



Working towards an International PMSC Code of Conduct

Report of views voiced by civil society representatives unable to attend workshop

April 2009

This report seeks to reflect the views voiced by several civil society representatives unable to attend the workshop held on 17 April during separate consultations held with them during April 2009.

I. The code and its scope

Any accountability that is established under this international CoC needs to be one that has “teeth”. This was a shared concern of all consulted.

Pure self-regulation was not considered effective by any; some external regulation of the PMSC industry was crucial.

Concerns were raised over the usefulness of vetting PMSCs if they then sub-contract to other actors not subject to scrutiny, and also over maintaining effective vigilance when PMSCs change the legal identity of their company entity and/or country or registration or incorporation.

It was suggested that in order to prevent PMSCs from “jurisdiction shopping”, the CoC needed to be global rather than just international in its reach.

Recognizing the key role that team leaders of operating units play in setting the tone of operations on the ground, licencing certain key personnel as “team leaders” within PMSCs was suggested as one way to support improved conduct on the ground.

Defining some activities as so inherently governmental that they were not capable of being outsourced was suggested as an intrinsic part of raising standards.

Whether the code applied to just “private military” or also to “private security” should be decided and defined; also whether the CoC should apply to just corporate entities or also individuals.

Services other than security should also be considered – intelligence/risk analysis, for example, was a service that some clients would use, even if they didn't use PMSC physical security services.

European competition law and WTO law were potential hurdles to be overcome in any CoC initiative.

II. States and Clients

The continuing responsibility of States to ensure that practical effect is given to the realisation of human rights was emphasised by all, including the responsibility to investigate and prosecute crimes which violated human rights. An international CoC should not weaken that responsibility or international standards, and it should not present itself as an alternative to State regulation.

Some suggested that states use PMSCs in order to legally avoid international obligations, such as those contained in human rights treaties, as well as to shield themselves and their agents from direct liabilities and responsibilities.

It was noted that some clients, such as humanitarian organizations, may have a very different perspective from PMSCs on how security should be realized. This tension was worth noting in the debate.

III. Perspectives from the ground

Apart from substantive changes to accountability that it may bring about, some felt that an initiative such as an international CoC may also help dent the personal sense of impunity that some PMSC personnel operate with, perhaps changing their attitude on the ground.

There was dismay at the lack of sanctions for those who had committed activities in the past resulting in human rights violations. There seemed to be in some regulatory quarters an attitude that PMSCs would “learn from their mistakes” and that a certain degree of “bad behaviour” on their part was to be tolerated.

It was suggested that supply and demand dictated the quality of PMSC personnel operating on the ground: a high demand at short notice often meant that “lower quality” personnel would be dispatched. It was important, therefore, to consider the role of management in providing the appropriate actors on ground operations. Having the right person as team leader in operations on the ground was crucial in ensuring that personnel under their direction acted appropriately.

IV. International Oversight

The idea of an international oversight body/ombudsperson was generally welcomed, so long as it was properly resourced and that the institution or person had the appropriate gravitas and independence. One suggestion was that it could be born out of the UN security council;

others felt that a body modelled on the Law Society/Bar Council was worth exploring further. In the interests of independence, funding for the body should come from a variety of sources and not just from industry contributions. One option mentioned was to model funding on the lines of a UN trust fund. An international secretariat could at least initially be hosted by a government department.

Victims need to have real and effective access to any international ombudsman. It was suggested that lessons could potentially be learned from the on-the-ground failure of the World Bank Inspection Panel to provide justice to people, despite being in theory an accessible and inclusive mechanism.

V. Learning from other initiatives

There were several critics of the effectiveness of other international initiatives, such as the Voluntary Principles on Security and Human Rights. A concern shared by more than one was that the VPSHR was not as effective as it could be, and would benefit from having a higher degree of accountability built-in to it with strong sanctions for breach.

In contrast, another view of the VPSHR was that it showed that only standards could be established in the initial stages of a CoC, and that methods of enforceability and accountability would follow later. Also, being led by a few developed countries at an early stage was perhaps a political reality, with other countries being brought on board later in the process. In the process of consulting with different stakeholders, including legal government or industry legal teams, it was suggested that you ran the risk of actually ending-up with lower standards overall in order to accommodate disparate views.

Several times the “protect, respect and remedy” framework of UN Special Representative John Ruggie was mentioned, with the suggestion that ways in which his work could contribute to an international CoC should be explored further. In particular, attention was drawn to his focus on companies carrying-out human rights due-diligence.

Some expressed disappointment with the Montreux Document in that it did not bring about direct improved accountability of PMSCs or enforceability of human rights standards. For example, skepticism was voiced as to whether States had taken positive steps to incorporate obligations set-out in the Montreux Document in their procurement practices.

One “name and shame” initiative promoting the respect of human rights standards by the business community reported that 75 to 80 per cent. of companies would respond when adverse information about them was placed in the public domain. It was suggested, therefore, that the power of publicizing activities violating human rights should be harnessed by the CoC initiative. The same initiative also indicated that incentivizing companies who perform positive actions to realize the enjoyment of human rights should also be considered.