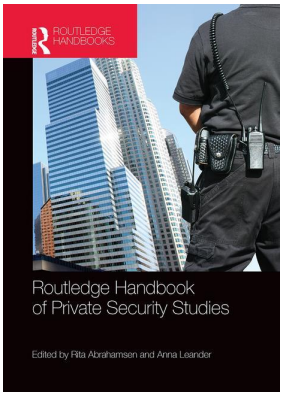

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26

TRANSNATIONAL BUSINESS GOVERNANCE THROUGH STANDARDS AND CODES OF CONDUCT

Rebecca DeWinter-Schmitt

As the private security industry (PSI) experienced unprecedented growth with the wars in Iraq and Afghanistan, a number of incidents implicating private military and security contractors in human rights violations revealed lacunae in the existing hard and soft law governance regimes. The abuses at the Abu Ghraib prison facility and the killing and wounding of civilians at Nisour Square were among the most tragic and iconic incidents of this period, and helped generate discussions at both the national and international levels about how best to regulate the PSI. When it came to addressing the human rights impacts of private security companies (PSCs), the new forms of business governance that emerged and gained relative momentum involved private actors, rather than the promulgation of hard law by states, namely an international code of conduct and management standards. The corporate social responsibility literature (e.g. Scherer and Palazzo 2011) attributes the preference for such (semi)privatized forms of governance to states being 'unable or unwilling to regulate'. However, as this chapter argues in the PSI such initiatives were the result of deliberate decisions by key contracting and home states. This is not to imply that contracting, home, and territorial states did not promulgate new national laws and regulations during this period. They did, although to varying degrees.[1] Yet the majority of regulatory efforts of key contracting and home states, including the US, UK, Switzerland, Australia and Canada, centred on voluntary initiatives that involved businesses and other stakeholders.

Transnational business governance in the private security industry

At the international level, the UN 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 (UN Working Group on Mercenaries) released a draft convention in 2010 with recommendations for regulating private military and security companies. However, its efforts to gain support for a binding international instrument have failed in the face of ongoing opposition from major contracting and home states to its provisions, including those limiting the types of activities that can be outsourced. Instead these states backed an initiative led by the Swiss government and the International Committee of the Red Cross to create a non-binding declaration. The

outcome was the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict. Released in September 2008, the so-called Montreux Document creates no new international law, but rather recalls the existing international humanitarian and human rights law obligations of states with regard to the activities of private military and security companies, and elaborates good practices to assist states in meeting those obligations. The Montreux Document set the stage for the next step of the Swiss-led initiative to develop a code of conduct for PSCs through a multi-stakeholder process. The International Code of Conduct for Private Security Service Providers (ICoC) was the culmination of those negotiations and details international human rights and humanitarian law principles for the responsible provision of security services in complex environments. The ICoC contains principles regarding the conduct of security personnel and commitments regarding the management and governance of PSCs. The multi-stakeholder ICoC Association (ICoCA), launched in September 2013, is the governance body meant to ensure implementation of, and accountability to, the ICoC. It is currently developing procedures for certification, monitoring and reporting, and grievance mechanisms as stipulated in its Articles of Association.

The other key business governance initiative examined in this chapter is a series of four national management system standards created by ASIS International with the support of the PSI and funding provided by the US Department of Defense (DoD). All four are approved as American National Standards Institute (ANSI) standards. In particular, I focus here on ANSI/ASIS PSC.1: Management System for Quality of Private Security Company Operations – Requirements with Guidance (PSC.1). PSC.1 rests on the normative foundations of the ICoC and Montreux Document, and builds on the plan–do–check–act model of management systems. It provides auditable criteria for the assurance of the quality provision of security services in a manner consistent with respect for human rights, legal obligations, and industry good practices by security providers operating in areas where governance and the rule of law have been undermined. PSC.1 is currently being developed into an International Organization for Standardization (ISO) standard, ISO 18788 Management System for Private Security Operations. I concentrate my analysis on the ICoC process and the ANSI/ASIS PSC series because they are the most developed business governance initiatives in the PSI, involve the greatest number of stakeholders, and are most similar to each other as examples of 'certification standards' that 'attempt to provide external validity to what companies say they are doing' (Gilbert *et al.* 2011: 27).

These are by no means the only governance initiatives in the PSI's regulatory institutional field, which includes company-level codes of conduct, industry trade association codes of conduct, related multi-stakeholder initiatives, regional standards, and global business and human rights standards. However, none of these governance initiatives has gained the same level of recognition and adoption, with one possible exception, the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect, and Remedy' Framework (UNGPs). The UNGPs were drafted under the leadership of UN Special Representative John Ruggie and unanimously endorsed by the Human Rights Council in 2011. The UN backed consensus on the state obligation to protect human rights from infringement by economic actors, the corporate responsibility to engage in a due diligence process to ensure respect for human rights, and the rights of victims to access effective remedies is reflected to varying degrees in the ICoC process and the ANSI/ASIS PSC series. At this stage in the development of the ICoC process and the ANSI/ASIS PSC series it is unclear whether or not they will improve human rights protections for affected populations. Yet, this chapter suggests a preliminary assessment is possible. The effectiveness of business governance initiatives will largely

depend on their institutional design. Based on interpretation of the UNGPs and studies of other industries, there is growing consensus in the transnational business governance literature and in practice about effective design for regulatory initiatives involving private actors in terms of standards setting, governance structures, and assurance frameworks. This consensus, coupled with actual experiences with the development of new forms of governance in the PSI, provides a useful starting point for a human rights-focused assessment. However, understanding the particular institutional design characteristics of the ICoC/ICoCA and the ANSI/ASIS PSC series, and their potential for positive evolution, requires an examination of the processes that account for their emergence and development and the outcomes of, at times contentious, negotiations among stakeholders situated in the PSI institutional field. The interactions among stakeholders and initiatives have created certain path dependencies that would seem to lock some outcomes in place, but have also created dynamic and open opportunities for learning and upwards convergence.

Methodological note

Three methodological matters bear mentioning. First, there has been a great deal of debate on what to call those who provide military and security related services, from encompassing terminology like private military and security companies to more derogatory terminology like mercenaries. I use the term private security companies or service providers simply because both the ICoC/ICoCA and ANSI/ASIS PSC series focus primarily on those offering armed security services, and operate from the assumption that the PSI is a legitimate industry not to be conflated with mercenarism.

Second, as Abrahamsen and Leander note in the Introduction to this volume, one feature of the multi-disciplinary and heterogeneous field of private security studies is its relationship to practice and the role of practitioners in shaping research. With this in mind, I don the hat of an academic-practitioner to discuss the potentials and limitations of emerging forms of transnational business governance for ensuring that PSCs respect human rights in their operations. The data I draw on come from a combination of being a participant–observer in the business governance initiatives discussed here, interviews with a range of stakeholders and secondary sources.[2]

Finally, speaking of voluntary or self-regulation of the PSI does not capture the complexities of the ICoC process and the ANSI/ASIS PSC series. Because these initiatives address how to regulate the legitimate use of force by private actors, state actors have played a significant role in driving and shaping them and a few states and international organizations are now requiring in laws, regulations, and procurement policies that PSCs adhere to them, thereby making any terminology invoking the idea that these are purely private, voluntary, or self-regulatory inaccurate. Therefore, I prefer to use the term transnational business governance initiative. Eberlein *et al.* (2014: 3) refer to transnational business governance (TBG) as 'systematic efforts to regulate business conduct that involve a significant degree of non-state authority in the performance of regulatory functions across national borders'. The authors contrast this with traditional notions of governance insisting on the primacy of the state in exercising regulatory authority through binding laws and regulations. Instead they examine manifestations of what they term 'regulatory governance' involving a heterogeneous array of private actors. Governance broadly understood captures 'all activities involved in conducting the affairs of a state, organization or society', and regulation is 'organized and sustained attempts to change the behavior of target actors to further a collective end, through rules or norms and means of implementation and enforcement' (ibid.: 4). Drawing on this literature allows me to capture the

significant involvement of private actors – alongside state actors – in the exercise of regulatory authority over business activities that involve the use of force, a traditional matter of state control, through the promulgation of soft norms rather than just hard laws.

Effective transnational business governance

Despite differences in the nomenclature describing new forms of (semi)private governance, in the academic literature and in practice there is an emerging consensus on what constitutes effective institutional design of TBG initiatives (Dingwerth and Pattberg 2009) which can be used to examine the design of PSI-specific initiatives. The design characteristics discussed here are ideal types, as the perceived legitimacy of a particular institutional design is the result of ongoing negotiations among stakeholders and relative to the normative institutional field, and will reflect sector-specific variations (Bernstein and Cashore 2007; Fransen 2011). I understand effectiveness to mean that TBG initiatives enable companies to meet their responsibility to respect human rights as detailed in the UNGPs. The UNGPs reflect the first international consensus on the obligations of states and responsibilities of companies to ensure that people are protected from harms linked to corporate activities. According to Principle 15, the corporate responsibility to respect entails companies having in place a human rights policy commitment, a 'human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights', and a remediation process to address adverse human rights impacts. Next, I discuss some of the best practices for effective design of standards, governance procedures, and assurance frameworks.

In terms of *standards-setting*, benchmarks for best practices can be divided into process and content.[3] With regard to process, standards should be developed in a transparent and inclusive multi-stakeholder fashion to ensure their 'moral legitimacy' in the eyes of 'those parties that are affected by the rules of a standard or have the ability to affect these' (Rasche 2009: 197). Requirements of standards should be grounded in international norms and have a sufficient level of specificity and clarity. According to the UNGPs (Principle 12), corporate human rights commitments should reference at a minimum internationally recognized human rights as detailed in the International Bill of Rights and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. Specificity and clarity are useful for both adopters and certifiers of a standard since they make both implementation and verification easier (Rasche 2009). Specificity and clarity also aid in preventing 'decoupling' (i.e. when companies claim to abide by a standard, or are certified as compliant with a standard, despite the fact that they may not be implementing the standard fully or not altering actual business practices; Behnam and MacLean 2011).

Governance procedures deemed to be more effective and demonstrating greater 'political legitimacy' are multi-stakeholder in nature (Bernstein and Cashore 2007). Multi-stakeholder initiatives (MSIs) tend to be viewed positively because of their inclusiveness, consensus-building, sharing of knowledge and expertise, and procedural fairness (Fransen and Kolk 2007; Fransen 2011). Typically, MSIs include companies, civil society, and at times government representatives, and seek to create a balance between participants from the Global North and South. Decision-making should be equal among stakeholders, consensus-oriented, and structured so that no significant decision can be made in the face of opposition by one of the stakeholder groups. Transparency, among stakeholders and also externally to other interested parties, is another best practice.

Assurance frameworks, borrowing language from the UNGPs, allow companies to 'know and show' that they are respecting human rights, and make them accountable to stakeholders for

their actions and omissions (Rasche 2009).[4] Ideally, an assurance framework encompasses some type of ongoing auditing/monitoring and certification procedures, whereby a company can demonstrate that it has assessed its compliance with the requirements of a code or standard and may receive some type of mark for a set time period indicating as much publicly. Auditing/monitoring can be undertaken by internal and/or external parties to a company, but greater credibility is granted to audits carried out by, and certifications granted by, independent, third parties without a direct financial tie to the company (O'Rourke 2006). Auditing should not be a check-the-box exercise, and should move a company beyond mere compliance to a demonstrated commitment to respect human rights as engrained in its corporate culture, management system, and business relationships. An additional component of an effective assurance framework is some type of grievance mechanism whereby internal parties, such as whistleblowers, and external parties, such as aggrieved affected individuals and communities, can file complaints. UNGPs Principle 31 lays out effectiveness criteria for non-judicial, company grievance mechanisms, namely legitimacy, accessibility, predictability, equitability, transparency, rights compatibility, a source of continuous learning, and based on engagement and dialogue with affected stakeholders. 'Knowing and showing' respect for human rights also requires public reporting on a company's efforts to address its human rights impacts (Principle 21). Finally, an assurance framework should be accompanied by some type of graduated sanctioning regime that provides scoped responses to instances of unintended and intended non-compliance (Behnam and MacLean 2011).

Benchmarking the ICoC Process and the ANSI/ASIS PSC series

This section assesses the extent to which both initiatives meet best practices and elaborates on particular outcomes in their institutional design resulting from ongoing negotiations between stakeholders. In terms of *standards-setting*, the ICoC is itself a human rights policy commitment by signatory PSCs, and references the 'Protect, Respect and Remedy' framework (Paragraph 2). It was developed under the leadership of the Geneva Centre for the Democratic Control of Armed Forces in a transparent, inclusive, multi-stakeholder fashion; drafts were discussed at stakeholder conventions and were open for public comment. However, the ICoC, as a statement of principles, lacks specificity and calls for the creation of operational and business practice standards (Paragraph 7). The reference to business practice standards was inserted by business and government stakeholders into the draft ICoC in light of developments on the US regulatory front. At the time, major US PSCs were lobbying Congress to require in the National Defense Authorization Act (NDAA) that the DoD develop and utilize some type of third party certification to an industry generated standard when procuring security. The 2010 and 2011 NDAA contained the provisions allowing the DoD to begin funding the development of PSC.1. The DoD and PSCs had greater familiarity with management standards than multi-stakeholder processes. However, aware that a stand-alone, business generated management standard would not be viewed as credible enough, the drafters and supporters of PSC.1 had to link it to the legitimacy of the multi-stakeholder ICoC process. Hence their description of PSC.1 as the business practice standard that operationalizes the ICoC. This view is not shared by many civil society organizations (CSOs), who were largely absent in the drafting of PSC.1 and initially had envisioned that the governance and oversight mechanism for the ICoC would develop operationalized standards.

While PSC.1 requires companies seeking to demonstrate conformance with the standard to develop a 'Statement of Conformance' in line with the ICoC, the Montreux Document, and applicable international law, including human rights law (Sec. 6.3), a number of CSOs believe

that there are gaps between the human rights requirements of the ICoC and PSC.1. CSOs also call into question the multi-stakeholder nature of the PSC.1 standards-setting process since ASIS International selected participants for the Technical Committee drafting the standard from three categories, users/managers, producers/service providers, and general interest, which do not reflect the more common division of stakeholders into business, government, and civil society. The DoD sought to establish the multi-stakeholder nature of PSC.1 by referencing the number and different types of organizations on the Technical Committee, their level of expertise, and geographical representativeness.[5] The fact that supporters of PSC.1 lay claim to this criterion indicates the widespread acceptance of the norm of multi-stakeholder participation.

One reason for the perception of gaps between the two initiatives is differences in the language of risk management standards versus multi-stakeholder codes. As noted in the Introduction to this Handbook, we have become a risk-based society, and the focus on risk management is reflected in new regulatory arrangements. For human rights CSOs, PSC.1's language is unfamiliar; human rights violations are 'undesirable and disruptive events' and respect for human rights is risk minimization. In their view, PSC.1 does not go far enough in assessing and addressing human rights impacts on affected external stakeholders. In contrast, supporters of PSC.1 believe that embedding a risk assessment requirement into a management system, based on the idea of a continual improvement process, which seeks to identify and mitigate human rights risks to PSCs and stakeholders is largely the same thing. The latter perspective would seem to align with the Commentary to UNGPs Principle 17 which states that human rights due diligence can be part of a broader risk management system, 'provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders'.

Reflective of Fransen and Kolk's (2007) distinction between MSIs that merely consult versus involve civil society, the nature of *governance* in both initiatives and the role of CSOs varies. With the ANSI/ASIS PSC series completed, there are limited roles for CSOs to play, other than in regularly scheduled reviews of the standards, especially when compared to civil society's full and equal integration into all functions of the ICoCA as one of three pillars, including into the governance bodies which have decision-making authority over budgetary and membership issues, the creation of assurance frameworks, and determinations over non-compliance and sanctions. All three pillars of the ICoCA have equal voting rights, and voting requirements have been set up so that no one pillar can force through significant governance or process decisions.

However, representation from the global South has been lacking, something Fransen and Kolk (2007) find to be a common shortcoming of many MSIs. CSOs made a concerted effort to bring representatives from organizations in the global South on the first board. And while PSCs headquartered in the global South are signatories to the ICoC, fewer have joined the ICoCA, and none are on the board. The make-up of the CSO pillar has been a point of contention among stakeholders, and participating CSOs have successfully excluded academics and implementing CSOs in favour of watchdog CSOs, which ideally should increase the stringency of the MSI (Fransen and Kolk 2007). In the membership of the government pillar, territorial states are absent, and while the contracting states are large clients of the PSI, private sector clients (such as companies in other sectors and humanitarian aid and development organizations), which account for a greater share of overall PSI revenues, are missing. These factors not only impact the multi-stakeholder nature of the ICoCA, but also influence market drivers that will affect the global reach and uptake of the ICoC by PSCs.

The ICoCA has demonstrated a high degree of operational transparency, for example making available publicly the budget and notes from Board meetings. In contrast, the disaggregated and marketized structure of the architecture around national management system

standards is very different from the centralized governance role played by the ICoCA. In broad brush strokes, organizations like ASIS International set standards which are then recognized by national standards bodies, such as ANSI, as having been created in accordance with their requirements. Accreditation bodies, like the ANSI-ASQ National Accreditation Board (ANAB), create rules and have procedures for accrediting certification bodies to audit PSCs to standards – for example, as detailed in ISO 17011 Conformity Assessment – General Requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies. Certification bodies have standards by which they carry out audits, such as ISO 17021 Conformity Assessment – Requirements for Bodies Providing Audit and Certification of Management Systems, and auditors are certified after participating in accredited training programs. ANAB and ANSI are members of an international oversight body, the International Accreditation Forum. At each of these organizational levels, there are procedures to file complaints if there is a reasonable belief that standards were not adhered to; however, the degree of transparency of the complaints processes is limited.

As a core component of an *assurance framework*, certification has been a major point of contention among stakeholders, in particular because of the first mover advantage that PSC.1, and the accompanying conformity assessment and auditing standard PSC.2, enjoyed because of their completion in advance of the establishment of the ICoCA. This has shaped negotiations in the ICoCA. The ICoCA's Articles of Association sketch out in a skeletal fashion the procedures it must develop for certification, reporting, monitoring, and complaints. While the ICoCA approved a certification procedure for recognizing external standards in July 2015, the UK government in 2013 funded and completed an effort with the UK Accreditation Service and a few PSCs to test pilot certification to PSC.1, and accredit the first certification bodies. This has created certain path dependencies that governments and PSCs have been able to leverage during ICoCA negotiations. First, participating governments and PSCs stress that PSC.1 is an auditable operationalization of the ICoC's principles and thus only a few, limited gaps exist between the two. Second, they leverage the notion of 'auditing fatigue' to argue that it would be unreasonable, and a likely deterrent to participation in the ICoCA, to require companies to become certified to two different standards. Third, they call into question the resources and capabilities of the ICoCA to conduct field monitoring in complex environments relative to professional auditors, as well as expressing reticence about the possibility of having to share confidential business information.

CSOs have retorted, expressing concern that certification to a management standard is largely a desk-based exercise that captures the existence of management policies and processes, but does not identify actual and potential human rights impacts, as would be required by an adequate human rights due diligence process as laid out in the UNGPs. They also raise the issues of lack of independence and transparency, since certification bodies are paid by the PSC and any audits are confidential between the two, unless the PSC opts for disclosure. The fact that to date there has been almost no transparency of the outcomes of the UK pilot project is telling. Although it is worth noting that despite best practices to the contrary, a survey of MSIs revealed that a little more than half rely on professional audit companies, the same method of monitoring implementation typical for business standards (Fransen and Kolk 2007: 674).

The compromise solution that is emerging can be described as a 'certification plus' model. The ICoCA would accept certification to PSC.1 – or an equivalent national or international standard – but reserves the right to request additional human rights specific information. This compromise would lend legitimacy to PSC.1 certification, while enabling the ICoCA to gather information on human rights impacts and conduct spot monitoring in areas of high risk or specific instances of non-compliance. The ICoCA would thus carve out a role for itself without duplicating certification to PSC.1.

Regarding other key components of assurance frameworks, both the ICoC and PSC.1 require company-level grievance mechanisms, although the ICoCA has yet to develop grievance procedures detailing the role of the Association in that process. Its Articles of Association foresee at a minimum annual reporting on its activities, whereas in PSC.1 it is up to the company to determine whether to communicate externally about significant risks, impacts to stakeholders, and control procedures. In terms of sanctions, the ICoCA has removal of a PSC from the Association as its ultimate sanction. PSCs which do not remedy non-conformances surfaced in an audit can ultimately lose their PSC.1 certifications.

Potential human rights effects

The ICoCA is just over one year old and the Board is currently developing key procedures of its institutional design elements. Assuming these adhere closely to the provisions of the Articles of Association, one can expect that the ICoCA largely will meet best practices with regards to multi-stakeholder governance and an independent assurance framework – albeit with one exception, the specificity of the ICoC. While PSC.1 does not fully meet best practices in multi-stakeholder standards-setting, and even some of its drafters acknowledge that the quality of auditing and effectiveness of oversight of auditors and certification bodies can vary, PSC.1 does reflect an operationalized, auditable management system standard. The successful implementation of the ICoC as a statement of aspirational principles will hinge on how it is made operational. Thus the issue of effectiveness really comes down to the nature of the relationship between these two initiatives.

There are two possible outcomes. The two initiatives could go through a fitting-process, resulting in convergence and complementarity (Avant 2013). This is a likely outcome, if the ICoCA continues to develop the 'certification plus' model of accepting certification to PSC.1 in addition to some human rights related information. For example, the Board could request that a PSC share all or aspects of its audit, and provide evidence of a thorough human rights due diligence process, to include meaningful consultation with affected stakeholders, assessment of actual and potential human rights impacts, and remedying of any human rights harms. The ICoCA could also function as a watch dog, conducting field monitoring in high risk environments, responding to company-specific complaints of non-compliance, and serving as a mediator when complaints cannot be remedied at the company-level. Convergence is favoured by governments and PSCs, although much depends on the outcome of current discussions about gaps between the two initiatives. Assuming that CSOs accept in large part certification to PSC.1, the result is likely to be an effective, but somewhat less stringent, oversight and enforcement mechanism than would have been possible had PSC.1 never been created.

The second possible outcome is divergence, with the ICoCA rejecting certification to PSC.1 and opting for the creation of its own operationalized standard and more stringent certification, monitoring, and grievance mechanisms. Likely, this would result in a small subset of PSCs, already operating to high standards, remaining in the ICoCA, while others would opt out and potentially seek certification to PSC.1. Some PSCs might choose to adhere to both standards. Much would depend on the PSI's clients' expectations. In terms of effectiveness, one could presume that the PSCs participating in a more rigorous ICoCA would be able to better mitigate any human rights risks linked to their operations, while those only receiving certification to PSC.1 would display differential human rights records in part dependent upon the quality of their auditors and the extent of their internal commitment to PSC.1. It is unclear, however, if the market is big enough for two separate certification initiatives. The ICoCA would not be financially viable were it to lose more PSCs and the backing of states supporting

PSC.1, like the US and UK. Both have already committed to requiring their contractors to comply with PSC.1. It is unclear where the market pressures to adhere to the ICoC would come from if it were delinked from certification to PSC.1, since no PSI clients, other than the UN, Switzerland, and the US Department of State through the Worldwide Protective Services to solicitation, have committed explicitly their support to the ICoC.

This second outcome appears to be unlikely. As discussed, the legitimacy of the norm of multi-stakeholder governance has resulted in recognition by both governments and companies that a management system standard on its own would not be credible in the eyes of PSI critics or the broader public. By developing PSC.1 and then writing it into procurement policies, the US government leveraged its power as a client and regulator of the PSI to give PSC.1 a first mover advantage, and created a path dependency that appears to have closed the possibility of the ICoCA's Board, in particular its CSO members, completely rejecting PSC.1.

Assuming convergence is likely, the overall effect on human rights protections should be positive, in particular if the ICoCA is able to bring in non-state clients of the industry and expand participation from the global South to increase its global reach. As foreseen in the Articles of Association, the ICoCA largely is reflective of the consensus in the field of TBG on best practices in terms of design characteristics. In part based on identified shortcomings in past MSIs, such as the Voluntary Principles on Security and Human Rights, the participating CSOs, and supportive PSCs and governments, ensured that the standards-setting process and governance were transparent, open, and multi-stakeholder and that there was an upfront commitment from participating PSCs to establish an effective governance and oversight mechanism to ensure conformance to the ICoC. Although it garners less attention than MSIs and certification schemes in other industries, perhaps because of the perceived 'dirty nature' of the PSI, the ICoCA represents a transnational business governance initiative that comes very close to meeting best practice in light of the negotiated nature of MSIs.

Both of these initiatives warrant further research. Internal to them, questions arise not only about the role of specific actors and organizations in shaping outcomes of contentious negotiations, but also about how various stakeholders manifest and leverage power, in particular considering the involvement of state actors. At the level of the institutional field, more insight is needed into the influence on negotiations of other TBG initiatives, both those specific to the PSI and those making up the larger field of business and human rights. At the international level, the effects of the widespread acceptance of (semi)privatized governance of the PSI on the role of the state, as the ultimate guarantor and provider of the right to security, needs further exploration. Finally, at a more applied level, human rights impact assessment methodologies for the PSI, to include identifying criteria and metrics for measuring potential and actual human rights impacts, need to be developed and piloted.

Notes

1 For a database of national laws with regard to regulating private military and security companies, see the Private Security Monitor at http://psm.du.edu/national_regulation. See also chapters 24 and 25 in this volume.

2 For purposes of full disclosure, among the activities I have participated in either as a volunteer thematic expert at Amnesty International USA or as an academic expert are multi-stakeholder forums to revise the code of conduct of the US industry trade association, the Technical Committee responsible for developing ANSI/ASIS PSC.1, multi-stakeholder consultations on the ICoC and ICoCA, and the Project Committee that is drafting a new ISO standard for security operations.

3 See also ISEAL's Code of Good Practice for Setting Social and Environmental Standards, available at www.isealalliance.org/our-work/defining-credibility/codes-of-good-practice/standard-setting-code.

4 See also ISEAL's Code of Good Practice for Assuring Compliance with Social and Environmental Standards, available at www.isealalliance.org/sites/default/files/ISEAL-Assurance-Code-Version-1.0.pdf.

5 See Christopher Mayer's webinar briefing, Implementation of Montreux Commitments: Comparative Perspectives – USA, available at http://ihrib.org/webinar-recordings-montreux-fives-years-on-assessing-current-status-development-implementation-international-standards-private-military-security-industry.

Bibliography

Avant, D. (2013) *Linking Power, Purpose and Legitimacy: The Montreux/ICoC Network and Global Governance of Private Military and Security Services*, working paper, Denver, CO: University of Denver.

Behnam, M. and MacLean, T. (2011) 'Where is the Accountability in International Accountability Standards? A Decoupling Perspective', *Business Ethics Quarterly* 21(1): 45–72.

Bernstein, S. and Cashore, B. (2007) 'Can Non-state Global Governance be Legitimate? An Analytical Framework', *Regulation and Governance* 1(4): 1–25.

De Nevers, R. (2010) 'The Effectiveness of Self-Regulation by the Private Military and Security Industry', *Journal of Public Policy* 30(2): 219–40.

DeWinter-Schmitt, R. (ed.) (2013) *Montreux Five Years On: An Analysis of State Efforts to Implement Montreux Document Legal Obligations and Good Practices*, Washington, DC: American University Washington College of Law Center for Human Rights & Humanitarian Law and NOVACT.

Dingwerth, K. and Pattberg, P. (2009) 'World Politics and Organizational Fields: The Case of Transnational Sustainability Governance', *European Journal of International Relations* 15(4): 707–44.

Eberlein, B., Abbott, K. W., Black, J., Meidinger, E. and Wood, S. (2014) 'Transnational Business Governance Interactions: Conceptualization and Framework for Analysis', *Regulation and Governance* 8(1): 1–21.

Fransen, L. (2011) 'Multi-stakeholder Governance and Voluntary Programme Interactions: Legitimation Politics in the Institutional Design of Corporate Social Responsibility', *Socio-Economic Review* 10(1):163–92.

Fransen, L. and Kolk, A. (2007) 'Global Rule-Setting for Business: A Critical Analysis of Multi-stakeholder Standards', *Organization* 14(5): 667–84.

Gilbert, D., Rasche, A. and Waddock, S. (2011) 'Accountability in a Global Economy: The Emergence of International Accountability Standards', *Business Ethics Quarterly* 21(1): 23–44.

International Committee of the Red Cross (2012) 'Special Issue: Business, Violence, and Conflict', *International Review of the Red Cross* 94(887).

Leander, A. (2012) 'What Do Codes of Conduct Do? Hybrid Constitutionalization and Militarization in Military Markets', *Global Constitutionalism* 1(1): 91–119.

O'Rourke, D. (2006) 'Multi-stakeholder Regulation: Privatizing or Socializing Global Labor Standards?', *World Development* 34(5): 899–918.

Ralby, I. (2015) 'Accountability for Armed Contractors', *Fletcher Security Review* 2(1): 1–7.

Rasche, A. (2009) 'Toward a Model to Compare and Analyze Accountability Standards – The Case of the UN Global Compact', *Corporate Social Responsibility and Environmental Management* 16(4): 192–205.

Scherer, A. G. and Palazzo, G. (2011) 'The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and its Implications for the Firm, Governance, and Democracy', *Journal of Management Studies* 48(4): 899–931.