

Ideas and Interests in the Regulation of Private Security Provision: Probing Norms behind the Swiss initiative

DRAFT

COMMENTS WELCOME

Please don't cite without permission

Marco Boggero¹

12 November 2014

Paper prepared for the ISAC-ISSS Annual Conference on Security, November 14th-16th 2014,
The University of Texas, Austin, Texas, USA
(Hosted by the International Security Studies Section of ISA
and the International Security and Arms Control Section of APSA)

¹ Ph.D. Candidate, Paul H. Nitze School of Advanced International Studies is a division of Johns Hopkins University,
Mbogger1@jhu.edu

This paper argues that ideational and institutional variables are useful for a full account of the ongoing regulation of private security provision. By looking at the Swiss Initiative and at a central actor within it- the International Committee of the Red Cross- an embodiment of restraint and moderation in international politics- I trace how neutral humanitarianism shrunk but still provided a unique and indispensable focal point to advance cooperation. I assess how the Swiss initiative can be explained, under an ideational perspective as a defense of neutral humanitarianism and assess how the Swiss Initiative to retain at least some of the initial aspirations. I rely on secondary sources and interviews to spell out the contours of this case.

- i. Introduction
 - *Current regulation of mercenaries and/or private security provision*
 - *Ideational accounts of private security in political science*
 - *Argument of this paper*
- ii. Origins of the Swiss initiative
 - *Tracing the Actors*
 - *Tracing the Norms: First Stage of the Swiss Initiative*
 - *Second Stage of the Swiss Initiative*
- iii. Limits of the argument based on Neutral Humanitarianism
 - *The Soft Power of Neutrality*
 - *Institutional Drivers in historical perspective: ICRC and Neutrality*
 - *Institutional Drivers in the Swiss initiative: between Anti and Pro-Americanism*
- iv. Conclusion
- v. Bibliography

i. Introduction- *Current regulation of mercenaries and/or private security provision*

In this paper, I elaborate the framework of ideas and interests that I am developing for my dissertation by investigating the ideational explanations of Private Security and Military Companies (from now PMSCs) regulation under the lenses of a neutral humanitarian norms.

PMSCs are not the mercenaries, or *Les Affreux* that plagued decolonization wars. A ‘mercenary misconception’, defined by Abrahamsen and Michael Williams as the tendency to equate private security in general with private military, was given impetus by African conflicts and the case of Executive Outcomes in the 1990s. The misconception obscured the commercial, non-military dimensions from view and had implications on policy and scholarly debates².

The regulation of PMSCs that I shall now introduce never refers to mercenarism³ but the seeds of regulation originate from the age of decolonization - when PMSCs did not exist as corporate entities as they do today- in the notion of mercenarism, as defined in a series of conventions and U.N. resolutions developed during the years of decolonization.⁴ In this paper, I refer to two inter-state initiatives. First, the initiative of the United Nations set the stage for a proposed treaty whose aim is to “reaffirm and strengthen State responsibility for the use of force” by “identify[ing] those functions which are inherently governmental and which cannot be outsourced”.⁵

Second, the so-called *Swiss initiative* led to the Montreux Document⁶, signed in 2008, that reaffirms state responsibilities under international law. The Montreux-related International Code of Conduct for Private Security Service Providers (from now ICoC) also opens the way to market self-regulation⁷.

² Abrahamsen and Williams. *Security beyond the state: Private security in international politics*. (Cambridge University Press, 2010). The authors shifted the attention towards the non-conflict domain while stressing that the problem of mercenarism per se remains an important concern. It remains a problem, particularly in Africa, as illustrated by the recent cases in Libya (2011) and Ivory Coast (2012)

³ The Draft Convention avoids the use of the word “mercenary” in its text. The only reference is in the Preamble where the UN and the OAU Conventions on mercenaries are mentioned.

⁴ The General Assembly and Security Council resolutions proscribing or condemning the use of mercenaries; second, the Organization of African Unity Convention for the Elimination of Mercenaries in Africa; third, Article 47 of Protocol I additional to the Geneva Conventions; and fourth, the United Nations International Convention against the Recruitment, Use, Financing, and Training of Mercenaries, which closely follows the definition supplied by Article 47

⁵ Draft Convention, Art. 1(1); Available at: http://psm.du.edu/media/documents/international_regulation/united_nations/human_rights_council_and_ga/open_ended_wg/session_1/un_open_ended_wg_session_1_draft-of-a-possible-convention.pdf, Last accessed 1st September 2014

⁶ For the background documents and the list of signatories, cf. <http://www.eda.admin.ch/psc>, Last accessed 1st September 2014

⁷ The International Code of Conduct for Private Security Service Providers (ICoC) is a Swiss government convened, multi-stakeholder initiative that aims at both clarifying international standards for the private security industry operating in complex environments, as well as at improving oversight and accountability of these companies. <http://www.icoc-psp.org/> Accessed 4th September 2014

Two points are worth noting. First, the Montreux Document represented a reaffirmation by a diverse group of states, including the United States, of the applicability of International Humanitarian Law and International Human Rights Law to contemporary armed conflict. It opened the way to a phase of compliance that had some impact on reform- although much remains to be done⁸. Second, it has opened the way to a process of market regulation of private security provision with the establishment of the ICoC and then, to the process of creation of International Organization for Standardization (ISO) standards for the ICoC.

- *Ideational accounts of private security in political science*

The realities of peace and war have often invited scholars and policymakers to shape a seemingly unavoidably materialist view of the world and realist accounts stressed the Hobbesian character of international politics. Kenneth Waltz proposed to derive an entire theoretical apparatus from first principles- the absence of a world government- to explain international political life. During the nineties, however, a turn towards constructivism shaped the social sciences. An increasingly common argument was that ideas help explain the origins of institutions.⁹ By the late 1990s, constructivist approaches to security studies had become part of the mainstream and entered American IR.

Within the sub-field of private security, a generation of scholars studied how private security affects the state monopoly on the control of force, either directly (Singer 2000) or via a theorized multi-level types of functional, political, and social control (Avant 2005). Other scholars saw changes in state sovereignty as the mechanism used to achieve control on the market for violence- sovereignty should '*be treated not as an attribute, nor as a set of normative constraints, but as an institution that empowers states vis-à-vis people*' (Thomson 1990). This perspective, to which I return below, is useful to explain contemporary changes.

Building on the works of Avant and Singer, a second wave of constructivist scholars emerged in private security studies as the interventions in Iraq and Afghanistan came to an end focusing either on the norm on monopoly of violence or on the anti-mercenary norm. For Krahmann, a "transformation of the norm (on monopoly of violence) surpassed its 'norm emergence' stage, in which the USA acted, intentionally or otherwise, as a norm entrepreneur by setting important

⁸ For an analysis of compliance after five years, cf. Buckland and Burdzy, 2013, Progress and Opportunities: Five Years On, DCAF Report, and on Rebecca DeWinter-Schmitt (ed.) Montreux Five Years On: An Analysis of State Efforts; Rebecca DeWinter-Schmitt (Ed) *Montreux Five Years On: An analysis of State efforts to implement Montreux Document legal obligations and good practices*, online report, available at <http://ihrib.org/wpcontent/uploads/2013/12/MontreuxFv3.pdf>

⁹ Martha Finnemore showed how international norms shape state identities in a variety of policy areas, including beliefs on the legitimate purpose of violence (1996, 2003). Scholars showed how norms of appropriate behavior had changed state policies (Klotz 1995; Price 1995).

precedents for the use of armed PMSCs internationally¹⁰. Yet, as claimed by Abrahamsen and Williams, too narrow a focus on the state's monopoly on violence risks becoming a hindrance¹¹.

The contemporary rise of private security shows explanation that stress agency often contrasted but not opposed to institutional or structural factors- like the end of the Cold War and 9/11. Avant for example argues that 9/11 was less critical than expected with domestic choices shaped by poor planning¹². The debate on the rise of private security- either stresses a change in the *type* of threat or a change in the *idea* of the type the threat- the former stressing either how variation in the type of threat led to changes in mobilization patterns¹³, often associated to arguments on economic efficiency of private contractors¹⁴.

Other approaches suggest the lingering influence of the anti-mercenary norm¹⁵ or its partial transformation¹⁶ in shaping state's behavior and institutional change. Petersohn, for example, shows that *the scope of the anti-mercenary norm has shrunk* and that the individual self-defense interpretation of the anti-mercenary norm explains the institutional shift by several states and international organizations.¹⁷

In this paper, I build upon normative perspectives by arguing that norms provide important insights from another perspective. I argue that PMSCs norms- the dependent variable- originate in the normative concerns around the notion neutral humanitarianism which informed and constrained self-interested states' actions. My approach takes some inspiration from Goldstein and Keohane argument that changes in ideas or in conditions that affect the impact of ideas can affect policy¹⁸.

- *Argument of this paper*

¹⁰ Krahmann. *The United States, PMSCs and the state monopoly on violence: Leading the way towards norm change* Security Dialogue February 2013 44: 53-71. Her evidence is the United States and European states recent turn towards use of PMSC on board ships. Significant evidence for a 'norm cascade' can be identified among many of the USA's allies, such as the UK, Canada, the Netherlands, Germany, Italy, Spain and Norway, who have started to permit the international use of force by PMSCs even when hired by private actors, for example to provide protection against pirate attacks". She then goes on to add that "failure to agree on a global regulation puts into question whether the evolution of the norm towards an inclusion of state-sanctioned or regulated private armed force has already reached the phase of international 'norm internalization'."

¹¹ Abrahamsen and Michael C. Williams. Op. cit. (...) *leaving only the options of seeing private security as a straightforward erosion of the state or as delegation by a state whose monopoly and power remain essentially unaltered.*

¹² Avant in Burk, James, ed. *How 9/11 Changed Our Ways of War*. Stanford University Press, 2013. The policy choice to increase privatization in the United States *was neither intentional nor the result of 9/11, it was the result of poor planning* The opposite view is found in Krahmann: political and ideological nature of the decision to contract.

¹³ Cohen, *Citizens and Soldiers*, p.32. Small and asymmetric war require small, lighter equipped and professional forces

¹⁴ Avant in Burk 2013:225. She criticizes both arguments since they assume an *intentional* choices to revert to private forces, born out of the change in nature of the threat or of the nature of ideas prevailing in the United States. Instead, it was an expansion of existing policy choices born of optimistic assessments of mobilization requirements and most decisions were made *at low levels* in response to deteriorating security. Against this view, cf. Krahmann 2010:154. She argues that only ideological preferences of US government from Republicanism to Neoliberalism- can explain the shift

¹⁵ Percy, S. Mercenaries, *The history of a norm in international relations* (Oxford University Press, 2007)

¹⁶ Petersohn (2014), Panke, and Petersohn. (2011).

¹⁷ That is, the UK parliament, the second UN special rapporteur on mercenaries, the UN Working Group on Mercenaries, and the US Congress Petersohn (2014). Krahmann and Petersohn reach the same conclusions; she writes that the *growing number of governments consider the norm* (on state monopoly on violence) *to be limited to offensive combat operations*

¹⁸ Judith Goldstein and Robert O. Keohane, "Ideas and Foreign Policy: An Analytical Framework," in *Ideas & Foreign Policy: Beliefs, Institutions, and Political Change*, eds. Judith Goldstein and Robert O. Keohane (Ithaca, NY: Cornell University Press, 1993), p. 24.

The attempt to develop PMSCs norms in the last decade has been driven by neutral humanitarianism, which I argue, has two noticeable components.

The first is humanitarianism, which was initially narrowly the alleviation or improvement of victims of war and it meant to involve only emergency relief. With time, it has come to include aspects that confront the root causes of humanitarian crises, such as promoting of human rights, abetting state-building and fostering economic development¹⁹. Using humanitarianism in international security also derives legitimacy from an accepted conventional understanding that in fields like disarmament, the banning of entire categories of conventional weapons was carried out on humanitarian ideals²⁰. Borrie writes that:

Where limited progress in the disarmament and arms control domain has been achieved over the last decade, it tends to have been accompanied by humanitarian approaches, with assistance from international organizations, field-based practitioners, academic researchers and transnational civil society.

Second, and beyond humanitarianism, the evolution of PMSCs norms has been shaped by sovereignty and neutrality- crucial mechanisms to explain control over the market for violence in history. Thomson claimed that the practical development of the concept of neutrality allowed defining the problem of mercenarism as one where the state has a responsibility for the actions of its subjects or citizens (Thomson 1990:55). She explained the problem as the result of “unintended and undesirable consequences for interstate politics”²¹ and a problem that came from the supply side rather than the demand side: “a state that allowed its citizens or subjects to serve in a belligerent’s military could not claim neutrality” (Thomson 1990:59).

The argument that I advance is that the progression of PMSCs norms in the last decade shows continuity and differences vis-à-vis Thomson’s arguments. The mechanisms of sovereignty and neutrality remain foundational to order in the international system; however, while in the seventeenth century externalities were raised from the supply side rather than the demand side, the origins of the current regulation are probably better seen as originating both in supply and demand.

On the one hand, on the demand side, the abuses in the use of contractors led the United States to be involved in the Swiss initiative from the start, using it to inform domestic policy. On the other hand, on the supply side, neutral states like Switzerland risked being used as a base for activities in

¹⁹ Michael Barnett, “Humanitarianism Transformed,” *Perspectives on Politics* 3, no. 4 (December 2005): 723.

²⁰ Borrie, John, and Vanessa Martin Randin. *Disarmament as humanitarian action: from perspective to practice*. (United Nations Institute for Disarmament Research, 2006); Borrie, John. *Unacceptable harm: A history of how the treaty to ban cluster munitions was won*. (United Nations Publications UNIDIR, 2009).

²¹ Authorizing non state violence in the international system served states interests but came with unintended consequences both for privateering, mercenaries, mercantile companies. Cf. Thomson, Chapter 3. For a critique of this approach, cf. Percy (2007) where she contends that one of the central problems with Thomson's neutrality-as-control-mechanism argument is that even in states without neutrality laws, the practice of selling or using mercenaries stopped

foreign conflict and crisis regions, a point to which I return in section *ii*. It is the driver of state sovereignty that added a mechanism that prompted Swiss foreign policy to press on for the Swiss initiative to be signed and accepted.

Table 1

Century	Origin of Externality	
	Supply	Demand
XVIIth-XVIIIth	Individuals (mercenaries) could start wars	None
XXth- XXIst	Home states need regulation to avoid compromising their neutrality	Contracting states need regulation to ensure military efficiency

The analysis that follows draws from a variety of data collected during research work conducted in 2013 and 2014, including interviews as well as available literature and archival sources. The narrative also benefited from my participation to the *Montreux Five Years On: An analysis of State efforts to implement Montreux Document legal obligations and good practices*²²- researched and written by academics and activists to offer an alternative to the official publications.

ii. Origins of the Swiss initiative

- *Tracing the Actors*

As I shall show below, the difficulty of the Swiss initiative lied in overcoming diverging state interests- between states wielding the most power in that market, the United States, and host states that had none. To overcome this difficulty, regulation was framed around the ideals of neutral humanitarianism, ideals which then become interpenetrated by a range of interests during the final gestation. Yet, ideas still served, either as “roadmaps” or “focal points”, to inspire or constricts an actor’s range of a state’s foreign policy behavior²³.

To recognize the normative components, process tracing of the Swiss initiative must necessarily start with the identification of the actors involved- i.e. the Swiss state and the two non-state actors. The International Committee of the Red Cross (from now ICRC) and the DCAF, originally named 'Geneva Centre for the Democratic Control of Armed Forces' were the only non-state organizations present from the inception of the Swiss initiative.

²² Rebecca DeWinter-Schmitt, op.cit.

²³ Goldstein and Keohane, *Ideas & Foreign Policy: Beliefs, Institutions, and Political Change*, p. 24-26.

The DCAF is an international foundation established in 2000 on the initiative of the Swiss Confederation with the aim of improving security sector governance through security sector reform.

The definition of ICRC is more complex and more important for the purposes of this article. 2013 marked the 150th anniversary of the creation of the 'International Committee for Aid to Wounded Soldiers' by Henry Dunant and four others. The committee, later to become the ICRC, adopted the first Geneva Convention in 1864.

From a policy perspective, the International Committee of the Red Cross can be defined as *a complex, hybrid NGO, as there is a NGO within a NGO (the Federation) and a transnational organization (the ICRC), which as a private national organization in Switzerland, sets a global foreign policy.*²⁴ ICRC claims to act for the advance of human dignity and in the name of humanity. It also claims to be impartial, in the sense of responding to human suffering regardless of the nationality, religion or any other human characteristics.

On the other hand, from a legal point of view, ICRC is an ordinary association under Swiss private law. Its private nature and its uniform nationality guarantee its independence vis-à-vis other States, and ensure the neutrality without which it could not operate. This also applies to the Swiss State, in whose neutrality the ICRC is generally embedded without, however being dependent on that State. Rather, both sides insist on strictly observing this independence irrespective of the actual proximity.²⁵ Furthermore, *the humanitarian conventions to which the ICRC has actively contributed ever since its founding recognize its role, and invest it with specific assignments with the Community of Nations.* For this reason it is argued that ICRC today has a *functional international personality*.²⁶

Tracing the Norms: First Stage of the Swiss Initiative

The first seeds of the Swiss Initiative can initially be found in ideas and norms. The neutral humanitarianism embodied by ICRC, drove the first phase. It is an idea of neutral humanitarianism, defined as the impartial, independent, neutral approach that operates in peace and war, and that can be tied to various laws or be conducted on the basis of a-legal pragmatism.

²⁴ ICRC is part of an organization, the International Red Cross, which consists of three components: the national societies, the International Federation of the Red Cross and Red Crescent societies and the International Committee of the Red Cross. *It is a complex, hybrid NGO, as there is a NGO within a NGO (the Federation) and a transnational organization (the ICRC), which as a private national organization in Switzerland, sets a global foreign policy.* Routledge History of International Organizations: From 1815 to the Present Day. P.54

²⁵ Probst R. (1989) P. 125

²⁶ Torrelli, M. Le droit international humanitaire, p.16-17 in Probst R. (1989: 125)

At the origin of the Swiss initiative is a document discussed within the ICRC in 2004²⁷. For this reason, and for the continued support of ICRC to the Montreux Document after the signature in 2008, the identity and role of ICRC, which I have laid out above, are important to this argument.

The document was presented at the annual international conference of ICRC in 2004; it claimed that: “armed forces rely more and more both on civilians, with tasks that used to be strictly military, and on private security firms. This change is calling into question the accepted categories of actors in armed conflict”.²⁸

These questions led to a further reflection and eventually a special edition of the scholarly journal of ICRC.²⁹ The articles in the special edition suggested several important points: first, that the usefulness of the criteria for being a mercenary is limited; second, that human rights concern are less likely to be about *whether an individual fulfils the criteria for being a mercenary and more likely to be focused on issues of corporate accountability, contract law and individual criminal responsibility under the laws of armed conflict*.³⁰ Third, another *approach is to think about how private military companies may trigger state responsibility under international law*.³¹

It was pragmatic neutral humanitarianism, presumably severed from nationalism and national interests, which also led the ICRC to launch a series of expert meetings to clarify the notion of direct participation in hostilities³². “Direct participation” by civilians in combat erodes PMSCs protection against being targeted. It may also make them liable for criminal prosecution if captured. Determining status and what constitutes “direct participation” in conflict were problematic, however, and state actors and the ICRC did not always agree on how to interpret IHL’s guidelines. The “Interpretative Guidance on the notion of Direct Participation in Hostilities under International Humanitarian Law”, published a year after the Montreux Document was signed, would eventually reflect the conclusion of the Montreux Document.³³

²⁷ CICR, Rapport pour la XXVIII conference international de la Croix-ROUGE et du Croissant Rouge, Geneve, Decembre 2003, RICR

²⁸ CICR, Rapport pour la XXVIII conference international de la Croix-ROUGE et du Croissant Rouge, Geneve, Decembre 2003, RICR, March 2004, p.249. Author’s translation. These are deliberative rather than operational meetings that take place every four years.

²⁹ *International Review of the Red Cross*. Volume 88, Issue 863, Private Military Companies - 01 September 2006

³⁰ Clapham 2006

³¹ Ibid.

³² Available at <https://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>, last accessed September 20th 2014

³³ *The status of the personnel of private security and military contractors in armed conflict situations is to be determined by International Humanitarian Law on a case by-case basis, with particular regard to the nature and circumstances of the functions in which they are involved. However, there is a presumption that personnel of PMSCs are protected as civilians under IHL unless they are incorporated.* In Williamson, Jamie A. "Challenges of Twenty-First Century Conflicts: A Look at Direct Participation in Hostilities." *Duke J. Comp. & Int'l L.* 20 (2009). P. 465. One of the criticism can be found in Watkin, Kenneth. "Opportunity lost: organized armed groups and the ICRC direct participation in hostilities interpretive guidance." *NYUJ Int'l L. & Pol.* 42 (2009): 641. For a response, cf. Melzer, Nils. "Keeping the Balance Between Military Necessity and Humanity: A Response to Four Critiques of the ICRC's Interpretive Guidance on the Notion of Direct Participation in Hostilities." *NYUJ Int'l L. & Pol.* 42 (2009): 831.

Second Stage of the Swiss Initiative

Another initiative was being probed elsewhere: the Swiss Federal government considered the appropriateness and potential of new *international, binational and supranational initiatives*.³⁴ It was claimed that to date, there had been no forum to come together to discuss approaches to the establishment of both international and national standards.

This was only partly true. As a matter of fact, the African Union (A.U.) had just convened a meeting of experts to review the organization's legal instruments, including the 1977 Anti-Mercenary Convention.³⁵ However, it was not a 'forum to discuss approaches'; the A.U. was interested in seeking to control conventional 'mercenaries' of the type high-lighted by the 2004 coup attempt in Equatorial Guinea. In 2005, the U.N. also started to re-engage in this process from a clean slate. With the establishment of a second *Special Rapporteur on the Use of Mercenaries*, and then, of a new Working Group that succeeded the mandate of the Special Rapporteur on the use of mercenaries and stopped assuming PMSCs and mercenaries as one and the same.

In the decisive year of 2005, the Swiss initiative had also come to the realization that the available conventions and protocols regarding mercenarism would suffice and secondly, that PMSCs were corporate entities. This was no easy step. From the inception, in fact, the position textbooks in preliminary meetings could make a reference to private firms only via the concept term of mercenarism. The subtle and crucial juncture occurred and is described by Blamond: *in the "ouvrage de référence", Sassoli and Bouvier- "Un droit dans la guerre?"- security firms are not present in the index and are not referred to, if not by way of a reference to mercenarism*³⁶.

In 2005, the crucial shift occurs and humanitarian concerns and preoccupations with International Humanitarian Law were no longer the sole drivers of the initiative. When the Swiss diplomacy initiates the intergovernmental consultation, with the cooperation of ICRC, it prioritized its own national security preoccupations - i.e. *the issue of private security companies that could use Switzerland as their base for activities in foreign conflict and crisis regions*.³⁷

On the one hand, the first motivation stressed the need to ensure the safety of citizens abroad, particularly in conflict zones; Switzerland must *itself on occasion have recourse to the services of private security companies*. Similar strategic interests are found in the second motivation: *Switzerland has an interest not*

³⁴ Report by the Swiss Federal Council on Private Security and Military Companies, December 2005 p. 57. Employees of private security companies had been among those participating in those human rights violations.

³⁵ *This presented an opportunity for the AU to simultaneously address the challenges posed by PMSCs in the region*, as written by Gumedze 2011

³⁶ Balmond, L., p115, fn 6. The full citation is Sassoli and Bouvier, "Un droit dans la guerre?" CICR, Geneva, 2003

³⁷ *The report found only some evidence.* In the Basel region, three licensed companies known to be operating in war zones or crisis areas. Another private security company domiciled in canton Ticino made an unsolicited offer for its services to the Federal Department of Foreign Affairs while operating from Ticino without a licence, according to the cantonal authorities.

³⁷The company elected domicile in Ticino as a way of gilding its image (Swiss neutrality). Report by the Swiss Federal Council on Private Security and Military Companies, December 2005.. Available at: http://psm.du.edu/media/documents/national_regulations/countries/europe/switzerland/report_swiss_2005_private-security-and-military.pdf. Accessed April 2014

to be used as a base for illegal or dubious operations abroad and the government should respond to researches showing that *private military or security companies active in conflict zones could be operating from within Switzerland*.

In fact, the Montreux Document did not deter this trend. By 2011, the Federal Department of Justice and Police estimated that Switzerland was home to 20 PMSCs³⁸, including large holding groups relocating from abroad³⁹.

Thus, even if the third given motivation brings back a normative and foundation- “The *implementation and, where necessary, the development of international law*, especially human rights and international humanitarian law, is among *Switzerland’s traditional concerns*”⁴⁰- the Swiss initiative had already become an amalgamate of priorities.

Thus, during the second stage of the Swiss initiative, ideals and state interests became closely fused. From 2005, one could presume a cooptation by the government of Switzerland of the Swiss initiative. In analogy with Hall’s three principles of neutrality, Switzerland as neutral state had a specific state interest – i.e. restraining other states and private individuals from using its territory and resources for hostile purposes.⁴¹ Further, from 2008 onwards, the involvement of state interests would be promoted further⁴².

iii. Interests in ideas: argument based on neutral humanitarianism

- *The Soft Power of Neutrality*

In order to show the role of neutral humanitarianism, I should first articulate what I mean by neutrality, a difficult concept, like power or democracy, and other concepts in international relations. When one thinks of neutrality, one often thinks of states that do not participate to armed conflict, that do not interfere nor provide support to any of the involved parties in a conflict.

³⁸ Smith, R. (2013, Feb 18). Switzerland: mercenaries find loopholes in a ban on security companies. *Global Information Network* Retrieved from <http://search.proquest.com/docview/1288378922?accountid=11752>

Swiss politicians pushed for establishment of a new legal frame for registration and licensing of private security companies. Josef Lang, then national councilor and a leading voice in the Group for Switzerland without an Army (GsoA) demanded a national ban of PMCs.

³⁹ On Mar. 24 2010, a newly-founded holding company was registered in Basel's commercial register. Its name was AEGIS Group Holdings AG. A few months later, on Aug. 2, it was noted that the holding had taken over the London-based AEGIS Defense Services Ltd. Smith, R. (2013, Feb 18).

⁴⁰ Report by the Swiss Federal Council, 2005, pp57-8

⁴¹ Hall W.E. *The Rights and Duties of Neutrals*, p.47 in Thomson, P.57

⁴² In the outreach initiative to increase awareness and signatories to the Montreux Document, the involvement of the Swiss government and of the DCAF increased. For an analysis of compliance after five years, cf. Buckland and Burdzy, 2013, op.cit., and Rebecca DeWinter-Schmitt, 2013, op.cit.

Switzerland's foreign policy has been characterized by neutrality as a permanent feature since 1515, a status that was internationally recognized with the Vienna Congress in 1815⁴³. The U.S. Neutrality Act of 1794 was a defining moment for the notion of neutrality following which national role concepts and foreign policies became deeply rooted in neutrality in European states like Ireland, Norway, and Switzerland.⁴⁴

As mentioned at the beginning, Thomson explained the problem of mercenarism as a problem for states- it spurred "unintended and undesirable consequences for interstate politics". States had to bring individuals accountable under their jurisdiction or be drawn into other states' wars. Sovereignty and neutrality became the mechanism to control and eliminate the externalities of non-state violence.

The analogy with the Swiss initiative is significant. Switzerland means to control PMSCs on its territory as well and as noted above, aims at not being *used as a base for illegal or dubious operations abroad* aims at protecting its respectability and credentials of neutrality.

Several states investing in multi-lateralism had built credentials of neutrality, especially Western European small states. Some like Ireland and Norway similarly built on an earlier historical anchorage. Yet, no other state but Switzerland could have secured the acknowledgment of the custodian of Geneva Convention.

Certainly, Switzerland had built stronger networks and historical credentials by hosting and providing judges for ad hoc courts⁴⁵. It frequently represented other states with *protective power mandates*⁴⁶. Nonetheless, the seal of the ICRC strengthened the final Montreux Document in a extraordinary way. The ICRC was the indispensable institutional pillar, unlike other an inter-state organizations, such as those that eventually signed the Montreux Document⁴⁷.

Thus, this mechanism is not only about the idea of neutrality but about its institutionalization. It was arguably the neutrality of an international organization, not only of the state, that became crucial to the success of the Swiss initiative by adding a tool that no other state had. No other actor could legitimately claim to be neutral, and at same time benefit of the traction of ICRC, the guardian of the Geneva Convention. ICRC's claim that the Montreux Document has a purely humanitarian purpose cannot divert from the original motivations of state control.

⁴³ Before the Vienna Congress, since the defeat in the Battle of Marignano in 1515 and in particular since the Thirty Years War in the 17th century.

⁴⁴ Goetschel (2013)

⁴⁵ Most famously in 1872 in the Alabama case between the U.S. and Great Britain

⁴⁶ Since the Franco Prussian war, these engagements peaked during World War II when Switzerland held over 200. In Graf, Andreas, and David Lanz. "Conclusions: Switzerland as a paradigmatic case of small-state peace policy?." *Swiss Political Science Review* 19.3 (2013): 410-423.

⁴⁷ The European Union, The North Atlantic Treaty, the Organization for Security and Co-operation in Europe

The institutional trait stands out in comparison with another institution, the United Nations. Yet, the terrorist attacks of 11 September 2001 and the US-led Iraq intervention had undermined the organization, and the Baghdad bombing, *deepen(ed) an already powerful sense of crisis in the organization's senior staff*⁴⁸. Second, normative and definitional reflection had not advanced in the same direction as they did within the ICRC- United Nations officials argued that the Swiss initiative overlook that PMSCs are rarely under IHL obligations and *much of their most sensitive work happens entirely outside the scope of armed conflict* (e.g. anti-piracy work or the privatization of security in societies riddled with violent crime).⁴⁹

Directly relevant to this discussion, is the fact that it was not until the Draft Convention in 2010 that the shift in definitions took hold within the U.N. Attempts to reform the human rights initiatives led to the replacement of the Human Rights Commission with a new Human Rights Council⁵⁰ where the UN Working Group on the Use of Mercenaries had been established in 2005- with a mandate was to monitor private companies offering military assistance, consultancy and security services and study how their activities on the international market affected the enjoyment of human rights, particularly the right of peoples to self-determination.

- *Institutional Drivers in historical perspective: ICRC and Neutrality*

As a guiding principle, neutrality functions as only one of seven interconnected 'fundamental principles' adopted by the ICRC. It is a pledge to 'not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature' (ICRC 1965). Yet, I illustrate this difficulty of the practice of neutrality before analyzing the difficulty within the Swiss initiative.

Two examples are useful for my purpose. The first episode is the Italo-Ethiopian conflict (1935-1936). During the war, members of the ICRC often held or exhibited pro-Italian sympathies and eventually, the ICRC as an organization leant towards the Italian fascists.⁵¹

Another historical example is the Nigerian civil war- a war where mercenaries were used and a context where the ICRC swayed inadvertently towards Biafran independence. The biggest problem for the ICRC in Biafra was not encouraging compliance with the law of war, but providing enough

⁴⁸ Bosco, David L. *Five to rule them all: the UN Security Council and the making of the modern world*. Oxford University Press, 2009. P. 243

⁴⁹ Author's interviews, United Nations officials within the H.R.C., July 2014

⁵⁰ It was the result of advocacy by key world actors, particularly the United States. The proponents of the new body expected the HRC to be active in protecting and not only promoting human rights and the human rights movement hoped it would be the defendant of human rights alongside the U.N. Security Council. Ramcharan 2011. One of the "key problems of the HRC is that the African and Asian groups have been allocated 26 out of 47 seats. Many countries in these two regions have severe governance problems and have experienced numerous conflicts and situations of human rights violations. (...) They band together to prevent discussions of gross human rights violations and forthright criticisms of such violations" (Ramcharan 2011:13)

⁵¹ Baudendistel R. *Between Bombs and Good Intentions: The Red Cross and The Italo-Ethiopian War, 1935-1936*. (Routledge, 2006)

Further lack of neutrality was demonstrated when the ICRC conducted an investigation of the bombing of Red Cross hospitals in the field.

relief supplies to prevent starvation.⁵² Yet, the headquarters eventually realized that the Biafran leaders had manipulated the relief effort⁵³ and their representative was declared *persona non grata*.⁵⁴ As Forsythe writes, the ICRC performed so poorly that its neutrality was compromised and “more Biafra would have led to the demise of the organization”.⁵⁵

These examples illustrate both the challenges for the organization and the fluidity of the concept of neutrality in the operational context. Arguably, it is perhaps *political neutrality* that ICRC can aspire to.⁵⁶ These two examples also illustrate how challenges increase at moments of historical juncture- be it the rise of fascism, decolonization, the end of the Cold War or the post 9/11. The end of the bipolar system marked the end of a role essentially as being neutral vis-à-vis the two blocs. The new reality after 9/11 is not dissimilar. The challenge to maintain neutrality is higher at points of juncture- and during these moments of transition some slips may occur.⁵⁷

I have thus outlined one factor that may have *directly* affected the neutrality of ICRC vis-à-vis the Swiss initiative- the changes of post 9/11; a second one has an *indirect* effect- the shifting foreign policy of Switzerland. The fact that ICRC depends upon a president who is generally a former Swiss diplomat⁵⁸ and the single nationality (Swiss) of the ICRC Assembly⁵⁹ may also impact neutrality. Over the years, Switzerland shifted away from an isolationist interpretation of neutrality⁶⁰ and the traditional asymmetry in Switzerland integration to the world was greatly reduced. In 2002, Switzerland became a full member of the UN⁶¹; it started to participate to military peacemaking; two rounds of bilateral agreements with the EU constituted a major step towards European integration.⁶²

⁵² Nigerian federal government issued a code of conduct to its soldiers which required that Biafran prisoners be 'treated as prisoners of war'. Instructions were given on the protection of civilians, mosques, churches, foreigners and private property. Foreign mercenaries, however, were 'not to be spared'. The Red Cross (ICRC) made fairly regular visits to detainees held by the government. (author??) On the famine intervention, cf. Chandler, David G. "The road to military humanitarianism: how the human rights NGOs shaped a new humanitarian agenda." *Human rights quarterly* 23.3 (2001): 678-700. After some limited involvement at the beginning of the war, Biafra became the ICRC's first large-scale relief operation

⁵³ counting on the “reluctance of Lagos to attack the night-time weapons flights for fear of hitting Red Cross planes in the process. Forsythe 2005:66

⁵⁴ A shooting incident caused the ICRC to pay closer attention to the Fourth Geneva convention and its Article 23 (...) and that the established government in a civil war had the legal right to set the terms for inspection for relief flights into the secessionist area. in Forsythe, D. P. *Humanitarian Politics: The International Committee of the Red Cross*. (Baltimore: Johns Hopkins University Press, 1977). P. 192. For a full account of ICRC work during the Nigerian civil war, cf. pp.180-196

⁵⁵ Forsythe 2013. He cites three main “blots on the record” of neutrality: conservatism and racism against Ethiopia during the Italian invasion; cooperation with the Nazis that prevented a discreet diplomacy in favor of the Jews during the genocide; the tilt towards Biafra during Nigerian civil war.

⁵⁶ For a critique, cf. Franke, Mark FN. "Responsible Politics of the Neutral: Rethinking International Humanitarianism in the Red Cross Movement via the Philosophy of Roland Barthes." *Journal of International Political Theory* 6.2 (2010): 142-160. ICRC's commitment to neutrality leads it to a broad yet significant political partiality and, thus, a highly politicised role in international conflict. (...) The irresponsibility to these terms is rooted well within ICRC's simultaneous admission to being politically involved and interested in its support for humanity, while assuming that humanity itself can serve as an apolitical guide to such action. It presents an acknowledged political humanitarianism while taking the position that the ground of this work, humanity, is itself neutral.

⁵⁷ The perception of bias made the ICRC's relationship with most communist countries difficult throughout the Cold War. ..Is this the same pattern we will see in the War on Terrorism? If this pattern is repeated the ICRC must understand the limits of its neutrality, and further should understand how it is perceived and adapt to these circumstances. Forsythe. Op. Cit.

⁵⁸ Although they have all been chosen and co-opted by the ICRC. Further, they have not been seconded to Geneva by Bern. They have all given up their position in the Swiss administration, except in one case during the 1940s. Gasser in Gabriel and Fischer, P.121

⁵⁹ For a description of the office of the president and the assembly, cf. Forsythe, 2014, ch. 2

⁶⁰ Goetschel, Laurent. 2013.

⁶¹ For a table of the integration of Switzerland in the UN system, cf. Gabriel and Fischer, 2003, pp. 55-6

⁶² Kriesi and Trechsel (2008)

Thus, post 9/11 changes challenged the *modus operandi* of ICRC and its neutral Swiss ground shifted. Yet, the force of neutral humanitarianism could be reliant on its institutionalization and was able to function with political and bureaucratic autonomy.

- *Institutional Drivers in the Swiss initiative: between Anti and Pro-Americanism*

The Swiss initiative succeeded in keeping major powers to the negotiating table even if the U.S. had no interest in international regulation. The most direct externalities that affected national interest related to the inefficiency of contractors in military cooperation (Dunigan 2011) and fraud. The Commission on Wartime Contracting, established by Congress in 2008, found that up to \$60 billion- or about one of three dollars spent - was lost to waste or fraud. The problems, however, called for a domestic rather than international reform. Initially, the U.S. did not join the process to develop regulations. Avant writes that: *US preferences for (..) regulation emerged during the multi-stakeholder processes. Though there was demand for US regulators to “do something” from Congress, new ideas about what the US might do emerged from its interactions with others.*⁶³

The following narrative is going to emphasize two legitimacy aspects that stress the institutional brokerage by the proponents of the Swiss initiative, the first at the domestic level, the second at the global level. Each show the force of institutionalized neutrality and its ability eventually affect the U.S.- “the 800 pound gorilla in the room”.⁶⁴ They also show the ambiguities and the delicate balance that ICRC sought with the counterparts in the United States, and the attacks sustained by ICRC- *not* by the Swiss government- as it defended humanitarian principles

The first feature in the orchestration of the Swiss initiative is that ICRC opposed certain aspects of U.S. policy and arose to the status of a potentially anti-American institution. In the midst of growing Anti-American sentiments in world politics, the perceived association between anti-Americanism and opposition to U.S. policy does not mean that anti-Americanism causes the opposition⁶⁵. The ICRC was not anti-American; yet, it came to be antagonized because of the criticisms towards detention at Guantanamo, which led to a position paper circulated in U.S. policy circles that advocated a restructuring of the ICRC⁶⁶.

Despite the spread of anti-American views, the extent of U.S. collaboration with multilateral fora intensified greatly. Cooperation in counterterrorism and security with the U.N., NATO and at the

⁶³ *Instead, US preferences for this approach to regulation emerged during these multi-stakeholder processes. Though there was demand for US regulators to “do something” from Congress, new ideas about what the US might do emerged from its interactions with others.* Avant 2014, forthcoming

⁶⁴ Avant 2012

⁶⁵ Katzenstein, and Keohane, eds. *Anti-Americanisms in world politics* (Cornell University Press, 2007). The authors define Anti-Americanism as a psychological tendency to hold negative views of the United States and of American society in general. p. 275

⁶⁶ The restructuring was highly unlikely since an all-Swiss Assembly contributes to the neutrality of the organization but the proposal was one of many frequent attacks. This paragraph draws from Forsythe, 2011: 165-6

G8 summit meetings increased; partnerships with organizations such as the World Bank and the IMF remained intact⁶⁷. Anti-Americanism did not shape the signing of the ICC treaty either⁶⁸. Nor did it change ICRC's views either. The ICRC had even questioned the claim made by some that there was a "vacuum of law" surrounding PMSCs.

Yet, a bias towards the ICRC developed and here again, Forsythe's account is illuminating:

Clearly there was a determined effort in some American political circles to discredit the ICRC, despite the fact that historically it had been widely recognized as mostly neutral and certainly discreet. During the Cold War if it had strayed from neutrality in places like Korea and Southeast Asia it had tilted toward the West.

The post 9/11 interventions blurred accepted distinctions and categories spurring questions on the applicability of International Humanitarian Law to armed conflict. Forsythe writes that the Bush administration saw IHL and the international organizations that sought to apply it, as in league with the enemy: *what others saw as normal defense of normal law (...), some others saw as 'lawfare', the pursuit of an anti-American agenda by enemies. (...) The ICRC has become the leading practitioner of 'lawfare'*⁶⁹.

The applicability of the IHL to terrorism would entrench the idea that armed conflict is normal and routine. *If efforts to combat terrorism in general always involve armed conflict, then it is a conflict with no boundaries in time or space. It takes place everywhere, has no logical culmination and irrevocably blurs the distinction between civilian and combatant that is so important to the Geneva convention*⁷⁰.

Eventually, the Swiss initiative was indeed signed and the Montreux Document informed the U.S. reform process and contributed to the growing global standards reflected in a "web of regulatory interaction which is American power at work, but power bound to general principles and processes"⁷¹ Cockayne wrote that the Montreux Document was an achievement as a reaffirmation by the United States, of the applicability of International Humanitarian Law and International Human Rights Law to contemporary armed conflict, *given the uncertainty around the US position on such issues between 2003 and 2008.*⁷²

A second important aspect stresses the opposite risk that support to the Swiss initiative by ICRC may have been perceived as a contribution to legitimate the U.S. interventions- a balancing of

⁶⁷ Katzenstein, and Keohane. P. 281, 283-6. Also: *European governments not only declined to block the nomination of Paul Wolfowitz (often referred to as the architect of the Iraq War) but expressed considerable support for him before his official selection.* P. 288

⁶⁸ Kelley 2005 in Katzenstein, and Keohane

⁶⁹ Forsythe. D.P. *The politics of prisoner abuse: The United States and enemy prisoners after 9/11*. Cambridge University Press, 2011) p.164. He adds, citing Goldsmith, *The Terror Presidency: the weak 'enemy' using asymmetric legal weapons was not al Qaeda, but rather our very differently motivated European and South American allies and the human rights industry that supported their universal jurisdiction aspirations. Rumsfeld saw this form of lawfare as a potentially powerful check on American military power*

⁷⁰ Parry and Duffy. In Forsythe fn. 18, p. 169

⁷¹ Avant, 2012

⁷² Cockayne, James 2009: 401. *One US government participant in the process pronounced the Montreux Document 'a significant achievement of historic importance'*

perceptions, outside of U.S. domestic politics. First, ICRC could have been perceived as helping normalize contracting practices in the war effort; and second, as supporting- albeit indirectly- a mostly Western industry.

Indeed, for ICRC, *it was by no means certain*, as Cockayne writes, that *that it would serve as a driver of intergovernmental discussion on a topic with as controversial a history as the 'mercenary issue'*.

There are three points to this argument. First, the participation of ICRC to an initiative of regulation like the Montreux Document had few antecedents, as Cockayne himself acknowledges: *despite the sui generis roles of the ICRC as the guardian of IHL and the Swiss Federation as the Depository of the Geneva Conventions, such a cooperative initiative in fact had few precedents*⁷³.

In general, the ICRC preferred the role of passive observer- rather than active participant- in intergovernmental and multi-stakeholder discussions, as in the case of Small Arms and Light Weapons, and more recently, the Arms Trade Treaty⁷⁴.

Second, it is noted that since 2001 the ICRC had been an observer of the *Voluntary Principles on Human Rights and Security*, an initiative meant to use soft law to clarify norms in the use of security by the extractive firms. At its inception, it had declined to participate formally⁷⁵. Voillat writes:

*The ICRC did not wish to be a formal member of the Voluntary Principles: it considered that formal membership in an initiative that was constituted exclusively of Western governments, companies, and organisations was not suitable with regard to the institution's principle of neutrality*⁷⁶.

Further, and this is perhaps the most ambiguous aspect, the Swiss initiative came to indirectly include the active participation of the security industry, in a second stage⁷⁷. The ICoC originated from the withdrawal of the industry from the inter-state negotiations of the Swiss initiative, an event that had not been planned at the outset. The Swiss government, not the ICRC, convened the Code but ICRC welcomed nonetheless the ICoC *as an initiative aimed at ensuring adherence by PMSCs to recognized standards of IHL and human rights law, thereby contributing to the better protection of victims of armed conflict and situations of violence below that threshold*⁷⁸.

⁷³ Cockayne p. 418.

⁷⁴ An exception of active participation is the International Coalition for the Ban on Landmines. Concern with Anti-Personnel land mines initially grew out of work on humanitarian laws of conflict as carried out chiefly by the ICRC. Price, R. (1997:7)

⁷⁵ Interviews with ICRC representatives, January 2014, Johannesburg and Geneva

⁷⁶ Voillat 2012: 1098

⁷⁷ This raised the risk that ICRC- or Switzerland- could be seen as contributing to legitimate PMSCs. The question may be settled only with time as the Montreux Document extends its membership or else remain confined to an almost *exclusively Western* initiative, as the Voluntary Principles, which indirectly supports a mostly Western industry. The Swiss initiative did not set out to be exclusively Western, nor did it set out to encourage the market for private security but this could be its long-term, unintended result.

⁷⁸ 31st International Conference of the Red Cross and the Red Crescent (Geneva, 2011). P.35 Op. cit.

This story of the relationship between the ICRC and the United States shows the force of institutionalized ideas as ICRC survived strong attacks from domestic US groups, and tried to balance the internal dilemmas that the participation posed at the global level. The same institutional features persist to this day and may perhaps also shed light on the substance of the limited compliance achieved since the ink of the Montreux Document dried up (in table 2, a synthesis of what the Document achieved in the 2008-2013 period).

Table 2

MONTREUX DOCUMENT, IMPLEMENTATION, 2008-2013⁷⁹	
Determination of services ⁸⁰	<p>Low/Medium</p> <ul style="list-style-type: none"> • In most states, imprecise determination of functions that PMSCs may or may not perform • Inadequate extraterritorial applicability of legislation for PMSCs operating abroad⁸¹ <p>Country cases: USA: high but contradictory⁸²; UK: low; Afghanistan: high⁸³</p>
Accountability ⁸⁴	<p>Low/Medium</p> <ul style="list-style-type: none"> • Weak monitoring of compliance with terms of authorisations, contracts and licenses • Gaps in legal accountability and judicial liability; gaps remain in this area, whether they relate to corporate, criminal or civil law⁸⁵
Procedures of authorization ⁸⁶	<p>Low</p> <ul style="list-style-type: none"> • Problem of Capacity⁸⁷ • Problem of low standards as a basis for authorizations, contracts and

⁷⁹ This table is offered for illustrative purposes and is based on a synthesis of both the Official Report and Shadow Report. It is not meant to be exhaustive nor to give an ordering of importance of the issues.

⁸⁰ Good Practices 1, 24 and 53 of the Montreux Document relate to which services may or may not be contracted out to PMSCs.

⁸¹ Buckland and Burdzy, P. 6. The report contrast a permissive approach (Finland or Angola) vs. Proscriptive approach (USA or UK in the area of export of services and goods in CBN)

⁸² Both DeWinter-Schmitt and Buckland and Burdzy agree on this. Cf. Buckland and Burdzy pp. 18-19 and DeWinter-Schmitt, pp. 41-42

⁸³ From Shadow Report. In Afghanistan, the definition is “activities which provide security of real and natural persons, logistics, transportation, goods and equipment, training of security employees [and] warning services.”¹³⁸ Regulations have further classified security services into five different categories:¹³⁹ a) area security,¹⁴⁰ b) convoy security,¹⁴¹ c) fixed-site security,¹⁴² d) mobile security,¹⁴³ and e) police training missions

⁸⁴ Good Practices 5-13, 14-18, 30-42, and 60-67 cover several reporting mechanisms and requirements and include background checks into the past conduct of PMSCs, adequate training, lawful acquisition of weapons and equipment, and internal accountability policies

⁸⁵ These gaps prevent victims of PMSC misconduct from seeking or obtaining justice. International legal remedies depend on the expediency and willingness of national prosecutors to bring cases before a criminal court. Buckland and Burdzy, 2013, P. 7

⁸⁶ Procedures of authorisation are outlined in Good Practices 2-4, 25-29, and 54-59. They include: designating a central, publically accountable authority, allocating adequate resources to the licensing authority and ensuring personnel are sufficiently trained to meet the task of issuing licenses.

⁸⁷ Montreux Document-endorsing states have identified a government organ with responsibility for the authorisation, contracting and licensing of PMSCs but capacity required to adequately carry out their functions, Buckland and Burdzy, P. 30.

Conclusion

I outlined an ideational approach in PMSCs norms and showed that with some caveats, it can add perspective to the interpretation of current regulatory developments. Regulation must account for variation in state behavior- as Avant writes: *theories of US hegemony are unable to explain why the US would support, forestall, and then more moderately engage with regulation in small arms while it moved from resisting to supporting governance in military and security services*. Purely interest-based explanation cannot entirely explain how the U.S. government was induced to collaborate to an initiative meant to contribute to the defense of humanitarian norms.

In historical perspective, the Swiss initiative tried to deal with some of the new “unintended and undesirable consequences” of non-state violence suggesting an analogy with Thompson’s described mechanism for the suppression of mercenaries and pirates practices of seventeenth century states. The analysis must be complemented since the Swiss initiative is probably better seen as originating in a mix of *both* demand and supply side externalities.

On the one hand, on the demand side, the abuses in the use of contractors led U.S. policymakers to spearhead inquiries and to be involved in the Montreux Process from the start, using it to inform their actions and eventually US regulation. “The Montreux language quickly took hold as the dominant frame for looking at PMSCs”⁸⁹. On the other hand, on the supply side, neutral states like Switzerland risked being used as a base for activities in foreign conflict and crisis regions.⁹⁰ This was an important driver that prompted Swiss foreign policy to defend the country’s already embattled neutrality and that found strength in the institutionalized neutrality embodied by ICRC.

⁸⁸ Low standards in obtaining contracts, authorisations or licenses, (past conduct, personnel training, and internal company policies are being ignored or treated as less important than competitive pricing), Ibid, p 29.

⁸⁹ Avant, 2012, op. cit, p.34

⁹⁰ *The report found only some evidence*. In the Basel region, three licensed companies known to be operating in war zones or crisis areas. Another private security company domiciled in canton Ticino made an unsolicited offer for its services to the Federal Department of Foreign Affairs while operating from Ticino without a licence, according to the cantonal authorities.

⁹⁰The company elected domicile in Ticino as a way of gilding its image (Swiss neutrality). Report by the Swiss Federal Council on Private Security and Military Companies, December 2005.. Available at: http://psm.du.edu/media/documents/national_regulations/countries/europe/switzerland/report_swiss_2005_private-security-and-military.pdf. Accessed April 2014

Selected Bibliography

- Abrahamsen, Rita, and Michael C. Williams. *Security beyond the state: Private security in international politics*. Cambridge University Press, 2010.
- Avant, D. (2005) *The Market for Force*. Cambridge: Cambridge University Press
- _____. (2012) *The US and Global Security "Governance": Networks, Goals, and Power*. APSA paper
- Baudendistel R. (2006) *Between Bombs and Good Intentions: The Red Cross and The Italo-Ethiopian War, 1935–1936*. London: Routledge
- Blamond, Louis "Observations sur le Document de Montreux relatif aux obligations juridiques internationaux pertinentes et aux bonnes pratiques pour les États concernant les activités des sociétés militaires privées" (2009) 113 R.G.D.I.P., 113
- Borrie, John. *Unacceptable harm: A history of how the treaty to ban cluster munitions was won*. (United Nations Publications UNIDIR, 2009
- _____ and Vanessa Martin Randin. *Disarmament as humanitarian action: from perspective to practice*. (United Nations Institute for Disarmament Research, 2006);
- Clapham, Andrew. "Human rights obligations of non-state actors in conflict situations." *International Review of the Red Cross* 88.863 (2006): 491-523.
- Cockayne, James "Regulating Private Military and Security Companies : The Content, Negotiation, Weaknesses and Promise of the Montreux Document" (2009) 13 *Journal of Conflict & Security Law* 401
- Dunigan, M. (2011) *Victory for Hire: Private Security Companies' Impact on Military Effectiveness*. Stanford University Press
- Melzer, Nils. "Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law." (2009). Available at: <https://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf> , Accessed September 22, 2014
- ICRC, *International Review of the Red Cross*, 2006, No. 863 – (Private military companies)
- ICRC. 1965. *Proclamation of the Fundamental Principles of the Red Cross*. The XXth International Conference of the Red Cross, Vienna
- Hanspeter Kriesi, Alexander H. Trechsel (2008) *The politics of Switzerland: continuity and change in a consensus democracy*
- Forsythe, D. P. (1977) *Humanitarian Politics: The International Committee of the Red Cross*. Baltimore: Johns Hopkins University Press,.
- _____. 2005 *The Humanitarians: The International Committee of the Red Cross*. Cambridge University Press.
- _____. 2011 *The politics of prisoner abuse: The United States and enemy prisoners after 9/11*. Cambridge University Press,.
- _____ and Barbara Ann J. Rieffer-Flanagan. *The International Committee of the Red Cross: a neutral humanitarian actor*. Routledge, 2014.
- Gabriel, Jürg Martin, and Thomas Fischer. *Swiss foreign policy, 1945-2002*. Palgrave Macmillan, 2003,
- Gasser, *The International Committee of the Red Cross and its Development since 1945* in Gabriel and Fischer. *Swiss foreign policy, 1945-2002*. Palgrave Macmillan, 2003
- Goldstein, Judith and Keohane Robert O. *Ideas & Foreign Policy: Beliefs, Institutions, and Political Change*, eds. (Ithaca, NY: Cornell University Press, 1993)

November 15, 2014

Goetschel, Laurent. 2013. "Bound to Be Peaceful? The Changing Approach of Western European Small States to Peace." *Swiss Political Science Review* 19, no. 3: 259-278.

Katzenstein, and Keohane, eds. *Anti-Americanisms in world politics*. Cornell University Press, 2007.

Melzer, Nils. "Keeping the Balance Between Military Necessity and Humanity: A Response to Four Critiques of the ICRC's Interpretive Guidance on the Notion of Direct Participation in Hostilities." *NYUJ Int'l L. & Pol.* 42 (2009): 831.

Rieffer-Flanagan, Barbara Ann. "Is Neutral Humanitarianism Dead? Red Cross Neutrality: Walking the Tightrope of Neutral Humanitarianism." *Human rights quarterly* 31.4 (2009): 888-915.

Panke, Diana, and Ulrich Petersohn. (2011) "Why international norms disappear sometimes." *European Journal of International Relations*

Percy, S. (2007). *Mercenaries: the history of a norm in international relations*. Oxford University Press.

Petersohn, Ulrich. "Reframing the anti-mercenary norm: Private military and security companies and mercenarism." *International Journal: Canada's Journal of Global Policy Analysis*

Probst R. (1989) "Good offices" in the light of Swiss international practice and experience.

Singer, P. (2003) *Corporate Soldiers*. Cornell University Press

Thomson, J. E. (1996). *Mercenaries, pirates, and sovereigns: state-building and extraterritorial violence in early modern Europe*. Princeton University Press.

Tougas, Marie-Louise "Some Comments and Observations on the Montreux Document" (2009) Y.B. Int'l Hum. L. volume 12 Yearbook of International Humanitarian Law, Volume 12 – 2009 – pp. 321-346