those in post-war Iraq, may differ, since the decision to use commercial troop providers lies with individual member states, for now.) On the contrary, such a prospect seems very unlikely because of the "embarrassments the organization has suffered at the hands of mercenaries and the hostility the developing world membership often directs towards the mercenary problem."³⁵ Many of the developing countries that have traditionally led the push against mercenaries (such as Nigeria) are now among the major troop-contributing countries in UN peace operations. Accordingly, there is an appreciation that any attempt to incorporate commercial troops in frontline roles in UN-led peace operations could provoke significant hostility from those countries – and not only at the political level. As one DPKO official noted, any such move would likely provoke "cultural issues," concerns over pay differentials and over the poor quality of some private security companies.

Much more conceivable, however, is the use of

commercial personnel to play second-rank roles within UN-led peace operations, tasks such as guarding installations, compounds and personnel, and assisting with logistics. This second-rank role is likely to grow (including into evacuation support and perhaps military training) as demand for peace operations personnel increasingly outstrips adequate supply by troop-contributing states, and as the Security Council expands behind-the-front-line roles such as installation security³⁶ and security sector reform (SSR). Given that many of the recent high-profile casualties among UN staff targeted by terrorists and spoilers in Iraq, Haiti and elsewhere have in fact been static guards, the UN and its member states may in fact see significant political and risk management benefits in outsourcing this guarding work – assuming that the reputational risks involved in relying on commercial providers in this way can be managed through adequate command and control, interoperability and accountability arrangements. The UN is also likely increasingly to confront other "secondary" security needs such as hostage negotiations, extraction and evacuation. It is difficult to say at this early stage whether it will turn to private or state capacity to deal with these needs.

Governments may also countenance the continued, and even increased, outsourcing of post-conflict SSR work to contracted military trainers and vetting experts – as the US has outsourced vetting of the Liberian armed forces to DynCorp – so long as that work is adequately supervised by a UN member state. The exact extent of such a future role for the private sector in SSR seems likely to depend on the industry's ability to overcome not only the "skepticism" of SSR professionals, but also the extent to which donors are prepared to finance the substantial overheads of many of the current industry players.

³¹ Confidential interview. This account was contested by senior UN security officials.

³² This protection was apparently financed by member states rather than a UN agency.

³³ Confidential interview.

³⁴ For discussion of some of the reasons, see Spearin, "Humanitarians and Mercenaries: Partners in Security Governance?," p. 51.

³⁵ *Ibid.*, p. 59.

³⁶ See, for example, Resolution 1528 (27 February 2004) (Liberia, guarding demobilized weapons and materiel) and Resolution 1484 (May 30, 2003) (DRC, protection of Bunia airport and protected persons). Other guarding missions have included ports (Albania, Resolution 1114) and election polling stations (numerous missions).

Controls

Choosing a provider

Commercial security providers are engaged by clients in humanitarian and post-conflict settings through highly decentralized administrative and procurement processes that rely on poor market information, and weak sanctions, and make scant reference to the broader security, political and social impact of particular providers. As a result, local administrators' decisions, rather than centralized policies or procedures, often determine the impact a user has, through hiring a commercial security provider, on the humanitarian space and local public security and institutions.

Users choose providers through tender processes run almost exclusively at the local level, ensuring that solutions which meet local missions' needs are found. Arrangements are often, as a result, very ad hoc: in the UN Common Security System, for example, it appears to be a matter of local administrators' discretion whether to involve UN Department of Safety and Security (UNDSS) staff (usually Field Security Coordination Officers) in advising on these tenders.³⁷ Field staff also play a crucial role in dealings with residential-compound security providers, decentralizing procurement and accountability even further.

Local administrators exercise a very wide discretion in choosing commercial security providers, usually selecting on technical grounds such as level of training, capacity, experience, range of services and cost. Information sharing on providers' performance histories, even within NGO families (e.g., between Save

the Children US and Save the Children UK), is rare and informal. Background checks on providers, their employees and their global affiliations are without exception extremely ad hoc, often limited to discussion by a local security officer with his personal contacts and internet research.³⁸ Many users rely on local governments and authorities to check commercial providers' backgrounds, even where those authorities manifestly lack adequate investigative capacity and independence - many local governmental officials have private stakes in or connections to commercial providers. In rare cases, users oblige tendering companies to facilitate these investigations by providing details of past contracts, though the purpose of such disclosure often appears to be an assessment of performance reliability, rather than of broader social impacts of a particular provider's performance.

The selection of providers is rarely governed by formal guidelines referring to relevant international standards (such as human rights, policing or use of force standards). Choices are usually guided only "by intuition" and organizational procurement policies, which are not specifically tailored to the procurement of security services.³⁹ Even the most formalized policies controlling engagement with armed guards, such as the Red Cross Movement's Doctrine 60, do not include criteria relating to past human rights performance or future, long-term impact on local public security, in assessing whether to engage with a particular security provider.⁴⁰ Few users consider the potential reputational costs that flow from engaging, in one theater, a commercial provider that violates international law or human rights in another theater. Cases such as that described by the International Federation of Red Cross and Red Crescent Societies (IFRC), which has

³⁷ Compare IASC WG, *Use of Military or Armed Escorts for Humanitarian Convoys*, Discussion Paper and Non-Binding Guidelines, 14 September 2001, which includes non-binding guidelines suggesting that use of private security companies is subject to approval by the UN Security Coordinator. This discrepancy demonstrates the high levels of uncertainty within the organization about how UN relations with commercial security providers should be properly administered.

³⁸ The most developed system of background checks appear to have been those developed in Kosovo by NATO and the UN. In the Threat Assessment Committee, the UN temporarily took on the role of a licensing authority for local commercial providers. But even there, inter-organizational rivalry appears to have hampered information-sharing between the UN and NATO.

³⁹ Confidential interview.

⁴⁰ Doctrine 60 does, however, require an assessment of whether "the ICRC [is] certain that an armed escort will not jeopardize the safety of its beneficiaries," which suggests a short-term focus on public security. See ICRC, *Protection of ICRC Operations*, Confidential Internal Document, DOCT/60 - 2002/1; DC/DC, 2002/26, 2 January 2002. Shown to the author, not publicly available.

withdrawn from contracts with major international private security companies in Angola and Uganda on the basis of those companies' problematic activities elsewhere, remain highly exceptional.

In some cases, users have no real choice of provider, particularly where a state-backed security service acts as a de facto commercial provider. In such cases, there is a real risk of the client becoming "hostage" to these providers, the victims of a protection racket. As discussed earlier, this appears to occur primarily where commercial providers exercise something close to an effective monopoly on violence, allowing them to determine whether or not a user organization is exposed to genuine threats to security. In such situations – for example, in Somalia or the northern Caucasus – providers may be exercising (and abusing) a form of limited, localized governmental authority, whether or not they are formally entitled to do so.

Operational standards

Standards regarding providers' use of firearms and other weapons, the content of Rules of Engagement (ROE), and other operating procedures vary widely among users of commercial security in humanitarian and post-conflict settings. The approach adopted depends on the general approach to security preferred by the local administrator, the local threat environment, and local laws and informal norms. Thus the static security guards employed by the ICRC in India carry a stick and whistle, those working for its African delegations rely on sticks alone, and, at least according to some ICRC respondents, those in

Colombia carry sidearms.

The use of arms for protective security depends on creating a credible deterrent threat, which in turn depends on local peer practice. In order to be effective, providers must be better armed than local threats. The risk that results is of a localized arms race, with potentially significant cumulative implications for the proliferation of small arms and light weapons (SALW).⁴²

The operating standards imposed on commercial providers by their clients in humanitarian and post-conflict settings rarely refer to international standards governing the use of force or firearms.⁴³ Interestingly, there is no clear evidence that providers would resist reference to such standards – perhaps in part because references to such standards might be difficult to enforce. The study revealed only one formal reference to existing international standards on the use of force or firearms in policing and security, and that was in very general terms.⁴⁴ UNHCR has provided field security officers with sample *Instructions for Security Guards Employed at UNHCR Premises*, which cover issues such as professional standards, reporting and provide detailed performance guidelines.⁴⁵ These are, however, only guidelines, and contain no binding performance standards. UNSECOORD (the Office of the UN Security Coordinator, now rolled into the UNDSS) reportedly produced a *Guideline on Guard Force Management*, and a *Security Directive on Guard Forces*, but the extent to which these incorporate binding operational standards is unclear. References in operating standards to more specific international norms, such as the *United Nations Code of Conduct for*

⁴¹ Spearin, "Humanitarians and Mercenaries: Partners in Security Governance?," p. 55; Vaux et al., *Humanitarian action and private security companies*, p. 15.

⁴² For discussion of the connection between security privatization and small arms proliferation, see Gregory Mthembu-Salter, "Guns and Private Security in South Africa," *Small Arms and Human Security Bulletin*, Issue 3, June 2004, p. 4; and see Cate Buchanan and Robert Muggah, *No Relief: Surveying the Effects of Gun Violence on Humanitarian and Development Personnel* (Geneva: Centre for Humanitarian Dialogue and Small Arms Survey, 2005). See also the Draft Principles on the Prevention of Human Rights Violations Committed with Small Arms, UN Doc. E/CN.4/Sub.2/2005/35, Annex, 16 June 2005, esp. Section B (Due diligence to prevent human rights abuses by private actors).

⁴³ Some providers may refer to international standards in their own, internal ROE, but these are unlikely to be contractually binding on them, and create no mechanism of accountability of the provider to their clients.

⁴⁴ "In using their weapons [security guards] must strictly observe the principle of proportionality as set by international standards relating to the use of force or firearms by the police." ICRC Doctrine 60.

⁴⁵ On file with the author.

Law Enforcement Officials,⁴⁶ the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*⁴⁷ and the *OSCE Code of Conduct on Politico-Military Aspects of Security*,⁴⁸ are conspicuous by their absence.

Discipline

The arms-length nature of contractual relations between users and commercial security in humanitarian and post-conflict settings means that users rely on informal relations with the leaders and managers of provider groups for the disciplining and accountability of providers and their staff. Where there are few or no credible alternative providers (whether because of a lack of competition or because of the costs the user has already sunk into a relationship with a particular provider), the threat of withdrawal from or non-renewal of a contract is so weak that price gouging, or even the upending of the principal-agent relationship into a protection racket, can result - as it has in Somalia and arguably also in some cases in Iraq. Since state agencies exercise effective monopolies on violence, they have a unique power to engage in such racketeering, acting as informal commercial providers, as has occurred in parts of the northern Caucasus and Pakistan.

Even where this weak discipline does not result in racketeering, commercial security providers in humanitarian and post-conflict settings routinely work in a sellers' market. Richard Floyer-Acland, Officer in Charge of the UNHCR Field Safety Section points out, for example, the inflationary pressures exerted by television crews operating in the humanitarian space: they often operate for short periods with large budgets, and will go to great lengths to get the story, pricing many other users out of the market and greatly

reducing those users' ability to discipline providers with whom they work.

Moreover, contracts are often unenforceable in humanitarian and post-conflict settings, given the common absence of effective legal institutions. None of the users interviewed in this study established centralized disciplinary or accountability baselines that their local administrators were required to ensure were met in local contracts with commercial security providers. That left local administrators free to displace disciplinary responsibilities onto providers' leadership, with potential costs for users because of the obvious incentive for a provider's leaders or managers to understate the need for disciplining of their staff.

Despite the weakness of local judicial mechanisms in humanitarian and post-conflict settings (sometimes reinforced by the specific exemption of foreign security contractors from domestic jurisdiction, as has occurred in Iraq⁴⁹), the study revealed no evidence that users' headquarters mandate local administrators to require tendering security providers to submit to foreign substantive law or dispute resolution mechanisms. Such an approach might increase the prospects of accountability in the event of provider misconduct, especially where a local provider has foreign affiliates with valuable assets outside the humanitarian or post-conflict setting in which the contract will be performed.

On the contrary, interview subjects suggested that standardization of accountability arrangements, even within an individual organization operating in humanitarian and/or post-conflict settings, is likely to be perceived by many local administrators as "incredible micro-management."⁵⁰ The result is an absence of both formal and informal accountability between

⁴⁶ UNGA Res. 34/169, 17 December 1979.

⁴⁷ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990.

⁴⁸ OSCE, *Code of Conduct for Politico-Military Aspects of Security*, CSCE Forum for Security Co-operation in Budapest on 3 December 1994, 91st Plenary Meeting of the Special Committee of the CSCE Forum for Security Co-operation in Budapest, DOC.FSC/1/95.

⁴⁹ See Coalition Provisional Authority (CPA), CPA Memorandum Number 17, *Registration Requirements for Private Security Companies (PSC)*, CPA/MEM/26 June 2004/17, available at http://www.iraqcoalition.org/regulations/20040626_CPAMEMO_17_Registration_Requirements_for_Private_Security_Companies_with_Annexes.pdf.

⁵⁰ Confidential interview.

commercial providers and their users, heightening the risk that engagement with commercial security providers will produce racketeering. The lack of effective oversight of commercial security providers may also risk strengthening the hand of local armed groups without regard to their human rights record, or political, social or economic profile.

Payment practices

Payment practices are an overlooked but important factor in determining how the use of commercial security in humanitarian and post-conflict settings impacts on local economic, social and political power. Payment practices affect the distribution of power between the leadership and employees of commercial provider groups, and thus may affect whether the use of commercial providers will benefit private social groups or the local public generally.

Payment to leaders involves lump-sum payment by users to a corporate entity or labor-brokers, who then extract a significant commission – even as high as 50% – before paying their own staff. Examples include NATO payments to local mayors as security labor-brokers in Bosnia, UNHCR payments to governments in its refugee security arrangements and some payments by Provincial Reconstruction Teams and UN programs and agencies to local militia leaders for camp and convoy security in Afghanistan. Payment to leaders enhances those leaders' material resources, symbolic legitimacy and market power, often giving them control over the key economic resource of access to lucrative employment. It can, in other words, fuel patronage systems. In some contexts, particularly where this labor-market power is significant compared to background economic activity, this combination of financial, economic and social power may translate into political or even governmental authority.

Payment to employees involves users paying individual guards directly. Examples include ICRC payments in Somalia, and CSLG payments to Zairian troops. This approach avoids the direct buttressing of a particular leadership group's power, but can nevertheless buttress the power of a particular social group from which staff are drawn, vis-à-vis the broader population. This, in turn, may feed into local social conflicts, also

potentially fuelling the privatization of local governmental authority.

Impacts

Reliance on commercial security may reduce administrative costs, but that is because it reduces administrative control, increasing risks for users. In addition, reduced control may create risks for other actors in humanitarian and post-conflict settings, notably other assistance groups and, crucially, local communities.

On the humanitarian space

Although many humanitarian groups turn to commercial security because they do not wish to risk their image of neutrality and impartiality by accepting the protection of state or other public security forces, commercial security brings its own risks for neutrality and impartiality and the boundaries between military and humanitarian action. Reliance on commercial security can blur the distinction between non-military and military actors in humanitarian and post-conflict settings because commercial providers have multiple associations and affiliations. This, in turn, risks blurring the distinction between humanitarian action and military intervention, creating significant operational, reputational and legal risks for users of commercial security in the humanitarian space – and longer term systemic costs.

Groups providing security on a commercial basis often have ties to both humanitarian actors and military actors within the same humanitarian space, making it difficult for local communities to distinguish between the different groups. As Randy Martin, Director of Global Emergency Operations for the relief NGO Mercy Corps put it, "It becomes very difficult to tell who's a combatant and who is not." Using a commercial security provider may risk associating a group with a party to a conflict because the provider and that party share a style of dress, ethnic or social ties or formalized commercial links, or because personnel working for the provider were previously associated with the party to the conflict. This jeopardizes humanitarians' perceived neutrality, impartiality and independence, and risks blurring humanitarian action and military intervention.

The resulting confusion can have a serious negative impact on staff security for the user and for other humanitarian groups. World Vision staff were targeted in Somalia in the early 1990s in apparent retaliation for US military action,⁵¹ and numerous recent attacks on Médecins sans Frontières (MSF), Care and other humanitarian staff in Iraq and Afghanistan arguably resulted from the blurring of civilian and combatant roles producing “an environment of increased risk for humanitarian operations.”⁵² Both ICRC and MSF refuse to use security contractors in Afghanistan and Iraq, on the basis that to do so would in fact decrease staff security by risking associating them with parties to an armed conflict.

The potential for blurring is increased by the global nature of the formalized private security industry. For users, the global operations and consolidation of many private security companies increase the difficulty of knowing the affiliations and associations of the commercial providers they engage. The risks (particularly the reputational risk) associated with using a particular provider in one theater include becoming associated with actions taken by that provider and its staff in another theater, even, perhaps, while working for some other employer. There is a genuine risk of highly negative publicity for organizations operating in humanitarian and post-conflict settings as a result of their association with commercial providers that commit abuses elsewhere. As one UNDSS officer recognized, users of commercial security are constantly operating in the shadow of “the specter of mercenaries.” And as Mark Bowden, Head of Policy in OCHA recognized, “even if you think a company is clean in one country, because of their overall associations, you may need not to take them on.”

The risk of bad publicity runs not just from mercenary activity, but also from commercial-provider personnel involvement in other illicit activities, such as sex trafficking and organized crime.⁵³ Bad publicity may, in turn, have a real dollar value, since donors are unlikely to wish to be associated with groups using disreputable security providers. Incidents in one theater may have global ramifications. As Lars Tangen of the International Federation of Red Cross and Red Crescent Societies recognized, “if an IFRC armed guard shoots someone, it will have huge implications for the whole Red Cross movement.”

Competition and convergence

The use of commercial security in humanitarian and post-conflict settings may also lead to convergence and competition between providers of humanitarian and politico-military assistance, complicating civil-military relations as the distinction between private, humanitarian assistance and public intervention becomes increasingly unclear because of overlapping functions and personnel. The most obvious area of competition between “assistance” providers and “security” providers is for security staff.⁵⁴ One UN official suggested that “DSS lives in fear of private security companies,”⁵⁵ in part because they cannot match the salaries global security companies offer to the best security staff.

But a number of interviewees contested this characterization of the security labor market, suggesting that humanitarian and military security cultures are so distinct as to create two separate and distinct labor pools.⁵⁶ Private security companies, in particular, have tended to rely on personnel with military backgrounds,

⁵¹ Daniel L. Byman, “Uncertain Partners: NGOs and the Military,” *Survival* 43:2 (2001), p. 104.

⁵² See, generally, Jake Phelan and Graham Wood, *Bleeding Boundaries: Civil-Military Relations and the Cartography of Neutrality* (Ockenden International, November 2005).

⁵³ For an account of DynCorp staff involvement in such activity in the Balkans, see Jennifer Murray, “Who Will Police the Peace-Builders? The Failure to Establish Accountability for the Participation of United Nations Civilian Police in the Trafficking of Women in Post-Conflict Bosnia and Herzegovina,” *Columbia Human Rights Law Review* (2003), p. 475.

⁵⁴ See, for example, 2004 ECHO Security Report, p. 31.

⁵⁵ Confidential interview. This contention was vigorously contested by senior UNDSS officials, who pointed to more than 400 applications for every position advertised, and indicated that few UNDSS staff have been lost to private contractors.

⁵⁶ For empirical support of this anecdotal evidence, see especially Antonio Donini, Larry Minear, Ian Smillie, Ted van Baarda, and Anthony C. Welch, *Mapping the Security Environment: Understanding the perceptions of local communities, peace support*

whose notion of security focuses on hardening targets to “protect” them against potential threats from the immediate security environments. In contrast, some humanitarians have traditionally based their approach to security on being embedded in – and “acceptance” by – their local security environment, in this way removing the threat before it materializes.⁵⁷ Interviewees suggested that security companies’ failure to understand the distinct acceptance-based (rather than protection-based) security model of many humanitarian organizations is limiting the use of commercial security in humanitarian and post-conflict settings.

Most of them [private security companies]... don't understand the basis of what security means to a humanitarian organization. They want to sell 'protection' to us. And their concept of protection is usually a hardened one – it's about close protection, it's about convoy operations, it's about telecoms, it is a suspicion of the communities we serve, and a lack of awareness of community engagement, and of the damage you can do by having too high a security profile.

NGO security officials repeatedly expressed surprise that the larger private security companies had been unwilling to do more to “learn” the security culture of humanitarian NGOs in order to develop the kinds of business products that NGOs would purchase. Others suggested that this was because NGOs provided an essentially shallow market for private security companies, in contrast to the deep pockets of national militaries, entrenching providers’ preference for hard, protection-based security products. What that may suggest, though, is that competition between private security companies and the in-house security staff of groups operating in the humanitarian space is likely to be greatest in the provision of products and services

which require less focus on the “acceptance” model, such as the provision of theater or regional intelligence and threat analysis. The large private security companies may have significant first-mover and economy of scale advantages over UNDSS in providing such services. Competition with external providers with established market shares and skills may lend weight to the perception admitted privately by one senior UN official: “In some places, commercial providers are better than UNSECOORD [now rolled into UNDSS]. UNSECOORD is a bit of a mixed bag in terms of what you get on the ground.”⁵⁸

Competition will also likely drive some actors in humanitarian and post-conflict settings, particularly NGOs, to take advantage of economies of scale and their own lower labor costs (e.g., in the humanitarian sector) by creating their own collective, not-for-profit security service delivery mechanisms. We already see three business models emerging:

- not-for-profit clearing houses and labor-brokers such as the Canadian NGO CANADEM, which places civilian police in peace operations and training missions;
- not-for-profit, fee-for-use direct service provision, such as RedR’s humanitarian security training services; and
- not-for-profit, cost-sharing service provision arrangements like the new experiments with security information clearinghouse arrangements such as the Afghan NGO Security Office (ANSO) or the NGO Coordination Committee in Iraq (NCCI).

But competition will not only see humanitarian groups assuming a direct security service provision role - it may also see some security providers branching out, beyond security and reconstruction work, into providing humanitarian assistance type services - for a profit. As ECHO’s Anthony Val Flynn asked rhetori-

operations, and assistance agencies (Feinstein International Famine Center, June 2005). See also Jane Barry with Anna Jefferys, *A Bridge too far: Aid agencies and the Military in Humanitarian Response*, Humanitarian Practice Network Paper No. 37 (London: Overseas Development Institute, January 2002); and see Daniel L. Byman, “Uncertain Partners: NGOs and the Military”, *Survival* 43:2 (2001), pp. 103-104.

⁵⁷ Koenraad Van Brabant, *Operational Security Management in Violent Environments: A Field Manual for Aid Agencies* (London: Overseas Development Institute, 2000).

⁵⁸ Confidential interview. Not surprisingly, this assertion was vigorously contested by senior UNDSS staff.

cally, “How far are they going to go? If there is a humanitarian vacuum, how much are these for profit organizations going to do?...They can’t just sit around and protect themselves.” There may be limits on the extent to which such a strategy can be effective, since civilian populations are likely to be ambivalent at best about receiving assistance from profit-making groups, particularly where they are foreign, are perceived as taking profits out of the local economy, and lack sources of local social legitimacy beyond the services they provide.

One potentially significant implication of this convergence between providers of security and providers of humanitarian assistance is that it may render humanitarians and commercial security providers strategic competitors for donor funds. That is particularly problematic for organizations which have dual assistance (or relief) and advocacy roles, because donors may prefer to fund relief providers that will not bite the hand that feeds them. Commercial providers, of course, have a profit incentive not to bite.

The danger is that this will lead to a commercialization of the humanitarian space. That also opens up the humanitarian space to politicization, and even weaponization. In 2001, US Secretary of State Colin Powell already described humanitarian NGOs as a “force multiplier,” an important part of the US “combat team.”⁵⁹

Since many national donors impose nationality restrictions on commercial expenditures by recipients of their aid funds, for example requiring that a certain percentage be spent on goods and services from the donor’s country, any turn to commercial providers to provide humanitarian assistance or relief services is also likely to mean that humanitarian assistance and relief will become increasingly nationalized. The real risk is that convergence and competition between groups in humanitarian and post-conflict settings will politicize humanitarian assistance, rendering it

“another weapon...in a ‘hearts-and-minds’ operation... to win the people’s favour.”

Impacts on state-building and peace-building?

Using commercial security providers - particularly local, informal armed groups - in humanitarian and post-conflict settings may have significant impacts on local economic, social and political dynamics, potentially impacting on state-building and peace-building initiatives.

Non-military users uniformly stress that their organizations turn to commercial security providers only as a measure to protect against “criminality,” rather than “conflict.”⁶⁰ Yet in most cases, the individuals with the security, policing or military skills needed to provide commercial security services have acquired those skills through service with a governmental organization or an armed group. Many have continuing social or commercial ties to parties to local social, political or armed conflicts. It is therefore often difficult to avoid informal association with a party to a conflict, even if there is no formal link between a commercial security provider and such a party.

Once assistance personnel become identified with a party to a conflict they are often the softest target available;⁶¹ their deaths become an easily attainable symbol of resistance to foreign intervention. What appears to external interveners as an “anti-crime” measure may thus unwittingly fan “conflict,” both materially and symbolically blurring the boundary between “crime” and “conflict.” This can produce a crime-conflict complex like those we see in Somalia, the northern Caucasus, Afghanistan and Iraq.

One way to avoid fueling local conflicts is to circumvent the local labor-market altogether, for example by relying on foreign guards offered through international private security companies.⁶² NATO has used foreign

⁵⁹ Colin Powell, *Remarks to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations*, 26 October 2001.

⁶⁰ In the case of the Red Cross movement, this position is formalized under Doctrine 60.

⁶¹ Compare Vaux et al., *Humanitarian action and private security companies*, p. 4.

⁶² Relying on foreign private security companies (as opposed to individual foreign guards) may not be adequate, because many foreign companies derive their profits in part from use of local labor: Spearin, “Humanitarians and Mercenaries: Partners in Security Governance?,” p. 54.

guards to protect its bases in both Afghanistan and Iraq. While this may increase labor costs, it also has the potential benefit of reducing the risk, for a user, of association with a party to the local conflict. But that is, in turn, because foreign guards are not connected with local social groups, which may also reduce their ability to operate through an “acceptance” approach to security, rather than a confrontational “protection” approach. This may make foreign guards an unattractive option to many potential users in humanitarian and post-conflict settings.

Using local commercial providers can, if poorly managed, fuel local insecurity and work against the development of public security and law and order. Hiring commercial contractors may crowd out investment in nascent public institutions. Local providers may accrue significant benefits from their use in these settings, such as control over a local labor market, social legitimacy from association with sources of revenue and humanitarian assistance, and material resources.

To avoid such outcomes, potential users of commercial security may choose, instead, to directly fund “public” solutions, as UNHCR has begun to do in its support for states in their discharge of their refugee security obligations. As a result, actors in humanitarian and post-conflict settings – including UN programs and agencies and NGOs – may themselves be drawn into playing public, quasi-governmental or at least supervisory roles. They may, in other words, become unwitting drivers in the complex process of state-building.

The key question for groups providing assistance in a humanitarian or post-conflict context is clearly that posed by the respected security expert Koenraad Van Brabant: “Are you contributing to the privatization of security...or are you contributing to increased, wider public security?”⁶³

Recent empirical evidence suggests that most, but not all, humanitarian staff consider the use of armed guards, including those provided by commercial providers, to contribute to their own security.⁶⁴ Respondents in this study presented a similar perception, but many also stressed the potential for armed guards to increase staff insecurity, where their presence or operations “ups the ante,” or leads to a deterioration in local public security. As Val Flynn put it, “the further you go” in adopting a protective security posture, “the harder it is to reverse” towards an acceptance based posture. Turning to commercial security in humanitarian and post-conflict settings thus risks producing negative spillover, creating miniature arms races, escalating local threat environments, and inflaming local social conflicts. In time, this may, if unchecked or even fostered, unravel public security on a broader scale into an oligopoly of protection rackets, as appears to have occurred in Somalia and may be occurring in Afghanistan. One NGO security officer described the problem well in the Somalian context:

*In Somalia, you’re purchasing your security from the militias... By purchasing that security you’re perpetuating the conflict, because if all of them maintain insecurity, you need them, to provide security. Unless you’re providing absolute life-saving services, you become part of the problem, not part of the solution.*⁶⁵

The use of commercial security outfits by foreign providers of military, humanitarian and development assistance in Somalia arguably fueled the privatization of public security in that country through the 1990s, because the funds paid to commercial security providers “were often reinvested into arms and ammunition, leading to a further required strengthening of private security networks.”⁶⁶

The result may be the commercialization of govern-

⁶³ Van Brabant, *Operational Security Management in Violent Environments*.

⁶⁴ See, for example, Buchanan and Muggah, *No Relief: Surveying the Effects of Gun Violence on Humanitarian and Development Personnel*, p. 36.

⁶⁵ Confidential interview.

⁶⁶ Grosse-Kettler, *External actors in stateless Somalia*, p. 11. See also Tobias Debiel, “UN-Friedensoperationen in Afrika,” in *Weltinnenpolitik und die Realität von Bürgerkriegen* (Sonderband der Stiftung Entwicklung und Frieden, Bonn: Dietz, 2003), pp. 142-143.

mental authority, and thus, arguably, of the process of state-building (and perhaps more broadly, peace-building). Sabine Grosse-Kettler, a commentator on Somalia, describes the transformation of security arrangements in that country as follows:

*Security has...become a commercialized good. With business and violence constituting two sides of the same coin, lacking functional authority within Somalia is substituted by the authority of business.*⁶⁷

Somalia is the extreme example, but it may represent in concentrated form the otherwise diffuse impact of uncontrolled use of commercial security in humanitarian and post-conflict settings. For example, in Afghanistan, Provincial Reconstruction Teams (PRTs) and UN agencies both reportedly pay local militias and warlords for protection.⁶⁸ Recent research by Save the Children UK⁶⁹ suggests that there is no statistical correlation between the presence of PRTs and the reduction of security incidents for third actors in the humanitarian space; PRTs are, in other words, not purchasing public security, but private protection, from local military leaders. In this way, local security practices in Afghanistan's provinces may be slowly undermining attempts to extend the authority of the central government in Kabul, instead creating "parallel security structures."⁷⁰ Indeed, just as occurred a decade earlier in Somalia, unregulated markets and commercial security may now be melding to produce an oligarchical fusion of commercial and military power that substitutes for effective, accountable political authority.⁷¹

This developmental trajectory may also have profound implications for our understanding of the links between humanitarian assistance, development and

security, and for the manner in which integration into the global economy will affect state-building trajectories. It suggests that access to global markets (whether in assistance, security, or other goods and services such as telecoms in Somalia or drugs in Afghanistan) may in fact reinforce the power of local warlords and traditional authority figures, regardless of their commitment to accountable or democratic politics, because it allows them access to foreign income streams and resource bases. The integration of conflict economies and the economies of weak states into the global economy may, this suggests, not assist the fostering of democratic politics and strong public institutions, but actually hinder it.⁷²

Looking ahead

The absence of considered discussion of the impact of commercial security on the humanitarian space and in post-conflict settings – especially systemic impacts on civil-military relations and impacts on longer-term developmental and state-building goals – is particularly striking in the context of recent discussions within the UN and broader humanitarian communities of Integrated Mission Planning Processes (IMPP), civil-military relations and threats to humanitarian staff.

Some groups operating in humanitarian and post-conflict settings may consider the broader social and state-building impacts of commercial security as issues beyond their mandate, particularly if they have a narrow relief focus. In contrast, actors with clearer development mandates may see the key issue as one of relations between providers of relief or humanitarian assistance (in the narrow sense) and commercial security, and therefore arising before their writ begins to run. The interviews conducted for this study suggest that such hard-and-fast distinctions between security

⁶⁷ Grosse-Kettler, *External actors in stateless Somalia*, p. 7.

⁶⁸ This statement as it relates to the UN was denied by senior UN security staff, but two more junior field staff indicated seeing evidence of informal payments by UN agencies.

⁶⁹ Gerard McHugh and Lola Gostelow, *Provincial Reconstruction Teams and Humanitarian-Military Relations in Afghanistan* (Save the Children UK: London, 2004).

⁷⁰ Compare Avant, *The Market for Force: The Consequences of Privatizing Security*, p. 59.

⁷¹ Sarah Lister and Adam Pain, "Trading in Power: The Politics of 'Free' Markets in Afghanistan," Afghanistan Research and Evaluation Unit, June 2004, p. 8.

⁷² Ibid.

in humanitarian or conflict settings and security in development may be problematic. The use of commercial security providers (particularly local commercial outfits) in the “humanitarian space” and in the immediate post-conflict setting may, if poorly managed, risk not only contributing to the insecurity of assistance providers’ own staff, but also risk contributing to the insecurity of the local public in the medium to long term, by significantly impacting upon or even setting the parameters of possibility of subsequent security sector reform and related developmental strategies.

At present, users of commercial security in humanitarian and post-conflict settings are not adequately aware of the potential cumulative impact of decentralized decision-making on the security of their staff, the reputation of their organizations or local economic, social and political dynamics. Users will need to look closely at the practice of their own field offices and administrators, in order to assess these cumulative impacts. Further research, differentiating between different types of users and providers, and how their relations in humanitarian and post-conflict settings impact on developmental trajectories, is clearly needed. But there are also a variety of steps that specific actors can already take to manage better their relations with commercial providers, moving towards best practice. In the pages which follow, I set out some of these steps.

Improve profiling of commercial providers

At present, users engage commercial security providers through such decentralized administration and procurement processes that headquarters usually have little control over the providers with which their organizations become associated. This risks potentially significant negative publicity or even legal liability for misconduct by those providers. It will remain difficult and costly for users to monitor providers’ performance, discipline them and protect against the emergence of protection rackets, until users improve their access to this basic “market” information. Users also inadequately screen providers (and their staff) to assess

their likely impact on human rights, their ties to parties to local social, political and armed conflicts, and the likely impact of their hiring on the development of local governmental authority.

Users might begin to address these deficiencies through simple steps such as the development of organizational policies that require local administrators to assess the human rights record of local providers (and their staff), and their ties to organized crime, terrorist activity or other illicit activity, before engaging them. Users should also assess whether by using a particular potential provider with (social, military, political or commercial) ties to other groups wherever the user may operate, there is a risk of fanning a latent social conflict into violence.

A more advanced approach would involve assessing whether a potential provider will exercise the authority it garners from working with the user in a manner that enhances or detracts from local public security. This could involve, for example, examining whether the group preys on the local civilian population or offers security as a non-exclusive public good to the entire population of an area affected by humanitarian crisis.⁷³ Preference should be given to providers that are accountable (either through formal complaint or control mechanisms, or through informal mechanisms such as social ties) to the populations with which they will have to engage in performance of the contract. Providers that incorporate mechanisms for local capacity-building into their service packages, for example through human rights training for their employees or through phased handover of security arrangements to community bodies, may also be preferable. Providers that are accountable to foreign interests, such as those with ties to foreign corporations or governments or with significant assets in foreign jurisdictions subject to effective regulation, may also be preferable to those which operate free of such controls.

Improving controls on commercial security providers

There are a number of steps that users could take to

⁷³ On the different strategies of non-state armed actors and how they impact on humanitarian practice, see especially Max Glaser, *Humanitarian engagement with non-state armed actors: The parameters of negotiated access* (London: HPN, 2005).

improve their control of commercial security in humanitarian and post-conflict settings, once engaged. Such steps include:

- incorporating and adapting international standards on the use of force and firearms, including the *United Nations Code of Conduct for Law Enforcement Officials*, the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* and the *OSCE Code of Conduct on Politico-Military Aspects of Security*, into rules of engagement, standard operating procedures or contracts with security providers;
- developing internal standards requiring local administrators to review and report to headquarters on the performance of security providers, including their impacts on local public security and human rights;
- developing internal, and if possible theater-coordinated, standards controlling the quantum and method of payments to commercial security providers to ensure payments do not distort market power or social authority;
- giving preference to providers that have adopted a formalized corporate identity, and that are prepared to accept foreign law and enforcement mechanisms within their contracts (since both seem likely to increase the chances of effective discipline of commercial security providers);
- giving preference to providers with significant assets or those incorporated in foreign jurisdictions with effective regimes regulating extra-territorial commercial security provision;

- adopting procurement practices that require prospective security partners to disclose their other commercial partners in the same theater and elsewhere where the user organization has an interest at stake;
- working with donors and industry players to develop frameworks for assessing and monitoring the performance, affiliations and impacts of particular providers.

Users of commercial security in humanitarian and post-conflict settings should look to the business community for starting points in developing frameworks for these assessments (such as the US-UK Voluntary Principles⁷⁴ or the UN Business Norms.⁷⁵

Alternative security solutions

Unless users of commercial security in humanitarian and post-conflict settings learn from each other, share information about the conduct of specific commercial security groups and coordinate their actions, this will remain a seller's market. As Mark Bowden, head of policy in OCHA notes, "[p]art of the problem is that NGOs and others don't know how to use the market." Without information-sharing about the performance and background of commercial providers (particularly at the theater level), it will remain "difficult to know what you're procuring." Humanitarian assistance providers, in particular, must overcome skewed risk-aversion curves that see humanitarian staff willingly risk their own safety in the name of humanitarian service, but unwilling to take the steps needed to allow them to share information to enhance their own safety, for fear of breach of corporate confidentiality obligations or negative publicity.

⁷⁴ *Voluntary Principles on Security and Human Rights Fact Sheet*, Bureau of Democracy, Human Rights, and Labor, US Department of State, Dec. 20, 2000, available at http://www.state.gov/www/global/human_rights/001220_fsdr principles.html (8 April 2002).

⁷⁵ *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003), approved by Resolution 2003/16, Aug. 13, 2003, UN Doc. E/CN.4/Sub.2/2003/L.11 at 52 (2003), available at <http://www1.umn.edu/humanrts/links/norms-Aug2003.html>; and see *Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, UN Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003). Also see Carolin Hillemanns, *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights*, 4(10) *German L. J.* (Oct. 1, 2003), available at <http://www.german-lawjournal.com/article.php?id=330>.

In the longer term, users may need to countenance more far-reaching “public” solutions as alternatives to commercial solutions, such as the creation of a system for training security staff in acceptance-based security approaches that foster local public security and accountable governmental authority. It is possible to envisage a range of public and private funding arrangements and participation for such a mechanism, potentially including governments, users and providers. There are clear economies of scale and coordination and inter-operability benefits to be derived from such a centralized training mechanism.

The path ahead for the UN

The UN system will be forced to engage with commercial security providers with unrelenting and increasing frequency in years to come.⁷⁶ Private security companies are likely to provide increasing levels of logistical support, threat analysis, intelligence and other “second-rank” services to UN programs and agencies, and may take on roles in guarding installations behind the front lines of peace operations and in security sector reform in post-conflict situations.⁷⁷ Local commercial guarding outfits (and moonlighting elements of governmental forces) are likely to be of increasing importance to UN peace operations as those operations’ footprints increase in size and duration, and as the security environments they encounter become increasingly informalized and fragmented.

Policies and procedures for dealing with such security providers are largely unarticulated, with the result that the UN risks significant reputational, liability and security costs from association with problematic providers, as well as complicating its own humanitarian, development and state-building objectives, civil-military relations, and even conflict prevention work.

The UN should develop standardized procurement procedures improving profiling and control of commercial security providers, in particular through the implementation of the nascent UN Supplier Code of Conduct. In addition, the UN should consider incorporating into the UN General Conditions of Contract a clause on security services such as the following:

SECURITY SERVICES: The Contractor represents and warrants that neither it nor any of its affiliates is actively and directly engaged in the provision of security services to any client in violation of applicable rules of international law, nor the law of any jurisdiction in which it is registered, incorporated, operates, conducts business or holds assets, or any other legal obligation freely undertaken by the Contractor or its affiliate. Any breach of this representation and warranty shall entitle the United Nations to terminate this Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of the United Nations.

The impacts of commercial security in the humanitarian space and on state-building warrant the attention not only of operational programs and agencies, but also of the UN Department of Safety and Security, and of the expanded Executive Committee on Humanitarian Action, perhaps with the involvement of the UN Development Group and the Inter-Agency Standing Committee. These groups could initiate internal consultations (and, if necessary, further research) with a view to establishing policy guidelines for the Organization as a whole and for the broader humanitarian community. Such a review could build out of existing work by the IASC,⁷⁸ including its Menu of Options and guidelines on civil-military relations.⁷⁹

⁷⁶ Compare Daniel Hellinger, “Humanitarian Action, NGOs, and the Privatization of the Military,” *Refugee Survey Quarterly*, 23:4 (2004), p. 192.

⁷⁷ The UN is also likely increasingly to confront other security needs such as hostage negotiations, extraction and evacuation. It is difficult to say at this early stage whether it will turn to private or state capacity to deal with these needs.

⁷⁸ Raising the issue in the IASC received support from some members of the ICRC Donor Support Group in an April 2005 meeting: Interview 31.

⁷⁹ See, for example, Inter-Agency Standing Committee, Reference Paper, *Civil-Military Relationships in Complex Emergencies*, endorsed by IASC Working Group on 16-17 June 2004, pp. 4-5 (specifically excluding discussion of private security companies).

These groups will also need to consider how these guidelines may best be integrated into the work of OCHA on civil-military relations, and the DPKO-led IMPP review or its follow-up. Operationalization will need to address issues such as authority over the approval of particular providers, information-sharing platforms, incident reporting, coordination of command and control and payment practices. More broadly, the UN may need to consider mechanisms for centralizing information about its commercial security partners and their performance. UNDSS officials suggested such an idea, while conceivable, was unlikely to receive high priority any time soon. That assumption requires testing.

The important role of the International Committee of the Red Cross

The International Committee of the Red Cross has a unique and important role to play in driving forward discussions on these issues. Its mandate positions it to speak with unsurpassed authority on many of the legal and policy issues raised in this study, as well as giving it unique authority to act as a bridge between the views of users and providers.

The ICRC is already taking significant steps in this regard, adopting a “triangular strategy” of engaging private security companies, their home states and their clients to discuss respect by private security companies of international humanitarian law.⁸⁰ The ICRC is also working with the Swiss government to promote an intergovernmental dialogue on such issues.

But there is more that the ICRC could do, in time. The triangular strategy might be broadened beyond simple

“responsibilization,” towards monitoring and accountability. The ICRC will, like all other actors in the humanitarian space, also need to grapple with the long-term impacts of its *own* use of commercial security providers, including residential and office security guards. For that reason, it will need to develop guidance for the whole Red Cross Movement – beyond Doctrine 60 – that addresses such issues. It should, for example, squarely address relations with commercial security in the Model Agreement on partnership between UNHCR and National Red Cross and Red Crescent Societies currently under negotiation; and it might consider preparing guiding principles or other standards governing relations between the Movement and commercial security providers for consideration at the forthcoming Conference of Delegates later in 2006. Such principles are, themselves, likely to have a significant demonstration effect within the broader humanitarian community.

The key role of donors

One recurring theme throughout the interviews undertaken for this study was the highly significant influence of donor policy on the security decision-making of groups providing assistance in humanitarian and post-conflict settings.⁸¹ Donors commonly have veto powers over their partners’ security budgets, and can thus use their tender and funding processes to influence the use of commercial security in humanitarian and post-conflict settings. Additionally, their access to information about the use of security providers by multiple users in multiple theaters gives them exceptional power to monitor performance by particular providers, discipline those providers (by withholding funding to users that work with that

⁸⁰ See Michael Sirak, “ICRC Calls For Contractor Accountability In War,” *Jane’s Defence Weekly*, May 19, 2004, p. 4; and see Gilles Carbonnier, “Corporate responsibility and humanitarian action: What relations between the business and humanitarian worlds?,” *International Review of the Red Cross* 83: 844, p. 947.

⁸¹ What can be said of national donors may also go for international financial institutions such as the International Monetary Fund (IMF) and World Bank in the post-conflict reconstruction phase. IMF policy is seen by many as central in creating demand for commercial security in many African states. Notably, it specifically approved payments by the Sierra Leonean government to Executive Outcomes in the 1990s, without any apparent reference to international standards or consideration of EO’s respect for human rights or humanitarian law: see David Shearer, *Private Armies and Military Intervention*, Adelphi Paper No. 316, International Institute for Strategic Studies (Oxford, UK: Oxford University Press, 1998), p. 68. Unfortunately, World Bank and IMF officials declined to be interviewed for this study. The increasing prominence of private contractors in SSR and even post-conflict judicial reform work, both areas in which the World Bank continues to have a significant interest, suggests that policies on hiring private security contractors will be of increased importance for these institutions in the future, as well as for the nascent Peacebuilding Commission.

provider) and to impose operational standards on security providers.

Donors should look to use existing mechanisms to control the use of unacceptable commercial security solutions by their implementing partners. For example, the European Commission Humanitarian Office might explore whether Article 16 of its *Framework Partnership Agreement with Humanitarian Organisations* can be interpreted to allow suspension of a partnership where a partner engages with a commercial security provider that has links to a party to a conflict that are likely to jeopardize the appearance of the partner's, or ECHO's, impartiality.

In the longer term, donors should consider how their market power may allow them to shift the incentives for developing and implementing best practice onto providers themselves. In particular, they might consider developing, in consultation with partnership agencies and the provider industry, registers of commercial security providers operating in humanitarian and post-conflict settings and contributing to

state-building. This could help overcome the competition between many humanitarian actors which not only prevents collective action such as information-sharing, but even risks creating a race to the bottom in security practices. Donors might also consider the benefits of using and if necessary changing donor partnership frameworks to incorporate baseline standards on relations between partners and commercial security groups. They might also reward, rather than penalize, tender proposals which demonstrate appropriate investment in public security capacity and accountable governmental authority. One way of doing this would be to create lists of preferred security partners, audited to ensure listed providers' practices foster public security and accountable governmental authority (e.g., by including human rights training for provider personnel and local staff, or by establishing complaints mechanisms for affected populations). This would not only help drive under-performers out of the market, but also help internalize incentives for movement towards best practice into the profit calculations of providers.

Annex I: List of Interviews

Shawn Bardwell
Security Coordinator
InterAction

Andrew Bearpark
Olive Group and British Association of Private
Security Companies

Mark Bowden
Head of Policy
OCHA

Cate Buchanan
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Center for Humanitarian Dialogue

Dr. Marina Caparini
Senior Fellow
Geneva Center for the Democratic Control of Armed
Forces (DCAF)

Prof. Andrew Clapham
HEI

Alisa Clarke
Human Rights Officer
Special Procedures, Office of the High Commissioner
for Human Rights

Michael Cottier
Directorate of International Law
Swiss Ministry of Foreign Affairs

Brigadier-Gen. (ret'd) Ian Douglas
Former Commandant
Camp Security Liaison Group

Renata Dwan
Coordination Officer
UNDPKO Best Practices Unit

Anthony Val Flynn
HQ & Field Security Coordinator
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Francis James
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Paul LaRose-Edwards
Director
CANADEM

John Logan
Former UNHCR Field Security Coordination Officer,
Goma
Formerly UNHCR, now UNDSS

Andrew Macleod
Asia and Pacific Section
Coordination and Response Division, OCHA

Richard Manlove
Senior Security Coordinator
Office of the Security Coordinator, UN Department of
Safety and Security

Randy Martin
Director of Global Emergency Operations
Mercy Corps

Christine Escurriola Moulin
Head of Sector for Europe and North America
Unit for Relations with Armed and Security Forces,
ICRC

Michael O'Neill
Director of Security
Save the Children US

Melissa Powell
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UN Global Compact

Chuck Royce
Humanitarian Affairs Officer
Military, Civil Defence and Logistics Section,
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Ed Schenkenberg van Mierop
Coordinator
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Fred Schreier
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Lars Tangen
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International Federation of Red Cross and Red
Crescent Societies

Pegatha Taylor
Defence and Security Relations Division
Foreign Affairs Canada

Saleh Tembo
Field Safety Adviser
UNHCR Tanzania

Col. Denis Thompson
Director of Peacekeeping Policy
Canadian Department of National Defense

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