1 Governance Shifts in Security
Military and Security Services and Small Arms Compared

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Scholars commonly doubt the relevance of complex governance for security issues, but it is very much present in the nascent regulation of military and security services. A set of multi-stakeholder initiatives link action by national and international hierarchies, markets, and networks. This complex governance system has eclipsed a largely hierarchical system focused on national and international law controlling mercenaries. Complex governance, however, is a sideshow in the governance of small arms. Here, national hierarchies act with less coordination via one another, diametrically opposed networks battle for their attention, and markets are largely absent (though commercial money from arms flows through both national hierarchies and networks, market modes are not present in governance processes). Concomitant with these institutional configurations, global governance, loosely defined as the coordination of relevant actors, has progressed in military and security services but regressed in small arms. In what follows, I compare the evolution of governance modes in these two issue areas illustrating the interplay of structure and agency that yields change (or not) as well as more and less governance surrounding these two issues. In so doing, I argue that while the "good enough" of complex governance may not be enough in some eyes, it is likely to be the best we can hope for and far more likely to solve problems than forms that rely on top-down, commanding, and forceful measures alone.

Toward the end of the Cold War one would have been hard-pressed to find mention of either "military and security services" or "small arms" as governance issues. But geopolitical changes, combined with proliferating actor types and interactions, generated new problems (and greater awareness of them) in both realms. Different logics of governance offered distinct interpretations of, and paths for managing, these developments. In military and security services an initial disarray of perspectives, proposing competing market and hierarchical responses, led to little change in the 1990s. In the wake of escalating problems, though, policy entrepreneurship by the Swiss government and the International Commission

of the Red Cross (ICRC) in the mid-2000s generated a process that both shifted the perspectives of many of the actors involved (including the United States) and articulated new governance processes that joined network, hierarchical, and market mechanisms. By 2016 perspectives had largely coalesced around this system. In small arms, different factions in the 1990s came together around distinct hierarchical perspectives. Evidence of gun violence in civil wars, transnational crime, and domestic shootings led proponents of small arms regulation to optimism for hierarchical governance at the international level by the late 1990s. With US support, however, opponents of regulation disrupted this momentum at a UN conference in 2001. Pro- and anti-regulation perspectives hardened into a clash over whether to govern at all. Both remained focused on hierarchical tools, but pro-regulation perspectives aimed for international hierarchical governance and anti-regulation used national hierarchies to resist. Though there are relevant networks, they oppose one another, and thus they lack common purpose. The bulk of efforts – for or against regulation – aims to be hierarchical. With the United States often supporting the governance resisters, little regulation of small arms has been enacted at the global level since 2001.

A comparison of these two issue areas highlights similar structural conditions and thus the importance of agency for the different responses. The trajectory of military and security services demonstrates how problems without apparent solutions can provide openings for policy entrepreneurship – in this case by the Swiss government – that generate pragmatic processes. Continual efforts by the Swiss and others knitted these solutions, based in a range of different governance forms, into a reinforcing complex governance system. The small arms trajectory reveals how strategies fixed on commanding solutions can limit the space for policy entrepreneurship. Without new connections and the potential to coordinate action among different types of relevant actors, the potential for changed perspectives and innovation was diminished.

This comparison also yields provocative insights into the effectiveness of different governance outcomes. While the complex governance surrounding military and security services has not curtailed their growth, it has shaped rules and norms about proper behavior among service providers and their clients and drawn these into contract law and other regulatory tools that enable enforcement by states, companies, and other organizations. The complex system has tamed what looked like a downward cycle of behavior and holds the potential to influence the range of actor types relevant to this issue. A focus on hierarchical solutions in small arms allowed for clearer wins (and losses) but not for coordination of disparate actors. Pro-regulation networks influenced hierarchy in

Australia in the 1990s but anti-regulation networks did the same in Brazil in the 2000s. Neither side feels that it has solved the governance problem. The global proliferation of small arms has escalated, but how to understand that is disputed. Thus, in these two processes, strategy more open to new actor types and different solutions was better able to generate coordination. Though these new solutions are deemed less satisfying by some, those focused on managing global concerns are unlikely to do better. More focus on specific solutions and forced acceptance generates less of the flexibility, innovation, and buy-in often necessary to solve collective problems.

What Has Happened?

Growth in global markets for both security services and weapons in the 1990s, largely a function of geopolitical changes precipitated by the end of the Cold War as they rippled through different regions and countries, generated a number of problems. These, in turn, spurred calls, and mobilization, for transnational action. The pace, energy, and timing of the action were different in the two issue areas.

Military and Security Services: From Hierarchy to Complexity

Both the use and governance of hired fighters have shifted over the course of Western history. The modern system in Europe began with mercenaries of various sorts prominent in conflict – and governed by the parties that hired them – at national or local levels. This style of recruitment went out of style in the nineteenth century.[1] Changes in practice were largely initiated – and governed – by national governments.[2] But there also developed an international norm against the use of mercenaries.[3]

National regulation and the international norm worked together to "outlaw" guns for hire, even though they never really went away.[4] Governments, rebel movements, and others used them from time to time, more often in the colonial and postcolonial world. During the Cold War, mercenaries were most prominent in parts of Africa.[5] Concerns about mercenaries and their consequences led African states to seek international regulation to formally outlaw them in the 1980s. The 1989 International Convention Against the Recruitment, Use, Financing and Training of Mercenaries was adopted in 1990.[6]

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[1] Avant 2000.   [2] Thomson 1994.   [3] Percy 2007.   [4] O'Brien 1998.
[5] Mockler 1985.   [6] And came into force in 2002.

By this time, though, the market for military and security services was beginning to expand. Largely coincident with the end of the Cold War, the supply of those with military experience went up with force contractions and demand for services increased as governments undertook new missions and neoliberal thinking led some companies and other non-state actors to increasingly take responsibility for their own security. Though customers (some states, companies, and nongovernmental organizations [NGOs]) saw these forces as useful tools, others saw them as a scourge.[7] The former often referred to them as private security or military companies (eventually private military and security companies [PMSCs]), the latter as mercenaries. Dramatic stories of Executive Outcomes in Angola and Sierra Leone and Military Professional Resources Incorporated working with Croatian forces in the Yugoslavian civil war in the middle of the decade were seized for both purposes.[8]

As the market expanded, laws in the United States (developed for other purposes) provided a basic governance framework for some elements of these services and their export, but many governments had no such laws in place.[9] So, there was little global governance, and in some places there was little national regulation either. The United Nations, and especially the Special Rapporteur on the use of mercenaries, which had been appointed in 1987 to develop and then work to ratify the International Convention, saw the market as a growth in mercenarism and doubled down on its efforts to get it ratified. Once it was ratified in 2002, this office worked to enforce it in ways that would eliminate these forces.[10]

Neither national nor international efforts, though, were sufficient to address concerns around this industry and its use. Both its transnational nature and the growing relevance of different sorts of customers, including companies, NGOs, and international bureaucracies as well as governments, frustrated the ability of any one government to regulate effectively. As the use of these companies escalated during the wars in Iraq and Afghanistan after 9/11, so did increasing evidence of problems.[11]

In response to these problems, the Swiss government and the ICRC initiated a series of meetings among governments, companies, and civil society groups in 2005. These meetings eventually generated a set of

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[7] Shearer 1998.   [8] Douglass 1999; Musah 2000; Goulet 1998.   [9] Avant 2005.
[10] The United Nations Commission on Human Rights appointed a special rapporteur in 1987 to address the increasing concerns about the use of mercenaries.
[11] *New Yorker*, May 6, 2004; Hammes 2011.

multi-stakeholder agreements that are nested with each other as well as with international, national, and local regulations. To sum up, the Montreux Document outlines obligations and best practices for states; an International Code of Conduct (ICoC) for private security providers spells out International Humanitarian Law and human rights obligations for PMSCs; and the American National Standards Institute (ANSI) and International Organization for Standardization (ISO) standards rely specifically on both of these (as well as the UN Guiding Principles on Business and Human Rights) to articulate standards that can be written into contracts and contracting requirements. These have led to changes in national laws and there are efforts to enhance use of the ICoC and standards by non-state clients (such as the extractive companies) and international organizations. This web of governance links heterogeneous actors – organized as hierarchies (governments), as networks (civil society and industry organizations), and as markets (clients and service providers). There is no hierarchy at the global level, but participants make use of national hierarchical controls and international norms. Market mechanisms and the information exchange prominent in networks also play key roles in this governance process. Each of these different forms is involved in rule-making, rule implementation, rule interpretation, and rule enforcement.[12]

In the terms of this project, governance has shifted from a form in which rule-making, implementation, interpretation, and enforcement were undertaken by national and international hierarchies against using mercenaries, through a moment of contestation in which there was little coordination, to a form in which coordination is accomplished via an interaction among hierarchies, networks, and markets. This complex governance system is characterized by a diverse array of mechanisms and the interaction among them. Government regulation references standards to explicitly generate hierarchical leverage on networks and markets. Markets both rely on and reinforce networks and hierarchies, and civil society networks have worked with state and market mechanisms to generate effect.

Small Arms: Reassertion of Hierarchy

Small arms were largely regulated by national hierarchies at the end of the Cold War. The Cold War's end, though, led to increases in the supply of these weapons as demobilized soldiers sold their weapons to

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[12] Avant 2016.

black markets and governments upped their sales and transfers of small arms as demand for larger conventional weapons waned even as arms manufacturers grew, spread, and became more interconnected.[13] The number of manufacturers tripled between 1980 and 2000 as the industry globalized.[14] Demand also rose, particularly among substate and non-state actors.[15]

As with military and security services, opinions were mixed about whether this increasing flow was a problem. Those with newfound access to weapons with which to pursue their causes saw arms as a security tool and one that ought not be restricted. But arms control advocates, already organized and connected with one another and with national and inter-national hierarchies via their Cold War efforts, increasingly saw small arms and light weapons as a problem fueling intrastate conflicts in the 1990s.[16] Crime control and disarmament networks joined forces with the United Nations to create a network to combat small arms and light weapons as a threat to global peace and security.[17] Advocates for trans-national regulation were initially split over whether to focus particularly on illicit arms in conflict zones or to link up with those seeking gun control in more stable countries. As they came together to launch the International Action Network on Small Arms (IANSA) in 1999, this broader stance took root.[18] IANSA also pushed for a formal international conference at the United Nations to look comprehensively at the small arms issue.[19] A formal process, they thought, was more serious, and would lead to international hierarchy; the kind of binding international commitments that could squarely address the problem.

Connections between domestic groups that had opposed gun control measures in the United States, Australia, and other states, though, also created a network to coordinate resistance to domestic gun control in the mid-1990s. As the network to regulate small arms internationally grew, the anti-control forces turned their attention to combating regulation on the global stage.[20] This network developed an alternative normative perspective, claiming that arms were not the issue; people, not guns, kill.[21] They also argued that legal restrictions would be ignored by criminals and only impact law-abiding citizens. And, drawing on the National Rifle Association's (NRA) use of the Second Amendment in American politics, they argued that people have a "right" to bear arms.[22]

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[13] Klare 1997; Alves and Cipollone 1998.
[14] Bitzinger 1994; Hayward 2000; Survey 2001.   [15] Laurance 1998.
[16] Boutwell and Klare 1998.   [17] Bob 2012, 111–119.   [18] Bob 2012, 117–123.
[19] Survey 2002, 205.   [20] Bob 2012, 114–117.   [21] Grillot 2011.
[22] Bob 2012, 115.

They formed an international NGO, the World Forum on the Future of Sport Shooting Activities (WFSA). These advocates fought control on weaponry from different normative frames. To combat international regulation, they touted the sovereign rights of nations. To combat domestic regulation, they touted the rights of individuals to bear arms.

Simultaneously, global, regional, and national networks attempted to manage particular problems arising from the flow of weapons – from the Wassenaar arrangement to EU Codes of Conduct and an Organization of American States convention. These regional and nonbinding agreements, though, remained largely separate from the pro- and anti-regulation coalitions. The 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects demonstrated the strength of the pro-regulation movement. The conference results, though – the Programme of Action (a set of nonbinding commitments and an agreement to meet for another conference in 2006) – were sorely disappointing. IANSA and its allies felt particularly betrayed as the USA took a position highly influenced by the NRA and abandoned the fight for regulation. After 2001 rancor grew on both sides. The United Nations established a special rapporteur to issue a report that would demonstrate with hard evidence that human rights abuses were associated with small arms. And IANSA remobilized to push for the insertion of "teeth" in the Program of Action (POA) at the Review Conference (RevCon) in 2006. The NRA, on the other hand, cast the POA as a significant threat to the rights of law-abiding citizens and also geared up for the battle in 2006. Wayne LaPierre, the NRA executive vice president, wrote *The Global War on Your Guns* released in 2006 before RevCon. Its Amazon description reads:

The United Nations wants your guns. They want all of them – *now* – and they've found a way to do it. In fact, the UN is so cocksure it can commandeer the Second Amendment that it chose the Fourth of July, 2006, to hold its global gun ban summit in New York City. If you think there's no way an armed UN platoon of blue helmets can knock on your door to take your guns, this book just became your next must-read.

Sovereignty carried the day in 2006. The POA was not extended, and no additional meetings were planned. IANSA joined with other NGOs to form the Control Arms campaign, which worked with supportive states to focus on a much broader array of weapons. Advocates hoped that including small arms in the entire range of conventional weapons (advanced conventional weapons, tanks, armored combat vehicles, artillery systems, military aircraft, military helicopters, naval vessels, missiles, missile launchers, small arms and light weapons, and combat support

equipment as well as parts, components, and/or technology to manufacture, modify, or repair the covered items) would have more success. Their goal, according to Control Arms, was still "a bulletproof ATT [Arms Trade Treaty]" – that is, "a global, legally binding agreement that will ease the suffering caused by irresponsible transfers of conventional weapons and munitions."[23] Despite resistance from the gun rights network, the ATT did pass in 2013 and the treaty does require control systems for export obligations and these are legally binding. The compromise necessary to pass it, however, left provisions for importing, transporting, and brokering small arms weaker than in the nonbinding commitments in the POA. Thus, analysts worry that it could be a step backward in some areas.[24] Also, while the United States engaged with the process and signed the ATT, it carefully avoided its implications for small arms, and it is unlikely to ratify the treaty.

In sum, the hierarchical form of small arms regulation is largely unchanged. It takes place mostly at the national level in an uncoordinated fashion. Though there are some more informal mechanisms, these remain largely unconnected to either national or international regulatory debates.

Why? Similar Structural Shifts and Different Agency

These different stories begin with similar structural shifts. The end of the Cold War generated changes that allowed transnational markets to grow. Increasing transnational connections generated concerns on a scale different from the scale of the nation state. Connections via multinational companies and supply chains generated economic worries about stability in many parts of the world. These were joined by connections among like-minded advocates for conservation, human rights, or humanitarianism[25] created by different sorts of, similarly wide-reaching, worries. These connections, combined with technology and the speed of travel, allowed violence or disorder in one part of the world to generate concern in many others.

Efforts to link these concerns with "national" security and the use of national forces were complicated. So were efforts to build multilateral forces based on concerns of an "international community." Commercial provision of military and security services, arms, or both – no doubt connected with neoliberal ideas of governance – provided a different

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[23] Lerman 2012.   [24] Survey 2013.   [25] Keck and Sikkink 1998; Barnett 2011.

avenue for governments, commercial actors, and others to respond to this array of concerns.

The increasing demand for private security and small arms was complemented by increasing supply. The contraction of national military forces with the lessening of tensions between East and West led to networks of retired military personnel: potential contractors for those in need of services. And demobilized soldiers sold their weapons to black markets in some parts of the world while arms manufacturers grew, spread, connected, and focused increasingly on small weapons as demand for large weapons systems declined.[26]

The expanding markets, in turn, increased the importance of corporate actors selling services or arms, respectively. They also generated potential governance roles for their customers – a mix of governments, anti-government political groups, commercial actors, and not-for-profit groups.[27] Legal corporate providers contracted openly with governments and commercial clients to deliver military and security services. UN anti-mercenary regulation was of questionable relevance and hierarchically based international arms control did not address small arms at all. The transnational logic of both markets challenged uncoordinated national hierarchical regulation.

Distinct ideologies of governance offered different interpretation of these developments. A focus on international hierarchy and legalization, dominant at the beginning of the post-Cold War era, focused on inadequate controls as a problem and sought binding international agreements. A more libertarian approach suggested regulation was not needed at all, and that these markets were new flexible responses that should be allowed to flourish without interference (or according to the sovereign decisions of independent states). Finally, an emerging stakeholder approach to governance focused less on any particular form and more the process of finding common purpose and buy-in from those surrounding particular issues (including various actor types), often with the advice and participation of experts.

Gathering around Problems, Policy Entrepreneurship, a Pragmatic Process, and Complex Governance Development around Military and Security Services

The growing market in military and security services generated problems. The US experience during the second Iraq war provides a useful

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[26] Klare 1997; Alves and Cipollone 1998.   [27] Avant 2005.

illustration. The US government contracted with PMSCs from all over the world. Non-US firms, though, were subject to the legal stipulations of the states in which they were incorporated. Some, like South Africa, claimed that contracts were illegal. Other had different screening requirements or offered inadequate insurance in the event of injury or death. Even contracts with US companies were complicated by transnational recruitment. Also, turning to PMSCs in its stabilization effort led the USA to encourage (or require) the use of private security by others. These PMSCs working for different clients (other governments, companies, and NGOs) were not coordinated with US military forces and harmed US counterinsurgency efforts.[28] Other countries had different experiences but none were able to control PMSCs with national tools alone.

International regulation sought to outlaw mercenaries rather than regulate the behavior of the industry,[29] but it was not supported by any of the powerful players, including the three largest exporters (the US, the UK, and South Africa). Some were interested in managing the behavior of these forces rather than outlawing them altogether.[30] The varied type of services offered by private military and security companies and the forms that security privatization took led to different concerns in different parts of the world.[31] The USA was adamantly opposed to international coordination out of concern that would limit its flexibility. And commercial clients of PMSCs were not represented in, or tapped by, government-based arrangements.

The scale of PMSC problems in Iraq and Afghanistan led to disparate reactions. The UN Working Group and some NGOs redoubled mercenary charges. Some NGOs focused on US-based waste and fraud. Others began to investigate potential human rights abuses. While some industry leaders signed on to professional codes of conduct, others highlighted their ability to pursue national interests. Despite some concern in Congress, the US government remained committed to retaining maximum flexibility and resistant to any transnational coordination efforts.

It was at this point in 2005 that the Swiss government and the ICRC joined to introduce the Swiss Initiative. Building on their longstanding commitment to humanitarianism as a reason to host, they acted much as a policy entrepreneur would, capitalizing on a window of opportunity and framing the problem so as to draw in the widest variety of networks.[32] Its first exploratory meeting was in January 2006 and brought

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[28] *The Christian Science Monitor*, October 21, 2010; Hammes 2011.
[29] Gaultier et al. 2001.   [30] Shearer 1998.   [31] Dunigan and Petersohn 2015.
[32] Kingdon 1984.

together government experts, representatives from the security industry, and civil society. Partly as a tactic to ensure US participation, the meeting sought to produce nothing new – only to catalogue the way existing agreements might affect government relations with PMSCs.

The Swiss set the agenda, as policy entrepreneurs often do, around humanitarianism and human rights as opposed to waste and fraud or mercenarism. In keeping with ICRC tradition, which has inferred obligations for other non-state actors on the battlefield from existing agreements,[33] the Swiss asserted that there was not a vacuum of law surrounding private security. This claim drew in industry and its clients who were tired of hearing arguments about the vacuum of law. But it also drew in members of civil society who were eager to have the legal obligations surrounding the industry acknowledged and met. Discussions at the first meeting were fraught at times but the group did settle on how to define private military and security services and agreed that states had different relationships with PMSCs: contracting states, exporting states, and territorial states. These three relationships provided the structure for another meeting.

Building on this small amount of progress, the second meeting began to chart state obligations according to these different relationships. Subsequently, participants also noted the best practices for each. The resulting Montreux Document in September 2008 simply drew on existing international agreements and was thus "nothing new." But was an entirely new legal framework for PMSCs that highlighted state obligations via PMSCs and the best practices they might follow. It also noted governance gaps – particularly in behavioral standards for PMSCs. The meetings thus ended with both a new document (signed by seventeen governments) and the initiation of another multi-stakeholder process to define appropriate PMSC behavior.

The resulting international code of conduct for private security providers, or ICoC, specifically referenced the Montreux Document and built on extensions of international humanitarian law and human rights obligations to other non-state actors. The ICoC was finalized in October 2010 and then signed by companies in November. It outlines principles that should inform good behavior in delivering private security services, building on the Montreux Document but also the "Respect, Protect, Remedy" Framework developed by the Special Representative of the UN Secretary-General on Business and Human Rights.[34] The ICoC's gravitas grew when it gained key support from the US Department of

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[33] Roling 1976; Avant 2017.   [34] ICoC 2009, 3.

Defense's (DoD) Program Support Office. This office, set up in 2006 to address contractor concerns, was charged by Congress in 2009 to come up with a standard by which to judge whether private security companies should be eligible for contracts. The ICoC provided an outline for just such a standard, and US officials realized that if they answered the congressional requirement building on a transnational standard they may be able to impact private security contracts with other clients as well. Because these officials were concurrently keeping track of incidents in Iraq, they realized that private security contracts with the US government were only a small fraction of private security in the country. They saw that PMSCs were less likely to be disruptive to US policy if they had the same standard no matter who they worked for. DoD thus reversed its reluctance to engage transnationally and both DoD and threw its support behind the ICoC – and the creation of an association to govern it. They also began a process to build national and international standards based on the ICoC.

DoD joined with US State Department representatives to indicate the usefulness of the ICoC to the world's largest client. Their support also increased both company and civil society interest in the ICoC. Many large PMSCs were committed to be compliant with US requirements and eager to participate in a process that would shape them. Civil Society Organizations (CSOs) saw that US requirements could make the ICoC more biting. Negotiations about the association intensified as the stakeholders saw promise and began to build standards on it, but also became increasingly interested in ensuring that their perspectives were included.

In launching the Montreux process the Swiss government and the ICRC had acted as policy entrepreneurs to open a conversation that generated new thinking about the problems private security generated and how to solve them. This thinking led US participants to craft policy that embraced rather than resisted transnational coordination. The Montreux Document and the ICoC process also shifted the conversation within the industry and among civil society groups. Though PMSCs had long been interested in some regulatory framework to counter the mercenary charge, tension existed between those interested in a broader, transnational approach and those more focused on working for the interests of governments like the United States. The Montreux process began to tip the balance toward a more transnational approach. The International Peace Operations Association (now International Stability Operations Association) called it "the way ahead" for accountability.[35]

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[35] Mayer 2010.

Well-established civil society voices such as Amnesty International and Human Rights First agreed, embracing the Montreux Document and its recommendations.[36]

The workability of this framework attracted others. The Special Rapporteur on the use of mercenaries was replaced by 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" in 2005. The working group's initial efforts focused on state use of private military and security companies as a mechanism for impunity. When it was reauthorized in 2008, though, it was asked to prepare a draft of "international basic principles that encourage respect for human rights by those companies in their activities."[37] After over a decade of treating PMSCs as mercenaries, the working group saw them as companies in need of regulation. The "Draft International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies," released in July 2009, adopted the Montreux Document's terminology of contracting, territorial, and home states.[38]

The process did not stop there. The US government supported standards process was conducted by the ANSI. Consistent with ANSI practices, it involved stakeholders from all over the world. PSC 1 (Management System for Quality of Private Security Company Operations – Requirements With Guidance), the private security management standard, was published in 2011. It was also elevated, and approved, as an ISO Standard. The ANSI and ISO standards specifically reference the Montreux Document and the ICoC. With the publication of PSC 1, the US DoD required that contractors be compliant with the standard to be eligible to compete for DoD contracts.[39]

Concurrent with the standards development were negotiations within the ICoC's temporary steering committee to create a governance body. A charter was approved on February 22, 2013.[40] The ICoCA was launched in September 2013, after which the US Department of State (DoS) required ICoCA membership for its Worldwide Protective Services contracts. Since then the ICoCA has developed certification and monitoring procedures. It has also reached out to related governance processes such as the Voluntary Principles on Security and Human Rights and the UN Guiding Principles on Business and Human Rights in an effort to make ICoCA certification useful to companies that hire

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[36] Amnesty International 2008; HRF 2010.   [37] UNWG 2011, 2.
[38] This legislation has since fallen by the wayside. Though the office still hopes for binding regulation, most see this as highly unlikely.
[39] DFARS 2012.   [40] ICoCA 2013.

private security as well. At the five-year anniversary celebrating the signing of the Montreux Document governments created the Montreux Document Forum to continue government-to-government discussion on how best to handle relationships with PMSCs.[41]

Each step in this process was supported by the Swiss government. Again, in keeping with a policy entrepreneurial role, the Swiss invested time, energy, reputation, and money into this process and supported what many see as a workable solution to problems associated with PMSCs. Beyond setting an agenda focused on accepted international law (which also privileged humanitarianism and human rights), though, the Swiss have remained open to different solutions. The open process and interaction among previously unconnected networks generated options that were not seen from the beginning and also led key actors to understand their interests and relationships with the industry in new ways. Thus, while US support for the network led it to have increased gravitas as a "shadow of hierarchy" argument might suggest, the US position was influenced by the network. It is the continual process of linking different initiatives that has generated a system with governance roles for hierarchical, market, and network mechanisms; the continual interaction among these forms is more important than the shadow of anyone.

Disputed Problems, Set Solutions, and Deadlock around Different Versions of Hierarchical Governance around Small Arms

The growing market for small arms and light weapons dramatically increased the number of these weapons in circulation. The increasing flows were linked with a range of transnational concerns in the latter half of the 1990s, including increased conflict intensity, victimization of civilians, large-scale criminal violence, threats to UN and humanitarian workers, and even increasing public health costs.[42] By 2001, "a relatively large consensus (geographically and politically)" had emerged "that the unconstrained availability of small arms and light weapons ought to be addressed as a problem in itself."[43]

This problem was defined, researched, and shaped by individuals who had worked on more conventional arms control issues or crime during the Cold War. Though increasingly networked with each other and, to some extent, the domestic gun control movements in Canada, Australia, and the UK, they were inclined to focus on addressing this problem

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[41] www.montreuxdocument.org/.   [42] Bob 2010, 188; Krause 2002, 251.
[43] Krause 2002, 251.

within the United Nations. In 1994 experts outlined the relationship between small arms and conflict and steps to address it.[44] The UN was quick to seize on this issue. In 1995, UN Secretary-General Boutros Boutros-Ghali called for "Micro-Disarmament" – focused on land mines, small arms, and light weapons.[45] 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.[46] 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.[47]

UN interest intensified in the wake of the Ottawa Convention to ban landmines in 1999. Concerned that the Ottawa Treaty would set a precedent for negotiations to happen outside of UN processes, advocates pushed for an international conference at the UN on small arms in 2001.[48] 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 IANSA in 1999 with an aim of obtaining an international agreement similar to the Ottawa Convention at the UN conference scheduled for 2001.

At the same time, though, anti-regulation forces mobilized based on a libertarian philosophy that saw guns as a solution, not a problem. This philosophy may be related to the changes in capitalism and governance ideologies that the Introduction discusses but it is distinct in that access to weaponry was not rooted in a market logic but in a political one. And the logic was not for a different type of governance but a different extent of governance. In response to tightening gun laws in Australia in the early 1990s, the head of the Sporting Shooters Association of Australia visited the NRA's headquarters in Washington, DC and asked the NRA to help establish an international forum on firearm laws to protect the rights of gun owners.[49]

The NRA and its affiliated organizations around the world founded the International Conference on Firearms Legislation (ICFL) in 1993 and then the 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

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[44] Boutwell et al. 1995.   [45] UNGA 1995.   [46] UNGA 1996.   [47] Grillot 2011.
[48] Bob 2010.   [49] *Foreign Policy*, October 19, 2006; Bob 2010.

control, the WFSA geared up to blunt the UN's efforts to promote international gun control schemes.[50] These groups claimed that legal restrictions on guns were unnecessary (people, rather than guns kill), unfair (they would disproportionately affect law-abiding citizens), and (drawing from the US Constitution) that people have a "right" to bear arms.

Despite a forceful position that took issue with every part of the pro-governance argument, there were small signs that the WFSA as well as the pro-governance forces were open to some conversation in the 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."[51] In pursuit of that the WFSA applied for and received status as an NGO with the UN's Economic and Social Council. There were also signs of pro-governance openness at this moment. Pro-governance forces opted not to block the WFSA's status as an NGO to avoid looking as if they were trying to thwart debate.

Neither side in this struggle suggested a role for arms manufacturers, arms dealers, or markets more generally in governance. This is not to suggest that the arms industry showed much interest in engaging in effort for the common good.[52] But there was some movement toward at least the idea of corporate social responsibility in 2000 when President William J. Clinton announced an agreement with Smith and Wesson to adopt new designs to limit gun operation by children and require that its dealers conduct background checks even at gun shows.[53] Pro-regulation forces, though, were suspicious of this development, claiming that corporate social responsibility, or any measures short of hierarchical law, would not actually address the problem. Anti-regulation forces had an even harsher reaction, arguing that companies had no authority to make such judgments. Some have 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.[54]

Similarly, while networks are a big part of the competing mobilization around this issue, neither side advocated for networks as a governance tool. For the anti-regulation coalition, networks were a tool for thwarting governance. Although they exerted heavy pressure on their members, sometimes using market-based tools – as the boycott of Smith and Wesson demonstrates – they did not suggest network governance. The same was true for the pro-regulation forces. They saw networks of

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[50] Bob 2010, 190.   [51] Goldring 1999, 112; Bob 2010, 190.   [52] Byrne 2007.
[53] White House 2000.   [54] *The New York Times*, May 27, 2013.

experts as important for providing information and analysis of the problem but pushed consistently for "hard," hierarchical governance solutions.

Ironically, however, networks did grow in the 1990s to respond to particular problems. For instance, the Wassenaar arrangement was established 1996 as a nonbinding multilateral agreement among forty-one states.[55] Set up as a successor to the Cold War-era Coordinating Committee for Multilateral Export Controls in order to promote transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, it also pertains to small arms. The Wassenaar Arrangement operates by consensus and its decisions are nonbinding, but it has served as a forum for harmonizing categorizations of arms and enhancing transparency. Also launched were the EU's "European Programme for Preventing and Combating Illicit Trafficking on Conventional Arms" (to promote information exchange and the assist developing countries in eliminating illicit trade) as well as its "EU Code of Conduct on Arms Embargo" (setting standards on arms exports). In December 1999 the United States and European Union signed a joint Statement of Common Principles on Small Arms and Light Weapons, a ten-point plan of action that included US support for the EU Code of Conduct on arms exports and the principles contained in its criteria. And, in 1997, the OAS aimed to combat weapons used in the illegal drug trade with its "Inter-American Convention against the Illicit Manufacturing and Trafficking in Firearms, Ammunition Explosives, and Other Related Materials."

The competing mobilizations each had clear solutions, which left less room for a policy entrepreneurship role. The Swiss government was involved with small arms, but rather than pulling together stakeholders to find a new solution they largely supported the regulation proponents.[56]

The pro-regulation forces were successful in pushing for the 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, which resulted in the POA. Though it raised attention to

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[55] www.wassenaar.org.
[56] They have advocated for the implementation of an international instrument for the rapid and reliable identification and tracing of illicit small arms and light weapons and for the implementation of the Geneva Declaration on Armed Violence and Development. They also took part in negotiations within the UN for a comprehensive and binding ATT, contributed to a project for the destruction of superfluous small arms and light weapons and to their secure storage in the framework of the Organization for Security and Cooperation in Europe under the Partnership for Peace, supported the Small Arms Survey competence center and countries and NGOs in the implementation of the UN action program.

small arms as an issue and set a framework for agreement, the pro-regulation forces saw its lack of binding rules as a loss. They called the POA disappointing and toothless: "zombie policy" or, as Human Rights Watch suggested, the "Program of Inaction."[57] The language and strategies of the pro-gun groups was reflected in the Bush administration's policy (NRA Board of Directors member Bob Barr was even part of the official US delegation), leading pro-regulation groups to argue that the US position had been hijacked by pro-gun forces.[58] The USA was not alone in frustrating stronger regulation. It joined other governments that resisted different 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.[59] But without US support international regulation had little chance.

In the wake of the 2001 conference both positions hardened. The pro-governance groups did not acknowledge the small gains made with the POA. 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. Making 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,[60] they mobilized their forces to roll it back.

The NRA's influence on both US policy and policy in other countries grew in the 2000s. Pro-gun forces aimed to frustrate or repeal both domestic and international regulation on the basis of the self-protection benefits of access to weapons.[61] 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.[62]

The NRA also gave advice to gun 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 had majority support at the start. In the wake of a campaign advised by the NRA to protect the "right" to bear arms (not a traditional right in Brazil), however, 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."[63] The NRA linked with gun rights groups in various countries,

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[57] Bob 2010.   [58] Meierding 2005.   [59] Meierding 2005.   [60] LaPierre 2006.
[61] Grillot 2011.   [62] Bob 2010.   [63] Morton 2006.

concerned that any gun control could 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."[64] Similarly an 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."[65] The NRA also joined the WFSA in concerted grassroots efforts to block and even roll back the POA at the 2006 RevCon.[66]

The pro-regulation forces remobilized to push for the insertion of "teeth" in the POA at RevCon. Their hopes would have been tough to achieve even with the USA on board, but they were completely unrealistic without it.[67] At RevCon the USA maintained its restrictions on stipulations about civilian firearms and its ability to sell or give arms to whomever it pleased, and even added restriction on the regulation of ammunition. China, Russia, and Arab states that had joined the USA 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 ATT. Demonstrating its increasing connection with the NRA's view, the USA distinguished itself by being the only state to vote against this resolution.

When the Obama administration took office in 2009 it reengaged on 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 USA. 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. Meanwhile, pro-regulation forces were profoundly disappointed with Obama's efforts. US hesitancy and Chinese resistance led the meeting to consider a comprehensive ATT in 2012 to adjourn at the end of July without reaching any consensus.[68]

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 little attention to small arms, light weapons, and ammunition and a number of its provisions are weaker than commitments on small arms transfers in the POA.[69] Despite Obama's efforts common ground was hard to find, the arms industry remained unengaged, and the USA signed, but did not ratify, the treaty.

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[64] Morton 2006.   [65] Morton 2006.   [66] Bob 2010.   [67] Meierding 2005.
[68] *New York Times*, July 27, 2012.   [69] Survey 2013.

What is interesting for the purposes of this book, though, is both sides' continued focus on hierarchical forms of governance as the preferred mode. While some networked schemes are also in place they have remained generally disconnected from this political struggle. And market mechanisms are largely uninvolved in small arms governance.

How Does It Matter?

The process surrounding military and security services moved from hierarchy to a complex governance system involving hierarchy, market, and network mechanisms. Small arms remained largely focused on hierarchy. Just a cursory evaluation of the efforts in these two issue areas demonstrates at least some progress in military and security services since the mid-2000s and no progress, or even some backsliding, in small arms. Nonetheless, many feel unease when looking at the complex governance system surrounding military and security services, often seeing it as a less effective, second-best solution to a "binding," legalized, hierarchical agreement among states. As the Introduction to this volume muses, are major challenges "fixable or even manageable via piecemeal, incremental, and disorganized efforts?"

But ambitious, hierarchical regimes, even in their heyday, were rarely produced in the absence of agreement among consequential parties.[70] Regimes have rarely been forced. And given growth in the array of relevant actor types, a solution built on states alone is unlikely to address the range of governance issues.[71] Bringing different actor types to the table can link previously unconnected networks in ways that yield new ideas and even new coalitions. Complex governance can serve to aggregate, shape, and build toward collective ambition.

Rather than thinking of complex governance processes as second best compared to some finite alternative, a more pragmatic conception of effectiveness evaluates them according to whether they connect relevant stakeholders and enhance the prospect that their efforts will be reinforcing (see Table 1.1). What makes governance tick from this perspective is the relationship between many different venues, perspectives, and mechanisms; it thus incorporates a measure of legitimacy. The web of initiatives that govern private security, for instance, generates more traction if the initiatives work together instead of at cross-purposes.[72] When US government regulations push in the same general direction as British government regulations, and what will satisfy them also satisfies the

[70] Krasner 1983.   [71] Abbott and Snidal 2009.   [72] Avant et al. 2010.

Table 1.1 *Pragmatic conception of variation in governance processes*

	Reinforcing efforts	Competing efforts
With a broad set of stakeholders/capacities	(1) Most effective governance processes	(2) Rival governance processes
With a narrow set of stakeholders/capacities	(3) Partial governance processes	(4) Least effective governance processes

Note: Drawn from Avant 2016.

demands of other prominent clients, such as those in the extractive industry, and they lead to fewer complaints that civil society groups catch wind of, PMSCs are more inclined to sign on and observers are more likely to see the issue area as relatively well governed. All of this is more likely to happen if the regulation of military and security services fits under the larger umbrella of business and human rights, and this larger umbrella continues to garner effort and attention.

In both military and security services and small arms there was a proliferation of actor types relevant for governance. They reflected different bases of authority with different constituencies all concerned with problems surrounding the issues. In military and security services different stakeholders were included in the process, while with small arms constituencies were largely funneled through state and international hierarchies.

Recognizing different stakeholders was key to the Montreux Document's articulation of the various relationships states had with private security and the implications of these for quite distinct best practices. Recognizing that clients who hire PMSCs include an array of organizations, from governments to extractive industry groups to a wide array of commercial organizations (including shipping) to implementing NGOs, also had important implications for the process. It led not only to the need to include these constituencies but was also key to convincing many powerful players that an international code of conduct could be useful rather than disruptive. Including a breadth of stakeholders and recognizing their different perspectives and impact on one another was not only important to moving toward some governance in the first place, it also led to harmonization among national processes. And recognizing that ongoing communication and coordination would be necessary led to the successful creation of an organization, the ICoCA, that could link different constituencies as a way of facilitating both responses to new concerns and some sort of communications or coordination among them.

Though the ongoing success of this organization is less certain, the processes of agreeing on it and setting it up have already served to link and coordinate among different clients, industry members, and civil society representatives.

In small arms, on the other hand, industry representatives were not included in governance efforts. The Smith and Wesson initiative at the end of the Clinton administration, though, suggests that there was some difference of opinion on how best to proceed within the industry. One counterfactual to consider is whether acceptance of this by regulatory proponents and/or the NRA could have brought industry voices more directly to the governance table (rather than leaving them to work through interest group influence on governments) and whether this broadening of voices could have widened the debate in ways that allowed for new ideas and/or shifts in how actors perceived their interests.

Complex governance systems also work through lower levels of the bureaucracy. The networks involved are transgovernmental like those that Anne-Marie Slaughter[73] wrote of, but they join hierarchies (governments) and different networks (links across governments and also CSOs, subject matter experts, and commercial actors). Because they operate at this lower level they are often able to get around veto points and other political hurdles.[74] Students of bureaucratic politics have long argued that policy made by those closer to the ground is more responsive to actual problems and more effective.[75]

These systems can face stumbling blocks within hierarchies. Though the system governing PMSCs allowed for harmonization between US regulation (in DoD and one part of DoS) and the ICoC standards, harmonization across United States government agencies (other offices at the State Department and USAID, among others) has been more difficult. Offices relevant to some parts of the regulatory web are not even aware of their role in the framework that governs PMSCs and have sometimes unknowingly made changes that challenged elements of the system. In 2015, for instance, the State Department office of defense trade controls made changes that threatened the degree to which the USA was compliant with its obligations under the Montreux Document.[76] These processes can be likened to the banal authority that McNamara[77] argues the European Union has developed. Problems are solved quietly by closely involved experts in ways that avoid openly

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[73] Slaughter 2004.   [74] Eilstrup-Sangiovanni 2016.
[75] Thompson and Frizzell 1977.   [76] *Foreign Policy*, October 26, 2015.
[77] McNamara 2016.

"political" manifestations. The solutions may become part of regulatory routines but fail to generate commitment.

Finally, the governance complex surrounding private security has no one central point or pinnacle. This may lead some to worry about "multiple principal" problems: many authorities could compete or move in different directions and weaken effectiveness. For instance, periodic stories that high-level US officials are considering plans to use PMSCs in a way that counters the best practices put forth by the Montreux Document have led to concern among other governments about weakened influence for ICoCA membership and PSC standard certification. Others, though, might point to the various ways different nodes are linked. If firms in the extractive sector continued to see the behavior suggested by the ICoC and standards as important they could buffet participation in these initiatives even if US policy changed. The different connections could thus inject a degree of resilience into governance practices even in the face of policy changes by an important player like the United States. Some have argued that the key to management, even in hierarchies, is shared norms and relationships.[78]

As suggested in Section 1.2, pragmatic arguments about effectiveness incorporate a degree of legitimacy. Governance, by its nature, addresses matters of public – or common – concern.[79] Arguments for including multiple stakeholders hold that pulling those with a stake in common concerns into supporting their governance can yield both effectiveness and legitimacy. When those who will be governed have a say in that governance they are more likely to buy in and this should increase its effectiveness. At the same time their stake also means they are affected and thus should have some say into how an issue ought to be governed.

But both popular and academic language often equates "public" with government and "private" with commercial, narrow, and self-interested. Governments represent the "public sector" and thus ought to be the institutions pursuing common concerns. The legitimacy of private actors working for "public" goals is more suspect. These concerns are amplified by the association of specific processes, like elections and criminal enforcement (typically associated with government and government policy), as *the* tools for accountability. Though multistakeholderism's language of inclusiveness may be appealing, some stakeholders are viewed suspiciously and the processes for participation are not fully specified in ways that challenge their rightfulness.

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[78] Miller 1992.   [79] Best and Gheciu 2014.

The legitimacy of the military and security services governance system – often termed "voluntary" or "self"-regulation – has suffered from this critique. In the absence of international hierarchical agreements, some have argued that PMSCs have used the regulatory façade to escape the mercenary tag and gain legitimacy but without guarantees that their behavior will serve common concerns. These critiques are aided by evidence that traditional democratic mechanisms are often interrupted, even when governments contract for military and security services,[80] let alone other clients. The comparison of these two issue areas, though, shows that worries over capture should not be limited to complex governance.[81] Indeed, many of those promoting small arms regulation argued that the NRA captured the US position during the George W. Bush administration.

The very nature of complex governance challenges many modern ways of thinking of legitimacy. It could be more promising to think about legitimacy as based not only on who actors are but what they do; whether their actions are public serving or not.[82] This perspective could benefit from imagining publics as not set in stone but situations where people realize their interdependence and take steps to manage it.[83] This is the logic on which the ICoC is based and it follows in a long tradition of pulling non-state armed actors into the International Humanitarian Law framework.[84] This more process-based approach could also inform analysis of participation where legitimacy is tied to processes of deliberation.[85] Finally, the types of power operative in complex governance is relevant to discussions of legitimacy. As demonstrated in the PMSC case, this kind of governance enhances the power of brokers that connect others. The Swiss government, the ICRC, and the Geneva-based Center for the Democratic Control of Armed Forces (the NGO facilitating the Montreux Process and ICoC/ICoCA), for instance, have had an outsized influence on the unfolding of this governance process because of their central position in the governance network and their ability to bring different stakeholders to the table. The process that emerged reflected these organizations' traditional concerns with humanitarianism and human rights even though the concerns people voiced around private security ranged widely.[86] On the one hand, this exacerbates the worries mentioned in the Introduction that the power of the global "haves" will

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[80] Avant and Sigelman 2010.   [81] Mattli and Woods 2009.
[82] Avant and Haufler 2018; Ciepley 2013.   [83] Dewey 1927.   [84] Avant 2017.
[85] Nanz and Steffek 2004; Castells 2008; see also Ruggie 2013.
[86] Some saw a threat to state control of force, others a threat to military professionalism, a threat to democracy, a tool for corruption, and a threat to the rights of those who work in the industry, among others.

be enhanced. On the other, these organizations constructed power for themselves through connecting with others, and that power is contingent on the maintenance of those relationships. This different sort of power has some element of accountability baked in to it. If relationships break down so does the power that these organizations hold.[87] To gain greater influence the Swiss government, the ICRC, and the ICoCA have worked to connect with companies and civil society groups in many different parts of the world and, once connected, these new organizations gain influence on the process.

Conclusion

What is happening in private security governance is different now than it was twenty years ago. In this project's terms it has moved from a governance system based on hierarchy to one based on markets, networks, hierarchies, and the interactions among them. Small arms governance remains based on hierarchy and the coordination among hierarchies at the global level has lessened. Similar structural changes in both issue areas led to new concerns, but the agency of actors varied. As problems mounted, clear ideas about solutions led initially to greater direction in small arms, but increasingly rigid positions eroded space for creative ideas and new solutions, and the governance process stalled in a stalemate between proponents and opponents of regulation. In military and security services, initial confusion and escalating problems led to policy entrepreneurship by the Swiss government and the ICRC that involved a range of actors and entertained the potential for different mechanisms. The pragmatic process that unfolded shifted the perspectives of key actors and moved the governance process forward.

Given the range of actors that is important for global concerns the proliferation of governance forms makes sense, but the relationships among these various governance forms is critical to effectiveness. Processes that work to aggregate different forms and allow for healthy conflict but manage unproductive rigidity should be most effective. This conceptualization of effectiveness incorporates legitimacy to some extent but it would be useful to devote more thought in academic and popular circles to the processes that connect different forms of governance and the mechanism by which they gain or lose legitimacy. Rigid

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[87] Avant and Westerwinter 2016.

commitments to specific ideas or forms of governance can lead strategies to minimize the potential for new connections and lessen the possibility for both greater buy-in and creative solutions that can change how actors see their concerns. A focus on hierarchical governance as the best solution can thus erode the potential for coordination altogether.

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