

# The Anti-mercenary norm and the Market for Combat Force

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## **Abstract:**

Since 2013, combat services have been increasingly exchanged on the market for force. This development is puzzling since the practice emerged despite an anti-mercenary norm banning such services, and without any revision of the norm. The article argues that the combat market is not a deliberate design, but the result of strategic interaction. While for some violating the anti-mercenary norm is the best strategy, compliance is the best for others. However, once the norm violation occurred, it is in the interest of all actors to keep a compliance façade. Non-compliant actors benefit from the combat services, and compliant actors do not have to engage in costly sanctioning of the norm violation and avoid the reputational costs associated with non-enforcement. The article employs game theory to investigate the strategic interactions of actors across eleven combat contracts from 2013 to 2019.

In February 2018, operators of a Russian private military and security company (PMSC) attacked a U.S. military outpost in Syria. The event was a strong indication of a significant development: combat services are frequently and regularly exchanged on the market.<sup>1</sup> The exchange of combat services is surprising as it runs counter to an established norm—the anti-mercenary norm. The norm reflects a longstanding aversion—going back at least to the beginning of the 19<sup>th</sup> century—of international society to private force providers.<sup>2</sup>

Violations of the norm are not a new phenomenon. In the 1960s and 1970s, when groups of mercenaries were participating in civil wars in Congo and Angola, an extensive international debate developed. As a result, the UN General Assembly and the UN Security Council issued several resolutions condemning the practice, describing mercenaries as dangerous criminals. At the same time, the international community started to develop the UN International Convention against Recruitment, Use, Financing and Training of Mercenaries and the Organization of African Unity Convention on Mercenaries.<sup>3</sup> Similarly in the mid-1990s—when the market for force experienced a quantum leap, turning into a corporate market, and PMSCs provided combat services on a highly professional level—international and national actors criticized the practice immediately.<sup>4</sup> Some considered corporate actors to be different from mercenaries, while others deemed them to be the ‘new mercenaries’.<sup>5</sup> However, it was not the corporate structure or the legal contractual relations that provided the differentiation between illegitimate mercenary and legitimate activity. It was the type of service that made the difference. Any actor, be it an individual, group of corporation was considered to be a mercenary if they provided offensive combat services. PMSCs therefore did ‘not entirely escape the anti-mercenary norm’ if they offered such services.<sup>6</sup> However, as long as they provided defensive services only, even in a conflict zone, their activities were considered to be appropriate and not in violation of the anti-mercenary norm.

This has been reflected in the 2008 Montreux Document.<sup>7</sup> With 54 members to date, the agreement enjoys wide support within the international community, including major international actors which are home to the largest PMSC markets, e.g. the United States, the United Kingdom, Canada, France, South Africa, and Germany, as well as states that have been significantly affected by armed security providers, e.g., Sierra

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<sup>1</sup> Mark Galeotti, *Moscow's Mercenaries in Syria*, 2015, [www.warontherocks.com](http://www.warontherocks.com).

<sup>2</sup> Janice Thomson, *Mercenaries, Pirates, & Sovereigns* (Princeton: Princeton University Press, 1994).

<sup>3</sup> Sarah Percy, 'Mercenaries: Strong Norm, Weak Law', *International Organization*, 61, 4 (2007), 367-397, 373-374.

<sup>4</sup> Foreign and Commonwealth Office, *Private Military Companies: Options for Regulation* (London: 2002); Foreign Affairs Committee, *Memorandum from Armor Group Services Limited, Appendix 6* (London, 2002); Committee on Oversight and Government Reform, *Hearing on Blackwater USA* (2. October) (Washington, D.C.: 2007).

<sup>5</sup> Peter Singer, *Corporate Warriors*, (Ithaca: Cornell University Press 2003). Juan Zarate, "The Emergence of a New Dog of War: Private Security Companies, International Law and New World Disorder, *Stanford Journal of International Law* 34, (1998), 75-165.

<sup>6</sup> Sarah Percy, *Mercenaries: The history of a norm in international relations* (Oxford; New York: Oxford University Press, 2007), 242.

<sup>7</sup> Ulrich Petersohn, 'Reframing the anti-mercenary norm: Private military and security companies and mercenarism', *International Journal: Canada's Journal of Global Policy Analysis*, 69, 4 (2014), 475-493.

Leone, Iraq, Afghanistan, and Angola. Accordingly, while security providers remained in business, combat providers disappeared again.<sup>8</sup> In contrast, the most recent re-emergence of combat contractors did not cause any debate or reshaping of the anti-mercenary norm. The manuscript sets out to investigate the question: *why is there an active market for combat services, despite the presence of an anti-mercenary norm?*

The article will argue that the combat market is an institution that did not emerge through a deliberate process, but rather as an unintended consequence of strategic interactions among states. The investigation will proceed in two steps. In the first step, the existence of a combat market will be demonstrated. The claim that there is regular and frequent exchange of combat services requires corroboration. In the second step, the exchange of combat services on a market despite the presence of an anti-mercenary norm will be explained. As will be demonstrated, the most likely theoretical explanations—a transnational coalition of actors campaigning for the exchange of combat services, or a broad international discourse on the legitimacy of private combat services—fail to account for the re-emergence of combat providers.<sup>9</sup>

The article, in contrast, will draw on game theory. An institution is considered to be a self-enforcing pattern of behaviour (equilibrium). The combat market emerges as stable through several sequential games. In the first—the norm compliance game—market actors decide whether to comply with or defect from the anti-mercenary norm, i.e. whether to trade defensive or offensive services. As the benefits of compliance and non-compliance are distributed unevenly on the market, an equilibrium emerges with a larger group complying and a smaller group defecting. However, it is not until the next subgame that the equilibrium becomes stable. In the norm enforcement game, compliant actors have the ability to increase the cost of defection through punishment. However, punishment is costly for punishers as well, hence compliant actors would prefer to avoid enforcing the anti-mercenary norm. Although tempting, this strategy can turn out to be costly, as non-enforcement may be observed and sanctioned by an international audience. Once the norm violation has occurred, compliant and defecting actors have a similar interest: to not draw attention from their audience. Accordingly, both actors tacitly collude and take actions to maintain a compliance façade.<sup>10</sup> As a consequence, the combat market emerges as a stable self-enforcing equilibrium.

In order to test the validity of this theoretical argument, the congruence method will be employed. This method emphasizes consistency between precise theoretical predictions and actual observable outcomes.<sup>11</sup> This method lends itself to testing game theory arguments because the underlying calculations of actors cannot be directly

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<sup>8</sup> Percy (2007), 227.

<sup>9</sup> Martha Finnemore & Kathryn Sikkink, 'International norm dynamics and political change', *International Organization*, 52, 4 (1998), 887-917; Elke Krahnemann, 'From 'Mercenaries' to 'Private Security Contractors': The (Re)Construction of Armed Security Providers in International Legal Discourses', *Millennium - Journal of International Studies*, 40, 2 (2012), 343-363.

<sup>10</sup> Austin Carson, 'Facing Off and Saving Face: Covert Intervention and Escalation Management in the Korean War', *International Organization*, 70, 1 (2015), 103-131, 105.

<sup>11</sup> Alexander George & Andrew Bennett, *Case studies and theory development in the social sciences* (Cambridge, Mass.: MIT Press, 2005), 67-72, 181-204.

observed, while the associated behaviour can. The closer the predicted and the observed patterns match, the higher the likelihood of the theory being valid.

### **A combat market for force**

The article puts forward the claim that a combat market has been established since 2013. In general, a market institution is a stable and persistent pattern of behaviour (self-enforcing equilibrium) organized around social factors such as rules.<sup>12</sup> Market exchange in general is governed by rules; it is a two-way voluntary transfer of services or goods for money.<sup>13</sup> Hence, what remains is to demonstrate the regularity in exchange behaviour. Regularity requires a ‘degree of repetition over a period of time’ between the same or different actors.<sup>14</sup> Table 1 outlines the different combat contracts. The table does not present a sample of contracts, but is as comprehensive as possible and includes the entire population of *known* combat contracts since 2013.<sup>15</sup>

Table 1: Combat Contracts

No.	Location	Parties to the contract	Purpose	Size & Equipment	Year
1	Nigeria	Nigerian government & STTEP	Training Nigerian army & fighting Boko Haram	Approx. 100 operators, helicopters, armoured vehicles	2013
2	Syria	Russian government & Wagner Group (Moran Security Group)	Fighting in support of Syrian gov.	250-900 operators, artillery, tanks and aircraft	2013-2019
3	Syria	Russian government & Slavonic Corps (OMS)	Fighting support of Syrian gov.	260-2000 operators, artillery, tanks	2013
4	Ukraine	Russian government & Wagner Group (Moran Security Group)	Fighting in support of Russian separatists	5,000-10,000 artillery, tanks	2014-2019
5	Libya	Russian government, General Haftar & Wagner Group (Moran Security Group)	Fighting in support of Gen. Haftar (Tobruk gov.)	200 operators, (potentially artillery, fighter jets)	2019-
6	Mozambique	Mozambique, Russian government	Training armed forces & fighting in	203 operators, three helicopters	2019-

<sup>12</sup> James Morrow, *Order within anarchy : the laws of war as an international institution* (Cambridge: Cambridge University Press, 2014), 6.

<sup>13</sup> William Jackson, 'On the social structure of markets', *Cambridge Journal of Economics*, 31, 2 (2007), 235-253.

<sup>14</sup> Peter Malanczuk, *Akehurst's modern introduction to international law* 7th rev. edition, (London; New York: Routledge, 1997), 41.

<sup>15</sup> Given that confidentiality is in the nature of the combat market, it is possible for a few cases to be missing. Libya was not included. There was too little corroboration of Gaddafi hiring foreigners to fight.

		& Wagner Group (Moran Security Group)	support gov. of Mozambique		
7	<b>Libya</b>	UAE & foreign pilots	Fighting in support of Gen. Haftar (Tobruk gov.)	Several pilots, aircrafts	2015-2016
8	<b>Yemen</b>	UAE & subsidiary of Northrop Grumman	Fighting in support of Yemeni government	100 operators from El Salvador	2015-2017
9	<b>Yemen</b>	UAE & Academi or Reflex Response	Fighting in support of Yemeni government	500 operators from Columbia	2015-2017
10	<b>Yemen</b>	UAE & Spear Operations Group	Training UAE force & targeted assassination	Approximately 10 US operators	2015-2016
11	<b>Yemen</b>	Saudi Arabia & foreign operators	Fighting in support of Yemeni government	Several hundred	2015-2017

In 2013, the Nigerian government hired a company called Specialized Tasks, Training, Equipment, and Protection (STTEP) to support its combat operations against Boko Haram. Around 100 contractors were involved in direct combat, provided air support, and participated in night raids.<sup>16</sup> The second, third, and fourth contracts were cases where the Russian government hired different PMSCs such as Moran Security and OMS ‘to engage in the fighting in Syria and the Ukraine.’<sup>17</sup> The contracts were of substantial size, ranging from 200 to 900 operators, including heavy weapons operators.<sup>18</sup> The fifth contract was between the Wagner Group and either the Russian government or Moscow-backed Libyan General Haftar (Tobruk government) to provide military support to fight against the government in Tripoli. The Wagner Group deployed around 200 operators, including highly-skilled snipers. It has also been reported that Russian support included fighter jets and artillery, yet it is unclear whether this was through the Wagner contract.<sup>19</sup> Contracts seven, eight, nine, and ten were UAE contracts. The UAE provided air support in 2015 and 2016—including aircrafts, pilots, and actual air strikes—to the Tobruk government in Libya. Several of the pilots flying combat sorties were foreigners.<sup>20</sup> Moreover, the UAE had two contracts in 2010, one with Northrop Grumman and one with Reflex Response (R2) to build an 800-member battalion of

<sup>16</sup> Jack Murphy, *Eeben Barlow Speaks Out (Pt. 1): PMC and Nigerian Strike Force Devastates Boko Haram*, 2015. [www.sofrep.com](http://www.sofrep.com); Peter Fabricius, *Nigeria's decision to use ex-SADF soldiers to combat Boko Haram will further aggravate sour relations between the two countries*, 2015. [www.issafrica.org](http://www.issafrica.org).

<sup>17</sup> The Interpreter, *St. Petersburg Sends Contractors to Syria*, 2013, [www.interpretermag.com](http://www.interpretermag.com); Thomas Grove, *Up to nine Russian contractors die in Syria, experts say*, 2015; The Economist, *How Wagner came to Syria*, 2017.

<sup>18</sup> John Sparks, ‘*Russia's Secret Soldiers Fighting in Syria*’ (Sky News, 2016); Pierre Vaux, *Fontanka Investigates Russian Mercenaries Dying For Putin in Syria and Ukraine*, 2016.

<sup>19</sup> David Kirkpatrick, ‘*Russian Snipers, Missiles and Warplanes Tyr to Tilt the Libyan War*’, *The New York Times*, November 7 2019; Sudarsan Raghavan, ‘*Arrival of Russian mercenaries adds deadlier firepower, modern tactics to Libya's civil war*’, *Washington Post*. (Washington). November 6 2019.

<sup>20</sup> Arnaud Delalande, *Erik Prince's Mercenaries Are Bombing Libya*, 2017, [www.warisboring.com](http://www.warisboring.com).

foreign troops to conduct 'urban combat' and to destroy enemy equipment and personnel.<sup>21</sup> The unit was deployed in 2015 to participate in the fighting in Yemen. Finally, UAE contracted with Spear Operations Group, a private military company based in the U.S. which provided approximately ten former special operations forces operators to train UAE armed forces in counter terrorism and to carry out targeted assassinations in Yemen.<sup>22</sup> There is only sparse information on the eleventh contract. In this case, Saudi Arabia hired several hundred foreign fighters to participate in the fight in Yemen.

This history shows that combat contracting is not an insignificant event nor a random norm violation. On the contrary, contracting combat services is a regular occurrence, and the contracts are significant in size. In total, eleven combat contracts were identified between 2013 and 2019, with nine contracts running across multiple years. Hence, from 2013 on, a persistent pattern suggests the existence of a combat market for force.

### **Theoretical considerations**

Crucial to this investigation is the fact that theories of normative change and emergence differ in the extent to which they emphasize intentional agency, i.e. whether an agent deliberately creates a specific outcome or whether the outcome is spontaneous and unintended. At one extreme of this spectrum, hegemonic theories consider the influence of agency to be very high on the final outcome. Powerful actors deliberately choose and authoritatively implement rules to maintain and exert their power. At the other extreme are evolutionary theories, which deemphasize agency and intentionality. Norms may develop independent of a deliberative process through natural selection pressures, historical path dependency, or are shaped by psychological factors.<sup>23</sup> Two prominent and widely-applied theories are located in the middle ground in terms of intentionality and influence of agency on the outcome: the plural politics approach and the communicative action approach.

The plural politics approach is one of the most influential theoretical perspectives in explaining the emergence of norms. It argues that norm entrepreneurs, such as states, transnational, or international organizations, intentionally seek adjustment or institutionalization of a norm. In order to achieve their goals, they form coalitions to tip the balance in favour of their campaigns. Depending on the ability to form alliances, the balance will shift in favour of changing or establishing the norm.<sup>24</sup> However, in the cases

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<sup>21</sup> Mark Mazzetti & Emily Hager, 'Secret Desert Force Set Up by Blackwater's Founder', *New York Times*, May 14 2011, 1; Emily Hager & Mark Mazzetti, 'Emirates Secretly Sends Colombian Mercenaries to Yemen Fight', *New York Times*, November 25 2015, 1.

<sup>22</sup> Aram Roston, *A Middle East Monarchy Hired American Ex-Soldiers To Kill Its Political Enemies. This Could Be The Future Of War*, 2018, [www.buzzfeednews.com](http://www.buzzfeednews.com).

<sup>23</sup> Ann Florini, 'The Evolution of International Norms', *International Studies Quarterly*, 40, 3 (1996), 363-389; Douglass North, *Understanding the process of economic change* (Princeton, N.J.: Princeton University Press, 2005); Jennifer Ramos, *Changing Norms Through Action* (Oxford: Oxford University Press, 2013).

<sup>24</sup> Finnemore & Sikkink 'International norm dynamics'.

at hand, neither has there been a campaign, nor has a coalition been formed tipping the balance in favour of combat services. Alternatively, the communicative action approach proposes that norms are developed through public discourse.<sup>25</sup> While the assumption of agency is still high, the intentionality of the outcome is more limited because the outcome is not under the control of any individual actor or group. It is the result of a collective process. Actors holding a variety of motivations, ideas, and arguments enter into discourse with each other. Their different positions are then pitted against each other, and multiple factors—e.g. resonance with normative structure, instrumental considerations, truthfulness or the communicative power of actor—decide which actors are successful. In short, normative ‘change depends on the ensuing arguments.’<sup>26</sup> However, the approach runs into difficulty explaining the existence of the current combat market, as its explanatory leverage stems from the analysis of the dynamics of the discourse. First, in the case of the current combat market, no discourse changed the parameters under which force can be exchanged. None of the actors on the combat market made a deliberate attempt to trigger a discourse and seek to amend or change the norm.<sup>27</sup> Second, even though actors might not have wanted a discourse, choices routinely generate disputes over rules. If a rule collides with particular actions, a dispute should be triggered, i.e. compliant actors should demand an explanation or exert pressure.<sup>28</sup> However, in stark contrast to previous decades, there was no widespread outcry about the current practice.

### *Why is there a combat market despite the anti-mercenary norm?*

The argument here is that the current combat market is *not* an intentional design, but rather the consequence of strategic interactions. Game theory offers a powerful tool to explore strategic interaction, and how such interactions—either intended or unintended—develop into a self-enforcing equilibrium.<sup>29</sup> The basic assumption of game theory is that actors are cost-benefit calculating. Hence, actors’ moves are constrained by rationality and they will always pick the option offering the best possible payoff. However, the outcome is not determined by unilateral action but by interaction, i.e. the best reply to another actor’s actions. If both actors find a mutual best response from which they cannot improve unilaterally, and they decide to repeat this interaction, a self-enforcing (Nash) equilibrium emerges. They can formalize the rules, making the rules of the game explicit, or they can be informal and tacit.<sup>30</sup>

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<sup>25</sup> Thomas Risse-Kappen et al., *The power of human rights: international norms and domestic change* (New York: Cambridge University Press, 1999), 11; Wayne Sandholtz & Kendall Stiles, *International norms and cycles of change* (Oxford; New York: Oxford University Press, 2009), 14-15.

<sup>26</sup> Thomas Risse, ‘“Let’s Argue!”: Communicative Action in World Politics,’ *International Organization*, 54, 1 (2000), 1-39.

<sup>27</sup> There were two exceptions: Simon Mann suggested to form an ‘Arab Legion’ to fight ISIS, and Erik Prince proposed a private multi-national force. Both proposals failed

<sup>28</sup> Sandholtz & Stiles (2009), 6-10.

<sup>29</sup> Edna Ullmann-Margalit, *The emergence of norms* (Oxford: Clarendon Press, 1977); Avner Greif & David Laitin, ‘A Theory of Endogenous Institutional Change,’ *The American Political Science Review*, 98, 4 (2004), 633-652.

<sup>30</sup> Douglass North, *Institutions, institutional change, and economic performance* (Cambridge; New York: Cambridge University Press, 1990), 3.

Sceptics might have reservations about the approach's ability to explain the existence of two contradictory equilibria, e.g. the combat market and the anti-mercenary norm. However, it may be less fruitful to ask whether an institution or norm is self-enforcing in general, but rather *for whom* it is self-enforcing. To be more specific, norms often have different payoffs for different actors within a given community. Payoffs can be distributed asymmetrically.<sup>31</sup> The underlying assumption is that international norms create an order yielding better payoffs for some than for others. This creates different groups within the international society. Satisfied states support the current order as it is constructed in a way to yield high payoffs and helps them to achieve their goals. However, that order also produces dissatisfied states. Dissatisfaction is derived from their disadvantageous position under the current rules yielding low benefits.<sup>32</sup> Accordingly, there are those whose best strategy is to comply with the anti-mercenary norm (H-doers) as this promises substantial payoffs, while for others the best strategy is to unilaterally defy the anti-mercenary norm (L-doers) as this promises better payoff.<sup>33</sup> In terms of the stability of the order, some level of defection can be sustained as long as the group of L-doers is small and the group of H-doers remains large. The asymmetric payoff structure has direct relevance for the argument about the emergence of the combat market. It is the unintentional outcome of the best strategies between the H- and L-doer groups which yields the combat market. To be more precise, it is the interaction of the two actors' best strategies: the H-doers move in the compliance subgame, followed by the L-doers moving in the compliance subgame, and finally the H-doers move in the enforcement subgame.<sup>34</sup>

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<sup>31</sup> T. K. Ahn et al., 'Asymmetric payoffs in simultaneous and sequential prisoner's dilemma games', *Public Choice*, 132, 3 (2007), 353-366.

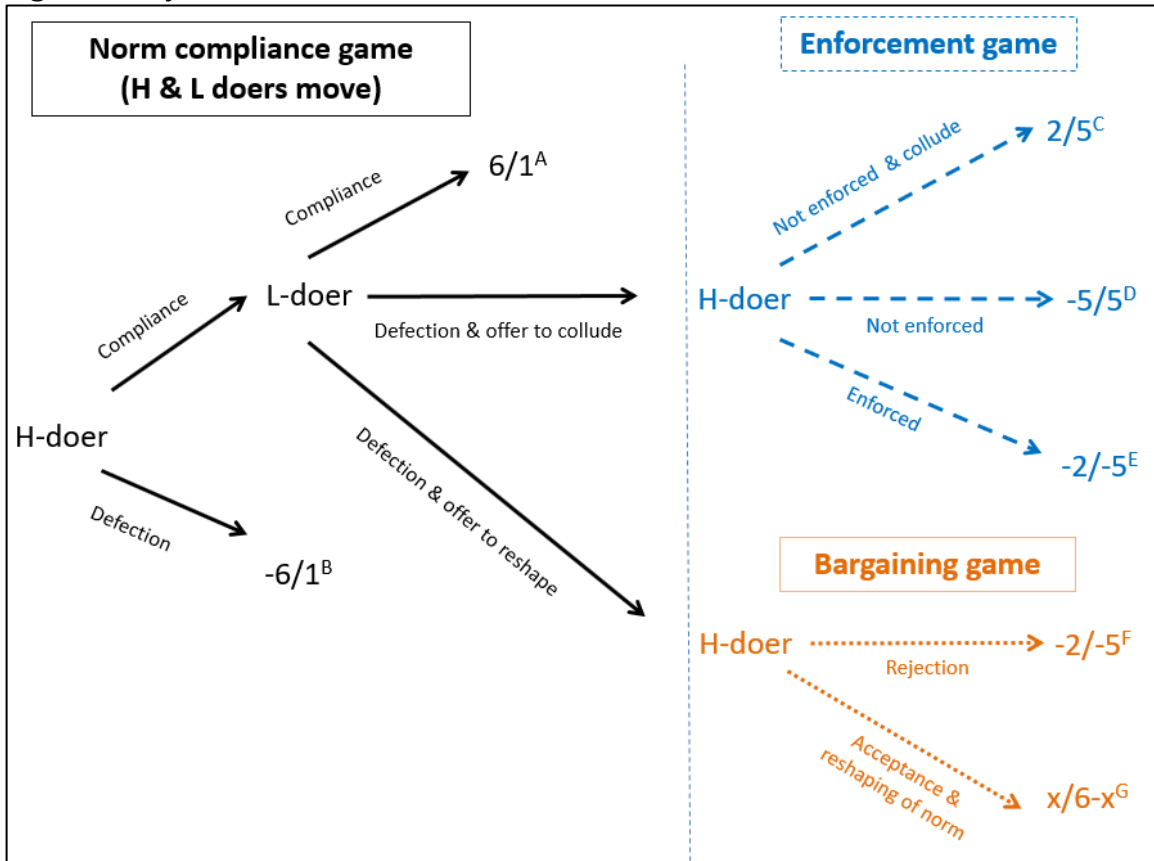
<sup>32</sup> Susan Sample, 'Power, Wealth, and Satisfaction: When Do Power Transitions Lead to Conflict?', *Journal of Conflict Resolution*, 62, 9 (2018), 1905-1931, 8 & 23; Ronald Tammen, 'The Organski Legacy: A Fifty-Year Research Program', *International Interactions*, 34, 4 (2008), 314-332, 317-318.

<sup>33</sup> The acronyms were taken from Diego Gambetta & Gloria Origgi, 'The LL game: The curious preference for low quality and its norms', *Politics, Philosophy & Economics*, 12, 1 (2012), 3-23. 'H' indicates high, and 'L' indicates low compliance.

<sup>34</sup> Players act rationally in every subgame, i.e. the game is subgame perfect. Kenneth Williams, *Introduction to game theory: a behavioral approach*, Oxford; Oxford University Press, 144



Figure 1: Payoff structure<sup>35</sup>



Norm compliance subgame

In the norm compliance subgame, members of the H-doer group move first. In theory, they have the option to comply or defect. However, compliance with the normative order yields a high payoff for H-doers. Hence, they are satisfied with it and seek to facilitate its stability. Compliance with the anti-mercenary norm is therefore a rational move. While hiring violent non-state actors has certain benefits—such as providing a maximum of freedom and a minimum of responsibility—it also has costly repercussions as it renders state relations less predictable and stable due to more adventurous foreign policy.<sup>36</sup> In the worst case, it could be difficult to determine who initiated and authorized forcible PMSC intervention. Overall, the lack of accountability and unpredictability may lead to diplomatic tensions, or worse, it might trigger war and increase overall violence.<sup>37</sup> In essence, as norms require a substantial amount of

<sup>35</sup> Game theory depends on ordinal preference orders. The individual scores are for illustration purposes only.

<sup>36</sup> Deborah Avant, 'The Marketization of Force: Adventurous Defense, Institutional Malformation, and Conflict', Jonthan Kirshner (ed.), *Globalization and National Security* (New York: Routledge, 2006), 105-141, 116; S. Schooner, 'Why Contractor Fatalities Matter', *Parameters*, Autumn (2008), 78-91.

<sup>37</sup> Ulrich Petersohn, 'Private Military and Security Companies (PMSCs), Military Effectiveness, and Conflict Severity in Weak States, 1990–2007', *Journal of Conflict Resolution*, 61, 5 (2017), 1046-1072.

compliance to yield positive effects, the defection of H-doers would mean the end of the anti-mercenary norm due to the size of the group. The negative repercussions of instability and unpredictability for the H-group would be substantial as indicated by the payoff of Outcome B (Figure 1). Constrained by rationality, H-doers will therefore not opt for defection as it would be irrational. Hence, H-doers are expected to comply with the anti-mercenary norm.

Following this, L-doers are ready to move. L-doers have the option of compliance or non-compliance with the anti-mercenary norm. However, while compliance would contribute to the overall public good of stability and predictability, the benefits for the L-doers are small (Figure 1, Payoff A). The current order either disadvantages L-doers or makes the opportunity costs of compliance too high, rendering L-doers dissatisfied with the international order. The latter will mainly apply to states which face an internal military challenger and which are under threat for regime survival. Accordingly, L-doers are expected to respond with non-compliance. Theoretically, L-doers have two options to defect from the norm:

First, the L-doers' dissatisfaction with the normative order may prompt an intentional norm challenge. In other words, the L-doer turns into a norm-entrepreneur. A norm challenge is indicated by the L-doer, making its violation public in order to trigger negotiations about the order and eventually re-shape the rules of the game. Accordingly, the violation is accompanied by a justification as to why the norm was violated and an offer to other actors to change the current order. Whether the offer is accepted depends on the offer made by L-doers. The offer (x) can range from 0 (L-doer receives all benefits) to 6 (payoff for H-doers as if status quo remains and actors comply with the anti-mercenary norm). It can be assumed that any offer less beneficial to H-doers than the status quo minus the enforcement costs will be rejected.<sup>38</sup> If the offer is above this threshold, H-doers may accept and both parties may benefit (Figure 1, Payoff G). If, in contrast, the offer does not resonate with H-doers, they will seek to maintain the status quo and take costly enforcement actions (Payoff F). While norm challenge is a theoretical possibility, there are currently no attempts by any actor to challenge or initiate negotiations.

Second, L-doers may violate the norm in order to gain higher payoffs from the violation. Instead of a negotiation game, this defection-move triggers a norm enforcement game. H-doers may then decide to punish L-doers by imposing costs, such as economic sanctions, or social sanctions, such as blaming and shaming. The goal is for the costs to significantly exceed the benefits from non-compliance, forcing L-doers into compliance (Figure 1, Payoff E). However, this is not a likely move as H-doers have a strong incentive to not pursue L-doers aggressively, as dealing punishment is associated with substantial costs. For one, the punisher accrues direct costs from coordinating and adjustment costs, i.e. the formation and negotiation of a sanctioning alliance. For instance, in the case of the Syrian war the European members of the UN

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Ulrich Petersohn, 'The Impact of Mercenaries and Private Military and Security Companies (PMSCs) on Civil War Severity between 1946 and 2002', *International Interaction* 40, 2 (2014), 191-215.

<sup>38</sup> Andrew Kydd, *International relations theory : the game theoretic approach* (Cambridge: Cambridge University Press, 2015), 59; H-doers may accept offers which are  $>4 (6[\text{status quo}] - 2[\text{enforcement costs}])$ .

Security Council sought to find a consensus for a resolution to condemn human rights violations and establish an arms embargo. However, despite substantial effort in drafting different versions of the resolution and intensive negotiation with other Security Council members, the initiative failed.<sup>39</sup> Furthermore, costs arise from implementing and monitoring sanctions. Lastly, imposing punishment may have repercussions on relations between sender and recipient, as the latter might adopt a more antagonistic stance in other issue areas. As a result, the preferred strategy for H-doers is to defect in the norm enforcement game. This leaves both groups of actors better off as opposed to norm enforcement (Payoff C).<sup>40</sup>

However, whether non-enforcement or enforcement is the best strategy for H-doers depends on parameters external to the interaction. In other words, 'the best' is always in reference to a set of stable parameters, and changes in such parameters may change what is considered the best strategy. For instance, power changes exogenous to the interaction may shift an actor's best bargaining strategy.<sup>41</sup> In the game at hand, the external parameter influencing the choice of strategy is the level of attention by an external audience. An audience can influence an actor's strategy by highlighting or publicizing non-compliance or non-enforcement. The publicity exploits the political vulnerability of actors committed to a norm. Actors are sensible to their transgressions being made public, as that publicity will likely generate domestic and international reputational costs about the credibility of their commitments.<sup>42</sup> Accordingly, if public attention is high, H-doers are expected to enforce the norm as it is less costly than non-enforcement (Figure 1, Payoff E over D). However, the attention the audience pays to similar events varies.<sup>43</sup> Hence, one combat contract may receive attention while another does not. Accordingly, any defection by L-doers contains an offer to H-doers to collude in minimizing public attention and maintaining a compliance façade. Tacit cooperating to maintain a compliance façade is in the interest of H-doers as it promises a higher payoff.

Against this backdrop, the preference order of L-doers is  $C=D>A=B>E$ . The preference order of H-doer is  $A>C>E>D>B$ .<sup>44</sup> While there are theoretically five outcomes possible, the argument is that the outcome is either C or E, depending on the level of audience attention. If public attention is low, C is the preferred outcome by both parties. If public attention is high, E is the preferred outcome of the H-doer, who makes the last move. Accordingly, in order to create the circumstance under which H-doers are able to collude and Outcome C is possible, L-doers engage in activities maintaining

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<sup>39</sup> What's in Blue, 'Syria Sanctions Resolution', *Security Council Report*, 25 August 2011.

<sup>40</sup> Robert Axelrod, 'An Evolutionary Approach to Norms', *American Political Science Review*, 80, 4 (1986), 1095-1111, 1098; Daniel Drezner, *The sanctions paradox: economic statecraft and international relations* (Cambridge: Cambridge University Press, 1999), 34, 41.

<sup>41</sup> Avner Greif, *Institutions and the path to the modern economy: lessons from medieval trade* (Cambridge: Cambridge University Press, 2006), 159, 164.

<sup>42</sup> Martha Keck & Kathryn Sikkink, *Activists beyond borders: advocacy networks in international politics* (Ithaca, N.Y.: Cornell University Press, 1998), 24; James Fearon, 'Domestic Political Audiences and the Escalation of International Disputes', *The American Political Science Review*, 88, 3 (1994), 577-592., 580-581.

<sup>43</sup> Nils Weidmann, 'A Closer Look at Reporting Bias in Conflict Event Data', *American Journal of Political Science*, 60, 1 (2016), 206-218, 211.

<sup>44</sup> The pathway 'defection and offer to reshape' has not been included in the analysis.

a compliance façade, e.g. concealing activities, denial, or rhetorical action to keep public attention low (Prediction 1). While C is not the preferred outcome of H-doers (A is at the top of the preference order), it is preferable to E. Hence, H-doers will reciprocate by engaging in activities maintaining a compliance façade, e.g. denial or rhetorical action (Prediction 2). If H- and L-group members collude in this manner, an unintended stable equilibrium forms, i.e. the combat market for force (Outcome C).<sup>45</sup> However, if the audience is attentive, costs of non-enforcement increase. Under these circumstance, H-doers will not collude as non-enforcement would be punished by the audience, resulting in Outcome E. L-doers would be content with E as they would receive the benefits of defecting from the norm and not getting punished. However, H-doers prefer E over D, as the costs are less in the former. Accordingly, the prediction is that H-doers will break the compliance façade and enforce the norm if public attention is high (Prediction 3).

### **Testing the Prediction**

A crucial assumption is that the current normative order yields an asymmetric payoff structure, dividing actors into those who are satisfied and those who are dissatisfied. For the purpose of the investigation, it is important to identify the group of dissatisfied states—and, by extension, potential L-doers—independent of their norm defection. The assumption here is that dissatisfaction follows from lower payoffs received from the current order. Two indicators will be employed to determine dissatisfaction.

First, the literature has developed several indicators to measure dissatisfaction.<sup>46</sup> For the purpose of this investigation, dissatisfaction is identified by proximity to the values upon which the system rests or the actual accrued costs associated with norm compliance. To be more specific, states follow their interest in forming international regimes and what treaties they enter into.<sup>47</sup> Dissatisfied states will therefore refrain from entering into any agreements or regulatory regimes not associated with positive payoffs. Accordingly, for the investigation at hand, membership in the Montreux Document will be taken as an indication of being satisfied with the current order.<sup>48</sup> Alternatively, the membership in the UN Convention against Recruitment, Use, Financing and Training of Mercenaries could have been selected as an indicator for satisfaction with the order. However, although the treaty addresses the organization of the use of force by private actors, it does not reflect a widespread consensus. Although it has been adopted almost 20 years prior to the Montreux document, it has gathered fewer members.<sup>49</sup> Moreover, in contrast to the Montreux

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<sup>45</sup> There are other possible equilibria.

<sup>46</sup> Ronald Tammen et al., 'Foundations of Power Transition Theory', in *Oxford Research Encyclopedias*(Oxford University Press, 2017); Michael F. Altfeld & Bruce de Mesquita, 'Choosing Sides in Wars', *International Studies Quarterly*, 23, 1 (1979), 87-112.

<sup>47</sup> Abram Chayes & Aantonia Handler Chayes, 'On Compliance', *International Organization*, 47, 2 (1993), 175-205, 179.

<sup>48</sup> Please see Appendix 1.

<sup>49</sup> The UN Convention was adopted in 1989 and it has 36 members (2020). On average 1.2 states joined per year. The Montreux document was signed in 2008 and has currently 56 members. On average 5 states joined per year.

document, none of the members of the UN convention are 'crucial actors', i.e. none of the members have a significant PMSC industry. Lastly, the convention seeks to criminalize any participation or attempted participation in hostilities by private actors. This deviates substantially from the current consensus, which only considers offensive participation problematic.<sup>50</sup>

Second, dissatisfaction with the order may result from norm compliance generating large opportunity costs. In the case of commercial combat providers, opportunity costs increase if there is a significant domestic threat and if the state is incapable of addressing that threat by deploying its own armed forces or drawing on resources of state allies.

According to Prediction 1, L-doers engage in activities to maintain a compliance façade. H-doers, in turn, tacitly collude with L-doers and engage in similar activities in maintaining the compliance façade (Prediction 2). In both cases, actors may undertake any of the following actions: conceal the activity, which is indicated by secrecy; retreating from the discourse, which is indicated by an absence of press statements mentioning the PMSC employment; denial and rhetorical action, which is indicated by either contradicting the credibility of factual statements, or framing the violation to be in accordance with the existing norm.<sup>51</sup> For the H-doer group, the focus here will be on the reactions of several important members of the Montreux Document: the United States, South Africa, the United Kingdom, Germany, and the North Atlantic Treaty Organization (NATO).

As suggested by Predictions 2 and 3, the level of audience attention is decisive as to whether enforcement measures are implemented. However, different authors have conceptualized attention in different ways suggesting that it is multidimensional. In order to capture this complexity, the investigation includes the three main dimensions of attention: elite attention, media attention, and public attention.<sup>52</sup> The level of elite attention is determined by the absence or presence of reports by the UN Working Group on the Use of Mercenaries. Media attention is measured by the frequency of published newspaper articles on the specific subject, and public attention is captured by the frequency of Google search hits. In regards to the latter two indicators, high public attention is determined by comparing the hits in each case to an incident of exceptionally high public interest: the Nisour-Square incident in 2007 in Iraq. In this incident, operators of the U.S. PMSC Blackwater killed seventeen Iraqi civilians. However, Blackwater received unique and exceptional global attention, which needs to be taken into consideration. Accordingly, high interest is assumed if a case receives 50% (or more) of the Nisour-Square interest, while anything below is considered as

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<sup>50</sup> Lindsey Cameron, 'Private Military Companies: their status under international humanitarian law and its impact on their regulation', *International Review of the Red Cross* 88, 863 (2006): 573-598.

<sup>51</sup> Frank Schimmelfennig, 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union', *International Organization*, 55, 01 (2001), 47-80; Lee Seymour, 'Let's bullshit! Arguing, bargaining and dissembling over Darfur', *European Journal of International Relations*, 20, 3 (2014), 571-595.

<sup>52</sup> W. Lance Bennett, 'Towards a Theory of Press-State Relations in the United States', *Journal of Communication* 40, no. 2 (1990): 103-125; James Fearon, 'Domestic Political Audience and the Escalation of International Dispute', *American Political Science Review* 88, 3 (1994): 577-592.

low interest.<sup>53</sup> The following sections test these predictions in several combat contracts.

### *Nigeria and STTEP*

The Nigerian government has struggled with an insurgency on its own territory since 2004. Since 2009 the intensity of the fighting, territorial losses, indiscriminate violence, and the number of displaced increased, amounting to a significant threat to the government. With the Nigerian military ineffective due to years of decline and corruption, the opportunity costs of complying with the anti-mercenary norm and forgoing the hiring of combat PMSCs were high. Accordingly, in 2013, the Nigerian government tasked a PMSC called STTEP to train the Nigerian military and to engage in direct combat, provide air support, and execute night raids.<sup>54</sup> However, the Nigerian government had no interest in challenging the anti-mercenary norm and engaged in rhetorical action to keep a compliance façade as Prediction 1 suggests. They did not deny the existence of the contractual relationship nor the exchange of force-related services. However, when elaborating on those services, a representative of the company focused on the training task in order to maintain the impression of acting in accordance with normative requirements.<sup>55</sup> Likewise, Nigerian officials emphasized the legitimacy of the contract and placed the exchange within the boundaries of the security market for force. Mike Omeri, a government official, denied that foreigners provided military services to the Nigerian government. Nigerian President Goodluck Jonathan was more detailed and described the operators as ‘technicians’ performing maintenance and instruction services, although they were actively participating in hostilities. Rear Admiral Gabriel Oki, the chief of Nigerian defense intelligence, emphasized the foreigners were not there to fight, but to train the Nigerian army.<sup>56</sup>

This offer to collude was accepted by the H-doers due to the minimal international attention (Prediction 2). First, the UN Working Group did not mention Nigeria-STTEP in any of their reports, and did not bring it to the attention of the General Assembly. Likewise, the media reporting was negligible. A Nexis search yielded only seventeen reports. The low media interest is underscored by the results of a Google search, which yielded only 162 results and represents a low level of interest. Second, the international community’s response was mute. There was no official statement by the U.S., South Africa, the UK government, or by NATO on the topic. While Nigeria and Boko Haram was brought up in a German government press conference, the spokesperson did not mention any mercenary activity.<sup>57</sup> However, a South African government official, the spokeswoman for the South African Defence Ministry,

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<sup>53</sup> A ‘Nexis’ and Google search for reports on each case was conducted for the period 2013 to 2019. The search for the term ‘Blackwater’ yielded 465 results on Nexis, and 677 on Google.

<sup>54</sup> Caroline Varin, ‘Turning the tides of war: The impact of private military and security companies on Nigeria’s counterinsurgency against Boko Haram’, *African Security Review* (2018): 1-14, 6.

<sup>55</sup> Fabricius, ‘Nigeria’s decision to use ex-SADF soldiers to combat Boko Haram’.

<sup>56</sup> Sani Tukur, ‘Nigeria denies hiring mercenaries to fight Boko Haram’, *Premium Times*. (Abuja). March 16 2015; Chris Stein & Mike Eckel, ‘VOA Exclusive: Nigeria Brings S. African, Foreign Mercenaries Into Boho Haram Fight’, *Voice of America*, 2015.

<sup>57</sup> Bundesregierung, *Regierungspressekonferenz vom 6. Juni 2016*, 2014.

commented on STTEP. When asked about the topic, she denied any knowledge of STTEP operating in Nigeria, thereby contributing to the maintenance of the façade.<sup>58</sup>

The empirical results therefore support Predictions 1 and 2. L-doers defected and maintained a compliance façade. Likewise, H-doers did maintain the compliance façade and did not impose sanctions due to low audience attention. The interaction of the two strategies yields Outcome C.

### *Russia in Ukraine and Syria*

In Syria and Ukraine, Russian PMSCs engaged in combat operations on behalf of the Russian government. In Syria, the Slavonic Corps (a subsidiary of the Russian-based security company Moran Security) operated briefly in 2013. Currently, between 100 and 900 Russian private military personnel from the Russian company OMS (also known as the Wagner Group) are participating in the fight. The Wagner Group was also engaged in operations in Ukraine on behalf of the Russian government to support the separatists from 2013-2015.<sup>59</sup> In terms of payoffs, there were no significant opportunity costs by complying with the anti-mercenary norm. Russia has substantial military capabilities and did not face any significant domestic threat. However, Russia is often considered to be dissatisfied with the current international order in general. For instance, it displays a significant distance from the dominant liberal values of many H-doers<sup>60</sup> and, specific to this case, it is not a member of the Montreux Document.

As suggested by Prediction 1, Russia defected and engaged in rhetorical action while not drawing attention to its norm violation. For one, Russia took extensive measures to keep the entire operation secret and out of the public debate. For instance, the private soldiers of the Slavonic Corps were told not to bring any military-related articles to avoid attention and, upon their return to Russia, they had to surrender their SIM cards and electronic media to the Federal Security Service (FSB) and sign a non-disclosure agreement.<sup>61</sup> Moreover, the Russian government refrained from providing any information about the involvement of Moran Security or OSM in Syria. They either refused to directly comment on any relationship to a Russian PMSC or denied having any information available on the Slavonic Corps. Likewise, representatives of Moran Security and the Slavonic Corps denied involvement. OSM has not engaged in any public discourse and has pre-empted any questions by keeping its contact details undisclosed. The Russian defence ministry refuses to respond to any inquiries about the relationship and involvement of the company, and the Russian military does not acknowledge the existence of the Wagner Group. Moreover, a Russian government spokesperson deflected news reports about the Wagner Group as untrustworthy.<sup>62</sup>

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<sup>58</sup> Carien du Plessis, 'Arrest SA 'mercenaries' on Boko Haram mission - Mapisa-Nqakula', *City Press*, Januar 28, 2015.

<sup>59</sup> The Interpreter, 'St. Petersburg Sends Contractors to Syria'; James Miller, 'Putin's Attack Helicopters and Mercenaries Are Winning the War for Assad', *Foreign Policy*. March 30, 2016.

<sup>60</sup> E.g. the UK, Germany or France.

<sup>61</sup> The Interpreter, 'The last Battle of the 'Slavonic Corps'', *www.interpretermag.com*, November 16, 2013.

<sup>62</sup> Grove, 'Up to nine russian Contractors die in Syria'; Economist, 'How Wagner came to Syria'; Andrew Roth, 'The Russian Captives who may link Syria, Ukraine and the Kremlin's fight against the opposition', *Washington Post*, October 5, 2017.

In both cases international interest was high. A Nexis search yields 180 articles mentioning the Syria-Russia contract and approximately 320 dealing with the Ukraine-Russia contract. The high interest is underscored by an analysis of the Google search results which produced around 500 hits. In addition, several in-depth journalistic pieces on Syria and the Russian practice of using private combat providers were published.<sup>63</sup> Even the UN Working Group took notice of the Russian practice. A delegation visited Ukraine and produced a report pointing out the participation of Russian operatives, their recruitment in Russia, and various human rights violations.<sup>64</sup> However, in contrast to Prediction 3, the high public attention triggered only scant criticism and did not lead to sanctions imposed on the norm violator. Indeed, in Ukraine, some H-doers broke the compliance façade by criticising the deployment of PMSCs. The Foreign and Commonwealth Office criticized the presence of mercenaries in Ukraine, and Germany repeatedly called upon the Russian government to withdraw their mercenaries.<sup>65</sup> However, this was the exception rather than the norm. No other actor raised criticism, and in Syria H-doers even tried to diffuse attention by casting doubt on the link between Russia and the PMSCs. For instance, a DoD spokesperson stated that U.S. military officials had been in contact with their Russian counterparts, who assured them that no Russian paramilitaries were in the region.<sup>66</sup> U.S. Secretary of Defense James Mattis insisted he did not know whom the U.S. air strikes had hit, and that he believed that Russia would have informed the U.S. government if they had been involved.<sup>67</sup> In short, while there was some criticism, the main thrust of the efforts was aimed at diffusing public attention. Moreover, the sanctions imposed were not designed to enforce the norm, but to rebut any allegations of non-enforcement. The measures targeted not the norm violator Russia, but the PMSCs. For example, Moran Security, which is registered in the British Virgin Islands, was sanctioned by the UK for its involvement in the Syrian conflict. Likewise, Wagner Group founder and leader Dmitry Utkin was added to the list of officials sanctioned for involvement in Ukraine conflict by the United States.<sup>68</sup> The absence of sanctions against Russia directly avoided the costs associated with coordination, monitoring, and (further) disrupting diplomatic relations.

In sum, the empirical results support Prediction 1 but not Prediction 3. While L-doers defected and maintained a compliance façade, some H-doers did criticize the use

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<sup>63</sup> James Miller, 'The Insane Story of Russian Mercenaries Fighting for the Syrian Regime', *Huffington Post*, November 21, 2013.

<sup>64</sup> UN Working Group on 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 on its mission to Ukraine* (New York: United Nations, 2016).

<sup>65</sup> Foreign and Commonwealth Office, *UK remains deeply concerned by situation in Ukraine*, October 24, 2014; Bundesregierung, *Regierungserklärung von Bundeskanzlerin Merkel*, December 16, 2015; Bundesregierung, *Hoffnungsschimmer fuer politische Loesung*, October 15, 2015.

<sup>66</sup> Mike Eckel, 'Pentagon Says U.S. Was Told No Russians Involved in Syria Attack', *Radio Free Europe*, February 23, 2018.

<sup>67</sup> Joshua Yaffa, 'Putin's Shadow Army Suffers a Setback in Syria', *New Yorker*, February 16, 2018. Joseph Trevithick, 'Russian Mercenaries Take the Lead in Attacks on US and Allied Forces in Syria', *www.thedrive.com*, February 15, 2018.

<sup>68</sup> Miller, 'The Insane Story of Russian Mercenaries'; <https://www.treasury.gov/press-center/press-releases/Pages/sm0114.aspx> (accessed Dec 15, 2017).



of combat providers, while most efforts sought to diffuse public attention. However, all H-doers avoided sanctioning the norm violator Russia. Accordingly, outcome E—where H-doers pay enforcement costs and L-doers receive a hefty penalty for the norm violation—did not materialize. Instead, the interaction produced an outcome not yet accounted for by the game matrix. In terms of payoff the unaccounted outcome is much closer to C than to E. The L-doer was able to keep the benefits of the norm violation, and H-doers avoided the costs of non-sanctioning imposed by the audience *and* the costs of sanctioning the violator at the same time.

### *UAE in Libya and Yemen*

In 2010, the UAE government hired Reflex Response (R2) to establish an 800-member battalion of foreign troops to conduct ‘urban combat’ and to destroy enemy equipment and personnel.<sup>69</sup> The unit was deployed in 2015 to participate in combat in Yemen within the military operation led by Saudi Arabia. Around the same time the UAE was involved in the Libyan civil war, providing air support for the Tobruk government, including aircraft, pilots, and air strikes. One of the main contractors supporting UAE special operations in Libya was an American business man named Erik Prince. Several of the pilots flying combat sorties were reportedly employed by him.<sup>70</sup> The UAE did not face any significant opportunity costs by forgoing combat providers as it was not confronted with any domestic challengers. However, the UAE is categorized as a state dissatisfied with the current organization of the use of force. It does not align with the dominant liberal values and is not a member to the Montreux Document.

In both cases the communication strategy was as expected (Prediction 1): L-doers sought to maintain the compliance rhetoric. The New York Times reported the UAE’s plans and the involvement of Reflex Response in setting up a special battalion in 2011.<sup>71</sup> In response, Faiza Patel, then-chairperson for the UN Working Group, sent a questionnaire to the UAE embassy regarding the laws regulating PMSC activities. The UAE embassy sought to conceal the true nature of the activities by explaining that ‘no military companies using mercenaries’ were used, and insisted PMSCs were ‘limited to preventive security protection.’<sup>72</sup> R2 did not engage in the discourse at all and did not issue any statements. Erik Prince, who reportedly helped to facilitate the contract, denied involvement. His spokesperson, Kathy Daneman, also denied and explained that ‘[n]either Mr. Prince nor Blackwater are doing or have done security with the UAE ... All reports to the contrary are in error.’<sup>73</sup> The Libya contract displayed the same pattern. When news of UAE involvement broke, Libya’s ambassador to the United Nations sought to diffuse the situation by claiming that outside support was involved in his country. Likewise, the foreign minister made it clear that his government did not want any foreign military intervention, and the Libyan prime minister called the

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<sup>69</sup> Mazzetti & Hager, ‘Secret Desert Froce’.

<sup>70</sup> Intelligence Online, ‘Erik Prince to UAE’s rescue in Libya’, *Intelligence Online*, January 26 2017; Delalande, ‘Erik Prince’s Mercenaries Are Bombing Libya’.

<sup>71</sup> Mazzetti & Hager, ‘Secret Desert Force’.

<sup>72</sup> Paul Shinkman, ‘Blackwater Founder Denies UAE Royalty Contract’, *www.usnews.com*, January 6, 2014.

<sup>73</sup> *Ibid.*

allegations 'false events.' Similarly, Erik Prince denied any involvement in the air operations. Finally, the UAE government did not provide any comments on specific matters, yet the UAE Minister of Foreign Affairs said the claims about the attacks were a 'diversion' from Libyans' desire for stability.<sup>74</sup>

Overall, the audience's attention to both contracts was rather low. Although the UN Working Group took up the UAE-Yemen issue briefly, it was not followed up or referred to in any meetings of the UN Human Rights Council. Media reporting on the topic was low as well. A Nexis search yielded around 50 newspaper articles covering the R2 contract. Google generated 194 search results which represents a low level of interest. Interest in the Libya case was also low. Nexis held only twelve reports, and a Google search yielded no results,. This is a very low level of interest. As a consequence, the audience cost for not sanctioning the other actors was low. Accordingly, there was no official statement by the U.S., German, South African, or UK government, or by NATO on the topic.

The empirical results support Predictions 1 and 2. As expected, L-doers defected and maintained a compliance façade. Likewise, members of the H-group maintained a compliance façade and did not impose sanctions due to low audience attention. The interaction of the two strategies yields Outcome C.

## **Conclusion**

Janice Thomson's claim '[t]oday real states do not buy mercenaries' needs to be revised.<sup>75</sup> Indeed, a large part of the international community has accepted a regulated and restrained security market for force and has vehemently rejected attempts to re-establish a combat market several times in the past decades.<sup>76</sup> Nevertheless, the combat market re-emerged.

Theoretically, the article argues that the combat market is the unintended outcome of strategic interaction between actors, who are satisfied and dissatisfied with the order. Dissatisfied actors are disgruntled due to the lower payoff they receive. Accordingly, for those actors it is more beneficial to defect. Satisfied actors, in contrast, are content with the order due to the higher payoff they receive and their best strategy is to comply. Compliant actors may choose to enforce the norm, yet this is a costly undertaking and will only be the best strategy if the audience's attention is high and non-enforcement accrues a penalty. If public attention is low, L-doers engage in activities to maintain a compliance façade (Prediction 1). H-doers will join L-doers in keeping that compliance façade (Prediction 2). If both actors collude in this way, the interaction yields a self-enforcing equilibrium, the combat market (Outcome C). However, if attention is high, the expectation is that H-doers will take enforcement measures (Prediction 3).

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<sup>74</sup> Reuters, 'Egypt, UAE carried out Tripoli air strikes: US officials', 2014; Caline Malek, 'Libya prime minister denies UAE military involvement in his country', *www.thenational.ae*, 2014; David Alexander & Aandrea Shalal, 'Egypt and UAE 'behind air strikes on Libya', Claim US officials', *The Independent* August 26 2014.

<sup>75</sup> Thomson, *Mercenaries*, 96.

<sup>76</sup> Percy, *Mercenaries*; Petersohn, 'Reframing the anti-mercenary norm'.

In sum, two theoretical predictions are congruent with the empirical evidence. As assumed, in all of the cases, the defecting actors were dissatisfied with the current order due to lower payoffs. Prediction 1 holds up to the empirical test. Any defection is accompanied by L-doers seeking to maintain a compliance façade. Similarly, Prediction 2 was corroborated. Whenever the audience's attention was low, H-doers refrained from norm enforcement and maintained a compliance façade. However, in the case of the Russian contracts in Syria and Ukraine, high attention did not lead to the expected criticism or to sanctioning behaviour. While this contradicts Prediction 3, a closer look reveals that the result is still within the scope of the game theory model. H-doers sought to attain the best payoff by avoiding costly enforcement measures and costs from non-enforcement at the same time. The overall results support the argument of the combat market being an unintended consequence. It is the result of the interaction of both actor's best strategies by either colluding in maintaining a compliance façade, or H-doers seeking to avoid costs of enforcement and of non-enforcement. In either case, the non-punishment by H-doers permits L-doers to continue to contract combat providers.

An objection to the validity of the results may be that, due to space constraints, only seven out of eleven combat contracts were investigated in detail. However, it seems unlikely that four additional cases would change the results: Saudi Arabia worked alongside UAE in Yemen and public attention was low. It is unlikely that Saudi Arabia received criticism for its action while the UAE did not. The UAE-Spear Operations Group contract was one out of three contracts for the Yemen operation. It is unlikely that the UAE was not criticized for the two, yet was for the third. Lastly, to date the Russian contracts in Libya and Mozambique have not received any international outcry or criticism. However, admittedly, knowledge about Russia's involvement is still very recent, and this may change in the future. Nevertheless, since no substantial enforcement measures have been taken in previous Russian contracts, it is unlikely this will be different.

The result has also wider implications. If a norm gets violated, the literature tends to discuss two stylized outcomes: either compliant actors uphold the norm through sanctions forcing the violator to change behaviour, or the norm violator becomes a (illiberal) norm entrepreneur, engages in a discourse and persuades others to adjust the norm.<sup>77</sup> However, the findings here suggest that there is a third option. Tacit collusion may be the best strategy for both actors saving sanctioning costs for the H-actors and the costs of norm adjustment for the L-actor. However, according to conventional wisdom, repeated norm violations and a lack of enforcement measures weakens the salience of a norm.<sup>78</sup> Surprisingly though, the literature is divided about the repercussions of the current trend on the strength of PMSC regulation. Despite the presence of combat service exchange, Deborah Avant considers the current trajectory of regulation as a positive development increasing the 'chances of effective

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<sup>77</sup> Carmen Wunderlich, *'Rogue States as Norm Entrepreneurs'* (Cham: Springer 2020); Alan Bloomfield, 'Norm Antipreneurs and Theorising Resistance to Normative Change', *Review of International Studies* 42 (2016): 310-333; Keck & Sikkink, 'Activists beyond Borders'.

<sup>78</sup> Ryder McKewon, 'Norm Regress: U.S. Revision and the Slow Death of the Torture Norm', *International Relations* 23, 1 (2009): 5-29; Diana Panke & Ulrich Petersohn, 'Why International Norms Disappear Sometimes', *European Journal of International Relations* 18, 4 (2012): 719-742.

governance.<sup>79</sup> Elke Krahmman, in contrast, points out that much of the hope for regulatory effectiveness depends on market actors being able to punish deviation. Her conclusion is rather sceptical, suggesting that there are 'significant obstacles' to enforcing standards.<sup>80</sup> However, the two assessments do not need to be contradictory if the different groups of actors are taken into consideration. Among H-doers the salience of the anti-mercenary norm is high and are effectively governed, while the opposite is true for L-doers. In short, the norm's salience varies across the two groups, yet there is no attempt to engage in a bargaining game and to find a new consensus. As a consequence, the market for force has become segmented. On the one hand there is a legitimate segment which is government by widely accepted rules, and on the other hand there is an illegitimate segment where the exchange of combat services is a normality.

Tacit collusion between H-doers and L-doers may have wider implications, and may not be limited to the anti-mercenary norm.<sup>81</sup> With the rise of revisionist states and dwindling influence of liberal states in the international system, increasing non-compliance on important international norms such as human rights, freedom of the press, military intervention, or climate change is already a reality. Faced with non-compliance and an increasing inability to enforce norms, H-doers may become more and more willing to tacitly collude with L-doers. This may be the path through which the normative foundation of the liberal international order becomes substantially weakened or even undone.

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<sup>79</sup> D. Avant, 'Pragmatic Networks and Transnational Governance of Private Military and Security Services', *International Studies Quarterly* 60, no. 2 (2016), 330-342, 340.

<sup>80</sup> E. Krahmman, 'Choice, voice, and exit: Consumer power and the self-regulation of the private security industry', *European Journal of International Security* 1, no. 1 (2016), 27-48, 47.

<sup>81</sup> I am grateful to reviewer one for this point.

## Appendix 1

	Challenger present	Challenger absent
Montreux Member	Ukraine, Iraq, Afghanistan	Australia, Austria, Canada, France, Germany, Poland, South Africa, Sweden, Switzerland, United Kingdom, Former Yugoslav Republic of Macedonia, Albania, Netherlands, Bosnia and Herzegovina, Greece, Portugal, Liechtenstein, Spain, Italy, Cyprus, Georgia, Denmark, Hungary, Costa Rica, Finland, Belgium, Norway, Lithuania, Slovenia, Iceland, Bulgaria, Croatia, New Zealand, Czech Republic, Luxembourg, Japan, Ireland, Monaco, Estonia, Ecuador, Chile, Uruguay, Jordan, China, Qatar, Angola, Madagascar, Uganda, Sierra Leone, USA
Not member of Montreux	<b>Nigeria, Libya</b>	<b>Russia, Saudi Arabia, UAE</b>