Accountability, markets and private force


Whether and how to regulate private military companies (PMCs) is a discussion taking place in newspapers, in parliaments (or Congresses) around the world, and in international organizations. Debating this issue in concrete terms can, however, be difficult because of the lack of public information on the issue, the wide range of possible regulations (international, national or self-regulation), and the widely varying systems already in place.

This book is therefore a timely one, aiming to evaluate existing and possible regulations of PMCs by addressing market and political concerns. The first section outlines various types of concerns about the use of private military companies, covering moral concerns, concerns about what activities should be regulated, and concerns about PMCs’ role in determining national policies. The second section addresses some of the concrete regulatory issues that have arisen from PMCs’ operations in various geographical and thematic areas: in Africa, in Iraq and in the sphere of security sector reform. The third section outlines broader regulatory mechanisms, including those implied by international humanitarian law and the law on state responsibility, and those instituted in export-control regimes. The final section discusses the suitability of market controls for regulation.

This book’s weakness and strength are the diversity of opinions it contains and the range of topics it covers. On the one hand, the fact that it brings together leading proponents of market regulation, self-regulation, national regulation and international regulation means that it concisely outlines all major points of view on how PMCs can be effectively regulated. On the other hand, its subjects range so widely, from philosophical discussions of moral concerns to supply-and-demand market to detailed outlines of export-control regimes, that it becomes difficult to compare the mechanisms discussed in each chapter. For instance, the export-control and legal discussions often focus on the current regimes in the USA and South Africa (Marina Caparini and Laura A. Dickinson), while the chapters on moral concerns more frequently discuss earlier examples such as...
Executive Outcomes’ involvements in Africa and the problems with PMC involvement in the Balkans (Sarah Percy, Kevin O’Brien, and Angela McIntyre and Taya Weiss). Because the ‘concerns’ chapters do not always align with the regulation and legal chapters, the book as a whole seems occasionally inconsistent.

Furthermore, although the editors of this book claim it reconciles market and regulatory concerns, many discussions of regulatory options either do not address PMC market issues or address them insufficiently. Instead, the authors display a range of optimism (Kevin O’Brien) and pessimism (Anna Leander) when addressing the question of whether national control mechanisms can effectively regulate undesirable PMC activity. The optimism and pessimism do not, however, appear to be tied to market concerns.

One example is Marina Caparini’s chapter, which extensively discusses the export-control regimes relevant to PMCs in South Africa and the USA. She acknowledges but does not sufficiently emphasize the role that the vast US governmental contracting revenue plays in its ability to regulate the companies it employs. Other states cannot exercise the same amount of control because they do not directly contract out so many services while also requiring national business registration for contracting eligibility. The UK’s PMCs, for instance, are more frequently employed by non-state organizations (NGOs, private companies, etc.) than by government departments, and many UK companies are registered offshore. This greatly reduces the options for regulation for the UK government, unless it chooses to require on-shore legal registration for all UK contracts. Even so, if regulations were too restrictive, it may still be likely that UK companies would move or remain offshore unless the numbers and values of UK government contracts increased. Deborah Avant addresses this issue more succinctly in her chapter, writing, ‘The ability of individual states to regulate the market under these circumstances is directly tied to their consumption’ (p.187).

The chapters on international humanitarian law (IHL) (Louise Doswald-Beck) and on the law of state responsibility (Chia Lehnardt) are outstanding outlines of the relevant law in these areas. Doswald-Beck’s discussion of IHL is fairly technical, but makes the appropriate distinctions between various types of conflicts and clearly explains the rationale for the differences between laws on international and non-international armed conflicts. Lehnardt’s discussion of state responsibility is similarly comprehensive but responsible, successfully avoiding the often exaggerated claims some other authors have made on theories of applying state responsibility to private actors. Laura A. Dickinson’s chapter on how contracts could include clauses to incorporate public law values is also outstanding. In this chapter, she concretely refutes arguments against including standard public law values in PMC contracts and argues effectively that the inclusion of such clauses would allow increased oversight and accountability.

Most recent debate about PMCs has centred explicitly or implicitly on the question of how to hold them accountable. Many authors in this volume advance arguments relevant to this debate on accountability. Unfortunately, the definition of ‘accountability’ is left open, and each author defines it seemingly
differently. Several of the authors, including David Isenberg and Elke Krahmann, conflate accountability and control. Recent articles on the theory of public accountability have instead defined accountability as the ‘obligation to explain and justify’ conduct to stakeholders. In public terms, this has generally meant the government’s obligation to explain and justify conduct, but in private business terms, this has meant the obligation of corporate management to stakeholders and board members (so far almost exclusively concentrated in the realm of financial profits and losses). Although many chapters address public accountability of contractors, few discuss the implications of PMCs’ status as private companies – and the somewhat narrow accountability relationships that may result from this status – as a factor in determining effective regulatory systems.

This book’s inconsistency and vast topical breadth are problems for readers attempting to evaluate the book as a whole. Nonetheless, despite these thematic and structural issues, this book is effective in mapping out the various arguments for and against different types of regulation. These detailed arguments and explanations are doubtless of immediate relevance, given the current intense debate on how best to regulate PMCs.

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