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REVIEW ESSAY

Regulating the Private Military and Security Industry: A Quest to Maintain State Control and Preserve Public Values

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Laura A. Dickinson, *Outsourcing War and Peace: Preserving Public Values in a World of Privatized Foreign Affairs*, Yale University Press, 2011, xi+271 pp., ISBN 978-0-300-14486-4, $40.00 (hb).

Hannah Tonkin, *State Control over Private Military and Security Companies in Armed Conflict*, Cambridge University Press, 2011, xxiv+310 pp, ISBN 978-1-1-7-00801-4, £60.00 (hb).

1. Introduction

Since the late 1980s, governments have increasingly relied on the services of private military and security companies (PMSCs) in attaining their defence and foreign-policy objectives. States with advanced armed forces (notably the US and UK but also many others) have seen the outsourcing of various support functions, such as logistics or communications, as a way of cutting costs. Conversely, states with weak militaries (for example, Croatia at the time of the break-up of Yugoslavia and Angola during the civil war) have used PMSCs to boost their actual war-fighting capabilities. More recently, international organizations and non-governmental organizations have also turned to PMSCs, largely to ensure the safety of their humanitarian operations in zones of conflict.

The activities of PMSCs have attracted significant public interest. The press has extensively covered the misadventures of the industry, particularly in Iraq and Afghanistan. A number of journalistic volumes have appeared on the topic,[1] some of them admittedly quite sensationalistic. Further, the panoply of problems caused by the commercialization of war in general, and the rise of PMSCs in particular, has been a recurring theme in the minds of screenwriters: not only has there been a

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1 See, e.g., Robert Young Pelton, *Licensed to Kill: Hired Guns in the War on Terror* (2006); Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (2007); Stephen Armstrong, *War plc: The Rise of the New Corporate Mercenary* (2008).

string of documentaries exploring these issues, but also numerous works of 'fiction' have depicted, or drawn upon, actual situations and contexts.[2]

The picture that has emerged is one of complete chaos and lawlessness: DynCorp employees trafficking and molesting girls in Bosnia, CACI staff members abusing prisoners at Abu Ghraib, and trigger-happy Blackwater and Aegis gunmen shooting at civilian vehicles in the streets of Baghdad. Given this publicity, it is hardly surprising that Blackwater, probably the most notorious of all the PMSCs, has changed its name twice – first to Xe and more recently to Academi.[3]

Scholars have followed the development of the PMSC industry with a keen eye and a degree of alarm at least since the publication of P. W. Singer's eye-opening book *Corporate Warriors* in 2003, which gave a sense of the scale and the diversity of the industry.[4] Much work has since been done by political scientists, who have placed the privatization of violence in a broad political, historical, and strategic context.[5]

Lawyers have not been far behind given that PMSCs pose a significant regulatory problem – indeed, the International Committee of the Red Cross has identified the prevalence of PMSC activities as one the most significant challenges to the legal governance of warfare today.[6] Thus far, the (international) legal analysis has mainly taken the form of countless journal articles on specific points of law, and a couple of significant edited volumes.[7] There have not been all that many legal monographs, which may be something of an indication of the relative immaturity of this area of research.[8] Two noteworthy volumes appeared in 2011, however, authored respectively by Professor Laura Dickinson from the George Washington University Law School and Dr Hannah Tonkin, currently working for the Special Court for Sierra Leone. These books will be considered in more detail here.

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2 See, e.g., *The Lord of War* (Andrew Niccol, dir., 2005) (a Ukrainian-American arms dealer, a character loosely based on a real person and played by Nicolas Cage, is seen running guns to the Middle East and Africa, and smuggling war *matériel* out of the ruins of the Soviet Union); *Blood Diamond* (Edward Zwick, dir. 2006) (showing a mercenary-turned-diamond smuggler, played by Leonardo DiCaprio, embroiled in the Sierra Leone Civil War); *War Inc* (Joshua Seftel, dir., 2008) (a political satire that tells a story – itself too outlandish to narrate – set in in Turaqistan, a fictitious Central Asian a country occupied by Tamerlane, an American private corporation which is led by a former US vice president); *The Whistleblower* (Larysa Kondracki, dir., 2011) (starring Rachel Weisz, tells the story of Kathryn Bolkovac, an American UN CIVPOL officer who unearths a PMSC-led human trafficking and sexual slavery ring in Bosnia during the Yugoslav War).

3 BBC News, 'Former Blackwater firm renamed again', 12 December 2011, available online at www.bbc.co.uk/news/world-us-canada-16149971.

4 P. W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (2003).

5 See, e.g., Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (2005); Christopher Kinsey, *Corporate Soldiers and International Security: The Rise of Private Military Companies* (2006); Elke Krahmann, *States, Citizens and the Privatisation of Security* (2010); Kateri Carmola, *Private Security Contractors and New Wars: Risk, Law, and Ethics* (2010).

6 See, e.g., ICRC, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, Report to the 31st International Conference of the Red Cross and the Red Crescent, Doc. No. 31IC/11/5.1.2 (October 2011).

7 See, in particular, Simon Chesterman and Chia Lehnardt (eds.), *From Mercenaries to Market: The Rise and Regulation of Private Military Contractors* (2007); Francesco Francioni and Natalino Ronzitti (eds.), *War by Contract: Human Rights, Humanitarian Law, and Private Contractors* (2011); Christine Bakker and Mirko Sossai (eds.), *Multilevel Regulation of Military and Security Contractors: The Interplay between International, European and Domestic Norms* (2012).

8 But see Paul R. Verkuil, *Outsourcing Sovereignty: Why Privatization of Government Functions Threatens Democracy and What We Can Do about It* (2007); Benedict Sheehy et al., *Legal Control of the Private Military Corporation* (2008); Katja Creutz, *Transnational Privatised Security and the International Protection of Human Rights* (2006).

2. The model for governance

For better or for worse, society seems to have accepted that some industries have a commercial interest in armed conflict. Seldom does one find an outraged op-ed lamenting the fact that the manufacture of weapons and munitions is an enormous transnational business. Moreover, objections tend to be based on humanitarian concerns – such as the nastiness of landmines or cluster munitions – rather than the fact that conflict, or the potential thereof, directly commercially benefits businesses that design fighter jets, tanks, or assault rifles. Nor is it particularly scandalous that a private weapons manufacturer in one state sells its wares to the government of another state – unless we happen to dislike that government, of course.

The popular view of military services stands in contrast to this. There is a tendency to frown upon PMSCs, principally because their personnel, unlike soldiers, are motivated by financial gain rather than by 'proper' causes, and because shifting the function of national defence from citizens in uniform to (possibly foreign) contractors makes it politically easier to go to war.[9]

But of all the major regulatory initiatives undertaken in recent years,[10] the most significant ones have largely focused on particular practical problems resulting from the use of PMSCs, rather than the increased privatization as such. Thus, in 2008, 17 states endorsed the Montreux Document, which purports to describe the international humanitarian-law obligations of states in military outsourcing and captures a host of related 'good practices'.[11] In 2010, a sizable group of PMSCs agreed, largely as a reaction to the Montreux Document, on an International Code of Conduct, which seeks to clarify international standards for PMSCs operating in complex environments, and to improve oversight and accountability of such companies.[12] A Working Group tasked with developing enforcement machinery released a Draft Charter for the 'Oversight Mechanism' of the Code for public consultation in early 2012.[13]

It is largely in the UN context that the idea of limiting the use of PMSCs has been seriously discussed. The cumbersomely titled Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination has developed the text of a draft convention on PMSCs, which, inter alia, would prohibit delegating or outsourcing certain 'inherently State functions' to private contractors.[14] Such 'inherently State functions' would, according to the draft, include

9 See, e.g., Tonkin, *State Control*, at 17–23.

10 For a useful overview, see Daphné Richemond-Barak, 'Regulating War: A Taxonomy in Global Administrative Law' (2011) 22 EJIL 1027.

11 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, 17 September 2008, available online at www.eda.admin.ch/psc.

12 The International Code of Conduct for Private Security Service Providers, 9 November 2010, available online at www.icoc-psp.org/About_ICoC.html.

13 Draft Charter of the Oversight Mechanism for the International Code of Conduct for Private Security Service Providers, 16 January 2012, available online at www.icoc-psp.org/Charter_Consultation.html.

14 Report of the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, Human Rights Council, UN Doc. A/HRC/15/25 (2

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> direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, knowledge transfer with military, security and policing application, use of and other activities related to weapons of mass destruction and police powers, especially the powers of arrest or detention including the interrogation of detainees.[15]

States and PMSCs themselves clearly have a preference for the former model. As of 1 July 2012, 41 states – including the major hiring and home states, such as the US and the UK, and notable host states, such as Iraq and Afghanistan – have formally indicated their support for the Montreux Document. By 1 June 2012, the International Code of Conduct had attracted signatures from 404 companies. In contrast, when the Human Rights Council decided to create an 'open-ended intergovernmental working group' to 'consider the possibility of elaborating an international regulatory framework ... taking into consideration the principles, main elements and draft text' as proposed by the Working Group on Mercenaries, the vote was 32 to 12, with 3 abstentions – with all the NATO countries on the Council either voting against or abstaining.[16]

In this political climate, it is no real surprise that Dickinson and Tonkin share the assumption that military contracting is a fact of life and one must pragmatically consider how to better govern it.[17] Nonetheless, Tonkin does examine the limits placed by international law on the possibility of states to outsource military services in an armed conflict[18] and Dickinson carefully admits that there may be some services that ought not to be outsourced.[19] But at the end of the day, both books – and the majority of other legal scholarship – are premised on the position that PMSCs are here to stay, and rather than try to legislate them out of existence, a project that would be unlikely to succeed, measures must be taken to address the problems that result from their increased use.

The main concern of the books is also shared – the lack of constraint, accountability and transparency – even though the emphases are slightly different. Both authors also emphasize that the constraint and accountability aspect must be conceived as encompassing not only the repression of misconduct, but also prospective measures ensuring proper conduct.[20] From this starting point, Dickinson takes what might be called an empirical approach: in the well-chosen vignettes that open the chapters of her book, she draws attention to the particular problems that have emerged in military outsourcing; she then generalizes them into broader issues. Tonkin, conversely, takes a principle-driven approach, starting from the premise that the use of PMSCs

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July 2010), Annex: Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council, Article 4(3).

15 Ibid., Article 2(i).

16 HRC Res. 15/26 (1 October 2010) (*in favour*: Angola, Argentina, Bahrain, Bangladesh, Brazil, Burkina Faso, Cameroon, Chile, China, Cuba, Djibouti, Ecuador, Gabon, Ghana, Guatemala, Jordan, Kyrgyzstan, Libya, Malaysia, Mauritania, Mauritius, Mexico, Nigeria, Pakistan, Qatar, Russia, Saudi Arabia, Senegal, Thailand, Uganda, Uruguay, Zambia; *against*: Belgium, France, Hungary, Japan, Poland, South Korea, Moldova, Slovakia, Spain, Ukraine, UK, US; *abstaining*: Maldives, Norway, Switzerland).

17 See, explicitly, Dickinson, *Outsourcing War and Peace*, at 16.

18 Tonkin, *State Control*, at 173–87.

19 Dickinson, *Outsourcing War and Peace*, at 11.

20 See, in particular, ibid., at 12; Tonkin, *State Control*, at 134–6, 152–8, 188–200, 214–21.

constitutes a dilution of a state authority and then going on to illustrate the various manifestations of that phenomenon by pointing at the same problems as identified by Dickinson.

But a noticeable and interesting difference lies in the choice of terminology. Tonkin articulates the problem that has emerged as one of erosion of state control and she looks for ways to prevent or counteract that, while Dickinson sees a threat to public values and tries to find avenues to promote such values. This choice of language possibly reflects the intended audiences of the books. Tonkin's work is an example of fairly traditional, doctrinal scholarship, ostensibly directed at the 'invisible college of international lawyers', which is professionally united but otherwise diverse. Dickinson, however, writes to a distinctly American, though professionally diverse – lawyers, political scientists, strategists, etc. – readership. The phrase 'state control', while perfectly acceptable for international lawyers, would probably be unpalatable for the general American audience. At the same time, the notion of 'values' must surely be appealing in the US – come election time, 'values' will be the most overused word in the vocabulary – but would be viewed with some suspicion by many international lawyers.

3. State control and international law

The use of PMSCs, particularly in the context of armed conflict, raises numerous issues of international law. The most obvious, perhaps, is the question about the status of PMSC personnel under international humanitarian law,[21] particularly whether they might be regarded as mercenaries,[22] and, conversely, should they be seen as 'regular' civilians, what services could constitute direct participation in hostilities and result in the loss of protection from attack.[23]

The books considered here touch upon these issues, but their focus is elsewhere. Tonkin sets out to assess, in the light of current international law, the responsibility of states for the conduct of PMSCs in armed conflict. This analysis both covers obligations deriving from international humanitarian law and human rights law, and considers the position of states using PMSC services (hiring states), states where PMSCs are incorporated (home states), and states where they operate (host states).

It must be said that a fair amount of high-quality work has already been done on this topic.[24] But Tonkin's analysis is useful for at least two reasons. First, she

21 See, e.g., the articles in (2006) 88(863) *International Review of the Red Cross*; Louise Doswald-Beck, 'Private Military Companies under International Humanitarian Law', in Simon Chesterman and Chia Lehnardt (eds.), *From Mercenaries to Market: The Rise and Regulation of Private Military Contractors* (2007), at 115–38.

22 See, e.g., Maria Mancini et al., 'Old Concepts and New Challenges: Are Private Contractors the Mercenaries of the Twenty-first Century?', in Francesco Francioni and Natalino Ronzitti (eds.), *War by Contract: Human Rights, Humanitarian Law, and Private Contractors* (2011), at 321–40.

23 See, e.g., Michael N. Schmitt, 'Humanitarian Law and Direct Participation in Hostilities by Private Contractors or Civilian Employees' (2005) 5 Chicago JIL 511.

24 See, in particular, Carsten Hoppe, 'Passing the Buck: State Responsibility for Private Military Companies' (2008) 19 EJIL 989; Hoppe, 'Private Conduct, Public Service? State Responsibility for Violations of International Humanitarian Law Committed by Individuals Providing Coercive Services under a Contract with a State', in Michael J. Matheson and Djamchid Momtaz (eds.), *Rules and Institutions of International Humanitarian Law Put to the Test of Recent Armed Conflicts* (2010), at 411–83.

systematically pieces together various parts of this discourse. This has forced her to look at issues that are rather tricky in their own right – notably the extraterritorial applicability of human rights law and its interaction with international humanitarian law.[25] Second, Tonkin paints some parts of the argument with a very fine brush indeed. Not only does she cover in detail the various conditions under which the conduct of PMSCs might be attributable to a state, she also develops a fairly sophisticated framework for looking at situations where a lack of 'due diligence' by a state results in state responsibility.[26]

One of the things that will catch the reader's eye, and that perhaps warrants pondering over, is Tonkin's heavy reliance on Article 1 common to the 1949 Geneva Conventions in grounding the responsibility of states for violations of international humanitarian law by PMSCs. This is evident not only from the discussion itself, but also from the author's admission[27] that a sizable part of the book develops work that previously appeared as an article (published in this journal) and which focused on Common Article 1.[28]

In Common Article 1 of the Geneva Conventions, and in the corresponding Article 1(4) of Additional Protocol I, states parties to those instruments 'undertake to respect and to ensure respect' for the instruments in question 'in all circumstances'. Given that this provision does not just reiterate the obligation of states to follow international humanitarian law but creates the further obligation to ensure compliance by at least some other actors, it has significant normative potential for dealing with PMSCs. However, as eminent commentators have suggested, there remain uncertainties as to the precise scope of the Article, particularly in light of its drafting history.[29] Consequently, there is something of a danger of overreliance on the 'respect and ensure respect' clause, a danger that Tonkin in at least one context brushes aside with the rather cavalier remark that the original intent of the drafters is never conclusive as to the current status of a legal norm.[30] True, but as her arguments in large part rely on Common Article 1, this seems far too crude a way to deal with the matter.

Moreover, Tonkin views Common Article 1 as a minimum standard, baseline, or yardstick in dealing with private actors.[31] This view suggests a parallel with Common Article 3, which the International Court of Justice has memorably described as a 'minimum yardstick' for assessing behaviour in armed conflicts,[32] which reflects 'elementary considerations of humanity'.[33] But the fundamental difference between these provisions is that while Article 3 contains a substantive behavioural standard,

25 Tonkin, *State Control*, at 203–13.
26 Ibid., at 64–75.
27 Ibid., at viii.
28 Hannah Tonkin, 'Common Article 1: Minimum Yardstick for Regulating Private Military and Security Companies' (2009) 22 LJIL 779–99.
29 Frits Kalshoven, 'The Undertaking to Respect and Ensure Respect in All Circumstances: From Tiny Seed to Ripening Fruit' (1999) 2 YIHL 3.
30 Tonkin, *State Control*, at 191.
31 Ibid., at 170, 197, 227.
32 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. US)* [1986] ICJ Reports 14, para. 218.
33 *Corfu Channel (UK v. Albania)* [1949] ICJ Reports 4, at 22.

Article 1 does not. Article 1 reaffirms the obligation of states themselves – through their organs – to abide by international humanitarian law, and asks them to make sure that certain other actors abide by their obligations, too. Thus, Common Article 1 does not appear to create substantive standards of behaviour for non-state actors where those do not exist already. To put it differently, Common Article 1 seems to require states to make sure that others carry out duties that they already have.

In this sense, Common Article 1 is also different from the jurisdictional clauses of human rights treaties, which place an obligation on states to 'secure' to those within their jurisdiction the rights and freedoms specified in the treaty.[34] Without this type of a provision, human rights treaties by virtue of their very language would be merely exhortative. It is the 'jurisdictional clause' that operationalizes human rights and creates obligations for states. Not so with humanitarian-law instruments. Their individual provisions create obligations on states (and potentially non-state actors) with or without Common Article 1.

True, the liability of states for the violations of international humanitarian law by non-state actors can in many instances only arise through the failure of states to fulfil their due-diligence obligation to ensure respect under Common Article 1. But one could argue that a state should be responsible for a failure to ensure respect for international humanitarian law only to the extent that the non-state actor had an obligation to respect humanitarian law – i.e., to the extent that the non-state actor was bound by the rules of humanitarian law. In this light, a closer examination of the nature and purpose of Common Article 1, as well as the creation by international humanitarian law of obligations on individuals who are not state agents, would have been beneficial.

While Tonkin's book is primarily concerned with international law, that is not the case with Dickinson's monograph. That said, the latter book does address a handful of distinctly international-law issues.[35] Unfortunately, that part of the discussion suffers from a lack of precision. One example concerns the role of humanitarian law in regulating the conduct of PMSCs. Dickinson suggests that the humanitarian-law treaty regime, which includes the Geneva Conventions and their Additional Protocols, 'outlaws certain categories of extreme abuse, such as torture, executions, and other "grave breaches"'.[36] For this observation to be correct, one must assume that by 'executions' the author means 'extrajudicial executions', since humanitarian law does not abolish the death penalty except under very specific circumstances,[37] and that by 'outlaws' she means 'criminalizes' not just 'prohibits'. Dickinson goes on to suggest that Common Article 3 of the Geneva Conventions 'criminalizes these acts, whether committed in international or in internal armed conflict'.[38] While the

34 See International Covenant on Civil and Political Rights, UNGA Res 2200A (XXI) (16 December 1966), in force 23 March 1976, 999 UNTS 171 ('ICCPR'), Article 2(1); Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, in force 3 September 1953, 213 UNTS 222 ('ECHR'), Article 1; American Convention on Human Rights, San José, 22 November 1969, in force 18 July 1978, 1144 UNTS 123 ('ACHR'), Article 1(1).

35 See particularly, Dickinson, *Outsourcing War and Peace*, at 44–9.

36 Ibid., at 44.

37 See, e.g., William A. Schabas, *The Abolition of the Death Penalty in International Law* (2002), Chapter 5.

38 Dickinson, *Outsourcing War and Peace*, at 45.

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principles contained in Common Article 3 have indeed been regarded as the bare minimum of treatment in both international and non-international conflicts,[39] the provision formally applies only in 'conflicts not of an international character'. More importantly, Common Article 3 does not criminalize anything – it most assuredly does not attach individual criminal liability to violations of humanitarian law. Indeed, it remained unclear whether violations of the law of non-international armed conflicts were capable of generating individual liability at all until 1995 when the ICTY Appeals Chamber made that clear in *Tadić*, basing itself, though, squarely on customary law.[40]

4. Public values and the limits of international law

But it is probably unfair to expend too much energy on dissecting the points just made because Dickinson has not really set out to produce a treatise on the international-law problems of the PMSC industry. Rather, the book explains, in an illuminating way, how the formal legal rules – whether national or international – should not be seen as a panacea and how there are other mechanisms for ensuring respect for human dignity, transparency, and public participation – the public values that are the book's main concern.

While also exploring the unused potential of US law and making the important (if obvious) point that comprehensive legislation is useless without effective enforcement,[41] Dickinson focuses on the 'unexplored promise' of the contract. She looks at how the contract between the state and the PMSC could be used to incorporate standards and benchmarks that reflect public values, and how contracts could put in place grievance and oversight mechanisms. In some sense, the book appeared at an unfortunate moment: one cannot find a note stating when the manuscript was completed but the early 2011 publication date suggests that events after mid-2010 are not reflected. Yet this is precisely the period when the International Code of Conduct really started to take shape and the Code, along with its oversight mechanism, addresses many of the issues identified by Dickinson and indeed uses some similar solutions. In a way, these developments on the international level confirm the viability of some of Dickinson's suggestions, even though the latter were made with domestic contractual arrangements in mind.

One of the most significant points to emerge from the discussion of contracts is that when states use the services of PMSCs, they make use of public funds, ostensibly for the performance of public functions, but without the same kind of independent scrutiny that public spending usually attracts. For example, it appears to be general practice to circumvent troop caps (the limits placed by parliaments on the number

39 *Nicaragua (Merits)*, para. 19.

40 *Prosecutor v. Tadić*, Case no. IT-94–1, ICTY Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (2 October 1995), para. 134 ('customary international law imposes criminal liability for serious violations of common Article 3, as supplemented by other general principles and rules on the protection of victims of internal armed conflict, and for breaching certain fundamental principles and rules regarding means and methods of combat in civil strife.').

41 Dickinson, *Outsourcing War and Peace*, at 49–68.

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of troops that the executive can deploy abroad) by shifting some of the military functions to PMSCs. In short, there is a massive problem with democratic control.

While Tonkin also briefly mentions the lack of transparency in outsourcing and the shortcomings in contract monitoring,[42] Dickinson's discussion really reveals the true extent and ramifications of the reduction in public oversight. In some sense the most vivid example is the case of DynCorp: while under a USD43.8m contract to operate a police training camp in Baghdad, the company diverted USD4.2m to purchase 20 luxury VIP trailers and to construct an Olympic-size swimming pool, while the training facility stood empty.[43]

The important lesson here is that difficulties with PMSCs are not limited to their personnel behaving like cowboys in far-flung places, which appears to be the principal concern for many people. PMSCs, despite being used for the declared reason of economizing, might be wasting colossal amounts of public money and doing so in a way that remains hidden from the taxpayer. One wonders, somewhat cynically, whether this would be a better argument in rallying support for better oversight mechanisms over PMSCs in contracting states than the images of Iraqis or Afghanis killed by the bullets of security guards protecting Western diplomats.

Perhaps the most interesting part of Dickinson's book deals with the role of organizational constraints and culture in promoting the rule of law. This discussion is largely based on an extensive series of interviews with uniformed lawyers from the US Army's Judge Advocate General's Corps. Uniformed lawyers, by being embedded with the troops, have had a particular role in nurturing a culture of integrity, accountability, and respect for the law within the forces. They contribute to the law-abidingness of the US armed forces through training and legal advice, and by holding the power to discipline service members. The well-taken point is that few, if any, PMSCs have such integrated accountability agents,[44] which has a deleterious effect on the discipline of PMSC personnel. Unfortunately, in the end, this discussion goes off the rails, as the interviewees do not so much address their own role but bemoan the general lack of discipline among the PMSC personnel.

The principal difficulty with Dickinson's arguments and recommendations is that they assume the desire of states – the US in particular – to create more accountability and transparency. Yet, as Dickinson herself admits on several occasions,[45] outsourcing may at least partly be motivated by the desire to muddy the waters, avoid constraints, and circumvent the rule of law.

5. Concluding remarks

Though approaching the matter from different viewpoints, both of the books reviewed here emphasize that there is, contrary to popular belief, quite a lot of law that applies to PMSCs, whether in terms of assessing state responsibility for their

42 Tonkin, *State Control*, at 88.
43 Dickinson, *Outsourcing War and Peace*, at 1–2.
44 Ibid., at 182.
45 Ibid., at 17, 20.

conduct under international law or of litigating their misconduct under domestic law. The other clear observation is that various legal and non-legal factors work in a complementary fashion. Thus, as Dickinson shows, looking beyond public-law mechanisms and thinking creatively about contracts can be highly beneficial – and using Tonkin's arguments as a 'stick' may prompt states to actually engage in such creative thinking.

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