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**United Nations and Private Military Companies:
Impact of the Mercenary Norm**

Master's Thesis

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Abstract

In 1994, five hundred thousand to one million people were killed during the genocide in Rwanda.¹ Critiques soon emerged regarding the United Nations' (UN) inaction, accusing it of letting the genocide unfold. In the midst of this tragedy, Executive Outcomes (EO), a South African based private military company (PMC) suggested to intervene in Rwanda on behalf of the UN. However, the UN dismissed the idea of outsourcing peacekeeping to a private firm. The UN's inability to act decisively when wanting to deploy peacekeeping operations has led some to advocate the use of Private Military and Security Companies (PMSCs), leading to a very energetic debate. The debate on the outsourcing of peacekeeping to PMSCs comes at a time of increased use of such companies by the UN. Although it has increased its use of PMSCs over the years, the UN's discourse vis-à-vis these companies is usually critical. In this thesis, we aim to observe whether the UN's discourse vis-à-vis PMSCs has evolved over time to match the practice of increased use, or whether the UN continues to classify these companies in negative terms. We also attempt to establish whether the anti-mercenary norm has an impact on the UN's use of PMSCs.

Keywords

Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination, PMSCs, Mercenaries, Mercenary Norm, United Nations.

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¹ SURVIVORS FUND (SURF): Statistics; BROOKS, Doug. Could Executive Outcomes have ended the 1994 Rwandan Genocide?, p.1

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Abstrakt²

V roce 1994 bylo během genocidy ve Rwandě zabito pět set tisíc až jeden milión lidí. Brzy nato se objevili kritici nečinnosti Organizace spojených národů (OSN), která podle nich nesla vinu za rozměry, jichž genocida postupně nabyla. Uprostřed této tragédie navrhla Executive Outcomes (EO), soukromá vojenská společnost (private military company, PMC) se sídlem v Jižní Africe, že ve Rwandě jménem OSN zasáhne. OSN však myšlenku využití externích služeb soukromé firmy k zachování míru zavrhl. Neschopnost OSN jednat rozhodně při záměru nasadit mírové síly, vedla některé k prosazování využití soukromých vojenských a bezpečnostních společností (Private Military and Security Companies, PMSC), což vyvolalo ráznou debatu. Rozprava o využití PMSC jako externích dodavatelů mírových operací přichází v době, kdy OSN takové společnosti využívá ve zvýšené míře. I když ale OSN tyto společnosti využívá v průběhu let ve vzrůstající míře, staví se k nim obvykle ve svém diskurzu kriticky. V této disertační práci se snažíme sledovat, zda se postoj OSN vůči PMSC v jejím diskurzu v čase vyvíjí tak, aby odpovídal zvýšenému využívání těchto společností v praxi, nebo zda je OSN i nadále označuje negativními termíny. Dále se pokoušíme stanovit, zda má norma o zákazu žoldnéřství nějaký dopad na využívání PMSC ze strany OSN.

Klíčová slova

Pracovní skupina k využívání žoldnéřů jako prostředku porušování lidských práv a překážky výkonu práva osob na sebeurčení, PMSC, žoldnéři, žoldnéřská norma, Organizace spojených národů.

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² Translated from English to Czech by EKO Překlady s.r.o.

Declaration of Authorship

1. The author hereby declares that he compiled this thesis independently, using only the listed resources and literature.
2. The author hereby declares that all the sources and literature used have been properly cited.
3. The author hereby declares that the thesis has not been used to obtain a different or the same degree.

In Prague on April 29, 2016

Jeremy E. Meyer

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Table of Contents

I. Introduction

1.1. Background	1-3
1.2. Research objectives	3-4
1.3. Research approach.....	4-5
1.4. Deviations from the original research proposal	5-6

II. Literature Review and Theoretical Framework

2.1. Introduction	7
2.2.1. Creation of the United Nations.....	7-8
2.2.2. Structure of the United Nations.....	8-9
2.2.3. Missions/Functions of the United Nations	9-11
2.3. UN Failure in Rwanda and difficulties in accomplishing its humanitarian mission.....	11-13
2.4.1 The PMSC option.....	13-14
2.4.2. Advocates	14-16
2.4.3. “Second best option”	16-17
2.4.4. Opponents.....	17-19
2.5.1. PMSCs VS mercenaries: Definitions.....	20-22
2.5.2. PMC, PSC, PMSC, PMF?.....	23-25
2.6. The anti-mercenary norm.....	25
2.6.1. The impact of norms.....	26-28
2.6.2. The lifecycle of norms.....	28-29
2.6.3. History of mercenaries and of the anti-mercenary norm	29-32
2.6.4. Modern PMSCs	33-36
2.7. The UN and PMSCs	36-40

III. Method

3.1. Introduction	41
3.2. Evolution of the UN’s use of PMSCs	41-42
3.3. Evolution of the UN’s discourse vis-à-vis PMSCs.....	42-43
3.3.1. Selected reports.....	43-45
3.3.2. Discourse analysis	45-46
3.4. Comparison of the evolution of the UN’s use of PMSCs and its discourse vis-à-vis PMSCs.....	46
3.5. Impact of the anti-mercenary norm	46-47
3.5.1. 1 st group of indicators.....	47-49
3.5.2. 2 nd group of indicators.....	49-51

IV. Analysis

4.1. Evolution of the UN’s use of PMSCs	52-55
4.1.1. What services are PMSCs contracted for by the UN?	55-56

4.1.2.	Direct and indirect contracting of PMSCs	57
4.1.3.	UN guidelines for the contracting of PMSCs.....	57-61
4.1.4.	Reasons for the UN's increased use of PMSCs.....	61-62
4.1.5.	Summary of results.....	62-63
4.2.	Evolution of the UN's discourse vis-à-vis PMSCs.....	63-74
4.2.1.	Summary of the discourse analysis.....	74-75
4.3.	Comparison of the evolution of the UN's use of PMSCs and the evolution of the UN's discourse vis-à-vis PMSCs	75-76
4.4.	Impact of the anti-mercenary norm	76
4.4.1.	1 st group of indicators.....	76-81
4.4.2.	2 nd group of indicators.....	81-84
4.4.3	Impact of the norm on the UN's use of PMSCs	84-86

V. Conclusions

5.1.	Summary.....	87-89
5.2.	Final remarks and suggestion for future research.....	89-90

Bibliography	i-ix
Appendix 1: The United Nations System.....	x
Appendix 2: Evolution of the UN's discourse vis-à-vis PMSCs	xi-xii
Original research proposal	xiii-xix

List of Abbreviations

- DPKO United Nations Department of Peacekeeping Operations
- DSS United Nations Department of Safety and Security
- EO Executive Outcomes
- G.A. General Assembly
- H.R.C. Human Rights Council
- ICOC International Code of Conduct for Private Security
- MPRI Military professional Resources Incorporated
- PMC Private Military Company
- PMF Private Military Firm
- PMSC Private Military and Security Company
- PPE Personal Protective Equipment
Providers
- PSC Private Security Company
- RUF Revolutionary United Front
- UN United Nations
- UNAMIR United Nations Assistance Mission for Rwanda
- UNOMUR United Nations Observer Mission Uganda-Rwanda
- UNOPS UNITED NATIONS PROJECT SERVICES
- UNSMS United Nations Security Management System

I. Introduction

1.1. Background

In 1994, five hundred thousand to one million people, mostly Tutsis, were killed during the genocide in Rwanda.³ Critiques soon emerged regarding the United Nations' (UN) inaction, accusing it of letting the genocide unfold. In the midst of this tragedy, Executive Outcomes (EO), a South African based private military company, suggested to intervene in Rwanda on behalf of the UN. In 1994, in internal plans, EO claimed to be able of deploying 1'500 fully equipped troops within only six weeks, with the objective of creating multiple safe-havens in the country.⁴ However, the UN dismissed the idea of outsourcing peacekeeping to a private firm. The UN's failure in Rwanda reflects the sad reality, which is that the UN is often unable to launch adequate peacekeeping operations and consequently to fulfill certain of its key missions. In this case, the UN was unable to enforce the protection of hundreds of thousands of individuals' human rights. This is in large part due to certain structural problems in the UN's peacekeeping system. The numerous difficulties faced by the UN, which ultimately lead to the UN's inability to successfully launch and lead peacekeeping operations have led some to advocate the use of Private Military and Security Companies (PMSCs),⁵ defined as "(...) a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities."⁶ Put in other words, it has been argued that the UN should outsource peacekeeping – or at least certain tasks involved. Outsourcing peacekeeping is however no light matter since it involves shattering the State's monopoly on the use of force and outsourcing core military functions, which were seen until recently as exclusively reserved to States. An energetic debate has consequently erupted surrounding the UN's use of PMSCs, with many

³ SURVIVORS FUND (SURF): Statistics; BROOKS, Doug: Could Executive Outcomes have ended the 1994 Rwandan Genocide?

⁴ HULL, Cecilia: What future for privatized peacekeeping? Prospects and Realities in the UN debate, p.15; BURES, Oldrich: Private Military Companies: A Second Best Peacekeeping Option? p.539; SINGER, Peter Warren : *Corporate Warriors: The Rise of The Privatized Military Industry* p.185

⁵ SPEARIN, Christopher: Between Public Peacekeepers and Private Forces: Can there be a Third Way?, p.240

⁶ GENERAL ASSEMBLY: A/HRC/27/50, p.4 (paragraph 5)

academics and security sector professionals presenting substantial evidence that the UN could benefit from contracting PMSCs in peacekeeping operations.

However, although contracting PMSCs to take part in peacekeeping operations seems to possess a lot of potential benefits, their use has been limited and restricted to certain specific functions. This is in large part due to certain preconceptions the international community, including the UN, has about mercenaries, which reflect strongly on modern PMSCs and their employees, and on the readiness within the UN to offer contracts to such companies.⁷ Sarah Percy argues that this dislike of PMSCs stems in large part from the long-standing anti-mercenary norm, which has become so deeply rooted that it is now puritanical, meaning that the dislike for mercenaries is no longer based on facts, but solely on the presumption that PMSCs are bad.⁸

The contracting of PMSCs in peacekeeping operations is the most controversial aspect of UN security and military services outsourcing and consequently the aspect that has attracted the most attention and coverage. Although PMSCs have only had limited success in stepping into the area of peacekeeping, these companies have met more success when it comes to less controversial tasks. The UN already outsources a large array of security services to PMSCs on a regular basis, including armed or unarmed guarding, installation or personal protection and intelligence gathering.⁹ In spite of the fact that the UN is increasingly turning to PMSCs¹⁰, the general trend among this organization is to classify such companies in a negative manner¹¹, often maintaining – implicitly

⁷ HULL, Cecilia: What future for privatized peacekeeping? Prospects and Realities in the UN debate, p.4; LILLY, Damian: The Privatization of Peacekeeping, p.59-60; PERCY, Sarah: Mercenaries: The History of a Norm in International Relations, p.9+222

⁸ PERCY, Sarah: Mercenaries: The History of a Norm in International Relations, p.32

⁹ GENERAL ASSEMBLY: A/HRC/27/50, p.4; UNITED NATIONS. Concept Note: Expert Panel Event on the Use of Private Military and Security Companies (PMSCs) by the United Nations, p.1

¹⁰ GLOBAL POLICY FORUM: Private Military & Security Companies (PMSCs); JURRIAANS, Kim-Jenna. UN Increasingly Reliant on Private Security Contractors; LYNCH, Colum: U.N. embraces private military contractors; JANABI, Mohamad Ghazi. The Legal Status of Employees of Private Military/Security Companies Participating in U.N. Peacekeeping Operations p.87; ØSTENSEN, Åse Gilje: UN use of Private Military and Security Companies: Practices and Policies, p.5

¹¹ GLOBAL POLICY FORUM: PMSCs & the UN

or explicitly – that these companies strongly resemble mercenaries.¹² Once again, according to Percy, this à-priori contradiction comes down to the anti-mercenary norm, which we define as *a longstanding and well-established norm in international relations, which asserts that mercenaries and PMSCs are problematic for two main reasons; a problem of control and a lack of appropriate or just cause, which are respectively a practical and a moral problem.*¹³

1.2. Research objectives

Our thesis is built around two main research objectives. The first is to establish whether the evolution of the UN's discourse vis-à-vis PMSCs matches the evolution of the UN's use of PMSCs – therefore, whether the UN's discourse matches its practice – or whether there is a certain contradiction or hypocrisy within the UN when it comes to PMSCs. We believe that studying the relationship between the UN and PMSCs is extremely important since, on the one hand, the UN is charged with promoting the respect of human rights and ensuring international security and, on the other hand, PMSCs have faced many accusations of human rights violations and of interfering in, and benefiting from armed conflicts.

The second objective is to establish whether the anti-mercenary norm, as defined by Sarah Percy, has had an impact on the UN's use of PMSCs. Many studies have been done on whether the UN should or should not contract PMSCs and on the potential benefits presented by these companies and the potential risks they pose. However, not much attention has been paid to the impact of the anti-mercenary norm on the acceptance of PMSCs and their use by the UN. Furthermore, to our knowledge, no study has been led with the objective of discovering whether the UN's discourse matches its practice or whether a certain hypocrisy exists within the UN when it comes to its use of PMSCs.

Given our research objectives and keeping in mind what has just been written, we have reached the following two main research questions:

¹² PERCY, Sarah : Mercenaries: The History of a Norm in International Relations 222-224 + 230; SINGER, Peter Warren. Corporate Warriors: The Rise of The Privatized Military Industry, p.217; GUMEDZE, Sabelo: The elimination of mercenarism and regulation of the private security industry in Africa

¹³ This is the author's definition of the anti-mercenary norm

1. *Does the evolution of the United Nations' discourse vis-à-vis Private Military and Security Companies match the evolution of the United Nations' use of Private Military and Security Companies?*
2. *Does the anti-mercenary norm have an impact on the use of private military and security companies by the United Nations?*

1.3. Research approach

In order to bring answers to our research questions, we will use a fourfold method. First of all, we will establish whether there has been an evolution in the UN's use of PMSCs over time. Secondly, we will analyze the evolution of the UN's discourse vis-à-vis PMSCs. Thirdly, we will compare the two firsts parts in order to establish whether the evolution of the discourse matches the evolution of the practice. Lastly, we will attempt to establish whether the anti-mercenary norm impacts the UN's use of PMSCs nowadays.

In order to answer our first research question (which is whether the UN's discourse matches its practice), we will consequently be using a threefold method. This is why we have decided to divide the first main research question into three sub-questions:

- 1.1. *Has there been an evolution in the United Nations' use of private military and security companies?*
- 1.2. *Has the United Nations' discourse vis-à-vis private military and security companies evolved over time?*
- 1.3. *Does the evolution of the United Nations' discourse match the evolution of the United Nations' use of private military and security companies?*

Regarding the second question, as will be explained later on in this paper, trying to measure the impact of a norm on an actor's practice poses considerable difficulties. In consequence, in order to establish with the highest degree of certainty as possible whether the anti-mercenary norm has an impact on the UN's use of PMSCs, we will be using multiple indicators. The first group of

indicators we will be using is set forward by Percy, who explains that these indicators can be used in order to evaluate whether a norm influences the behavior of an actor. To summarize Percy's method in a few words, it focuses on observing whether violations of a norm are widespread and, if they are, on analyzing the reaction to these violations and also whether the actor having violated the norm attempts to justify the violations of the norm. We will complement this group of indicators with another group of indicators created by the author, which focuses on observing whether the main elements of the anti-mercenary norm can be frequently observed in different UN documents focusing on PMSCs. By combining these two groups of indicators, we believe that our conclusions will be trustworthy.

1.4. Deviations from the original research proposal

The original research proposal was established over a year prior to handing in the final version of this paper. Unavoidably, certain aspects of this paper are different than originally planned. This is something unavoidable when working on such a long-term project, especially due to the discovery of new pieces of information and limitations along the road. Certain key deviations should therefore be mentioned.

First of all, regarding the objectives of the research. Initially, the author had planned to put more emphasis on the evolution of the UN's discourse and its practice, and observing whether the discourse matched the practice over time. Not much emphasis was initially going to be placed on the impact of the norm and on establishing if it is still influential nowadays and impacting the UN's use of PMSCs. When collecting data for the analysis of the evolution of the UN's use of PMSCs, the author however soon discovered that accurate data was going to be impossible to obtain. The reasons for this lack of data are explained more in depth when presenting the research approach. In consequence of this lack of available data, tracing a precise and meticulous evolution of the UN's use of PMSCs over time proved to be unfeasible. Instead of tracing a precise evolution of the use of PMSCs year by year, we consequently decided to trace general trends in the evolution of the UN's use of PMSCs. Although being disappointing, using general trends in the evolution of the UN's use of PMSCs and comparing

these trends to trends in the evolution of the UN's discourse would still allow the author to establish whether the UN's discourse generally matches its practice over time and to spot any contradictions.

On the bright side, the author was left with the possibility of devoting more time to observe the anti-mercenary norm and its potential impact on the UN's use of PMSCs. This is the reason for which the reader will discover a thesis focusing much more on the norm than initially planned. Placing more emphasis on the impact of the norm, the research evolved from an initial threefold method to a fourfold method, where the evaluation of the impact of the norm has its own chapter. We believe that placing more emphasis on the norm is actually beneficial for this paper and also for the academic world in general. Indeed, as Percy mentions in her book, not much work has been done on the normative aspect of mercenaries and PMSCs.

II. Literature Review and Theoretical framework

2.1. Introduction

In this second chapter, we are going to lay down all the necessary knowledge and theory before moving on to the presentation of the method we will be using in this research (chapter III) and the analysis (chapter IV). Since one of the main actors in this thesis is the United Nations, we will start by presenting this institution. This short presentation will include an explanation as to why the UN was created, its structure, its key missions and certain problems it faces. We will then move on to explaining why it has been suggested that the UN should turn to PMSCs in peacekeeping operations. In order to explain this, we will demonstrate what difficulties the UN faces when wanting to deploy and lead peacekeeping operations. Following this, we will focus on the definitional debate between mercenaries and PMSCs. Having established that distinguishing both terms is crucial, we will present the different terminology used to name private firms operating in the security or military sector and establish what terminology will be used throughout this thesis. Following the issue of definitions, we will attack one of the main aspects of this thesis: Sarah Percy's anti-mercenary norm. Gaining a good understanding of the anti-mercenary norm being extremely important, this chapter will take up considerable time. Finally, we will present the three different camps in the debate surrounding the UN's use of PMSCs in peacekeeping operations and establish the main arguments of each camp.

2.2.1. Creation of the United Nations

As a result of the First World War, with the objective of preventing any further devastating wars from erupting, a new type of institution was established.¹⁴ We are of course referring to the League of Nations. This international organization, initially imagined by the American president Woodrow Wilson, was largely the result of the atrocities and suffering caused by the four year long conflict, which set the world ablaze between 1914 and 1918. However, as history demonstrated, this was not enough to prevent humanity from entering into another worldwide conflict in 1939. The First World War was

¹⁴ UNITED NATIONS OFFICE AT GENEVA: History of the League of Nations (1919-1946)

already new in regards to the scale and amplitude of destruction, death and suffering, but the Second World War managed to go even further. We all know too well about the gruesome history and it would be pointless to go into details here. The occurring of this war meant, among many other things, the end of the League of Nations – which is often pictured as a failure in consequence. But this did not signify the end of the will to have an international organization charged with preventing wars and maintaining peace and stability around the world. On the contrary, the outbreak of the Second World War reinforced the belief that “(...) *effective international organization was a matter of survival*”.¹⁵ Already during the war, as early as 1941, the successor to the League of Nations – the United Nations – was being designed.¹⁶ The United Nations came into being on the 24th of October 1945, once the five future permanent members and a majority of other signatories had ratified the UN Charter, which was signed on the 26th of June of the same year in San Francisco¹⁷. In order to understand how this institution works, and also why it works in a specific way and with certain constraints, it is helpful to observe its structure and the different missions it has taken on.

2.2.2. Structure of the United Nations

The United Nations was initially composed of six principle organs; the General Assembly, the Security Council, the Economic and Social Council, the Secretariat, the International Court of Justice, and the Trusteeship Council.¹⁸ However, the Trusteeship Council ceased to exist on the 1st of November 1994, one month after the last UN trust territory gained independence¹⁹. In consequence, the UN is currently composed of five principle organs. There are then a multitude of subsidiary bodies, funds and programmes, other agencies and commissions (this list is not exhaustive), all of which render the structure of the UN extremely complex. An unavoidable consequence of this is that this

¹⁵ BOSCO, David: Five to Rule them All, p.13

¹⁶ UNITED NATIONS: Milestones 1941-1950

¹⁷ UNITED NATIONS: History of the United Nations

¹⁸ UNITED NATIONS: Main Organs

¹⁹ UNITED NATIONS: Trusteeship Council

organization functions in an extremely complex manner.²⁰ Ideally, the United Nations would be a united organism, with similar goals shared among all entities comprising it. However, this is not the case. The United Nations is composed of a multitude of organs and departments, which all ultimately have their own interests and goals. As we will see later on in this paper, such disparities within the UN can lead to certain problems or contradictions.

2.2.3. Missions/functions of the United Nations

The different UN functions can be found in the UN Charter, which was established in 1945;

1. *“To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;*
2. *To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;*
3. *To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and*
4. *To be a centre for harmonizing the actions of nations in the attainment of these common ends.”*²¹

As we can see by observing this list, the UN has very diverse missions. Some, such as maintaining international peace and security, focus on the level of states. Others, on the other hand, such as protecting human rights or

²⁰ For a detailed view of the UN system see appendix 1.

²¹ UNITED NATIONS: Charter of the United Nations: Chapter 1: Purposes and Principles

fundamental freedoms, focus on the level of individuals or human beings. It is easy to understand where the will to protect both states and individuals comes from after the Second World War. First, Nazi Germany attacked multiple sovereign countries without being met with any remarkable international action. Secondly, there is a strong will to protect individuals following the atrocities committed during the Second World War. The idea of a duty to protect human beings is in some sort the ancestor of the modern “Responsibility to Protect”, or R2P norm. This norm gained huge legitimacy in recent years, especially since the 2005 World Summit, which took place in New York.²² The Responsibility to Protect aims at preventing genocides, war crimes, ethnic cleansing and crimes against humanity.²³ To do so, there are two levels, or separate responsibilities included in this norm. First of all, it is the responsibility of each state to protect its population against the aforementioned crimes. But, if a state is unable or unwilling to do so, it is the responsibility of the international community – and consequently also of other states – to protect the population of the unwilling or unable state.²⁴ As mentioned by M. Gerard, the French permanent representative to the UN, *“The Security Council must continue to play its role in the implementation of the responsibility to protect.”*²⁵ This is what we would like to call the UN’s humanitarian mission.²⁶

Although the UN was unarguably created, and still exists with noble goals and functions, this institution has faced heavy criticism from its earliest days. Critiques range from ones targeted toward its structure to others concerning the way it undertakes certain missions. One of the major critiques is aimed at the way the UN protects individuals from large-scale atrocities and suffering – its humanitarian mission.²⁷ The UN was for example heavily criticized for its inaction in Rwanda in the 1990s, or in Bosnia during the same period, and even

²² INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT: RtoP in the 2005 World Summit

²³ Ibid.

²⁴ REPRESENTATION PERMANENTE DE LA FRANCE AUPRES DES NATIONS UNIES A NEW YORK: 16 avril 2014 - Menaces contre la paix et la sécurité internationales

²⁵ Ibid. (our translation)

²⁶ Here we understand “humanitarian mission” in the larger sense and not only strictly related to actual UN humanitarian deployments; it is the objective of protecting individuals from large-scale suffering and atrocities

²⁷ FREEDMAN, Rosa: Failing to Protect: The UN and the Politicisation of Human Rights; MCGREAL, Chris: What’s the point of peacekeepers when they don’t keep the peace?

Kofi Annan admits that the “(...) UN has often failed to deliver on protecting and promoting human rights.”²⁸ However, as we shall see later on in this paper, it is not necessarily the UN that is unwilling to act. Inaction on the part of the UN can directly be caused by its structure, which ultimately leaves the power in the hands of sovereign nations, especially in those of the five permanent members – the United States, Russia, China, the United Kingdom and France.

2.3. UN Failure in Rwanda and difficulties in accomplishing its humanitarian mission

It is interesting to observe why the UN didn't act appropriately to protect a population from genocide and prevent a massive refugee crisis, which unavoidably had repercussions on neighboring countries. First of all, it was not because there was no legal base to act upon. Indeed, under the UN's charter, but also the 1948 Genocide Convention, there was a legal base to deploy military forces to prevent genocide.²⁹ Protecting people from mass atrocities was in fact one of the main goals of the international community when designing the United Nations back in the 1940s. The lack of proper intervention was also not because the UN, and its members, weren't informed about the risk of genocide; we now know that reports warning of imminent genocide were brought to their attention before the mass killings actually began.³⁰ Unarguably, as demonstrated by the fact that three different UN forces were set up in Rwanda –in theory at least – members knew there was a valid reason to act. The problem in this case, as in so many others, was that “*governments vote for a resolution on the Security Council, but are then unwilling to take even the minimum of action to put their money where their mouth is.*”³¹

The first mission in Rwanda was the United Nations Observer Mission Uganda-Rwanda (UNOMUR). This was solely a small force of maximum 81

²⁸ United Nations: Annan says UN has often failed to deliver on protecting and promoting human rights

²⁹ LOWE, Vaughan, et al: The United Nations Security Council and War: The Evolution of Thought and Practice since 1945, p.109

³⁰ DORN, Walter and MATLOFF, Jonathan: Preventing the Bloodbath: Could the UN have Predicted and Prevented the Rwandan Genocide?

³¹ LOWE, Vaughan, et al: The United Nations Security Council and War: The Evolution of Thought and Practice since 1945, p.113

personnel, which was deployed to “*verify that no military assistance was reaching Rwanda.*”³² The second mission, much larger, was the United Nations Assistance Mission for Rwanda (UNAMIR). It is during this mission that the UN saw one of its worst failures. Following the death of only ten Belgian peacekeepers on the 21st of April 1994,³³ the Security Council took the decision to reduce the force to only 270 troops³⁴ – hardly a force capable of preventing a genocide from unfolding. This decision took place at the same time as the systematic killings of Tutsis began. In May of the same year, faced with the evidence of genocide, the Security Council theoretically increased the contingent to 5’500 troops. The problem was that “*(n)ot one of 19 states then participating in the U.N. Standby Arrangements System chose to contribute military forces.*”³⁵

The third force in Rwanda – Opération Turquoise – was under French command and would also be heavily criticized. Unfortunately, humanitarian problems didn’t end with the termination of the systematic killings. Indeed, there had been massive refugee waves and troops were needed to help in refugee camps. Again, the UN called for troop contributions to sixty members, but none of the approached countries responded positively to its call.³⁶

The fact that countries were unwilling to contribute troops to the aforementioned UN missions, and also to help with the refugee crisis, was the largest problem faced by the UN in Rwanda. The death of only ten soldiers – whose job inherently implies a risk factor – was enough to put an end to the protection of millions of civilians at risk, including women and children. This is known as the body bag syndrome and was previously experienced by the UN in Somalia in 1993, when 18 US troops were killed in Mogadishu, leading to the withdraw of US forces from the country.³⁷ The body bag syndrome and the political damage associated with the loss of national soldiers has led western

³² Ibid., p.110

³³ CHRISAFIS, Angélique: Rwandan major jailed for murder of Belgian peacekeepers

³⁴ HUMAN RIGHTS WATCH: Ignoring Genocide

³⁵ ISENBERG, David: Outsourcing Peacekeeping

³⁶ LOWE, Vaughan, et al: The United Nations Security Council and War: The Evolution of Thought and Practice since 1945, p.111

³⁷ OSMAN, Jamal: Black Hawk Down: 20 years on

governments to avoid contributing troops to peacekeeping operations if no high national interests are at stake.³⁸

The problems faced by the UN in Rwanda are common in the fulfillment of what we call the UN's "humanitarian mission".³⁹ When wanting to deploy humanitarian or peacekeeping missions, the UN is faced with five major difficulties; finding states willing to contribute troops, the availability of financial resources, the delay in deployment, the presence of under trained and/or equipped forces, and national command. The author compiled this list by going through the available literature on the subject ⁴⁰ and by using historical examples of UN interventions, or non-interventions as some critics would argue, including the case of Rwanda.

2.4.1. The PMSC option

Given the aforementioned problems faced by the UN, it has been argued that the UN should turn to PMSCs in peacekeeping operations.⁴¹ The question of outsourcing peacekeeping is however a very delicate one. Indeed, we are ultimately speaking about challenging the traditionally state-based monopoly on

³⁸ LILLY, Damian: *The Privatization of Peacekeeping*, p.54

³⁹ Here we understand "humanitarian mission" in the larger sense and not only strictly related to actual UN humanitarian deployments. It is the objective of protecting individuals from large-scale suffering and atrocities

⁴⁰ SINGER Peter Warren: *Corporate Warriors: The Rise of The Privatized Military Industry*, p.59+183; LILLY, Damian: *The Privatization of Peacekeeping*, p.53-55; ISENBERG, David: *PMC in U.N. Operations? It Depends*; FITZSIMMONS, Scott: *Dogs of Peace: A Potential Role for Private Military Companies in Peace Implementation*; HULL, Cecilia. *What future for privatized peacekeeping? Prospects and Realities in the UN debate*, p.10-11; JANABI, Mohamad Ghazi. *The Legal Status of Employees of Private Military/Security Companies Participating in U.N. Peacekeeping Operations* p.85-87; WITTELS, Stephen: *From Dogs of War to Soldiers of Peace: Evaluating Private Military and Security Companies as a Civilian Protection Force*, p.134-143; PATTISON, James: *Outsourcing the responsibility to protect: humanitarian intervention and private military and security companies*, p.2

⁴¹ SPEARIN, Christopher: *Between Public Peacekeepers and Private Forces: Can there be a Third Way?*, p.240; HULL, Cecilia. *What future for privatized peacekeeping? Prospects and Realities in the UN debate*, p.10-11; LILLY, Damian: *The Privatization of Peacekeeping*, p.53-55; JANABI, Mohamad Ghazi. *The Legal Status of Employees of Private Military/Security Companies Participating in U.N. Peacekeeping Operations* p.85-87; LACHANCE, Daniel: *Military Forces for Hire: Is the World Ready to Privatize Peace?*, p.55-62; SINGER Peter Warren: *Corporate Warriors: The Rise of The Privatized Military Industry*, p.183; WITTELS, Stephen: *From Dogs of War to Soldiers of Peace: Evaluating Private Military and Security Companies as a Civilian Protection Force*, p.132

the use of force by allowing private firms to conduct certain tasks seen until recently as limited to States. In consequence, this debate has gained much attention among academics, politicians and also the media. Three main groups compose the literature on this debate. We would like to make it clear that our intention in this thesis is not to determine which group is right and whether the UN should in fact turn to PMSCs. This chapter is solely a presentation of the different views on the outsourcing of peacekeeping to PMSCs.

2.4.2. Advocates

Advocates of the use of PMSCs in peacekeeping operations argue that these private firms would be more effective than national troops. First of all, the largest problem faced by the UN when wanting to deploy troops – finding contributing states – would disappear. Secondly, private contractors (many of whom are former Special Forces⁴²) are claimed to be better trained than national forces, which most often come from developing countries eager to harvest financial compensation for contributing troops⁴³ (in an article from 2005, Christopher Spearin declared that “(...) *in recent years, 75 per cent of UN peacekeepers have come from developing states.*”⁴⁴). As explained by Scott Fitzsimmons, the problem of having UN missions composed for the essential part of second-rate militaries is a consequence of the UN’s voluntary basis functioning when it comes to troop contributions.⁴⁵ Furthermore, in addition to PMSC employees often being extremely well trained, these employees have frequently received specialist training during their careers in the military or the police, which could unarguably prove useful to the UN during its operations.⁴⁶ Other than offering better-trained and specialized personnel, PMSCs are also often far better equipped than regular forces taking part in UN missions. For example, whilst operating in Sierra Leone, EO could count on heavily armored vehicles

⁴² FITZSIMMONS, Scott. *Dogs of Peace: A potential Role for Private Military Companies in Peace Implementation*, p.3

⁴³ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations* p.53

⁴⁴ SPEARIN, Christopher: *Between Public Peacekeepers and Private Forces: Can there be a Third Way?*, p.240

⁴⁵ FITZSIMMONS, Scott. *Dogs of Peace: A potential Role for Private Military Companies in Peace Implementation*, p.3-4

⁴⁶ BENICSAK, Peter: *Advantages and Disadvantages of Private Military Companies*, p.316-317

and even attack helicopters and fighter jets. On the other hand, blue helmets in Rwanda during UNAMIR couldn't count on any kind of armored fighting vehicles or armed helicopters.⁴⁷ This is in large part “(...) because contributing nations either do not possess such resources or refuse to risk losing them in distant, non-strategic conflicts.”⁴⁸ It is also argued that PMSC employees could be on the ground in much less time than when resorting to national troops.⁴⁹ This is explained by the absence of the “(...) political and bureaucratic lead time required for mobilizing military forces.”⁵⁰ The issue of national command, which was for example observed in Sierra Leone where a Nigerian commander refused to send troops into combat although being ordered to do so by the Indian mission commander⁵¹, would also disappear with the outsourcing to PMSCs. Finally, advocates of the use of PMSCs argue that deploying private contractors would come at a lesser financial cost.⁵²

Other than potentially solving the main difficulties faced by the UN when wanting to deploy peacekeeping operations (see chapter 2.3.), advocates of the use of PMSCs in UN peacekeeping missions argue that using PMSCs offers greater flexibility than using national contingents.⁵³ It is also argued that PMSCs would always do their best to accomplish their missions since they require good feedback in order to establish a good reputation and gain future contracts.⁵⁴ As established in the UK's Green Paper on PMCs, “(a PMC) which had an interest in continuing business for the UN could be held to much higher standards – and these would include standards on behaviour and human rights as well as efficiency in

⁴⁷ FITZSIMMONS, Scott. *Dogs of Peace: A potential Role for Private Military Companies in Peace Implementation*, p.11

⁴⁸ Ibid.

⁴⁹ LILLY, Damian: *The Privatization of Peacekeeping*, p.55

⁵⁰ AVANT, Deborah D.: *Private Military Companies and the Future of War*

⁵¹ SINGER Peter Warren: *Corporate Warriors: The Rise of The Privatized Military Industry*, p.59

⁵² SINGER Peter Warren: *Corporate Warriors: The Rise of The Privatized Military Industry*, p.183; RICHEMOND, Daphné: *The New Peacekeepers? Private Military Companies and the Future of Peacekeeping Operations*, p.9; LILLY, Damian: *The Privatization of Peacekeeping*, p.53-55

⁵³ RICHEMOND, Daphné: *The New Peacekeepers? Private Military Companies and the Future of Peacekeeping Operations*, p.10; AVANT, Deborah D.: *Private Military Companies and the Future of War*; BENICSÁK, Peter: *Advantages and Disadvantages of Private Military Companies*, p.316-317

⁵⁴ STRAUB, Daniel G.: *Outsourcing Human Security: The Pros and Cons of Private Security Companies in Peacekeeping*, p.76-80

carrying out agreed tasks."⁵⁵ This statement demonstrates that it is also argued that PMSCs could comply with human rights more often than national forces. Finally, advocates of the use of PMSCs argue that these companies can deploy personnel with a good understanding of the specific region in which they are deployed. This is explained by the fact that PMSCs can recruit experts from anywhere around the globe.⁵⁶ This last argument reinforces the advocates' belief that PMSCs would be more efficient than national forces.

2.4.3. "Second best option"

The second group is more nuanced and argues that contracting PMSCs should depend on many different factors and that it is not the preferred option. Oldrich Bures has written a paper entitled "*Private Military Companies: A Second Best Peacekeeping Option?*", in which he argues that the UN should not exclude turning to PMSCs for certain tasks in peacekeeping operations if the UN itself is unable to fulfill its mission solely by depending on member state contributions. Put in his own words, Bures argues that "*(...) the use of PMCs should not be a priori dismissed on ideological or moral grounds when the choice is either a PMC peacekeeping operation or none at all.*"⁵⁷ Such an argument gains great strength when we acknowledge the fact that atrocities such as the ones perpetrated in Rwanda were made possible by the lack of troop contributions, as explained previously in this thesis. Bures is by far not alone in the camp of those defending the potential use of PMSCs in peacekeeping operations if the choice is PMSCs or no peacekeeping at all.⁵⁸ As stated by Cecilia Hull, "*(...) states have shown a lack of (state responsibility for peacekeeping) when faced with serious situations without the UN being able to rely on PMCs. A limited use of private peacekeepers could assist the DPKO in preventing and containing the scourge of war in situation of*

⁵⁵ FOREIGN AND COMMONWEALTH OFFICE: Green Paper: Private Military Companies: Options for Regulation, p.19

⁵⁶ BENICSÁK, Peter: Advantages and Disadvantages of Private Military Companies, p.317

⁵⁷ BURES, Oldrich: Private Military Companies: A Second Best Peacekeeping Option?, p.533-534

⁵⁸ HULL, Cecilia: What future for privatized peacekeeping? Prospects and Realities in the UN debate, p.41

supreme emergency."⁵⁹ James Pattison is of the same opinion and argues that PMSCs should be contracted if their use can avoid widespread violations of human rights.⁶⁰

2.4.4. Opponents

Many different reasons are put forward by opponents to the UN's use of PMSCs in peacekeeping operations. Some of the arguments refer to practical issues and some are of a moral nature.

A first argument is that PMSCs are too small to successfully fulfill peacekeeping missions and that they lack the necessary manpower. As explained by Damian Lilly, thousands of troops can be necessary to lead extensive peacekeeping missions, and it is unlikely that PMSCs could gather enough troops.⁶¹ Secondly, it is argued that it would be extremely difficult to have PMSC employees working efficiently side by side with national forces, notably due to the difference in salaries and the potential resentment caused by this.⁶² In consequence, even supplementing national contingents with private contractors would not be a good solution⁶³. Opponents also argue that using PMSCs would in reality cost more than deploying national contingents.⁶⁴ It is also argued that the argument of PMSCs being able to deploy faster than national contingents is erroneous, and that the delay in deploying PMSCs will only become more lengthy with the increase in control mechanisms and vetting procedures affecting PMSCs.⁶⁵

One of the most prominent arguments against the UN's use of PMSCs is the threat PMSC employees pose to the enjoyment of human rights.⁶⁶ Furthermore, it has been heavily argued, both by academics, but also by the UN,

⁵⁹ HULL, Cecilia: What future for privatized peacekeeping? Prospects and Realities in the UN debate, p.41

⁶⁰ PATTISON, James: Outsourcing the responsibility to protect: humanitarian intervention and private military and security companies, p.27

⁶¹ LILLY, Damian: The Privatization of Peacekeeping, p.59

⁶² SINGER, Peter Warren: Peacekeeping Inc.

⁶³ LILLY, Damian: The Privatization of Peacekeeping, p.59

⁶⁴ HULL, Cecilia: What future for privatized peacekeeping? Prospects and Realities in the UN debate, p.12

⁶⁵ ISENBERG, David: The PMSC Perils of Peacekeeping

⁶⁶ GOMEZ DEL PRADO, José Luis: The Privatization of War: Mercenaries, Private Military and Security Companies (PMSC)

that PMSCs and their employees are unaccountable.⁶⁷ This lack of accountability stems from the lack of legislation and control mechanisms surrounding PMSCs. Opponents also argue that the use of PMSCs would challenge the monopoly of the state on the legitimate use of force.⁶⁸ Furthermore, it is argued that PMSCs live thanks to conflicts and consequently have no interest in seeing an end to them since peace and stability do not bring further contracts and ultimately money.⁶⁹ Opponents also argue that there is a risk that PMSCs could pull out of missions and consequently abandon populations at risk if they feel that the situation has either become too dangerous, or that staying is not profitable enough. Furthermore, private contractors are not bound by military law and it is argued that PMSC employees may simply leave if the situation becomes too dangerous in their opinion, or if they can make more money elsewhere.⁷⁰

It is also feared that PMSCs may try to cut costs since they are primarily interested in profit. Cutting costs can be done for example by employing less expensive contractors from poor regions or by limiting the number of employees⁷¹ (we will see later in this thesis that PMSCs have been criticized on multiple occasions for subcontracting to other PMSCs in order to reduce costs and that they have been accused of violating employees' rights). Another argument against the use of PMSCs is that these companies are paid to fulfill only what is included in the contract. This is said to be problematic since situations where the UN deploys peacekeeping operations can change rapidly and, in order for a PMSC to take on new tasks, the UN would have to amend the contract and renegotiate different clauses, which could unavoidably take time. Consequently, if a situation changes and a population is for example faced with the risk of

⁶⁷ HULL, Cecilia: What future for privatized peacekeeping? Prospects and Realities in the UN debate, p.12; GOMEZ DEL PRADO, José Luis: The Privatization of War: Mercenaries, Private Military and Security Companies (PMSC); PETERSOHN, Ulrich: Reframing the anti-mercenary norm: Private military and security companies and mercenarism, p.7; Daniel G. Straub, p.74; STANGER, Allison and WILLIAMS, Mark Eric: Private Military Corporations: Benefits and Costs of Outsourcing Security, p.12-13

⁶⁸ STRAUB, Daniel G.: Outsourcing Human Security: The Pros and Cons of Private Security Companies in Peacekeeping, p.81

⁶⁹ SCAHILL, Jeremy: Private Security Contractors and the UN (May 19, 2010), part 5 (00:01:45-00:01:55)

⁷⁰ SINGER, Peter Warren: Peacekeeping Inc.

⁷¹ STRAUB, Daniel G.: Outsourcing Human Security: The Pros and Cons of Private Security Companies in Peacekeeping, p.81

genocide, as mentioned by Straub, “(...) *if stopping genocide is not in the contract, they may stand back and watch.*”⁷²

The use of PMSCs is also said to impact UN member states from developing regions. We established previously that certain states are keen on contributing troops to UN operations because they receive funding in return. If PMSCs were deployed instead of national contingents, these member states would lose this important funding.⁷³

Other than the abovementioned practical issues put forward by opponents to the UN’s use of PMSCs in peacekeeping operations, it is also argued that PMSCs pose moral problems. First of all, private contractors are unarguably primarily motivated by personal financial gain. This is the reason for which so many soldiers quit national forces to join the private industry. The moral argument of lack of just or appropriate cause associated with PMSCs plays an important role in the anti-PMSC discourse.⁷⁴ PMSCs are also associated with mercenaries and it is argued that the UN could simply not afford to be associated with mercenaries given the blow this would deal to the UN’s reputation^{75 76}. Finally, concerns regarding the UN’s perceived neutrality and independence are raised.⁷⁷ As mentioned by the Working Group, the fact that the UN uses PMSCs may “(...) *hamper the perception of independence and impartiality of the United Nations in the eyes of local populations.*”⁷⁸

⁷² STRAUB, Daniel G.: Outsourcing Human Security: The Pros and Cons of Private Security Companies in Peacekeeping, p.81

⁷³ Ibid.

⁷⁴ SCAHILL, Jeremy: Private Security Contractors and the UN (May 19, 2010), part 5 (00:01:55-00:02:16)

⁷⁵ UNITED NATIONS: Expert Panel Event on the Use of Private Military and Security Companies (PMSCs) by the United Nations

⁷⁶ UNITED NATIONS. Working Group on the use of mercenaries – Panel Event: use of private military and security companies by the United Nations (00:05:06 – 00:05:20)

⁷⁷ GLOBAL POLICY FORUM: PMSCs & the UN

⁷⁸ WORKING GROUP: A/69/338, paragraph 23

2.5.1. PMSCs VS mercenaries: Definitions

As mentioned previously, PMSC employees often carry the same negative connotations as mercenaries and the activities of both groups are seen by many as similar.⁷⁹ In fact, in some cases, no distinction is made at all and the term PMSC seems to simply be used as the modern term for mercenaries.⁸⁰ Phillip Van Niekerk, for example, calls PMCs “(...) *the new world order’s mercenaries (...)*.”⁸¹ There are obviously some common traits between classical mercenaries or mercenary companies and modern PMSC employees. However, it is too simplistic to put mercenaries and PMSCs in the same basket⁸² and, as explained by Singer, some crucial differences exist. A classical definition of a mercenary given by Oxford Dictionaries is “*a professional soldier hired to serve in a foreign army*”.⁸³ This is an extremely vague and basic definition and would probably be similar to the one most people would give when asked to define a mercenary. However, such a definition is far too vague to be used in legal or other official documents. The UN consequently came up with a very precise definition, which can be found in General Assembly resolution A/RES/44/34 (4th of December 1989). It should be noted that this definition has been repeatedly criticized as too limiting or exclusive since all points have to be met in order for someone to be classified as a mercenary.^{84 85}

- “ 1. *A mercenary is any person who:*
- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;*
 - (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed of that party;*

⁷⁹ LILLY, Damian: *The Privatization of Peacekeeping*, p.53; SINGER Peter Warren: *Corporate Warriors: The Rise of The Privatized Military Industry*, p.216-217; GOMEZ DEL PRADO, José Luis: *The Privatization of War: Mercenaries, Private Military and Security Companies (PMSC)*; STRAUB, Daniel G.: *Outsourcing Human Security: The Pros and Cons of Private Security Companies in Peacekeeping*, p.81

⁸⁰ DE LAVARENE, Celhia: *For a fistful of dollars*; SCAHILL, Jeremy. *A very private war*; PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.9

⁸¹ VAN NIEKERK, Phillip: *The business of war*

⁸² SHEARER, David: *Outsourcing War*, p.68

⁸³ OXFORD DICTIONARIES: *Mercenary*

⁸⁴ LILLY, Damian: *The Privatization of Peacekeeping*, p.9

⁸⁵ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.53

- (c) *Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;*
 - (d) *Is not a member of the armed forces of a party to the conflict; and*
 - (e) *Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.*
2. *A mercenary is also any person who, in any other situation:*
- (a) *Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:*
 - (i) *Overthrowing a Government or otherwise undermining the constitutional order of a State; or*
 - (ii) *Undermining the territorial integrity of a State;*
 - (b) *Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise of payment of material compensation;*
 - (c) *Is neither a national nor a resident of the State against which such an act is directed;*
 - (d) *Has not been sent by a State on official duty; and*
 - (e) *Is not a member of the armed forces of the State on whose territory the act is undertaken.”⁸⁶*

On the other hand, the UN defines a private military or security company as “(...) a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities.”⁸⁷ In consequence, a PMSCs employee could be defined as an individual who provides on a compensatory basis military and/or security services. Nothing in this definition, other than maybe the financial aspect, seems to link PMSCs to mercenaries and their negative connotations. However, as mentioned earlier, the distinction is often neglected.

The question of definitions and the wording used is of course important. However, we believe that what distinguishes mercenaries from PMSC employees in facts and reality is far more important. According to Singer, the key difference between mercenaries and modern PMSCs is the corporatization of military service provision.⁸⁸ This key difference entails several characteristics. First of all, modern firms are “(...) organized in business form”.⁸⁹ Secondly, they are inherently motivated by the firm’s profit as a whole and not by each individual

⁸⁶ GENERAL ASSEMBLY: A/RES/44/34, Article 1

⁸⁷ GENERAL ASSEMBLY: A/HRC/27/50, paragraph 5

⁸⁸ SINGER Peter Warren: *Corporate Warriors: The Rise of The Privatized Military Industry*, p.45

⁸⁹ Ibid.

employee's personal financial gain. A third characteristic is the fact that these modern firms operate on the open market. They do not hide their services and are legalized, unlike classical mercenaries or mercenary companies. Furthermore, this entails that PMSC employees are linked to the firms by a contract and are somewhat subjected to national laws (we will see later on that it is sometimes argued that PMSC employees are unaccountable and that legislation surrounding their activities is lacking). A fourth difference is the fact that modern PMSCs offer a wider array of services to a larger variety of clients. A further distinction is the way in which these modern companies recruit; given their legality and their presence on the open market, PMSCs recruit publicly and focus on recruiting specialized employees.⁹⁰ The last distinction put forward by Singer is the fact that modern PMSCs are often "(...) *linked with greater financial holdings and conglomerates*".⁹¹ The following table presents a summary of the characteristics of modern PMSCs established by Singer.

Modern PMSCs according to Singer⁹²

<i>Organization:</i>	Prior Corporate Structure
<i>Motives:</i>	Business Profit-Driven, Rather than Individual Profit-Driven
<i>Open Market:</i>	Legal, Public Entities
<i>Services:</i>	Wider Range, Varied Clientele
<i>Recruitment:</i>	Public, Specialized
<i>Linkages:</i>	Ties to Corporate Holdings and Financial Markets

Given the specificities of modern PMSCs and consequently of their employees, it is easy to argue in favor of distinguishing them from mercenaries or mercenary companies. We will observe throughout this thesis that the distinction is often neglected, playing a role in the slow acceptance of PMSCs and in the way the business has evolved. This is a consequence of what can be referred to as the anti-mercenary norm described by Percy.

⁹⁰ Ibid., p.45-47

⁹¹ Ibid., p.47

⁹² Ibid., p.47

2.5.2. PMC, PSC, PMSC, PMF?

Other than the question of definition of PMSCs and mercenaries and what distinguishes the two, it is important to mention that many different terms are used to describe private modern companies offering security or military services. Percy refers to such companies as PSCs or PMCs and distinguishes PSCs from PMCs by the fact that PSCs do not get involved in offensive combat.⁹³ She argues that PMCs were active during the 1990s but only on three occasions (EO both in Angola and Sierra Leone, and Sandline in Papua New Guinea).⁹⁴ According to her, PMCs ceased to exist due to the anti-mercenary norm and were followed by the appearance of a huge number of PSCs in the early 2000s. Percy states that PSCs offer four types of services: logistical support, operational or tactical support, military advice and training, policing or security.⁹⁵

Singer classifies these modern companies as Private Military Firms (PMFs).⁹⁶ *“They are business organizations that trade in professional services intricately linked to warfare. They are corporate bodies that specialize in the provision of military skills, including combat operations, strategic planning, intelligence, risk assessment, operational support, and technical skills.”*⁹⁷ He then breaks down this global term into different groups using the “Tip of the Spear” typology depending on the type of services provided (see figure on next page). According to him, there are 3 types of companies: military provider firms, military consulting firms and military support firms.⁹⁸

⁹³ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.60-61+225+229

⁹⁴ *Ibid.*, p.209-212

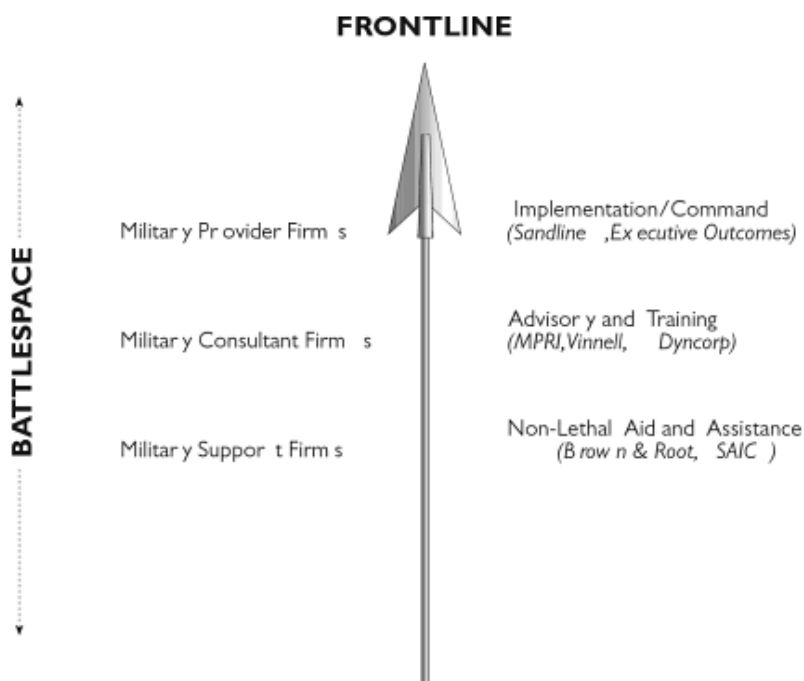
⁹⁵ *Ibid.*, p.225

⁹⁶ SINGER Peter Warren: *Corporate Warriors: The Rise of The Privatized Military Industry*, p.45

⁹⁷ *Ibid.*, p.8

⁹⁸ *Ibid.*, p.93

Singer's Tip of the Spear typology⁹⁹



The UN doesn't make any kind of distinction among this industry and simply classifies such companies as PMSCs. This is unlike many scholars, such as Percy or Singer, who find it important to make a distinction. The UN only distinguishes between what kind of services it contracts these companies for. These services are either considered as security or military services (we will come back to this distinction later in this paper). Given the fact that we will be using UN documents in our thesis, we have decided to stick to the same typology used by the UN – PMSCs. Faiza Patel explains that the Working Group uses the term PMSCs because these private firms often provide both security and military services.¹⁰⁰ According to the UN, among other services, PMSCs offer “(...) *personnel protection, site security and convoy security for military and civilian personnel working for international institutions, Governments or private entities, as well as policing and security protection services, intelligence data collection and analysis, private administration of prisons, interrogation of detainees and*

⁹⁹ SINGER Peter Warren: *Corporate Warriors: The Rise of The Privatized Military Industry*, p.93

¹⁰⁰ UNITED NATIONS. Working Group on the use of mercenaries – Panel Event: use of private military and security companies by the United Nations (01:15:51 -01:16:27)

*reportedly covert operations.*¹⁰¹ It should be noted that the Working Group “(...) refers to private military and security companies (...) as including private companies which perform all kinds of security assistance, training, provision and consulting services, including unarmed logistical support, armed security guards, and those involved in defensive or offensive military activities.”¹⁰² The last part of the quotation is extremely important since the provision of offensive military services is an extremely controversial aspect and something the industry itself has tried to distance itself from.

We have established that mercenaries and PMSCs deserve to be distinguished from one another. However, we have also mentioned that PMSC employees often carry the same negative connotations as mercenaries and that the distinction is often neglected. As mentioned above, this is in large part due to the anti-mercenary norm, which has been impacting the private force industry since its earliest days.

2.6. The anti-mercenary norm

*“For as long as there have been mercenaries, there has been a norm against mercenary use.”*¹⁰³ This statement by Sarah Percy reflects the fact that throughout history, mercenaries have been depicted in negative terms and that there has always been pressure against their use by states. Observing the effect of this norm on the use of mercenaries in modern days is one of the key aspects of this paper and it is therefore important to begin this chapter with some theory on norms, defined as “(...) a rule or standard of appropriate behaviour that an actor accepts as part of his identity and follows most of the time”¹⁰⁴. First of all, we are going to explain, mainly using Percy’s book, what norms are and how norms can impact the behavior of individuals or states. Secondly, we will briefly explain the life cycle of norms. Having laid down the theory, we will observe when and why the anti-mercenary norm emerged, gained in strength and spread across the world.

¹⁰¹ WORKING GROUP: A/65/325, paragraph 2

¹⁰² WORKING GROUP: A/HRC/4/42, paragraph 3

¹⁰³ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.1

¹⁰⁴ *Ibid.*, p.17

2.6.1. The impact of norms

Academics disagree on whether norms can influence state behavior. As explained by Percy, three main groups or approaches exist: structural realism, neoliberalism, and constructivism. According to the first group of thought – structural realism – power and material interests are what guide a state’s behavior¹⁰⁵ According to this approach, norms do not influence the behavior of a state. Structural realists argue that norms are created and maintained by states in order to serve state interests. Consequently, for structural realists, norms reflect the distribution of power.¹⁰⁶ Put in other words, norms, but also institutions or laws, are “(...) *the products and instruments of power.*”¹⁰⁷ The problem with this explanation when it comes to the use of private forces is that, if norms didn’t influence state behavior, it would be difficult to explain why states do not use private forces more often. Indeed, the use of private forces has many benefits and, if the realist approach were to be correct, states would logically contract private forces on a regular basis since this could increase state power.¹⁰⁸

The second approach – neoliberalism – maintains considerable similarities with structural realism but, unlike structural realism, neoliberalism accept the fact that norms may somewhat influence state behavior. First of all, it is important to note that both of the first approaches assume a logic of consequences. According to this logic, states will adopt a certain behavior and decide on which actions to take with the objective of maximizing state interests.¹⁰⁹ Accordingly, since states seek to maximize their interests, “(*neoliberalism*) still see the role of norms as limited or instrumental.”¹¹⁰ The Neoliberal approach argues that norms are instruments used by states¹¹¹ and

¹⁰⁵ LUI, Andrew: *Why Canada cares: Human Rights and Foreign Policy in Theory and Practice*, p.44

¹⁰⁶ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.15

¹⁰⁷ LUI, Andrew: *Why Canada cares: Human Rights and Foreign Policy in Theory and Practice*, p.44

¹⁰⁸ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.15-16

¹⁰⁹ SLAUGHTER, Anne-Marie: *International Relations: Principle Theories*, paragraph 22

¹¹⁰ *Ibid.*, p.16

¹¹¹ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.16

that these instruments “(...) are used strategically to further interests.”¹¹² States will evaluate whether adhering to a norm is beneficial or not in a cost-benefit manner. Not complying with a norm could be costly for a state since, for example, other states may apply sanctions. On the other hand, norms can be beneficial to states by rendering cooperation between states easier¹¹³ since “(...) compliance with broadly accepted norms reduces uncertainties, minimizes transactions costs, and facilitates cooperation among self-interested states.”¹¹⁴ It is this potential impact of a norm on the cost-benefit calculation of actors that is assumed by neoliberals as influencing to a certain degree the behavior of states. Percy explains that the main obstacle to explaining the anti-mercenary norm with this approach is the fact that “(...) it assumes interests are exogenously given and does not discuss where interests come from.”¹¹⁵

Unlike the first two approaches, which follow a logic of consequences, the third approach – constructivism – follows a logic of appropriateness. According to this third approach, “(...) rationality is heavily mediated by social norms.”¹¹⁶ Constructivism suggests that norms construct state identity and consequently state interests.¹¹⁷ In consequence, according to this approach, the behavior of states is heavily influenced by norms. It is important to note that in order for a norm to actually be a norm, the norm must be held by a group and not only by a single individual. When applied to the international level, the individual becomes a state and therefore, for a norm to be a norm, it must be held by a group of states.¹¹⁸

Percy asserts that constructivism is best suited to explain the anti-mercenary norm. She argues that norms have influenced state behavior and that

¹¹² BUKOVANSKY, Mlada: Legitimacy and Power Politics: The American and French Revolutions in International Political Culture, p.36

¹¹³ PERCY, Sarah: Mercenaries: The History of a Norm in International Relations, p.16

¹¹⁴ SATO, Yoichiro and HIRATA, Keiko: Norms, Interests, and Power in Japanese Foreign Policy, p.178

¹¹⁵ PERCY, Sarah: Mercenaries: The History of a Norm in International Relations, p.16

¹¹⁶ SLAUGHTER, Anne-Marie: International Relations: Principle Theories, paragraph 22

¹¹⁷ COPELAND, Dale C.: The Constructivist Challenge to Structural Realism: A Review Essay, p.195

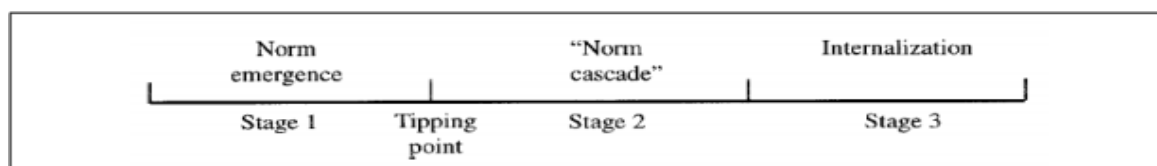
¹¹⁸ PERCY, Sarah: Mercenaries: The History of a Norm in International Relations, p.17

the anti-mercenary norm has led states to limit their use of private forces and that the private industry has been modeled by the anti-mercenary norm.¹¹⁹

2.6.2. The lifecycle of norms

The lifecycle of a norm can be split into three main phases: norm emergence or initial appearance (1), norm cascade or broad acceptance (2) and internalization (3).¹²⁰ Norms emerge thanks to so-called norm entrepreneurs, who attempt to bring attention to a specific issue. Put differently, in this first phase, *"(...) new rules of appropriate behavior are put on the radar by norm entrepreneurs (...)"*¹²¹ As explained by Finnemore and Sikkink, a norm passes from stage (1) to stage (2) when it crosses a tipping-point. This tipping point is reached when *"(...) a critical mass of relevant state actors adopt the norm."*¹²² Once a norm has reached this tipping point, the norm disperses rapidly within the international community.¹²³ This rapid spread is what Finnemore and Sikkink refer to as the norm cascade. If an increasing number of states adopt behaviors conform to the new norm, it is because they believe that non-compliance to the norm could affect their image and consequently their legitimacy.¹²⁴ As explained by Percy, *"(t)he third stage is reached when the norm becomes internalized, or embedded in state identity and international and domestic institutions, and adherence to it essentially automatic."*¹²⁵

Lifecycle of a norm¹²⁶



¹¹⁹ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.17-18

¹²⁰ FINNEMORE, Martha and SIKKINK, Kathryn: *International Norm Dynamics and Political Change*, p.895; Sarah Percy uses different terminology for the first two stages.

PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.37-38

¹²¹ GILARDI, Fabrizio: *Transnational diffusion: Norms, ideas, and policies*, p.23

¹²² FINNEMORE, Martha and SIKKINK, Kathryn: *International Norm Dynamics and Political Change*, p.895

¹²³ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.38

¹²⁴ GILARDI, Fabrizio: *Transnational diffusion: Norms, ideas, and policies*, p.23

¹²⁵ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.38

¹²⁶ FINNEMORE, Martha and SIKKING, Kathryn: *International Norm Dynamics and Political Change*, p.896

It should be noted that according to Finnemore and Sikkink, norms are exogenous. This means that norm entrepreneurs are the external cause or origin of the norm and that these norm entrepreneurs play a key role during the entire lifecycle of norms. Other academics disagree with the fact that norms are exogenous and claim that norms can be endogenous. According to this group of academics, “(...) norms can develop endogenously following a signaling process.”¹²⁷

The anti-mercenary norm has gone through all three abovementioned stages and has by now become internalized. It has spread across the globe and gained considerable strength, ultimately influencing state behavior and the private force industry itself.

2.6.3. History of mercenaries and of the anti-mercenary norm

According to Singer, mercenaries can be found as far back as 2000 years BC. Since then, they have existed throughout most of history, serving for example in the armies of Pharaoh Ramses II, of many Greek city-states, of Alexander the Great, and even in the Roman army.^{128 129} On many occasions, mercenaries counted for large portions of armies (approximately half of William the Conqueror’s in the eleventh century¹³⁰) and had the power to influence the outcome of battles. The Middle Ages saw the emergence of the first companies of mercenaries, which varied in size and travelled across Europe in search of employment.

The widespread presence of mercenaries from 2000 years BC to the 15th century may lead us to believe that mercenaries were largely accepted. However, this was not the case. According to Percy, who begins to trace the history of mercenaries back to the 12th century, as early as that time “(...) mercenaries were widely disliked because they were outsiders, and were not motivated by loyalty or duty in the same way as native troops.”¹³¹ These companies of mercenaries were also infamous for pillaging countries and for committing widespread crimes.

¹²⁷ GILARDI, Fabrizio: Transnational diffusion: Norms, ideas, and policies, p.24

¹²⁸ SINGER Peter Warren: Corporate Warriors: The Rise of The Privatized Military Industry, p.20-21

¹²⁹ PERCY, Sarah: Mercenaries: The History of a Norm in International Relations, p.1

¹³⁰ SHEARER, David: Outsourcing War, p.69

¹³¹ PERCY, Sarah: Mercenaries: The History of a Norm in International Relations, p.70

Resentment towards mercenaries was so strong that with the signing of the Magna Carta in 1215, King John had to agree on expelling all foreign mercenaries from the Kingdom. This didn't however mean totally giving up on the use of mercenaries and foreign mercenaries were simply used abroad and not domestically.¹³²

During the 13th century, Italy was flooded with units of mercenaries, or condottieri. The main issue with these units was that, when not kept busy fighting wars, they would pillage towns and raise massive protection taxes. It is in this context that Machiavelli argued that citizens should fight for the republic and be prepared to die for its cause, and that the presence of mercenaries only weakened the republic.¹³³ In Machiavelli's opinion, mercenaries affected the republic negatively in two ways: firstly, the presence of mercenaries prevented citizens from fulfilling their duty to serve the republic (since there are already available soldiers, citizens have no need to fight for the Republic), and secondly mercenaries "*can never be effective fighters because they are not motivated by the cause of the common good.*"¹³⁴ Although in reality the presence of mercenaries in armies was quite effective, Machiavelli's view was shared by many. This demonstrates that the norm against the use of mercenaries was rather a moral one and not necessarily based on facts (we will see later in this thesis that Percy argues that this is still the case nowadays).

Percy establishes that during this period (the Medieval Times), mercenaries were seen in a negative manner mostly because "*(...) they did not fight for an appropriate cause.*"¹³⁵ The concept of just war was already present and a war could only be just when it was sanctioned either by the nobility or by the church. In consequence, given the fact that mercenaries fought for themselves, they could not be seen as possessing this criteria and their activities were branded as "*(...) criminal, and in some cases, traitorous, treasonable and even heretical.*"¹³⁶ In addition to the moral problem, which was the lack of attachment to an appropriate or just cause, a second problem was a practical

¹³² Ibid., p.71

¹³³ Ibid., p.75-76

¹³⁴ Ibid., p.76

¹³⁵ Ibid., p.71

¹³⁶ Ibid., p.72

one. We established previously that mercenaries could be found across the continent causing havoc by pillaging and committing many crimes. This practical problem was a consequence of the lack of control over mercenaries.

Due to the widespread dislike of mercenaries, which stemmed from the two aforementioned problems, states set out to control them. It was believed that by placing mercenaries under control, both of the aforementioned problems (practical and moral) would disappear.¹³⁷ Throughout Europe, whether in France, in England, in Italy or in Switzerland, it was thought that control could be reached through three different strategies. The first strategy was moral condemnation, which meant excommunication of mercenaries. The second was sending mercenaries on crusades and therefore giving them a just cause. The third solution or strategy, which was the most effective, was the incorporation of mercenaries into standing armies.¹³⁸ Attempts to bring mercenaries under control had succeeded by the end of the Thirty Years War (1618-1648) and at this point, *"(...) military enterprisers were brought firmly under sovereign control and sovereigns themselves took the profits from raising and selling regiments."*¹³⁹ According to Percy, this represents the first shift away from mercenary use.

The second shift away from mercenary use came in the 19th century and led to the appearance of citizen armies. Following the French Revolution, *"(f)or the first time in at least several hundred years, states began to fight wars using their own citizens exclusively, and foreigners disappeared from the armies of Europe."*¹⁴⁰ The first states in modern times to adopt citizen armies were the American colonies and France. These were followed by Prussia and Great Britain, which took more time to go ahead with the change. According to Percy, we cannot explain the disappearance of mercenaries from European armies and in America in the 19th century without understanding why states favored citizens over mercenaries. In turn, in order to understand this preference, we need to understand the impact of the norm against the use of mercenaries.¹⁴¹ Percy states: *"If performance on the battlefield cannot provide enough compelling*

¹³⁷ Ibid., p.78-79

¹³⁸ Ibid., p.81

¹³⁹ Ibid., p.89

¹⁴⁰ Ibid., p.94

¹⁴¹ Ibid., p.119

*evidence, then the choice must be at least in part moral. A strong element of the decision to adopt citizen armies was that they were considered the morally superior alternative. States were persuaded to take a leap of faith and use citizens to fight their battles not necessarily because it was the **best** thing to do, but because they began to believe it was the **right** thing to do.”*¹⁴² The central argument behind the norm against mercenary use in the 19th century was that civilized states did not use mercenaries.¹⁴³

Mercenaries disappeared briefly from the international scene between the 19th century and the 1950s/1960s. When they returned in the 1950s, these mercenaries were very different. As explained by Singer, they were no longer organized enterprises of mercenaries, but rather these new mercenaries were individual ex-soldiers who hired out their services to private entities, such as mining companies, and got themselves involved in violent coups in different recently independent states. These hired soldiers also played an important role in the South African apartheid and “(t)he use of mercenaries thus became a symbol of the racism that hindered the self-determination of the new states, further strengthening international opinion against private actors in warfare.”¹⁴⁴ In large part due to the close relationship between mercenaries and racist regimes, this new form of independent mercenarism soon caught the attention of the international community and mercenaries were once again heavily criticized, leading to the creation of new legislation to deal with this phenomenon. Again, the anti-mercenary norm played a role and its two main elements - the lack of control and the moral issue - were central to the anti-mercenary posture.

It is a couple of decades later, during the 1990s, that the private force industry saw the emergence of the first modern companies as we know them. We demonstrated earlier that these modern companies deserve to be distinguished from previous forms of mercenarism. In consequence, we will now briefly retrace the history of this new type of companies.

¹⁴² Ibid., p.120. The two words in bold (best and right) are in italic in Percy's book

¹⁴³ Ibid., p.121-123

¹⁴⁴ SINGER Peter Warren: Corporate Warriors: The Rise of The Privatized Military Industry, p.37

2.6.4. Modern PMSCs

In 1991, violence erupted in Sierra Leone, a small country on the African Continent. During the following years, widespread atrocities were perpetrated, most often by the Revolutionary United Front (RUF), but later on also by governmental forces. Barbaric acts included large-scale killings of civilians, rape, torture and the use of child soldiers.¹⁴⁵ At one point, it was widely believed that the government was powerless and that the rebels (RUF) were going to seize the capital and massacre large numbers of civilians. The West and the international community, including the UN, had basically abandoned Sierra Leone's population and the situation seemed hopeless. However, only a few months later, the RUF had been completely eradicated and stability and security had returned to Sierra Leone, leading to elections and ultimately a civilian-led democracy. This amazing turnaround was all down to one private company – the South African based Executive Outcomes (EO).¹⁴⁶ Executive Outcomes, which was created in 1989, was one of the first modern private military companies as we know them. It is widely accepted that this firm played a positive role in Sierra Leone, as mentioned by Michael Ashworth already in an article from 1996.¹⁴⁷ During the same period, but thousands of kilometers away from this small African country, certain Balkan states were also witnessing the impact private military companies could have on the outcome of militarized conflicts. In 1995, with the help of an American private military company – Military professional Resources Incorporated (MPRI) – the Serbs were forced to the negotiating table. This ultimately led to the end of one war in the Balkans. However, it did not lead to long lasting peace in the region and another war erupted just a few years later. During the previous war, the international community hadn't reacted in a forceful manner and allowed thousands to die in what was no less than ethnic cleansing. In consequence, Western countries asserted that they would not let this happen again and an air campaign was undertaken by NATO to put an end to the war by forcing Milosevic to negotiate. Once again, an American private

¹⁴⁵ REUTERS: FACTBOX – Sierra Leone's civil war; HUMAN RIGHTS WATCH: The Armed Conflict in Sierra Leone

¹⁴⁶ SINGER Peter Warren: Corporate Warriors: The Rise of The Privatized Military Industry, p.3-4

¹⁴⁷ ASHWORTH, Michael. Africa's new enforcers

company – Brown & Root Services – played a major role in the outcome of the conflict. This company was contracted because public opinion in the US was against getting involved in another war in the Balkans. Therefore, in order to avoid having to deploy thousands of its regular troops, the US outsourced important tasks to the private firm. Brown & Root Services constructed facilities for refugees, but also undertook logistical missions and were charged with the maintenance of military equipment and weapons.¹⁴⁸

In these three aforementioned examples, private firms had an important impact on the outcome of militarized conflicts. The three companies (EO, MPRI, Brown & Root Services) were some of the first modern PMSCs. Since these three firms emerged, hundreds have mushroomed around the world¹⁴⁹ and, by the early years of our millennium, the private military and security industry was composed of several hundreds of private companies ranging in size and varying in services provided.¹⁵⁰

The fact that we have seen an explosion in the number of PMSCs since the early 2000s does not however mean that the anti-mercenary norm has lost any influence. Indeed, the industry has been modeled by the norm, and the way in which states or international organizations have been willing to use such companies has also been influenced by the norm. The fact that the industry has distanced itself from offensive combat services and that it has gone, and continues to go to great lengths in order to distance itself from mercenaries and rebrand the industry¹⁵¹ is due in large part to the prevalence of the anti-mercenary norm.¹⁵²

Although we share Percy's belief that PMSCs are affected by the anti-mercenary norm, we should note that certain academics argue that modern companies should not be included in the anti-mercenary norm. Ulrich Petersohn, for example, argues that modern PMSCs should not be included in the anti-

¹⁴⁸ SINGER Peter Warren: *Corporate Warriors: The Rise of The Privatized Military Industry*, p.5-6

¹⁴⁹ BURES, Oldrich: *Private Military Companies: A Second Best Peacekeeping Option* p.535

¹⁵⁰ DUNAR; Charles J. et al.: *Private Military Industry Analysis: Private and Public Companies*, p.1

¹⁵¹ ISENBERG, David: *The PMSC Perils of Peacekeeping*; PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.228

¹⁵² *Ibid.*, p.207

mercenary norm because these companies have moved away from combat services and that their use of force is now justified only for self-defense and therefore legitimized.¹⁵³ In his opinion, taking part in combat services is a condition to be included in the anti-mercenary norm. Petersohn argues that, in consequence, since their use of force is no longer considered as combat, PMSCs have become legitimate and widely accepted. He states that proof of the legitimization of PMSCs is their increased use and also the signing of the Montreux Document.¹⁵⁴ We strongly disagree with Petersohn's claims. Indeed, taking part in offensive combat is in no way a requirement to be included in the anti-mercenary norm. The anti-mercenary norm establishes that mercenaries and PMSCs are problematic because they pose a problem of control and are morally problematic. As we will demonstrate in this thesis, even companies offering no combat services are affected by these two areas of concern. Furthermore, we believe that the signing of the Montreux Document demonstrates a will among the international community to increase control over PMSCs in order to reduce, or at least limit, the problem of control associated with these companies. Also, the increase in the use of PMSCs does not signify the end of the impact of the anti-mercenary norm, as explained by Percy and as will be demonstrated by us later in this thesis. Lastly, as shall be established throughout this paper, the belief that PMSCs are largely considered as legitimate and widely accepted is erroneous and PMSCs face substantial criticism.

To sum up this chapter on the anti-mercenary norm, *“(t)he norm against mercenaries relies on the fact that mercenaries are outside state control **and** that they are not motivated by an appropriate cause.”*¹⁵⁵ As we shall see throughout this paper, PMSCs nowadays are still criticized as lacking both control and the appropriate cause. The lack of control is often described as a lack of accountability and legislation surrounding PMSCs. Regarding the moral question, one of the main arguments against PMSC employees is the fact that they are primarily motivated by personal financial gain and that they profit from violence and insecurity. As explained by Percy, the norm against mercenary use has

¹⁵³ PETERSHON, Ulrich: Reframing the anti-mercenary norm: Private military and security companies and mercenarism, p.3

¹⁵⁴ Ibid., p.1-3

¹⁵⁵ PERCY, Sarah: Mercenaries: The History of a Norm in International Relations, p.173

become puritanical. By this, she means that dislike of mercenaries is not based on facts, but rather on the simple shared belief that mercenaries are bad or evil.¹⁵⁶ *“The long history of the norm against mercenary use, its recent institutionalization, and the support it receives from similar norms have resulted in almost automatically negative responses to the use of private force no matter the facts of the case.”*¹⁵⁷ According to Percy, the anti-mercenary norm still carries substantial weight nowadays and its influence can still be seen in the way states, NGOs or international organizations are ready to work with PMSCs, and also in the way the private force industry has evolved, notably by evolving from PMCs to PSCs and distancing itself from offensive combat services.

2.7. The UN and PMSCs

Our research focuses on the relationship between the private force industry and the UN. It is consequently important to present when and how the UN took interest in mercenaries and later PMSCs. The UN has been concerned with mercenarism since the 1960's. Proof of this concern regarding mercenary activities can be found in multiple resolutions, such as General Assembly Resolution 2395 (XXIII) dating back to 1968, in which the General Assembly expresses its concerns regarding mercenary activities connected to *“(...) the colonial war being waged in the Territories under Portuguese domination and for violations of the territorial integrity and sovereignty of the independent African States.”*¹⁵⁸ In another of its resolutions, Resolution 3103 (XXVIII), the General Assembly reaffirms that *“(...) using mercenaries against national liberation movements in the colonial Territories constitutes a criminal act.”*¹⁵⁹ Through these two statements from the UN, we can easily establish that one of the main reasons the UN addressed the issue of mercenaries in the 1960s was the threat mercenaries were seen as posing to the right of people to self-determination – right the UN is bound to promote and protect. Other than the threat they posed to the right to self-determination, mercenaries were also seen as posing a threat to international peace and security. We can connect this criticism with the anti-

¹⁵⁶ Ibid., p.218-219

¹⁵⁷ Ibid., p.219

¹⁵⁸ GENERAL ASSEMBLY: Resolution 2395 (XXIII), paragraph 9.

¹⁵⁹ GENERAL ASSEMBLY: Resolution 3103 (XXVIII), p.1

mercenary norm and the problem of control associated with mercenaries that we had presented earlier in this paper and which is one of the two central elements of the norm.

Since the right of people to self-determination is something we will be referring to and coming across a lot in this thesis, it is worth taking some time to understand what it means and where it comes from. The principle of self-determination already figured in the UN Charter in 1945.¹⁶⁰ However, at that time, self-determination was only a principle and not yet a right. Being only a principle, self-determination was therefore not recognized in international law. It is only during the 1960's, when many colonies were gaining independence, that self-determination evolved into a right and became recognized in international law. This right "(...) *was interpreted as the right of all colonial territories to become independent or to adopt any other status they freely chose.*"¹⁶¹ As explained by Hannum Hurst, The first time the right to self-determination figured in an important text was in 1960, in the Declaration on the Granting of Independence to Colonial Countries and Peoples.¹⁶² In this text, it was declared that colonialism should rapidly come to an end¹⁶³ and that "(a)ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."¹⁶⁴ Ten years later, the UN General Assembly released a declaration, which is still seen as being one of the most valuable statements on the right of people to self-determination.¹⁶⁵ This declaration – the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations – establishes that "Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter

¹⁶⁰ HURST, Hannum: Legal Aspects of Self-Determination

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ UNITED NATIONS: The United Nations and Decolonization

¹⁶⁵ HURST, Hannum: Legal Aspects of Self-Determination

*regarding the implementation of the principle (...).*¹⁶⁶ The obligations conferred to States in this declaration are considered as an image of customary law and are still valid nowadays.¹⁶⁷ So what is the link between mercenaries and the right to self-determination? Why are mercenary activities considered as threatening this right?

We had presented the UN's definition of mercenaries earlier in this thesis (chapter 2.5.1). When put into the historical context of the 1960's and 1970's, it is easy to understand why mercenary activities were perceived as posing a threat to national liberation movements and to self-determination. In many cases, mercenary forces were present in internal conflicts, such as in Sierra Leone, Nicaragua or Nigeria and in some of these cases they had a strong impact on the outcome of the conflict.¹⁶⁸ Mercenary groups consequently had the power to influence internal conflicts and this was a daunting prospect for the UN, which was responsible for maintaining peace around the globe and for protecting state sovereignty and Human Rights. We also saw that PMSCs were involved with racist regimes, such as the one in South Africa. In consequence, the UN was obliged to take mercenarism into consideration.

We have established that the UN has been preoccupied with mercenary activities since the 1960's. However, it was not until 1987 that the UN saw the creation of a specific entity explicitly focused on mercenary related activities. This new entity was the Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (from now on referred to simply as "the Special Rapporteur"). The Special Rapporteur was the result of the release of the Economic and Social Council Resolution 1986/43, in which the Council called upon the Commission on Human Rights to set up the role of Special Rapporteur. Following this request, the Commission on Human Rights decided to establish the Special Rapporteur through its Resolution 1987/16.¹⁶⁹ The Special

¹⁶⁶ GENERAL ASSEMBLY: A/RES/25/2625, p.6

¹⁶⁷ HURST, Hannum: Legal Aspects of Self-Determination

¹⁶⁸ FOREIGN AND COMMONWEALTH OFFICE: Green Paper: Private Military Companies: Options for Regulation, p.9-10

¹⁶⁹ OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS: Special Rapporteur on use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination

Rapporteur later became the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of people to self-determination through resolution 2005/2.¹⁷⁰

Now that we have established the link between mercenaries and self-determination, and that we have explained why and how the function of Special Rapporteur and consequently the Working Group came to life, we have to answer yet another crucial question. Is the Working Group (and previously the Special Rapporteur) actually preoccupied by PMSCs, or is it only preoccupied by mercenaries? Regarding the Special Rapporteur, the answer to this question can be found in document A/52/495 (1997). In this document, the Special Rapporteur asserts that *“(...) there are the modern private security companies which provide many different kinds of service, economic advice and sophisticated military training but which are covers for former professional soldiers and mercenaries offering themselves as a solution, in exchange for large sums of money, to countries experiencing instability and armed conflicts and the consequent impossibility of developing their enormous natural resources. Such companies (...) today represent the biggest and most sophisticated threat to the peace, sovereignty and self-determination of the peoples of many countries.”*¹⁷¹ We can clearly see that the Special Rapporteur maintains the links between mercenaries and self-determination but has added modern PMSCs to mercenaries and put them in the same basket. Again, we should place this document in the historical context. It was during the 1990’s that modern PMSCs started to emerge (the first being Executive Outcomes in 1989¹⁷²) and consequently the Special Rapporteur had to adapt to the emergence of this new form of “mercenaryism”. We can also prove that the Special Rapporteur included PMSCs in his mandate by observing a report to the Commission on Human Rights in 2003. In this report, Mr. Ballesteros argued that PMSCs need to be regulated and held accountable for the many crimes their employees commit.¹⁷³ A few years later, the fact that the Working Group is preoccupied with modern PMSCs as well as more classical

¹⁷⁰ OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS: Human Rights Resolution 2005/2, paragraph 11

¹⁷¹ GENERAL ASSEMBLY: A/52/495, paragraph 21h

¹⁷² ASHWORTH, Michael: Africa’s new enforcers

¹⁷³ GHEBALI, Victor-Yves: The United Nations and the Dilemma of Outsourcing Peacekeeping Operations, p216

mercenaries was confirmed by Faiza Patel – a former member of the Working Group – during a meeting on the UN’s use of PMSCs. During this meeting, Faiza Patel admitted that the name of the Working Group could be confusing because of the presence of the word mercenaries. She consequently explained that the Working Group has a dual mandate. Its first mandate is to focus on what she calls traditional mercenary activities, which could be observed for example in post-colonial Africa. The other mandate pays attention to the use of PMSCs in a variety of sectors¹⁷⁴. We can consequently assert that the Working Group is the UN body charged with working on PMSCs as well as classical mercenary activities.

¹⁷⁴ UNITED NATIONS. Working Group on the use of mercenaries – Panel Event: use of private military and security companies by the United Nations (00:3:30 – 00:04:00)

III. Method

3.1. Introduction

This third chapter consists of the presentation and explanation of the different methods that will be used in the next chapter (Chapter 4) in order to bring answers to our four questions presented in Chapter 1:

- 1.4. *Has there been an evolution in the United Nations' use of private military and security companies?*
- 1.5. *Has the United Nations' discourse vis-à-vis private military and security companies evolved over time?*
- 1.6. *Does the evolution of the United Nations' discourse match the evolution of the United Nations' use of private military and security companies?*
- 2.1. *Does the anti-mercenary norm have an impact on the use of private military and security companies by the United Nations?*

3.2. Evolution of the UN's use of PMSCs

Initially, the author wanted to establish the evolution of the UN's use of PMSCs by compiling a list of all contracts given to PMSCs by the UN. Unfortunately, this task revealed itself to be infeasible for multiple reasons. First of all, the use of PMSCs by the UN is still quite secretive or taboo and the UN is opposed to releasing much information or data on its use of PMSCs¹⁷⁵ (although the UN has reportedly gathered detailed information on the UN's use of PMSCs, which is kept confidential)¹⁷⁶. We would consequently be unable to lay our hands on all the necessary data required to compile such a precise list. This is one of the problems of studying PMSCs set forward by many academics, including P. W. Singer¹⁷⁷ or Østensen¹⁷⁸. Another problem is the fact that there is not a single body in charge of preparing and handing out contracts to private firms. The UN headquarters, as well as multiple other agencies offer contracts to different PMSCs. Regrouping them would therefore be even more complicated.

¹⁷⁵ A/69/338, paragraphs 12+13

¹⁷⁶ ØSTENSEN, Åse Gilje. UN use of Private Military and Security Companies: Practices and Policies, p.8

¹⁷⁷ SINGER, Peter Warren: Corporate Warriors: The Rise of The Privatized Military Industry, p. ix-x (preface)

¹⁷⁸ ØSTENSEN, Åse Gilje. UN use of Private Military and Security Companies: Practices and Policies, p.8-9

Furthermore, adding to this problem is the fact that there is not only direct contracting of PMSCs by the UN, but also indirect contracting (we will come back to this point later in this thesis). Compiling an exhaustive list, even if it were possible to do with the likely problem of missing data, would also require an immense amount of time and resources. Lastly, we cannot rely on PMSCs documents or reports since these firms are often limited to releasing details about their clients due to client confidentiality clauses.¹⁷⁹ Furthermore, these companies would carefully select what data to release or what statements to make, consequently rendering such information extremely biased and difficultly usable to establish accurate conclusions.

Given the problem of available sources, we have decided to establish general trends in the UN's use of PMSCs and not an exhaustive list of UN contracting of such firms. Although this is disappointing, we don't believe that it will impact our conclusions since general trends will be observable and similar using both methods. In order to trace general trends in the evolution of the UN's use of PMSCs, we will use different types of sources. Primary sources, such as UN documents (for example annual statistical reports on UN procurement) will be complemented by secondary sources such as studies on the UN's use of PMSCs, news feeds or academic papers or books. Secondary sources will constitute a substantial part of the used sources given the problems of UN transparency and availability of primary sources abovementioned.

3.3. Evolution of the UN's discourse vis-à-vis PMSCs

In this second stage, we will establish whether there has been an evolution in the UN's discourse vis-à-vis PMSCs. To do so, we are going to focus on the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination. If we are focusing on this group, it is for the following reasons. As established earlier, the Working Group is the main UN body covering the topics of mercenaries, mercenary related activities and PMSCs. It is consequently the body that has produced the most documents on the topic of PMSCs. Furthermore,

¹⁷⁹ Ibid., p.8-9

using the Working Group's annual reports offers a structured way to analyze the discourse diachronically.

Some may argue that the Working Group is obviously going to focus on human rights violations and that the analysis will therefore be biased. However, the author doesn't believe this to be the case. The Working Group's name is a heritage of its predecessor – the Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The name of the Working Group does indeed contain “as a means of violating human rights” but, as mentioned by Faiza Patel, the Working Group is mandated to work on the use of PMSCs in a variety of sectors and not solely on their links to human rights violations. Further evidence that the name of the Working Group is probably not the most adequate and would deserve to be modified can also be found in the fact that it only mentions mercenaries and not PMSCs, although studying mercenaries is only one part of its mandate.

We are aware that this is not the only body within the UN to produce statements on PMSCs (others include for example the UN Security Council or the UN General Assembly). This is due to the fact that the UN is composed of a multitude of bodies. We also recognize the fact there is a risk that views on PMSCs may differ from one body to another within the UN since each body will ultimately have its own interests. Limiting ourselves to the Working Group should therefore be complemented by further analysis of other documents occurring from other UN bodies in the future.

3.3.1. Selected reports

The first annual report (E/CN.4/2006/11) was presented to the 62nd Session of the Commission on Human Rights on the 23rd of December 2005. This first session was resumed on the 3rd of March 2006 and complemented by an addition to the first annual report (E/CN.4/2006/11/Add.1). This was the only time an annual report from the Working Group would be presented to the Commission on Human Rights. Indeed, this Commission was replaced by the

Human Rights Council in 2006¹⁸⁰, and therefore the following annual reports were presented to the newly established Human Rights Council. Until now, eight annual reports have been presented to the Human Rights Council.

In addition to presenting its annual reports to the Commission on Human Rights and the Human Rights Council, the Working Group also presents its annual reports to the General Assembly. The first time one of the Working Group's annual reports was presented to the General Assembly was on the 13th of September 2006, to the 61st Session of the General Assembly. Another 9 annual reports would be presented to the General Assembly, the most recent dating back to the 19th of August 2015, at the 70th Session of the UN General Assembly.

There are therefore a total of 19 annual reports (the first dating back to the 23rd of December 2005 and the most recent to the 19th of August 2015). If we include the additions, this number climbs to 39 documents. Each report is on average between 15 to 25 pages long. Given the limited length of this thesis, if we were to analyze each of these reports and produce a written analysis on each and every one, the author would have to restrict the analysis of each report to a single short paragraph. In consequence, instead of analyzing each report, we will be focusing on one single annual report per year (from 2005 to 2015). Doing so will allow us to go more in depth and produce what we believe to be a more valid and interesting analysis. For each year, we will alternate between a report to the Human Rights Council (for the first report to the Commission on Human Rights) and a report to the General Assembly. We will therefore be using the following reports:

- **2005:** E/CN.4/2006/11 (23.12): Report to the 62nd Session of the Commission on Human Rights (we will also include the complementary document E/CN.4/2006/11/Add.1 (03.03.06))
- **2006:** A/61/341 (13.09): Report to the 61st Session of the G.A.
- **2007:** A/HRC/4/42 (07.02): Report to the 4th Session of the H.R.C.
- **2008:** A/63/325 (25.08): Report to the 63rd Session of the G.A.
- **2009:** A/HRC/10/14 (21.01): Report to the 10th Session of the H.R.C.

¹⁸⁰ OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS: Who We Are

- **2010:** A/65/325 (25.08): Report to the 65th Session of the G.A.
- **2011:** A/HRC/18/32 (04.07): Report to the 18th Session of the H.R.C.
- **2012:** A/67/340 (30.08): Report to the 67th Session of the G.A.
- **2013:** A/HRC/24/45 (01.07): Report to the 24th Session of the H.R.C.
- **2014:** A/69/338 (21.08): Report to the 69th Session of the G.A.
- **2015:** A/70/330 (19.08): Report to the 70th Session of the G.A.¹⁸¹

It should be noted that if the author is focusing on the Working Group's annual reports and not analyzing other documents produced by the Group, it is because everything that is deliberated on during the year by the Working Group is incorporated into these annual reports to the Commission on Human Rights and the General Assembly.¹⁸²

3.3.2. Discourse analysis

During the analysis of the Working Group's annual reports, we will need to keep in mind the objective of this discourse analysis, which is twofold; first of all, we want to establish whether there has been an evolution in the UN's discourse toward PMSCs and, if indeed there has been an evolution, in what way the discourse has evolved (whether it has become more conciliatory towards PMSCs, whether it continues to maintain a similar stance toward these companies, or whether the discourse has become even more critical toward PMSCS).

Secondly, paying attention to specific reasons put forward by the Working Group to oppose or criticize PMSCs will be greatly important for the remaining of the thesis. Indeed, we will be able to use the same documents and observation made in this chapter to establish in what manner the anti-mercenary norm has affected, and still affects, the UN. To observe the impact of the norm, we will need to keep in mind that the norm has two main components – a problem of control and a lack of just or appropriate cause. During this discourse analysis, we must

¹⁸¹ The latest report to the Human Rights Council dates back to 2014, this is why there are two General Assembly reports one after the other.

¹⁸² WORKING GROUP: E/CN.4/2006/11/Add.1, paragraph 2

consequently pay attention to whether these two main components of the norm are frequently present in the Working Group's discourse.

To reach the first objective of this chapter, the author will focus on the terminology used to describe or classify PMSCs and/or their employees. In addition to going through reports individually, the author will present a table in an Excel format, which will present the main terms used to classify PMSCs and/or their employees. This will offer a better visualization of the potential evolution of the discourse to the reader.¹⁸³ During this analysis, we must also pay attention to the historical context of each report. Without placing each report in its historical context, we will be unable to understand why the Working Group focuses on specific issues with a specific angle. We must also pay attention to whom is making specific declarations in the annual reports. On many occasions, the reports include statements from governments, NGOs or regional organizations and we must be careful not to include any terminology used to classify PMSCs by other actors than the UN in our analysis.

3.4. Comparison of the evolution of the UN's use of PMSCs and its discourse vis-à-vis PMSCs

In this part of the research, we will bring together the two previous parts with the objective of establishing whether the evolution of the discourse matches the evolution of the practice. This is a rather straightforward process and does not require a thorough explanation. If the evolution of the discourse doesn't match the evolution of the practice, we will attempt to establish why.

3.5. Impact of the anti-mercenary norm

In this part of our research, we will set out to determine whether the anti-mercenary norm has an impact on the UN's use of PMSCs. We will therefore attempt to bring an answer to our second main research question. We previously established that, according to Percy, the anti-mercenary norm is still valid nowadays and continues to play a role in the acceptance of the use of PMSCs and the manner in which the private force industry builds itself and has evolved over

¹⁸³ See appendix 2 for a copy of the Excel document

time. We will consequently attempt to validate or invalidate the presumption that the anti-mercenary norm has an impact on the UN's use of PMSCs.

Establishing whether a norm has an impact on an institution is unavoidably subjective in a certain measure. Keeping in mind that a certain degree of subjectivity will always be present, our aim is to reach an answer with the smallest degree of doubt as possible. In order to assert with the highest degree of certainty as possible to what extent the anti-mercenary norm has an impact on the UN's use of PMSCs, we will use multiple indicators to reinforce our conclusions. These indicators will be separated into two groups.

3.5.1. 1st group of indicators

The first group of indicators is set forward by Percy, who explains that these indicators can be used to evaluate whether a norm influences the behavior of an actor. As noted by Percy, *“(e)xamining violations of a norm and the justifications that states offer for doing so provides a useful empirical pool of evidence for the influence of norms on state policy.”*¹⁸⁴ It is important to note that observing that an actor has violated a norm only allows us to make the assumption that the norm has **potentially** lost its influence, and doesn't allow us to conclude that the norm has actually lost its influence.¹⁸⁵ In order to be able to conclude that a norm has lost its influence, we must also observe what reaction followed the violation of the norm and whether the actor having violated the norm attempted to justify the violation of the norm. Furthermore, if the actor has violated the norm and attempted to justify the violation, it is important to observe in what manner the actor justified the violation.

According to Percy's explanation, if violations of a norm take place and there is no widespread reaction, the norm is unlikely to be influential and we can assert that the norm has lost its influence. Indeed, if a norm were influential, we would expect a widespread reaction to the violation of the norm. For example, if the UK violated the norm against the use of chemical weapons and there was no reaction among the international community, we could conclude that the norm

¹⁸⁴ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.37

¹⁸⁵ The word “potentially” has been highlighted by the author in order to put emphasis on the fact that we cannot make a final conclusion on whether a norm has lost its influence based only on the fact that an actor has violated the norm.

had lost its influence. If, on the other hand, the violation of the norm was followed by widespread criticism within the international community, we could conclude that the norm against the use of chemical weapons was still influential.

Furthermore, if the actor having violated the norm doesn't attempt to justify its violation of the norm, the actor obviously doesn't believe the norm to be important and doesn't feel obliged to justify the violation. On the other hand, if an actor goes to great lengths to justify the violation of a norm, this demonstrates the feeling of a need to justify violating the norm and consequently demonstrates that the norm is influential. Percy explains that using normative terms to justify the violation of a norm signifies a stronger influence of the norm since using a normative justification demonstrates a stronger belief in the need to justify one's actions. Observing whether the violation of a norm was made in normative terms can consequently reinforce the assumption that the norm is influential. Percy also explains that it is important to observe what specific aspects were justified. This allows us to observe what elements of the norm remain important, what elements have lost or gained in importance, and what elements of the norm ultimately influence an actor's behavior.¹⁸⁶

According to this explanation, Percy's five indicators are (i) the violation of a norm, (ii) the reaction to the violation, (iii) the justification of the violation, (iv) the terms used to justify the violation (normative or not) and (v) the specific aspects which are justified. We have consequently come up with five questions referring to these indicators:

1. Was the anti-mercenary norm widely violated by the UN?
2. Did the UN's violations of the anti-mercenary norm lead to widespread criticism within the UN?
3. Did the UN try to justify the violations of the anti-mercenary norm?
4. Did the UN try to justify the violations of the anti-mercenary norm in normative terms?
5. What specific aspects were justified?

If the UN has violated the norm (question 1), answering positively to questions 2, 3 and 4 will allow us to conclude that the anti-mercenary norm

¹⁸⁶ PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.35-37

exerts influence within the UN. However, if the UN has violated the norm (question 1) but we must answer negatively to questions 2,3 and 4, we will have to conclude that the anti-mercenary norm doesn't have an impact on the UN. Observations made by answering question 5 will be interesting to observe what elements of the norm are still valid or what elements have lost influence. The following table summarizes the method using Percy's indicators.

Percy's indicators

Frequent violations of the anti-mercenary norm?	YES/NO
Strong and widespread reaction to violations of the anti-mercenary norm?	YES/NO
Efforts made to justify the violation of the anti-mercenary norm?	YES/NO
Was a normative justification used to justify the violation of the anti-mercenary norm?	YES/NO
What specific aspects were justified?	List

3.5.2. 2nd group of indicators

The second group of indicators has been created by the author. We established previously that there are two main aspects in the anti-mercenary norm. These two aspects are the lack of control and the lack of just or appropriate cause, therefore respectively one practical and one moral problem. These two elements having been fundamental to the norm since its earliest days, if we can establish that both elements are widely present in different documents occurring from the UN, then we can establish that the probability that the anti-mercenary norm is influential within the UN's is high. We will consequently observe whether the two main components of the anti-mercenary norm are present in the two following areas:

1. In the UN's discourse vis-à-vis PMSCs (primarily using the work done previously to analyze the Working Group's discourse toward PMSCs).
2. In the new set of UN guidelines relating to the use of private armed security guards.

The author's indicators

Presence of the two main components of the norm in the UN's discourse vis-à-vis PMSCs?	YES/NO
Presence of the two main components of the norm in the new UN guidelines?	YES/NO

In order to establish whether the two aspects of the norm are present, we need to keep in mind what both aspects imply. The problem of control signifies that PMSCs are dangerous and pose a threat to many rights due to the fact that these companies operate with insufficient control. Insufficient control stems from a lack of legislation, a lack of control mechanisms, and a lack of accountability. In consequence, if we can establish that the Working Group extensively mentions these issues, we will be in a position to conclude that the problem of control associated with mercenaries is present in the UN's discourse.

The second component of the norm – the lack of just or appropriate cause – is very straightforward. PMSCs and their employees are considered as lacking just or appropriate cause because they fight mainly for money and because they profit from instability and conflict. They are consequently portrayed as being morally problematic, just as were mercenaries throughout history. If we can demonstrate that the Working Group's discourse includes multiple references to the lack of just or appropriate cause, we will be in a position to assert that the lack of just or appropriate cause is present in the UN's discourse.

Finally, observing any amalgamations between mercenaries and PMSCs is also a consequence of the anti-mercenary norm. Establishing that PMSCs are seen as similar to mercenaries by the UN would therefore reinforce our belief that the anti-mercenary norm exerts influence within the UN.

By observing whether we can answer positively or negatively to the two groups of questions, we will be able to answer whether the anti-mercenary norm appears to be influential. We believe that by combining the results for both groups of indicators, our conclusion will have a high probability of being correct. Having established whether or not the anti-mercenary norm is influential within the UN, we will then concentrate on observing the potential influence of the norm on the UN's use of PMSCs, therefore the influence of the norm on the UN's practice. As explained by Percy, it is extremely difficult to measure the impact of

a norm. However, using the work done previously in this thesis will allow us to bring an answer to the question of whether the norm impacts the UN's use of PMSCs.

IV Analysis

4.1 Evolution of the UN's use of PMSCs

As established throughout this thesis, the relationship between the UN and PMSCs is extremely complicated and has led to an energetic debate among academics, security sector professionals, politicians, but also the general public. On the one hand, we are dealing with the main international institution charged with maintaining peace and security and enforcing the respect of human rights. On the other hand, we have companies whose employees have often been accused of violating these same human rights and of interfering in conflicts and even profiting from instability and violence. Nevertheless, the United Nations has a relatively long lasting history of using PMSCs, which stretches as far back as the 1990s.¹⁸⁷

The aim of this chapter is to establish general trends in the evolution of the UN's use of PMSCs in order to be in a position to declare with the greatest certainty as possible whether the UN has increased its use of PMSCs over time or not. Verifying this will allow us to answer our first question which was "*Has there been an evolution in the United Nations' use of private military and security companies?*".

It is widely accepted that the UN has dramatically increased its use of PMSCs since the early 2000s¹⁸⁸, leading to substantial criticism. L. Pingeot has established that between 2006 and 2011, there had been an increase of 250% in the UN's use of PMSCs in field missions.¹⁸⁹ According to her report, between 2009 and 2010, in only one year, the use of private security services increased from 44 million USD to 76 million USD.¹⁹⁰ This represents an astonishing increase of 73% over a single year. Furthermore, as explained by Pingeot, this

¹⁸⁷ WORKING GROUP: A/69/338, paragraph 2; ØSTENSEN, Åse Gilje: UN use of Private Military and Security Companies: Practices and Policies, p.5; ISENBERG, David: UN Use of PMSC ? It's a Reality, Not a Hypothetical

¹⁸⁸ COOPER-KNOCK, Sarah Jane: The UN's dangerous liaisons; JURRIAANS, Kim-Jenna. UN Increasingly Reliant on Private Security Contractors; JANABI, Mohamad Ghazi. The Legal Status of Employees of Private Military/Security Companies Participating in U.N. Peacekeeping Operations p.87; ØSTENSEN, Åse Gilje: UN use of Private Military and Security Companies: Practices and Policies, p.5; SCHILDKNECHT, Darja: Robust UN Peacekeeping and Private Military and Security Companies

¹⁸⁹ JURRIAANS, Kim-Jenna. UN Increasingly Reliant on Private Security Contractors

¹⁹⁰ PINGEOT, Lou. Dangerous Partnership: Private Military and Security Companies and the UN, p.7;

last figure is probably less high than the reality since certain contracts given to PMSCs by certain UN entities are not included, for example those by UNICEF.¹⁹¹

By using the UN's Annual Statistical Reports on United Nations Procurement, we are able to verify Pingeot's claims and demonstrate a clear increase in the UN's spending on security services. The following table presents the UN's expenditure on security services and security equipment from 2009 to 2014. If we are only including the reports from 2009 to 2014, it is because 2009 was the first year for which the UN procurement report establishes clear figures relating to the UN's procurement of security services and equipment, and that the 2014 report is the most recent available report, the 2015 report not yet being available at the time of the writing of this thesis.

UN expenditure on security services and equipment¹⁹²

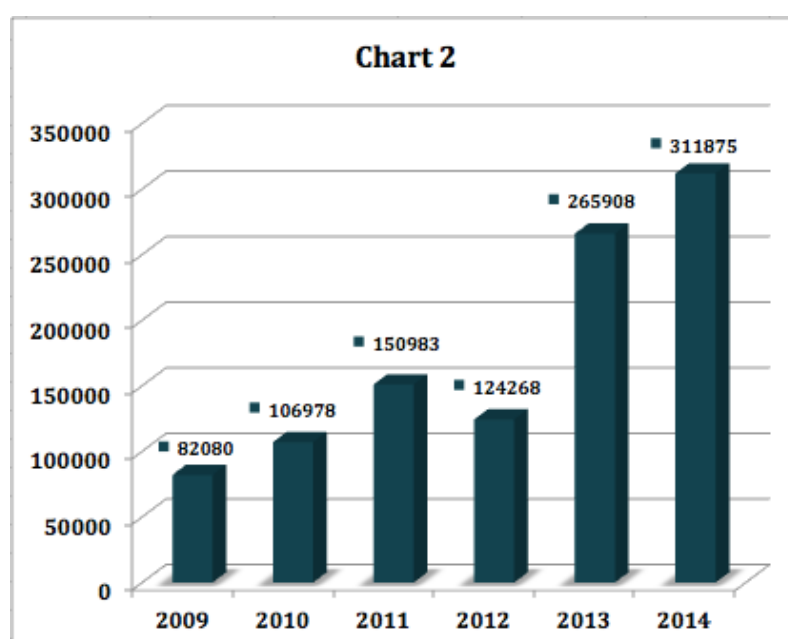
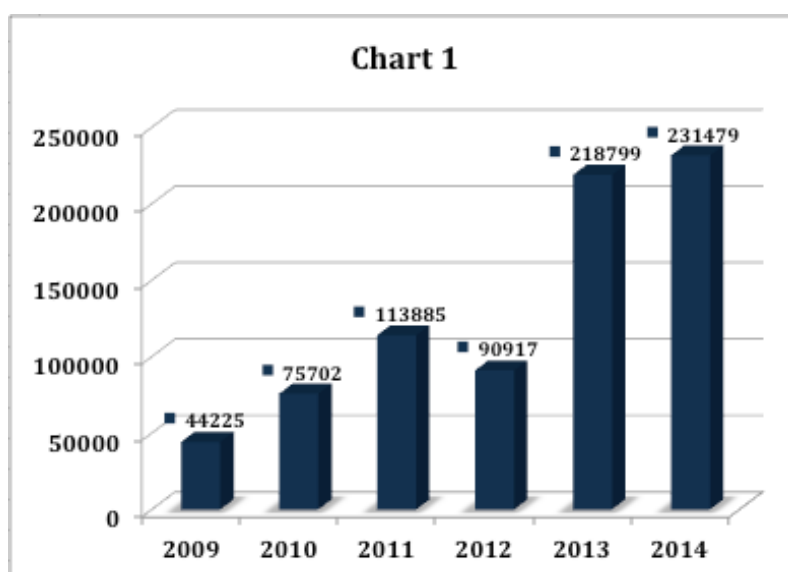
		Thousand USD	Total
2009	Security Services	44225	
	Security and Safety Equipment	37855	82080
2010	Security Services	75702	
	Security and Safety Equipment	31276	106978
2011	Security Services	113885	
	Security and Safety Equipment, incl. PPE (personal protective equipment)	37098	150983
2012	Security and Safety Services and Public Order	90917	
	Security, Safety, Law Enforcement Equipment, including Demining and PPE	33351	124268
2013	Security and Safety Services and Public Order	218799	
	Security, Safety, Law Enforcement Equipment, including Demining and PPE	47109	265908
2014	Security and Safety Services and Public Order	231479	
	Security, Safety, Law Enforcement Equipment, including Demining and PPE	80396	311875

¹⁹¹ PINGEOT, Lou. *Dangerous Partnership: Private Military and Security Companies and the UN*, p.23-24

¹⁹² UNITED NATIONS PROJECT SERVICES (UNOPS): 2009 Annual Statistical Report on United Nations Procurement, p.111+112; UNITED NATIONS PROJECT SERVICES (UNOPS): 2010 Annual Statistical Report on United Nations Procurement, p.111+112; UNITED NATIONS PROJECT SERVICES (UNOPS): 2011 Annual Statistical Report on United Nations Procurement, p.111+112; UNITED NATIONS PROJECT SERVICES (UNOPS): 2012 Annual Statistical Report on United Nations Procurement, p.119-120; UNITED NATIONS PROJECT SERVICES (UNOPS): 2013 Annual Statistical Report on United Nations Procurement, p.153-154; UNITED NATIONS PROJECT SERVICES (UNOPS): 2014 Annual Statistical Report on United Nations Procurement, p.165-166

It is important to note that the terminology used by the UN in its reports changed on three occasions between 2010 and 2012. Between 2010 and 2012, the terminology used for security equipment was changed twice, as can be seen in the above table. The third change occurred between 2011 and 2012. This last change affected security services and not security equipment.

The two following charts present the evolution of the UN's expenditure for security services and equipment from 2009 to 2014. Chart 1 uses only the UN's expenditure on security services, whereas Chart 2 includes not only security services, but also security equipment.



By using the figures presented in the annual reports on UN procurement, we can confirm that the UN has increased its use of security services over the years. We should however note that the author hasn't managed to explain with certainty why the reported procurement of security services decreased considerably between 2011 and 2012. This appears strange since there had been a steady increase in security services in previous years and that overall the UN's procurement of services increased by 1.4 billion USD from 2011 to 2012.¹⁹³ Furthermore, there is a sharp increase in security services between 2012 and 2013 (approximately 140% increase). The author believes that the change in terminology used could be to blame, or that the UN was mistaken in its 2012 report and included certain security contracts in other categories of UN procurement. This issue would deserve to be examined more in depth in future research. Nevertheless, given such figures, even if they are complicated to come by and that the terminology used in the UN's procurement reports has not remained consistent over the years, it is undeniable that the UN has increasingly been turning to PMSCs.

4.1.1. What services are PMSCs contracted for?

We mentioned earlier in this thesis that the UN contracts PMSCs for two types of services – security services and military services. According to the UN, the term security services *“(...) refers to armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities.”*¹⁹⁴ On the other hand, the term military services *“(...) refers to specialized services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities.”*¹⁹⁵

¹⁹³ Procurement report 2012, p.1

¹⁹⁴ GENERAL ASSEMBLY: A/HRC/15/25, p.24, article 2C

¹⁹⁵ Ibid., p.24, article 2B

In her report, Pingeot established a list of services for which the UN has contracted PMSCs. Services include unarmed guards; armed guards; mobile or convoy security; security training, risk assessment, security management, consultancy; military equipment and maintenance, air services, airlift, helicopters, armored vehicles; other related services (for example: demining, logistics and secure telecommunications, election organizing, police training).¹⁹⁶ Østensen also establishes what services PMSCs have been contracted for over the years by the UN. He divides the list into three groups. The first group is composed of tasks performed by PMSCs in UN humanitarian operations and includes the protection of staff, risk assessments, security training, giving advice regarding crisis management and security management consulting.¹⁹⁷ The second group is composed of tasks performed in UN peacekeeping operations and includes guarding, logistical support (such as the supply of armoured vehicles, the maintenance of vehicles, etc.), demining, helicopter transport, satellite network communications, intelligence support, crime prevention and detection, close protection and border security.¹⁹⁸ Thirdly, the UN has used PMSCs in political missions, where PMSCs were involved in risk assessments, physical protection, communications and logistical support, security training and advice, but also in the setting up of voter registrations and elections.¹⁹⁹

We can consequently establish that the UN has been using PMSCs for a wide range of tasks and that PMSCs have been involved in UN operations in many places across the globe over the years, including in Bosnia from 1992 to 1996 and in the Democratic Republic of Congo in 2004.²⁰⁰ Using the lists of tasks undertaken by PMSCs, we can confirm that the UN has contracted PMSCs for both military and security services.

¹⁹⁶ PINGEOT, Lou: *Dangerous Partnership: Private Military and Security Companies and the UN*, p.24-26

¹⁹⁷ ØSTENSEN, Åse Gilje: *UN use of Private Military and Security Companies: Practices and Policies*, p.14-15

¹⁹⁸ *Ibid.*, p.15-17

¹⁹⁹ *Ibid.*, p.17-18

²⁰⁰ *Ibid.*, p.16-17

4.1.2. Direct and indirect contracting of PMSCs

PMSCs can end up involved with the UN in two ways. The first way is through direct contracting. Direct contracting means that the UN has directly given a contract to a PMSC. This is pretty straightforward and does not require any further explanation. There is then indirect contracting, which can take place in two different manners. Firstly, indirect contracting can happen through a member state. In this case, a member state, which agreed on providing a specific service to the UN, pays for services from a PMSC and outsources the responsibilities given to it by the UN to a private firm. In consequence, the PMSCs' employees end up indirectly working for the UN. Secondly, indirect contracting can happen through a PMSC, which was contracted directly by the UN. In this case, the PMSC contracted by the UN outsources other services, such as security for its own employees, to another PMSC. In consequence, the employees of the second PMSC also end up linked to the UN.²⁰¹ A concern with indirect contracting is that, although the UN can't decide on which companies the contract will go to, the actions of these indirectly contracted PMSCs and of their employees will impact the UN's reputation²⁰² and unavoidably the security of UN staff.

4.1.3. UN guidelines for the contracting of PMSCs

Figures are of course important and have allowed us to confirm that the UN has increased its use of PMSCs over the years. However, by leading this research we have discovered something that we believe is just as valuable as figures relating to the UN's use of PMSCs. Quite surprisingly, until recently, and despite the fact that the UN was increasingly using the services of PMSCs, there was no single process or any established guidelines for the contracting of PMSCs within the different UN bodies. This lack of policies and guidelines led to what Østensen calls an "ad hoc contracting culture" within the UN.²⁰³ As explained by

²⁰¹ PINGEOT, Lou: *Dangerous Partnership: Private Military and Security Companies and the UN*, p.26-27; ØSTENSEN, Åse Gilje: *UN use of Private Military and Security Companies: Practices and Policies*, p.12-14

²⁰² WORKING GROUP: A/69/338, paragraph 10; PINGEOT, Lou: *Dangerous Partnership: Private Military and Security Companies and the UN*, p.26-27

²⁰³ ØSTENSEN, Åse Gilje: *UN use of Private Military and Security Companies: Practices and Policies*, p.5-6

L. Pingeot, the lack of guidelines, rules and procedures also meant that any kind of chain of accountability was absent, leading to a lack of transparency in the UN.²⁰⁴ Fortunately, in recent years things have changed, at least regarding the use of PMSCs for armed security services. It is worth taking some time to describe the recent changes that took place within the UN regarding the contracting of PMSCs for security services.

As late as 2010, *“(t)he Department of Safety and Security stated that there was currently no United Nations system-wide policy regarding the outsourcing of military and security functions of the Organization to private companies and that each United Nations agency could decide to use private military and security companies and to contract them directly.”*²⁰⁵ Fortunately, since then, measures have been taken and guidelines have been set up for the contracting of PMSCs for armed guarding services. When it comes to ensuring the security of UN staff, as mentioned in the UN’s Security Policy Manual, *“[t]he primary responsibility for the security and protection of United Nations personnel, their eligible family members and the premises and property of United Nations Security Management System organizations rests with the host government.”*²⁰⁶ Unavoidably, in certain cases, ensuring this protection can require the use of armed security services. If the host country is unable or unwilling to fulfil this responsibility, the UN can either turn to other member States or to internal UN security services to provide adequate security.²⁰⁷ Turning to PMSCs must only be considered as a last option, when none of the abovementioned alternatives are feasible,²⁰⁸ and must be judged necessary by the United Nations Security Management System (UNSMS) organization. When contracting PMSCs for such services, strict guidelines must be followed. These guidelines can be found in the UN Security Policy Manual and

²⁰⁴ UNITED NATIONS. Working Group on the use of mercenaries – Panel Event: use of private military and security companies by the United Nations (00:16:56 – 00:17:23)

²⁰⁵ WORKING GROUP: A/65/325, paragraph 35

²⁰⁶ United Nations Department of Safety and Security: United Nations Security Management System: Security Policy Manual, Chapter IV, Section I, p.1

²⁰⁷ What the author has named internal security services is referred to by the UNDSS as *“(…) Security and Safety Services, security officers recruited directly by a mission or through another United Nations Security Management System organization.”* United Nations Department of Safety and Security: United Nations Security Management System: Security Policy Manual, Chapter IV, Section I, paragraph 3

²⁰⁸ WORKING GROUP: A/69/338, paragraph 14

in a manual entitled Guidelines on the Use of Armed Security Services from Private Security Companies.

First of all, before resorting to armed security services, every case must go through a Security Risk Assessment in order to establish whether the use of such services is in reality necessary. An assessment on the potential negative impacts the use of a private security company could have must also be made. Once it has been agreed that the use of a private company is required, the Under-Secretary-General for Safety and Security (since July 2014, Peter Drennan²⁰⁹) has to approve the request.²¹⁰

Once the approval has been granted, companies can compete to obtain the contract. In order to be eligible, companies must meet certain requirements. First of all, regarding the level of individual employees, each company wishing to provide its services has to confirm that a specific screening process has been followed. Secondly, regarding the use of force, guidelines establish that private companies shall establish their own Use of Force Policy, which must be at least as restrictive as the UN Use of Force Policy. In addition to this, private companies' Use of Force Policies must also respect the International Code of Conduct for Private Security Service Providers. Companies must also provide a Weapons Manual respecting certain criteria. PMSCs also have to provide clear Standard Operation Procedures, which the UNSMS organization can request to be changed as it sees fit. Lastly, companies have to ensure that each employee has undergone specific training (meaning sufficient training to perform well under the specific mandate).²¹¹ The following table presents a summary of the different steps and requirements in the contracting of PMCS by the UN.

²⁰⁹ UNITED NATIONS DEPARTMENT OF SAFETY AND SECURITY: How we work

²¹⁰ United Nations Department of Safety and Security: United Nations Security Management System: Security Policy Manual, Chapter IV, Section I, paragraphs 11-16

²¹¹ United Nations Department of Safety and Security: United Nations Security Management System: Security Policy Manual, Chapter IV, Section I, paragraphs 21-24

Procedure and Requirements for Contracting Private Armed Security Services (valid from 08.11.12)²¹²

1. Primary Assessment:

- a) Unwilling/unable host State; no alternate member State; no internal UN resources
- b) Risk assessment
- c) Approval by the Under-Secretary General for Safety and Security

2. Selection Process:

- a) Company criteria
- b) Individual (employee) criteria; screening process

3. Other guidelines:

- a) Use of force
 - b) Weapons manual
 - c) Standard operating procedures
 - d) Level of training
-

The procedure for contracting private companies to provide armed security services seems very strict. However, it is feared by some that in practice things are often done differently and that guidelines, rules and regulations are not necessarily respected due to weak enforcement mechanisms.²¹³ Furthermore, as mentioned by Krahmenn and the Working Group, there is a huge problem with these guidelines. Indeed, these guidelines are set up specifically to deal with armed security guards.²¹⁴ There are no such guidelines for unarmed guards or other types of services provided to the UN by PMSCs, such as logistical tasks, risk assessments, security training, demining or flying drones.²¹⁵ Although being too restrictive, these guidelines are unarguably a step forward and, as mentioned by L. Pingeot, the implementation of these guidelines has created a clearer chain of accountability and an increased transparency since

²¹² UNITED NATIONS SECURITY MANAGEMENT SYSTEM: Security Management Operations Manual: Guidelines on the Use of Armed Security Services from Private Security Companies, paragraphs 25-41; United Nations Department of Safety and Security: United Nations Security Management System: Security Policy Manual, Chapter IV, Section I, paragraphs 21-24

²¹³ KRAHMANN, Elke. The UN Guidelines on the Use of Armed Guards: Recommendations for Improvement, p.17-18

²¹⁴ A/69/338, paragraph 30; KRAHMANN, Elke: The UN Guidelines on the Use of Armed Guards: Recommendations for Improvement, p.5-7

²¹⁵ UNITED NATIONS. Working Group on the use of mercenaries – Panel Event: use of private military and security companies by the United Nations (00:26:10 – 00:26:37); KRAHMANN, Elke. The UN Guidelines on the Use of Armed Guards: Recommendations for Improvement, p.5-7

*“(…) all agencies, funds and programmes of the UN must be notified when one entity hires private security companies.”*²¹⁶ Furthermore, the new guidelines do recognize the potential negative impacts of using PMSCs, notably on the acceptance of PMSC employees by the host country and the local communities.²¹⁷

4.1.4. Reasons for the UN’s increased use of PMSCs

It is important to understand why the UN is increasing its use of PMSCs and consequently its expenditure on services provided by these companies. The main reason for this is the fact that UN employees are increasingly being targeted in attacks.²¹⁸ This increase in the number of attacks is the result of two factors. First of all, as stated by the UN, *“(t)he proliferation of conflicts, the fact that local populations have become more vulnerable to human rights violations and the effects of a rising number of humanitarian crises have led to an increase in requests from Member States for the United Nations to carry out programmes in high-risk environments.”*²¹⁹ The first factor is therefore an increase in the number of UN staff deployed in dangerous environments.²²⁰ This quantitative factor is amplified by the fact that the World has become more dangerous for UN staff. When speaking about UN staff, we are not necessarily referring solely to blue helmets, but also to civilian employees, therefore UN employees who cannot defend themselves.

To mention only one figure, the UN has established that more than 200 UN civilian staff have been killed since 2003.²²¹ Since the UN unarguably has a duty to protect its own employees,²²² it is obvious that it has had to take measures, including increasing the number of guards when this is deemed as necessary. In fact, the UN’s use of PMSCs strongly increased following an attack against a UN residence in Afghanistan, which left five UN employees dead back in

²¹⁶ UNITED NATIONS. Working Group on the use of mercenaries – Panel Event: use of private military and security companies by the United Nations (00:16:00 – 00:16:00)

²¹⁷ Ibid. (00:17:45 – 00:19:00)

²¹⁸ UN GENERAL ASSEMBLY, A/RES/49/59 (17.02.1995), p.1-2; UNITED NATIONS: With Increased Number of United Nations Personnel Deliberately Killed in 2014, Staff Unions Calls on Organization to Do More towards Protecting Lives; LILLY, Damian: The Privatization of Peacekeeping, p.56; GLOBAL POLICY FORUM. PMSCs & the UN

²¹⁹ WORKING GROUP: A/69/338, paragraph 8

²²⁰ Ibid., paragraph 9

²²¹ Ibid. paragraph 20

²²² Ibid.

2010.²²³ As explained earlier, it is ideally the host nation that would provide security to UN employees. However, on many occasions, due to a lack of willingness or capability from the host state, this is not happening. If the host state is unable or unwilling to provide security to UN staff, it should theoretically be down to an alternate state or the UN's internal security teams to protect UN employees. The problem is that member states are often unwilling to provide personnel. Furthermore, using UN permanent security staff is considered as too expensive and turning to local security guards is not practical due to the delay caused by the *"(...) selection, vetting and training (...)"*.²²⁴ The increase in the use of PMSCs is therefore unavoidable since the UN has a duty to protect its employees, and even if the anti-mercenary norm were extremely influential, the UN could not stand by and leave UN employees vulnerable to attacks. It has in fact been established by the UN that *"(...) in order to provide protection for the 12,000 to 14,000 United Nations facilities worldwide, close to 60 per cent of the United Nations offices were using the services of private military and security companies."*²²⁵ This demonstrates the scale on which the UN is dependent on PMSCs to provide security for its staff and buildings, and ultimately demonstrates the clear lack of cooperation from host nations and alternative member states.

4.1.5. Summary of the results

Using the available literature and data, we have been able to establish general trends and conclude with great certainty that the UN has increased its use of PMSCs over time. We are however unable to establish whether the UN has been contracting PMSCs for more varied tasks over time. Indeed, in previous decades, PMSCs were already contracted for diverse tasks, such as in Bosnia in 1992, where PMSCs got deeply involved in the UN peacekeeping operation taking place in the country and performed a large array of tasks.²²⁶ Again, in 2004 in the Democratic Republic of Congo, a PMSC played a key role in a UN

²²³ LYNCH, Colum: U.N. embraces private military contractors

²²⁴ KRAHMANN, Elke. The UN Guidelines on the Use of Armed Guards: Recommendations for Improvement, p.8

²²⁵ WORKING GROUP: A/65/325, p.11, paragraph 34

²²⁶ ØSTENSEN, Åse Gilje: UN use of Private Military and Security Companies: Practices and Policies, p.16

peace operation.²²⁷ Although we are unable to assert whether the UN has diversified the range of services offered to PMSCs, there seems to be an agreement on the fact that we are unlikely to see the UN handing over entire humanitarian or peacekeeping missions to PMSCs.²²⁸ PMSCs do play a role in these operations but they are complementary to UN staff. As mentioned by Østensen, “(...) *there are arguably few prospects of UN blue helmets being substituted by PMSC personnel in the near future.*”²²⁹

4.2. Evolution of the UN’s discourse vis-à-vis PMSCs

As explained previously (see chapter 3.3.), our first objective in this chapter is to observe whether the discourse of the Working Group has evolved over time and, if indeed it has evolved, whether it has become more conciliatory vis-à-vis PMSCs, if it has remained similar, or whether the discourse has become even more critical and negative toward PMSCs. We will therefore take each selected annual report individually in order to trace the evolution of the discourse year by year. Furthermore, we must keep in mind the second objective of this analysis, which is to observe the potential influence of the anti-mercenary norm. We will therefore pay attention to the presence of the two main components of the norm in the UN’s discourse – the problem of control and the lack of just or appropriate cause. We would like to remind the reader that, as mentioned in chapter 3.3.2, a summary of the discourse analysis is available in form of an Excel table at the end of the thesis (appendix 2).

2005: E/CN.4/2006/11 (23.12.05) Report to the 62nd Session of the Commission on Human Rights

This report is the outcome of the Working Group’s first session, which was held from the 10th to the 14th of October 2005. It is consequently the Working Group’s first report and the starting point of our analysis. During its first session, the Working Group established its functioning and what specific

²²⁷ Ibid. p.17

²²⁸ LILLY, Damian: *The Privatization of Peacekeeping*, p.58+60-61; PERCY, Sarah: *Mercenaries: The History of a Norm in International Relations*, p.220+222

²²⁹ ØSTENSEN, Åse Gilje: *UN use of Private Military and Security Companies: Practices and Policies*, p.49

areas it would focus its efforts on. Since the first session was held with the objective of establishing the technicalities of the Working group (functioning, how often it will meet, composition, etc), there is no real work on the issue of PMSCs. Nevertheless, we can make certain interesting observations. First of all, the title is already interesting in that it places the report in a specific context, which is colonial or alien domination, or foreign occupation. We saw previously in this paper that the issue of colonialism and the sovereignty of newly independent states was an important factor in the creation of the Special Rapporteur – and consequently the Working Group.

Another interesting piece of information can be found in the summary of this report, in which the Working Group establishes two main areas it will initially focus its attention on;

1. *“(F)irst, the role of the State as the primary holder of the monopoly of the use of force, and related issues such as sovereignty and State responsibility to protect and ensure respect for human rights by all actors.”*
2. *“Second, the Group intends to address governmental agreements that provide private military and security companies and their employees with immunity for human rights violations.”²³⁰*

Regarding the first paragraph, mercenaries and PMSCs unarguably represent an obstacle to the state’s monopoly of the use of force. Mercenaries, and later PMSCs, were also seen as threats to state sovereignty, notably of newly independent states. Furthermore, mercenaries and PMSCs could be an obstacle to the state’s responsibility to protect and to ensure respect for human rights by all actors in two ways. The first would be if mercenaries or PMSC employees violate human rights. The second would be if PMSCs were contracted by the UN to assist in helping or protecting populations at risk. It is therefore logical that the three aspects presented in paragraph 1 were taken into account by the newly formed Working Group.

Regarding the second paragraph, or the second area of concern set forward by the Working Group in its first report, it seems logical that the

²³⁰ WORKING GROUP: E/CN.4/2006/11, p2

Working Group included the issue of immunity or a lack of accountability. Indeed, we have established previously in this thesis that one of the main areas of concern surrounding PMSCs and their employees is the lack of legal framework, regulations, and consequently the lack of accountability in case of human rights violations or the commission of other crimes.

Although this first report aims at establishing the functioning and the main objectives of the Working Group, there are already hints as to the image the Working Group, and consequently the UN, has of PMSCs. PMSCs and their employees are said to potentially have an impact on “(...) *the enjoyment of human rights by everyone and every people (...)*”²³¹ and to be unaccountable for potential human rights violations²³². The UN consequently places PMSCs and their employees in a shady light, although the degree of negativity is rather moderate in this first report.

E/CN.4/2006/11/Add.1 (03.03.06) Report to the 62nd session of the Commission on Human Rights

This report is the outcome of the resumed first session of the Working Group, which took place between the end of 2005 and the beginning of 2006 (10-14 October 2005 and 13-17 February 2006). Very early in this second report, the Working Group establishes a link between PMSCs and threats to the enjoyment of human rights.²³³ The Working Group also reaffirms that there are situations in which PMSCs “ (...) *impede the enjoyment of human rights, interfere with the self-determination of peoples and the constitutional and social order of States, either as part of security measures, or in armed conflict or in any other situation.*”²³⁴ This sentence demonstrates an escalation in the accusations toward PMSCs. Previously, PMSCs were described only as posing a threat. In this sentence however, the UN asserts that PMSCs not only pose a threat, but that there are situation in which PMSCs have impeded the enjoyment of human rights, interfered with self-determination of peoples and also the sovereignty of states.

²³¹ Ibid., paragraph 3

²³² Ibid., p.2 + paragraph 38

²³³ WORKING GROUP: E/CN.4/2006/11/Add.1, paragraph 2

²³⁴ Ibid., paragraph 2

The last part of the previous quotation is equally important since it establishes that the Working Group is not only concerned with PMSCs acting in conflict areas (for example Iraq or Afghanistan, where PMSC employees were indeed involved in many crimes), but also in places where no conflicts or wars are taking place.

It should be noted that the Working Group establishes for the first time that “(...) *some United Nations departments, funds, programmes and organizations in the system, as well as NGOs, were reportedly utilizing the services of private military and security companies.*”²³⁵ In consequence, the Working Group states its intention to lead further research on the use of PMSCs by the UN, notably in order to establish to what extent such companies are used and how the companies are selected.

In its second report, the Working Group not only expresses concerns regarding potential violations perpetrated by PMSC employees, but also violations of PMSC employee’s rights. PMSCs are accused of having violated “(...) *the right to security of persons, the rights of workers and respect for national sovereignty and human rights*”²³⁶ and certain of their employees’ “(...) *right to non-discrimination.*”²³⁷

The Working Group states the need to adopt further regulations and legislation on multiple occasions in this report.²³⁸ Adopting new regulations and legislation is, as we shall see, a way to attempt to decrease the problem of control associated with PMSCs – therefore one of the two main aspects of the anti-mercenary norm.

A/61/341 (13.09.06) Report to the 61st Session of the General Assembly

In its first report to the General Assembly, the Working Group presents its two main tasks which are “(t)o *monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of people to self-determination, and to prepare draft international basic*

²³⁵ Ibid., paragraph 26

²³⁶ Ibid., paragraph 27

²³⁷ Ibid., paragraph 27

²³⁸ Ibid., paragraphs 28+32+37+38

principles that encourage respect for human rights on the part of those companies in their activities."²³⁹ The second mission of the Working Group can be linked to the strong will within the UN to increase the control over PMSCs and limit the risks they pose to human rights. Once again, increasing control over PMSCs is seen as a solution to the practical issue described by the anti-mercenary norm.

In its report, the Working Group emphasizes that there is a lack of regulation, control and monitoring regarding PMSCs and that in consequence such companies pose a threat to human rights.²⁴⁰ It is established that populations living in conflict areas or under authoritarian governments run a greater risk of seeing PMSCs negatively impact their human rights, as do populations living in regions where extractive industries are heavily implanted. This is because *"(...) extractive industries (oil, gas, timber and mining transnationals), in order to protect their premises and interests, as well as national and local authorities, may rely on mercenaries and PMSCs to restrict public demonstrations and protest movements."*²⁴¹ Connections between PMSCs and authoritarian regimes or extractive industries have provoked widespread criticism over the years and it has been argued that PMSCs thrive in authoritarian regimes or countries facing profound instability.²⁴²

The Working Group denounces connections between PMSCs and mercenaries and asserts that mercenaries who have been hired by PMSCs have operated in armed conflicts and taken part in *"(...) summary executions, torture, trafficking in person, drugs and arms, terrorism, paramilitary and covert operations, mercenary-related activities and activities of PMSCs and the extractive industry."*²⁴³ In addition to this, the Working group reaffirms that PMSCs are unaccountable for human rights violations and that there is a lack of regulatory mechanisms and oversight. It also states its concern with the fact that functions seen as reserved to states until recently (in this case core military functions) are being outsourced to private firms.²⁴⁴ The Working Group also raises concerns

²³⁹ WORKING GROUP: A/61/341, paragraph 4e

²⁴⁰ Ibid., paragraph 65

²⁴¹ Ibid., paragraph 65

²⁴² ARGUETA, Otto: Private Security in Guatemala: The Pathway to its Proliferation, p.7

²⁴³ WORKING GROUP: A/61/341, paragraph 66

²⁴⁴ Ibid., paragraph 69

about the potential recruitment of employees in refugee camps²⁴⁵ and the potential use of children by PMSCs.²⁴⁶

Although being extremely critical and presenting plenty of accusations aimed at the activities of PMSCs, the Working Group does seem to admit that certain PMSCs can be legitimate. Indeed, it claims that one of its tasks is to distinguish between “(...) companies which offer security services in strict compliance with imperative norms such as respect for the principle of the State’s monopoly on the use of force and those conducting mercenary activities which should be criminalized.”²⁴⁷ The Working Group asserts that, in order for PMSCs to respect human rights, there is a need to improve current legislation. According to the Working Group, measures to improve the legislation should include “(...) regulatory mechanisms to control and monitor their activities, including a system of registering and licensing which would authorize these companies to operate and allow them to be sanctioned when the norms are not respected.”²⁴⁸

On the one hand, this report demonstrates a clear escalation in the UN’s discourse toward PMSCs. PMSCs face precise accusations, such as taking part in torture, participating in summary executions or being linked to extractive industries. Furthermore, an amalgam is made between mercenaries and PMSCs, which are described as a new manifestation and modality of mercenarism.²⁴⁹ In consequence, the image of PMSCs depicted by the UN is very negative. On the other hand, the UN recognizes that not all PMSCs are necessarily bad and that some may comply with laws and norms.

A/HRC/4/42 (07.02.07) Report to the 4th Session of the H.R.C.

This report of the Working Group is established in the context of increased use of PMSCs in Iraq, which could, according to the Working Group, “(...) lead to the privatization of the conflict.”²⁵⁰ The Working Group asserts that, although multiple companies were operating on the same field at the same time, there was no supervision and these companies operated under no command

²⁴⁵ Ibid. paragraph 32

²⁴⁶ Ibid., paragraph 42

²⁴⁷ Ibid., paragraph 94

²⁴⁸ Ibid., paragraph 98

²⁴⁹ Ibid., paragraph 5

²⁵⁰ WORKING GROUP: A/HRC/4/42, paragraph 31

other than their own internal hierarchy. Again, PMSCs operating in Iraq are accused of lacking control, of being unaccountable and of working in total impunity.²⁵¹ PMSCs are also accused of employing people with dubious records, some having worked for repressive regimes in the past.²⁵² The same accusations are made toward PMSCs operating in other areas of the world, such as in Latin America.²⁵³

The Working Group reiterates its concerns regarding violations of PMSC employees' rights.²⁵⁴ It also expresses its concern regarding the increased performance by PMSCs of functions seen until recently as reserved to states, which has on occasions had a negative impact on human rights.²⁵⁵

An interesting aspect of this report is the presentation by the Working Group of what it sees as the three national conditions facilitating the development of PMSCs: *“(a) unemployment, and/or underemployment, and the availability of low-wage labour trained in security and military functions; (b) a migratory population ready to work abroad; and (c) scarce or weak national legislation that allows largely unmonitored activities of PMSCs. In this regard, the Working Group notes that experiences of recruitment for these services display elements and features similar to that of human trafficking.”*²⁵⁶ The accusation of resemblance of PMSCs and human trafficking is extremely negative and deserves to be highlighted.

A/63/325 (25.08.08) Report to the 63rd Session of the General Assembly

The Working Group asserts that PMSCs are particularly active in countries facing low-intensity armed conflicts.²⁵⁷ The Working Group accuses PMSCs of violating these countries' inhabitants' most basic rights, including their right to life, on many occasions.²⁵⁸

In this specific report, the Working Group doesn't elaborate as much as

²⁵¹ A/HRC/4/42, paragraph 31

²⁵² Ibid., paragraph 33

²⁵³ Ibid., paragraph 47

²⁵⁴ Ibid., paragraphs 48-50

²⁵⁵ Ibid., paragraph 56

²⁵⁶ Ibid., paragraph 59

²⁵⁷ WORKING GROUP: A/63/325, paragraph 26

²⁵⁸ Ibid., paragraphs 28-30

previously on specific problems caused by PMSCs and their employees' actions. The main focus of the Working Group in this report seems to be the need for further regulation and control mechanisms surrounding PMSCs.

A/HRC/10/14 (21.01.09) Report to the 10th Session of the H.R.C.

In this annual report, the Working Group does not elaborate much on specific cases in which PMSCs and their employees have been involved in violations of human rights or other crimes. As in the previous report, the Working Group focuses more on the need to establish further guidelines and regulation surrounding PMSCs. As mentioned in its report, *"The Working Group defines regulatory principles in six topic areas: legal standards; registration; licensing; accountability mechanisms; vetting, legal and human rights training; and oversight."*²⁵⁹

A/65/325 (25.08.10) Report to the 65th Session of the General Assembly

The Working Group explains that the privatization of security is increasing²⁶⁰ and that PMSCs remain problematic for many reasons, including a lack of accountability surrounding the companies and their employees,²⁶¹ a lack of transparency and their impact on human rights.²⁶² Privatization of security is noted as not only taking place in conflict situations, but also on a national level, in countries where no conflict is ongoing. According to the Working Group, the privatization of security on a national level is dangerous because the state is *"(... evading its duty to provide security for all its citizens equally."*²⁶³ It is believed that people who can afford private security will be safe and those who cannot afford private security and have to rely on the state to provide security will be in a more precarious situation with regards safety.

The Working Group estimates that PMSCs threaten stability and that such companies can aggravate conflicts.²⁶⁴ Furthermore, PMSCs are claimed to be linked to extractive industries and participating in the repression of social

²⁵⁹ WORKING GROUP: A/HRC/10/14, paragraph 38

²⁶⁰ WORKING GROUP: A/65/325, paragraphs 2+5

²⁶¹ Ibid., paragraphs 17-24

²⁶² Ibid., paragraphs 2+3

²⁶³ Ibid., paragraph 5

²⁶⁴ Ibid., paragraph 16

protests²⁶⁵, therefore interfering with populations' right to development.

An important aspect of this report is the Working Group's draft convention on the regulation, monitoring and oversight of private military and security companies. As explained by the Working Group, "*(t)he aim of a new binding legal instrument is not to ban private military and security companies but to establish minimum international standards for States parties to regulate the activities of the companies and their personnel and to set up an international oversight mechanism.*"²⁶⁶ This demonstrates once again that the UN wants to distinguish between PMSCs which would comply to specific regulations and respect human rights and state sovereignty, and others that do not respect such rules and must be criminalized.

A/HRC/18/32 (04.07.11) Report to the 18th Session of the H.R.C.

In its report to the Human Rights Council, the Working Group expresses its concern regarding PMSCs involvement with individuals having violated human rights. In consequence, the Working Group reaffirms the need for further control, notably improved vetting procedures.²⁶⁷

Although still describing PMSCs in negative terms, the Working Group places more emphasis on the need for further regulation, control mechanisms and legislation on both the national and the international levels.

Another concern described by the Working Group is "*(t)he trend towards the privatization of many functions traditionally performed by States, including military assistance operations, domestic security and policing, (which) poses an increasing risk to human rights.*"²⁶⁸

A/67/340 (30.08.12) Report to the 67th Session of the General Assembly

The Working Group starts by establishing that PMSCs are "*Involved in an ever-expanding range of activities.*"²⁶⁹ The Working Group also reaffirms that it is "*(...) concerned about the lack of transparency and accountability of these*

²⁶⁵ Ibid., paragraph 16

²⁶⁶ Ibid., paragraph 54

²⁶⁷ WORKING GROUP: A/HRC/18/32, paragraph 9

²⁶⁸ Ibid., paragraph 84

²⁶⁹ WORKING GROUP: A/67/340, p.2

companies and about the absence of an international regulatory framework to monitor their activities."²⁷⁰ The Working Group consequently reaffirms the need for further legislation. It also notes and welcomes the fact that some efforts have already been made, such as the development of the International Code of Conduct for Private Security Providers.²⁷¹

In its report, the Working Group notes that PMSCs have been increasing their activities in two different areas. Firstly, PMSCs have increasingly been contracted to perform maritime security. PMSCs offer armed security guards charged with protecting ships against pirate attacks, notably off the coast of Somalia.²⁷² Secondly, PMSCs have become increasingly active in peacekeeping operations. The UN asserts that PMSCs "*(...) are engaged by States that are unwilling or unable to send their own military personnel to support peacekeeping efforts or by the United Nations.*"²⁷³ This is an extremely important statement since the Working Group asserts that the UN has increasingly been contracting PMSCs to operate in peacekeeping operations.

The Working Group also notes that PMSCs are increasingly taking on functions seen as reserved to national armed forces. The Working Group asserts that this could be problematic due to the fact that "*(...) these types of functions pose particular risks to human rights because they involve the potential for the use of force against civilians and the citizenry. These risks are further exacerbated by the environments in which the companies typically operate: conflict and post-conflict situations and places in which the rule of law is weak.*"²⁷⁴ The Working Group reaffirms that, in consequence of the risks posed by PMSCs to the enjoyment of human rights, there is a need for further legislation and increased regulations.²⁷⁵

The Working Group establishes that measures should be taken on three levels. First of all, measures should be taken on the international level, for example with the creation of new legislation and regulations.²⁷⁶ Secondly,

²⁷⁰ Ibid., p.2

²⁷¹ Ibid., paragraph 6

²⁷² Ibid., paragraph 44

²⁷³ Ibid., paragraph 45

²⁷⁴ Ibid., paragraph 46

²⁷⁵ Ibid., paragraph 47

²⁷⁶ Ibid., paragraph 78

measures should be taken on a national level, with the creation of national legislation affecting PMSCs.²⁷⁷ Thirdly, there should be industry-led initiatives.²⁷⁸ Although arguing that efforts should be made on the three levels, the Working Group argues that “(...) *a comprehensive, legally binding international regulatory instrument is the best way to ensure adequate protection of human rights.*”²⁷⁹

A/HRC/24/45 (01.07.13) Report to the 24th Session of the H.R.C.

In its 2013 report, the Working Group reaffirms that the best way to ensure that PMSCs respect human rights would be an international convention.²⁸⁰

The Report presents the work done by the Working Group in the year preceding the publishing of the report. In this case, the Working Group primarily focused on analysing different national legislations dealing with PMSCs. In consequence, a large part of the report is devoted to summarizing its findings and only little is devoted to describing the activities of PMSCs. It is nevertheless interesting to note that the Working Group observed great disparities between national legislations. The fact that there is no consistency is a key argument in favour of an international convention.

A/69/338 (21.08.14) Report to the 69th Session of the General Assembly

The Report begins with a statement from the Working Group establishing that it “(...) *has chosen to dedicate the present report to the subject of the use by the United Nations of private security companies in light of the vast and complex challenges which outsourcing security to private military and security companies poses to the United Nations and to local population.*”²⁸¹ It is important to note that the Working Group asserts that the UN only contracts these companies for security services, and not military services. However, the Working Group notes

²⁷⁷ Ibid., paragraphs 75-76

²⁷⁸ Ibid., paragraph 75

²⁷⁹ Ibid., paragraph 78

²⁸⁰ WORKING GROUP: A/HRC/24/45, paragraph 12

²⁸¹ WORKING GROUP: A/69/338, p.2

that the “(...) *these same companies are also known to provide military services in other circumstances.*”²⁸²

This report consequently focuses on describing what services PMSCs are contracted for, and under what conditions they are selected. The Working Group asserts that, although the UN has been using PMSCs, “*(t)he provision of security functions should remain the primary responsibility of Member States, including in providing security to the United Nations and its staff members.*”²⁸³ This statement is important because it demonstrates the belief within the UN that the preferred solution is still to rely on member States to provide security.

It is interesting to note that the Working Group is of the opinion that the UN, in order to increase transparency and trust, should release more information on the UN’s use of PMSCs, for example by rendering public all security contracts and their amounts.²⁸⁴

A/70/330 (19.08.15) Report to the 70th Session of the General Assembly

In its most recent report, the Working Group focuses on foreign fighters, their links with mercenaries, and their impact on human rights.²⁸⁵ This report doesn’t focus on PMSCs at all. In fact, the Working Group doesn’t refer to PMSCs a single time in this final report.

4.2.1. Summary of the discourse analysis

Throughout the Working Group’s reports, PMSCs are consistently described in negative terms. Among other things, these companies are said to pose a threat to the enjoyment of human rights, to have extremely dubious track records, to be linked to mercenaries and the extractive industry, and to be unaccountable. Until 2006-2007, the Working Group’s reports describe many specific violations committed by PMSCs and their employees and problems posed by these companies. From 2007-2008, the main concern of the reports seems to shift away from presenting specific and numerous violations. Indeed, the Working Group seems to move away from simply presenting the problem to

²⁸² Ibid. p.2

²⁸³ Ibid., paragraph 79

²⁸⁴ Ibid., paragraph 84

²⁸⁵ WORKING GROUP: A/70/330, p.2

trying to find a solution by suggesting what needs to be done (increased legislation, control mechanisms, etc.). This shift away from presenting the problem to suggesting solutions is a logical step forward. Nevertheless, although the Working Group spends less time criticizing PMSCs and presenting specific violations committed by their employees in its reports after 2006-2007, the Working Group's discourse vis-à-vis PMSCs does not appear to become less critical.

4.3. Comparison of the evolution of the UN's discourse with the evolution of its practice

On the one hand, we established that the UN has increased its use of PMSCs over time. On the other hand, we demonstrated that the UN's discourse vis-à-vis PMSCs has not become more conciliatory toward these companies and that the UN continues to classify PMSCs in negative terms and to assert that these companies pose a threat to human rights and that control and accountability of PMSC employees is far from sufficient. With an increase in the use, we would normally expect a change in the discourse in order to match the practice, or we would expect the practice to evolve in order to match the discourse. This is clearly not the case here. However, we do not believe that this constitutes a demonstration of hypocrisy within the UN. Indeed, the UN has an obligation to enforce human rights and protect populations around the world. These missions are of the utmost importance and are clearly established in the UN Charter. As has already been demonstrated above when explaining why the UN has increased its use of PMSCs, and as will be consolidated in the following chapter when speaking about the impact of the anti-mercenary norm, the UN is put in a complicated situation and is left with no alternative solution than to work with PMSCs. If host nations where UN staff were deployed, or if alternative member states agreed on contributing sufficient personnel or financial resources to protect UN staff, the UN would have no reason to hire PMSCs. The analysis of the Working Group's discourse demonstrates that PMSCs are still considered as being extremely problematic by the UN, but the UN cannot align its practice on its discourse due to the lack of cooperation from member states. If anything, the contradiction between the UN's practice and its discourse regarding the use of

PMSCs demonstrates the problem caused by the UN's dependence on member states and the reluctance of member states to contribute enough personnel and financial resources to the UN.

4.4. Impact of the anti-mercenary norm

In this chapter of our research, we set out to determine whether the anti-mercenary norm has an impact on the UN's use of PMSCs. As explained previously, we will do so by using two groups of indicators. The following tables summarize the two groups.

Percy's indicators

Frequent violations of the anti-mercenary norm?	YES/NO
Strong and widespread reaction to violations of the anti-mercenary norm?	YES/NO
Efforts made to justify the violation of the anti-mercenary norm?	YES/NO
Was a normative justification used to justify the violation of the anti-mercenary norm?	YES/NO
What specific aspects were justified?	List

The author's indicators

Presence of the two main components of the norm in the UN's discourse vis-à-vis PMSCs?	YES/NO
Presence of the two main components of the norm in the new UN guidelines?	YES/NO

4.4.1. 1st group of indicators

1. Have there been frequent violations of the anti-mercenary norm within the UN?

The first question we have to answer is whether the UN has frequently violated the anti-mercenary norm. In order to bring an answer to this question, we first need to clearly establish what must be considered as violating the norm. We would like to recall our definition of the anti-mercenary norm; the anti-mercenary norm is *a longstanding and well-established norm in international relations, which asserts that mercenaries and PMSCs are problematic for two main reasons; a problem of control and a lack of appropriate or just cause, which are*

respectively a practical and a moral problem. The anti-mercenary norm's central argument is that the activities of mercenaries and PMSCs are bad, mainly because of the problem of control over such companies and also the lack of appropriate or just cause. Essentially, mercenaries and PMSCs are considered as being both dangerous and morally problematic. Violations of the norm would therefore be demonstrated by a large use of PMSCs by the UN and the expansion of these companies' activities within the UN.

We established previously (in chapter 4.1) that the UN had unarguably increased its use of PMSCs over the last decades. In consequence, we must answer positively to the first question and claim that yes, the UN has à-priori violated the anti-mercenary norm. However, as explained earlier, this does not suffice to conclude that the anti-mercenary norm has lost its influence within the UN and that this norm doesn't impact the UN's use of PMSCs. We will only be in a position to offer a conclusion once we have answered all of the following questions.

2. Were the potential violations of the norm followed by a strong and widespread reaction within the UN?

Our objective is to establish whether the UN's increased use of PMSCs, which can be considered as a violation of the norm, provoked widespread criticism within the UN or if the increased use of PMSCs by the UN didn't lead to much criticism within the institution.

During our analysis of the evolution of the Working Group's discourse, we observed on multiple occasions that the use of PMSCs by the UN was criticized and noted as potentially problematic by the UN. One of the consequences of the use of PMSCs by the UN was the establishment by the Working Group of the need to increase control mechanisms and regulations surrounding the UN's use of PMSCs. Furthermore, concern about the UN's use of PMSCs can be observed during a conference which took place in 2013.²⁸⁶ It is interesting to note that other than leading to widespread criticism and the voicing of concerns within the UN, the increased use of PMSCs by the UN also led to substantial criticism from

²⁸⁶ UNITED NATIONS: Working Group on the use of mercenaries – Panel Event: use of private military and security companies by the United Nations

academics and security experts,²⁸⁷ including L. Pingeot. We can conclude that the UN's violations of the anti-mercenary norm resulted in criticism and the voicing of widespread concerns within the UN.

3. In case of violations of the anti-mercenary norm by the UN, were efforts made by this institution to justify the multiple violations?

Establishing whether the UN attempted to justify its use of PMSCs is rather complicated since ideally we would need to establish which body contracted a specific PMSC and whether the specific UN body or agency made efforts to justify the use of that private firm. Doing so is unfeasible, notably due to the lack of transparency within the UN and the problems of indirect and direct contracting, which makes it impossible to identify clearly who employed which company. Nevertheless, we can demonstrate that the UN has tried hard to justify its use of PMSCs. We saw previously, in the chapter describing the evolution of the UN's use of PMSCs, why the UN offers an increasing number of contracts to such companies. The main reason for this is to provide security to UN staff.²⁸⁸ As explained by Faiza Patel, *"In principle, the UN relies on the host government to provide security when it acts in the field. But in cases when the host government is not able to provide adequate protection to UN employees, the UN has to come up with other alternatives."*²⁸⁹ The problem faced by the UN is that *" (...) it doesn't have enough UN guards to protect its staff and has on several occasions relied on private guards."*²⁹⁰ The UN is therefore left with a dilemma. The first option is for the UN to use PMSCs – which is seen as the best option by nobody within the UN as far as we are aware²⁹¹ – and provide security to its staff. The second option is for the UN to dismiss the use of PMSCs and rely exclusively on the willingness and capability of states to provide guards or alternatively on UN security guards. The problem with this second option is that it would result in an insufficient

²⁸⁷ SCHILDKNECHT, Darja: Robust UN Peacekeeping and Private Military and Security Companies; SCAHILL, Jeremy: Private Security Contractors and the UN (May 19, 2010)

²⁸⁸ WORKING GROUP: A/65/325, paragraph 34; WORKING GROUP: A/69/338, paragraph 9

²⁸⁹ UNITED NATIONS. Working Group on the use of mercenaries – Panel Event: use of private military and security companies by the United Nations (00:04:38 – 00:04:55)

²⁹⁰ Ibid. (00:04:59 – 00:05:06)

²⁹¹ WORKING GROUP: A/69/338, paragraph 26

number of guards and the UN would consequently be taking the risk of leaving some of its staff vulnerable to attacks. It is obvious and unarguable that, in order to work properly and fulfill their missions, UN employees need to be kept as safe as realistically possible. This has led to the recognition that the UN must sometimes use PMSCs.²⁹² It is clear that this dilemma is intense within the UN and the use of PMSCs is in no way seen as ideal but as something unavoidable due to the lack of cooperation from member states.

4. In case of violations of the norm, did the UN attempt to justify the violations by referring to a normative justification?

When it comes to observing whether the UN uses a normative justification for the increased use of PMSCs, we are in a rather peculiar situation. Indeed, the UN is charged with maintaining international security, and also protecting people from atrocities and enforcing the respect of human rights. The UN's missions unavoidably relate to norms since, to mention only one example, protecting human rights can fall under the responsibility to protect, which is an important norm nowadays. We could therefore say that the UN's staff is ultimately responsible for enforcing certain norms. If the UN is to fulfill its missions, its staff must be protected in order to be able to work properly. By justifying the use of PMSCs to protect its staff, the UN's justifications can therefore be considered as normative.

As mentioned by Richard Cottom, "*(...) the UN staff understands that the world has changed, that it's become a much more dangerous place unfortunately, and that the needs for delivering services, humanitarian relief, etc, are increasing. The UN staff completely understand, and want to be deployed into areas which are high risk.*"²⁹³ However, Richard Cottom explains that UN employees want to be as safe as possible when they go into these risk areas. We should note that Richard Cottom also mentions that, along with knowing that the UN has taken all necessary measures to limit the risk to their security as possible, UN staff also

²⁹² UNITED NATIONS. Working Group on the use of mercenaries – Panel Event: use of private military and security companies by the United Nations (00:07:50 – 00:09:37)

²⁹³ UNITED NATIONS. Working Group on the use of mercenaries – Panel Event: use of private military and security companies by the United Nations (00:32:22 – 00:32:46)

want to know who is protecting them.²⁹⁴ Richard Cottom states that numerous concerns have been raised by UN staff over time regarding the background of the people protecting them (meaning PMSC employees). It appears obvious that the UN would prefer to use other means to protect its staff and that the staff itself would prefer to be protected by national contingents or UN security staff. However, given the unwillingness of member states to provide personnel or sufficient financial resources, the UN has no other option than to contract PMSC employees to protect its staff and ultimately allow the UN to fulfill its different missions, such as, among many others, protecting human rights or bringing vital supplies to different populations in need around the globe.

5. What specific aspects were justified?

The specific aspect justified by the UN is the increased use of PMSCs. As explained above, the use of PMSCs is justified mainly by the need to protect UN staff in order for the UN to be able to fulfill its utmost important missions. The fact that the UN attempts to justify its use of PMSCs and puts considerable effort into justifying the need to increase contracting PMSCs, demonstrates that the use of PMSCs is still seen as controversial by the UN. If the use of PMSCs was seen as totally acceptable, the UN would most likely not elaborate as much as it does on justifying the use of such companies, mainly in terms of lack of cooperation from states.

The following table summarizes what has been described above:

Frequent violations of the anti-mercenary norm?	YES
Strong and widespread reaction to violations of the anti-mercenary norm?	YES
Efforts made to justify the violation of the anti-mercenary norm?	YES
Was a normative justification used to justify the violation of the anti-mercenary norm?	YES
What specific aspects were justified?	The increased use of PMSCs by the UN

By using Sarah Percy's method, we can establish that the norm seems to exert a certain influence within the UN. Indeed, although the UN has violated the

²⁹⁴ Ibid. (00:32:54 – 00:33:12)

norm on numerous occasions and has been increasing its use of PMSCs, it has gone to great lengths to justify its use of PMSCs and it appears clear that the UN would prefer to limit its use of PMSCs but that is put in a situation where it has no other choice due to the low level of cooperation from member states. If the anti-mercenary norm didn't have an impact on the UN, it is unlikely that the UN would go to such lengths to justify the use of PMSCs and also put so much effort into controlling these companies by creating new guidelines and regulations.

4.4.2. 2nd group of indicators

Having observed the influence of the norm by using Percy's indicators, we will now use our second set of indicators in order to reinforce or challenge our assumption that the anti-mercenary norm remains influential within the UN.

Is there a widespread presence of the two main components of the anti-mercenary norm in the UN's discourse vis-à-vis PMSCs?

Analyzing the Working Group's discourse proved useful not only to establish the evolution of the UN's discourse vis-à-vis PMSCs, but also to determine whether the two main components of the anti-mercenary norm are present in the UN's discourse. Observing the Working Group's annual reports allows us to establish that throughout its existence, the Working Group has been concerned with the lack of control associated with PMSCs. Time and again throughout its reports, the Working Group asserts that PMSCs are faced with a lack of control mechanisms, that legislation affecting PMSCs is lacking, and that PMSCs and their employees are unaccountable.²⁹⁵ According to the Working Group, these problems lead to a threat to human rights and also to a threat to state sovereignty. We can therefore establish with no hesitation that the issue of control is widely present in the UN's discourse vis-à-vis PMSCs.

²⁹⁵ WORKING GROUP: A/65/325: paragraphs 2+37+58+60+61; WORKING GROUP: A/HRC/4/42: paragraphs 31+33+51; WORKING GROUP: A/63/325: paragraphs 83-85; A/HRC/10/14: paragraphs 24+68; WORKING GROUP: A/HRC/18/32: paragraphs 9+64+65+66+78; A/67/340: paragraphs 47. It should be noted that these are only a few occurrences and that the problem of control associated with PMSCs is present in all of the Working Group's annual reports (except for the last of the annual reports which doesn't focus on PMSCs at all).

It is worth noting that, in consequence of this problem of control, the Working Group encourages the creation and adoption by states of new national and international legislation, increased regulation and control mechanisms surrounding PMSCs.²⁹⁶ This is of course with the objective of increasing control over PMSCs. The Working Group's belief in the need for further regulation is best observed in its annual report to the tenth session to the Human Rights Council (A/HRC/10/14), in which the Working Group defines six topic areas for regulatory principles.²⁹⁷

Observing the Working Group's annual reports also enables us to assert that the second component of the anti-mercenary norm, the lack of just or appropriate cause, is also present in the UN's discourse vis-à-vis PMSCs. Indeed, the Working Group asserts that "(...) *the interests of private military and security companies remain purely financial.*"²⁹⁸ It is established on multiple occasions that PMSCs and mercenaries share the same main objective, which is to make as much profit as possible.²⁹⁹ It is interesting to note that the Working Group is not only concerned with the fact that financial gain is the main motivation on moral grounds. Indeed, as noted in one of its annual reports, the fact that PMSCs are mainly motivated by financial gain could lead to them being more costly due to the incentive these companies could have to duplicate their services.³⁰⁰ The lack of just or appropriate cause consequently seems to also be connected to more practical concerns.

To summarize, the two main components of the anti-mercenary norm – the problem of control and the lack of just or appropriate cause – are both widely present in the UN's discourse regarding PMSCs, although the problem of control seems to weigh more heavily on the UN.

²⁹⁶ WORKING GROUP: A/HRC/4/42, paragraphs 58+74+76; WORKING GROUP: A/63/325, paragraphs 40+42+81; WORKING GROUP: A/HRC/10/14, paragraphs 34+38; WORKING GROUP: A/HRC/18/32, paragraphs 20+39+40+82

²⁹⁷ WORKING GROUP: A/HRC/10/14, paragraph 38

²⁹⁸ WORKING GROUP: A/65/325: paragraph 30

²⁹⁹ WORKING GROUP: A/HRC/4/42, paragraph 36

³⁰⁰ Ibid., paragraph 36

Is there a widespread presence of the two main components of the anti-mercenary norm in the UN's new set of guidelines?

Other than establishing that PMSCs should only be used as a last resort and indicating according to which criteria these companies must be selected by the UN, the new set of guidelines aims at establishing clear and strict requirements regarding the conditions under which PMSCs and their employees must operate. Such requirements are unarguably a consequence of the fear of lack of control over PMSCs and the problems these companies may pose, such as employing personnel with dubious backgrounds or the fear that PMSC employees may commit crimes in total impunity. There is a great will to control PMSCs in order to mitigate the risk of employing volatile employees, or simply employees with too little training and/or knowledge. We can therefore conclude that the new set of guidelines aims to reduce one of the two main problems set forward by the anti-mercenary norm – the problem of control.

The lack of just or appropriate cause is, as mentioned previously, a moral issue. No matter how many new pieces of legislation or new regulations are created, the moral problem is unlikely to disappear since it is impossible to take away the main motivation to work for a PMSC, which is financial gain. Financial gain is the reason for which so many members of elite forces quit national militaries in order to join private firms.³⁰¹ We recognize that this is a problem. However, the only way to put an end to this issue would be to limit the salaries offered by PMSCs to their employees. Other than the obvious free market reasons, we do not believe that this would be a good solution in any way. Indeed, we have to ask ourselves what kind of individuals would be prone to join PMSCs if we took away the attractive salary. Candidates would most likely be people searching for a job offering action and thrills, and who were for some reason rejected by their national military or police forces. Needless to say that such candidates are better left at a safe distance from any kind of UN activity.

³⁰¹ WORKING GROUP: A/61/341, paragraph 87

The following table summarizes the abovementioned findings:

Presence of the two main components of the norm in the UN's discourse vis-à-vis PMSCs?	YES
Presence of the two main components of the norm in the new UN guidelines?	Only the problem of control

4.4.3. Impact of the norm on the UN's use of PMSCs

Having concluded, using both sets of indicators, that the anti-mercenary norm is influential within the UN, we now need to concentrate on establishing in what manner the norm actually influences the UN's use of PMSCs. There initially appears to be a contradiction between the fact that the UN has increased its use of PMSCs and the fact that the anti-mercenary norm is influential within the UN. Indeed, the anti-mercenary norm should normally lead to a decrease in the use of PMSCs, not to an increase. In order to understand how it is possible to observe an increase in the UN's use of PMSCs whilst the anti-mercenary norm is influential within the organization, it is crucial to understand that the anti-mercenary norm isn't the only "force" exerting influence on the UN. As explained by Martha Finnemore, it is crucial to view norms *"(...) not as individual "things" floating atomistically in some international social space but rather as part of a highly structured social context."*³⁰² What we have to understand by this is that there are different norms and interests exerting influence on the UN at the same time. In our case, we established that the UN has a responsibility to intervene in order to fulfill its missions, such as protecting people from widespread atrocities, protecting the enjoyment of people's human rights or helping populations in need around the globe. We also established that in order to fulfill its missions, the UN must ensure the safety of its staff. However, we saw that the UN is faced with a lack of contributions from states and is left with no other option than to employ PMSCs to ensure the safety of UN employees. The impact of the anti-mercenary norm is consequently cancelled by the fact that the UN has no other choice than to employ PMSCs. Ultimately, although the anti-mercenary norm is influential, its effect is limited by the fact that other norms also influence the UN. We believe that if the UN didn't face a lack of cooperation from states and

³⁰² FINNEMORE, Martha: *The Purpose of Intervention: Changing Beliefs About the Use of Force*, p.57

received enough security personnel or funding, the effects of the anti-mercenary norm on the UN's use would be much more visible.

Although the norm seems to have a limited impact on the UN's use of PMSCs, we should not forget that other than observing that the UN has increased its use of PMSCs over time, we have also noted that there appears to be an agreement on the fact that it is extremely unlikely that PMSCs will take on peacekeeping operations entirely and that these companies are likely to remain in support roles in UN peacekeeping operations. Until recently, PMSCs were keen on promoting themselves as potential peacekeepers. This was for example the case of EO during the genocide in Rwanda. However, the UN was never willing to outsource peacekeeping to these private firms. Although Kofi Annan admitted having thought about it during the Rwandan genocide, he ultimately rejected outsourcing peacekeeping to a private firm and asserted that "(...) *the world may not be ready to privatize peace.*"³⁰³ This statement demonstrates the fact that outsourcing peacekeeping was seen as too controversial by the UN.

Other than the fact that the UN sees the outsourcing of peacekeeping as too controversial, the industry itself has operated a shift and, in an attempt to rebrand the industry, has moved away from the provision of combat services. This can be observed by visiting the webpages of large PMSCs. On their webpages, PMSCs no longer advertise combat services, but rather services such as logistical support, intelligence gathering or protective services.³⁰⁴ This contrasts with EO or Sandline International, which both offered combat services during their existence.³⁰⁵ The fact that PMSCs are distancing themselves from combat services signifies that these companies would face difficulties in taking on peacekeeping operations as a whole since, as explained by Isenberg, UN peacekeeping operations are increasingly requiring the use of violence.³⁰⁶ The fact that the International Peace Operations Associations changed name in 2010 and became the International Stability Operations Association³⁰⁷ is, as explained

³⁰³ UNITED NATIONS: Secretary-General Reflects on "Intervention" in Thirty-Fifth Annual Ditchley Foundation Lecture

³⁰⁴ AEGIS: Services; ACADEMI: Managed Support Services; DYNCORP INTERNATIONAL: Intelligence and Security

³⁰⁵ PECH, KHAREEN: Executive Outcomes – A corporate conquest

³⁰⁶ ISENBERG, David: The PMSC Perils of Peacekeeping

³⁰⁷ INTERNATIONAL STABILITY OPERATIONS ASSOCIATION: History of ISOA

by Jeremy Scahill, “(...) *part of a sophisticated rebranding campaign.*”³⁰⁸ It can also be seen as an indication that the industry has shifted away from suggesting to take on peacekeeping. The fact that PMSCs were unable to gain access to peacekeeping, although having previously attempted to do so, is in our opinion a consequence of the anti-mercenary norm and we should consequently conclude that, although to a limited degree, the anti-mercenary norm has impacted the UN’s use of PMSCs.

³⁰⁸ SCAHILL, Jeremy: Private Security Contractors and the UN (May 19, 2010), part 5 (00:01:20-00:01:25)

V. Conclusions

5.1. Summary

Following multiple humanitarian fiascos in the 1990s – notably its failure in Rwanda – the UN faced heavy criticism. It was argued that the UN was unable to deploy efficient peacekeeping operations in a timely manner due to certain structural problems and that contracting PMSCs could be a good solution. The potential use of PMSCs by the UN led to an energetic debate with opponents to the UN's use of PMSCs arguing that the UN should stay away from such companies. Sarah Percy is of the opinion that the dislike of PMSCs stems in large part from the prevalence of the anti-mercenary norm. The anti-mercenary norm is a longstanding norm, which asserts that mercenaries are dangerous and morally problematic due to a lack of control and also a lack of just or appropriate cause. PMSCs being often assimilated with mercenaries and described as similar, these modern companies also suffer from the assumption that they are dangerous and morally problematic.

Our thesis evolved around two main objectives in relation to the controversial relationship between the UN and PMSCs. The first objective was to establish whether the evolution of the UN's discourse vis-à-vis PMSCs matches the evolution of its use of PMSCs, therefore whether the evolution of the UN's discourse matches the evolution of its practice. The second objective of this thesis was to establish whether the anti-mercenary norm impacts the UN's use of PMSCs, as is believed by Sarah Percy.

We believe that answering the question of whether the evolution of the UN's discourse matches the evolution of its practice is important due to the fact that there appears to be a contradiction between the UN's discourse and its practice when it comes to PMSCs. Indeed, although the UN is often accused of increasing its use of PMSCs, the first impression we get when reading documents occurring from the UN and focusing on PMSCs seems to be that the UN maintains a negative stance toward PMSCs and that these companies are said to be problematic. In order to fulfill this first objective, our research was separated into three parts. First of all, we set out to establish whether the UN has indeed increased its use of PMSCs over time. In a second time, we attempted to determine whether the UN's discourse vis-à-vis PMSCs has evolved in the last

decades. Finally, by comparing the two first parts of our research, we aimed at establishing whether the evolution of the UN's discourse matches the evolution of its practice. What we discovered is that the UN has consistently been increasing its use of PMSCs over the years. We also established that the UN's discourse has remained critical toward PMSCs and that these companies are said to be problematic mainly due to a lack of control, but also due to the fact that these companies are morally problematic. Although this may initially seem to demonstrate a contradiction within the UN, or a certain hypocrisy within the organization, we do not believe this to be the case. The UN exists with extremely important missions, such as protecting people from human rights violations or enforcing the respect of state sovereignty and international peace and stability. In order to fulfill its missions, mainly those of humanitarian character, the UN's staff needs to be able to work in different regions around the globe and needs to be kept as safe as realistically possible when deployed. We demonstrated that the safety of UN staff is primarily the responsibility of host nations, alternative member states or UN internal security. However, if host nations or alternative member states are unable or unwilling to provide personnel, and if the UN doesn't have enough security personnel to ensure the safety of its staff, the UN has to rely on an alternative solution, which is the use of PMSCs. We established that the fact that member states are often unwilling to provide sufficient personnel or financial resources leaves the UN with no other option than to outsource the security of its staff and infrastructure to private companies. Our research allowed us to conclude that the use of PMSCs isn't seen as ideal by the UN, but that the UN has no other choice than to use these companies if it wishes to be in a position to fulfill its missions.

In order to fulfill our second objective, which was to establish whether the anti-mercenary norm has an impact on the UN's use of PMSCs, multiple indicators were evaluated. Our research allowed us to demonstrate with a high degree of certainty that the anti-mercenary norm exerts influence within the UN and plays a role in the maintenance of the UN's negative stance toward these companies, which are seen as posing a problem of control and lacking a just or appropriate cause (the two main components of the anti-mercenary norm). Although the anti-mercenary norm exerts influence within the UN, we also

demonstrated that its effects on the UN's use of PMSCs are cancelled by the fact that the UN has to contract PMSCs if it wishes to fulfill its missions. Again, the necessity to use PMSCs is a consequence of the lack of cooperation from member states. Put in other words, the effect of the anti-mercenary norm is largely cancelled by other norms, such as the responsibility to protect and, although the norm is influential, the UN has been forced to increase its use of PMSCs.

Our research has led us to believe that as long as member states do not increase their cooperation with the UN and refuse to provide adequate numbers of personnel or sufficient financial resources, the UN will have no other option than to continue increasing its use of PMSCs since the organization is deploying an increasing number of operations around the globe.

5.2. Final remarks and suggestion for future research

This thesis brings answers to two important questions relating to the relationship between the UN and PMSCs, which, as far as we are aware, had not yet been studied. First of all, we were able to establish that the UN's discourse doesn't match the UN's practice when it comes to PMSCs and that the reason for the UN's inability to align its practice on its discourse is the lack of cooperation from member states, which are unwilling to contribute sufficient personnel or financial resources to the UN. Establishing this should be an eye-opener and lead us to realize that the UN's dependence on uncooperative member states is problematic and forces the UN to increasingly rely on PMSCs. In fact, although being a provocative statement, it could legitimately be argued that the UN's dependence on uncooperative member states poses a threat to the enjoyment of human rights of peoples around the globe, as was clearly the case in Rwanda during the 1990s.

Secondly, we established that the anti-mercenary norm described by Percy still remains valid and exerts a certain influence within the UN. However, although exerting influence within the UN, the effects of the norm are largely cancelled due to the fact that the UN cannot reject using PMSCs if it is to fulfill many of its operations.

Throughout our research, we have observed that PMSCs and their employees are thought by many to be dangerous and to pose a threat to the

enjoyment of human rights. It appears that PMSC employees are feared to be prone to committing crimes, including murder, torture or rape. Although accusations are widespread, we have not come across an empirical study on whether PMSCs have statistically been involved in a higher number of crimes than national contingents proportionally to their numbers. Future research should be led with the objective of establishing once and for all whether PMSCs are indeed more prone to committing crimes than national soldiers.

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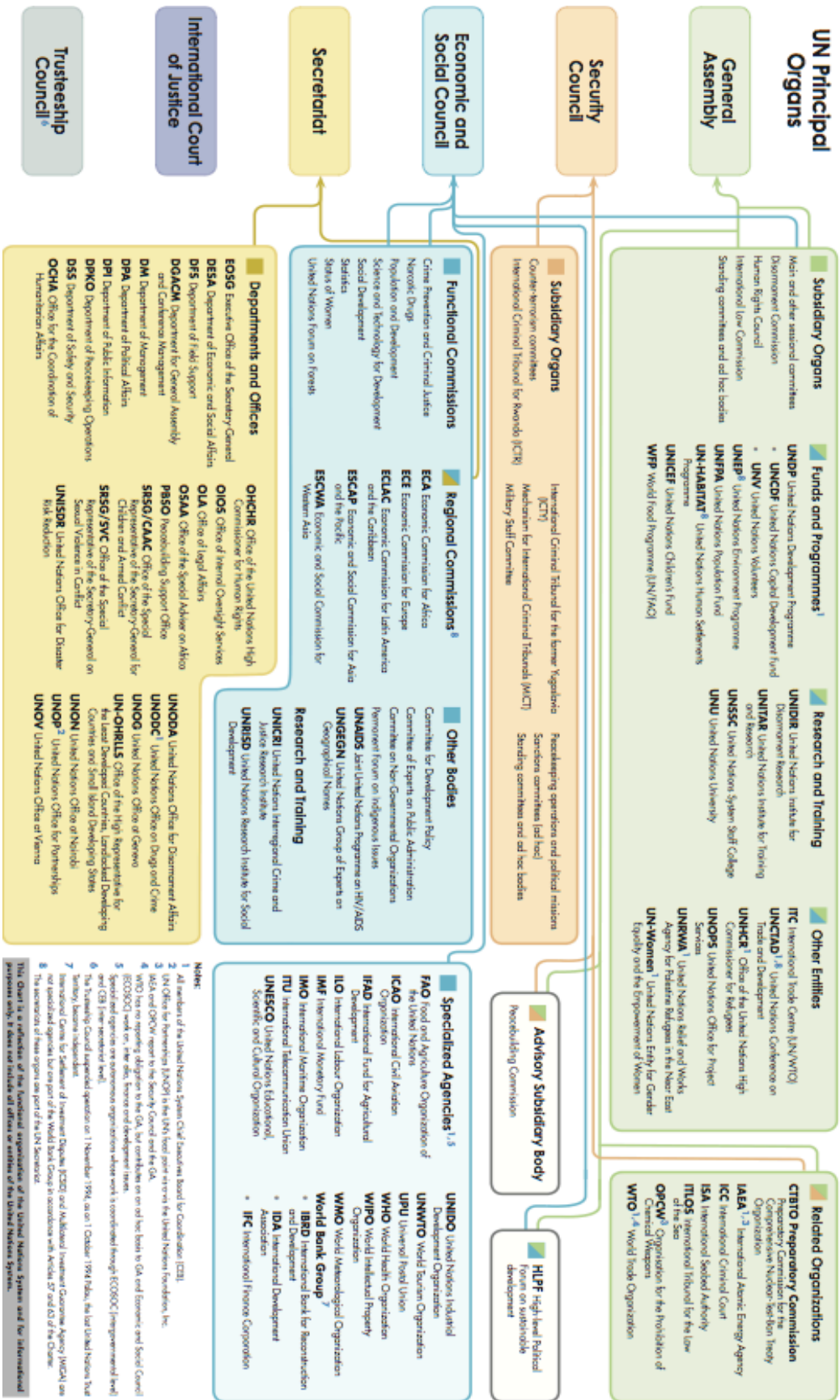
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Appendix 1: The United Nations System³⁰⁹



309 UNITED NATIONS: The United Nations System

Appendix 2: Evolution of the UN's discourse vis-à-vis PMSCs

Year	Document	Classification of PMSCs or/and their employees	Remarks			
2005	E/CN.4/2006/11	Potential impact on enjoyment of human rights	The degree of negativity and criticism is rather moderate.			
	23.12.2005	Unaccountable for potential human rights violations				
2006	E/CN.4/2006/11/Add.1 03.03.2006	Potential impact on enjoyment of human rights	The Working Group notes the UN's use of PMSCs There is a clear escalation. The accusations are more widespread and describe precise crimes and human rights violations.			
		Interfere with self-determination				
		Interfere with state sovereignty				
		Violate human rights				
		Violate right to security of employees				
		Violate rights of workers				
		Violate national sovereignty				
Violate right to non-discrimination of employees						
2006	A/61/341 13.09.2006	Amalgamation of mercenaries and PMSC employees	This report is clearly more critical than the previous two The Working Group asserts that PMSC employees are implicated in widespread human rights violations and other crimes. We must however note that the Working Group does distinguish between PMSCs which comply to rules and the ones that don't.			
		Potential impact on enjoyment of human rights				
		Potentially interfere with self-determination				
		Potentially interfere with state sovereignty				
		Potentially recruiting from refugee camps				
		Potentially using children				
		Connected to extractive industry				
		Connected to authoritarian regimes				
		Profit from conflict				
		Linked to mercenaries				
		Involved in summary executions, torture, trafficking in persons, drugs and arms, terrorism, paramilitary and covert operations, human rights violations				
		Involved in armed conflicts				
		Increasingly used by the UN				
Potentially threatening the right to development						
2007	A/HRC/4/42 07.02.07	Unaccountable	The level of criticism is similar to the level of criticism in the previous report. However, more concerns are raised concerning PMSC employees' rights in this report than previously.			
		Operate with no control (context of Iraq where many PMSCs operate at the same time on the same field with no command overseeing them)				
		Operate without visibility				
		Operate in complete impunity				
		Expansion of these companies in conflict zones				
		Recruit employees with dubious records, some having worked for repressive regimes				
		Violate human rights				
		Participated in torture				
		Primarily motivated by financial gain				
		PMSCs violate multiple rights of their employees				
		Increasingly performing domestic police functions				
		Recruitment of certain PMSC employees is similar to human trafficking				
		2008		A/63/325 25.08.08	Very active in countries facing low-intensity armed conflicts	The main focus of the Working Group in this report seems to be the need for increased mechanisms and regulations surrounding PMSCs. Although still painting a rather negative image of PMSCs and their employees, the Working Group doesn't elaborate as much as on specific violations and problems as previously.
					Involved in human rights violations	
PMSCs try to cut costs as much as possible						
Operate in impunity						
Connected to extractive industry						
Involved in repression of legitimate social protests						
Insufficiently regulated and controlled						
Contracted by the UN						

2009	A/HRC/10/14 21.01.09	Insufficiently regulated and controlled	The main focus in this report is once again the need for further regulation and mechanisms. The Working Group defines six topic areas for regulatory principles. Criticism is not aimed at specific cases or violations but on the lack of legislation, accountability and oversight mechanisms.
		Potential impact on enjoyment of human rights	
		Unaccountable for potential human rights violations	
2010	A/65/325 25.08.10	Unaccountable	The level of criticism remains the same as in previous annual reports and emphasis is put on the need to increase regulation.
		Lack of regulation	
		Increasingly taking on tasks seen until recently as reserved to states	
		Increase instability and aggravate conflicts	
		Linked to extractive industries	
		Often benefit from immunity	
2011	A/HRC/18/32 04.07.11	Unaccountable	As in previous reports, the main focus is the need for increased regulations, laws and control mechanisms. Nevertheless, although not describing many specific cases, the Working Group remains critical towards
		Impact the enjoyment of human rights	
		Involved in human rights violations	
		PMSCs have employed mercenaries	
		Operate in impunity	
		PMSCs violate multiple rights of their employees	
		Have threatened human rights activists	
		Increasingly taking on tasks seen until recently as reserved to states	
2012	A/67/340 30.08.12	Involved in an ever-expanding range of activities	This report remains on the same level of criticism as the previous report. This report once again demonstrates the Working Group's belief in the need for further regulations and legislation. It is important to note that the Working Group asserts that PMSCs are increasingly active in peacekeeping.
		Unaccountable	
		The industry lacks transparency	
		PMSCs operate under no international regulatory framework	
		Impact the enjoyment of human rights	
		Contracted by the UN	
		Increasingly taking on tasks seen until recently as reserved to national armed forces	
		Increasingly used in maritime security	
		Increasingly used in peacekeeping	
2013	A/HRC/24/45 01.07.13	Can undermine the rule of law	The Working Group primarily focused on analysing different national legislations dealing with PMSCs. In consequence, the Working Group hasn't focused on describing the activities of PMSCs or violations committed by them.
		Can undermine the functioning of a democratic State	
2014	A/69/338 21.08.14	Employed by the UN for security services	The focus of this report is to describe the Working Group's observation of the UN guidelines on the use of armed guards and in what ways the guidelines are insufficient and should be improved.
		Some PMSCs have bad human rights records	
		Can negatively impact the UN's reputation	
		Pose a threat to the enjoyment of human rights	
2015	A/70/330 19.08.15		The Working Group doesn't refer to PMSCs a single time in this last report. The entire focus is on foreign soldiers, their similarities or differences with mercenaries, and their impact on human rights. Given the historical context (notably the rise of ISIS and its implications for human rights), the focus on foreign soldiers is easy to understand.

Original Research Proposal

Charles University; Master in International Security Studies **Master Thesis**

Research Design

Student: Jeremy Meyer

Supervisor: Dr. Oldrich Bures

Global theme: United Nations (UN) and Private Military Companies (PMCs):
Impact of the Mercenary Norm"

Main aim of the thesis

The aim is to observe the relationship between the UN – through the “Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination”, and PMCs.

We will be observing whether there has been an evolution in the discourse of the “Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination” regarding PMCs. Therefore we would observe if the UN has become more conciliatory in respect to the use of PMCs, or whether it is still continuing to maintain that PMCs are basically mercenaries – consequently classifying them negatively.

In parallel, we will analyse in great details the evolution of the UN’s use of PMCs. By combining the two previous parts of the research, we will be able to conclude whether the evolution of the discourse is following the trend in the use of PMCs, or whether the discourse of the UN is still maintaining that PMCs are mercenaries, therefore demonstrating a certain hypocrisy of the UN.

Outline:

- Introduction (approximately 15 pages)
- Conceptual framework (4-5 pages)
- Methodology (approximately 3-4 pages)
- The evolution of the UN’s use of PMCs (approximately 15 pages)

- Discourse analysis of the “Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination” (approximately 15 pages)
- Analysis of the two previous steps (approximately 5-10 pages)
- Conclusion (approximately 5 pages)

Introduction

We will begin the thesis by stating that the UN has faced many problems during its existence, and that one of the main problems put forward is the protection of people around the globe, therefore the UN’s humanitarian mission. To demonstrate this, we will use the available literature and historical examples.

We will present a small number of UN failures in details (the exact cases are still to be selected). By observing these failures, and combining what we find with the literature, we will compile a list of problems faced by the UN; these would include troop contributions, financial resources, under trained/equipped troops and lack of specialists, national command.

This will lead us to present one of the proposed solutions for facing such problems; the contracting of Private Military Companies, or “mercenaries”. We will therefore deeply present the debate existing in the academic and political worlds (using the abundant literature on the subject); some argue that the UN should make use of PMCs and that it could be a good solution given the many problems faced by the UN. Others, on the other hand, would argue that it is not an appropriate or viable solution.

We will mention that the UN has been using PMCs for quite some time already; however, we will not go into details here since this will be a separate part in our thesis.

Having introduced the issue and the debate, we will state what we want to observe in this thesis, therefore what our goals/aims are. As mentioned earlier, in this thesis we want to observe what relationship the UN maintains with PMCs, and more precisely how the UN classifies them. At this point, we will present the group we will be focusing on in this thesis; the “Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of

the right of people to self-determination”. We will explain what this group does, why it was created, etc...

Following this, we will present our research question. It will include the following interrogation; has the UN become more conciliatory vis-à-vis PMCs, or is it hypocritical and continues to maintain negative classifications such as “mercenaries”?

Regarding the **conceptual framework**, as discussed with Professor Bures, it will be difficult to use an existing theory for this thesis. However, we will use Sarah Percy’s book “Mercenaries: The History of a Norm in International Relations” to trace the evolution of the norm. By tracing the evolution of the norm, we will find in which direction the norm has evolved over time. Doing this will allow us to bring forward our hypothesis;

- If “mercenaries” have become more accepted, we will assert that the UN’s discourse is likely to have become more conciliatory regarding PMCs.
- On the other hand, if mercenaries have not become more accepted, we will assert that it is likely that the UN will have continued to classify PMCs in a negative manner.

Methodology; discourse analysis

In this part of the thesis, we will explain what method we will be using to answer our research question, and consequently validate or invalidate our hypothesis.

The scientific method that will be used in this thesis will be “discourse analysis”.

The analysis will be separated into three parts:

1. We will observe in great details the evolution of the UN’s use of PMCs over time.
2. We will apply a discourse analysis on statements and reports from the “Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination”.
3. We will combine both parts and establish whether the evolution of the use of PMCs have been accompanied by an evolution in the UN’s discourse.

Evolution of the UN's use of PMCs

This will be a very detailed examination of the UN's use of PMCs. We will compile every single use of PMCs by the UN. The objective in this part is to end up with two pieces of information. First of all, the strict number of contracts given to PMCs by the UN. Secondly, the "qualitative" evolution, meaning what kind of missions have been given to PMCs over time (for example water purification, transportation, etc...).

We believe that we will end up with the following conclusion; the UN has increased the use of PMCs (both a quantitative and a qualitative increase). Once we have demonstrated this, we will assert that this should obviously have led to an evolution of the discourse occurring from the UN vis-à-vis PMCs (becoming more conciliatory and less intransigent).

(we could maybe place the hypothesis here instead of in the introduction and relate to Sarah Percy's work and the "mercenary norm")

Discourse analysis of documents originating from the "Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination"

We will analyse different kinds of documents established by the aforementioned working group (annual reports, etc.). The objective will be to observe whether there has been an evolution/any evolving trends. We would like to place the eventual evolution on a graphic in order to facilitate the following part of the research (presenting on a temporal graphic each time there is a change in the group's point of view).

Comparison of the two previous parts of the thesis

In this part of the research, we will bring together the two previous parts. There will be one objective; to observe whether the evolution of the discourse follows the evolution of the practice. Observing this will allow me us validate or invalidate our hypothesis.

The precise manner in which we will proceed will of course depend on how my research will have evolved up to this point.

Conclusion

In this part, we will bring the conclusion to our research. We will also mention the limits of our thesis, the eventual problems faced during this research, and eventual “solutions”. Solutions here are likely to be proposals that would be addressed to the issue of hypocrisy if it actually exists.

Potentially we will give our point of view as to how the relationship will evolve between the UN and PMCs.

FINAL NOTE: Sarah Percy’s work is most likely global and will take into account the global “mercenary norm”. To establish our hypothesis, this will be okay and doesn’t pose a problem. It would for example allow us to reach our hypothesis and trace the global evolution of the use of so-called “mercenaries” around the world (useful for our introduction).

However, in this thesis we are strictly focusing on the UN’s use of PMCs. This could be an interesting point to mention, especially if there is a difference between the “global norm” and the “UN’s norm” regarding “mercenaries”.

We could for example conclude whether the global norm has had an impact on the UN’s discourse and behaviour vis-à-vis PMCs, or whether the UN has stayed impermeable to the “mercenary norm”.

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