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Policy Brief: Five Blueprints for Regulating the Global Security Industry

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IPI's Work on Private Security

IPI has been working with governments, international organizations, industry, and civil society to improve regulation of the international private military and security industry since early 2006. In late 2007 and early 2008, governments and industry actors expressed interest in the International Peace Institute (IPI) carrying out a study on how to improve international regulation of private military and security companies (PMSCs) by combining governmental initiatives with industry self-regulation. The study's aim is to catalyze thinking on the urgent need for better regulation of the global security industry—and the practical and policy issues involved. It provides five options for the development of a global framework. However, it does not aim to develop a preferred model for a framework for the industry, nor to prescribe standards for the industry. Instead, it aims to foster reflection within all relevant stakeholder groups—governments, industry, and civil society—on their own positions regarding possible approaches to the implementation and enforcement of standards in the global security industry. The study is intended to serve as a reference document for stakeholders and to inform dialogue on the improved regulation that IPI hopes will emerge in the coming years.

The complete study, James Cockayne et al., *Beyond Market Forces: Regulating the Global Security Industry* (New York: International Peace Institute, 2009), will be available for download from www.ipinst.org. For more information, contact James Cockayne, Senior Associate, International Peace Institute, at cockayne@ipinst.org.

This policy brief examines options for improving international regulation of private military and security companies (PMSCs). In late 2008, seventeen states, including the US, UK, China, Iraq, and Afghanistan, endorsed the Montreux Document, providing guidance to states in regulating PMSCs. But there is a need to do more to provide increased guidance to industry and to ensure standards are enforced. There are positive signs that the Obama administration will step up efforts to improve regulation, both domestically and internationally. And there are signs that other states, such as Switzerland, the UK, and Canada, are also willing to act. But a roadmap for effective international regulation is needed. Domestic regulation is not enough, because the industry is increasingly global. Even many of the PMSCs employed by the US government are incorporated offshore, and recruit third-country nationals that they then deploy overseas without their ever having entered US jurisdiction. What is needed is a global framework to assist states in regulating this industry.

The Study

In 2008, the International Peace Institute (IPI) undertook a review of thirty standards implementation and enforcement frameworks to learn how a framework for the PMSC industry might be achieved. IPI examined frameworks for the financial, extractive, garment, chemical, toy, toxic waste, sporting, veterinary, and security sectors. The result is *Beyond Market Forces*, a book-length study which identifies four design principles to guide the development of an effective global security industry framework:

- 1) assist states in discharging their legal duty to protect human rights;
- 2) involve all relevant global security industry (GSI) stakeholders, including states;
- 3) use “smart incentives” to encourage stakeholder involvement and influence their conduct; and
- 4) improve PMSCs’ accountability to clients, the communities in which they operate, and other stakeholders.

The study sets out five blueprints for such a global framework. These frameworks could be set up immediately, individually or as a package, on the basis of existing standards, such as the Swiss Initiative’s Montreux Document and existing international law. Each would add value to existing regulatory arrangements. These blueprints are explained briefly here. The complete study will be available for download at www.ipinst.org.

1. A Global Watchdog

Precedents: Geneva Call, International Committee of the Red Cross, Transparency International, UN framework on children and armed conflict

A GSI watchdog could take the form of a states-backed global GSI ombudsman or be established collectively by NGOs and industry. It would act as a “guardian” of GSI standards, by monitoring PMSCs’ and/or other stakeholders’ compliance with these standards. It would investigate allegations reported publicly or through a complaints hotline, passing on its findings to appropriate state enforcement mechanisms. It would publish an annual review of compliance with GSI standards, and a digest of good practices in implementing and enforcing them. A GSI watchdog would consist of a secretariat, responsible for its monitoring and review functions, and a board. Its running costs, approximately \$1.2 million/year, would be funded by states and private foundations. It would help fill the chronic gaps in GSI market transparency and provide GSI stakeholders with reliable information about industry performance. And it would make industry underperformers accountable, while rewarding good behavior.

2. An Accreditation Regime

Precedents: Business Social Compliance Initiative, Fair Labor Association, International Council of Toy Industries

A GSI accreditation regime would create demand for standards-compliant PMSCs, and drive up standards across the GSI. It would have three linked functions: certification, auditing, and ratings. It would consist of a board, a secretariat responsible for day-to-day operations and answerable to the board, and auditing teams. These teams would certify applicant PMSCs according to agreed criteria, and then monitor and rate their performance. Clients and regulators could link their own decisions to these ratings. The regime, not

including the auditing teams, would cost approximately \$1.5 million/year and be funded by fees levied for the accreditation process, according to a graduated fee schedule. It will depend on substantial buy-in from both industry and clients. But it could institutionalize the connections among standards implementation, market access, and performance.

3. An Arbitral Tribunal

Precedents: Court of Arbitration for Sport, ILO Tripartite Declaration Interpretation Procedure

A GSI arbitral tribunal would serve as a forum in which contractual parties could enforce the terms of their contracts, or from which state regulators could seek advisory opinions or decisions in specific cases. It would deal with disputes over labor, contracts, and other issues—but not serious human rights violations. A tribunal would significantly reduce transaction and dispute-resolution costs for all industry stakeholders, supplement state enforcement options, and encourage improved respect for standards in the industry. However, it would not deal with the key regulatory problem for the GSI: PMSC violations of human rights and international humanitarian law (IHL). PMSCs, their clients, and personnel would specifically consent to submit to the tribunal’s jurisdiction in their contracts; or states could mandate its jurisdiction over certain types of disputes. Its decisions would be enforced through states’ domestic jurisdiction, as with other international arbitration arrangements. A small secretariat would maintain a database of arbitrators, receive and process complaints, and publicize the tribunal. It would cost an estimated \$900,000/year, financed by contributions from states and industry actors, which would cover the secretariat’s operations and the provision of assistance to small and indigent claimants.

4. A Harmonization Scheme

Precedents: Financial Action Task Force, Organization for the Prohibition of Chemical Weapons, Toxic Waste Convention, UN Global Compact

A GSI harmonization scheme would involve harmonizing national regulatory arrangements and/or PMSC management arrangements around agreed international standards. Its small secretariat would track and assist with the implementation of these standards by states, the industry, and its clients. But its main activities would be decentralized: states and/or PMSCs could volunteer to lead working groups championing harmonization in specific areas (e.g., training, vetting, accountability). Secretariat activities would then be relatively low cost: about \$800,000/year, financed by a participation fee. It could provide capacity-building assistance to states with weak regulatory capacity (through a voluntary trust fund), or accelerate harmonization through a peer review system (like that of the Financial Action Task Force). And it could begin immediately among the seventeen states that have already endorsed the Montreux Document.

5. A Global Security Industry Club

Precedents: British Association of Private Security Companies, International Peace Operations Association, Voluntary Principles on Security and Human Rights

A GSI club would provide a framework for states, PMSCs, and clients to develop and implement a shared professional ethic, through collectively wielded peer pressure. It would comprise a members' assembly divided into members (clients, industry, states) and participant observers (civil society, affected communities, GSI financiers, and insurers); a board; a secretariat; and a mixed commission made up of membership and observer representatives. This commission would investigate specific allegations of serious violations of the club's standards, refer findings to relevant state enforcement authorities, and issue annual "general comments" to assist members in improving GSI regulation. Membership fees would finance its costs of about \$1 million/year. While its diverse membership could weaken the common ethic at the heart of a club's enforcement power, its participatory nature would be its key added value.

The **INTERNATIONAL PEACE INSTITUTE (IPI)** is an independent, international institution dedicated to promoting the prevention and settlement of armed conflicts between and within states through policy research and development.



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