

Regional Organizations: What Role for the EU?¹

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Introduction

- Following allegations that private security guards were involved in the torture of Iraqi prisoners and in the wake an attempted coup by private mercenaries in Equatorial Guinea the proliferation of so-called 'private military companies' (PMCs) is again receiving considerable attention. Of particular concern in the public and academic debate is the continuing lack of effective national and international controls of the industry. Much of this debate criticises that international regulation has so far focussed almost exclusively on mercenaries and has been bogged down by problems related to defining PMCs. Moreover, it is suggested that national controls on PMCs are lacking in most countries with the exception of the United States and South Africa.
- This debate systematically underestimates the level of national and international regulation of the sector and thus the possibility of strengthening existing controls.
- In particular in Europe there has been a growth of national and international policies which directly or indirectly shape the provision and export of private military services since the mid-1990.
- Moreover, due to the specific dynamics of European integration these controls are not only increasing, but also converging within the European Union (EU).

Structure of presentation:

1. Problems of International Regulations -> UN + AU Conventions
2. A Service-Based Definition
3. Regulations within the EU -> Code of Conduct + CSFP
4. Advantages of EU/Regional Regulation (and Disadvantages)
5. Conclusion

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Problems of International Regulations

- Current attempts and future possibilities to control private military forces are generally viewed with scepticism. In particular, the literature identifies three problems:
 1. The first concerns the definition of mercenaries and private military companies for the purpose of regulating them.
 2. The second problem is a perceived lack of interest among governments in the control of private military forces.
 3. The third is the transnational character of most PMCs which allows them to evade anything but global controls.
- These problems, it is argued, explain why any effort to regulate mercenaries and PMCs short of an international regime would fail. However, they are also used to illustrate why national and international regulation has so far been limited.

United Nations Convention

- The *United Nations International Convention Against the Recruitment, Use, Financing and Training of Mercenaries 1989* is typically presented as the key example for the problems which characterise attempts to control the private military industry.
- The *UN International Convention on Mercenaries* has been marred by difficulties associated with a common definition of mercenaries and the reluctance among members of the international community to sign up to the convention. The definition of mercenaries embraced by the convention is based on the *Additional Protocol I* of the Geneva Convention which stipulates that a mercenary is any person who is specially recruited to fight in armed conflict, does take direct part in hostilities, is motivated essentially by the desire for private gain, is neither a national or a party to the conflict, is not a member of the armed forces and has not been sent by another state as a member of its armed forces. However, since the definition presumes that it is possible to analyse and prove the motivation of mercenaries and since it requires that all criteria have to be met simultaneously, it is nearly impossible to convict any combatant as mercenary.

AU Convention

- Another attempt at regulating mercenaries which is widely criticised is the *Organization of African Unity (OAU) Convention for the Elimination of Mercenaries in Africa*, which was opened for signature in 1977 and entered into force in 1985.
- The *OAU Convention*, like the *UN International Convention on Mercenaries*, uses the definition of mercenaries of the *Additional Protocol I* and thus suffers from similar problems.

Moving Beyond: A Service-based Definition

- The preceding analysis points to three problems with the current debate over the regulations of PMCs:
 1. The first is the predominant focus on ‘mercenary’, i.e. combat, companies and their operation in failed states and regional conflicts.
 2. The second problem is the definition of PMCs and mercenaries in the literature and contemporary legislation, and
 3. The third is the narrow conception of existing and possible regulation of PMCs.

I suggest three interlinked modifications:

1. a broadening of the analysis of the privatization of military services from Africa to Europe and North America,
 2. a definition of private military contracts in terms of the services provided and not of the companies which provide them, and, finally,
 3. a broadened understanding of the means by which PMCs are and can be controlled.
- Closely linked to the broadening of the analysis of the privatization of military services from developing countries in Africa to industrialized nations in Europe and North America is the **need for a different conceptual approach** to private military operations. Such a definition should recognise the full range of private military services and the variety of companies which offer them.
 - A definition of private military force in terms of the **services** provided rather than the nature of the companies which offer them is more suited to the study and regulation of the sector.

- A **list of services** includes: *combat; personal and site security where this relates to the personnel and bases of governments or international organizations and NGOs operating in conflict regions; military training and advice; security consulting; technical support for the operation and maintenance of military equipment; procurement, trafficking and brokering of military equipment; explosive ordnance disposal; logistical support for military operations and bases; intelligence collection and analysis including the interrogation of military prisoners.*
- Although a service-based definition might initially seem confusing and difficult to implement in terms of legislation, it is **common practice** in defence export regulation -> e.g. armaments exports and the transfer of dual-use goods, i.e. goods with civil and military applications, are thus legislated
- The European Union has adopted such an approach to control what it calls ‘technical assistance’ related to listed military equipment and activities.
- A different conceptualization and definition of private military force has important implications for the analysis and prospects of the regulation of private military services. In particular, this definition reveals that private military services and the companies which offer them are currently regulated by **a broader range of legislative measures** than has been recognized by the media and the academic literature. Moreover, it suggests new and different forms of regulatory controls for the future.
- In Europe, these legislative measures range at the national level from the registration and regulation of private policing and security firms to the control of armaments exports and arms brokering.

Regulations within the EU

- At the level of the EU, they include:
 1. the **European Code of Conduct on Armaments Exports**
 2. a range of **Common Foreign and Security Policies** concerning the transfer of sensitive technology and services to specific countries

The European Code of Conduct on Armaments Exports

- The Code of Conduct was drawn up in June 1998 in order to set high **common standards** for conventional arms transfers and to **facilitate the exchange of information** about arms exports among member states.
- Furthermore, the Code of Conduct called for the circulation among the member states of confidential **annual reports** on their arms exports and the implementation of the Code, as well as for the production of a consolidated report by the EU.

Common Foreign and Security Policies

WMDs and Missiles

- EU Council Joint Action 2000/410 of 22 June 2002 has encouraged controls of technical assistance related to certain military end-uses or destinations among the member states.
- The proposed regulations concern technical assistance related to items ‘which are or may be intended for use in connection with **weapons of mass destruction** or **missiles** for delivery of such weapons’.
- ‘*Assistance*’ as defined by the EU Joint Action covers nearly the entire spectrum of private military services, including ‘*technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, training, transmission of working knowledge or skills or consulting services.*’
- Moreover, the Joint Action encourages member states to ‘consider the application of such controls also in cases where the technical assistance relates to military end-uses other than those referred to in Article 2 ... and is provided in countries of destination subject to an arms embargo.’
- In sum, the Council suggests national legislation regarding the export of private military services related to chemical, biological or nuclear weapons as well as to any country subject to international arms sanctions.

Armaments Brokering

- The second EU guideline for national export controls is the **Council Common Position 2003/468/CFSP** which sets out a range of provisions for the regulation of **armaments brokering**.

- Crucially, the Common Position **requires** member states to implement these guidelines through **national legislation**.
- The stated objective of the Common Position 2003/468/CFSP is *'to control arms brokering in order to avoid circumvention of UN, EU or OSCE embargoes on arms exports, as well as of the Criteria set out in the EU Code of Arms Exports'*.
- The Common Position mandates that 'member states will take all necessary measures to control brokering activities taking place within their territory', but is also **'encourages'** member states 'to consider controlling brokering activities **outside** their territory carried out by brokers of their nationality resident or established in their territory'.

Ad Hoc Restrictions

- More directly, however, the EU has used *ad hoc* Regulations at the EU-level to control the export of private military services to certain destinations in response to **civil wars and regional conflicts**.
- Specifically, the transfer of technical services related to military equipment and activities has progressively been the target of EU restrictions since the mid-1990s.
- In January 2005, no less than seven countries, Congo, Ivory Coast, Liberia, Myanmar/Burma, Somalia, Sudan and Zimbabwe, were subject to an EU-wide embargo of technical services related to military activities.
- Previously, similar restrictions on the transfer of military technology and services have been applied to Afghanistan, Ethiopia and Eritrea, the former Yugoslavia, Libya and Nigeria.
- Crucially, the EU definition of **'technical services'** in most of these Regulations is considerably broader than those embraced in many of the national export legislations examined above. In the case of Liberia, for instance, it includes *'technical training or assistance related to the provision, manufacture, maintenance or use of arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned'*.

Transfer of Small Arms and Light Weapons

- Further Joint Actions have been adopted regarding the transfer of small arms and light weapons, which can be facilitated by the operations of PMCs in developing countries. In

1998, the Council thus adopted Joint Action 1999/34/CFSP on the EU contribution to combating the destabilising accumulation and spread of small arms and light weapons.

Advantages of Regional/EU Regulations

Harmonization

- The impact of the Code of Conduct has not only been the increase of transparency concerning armaments exports from the EU, but also the **growing harmonization of national arms export legislation** in Europe.
- The harmonization of arms controls is particularly important because it makes it more difficult for PMCs to evade national controls by settling in those member states with the least restrictive regulations.
- Mercenary companies may still be able to move offshore. But companies which offer services concerning the operation, management and maintenance of military equipment frequently rely on the skilled labour forces available in European countries and are less flexible.

Enlargement

- The enlargement of the EU has increased the number of countries subscribing to the export control standards endorsed in the Code of Conduct from 12 to 25.
- Already before accession, most aspirant countries had aligned themselves to the Code of Conduct.

Cooperation Agreements

- In addition, a number of associated or allied countries have embarked upon measures to tighten their national export controls in line with the Code of Conduct, including Turkey, Croatia, the EFTA countries and Canada.
- And in December 2000 the EU and the United States agreed on a US-EU Declaration on Responsibility in Arms Exports.

Collective Action within International Organizations

- Furthermore, the EU tries to build a consensus in international organizations such as the United Nations and the OSCE for restrictive arms export criteria as provided in the EU Code of Conduct.

Conclusion

- The regulation of private military services in Europe appears to have progressed along two axes: functionally and geographically.
 1. Functional axis: attempts to control the ‘soft’ end of private security services, such as private investigation and policing, on the one hand, and the ‘hard’ end, such as mercenaries and PMCs, on the other.
 2. Geographical axis: simultaneous efforts to regulate private military services from the national and the international arena.
- The advantage of these concurrent developments seems to be the evolution of a system of multilevel governance of the private security sector in which **overlapping regulations** and **regional institutions** and regimes **strengthen each other**.
- Disadvantages include the complexity and inconsistency of the emerging controls which currently leave loopholes for PMCs and which put a heavy administrative burden on regulators.
- Both axes converge within the EU, allowing it to play a central role in determining the future regulation of private military services. Along the functional axis, the EU is on the one hand, under increasing pressure to harmonize or even integrate the regulation of private security services among the member states due to the rulings of the Court of Justice which suggest that private security services should operate under the conditions of the internal market. On the other hand, the EU is progressively laying out common standards for the export of military equipment and services under the Code of Conduct on Arms Exports and through Joint Actions and Common Positions under the CFSP. Along the geographical axis, the EU influences national regulations through common European standards and vice versa. Moreover, the EU takes an active role in the geographical expansion of its control standards within the international community both through enlargement and bilateral agreements with other states.