

Book Reviews

Corinna Seiberth: Private Military and Security Companies in International Law: A Challenge for Nonbinding Norms: The Montreux Document and the International Code of Conduct for Private Security Providers (Intersentia, 2014).

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Dutch and international law, law of armed conflict

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1 * The author has a background in Dutch & international law, specifically in the law of armed conflict and flag-state responsibility for security on the high seas. His bachelor's thesis, which will be published by Wolf Legal Publishers, was on international legal obligations to allow for private armed security aboard Dutch merchant vessels.

Since 2008, pirate activity in the waters of Somalia, more specifically in the Gulf of Aden, has increased rapidly. Merchant vessels were hijacked and crews taken hostage in exchange for huge amounts of ransom money. Up until 2012, 589 seafarers had been held captive and around sixty found their death in these attacks.² Almost parallel to the appearance of this life-threatening phenomenon is the rise of joint international military efforts repressing it. A large number of states have their naval forces deployed in the Gulf, the Red Sea and the Indian Ocean, for example in the context of NATO's Ocean Shield and the EU's Atalanta. But it is not only the public sector which counters the threat; We also witness a response from the private sector, consisting of armed security guards hired by shipping companies to accompany their merchant vessels.

Although their use can be seen as an inevitable element in making the world a safer and more secure place, private contractors also have the reputation of being trigger-happy cowboys, allegedly operating in a, as is so often mentioned, legal vacuum. The classic example of how things turned sour is of course the Blackwater case, in which private contractors allegedly opened fire on Nisour Square, Baghdad, killing 17 civilians.³

But although this controversy exists, the outsourcing of traditional state tasks to Private Military and Security Companies (PMSCs) seems to be becoming more and more popular. Corinna Seiberth believes that '[t]he extended future use of PMSCs [is suggesting] a continuation of abuse, unless the international legal framework can evolve into a system providing effective international rules and provides minimal standards applicable for the use of [private contractors], ensuring control and oversight as well as accountability[.]'⁴ The book, based on her doctoral thesis defended at the University of Lucerne in 2012,⁵ sets out the present framework and analyses how PMSCs are currently regulated, and whether the existing regulations are sufficient.

To that end, the author offers a well-structured analysis of international law and of non-binding policy documents. In fact, in contrast to what the main title of the book suggests, the lion's share of the book consists out of an analysis of the latter. Yes, the book covers human rights law, the law of armed conflict, state accountability, individual criminal responsibility and other aspects of public international law, but it mainly focusses on, as the sub-title states, existing non-binding norms regulating PMSCs. Four of the seven chapters are thus dedicated to the Montreux Document, the International Code of Conduct for Private Security Service Providers (ICoC) and, to a lesser extent, other instruments, like the United Nations Draft Convention on the use of PMSCs and some regional and Corporate Social Responsibility (CSR) codes. Seiberth wonders how these instruments 'contribute structurally to the weaknesses inherent in existing international law.'⁶

The doctrinal analysis exposes the lack of international consensus on the regulation of PMSCs, which has resulted in discrepancy among the mentioned instruments. Seiberth argues, for example, that although it is universally acknowledged that the absolute monopoly on the use of force has ceased to exist, there is a huge contradiction on which tasks can, and which cannot be attributed to private entities: The Montreux Document upholds a very broad notion, where the UN Draft Convention is very narrow. At the core of this debate we find

2 K. Hurlburt & D. Conor Seyle, *The Human Cost of Maritime Piracy* 2012, *Oceans Beyond Piracy* 2013, p. 7. See <http://oceansbeyondpiracy.org/sites/default/files/attachments/View%20Full%20Report.pdf> (last checked on 16-06-2014).

3 The Associated Press, *Case Against Contractors Resurfaces*, *International New York Times*, 17 October 2013, see http://www.nytimes.com/2013/10/18/us/case-against-contractors-resurfaces.html?ref=blackwaterusa&_r=0 (Last checked on 16-06-2014).

4 Seiberth, p. 3.

5 *Ibid.*, colophon, p. iv.

6 *Ibid.*, p. 16.

the difference between mercenaries and private contractors. The war for profit debate is very fundamental, an issue on which the author elaborates adequately. In this respect she argues that PMSCs distinguish themselves from mercenaries by avoiding a 'solely profit-orientated approach when selecting customers'⁷ and by refraining from engaging in combat.

Seiberth also observes that the limited scope of the Montreux Document, namely to situations of armed conflict, and thus not to all so-called 'stability operations', which are defined as pre-, post- and during-conflict environments, including counter-terrorism activities, weakens the relevance of the document. She rightly points out that it does not effectively incorporate applicable human rights law, while it intends to do so. Her statement that 'Human Rights Law is applicable in all circumstances where PMSCs are active'⁸ is therefore questionable, but also paradoxical since she elaborates on the extraterritorial application of such laws and acknowledges its choke points.

In contrast to the Montreux Document, which applies to states, the industry-driven ICoC is meant to commit PMSCs to abide by the law. An interesting observation is therefore that the Code permits actions which would violate human rights law, such as the use of force beyond cases of self-defence,⁹ and is missing some important guarantees. It is therefore surprising that Seiberth praises the merits of the code, still calling it, in respect of human rights, 'the most comprehensive and detailed instrument for PMSCs[.]'¹⁰

As is intended to be shown above, Seiberth's observations are sometimes followed by confusing conclusions. They might make one wonder in which direction the overall argument is going. Although it makes the book harder to read, it is also a symptom of the great amount of detail the author uses in her discussion on the Document and the Code.

But the book does not merely contain an assessment of these legal/policy documents; it also substantially contributes to the broader understanding of the nature, deployment and history of PMSCs (chapter two), answering questions like what services they deliver, who hires them and it addresses in which scenarios they are working. For example, the author argues that the PMSC market has flourished since the end of both the Warsaw Pact and the apartheid regime in South Africa, which provided for supply and, due to the war against terrorism, demand. This kind of information is not always necessary to answer the main question, but it does provide, to my great pleasure, for some neat context and makes the nearly 300-page monograph a true kaleidoscope.

The consequence of all these topics compressed in these 300 or so pages is reflected in the extensiveness of some of the discussions. Seiberth deals with a great deal, but not everything is given the attention it might deserve. For example, the complicated concept of the extraterritorial application of human rights is addressed in only three pages in the book. On the other hand, although the book has an extensive scope, it cannot be said that it is all-embracing, since her research is limited to PMSCs conducting their activities in a third state while being hired by a state or the United Nations (UN). True, the reason for her demarcation, being that states and the UN are the main actors using PMSCs, might be logical, but it also formally excludes PMSCs hired by

7 Ibid, p. 62.

8 Ibid, p. 135.


9 Ibid, p. 180.

10 Ibid, p. 180.

NGOs and corporations. Hence, the earlier mentioned merchant shipping example is excluded, both because those guards are hired by shipping companies and because they conduct their activities on the high seas. A missed opportunity, especially because that specific use is nowadays so popular.

This book meets a very clear need. It provides a broad understanding of what Private Military and Security Companies are, how they are regulated and how non-binding international policy documents contribute to that regulation. That analysis represents the discrepancy in the international debate and concludes that the existing framework needs further development in order to guarantee accountability for the wrongful conduct of PMSCs.





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Security and Human Rights (formerly Helsinki Monitor) is a journal devoted to issues inspired by the work and principles of the Organization for Security and Cooperation in Europe (OSCE). It looks at the challenge of building security through cooperation across the northern hemisphere, from Vancouver to Vladivostok, as well as how this experience can be applied to other parts of the world. It aims to stimulate thinking on the question of protecting and promoting human rights in a world faced with serious threats to security.

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