

Pragmatism and Effective Fragmented Governance: Comparing Trajectories in Small Arms and Military and Security Services

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Abstract

A hallmark of contemporary global governance is its complex nature. Understanding the implications of the array of “governors” and their efforts is paramount for scholars of global law and global politics. Most analyses have treated fragmented governance as a piece, arguing about its general effects. I concentrate instead on variation within fragmented situations, seeking to understand the conditions under which complexity yields more or less effective governance. I propose an analytical scheme for gauging effectiveness focused on how the array of governance efforts in an issue area relate to one another. I then compare these efforts in two issue arenas: small arms and private military and security services. Despite a similar complexity, similar array of actors trying to exert influence, and similar timing, complexity in small arms generated what most see as less effective results while in military and security services it has generated what seems to be a more promising path toward effective governance mechanisms. This difference is best explained with insights from pragmatism and network theory. When a broader range of relevant governors engage pragmatically to form linked networks governance is more likely. When governors engage ideologically and break off ties governance is less likely. Pragmatic engagement among the variety of relevant governors, including the US, is most likely to generate effective global governance.

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Key words

Private military and security services; small arms; global governance; complex or fragmented governance; regulation; effectiveness; global governors; pragmatism; networks

Resumen

Una característica distintiva del gobierno mundial contemporáneo es su naturaleza compleja. Entender las implicaciones de la serie de "gobernadores" y sus esfuerzos es fundamental para los estudiosos del derecho internacional y la política mundial. La mayoría de los análisis han tratado el gobierno fragmentado como una pieza, discutiendo sobre sus efectos generales. El análisis se centra en cambio en la variación dentro de situaciones fragmentadas, buscando entender las condiciones en las que la complejidad produce un gobierno más o menos efectivo. Se propone un esquema analítico para medir la eficacia centrada en cómo el conjunto de esfuerzos de gobierno en un área temática se relacionan entre sí. Así, se comparan estos esfuerzos en dos ámbitos: las armas pequeñas y los servicios de seguridad y militares privados. A pesar de una complejidad similar, una gama similar de actores que tratan de ejercer influencia y un calendario similar, la complejidad de armas pequeñas generó ver los resultados como menos eficaces, mientras que en los servicios militares y de seguridad ha supuesto lo que parece ser un camino más prometedor hacia mecanismos eficaces de gobierno. Esta diferencia se explica mejor con los puntos de vista de pragmatismo y la teoría de redes. Cuando una gama más amplia de relevantes gobiernos emplea una forma pragmática para formar redes vinculadas, la gobernabilidad es más probable. Cuando los mandatarios se enfrentan ideológicamente y se rompen los lazos, el gobierno es menos probable. El compromiso pragmático entre la variedad de relevantes gobiernos, incluyendo EE.UU., es más probable que genere un gobierno mundial eficaz.

Palabras clave

Servicios militares y de seguridad privados; armas pequeñas; gobierno mundial; gobierno complejo o fragmentado; regulación; eficacia; mandatarios mundiales; pragmatismo; redes

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1. Introduction

A hallmark of contemporary global governance is its complex nature. As more types of actors attempt to influence global politics there are additional efforts to order particular issues. Not only do governments pass laws and sign treaties but industry groups, civil society groups, experts, and combinations of all draft and sign on to codes, best practices, standards, and guidelines. Understanding the implications of this array of “governors” is paramount for scholars of global law and global politics. Most analyses have treated fragmented governance as a piece, arguing about its general effects. I concentrate instead on variation within fragmented situations. Particularly, why does complexity yield more effective governance in some issue areas than in others?

To address this question, I compare two issue arenas: small arms and private military and security services. Despite a similar complexity, similar array of actors trying to exert influence and similar timing, complexity in these two issue areas yielded different trajectories. In small arms it generated what most see as less effective results while in military and security services it has generated what seems to be a more promising path toward effective governance mechanisms.

Below I first propose an analytical scheme for gauging effectiveness, focused on how the array of efforts seeking to govern an issue area relate to one another. Next I show that while US behavior was important for both cases, US behavior cannot be explained by its hegemony. Instead I use insights from pragmatism and network theory to suggest that how actors behave depends on who they interact with and how. When a broader range of relevant governors engage pragmatically to form linked networks governance is more likely. When governors engage ideologically and break off ties governance is less likely. Though the US is an important player, it cannot deliver governance alone. Pragmatic engagement among the variety of relevant governors, including the US, is most likely to generate effective global governance. The dynamics of these two cases illustrate the plausibility of this argument.

2. Fragmented but effective global governance mechanisms

Governance refers to the ability to steer or manage a collective (Commission on Global Governance 1995, Keohane and Nye 2000). It incorporates a variety of activities: creating issues, setting agendas, establishing rules, implementing rules and policies, and overseeing, evaluating and adjudicating outcomes. Global or transnational governance refers specifically to management or steering that stretches beyond the borders of one state.

Whether – or under what conditions – global governance is possible has been a source of contention. Though with different degrees of optimism, realists and liberals expect less governance in security issues and generally only when powerful states exercise hegemony (Gilpin 1981, Jervis 1983, Stein 1990). However, other scholars have documented “governance without government” (Rosenau and Czempiel 1992) in which various actors participate in governance, sometimes even in the security arena (Keck and Sikkink 1998, Kahler and Lake 2003, Ruggie 2004, for application to security see Krahmman 2003).

Scholars who have focused on the analytical consequences of this broader participation in global governance generally identify these as situations of fragmented authority affected by globalization (Dingwerth and Pattberg 2006, Kahler and Lake 2003). Examinations of regulation in global markets also note that fragmented authority frequently leads to “soft” law – as contrasted with the “hard” law of states (Alter and Meunier 2009). “National regulation is primarily about hard rules, that is, laws made, implemented and enforced by governments. By contrast, much of global regulation has traditionally been soft law; that is voluntary standards, best practices and their like.” (Mattli and Woods 2009, p. 3). But soft

law can be hardened when it is endorsed by governments and written into national law (Mattli and Woods 2009, Michaels 2009, Berman 2009).

Some find the premise of governance not rooted in state structures normatively troubling. Steering a collective is what governments do – or should do. The very idea of non-state actors, particularly those with commercial motivations, participating in “steering” – or providing public goods – may seem problematic. There are, however, both theoretical and practical grounds for exploring the participation of non-state or “private” actors in governance. Theoretically, the idea that “public goods” can be provided by private actors has a long history in economics. Public goods are “goods” that are non-rival in consumption and non-excludable.¹ Though these characteristics make it more likely that some will “free ride” and could undermine collective action necessary to provide public goods it is the qualities inherent to the “good” rather than the government provision of it that makes it “public”. Economists write of many ways public goods can be provided without government. A privileged group (at least one individual who benefits more from the provision of the public good than its cost) is one. Government is thus not theoretically necessary to achieve governance.² A variety of other theoretical traditions have noted the influence and participation of private actors in governance – from Marxist notions of capitalist interests “capturing” the state to C. Wright Mills’ power elite to Keck and Sikkink’s transnational advocacy networks.

Practically, there are more and more examples of private participation in contemporary global governance. From corporate codes to global standards to philanthropic missions to multi-stakeholder dialogues, examples of “private” actors participating in collective steering are all around us (Cutler *et al.* 1999, Avant *et al.* 2010). The mere number of these initiatives in global politics makes them important to understand. And it is particularly important to understand the conditions under which steering which serves broad, collective interests can emerge even under complexity (Mattli and Woods 2009, Keohane and Victor 2011).

2.1. Relations among governors and effective governance mechanisms

Whether governance mechanisms are effective depends on the relations among relevant “governors” and their efforts (Avant *et al.* 2010). The overriding question to ask when many governors participate is whether the activities of different actors complementary or competitive. Regardless of the level of formal coordination, regulatory efforts are most likely to direct behavior if they create synergies, encouraging similar behavior or harmonization (Krisch and Kingsbury 2006, Richemond-Barak 2011, Avant *et al.* 2010, Keohane and Victor 2011).³

Beyond complementarity, effective governance also requires the execution of particular tasks. To be effective, advocates of a regulatory scheme must put it on the agenda, mobilize relevant groups to action, negotiate rules, and then oversee and enforce them. This is most likely, according to Abbott and Snidal, when the collection of actors participating in a governance scheme holds the requisite competencies for each part of the governance process (Abbott and Snidal 2009). They list four competencies: expertise, capacity, independence, and representativeness.

¹ Clean air is a classic example. Because the amount of clean air I breathe does not affect what you breathe it is non-rival in consumption. Because we cannot limit the breathing of clean air to only those who contribute to it, it is non-excludable. A private good is both rival in consumption and excludable. A club good is excludable but non-rival in consumption (Olson 1965).

² This logic of public goods has been justifiably criticized. It does not attend to the distributional issues surrounding various paths toward “public goods”. It also ignores situations when one’s public good can be another’s public bad (Avant *et al.* 2010, pp. 365-7).

³ This is largely consistent with the typology of governance processes introduced by Drezner (2007). Though the arguments above would take issue with the need (or even ability) to separate governance outcomes with governance processes, the process I have described is similar to what Drezner describes as “harmonized standards”.

Two of these “competencies” – expertise and capacity – are essential for any steering at all. Knowing what you are doing and being able to do it are prerequisites for governance. Representativeness and independence are different though. These are common principles for democratic or participatory legitimacy. They relate not to effective governance, *per se*, but to governance which serves broad rather than narrow interests – what Mattli and Woods call governance for the “common interest”.

It may be that governance arrangements which have all four are more enduring. But there are examples of effective steering without appeal to participatory legitimacy. Thus I separate the effectiveness of governance efforts from their representativeness. Governance should be least effective when the efforts of relevant governors compete and do not have the expertise and capacities for rule making and enforcement. They should be more effective when the efforts of various governors reinforce one another and the array of involved governors has expertise and capacity. They should be more effective and more likely to serve the common interest when the efforts of governors reinforce one another, and, among them there is expertise, capacity, independence and representativeness.

In some situations there may be different efforts – each with some semblance of the capacities required for effective governance – that compete with one another. This should lead to competing – and less effective – governance. Instances that lack complementarity *and* competencies are least likely to lead to effective governance. Though both of these dimensions are better thought of as continuous rather than dichotomous, the matrix below sums up the expectations.

Table 1: Variation in Fragmented Governance

	Complementary Efforts	Competing Efforts
With expertise, capacity, independence and representativeness	Effective governance that serves global common interest	Competing governance serving different broad but not global interests
With expertise and capacity but W/O independence and/or representativeness	Effective governance subject to capture	Competing governance efforts serving different narrow interests
W/O independence, representativeness, expertise, and/or capacity	Partial governance	Least effective governance

There have been efforts to regulate both small arms and military and security services in recent years. Each has been a situation of fragmented authority with many different governors vying for influence and the US playing a significant role. But the trajectories are different. Small arms efforts appeared to be gaining traction in the late 1990s, moving toward box 3. These efforts lost steam after a UN conference in 2001, however, and have remained stalled in box 4 thereafter (Grillot 2011, p. 536). Initial efforts in military and security services in the 1990s worked against one another and no one governor had the requisite skills to steer the transnational industry, and were thus characterized by box 6. In the last 7 years, though, governors have increasingly converged around a regulatory framework and specific regulation for private security providers. These efforts are not only more complementary but also bring more the requisite skills. Though it would be a stretch to put the sum of current efforts in box 1, they are moving in that direction.

2.2. Explaining effectiveness: the paucity of hegemonic stability theory and the promise of pragmatic networks

At first glance one might think these cases could be explained by a realist variant of hegemony (Gilpin 1981, Gruber 2000, Brooks and Wohlforth 2008, Drezner 2007). Governance appears when the US wants it and does not when the US does not. Though these arguments seem to explain the outcomes in these two cases, they do not predict US preferences on military and security services. They also cannot explain why the US behaved differently at different times. Finally, looking more carefully at the cases reveals that the important governors in the process are not only other states the way these theories would expect.

According to the logic of hegemony US preferences and behavior on these two issue areas should be similar. The US is a major exporter of both small arms and military and security services, which in simplistic terms should lead it to prefer lax regulation on both. If one assumes the domestic voice of established industries rather than the benefits to the government as a whole drives support for regulation (Drezner 2007), arms and services should also show similar dynamics as these two sectors are connected and have become more so in recent years as small upstart military and security service firms in the US have been bought by large defense giants. If one assumes that the degree of negative externalities faced by the US combined with the influence of exporters/consumers is what matters (Efrat 2010), the US should show even less inclination to regulate services than arms – as the US experiences domestic effects from small arms in ways it does not from military and security services.

Furthermore, both what appears to drive US preferences and how the US tries to reach them looks different at different times: sometimes the US appears responsive to domestic constituencies, other times it invokes national interest, and in still others it acts like a major stakeholder in global governance. Finally, while governors can use unilateral and traditional forms of power to halt governance efforts, efforts to support them are more successful when they emphasize persuasion, re-framing and promising to use economic and enforcement to pursue common ends.

What can explain the different results? I argue that in complex situations where many governors are relevant, the key to effective governance is pragmatic interactions to create linkages among them. Pragmatism has a long history in political science and has resurfaced lately as a tool for improving international relations research and theory (Farrell and Finnemore 2009, Friedrichs and Kratochwil 2009, Kaag and Kreps 2012). The concept of pragmatism is also the heart of a recent normative defense of democracy and explanation for different institutional choices (Knight and Johnson 2011).

Knight and Johnson depict pragmatism as resting on three fundamental elements: recognition of the potential for fallibility, rejection of complete skepticism, and commitment to consequentialism (Knight and Johnson 2011, p. 26-7). As they quote Dewey:

The pragmatic conception of truth...places upon men the responsibility for surrendering political and moral dogmas, and subjecting to the test of consequences of their most cherished prejudices (Dewey 1920/1948, p. 159-60).

Participants are pragmatic when they engage with others knowing that they could be wrong, believing that they can improve a situation, and exhibiting a willingness to experiment to see if engagement will pay off.

There are several reasons why one should expect pragmatism to lead to governance. Pragmatic interactions have a greater potential to draw together different actors, even those who may disagree on many things, so long as there is some reason for common action. A commitment to consequentialism can lead

actors with different authorities or perspectives to nonetheless agree to experiment with different approaches. It should also lead to an awareness of which actors could frustrate governance initiatives and should therefore be engaged. And recognizing the potential for fallibility should generate a greater sense of contingency and willingness to walk in another's shoes.

Pragmatic interaction should thus be useful in situations of complexity for both recognizing the relevant governors and linking them together in a way that leads toward collective action. The reverse is also true. Dogmatic commitment to either who should participate or the principles on which governance should be based can often be inhibitors to common action by excluding courses of action and breaking links among important players.

3. Governance dynamics in small arms

Small arms became an issue in the 1990s when civil society actors, the UN, and some governments described them as a threat to human security. A number of regional and voluntary agreements were reached in the 1990s. Pro-governance forces then mobilized to promote binding international regulation. Their efforts were met with resistance by a civil society movement to protect the "right" to bear arms. An ideological standoff between pro-regulation forces pursuing an international "hard" law solution among governments and anti-regulation forces seeking to roll back regulation has led to increasingly competitive governance efforts that leave out important governors (notably arms manufacturers and dealers). Even with the passage of the Arms Trade Treaty (ATT) in 2013, relevant governance on small arms includes competing mechanisms, few of which have the necessary competencies for effective governance.

3.1. Initial efforts

Calls to govern small arms grew in the 1990s as a response to the growing relevance of civil war, the increasing production of small arms, and the transfer of small arms to non-state actors (Boutwell and Klare 1998, Laurance 1998, Small Arms Survey 2010, Bob 2010). In 1994 experts outlined the relationship between small arms and conflict and steps to address it (Boutwell *et al.* 1995). The UN was quick to come on board on this issue. In 1995, UN Secretary-General Boutros Boutros-Ghali called for "Micro-Disarmament" – focused on land mines, small arms and light weapons (UNGA 1995). Also in 1995 the UN General Assembly passed a resolution calling on the Secretary General to research the issue of small arms and lay out options for reducing their numbers (UN A/RES/50/70).

A range of regional and voluntary efforts to regulate small arms in the 1990s suggested that regulation proponents were making headway. The EU adopted the "European Programme for Preventing and Combating Illicit Trafficking on Conventional Arms" in 1997 (to promote information exchange and assist developing countries in eliminating illicit trade). Its "EU Code of Conduct on Arms Embargo" set standards on arms exports and the "Joint Action on Small Arms called for countries to strengthen export management systems for small arms. In 1997 the OAS signed the "Inter-American Convention against the Illicit Manufacturing and Trafficking in Firearms, Ammunition Explosives, and other Related Materials". This legally binding agreement was aimed at combatting weapons used in the illegal drug trade. In 1998 ECOWAS announced a three year expansion of a moratorium on manufacture, import and transfer small arms in their territories. The "Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa" was adopted at a conference in March 2000 (Lumpe 2000, Sato 2004). Also, the Wassenaar arrangement, established in 1996 as a successor to the Cold War era Coordinating Committee for Multilateral Export Controls (COCOM), set up an exchange of information on small arms and light weapons. Though it operates by consensus and

its decisions are non-binding, it has served as a forum for harmonizing categorizations of arms and enhancing transparency (among its members, its negotiations are all confidential).⁴

Many governments joined to help. Norway, Canada and Belgium hosted meetings in 1998 to coordinate action among states on small arms issues. These meetings focused on the development and enforcement of laws about civilian possession, improvement of weapons transfer processes, enhancing weapons collection and destruction efforts, and developing weapons export criteria (Grillot 2011).

UN interest intensified in the wake of the Ottawa Convention to ban landmines. Concerned that the Ottawa Treaty would set a precedent for negotiations to happen outside the UN processes advocates pushed for an international conference at the UN on small arms in 2001 (Bob 2010). Meanwhile, activists who had participated in the campaign to ban landmines turned their attention to small arms and argued for stronger control measures, within countries as well as in exports, all over the world. Activists joined together to form the International Action Network on Small Arms (IANSA) in 1999 with an aim of obtaining an international agreement similar to the Ottawa Convention at the UN conference scheduled for 2001.

In the period before 2001, then, a variety of different efforts were undertaken to put small arms on the global agenda and those interested began to interact with one another and share ideas about how to govern the issue. The various “governors” on small arms appeared to be more or less in sync and with adequate expertise and capacity, roughly characterized by box 3 in Table 1.

3.2. Anti-regulation mobilization

Initial strides in regulation, though, were met by mobilization among anti-regulation forces. In response to tightening gun laws in Australia in the early 1990s, the head of the Sporting Shooters Association of Australia visited the National Rifle Association’s (NRA) headquarters in Washington, DC and asked the NRA to help establish an international forum on firearm laws to protect the rights of gun owners (Morton 2006, Bob 2010).

The NRA had historically been a membership organization, focused on gun safety, hunting and marksmanship; it even supported early gun control legislation in the US. It established the Institute for Legislative Action (ILA) in 1975.⁵ This coincided with an increase in the amount of funding it received from arms manufacturers. At its 1977 annual convention a group focused on second amendment rights won the presidency and launched a more strident approach aimed to hinder regulation (Diaz 2013). With a brief intermission when Charlton Heston took the presidency in 1998 (in part to try and improve the NRA’s image with more moderation), this more vociferous approach has become dominant.

The NRA and its affiliated organizations around the world founded the International Conference on Firearms Legislation (ICFL) in 1993 and then the World Forum on the Future of Sports Shooting Activities (WFSA) in 1997. The WFSA’s early members included the NRA and other US gun groups as well as similar groups in mostly European countries. While the ICFL was focused on domestic gun control, the WFSA geared up to blunt the UN’s efforts to promote international gun control schemes (Bob 2010, p. 190). These groups claimed that people – not guns – are responsible for killing, that legal restrictions on guns will disproportionately affect law abiding citizens rather than criminals, and (drawing from the US Constitution) that people have a “right” to bear arms.

Despite a fairly forceful position that took issue with every part of the pro-governance argument, there were small signs that the WFSA would engage in the

⁴ <http://www.wassenaar.org/>

⁵ <http://www.nrahq.org/history.asp>

1990s. In its efforts at the UN the WFSA argued that it was focused on ensuring that “correct and unbiased information is available to international decision makers” (Goldring 1999, p. 112, Bob 2010, p. 190). In pursuit of that the WFSA applied for and received status as an NGO with the UN’s Economic and Social Council (ECOSOC). Pro-governance forces were also gracious. They opted not to block this move to avoid looking as if they were trying to thwart debate.

3.3. Increasingly ideological interaction

The 2001 UN conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects resulted in the “Program of Action on Small Arms” (POA). It raised attention to small arms as an issue and set a framework for agreement. Even though it is non-binding, it contains a number of governmental commitments: to criminalize illicit gun production and possession; to create national coordinating agencies on small arms; to destroy surplus weapons; to track officially-held guns; to issue end-user certificates for export and transfers; to notify original supplier nations of re-export; disarm, demobilize, and re-integrate (DDR) ex-combatants; to support regional small arms agreements; mark guns during production for identification and tracing; to keep records of gun manufacture; to engage in information exchange; improve enforcement of arms embargoes; and to include civil society in SALW control efforts (United Nations 2001).

Reaction to the agreement, though, intensified the ideological divide between pro-regulation and pro-gun forces and worked to limit interaction between them. The pro-governance side called the POA disappointing and toothless. Human Rights Watch re-named the results as the “Program of Inaction” and was discouraged enough to reduce its activism on this issue. Other NGOs joined with one another to combat opponents of action. On the pro-gun side, the WFSA, the NRA, and other gun rights groups portrayed the PoA as the opening gambit of the UN’s assault on private gun ownership all over the world. They mobilized their forces to roll it back.

Those hoping for a better agreement have cast the PoA as “zombie policy” and explained it as a product of the NRA’s global mobilization efforts and its influence on the US position (Bob 2010). It is certainly true that the NRA is an influential force in American politics generally and with the Republican party particularly. Once the George W. Bush administration took office the NRA could be expected to garner more influence and, as Bob reports, an NRA Board of Directors member (Bob Barr) was actually on the official US delegation to the 2001 Conference (Bob 2010).

It is not entirely clear that the NRA had such effect on the fate of conference though. The US had expressed concern with a “single sweeping top down solution”⁶ since the end of the Clinton administration, partly given concerns with the NRA, but also due to concerns the US had about its freedom of action in foreign policy. At the second Prepcom in January 2001, the US made clear that it would not support any agreement that dealt with issues of civilian possession or transfers to non-state actors. Also, other governments resisted elements of the proposed agreement – China did not want human rights language, Arab states were concerned about transparency, and some southern (non-manufacturing) states were concerned about measures that would limit their access to arms for defense (Meierding 2005).

The language and strategies of the pro-gun groups, though, along with the tone taken by the Bush administration (including Barr’s participation) led to feelings on the part of the pro-regulation groups that the US position had been hijacked by pro-gun forces (Meierding 2005). This contributed to hardening and increasingly ideological positions. The pro-governance groups tended not to acknowledge the

⁶ Remarks of John Holum, senior advisor to the Secretary of State for Arms Control and International Security, at a Feb 4, 2000 meeting of the Small Arms Working Group (SAWG) at the Paul Nitze School of Advanced International Studies. See http://www.state.gov/www/policy_remarks/2000/sp_000204_holum.html

gains made with the PoA, given their view that only biting international law could be effective. Meanwhile, the pro-gun groups made extreme claims about the potential for the PoA to infringe upon the rights of law abiding citizens, equating gun ownership with the potential for self-preservation, and even linking disarmament and genocide (LaPierre 2006). Neither side's arguments were particularly evidence driven. While pro-regulation sources supported the Small Arms Survey (a Swiss-based organization to do research on gun violence) though, the NRA mobilized to prevent the maintenance of records and release of information by the US Bureau of Alcohol, Tobacco and Firearms (ATF) in 2003⁷ (Díaz 2013).

Furthermore, both positions minimized the role of arms manufacturers and arms dealers in governance. This is not to suggest that the arms industry showed much interest in engaging in effort for the common good (Byrne 2007). But there was some movement toward at least the idea of corporate social responsibility in 2000 when Smith and Wesson broke ranks with the rest of the industry and agreed to settle litigation, adopt new designs to limit gun operation by children and require that its dealers conduct background checks even at gun shows. In response, anti-regulation forces argued that companies have no authority to make such judgments. Some have even claimed that efforts to mediate sales in any way would infringe on individual freedom. And the NRA orchestrated a boycott of Smith and Wesson, leading its sales to plummet (McIntire and Luo 2013). Pro-regulation forces, on the other hand, were reluctant to put faith in corporate social responsibility or any measures short of hard law.

In the wake of the 2001 conference rancor grew. So did the influence of the NRA on US policy. Pro-gun forces aimed to frustrate or repeal both domestic and international regulation on the basis of a different normative claim about the self-protection benefits of access to weapons (Grillot 2011). The NRA's action included lobbying Congress to shield arms manufacturers from lawsuits. With a friendly ear in the Bush administration and the Republican Congress, the "Protection of lawful commerce in arms" was passed in 2005.⁸ The NRA also gave advice to arms rights groups in other countries, most prominently, Brazil. There what looked like a popular proposal to outlaw the commercial sale of arms and ammunition to civilians in 2005 looked like it had majority support. In the wake of a campaign advised by the NRA to protect the "right" to bear arms (not a traditional right in Brazil), the proposal was rejected by a margin of 2-1. Ads warned that the proposal would not disarm criminals but would take away popular rights and urged viewers "Don't lose your grip on liberty" (Morton 2006). The NRA also has ties to gun-rights groups in other countries and is concerned that any gun control will impact the US. As put by one NRA member before the vote in Brazil, "We view Brazil as the opening salvo for the global gun control movement. If gun control proponents succeed in Brazil, America will be next." (Morton 2006). Similarly a NRA representative to the UN stated, "We live in a very globalized society, you can't say what happened in Scotland doesn't affect the United States, because it does." (Morton 2006). The NRA also joined the WFSA in concerted grassroots efforts to block and even roll back the PoA at the 2006 Review Conference on Small Arms (RevCon) (Bob 2010).

Meanwhile, pro-regulation forces re-mobilized to push for the insertion of "teeth" in the PoA at the RevCon. They had some support among European governments but their hopes would have been tough to achieve even with the US on board. They were completely unrealistic without it (Meierding 2005). At the RevCon the US maintained its restrictions on stipulations about civilian fire arms, its ability to sell or give arms to whomever it pleased, and even added restriction on regulation of

⁷ With the "Tiahrt Amendment" to the FY 2003 Appropriations Bill. The amendment has appeared in every appropriations bill since. It was expanded several times but began to be rolled back in 2009. See also http://www.mayorsagainstillegalguns.org/html/federal/history_tiahrt.shtml.

⁸ <http://www.gpo.gov/fdsys/pkg/BILLS-109s397enr/pdf/BILLS-109s397enr.pdf>.

ammunition. China, Russia and Arab states that had joined the US in 2001 were also unchanged. Pro-regulation forces then pushed further later in 2006 for a UN General Assembly resolution for to create a comprehensive Arms Trade Treaty (ATT). Demonstrating its increasing connection with the NRA's view, the US distinguished itself by being the only state to vote against this resolution.

3.4. Moves toward pragmatism?

When the Obama administration took office in 2009 it reengaged the UN and the proponents of regulation on the ATT. Even agreeing to take part in the process, however, caused the NRA to send out a press release telling people that the UN was going to regulate private gun owners in the US. What Obama and Clinton could not get in domestic legislation, the NRA argued, they would try and bring in through the "back door" of the UN.⁹ Meanwhile, pro-regulation forces were profoundly disappointed with Obama's efforts. US hesitancy and Chinese resistance led the meeting to consider a comprehensive Arms Trade Treaty in 2012 to adjourn at the end of July without reaching any consensus (Gladstone 2012).

Continued negotiations, perhaps buoyed by the Obama administration's recommitment to halt gun violence in the wake of the Newtown shootings did lead to the passage of the ATT in 2013. The ATT includes small arms, light weapons, and ammunition, and is thus "a significant addition" to global governance efforts on small arms. Because it contains a number of provisions that are weaker than commitments on small arms transfers in the PoA, however, some worry that it could be a step backwards in some areas (Survey 2013). Obama's efforts may have led some advocates of governance in small arms to become somewhat more pragmatic but, thus far, common ground has been hard to find and the arms industry remains unengaged. Though the US has signed the treaty, few expect Congress to ratify it.

3.5. Assessing the trajectory of regulatory efforts in small arms

The environment surrounding small arms reflects a fragmented global governance process. As the arms industry became more transnational in the 1990s even powerful individual countries lacked the competencies to control the industry on their own. Despite harmonization of some parts of the process, lack of agreement about many others has led to more sales and sales that reflect an array of different and competing goals. In the US – as well as in other powers such as the EU, Russia and China – the arms industry also appears quite adept at eroding government's independence. Both export and procurement processes offer opportunities for particular interests to win out.

The efforts of governors have often worked at cross purposes. The UN, the EU, and part of civil society (IANSA joined with other NGOs to form the Control Arms Campaign) have aimed at generating global and binding regulation to limit the spread of small arms. Despite support for this global regulatory effort, the EU and its member states still promoting their domestic industries in ways that frustrate global regulation. The recent EU Directive simplifying trade in defense related items within Europe is an example (European Parliament 2009). Though the US worked in the wake of 9/11 to crack down on a variety of illicit transfers, including weapons, its overall approach has enhanced the flow of small arms. It supplies weapons to countries in Latin America and the Middle East despite concerns that these weapons end up in the wrong hands (Stohl and Tuttle 2008). The US also reviewed export

⁹ <http://citizenwells.com/2010/06/15/un-small-arms-treaty-mexico-obama-administration-hillary-clinton-second-amendment-nra-video-plan-to-confiscate-our-guns/> For coverage of Clinton's statement, see <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=abkyS4.975YM>. In fact, the Obama administration, like the Clinton administration, pursued a cautious approach vis-à-vis UN efforts on small arms – in part because of worries about the potentially high political costs.

policies in 2012 to boost trade.¹⁰ Despite high profile incidents of gun violence, gun control in the US is lax – in ways that also feeds into illicit arms in the region (including arming Mexican drug cartels). The US has been more apt to support smaller scale attempts to use existing law, to develop best practices, to encourage sharing of information, and to crack down on illegal activity, arguing that this type of approach avoids grandstanding by governments eager to grind an axe against the US. Pro-control advocates have dismissed smaller scale efforts as inconsequential (Karp 2006). Finally, a portion of civil society mobilized to promote freedom over the right to bear arms. The NRA and the WFSA has sought to stymie regulation altogether in favor of pursuing an agenda preserving the “right” to carry weapons. Though based in the US this movement has a global organization and its US group has links with gun control opponents in many other countries. It has mobilized US opposition to UN regulatory efforts and worked to encourage opposition in other countries as well. Even having the small arms “problem” on the agenda is anathema to this perspective. The arms industry has supported the NRA’s efforts with donations. Even moves to generate self-regulation have been punished (McIntire and Luo 2013).

Few of the mechanisms have the competencies for governance that would be recognized as in the global interest. The US position, judging by public option polls, does not represent collective interests even in the US and lack of regulation has eased the arming of US opponents in conflict zones (IHT 2007). EU governments support global regulatory efforts but take inconsistent national action. Pro-regulation forces have focused on passing regulation even when it does not have the support of countries necessary for enforcement. Anti-regulation forces have been working to roll back what law there is. There have been almost no efforts working for small steps in between these opposing positions (Karp 2006) In this setting the number of small arms on the world stage has continued to grow. The 2012 Small Arms Survey showed the annual value of authorized international transfers of small arms, light weapons, their parts, accessories, and ammunition to be at least \$8.5 billion, more than double the 2006 estimate (Survey 2012). While the relationship between small arms and violence remains contested, the lack of effective steering surrounding small arms is not. Thus governance of small arms is best characterized by competing governance efforts serving different narrow interests without the requisite competencies for effectiveness.

4. Dynamics in military and security services

As the military and security services industry grew in the 1990s the initial reaction was contested. Some saw the industry as a resurgence of mercenaries and others as a tool to be exploited for foreign policy aims. Few focused on global regulation. In the wake of dramatic incidents in Iraq and Afghanistan, the “Swiss Initiative” sought to engage relevant stakeholders to catalogue existing law and responsibilities vis-a-vis private military and security companies (PMSCs). The resulting the Montreux Document became a focal point for a roadmap to greater global regulation. It both influenced regulatory initiatives in individual states and additional global efforts to develop an International Code of Conduct (ICoC) for private security providers as well as national and international standards endorsed by governments and written into contracts. Though it is premature to call these efforts effective, there is a growing set of overlapping and reinforcing regulations that draw on the same principles and coordinate the requisite competencies: expertise, enforcement, representativeness and independence.

¹⁰ http://www.washingtonpost.com/politics/obama-plan-would-ease-weapons-export-rules/2012/05/02/gIQAfTJhxT_story.html

4.1. Initial efforts

Though there were both recent and historical antecedents, a new global military and security services industry began delivering services in conflict zones, including services that had been considered core military capabilities in the modern era. Demand came from the US, many other governments, and non-state actors ranging from international organizations to humanitarian NGOs, to multi-national corporations (Avant 2005, Stoddard *et al.* 2008, Deitelhoff and Geis 2009). Uneven national regulatory structures and the industry's global nature made it difficult for any one government to regulate it effectively.

Initial regulatory efforts included both national policies and international/global responses. The United Nations led an international effort to ratify the "International Convention against the Recruitment, Use, Financing, and Training of Mercenaries". In 1987, the United Nations Commission on Human Rights had appointed a Special Rapporteur on the use of mercenaries.¹¹ As the industry in private military and security services grew, the UN office (held from 1987-2004 by Mr. Enriques Bernales Ballesteros, Peru) continued its focus on ratification of the "International Convention" and either side-stepped the issue of PMSCs or argued they were conducting mercenary activity (International Alert 1999). The International Convention was passed in 2002.¹² Its ambiguous definition of mercenary led to difficulties even identifying mercenary activities.¹³ And even if they were identified, there are not bodies willing to enforce this convention. Nonetheless, Mr Ballesteros and then his successor, Ms. Shaista Shameem continued, as per their mandate, to focus on PMSCs as potential evidence of mercenary activity. Several NGOs supported the UN's position to condemn PMSC activity as mercenary.

South Africa passed regulation that sought to outlaw the industry. Though it was a target of the initial UN Special Rapporteur on Mercenaries, the South African government took an about face after apartheid laws were repealed in 1992 and the African National Congress won a majority in 1994. The government was at first suspicious of its nascent private military and security industry and then attempted to crack down on it. The government enacted the *Regulation of Foreign Military Assistance Act* in May 1998. Though ostensibly designed to regulate, many in the private sector (and, off the record, in government) saw the South African law as attempting to essentially outlaw the industry (Avant 2005, p. 162).

The US largely ignored these efforts and sought to use the industry for its purposes using its existing regulatory structure. It had in place a variety of rules for government contracting for military and security services (the Federal Acquisition Regulations, FARs, and the Defense Department Supplement to these, DFARS) and for regulating the export of military services (the International Transfer of Arms Regulations, ITAR).¹⁴ Though there were many gaps the US government was initially relatively sanguine about its ability to control contractors and to harness the industry for US goals (not the same as the global good) (Avant 2005, p. 152).

One NGO, International Alert, pushed for the development of global regulation (Beyani and Lilly 2001). And there were steps to self-regulate by PMSCs. In an

¹¹ United Nations General Assembly, A/RES/41/102, 4 December 1986.

¹² See Fifty-sixth General Assembly, A/SCH/3600, Third Committee, 31 October 2001, 26th meeting. Discussion of document A/56/224 summarizing the activities of the Special Rapporteur.

¹³ The International Convention defines a mercenary as someone who is specifically recruited for the purpose of participating in a concerted act of violence aimed at overthrowing a government or undermining the territorial integrity of a state, and is motivated by the desire for private gain and material compensation, is neither a national nor a resident of the state against which such act is directed, has not been sent by a state on official duty, and is not a member of the armed forces of the state on whose territory the act is undertaken.

¹⁴ A defense service is defined as assistance, technical data or training related to military units. This regulation does not apply to law enforcement or sales of security advice to private entities. "International Traffic in Arms Regulations," (22 CFR 120-130) as of April 1, 2001 (United States Department of State, Bureau of Political-Military Affairs, Office of Defense Trade Controls).

effort to distinguish themselves from mercenaries, Sandline claimed to be an “ethical” company, EO said it would work only for legitimate governments, and MPRI refused to have its personnel carry weapons. At the end of the decade an industry group called the International Peace Operations Association, IPOA, (founded and led by a former academic researcher) introduced a code of conduct for military and security companies.¹⁵

There was also a movement (at the time not involving PMSCs) to generate security best practices for extractive industries working in unstable areas. The Voluntary Principles on Security and Human Rights were negotiated by a mix of governments, extractive industry companies and civil society groups and adopted in 2000. They created minimum standards by which extractive industry corporations could maintain their safety and security within a framework that ensured respect for human rights. The Voluntary Principles are non-binding but provide guidance to extractives companies on maintaining the safety and security of their operations, including contracting for security services, within an operating framework that ensures respect for human rights and fundamental freedoms. Though not aimed at companies delivering security services, it was the first multi-stakeholder agreement in this arena. As we will see, it had implications for PMSCs even though no PMSCs were involved in the process and it provided a model for other multi-stakeholder efforts in this sector.

4.2. Shifts toward complementarity

Events in Iraq and Afghanistan led to controversy mid-decade. Concurrent with these, the “Swiss Initiative” (collaboration between the Swiss government and the ICRC) sought to bring together stakeholders to counter the claim that there was a vacuum of law surrounding PMSCs by cataloguing existing law and implied responsibilities. The resulting Montreux Document became a focal point and a roadmap for a regulatory framework. Meanwhile, congressional calls for action in the wake of the controversies put pressure on the Department of Defense and the State Department to act. Officials within the US government who were participants in the multistakeholder initiative have increasingly used the Montreux roadmap to inform US policy and also to increase the chance that all private security companies (not only those hired by the US) will abide by regulatory standards. In the midst of all of this, the UN turned its efforts from abolishing mercenarism to regulating the industry and, increasingly, is looking for ways to enhance the Montreux framework.

The Swiss Initiative was an explicitly pragmatic exercise from the outset. It sought to engage with states and with members of the PMSC industry to encourage states exercise the responsibilities they had already committed to with particular regard to international humanitarian and human rights law.¹⁶ The resulting Montreux Document issued in late 2008 was developed with participation of seventeen governments as well as representatives from civil society and the private military and security industry (as of 2013 forty-six states supported it).¹⁷ The Montreux Document does not establish new law, but instead describes and clarifies the responsibilities of states and PMSCs under existing international humanitarian and human rights law. It disaggregates states on the basis of their relationships to PMSCs: contracting states (that contract for PMSC services), territorial states (where PMSCs operate), home states (whose citizens are PMSC personnel) and all other states. Then it articulates the different responsibilities of state in each of these relationships with PMSCs. It both defines the international responsibilities of states with regard to the industry and suggests best practices for national laws in contracting, home and territorial states. The Montreux Document also called for

¹⁵ See <http://ipoaworld.org/>. IPOA became ISOA in 2010.

¹⁶ <http://www.icrc.org/eng/privatisation-of-war>

¹⁷ <http://www.eda.admin.ch/eda/en/home/topics/intla/humlaw/pse/parsta.html>

additional efforts, including the development of an International Code of Conduct (ICoC) for security providers.

The Montreux Document established a framework that was useful to US policy makers in the wake of controversy in Iraq.¹⁸ The explosive growth of PMSCs in Iraq – both their numbers and their use as armed guards – generated concern in the US. Every single National Defense Authorization Act since the war began contained changes aimed at controlling contractors.¹⁹ The shootout by Blackwater personnel in a Baghdad square in 2007 led to particular concerns about security providers. When Congress called for something to be done, those in the Department of Defense who were tasked with doing something were just the people who have been involved with the Montreux process. They saw the (soon to be signed) Montreux Document and the follow on processes it called for to develop an ICoC as useful for addressing these concerns.²⁰ The US thus put its support behind a follow-on effort to facilitate the development of a standard of behavior, attentive to international human rights and humanitarian law, for companies that provide security services.

The ICoC for Private Security Providers was finalized and first signed in October 2010.²¹ It details general values consistent with the principles outlined in the Montreux Document. The ICoC obliges companies to specific principles regarding the conduct of personnel as well as commitments regarding management and governance in accord with the “Respect, Protect, Remedy” framework developed by the Special Representative to the United Nations on Business and Human Rights.²² It pledges to not only set forth principles but work with national and international standards bodies to translate these into standards. The ICoC put in place a multi-stakeholder steering committee to serve as a temporary governing board and develop a permanent independent governance body. The Charter for this governing body, the International Code of Conduct Association (ICoCA), was agreed upon by stakeholders in February 2013 and the ICoCA was launched in September 2013.²³

Once the ICoC was in place, the US Department of Defense also retained American Society for Industrial Security, International (ASIS International), a standards development organization, to develop American National Standards Institute (ANSI) standards for private security companies informed by the Montreux Document and the International Code of Conduct. Compliant with ISO processes, the standards development process is open to participation for users/managers, producers/service providers and those who have a general interest.²⁴ The process aims for consensus and all agreed on documents are subject to public review and approved as per ANSI approval processes. The ANSI PSC 1 articulates the management standard, three others stipulates procedures for accrediting and auditing, phasing in, and applying PSC 1 in maritime settings.²⁵ All specify the Montreux Document and the International Code of Conduct as articulating the principles around which they are

¹⁸ Communication with Chris Mayer September 2012.

¹⁹ See http://psm.du.edu/national_regulation/united_states/laws_regulations/index.html for summaries of each Act's relevance for PMSCs.

²⁰ Interview with Gary Motsek, January 2011.

²¹ <http://www.icoc-psp.org/>.

²² <http://www.business-humanrights.org/Links/Repository/965591>.

²³ <http://www.icoca.ch/>.

²⁴ As an accredited SDO, ASIS participates actively in the ISO. See ASIS International “Standards and Guideline: Quick Reference Guide,” available at <http://www.asisonline.org/guidelines/committees/docs/SGquickReferenceGuide.pdf>.

The initial meeting for PSC 1, the Management System Standard, included nearly 150 voting members (45 user/managers, 55 producers and 49 general interest participants) along with 50 observers. Both voting members and observers hail from a wide array of different countries.

²⁵ http://psm.du.edu/international_regulation/global_standards_codes_of_conduct/asis_standard.html.

developed. The US requires that companies it contracts with be compliant with ANSI PSC 1 Standard.²⁶

There have also been efforts by the Montreux community to make linkages with other related agreements. For instance, the Voluntary Principles on Business and Human Rights was created without input from PMSCs but there are ways in which the ICoC could aid extractive companies looking for security providers. And, were Voluntary Principles signatories to use the ICoC it would extend the principles and practices developed in the ICoC to a new (and significant) portion of global demand for private security. These members of the Voluntary Principles have been invited to participate as observers to the ICoCA in the hopes of extending the potential for governance among a greater group.²⁷

Finally, some of those who were most critical of the industry, particularly at the UN, have begun to look for more consequential action regarding PMSCs. In July 2005 the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination was established to succeed the mandate of the Special Rapporteur on the use of mercenaries.²⁸ The working group was reauthorized in 2008 and asked to, among other things, prepare a draft of international basic principles that encourage respect for human rights by PMSCs.²⁹ A "Draft International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies," was released in July 2009. Since then the UN working group has collected information on the use of PMSCs in various contexts, is working to collect information on the range of national legislation and its compliance with the best practices suggested by the Montreux Document and is looking more generally to what it can do – via a draft convention or otherwise – to support the principles in the Montreux Document and ICoC and to situate its efforts within the broader "UN Guiding Principles on Security and Human Rights".³⁰

Among all the actions in recent years, South Africa's efforts stand out as the least in sync with the other regulatory effort. South Africa did participate in the process leading up to the Montreux Document and is a signatory. However, its *Prohibition of Mercenary Activity and Prohibition and Regulation of Certain Activities in an Area of Armed Conflict Bill* passed in 2006 echoes its more critical stance from the 1990s. In 2013 – seven years later – the law has yet to be implemented. It is not altogether apparent why this is the case. Some suspect, however, that it reflects concern in South Africa that implementation will go against the grain of other efforts to regulate the industry and will damage South Africa's influence as well as the ability of the South African PMSC industry to compete in the global market.³¹

4.3. Assessing the trajectory of regulatory efforts on military and security services

The regulatory environment surrounding military and security services is equally fragmented as that of small arms. Nonetheless, there has been noteworthy convergence among the efforts of the various governors leading to greater complementarity and more competencies. The Montreux Document specifies the responsibilities of governments engaged in various ways with PMSCs under established frameworks of IHL. The ICoC and ANSI standards specify the

²⁶ Title 48, Part 225, Subpart 7401 of the Code of Federal Regulations requires use of ANSI/ASIS PSC.1 standard through implementing instruction PGI 225.7401(a) <http://www.gpo.gov/fdsys/pkg/CFR-2007-title48-vol3/pdf/CFR-2007-title48-vol3-part225-subpart225-74.pdf>.

²⁷ Interviews with DCAF 2012, participant observation at the drafting conference for the ICoCA (February 2013) and the launch conference for the ICoCA (September 2013).

²⁸ Pursuant to Commission on Human Rights resolution 2005/2.

²⁹ <http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/WGMercenariesIndex.aspx>.

³⁰ Conversations with members of the Working Group and participant observation in working groups meetings, June 2011, July 2012.

³¹ Interviews with South African academics and analysts, March 2011.

responsibilities of PMSCs themselves. Governments, NGOs, industry groups and even the UN have largely signed on to this regulatory agenda.

The development of standards based on the Montreux Document and the ICoC has been among the more contentious developments. Some in civil society saw the standards process as not properly “multi-stakeholder” and as potentially competitive with the ICoC (Cockayne 2012). Reactions, however, have been largely pragmatic in their focus on bringing evidence to bear. All sides also continued to engage in developing the ICoCA and working to enhance the interface between the ICoC and Standards and ties among the parties have been maintained.

There have developed significant overlaps in what various regulatory efforts seek to do. The Montreux Document principles highlighted deficiencies in the US regulatory system. Changes in US law reflect attention to just these deficiencies. The US now tracks PMSCs in named contingencies, has specified oversight responsibility for them while in theater, and has set in motion tools to keep track of incidents of potential misbehavior. It has also changed its law to make criminal prosecution of wrongdoings easier.³² The ICoC takes up the issue of private security contractors specifically and lays out a general framework for their conduct and the ANSI PSC 1 standard allows these to be written into contracts.

Along with these complementary efforts have also come greater expertise and capacity. Participants, including from the US, explicitly discussed the need to bring in industry and civil society involvement (from various parts of the world) in order to generate standards that would work in different transnational contexts. US requirements that its contractors be compliant with standards based on the Montreux Document and ICoC put US teeth (both purchasing power and contractual enforcement) behind these multi-stakeholder initiatives.

Those within the US government believed that access to expertise and independence would not be forthcoming if the US used a heavy hand. They saw the legitimacy that the ICRC, the Swiss and DCAF had as crucial to the success of the governance initiative. They draw sharp contrasts between what they say were poor decisions to use hard power to generate unilateral rules (such as the infamous CPA Order # 17) and current choices to throw their influence behind processes that are seen as more legitimate and representative.³³ They also remind other stakeholders, though, that their purchasing power does a lot to enhance the appeal of global standards and enforce them in contracts with the US government.³⁴ This web of regulatory interaction has the spread of competencies that are important for both effective governance and governance that serves a broader set of interests.

Though effective steering may not always coincide with the “common interest” the US was better able to steer when it acceded to the inclusion of a broader range of voices in the governance process and used persuasion and encouragement rather than threats to generate consensus. The “teeth” behind its purchasing power and legal changes to enforce compliance were most effective when they were tied to a broad and commonly endorsed purpose. By joining US capacities for enforcement with broader efforts at setting global standards the US was able to broaden the impact of its action.

It is too early to come to firm conclusions about these efforts. Over 700 companies have signed on to the ICoC though and 135 of them have joined the ICoCA.³⁵ And companies, civil society groups, and governments agree that the context for PMSCs

³² Though there is still controversy over how these changes will work, the US voted to extend its Uniform Code of Military Justice to contractors in contingency operations and enhance other mechanisms for holding PMSC personnel criminally accountable. See USG 2007; USG 2009.

³³ Interviews with US Department of Defense officials January 2011, December 2011.

³⁴ Remarks of a US Department of Defense official, January 2011.

³⁵ See http://www.icoc-psp.org/Home_Page.html for signatories of the ICoC; <http://www.icoca.ch/> for members of the ICoCA.

has changed significantly since 2005. Few would argue with a claim that there is more global steering now than there was before 2005.³⁶ All of this leads me to characterize these efforts as somewhere between boxes 3 and 1.

5. Pragmatic action, linkages, and complex governance

Both small arms and military and security services are fragmented issues where states, NGOs, companies, and international organizations all participate to influence outcomes. Effective governance requires complementarity of efforts among would-be governors and a minimum of expertise and capacity to set the agenda and create, implement, and enforce rules. When efforts also represent various interests and show independence from any one interest they are more likely to not only be effective but also serve common interests. The trajectory in small arms moved away from effectiveness and serving common interests military while military and security services moved closer to both.

As the US played a significant role in both of these stories, it may be tempting to attribute the outcomes to a realist version of hegemony theory. This would be a mistake. Though the US is important as hegemony theory suggests, the stories above are as much about who the US interacts with and who defines US interests as they are about the pursuit of US interests. The US has adopted positions consistent with the demands of a domestically constituency, its foreign policy flexibility, and a transnationally based constituency. And it has used a broad array of different levers of power to pursue these. These actions together challenge key assumptions of hegemony theory.

Instead, I have argued that pragmatic action to engage relevant governors and create linkages among them is the key to effective governance in fragmented settings. By starting small (to simply to catalogue what governments had already agreed to) the Swiss Initiative translated existing agreements into language relevant to PMSC, and thereby generated new ideas and the beginnings of a governance network that included a significant portion of relevant governors around a common normative agenda. The ICoC built on this success and continued building linkages among companies, governments, and civil society members. When controversy in Iraq and Afghanistan pushed the US to take action, these new ideas and the processes that surrounded them provided the direction for US behavior. US support for these ideas and processes also gave them greater effect. Those eager to promote steering, including the US, have been more effective using persuasion and linking enforcement powers to these commonly agreed upon goals. The process of developing an association to oversee, monitor, and enforce company compliance with the ICoC was full of disagreement but maintained largely pragmatic and respectful behavior by all sides.

Though many promoted the governance of small arms in the 1990s, efforts to encourage more coordination pushed, perhaps too fast and too soon, for binding international law even in the face of significant resistance among key governments. The arms industry was not a part of the governance efforts, except in an indirect way through its financial contribution to the NRA and its affiliated groups. Pro-gun groups mobilized under a competing normative rationale to counter new regulation and roll back what already existed. The NRA's ability to influence the US during the Bush years left pro-regulation advocates without US support. Strong ideological positions on both sides broke linkages among relevant governors. The US has re-engaged under Obama and there is now an ATT that the US is likely to sign. The level of convergence among governance mechanisms is still low, though, part of civil society is mobilized to fight any effort, and the arms industry is not engaged.

³⁶ See remarks made at the ICoCA launch conference, <http://www.icoca.ch/launch-conference.html>.

5.1. Normative implications

Those promoting the regulation of small arms have been described as pursuing a maximalist but frustrating agenda (Karp 2006). Efforts to regulate military services might be described as a more satisfying but also more minimalist. Pragmatic engagement of the industry and powerful governments has led to consensus about the need for regulation and small steps that seek not to eliminate the industry but to shape its (and its clients') behavior.

What are the implications of these trajectories? Do more pragmatic goals open the way for better regulation via the harnessing of the power of important clients and security providers behind human rights and humanitarian norms? Might small arms regulation learn from this example – perhaps by pursuing a more refined, minimalist approach to assure better control over all small arms and attention to venues other than the United Nations? (Karp 2006) Or does engagement with firms who provide security services facilitate the expansion of commercial military activities and thereby the expansion of violence? (Leander 2012)

Leander argues that, as agents of security and risk, private security/military companies gain power as exceptional actors (Leander 2010). As commercial agents they are assumed to be efficient and subject only to ad hoc accountability. By engaging these companies in codes of conduct, which separate good from bad companies, would be regulators have legitimized the role of PMSCs in global politics, and thus facilitated the expansion of violence inherent in military markets, and diffused discourses of militarism (Leander 2010).

This argument assumes that private security companies – by virtue of who they *are* – have a particular character that is natural or “essential”. It may be, however, that what security entails and whether PMSCs have militarizing voices is subject to change (Avant 2007). Debates about what security is suggest as much. There is also evidence that the behavior of military organizations and personnel vary. It is indisputable that changing processes of governance and regulation changes politics – and indeed, this is one of the key arguments made about the impact of new actors in global governance (Ruggie 2004, Avant 2005, Avant *et al.* 2010). Militarized voices, though, can be changed just as other voices can. If we do not assume that various politics actors have essential qualities, then the ideas, norms, strategies, and practices that shape participation matter. Conversations about proper behavior for PMSCs may legitimize their participation in global politics, but also change the behavior they see as important to their continued profitability.

6. Conclusion

The presence of fragmented authority is increasingly a fact of global governance. Rather than simply noting the presence of fragmentation, I sought to understand variation in governance *given* fragmentation. I suggested we gauge the effectiveness of governance mechanisms by examining their relative complementarity and competencies. To explain why effective mechanisms grew in one area and not in the other, I have argued that pragmatic engagement can encourage linkages among the relevant governors – including the US – to become a web that encourages complementarity and the prospect for more competencies. Conversely, ideological mobilization is likely to break off connections among important players and discourage complementarity.

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