The emerging market for private military services and the problems of regulation

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A 'market' implies a free interchange where profit-maximizing producers seek to meet the demands of consumers. Savvy consumers choose to purchase what they want and competition among producers yields 'goods' that best satisfy consumer demand. The stylized market is frequently contrasted with the more directed, hierarchical organization within states where superiors set up bureaucracies to carry out tasks according to specific instructions.\(^1\) Truly free markets are, of course, quite rare, and many features of state policy and social life more generally figure into the outcomes of any particular market exchange.\(^2\) Thinking about the differences between markets and hierarchies, however, can generate insights into how we should expect shifting a service from a state military to Private Military Companies (PMCs) to affect its control.\(^3\) More important for the purposes of this volume, investigating the character of different markets and attendant regulatory efforts can suggest a variety of challenges and opportunities for regulating the emerging market for force in the current era. This chapter first describes the emergence of the market for force and the factors that shape its character, suggests a variety of challenges issued by this character and, given this, the efforts that are most likely to be successful.

The market for force

The initial increase in private security can be tied to supply and demand. In the 1990s, the supply factors came from both domestic (the end of apartheid in South Africa) and international (the end of the Cold War) phenomena that caused

militaries to be downsized in the late 1980s and early 1990s. Military downsizing led to a flood of experienced personnel available for contracting. Concomitant with the increase in supply was an increase in the demand for military skills on the private market—from Western states that had downsized their militaries, from countries seeking to upgrade their militaries as a way of demonstrating credentials for entry into Western institutions, from rulers of weak or failed states no longer propped up by superpower patrons, and from non-state actors such as private firms and non-governmental organizations (NGOs) operating in the territories of weak or failed states.

In a globalizing world market pressures, technology, and social change created demands for 'security' that states had difficulty supplying or fostering because the scale of the security people demanded was often different from the scale of the nation state. This was partly a result of the variety of ways people came to see security, including environmental and economic well-being, which could not be guaranteed by one state alone. It was also a consequence of how disorder in one part of the world, combined with information technology and the speed of travel, fed insecurity in another. Security became increasingly diffuse and borders more complicated to defend, at least within the bounds of what many saw as acceptable political constraints.

The fact that global trends demonstrated a mismatch between security concerns and national military institutions, however, did not necessitate privatization. In fact, the pursuit of goals associated with public goods on a 'greater than national scale' had been increasingly facilitated by multilateral institutions. In the immediate wake of the Cold War, some argued that reaching new security goals required

Looking to history, it is often the case that the downsizing of militaries (for whatever reason) leads to a rise in private military activity as skilled military personnel look for places to sell their talents. See Peter Lock, 'Africa, Military Downsizing and the Growth in the Security Industry,' in Cillessen and Mason (eds), Peace, Profit or Plunder? (Pretoria: Institute for International Studies, 1999).


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greater capacity for multilateral security organs and many predicted the growth and strengthening of multilateral institutions to meet new security concerns. The possibility that the United Nations should be arranged to provide security tools (such as peace enforcement) for this new world was debated as was the possibility that NATO or other regional security organizations might be strengthened to do the same. Funding, activism, and research on multilateral organizations like the United Nations, NATO, the European Union, and the Organization for Security and Cooperation in Europe (OSCE) increased in the 1990s. Even financial institutions like the World Bank and International Monetary Fund (IMF) began to think about the security consequences of their actions.

Ideas about the benefits of privatization suggested an alternative response to the scale mismatch. In the United States and Britain, the privatization movement began with the arguments of British academics and Conservative party officials who articulated a sweeping privatization agenda as Margaret Thatcher took office in 1979. Arguing that social programmes generated massive inefficiencies and financing them required incentive-sapping levels of taxation and inflationary budget deficits, Conservatives viewed retrenchment not as a necessary evil but as a necessary good. Initially, these ideas were associated with the powerful Conservative coalitions in the United States and Britain in the 1980s, but the collapse of the Soviet bloc, the ensuing privatization of state-owned industries across Europe, and the endorsement of these principles by international financial institutions like the IMF and the World Bank led privatization to be endorsed much more widely. Privatization was often associated with comparative advantage and competition, and said to generate efficient and effective market responses as contrasted with staid, expensive, and backward-looking bureaucratic responses.

Thus far it is the market rather than multilateral alternatives that have thrived. This is in part because multilateral institutions have encountered operational difficulties. The United Nations experimented with peace enforcement missions in Somalia, Bosnia, and Rwanda, but was beset with problems. Though the operational issues are potentially overcome, the political issues that underlie them are
more daunting. It is often the case that all agree that *something* should be done in a particular instance, but cannot agree on what that something is. In these situations, the United Nations has been increasingly seen in the same framework as government bureaucracies only worse: unresponsive, expensive, and unaccountable. The United States, under President George W Bush, has been especially contemptuous of the UN's legitimacy, arguing that some of the governments are either illegitimate representatives of their people or inappropriate guardians of rights they routinely violate within their borders. Even within institutions such as NATO, where countries are arguably held to greater standards of legitimacy than among the UN General Assembly, agreement on intervention and strategies for intervention have been hard to reach. This was an issue in Bosnia and then in Kosovo. Other regional organizations, particularly in Africa, have manifested greater problems with operational capacity, legitimacy, and agreement. When the political agreement necessary to field multilateral forces was not forthcoming, PMCs provided an alternative tool that many see as more effective. To the degree that they are more effective, or at least more easily deployable, it is often precisely because their deployment is not contingent on the same level of political agreement. The growth of the current market was neither natural nor inevitable then, but grew in a context where states were reluctant to take on the variety of missions that people felt moved to respond to and multilateral options appeared to perform poorly—often because their rules precluded action where there was no political agreement. Almost two decades after the end of the Cold War the supply push evident in the 1990s has largely ended, but the demand for military and other security skills on the private market continues to swell. The demand is led by the United States. Its pursuit of the 'Global War on Terror' has created a surge of spending, exacerbated strain on existing forces, and demanded new skills, all of which have enhanced the use of PMCs. As the United States is seen as a leader in military innovation, other Western states have increasingly looked to privatization of military and security services as the wave of the future even though they have approached privatization in different ways, as James Cockayne's discussion of the differences between the French and Anglo-Saxon models of control in chapter eleven illustrates. Demand from weak and transitional states has also continued; sometimes funded by Western training dollars, other times by natural resources. Finally, demand from non-state actors such as private firms and NGOs that work in unengendered parts of the world, has continued to grow as it has become more and more commonplace for these organizations to see security as something crucial to the pursuit of their goals.


**Market characteristics and challenges to regulation**

Private security offers opportunities to states and non-state actors. As both have taken advantage of these opportunities, the market for force has grown and begun to alter the terrain on which violent forces are controlled. Generally, the change has not eroded the control of force but changed who controls force and how by diffusing control among a wider body of consumers and enhancing the importance of market mechanisms of control. These changes have redistributed power within states, between states, and among states and non-state actors and pose challenges for regulatory efforts. These challenges are enhanced by the character of the industry: its transnational nature, low capitalization, fluid structure, and the lack of commitment to territory all decrease the usefulness (or raise the costs) of traditional single state regulation.

**Diffusion of control**

Though private security sometimes strengthens elements of an individual state’s control over force, the growth of the market for force simultaneously diffuses control over violence among a variety of non-state entities, undermining states' collective monopoly over the control of force. It enhances the roles for non-state actors in shaping decisions about the use of force and presents states and non-state actors with additional tools for accomplishing their goals. As power is redistributed to a variety of actors with different constituents, roles, and claims to authority, it makes co-ordination among powerful actors more difficult. By increasingly calling into question existing international laws and simultaneously making co-ordination to create new standards more difficult, the market’s diffusion of control offers significant hurdles to regulation.

States do participate in the market and can use their purchasing power to enhance their influence over PMCs (states can both affect the behaviour of PMCs with their procurement and give firms incentives to abide by regulation to preserve their government contracts). The market’s availability to non-state actors, however, as well as the political flexibilities it offers to states, both increase the difficulty of co-ordination. The sheer number and variety of customers present three kinds of problems. First, the breakdown of state monopoly over violence may allow violence to be used for a wider variety of rationales than in the state system, including the use of violence by wealthy customers for purely private gain. Secondly, as the proliferation of PMCs are also a tool with which states can more easily avoid their international (and domestic) commitments, their use may exacerbate state co-operation to regulate violence. If what is rewarded by one state is undermined by another, or by other non-state customers, the ability of consumer
demand to be an effective tool for supporting a particular standard of behaviour is weakened. Finally, when different authorities with different motivations and interests share in the direction of an agent, the agent is often able to evade direction or carve out spheres of discretion. This ‘multiple principal’ problem can occur even within a state when different agencies or constitutional authorities direct military organizations or contracts. In the case of consumer direction of private security the multiple principal problems are much more extreme and have within them dynamics that make co-ordination difficult.

The variety of entities that are consumers in the market introduces hurdles to regulation. Private financials may use violence for private gain. Even if they claim to be acting in the public good (such as claiming to be protecting private property to ensure that economic development—beneficial to all—can move forward), the mechanisms by which private financials are held accountable as well as who they are accountable to (stock holders or boards of trustees, for example) may hold them to very different standards than state entities and through different processes. In the worst instances, this offers possibilities for opportunism and rent-seeking. Even under the best circumstances, however, it may lead agents to focus on short run goals such as ensuring that property is intact without attention to the long-term viability of their solution. For an example of the latter, when Executive Outcomes operated in Sierra Leon, its use and training of Kamaors to protect mines in the interior of the country was effective in the short run but also enhanced the capacities of a parallel force that in the long term frustrated effective governance. Also consider recent revelations that the Eritrean-trained Facilities Protection Force in Iraq has been a tool for strengthening militia forces in that country.

Furthermore, when one PMC serves many different authorities, it can increase the costs of strict state regulation. As illustrated by South Africa’s efforts to regulate its industry, so long as there are other customers, individual state efforts can be frustrated. Multiple principals can also encourage states to, in effect, free-ride on collective state responsibilities to develop or enforce international standards, potentially avoiding legal obligations and encouraging a race to the bottom. There is some tension between the goals of individual customers and overarching attention to professional and ethical goals. Though all may wish that PMCs abide by standards generally, in particular instances consumers often prefer that PMCs bend the standards to suit their individual interest. This is especially true because PMCs are often used to undertake action that does not generate the level of agreement within states or international organizations required to use military forces. The very kind of activities that have led to their rise ensure that their use is more likely when there is not agreement within conventional authority structures for missions that are seen as new, on the fringe or at the political extreme.

Finally, so many different authorities can allow individual PMCs (or the industry as a whole) opportunities for evading control altogether or shaping the demands of consumers rather than the reverse. This is made more likely by the fact that there are not even forums within which the different customers that might hire PMCs can come together. While there are forums for state co-operation (international organizations or bilateral or multilateral talks) and even some kinds of industry co-operation (among industry groups), finding an appropriate forum in which states, corporations, international organizations, and NGOs can come to agreement is complicated.

Market mechanisms

Aside from simply diffusing control, the growth of the market should lead us to think of the control of violence differently. Instead of accruing to superiors in a hierarchical sense (in the manner that civilian leaders nested in electorates direct military organizations), control accrues to consumers. The mechanism through which individual values and interests are aggregated to make ‘consumer demand’ is based on purchases. Consumers are those who can pay—suggesting that political power over the control of private violence will be distributed according to access to wealth rather than, say, votes. As discussed above, in the current market, wealthy customers include states as well as corporations, NGOs, and individuals. Some have claimed that this will lead to a ‘commodification’ of security. Those who can afford it will protect their property and other interests and those who cannot afford to pay will do without.

The structure of the industry should only enhance the prospects for commodification. Typical of the transnational service industries in general, a PMC frustrated with one state’s rules can simply move abroad, or melt and reconstitute itself differently to avoid them. The ability of individual states to regulate the market under these circumstances is tied to their consumption. PMCs are less likely to run afoul of a good customer likely to spend in the future but may dismiss the rules of states that are not consumers. For example, the United States, as a large consumer

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in this market, gives PMCs incentive to attend to US regulation while the South African government, which has chosen to eschew its reliance on the private sector for security, has also reduced PMCs incentives to comply with its wishes.

The most extreme implications of the commodification argument, however, ignore important social underpinnings of markets. Under many conditions, the protection of wealthy customers’ interests requires action that also affects the security of those around them—for good or ill. Different strategies for security among the wealthy may generate greater or lesser efforts to take account of the interests of others. Some oil companies, for instance, believe that the long-term protection of their interests requires taking into consideration the interests of the populations that live around oil facilities or pipelines. In other words, the way wealthy customers conceive of their interests and develop strategies to pursue them are important factors that shape the way the market affects the security of ‘non-consumers’. Anticipating how the market will unfold, then, requires some understanding of ideas (or norms) about what is typical, proper, and likely to work. Norms can arise in many different ways, out of an accidental pattern of action (path dependency), through intentional behaviour by norm entrepreneurs, out of the preferences of the powerful, or through some combination, just to name a few. Norms are more likely to be stable and impact behaviour, however, when they are agreed upon, enforced, and seen to be not only ‘good’ but also ‘effective’.

The market could impact the potential for norm emergence and stability in several ways. One could imagine customers upholding existing norms. As Jeff Herbst has argued, ‘in industries where the barriers to entry are low and where, as a result, companies probably cannot compete on price alone, firms will necessarily attempt to differentiate themselves in other ways’. He predicted that a distinction would emerge between upscale, professional firms (that appeal to the UN, NGOs, and other upstanding members of the international community by virtue of their willingness to abide by international law) and downscales, unprofessional firms (that appeal to non-lawful elements). If there are a variety of PMCs, companies are worried about their reputation and prospective employers can easily know what they are likely to be buying, consumers can exercise effective control with purchasing decisions. If customers—particularly wealthy customers—agree on norms and abide by them in their purchasing decisions, customer decisions could uphold these norms.

A variety of features of the current market may interrupt this result, however. First, as discussed above, when there are many types of consumers with different needs and interests, they may not agree upon the professional norms they want to

uphold or abide by through similar purchasing practices. Different customers hire private security companies with different priorities in mind. Though humanitarian NGOs may want to hire PMCs committed to behaviour that respects human rights, large oil industry giants may have as its first concern PMCs that can guarantee the security of pipelines. Even among states the attention to professional norms may differ or they may use various interpretations of norms in their hiring decisions. States sometimes hire PMCs rather than using their own military for particular tasks precisely because it may allow action that would otherwise be politically infeasible. This may include action that violates professional norms in one way or another. If PMCs believe that wealthy customers demand a variety of approaches to security, some more attentive to professional norms and some less, they have incentives to speak loudly about being ‘professional’ but quietly pursue quite different behaviour for different clients.

Secondly, the capacity of customers affects their ability to make choices that reflect their interests. In some instances customers may not have enough competence to make good choices. This can be true when customers are states and the contract is issued through an agency with inadequate security training. For instance, the US Department of the Interior contracted for interrogators and interpreters at Abu Ghraib prison in Iraq with little knowledge of what such a setting required. It can also occur when NGOs or corporations with little training in security are suddenly faced with making decisions about security contracts. NGOs focused on rhino conservation in the Democratic Republic of Congo, for example, did not have the requisite expertise to evaluate different private security plans. Lack of competence on the part of customers increases the opportunities for ‘slack’ among PMCs agents and the ability of agents to shape customer preferences rather than the reverse.

Thirdly, customers may not have enough information to make good choices. Even if customers have a clear sense of what professional means and want to hire a PMC that behaves according to professional norms, the information they need to make this judgment may be difficult to obtain. To begin with it may be hard to distinguish between companies. Though some states have systems for approving companies, the links between approved companies and behaviour of the individuals working for that company on the ground may be tenuous. Most PMCs operate as databases from which to service contracts and these databases are non-exclusive (individuals often show up on the rosters of several different companies). Thus, someone working for one firm one week may be working for a different firm or

26 Jeffrey Herbst, The Regulation of Private Security Forces’ (n 22 above).
simply as an independent consultant the next. The actual people working on a contract, then, may not vary with the PMC chosen. Also, even if companies espouse professional standards, their ability to communicate these to employees working on short-term contracts may be problematic. Finally, the fact that individuals can shift from one company to the next so easily makes monitoring by third parties (so called 'fire alarm' monitoring) in the field much more difficult. For instance, NGOs accused MPRI of training the KLA in the midst of the war in Kosovo. These claims were vociferously denied by MPRI. At the same time, however, persons who had worked for MPRI at one time were doing freelance consulting with the Albanian government and probably providing services to portions of the Kosovo resistance. While there is a virtual cottage industry of reporting on the connections between individuals and various firms drawing attention to the suspicious links, and companies do appear worried about their reputations, the fluctuation in personnel makes it hard to track which individual behaviour is attributable to which firm. This complicates the development of corporate reputation as a link to accountability or control by clouding the information available.

Fourthly, purchasing power is a blunt tool. It offers fewer pathways for consumers to explain their choices than hierarchies offer to superiors. The lesson that security service providers draw from different purchasing decisions may be quite different from what the customer intended. For example, when the United States hired Aegis to co-ordinate personal security in Iraq, there was a debate among analysts in the industry about the decision. Many looked at the decision to hire a company headed by someone who had been arrested for mercenary activity as problematic for the development of professional norms among PMCs. Some claimed that the US government simply made a bad decision based on lack of knowledge. Others, however, suggested that the United States knew just what it was doing and was seeking 'cowboys' who would do whatever it took (even including unprofessional or illegal behaviour) to accomplish US goals. The lesson the industry drew, then, was either that portions of the US customer were incompetent or that portions of the US customer were interested in performance rather than compliance with applicable laws. Regardless of whether either interpretation is true, the mere fact that this debate took place demonstrates the difficulty of communicating customer purchasing intent to a broad range of potential suppliers.

If features of the current market make consumer choices an unlikely stabilizer of professional norms, what about producer choices? Could producers affect the emergence and stability of norms? At first glance, this seems to fly in the face of market suppliers in desperate competition with one another. If international conditions have made what is appropriate and what is effective appear to diverge, competition among PMCs and between PMCs and militaries for services should lead to even greater violation of norms in the private sector. After all, it is through the delivery of an effective service that these companies are in the picture in the first place. Also, while serving in military organizations military personnel must respond to hierarchical organizational incentives and face military justice systems. The institutional sanctions faced by individuals slow the rate at which norms change. As the chapters in part three of this book describe, once individuals are working for a PMC the murkiness in their legal responsibilities should enhance the potential for violation of norms. Knowing that other personnel or other companies are available for hire if their 'customer' is dissatisfied with the outcome, PMCs and the personnel that work for them should be more likely to choose effective (rather than appropriate) action.

Economics textbooks are littered, however, with examples where suppliers do not compete but instead 'collude' to generate barriers to entry or to maximize prices and profits. Though these strategies are not frequently examined as tools for stabilizing norms, the market-driven emergence of professionalism in fields such as law, medicine, and architecture can be traced to just these strategies. Professions and professionalism frequently developed precisely to impose structure and rules on particular occupations. One impetus to this was social and economic change, which led some kinds of work to be poorly situated within traditional forms of authority. Another, however, was the economic gains to be had by those who successfully claimed to be professional. Systems of expert knowledge, ethical codes, and means of entry (such as licensing) were mechanisms by which a powerful few could capture more economic benefits by keeping out competitors. Whereas professionalism often emerged in Europe as the result of state action, in Britain and (particularly) the United States, professions developed in the context of private initiatives with an eye toward markets.

Professionalism is an effort to undertake collective action that limits individual entry, defines individual expertise in the name of the public good. These advancing arguments based on professional standards may be strategically using the standards to limit entry and maximize profit, may believe that the standard is related

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34 For examples of the former see Geoffrey Millerson, The Qualifying Association, Theodore Caplow, The Sociology of Work; Harold Wilesley and Charles Lebeaux, Industrial Society and Social Welfare. For the latter, see TJ Johnson, Professions and Power, MS Larson, The Rise of Professionalism (all in 32 above).
35 Rolf Torendahl, 'Essential properties, strategic aims and historical development: three approaches to theories of professionalism,' in Michael Burragate and Rolf Torendahl (eds), Professions in Theory and History: Redefining the Study of Professions (London: Sage, 1990) 44-61.
to some overarching social good, or both. Regardless, these standards provide a tool for differentiating between individuals who can be called professionals and those who can not (and for removing individuals from the professional category based on some transgression). Thinking about private security providers as professionals, then, suggests that efforts to maximize profits among PMCs could simultaneously be mechanisms through which to stabilize norms.

Many associated with PMCs already use this language. They argue that proper behaviour is crucial to the legitimacy of the industry and the reputation of individual firms. In addition, standards for behaviour reduce uncertainty in ways that enhance the prospect for profitability by weeding out fly-by-night firms and 'mercenaries'—who may both drive down prices and endanger the legitimacy of the industry. As part of a larger movement where corporations in general have begun to focus on the long-term viability of their actions—or the 'triple bottom line', many companies claim to be governed by integrity, ethics, and professionalism. PMCs have participated in emerging regimes of corporate responsibility, offering to come up with standards for professional behavior and monitoring by objective groups.66 As Andrew Bearpark and Sabrina Schultz suggest in chapter thirteen of this volume, there are also organizations for the 'self-regulation' of international PMCs.67

Looking at the way professionalism has worked historically, however, suggests that professions have been built on individuals. A profession typically channels individual achievement towards broader social goals through the definition of expert knowledge, ethical codes, and means of entry (such as licensing).68 Thus far, many of the arguments about industry-led standards focus on the regulation and licensing of companies. Thinking seriously about private security professionals would require, first and foremost, a focus on individuals: what individuals should know, how individuals should be trained, and the boundaries of individual action.

Over the course of the last several decades, there has been increasing transnational discussion about what constitutes a security professional. Some of this has to do with the mastery of particular forms of expertise, which spreads across borders with security organizations and military-military contacts.69 There is increasing agreement among security professionals across the globe about how one does a number of tasks and what individual skill is required to be effective at a variety of security-related tasks (military and policing). There is also a set of principles, growing in acceptance, about what appropriate individual behaviour is.40 This began with the International Tribunal at Nuremberg, which found that when international rules protecting humanitarian values come into conflict with state laws, individuals are obligated to transgress the laws of their government (except when there is no room for 'moral choice'). Individual military personnel cannot escape criminal responsibility for actions that violate international law by citing civilian orders. There are similar standards for law enforcement personnel that can be gleaned from the training in peace missions and general standards for international civilian police.41 The acceptance of a body of expertise and judgment about the proper role of security professionals is a step toward the definition of standard principles of behaviour among security professionals.62

Common among historically successful claims to a profession are also arguments about the public benefits of professional behaviour. Even when this accompanies efforts to curtail competitiveness in the market, the claims to public benefits are both important to a profession's legitimacy and place constraints on opportunistic action. The appeal to public benefits accords with other current arguments about the way in which private entities and private initiatives might bring about global public benefits. In his discussion of the normative practices that should underlie the generation of law, for instance, Benedict Kingsbury argues that any entity should accept the principles of public law (legality, rationality, proportionality, rule of law, and human rights) and should make a normative commitment to 'public-ness'.43

A necessary feature of a profession also includes an occupational organization that can test competence, regulate standards, and maintain discipline.44 Here, of course, private security has quite a distance to travel. Examining successful and unsuccessful efforts among professionals in other fields may prove instructive. This is also an area where interested parties—states, NGOs, international organizations, corporations, and others—might pool efforts to generate or ratify steps

66 For instance, the 'Voluntary Principles on Security and Human Rights,' statement by the governments of the United States of America and the United Kingdom, 20 December 2000 was the result of efforts by PMCs, members of extractive industries, INGOs, and governments to regulate the behaviour of the private sector in unstable territories.

67 Such as the International Peace Operations Association (http://www.ipoaonline.org/) and the British Association of Private Security Companies (BAPSC) (http://www.bapsc.org.uk/).


42 Margaret Keck and Katherine Sikkink talk about the importance of expertise for the building of networks. Though their focus is on advocacy networks, one could extend the analysis to other varieties such as security professionals. See Keck and Sikkink, Activists Beyond Borders: Advocacy Networks in International Politics (Ithaca: Cornell University Press, 1998). ch 6.


toward such an organization. Even if it initially generates only minimal standards, history suggests that such organizations often build and morph over time.

Conclusion

In considering how best to encourage proper behavior by PMCs and the individuals they employ, a number of options have been raised, foremost among them intergovernmental legal co-ordination (to standardize contracting and legal mechanisms for retrospective justice) and global industry standards. Though these are both important options, neither of them address important elements of the industry and thus the pursuit of either alone, or even both together, is unlikely to prove effective. Intergovernmental co-ordination has been stymied by the different roles various governments play in the market. When what each government wants to control is very different, it is hard to get them to institute standard regulatory schemes together. Without standard regulatory schemes, it is easy for companies to take advantage of the global nature of the market to avoid the rules of any one government. Furthermore, intergovernmental co-ordination rarely addresses private financiers of private security and other stakeholders.

Corporate industry standards options have run into difficulties with finding ways to tie a company's stated policy to its behavior on the ground. The contract-driven nature of the industry means that individuals may be on the rosters of many companies and work for several in quick succession within a single conflict zone. This leads to difficulty inculcating individuals with any corporate culture and also to problems accurately linking individual misbehavior to the right corporation. Though some PMCs advertise themselves as ethical, what that means for action on the ground is uncertain. This complicates the development of corporate reputation as a link to accountability or control by clouding the information available.

In this volume, other options for regulation have been raised, including Kevin O'Brien's framework in chapter two, which aims to distinguish between security and military firms, between offensive and defensive services, and between contracts that aim to alter the strategic landscape and those that do not—and regulate or prohibit contracts at the national level on that basis. The market offers many challenges to national level regulation of these services, however, and the unfolding nature of conflict (and political uses of violence more generally) render many of these distinctions problematic. Also, the intergovernmental co-ordination that O'Brien admits is crucial to the effectiveness of his framework has been stymied by the different roles various governments play in the market.

An alternative approach would build on the interests of producers to socialize the market. The stated commitment of many PMCs to professionalism is a place to start. Interested stakeholders might push PMCs to avoid a purely ceremonial appeal to professionalism by establishing processes and organizations to articulate standards for global security professionals. The nascent conceptions of security professionals that have grown in the last several decades and are built largely around the framework of international humanitarian law should provide a reasonable place to start. Efforts to further develop standards could draw on other arenas where analysts have begun to outline standards for those non-state entities that are, in effect, governing.45

Standards for private security professionals might allow the use of litigation—as Cockayne discusses in the next chapter—to be a more effective tool for regulation. It could also provide the basis for a system of individual licensing for transnational private security professionals. The standards that Bearpark and Schulz propose for companies in chapter thirteen could be more easily achieved if these companies could designate their commitment to corporate social responsibility by agreeing to hire only licensed security professionals. Most importantly, a process for developing standards could also provide a focal point for customer education, agreement, and potential co-ordination. Though hardly a silver bullet for the myriad challenges presented above, building on producer attempts to differentiate themselves both works through market mechanisms and is attentive to the pressures that led to the market's rise in the first place—and is thus among the most promising steps toward its taming.

45 Kingsbury et al, "The Emergence of Global Administrative Law" (n 43 above).