Since the 19th century, violent non-state actors have been prohibited by the anti-mercenary norm. Today, however, private military and security companies (PMSCs) are widely perceived as legitimate. How did they achieve that legitimacy? This article argues that PMSCs initially resembled mercenaries. Previously, mercenaries were defined as fighters participating in combat, be it offensive or defensive. PMSC advocates aimed to alter the combat component of the anti-mercenary norm. By arguing that PMSCs’ use of force was not combat, but rather individual self-defence, they created an alternative interpretation which established the practice as appropriate. As critical actors like the United States, the United Kingdom and the United Nations adopted their interpretation, the regulatory scope of the norm changed. In short, PMSCs are perceived to be legitimate because they are no longer implicated in the anti-mercenary norm.

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“What one generation considers to be a ‘mercenary’ the next may not.”[[1]](#footnote-2)

Imagine that at a conference on military operations, a crafty entrepreneur gave a presentation on his international privateering start-up company, offering to interrupt enemy trade and to protect shipments of strategic importance. Would we consider this a legitimate business? Who is permitted to use force, and for what purpose, is a fundamental question each society has to address. In general, the answer is determined by the shared norms within a society governing the legitimate use of force.[[2]](#footnote-3) Today, the privateering start-up would probably sail into deep water. Since the nineteenth century, the norm of state monopoly of force has concentrated the legitimate decision-making, ownership, and allocation of the means of violence in the hands of the state.

Another type of non-state actor, private military and security companies (PMSCs), i.e., civilian firms providing armed protective services for convoys, compounds, or personnel in war zones, also runs afoul of the normative structure.[[3]](#footnote-4) PMSCs affected not only the monopoly of force, but a more specific norm explicitly banning any use or employment of mercenaries, or what is sometimes called the anti-mercenary norm. Not surprisingly, the emergence of PMSCs has faced strong discursive resistance. The International Consortium of Investigative Journalists, for instance, considers them a euphemism for “mercenaries.”[[4]](#footnote-5) The United Nations (UN) special rapporteur on mercenaries, Enrique Ballasteros, has called private security providers the “new modalities of mercenarism.”[[5]](#footnote-6) Nonetheless, the employment of PMSCs today is widespread and appears to be gaining legitimacy.[[6]](#footnote-7) Consider, for example, their extensive deployment to Iraq and Afghanistan or the recent signing of the “Montreux Document,” wherein 34 governments defined “good practice” for the use and conduct of PMSCs.[[7]](#footnote-8) This evolution raises the question of how the existence of PMSCs can be reconciled with the ban of mercenarism and the monopoly of force. In other words, how have PMSCs become legitimate actors?

This article argues that PMSCs *initially* – i.e. during the period between the late 1980s and 1990s – violated the anti-mercenary norm and were, hence, illegitimate actors. However, as Janice Thomson has argued, “the contemporary organization of global violence is neither timeless nor natural.”[[8]](#footnote-9) Moreover, there is always a tension between general rules and specific practices. That tension leads to disputes, the generation of arguments, and eventually a reshaped normative structure.[[9]](#footnote-10) In the case at hand, the discourse narrowed the regulatory scope of the anti-mercenary norm by specifying that combat comprises offensive actions, and broadened at the same time the self-defence norm by including defensive combat tasks. While the anti-mercenary norm had previously covered all private commercial actors participating in combat, PMSCs became exempt and legitimized by the self-defence norm. Their use of force was no longer considered combat, but rather self-defensive and therefore legitimate.

 The rest of this article outlines the theoretical foundations of normative change, clarifies the anti-mercenary norm and how PMSCs initially challenged it, and finally traces the development of the discourse in three different arenas: the US, the UK, and the UN.

**The debate on norm recess**

Constructivists have developed sophisticated approaches to explain the emergence of norms. However, few authors have dealt with their de-institutionalization.[[10]](#footnote-11) Some have suggested a reversed norm cascade, while others have focused on structural factors.[[11]](#footnote-12) To Wayne Sandholtz, normative change is not a one-time event, but a continuous cycle of discourses on the content, scope, and shape of norms. Any cycle starts within a constellation of existing norms, which lends more legitimacy to some activities than to others. However, the existing rules cannot cover every contingency. As a result the relevant actors, such as politicians, officials or spokespersons for particular interests, enter into a discourse to produce a shared understanding on which norm applies and what it requires. Any consensus will change the norm in question. In the end the regulatory scope of the norm might be bolstered, if it is broadened by including the new practice, or it may end up to be weakened, if the regulatory scope is narrowed or a particular conduct that has been stigmatized gains acceptance.[[12]](#footnote-13)

Analysts continue to struggle to specify conditions under which a particular position prevails. It is widely agreed, however, that the ability of a norm entrepreneur to embed the new practice with already accepted norms is central to success. An important tool in this regard is “framing.” Technically speaking, the framing of an issue is the selection of particular aspects of the reality and making them salient. [[13]](#footnote-14) Its purpose is to provide a singular interpretation of a particular practice or situation, and to indicate whether the practice is appropriate, or what action might be appropriate to address the respective situation. Moreover, frames provide either the association or disassociation of the new practices to a norm.[[14]](#footnote-15) The assumption here is that the frame that posits the *most credible* argument of associating or disassociating the new practice to a specific norm will prevail.

There are at least two ways to build a credible association or disassociation. First, norm entrepreneurs may subsume the new practice under the criteria of the norm. Such activity might entail referencing events selectively, or emphasizing or downplaying a certain feature in order to strengthen or weaken the connection.[[15]](#footnote-16) This is not to say that anything goes. Norm entrepreneurs seek to persuade a particular target audience of the validity of their claim. In such a setting the truthfulness of the frame is important. In a discourse the ‘better argument’ wins, i.e. the one that is in conformity with the perceived world.[[16]](#footnote-17) Hence, if actors overemphasize features or are too selective, it undermines the truthfulness of the frame.

Second, norm entrepreneurs may also reshape the normative criteria they are evoking. To achieve their goal, actors engage in norm stretching, that is, they make the norm applicable to a broader range of practices.[[17]](#footnote-18) In this process either the attributes of the norm are reduced or the criteria are loosened. Actors can also engage in norm specification, or make the norm applicable to a smaller range of practices by adding new attributes to the norm or making particular aspects more prominent. Norm stretching is not infinite. Overstretching can create indefinite norms that are elusive of the criteria. Likewise, norm specification can be applied so extensively that it obfuscates the initial regulatory content of the norm and becomes applicable only to a small subgroup of cases.[[18]](#footnote-19) Both overstretching and overspecification can lead to a diminished likelihood of success. In a setting where multiple arguments compete for support, the frame closest to the initially accepted content is likely to succeed.

It is crucial for the analysis to establish a measure to determine when (and if) a frame has been accepted and a consensus has been reached. The process of determination has two elements: First, actors within the discourse need to adopt the frame: actors must be using similar terms in the debate and express their agreement with the arguments. Second, the scope of the support within the target audience is critical. Nonetheless, as norms are constantly questioned and challenged, it seems unrealistic to expect all actors to fully agree with a new interpretation or norm at a certain point in time. Martha Finnemore argues that only certain actors can determine the success of a normative change or a new argument on their own.[[19]](#footnote-20) The Presence or absence of crucial actor support consequently provides a sound indicator for the state of the consensus. However, the critical actors differ from discourse to discourse. In the case of international norms, international organizations and states play an important role in fostering consensus.[[20]](#footnote-21) The focus here rests on the UN, the US, and the UK. The international community has institutionalized the UN special rapporteur and subsequently the Working Group as watchdogs against mercenarism. Their contributions are therefore crucial to the debate. The US and the UK are taken into consideration as they are home to the largest PMSC industries. Still, accepting governments as target audiences to be convinced by the arguments can be misleading. Both governments have hired PMSCs, potentially motivating them to engage in “rhetorical action,” i.e. to employ normative arguments instrumentally.[[21]](#footnote-22) For the purpose of this article, governments are therefore considered rather a part of the advocacy network seeking to convince the target audience of the appropriateness of its practice. In order to determine whether a consensus has formed, attention is focused on the respective parliaments. Parliaments in democratic systems are independent from the government and explicitly tasked with monitoring and controlling its actions. A consensus or a lack thereof in parliament is therefore a strong indicator of norm-change or failure to change. Proponents and opponents of norm change need therefore access to the parliament and the UN to spread their message.

**The normative context: the anti-mercenary norm**

Article 47 of the First Additional Protocol of the Third Geneva Convention constitutes a legal anti-mercenary norm. The law provides a definition of a mercenary, but it includes many loopholes. Its vagueness could be interpreted as deliberate in order to retain the mercenary option. Sarah Percy therefore differentiates between the legal and social anti-mercenary norm. She shows that the existence of the law is a reflection of the dedication of the states to ban mercenarism and the problems of translating it into legal terms. The weakness of the legal anti-mercenary norm does not indicate a weak social anti-mercenary norm.[[22]](#footnote-23) With regard to the latter, Janice Thomson concludes that no state has attempted to challenge the norm openly since it was institutionalized in the eighteenth century.[[23]](#footnote-24) However, without giving a precise description of a mercenary, the norm’s prescriptive scope is unclear. Mercenaries are defined in several ways in the literature. All of them, however, suffer from serious shortfalls, most notably they cannot account for the different historical shapes of mercenarism.[[24]](#footnote-25)

Percy offers a more promising approach. She considers two components to be crucial for the definition of a mercenary: First, the categorization depends on the extent to which fighters can associate themselves with a larger group cause independent of personal profit motivation. Second is the degree to which the fighter is under the control of the proper authority, which nowadays is the state. In short, mercenaries are not or only loosely associated with a group cause, and are only loosely controlled by the state.

Percy does not consider PMSCs to be mercenaries, as they associate themselves with a larger group cause and are under “tight” state control. PMSCs can point to a greater cause, as they fight for the goals of their home state, contract “primarily” or “exclusively” with their home state, or work only on projects approved by their home state. [[25]](#footnote-26) There are problems, however, with Percy’s argument. First, even if PMSCs might be working closely with governments in some cases, it is doubtful whether their work automatically generates an affiliation with the group cause. Indeed, some operators might have other motivations or share the government’s cause.[[26]](#footnote-27) Moreover, none of these factors change the profit orientation of the corporate structure. For instance, PMSCs have been known to distort costs during the bidding process as well as to attempt to reduce efforts after having secured a contract to increase profit.[[27]](#footnote-28) The involvement of the firm is therefore based on a series of deliberate business decisions; moreover, even if the firms and operators subscribe to the cause of a specific government, most of them do not work primarily or exclusively for a single government. They provide armed services to foreign governments, non-governmental organizations (NGOs), international organizations (IOs), and corporations. British PMSCs, for instance, only occasionally work for the British government; the majority of their contracts are in the commercial sector.[[28]](#footnote-29) This indicates no, or only a very remote, affiliation of PMSCs with the group cause.

Second, Percy also claims that PMSCs are under tight state control, almost like national forces.[[29]](#footnote-30) Indeed, the state might enjoy some control over PMSCs through domestic law, or if they are deployed alongside government armed forces. Recently, for instance, the US armed forces established coordination interfaces and oversight bodies in Iraq.[[30]](#footnote-31) However, most experts deem the current system of oversight, control, and accountability to be insufficient.[[31]](#footnote-32) Additionally, the historical development of state control gives more reason to label such an arrangement as rather “loose.”. According to Janice Thomson, the state monopolized ownership of the means of violence and of decision-making in the nineteenth century, which rendered illegitimate any violent actor not incorporated in the state structure.[[32]](#footnote-33)

In sum, the definition is not suitable for defending PMSCs against the charge of mercenarism. On the contrary, if the definition is taken for granted, PMSCs do come under the regulatory scope of the norm. [[33]](#footnote-34)

**The reconstruction of the anti-mercenary norm**

*First Cycle: Strengthening of the anti-mercenary norm*

In the 1990s, the CEOs of two PSCs, LtCol. (ret.) Eeben Barlow, former head of the now defunct South African Executive Outcomes, and LtCol (ret.) Timothy Spicer, head of the former British firm Sandline, became the unofficial voices of the industry. Both were aware of the controversial nature of the services their firms offered. Thus, the major aim was to disassociate the security industry from the anti-mercenary norm, and to legitimize participation of private companies in combat. However, the frames both provided were different.

Spicer’s strategy was to show that PMSCs had been legitimized to use force in combat as they were serving a group cause and were affiliated with a legitimate authority. Hence, he developed arguments to disassociate security companies from the out-of-control and gun-slinging mercenary gangs. According to Spicer these “private military companies” (PMCs) were under the control of a government. Moreover, the industry would “only work for the good guys,” the government, and not for criminals or guerillas.[[34]](#footnote-35) Spicer addressed the group cause problem by aligning PMSCs with widely accepted causes, such as peace and the protection of human rights. Accordingly, private military providers could augment a NATO intervention for peace and stability or advance the human rights regime by providing the international community with a tool to intervene in cases of gross human rights violations. [[35]](#footnote-36)

While Spicer had focused on disassociating PMSCs from the mercenary criteria, Eeben Barlow pursued a different strategy. He referred to a third, implicit, component of mercenaries: mercenaries were fighters, which meant that they had to participate in *combat.* If he could disassociate PMSCs’ use of force from combat they would no longer be covered by the anti-mercenary norm. Barlow therefore argued that EO personnel used force only in self-defence. Such force was different from combat as it was responsive, aimed at protecting oneself when fired upon. Combat, in contrast, took the initiative to the opponent with the aim of victory.[[36]](#footnote-37)

In contrast, Enrique Ballesteros, at that time the United Nations special rapporteur on mercenaries, did not share the industry’s self-depiction. He considered PMSCs the “new operational model of mercenarism.”[[37]](#footnote-38) Most important, PMSCs lacked any group cause. As corporations, all military and security firms traded force as a commodity and rendered its distribution subject to profit interests, which jeopardized the security of the people. Moreover, the use of force by such firms resulted in human rights violations as they had no respect “for human life and dignity and international law and consider cruelty and contempt for the human being to be virtues.”[[38]](#footnote-39) With regard to the legitimate control, Ballesteros conceded that PMSCs indeed worked for governments. However, in his view they would not be able to control market forces. To emphasize his point, he depicted the negative repercussions of practice on the internationally accepted norm of sovereignty. If such firms gained control over a country’s security, they would gain “considerable political influence over production and economic, financial and commercial activities.”[[39]](#footnote-40)

In the first cycle, both the proponents and opponents of the PMSC trend competed for the support of the UK parliament. In the end, the Foreign Affairs Committee (FAC) shared Ballesteros’ concerns about the increasing privatization of warfare. In its view, PMSCs were “nothing more than mercenaries and arms-mongers.”[[40]](#footnote-41)

In his effort to disassociate PMSCs from mercenaries, Timothy Spicer’s effort emphasized the desire to serve a group cause. However, in 1998, Sandline became the centre of the so-called “arms to Africa” affair, for supporting the Sierra Leone government in the midst of a civil war in 1998. A UK parliamentary investigation eventually demonstrated that the firm had broken the UN arms embargo and that Sandline had apparently been paid in part by diamond concessions. This weakened Spicer’s argument as his claims were incongruent with the actual events. Since FAC considered diamonds to be one of the main causes for the Sierra Leone civil war, it doubted that Sandline was acting altruistically. Consequently, the committee concluded that the “last thing” any trouble spot needed was the involvement of such firms. [[41]](#footnote-42)

Likewise, Eeben Barlow’s self-defence frame also failed to legitimize the use of force by PMSCs. It played almost no role in the parliamentary debate. This may have been due to Barlow’s lack of direct access to the parliament. However, his views were well-publicized in the press.[[42]](#footnote-43) The self-defence frame was discredited at that time as it overstretched the criteria of the self-defence norm severely. In general, self-defence is any person’s privilege to kill an aggressor to avoid imminent loss of his life, health, liberty, or even possession.[[43]](#footnote-44) This understanding has several implications. First, individual self-defence occurs unexpectedly and is an *ad-hoc measure*, usually a single isolated act or brief series of acts to harm the opponent.[[44]](#footnote-45) In warfare force is part of the all-day business and armed forces are purposely built and structured to apply force in an organized manner. EO did not employ force in an ad-hoc manner, but was an organized entity - with a command structure and group cohesion - using force in a methodical way. The firm, for instance, devised a battle plan and carried out combined air-ground operations.[[45]](#footnote-46) Second, individual self-defence is only permissible to ward off an *imminent* attack, whereas in combat it is permitted to take actions against all enemy fighters. In war, any enemy fighters can be attacked because “they pose a danger to other people”.[[46]](#footnote-47) A soldier is therefore permitted to use force against any foe even if it does not pose an imminent threat. EO did not react to imminent attacks only, but took actions against all enemy fighters (it employed armoured vehicles and helicopters to attacks rebels’ strongholds). [[47]](#footnote-48) Third, the ultimate goal of individual self-defence is to protect the person’s life, but it does not serve a higher collective aim. In war, a soldier uses force to carry out a mission in support of the broader aim or mission. However, the purpose of EO’s use of force was not ‘only’ self-defence, but also part of a broader military operation to secure the stability in Sierra Leone and ultimately defeat the rebels.

Enrique Ballesteros overstated his case as well. To depict the gravity of the mercenary problem he subsumed almost any violent non-state actor group – including criminals, terrorists, and religious volunteers – under the mercenary label, or at least argued that a connection existed.[[48]](#footnote-49) Nonetheless, compared to Spicer’s argument, his frame was more congruent with the events. For instance, Sandline’s circumvention of the UN arms embargo supported his claim that PMSCs had no respect for international law. The alleged payment in diamonds was also more in accordance with Ballesteros’s depiction of the profit-driven nature of the firms. Finally, Ballesteros’s frame was less overstretched than Barlow’s idea of EO’s personnel only using force in self-defence. Not only had EO conducted combined air and land assaults in Sierra Leone, Barlow, himself, had entertained the idea that self-defence included pre-emptive strikes.[[49]](#footnote-50) As a result, PMSCs were still covered by the anti-mercenary norm at the end of the first cycle.

*Second Cycle: Specifying the anti-mercenary norm*

The second cycle was introduced by the publication of the British government’s green paper on the PMSC-mercenary issue in 2002. The paper defended the practice of PMSC-employment in stark opposition to the views voiced by the special rapporteur or the previous FAC report. In the introduction, Jack Straw, at that time foreign minister, indicated what was about to come: “[t]oday’s world is a far cry from the 1960s when private military activity usually meant mercenaries.”[[50]](#footnote-51) Indeed, the FCO’s position appears to not have been altruistic but rather instrumental, as it was using armed private actors to protect diplomatic personnel and embassies in conflict zones.[[51]](#footnote-52)

However, the FCO also considered PMSCs as legitimate actors. It specifically addressed the special rapporteur’s claim of security firms lacking a group cause. PMSCs had a potential role in supporting weak governments, and in the protection of human rights. The special rapporteur’s argument that governments hiring PMSCs were acting illegally was “extreme.” PMSCs could be used by a weak government to acquire the adequate resources for self-defence purposes and to assure domestic security. Accordingly, the FCO considered EO’s military support for African states as positive. Finally, PMSCs could supplement UN operations, which often suffered from high costs and poor troop quality. PMSCs could be held to higher standards and were more cost-effective.[[52]](#footnote-53)

Nonetheless, the report did not seek to grant PMSCs carte blanche. The FCO was concerned with PMSCs participating directly in combat, other than under exceptional circumstances, for example, to reestablish the monopoly of force or in humanitarian operations.[[53]](#footnote-54) It was less anxious to phase out combat operations, than to prevent any inadvertent repercussions on private military and security services that had been were deemed legitimate.[[54]](#footnote-55) Services other than direct participation in combat, e.g. advice and security services, were considered legitimate tasks. Armed security services, even though in a conflict zone, were deemed to be similar to watchman services in a domestic context as so long as force was used only for protective purposes. That said, the FCO admitted that the line between combat and non-combat services was a difficult one to draw.[[55]](#footnote-56)[[56]](#footnote-57)

Many representatives of the industry applauded the green paper.[[57]](#footnote-58) At this time, the industry had given up on legitimizing PMSC combat operations, with the exception of humanitarian crises and peacekeeping missions.[[58]](#footnote-59) The use of defensive force in conflict zones was not considered combat, and hence was legitimate.[[59]](#footnote-60) To differentiate between combat and non-combat use of force, the industry provided several criteria. Dough Brooks, then-president of the US-based International Peace Operations Association (IPOA), argued that the use of force in combat was aggressive and offensive, while defensive force was passive and reactive in nature.[[60]](#footnote-61) Likewise, Armor Group did not accept that it could field “combat troops” and emphasized that doing so would be illegitimate. The firm’s personnel carried arms only for personal defence and did not engage in offensive combat actions.[[61]](#footnote-62) Timothy Spicer had changed his argument as well. He now emphasized that private military companies provided protective and passive security services only. They did not provide combat operations anymore.[[62]](#footnote-63)

Needless to say, not everybody was equally thrilled by the government’s green paper. Unconvinced by the arguments, the special rapporteur called it a “serious and deplorable backward step.”[[63]](#footnote-64) Rather than responding directly, Ballesteros continued to associate PMSCs with the mercenary criteria. He argued that PMSCs were participating in combat and lacked a group cause. They were hired because they had no “scruples in riding roughshod over the norms of international humanitarian law or even in committing serious crimes and human rights violations.”[[64]](#footnote-65) Moreover, the privatization of warfare was still a threat to the civilian populations and peace and sovereignty.[[65]](#footnote-66) Furthermore, mercenary activities were not limited to participation in combat, but also included assassinations, acts of sabotage, any kind of illicit trade, and the provision of security and military services. Ballesteros even claimed that mercenaries participated in terrorist attacks.[[66]](#footnote-67)

Like the special raporteur, the FAC analyzed the green paper in detail. In general, the FAC agreed with the Foreign Secretary’s observation, that contemporary PMSCs were a far cry from mercenaries.[[67]](#footnote-68) It conceded that the vast majority of PMSCs provided legitimate services and that they were able to contribute to a group cause, such as security and stabilization. Moreover, since terrorism spread in weak states, PMSCs were an effective way to provide needed capabilities. The deployment of PMSCs in support of UN-peacekeeping operations was similarly appealing. This assessment was a complete reversal of the FAC’s position on the 1999 report.

Still, the committee only considered non-combat roles appropriate. The use of force for defensive purposes was considered appropriate, but any direct participation in combat operations was not. Indeed, the difficulties differentiating between combat and non-combat were acknowledged. To do so, the committee considered combat as the offensive and direct application of force, taking the initiative to pursue the enemy or to carry out a pre-emptive strike. Non-combat was defensive and protective force to ward off an enemy. [[68]](#footnote-69)

This success of the defensive frame this time is associated with its relative strength. First, the proponents had widely abandoned the efforts to legitimize the use of force disassociating PMSCs from mercenaries. The argument that they only worked for the “good guys” was too vague as they worked for multiple state and non-state clients.[[69]](#footnote-70)

Second, with regard to the defensive frame, the proponents were more careful than Barlow in extending the criteria of the self-defence norm. Indeed, the use of force by PMSCs was still not an ad-hoc measure, but organized and methodical. Likewise, if included in peacekeeping operations or in support of a weak state, the use of force still served a higher military goal. However, the degree to which the PMSCs set the military goals and operated independently to achieve the goal changed. Their operational independency was de-emphasized and the role of the state underscored. PMSC deployment was considered appropriate if it assisted the state and was properly monitored. Furthermore, in a UN-peacekeeping operation, PMSCs were to be integrated in the command and control structure.[[70]](#footnote-71) Finally, offensive tasks were not included in the crucial area of the use of force. While PMCs like EO and Sandline had used force to pursue and preemptively strike the enemy, the argument was now that use of force was only legitimate to ward off more *imminent* attacks. Still, the term imminent was interpreted broadly. PMSCs deployed in low- intensity conflict settings and warding off organized military attacks were acting in self-defence.[[71]](#footnote-72) The term “immediate” was employed more conservatively.

Ballesteros’ arguments were also relatively weaker this time. He still overstretched the mercenary concept by not differentiating between services – training or combat – and including any kind of illicit behaviour. The committee did not share such an extensive interpretation. It saw little connection between PMSCs and illicit activities, with the exception of arms trafficking.[[72]](#footnote-73) Furthermore, Ballesteros’ claims that PMSCs were violating human rights, undermining state sovereignty, and failing to provide benefits to the international community, were too selective.[[73]](#footnote-74) The FAC had a more nuanced picture of PMSC conduct. It conceded that PMSC actions might harm human rights; however, such an impact was not predetermined . Strong regulation could prevent such transgressions and PMSCs could in fact help the international community respond faster and more efficiently to a human rights crisis. Moreover, PMSCs were considered to be able to play a vital role in supporting weak governments to provide security.[[74]](#footnote-75)

The relative weakness of Enrique Ballesteros’s arguments was also reflected in the UN debate. With the retirement of Ballesteros in 2004, the new special rapporteur, Shaista Shameem, changed the approach towards PMSCs drastically. The course Ballesteros had followed for almost two decades was abandoned almost immediately. The arguments rejecting the former position underscored that Ballesteros had overstretched the mercenary criteria severely, and had overemphasized the negative consequences without sufficient evidence.

Ballesteros’ extensive definition of the term “mercenary” was no longer considered useful. In contrast, Shaista Shameem underscored that terrorism and mercenarism were two separate phenomena. Moreover, the difference between various armed actors – volunteers, rebels, mercenaries, or private military companies – needed to be taken into account. The new perspective on PMSCs also rejected Ballesteros’s claim that such companies did not serve or harmed a group cause. The argument that PMSCs interfered with the right of self-determination was rejected as weak because of a lack of concrete evidence. Moreover, the protection of human rights, though still an obligation of the state, could be provided by a variety of actors. In addition, PMSCs might be able to support the international community in responding to gross human rights violations. When the Working Group later discovered incidents of PMSCs violating human rights, it did not consider such actions as an indication of mercenarism, but rather of improper regulation.[[75]](#footnote-76)

The self-defence frame, in contrast, appeared to have been more convincing. From 2007 on, the reports differentiated explicitly between mercenaries and PMSCs and the justification followed the combat vs. non-combat, or offensive-defensive use of force, differentiation. Accordingly, PMSCs were deemed legitimate in the role of a defensive guard. Force was only to be employed by private actors for personal or client protection. Any offensive military activities were problematic, and could only be legitimized if the company was part of a state’s armed forces.[[76]](#footnote-77)

At the end of the second cycle, the self-defence frame had been accepted. As a result, the self-defence norm was broadened to include defensive combat services and the anti-mercenary norm was narrowed to specific combat criteria: offensive actions.

*Strengthening the narrowed anti-mercenary norm*

In 2003, Congress started to develop an interest in PMSCs. Numerous hearings were held in the House and in the Senate.[[77]](#footnote-78) From the beginning, the industry coherently argued that PMSCs provided only protective and not offensive combat services.[[78]](#footnote-79) DynCorp depicted its philosophy as “threat avoidance,” claiming that force was only used for defensive purposes.[[79]](#footnote-80) Triple Canopy argued that it used force only in defence of property or persons and not for offensive operations.[[80]](#footnote-81) When Eric Prince, then CEO of Blackwater, had to justify the actions of his employees during the Nisoor Square incident, he argued that they had acted in self-defence. Doug Brooks went even further, claiming that PMSCs did not play a role on the “battlefield.” They were rather non-combatants, not tasked with “anti-insurgency” matters and not performing offensive duties. Likewise, representatives of the US government underscored the defensive posture of PMSCs. Ambassador Griffin argued that security operators were given the security, and not the military training that is required to go to war. The mission was to protect, and the response was not to stay and fight, but to get away. [[81]](#footnote-82) The deputy undersecretary for defense, Jackson Bell and Undersecretary Patrick Kennedy depicted PMSCs as providing defensive services such as static security, not performing offensive roles.[[82]](#footnote-83)

Few of the opponents still tried to directly associate PMSCs from the criteria of the anti-mercenary norm: the lack of a group cause. Jeremy Scahill, an investigative journalist, still considered PMSCs mercenaries, as they were selling war-fighting services for money.[[83]](#footnote-84) Some members of Congress shared this perspective. Rep. Cummings (D-MA) called Blackwater, a security firm, to be a “shadow military of mercenary forces.”[[84]](#footnote-85) Rep. Marcy Kaptur (D-Ohio) proposed that security contractors did not serve in war zones out of honour or duty, but rather for adventure and pleasure, making them mercenaries.[[85]](#footnote-86) However, this view appeared to be a minority in Congress.

Some members of Congress explicitly rejected the view that PMSCs supported a group cause and therefore considered PMSC deployment a legitimate practice. Senator Joe Lieberman (D-CT), for instance, underscored that if PMSCs did use force to further a group cause, they were risking their lives for the U.S. mission.[[86]](#footnote-87) Moreover, Rep. Jack Kingston (R-Georgia) defended the practices of PMSCs and the policy of outsourcing in a war zone as a legitimate market business.[[87]](#footnote-88) When opponents attempted to put legislation in place, which depicted PMSCs as mercenaries, they failed. In 2007, Rep. Bob Filner (D-CA) even introduced an “anti-mercenary” bill into the House of Representatives. The bill was less powerful with regard to its regulatory scope; it did not ban the firms, but required them to train on federal property. The powerful part was in its symbolic message. The bill dubbed all firms “mercenaries” that trained their employees in a military style and were not part of the military.[[88]](#footnote-89) However, the bill never found any co-sponsors nor was acted upon.[[89]](#footnote-90) In the same year, another bill aiming to phase out all private security contractors found at least 32 co-sponsors (out of 535 members of Congress), but was never acted upon.[[90]](#footnote-91)

All of this is not to say that there was no concern with the deployment of PMSCs in war zones, but at that point the understanding prevailed, even among the skeptics, that it was appropriate for private corporations to provide services such as protection, and to use force in self-defence. For instance, Human Rights First, a US-based NGO dedicated to the promotion of human rights, published an influential report in 2008. The organization did not criticize that PMSCs were used for protective purposes; however, it was concerned about the transgressions of such firms, acting not defensively, but employing aggressive tactics.[[91]](#footnote-92) Rep. Henry Waxman, one of the most outspoken critics of the PMSC trend, was less concerned with the companies’ use of force in general, and more with potential aggressive behavior.[[92]](#footnote-93) Likewise, Rep. Dennis Kucinich (D-Ohio) and Senator Susan Collins (R-Maine) were both unconcerned with the use of force as long as it remained defensive.[[93]](#footnote-94) Meanwhile, Rep. McHenry (R-NC) was convinced that Blackwater had used force to protect people and that this was legitimate.[[94]](#footnote-95)

In 2008, the US Senate initiated a bi-partisan Commission on Wartime Contracting (CWC) to investigate the outsourcing phenomenon. Among numerous hearings on contracting in general, the commission held also two on PMSCs in June 2010. In essence, the Commission deemed PMSCs in warzones as performing guard duty or protective services as appropriate.[[95]](#footnote-96) However, if security operations were to be provided in direct support of combat operations, as part of the larger force, PMSCs would end up participating in combat, and this was inappropriate.[[96]](#footnote-97) The final report was received positively in both the Senate and the House.[[97]](#footnote-98)

**Conclusion**

How did the advocacy network reconcile the existence of PMSCs with the anti-mercenary norm? How did PMSCs become legitimate actors? This article argues that PMSCs resemble mercenaries, but are legitimate because the anti-mercenary norm has changed. Previously, mercenaries were defined as fighters participating in combat, be it offensive or defensive, with only a remote affiliation to a group cause and only loosely controlled by the state. Advocates of the new practices aimed at altering the combat component of the anti-mercenary norm. By arguing that PMSCs’ use of force was not combat, but rather individual self-defence, they created an alternative interpretation that framed the practice as appropriate. Empirically, this argument was adopted by the UK parliament, the second United Nations special rapporteur on mercenaries, the UN Working Group on Mercenaries, and the US Congress. The support by these crucial actors is a strong indication that the regulatory scope of the anti-mercenary norm has shrunk. Defensive force has become distinct from combat. The self-defence norm, in contrast, has broadened to cover private defensive combat actions. PMSCs providing defensive services only therefore do not violate the anti-mercenary norm *any more* and have become legitimate actors.

This result has broader implications. The normative structure governing the legitimate use of force has changed. Formerly, non-state actors were prohibited from using extensive force in a war zone. Although the justification for the use of force refers to self-defence it comprises extensive competencies. The newly granted permission has basically removed the defensive part from the combat component of the anti-mercenary norm and integrated it in the individual self-defence norm. Combat is still prohibited for non-state actors by the anti-mercenary norm, but only in the offensive sense. In essence, the regulatory scope of the anti-mercenary norm has shrunk. Linking the conduct to the self-defence also provides a justification vis-à-vis the norm of the state’s monopoly on force, as it does not permit non-state actors to use force in general, but only under exceptional circumstances.

Many have pointed to how the current context blurs the boundaries between offensive and defensive force. Indeed, the two might be difficult to differentiate, but nevertheless, a distinction is not totally random. Protecting a convoy is significantly different from special operational forces conducting a nighttime raid on potential insurgents. While the latter takes the initiative to the enemy, the former does not. The constraining power of the differentiation is also indicated by the fact that companies currently are only employed for explicitly protective tasks, and their tactics aim at getting away from the fight or pushing back an attacker. Against this backdrop, it seems rather unlikely that firms will take over fully-fledged combat operations anytime soon. Nonetheless, recent developments underscore once again that notions of legitimacy are not set in stone, but subject to change. In the UK and UN debates, combat actions by private actors in support of UN missions or humanitarian interventions were considered legitimate; moreover, some firms already make the case for deploying larger contingents for peacekeeping missions, though currently with little success.[[98]](#footnote-99) Private actors are also becoming increasingly active at sea. This seems to be good news for the hypothetical start-up mentioned in the introduction. In the long run, privateering might not be such a hopeless business endeavour after all.

1. Sarah Percy, *Mercenaries: The History of a Norm in International Relations* (Oxford and New York: Oxford University Press, 2007), 50. [↑](#footnote-ref-2)
2. Martha Finnemore, *The Purpose of Intervention : Changing Beliefs About the Use of Force* (Ithaca: Cornell University Press, 2003), 1. [↑](#footnote-ref-3)
3. In this article, I do not extend PMSCs to privatized policing, military logistics, or maintenance services. Indeed, many PMSCs provide protective services outside of warzones, or services other than armed services in a warzone. However, both kinds of services do not involve any mercenary activity. Only armed services, involving the use of force provided in warzones challenge the anti-mercenary norm. [↑](#footnote-ref-4)
4. International Consortium of Investigative Journalists, *Making a Killing: The Business of War* (2002 [cited 2007]) http://www.icij.org/projects/makingkilling (accessed 8 Apruil 2014). [↑](#footnote-ref-5)
5. United Nations General Assembly, "Use of Mercenaries as a Means of Violating Human Rights and

Impeding the Exercise of the Right of Peoples to Self-Determination," (New York: United Nations, 2007), 69. [↑](#footnote-ref-6)
6. Rita Abrahamsen and Michael C. Williams, "Public/private, global/local: The changing contours of Africa's security governance," *Review of African Political Economy* 35, no. 118 (2008): 542; Frederik Rosen, "Commercial security: Conditions of growth," *Security Dialogue* 39, no. 1 (2008): 82. [↑](#footnote-ref-7)
7. Although the Montreux Document explicitly claims not to legitimize the use of PMSCs, it is nonetheless an expression of the signatory states as to the legitimate actor status of PMSCs. The signatory state of the document made a deliberate choice to not criminalize PMSCs or depict them as mercenaries, but rather to formulate “best practices” for contracting parties. José Luis Gómez del Prado, the chairman of the UN Working Group on Mercenaries, was concerned in this regard that the Montreux Document recognizes de facto „this new industry and the military and security services it provides.“ See José L. Gómez del Prado, "Private military and security companies and the UN Working Group on the Use of Mercenaries," *Journal of Conflict & Security Law* 13, no. 3 (2009): 444). [↑](#footnote-ref-8)
8. Janice Thomson, *Mercenaries, Pirates, & Sovereigns* (Princeton: Princeton University Press, 1994), 3. [↑](#footnote-ref-9)
9. Wayne Sandholtz, "Dynamics of international change: Rules against wartime plunder," *European Journal of International Relations* 14, no. 1 (2008): 101. [↑](#footnote-ref-10)
10. Martha Finnemore and Kathryn Sikkink, "International norm dynamics and political change," *International Organization* 52, no. 4 (1998): 887-917, Thomas Risse-Kappen, Steve C. Ropp, and Kathryn Sikkink, *The Power of Human Rights : International Norms and Domestic Change* (New York: Cambridge University Press, 1999). [↑](#footnote-ref-11)
11. Diana Panke and Ulrich Petersohn, "Why international norms disappear sometimes," *European Journal of International Relations* 18, no. 4 (2011): 719– 742; R. A. Payne, "Persuasion, frames and norm construction," *European Journal of International Relations* 7, no. 1 (2001): 37-61. [↑](#footnote-ref-12)
12. Wayne Sandholtz, *Prohibiting Plunder: How Norms Change* (New York: Oxford University Press, 2007), 10; See also Peter Hall, "Policy paradigms, social learning, and the state: The case of economic policymaking in Britain," *Comparative Politics* 25, no. 3 (1993): 289; Thomas Risse, "'Let’s argue!': Communicative action in world politics," *International Organization* 54, no. 1 (2000): 17; Wayne Sandholtz and Kendall W. Stiles, *International Norms and Cycles of Change* (Oxford and New York: Oxford University Press, 2009), 6; and Ryder McKeown, "Norm regress: US revisionism and the slow death of the torture norm," *International Relations* 23, no. 1 (2009): 11. [↑](#footnote-ref-13)
13. Payne, "Persuasion," 39, 43. This is not to say that other factors, such as access to the respective forum of discourse or material power, do not play a role; however, in the case at hand, differences in access between the various groups played almost no role (and where they did, they are mentioned in the analysis). Power differences may enable an actor to coerce others to support its position rather than to persuade them. In this case, the most powerful actor, the government, is not able to coerce the target audiences, the parliament. The latter has means to repel any undue influence of the former. On framing, see also Kirk Hallahan, "Seven models of framing: Implications for public relations," *Journal of Public Relations Research* 11, no. 3 (1999): 205-242. [↑](#footnote-ref-14)
14. Scott A. Hunt, Robert D. Benford, and David A. Snow, "Identity fields: Framing processes and the social construction of movement identities," in Enrique Larana, Hank Johnston, and Joseph Gusfield, eds., *New Social Movements* (Philadelphia: Temple University Press, 1994), 194. [↑](#footnote-ref-15)
15. Dennis Chong and James N. Druckman, "Framing theory," *Annual Review of Political Science* 10, no. 1 (2007): 103-126. [↑](#footnote-ref-16)
16. Thomas Risse, "Konstruktivismus, Rationalismus und die Theorie Internationaler Beziehungen – Warum empirisch nichts so heiß gegessen wird, wie es theoretisch gekocht wurde," Contribution to Gunther Hellmann, Klaus Dieter Wolf and Michael Zürn, eds., *Forschungsstand und Perspektiven der Internationalen Beziehungen in Deutschland* (Berlin: 2002). [↑](#footnote-ref-17)
17. Theo Farrell, "World culture and military power," *Security Studies* 14, no. 3 (2005): 461. [↑](#footnote-ref-18)
18. Giovanni Sartori, "Concept misformation in comparative politics," *American Political Science Review* 64, no. 4 (1970): 1035. [↑](#footnote-ref-19)
19. Finnemore and Sikkink, "International norm dynamics," 901. [↑](#footnote-ref-20)
20. Sandholtz and Stiles, *International Norms*, 18. [↑](#footnote-ref-21)
21. Frank Schimmelfennig, "The community trap: Liberal norms, rhetorical action, and the eastern enlargement of the European Union," *International Organization* 55, no. 1 (2001): 48. [↑](#footnote-ref-22)
22. Percy, *Mercenaries,* chapter 6. [↑](#footnote-ref-23)
23. Thomson, *Mercenaries*, 96-97. [↑](#footnote-ref-24)
24. Dominick Donald, *After the Bubble. British Private Security Companies after Iraq* (London: Royal United Services Insititute, 2006), 4; Juan Carlos Zarate, "The emergence of a new dog of war: Private international security companies, international law, and new world disorder," *Stanford Journal of International Law* 34 (1998):79. For a more detailed discussion on the different definitions see Deane-Peter Baker, *Just Warriors, Inc.: The Ethics of Privatized Force*, *Think Now* (London ; New York: Continuum, 2011), and Sarah Percy, "This gun's for hire," *International Journal* 58, no. 4 (autumn 2003): 721-736. [↑](#footnote-ref-25)
25. Percy, *Mercenaries,* 90-91, 55-58, 65, 235. [↑](#footnote-ref-26)
26. Volker Franke and Marc von Boemcken, "Guns for hire: Motivations and attitudes of private security contractors " *Armed Forces & Society* 37, no. 4 (2011): 725-742. [↑](#footnote-ref-27)
27. Fred Schreier and Marina Caparini, *Privatising Security: Law, Practice and Governance of Private Military and Security Companies* (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2005), 53. [↑](#footnote-ref-28)
28. Christopher Kinsey, *Corporate Soldiers and International Security: The Rise of Private Military Companies* (New York, NY: Routledge, 2006), 97. [↑](#footnote-ref-29)
29. Percy, *Mercenaries*, 235; Percy, "This gun's for hire," 733. [↑](#footnote-ref-30)
30. Special Inspector General for Iraq Reconstruction, "Opportunities to Improve Processes for Reporting, Investigation, and Remediating Serious Incidents Involving Private Security Contractors in Iraq," (Arlington, VA: 2009). [↑](#footnote-ref-31)
31. Caroline Holmqvist, "Private security companies: The case for regulation," *Sipri Policy Paper* 9 (Stockholm: Stockholm International Peace Research Institute, 2005); Anna Leander, "Eroding State Authority? Private Military Companies and the Legitimate Use of Force," (Centro Militaire di Studi Strategici: Rome: 2006). [↑](#footnote-ref-32)
32. Thomson, *Mercenaries*, 19. [↑](#footnote-ref-33)
33. It may be asked why PMSCs did not violate the anti-mercenary norm before the 1990s. A fundamental shift in the security industry at the end of the Cold War, i.e. the extensive provision of direct military services and the deployment of armed PMSCs alongside military forces in warzones (Percy, *Mercenaries*, 206; Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry*, (Ithaca: Cornell University Press, 2003), 49). Although security firms existed during the Cold War, they provided mainly crime protection, surveillance services, military training, and military advice. See Thomas Adams, "The mercenaries and the privatization of conflict," *Parameters* 29, no. 2 (summer 1999): 103-116; Rita Abrahamsen and Michael C. Williams, *Security Beyond the State : Private Security in International Politics* (Cambridge: Cambridge University Press, 2011), 24-49). In the few cases where companies did more, they violated the anti-mercenary norm and were dubbed mercenaries. See Kinsey, *Corporate Soldiers*, 44. [↑](#footnote-ref-34)
34. Interview, Australian Broadcasting Corporation, *Lateline*, 18 May 2000, <http://www.sandline.com/white/can_the_private_sector_do_better.html> (accessed 11 April 2014). [↑](#footnote-ref-35)
35. See also Andrew Gilligan, "Inside Lt Col Spicer's new model army," *The Telegraph*, 22 November 1998; Judith Woods, "We don't operate in the shadows," *The Telegraph*, 3 December 1999; Duncan Campbell, (2002): “Marketing the new dogs of war,” *Centre for Public Integrity*,30 October 2002, <http://projects.publicintegrity.org/bow/report.aspx?aid=149> (accessed 11 April 2014); and Cambridge Review of International Affairs, "Interview with Lt Col Tim Spicer," *Cambridge Review of International Affairs* 13, no. 1 (1999): 165-171. [↑](#footnote-ref-36)
36. Tom Cohen, "War-for-pay stirs controversy: South Africa's Executive Outcomes," *Austin American Statesman*, 3 May 1997. [↑](#footnote-ref-37)
37. Enrique Ballesteros, "Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination," (Geneva: Commission on Human Rights, 54 Session, 1998), para 68. [↑](#footnote-ref-38)
38. Enrique Ballesteros, "Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination," (Geneva: Commission on Human Rights, 56 Session, 2000), para 88. [↑](#footnote-ref-39)
39. Ballesteros, "Report on Use of Mercenaries," 1998, para 108. [↑](#footnote-ref-40)
40. Foreign Affairs Committee, "Second Report - Sierra Leone," (London: House of Commons, Session 1998-99, 1999), paras 88, 91 and 26. [↑](#footnote-ref-41)
41. Ibid., paras 89, 26, 91. [↑](#footnote-ref-42)
42. Michael Ashworth, "Africa's new Enforcers," *The Independent*, 16 September 1996; Cohen, "War-for-pay," Elizabeth Rubin, "An army of one's own," *Harpers Magazine*, February 1997. [↑](#footnote-ref-43)
43. Claire Finkelstein, "On the obligations of the state to extend a right of self-defense to its citizens," *University of Pennsylvania Law Review* 147, no. 6 (1999): 1368; Stanford Kadish, "Respect for life and regard for rights in the criminal law," *California Law Review* 64 (1976): 875. [↑](#footnote-ref-44)
44. David Rodin, *War and Self-Defense* (Oxford and New York: Oxford University Press, 2002), 127. [↑](#footnote-ref-45)
45. Jim Hooper, "Executive Outcomes," *World Air Power Journal* 28, (spring 1997): 38-49. [↑](#footnote-ref-46)
46. [↑](#footnote-ref-47)
47. Michael Walzer, *Just and Unjust Wars : A Moral Argument with Historical Illustrations*, 2nd ed. (New York: Basic Books, 1992), 145. See also Rodin, *War*, 127. [↑](#footnote-ref-48)
48. Enrique Ballesteros, *Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination*, (Geneva: UN Commission on Human Rights, 1996), paras 29 and 31. [↑](#footnote-ref-49)
49. Cohen, "War-for-pay." [↑](#footnote-ref-50)
50. Foreign and Commonwealth Office, *Private Military Companies: Options for Regulation* (London: 2002), 5. [↑](#footnote-ref-51)
51. Christopher Kinsey, *Private Contractors and the Reconstruction of Iraq : Transforming Military Logistics* (London: Routledge, 2009), 109-111. [↑](#footnote-ref-52)
52. Foreign and Commonwealth Office, *Private Military Companies: Options for Regulation*, Para 37, 29, 24, 58-59. [↑](#footnote-ref-53)
53. [↑](#footnote-ref-54)
54. [↑](#footnote-ref-55)
55. Ibid., paras 24, 54, 71, 11-13, 15, 58. [↑](#footnote-ref-56)
56. [↑](#footnote-ref-57)
57. Sandline International, *Comments on the Governments Green Paper* (London: 2002). [↑](#footnote-ref-58)
58. Doug Brooks, *Protecting People: The PMC Potential* (Alexandria, VA: International Peace Operations Association, 2002), 6; Sandline International, *Comments.* [↑](#footnote-ref-59)
59. Foreign Affairs Committee, "Ninth Report - Private Military Companies," (London: House of Commons, 2002), 27. [↑](#footnote-ref-60)
60. Brooks, *Protecting People*, 3. IPOA was founded in 2002 as a business association for the security industry. In 2010, the association renamed itself the International Stability Operations Association (ISOA). [↑](#footnote-ref-61)
61. Foreign Affairs Committee, "Memorandum from Armor Group Services Limited, Appendix 6," (London: House of Commons, 2002), paras 103, 107, 54, 115. [↑](#footnote-ref-62)
62. Ibid., Question 15. [↑](#footnote-ref-63)
63. Chaloka Beyani and Damain Lilly, *Regulating Private Military Companies* (London: International Alert, 2001), 9. [↑](#footnote-ref-64)
64. Enrique Ballesteros, "Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination," (Geneva: Commission on Human Rights, 60 Session, 2003), para 30. [↑](#footnote-ref-65)
65. Enrique Ballesteros, "Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination," (Geneva: Commission on Human Rights, 57 Session, 2001), para 84. [↑](#footnote-ref-66)
66. Ballesteros, "Report on the Use of Mercenaries ", 2003, paras 19. [↑](#footnote-ref-67)
67. Foreign Affairs Committee, "Ninth Report," 7. [↑](#footnote-ref-68)
68. Ibid., paras 12, 89, 108, 37, and 104. [↑](#footnote-ref-69)
69. Ibid., para 31. [↑](#footnote-ref-70)
70. Ibid., paras 84, 106, and 89. [↑](#footnote-ref-71)
71. Foreign Affairs Committee, "Appendix 6," 34. [↑](#footnote-ref-72)
72. Foreign Affairs Committee, "Ninth Report," paras 107, 149. [↑](#footnote-ref-73)
73. Ballesteros, "Report on the Use of Mercenaries," 1998, para 74. [↑](#footnote-ref-74)
74. Foreign Affairs Committee, "Ninth Report," paras 62, 87, 7, 67. [↑](#footnote-ref-75)
75. Shaista Shameem, *Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination*, (Geneva: UN Commission on Human Rights, 61 session, 2004), paras 53, 60, 31, 61. [↑](#footnote-ref-76)
76. UN Working Group on the Use of Mercenaries, *Report of 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* (Geneva: 2010), paras 12, 18, 30. [↑](#footnote-ref-77)
77. Committee on Government Reform, *Private Security Firms Standard, Cooperation and Coordination on the Battlefield*, (Washington, D.C.: 2006); Committee on Homeland Security, *Management and Oversight of Contingency Contracting in Hostile Zones* (Washington, D.C.: 2008); Committee on Oversight and Government Reform, *Hearing on Blackwater USA* (Washington, D.C.: 2007); Defense Subcommittee of the House Appropriations Committee, *Defense Contracting* (Washington, D.C.: 2007). [↑](#footnote-ref-78)
78. Committee on Government Reform, *Private Security Firms Standard*, 83-156. [↑](#footnote-ref-79)
79. Donald Ryder, *Statement before the Commission on Wartime Contracting* (Washington, D.C.: 2010). [↑](#footnote-ref-80)
80. Ignacio Balderas, *Statement before the Commission on Wartime Contracting* (Washington, D.C.: 2010). [↑](#footnote-ref-81)
81. Committee on Oversight and Government Reform, *Blackwater*, 24, 95, 146, 143. [↑](#footnote-ref-82)
82. Committee on Homeland Security and Governmental Affairs, *An Uneasy Realtionship: Us Reliance on Private Security Firms in Overseas Operations* (Washington, D.C.: 2008), 19-20. [↑](#footnote-ref-83)
83. Defense Subcommittee of the House Appropriations Committee, *Defense Contracting*, 27; Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York, NY: Nation Books, 2007), xix-xxvii. [↑](#footnote-ref-84)
84. Committee on Oversight and Government Reform, *Blackwater*. [↑](#footnote-ref-85)
85. House of Representatives, "Outsourcing Military to Soldiers of Fortune," Congressional Record, (Washington, D.C.: 2005). [↑](#footnote-ref-86)
86. Committee on Homeland Security and Governmental Affairs, *An Uneasy Realtionship,* 1. [↑](#footnote-ref-87)
87. Defense Subcommittee of the House Appropriations Committee, *Defense Contracting*, 16, 32-33. [↑](#footnote-ref-88)
88. If approved, this bill would have immediately raised questions regarding the Pinkerton Act of 1892, which prohibited the government from hiring the Pinkerton Agency or similar organizations. See Comptroller General, Decision Brian X Scott, B-298370; B-298490, August 2006. [↑](#footnote-ref-89)
89. However, other less radical initiatives failed similarly. In February 2007, then-Senator Barack Obama (D-IL) introduced a bill seeking to enhance transparency and increase congressional oversight over the PSCs. In total, the bill found only four co-sponsors and was never acted upon. See Senate, *Transperency and Accountability in Military and Security Contracting Act of 2007*, 110th Congress, 1st Session, (Washington D.C.: 2007). [↑](#footnote-ref-90)
90. House of Representatives, *A Bill to Phase out Private Military Contractors*, 110 Congress, 1st. Session, HR 4102 (Washington, D.C.: 2007). [↑](#footnote-ref-91)
91. Human Rights First, *Private Contractors at War. Ending the Culture of Impunity* (Washington, D.C.: 2008), 6. [↑](#footnote-ref-92)
92. Committee on Oversight and Government Reform, *Blackwater*, 3, 7. [↑](#footnote-ref-93)
93. Committee on Government Reform, *Private Security Firms Standard,* 168-171; Committee on Homeland Security and Governmental Affairs, *An Uneasy Realtionship*, 4. [↑](#footnote-ref-94)
94. Committee on Oversight and Government Reform, *Blackwater*. [↑](#footnote-ref-95)
95. Commission on Wartime Contracting, "Transforming Wartime Contracting," (Washington, D.C.: 2011), 53-61. [↑](#footnote-ref-96)
96. Committee on Oversight and Government Reform, *Where Is the Peace Dividend? Examining the Final Report to Congress of the Commission on Wartime Contracting*, (Washington, D.C.: 2011), 53. [↑](#footnote-ref-97)
97. Committee on Homeland Security and Government Affairs, *Transforming Wartime Contracting: Recommendations of the Commission on Wartime Contracting* (Washington, D.C.: 2011), Committee on Oversight and Government Reform *Where Is the Peace Dividend?*. [↑](#footnote-ref-98)
98. See for example, the website for Greystone, Ltd., <http://www.greystone-ltd.com/> (accessed 11 April 2014); and Carrie Schenkel, "Finding suitable peacekeepers," *Journal of International Peace Operations* 2, no. 3 (2006): 8. [↑](#footnote-ref-99)