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F. Francioni and N. Ronzitti (eds). **War by Contract: Human Rights, Humanitarian Law and Private Contractors**. Oxford: Oxford University Press, 2011. Pp. 532. £95. ISBN 9780199604555.

Although the sub-title of the book indicates that the authors are not going to deal with all the legal issues arising in the context of a 'privatization' of warfare, the book, and not only the first chapter by Eugenio Cusumano on the policy prospects of regulating private military and security companies (PMSCs), throws its net wider than the title suggests. And rightly so. The privatization of warfare is a consequence and an element of the post-Cold War triumph of capitalism, and especially its neo-liberal advocates' tendency to privatize and deregulate all and everything. It is not by chance that PMSCs have mushroomed in the heartland of neoliberalism – the USA – faithfully followed by its Anglo-Saxon brethren on this side of the Atlantic. As the book specifies, in 2009 there were approximately 119,706 Department of Defense contractors in Iraq, compared with about 134,571 uniformed personnel (at 13). The authors accept the privatization of various functions of the state, including its 'monopoly of violence', to be almost inevitable. Nevertheless, they call for stronger and tighter regulation of the status and functions of PMSCs and control over their activities. They also show that though often new norms may be needed, in many cases existing laws, and their stricter and sometimes more creative application, may serve the purpose. The book concludes that 'many private military and security companies are operating in a "gray zone", which is not defined at all, or at the very least not clearly defined, by international legal norms' (at 340).

Though private security (not military) companies, whose functions may range from running prisons to acting as bouncers in nightclubs, have a presence in practically all countries, the authors concentrate on the activities of those PMSCs which operate in the most hazardous situations, including the context of armed conflicts, be they of international or non-international

character, and sometimes take a direct part in hostilities. In such a setting, it is natural that both human rights law and humanitarian law become highly applicable. Even *jus ad bellum* may become relevant, as the book shows (at, e.g., chs 12, 20). The fact that issues concerning PMSCs go beyond the domain of human rights and humanitarian law is illustrated by the very topical and interesting chapter by Natalino Ronzitti on piracy and the possible role of private contractors in protecting shipping from this oldest of international crimes – a chapter which stands out not only qualitatively (there are many high quality chapters), but also structurally.

Among the authors there is a good balance between well-known and mature international lawyers and those whose academic careers are just taking off, and for whom this book will surely provide a serious impetus for further research. Though the book is well structured (Part II deals with human rights issues, while Part III is devoted to international humanitarian law matters), it is necessary to warn the reader that one often has to consult various chapters of the book in order to find an answer to a specific question. For example, the chapter on the role of the host state in ensuring compliance with human rights by private military contractors contains material that is equally relevant to questions of international humanitarian law. There are quite a few such crosscutting reflections in the book, others being the responsibilities of states, PMSCs, and their personnel.

Although in most cases PMSCs and their personnel act on the side of the law, including human rights law and humanitarian law, the practice of some of these organizations reveals that they may also breach it. Francesco Francioni diplomatically and politely observes that the growing attention to the activities of PMSCs in light of human rights and humanitarian law 'is not so much because PMSCs must be considered inherently inimical to human rights, but rather because their growing role and importance raises questions as to the transparency of their mandate and operation, the adequacy of existing national legislation for the prevention of abusive uses of force, and, more generally, the adaptability of existing human rights standards to the conduct of PMSCs as business entities' (at 93–94). Therefore, it is important to define which state (neither deregulation nor self-regulation helps here) bears responsibility for the acts of PMSCs and their personnel. The authors distinguish between the PMSC's 'home state', i.e., the state where the company is registered or where either its headquarters or its main places of business are, the 'hiring state', i.e., the state that hires the company (of course, sometimes there is no hiring state since such companies may be, and are, used by non-state actors), and the 'host state', i.e., the state on whose territory a company carries out its functions.

A special case of the possible and actual use of PMSCs is the protection of commercial vessels from an increasing number of pirate attacks. Today, the navies of various states often offer such protection in the more dangerous waters of the world's oceans, but, as Ronzitti writes, '[T]he fleets are too big to adapt to a variety of changing tasks and the role of small units and armed guards is gaining currency' (at 50). He points out, however, that PMSCs may be used for 'self-defence' by commercial vessels against pirate attacks, but not for 'pirate hunting', which, in accordance with international law, has to be reserved for military or other governmental vessels.

One of the important issues analysed in the book is the status of the personnel of PMSCs in the context of armed conflicts. Are they combatants or non-combatants (e.g., civilians accompanying armed forces)? The authors also examine the possibility of considering PMSC personnel as mercenaries, and come to the conclusion that though such a finding should not be excluded completely, by taking account of the character of the definition of 'mercenary' in Article 47(2) of Additional Protocol I, a characterization as mercenaries is rather improbable. At the same time, they find that 'when a state hires an organized private unit for coercive services, the existence of the factual link required for "membership in the armed forces" within the meaning of Article 43(1) is not unlikely, once the following three conditions are present: the contract defines precisely the tasks to be performed by the company, the state authorities assure adequate oversight and coordination of the activities, and the PMSC's employees are subject to criminal

jurisdiction' (at 203). In practice, this means their inclusion in the armed forces of a state; hence they can be and have to be considered combatants, with all the consequences ensuing from this status. Even if in most cases, within the context of an armed conflict, the personnel of a PMSC remain civilians, there are also ambiguous situations. Therefore, the authors analyse the applicability of the concept of 'direct participation in hostilities' to certain activities of the personnel of PMSCs. In that respect, the book follows the ICRC's *Interpretive Guidance on the Notion of Direct Participation in Hostilities under IHL* published in 2009. Analysing, for example, certain activities of the infamous American PMSC Blackwater (later renamed several times), particularly the events of 4 April 2004, when its personnel engaged 'in tactical military action in concert with US troops' in Najaf, the book concludes that such activities constitute 'direct participation in hostilities' (at 207). In situations of such a nature, the personnel of PMSCs lose their status as civilians, become targets of lawful attacks, and if captured by the enemy do not enjoy privileged PoW status. They may be tried for the very act of taking part in hostilities. Blackwater became especially notorious after it had massacred 17 Iraqi civilians and injured many more in the Nisoor Square incident of 16 September 2007. Similarly, certain intelligence or maintenance activities by personnel of PMSCs may also be considered as 'direct participation in hostilities'.

The importance of the book goes beyond problems related to the increasing utilization of PMSCs. For example, Francioni's chapter on the role of the 'host state' in regulating and bearing responsibility for the activities of PMSCs and their personnel raises and discusses several important controversial issues concerning the nature of international human rights law. In recent decades there has been a tendency to hold that not only states, but also various non-state entities such as private firms or even individuals (e.g., a husband abusing his wife), have to be bound directly by international human rights obligations. Usually such claims are made in good faith and are noble in intention. However, such attempts to 'privatise public international law' (there is no doubt that international human rights law is an important part of public international law) may sometimes do more harm than good for human rights, by shifting responsibility for human rights violations to actors that are even more elusive (as subjects of international responsibility) than states. Francioni rightly observes that such a shift of responsibility for human rights violations from states to corporate actors in practice 'presents more difficulties than originally thought' (at 97) and, at a more general political level, that 'the faith in the ability of the market to generate spontaneous forms of regulation to ensure respect for public goods, such as human rights, social justice, and environmental quality has been undermined by the gigantic market failures of the recent years: global warming, increasing poverty, and now the planetary financial crisis of devastating economic and social consequence for the ordinary life of people all over the world' (at 97–98). In the context of the mandates and activities of PMSCs Francioni presumes special responsibilities of the 'host state' of a PMSC for the behaviour of the latter in light of international human rights and humanitarian law. The 'host state' has an obligation under international law not only to have proper regulations in place, but also to bring to justice those corporations and individuals whose activities have caused violations of the norms of international human rights and humanitarian law. States are responsible not only for the direct acts of their agents, but under international human rights and humanitarian law they are also responsible for their omissions, i.e., for failing to guarantee that the behaviour of those under their jurisdiction does not lead to the violation of international law. Moreover, according to Article 5 of the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts 'the legal status of a company as a private entity rather than a public one, cannot be a criterion for excluding *a priori* the attribution of its acts to the state' (at 100). Issues of state responsibility relating to the activities of PMSCs, as well as problems regarding the accountability and responsibility of private contractors and their immunities, are specifically dealt with in Parts IV and V of the book. Nigel White's chapter on the use of private contractors by international organizations analyses, among other problems, the complicated questions of the attributability

of certain acts either to international organizations or to their member-states, including such hotly debated issues as the ‘effective control’ or the ‘overall control’ tests.

Although the authors of the book have not limited their research and discussions to the application of international human rights and humanitarian law norms to PMSCs and their personnel, considering the role and responsibilities of various categories of states in regulating their activities and even analysing the wider political context and tendencies that have led to the privatization *inter alia* of warfare, one would like to learn more about the consequences of such context. For example, whether the extensive use of PMSCs in conflict situations (and it is practically only Western companies which act in conflicts in the non-Western world) makes it easier to resort to military force? Although in most cases the personnel of PMSCs do not fall under the definition of ‘mercenary’ – is this not a deficiency of the definition in Article 47(2) of Additional Protocol I, which makes it almost impossible to consider somebody as a mercenary? What about the emotions of patriotism and fighting for the right cause, which the leaders of democratic countries have to instill in the hearts and minds of members of their armed forces? Can ‘hired guns’, even if in strictly legal terms not being mercenaries, who are often the nationals of one state, in the service of another, and doing their job on the territory of a third, possess such feelings?

There are a few debatable statements in the book. Thus, it states that ‘self-defence is a subsidiary right of states, since the primary responsibility for the maintenance of international peace and security rests on the UN Security Council (at 399). Yet, the right to self-defence is the only right in the UN Charter that is specified as an ‘inherent’ right. Moreover, though measures taken by states in self-defence have to ‘be immediately reported to the Security Council’, the Council has not been able or willing to overturn even the most implausible self-defence claims of some states.

There is hardly a more timely or topical book for those who are interested in the evolution of international humanitarian law, or the expansion of human rights law to new areas and issues regarding the responsibility of states for acts outsourced to PMSCs. Notwithstanding the several serious monographs on PMSCs (see, e.g., S. Chesterman and C. Lehnardt (eds), *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (2009); Laura Dickinson’s *Outsourcing War and Peace: Preserving Public Values in a World of Privatized Foreign Affairs* (2011) and a growing number of scholarly articles and studies by various international and national bodies, this book stands out for attention to detail and setting it in the wider political and even philosophical context. It should quickly find a solid place on the shelves of all university law libraries and beyond.

## Individual Contributions

- Eugenio Cusumano*, Policy Prospects for Regulating Private Military and Security Companies;  
*Natalino Ronzitti*, The Use of Private Contractors in the Fight against Piracy: Policy Options;  
*Federico Lenzerini and Francesco Francioni*, The Role of Human Rights in the Regulation of Private Military and Security Companies;  
*Ieva Kalnina and Ugis Zeltins*, The Impact of the EU Human Rights System on Operations of Private Military and Security Companies;  
*Francesco Francioni*, The Role of the Home State in Ensuring Compliance with Human Rights by Private Military Contractors;  
*Carsten Hoppe*, Positive Human Rights Obligations of the Hiring State in Connection with the Provision of Coercive Services by a Private Military And Security Company;  
*Christine Bakker*, Duties to Prevent, Investigate and Redress Human Rights Violations by Private Military and Security Companies: The Role of the Host State;

*Giulia Pinzauti*, Adjudicating Human Rights Violations Committed by Private Contractors in Conflict Situations before the European Court of Human Rights;

*Guido Den Dekker and Eric Myjer*, The Right to Life and Self-Defence of Private Military and Security Contractors in Armed Conflict;

*Luisa Vierucci*, Private Military and Security Companies in Non-International Armed Conflicts: Ius ad Bellum and Ius in Bello Issues;

*Giulio Bartolini*, Private Military Companies as “Persons who Accompany the Armed Forces”;

*Luisa Vierucci*, Private Military and Security Companies in Non-International Armed Conflicts: Ius ad Bellum and Ius in Bello Issues;

*Christine Bakker and Susanna Greijer*, Children’s Rights: The Potential Impact of Private Military and Security Companies;

*Ana Filipa Vrdoljak*, Women and Private Military and Security Companies;

*Valentina Falco*, Private Military and Security Companies and the EU’s Crisis Management: Perspectives under Human Rights and International Humanitarian Law;

*Marina Mancini, Faustin Ntoubandi and Thilo Marauhn*, Old Concepts and New Challenges: Are Private Contractors the Mercenaries of the 21st Century?;

*Sorcha MacLeod*, The Role of International Regulatory Initiatives on Business and Human Rights for Holding Private Military and Security Contractors to Account;

*Carsten Hoppe, Ottavio Quirico*, Codes of Conduct for Private Military and Security Companies: The State of Self-regulation in the Industry;

*Nigel White*, Institutional Responsibility for Private Military and Security Contractors;

*Charlotte Beaucillon, Julian Fernandez and H el ene Raspail*, State Responsibility for Conduct of PMSC Violating Ius ad Bellum;

*Ottavio Quirico*, The Criminal Responsibility of PMSC Personnel under International Humanitarian Law;

*Micaela Frulli*, Immunity for Private Contractors: Legal Hurdles or Political Snags?;

*Andrea Atteritano*, Liability in Tort of Private Military and Security Companies: Jurisdictional Issues and Applicable Law.

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Paul Schiff Berman. ***Global Legal Pluralism: A Jurisprudence of Law Beyond Borders***. New York: Cambridge University Press, 2012. Pp. 356. \$99. ISBN: 9780521769822.

*Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (GLP) by Paul Schiff Berman is a legal pluralist’s contribution to the study of local and global regulation. In a *tour de force*, Berman articulates clear and concise arguments in support of adopting a pluralist lens (coined as a cosmopolitan pluralist perspective). He magnificently traverses the multiple and complex bodies of literature that seek to understand the various inchoate regulatory regimes, actors, norms, and processes,<sup>1</sup> to simply state that we must harness the benefits of the overlapping legal authorities. The overlapping legal authorities for Berman produce legal hybridity, which is a product of globalization(s).<sup>2</sup>

<sup>1</sup> Zumbansen, ‘Transnational Law, Evolving’, in J.M. Smits (ed.), *Elgar Encyclopedia of Comparative Law* (2012).

<sup>2</sup> De Sousa Santos, ‘Globalizations’, 23 *Theory Culture Society* (2006) 393.