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**A legitimate practice? How the United Nations Justifies the Use of
Private Military and Security Companies**

BA thesis

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Authorship Declaration

I have prepared this thesis independently. All the views of other authors, as well as data from literary sources and elsewhere, have been cited.

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Abstract

Private Military and Security companies (PMSCs) are important non-state actors with growing influence in international relations. In this paper, the legitimacy of the use of PMSCs is explored in the case of the United Nations (UN). Constructivist framework is employed to understand the legitimation of the use of PMSCs in contexts of international norms such as the anti-mercenary norm, states' monopoly on violence and prohibition of use of force in international relations. Based on a search in the UN's official Document System and reports by the Working Group on the use of mercenaries, the UN officials have not given many norm-based explanations to their use of PMSCs and instead employ functional explanations while also framing the use as inevitable. Through the latter, the UN has managed to avoid the responsibility for making the decision of employing PMSCs and largely also the legitimacy of this use.

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Introduction

Max Weber has defined the monopoly on violence as a decisive criterion of the modern Western states. The trend of using private military and security companies (PMSCs) over the past has challenged this norm. Since the end of the Cold War, PMSCs have become an important actor in international relations as their use has grown exponentially (Ballard 2007, 43). According to Vantage Market Research (2022), the private military and security industry was worth USD 258.1 billion in 2022 and has become global with customers ranging from states to international organisations to corporations.

The use of PMSCs is still largely viewed as problematic (see for example McFate 2019; van Meegdenburg 2019) as they are associated with other armed non-state actors, mainly mercenaries, the use of which was delegitimised in the 20th century. Today's PMSCs have used several methods for distancing themselves from that stigmatised term. They have largely succeeded and despite the opposition by some actors, the growth of the industry and use by reputable states and organisations have consolidated their place in international relations.

Despite their controversial standing, the United Nations (UN) has used PMSCs in a wide variety of missions and functions (Cameron 2017, 7). Despite the organisation's strong stance against mercenaries, the use of PMSCs is prevalent throughout the UN system. The UN's image of being a beacon of international norms is in contrast with hiring force from private actors instead of acquiring it from Member States. The use of PMSCs by the UN in spite of their questionable standing has raised questions of the legitimacy of this practice which the UN has had to address.

Against this background, this study asks whether the UN has managed to legitimise their use of PMSCs. For this, the thesis gives an overview of and analyses the ways in which the UN has attempted to legitimise its use of PMSCs and frame it as appropriate. The study draws on a constructivist framework highlighting the logic of appropriate behaviour and thus the need for actors to give reasons for their actions. The empirical part of the study entails a case study on UN's use, policy and explanations regarding PMSCs. The practices of legitimation are looked at in the contexts of international norms upheld by the UN and the logic of appropriate behaviour.

To explore these questions, the paper is divided into three chapters. Firstly, the development and ways for legitimising PMSCs is explored. The second chapter gives an overview of the methodology and main sources for the case of the UN. In the final chapter, UN's legitimisation

of the use of PMSCs is analysed tackling UN's use of PMSCs, policy advancements, critics within the UN system and legitimation strategies used.

1. Theoretical framework: constructivist approach to the legitimation of the use of PMSCs in world politics

1.1 The growing role of PMSCs in international politics

Paid armies and mercenaries have been the norm in warfare throughout most of history. This started to change in 17th century with establishment of “Westphalian Order” and sovereignty of states who began monopolising force by creating national armies (McFate 2019, 15). The roots of modern Private Military and Security Companies go back as far as mid 19th century, when “detective businesses”, mostly operating outside the law and underground, started offering private investigators, armed security guards and other security services in North America (Pingeot 2012, 10). In 1893, the US congress passed the first law limiting the government’s use of such companies (*ibid.*). Another predecessor of PMSCs arose in European colonies after the World War II in the form of private mercenary groups (*ibid.*).

At the end of the Cold War Francis Fukuyama proposed the thesis of ‘the end of history’, which found many supporters among world leaders, but was proven wrong in just a few years as Samuel P. Huntington states: “The illusion of harmony at the end of that Cold War was soon dissipated...” (Huntington 1996, 32). So, contrary to Fukuyama’s thesis, many violent conflicts arose around the world fuelled by the end of bipolarity and surplus of weapons (Ballard 2007, 43). At the same time, reorganizing and downsizing national militaries is estimated to have cut the number of employed soldiers in half (from 6.9 to 3.3 million) by 1997 (*ibid.*, 44). These two factors combined created a vacuum in the market of security which was filled by emerging modern PMSCs and other armed non-state actors (*ibid.*, 43).

During the 1990s PMSCs established their ability to succeed in low-intensity conflicts, for example in 1995 a South African PMSC Executive Outcomes (EO) freed diamond mines in Sierra Leone from rebel groups with 150 soldiers in just 11 days, something that the national military had been unable to achieve for several months (Ballard 2007, 44). However, while doing this, EO established secretive connections with the mining companies to exploit and profit from the mining industry (Pingeot 2012, 10-11). Cooperation between mining companies and PMSCs has since become prevalent in Asia, Africa and South America and often brings with it serious violations of human rights (*ibid.*, 11)

The general awareness and importance of PMSCs started to rise in 2000s with USA’s war on terror which made use of several PMSCs (McFate 2019, 18). The White House expected the wars in Iraq and Afghanistan to be short, lasting no more than five months but as the conflicts

dragged on, recruiting volunteers for the army became harder (*ibid.*, 19). As withdrawing or reinstating the national draft would have been unpopular decisions, policymakers turned to PMSCs (*ibid.*). Thus, the ratio of American soldiers to contractors from PMSCs in both wars was at least 1:1 and in Afghanistan reached up to 3:7 (*ibid.*, 18). The US army relied on PMSCs to provide logistics, supplies and translators, protect bases and convoys and maintain equipment (Cusumano & Kinsey 2022, 1).

Behind these seemingly unarmful tasks, PMSCs brought along abuse and human rights violations which reached the media and raised public awareness of the growing PMSC market. The Nisour Square massacre is probably the most widely known case, where PMSC employees killed 17 Iraqi civilians (McFate 2019, 8). Other incidents involving contractors include hazing by senior officers, firing weapons for pleasure, battles between several PMSCs, culturally insensitive behaviour, imprisonments and interrogations, translators being involved in torture and many more (Pingeot 2012, 13, 15). PMSCs like to brush off these instances by stating that these actions violate company rules and norms but often no actions are taken against the violators (*ibid.*,15).

The war on terror gave the PMSC industry a chance to develop and gain experience which led the way to growth and diversification of services (McFate 2019, 23). PMSCs also diversified their userbase as they are now employed by states, international organizations, non-governmental organizations (NGOs), corporations (Pingeot 2012, 13) and terrorist organisations (McFate 2019, 4). As diverse as their clientele is also the range of services offered starting from logistics and catering to guards and surveillance to psychological operations and maintaining complex weapon systems (Ballard 2007, 52). Involvement with government intelligence, secret missions and relying on PMSCs to manage weapon systems only consolidates the dependency on these contractors (*ibid.*, 46).

In order to offer such a wide array of high-level services, PMSCs mostly hire two types of employees. First is the high-ranking personnel from western national military and intelligence agencies (Pingeot 2012, 10). This can also include members of governments and parliaments, creating strong ties between states and the PMSC industry, and allowing no-bid contracts which means greater profits and secrecy (*ibid.*, 12). As PMSCs offer higher salaries for these high-ranking employees than public agencies, it is easy to win them over, creating a shortage of staff for national services which leads to growing use of PMSCs (*ibid.*). Secondly, PMSCs hire personnel from developing countries to keep the costs down as even high-ranking commanders can be paid significantly less than their counterparts in western countries (McFate 2019, 20). In

2018 of nearly 50 000 contractors working for US Central Command only 20 000 were American (*ibid.*).

The strong ties between PMSCs and states is beneficial for both. PMSCs have the influence to construct the states' understanding of security (Pingeot 2012, 13). In many cases, PMSCs exaggerate security risks when providing consultancy and offer solutions focused on securitization rather than social or political alternatives which could be cheaper and less violent, thus creating more business for themselves (*ibid.*). For states, PMSCs open up opportunities for more secretive missions (*ibid.*, 16) without using their own armies and equipment (Kramer 2007, 29). For western countries PMSCs have also been a tool for preserving the current economic system and world order (*ibid.*, 35). This is done by deploying PMSCs to train foreign armed forces for enforcing stability and gain indirect control over these regions (*ibid.*, 29-30).

PMSCs have consolidated their place in international politics. Wide use by various states, United Nations (UN), North Atlantic Treaty Organization (NATO), European Union (EU) and others has created a consensus among leaders that PMSCs are a crucial part of implementing defence and security policy (Cusumano & Kinsey 2022, 1). However, many concerns still exist as the industry remains secretive while constantly growing and gaining influence.

Several terms are still used when referring to PMSCs. Some experts find that they are essentially the same as mercenaries and use the terms interchangeably. The industry itself and many of their clients, including the UN, prefers to refer to these actors as private security companies or providers and point to not using these companies for military services. However, most of the PMSCs today are multinational corporations with a wide selection of services and staff who is able to fill both security and military tasks. Thus, the term PMSCs is used in this paper, except in chapter 3.2, where UN's policy language is used.

1.2 Constructivism and the logic of appropriate behaviour

The end of the Cold War that gave way to the rise of PMSCs, also bought on the rise of constructivist theory in the study of international relations (Klotz & Lynch 2007, 3). Constructivists contend that important elements of international relations are historically and socially produced, emerging from social practice and interaction, rather than being the inevitable result of human nature. Decisions are made in accordance with norms and ideals. Both structural continuity and change are influenced by agency and in turn, agency is influenced by social, spatial, and historical context (Klotz & Lynch 2007, 3). Constructivists see structure

and agency as being "mutually constituted" rather than giving one of them ontological precedence over the other (ibid.).

According to Klotz & Lynch (2007), the constructivist ontology depends on three factors: intersubjectivity, context, and power.

Structures and agents are a part of intersubjective understandings. These social phenomena—norms, rules, meanings, languages, cultures, and ideologies—create identities and direct behavior. In order for these phenomena to exist, they require the acceptance of more than one person, and people define themselves in light of them. Intersubjective understandings go beyond the sum of people's individual ideas. Over time, certain meanings acquire reliability, establishing social orders that constructivists refer to as institutions or structures. Rules and norms establish expectations about how the world operates, what conduct is acceptable, and what pursuits or identities are permissible. Social orders depend on meanings, yet meanings are subject to dispute. Even the most stable organizations change over time, despite the fact that some practices inevitably predominate over others at specific times.

Constructivist research questions need to be placed into physical, historical, and social context since intersubjective understandings change through time, across places, and within hierarchies. Researchers must steer clear of reified, essentialized, or static concepts of culture that rule out the possibility of change if they are to comprehend how changes in meaning affect people living in certain areas and eras and measure the capacity for people to reform customary practices. Accepted goals and behaviors in one era or society may be rejected by individuals in different eras, locations, or social contexts. Changing practices in one place does not mean universal change but rather it spreads unevenly and is not accepted in some places.

Constructivists explore how and why specific behaviors predominate in specific situations given the coexistence of various meanings, which are frequently in conflict with one another. People's identities and interests are formed by dominant intersubjective understandings, which are also used to frame how actions are interpreted. It is common to refer to the repetitive behaviors that result from these readings as "practices" and the combination of words and strategies used to uphold them as "discourses." Although dominant understandings are emphasized, this is not merely a replacement of language for material resources. Each person holds certain power since their actions either support or contradict meanings. This understanding of power as the ability to reconstruct discourses and shape practices provides academics with a framework for analyzing how meanings condition identities and behaviors,

why some dominate others, and why these patterns shift. It also broadens the scope of research to include how people justify their behaviors.

The need to justify actions can be looked at through the theory of “Logic of Appropriateness”. The theory suggested by James G. March and Johan P. Olsen points to actors’ need to show their activities as appropriate (March & Olsen, 1996). Appropriateness is defined through certain rules that are followed because they are seen as natural, rightful, expected, and legitimate (Olsen & March 2004, 3). The fact that an individual or a collectivity defines a rule of behavior to be appropriate may represent some kind of historical understanding, but it does not ensure technical efficacy or moral acceptability (*ibid.*, 4).

The rules of appropriateness may be looked at as striving from foundational norms (Olsen & March 2004, 6). In the case of the United Nations, the principles and norms stated in the UN Charter, The Universal Declaration of Human Rights and international law as a whole can be seen as constituting those rules. UN’s use of PMSCs raises questions of upholding several of those norms, most importantly the states’ sovereignty and monopoly on violence, anti-mercenary norm, prohibition of use of force in international relations, and UN’s primary goal of saving succeeding generations from the scourge of war.

As van Meegdenburg (2019) points out, functional explanations are most prevalent in explaining the use of PMSCs. It is often framed as something logical and inevitable striving from the changes in the post-Cold War world. This minimises the role of the actor in making the decision to employ PMSCs. Contrary to this, the case of Denmark not using PMSCs, studied by van Meegdenburg, shows this decision not as inevitable, but basing on the identity and understanding of appropriateness of the actor.

1.3 Legitimising the use of PMSCs

The question of legitimacy of PMSCs is deeply rooted in history as they are still often seen as deriving from mercenaries. As mentioned before, mercenaries have been involved in wars throughout human history and the term has gained a deeply negative connotation. After World War II, the rise in mercenary groups in Africa consolidated this negative connotation and brought along the ban on mercenaries in 1977 (McFate 2019, 15). This was done through Additional Protocol I to Geneva Convention where Article 47 clearly defines the term ‘mercenary’ as *any person who*:

- a) is specially recruited locally or abroad in order to fight in an armed conflict;*
- b) does, in fact, take a direct part in the hostilities;*
- c) 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 ranks and functions in the armed forces of that Party;*
- d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;*
- e) is not a member of the armed forces of a Party to the conflict; and*
- f) 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.*

Many scholars have deemed this definition too limiting as all the requirements have to be filled cumulatively (Drews 2007, 332). At the same time, subjective requirements, mainly in point c, make it easy to deny falling under this definition (McFate 2019, 16).

Another initiative to ban mercenaries was the United Nations' International Convention Against the Recruitment, Use, Financing and Training of Mercenaries adopted in 1989. Additional points were added to the definition of mercenary, but as there are only 37 parties to this Convention, it has very little relevance (DCAF 2021, 4). Thus, the definition in the Geneva Convention is widely accepted with 174 states having ratified this convention.

The first UN Special Rapporteur on the use of mercenaries Enrique Bernales Ballesteros saw PMSCs as a clear successor to previous forms of mercenary activity (Pingeot 2012, 20). The industry itself and many clients prefer not to use the term as do some experts (McFate 2019, 6). Using other terms such as Private Security Providers distances the industry from the traditional concept of mercenaries (Pingeot 2012, 14). Employing the language use of United Nations and humanitarian NGOs in their public relations campaigns furthers these efforts and opens up new business opportunities (*ibid.*, 14-15).

PMSCs differ from other armed non-state actors with their corporate structure and legally valid business practices (Ballard 2007, 42). Due to this, their primary goal is corporate profit instead of individual, and the variety of services they provide is much broader (Cusumano & Kinsey 2022, 12). This corporate facade frames PMSCs as any other service provider (Pingeot 2012, 10), and as the Geneva Convention only refers to a person being a mercenary, only the employees of PMSCs filling military tasks could be considered mercenaries (McFate 2019, 7).

Constructing PMSCs as a new phenomenon in international security left them operating in a legal ‘grey area’. With growing awareness and cases of human rights abuses becoming public, the issue of regulations rose (DCAF 2021, 2). Main efforts thus far have been self-regulatory and not legally binding such as the Montreux Document and International Code of Conduct (ICoC) (Pingeot 2012, 43). United Nations has been working on a regulatory framework since 2010 but little progress has been made.

The Montreux Document is an intergovernmental agreement containing international law and best practices relevant to the use of PMSCs in armed conflicts (ICRC 2020). The process was started on the initiative of Switzerland and the International Committee of the Red Cross and finalised in 2008 after 17 states, including the UK, USA and China, had reached consensus (*ibid.*). Since then, 41 more states and 3 international organisations have joined the document. As it is not legally binding and merely an overview of former international contracts, applicability depends on whether a state is a party to those contracts.

International Code of Conduct for Private Security Service Providers was also launched by Switzerland and was finalised in 2010 with the goal of raising industry standards based on the Montreux Document (ICoCA webpage). ICoC Association, tasked with oversight and governance of ICoC, was established in 2013 (*ibid.*). Its members include 7 governments, 122 PMSCs and 50 civil society organisations (*ibid.*). Although the members agree to the guidelines set out in ICoC, there is no legal liability and the only consequence can be losing membership (McFate 2019, 42). Furthermore, even the governments that are members of ICoCA have not committed to only hiring member PMSCs (Pingeot 2012, 16).

In 2010, the UN Human Rights Council established an intergovernmental working group for elaborating a regulatory framework for PMSCs. After several mandate renewals, the working group is still operating and has annual sessions. As of 2023, the second draft of an *international regulatory framework on the regulation, monitoring and oversight over the activities of private military and security companies* is in works, however, it is still unclear whether it would be legally binding or when it would be endorsed (Aparac 2023).

Although these initiatives have shown that PMSCs do not operate in a legal vacuum, there are still several problems with regulating the industry (DCAF 2021, 2). For PMSCs, these self-regulatory standards can be a useful marketing tool rather than binding rules to follow (Pingeot 2012, 14-15; McFate 2019, 28). As a highly international industry, companies often are registered, recruit and operate all in separate countries, which makes determining the

prosecution jurisdiction difficult (Pingeot 2012, 16). Implementing any regulations is left for the national level where political will and capacities are often lacking (DCAF 2021, 2).

Widespread use, regulations and branding strategies have all legitimised the PMSC industry. Additionally, PMSCs borrow their legitimacy from their employees, who are often veterans of national militaries and thus are seen as having served the state (Joachim & Schneiker 2022, 210), which can also add to the impunity associated with the industry. This can be illustrated with former President of the US Donald Trump pardoning four men in 2020, who were convicted for the Nisour Square massacre. The men, all US army veterans, were employed by a PMSC in Iraq and were found accountable for the murder of at least 14 Iraqi civilians. In 2020, President Trump pardoned them alluding to their “long service to the nation” (The White House press secretary, 2020).

Despite industry efforts, PMSC use is still seen as problematic. Even organisations who use these companies admit this in other contexts which brings accusations of organised hypocrisy (Cusumano & Bures 2021, 160). Continuing contracting while stating the use of PMSC only as a last resort shows the gap between actions and talk (*ibid.*). Hypocrisy can also be seen when states that employ PMSCs themselves rhetorically use the term ‘mercenary’ when referring to certain PMSCs used by others (Cusumano & Kinsey 2022, 8). This is prevalent in the context of Ukrainian war as a Russian PMSC Wagner Group is often labelled as mercenary.

2. Methodology

For studying the legitimacy of UN's use of PMSCs, a single case study of United Nations' justification practices in the 21st century was conducted. Qualitative research design was employed to show possible ways for justifying and framing the use of PMSCs as appropriate and legitimate. United Nations is a leading international organisation with 193 member states and great influence on keeping up the international norms and law. As other actors might follow the lead of the UN on possible explanations on the use of PMSC and it could also reflect the opinions of member states, it is important to understand UN's explanations.

The main sources for the case study are academic literature and UN documents retrieved from the organisation's official document system. Academic literature is used to provide a broader understanding of UN's use of PMSCs. For identifying relevant UN documents, the subjects "Staff Security", "Security and Safety Staff" and "Security Management" were searched as these were the subjects used to mark the Secretary-General's report on UN's use of private security. To further narrow the search, "private security" was added as a phrase present in the text. The search provided 38 results in timeperiod from 2002 to 2017. Explanations were also retrieved from reports of the Working Group on the use of mercenaries as they have had the chance to interview different security officials within the UN system. Other UN sources include General Assembly resolutions, Security Policy Manual, Security Management Operations Manual and press releases.

The justifications for the use of PMSCs were expected to fall under two interconnected categories. First, the lack of resources to opt for other solutions and second, the moral obligation to still operate in areas of unrest. The use of PMSCs has largely been considered more cost-effective than national armies, so this argument was also expected to be used by the UN.

The main complication of the paper is identifying relevant UN materials as the UN avoids using the term "PMSC". Instead, several other terms are used, like "contractors", "private security", "private security providers", "commercial security" etc., not distinguishing them from personnel on some occasions, and referring to whole groups of actors like 'non-state actors' without clarifications.

3. Arguing legitimacy: UN legitimising the use of PMSCs

3.1 The use of PMSCs by the UN

In the second half of the 20th century, the UN was a major advocate of the anti-mercenary norm, but since the 1990s has increasingly employed PMSCs (Bures & Cusumano 2021, 580). Since the early 2000s, outsourcing tasks to PMSCs has become widespread and common practice in the whole UN system and its field missions, including peacekeeping (*ibid.*, 589). Although the UN policy restricts the use of PMSCs to exceptional cases, expenses on security service and equipment contracting have increased by 489% between 2009 and 2019 (Cusumano & Bures 2022, 166).

The UN has been secretive of its use of PMSCs and comprehensive data is hard to gather. The Secretary-General acknowledged the use of armed private guards only in 2011 stressing their use as a last resort (Bures & Cusumano 2021, 580). Preference for the term private security companies is also strong among UN officials as they stress only using security services (*ibid.*, 581). However, the line between military and security services is not clear and the same companies often offer both services (Linti 2016, 142). As many institutions in the UN system employ PMSCs in several different roles, there is no overview of the total extent of use and expenditure on these contractors (Pingeot 2012, 24). UN Secretariat Annual Procurement Statistics provide general data on procurements by category and also lists suppliers and the value of their contracts. However, there is no overview of which services and where are provided under these contracts.

According to studies, the use of PMSCs in peacekeeping missions has not been effective and merely fills the gaps in manpower (Cusumano & Bures 2022, 175). At the same time, it negatively affects the UN's status as a humanitarian organisation that safeguards the rule-based international system, including the state monopoly on violence (*ibid.*). Instead of stricter regulations, the UN has also resorted to shifting the responsibility for any misconduct to Member States who contribute PMSCs as part of their forces for peacekeeping (UNHRC 2018, 22)

The Member States have opposing views on the use of PMSCs. In 2019, Security Council Debate on Mercenary Activities in Africa was held and the statements of country representatives show major differences in defining mercenaries and PMSCs. For some states, like Poland, Dominican Republic and South Africa, the two terms are essentially interchangeable, representing armed non-state actors fueling the unrest in Africa for their own

gain. The African Union and some other states see PMSCs as separate from mercenaries, but needing stronger regulations. Finally, there are states, like the UK and Equatorial Guinea, who stress the legality and legitimacy of PMSC while condemning mercenary activities. (UN Press 2019)

3.2 The roles and reasons for contracting PMSCs in UN missions

PMSCs fill various roles in UN missions and often the same company provides several different services. While in the 1990s the main roles were related to transport and logistics, PMSCs now offer armed and unarmed guards, construction, logistics, information and communication technology (ICT), risk assessment, security management, consultancy, intelligence, demining etc (Bures & Cusumano 2021, 589). For example, according to the UN secretariat's annual procurement statistics, the UN contracted a globally operating Israeli company Mer Security and Communicationsystems between 2018 and 2022 for services in eight different categories including security, ICT, education, financial & insurance, office equipment & supplies, vehicles, transportation & storage and power generation & distribution with contracts upwards of \$5 million each year. Other major security contractors have additionally provided services in pharma & health, building & construction, air transport, lodging & conference and several other categories.

A 2012 report by the Advisory Committee on Administrative and Budgetary Questions, shows limited knowledge of UN's own practices within the system (Pingeot 2014, 9). While claiming that only one multinational armed PMSC, IDG Security, has a contract with the UN, the report also lists several contracts with G4S which is the largest PMSC in the world (*ibid.*). According to the report, for political and peacekeeping missions more than 5000 armed private security guards were under UN contracts in 2012 and a budget increase from \$31 to \$41 million was planned for the next one year period (*ibid.*). Even though this report only gave a partial view of UN's use of PMSCs, it was one of the first ones that shed light on this topic (*ibid.*).

In addition, UN activities often use PMSCs indirectly. Outsourcing non-security services can lead to hiring of armed PMSCs for security by these service providers (Pingeot 2012, 26). This can have serious consequences on an already fragile security environment. The World Food Programme's outsourcing of food transportation in Sudan illustrates the tire security conditions of contractors as 26 contracted drivers were killed in the first three months of 2008 (*ibid.*). In Afghanistan, local officials have expressed concerns of local PMSCs paying terrorists to attack convoys in order to keep up the business (McFate 2019, 22).

Indirect use also occurs when member states contract PMSCs for UN missions (Pingeot 2012, 26). For example, every police officer contributed by the US for the UN civilian police force has been a PMSC employee (Pingeot 2014, 7). Between 2005 and 2014 peacekeepers and police troops for UN missions were trained through Global Peace Operations Initiative which was led by the US and almost entirely outsourced to PMSCs (*ibid.*).

The main purpose of contracting PMSCs is the safety of the UN staff. At first, local and unarmed companies were hired (Linti 2016, 143). As the UN took up roles in higher risk environments, the security risks rose (Pingeot 2012, 23). After an incident in Baghdad in 2003, where 22 UN Assistance Mission staff members were killed in a bomb attack, the Department of Safety and Security (DSS) was established (*ibid.*). With expanding peacekeeping operations and attacks on UN property in Beirut in 2006 and Algiers in 2007, security outsourcing expanded (*ibid.*)

In 2009, the United Nations System Chief Executives Board for Coordination adopted a new strategic vision shifting security management policy approach from “when-to-leave” to “how-to-stay” (Working Group on the use of mercenaries 2014, 4). This shift has led to UN missions operating in increasingly challenging security conditions which means increased need for forceful protection (Pingeot 2012, 36). Outsourcing risk to PMSCs in these settings lessens the number of UN staff casualties and minimises legal liability for security-related damages (*ibid.*). The focus of the UN is solely on reducing security risks rather than evaluating the reasons for their staff becoming a target and whether the UN should operate amid ongoing conflicts (*ibid.*).

3.3 UN policy on the use of PMSCs

Until 2011 there was no coherent policy approach to employing PMSCs within the UN and different, often contradictory approaches were used (Østensen 2011, 40). In 2012 the UN Department of Safety and Security (UNDSS) adopted a Security Policy Manual (from now on the Manual), which regulates contracting armed and unarmed PMSCs. The manual states the host Government as primarily responsible for the safety and protection of UN personnel and property. However, in certain cases, the use of Armed Private Security Companies and Unarmed Private Security Services is authorised. Both of these are covered in the Security Policy Manual and are accompanied with guidelines found in Security Management Operations Manual, to which the compliance is expected but mandatory only in some cases.

3.3.1 Armed Private Security Companies

The use of armed PSCs is regulated by the Security Policy Manual and accompanying document “Guidelines on the Use of Armed Security Services from Private Security Companies” both adopted in 2012. The policy states use of armed PSCs only in exceptional cases when the host Government, alternate Member States and security entities of the UN are unable to provide these services. Altogether, the exceptional nature of the use of armed PSCs is mentioned seven times in the documents (Cusumano & Bures 2022, 165). The Manual states the possibility of taking administrative action against personnel that violate this policy, but further measures are not discussed.

The necessity of the use of armed security services is determined through Security Risk Assessment (SRA), which identifies threats and level of risk for the UN personnel, premises and operations, and measures for lowering them (UN Department of Safety and Security 2012b, 4). Two objectives for the use of armed personnel are identified: *a visible deterrent to potential attackers* and *an armed response to repel any attack not deterred (ibid.)*. The Designated Official, Security Management Team and Security Advisor are responsible for identifying the need for private security providers and the Under-Secretary-General for Safety and Security must approve their use (*ibid.*, 4-6). For each contract renewal the whole process needs to be repeated (*ibid.*, 6).

The guidelines lay out the requirements for company's eligibility. Among other criteria, only companies member to ICoC and with valid relevant licences can be employed (UN Department of Safety and Security 2012b, 6). The screening and training of personnel according to UN requirements is the responsibility of the company (*ibid.*, 7, 9). The PSCs are also required to develop a Use of Force Policy, Weapons Manual and Standard Operating Procedures in accordance with relevant UN documents (*ibid.*, 8).

For the management and oversight of the PSCs, *daily on-site inspection* and *monthly review of the performance* are used (UN Department of Safety and Security 2012a, 118). However, the Security Policy Manual and the Guidelines state different officials as responsible for these mechanisms. According to the Manual, it is the responsibility of the UN Security Management System organisation or *most senior security professional directly supporting the Designated Official (ibid.)*. In the Guidelines, assigning a Contracting Officer is mentioned and additional supervision and review has to be done by *the applicable United Nations security professional* (UN Department of Safety and Security 2012b, 10). In certain circumstances *the DSS Chief*

Security Adviser/ Security Adviser, entity's Field Security Officer or in-country Agency Security Focal Point is mentioned as the responsible officer for the daily inspection (*ibid.*). The DSS Chief Security Adviser/Security Adviser is responsible for the completion of monthly review in all circumstances (*ibid.*, 11).

3.3.2 Unarmed Private Security Services

The policy on unarmed private security services was added to the Manual in 2016 and is accompanied by 'Guidelines on the Use of Unarmed Security Services from Private Security Companies'. Private security services are used to support existing security capacities or to deliver security services in a cost-effective manner without endangering or compromising the security of UNSMS personnel and visitors (UN Department of Safety and Security 2016a, 134). The objectives for unarmed security services are the same as for armed services - acting as a visible deterrent and repelling any attacks that were not deterred (UN Department of Safety and Security 2016b, 419).

The need for unarmed private security services is determined in the Security Risk Management process and confirmed by UNDSS. The private security providers are equipped only with non-lethal equipment and are not authorised to carry firearms (UN Department of Safety and Security 2016a, 135). In the Manual, 7 security duties are identified for which private security providers may be used:

- (a) Entry control procedures management, screening, perimeter patrolling, escorts, counter-hostile surveillance, mail screening, responding to alarms and training*
- (b) Security advisory and assessments services*
- (c) Site and specialist technical surveys*
- (d) Installation, maintenance and operation of security technology (e.g., close circuit television, tracking systems and communications)*
- (e) Safety, fire, traffic and medical services*
- (f) Residential guard services*
- (g) Other services as defined in the contract and in accordance with this policy.*

Unlike armed PMSCs, unarmed contractors do not need to be members of ICoC and most of the details and requirements are tackled in the Guidelines, which are not mandatory. Screening and training of the personnel is left to the companies, however on-site trainings are conducted by the UN (UN Department of Safety and Security 2016b, 427). The management and oversight of contractors is the responsibility of Contracting Officer and Contracting Officer's

Representative (*ibid.*, 429). The Guidelines also include topics for a monthly review and meeting with the contractor, which should be recorded added to the contract file (*ibid.*, 430). However, these monthly reviews are not mentioned in the Policy Manual, making them essentially voluntary. No enforcement clause is mentioned in the manual.

3.4 Criticism of the use of PMSCs from inside the UN

For more than three decades, the Special Rapporteur and later Working Group on the use of mercenaries has been the main critic of the use of PMSCs by the UN. The Special Rapporteur was mandated in 1987 by the Human Rights Council and in 2005 replaced by the Working Group *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 the Working Group) composing of five independent experts (OHCHR webpage). Although only mercenaries are mentioned in the name of the Working Group, its focus has largely shifted to PMSCs (Bures & Cusumano 2021, 594).

In 2002, the Secretary-General predicted the phasing out of outsourcing security tasks, seeing it as compromising to the safety (Bures & Cusumano 2021, 593-594). However, the opposite has happened as expenditure on security contracting has risen continuously and instead of being a last resort, PMSCs have become a default option (Cusumano & Bures 2022, 173). At the same time, the UN staff has voiced concerns about their safety being sourced out to private contractors as local guards are often underpaid and inadequately equipped to respond to threats (Working Group on the use of mercenaries 2014, 7-8). The Working Group has addressed these issues most notably in the 2014 report on UN's use of PMSCs.

The increasing private use of force and the presence of non-state actors in armed conflicts is seen by the Working Group as resulting in more frequent violations of human rights (UNHRC 2018, 26). In 2010, the Working Group addressed the lack of policy on the use of PMSCs by the UN, which led to the UNDSS policy on armed private security in 2012 (*ibid.*, 22). After reviewing the policy, the Working Group noted several shortcomings including lack of screening of the personnel by the UN, only including armed services, not tackling indirect use and no sanctions for violating human rights (*ibid.*, 22-23). Consequently, in 2016, the policy and guidelines on unarmed security services were adopted, but work on other issues mentioned is lacking (*ibid.*, 23).

Despite these advancements in policy, the Working Group keeps advocating the need for an updated definition of mercenarism and effective accountability measures for PMSCs (UNHRC 2018, 25). Since starting the elaboration of an international legal framework for PMSCs, essentially no progress has been made due to conflicting views on the issue by Member States (*ibid.*). Although several experts have concluded that PMSCs do not operate in a legal vacuum, the Working Group still believes that they do (*ibid.*, 26).

In addition to the Working Group, several other UN organs have expressed concerns about the growing use of PMSCs. In 2004, the Office for the Coordination of Humanitarian Affairs noted concerns about PMSCs hired for security services becoming a target in conflict zones (Pingeot 2012, 21). A high-level panel concluded in a report to Secretary-General in 2008 that good perception and sympathy for UN work and values is the key for its staff's security which can not be assured with merely physical security services (*ibid.*). In 2012, the General Assembly requested the Secretary-General to assess the appropriateness of using PMSCs and report to the Assembly (Un General Assembly 2012, 15). The topic was also discussed by the Fifth Committee of the General Assembly in 2013 and consecutive recommendations to the General Assembly stressed the use only as a last resort, the need to widely disseminate the policy on armed private security and the need for more information and clearer criteria for when it is appropriate to use armed PMSCs (Pingeot 2014, 10).

In 2014, the Coordinating Committee for International Staff Unions and Associations (CCISUA) that represents UN field-based staff, highlighted their position on not employing UN staff to areas where the host country, Member States and UN security staff are unable to provide security. CCISUA stresses the use of PMSCs as a security risk to the staff as it can bring public anger and retaliatory violence (UN Chief Executives Board for Coordination 2014, 33). Additionally, the cost saving aspects of PMSCs use and on staff security in general were condemned (*ibid.*, 34).

3.4.1 Practices of legitimation of the use of PMSCs by the UN

The search in the UN's Official Document System yielded 38 documents, most from years 2012 and 2013. Several of these documents were already mentioned in the subchapter 3.4 and don't provide justifications on the use of PMSCs by the Secretary-General or other high-ranking UN officials. The only relevant document for gathering UN's explanations on their use of PMSCs is a report by the Secretary-General from 2012. This demonstrates the continuing silence and lack of information on this topic pointed out by the Working Group and other researchers.

The report of the Secretary-General was released as a response to the request of the General Assembly to assess the appropriateness of the use of PMSCs. This is the only occasion when the Secretary General has addressed this topic directly in a report, and the same explanations have been recycled since with some additions from reports by the Working Group. The main justifications used by the UN are functional, framing the use of PMSCs as inevitable as there are no other resources available while also stressing the need to fill mandates from Member States.

In the report, The Secretary-General frames the use of PMSCs as the only option to be able to carry out the mandates from Member States (UN Secretary-General 2012, 2). As the Member States demand missions in (post)conflict areas and the host country and Member States fail to provide sufficient security, the UN has to resort to PMSCs in order to protect its staff (ibid.). Filling a mandate is seen as the only option and can be traced back to the policy change to ‘how-to-stay’ mindset.

Security officials have pointed to several reasons for the employment of PMSCs. Conflicting views among Member States make funding and instructions unclear, and despite a growing number of mandates, oppose raising staff numbers (Working Group on the use of mercenaries 2014, 7). They also point to administrative issues causing disconnect inside the UN system and high staff cost (ibid.). At the same time, PMSCs are seen as readily available when needed and easily disposable once they have fulfilled their duty (ibid.). Staff costs of PMSC employees are often perceived as significantly cheaper as the recruitment, training and staff costs are left to the companies (ibid.).

The notion, highlighted by the Secretary-General and policy on private security, that PMSCs are only used as a last resort highlights the understanding of PMSCs as not fully legitimate. However, it is not much more than an empty phrase. Although the primary responsibility for the safety and protection of UN personnel is on the host country, this can’t be expected from a state that is mid-conflict. Sending national troops to a conflict zone, when there are other options available, does not seem to be a step that any Member State would be willing to take. Just like the UN prefers to put PMSC employees on the line instead of their own staff. This could be the reason why the use of PMSCs have become the norm, and why such mandates are even carried out. The Working Group has highlighted this in a 2021 report, stating sending missions to areas where there is little or no ‘peace to keep’ (Working Group on the use of mercenaries 2021, 9).

The Secretary-General also acknowledges the UN being specifically targeted in some conflict zones in the 2012 report (UN Secretary-General 2012, 2). Like mentioned before, this concern had been expressed in earlier reports by other UN organs and suggested the trust for UN's work and values by locals in mission states as the key to security. For over a decade, this suggestion has been ignored and fortifying physical security has been employed instead. Growing numbers of armed security providers in UN missions is also in contrast with UN's anti-mercenary norm and prohibition of using force in international relations.

The UN's silence on the use of PMSCs has in general worked in its favour. Pointing to the use of PMSCs as something that is not up to the UN to decide but rather an inevitable consequence of Member States' decisions, has allowed it to ignore the contrast between norms and what the use of PMSCs symbolises. Stressing the principle of last resort, even when it is in obvious contrast with actual actions, shows the understanding of using PMSCs still being inappropriate and not fully legitimate.

On the 75th anniversary of the UN, Member States expressed their support for reforming the UN and review of peacekeeping principles. As an answer to this, the Secretary-General presented in 2021 'Our Common Agenda' which includes a New Agenda on Peace (UN Secretary-General, 2021). A policy paper on the New Agenda for Peace is expected in June. This is an opportunity to move from growing use of force back to trust-building in order to be seen as a legitimate peace entrepreneur by every person.

Conclusion

Private Military and Security companies have become a major actor in international relations. Fast growth of the industry is fueled by a large user base consisting of states, corporations, NGOs, international organisations and private clients. Despite this, PMSCs are still associated with mercenaries which makes their use questionable.

The aim of this thesis was answering the question whether the use of PMSCs by the UN is legitimate. This was done through a case study of UN's PMSC employment practices in the 21st century. Constructivism was employed as the theoretical framework and UN documents were the main source for the case study.

The analysis concluded that employing PMSCs is widely used in the UN system. Coherent policy on the use of armed private security was promulgated in 2012, and followed by criticism from the Working Group, policy on unarmed private security was included in the Security Policy Manual in 2016. The policy is accompanied by guidelines in both cases, however these are not mandatory to follow.

The use of PMSCs is criticised by several UN institutions. The most prominent of these is the Working Group on the use of mercenaries, which has criticised UN's practices in several reports. Additional concerns have been voiced by the fifth committee, the Office for the Coordination of Humanitarian Affairs, CCISUA and General Assembly. The viewpoints of Member States on this question vary vastly.

The Secretary-General and other high-ranking UN officials have largely remain silent on the topic of using PMSCs. When addressing it, the emphasis is on functional explanations for employing PMSCs. Framing the use as inevitable has allowed the UN to distance from the responsibility of the decision to employ PMSCs. However, the principle of hiring PMSCs only as a last resort and stressing it on every occasion even though actions are in stark contrast to it, shows the understanding of PMSCs as not completely appropriate and legitimate.

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