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The UN Guidelines on the Use of Armed Guards: Recommendations for Improvement

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Abstract

In 2012, the United Nations approved new Guidelines on the Use of Armed Private Security Companies by its agencies, funds and programmes. The Guidelines hold the potential to not only enhance the quality of armed security services contracted by the UN, but also raise professional standards within the military and security industry more generally by serving as a model for other consumers and companies. Nevertheless, a close reading of the Guidelines indicates that there is still room for improvements. Drawing on best practices identified by industry associations, major clients and academic research, this article makes six recommendations for revision. Specifically, the article contends that expanding the scope, content and enforcement of the Guidelines would contribute to strengthening the control over private security contractors.

Keywords: Private Security Companies, United Nations, regulation, ICoC

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[476] Introduction

United Nations (UN) agencies, funds and programmes have employed Private Security Companies (PSCs), i.e. firms which provide static and mobile protection, for many years. Nevertheless, little was known about this practice until recently.¹ In 2010, a report by the UN Working Group on the Use of Mercenaries noted that the UN was 'using the services of private military and security personnel in some of the conflict zones in which it is engaged'.² Subsequent UN publications acknowledged the contracting of PSCs for 'guard services for United Nations offices, residential security for staff, and support for humanitarian activities, including risk assessments, threat analysis, logistical support and contributing to the development of security strategy'.³ The controversy which has surrounded the employment of PSCs during the international interventions in Iraq and Afghanistan has contributed to the reticence of the UN to make public its growing reliance on PSCs. High profile incidents, such as the shooting of 17 Iraqi civilians by employees of the American PSC Blackwater, have given the industry a bad name. The lack of binding international regulations for the global security industry remains a cause for concern.

To address these issues and prevent reputational damage to its agencies and operations the UN has adopted new Guidelines on the Use of Armed Guards. These guidelines hold the potential to not only enhance the quality of security services contracted by the UN, but also raise professional standards within the industry more generally by serving as a model for other consumers and companies. However, academic research and contracting best practices identified by industry associations and major clients such as the United States (US) suggest that there is considerable room for improvements. In the following, this article identifies six areas related to scope, content and enforcement where revised guidelines could lead to a significant strengthening of the

¹ See Åse Gilje Østensen, *UN Use of Private Military and Security Companies: Practices and Policies*. SSR Paper 3 (2011); Lou Pingeot, *Dangerous Partnership. Private Military & Security Companies and the UN*. Report (2012).

² See UN, *Use of Mercenaries as a Means of Violating Human Rights and Impending the Exercise of the Right of Peoples to Self-determination* (2010), A/65/325, at 10.

³ See UN, *Use of Private Security* (2012), A/67/539; UN, *Reports on the Department of Safety and Security and on the Use of Private Security* (2012), A/67/624; UN, *Use of Mercenaries as a Means of Violating Human Rights and Impending the Exercise of the Right of Peoples to Self-determination* (2013), A/68/339, at 9.

UN's control over security contractors. Notwithstanding these recommendations, it should be noted that improved guidelines and management cannot address [477] all apprehensions that have been expressed with regard to the proliferation of PSCs in international interventions and areas of conflict. The impacts of PSCs on the laws of war, the state monopoly on violence, combatant demobilization, disarmament and reintegration, and public control and accountability, touch upon broader societal concerns which go beyond regulation and the scope of this article.⁴

UN Guidelines on the Use of Armed Guards

The UN's Guidelines on the Use of Armed Private Security Companies (APSC Guidelines) which were approved in November 2012 consist of four elements.⁵ The UN Security Management System (UNSMS) Security Policy Manual contains a section on 'Armed Private Security Companies' (APSCs) which sets out general policies for the employment of armed security contractors by UN agencies, funds and programmes. It establishes that the use of armed security contractors 'may be considered only when there is no possible provision of adequate and appropriate armed security from the host Government, alternate member State(s), or internal United Nations system resources'.⁶ APSCs hired by the UN are required to provide confirmation, in writing, of compliance with a mandatory screening process and asked to develop and implement company policies on the use of force, firearms management and weapons manuals. These policies must conform to the national laws of the home and host states, be as or more restrictive than the UN 'Use of Force Policy' and 'Instruction on Use of Force Equipment', and should be consistent with the International Code of Conduct for Private Security Service Providers (ICoC).⁷ In addition, the UNSMS Security Policy Manual identifies general training, management and oversight conditions.

⁴ See, for instance, Deborah Avant, *Markets for Force* (2005); Elke Krahmann, *States, Citizens and the Privatization of Security* (2010); Cateri Carmola, *Private Security Companies and the New Wars* (2010); Anna Leander, ed. *The Commercialization of Security in Europe: Consequences for Peace and Reconciliation* (2013); James Pattison, *The Morality of Private War* (2014).

⁵ See UN, *Reports on the Department of Safety and Security and on the Use of Private Security* (2012), A/67/624, at 8.

⁶ See UN, *UN Security Management System. Security Policy Manual*, Chapter IV, Section 1 (2012), at 1.

⁷ Id., at 4.

The details of these requirements are set out in a second element: the UNSMS Security Management Operations Manual 'Guidelines on the Use of Armed Security Services from Private Security Companies'. [478] They are complemented by advice on a 'Statement of Works for the Use of Armed Private Security Companies' and a 58-page long 'Model Contract' for the provision of armed security services.⁸

Two types of security services fall under the APSC Guidelines: static and mobile protection. Static guarding services include access control, identification and reporting of suspicious persons or objects, monitoring and responding to intrusion, maintaining guard post records and preparing incident reports.⁹ Mobile services cover services such as to 'plan and monitor road movements', 'present a visible deterrent', 'conduct reconnaissance', 'advance and clear routes' and 'operate and maintain communications equipment'.¹⁰ Mandatory criteria for the selection of suitable APSCs involve, among others, ICoC membership, five years-experience in the supply of armed guards, a valid license in their home state, a license to import, carry and use firearms in the host state, and the ability to comply with the scope of work.¹¹ Companies must also carry out criminal background screening of all armed guards and verify their employment history for the past five years.¹² In addition, an APSC must provide training for its guards on the ICoC, the company's use of force policy and weapons manual as well as on issues such as firearms handling, counter-terrorist search, hostile surveillance and reconnaissance, human rights law and its applications, integrity and ethical awareness, preventing sexual harassment and an overview of the UN security management system as relevant.¹³ Management and oversight include daily operations reviews and monthly performance reviews by UN staff.¹⁴ The model contract sets out these requirements in detail.

⁸ See UN, *United Nations Security Management System* (2012).

⁹ See UN, *UN Security Management System. Security Management Operations Manual 'Guidelines on the Use of Armed Security Services from Private Security Companies'* (2012), at 2.

¹⁰ Id., at 3.

¹¹ Id., at 6.

¹² Id., at 7.

¹³ Id., at 9.

¹⁴ Id., at 10-11.

Areas for Improvement

The APSC Guidelines are a significant advancement over the UN's Use of Armed Guards policy which has been in place since the publication of the United Nations Field Security Handbook in 2006. Its primary requirement was that all contracted security companies had to be 'entitled, pursuant to local law, [479] to provide armed guards and ... fully insured and appropriately licensed, so that they can effectively indemnify the organization from claims'.¹⁵ A sample contract was 'attached for convenience' rather than explicit guidance.¹⁶ Nevertheless, the APSC Guidelines are characterized by several limitations because their main objective is to minimize 'reputational risk' to the UN.¹⁷ As a consequence, the APSC Guidelines pay no attention to security services other than armed guards; they show limited concern for the impact of PSCs on the UN's security posture and environment; they do not realize fully the UN's potential as a norm entrepreneur in the international regulation of PSC services; and they make few provisions to ensure effective implementation. In the following, this article makes six recommendations for improvement.

1. Expansion of Scope

The APSC Guidelines' restriction to armed security contractors is its most significant limitation. This restriction disregards that reputational damage and negative impacts on mission objectives and host state populations can be caused by PSCs providing a wide range of services, as examples such as contractor involvement in the abuse of prisoners in Abu Ghraib or the sex-trafficking scandal of DynCorp during the peacekeeping mission in Bosnia illustrate. By focusing exclusively on armed guards, the policy overlooks the potential hazards caused by the important contribution of unarmed contractors in a variety of functions. Unarmed guards, for instance, provide a strategic interface between UN missions and local populations in many countries. The habitus and behaviour of these

¹⁵ See UN, *United Nations Field Security Handbook* (2006), Annex O 'Use of Armed Guards', at O-1.

¹⁶ Id., footnote 1.

¹⁷ See UN Chief Executives Board (CEB) *Conclusions of the Twenty-third Session of the High Level Committee on Management* (2012), CEB/2012/3, at 5. See also UN CEB, *Inter-Agency Security Management Network Meeting*. 13th Session, Vienna (2010), CEB/2010/HLCM/20, at point 16.

guards can have a significant impact on how the UN is perceived by civilian populations.¹⁸ Unarmed security companies are also involved in the operations of UN agencies in other ways that have the potential to be abused or cause complaints, e.g. when accompanying UN personnel outside protected areas or handling sophisticated technical equipment [480] such as surveillance drones.¹⁹ In addition, the employment of private military and security companies for logistical and management support may involve the UN in controversies or impact on disarmament, demobilization and reintegration, such as the subcontracting of security services with local militias or rebel groups.²⁰

The limitation to armed companies is surprising if one considers that the UN had fairly comprehensive guidelines on unarmed security guards in the past. The UN Field Security Handbook (1991) and the United Nations Security Operations Manual (1995) both included Guard Force Guidelines which prohibited the use of armed PSCs and made recommendations for the selection and vetting of companies as well as minimum professional standards for unarmed guards and their supervisors.²¹ Its annexes included a Facility Inventory Form, a Guard Recruit Training Subjects list and a suggested In-Service Guard Training Subjects list. In 1996, a UN Security Directive permitted the use of armed guards in light of the perceived deterioration of the UN's global working environment. The Guard Force Guidelines were not revoked, but had already 'faded away' before they were formally replaced by the UNSMS (2012).²²

Since the majority of PSCs employed by the UN provide unarmed security services it is vital to expand the scope of the guidelines in order to prevent potential scandals and limit negative impacts on UN missions, host countries and local populations. Revised

¹⁸ See Peer Schouten, *Political Topographies of Private Security in Sub-Saharan Africa*, in T. Dietz et al. (Eds.) African engagements - Africa Negotiating an Emerging Multipolar World, 56-83 (2011), at 70.

¹⁹ See Perry Chiaramonte, UN Using Drones to Monitor Congo Border, Fleet to Grow This Spring. *Fox News*, 1 March 2014, at: <http://www.foxnews.com/world/2014/03/01/un-using-drones-to-monitor-congo-border-fleet-to-grow-this-spring/>.

²⁰ Although there is no known example among UN contractors, local security firms employed by the US government in Afghanistan have been suspected of having paid the Taliban and local warlords to gain protection for military supply convoys. See United States Senate 2010: Inquiry into the Role and Oversight of Private Security Contractors in Afghanistan. 111th Congress, 2nd Session. Report, 28 September, at: <https://info.publicintelligence.net/SASC-PSC-Report.pdf>.

²¹ See UN, *United Nations Security Operations Manual. Guard Force Guidelines* (1995).

²² Interview with Stuart Groves, Geneva, 5 March 2014.

guidelines would be more effective if they applied to all companies which supply military and security services to the UN, including, but not limited to, services such as 'armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel'.²³ Expanding the scope of the UN guidelines would not only fill the gap caused by the abolition of the Guard [481] Force Guidelines, but also bring the UN in line with best practice suggested by 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.²⁴ The Montreux Document was signed in 2008 and, so far, has gained support from 50 UN member states as well as the North Atlantic Treaty Organization, the European Union and the Organization for Security and Cooperation in Europe.²⁵

2. Specification of Conditions for the Use of Security Guards

A second area for improvement concerns the development of stricter conditions for the use of private security guards. Although the APSC Guidelines state that armed guards should only be contracted 'on an exceptional basis', this policy - which has been in place since 1996 - has done little to prevent the extensive employment of security guards by UN agencies and missions.²⁶ One reason for the proliferation of contract guards is the APSC Guideline's incorrect assumption that 'armed security services will normally be provided by alternate member States or the appropriate security entity within the United Nations system' if a host state should be unable or unwilling to protect UN staff and facilities.²⁷ In reality, many member states are reluctant to provide police or military personnel to guard

²³ See Montreux Document (2009), at 9, http://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf.

²⁴ Id.

²⁵ See Participating States of the Montreux Document,

<http://www.eda.admin.ch/eda/en/home/topics/intla/humlaw/pse/parsta.html>. In contrast, the association for the implementation of the ICoC, which is taken as standard by the APSC Guidelines and restricts its remit to the providers of static and mobile protection, has only been joined by six member states so far. See ICoCA, Membership,

http://www.icoca.ch/en/membership?states_governments=states&op=Search&view_type=map&form_id=search_for_members_filter_form.

²⁶ Id.

²⁷ See UN, *UN Security Management System. Security Policy Manual*, Chapter IV, Section 1 (2012), at 1.

UN facilities and personnel because they receive little credit for such services in comparison with peacekeeping operations. Also peacekeeping forces loath delegating soldiers for guarding duties because they consider the protection of UN personnel and facilities outside their regular mandates. Few countries, such as Romania, Nepal, Fiji, Jordan and Morocco, take pride in volunteering military or police contingents to ensure the safety of UN missions. Although permanent UN security staff could be deployed abroad, this option is considered too expensive by UN security managers because international security staff are paid higher rates in the field [482] and replacements would have to be hired to fill their current positions.²⁸ Local security guards employed as permanent UN staff are cheaper, but they require selection, vetting and training, and are impractical for temporary missions.²⁹

A second cause for the rise in the number of private security guards employed by the UN is the use of Security Risk Assessment to determine whether there is a need for armed guards. This practice is perpetuated by the new APSC Guidelines.³⁰ Security Risk Assessments are part of the UN's Security Risk Management Process which was introduced in 2004.³¹ In contrast to the threat analyses which were carried out before 2004, Security Risk Management assesses not only threats, but also the potential vulnerabilities of UN facilities and missions. By factoring vulnerability into security assessments, however, Security Risk Management has a tendency to justify a precautionary use of guards in many circumstances. Even where the likelihood of an attack is very low Security Risk Management can defend the employment of guards because they help to address potential weak points in the UN's defences.³²

Revised APSC Guidelines cannot address all these issues. Foremost, member states should realize that the UN requires adequate resources and support to ensure the security

²⁸ See Rick Cottam, UN Working Group on Mercenaries – Panel Event 'Use of Private Military and Security Companies by the United Nations', Geneva, 5 March 2014; interview with a representative of the Department of Peacekeeping Operations (DPKO), 2 April 2014, New York.

²⁹ See interview with a representative of DPKO, 2 April 2014, New York.

³⁰ See UN, *UN Security Management System. Security Policy Manual*, Chapter IV, Section 1 (2012), at 2.

³¹ See UNSECOORD, *Security Risk Management*, 24 June (2004), at 1, 4, 5.

³² See Elke Krahmann, Beck and Beyond: Selling Security in the World Risk Society. 37:1 *Review of International Studies* 349-372 (2011).

of its operations and staff. The UN could do more to make member states recognize this fact by identifying security as a separate budget line for all its agencies, funds and programmes. The reluctance of some UN agencies to reveal how much they are spending on security has allowed member states to assume that security is not a major item.³³ Exposing the true cost of security would contribute to putting pressure on member states to make more funds available for the employment of additional UN security staff or to volunteer national police and military personnel for guarding duties. By emphasizing the cost and importance of security, the UN would also raise the profile and international recognition received by countries which second guards for UN missions and operations. So would the creation of a dedicated UN Guard Force, drawn from a roster of personnel supplied by member states, [483] which has been discussed in UN circles.³⁴ A standing UN Guard Force could build on the examples of special guard force contingents which have protected the UN missions in Iraq and Somalia. In the meantime, it would be important to clarify and restrict the circumstances in which armed and unarmed security guards may be deployed. New guidelines could achieve this by identifying minimum threat levels, which are established by the UN's regular threat assessments, above which the use of unarmed and armed security guards may be considered. Such a rule would prevent that guards are used to address perceived vulnerabilities where the probability of harm is low. More generally, it seems advisable to restructure the UN Security Risk Management approach in such a way as to establish threat levels *before* analysing vulnerabilities in order to ensure that mitigating measures are only implemented where necessary.

3. Specification of Standards and Training Requirements

The APSC Guidelines contain an extensive list of professional standards and training requirements for companies employed by the UN. Nevertheless, they, too, can be improved in two respects. The first improvement concerns the requirement that an APSC must be a 'member company to the International Code of Conduct for Private Security

³³ See interview with Stuart Groves, Geneva, 5 March 2014.

³⁴ See interview with a representative of DPKO, 2 April 2014, New York.

Services Providers' (ICoC).³⁵ In this context, it is important to note the creation of the ICoC Association (ICoCA) in 2013 as an organization responsible for certifying PSCs which formally comply with the ICoC. This development has reduced the signing of the ICoC to a mere voluntary commitment, compared to certified membership in the ICoCA. So far, 708 PSCs have signed up to the ICoC, but only 133 companies have joined the ICoCA which is still in the process of finalizing its certification mechanisms.³⁶ Even when the ICoCA has set up processes for certifying and monitoring compliance, the imprecision and limited value added of the ICoC beyond existing national and international laws and the inability of the ICoCA to impose sanctions other than exclusion raise questions about the benefits of [484] making membership a requirement for UN security contractors.³⁷ The second area for improvement regards the specification of minimum training requirements for UN security contractors. While the APSC Guidelines demand that companies provide training on a wide range of issues, including use of force, human rights law, ethics and sexual harassment, they leave it up to each contractor to determine the scope and content of the training. Moreover, APSCs decide and 'certify' whether their employees have 'demonstrated the necessary level of skill' in these fields.³⁸ Since contractors seek to reduce costs even industry associations, such as the Confederation of European Security Services, warn that the failure to detail training requirements can lead to a race to the bottom.³⁹

In order to ensure professional standards and training revised APSC Guidelines should, therefore, not rely on ICoC membership or ICoCA certification. Also accreditation

³⁵ See UN, *UN Security Management System. Security Policy Manual*, Chapter IV, Section 1 (2012), at 6. The Model Contract is confusing in respect to the ICoC. It requires that an APSC 'complies' with the ICoC, but the company need not be a 'signatory' to the code. Moreover, the Model Contract demands that a company should be 'certified' under the code, while the Security Policy Manual does not. See UN, *UN Security Management System. Security Management Operations Manual 'Guidelines on the Use of Armed Security Services from Private Security Companies – Annex B – Model Contract'* (2012), at 12.

³⁶ See ICoCA, *Get Involved*, <http://www.icoca.ch/en/get-involved>.

³⁷ See Rebecca DeWinter-Schmitt (ed.) *Montreux Five Years On: An Analysis of State Efforts to Implement Montreux Document Legal Obligations and Good Practices*, (2013), <http://ihrib.org/wp-content/uploads/2013/12/MontreuxFv31.pdf>; Corinna Seiberth, *Private Military and Security Companies in International Law* (2014).

³⁸ See UN, *UN Security Management System. Security Management Operations Manual 'Guidelines on the Use of Armed Security Services from Private Security Companies'* (2012), at 9.

³⁹ See CoESS and Uni-Europa, *Selecting Best Value – A Manual for Organisations Awarding Contracts for Private Guarding Services* (2000), at 1, http://www.coess.org/_Uploads/dbsAttachedFiles/Best_Value_Manual_EN%281%29.pdf.

by the International Standards Organization (ISO) in the new Management System for Quality of Private Security Company (PSC) Operations would achieve little since the ISO standard only concerns management procedures, not the training or operations of security guards.⁴⁰ The UN would be better placed by defining its own minimum standards for the professional conduct and training of security guards. By doing so, the UN would fulfil its function as an international role model. Best practice is already illustrated by the APSC Guideline's stipulation that contracted companies must develop and implement use of force and firearms management policies which are 'as or more restrictive' than the UN's own policies.⁴¹ Another good example is the UN's zero tolerance policy on sexual exploitation which is included in the Model [485] Statement of Works and Model Contract.⁴² Best practice in the definition of training standards for security guards is demonstrated by the World Wide Protective Services Contracts awarded by the US government. Among others, these contracts detail the content of security training, including a Department of Defense-defined curriculum; hours of the programme of instruction; proficiency standards; and certified training institutions.⁴³ Compliance with training standards must be 'demonstrated' by the US security contractor rather than merely self-certified.

4. Expansion of Contract Management Capabilities in the Field

The UN's contracting and contractor management processes in the field as envisaged by the ASPC Guidelines and structured by the UN Security Management System can also be

⁴⁰ See International Standards Organization (ISO), *ISO/PC 284 Management system for quality of private security company (PSC) operations*, http://www.iso.org/iso/iso_technical_committee?commid=4857900.

⁴¹ Id., at 4. Ironically, the UN also demands that a company's firearms and use of force policy must comply with the ICoC, although the ICoC identifies the 'United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)' and compliance with national laws as its own minimum standard.

⁴² See UN, *UN Security Management System. Security Management Operations Manual 'Guidelines on the Use of Armed Security Services from Private Security Companies – Annex A – Statement of Works*, at 7; UN, *UN Security Management System. Security Management Operations Manual 'Guidelines on the Use of Armed Security Services from Private Security Companies – Annex B – Model Contract'* (2012), at 57.

⁴³ See US, *Triple Canopy - World Wide Protective Services Contract* (2011), http://psm.du.edu/media/documents/industry_initiatives/contracts/dos_contract_triplecanopy_s-aqmpgd-05-d-1100_award.pdf.

improved. One field for improvement concerns the selection of APSCs and their employees. With regard to criteria, such as minimum years of operation, age, training and criminal records checks for individual security guards, the APSC Guidelines rely exclusively on the company's written confirmation.⁴⁴ A second area for possible improvement regards the management of security guards. UN security officers responsible for the management and inspection of contract guards have no direct authority over them. If a UN security guard force manager observes a deficiency or misconduct, he or she must report to their supervisor or company headquarters in order to ask for the problem to be addressed. Finally, there is the issue of monitoring. The ASPC Guideline's rules for the supervision of security guards are very extensive, including daily, weekly and monthly inspections by field security officers or the security cell.⁴⁵ Considering that the list of daily checks includes twelve items, such as safe storage of equipment; physical condition of security [486] posts, stations and personnel; and quality of responses to spot test training questions and readiness drills, however, it is doubtful whether field security staff will have sufficient time to carry out these additional inspections and whether checks will be very thorough.⁴⁶ US experience from multilateral interventions shows that contractor management often takes a backseat to other duties, in particular in volatile environments where contract guards are most likely to be used.⁴⁷ Moreover, security officers are often untrained in issues of contractor oversight or, as noted above, lack direct authority over contractors.

To remedy these matters the guidelines should make provisions for spot checks of companies and their employees as well as the verification of training, and tighten security contractor management by giving more authority to field security officers. The effective implementation of the guidelines also requires additional qualified staff and resources. For the vetting of local security staff where public criminal records have been destroyed or lost the UN could use databases from UN War Crimes Tribunals and the ICC which include lists

⁴⁴ See UN, *UN Security Management System. Security Management Operations Manual 'Guidelines on the Use of Armed Security Services from Private Security Companies'* (2012), at 6-7.

⁴⁵ See UN, *UN Security Management System. Security Management Operations Manual 'Guidelines on the Use of Armed Security Services from Private Security Companies'* (2012), at 10.

⁴⁶ *Id.*, at 10-11.

⁴⁷ See Government Accountability Office (GAO), *Operational Contract Support: Management and Oversight Improvements Needed in Afghanistan*. GAO 12-290 (2012).

of military units, paramilitary groups and police units.⁴⁸ For security contractor management the UN should allocate additional personnel. Best practice is suggested by the US Government Accountability Office (GAO) which has reviewed extensively the problem of security contractor management in multilateral military interventions.⁴⁹ Among others, GAO advocates that 'Reliance on private security contractors should be accompanied by greater use and emphasis on vetting, training, authorizing arms, and weapons control; post-convoy debriefing, locational tracking, and video monitoring; and more thorough and comprehensive management'.⁵⁰ In addition, GAO recommends the hiring or training of specialized contract management personnel who can be deployed [487] with international missions.⁵¹ The UN can learn from these recommendations. Rather than expecting field security officers to carry out extensive monitoring of PSCs, contractor management should be recognized as a separate function. Contract managers should have relevant security service and management expertise in order to carry out contractor selection, contract design, contractor performance reviews and contractor management. In order to operate effectively they and field security officers also need direct authority over contractor personnel.

5. Performance Reviews Focused on Security Outcomes

Suitable performance measures are an important factor in the monitoring of security contractors. The performance criteria identified in the APSC Guidelines, however, are characterized by a common weakness.⁵² They assess quality of service, cost, timeliness and

⁴⁸ See Rick Cottam, UN Working Group on Mercenaries – Panel Event 'Use of Private Military and Security Companies by the United Nations', Geneva, 5 March 2014.

⁴⁹ See GAO, *Contract Security Guards: Army's Guard Program Requires Greater Oversight and Reassessment of Acquisitions Approach*, GAO-06-284 (2006); GAO, *Military Operations: High-Level DOD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces*. GAO 07-145 (2006); GAO, *Stabilizing and Rebuilding Iraq: Conditions in Iraq Are Conductive to Fraud, Waste and Abuse*. GAO 07-525T (2007); GAO, *Operational Contract Support: Management and Oversight Improvements Needed in Afghanistan*. GAO 12-290 (2012).

⁵⁰ See GAO, *Contingency Contracting: Agency Actions to Address Recommendations by the Commission on Wartime Contracting in Iraq and Afghanistan*. GAO 12-854R (2012), at 12.

⁵¹ Id., at 10.

⁵² See Elke Krahmann, *Input, Output, Performance and Performativity: PMSCs and the Legitimacy of Security*. International BISA-ISA Conference, Edinburgh, 20-22 Mai (2012).

business relations, but not the achievement of results.⁵³ The UN, thereby, disregards the main purpose of 'performance' assessments which is to measure 'results, not activity'.⁵⁴ By focusing on services rather than outcomes, the APSC Guidelines neglect to investigate the impacts of contract security services.⁵⁵ These impacts can include intended results, such as fewer attacks on UN facilities and decreased theft. However, the contracting of PSCs can also have unintended consequences, such as the alienation of local populations and the rearmament of militias in a different form.⁵⁶

Improved guidelines for the use of security contractors should, therefore, include performance criteria which assess results as well as services. Admittedly, security is not an outcome that is easily measurable or attributable. Research suggests three measures of security which can be used to capture a [488] diverse range of intended and unintended outcomes.⁵⁷ Since each measure has its advantages and disadvantages, they are best used in combination. The first measure is provided by statistical changes in the frequency of crime or violence against UN facilities and staff. Although these statistics have to be evaluated in light of a particular security situation and threat environment, they can provide direct evidence for the effectiveness of specific security services and companies. A second measure concerns the subjective perceptions of security and insecurity among UN personnel and local civilians in response to contractors' presence and activities. This measure does not grasp the impact of security contractors on potential threats to UN facilities. However, it identifies important positive and negative consequences for the UN's general security environment, e.g. if contractors are considered a threat to public security. Surveys among UN staff and local users of UN services also serve as an early warning system for problems which can affect the operation and reputation of the UN, such as

⁵³ See UN, *UN Security Management System. Security Management Operations Manual 'Guidelines on the Use of Armed Security Services from Private Security Companies – Annex A – Statement of Works*, at 8-9.

⁵⁴ See US Army, *Developing a Performance Work Statement in a Deployed Environment*, Handbook 09-48 (2009), at 4, <http://usacac.army.mil/cac2/call/docs/09-48/09-48.pdf>.

⁵⁵ An assessment of 'potential negative impacts' is only carried out in the application for a use of armed security guards. See UN, *UN Security Management System. Security Management Operations Manual 'Guidelines on the Use of Armed Security Services from Private Security Companies'* (2012), at 5.

⁵⁶ See Lou Pingeot, *Dangerous Partnership. Private Military & Security Companies and the UN*. Report (2012), at 15.

⁵⁷ See Elke Krahmann, *Input, Output, Performance and Performativity: PMSCs and the Legitimacy of Security*. International BISA-ISA Conference, Edinburgh, 20-22 Mai (2012).

corruption or harassment by security guards. Finally, the effectiveness of security activities and capabilities can be assessed through mock attacks or tests. In contrast to the checks of capabilities and personnel specified in the APSC Guidelines, these tests should examine the responses of security contractors to situations such as attempted theft, disorder or hostilities.

6. Sanctions for Contractor Misperformance and Misconduct

A final area for improvement concerns the UN's responses to contractors which are accused of misperformance or misconduct. In most circumstances, the UN envisages that 'any performance issues or concerns identified' can be addressed through 'remedial action'.⁵⁸ In cases where such action is not possible, the Model Contract identifies three types of sanctions. Firstly, the UN can require reimbursements for any damage caused to the UN because of the failure to conform to the contract.⁵⁹ Secondly, the UN can demand the withdrawal or replacement of any contractor staff at any time.⁶⁰ Thirdly, the UN can terminate the contract.⁶¹ A main disadvantage of these stipulations is that they leave [489] little room for a graduated response. If contract termination or the replacement of guards are the only alternatives remedial action is likely to be considered the sole practicable option in most instances. Requiring contractors to make merely amendments, however, can give the impression that companies have little to fear from accusations of weak performance or misconduct. The lack of a penalty may tempt PSCs to cut costs wherever possible, even if this has a negative effect on their services or standards. Another issue concerns the Model Contract's ambiguity on the kinds or levels of misperformance or misconduct which will trigger sanctions. The Model Contract instead places great emphasis on the resolution of disputes between the UN and its contractors over performance issues. Without clear stipulations companies and their employees may claim that the UN is acting arbitrarily when it terminates a contract or demands the dismissal of personnel.

⁵⁸ See UN, *UN Security Management System. Security Policy Manual*, Chapter IV, Section 1 (2012), at 5.

⁵⁹ UN, *UN Security Management System. Security Management Operations Manual 'Guidelines on the Use of Armed Security Services from Private Security Companies – Annex B – Model Contract'* (2012), at 35.

⁶⁰ Id., 21.

⁶¹ Id.

Experience from the interventions in Iraq and Afghanistan illustrates the extent of contractor fraud, waste and abuse.⁶² To ensure the effective implementation of the UN's rules on security contractors it is, therefore, imperative that revised guidelines and contracts clarify what is considered non-compliance or misconduct and how it will be penalized. Best practice is suggested by the US Department of Defense's Contracting Officer's Representative Handbook and the US World Wide Protective Services Contract. The Contracting Officer's Representative Handbook illustrates that a graduated response to non-compliance can utilize at least ten different types of sanctions. Contract managers can: (1) invoke relevant contract clauses (stop work, cure notice, show cause, liquidated damages, warranty, or termination); (2) withhold or reduce award and incentive fees; (3) reject the noncompliant work or allow to rework; (4) suspend progress payments; (5) decline to extend the term of the contract; (6) modify the contract; (7) address claims or consideration; (8) take legal recourse; (9) use alternative dispute resolution; and (10) document the issue in a past performance database.⁶³ Including a wider range of penalties in PSC guidelines and contracts would not only enable UN contract managers and field security officers to modify and escalate their responses to contractor non-compliance, but also impress upon contractors the importance that the UN places on professional standards of operation. In order to be effective, however, contacts must clearly specify performance standards and relevant [490] penalties. The World Wide Protective Services Contracts illustrate how sub-standard performance or behaviour can be defined in order to clarify when sanctions can be imposed. The contract's detailed 'Standards of Conduct' for security guards regulate, among others, contactor appearance, clothing and equipment, neglect of duties, disorderly conduct, intoxication, prohibited activities, and criminal

⁶² See Commission on Wartime Contracting, *Transforming Wartime Contracting: Controlling Costs, Reducing Risks* (2011),

http://cyberemetery.unt.edu/archive/cwc/20110929213820/http://www.wartimecontracting.gov/docs/CWC_FinalReport-lowres.pdf.

⁶³ See DoD, COR [Contracting Officer's Representative] Handbook (2012) at 63,

http://www.acq.osd.mil/dpap/cpic/cp/docs/USA001390-12_DoD_COR_Handbook_Signed.pdf.

actions.⁶⁴ The contract emphasizes that the US government 'reserves the right to direct the Contractor to remove an employee from the work site for failure to comply with the standards of conduct'.⁶⁵ While sanctions are important, incentives in the form of performance-linked rewards are another way to encourage contractors to raise their standards.⁶⁶ The US government has, thus, included positive and negative incentives in its World Wide Security Services Contract.⁶⁷ Since it is easier to withhold incentive fees or reduce performance-based payments than to require reimbursements for failure to conform to a contract, incentives can be a very useful method for contractor management if implemented correctly.

Conclusion

The publication of the UN's Guidelines on the Use of Armed Private Security Companies in 2012 has been an important signal for an industry which still lacks international regulation. Nevertheless, research, experience and best practices from other clients suggest that there is still room for improvement. This article has made six recommendations which would enhance the UN's control over security contractors and facilitate higher professional standards among the global security industry more generally: (1) broadening the scope of the regulations to include unarmed PSCs, (2) clarifying the conditions for the use of security guards, (3) specifying standards and training requirements, (4) expanding contract management capabilities, (5) revising the UN's performance assessment process, and (6) developing an effective sanctions regime for contractor noncompliance and misconduct.

Notwithstanding these recommendations it must be noted that guidelines, rules and regulations are only as good as their implementation. Few international clients have

⁶⁴ See US, *Blackwater, Triple Canopy, and DynCorp –Contract with the U.S. State Department, World Wide Protective Services Contract* (2007), at Appendix Q to Section C 'Standards of Conduct', <http://r.m.upi.com/other/12216818791223.pdf>.

⁶⁵ Id.

⁶⁶ See for instance US White House, Best Practice for Performance-Based Contracting, http://www.whitehouse.gov/omb/procurement_guide_pbse.

⁶⁷ See US, *Triple Canopy - World Wide Protective Services Contract* (2011), at 21, http://psm.du.edu/media/documents/industry_initiatives/contracts/dos_contract_triplecanopy_s-aqmpgd-05-d-1100_award.pdf

imposed systematic or significant penalties on companies which have fallen short of contractual obligations and regulations during the interventions in Iraq and Afghanistan. Even the US government, which this article has cited repeatedly for best practice in the contractual governance of PSCs, has been reluctant or unable to strictly enforce its regulations and management guidelines.⁶⁸ Among the main reasons for weak implementation are insufficient contractor management capabilities which can be deployed abroad and a growing dependence upon major security contractors. This has given the wrong signal to PSCs. Contractor fraud, waste and abuse have become major concerns in international missions. Although there have been efforts to develop industry self-regulation and third party certification through the ICoCA and the ISO PSC management standards, the failure of these regulations to set strict and clear standards for operations and training puts the onus on back on the clients. By demanding *and* enforcing high professional standards for security services the UN can serve as a role model for others.

⁶⁸ See GAO, *Contingency Contracting: Agency Actions to Address Recommendations by the Commission on Wartime Contracting in Iraq and Afghanistan*. GAO 12-854R (2012); DoD, *Report to Congress on Contracting Fraud* (2011), www.sanders.senate.gov/graphics/Defense_Fraud_Report1.pdf