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International Peace Operation Association

CONFLICT AND SECURITY ISSUES IN THE MODERN AGE: IMPLICATIONS FOR PEACE

By Dr. Shaista Shameem

The reality of the current peacemaking, peace building, peace support and peacekeeping environment is such that peace operators need to be constantly monitoring both substantive and public relations aspects of their work. There are broadly two further aspects to this, the first, human rights implications of their substantive work, including issues of concern about state sovereignty. The second is the need, even the requirement these days, for transparency and accountability to alleviate any concerns in the mind of the general public that peace operators are just corporate 'mercenaries', irrespective of whether they are seen to be contributing to the public good, world peace and security.

The 'Mercenary' label

While the peace operations and security industry attempt to remove themselves as far as possible from the label of 'mercenary', there is no doubt that in the public mind, and instigated, or at least supported, by the media, many private companies operating in the remote and conflict-ridden regions of the world are merely modern day mercenaries hiding behind another, perhaps more palatable, label. This is a long-standing prejudice that continues to be held, probably because mercenaries have been mythologized and given an unsavory reputation that tenaciously remains in the

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THE VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS

Launched in 2000, the Voluntary Principles on Security and Human Rights (Voluntary Principles) is an international, tripartite initiative designed to assist energy and extractives companies in maintaining the security of their operations globally while ensuring respect for human rights.

In early 2000, the U.S. and UK governments, a handful of extractive and energy companies, and a few international human rights NGOs initiated a year-long, multi-stakeholder process to address concerns associated with security and human rights. The participants sought to draft a set of human rights guidelines customized for the extractive and energy sectors that specifically address security issues and provide practical guidance on implementation. The Voluntary Principles, which were officially announced in December 2000, consist of three components that provide guidelines for: (1) conducting a comprehensive risk assessment with regard to security and human rights issues, the criteria of which are designed to build accountability; (2) engaging with public security forces, both military and police; and (3) engaging with private security forces.

The Voluntary Principles illustrates the opportunities and challenges of a tripartite initiative, as well as the unique strengths that each partner brings to the multi-stakeholder process. Companies offer the experience of working on the ground and the reality of implementing at an operational level. Home governments are able to convene diverse stakeholders around mutual goals and provide diplomatic channels to engage host governments. NGOs bring an expertise in human rights issues including knowledge of local civil society in the geographic areas where companies

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Global Peace Operations

In 2005, the United Nations had four times more troops stationed in Africa alone, than the rest of the world.

Between 2004 and 2005, out of 136 reported fatalities during UN missions, 48% died of illness, 23% by accidents, and only 14% of hostile acts.

81% of the fatalities within UN missions in 2005 occurred in Burundi, DRC, Liberia and Sierra Leone.

Provided by the Center of International Cooperation

Inside this Issue

IPOA MEMBER PROFILE

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Location: London, England

Areas of Operation: Global

Key Services: Lease of Helicopters and Airplanes

Background: AYR group provides turn-key aviation solutions in the most inhospitable conditions on earth. AYR offers local experience-worldwide

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PRESIDENT'S MESSAGE

Contrary to the conventional wisdom among many academics and pundits, private contractors are held to high standards and have strong incentives to uphold human rights. IPOA believes that ensuring respect for human rights is essential for all actors in conflict and post-conflict environments (CPCs), be they military or civilian. Directly or indirectly, it is the international community contracting the private sector to operate in the field, and there is every reason to demand and expect that the sector be held to the highest of standards.

The human rights record of the private sector in peace and stability operations is far superior to that of national militaries and international peacekeepers. Although there have been some well-publicized incidents in the past, they have paled in both scale and severity when compared to revelations about military deployments in peace operations in recent years. Private companies use far fewer personnel which allows for great selectivity and overall higher quality. It is crucial that we as an industry support efforts to better address these problems in the future.

Most firms in the Peace and Stability Industry involved in security provision are comprised of former military personnel who bring along their military-taught ethics when they join the civilian sector. For those analysts who recognize only financial motivations, it is rather obvious from a commercial perspective that employee violations of human rights laws and norms can be hugely detrimental, if not catastrophic to long-term viability. Moreover, employees are overseen not just by their companies who are motivated by contractual stipulations, but also by company clients.

Quality companies are always keen to demonstrate their professionalism and contractual compliance to their clients. This does not mean that we as an industry association may blithely assume that problems will never arise; rather, we should utilize all tools at our disposal to maximize effective oversight while encouraging companies to address problems themselves and be proactive about complying with human rights norms.

Governments, companies, NGOs and others who employ private sector services in CPCs can be clear about their concerns about human rights in their interactions with security providers. Clients' Requests for Proposals (RFPs) can include specific contractual rules on transparency and oversight, which the most professional companies fully support. It also makes sense to ensure that contracted companies are members of trade associations like IPOA which proactively supports human rights and advocates for industry transparency and accountability. Few industry analysts seem to realize how effective contracts and self-regulation can be in helping to promote ethical industry standards.

We must also note that the Peace and Stability Industry is instrumental in supporting and improving international efforts to successfully resolve conflicts and create obvious improvements in human rights situations. At human rights conferences it is often humanitarians who emphasize the need for the establishment of effective security as a first step in resolving conflicts. Establishing effective security in itself does much to end human rights atrocities common to chaotic areas of conflict. Once security is in place, NGOs and humanitarian organizations gain freer and safer to access the victims of chaos and lawlessness, and can begin efforts at community reconciliation and reconstruction.

IPOA regularly reaches out to interested parties to proactively address human rights concerns in forums and on an individual basis. Since the industry is becoming an increasingly important actor in peace and stability operations, the sooner concerns are aired and addressed, the better. If we truly expect to revolutionize peace operations, the Peace and Stability Industry must be seen as a resource and not a threat. We welcome constructive suggestions and feedback on how the private sector can be more effective in this area, and how IPOA can promote higher standards.

The Peace and Stability Industry need not be shy about addressing human rights concerns. Ultimately the better and more ethically we do our job, the better the world can successfully address the conflicts that cause the overwhelming majority of human rights problems in the first place.

CONDITIONAL STATUTORY DEFENSE UNDER DETAINEE TREATMENT ACT OF 2005

by Christopher J. Hunter

The Detainee Treatment Act of 2005, Public Law Number 109-163, 119 Stat. 3136 (2006), became law in the United States in January. Of late, much of the media coverage of the Detainee Treatment Act (the "Act") has related to how the new law impacts the ability of detainees held at Guantanamo Bay, Cuba to seek judicial review of their status. In the run-up to the law's enactment, however, much of the coverage focused on whether the Act would include any type of immunity or defense for U.S. government personnel involved in detention and interrogation of detainees. Following negotiations between Senator John McCain, the Act's principal sponsor, and the White House, a statutory defense for those involved in detention and interrogation of detainees was included in the Act and became law. This article examines the statutory defense, Section 1404, and its applicability to government contractors.

Section 1404 provides a conditional defense for an interrogator if he is sued by a private plaintiff or is investigated or prosecuted by a public law enforcement authority. If the statutory conditions are met, an interrogator may claim as a defense lack of knowledge that the conduct at issue was unlawful.

The availability of the defense is linked with the Act's guidance on the scope of lawful interrogation practice. Section 1402 states what an interrogator may do. Section 1403 states what an interrogator may not do.

The Standard for Interrogation

Anyone tasked with interrogation must have a working knowledge of the Army Field Manual on Intelligence Interrogation (AFMII). Section 1402 of the Act sets the AFMII as the standard for interrogating detainees who are under the control of the United States Department of Defense (DOD) or located at DOD facilities. Only "treatments or techniques of interrogation [] authorized by and listed in" the AFMII are permissible.

Prohibited Conduct

Section 1403 of the Act is, in essence, a prohibition on torture. It prohibits "cruel, inhuman, or degrading treatment or punishment" of any individual under United States government control anywhere in the world. Section 1403 does not define what is meant by "cruel, inhuman, or degrading treatment or punishment." Rather, the prohibited conduct is defined by reference to the prohibitions on such conduct found in the U.S Constitution and by incorporation of the

definitions in the United States Reservations, Declarations and Understandings to the United Nations Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment.

Courtesy of Department of Defense

The Act does not expressly create a private civil cause of action for alleged victims of prohibited conduct, nor a new federal criminal offense. However, as those who have worked in confrontational information-gathering – whether in the local precinct or in a foreign theater – can attest, the law's silence is often poor protection from a civil lawsuit or a criminal prosecution. When either occurs, Section 1404 may provide legal protection for the interrogator.

The Defense

Section 1404's defense of lack of knowledge allows an interrogator to claim that he or she did not know that a specific practice was unlawful and that a reasonable person would not have known that a specific practice was unlawful. Three conditions must be satisfied to invoke the defense. First, the interrogator was engaged in "specific operational practices" involving detention and interrogation. Second, the detention and interrogation was of aliens the U.S. government believes to be associated with threat-based international terrorist activity. Third, the detention and interrogation operation itself was officially authorized and lawful at the time it was conducted.

Perhaps the most important part of the defense is the meaning of "specific operational practices" involving detention and interrogation. The phrase is undefined in Section 1404. Because Section 1402 sets the AFMII as the standard for interrogation practices, it is likely that the first condition will be satisfied if the interrogator was engaged in "specific operational practices" as discussed in the AFMII.

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ACCOUNTABILITY AND THE USES OF CONTRACTS

By Laura A. Dickinson

Over the past two years, voices from both within and outside the private security industry have called for the creation of greater mechanisms for accountability and accreditation. In the wake of reported abuses in Iraq, there have been some efforts by Congress and government agencies to institute more oversight concerning government contracts, but those efforts inevitably are slow and will likely bring only piecemeal solutions. Thus, the security industry is increasingly looking to impose forms of standardization, self-regulation, and contractual monitoring on itself. Such provisions set attainable benchmarks for the industry and provide a way for accredited firms to differentiate themselves from rogue outfits.

The domestic privatization context provides an instructive example. Government contracts for these services routinely include a variety of provisions designed to ensure professionalization and accountability. In addition, trade groups and independent not-for-profit monitoring organizations oversee a network of accreditation structures, which are, in turn, often incorporated into the contracts themselves. Together these contractual and non-contractual measures provide a blueprint for the private security industry to follow.

In contrast, my investigation of all the publicly available Iraq military and reconstruction aid contracts reveals an alarming lack of accountability mechanisms or performance standards. To make matters worse, the Coalition Provisional Authority, the Department of Defense, and the various other relevant government agencies and departments were notoriously lax in their oversight of these contracts. Accordingly, two immediate avenues for reform are needed. First, the government contracts themselves should be drafted to include explicit provisions designed to ensure (or at least encourage) accountability with international and domestic norms of conduct. Second, these provisions should include grievance procedures and accreditation requirements so as to encourage industry and third-party monitoring and oversight. This essay surveys both avenues of reform.

Turning to the contracts themselves, six different types of provisions should be considered:

1. The contracts could explicitly require that contractors obey international human rights and humanitarian law. This may seem like an obvious point, but of the contracts that I have examined, none contained such requirements.

2. The contracts could explicitly require contractors to receive training in international human rights and humanitarian law. Again, none of the publicly available Iraq contracts appears to require such training.

3. The contracts could include more concrete performance benchmarks.

4. The contracts could require self-evaluation by contractors. Contractors could thus be required to assess their own performance as a way of enhancing accountability.

5. Contracts could include terms allowing the government to take over the contract by degrees for failure to observe international human rights and humanitarian law norms. Although many of the U.S. Iraq contracts do have termination provisions, outright termination is such an extreme measure that these provisions are rarely exercised. Indeed, the contractor implicated in the Abu Ghraib prison scandal not only was not terminated; its contract was actually expanded. Graduated takeover provisions might alleviate the problem by permitting a more moderate remedy short of outright termination.

6. The contracts could provide for enhanced whistleblower protections and third-party beneficiary suit provisions. For instance, those who are receiving aid or those who are subject to a contractor security action might be able to make claims under the contracts for non-compliance with international human rights and humanitarian law norms. Such claims could be heard and adjudicated through grievance procedures established and run either by the contractor itself or by a professional association of contractors.

Of course, these compliance mechanisms are necessarily only as good as the quality of the monitoring. A three-tiered monitoring structure is necessary, as with domestic privatization contracts. Thus, there should be sufficient numbers of trained and experienced governmental contract monitors. At the same time, governmental ombudspersons—leaders of independent offices charged with providing enhanced oversight—serve as an important supplement to the contract monitors. The contractor itself, as well as outside independent non-governmental organizations, can serve an important function monitoring contracts and providing third-party grievance procedures.

Finally, independent organizations, consisting of experts or professionals in the field, can evaluate and rate private contractors. These ratings can then be used in the contracting process because agreements can require that contractors receive certain rankings.

Amazingly, not one of the available contracts for aid or military services in Iraq requires that the entities receiving the contracts be vetted or accredited by independent organizations. Yet, the domestic context provides a particularly rich set of models as to how this might work. For example, in the healthcare field, state laws or contractual terms often specify that health maintenance organizations (HMOs) must receive accreditation by the National Committee for Quality Assurance (NCQA), an independent non-profit organization, before receiving public funding. Until recently, NCQA certification was primarily voluntary, offering HMOs an advantage when competing for contracts. When states became managed care purchasers, however, they adopted NCQA as a benchmark of quality. Similarly, many contracts with private prison operators require companies to receive accreditation by the American Correctional Association. And because private investors come to view accreditation as an indicator of quality, an accreditation requirement creates significant compliance incentives.

Significantly, the principal reforms discussed above—drafting new contract language and developing private grievance, accreditation, and rating systems—could be initiated by the contractors themselves without waiting for government action.

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We live in a world that gets smaller each day. Inescapably, there are clashes between cultures and value systems. Tragedies that went unnoticed and undetected 10-20 years ago are daily brought to the world via network news and the Internet.

And now that we are aware of the many travesties of justice in the world, those of us who enjoy freedom and democracy are now bound to help share it with the world.

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CONDITIONAL STATUTORY DEFENSE UNDER DETAINEE TREATMENT ACT OF 2005

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The reasonableness of an interrogator's belief that a specific practice was lawful may depend in part on whether the interrogator relied in good faith on the advice of counsel prior to engaging in the specific practice.

Applicability to Government Contractors

The Detainee Treatment Act including the Section 1404 defense should be understood to apply to United States government contractors, even though its application does not explicitly include "contractors."

The Section 1404 defense is available to "an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person[.]" The last category – "other agent of the United States Government" – likely includes United States government contractors.

Section 1406 of the Act, relating to the training of Iraqi Security Forces in detention and interrogation practices, demonstrates that Congress had government contractors in mind when it established the categories of individuals protected by Section 1404. Section 1406 makes DOD contractors involved in detention and interrogation training of Iraqi Security Forces subject to the same policies and rules governing DOD personnel involved in such training. In this instance, government contractors would, in fact, be considered "other agent's] of the United States Government."

Support for extending the Section 1404 defense to government contractors also can be found in National Security Advisor Stephen Hadley's official comments on the Act, which repeatedly focus on the Act's "protections for the men and women, both in uniform and civilians, who are engaged in activities involving detainees and interrogations."

A Note About Iraq

Section 1406 of the Act requires that DOD personnel and DOD contractors training the Iraqi Security Forces provide training regarding the humane treatment of detainees. Specifically, the protections contained in the Geneva Conventions and in the Convention against Torture must be taught. Section 1406 also requires that DOD translate unclassified portions of the AFMII into Arabic for dissemination to the Iraqi government and recommends that the AFMII be the basis for the Iraqis' detainee interrogation policies.

Reducing a new, untested law down to several hundred words is an uncertain prospect. What is certain, however, is that the Army Field Manual on Intelligence Interrogation has now been established as the source for interrogation practices. Sticking close to it will increase the likelihood that Section 1404's defense will be available should the need arise, whether working directly for the United States or as its contractor.

Christopher Hunter is an attorney at Goodwin Procter LLP. He is a former FBI agent and state prosecutor. This article does not contain legal advice. If legal advice is desired, an attorney should be consulted.

CONFLICT AND SECURITY ISSUES IN THE MODERN AGE: IMPLICATIONS FOR PEACE OPERATIONS

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minds of the general public. There is already a definition of a 'mercenary' in international law as a person who fights for money and has no ideological relationship to the theatre of conflict, and is not a national of the country where he is engaged in hostilities. Private operators seem to fit this definition. There are no alternative definitions of private companies or operators which can provide them with more legitimacy. Thus peace operators, irrespective of the good they may do in the world, for example in support of humanitarian services and security, are tarred with the same brush.

Human Rights Implications

The main problem faced by peace operators in the current climate, perhaps more so in Iraq, Afghanistan, and Africa is whether, as private, and not state actors, they can be held responsible for human rights violations. Peace and security operators, either directly involved in hostilities or engaged in other work such as guarding mines or camps may be seen to be above the rule of law and beyond the reach of authorities monitoring compliance with human rights principles. This gap in the law on state responsibility with respect to private actors needs to be addressed urgently, particularly by the United Nations.

However, irrespective of whether anyone takes the initial responsibility for this dialogue, industry operatives should now take a leading role in reviewing their adherence to human rights principles, including consideration of how much of state responsibility for human rights compliance they should share. The extent of this duty, willingly taken, will no doubt depend on the parameters of state responsibility for maintaining peace and security delegated to private companies. This may well be a contractual term to be discussed with states where relevant. Contracting with private entities which are not states, such as militia groups, NGOs, United Nations and private mining companies also need assessment with respect to the responsibility to be taken for human rights compliance in the region of operation.

Many private peace and security firms are drafting specific Codes of Conduct for their operations. In some cases these Codes reflect international law on the rights of individuals and groups caught up in conflict, or international humanitarian law more generally. It is possible for companies to draft a set of detailed principles to provide guidance to their people on the ground.

The Fiji Human Rights Commission recently developed such a set of principles in partnership with the Disciplined

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IPOA CODE OF CONDUCT: RULES AND REGULATIONS FOR ALL IPOA MEMBERS

CODE OF CONDUCT

Rules and Guidelines for all members of IPOA

PURPOSE

This Code of Conduct seeks to ensure the ethical standards of International Peace Operations Association member companies operating in conflict and post-conflict environments so that they may contribute their valuable services for the benefit of international peace and human security. Members of IPOA are pledged to the following principles in all their operations:

HUMAN RIGHTS

In all their operations, Signatories will respect the dignity of all human beings and strictly adhere to all relevant international laws and protocols on human rights. They will take every practicable measure to minimize loss of life and destruction of property. Signatories agree to follow all rules of international humanitarian law and human rights law that are applicable, as well as all relevant international protocols and conventions, including but not limited to:

- Universal Declaration of Human Rights (1948)
- Geneva Conventions (1949)
- Protocols Additional to the Geneva Conventions (1977)
- Chemical Weapons Convention (1993)

Voluntary Principles on Security and Human Rights (2000)

TRANSPARENCY

Signatories will operate with integrity, honesty and fairness. Signatories engaged in peace or stability operations pledge, to the extent possible and subject to contractual and legal limitations, to be open and forthcoming with the International Committee of the Red Cross and other relevant authorities on the nature of their operations and any conflicts of interest that might in any way be perceived as influencing their current or potential ventures.

ACCOUNTABILITY

Signatories understand the unique nature of the conflict and post-conflict environment in which many of their operations take place, and they fully recognize the importance of clear and operative lines of accountability to ensuring effective peace operations and to the long-term viability of the industry. Signatories support effective legal accountability to relevant authorities for their actions and the actions of company employees. While minor infractions should be proactively addressed by companies themselves, Signatories pledge, to the extent possible and subject to contractual and legal limitations, to fully cooperate with official investigations into allegations of contractual violations and violations of international humanitarian law and human rights law. Signatories further pledge that they will take firm and definitive action if employees of their organization engage in unlawful activities.

CLIENTS

Signatories pledge to work only for legitimate, recognized governments, international organizations, non-governmental organizations and lawful private companies. Signatories refuse to engage any unlawful clients or clients who are actively thwarting international efforts towards peace.

SAFETY

Recognizing the often high levels of risk inherent to business operations in conflict and post-conflict environments, Signatories will always strive to operate in a safe, responsible, conscientious and prudent manner and will make their best efforts to ensure that all company personnel adhere to these principles.

EMPLOYEES

Signatories ensure that all their employees are fully informed regarding the level of risk associated with their employment, as well as the terms, conditions, and significance of their contracts. Signatories pledge to ensure that their employees are medically fit, and that all their employees are appropriately screened for the physical and mental requirements for their applicable duties according to the terms of their contract. Signatories pledge to utilize adequately trained and prepared personnel in all their operations in accordance with clearly defined company standards. All personnel will be vetted, properly trained and supervised and provided with additional instruction about the applicable legal framework and regional sensitivities of the area of operation. Signatories pledge that all of their employees are in good legal standing in their respective countries of citizenship as well as at the international level. Signatories agree to act responsibly and ethically toward all of their employees, including ensuring employees are treated with respect and dignity and responding appropriately if allegations of employee misconduct arise. Signatories agree to provide all employees with the appropriate training, equipment, and materials necessary to perform their duties as laid out in their contract. Employees will be expected to conduct themselves humanely with honesty, integrity, objectivity and diligence.

IPOA CODE OF CONDUCT: RULES AND REGULATIONS FOR ALL IPOA MEMBERS

Insurance

Foreign and local employees will be provided with health and life insurance policies appropriate to their wage structure and the level of risk of their service as required by law.

Control

Signatories strongly endorse the use of detailed contracts specifying the mandate, restrictions, goals, benchmarks, criteria for withdrawal and accountability for the operation. In all cases–and allowing for safe extraction of personnel and others under the Signatories' protection–Signatories pledge to speedily and professionally comply with lawful requests from the client, including the withdrawal from an operation if so requested by the client or appropriate governing authorities.

Ethics

Signatories pledge to go beyond the minimum legal requirements, and support additional ethical imperatives that are essential for effective security and peace related operations:

Rules of Engagement

Signatories that could potentially become involved in armed hostilities will have appropriate "Rules of Engagement" established with their clients before deployment, and will work with their client to make any necessary modifications should threat levels or the political situation substantially change. All rules should be in compliance with international humanitarian law and human rights law and emphasize appropriate restraint and caution to minimize casualties and damage, while preserving a person's inherent right of self-defense.

Support of International Organizations and NGOs /Civil Society and Reconstruction

Signatories recognize that the services relief organizations provide are necessary for ending conflicts and alleviation of associated human suffering. To the extent possible and subject to contractual and legal limitations, Signatories pledge to support the efforts of international organizations, humanitarian and non-governmental organizations and other entities working to minimize human suffering and support reconstructive and reconciliatory goals of peace operations.

Arms Control

Signatories using weapons pledge to put the highest emphasis on accounting for and controlling all weapons and ammunition utilized during an operation and for ensuring their legal and proper accounting and disposal at the end of a contract. Signatories refuse to utilize illegal weapons, toxic chemicals or weapons that could create long-term health problems or complicate post-conflict cleanup, and will limit themselves to appropriate weapons common to military, security or law enforcement operations.

Quality

Signatories are committed to quality and client satisfaction.

Partner Companies & Subcontractors

Due to the complex nature of the conflict and post-conflict environments, companies often employ the services of partner companies and subcontractors to fulfill the duties of their contract. Signatories agree that they select partner companies and subcontractors with the utmost care and due diligence to ensure that they comply with all appropriate ethical standards, such as this Code of Conduct.

Enforcement

This Code of Conduct is the official code of IPOA and its member organizations. Signatories pledge to maintain the standards laid down in this Code. Signatories who fail to uphold any provision contained in this Code may be subject to dismissal from IPOA at the discretion of the IPOA Board of Directors.

Version: March 31, 2005

ACCOUNTABILITY AND THE USES OF CONTRACT

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The security industry could draft model contract terms and negotiate for these terms to be included in future service contracts. Then, internal grievance procedures to adjudicate complaints could be established either by the contractors or their professional associations. Meanwhile, codes of conduct could be disseminated and a monitoring body created to rate contractors for compliance. These ratings might then become an industry standard that the government could be persuaded to use as a contracting factor.

As noted previously, these reforms would help firms differentiate themselves from each other and would likely provide compliant firms with an advantage both in negotiating future contracts and in attracting investors. Perhaps most importantly, the reforms might help to curtail the sorts of fraud, waste, and abuse that have emerged from the Iraq reconstruction and security efforts.

Laura A. Dickenson is an Associate Professor at the University of Connecticut School of Law. This essay is adapted from a longer article entitled "Public Law Values in a Privatized World.." It is available on our website at www.IPOAonline.org/news/reports.

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Services of Fiji, including the Republic of the Fiji Military Forces, (who are well-known for their effectiveness in the peace keeping role with the UN), the Fiji Police Force, who also operate in many different regions of the world in post-conflict policing roles, and the Fiji Prisons service.

The main elements of these principles comprehensively set out international law on aspects such as rights of detained persons, acceptable interrogation methods, access to courts and tribunals, treatment of remand prisoners (that is, those awaiting trial), treatment of prisoners while in detention (basic food, accommodation and medical requirements, communication with lawyers, families, religious counselors and others), transfer of prisoners, rights to a fair trial, including availability of defense counsel, open justice, prison visitations by magistrates and other judicial officers, extra-judicial issues, the rule against summary executions and so on.

The National Security and Human Rights Handbook as it is called, was launched by the President of Fiji and the Commander in Chief of the Fiji Military Forces in 2004. Since then, the Commission has reported a steady decline in complaints from detained persons about human rights breaches and violations. The military also uses the Handbook in its peacekeeping missions overseas, so it has broader appeal than just for domestic issues. A copy of the Handbook is available in the IPOA Library.

Reference can also be made to "Human Rights and transnational corporations and other business enterprises principles" (United Nations E/CN.4 2005/L.87)

Public Relations Issues

Managing public relations is as important as the substantive quality of the work undertaken by private operators to attract legitimacy in both domestic and international markets for the goods and services provided by this sector.

Openness, transparency, legality and a rigorous Code of Conduct, based not only on humanitarian, but also on human rights, principles and good business practices, have become necessary for acquiring legitimacy of private operations in support of peace.

To avoid the label of 'mercenary company' it is advisable that more than a new 'corporate' structure is offered by private operators. There needs to be detailed attention should be paid to issues of legitimacy, accountability and a visible and examinable set of principles. These in turn should be communicated to the stakeholders for the record.

Conclusion

The public has often heard that the private operators are a reality of our times and that banning their operations, either by the UN or domestically, will serve no purpose in the current discursive environment of international and domestic conflict. However, until operators themselves take responsibility for their own Codes and compliance mechanisms, for example by self-regulation in accordance with some internationally acceptable principles, the legitimacy of many of their operations will continue to cause problems for the international community, and directly or indirectly, for the operators themselves.

IPOA STANDARDS COMMITTEE UPDATE

By Catalina Lemaitre

Since its formation, in August 2005, IPOA's Standards Committee's main priority has been to develop appropriate enforcement mechanisms to be utilized when a complaint is received alleging the violation of the IPOA Code of Conduct by a member company. Though the process is still under review and is pending approval from the IPOA Board of Directors, the Committee has made great progress. They have identified the need for an Independent Committee to review complaints, and have drafted steps to follow once a complaint has been lodged, including reporting requirements and remedial measures. In an effort to ensure transparency and accountability, NGOs, human rights lawyers and other interested parties will be integrated into the design process through a series of roundtables to be held in the coming months. External persons/bodies will be integrated into the enforcement process in some fashion, likely as part of an Advisory Committee. As a Trade Association, IPOA is limited in its capacity to address the gap in international regulation and cannot, nor does it have any desire to, replace the actions that governments and international organizations need to take in this regard. IPOA does believe, however, that self-enforcement can and will prove to be an effective solution to the problems associated with standards compliance.

Catalina Lemaitre is the Director of Operations at IPOA.

THE VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS

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operate and serve as a quasi-accountability mechanism.

Progress and Lessons Learned

The Voluntary Principles have gained strong support from the private, public, and civil sectors globally since their launch in December 2000. In addition to the current 27 official members, the Voluntary Principles have also been adopted and implemented by a number of companies that are not officially members of the Voluntary Principles, such as French-based Total and Canadian-based Enbridge, Nexen, and Talisman. Moreover, multilateral institutions such as the International Finance Corporation (IFC) and the Organization for Economic Co-operation and Development (OECD) are now referencing the Voluntary Principles in their guidelines and standards.

As a voluntary framework, each of the 16 official company members have approached implementation of the Voluntary Principles in a different way, influenced by company culture, operating environments and other factors. Also, as companies continue to join the five-year old process, there are varying levels of progress among participants of the group. However, companies on the whole have achieved significant milestones in the initiative's first five years.

Specifically, all companies are including the Voluntary Principles in at least some of their contracts, particularly with private security; a number of companies have already conducted Voluntary Principles-related trainings for public and private security, or other company staff; most companies have a process for anonymously reporting human rights abuses and "whistle-blower" protection; and many companies believe the Voluntary Principles have caused a noticeable shift in company culture regarding awareness of human rights and security issues.

Participants have found the greatest implementation challenge to be engagement with host governments regarding public security. The participants have attempted to overcome this by leveraging the multi-stakeholder nature of the initiative and taking a coordinated approach to implementation known as "in-country working groups," comprised of various companies from the energy and extractives sectors along with home government participants. In-country processes have already been established in Colombia and Indonesia. Several companies involved in the Indonesian process have already signed MOUs with regional police forces. The Colombian process reached a milestone when the Colombian Ministry of Defense agreed to include a commitment to the Voluntary Principles in agreements between Ecopetrol, the state-owned oil company, and the Colombian armed forces to provide protection for oil operations. In addition, the Colombian process has developed a draft set of best practice guidelines for risk assessment and initiated a series of on-going best practice exchange workshops.

There has been some discussion among participants about the value of offering host country governments official membership in the Voluntary Principles - as well as private security firms, and multilateral organizations - though a number of concerns need to be addressed before offering membership to additional categories of stakeholders. The strength of the Voluntary Principles as a tripartite initiative has not yet been fully realized, and can only be enhanced by company, NGO, and home government partners working collaboratively at their full potential.

In addition to implementation challenges, the Voluntary Principles process itself has also identified the need to increase transparency, including regular reporting, to maintain and increase the initiative's legitimacy, credibility, and integrity. Participants are feeling pressure to demonstrate results, or at a minimum to detail their implementation efforts and prove that they are doing more than just endorsing the Voluntary Principles' brand. To date, the Voluntary Principles' process has not mandated any formal public reporting of implementation efforts by process participants. However, an informal information gathering exercise was completed in 2005 to capture company implementation efforts and in-country process efforts. Additionally, some company participants have begun reporting their implementation efforts as part of their annual social responsibility reports. Some participants believe that standardized and regular monitoring and reporting will help to increase trust between partners.

The most important lesson from the Voluntary Principles is that a tripartite partnership *can* successfully address issues that may be next to impossible for any single actor to attempt to resolve alone.

More information, including a list of the official members, full text of the Voluntary Principles, a brief history, case studies on company implementation efforts and contact information for the Secretariat are available on the website: http://www.voluntaryprinciples.org/. Future content for the website will likely include company-specific case studies and online forms to facilitate a peer network whereby security managers can anonymously share successes and challenges.

Voluntary Principles Company Members

UPCOMING EVENT

HUMANITARIAN DEVELOPMENT SUMMIT

3-5 OCTOBER 2006 – NAIROBI, KENYA

The Humanitarian Development Summit is being organised as a high level meetings- based event to bring the international private sector closer to the business of the United Nations and international aid agencies. Sustainable development to support the humanitarian sector is one of the key themes. Details of the summit are available at: www.humanitariandevelopmentprogram.org

International companies and local operators will have the chance to demonstrate their capabilities to potential partners from: UN Agencies, NGOs and Aid Agencies, Foundations and International Donor Agencies. The summit is about promoting partnerships for ongoing sustainable development required to ensure that humanitarian aid is at its most effective.

For further details, assistance and information on how to participate please contact:

Humanitarian Development Program

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