

A security guard stands near an ExxonMobil rig in Kome, southern Chad.
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Protected but Exposed

MULTINATIONALS AND PRIVATE SECURITY

INTRODUCTION

In November 2010, close to 60 private security providers signed an international code of conduct that committed them to ‘respecting human rights and humanitarian law in their operations’ (FDFA, 2010). The International Code of Conduct for Private Security Providers (ICoC) sets out standards in areas such as the use of force, vetting of private security personnel, and reporting of incidents. It emerged in response to alleged human rights abuses by private security contractors in conflict zones, and its creation reflects the growing scrutiny of private security companies (PSCs), particularly those employed by governments.

Another expressed aim of the ICoC is for PSC clients—‘be they states, extractive industries or humanitarian organizations’—to embed the code in their contracts (FDFA, 2010). Ideally, this goal should apply to multinational corporations (MNCs) in general, extractive and otherwise, as they are major consumers of private security, particularly in countries where the rule of law is weak and state-provided security is inadequate or non-existent. Even where the rule of law is well established, MNCs often employ PSCs to protect assets, personnel, and property.

And yet, despite the heightened attention to PSCs, and the frequency with which MNCs turn to private security, research on MNC use of PSCs is scarce. While MNCs clearly rely on private security providers to play an important role in protecting their operations, this relationship is not always straightforward. In conflict or post-conflict areas, MNCs may face difficulty in finding disciplined, well-trained private security personnel who have not been linked to hostilities. In other cases, the lack of a distinction between public and private security forces can affect MNC control over their security operations and hamper efforts to establish liability with respect to the misuse of force. In some cases, particularly in the extractive industries, companies’ PSC personnel are alleged to have killed, injured, or intimidated local community members, protesters, and others through excessive or improper use of force or arms.¹ The absence of global data on armed violence involving PSCs makes it difficult to assess the incidence of such abuses.

No international legal framework governs PSCs or MNCs, and national regulation of private security companies is weak or non-existent in many countries.² It is difficult to hold MNCs accountable in their home states for incidents of weapons misuse associated with their operations abroad (including abuses committed by their private security providers). Research for this study indicates that host states generally have limited legislation regulating MNC use of private security. The consequence is often a lack of accountability for MNC use of private security, particularly overseas and in countries with weak governance.

This chapter focuses on some of the problems surrounding MNC use of private security and associated misuse of force or arms. In so doing, it focuses on the extractive industries and on selected key issues:

- Under what conditions do MNCs use private security and what are some of the variations in these arrangements?
- How do governmental restrictions or local conditions affect private security arrangements of MNCs?

- Under what conditions do PSCs misuse force or firearms while in the employ of MNCs?
- What mechanisms exist, both legal and otherwise, for holding MNCs accountable regarding their use of PSCs?

Key findings include:

- Contrary to what may be expected, risks associated with in-house security point to the need for companies that opt for such an arrangement to engage in a high level of due diligence.
- The progressive blurring of distinctions between private and public security forces challenges the assumption that MNCs can turn to PSCs to bypass public security forces with a poor human rights record.
- Weaknesses in the regulation of PSCs and MNCs at the domestic and international levels, as well as gaps in oversight at the company level, may create conditions for violence, including excessive use of armed force, by private security contractors working for MNCs.
- While legal and non-binding mechanisms exist to hold MNCs accountable for their use of private security, significant obstacles to using them remain in place.
- Standards of good practice regarding MNC use of private security have begun to emerge, primarily through the Voluntary Principles on Security and Human Rights (VPs). No systematic research has been done on their implementation, however, and signatories face few consequences for failing to uphold agreed principles.

Weaknesses in regulation and gaps in oversight may create conditions for violence.

The chapter begins with a brief look at the kinds of private security MNCs typically use, placing them within the context of the international debate on the responsibility of companies to respect human rights. It then examines a broad set of issues that may increase the likelihood that PSCs will misuse armed force—including the degree of control of MNCs over private security providers, vetting and training, and the use of *public* security personnel for private security. The final section focuses on MNC accountability for private security use, identifying both the gaps and potential mechanisms for closing them. The chapter is based on desk research and interviews with representatives of both the private security and extractive industries, non-governmental organizations, academia, and others.³ It also draws on expert contributions commissioned by the Small Arms Survey.

SETTING THE SCENE: MNC SECURITY NEEDS

This chapter focuses on MNCs that hire PSCs that can or do use preventive or defensive force (including in self-defence) to protect people or assets. It does not review private security companies that provide offensive or military services, which are sometimes referred to as private military companies (PMCs),⁴ although some MNCs do use the services of such companies to protect their operations and staff in volatile areas.⁵ PMCs account for a relatively small percentage of the security industry, if one defines private security broadly to include, for example, guards at shopping malls.⁶ Some scholars use the collective term ‘private military and security companies’ (PMSCs); others dispute the division of companies into PSCs and PMCs, arguing that these categories can start to merge in conflict situations and that distinctions must therefore be made on a case by case basis.⁷

Nearly all multinational corporations use private security in some form.⁸ They often use it in countries with weak state institutions or in volatile, conflict-prone areas.⁹ They also use private security in developed countries, with the United States being the largest market for privatized security in the world (Abrahamsen and Williams, 2009, p. 2). They

do so for a number of reasons, not least because public security forces cannot fill the growing demand for security and because these forces do not or cannot necessarily provide the services MNCs may require, such as guarding private property (PRIVATE SECURITY COMPANIES).

Corporations turn to PSCs for a variety of services, including unarmed security (patrols or static security such as staffing checkpoints, monitoring security cameras, and providing theft control), as well as advisory functions (such as technical advice, risk analysis, monitoring, and consultancy). Services can also entail armed security, such as convoy escorts, close protection of VIPs, bank transfers, intervention or alarm response at industrial sites, and the guarding of factories, gold refineries, fuel facilities, commercial centres, banks, and delivery trucks.

The chapter focuses on MNC use of PSCs for several reasons. First, MNCs are among the top consumers of private security and thus help drive PSC industry expansion.¹⁰ Second, MNCs are at the heart of the current debate about corporate social responsibility. Third, they are particularly sensitive to controversies involving their private security contractors because of heightened scrutiny by civil society organizations.



A French businessman, the general director of Technip, prepares to enter an armoured vehicle during his Baghdad visit with the French industry minister in February 2010. Corporations sometimes use private security for close protection of VIPs. © Eric Gaillard/Reuters



Security personnel guard the chemical plant of the BASF-SINOPEC joint venture in Nanjing, China, September 2005.
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The chapter narrows the focus further to extractive multinationals—specifically oil, gas, and mining enterprises—because they face the toughest security challenges. They often operate in conflict-prone or volatile regions that raise particular concerns regarding the use of force and firearms. Specifically, some extractive MNCs have been associated with high-profile controversies involving serious human rights abuses, often perpetrated by third-party security forces hired to protect personnel and assets.¹¹ While the examples in this chapter are primarily from the extractive industries, other multinationals, notably those active in agribusiness and food commodities, have also been implicated in human rights controversies involving security forces in their employ. Future research on corporations' use of private security might thus usefully examine a broad cross-section of multinationals in order to test some of the ideas discussed in this chapter and generate others.

A lack of data and the sensitivity of the subject posed challenges for the research of this chapter. For example, it is not known how many injuries or deaths per year are due to violence (particularly armed violence) perpetrated by PSCs guarding MNCs. Nor is it known how many accusations of arms-related abuses are lodged each year against these PSCs. While companies themselves may collect such data, they are not available at a global level. This lack of information makes it difficult to know whether MNC use of private security is more problematic, in human security terms, than the use of public security. Due in part to liability concerns, MNCs have little incentive to share this information publicly. As discussed below, certain international initiatives may lead to improved incident reporting, which could facilitate comparisons of different levels and types of armed violence by PSCs to those of public security forces.

Two recent international frameworks have brought increased attention to corporate responsibility in relation to human rights. They have also raised questions about the responsibility corporations have in relation to the human rights impacts of their business partners, such as private security contractors. In 2005, UN Secretary-General Kofi Annan appointed his Special Representative (SRSG) on Business and Human Rights, John Ruggie, to 'identify and clarify standards of corporate responsibility and accountability' for MNCs and other businesses with regard to human rights. In 2008 Ruggie published a framework based on three pillars: state duty to protect human rights, corporate responsibility to respect human rights, and access to remedies for victims of human rights abuses (Ruggie, 2008a).

Corporate-related human rights abuses are more frequent in countries with weak rule of law, and 'legitimate and well-recognized firms also may become implicated in human rights abuses, typically committed by others, *for example, security forces protecting company installations and personnel*' (Ruggie, 2009, p. 3, emphasis added). In such cases, the security provider is the perpetrator, while the MNC, as contractor, may be complicit (see below). In this context, Ruggie has stated that the exercising of 'human rights due diligence'—through policies, assessments, integration, and tracking and reporting—helps companies identify and manage human rights-related risks and 'address their responsibilities to individuals and communities that they impact' (Ruggie, 2010b, pp. 16–17). A key part of due diligence, according to the SRSG's framework, is for a company to identify and manage risks posed by its relationships to third parties and to assess the context in which it operates.

Ruggie's guidance captures the growing consensus that a company should conduct due diligence on relationships with third parties—such as PSCs—to ensure 'it is not implicated in third-party harm to rights' through these links (Ruggie, 2008b, p. 7). Companies' relationships with business or joint venture partners such as state and private security forces are already under increasing scrutiny. They are likely to be an integral part of the standards expected to emerge when Ruggie presents his recommendations to the UN Human Rights Council in 2011. It is noteworthy that the ICoC pledges signatory companies to endorse the Ruggie framework (FDFA, 2010, p. 3). Further, the framework's focus on the importance of human

Box 5.1 Less-lethal weapons and munitions

Given the range of MNC private security arrangements, it is difficult to generalize about the types of weapon their private security providers use. A meaningful discussion of weapons used would require a more comprehensive survey than was conducted for this chapter. Yet despite its limited scope, this study reveals that some MNCs use weapons and munitions often categorized as 'less-lethal'. These include TASERS and stun guns, tear gas, and paint ball rounds.

One security studies expert points out that firearms constitute a liability for private security companies. In some countries, such as South Africa, armed guards may be attacked for their weapons. MNCs also face liability risks if their armed guards misuse their weapons; in most cases, both MNCs and PSCs thus 'prefer as little violent capacity as possible'.¹²

Unarmed security guards, however, may face attack from illegally armed groups or individuals precisely because they carry no weapons. A security executive at AngloGold Ashanti asserts that, because the company's PSC personnel in some countries must, by law, be unarmed, they have become targets of a 'criminal element' in those countries. In response to attacks that left PSC personnel seriously injured, in 2008 the company began to consider providing security personnel with less-lethal munitions so they could protect themselves until backup help arrived. The company approached the government of Ghana, where only individuals (not PSCs) may be licensed to carry arms, and 'agreed in principle' with the government to investigate the use of less-lethal munitions.¹³ As of late 2010, this process was 'pending', with the company awaiting government buy-in on the idea. AngloGold Ashanti is also looking at using less-lethal munitions for its private security personnel in South Africa, where it uses primarily in-house security personnel, some of whom are armed,¹⁴ as an alternative to the use of firearms. The decision of whether to equip personnel with firearms is based on threat and risk assessments.¹⁵

In another case, an extractive company has developed a standard set of less-lethal munitions: 12-gauge stabilized bean bags, 40 x 46 mm long-range and short-range tear gas ammunition, and Triple Chasers, hand-held CS gas canisters. It also uses paint balls in training and simulation. A security executive for the company reports, however, that because legislation has not kept up with the development of this technology, it is more difficult to obtain less-lethal munitions than lethal ones.¹⁶ The former security manager of a mining company echoes this point, noting a lack of legislation to license the use of these munitions.¹⁷

The extent of the use of less-lethal weapons and munitions among MNCs is not known.¹⁸ Research is needed to understand the conditions under which PSCs guarding MNCs are using less-lethal materiel at their sites, the weapons' impact on death and injury rates, and the legal impediments to MNC acquisition and use of less-lethal munitions. MNCs may favour switching to less-lethal equipment primarily in countries where their PSCs are not allowed to carry firearms (and the company perceives a need to arm them for self-defence purposes). Or they might use less-lethal weapons and munitions, more broadly, as a way to cause less harm to civilians—it is too early to tell.

It is also worth remembering that less-lethal weapons, and the use of weapons other than firearms, can cause serious injury and death if used improperly (EMERGING TECHNOLOGY).

rights-related reporting and internal grievance mechanisms is likely to be particularly important in the context of MNC use of private security.

A second relevant framework is that of the Voluntary Principles on Security and Human Rights, a multi-stakeholder initiative to specifically address MNC use of security. The VPs, designed for the extractive industries and launched in 2000, cover MNC use of both public and private security. They are not legally binding but, as discussed below, have nonetheless led certain companies to introduce new standards aimed at improving respect for human rights.

KEY CHALLENGES IN MNC USE OF PRIVATE SECURITY

The dearth of research on MNC use of private security prevents comprehensive analysis across any particular industry, setting, or region. Yet interviews conducted for this study shed light on key characteristics of this type of security, as well as on the factors that enable the misuse of armed force by PSCs. This section presents these findings through an examination of in-house security; international versus local private security; private and public security; and the use of hybrid security.

Security is a specialized and complex service, and not an MNC's core business.

In-house security

One of the decisions MNCs must make regarding the protection of their operations is whether to use their own staff for security provision (also called 'in-sourcing') or to outsource this function. According to numerous sources, MNCs generally do not use their own staff to provide security. If they do have security personnel, these are often managers who oversee outsourced security.

Several factors explain this tendency to outsource. Security is a specialized and complex service, and not an MNC's core business. In-house security can be more expensive than outsourcing, as it requires the corporation to take on the responsibility of training (and retraining) staff, and may also require registering as a PSC.¹⁹ In contrast, outsourcing private security affords an MNC the capacity to terminate a contract if something goes wrong, granting it some distance from the PSC and possibly allowing it to avoid liability or reputational risks. It is harder for an MNC to fire its own staff if, for example, a security officer is involved in the improper use of force. If an MNC relied on staff, any incident of misconduct would be directly subject to board supervision and corporate whistleblower procedures, which can be avoided when contractors are used.²⁰ Further, external private security personnel are more removed from staff and therefore arguably more objective in monitoring MNC staff to prevent theft (including of sensitive information) or other misbehaviour, in addition to protecting them.²¹

Some MNCs do use their own security personnel. In one case, a multinational extractive company recruits, trains, and uses its own security personnel in some parts of the world, sometimes in combination with contracted private security. One security executive notes that using in-house security is more complicated but points out that the company does so because it has found private security providers in developing countries to be lacking in capacity and proper training.²² In another case, the former security manager of a multinational mining company advocates a three-layered strategy, with the 'inner ring' composed of in-house 'trusted staff' who guard valuable assets and may be armed (depending on local law).²³ The second ring can be outsourced security (public or private) and the third ring represents the local community (Faessler, 2010, p. 18). This third ring serves as a 'strategic' one, in that the local community can provide (or deny) a company the 'license to operate' in the area.²⁴ Frictions between the community and the company can lead to conflict and increased security risks. If there is a good relationship between the two,

however, the community 'often becomes a key source of information', providing early warnings to the company on potential security threats.²⁵

Using in-house security has the potential to give an MNC better oversight and tighter control over the activities of its security personnel. But the degree of control, and its effect on weapons use and misuse, seems to depend on numerous variables. These include the local context and prevailing security situation; the profile of public security forces; the population from which an MNC recruits its private security personnel; and the MNC's internal procedures for handling infractions by such personnel. Use of in-house security can impede a company's ability to respond appropriately in the event that its own security personnel are involved in the improper use of force. Companies

Box 5.2 The Porgera joint venture mine

Security personnel at a gold mine in Papua New Guinea (PNG) have been accused of serious human rights abuses. Local community members have claimed that guards employed by the Canadian mining company Barrick Gold at the Porgera joint venture (PJV) gold mine²⁶ have used 'excessive or abusive force' in their work, killed individuals at the mine and outside its confines, and 'engaged in physical abuse and rape' (IHRC and CHRJ, 2009, p. 1). In addition, armed PJV security personnel allegedly raped women at gunpoint and were accused of being involved in the shooting deaths or injuries of several individuals (pp. 13-17, 19-20).

In 2009, a team of researchers from Harvard Law School and the New York University School of Law testified before the Standing Committee on Foreign Affairs and International Development of the Canadian House of Commons about these alleged human rights abuses. The research team reported it had found 'a close relationship between PJV security personnel and PNG police', with the police also implicated in allegations of violence (IHRC and CHRJ, 2009, p. 1). It also reported that armed members of PJV's private security force carried out many of the alleged abuses. While the research team acknowledged 'some of the actions of PJV security personnel may have been justifiable on the grounds that force was lawfully used to protect property or life', it urged independent investigation of 'all incidents of violence and death' (IHRC and CHRJ, 2009, p. 1).

The case underscores some of the complexities of situations in which MNCs use both private and public security. The close relationship between PJV and the government raises questions about the latter's 'ability to independently investigate' claims of human rights abuses (IHRC and CHRJ, 2009, p. 9). The case also highlights an important potential problem with the use of in-house security. As the research team argued, despite PJV's efforts to investigate violent incidents at the mine, an 'inherent conflict of interest' exists in its doing so, 'as it is PJV personnel who are alleged to have committed these abuses' (p. 2). In addition, the company's recruitment of security personnel among former police officers has raised concerns given the history of institutionalized police violence. These concerns call for a higher

level of vigilance regarding possible abuses by private security personnel than might be called for in other contexts.²⁷

In early 2011, Human Rights Watch published a report on Porgera's impact on human rights, further examining the alleged abuses committed by members of the mine's private security force in 2009 and 2010. The report finds that mine security personnel were 'generally well disciplined' in responding to 'violent nighttime raids by illegal miners on the central areas of the mine'.²⁸ Human Rights Watch concludes, however, that in more remote parts of the mining area, 'some security personnel have committed violent abuses against men and women, many of them illegal miners engaged in nonviolent scavenging for scraps of rock'; the violence occurred 'on or near the sprawling waste dumps around the mine' (HRW, 2011, p. 9). The report identifies one of Barrick's 'most glaring failures' at the mine as 'its inadequate effort to monitor the conduct of mine security personnel working in the field'; Human Rights Watch also argues that the company had failed to create 'a safe and accessible channel' for individuals to register alleged abuses by security guards or other company employees (HRW, 2011, p. 14).

According to the report, Barrick has taken steps to address these and other problems, including commissioning a 'former police commissioner and ombudsman to investigate the allegations of abuse by PJV security personnel' (HRW, 2011, p. 10). In this context, it is notable that Barrick joined the VPs in November 2010 (Barrick Gold Corporation, 2010). Human Rights Watch also points to the government's failure to carry out 'meaningful day-to-day oversight' of the mine's private security force and urges the government to create a mechanism to 'oversee the conduct of all private security actors' in the country (HRW, 2011, p. 24).

In February 2011, Barrick issued a response to the report, thanking Human Rights Watch for providing it with information on the alleged abuses. The company writes that, among other measures, it has conducted an extensive internal investigation, has terminated employees who violated its code of conduct, and is introducing monitoring systems for its security personnel (Barrick Gold Corporation, 2011).

opting for internal security therefore need effective procedures to address these factors. Box 5.2 highlights one example in which a company's in-house security guards have been implicated in allegations of serious human rights abuses stemming from the misuse of force, as well as some of the questions that arise in such cases.

International versus domestic private security

MNCs often use domestic PSCs.²⁹ If they use international private security companies,³⁰ these are generally staffed with local employees, though upper management positions tend to be filled by expatriates. In some countries, local law stipulates that PSCs must be owned by nationals (as is the case in Nigeria);³¹ in others, they must be staffed by nationals (as in Angola).³² Yet one source points out that foreign PSCs operate in Nigeria by forming management agreements with Nigerian companies, highlighting 'the extent to which regulation of the private security sector is often circumvented' (da Silva, 2010, p. 9). Some countries (such as Colombia and Sierra Leone) place no restrictions or preferences on the use of foreign versus domestic PSCs (p. 9).

Various factors explain an MNC's decision to contract international PSCs, or at least their local branches. Sources close to the industry assert one reason is that in some regions local private security personnel lack training and are not familiar with international standards, such as the VPs or the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN, 1990). In their view, using such firms has legal and reputational risks for MNCs. The former security manager of a mining MNC notes that his company used the local registered office of a global private security company in Africa for a number of reasons. Despite the higher cost, the mining company was able to hire security personnel with better training. It also had the option of adding penalty clauses to contracts, and the security firm offered higher standards of licensing and bonding than did local PSCs.³³ MNCs also turn to international PSCs (or their local branches) because they possess highly sophisticated technological and knowledge-based security solutions and systems.³⁴

On the other hand, local PSCs hold certain advantages over international ones. Several sources point out that cost is a key reason MNCs use the former.³⁵ In addition to being more affordable, local security personnel do not require housing or moving costs. They know the area and local conditions and speak the local language. In the words of one former private security representative, local PSCs 'tend to blend in better' and 'can often resolve issues before [they] escalate to violence'.³⁶ Further, certain countries (such as South Africa) grant firearms licences only to citizens or permanent residents.³⁷ In such cases, if an MNC plans to use armed PSC personnel, it must use local staff. If, however, potential security staff from the area around the MNC facilities are incompatible with the local population due to their military background or other personal characteristics, an MNC might not want or be able to use local personnel.³⁸

Local market conditions can also help inform an MNC's choice between international and local private security. For example, as the market for private security is regulated in Colombia, there is a wide choice of PSCs.³⁹ MNCs in the oil and mining sectors in Colombia tend to hire domestic PSCs, but a variety of international and local PSCs operate in the country. Some of these provide banking, commercial, or residential security, as in other countries in Latin America, while other PSCs in Colombia include US government contractors involved in the 'war on drugs'.⁴⁰

Private and public security

It is not possible—nor useful—to generalize about whether using private security in any particular situation poses greater risks of weapons misuse than using public security forces. The risk depends on the context, including the nature of both the public sector forces and those providing private security. The absence of comprehensive data on

Local PSCs hold certain advantages over international ones.

incident reporting further clouds the picture. This section looks at some of the factors that appear to lead MNCs to use private security, while acknowledging that it is not a simple question of choosing private over public security. In fact, one school of thought in security studies argues that categorizing security provision into private versus public ignores the major shift taking place in many countries towards 'global security assemblages'; in this view, public and private security increasingly work together and the lines between the two are becoming blurred (Abrahamsen and Williams, 2006, pp. 7–8; 2009, pp. 3, 6). This issue is explored further in the section on 'hybrid security', below.

The wide variety of security arrangements MNCs use around the world may be illustrated as straddling a spectrum. In certain countries, corporations are required to use public security in some form, perhaps because the host government requires public security at certain facilities (such as oil installations) if they are deemed sensitive or 'of national interest'.⁴¹ Alternatively, a government may prohibit PSCs from carrying arms, obliging an MNC to call on the state when it needs or wants armed protection. Even where MNCs are not legally obligated to use public forces, they might choose to use them as a supplement to private security, as in areas of conflict in countries where the armed forces are considered capable and a functioning state exists. Elsewhere, a host government may require companies to



An armed security guard watches over an official diamond mine in Lunda Norte, Angola, 1992. The Brazilian company Odebrecht operates the mine on behalf of the Angolan government. © Paul Lowe/Panos Pictures

provide their own security. In Angola, for example, MNCs entering certain domestic market sectors are responsible for the provision of security. Specifically, the Angolan Diamond Law 16/94 calls for regulated diamond concessionaires to ‘provide for their own security’ in ‘areas defined as “restricted” and “protection zones”’ (da Silva, 2010, p. 8; Joras and Schuster, 2008, p. 41).

The reasons MNCs might choose private security include:

Cost-effectiveness and flexibility. PSCs can be cost-effective, supplying ‘short-term and contract-bound services’ and a ‘level of flexibility that state security forces cannot provide’.⁴² Some states that contract PSCs claim that this flexibility translates into cheaper costs compared to permanent in-house security (Schwartz, 2010, p. 2; PRIVATE SECURITY COMPANIES).

Concerns with public security. MNCs might turn to private security to avoid using public forces in countries where the police and army are unreliable, weak, or have a record of human rights violations. Public forces are sometimes poorly trained and disciplined, and several sources raise the issue of corruption among public security forces as a factor leading MNCs to avoid them if at all possible. One source asserts:



*PSCs can offer MNCs a buffer where local communities have conflict with the state, where the state of course uses public security as its enforcement arm. In these situations, hiring PSCs can help MNCs distance themselves from abusive public security forces.*⁴³

The lines between public and private security are not always clear.

Availability. Even where they are reliable, state forces might not be available to fill the demand for private security.⁴⁴ Abrahamsen and Williams point to the ‘declining ability and/or willingness of the state to provide adequate protection of life and property’ as a major factor in the growth of the private security sector in sub-Saharan Africa (Abrahamsen and Williams, 2006, p. 5). MNCs may also use private security because the services they commonly require (such as the guarding of private property or the protection of individuals) are not those that public security forces normally provide. PSCs commonly perform static surveillance; public security forces are needed for other functions.⁴⁵

Enhanced control (real or perceived) over security provision. One of the most common reasons cited for using private security is the possibility of exerting more control over security providers through economic or contractual means. One source has observed a trend of companies trying to change from using public to private security because of the ‘control factor’.⁴⁶ Moreover, MNCs can often pay private security personnel more than these individuals would be paid to serve in their country’s public security forces. While an MNC has ‘relatively limited leverage with state security forces’, it can simply terminate a contract with a PSC or fire a private security guard in the event of improper use of weapons or other violations. When it engages a private security firm, it thus ‘has a contract and additional leverage over its service delivery and performance’ (International Alert, 2008, p. 8). In this way, contracts can increase the degree of oversight and control that an MNC has over its security personnel.

Another aspect of control is training. MNCs can train private security personnel, or demand a certain level of training and competence as part of their contracts. Indeed, several sources cite training and competence of PSCs as a factor in their favour over public security forces. Yet, as in other areas, there are regional and national variations. While police and military in Latin America have ‘relatively sophisticated and standardized training for their personnel, private security entities exhibit little consistency in staff training throughout the region’—even among ‘the more respected transnational private security companies with operations in Latin America’ (Godnick, 2009, p. 11). A review of 19 countries’ legislative frameworks for PSCs concludes that most of the countries have ‘some loose legal requirements’ on the ‘vetting and training of PSC sector workers’. Nevertheless, ‘they often contain merely a vague specification that the PSC is responsible for ensuring that its employees are properly trained’ (da Silva, 2010, p. 5). The degree of control an MNC has over private security, in contrast to public security, is thus not a given, but can vary significantly depending on the situation.

Hybrid security: the blurring of public and private

The previous discussion touches on why and where MNCs might choose to use private security. The lines between public and private are not always clear, however. This section discusses the challenges this poses for MNCs in terms of control, accountability, and the impact of security operations on local communities. As elsewhere in the chapter, examples are drawn primarily from extractive MNC practice.

In numerous developing countries, the distinction between public and private security can be blurred by the fact that retired state security force personnel often own PSCs, and in many places ex-military or ex-combatants staff PSCs.⁴⁷ Where military forces have poor human rights records, there is an obvious risk of hiring private security personnel who have been involved in rights abuses. In addition, ‘porousness’ may exist between public and private security, meaning that private security personnel are active members of the armed forces. Although a number of informed

sources assert they have not come across examples of such porousness, Dammert lists eight Latin American countries where police officers are permitted to work in private security in their off-hours (Dammert, 2008, p. 32).

Differing viewpoints exist regarding the implications of off-duty personnel providing private security. One source posits there could be some advantage to off-duty police officers working in PSCs, as the officers could receive training and bring those skills back to public security forces where these are lacking. Yet the same source warns that in some countries, such situations could be dangerous because the personnel who are supposed to be protecting people switch to 'protecting property from people',⁴⁸ raising potential conflicts of interest (Godnick, 2009, p. 9). Accountability is a further concern: 'How can one expect the police to investigate human rights abuses by PMSCs if members of the police work for these companies?' (Lazala, 2008, p. 9).

An important variation of security is 'hybrid policing', where private and public forces work together to provide security (Abrahamsen and Williams, 2006, p. 8). In some countries it is common for MNCs to use both PSCs and police or the army to fill their security needs. The decision to use both depends on factors such as whether the MNC is operating in an area of armed conflict or violence, whether the armed forces are considered competent, and whether local legislation prohibits PSCs from being armed.⁴⁹ In the latter case, MNCs that want armed security are dependent on the state security forces (da Silva, 2010, p. 7).

In a number of regions, MNCs pay into public funds intended to support state security forces and receive security services in return. These arrangements vary considerably. In Colombia, for example, the use of public security is optional, but extractive MNCs typically supplement private with state security. They do so by signing agreements with the Ministry of Defence for the provision of public security in exchange for their paying funds for the 'well-being' of the armed forces in the area where the MNC operates. This can include paying for flights home, food, and sometimes infrastructure. The use of the funds is restricted: according to sources in Colombia, they are not supposed to be used for salaries, weapons, or additional troops.⁵⁰ Arrangements in other countries differ, with MNCs paying supplementary wages or bonuses to armed forces personnel (see below).

MNC agreements with host governments sometimes provide for the use of private security firms to protect MNC facilities ('static security') while the army protects the company against external threats, such as armed groups. One industry source notes this is common among extractive firms in Colombia, but not in other sectors, as the former are more likely to operate in rural conflict zones that have illegal armed groups, and have less scope to leave those zones than do other MNCs.⁵¹

In Colombia, where large numbers of extractive MNCs have signed such agreements, they tend to hire local PSCs, many of whom are unarmed and more 'communications-oriented'. Since police and military provide the MNCs, and the geographical regions in which they operate, with armed protection, there is less of a need to arm PSCs.⁵²

Faessler has argued that such hybrid arrangements work well in Colombia due to soldiers' training, their ability to deter 'militia threats', the army's improving 'human rights strategy', and the fact that the government regulates the private security sector. He contrasts this with the Democratic Republic of the Congo, where, in his experience, police 'lacked training, particularly in the fundamentals of respect for human rights' (Faessler, 2010, p. 20). Others have expressed concern over the human rights record of Colombian armed forces and gaps in regulation of PSCs in the country.⁵³ Box 5.3 provides an example of hybrid security in the Niger Delta, a region where security arrangements are so integrated that 'it is often difficult to determine where public force ends and private security begins' (Abrahamsen and Williams, 2009, p. 10). Box 5.4 presents a case of armed violence allegedly perpetrated by an MNC's private security guards and police in Peru. It highlights questions about state and company oversight of, and accountability for, armed security given that distinctions between public and private security are not always clear.

Box 5.3 Oil MNCs in the Niger Delta

The complex situation of oil exploitation in the Niger Delta provides an example of hybrid security provision. Multinational oil companies operate in, and have contributed to, 'an environment of hostility and violence', marked, among other things, by environmental damage from oil extraction, aggrieved (economically marginalized) local communities, and the emergence of armed militias (Abrahamsen and Williams, 2009, p. 10).

The security arrangements oil companies use in the Delta are a complicated mix of public and private. For example, Chevron Nigeria Ltd. has hired a G4S subsidiary, Outsourcing Services Ltd., to provide it with 1,200 security personnel, who by law are unarmed. Because of the violence in the region, G4S offers its client armed protection by cooperating with the Nigerian paramilitary Mobile Police, who often carry automatic weapons and are 'more or less permanently seconded to PSCs and integrated into their everyday operations' (p. 10). Although they are under police authority, these officers receive 'supplementary wages' from the MNCs. Outsourcing Services personnel also cooperate with Nigeria's Supernumerary Police, who are trained by the state and then assigned to the oil MNCs as unarmed police. They are paid by the MNCs, and have 'police powers only on company property' (p. 11). The oil MNCs also have



Box 5.4 The Minera Yanacocha case

In 2007, the UN Working Group on the Use of Mercenaries⁵⁵ undertook a mission to Peru to investigate the alleged involvement of a mining MNC and its private security personnel in human rights abuses against local community members.⁵⁶ The mission report places the incidents against the backdrop of extensive privatization of security in Peru due to inadequate numbers of police. But as the mining company case involved both police and the MNC-contracted PSCs, it also sheds light on some of the problems with hybrid policing.

The case in question involves the Yanacocha gold mining operation, co-owned by the Newmont Mining Corporation, the Peruvian company Buenaventura Group, and the World Bank's International Finance Corporation. According to a 2009 independent review (described below), Minera Yanacocha has in-house security managers who oversee security, but it uses a PSC, Forza, to guard its mining facilities.⁵⁷ It employs two other private companies 'for the supply of information' and has a 'cooperation agreement' with the Peruvian National Police (PNP) to protect its property, personnel, and executives' residences. A team of police officers is stationed at its mines and the MNC has a 'small mobile police station'. For these services, Yanacocha pays the police a 'special bonus' and makes a 'contribution' to the PNP (Costa, 2009, p. 11).

On its mission the Working Group investigated allegations from 2006 that PSC personnel and police officers providing private security for the MNC were 'intimidating the population of Cajamarca' (where Yanacocha has its facilities), especially environmental rights defenders (UN Working Group, 2008, p. 15). Community members from one village had clashed with Yanacocha that year over environmental pollution from one of the mines, and a farmer was shot to death. According to the Working Group report, 'three police officers working as private security guards at Yanacocha were identified as suspects by investigators' (p. 16). It was unclear if the mining company had hired them to provide security or if Forza, Yanacocha's private security contractor, had hired them (pp. 15-16).





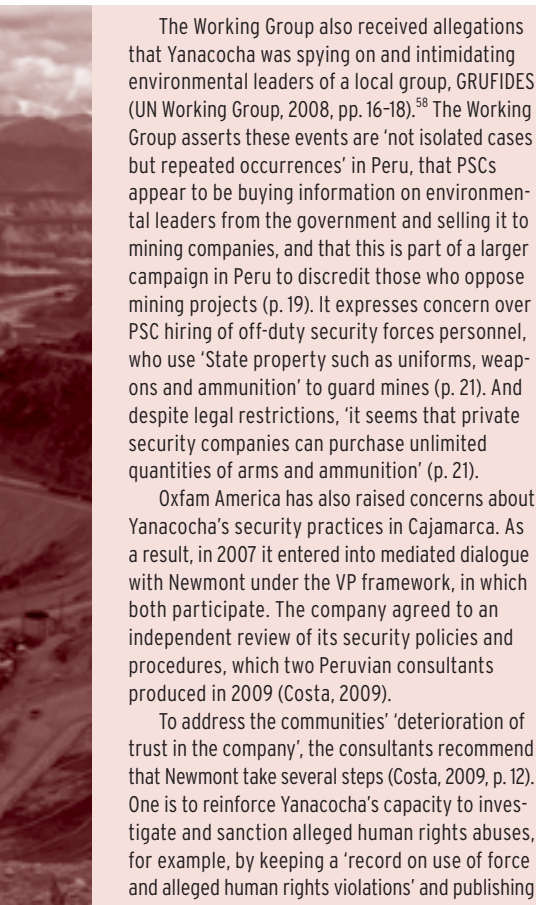
increasingly used the services of military Government Security Forces and the navy, given the continued instability in the region.

Abrahamsen and Williams argue that private security, in this case, has 'a fundamental impact on the security situation in the Niger Delta, providing technology, expertise and expatriate personnel that substantially influence the practices of public security forces' (p. 12). In their view, oil MNCs might be trying to 'distance themselves from the coercion of public security services' due to previous accusations of human rights violations in connection with the protection of oil operations (p. 12).⁵⁴

While admitting that 'the depth of this commitment remains questionable', Abrahamsen and Williams posit that international oil companies, through this very particular integration of private and public security, may be able to influence public forces (p. 12). Importantly, though, they conclude that although private security actors may be 'integrated within state structures', local communities still tend to perceive them as 'aggressive, disempowering, and exclusionary' (p. 15).

Source: Abrahamsen and Williams (2009, pp. 9-15)

A police officer and a man wearing an oil company uniform patrol the area near Port Harcourt, Nigeria, October 2004. Oil MNCs in the Niger Delta often use a mix of public and private security. © Jacob Silberberg/Getty Images



The Working Group also received allegations that Yanacocha was spying on and intimidating environmental leaders of a local group, GRUFIDES (UN Working Group, 2008, pp. 16-18).⁵⁸ The Working Group asserts these events are 'not isolated cases but repeated occurrences' in Peru, that PSCs appear to be buying information on environmental leaders from the government and selling it to mining companies, and that this is part of a larger campaign in Peru to discredit those who oppose mining projects (p. 19). It expresses concern over PSC hiring of off-duty security forces personnel, who use 'State property such as uniforms, weapons and ammunition' to guard mines (p. 21). And despite legal restrictions, 'it seems that private security companies can purchase unlimited quantities of arms and ammunition' (p. 21).

Oxfam America has also raised concerns about Yanacocha's security practices in Cajamarca. As a result, in 2007 it entered into mediated dialogue with Newmont under the VP framework, in which both participate. The company agreed to an independent review of its security policies and procedures, which two Peruvian consultants produced in 2009 (Costa, 2009).

To address the communities' 'deterioration of trust in the company', the consultants recommend that Newmont take several steps (Costa, 2009, p. 12). One is to reinforce Yanacocha's capacity to investigate and sanction alleged human rights abuses, for example, by keeping a 'record on use of force and alleged human rights violations' and publishing

reports on results of investigations (p. 14). They recommend the company ensure 'stationed police forces and hired private security personnel perform all tasks with professionalism' and 'the strictest respect for human rights' (p. 12). Newmont should require its PSCs to submit to it background check information on all personnel before they are employed at the mine, and consider terminating its relationship with the three PSCs, given their 'background and track record' on human rights and the damage they have caused Minera Yanacocha's 'image and reputation' (pp. 15-16).

The consultants conclude that 'although police cooperation is beneficial to Minera Yanacocha, such collaboration affects the neutrality of the police force in the eyes of the population' (p. 14). They therefore recommend the company make public its cooperation agreements with the PNP; ensure police officers at the mine receive anti-riot equipment but not carry firearms; clearly define PSC tasks versus those of the PNP; and forbid PSCs to work with active-duty personnel (pp. 14-15). These recommendations are fundamental in clarifying potential liability for the misuse of force, as the blurring between public and private security provision points to significant ambiguities around who is responsible for alleged human rights violations.⁵⁹

This is the only case to have gone all the way through the mediation process of the VPs,⁶⁰ and in which a public, independent review has resulted from incidents involving MNC use of private security (and the police, in this case). It serves as an important pilot of what the VPs process might achieve in addressing claims of human rights violations in the context of signatory operations, as well as growing concerns about the ambiguous line between private and public security. Key questions concern the extent to which Yanacocha will take up the steps—including the preventive ones—outlined in the review,⁶¹ and the degree to which other signatories will take up this kind of recommendation as good practice.

A panoramic view of Yanacocha, Latin America's largest gold mine, by the Andean city of Cajamarca, north of Lima, Peru, November 2006. © Pilar Olivares/Reuters

The combining of public and private security for the protection of MNCs is a complex issue, as the examples in this section illustrate. Closer examination is needed of factors that could influence the misuse of force and firearms in such situations, including the training and vetting of private security personnel, the use of active-duty personnel to guard private property, and access of such personnel to firearms. Overall, the discussion of security challenges has highlighted several problems that can result from weak oversight and regulation of private security, such as the recruitment of private security from public forces with poor human rights records, and the way the blurring of private and public security can impede the investigation and punishment of the improper use of armed force. These factors can foster impunity among PSC personnel, as well as an erosion of community trust in MNCs and their security providers. The chapter now turns to a discussion of measures designed to address these regulatory and accountability gaps.

REGULATORY FRAMEWORKS AND OTHER APPROACHES TO ACCOUNTABILITY

The accountability of PSCs under international humanitarian law (IHL) and international human rights law is the subject of vigorous international debate,⁶² as is the question of MNC accountability for the behaviour of joint venture or business partners, such as private security providers. Legal regulation of PSCs, generally weak at the national level, is non-existent at the international level, a situation that has led to the creation of international initiatives to address private security contractors' behaviour and clarify their responsibilities under international law. There have also been calls for the creation of international legal standards to govern MNC behaviour as well as for home-country regulation of MNC activities overseas. This section highlights relevant developments and prospective approaches, both legal and otherwise, to holding MNCs accountable for the actions of their private security providers.

National regulation of PSCs

In general, PSCs are unregulated or poorly regulated in many countries.⁶³ In Sierra Leone, for example, the private security sector is 'largely unregulated'; in Kenya, the vast majority of security companies are unregistered (Abrahamsen and Williams, 2006, pp. 12, 15). In Angola, implementation of the law on PSCs appears to have been 'limited and selective' (Joras and Schuster, 2008, p. 42). In Central America, many private security companies and their staff reportedly

Box 5.5 Private security and agro-industry in Brazil

In October 2008, the agrochemical MNC Syngenta turned over an experimental seed farm to the Paraná state government in Brazil. The farm, in Santa Tereza do Oeste, had been the site of a land dispute between landless workers' movements and the company. Amnesty International reports that in October 2007, 40 armed guards from a Syngenta-contracted PSC, NF Segurança, carried out an 'illegal and violent eviction' of landless workers at the farm, which resulted in the deaths of one of the movement's leaders and a security guard.

The following year, Amnesty International found that investigations into NF Segurança's conduct, including the death of the landless workers' leader, led to the security company losing its license. The human rights organization called on the Brazilian government to investigate all entities—including MNCs—using private security firms that commit human rights abuses, and to hold accountable those who fail 'to adequately vet or oversee their security company' (AI, 2008). Amnesty also urged the government to 'control the flood of irregular and/or illicit security companies, many of which are effectively acting as illegal militias in the service of landowners or agro-industry' (AI, 2008).

According to one source, at the time of the shooting, no one at NF Segurança had a licence to use firearms. As of 2010, the company's owner and several guards were on trial in connection with the events of 2007, yet the company continued to work in private security in Brazil, notwithstanding the loss of its operating licence.⁶⁴

operate ‘outside established legal parameters’, with a ‘lack of adequate control’ over firearms, even among legal PSCs (Godnick, 2009, p. 7). Central and South America have large numbers of illegal or unregistered security companies and guards (Godnick, 2009, p. 8). Box 5.5 presents one example from the region.

In Colombia, the situation is particularly complex. The government regulates domestic PSCs, but one source asserts that ‘the absence of certain laws’ has exacerbated the growth of private security in that country ‘without sufficient oversight and control by the state’, including over aspects of possession and use of arms as well as the hiring of personnel (Cabrera and Perret, 2009, pp. 5, 7–8). In addition, under the bilateral military pact, Plan Colombia, US personnel of private security companies contracted by the United States as part of its ‘war on drugs’ are exempt from Colombian criminal jurisdiction (p. 10).⁶⁵

Certain countries (such as South Africa and the Philippines) do have detailed regulations on PSCs (da Silva, 2010, pp. 13, 21), and others have moved towards legislation to regulate their private security sectors.⁶⁶ Some observers argue, however, that national regulation of private security is insufficient given the global nature of the security industry. Their recommendations include a ‘global standards implementation and enforcement framework’ (Cockayne et al., p. 1), or even a legally binding international treaty to regulate private military and security companies.⁶⁷

The ICoC aims to set standards to which industry would commit.

International initiatives addressing private security

Two major international initiatives, both spearheaded by the Swiss government, have sought to address the lack of regulation of private security companies and prevent improper use of force and human rights violations (PRIVATE SECURITY COMPANIES).

The first is the Montreux Document, drafted by states, NGOs, and industry, and unifying existing legal obligations of states under IHL and international human rights law in relation to contracting and regulating PSCs (Cockayne et al., 2009, p. 10). Although the framework deals only with PSCs in armed conflict, it provides, on one account, ‘the most coherent, precise and consensually developed statement of “good practice” ’ to date (Cockayne et al., 2009, p. 53). The second is the ICoC, which aims to set standards to which industry would commit. An enforcement and accountability mechanism for these standards is under discussion.

Neither of these initiatives, which are aimed primarily at states and PSCs, is legally binding. Nevertheless, the Swiss government calls on clients of private security—including private enterprise—to consider making ‘formal approval of the Code by service providers . . . [a] precondition for future contracts’⁶⁸ (see Box 5.6). Of particular relevance to MNCs, as major clients of PSCs, is the fact that the ICoC calls on signatory companies to prepare an incident report documenting the use of any weapon, to conduct an inquiry into the incident, and to provide the report to the client (FDFA, 2010, pp. 15–16).

MNC accountability for private security

The next sections focus on MNCs. Box 5.6 summarizes key points regarding MNC accountability for private security contractors under IHL and international human rights law, underscoring the obstacles to applying these norms to MNCs. The remainder of this section explores some of these points in more detail, looking at legal accountability at both the domestic and the international levels.

There are no international legal standards on human rights specific to MNCs and their business or joint venture partners, although human rights groups have continued to call for such standards.⁶⁹ In his framework on corporate responsibility to respect human rights, the SRSG on Business and Human Rights emphasizes that he uses the term ‘responsibility’—not ‘duty’—to respect:

Box 5.6 IHL and international human rights law⁷⁰

It is difficult to hold *companies* liable under international law for the misuse of force or firearms by employees. International humanitarian law and international criminal law—applicable in situations of armed conflict—govern the conduct of *individuals*, including PSC employees (PRIVATE SECURITY COMPANIES). IHL and international human rights law apply to *states*, including the states that hire PSCs (contracting states), those where they operate, and those where they are incorporated.

Domestic (national) law offers more possibilities in relation to corporations. Domestic criminal law cases can be brought against private security contractors that have committed human rights abuses while under contract to a corporation.⁷¹ There are, however, important practical obstacles to such prosecutions. States often lack the necessary laws and resources to prosecute multinational corporations and their security contractors. The expense of bringing a suit against an MNC can be a major barrier for individual plaintiffs, especially in developing countries. Jurisdictional problems may also arise if the accused PSC employee is a citizen of a third country (Cockayne and Speers Mears, 2009, p. 3).

Despite such constraints, systems of accountability do exist at the national level. A notable example is the US Alien Tort Claims Act (ATCA), which allows civil suits to be filed in US courts against non-US citizens



to indicate that respecting rights is not an obligation current international human rights law generally imposes directly on companies, although elements may be reflected in domestic laws. At the international level it is a standard of expected conduct acknowledged in virtually every voluntary and soft-law instrument related to corporate responsibility (Ruggie, 2010a, pp. 2–3).

This position is not without controversy, with several major human rights NGOs questioning the notion that companies do not have direct obligations under international human rights law.⁷⁶

In a handful of countries (such as Canada, the Netherlands, and the UK), discussions have taken place at the parliamentary level about holding MNCs domiciled in those countries legally accountable in their home states in relation to human rights abuses associated with their activities overseas. Such legislation is unlikely in the near future and, for the moment, there is ‘no serious regulation of MNCs’ human rights conduct overseas by their home governments’.⁷⁷ The SRSG is studying the question of extraterritorial jurisdiction in relation to business and human rights as part of his final recommendations to the UN Human Rights Council.

In general, few countries seem to have specific legislation on MNC use of private security; where it does exist, this legislation does not appear to target MNCs specifically (da Silva, 2010, p. 6).⁷⁸ For example, the UK government regulates activities of PSCs operating in the UK and prohibits them from using or carrying firearms. It does not, however, regulate the overseas activities of British PSCs or the use of British PSCs abroad by foreign companies or British MNCs (da Silva, 2010, p. 19). This loophole could contribute to the lack of oversight of PSCs in connection with their activities overseas, particularly in countries with weak governance.⁷⁹

Significant scholarly work has been done recently on the concept of corporate complicity, which entails corporations ‘knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime’ (Ruggie, 2008a, p. 20). For example, in 2008 the International Commission of Jurists published a three-



for violations of customary international law, including fundamental human rights norms (Martin-Ortega, 2008, p. 8). Several MNCs have been sued under ATCA for alleged complicity in human rights violations committed by their security providers (primarily public security forces).⁷² As of late 2010, however, the applicability of ATCA to corporations was being challenged.⁷³

Truth and reconciliation commissions, such as the one in Liberia, have included non-state actors under their statute for economic crimes and could be adapted to cover corporate accountability in the future (Ramasastry, 2010, p. 2). Scholars are also exploring the concepts of aiding and abetting, as well as pillage, as international crimes that may potentially be applicable to multinational corporations and security contractors.⁷⁴ Codes of conduct, such as the ICoC, may provide further means of accountability. The ICoC requires signatory firms to adhere to the human rights and humanitarian law obligations expressed in its articles. In future, multinational corporations may be able to adhere to the code as well, binding themselves to employ only those security firms that are signatories.⁷⁵

Author: Alexis Bushnell

A foreign security contractor guards a drilling site of the Norwegian oil company DNO in northern Iraq, November 2005. © Safin Hamed/AFP Photo

volume study on corporate complicity, which examines the conditions under which corporations could be liable under criminal or civil law for involvement in gross human rights abuses committed by other actors (ICJ, 2008, p. 3).

Referring to companies using private or state security forces, the study points out that contracting companies and security forces often have a close relationship ('proximity'), largely through information sharing, payment of fees, or security providers' presence on company property. Therefore, if the security forces (public or private) commit human rights abuses, 'criminal or civil courts may hold that a company knew of the risk that the abuses would occur', especially if the security forces 'have a record of gross human rights abuses' (ICJ, 2008, p. 29).⁸⁰

Litigation offers a possible avenue for holding MNCs accountable for the misuse of force by their PSCs,⁸¹ although challenges to bringing such claims remain in place, as discussed in Box 5.6. One recent example of litigation involves allegations of complicity against a mining MNC in connection with alleged human rights abuses by the Peruvian police and the corporation's contracted PSC. In 2009, a group of Peruvian villagers filed a lawsuit in the UK against a London-registered multinational mining company, Monterrico Metals plc, and its Peruvian subsidiary, Rio Blanco Copper SA, over events that took place at Monterrico's Rio Blanco copper mine in Peru in 2005. The claimants allege they were 'tortured by the Peruvian police assisted by mine employees and mine security guards, following their environmental protest' at the mine (Leigh Day & Co., 2009).⁸² One claimant is the widow of a protester who bled to death after being shot by police. Monterrico has denied 'its officers or employees had any involvement with the alleged abuses' (Leigh Day & Co., 2009). The British lawyer who brought the villagers' claim for damages, however, has argued 'it is inconceivable that the company did not know of the protestors' harsh treatment' (Leigh Day & Co., 2011, p. 22). According to the law firm representing the claimants, a trial is due to begin in June 2011 (p. 22).

The preceding sections analyse national and international mechanisms, both regulatory and, in the case of the ICoC, self-regulatory, which could address PSC activities and MNC accountability for these. The next section discusses the VPs, the only dedicated, multi-stakeholder initiative on MNCs and security provision.

The Voluntary Principles on Security and Human Rights

The most important soft law initiative addressing MNC use of private security is the VPs.⁸⁵ Launched by the UK and US governments, the VPs emerged in 2000 in response to allegations of human rights abuses by security forces contracted by extractive MNCs. Their primary and specific aim is to end abuses committed by security forces protecting company facilities (International Alert, 2008, p. 17). While they are not legally binding, the principles may serve to raise standards among companies involved, as signatories are expected to incorporate them into their operations.

The principles

The VPs provide companies with specific guidance on how to maintain the security of their operations while still respecting human rights. They cover risk assessment on security and human rights and company use of both public and private security, including general principles on the use of force and firearms (see Box 5.7). As of May 2010 adherents of the VPs included seven states, nine NGOs, and 17 companies, with three organizations having observer status (BHRRC, 2010). One country, Colombia, has a formal ‘in-country’ process to integrate the VPs into national practice.⁸⁴ Participation criteria include a commitment to public reporting by signatories (VPSHR, 2009, p. 1). The principles were designed for the extractive sector because of the particular challenges it faces in relation to private security. There have been attempts, however, to broaden the VPs to other industries.⁸⁵

The VPs are not meant to be rules of engagement per se.⁸⁶ Rather, they call on companies to promote and observe existing international guidelines on the use of force, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms (UNGA, 1979; UN, 1990).⁸⁷ While the VPs have no legal status, they call for companies, ‘where appropriate’, to include the Voluntary Principles in (legally binding) contracts with private security companies. The International Peace Operations Association claims that, as of 2010, all companies belonging to the initiative were including the VPs ‘in at least some of their contracts, particularly with private security’ (IPOA, 2010). It is not clear how this is checked. According to one source involved in the process, most large signatory companies (and those with the greatest reputational risks) include either clauses on the Voluntary Principles in contracts with PSCs, or clauses on human rights more generally, as local PSCs are often unaware of the VPs.⁸⁸

Implementation

In 2008, International Alert produced indicators designed to guide MNCs in implementing the VPs and measure company adherence to the principles. The expectation is that companies will test the indicators and eventually an ‘industry standard’ will emerge from the process (International Alert, 2008, p. 1). Indicators include:

Box 5.7 Private security use of force and firearms

According to the section of the VPs on interactions between companies and private security:

- Private security ‘may have to coordinate with state forces (law enforcement, in particular) to carry weapons and to consider the defensive local use of force’.
- Private security ‘should maintain high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms’.
- Private security should have policies—or rules of engagement—on the local use of force.
- Private security should ‘provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities’.
- Private security should ‘use force only when strictly necessary and to an extent proportional to the threat’.
- Where physical force is used, ‘private security should properly investigate and report the incident to the Company’.
- ‘To the extent practicable, agreements between Companies and private security should require investigation of unlawful or abusive behavior by private security personnel.’

Source: VPSHR (n.d.a)



A security officer stands guard over the In Salah Gas Krechba project, run by Sonatrach, BP, and StatoilHydro, in Algeria's Sahara Desert, December 2008.
© Adam Berry/Bloomberg/Getty Images

- Evidence of mainstreaming the principles in relations with security forces.
- Evidence of staff training on the VPs and human rights and of training for public security forces and private security contractors.
- Company scrutiny of the human rights record of public and private security providers.
- Company oversight of equipment transfers (International Alert, 2008, pp. 8–16).

The VPs call for companies to monitor the conduct of security providers. For this purpose, International Alert's guidelines provide a table of recommended data companies should seek from public and private security forces, such as the number of staff, the number of lethal weapons, and the number of small arms. While the authors acknowledge that obtaining some of this information from public security may be difficult 'for reasons of national security', they note that the company 'has the right to demand such information from its private security contractors' (International Alert, 2008, p. 15). The indicators also provide a model log for companies to report incidents. It is not clear to what extent companies are collecting this information, though this data is crucial for gauging the use of armed force by MNCs' private security (see Box 5.8).

Under the VPs, companies are asked, in relation to public security forces, to 'use their influence' to keep individuals with records of human rights abuses from providing security services. They are also urged to review the backgrounds of private security companies, in a way that includes 'an assessment of previous services provided to the host government and whether these services raise concern about the private security firm's dual role as a private security provider and government contractor' (VPSHR, n.d.a). Sources familiar with the VPs, including from civil

society and industry, indicate this particular clause has not been a focus of discussions within the initiative. Nevertheless, it speaks to some of the concerns about hybrid security and porousness that the Yanacocha case clearly illustrates (see Box 5.4).

Although company adoption, incorporation, and implementation of the principles is increasingly seen as good practice in relation to corporations' use of security, the VPs remain, in essence, a declaration of good intentions. To the extent companies incorporate them into contracts, they could eventually help form a basis for holding private security providers legally accountable for human rights abuses committed in relation to the protection of private sector operations. But while the VPs have begun to clarify industry standards around MNC use of private (and public) security, they are not a replacement for state enforcement of IHL and international human rights law.⁸⁹

Gaps and weaknesses

Monitoring of, and compliance with, the Voluntary Principles is up to individual MNCs, a point both participants and independent observers have acknowledged as a weakness. Various sources describe examples of signatory company implementation of the principles.⁹⁰ Non-signatory companies also report that they are implementing the provisions of the VPs in some form.⁹¹ And in addition to the independent review of Minera Yanacocha's security arrangements described above, at least one external evaluation of the implementation of the VPs is available in the public domain.⁹² The monitoring and evaluation of these implementation efforts, however, remain piecemeal.

Box 5.8 The leading edge: company incident reporting

Some signatory companies incorporate reporting on security issues in their public sustainability reports.⁹³ In its 2009 sustainability review, for example, the mining company AngloGold Ashanti includes a discussion of armed security at its operations, shooting incidents, and the company's response (although no details are provided on the type of firearms used). The company reports that the need for armed security guards has risen at its sites in recent years due to the increase in attacks on its security staff by 'armed criminals' (AngloGold Ashanti, 2009a, p. 82).

As part of its implementation of the VPs, the company states that in 2010 it 'aims to ensure that all potential violations of the principles are reported and investigated and that no violations of the Voluntary Principles occur' (AngloGold Ashanti, 2009b, p. 34). Both AngloGold Ashanti's annual report on the VPs, which the company posts on its website, and its sustainability review provide data on the number of injuries and fatalities of third parties involved in illegal activities. The sustainability review also indicates the number of major security interventions, including those involving the discharge of firearms, and the resulting deaths and injuries among community members and company personnel (AngloGold Ashanti, 2009b, p. 35).⁹⁴

A former AngloGold security manager has suggested that what companies need, in line with the VPs, is a register to catalogue grievances, including around the use of weapons.⁹⁵ It could include evidence of the company's investigations and information about how a company communicated with local communities about issues of security. This register could be used to improve transparency, with stakeholders as well as internal or external auditors.⁹⁶ The independent review of security at Minera Yanacocha also calls for such recording and reporting (see Box 5.4).

This type of disclosure in public reporting is relatively rare among MNCs, whether as part of their work in implementing the Voluntary Principles or otherwise. A notable exception, besides that of AngloGold Ashanti, is Newmont's *Community Relationships Review* (Newmont Mining Corporation, 2009), which the company published in response to a shareholder resolution asking it to carry out a global review of its policies and practices in relation to local communities worldwide. The review discusses issues integral to the VPs, such as community perception of security provision (it also discusses Yanacocha). Systematic evaluation of the implementation of the VPs, ideally by an independent third party, and public disclosure of these assessments, would provide a more comprehensive picture of the degree to which MNCs are applying these principles.

Further, the initiative makes no provision for penalties in case of non-compliance, other than the possibility of being expelled from the VPs. Critics have expressed concerns that ‘free-riding’ companies appear to endorse the principles without actually implementing them, and Human Rights Watch has pointed out that the initiative’s grievance mechanism can address only specific violations as they emerge, as opposed to systemic problems in a company (Cockayne et al., 2009, p. 156). Signatories seem aware of these weaknesses and gaps. In an undated report on company efforts to implement the principles, the Voluntary Principles Information Working Group notes that the VPs are ‘difficult to monitor and audit’ and that ‘some form of independent verification is needed’ to ensure implementation (IWG, n.d., p. 4). Public reporting, which the Working Group also calls for, is not mandatory for signatories.

The question of what impact the VPs have had, including on the human security of communities surrounding company operations, calls for further research. According to one source, the impact is being measured ‘anecdotally’.⁹⁷ In relation to private security and local communities, it is considered increasingly important for MNCs to undertake formal consultations with communities regarding their concerns about the use of PSCs and to address grievances as they arise.⁹⁸ While the principles themselves merely call on companies to consult civil society ‘regarding experiences with private security’, International Alert’s first two implementation indicators for the VPs explicitly address assessment of the impact of company operations on human rights and stakeholder consultation (International Alert, 2008, pp. 2–6).

Despite their weaknesses, the VPs are considered an important initiative and are likely to provide a ‘key forum’ for discussions on implementation and enforcement of improved standards in the global security industry (Cockayne et al., 2009, p. 144). Along with the ICoC and the Montreux Document, the VPs constitute part of an emerging set of standards that address expected behaviour of both PSCs and their employers.

The ICoC, the Montreux Document, and the VPs could be mutually reinforcing.

Converging initiatives?

As yet, the ICoC and the Montreux Document are not formally linked to the VPs. Each one targets a different audience: the Montreux Document is aimed primarily at states; the ICoC at PSCs; and the VPs at extractive companies. In a number of ways, however, these initiatives are mutually reinforcing—at least in theory. First, the Swiss government has been the driving force behind the Montreux Document and the ICoC. It has also recently joined the VPs, and has used the plenary of the VPs as a forum to promote the Montreux Document and the ICoC to signatories of the VPs. Second, because signatories are major users of private security, it is in their interest to demand that PSCs abide by the ICoC, to limit the possibility of misconduct. Third, with time, proponents of the code expect governments to encourage all those contracting private security, including signatories of the VPs, to include signature of, and abidance by, the ICoC as an integral part of their security provision contracts. In this sense, members of the VPs may eventually be expected to reinforce the ICoC.⁹⁹

Some of the same stakeholders, such as Switzerland, are already involved in both the ICoC and the VPs, or have begun to explore possible linkages. For example, companies in the Colombia Voluntary Principles process are assessing their private security as it compares to international principles, such as those in the ICoC.¹⁰⁰ Several leading extractive companies, governments, and NGOs that are members of the VPs have also been involved in the ICoC process.¹⁰¹ But the need to explore the connection between these initiatives and the Ruggie framework is also evident. As Cockayne et al. (2009, p. 26) point out, ‘discussions of improved regulation of the global security industry

remain notably disconnected from this broader discussion of business and human rights', despite Ruggie's efforts to underscore these connections.

In the end, these initiatives cannot replace international or national law. The effectiveness of the ICoC will depend in part on the ability of its accountability mechanism (which has yet to be created) to monitor and build industry capacity to implement standards (PRIVATE SECURITY COMPANIES). Likewise, the legitimacy of the VPs will depend in large part on increased uptake of its standards and a greater capacity to monitor compliance and to sanction non-compliance.

CONCLUSION

Multinational corporations are among the most important users of private security services. And yet there has been little research on their use of private security in comparison to that of other contractors, such as governments or humanitarian organizations. Private security forces employed by MNCs have been involved in incidents of alleged human rights abuses and armed violence, though a lack of data makes it difficult to gauge the incidence of such violence.

Multinationals face a complex set of challenges related to their use of security. Their control over private security personnel varies significantly depending on the context. The use of public and private security together—whether 'hybridized' or otherwise intimately related to one another—calls for particularly close attention to the factors that influence the misuse of force and firearms. These include training and vetting of personnel, the use of active-duty security personnel to guard private property, and the access of these personnel to firearms. The blurring of private and public can also impede investigation and punishment of the improper use of armed force.

Weak oversight and regulation of private security forces create accountability gaps and potential conflicts of interest. These weaknesses have allowed MNCs to recruit security personnel with poor human rights records; in some cases, they have led to an erosion of public trust in MNCs and their private security providers. It remains difficult to hold MNCs accountable for the misuse of force by their private security providers, though domestic law offers some possible avenues. Yet an international consensus is developing that companies have a responsibility to ensure they are not complicit in abusing human rights, including through third-party relationships with partners such as private security providers.

Specific international initiatives have also emerged to address the lack of regulation of PSCs and the prevention of the improper use of force and human rights abuses. All three pillars of the Ruggie framework—state duty to protect, corporate responsibility to respect, and access to remedies—are relevant in addressing the problems and challenges associated with MNC use of private security. Standards for MNC use of public and private security are emerging through the VPs; despite the initiative's weaknesses, it serves as an important forum for addressing human rights protection while still ensuring the security of MNC operations. Implementation of these standards remains very limited, as do public reporting and the independent monitoring of compliance with the principles. Yet it is in the interest of MNCs to work towards the success of these initiatives and the strengthening of the standards they promote. Otherwise, they will continue to contribute—and be exposed—to the risks currently entailed in the reliance on private security. ■

LIST OF ABBREVIATIONS

ATCA	Alien Tort Claims Act
ICoC	International Code of Conduct for Private Security Providers
ICRC	International Committee of the Red Cross
IHL	International humanitarian law
MNC	Multinational corporation
PJV	Porgera joint venture
PMC	Private military company
PMSC	Private military and security company
PNG	Papua New Guinea
PNP	Peruvian National Police
PSC	Private security company
SRSNG	Special Representative of the Secretary-General of the United Nations
VPs	Voluntary Principles on Security and Human Rights

ENDNOTES

- 1 See, for example, IHRC and CHRNG (2009); Leigh Day & Co. (2009); Oxfam America (2007).
- 2 See, for example, Abrahamsen and Williams (2006, pp. 12, 15) on Sierra Leone and Kenya, and Joras and Schuster (2008, p. 42) on Angola.
- 3 As part of this study, 24 author interviews were conducted between June and November 2010 with representatives of PSCs, extractive sector MNCs, industry groups, academic institutions, the legal profession, and NGOs. These were complemented with interviews conducted by Nicolas Florquin for the chapter on private security companies in this volume, as well as written responses to a questionnaire sent to PSCs covering various aspects of their work. The PSC and MNC interviewees represent companies with operations all over the world.
- 4 Abrahamsen and Williams (2009, p. 3) distinguish between 'commercial private security' and 'privatized military'.
- 5 Scahill (2008, pp. 236–43) documents, for example, the Pentagon's contracting of Blackwater in the mid-2000s to help protect the operations of Western oil and gas MNCs in the Caspian Sea region. Joras and Schuster (2008, p. 50) report that in 2003 Chevron–Texaco contracted an Israeli PMC, Aeronautics Defense Systems, Ltd., for 'unmanned air surveillance' in Angola. According to a number of sources interviewed, PSCs in Iraq provide armed services not only to government clients but also to MNCs.
- 6 Author correspondence with Scott Horton, contributing editor, *Harper's* magazine, and lecturer in law, Columbia Law School, 20 September 2010.
- 7 See, for example, Joras and Schuster (2008, pp. 5–6); Gaston (2008, pp. 227–28); Perret (2008), cited in Godnick (2009, p. 2).
- 8 Despite the availability of country-level data on the number of registered PSCs, there is apparently no disaggregation of this data at the global level, which would show the distribution of PSC use across different clients, such as MNCs, local businesses, NGOs, and international organizations.
- 9 Avant (2007, p. 153) writes of the 'phenomenal growth in the private security industry providing services to transnational corporations working in risky environments'.
- 10 According to a number of PSC representatives interviewed, MNCs and large companies rank second in importance as clients—in terms of volume—after governments; according to one source, oil and gas companies tied with governments for first place. Another private security representative notes that extractive MNCs in particular are important clients of British PSCs, as the British government is not a major consumer of private security services (correspondence between Nicolas Florquin and Andy Bearpark, director general, British Association of Private Security Companies, 3 September 2010).
- 11 The SRSNG on Business and Human Rights notes that, in a survey of 65 alleged corporate human rights abuses, the extractive sector 'utterly dominates this sample of reported abuses, with two-thirds of the total' (Ruggie, 2006, p. 8). A more recent survey of 320 cases of alleged corporate-related human rights abuses finds the extractive sector accounted for the single largest proportion (28 per cent) of these allegations (Wright, 2008, p. 7).

- 12 Author interview with Rita Abrahamsen, associate professor, University of Ottawa, 8 September 2010.
- 13 Author interview with Brian Gonsalves, vice president, Global Security, AngloGold Ashanti, 8 September 2010.
- 14 South Africa's 2000 Firearms Control Act permits private security to carry firearms (South Africa, 2000, art. 20(2); da Silva, 2010, pp. 14–15; correspondence with Clare da Silva, consultant in international law, 6 February 2011).
- 15 Author interview with Brian Gonsalves, vice president, Global Security, AngloGold Ashanti, 8 September 2010.
- 16 Author interview with a security executive of an extractive company, 1 September 2010.
- 17 Author interview with Mike Faessler, president, Oversight Risk Consulting, 24 August 2010.
- 18 Anecdotal evidence suggests there is more of a shift towards using less-lethal weapons and munitions within public security forces than in the private sector. However, discussion is ongoing in India, for example, about whether to allow MNC security guards to use stun guns and rubber bullets. Interview by Sonal Marwah with Kunwar Vikram Singh, chairman, Central Association of Private Security Industry, Delhi, 20 October 2010.
- 19 Author interview with private security representative 1, Geneva, 19 August 2010.
- 20 Author interview with Scott Horton, contributing editor, *Harper's* magazine and lecturer in law, Columbia Law School, 24 August 2010; author correspondence with Horton, 7 December 2010.
- 21 Author interview with Scott Horton, contributing editor, *Harper's* magazine and lecturer in law, Columbia Law School, 24 August 2010.
- 22 Author interview with a security executive of an extractive company, 1 September 2010.
- 23 Author interview with Mike Faessler, president, Oversight Risk Consulting, 24 August 2010.
- 24 Author correspondence with Mike Faessler, president, Oversight Risk Consulting, 5 December 2010.
- 25 Author correspondence with Mike Faessler, president, Oversight Risk Consulting, 5 December 2010.
- 26 Since 2006, the mine has been operated by Barrick and is co-owned by Barrick, the PNG government, and local landowners.
- 27 Author interview with Chris Albin-Lackey, senior researcher, Human Rights Watch, 7 September 2010; author correspondence with Albin-Lackey, 20 September 2010 and 5 December 2010.
- 28 Illegal mining is not uncommon in gold-mining areas.
- 29 Note that local and international PSCs are not always distinct. As Cockayne et al. write, 'In many cases, small local contractors and large multi-national [security] companies are connected, through subcontracting arrangements, joint ventures, personnel movements and subsidiary structures' (Cockayne et al., 2009, p. 16).
- 30 Examples of 'transnational PSCs of truly global scale' (in terms of their international presence) include G4S (formerly Group 4 Securicor), Securitas, and Prosegur (Abrahamsen and Williams, 2009, pp. 2–3).
- 31 The relevant legislation in Nigeria is part I, article 1(1)(c), of the Private Guards Companies Act (da Silva, 2010, p. 9; author correspondence with da Silva, 6 February 2011).
- 32 The relevant legislation in Angola is the Law on Private Security Companies (19/92), article 10 (Joras and Schuster, 2008, p. 40).
- 33 Author interview with Mike Faessler, president, Oversight Risk Consulting, 24 August 2010.
- 34 Author interview with Rita Abrahamsen, associate professor, University of Ottawa, 8 September 2010; author correspondence with Abrahamsen, 5 December 2010.
- 35 One of these sources states that cost 'is always the first concern'. Correspondence between Nicolas Florquin and former private security representative 6, 6 August 2010.
- 36 Correspondence between Nicolas Florquin and former private security representative 6, 6 August 2010.
- 37 See South Africa's Firearms Control Act 2000 (South Africa, 2000, art. 9 (2)(b)); author correspondence with Clare da Silva, consultant on international law, 22 September 2010 and 6 February 2011.
- 38 Author interview with Yadaira Orsini, International Alert, 26 August 2010.
- 39 Author interview with the executive officer of a mining company, 19 July 2010. See below for more on the regulation of PSCs in Colombia.
- 40 Correspondence with William Godnick, coordinator, Public Security Programme, UN Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC), 24 September 2010. Godnick notes that the US contractors include companies such as DynCorp, which could be categorized as 'hybrid intelligence and surveillance contractors'.
- 41 This is the case in Nigeria, for example.
- 42 Interview by Nicolas Florquin with private security representative 5, London, 14 July 2010.
- 43 Correspondence with Mark Taylor, deputy managing director, Fafo, 20 September, 2010.
- 44 Author interview with private security representative 1, Geneva, 19 August 2010. Table 4.1 in this volume provides data showing that PSC employees outnumber police in a number of countries; Florquin argues that at the global level, PSC personnel exceed police due to the ratios in large countries such as China, India, and the United States (PRIVATE SECURITY COMPANIES).

- 45 Author interview with Doug Brooks, president, International Peace Operations Association, 9 July 2010; author interview with the executive officer of a mining company, 19 July 2010.
- 46 Author interview with Luc Zandvliet, director, Triple R Alliance, 9 July 2010.
- 47 For example, in Colombia 'demobilized paramilitaries have on occasion ended up working in the private military and security sector' (Lazala, 2008, p. 1). In Sierra Leone, many ex-combatants have gone to work for PSCs (Abrahamsen and Williams, 2006, p. 10). On Africa, see Abrahamsen and Williams (2006, p. 7) and on Latin America, see Godnick (2009, p. 9).
- 48 Author interview with Krista Hendry, executive director, Fund for Peace, 12 August 2010.
- 49 This is the case, for example, in the UK and several African countries, such as the Democratic Republic of the Congo, Kenya, Nigeria, and Sierra Leone. Although Sierra Leone's National Security and Intelligence Act of 2002 'does in principle allow PSCs to hold arms', the UN arms embargo of 1997, which prohibits the sale of arms to non-state actors, has overruled this provision. There is one exception in Sierra Leone, where PSCs guarding the Sierra Rutile mine are allowed to be armed (da Silva, 2010, pp. 11–12).
- 50 Author interviews with Yadaira Orsini, International Alert, 26 August 2010, and an executive officer of a mining company, 19 July 2010.
- 51 Author interview with an executive officer of a mining company, 19 July 2010.
- 52 Correspondence with William Godnick, Public Security Programme Coordinator, UN Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC), 20 July 2010.
- 53 Cabrera and Perret (2009, p. 5) have called into question the level of regulation of private security in Colombia. For more details on regulatory frameworks and accountability, see below.
- 54 In two cases, oil MNCs were sued in the 1990s for alleged complicity in human rights violations committed by Nigerian security forces. Both lawsuits were brought in the United States under the Alien Tort Claims Act (ATCA; see Box 5.6). Chevron was cleared of charges in 2008, and Royal Dutch/Shell settled with plaintiffs in 2009. For one account of the allegations of human rights violations by Nigerian security forces, and the role and responsibility of oil MNCs, see AI (2005).
- 55 Its full title is the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination.
- 56 On the Working Group and the tensions between it and the global security industry as well as certain states, see Cockayne et al. (2009, pp. 51–53).
- 57 Securitas AB acquired Forza, a Peruvian firm, in 2007.
- 58 GRUFIDES stands for Grupo de Formación e Intervención para el Desarrollo Sostenible.
- 59 Author interview with Keith Slack, program manager, Extractive Industries, Oxfam America, 14 September 2010.
- 60 Author interview with Keith Slack, program manager, Extractive Industries, Oxfam America, 14 September 2010.
- 61 As of 2010 it was not clear whether Newmont had acted on the recommendations, though Oxfam America was working to encourage the company to implement them. Author interview with Keith Slack, program manager, Extractive Industries, Oxfam America, 14 September 2010.
- 62 See, for example, the bibliography of Cockayne et al. (2009), which cites a number of key works from this debate.
- 63 See, for example, Renouf (2007, p. 5). See also Cockayne et al. (2009, pp. 18–19; ch. 2) on criticisms of national regulation of the global security industry; the authors note that the United States and South Africa are the two states that have made the greatest efforts to strengthen regulation of PMSCs (p. 39).
- 64 Author correspondence with Terra dos Direitos, 20 September 2010.
- 65 Cabrera and Perret distinguish between PSCs, which provide security, and PMCs, which are 'geared up to facilitating warfare'. They report that 'the use of PSCs is more common in Colombia' and companies contracted in Plan Colombia would be categorized as PMCs (Cabrera and Perret, 2009, p. 4). Outside of mentioning this distinction, however, they refer simply to PMSCs.
- 66 See, for example, Cockayne et al. (2009, ch. 2) and Abrahamsen and Williams (2006, p. 17). Note that, in addition to having detailed regulations on PSCs, South Africa is one of the few countries to regulate its PMCs as well (author correspondence with Clare da Silva, consultant in international law, 22 September 2010).
- 67 This proposal comes from the Working Group on the Use of Mercenaries (OHCHR, 2010).
- 68 Ambassador Claude Wild, head, Political Division IV–Human Security, cover letter to International Code of Conduct for Private Security Service Providers, Berne, 27 August 2010. Emphasis added.
- 69 See, for example, 151 Organizations (2007), which calls for 'global intergovernmental standards' in this area.
- 70 Box 5.2 draws on Bushnell (2010).
- 71 A 2006 study finds that as countries ratify the Rome Statute and incorporate IHL and international criminal law into their domestic law, the potential liability for legal persons (such as corporations), as well as for natural persons, might increase (Ramasastry and Thompson, 2006, p. 27).
- 72 For example, Unocal (now part of Chevron) was sued under ATCA in 1996 for alleged complicity in human rights abuses committed by the Myanmar military during the building of a gas pipeline in Myanmar (the parties settled out of court in 2005). For a list of documents on the case, see BHRRC (n.d.). See also endnote 54 of this chapter for two other examples of ATCA cases.

- 73 See *Kiobel v. Royal Dutch Petroleum* (2010). For commentary on ATCA in the federal courts, see Altschuller (2010).
- 74 This section draws on panel discussions held at the conference ‘Corporations in Armed Conflict: The Role of International Law’ at the National University of Ireland, Galway, 9 April 2010.
- 75 Correspondence between Alexis Bushnell and Doug Brooks, president, International Peace Operations Association, 12 September 2010.
- 76 See, for example, HRW and ESCR-Net (2010); other NGOs have made similar statements. In a related vein, while a number of human rights groups have welcomed the SRS’s framework, some have called for more emphasis on what is required—as opposed to what is encouraged—of companies in relation to human rights. See, for example, AI et al. (2011, pp. 1–2).
- 77 Author interview with Chris Albin-Lackey, senior researcher, Human Rights Watch, 7 September 2010. In September 2010, European NGOs launched a campaign to press the European Union to hold EU-based multinationals legally accountable for social and environmental harm they or their subsidiaries cause, including overseas (ECCJ, n.d.).
- 78 Similarly, Cockayne et al. (2009, pp. 39–40) point out that most national regulation of private security contractors in home and contracting states focuses on government contracting, ignoring international PMSCs in the employ of private clients overseas.
- 79 As noted above, extractive companies are major clients of British PSCs (Cockayne et al., 2009, p. 17).
- 80 One source reports that in Colombia PMSCs can be held liable under civil law for their employees’ activities, though not under criminal law (as criminal liability applies only to individuals, not companies). It notes that civil liability could possibly ‘extend to the particular or public contractor’, with the former presumably including MNC clients (Cabrera and Perret, 2009, p. 9).
- 81 See, for example, Lam (2009). Focusing on Iraq, Lam makes the case for using the Alien Tort Claims Act to hold private military contractors accountable for torts.
- 82 The private security firm involved was Forza, the same firm implicated in the Yanacochoa case.
- 83 Senden (2005) defines soft law as ‘[r]ules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain—indirect—legal effects, and that are aimed at and may produce practical effects’.
- 84 See, for example, VPSHR (n.d.b) and Cockayne et al. (2009, pp. 154–55).
- 85 In 2005, Fundación Ideas para la Paz and the International Business Leaders Forum spearheaded efforts to bring the kind of guidance provided in the VPs to other companies. As part of this initiative, in 2006 guidelines based on the VPs were published that aimed at non-extractive companies, such as food and agriculture, with a focus on Colombia. See Guaqueta (2006). A discussion paper prepared in 2006 for the UN SRS on Business and Human Rights calls specifically for the VPs to be expanded to include ‘state-owned enterprises and smaller and/or non-Western companies’ (OHCHR, 2006, p. 3).
- 86 Correspondence with Krista Hendry, executive director, Fund for Peace, 25 September 2010.
- 87 For more information on these instruments, see Small Arms Survey (2004, ch. 7).
- 88 Author interview with Yadaira Orsini, International Alert, 26 August 2010.
- 89 Author interview with Scott Horton, contributing editor, *Harper’s* magazine and lecturer in law, Columbia Law School, 24 August 2010.
- 90 See, for example, ICMM (2009, p. 19). For a detailed description of BP’s implementation of the VPs at its Tangguh liquefied natural gas project in West Papua, Indonesia, as well as the Baku–Tbilisi–Ceyhan pipeline (which BP operates and co-owns), see Cockayne et al. (2009, pp. 152–54).
- 91 See, for example, Eni (2009).
- 92 See *On Common Ground* (2010, pp. 168–79). The review is a human rights assessment of GoldCorp’s Marlin Mine in Guatemala. GoldCorp is not a formal member of the VPs.
- 93 Sustainability reports are those in which companies report on their social and environmental policies, programmes, and, sometimes, impact. These are generally voluntary reports, in contrast to legally mandated financial reporting.
- 94 Note that AngloGold Ashanti itself has faced accusations of complicity in alleged security-related human rights abuses in Ghana. See FIAN (2008) and CHRAJ (2008). On the company’s response, see AngloGold Ashanti (2008).
- 95 For example, were weapons used? Should they have been? Were people’s rights violated?
- 96 Author interview with Mike Faessler, president, Oversight Risk Consulting, 24 August 2010.
- 97 Author interview with Krista Hendry, executive director, Fund for Peace, 12 August 2010.
- 98 See, for example, *On Common Ground* (2010, p. 207) and Joras and Schuster (2008, p. 64).
- 99 This paragraph draws on an author interview with Claude Voillat, economic adviser, International Committee of the Red Cross (ICRC), 17 November 2010. The ICRC was a co-sponsor of the Montreux Document, was regularly consulted in the drafting of the ICoC, and is an observer to the VPs.
- 100 Author interview with Yadaira Orsini, International Alert, 26 August 2010.
- 101 Author correspondence with participants involved in public, multi-stakeholder workshops to draft the ICoC, 24 September 2010.

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