

2. Security, Legitimacy and Accountability in (Critical) Security Studies

The following chapter will first portray different understandings of security by examining the different understandings of various schools of thought, with the aim of establishing a definition of security this work can then follow. The second part of this chapter will then explore the terms of accountability and legitimacy, customized for the analysis of PMCs.

2.1 Security

“Undoubtedly, feeling secure and well protected is one of humankind’s most cherished goals.”⁸

The concept of security is one that is debated substantially in academia. These debates range from the definition of what security actually is and what its referent object is, to the philosophical question whether or not security is truly something inherently good and whether such a thing as “objective” security exists. Some of these debates exist next to each other, not really picking up the points the other one is making while others are strongly intertwined. The following section aims to take these different debates and bring them into an order to eventually find a definition for security that will serve as a central point of orientation for the rest of this work.

8 Malik, Shahin (2021 a): Framing a discipline. In: Peter Hough et al. (Ed.): International Security Studies. Theory and Practice. Abingdon/Oxon: Routledge. Ps. 3–11. P. 4.

2. Security, Legitimacy and Accountability in (Critical) Security Studies

The leading question for the following chapter will be “What is security?”. Of course, this is not easy to answer, and in some cases, it might have to be reduced to the question “When is a referent object considered secure?”. Nevertheless, the questions have the potential to guide through the following chapter and portray the nuances of different concepts of security.

Realism and Security

When looking for the roots of (International) Security Studies (ISS), it is impossible to avoid realism and liberalism. Realist and liberal ideas have been shaping the ideas around ISS for decades. Therefore, the following section will be a quick overview on how these traditional ideas have influenced the contemporary debate on ISS.

Edward Smith formulates three questions, that according to him were the basis for the discourse and therefore shaped it:

1. What is the referent object of security?
2. What are the threats it may face?
3. How should we provide security against such threats?⁹

The realist school answers the first question rather one-dimensionally: The state, or – as there are multiple in the international system – states, are sovereign entities and should be the main referent object of security.¹⁰ The question “What is a state and how can we define it?”, has been raised by many authors. As this work is not purely theoretical and does not aim to conceptualize the whole debate within realism, it is worth noting that Buzan dedicated one whole chapter of “People, States and Fear” to this question.

The state’s “desire for more power is rooted in the flawed nature of humanity, states are continuously engaged in a struggle to increase their

9 Smith, Edward (2021): The traditional routes to security. Realism and Liberalism. In: Peter Hough et al. (Ed.): International Security Studies. Theory and Practice. Abingdon/Oxon: Routledge. Ps. 12–29. P. 12.

10 Cf. Ibid.

capabilities.”¹¹ Neorealists later abandoned the idea of explaining the strive for power with human nature, but found the reason in the structure of the international system. According to neorealists, states exist in an anarchic environment, in which their very existence is constantly threatened, and they therefore have to strive for more power, which equals military capacities.¹² Realist scholars extended their studies of security in different directions: Offensive and defensive realists made minor adjustments to Neorealism, while Neoclassical realists adopted some ideas from constructivism, highlighting the importance of ideology in the decision-making of states.¹³¹⁴ While all of these schools differ in nuance, they answer the questions of Edward Smith the same way: The state is the referent object of security, it is threatened by other states, and military is the best (and sometimes only) way to protect oneself against these threats. Paul D. Williams describes the realist scholars of security studies from the 1950s and 60s as “advocating political realism and being preoccupied with the four Ss of states, strategy, science and the status quo”.¹⁵ Following political realism, they made the state their main referent object. Strategy was therefore the idea of “devising the best means of employing the threat and use of military force.”¹⁶ Scientific meant what scholars at the time claimed to be not just political opinion, but objective truth. Lastly, the idea of keeping the status quo meant that changes, especially big changes in the international system, were not seen as something good and therefore had to be prevented.¹⁷

One problem that still arises in this context is the answer to the question “When is the referent object secure?”. Stephen Walt describes the common understanding of this in all realist theories as follows: “A

11 Elman, Colin (2008): Realism. In: Paul D. Williams (Ed.): Security Studies. An Introduction. Abingdon/Oxon: Routledge. Ps. 15–28. P. 17.

12 Cf. Smith (2021). P. 28.

13 Cf. Ibid. Ps. 17–18.

14 Cf. Elman (2008). Ps. 25–26.

15 Williams, Paul D. (2008): An Introduction. In: Paul D. Williams (Ed.): Security Studies. An Introduction. Abingdon/Oxon: Routledge. Ps. 1–12. P. 3.

16 Ibid.

17 Cf. Ibid.

state is thought to be secure if it can defend against or deter a hostile attack and prevent other states from compelling it to adjust its behavior in significant ways or to sacrifice core political values.”¹⁸ This definition answers the first two questions raised by Smith by clearly identifying the state as the referent object and other states as the main threat. Note that, while putting an emphasis on the potential military threat, Walt does not exclude other potential threats, like economic pressure. As his text was first published in 2010, it could be taken as an indicator that at least some realist scholars have broadened their view to some extent. Still, it is apparent that the realist approach to security is a narrow one, with a single referent object and a small number of threats. The next section will take a look at the liberal approach and where it has differences and similarities with the realists.

Liberalism and Security

The liberal ideas on ISS have many things in common with the realist view. They share the claim that the international system is an anarchic one and that, if nothing is done against it, states tend to be aggressive towards each other. Therefore, states remain the main referent object of liberal scholars and they also consider other states as the main threat to security.¹⁹ Still, liberals widened the focus in comparison to many realists. One important idea was that not only other state’s military can be a threat, but also economic “attacks” like sanctions and embargoes, for example during the first oil crisis in 1973.²⁰ Generally though, the biggest difference to realism are the answers that different liberal theories, like Liberal Peace Theory (or Democratic Peace Theory) and Neoliberal Institutionalism, give to Smith’s third question. Liberal Peace Theory has its roots in the thoughts of Immanuel Kant and his ideas of

18 Walt, Stephen (2010): Realism and Security. In: Oxford Research *Encyclopedia of International Studies*, 22.12.2017. URL: <https://oxfordre.com/internationalstudies/display/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-286> [15.11.2023].

19 Cf. Smith (2021). P. 19

20 Cf. Ibid. P. 16.

Perpetual Peace. As liberal democracies do not go to war with each other, “the occurrence of inter-state conflict is best mitigated by the spread of liberal democracy wherever and whenever possible.”²¹ Neoliberal Institutionalism also believes in the potential taming of insecurity and anarchy, though through other means. By establishing international organizations, states should be able to communicate clearly and settle their disputes without using military force.²² Liberal scholars therefore do not consider military confrontation between states as inevitable, but as something that can be prevented by the establishment of international regimes, laws or the establishment of liberal democracies.²³

This short paragraph does not do the liberal approaches justice, as they are rather specific and very different in their nuances. Nevertheless, as this work does not only focus on the different understandings of security, it is necessary to shorten this theoretical approach and focus on the following: While the liberal approach slightly opened up the narrow view which realists had (and still have) on ISS, it still very much accepted many of their premises, with the state being the main referent object and the threat to its security being other states.

Keeping that in mind, there are many angles of possible criticism. First and foremost, there is the question of the referent object. Is it right to consider the state as the only legitimate referent object or should the focus go beyond the state, for example to individuals or groups? Would it not be right to think of climate change as a security threat, given that many states in the world will face massive problems from rising temperatures and sea levels? Another potential area could be the society of a state and the potential impact fake news might have on it. Therefore, the first point of criticism is the choice of the referent object.

Smith’s second question can be approached in two ways: The first way accepts the state as the main referent object, but still asks if it may face more threats than solely military ones. As pointed out above,

21 Ibid. P. 20.

22 Cf. Navari, Cornelia (2008): Liberalism. In: Paul D. Williams. (Ed.): Security Studies. An Introduction. Abingdon/Oxon: Routledge. Ps. 29–43. P. 43.

23 Cf. Ibid. P. 42.

climate change or fake news are non-military threats, which still have the potential to at least destabilize a state. Another example, which became most prominent after 9/11, is the threat of terrorist groups and other non-state violent actors, like organized crime or guerillas. This shows that even if we accept the state as the main referent object of security, there are numerous other threats beside other states and their militaries. The second way to answer this question is to accept that the state is not the sole referent object, but only one of many. This greatly complicates the debate, as there might be countless referent objects and even more threats to them.

Moving towards the third question, a critical reflection then finds some similarities with the second. Depending on whether the main referent object is still the state or not, there is more or less room for criticism. Even if the state is accepted as the main referent object, it has been shown above that there are many more threats than only military ones, and therefore it cannot be assumed that a state can only rely on its own military to protect itself from such threats. Climate change is the best example here: While some of its potential negative effects could be resolved by the use of military force, such as the struggle for resources or the defense of a border against unwanted immigration, the problem itself needs to be solved by other measures, like the abolition of fossil fuels. As stated in question number two, the number of potential threats explodes when the state is not the only referent object. If society is accepted as a referent object and fake news is considered a threat, there are numerous ways to tackle this problem. A government could decide to solve the problem in a “classic way,” by attacking the suspected source of fake news with (military) force, especially when it comes from another country. As identifying the original source of fake news is often near impossible and the justification for going to war over it is questionable, other measures might be more practical. These could include censorship of certain parts of the internet, like social media, as well as educating society to be more sensitive towards potential fake news.

Aside from these three questions, there are several other ways to formulate criticism towards the traditional ISS approaches. The first one is to question the general idea of framing security as something inherently good. Throughout this chapter so far, the assumption has been that if something is secure, it is good as it is now safe from a potential threat. Another potential point of criticism is the supposed claim to objectivity, which is shown in the four Ss listed by Williams. While traditionalists consider security as something that can exist objectively, others would probably disagree. There is a notable quote at the beginning of this chapter by Shahin Malik, who has already said that feeling protected and secure is a cherished goal, which leads to the question: Is security actually an objective or a subjective concept?

Many scholars agree that one of the most influential works on these questions is Barry Buzan's "People, States and Fear" from 1983. In it, he criticizes the narrow focus of ISS or, – as the branch more or less did not exist at the time it was written – Strategic Studies, and wants to broaden its views. The following section picks up the questions raised above, trying to portray the different critical approaches to traditionalist thinking in ISS.

Human Security

*"For too long, the concept of security has been shaped by the potential for conflict between states. For too long, security has been equated with the threats to a country's borders. For too long, nations have sought arms to protect their security."*²⁴

The first concept that will be portrayed in the following section is the idea of human security. The quote above was taken from a 1994 UNDP report. In it, the UNDP campaigned for a reframing of the whole idea of security. In the section following the quote, they outlined the meaning:

24 UNDP (United Nations Development Programme) (1994): Human Development Report 1994: New Dimensions of Human Security. New York. P. 3.

“For most people today, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event. Job security, income security, health security, environmental security, security from crime – these are the emerging concerns of human security all over the world.”²⁵

The background was the end of the Cold War. With the end of the struggle between the two superpowers, the overriding fear of a nuclear war was much smaller. At the same time, weak states formerly supported by either one of the superpowers collapsed. Civil wars like the ones in Afghanistan and Somalia replaced the more prevalent proxy wars. In these violent environments, people not only feared to lose their lives directly to the conflict, but to further consequences like inadequate health care or lack of food and drinking water. This concept was then picked up and developed by numerous scholars and organizations all around the world, sometimes with different emphases, but agreeing on one primary point: the key referent object should be the individual.²⁶ However, the discussion of placing the individual as a potential referent object is nothing the UNDP came up with out of the blue. While Barry Buzan eventually concluded that “individual security [...] is essentially subordinate to the overarching political structures of state and international system,” he had already discussed the question of individual security in 1983/1991.²⁷

With the answer to Smith’s first question, the change of the referent object opens up a great potential of what could be a threat to an individual. Due to the very different nature of an individual compared to a state, it is useful to pose the question of “When is an individual secure?” Edward Newman put it this way: “In broad terms human security is ‘freedom from want’ and ‘freedom from fear’: positive and

25 Ibid.

26 Cf. Malik, Shahin (2021 b): Human Security. In: Peter Hough et al. (Ed.): International Security Studies. Theory and Practice. Abingdon/Oxon: Routledge. Ps. 58–71. P. 65.

27 Buzan, Barry (1991): People, States and Fear. An Agenda For International Security Studies In The Post-Cold War Era, Boulder/Colorado: Lynne Rienner Publishers. 2nd Edition. P. 54.

negative freedoms and rights as they relate to fundamental individual needs.”²⁸ Other definitions choose a narrower interpretation, for example Fen Osler Hampson: “One way is to define it negatively, i.e. as the absence of threats to various core human values, including the most basic human value, the physical safety of the individual.”²⁹ A mere cursory review of literature shows that there are numerous concepts of human security, ranging from a very negative to an entirely positive understanding. Depending on that understanding, it is now possible to move towards Smith’s second question. With a narrow negative understanding, only threats that have a direct impact on human lives are important (freedom from fear). The main threat for realists and liberals, an inter-state war, is of course part of that, as a war between two states inevitably has an impact on human lives, soldiers as well as civilians. Yet there are many more: If we consider violence, it would also include civil wars (Afghanistan, Somalia) or organized crime violence (Mexico), which are relatively common occurrences nowadays.³⁰ Without trying to name every possible threat there is to human life, Iztok Prezelj presents the following:

“economic threats, food threats, health threats, environmental threats, personal threats, community threats, political threats, demographic threats, crime in all forms, including terrorism, natural disasters, violent conflicts and wars, genocide, anti-personnel mines, SALW [Small Arms and Light Weapons], etc.”³¹

Looking at this list, it is already evident that there are no clear-cut lines between a positive and a negative understanding of human security.

28 Newman, Edward (2010): Critical human security studies. In: Review of International Studies, January 2010, Vol. 36 (1), Ps. 77–94. P. 78.

29 Fen Osler Hampson (2008): Human Security. In: Paul D. Williams. (Ed.): Security Studies. An Introduction. Abingdon, Oxon: Routledge. Ps. 229–243. P. 231.

30 Cf. Woody, Christopher (2017): Killings in Mexico climbed to new highs in 2016, and the violent rhythm may only intensify. In: Businessinsider, 09.02.2017. URL: <https://www.businessinsider.com/mexico-homicides-in-2016-under-enrique-pena-nieto-2017-2> [11.06.2023].

31 Prezelj, Iztok (2008): Challenges in Conceptualizing and Providing Human Security. In: HUMSEC Journal Issue 2, Ps. 6–26. Ps. 12–13.

For example: If a man living in Somalia has a job that provides the sole income for his family, is him losing that job (“economic threat”) a threat to human security or not? A very negative interpretation would probably say no, as the physical safety of him and his family is not threatened by the mere loss of his job. If the loss means that he will not be able to provide enough food or money for health care, then the loss could be considered a threat to human lives on a secondary level. The same point could be made about an “environmental threat” like climate change. The constantly warming world, with a few exceptions, does not threaten human lives directly. Yet the consequences of climate change, like droughts, floods, hurricanes, or other natural disasters, are a very real threat to human lives. Interestingly, the concept of human security not only allows looking into crisis-ridden countries mainly in Africa, Asia and South-America, but also into Western Democracies. Health threats like the opioid crisis in the USA cause 100,000 deaths a year, and while natural disasters often hit harder in the Global South, they are still very much a threat in the Global North as well.³² Since human security is only one of many concepts shortly portrayed here, the concept will not be explored in depth, instead focusing on Smith’s third question.

As shown above, there are numerous threats to human security, no matter if the understanding is a narrow negative or a wide positive one. This makes it almost impossible to list all the possible ways to tackle the problems. It does, however, bring up a point, which has not been addressed in the debate between realism and liberalism: Who is the security actor? This question is easier to understand looking at an example, in this case the civil war in Somalia. Considering the civil war as a major threat to human security, the goal would be to stop it as soon as possible. The problem is that the major actor (at least for realism and liberalism), namely the state, is not able to do so, and might have even ceased to exist in some regions. It is therefore necessary to consider

32 Cf. Elsenbruch, Niklas (2022): Valium fürs Volk. Opioidkrise in den USA. In: Süddeutsche Zeitung, 11.02.2022. URL: <https://www.sueddeutsche.de/kultur/sackler-purdue-pharma-empire-of-pain-opioidkrise-1.5526724> [11.06.2023].

other actors who might be able to provide the security the state cannot, for example the international community. At the same time, there is no single right answer to “How to stop a civil war?”, but many different opinions from different directions. Prezelj presents the following ways to provide human security:

“humanitarian intervention or humanitarian help, peacekeeping operations, peacebuilding, arms verification operations, respect for human rights and liberties, sustainable economic development, early warning, diplomatic missions, focused (smart) sanctions, preventive deployment of armed forces, preventive diplomacy, stronger civil society, empowerment strategies, assuring the minimal life standards, etc.”³³

This list includes both preventive and reactive measures to tackle the problem, but more importantly, it shows how complicated the whole process of responding to a security threat becomes when the referent object is individual human beings. Even though the concept differs between a strongly negative and a strongly positive interpretation, it is much broader than the realist and liberal concepts, which have been portrayed earlier. By changing the referent object in favor of individuals, the term security is moved far away from the traditionalist understanding. At the same time, and this is a criticism shared by many, it blurs the contours and makes ISS a vague study, as many things could be considered threats to human security.

While criticizing the traditional security approaches of liberalism and realism, hardly any scholar considers Human Security as a part of Critical Security Studies (CSS). So, when does something count as CSS? The first school of thought that is counted as CSS by some is the Copenhagen school, which will be presented in the next section.

33 Prezelj (2008). P. 15.

Copenhagen School

When looking for the roots of the Copenhagen School, Shahin Malik located the beginning in Buzan's "People, States and Fear" of 1983.³⁴ As Buzan (together with Ole Waever) is one of the most prominent minds behind the Copenhagen School and some similarities can be spotted when comparing "People, States and Fear" with "Security: A New Framework for Analysis" from 1998 by Buzan, Waever and de Wilde, this does not answer the question of the theoretical background the Copenhagen School has. Buzan et al. answer it as follows: "Our securitization approach is radically constructivist regarding security, which ultimately is a specific form of social praxis."³⁵ By naming constructivism as the official school of thought behind their understanding of security, the scholars of the Copenhagen School already take a radically different approach on security than the traditionalists. As already stated, multiple times, both realism and liberalism aspire to be objectivist. Without answering the questions posed by Smith, the claim to be constructivist rather than objectivist lifts the criticism of the Copenhagen School to another level, as they do not only question the aspects of the traditionalist approach by presenting more referent objects, but the whole system on how to understand security. Shahin Malik frames it like this: "The perceptions, opinions, subjectivity and consciousness of the observer provide meaning to the subject matter, thus ensuring that there are no neutral and entirely objective facts."³⁶ It is therefore no surprise that some consider the Copenhagen School a part of CSS.

Looking for the referent object now, the basis could again be found in Buzan's earlier work, where he had already argued that the traditional focus on only military threats was too narrow, presenting political, military, societal, economic and environmental threats as possible secu-

34 Cf. Malik, Shahin (2021 c): Constructing Security. In: Peter Hough et al. (Ed.): International Security Studies. Theory and Practice. Abingdon/Oxon: Routledge. Ps. 72–84. P. 79.

35 Buzan, Barry; de Wilde, Jaap; Waever, Ole (1998): Security. A New Framework for Analysis. Covent Garden/London: Lynne Rienner Publishers. P. 204.

36 Malik (2021 c). P. 79.

rity threats.³⁷ The same sectors were later reused in “Security: A New Framework for Analysis”. In addition to questioning the general framework, in which international security takes place, the Copenhagen School also puts more emphasis on the process than the traditionalists.³⁸ The key word in this case is *securitization*, which Matt McDonald characterizes in the following way:

“Securitization [...] refers to the discursive construction of threat. More specifically, securitization may be defined as a process in which an actor declares a particular issue, dynamic or actor to be an ‘existential threat’ to a particular referent object. If accepted as such by a relevant audience, this enables the suspension of normal politics and the use of emergency measures in responding to that perceived crisis.”³⁹

This abstract contains a lot of information: While the outcome is important, securitization is very much concerned with process as well. Another important factor, which also answers the question of the referent object, is given: According to the Copenhagen School anything can be a referent object. The process, by which an actor declares an existential threat to the referent object to a relevant audience is called a *speech act*. Note here that the scholars of the Copenhagen School do not claim that everything is or should be a referent object, only that it can be. One more idea, that has not been addressed by any of the other theories or schools of thought so far, is the relevant audience, which needs to accept or at least tolerate the securitization of a referent object. Finally, according to the Copenhagen School, security politics differs from normal politics in that it responds to existential threats. Moving on to Smith’s second and third questions, the answers are more complicated than for Human Security: If anything can become a referent object, the number of threats is infinite. Question number

37 Cf. Buzan, Barry (1991).

38 Cf. Ibid.

39 McDonald, Matt (2008): Constructivism. In: Paul D. Williams (Ed.): Security Studies. An Introduction. London and New York: Routledge. Ps. 59–72. P. 69.

three cannot be answered by approaching the problem in this way. It is necessary to delve deeper into the ideas of the Copenhagen School.

Securitization, as mentioned above, takes a problem out of the “normal” political way of dealing with it or as Malik phrases it: “Securitization involves a rejection of the rules which govern the relationship between two units under normal conditions.”⁴⁰ Buzan et al. put it this way: “it is possible to ask with some force whether it is a good idea to make this issue a security issue – to transfer it to the agenda of panic politics – or whether it is better handled within normal politics.”⁴¹ The framing, especially panic politics, gives the justified impression that the scholars behind the Copenhagen School consider securitization as something not necessarily good. They argue in favor of *desecuritization* or *politicization* of problems, as securitization removes it from democratic control mechanisms.

While the whole concept is definitely worth thinking about, one cannot help but realize that it is a concept very much based on the assumption that the process of securitization takes place within a liberal democracy. McDonald presents the issue of immigration as one of the best examples of how leaders of (liberal) democracies in Europe use their speech acts to frame something as a security threat.⁴² At the Polish border with Belarus, one can see how a problem that is not necessarily a security threat has been securitized and militarized.⁴³ In a case like migration from Africa and the Middle East to Western European countries, the ideas of desecuritization and politicization would then also make sense. The problem with the concept is whether and how it could be applied to states that are not liberal democracies. Who is the relevant audience in Mali or Russia? Is it still the people or just a certain part of the elites who are also the securitizing actors? McDonald

40 Malik (2021 c). P. 81.

41 Buzan; de Wilde; Waever (1998) P. 34.

42 Cf. McDonald (2008). P. 70.

43 Cf. Adam, Martin (2022): Zwischen Abwehr und Aufnahme. Geflüchtete an der polnisch-belarussischen Grenze. In: Deutschlandfunk. 12.12.2022. URL: <https://www.deutschlandfunk.de/hintergrund-gefluechtete-an-der-polnisch-belarussischen-gr-enze-100.html> [25.06.2023].

raises several more questions, for example when to identify the end of a securitization process, or which audience needs to be convinced to successfully securitize something.⁴⁴ The answer to all of these questions is “it depends.” The relevant audience depends on the country as well as the issue, the end of the process depends on the process itself. While this might be an answer, it is certainly not a very satisfying one. It is thus necessary to move on to the next (or, depending on who you ask, THE) school of CSS.

Aberystwyth School

As its name already betrays, CSS has evolved as a school of thought critical towards traditional ISS approaches. For the Aberystwyth School, Ken Booth was probably the most influential thinker. In 1991 he published two articles, *Security in Anarchy: Utopian Realism in Theory and Practice* and *Security and Emancipation*. Together they mark the beginning of what is now known as the Aberystwyth or Welsh School of CSS. In terms of theoretical background, it is based on the post-Marxist critical theory of the Frankfurt School. With many scholars trying to open up ISS as a whole, thinking “critically” about it was not surprising.

For the Welsh School, the only path to (true) security is emancipation, which is defined as follows:⁴⁵

“Emancipation is the freeing of people (as individuals and groups) from those physical and human constraints which stop them carrying out what they would freely choose to do. War and the threat of war is one of those constraints, together with poverty, poor education, political oppression and so on. Security and emancipation are two sides of the same coin. Emancipation, not power or order, produces true security. Emancipation, theoretically, is security.”⁴⁶

44 Cf. McDonald (2008). P. 70.

45 Cf. Booth, Ken (1991 a): *Security in Anarchy: Utopian Realism in Theory and Practice*. In: *International Affairs*, Vol. 67 (3), Ps. 527–545. P. 539.

46 Booth, Ken (1991 b): *Security and Emancipation*. In: *Review of International Studies*, Vol. 17 (4), Ps. 313–326. P. 319.

This quote from one of Booth's earlier works contains a lot of information and needs to be broken down. First, Booth defines the referent object: Individuals and groups. The second sentence presents the ultimate goal, as everyone should be able to carry out what they would freely choose to do. He identifies possible threats and therefore gives the answer to Smith's second question. While the Human Security approach did not use the concept of emancipation, there is arguably much common ground between the two approaches. A closer look at the whole concept of CSS is needed, to understand the difference. Ken Booth put it this way:

“Security is what we make of it. It is an epiphenomenon intersubjectively created. Different worldviews and discourses about politics deliver different views and discourses about security. New thinking about security is not simply a matter of broadening the subject matter (widening the agenda of issues beyond the merely military)”.

The first sentence, a reference to Alexander Wendt's “Anarchy is what states make of it”, is the most important part.⁴⁷ Security is understood as something dynamic that depends on actors and circumstances.⁴⁸ The approach is simultaneously inclusive and exclusive: It recognizes that there are different approaches to security in the world, hence the existence of this form of security. At the same time, it neglects the claim, particularly made by realism, that there is only one right idea of security. Taken together with the last sentence, it is also a critique of approaches like Human Security, as it is not enough for a critical approach to simply increase the number of referent objects and/or threats. Another systemic factor mentioned by Booth is that “True (stable) security can only be achieved by people and groups if they do

47 Booth, Ken (1997): Security and Self. Reflections of a Fallen Realist. In: Krause, Keith; Williams, Michael C. (Ed.): Critical Security Studies. Concepts and Cases. Ps. 83–120. P. 106.

48 Cf. Wendt, Alexander (1992): Anarchy is what states make of it: the social construction of power politics. In: International Organization, Vol. 46 (2), Ps. 391–425. P. 391.

not deprive others of it.”⁴⁹ States, societies, and individuals must be inherently peaceful; one’s security cannot result in the diminishment of another’s. The answer to how the approach of the Welsh School differs from that of Human Security therefore lies in the systemic background. While Human Security might have the same referent object and threat, it only extends the traditional approach, which still sees states as the most important actors, and does not break with the general view on the international system. Critical theory can free itself from these traditional constraints, or as Malik phrases it: “Although the Human Security approach appears to make the individual the referent object of security – it does not oppose traditional constructions such as “state sovereignty”, “balance of power” or “national security”.”⁵⁰ For critical theorists, it is not enough to just broaden the field, the whole way security is thought about needs to be questioned. The following part will now examine the relations between the Aberystwyth School and the Copenhagen School.

A comparison between these two schools of thought is not particularly easy, as their ideas on how to analyze security differ not only in their outcomes, but also in their process. As seen in the previous section, the Copenhagen School is a) very much focused on the process and b) considers securitization as something mostly bad that should be revoked through desecuritization. The Welsh School, on the other hand, accepts that there are multiple understandings of security, but claims that there is one right way that leads to true security: emancipation. If security is understood as emancipation, then it is good and there is no need for something like desecuritization. Many scholars have tried to merge these two schools, as both of them are heavily critical of traditional approaches. One attempt was made by Rita Floyd, who promotes “a consequentialist evaluation of security”. In her work, Floyd criticizes both schools, for – in her opinion – not having the right

49 Booth (1991 b). P. 319.

50 Malik, Shahin (2021 d): Challenging Orthodoxy. Critical Security Studies. In: Peter Hough et al (Ed.): International Security Studies. Theory and Practice. Abingdon/Oxon: Routledge. Ps. 30–42. P. 35.

approach on security. The Copenhagen School in general is too negative, as it considers most cases of securitization as something wrong. The Welsh School, on the other hand, has an approach that is too positive, maybe even naïve. Her solution lies in the consequentialist evaluation, which accepts that there is positive and negative securitization, and that each case has to be analyzed separately. This, according to her, would bring both schools together on the ideal ground.⁵¹

While the attempts of numerous authors to address potential connections between the two schools of thought should not be neglected, the answer to the problem is probably easier to find than expected. Buzan et al. actually addressed it in “Security: A New Framework for Analysis”, as they wrote:

“With our securitization perspective, we abstain from attempts to talk about what “real security” would be for people, what are “actual”; security problems larger than those propagated by elites, and the like. To be able to talk about these issues, one has to make basically different ontological choices than ours and must define some emancipatory ideal. Such an approach is therefore complementary to ours; it can do what we voluntarily abstain from, and we can do what it is unable to: understand the mechanisms of securitization while keeping a distance from security—that is, not assuming that security is a good to be spread to ever more sectors.”⁵²

This paragraph already answers how these two schools might be brought together: The Copenhagen School itself “voluntarily abstains” from establishing a definition for security. It focuses on the mechanisms of security, not the outcomes. Therefore, according to the scholars of the Copenhagen School, it could definitely be compatible with the Welsh School.

51 Cf. Floyd, Rita (2007): Towards a Consequentialist Evaluation of Security: Bringing Together the Copenhagen and the Welsh School of Security Studies. In: *Review of International Studies*, Vol. 33 (2), Ps. 327–350. P. 349.

52 Buzan et al. (1998). P. 35.

The question is: Why was it necessary to portray all of these different approaches on security, and how does it help to explain Wagner's actions all around the world? The answer is given by Booth when he explains that different worldviews produce different definitions of security: "Security is what we make of it." This work takes a social-constructivist approach, including both, the Copenhagen and the Welsh School. The strength of this approach lies in its inclusiveness. While it denies the realist claim its one-dimensional take on security, it does not deny the existence of this idea. While the idea of desecuritization will not play a major role in this work, the mechanisms of securitization could be very useful when looking at dynamics of legitimacy and accountability, looking at what is securitized by whom. The Aberystwyth School has its own understanding of how security *should* work, but it does not claim that security only works one way. Therefore, when speaking about security later, it is important to identify *who* provides security for *whom*, as the idea of security is actor-dependent. Returning to the quote that started this chapter, security is understood as something subjective, in opposition to the positivist and objective understanding of realists. Before the following chapters take a look at the concepts of legitimacy and accountability, it is necessary to phrase the guiding question for this chapter, asking: To what extent can a common understanding of security be discerned in the relationships between Wagner and the actors studied here?

It should be noted that the Copenhagen School and the Welsh School are not the only critical approaches towards security. In recent years, Feminist and Post-Structuralist approaches have also begun to address the problem from their perspective. As this is not a purely theoretic work, I will refrain from describing them further and move on to the questions of legitimacy and accountability.

2.2 Legitimacy & Accountability

With this definition of security, it is now time to move on to the concept of legitimacy. There are hundreds of definitions that try to

capture the concept of legitimacy, and they cannot all be described here. Instead, I will start with a definition by Walgenbach and Meyer:

“Eine Organisation wird als legitim betrachtet, wenn ihre Aktivitäten innerhalb gesellschaftlicher Werte, Normen, Vorstellungen und Festlegungen wünschenswert, richtig und angemessen erscheinen. Wichtig ist, dass Legitimität verliehen wird, also im Sinne der obigen Ausführungen weniger etwas ist, das eine Organisation besitzt, als vielmehr etwas, das sie zugesprochen bekommt.”⁵³

This definition contains two sentences that are both equally important. The first part defines the criteria for legitimacy: Values, norms, expectations, and determinations that are considered good and right. The second part makes it clear that legitimacy is not something that is inherently possessed, but given by an audience. It is partly based on the works of Suchman, who wrote that “legitimacy represents a relationship with an audience, rather than being a possession of the organization”.⁵⁴ The first and most obvious question that arises then is “Who is the audience?”. While it is entirely correct to ask this, it raises another question: “In what environment does the relationship between organization and audience exist?” Do the same rules apply to democratic governments that apply to authoritarian ones? This question will arise several times in this work, as often when authors talk about legitimacy (and also accountability) they are writing from a Western perspective, expecting the state to be a liberal democracy with a functioning constitution. This problem will be addressed as follows: First, the structure of this work has already established the environments in which it will take place: The operational states, the sending state and the international level. For each environment different rules apply, and for every level one could pose the question: When is an actor legitimate? To answer

53 Meyer, Renate; Walgenbach, Peter (2008): Neoinstitutionalistische Organisations-theorie. Stuttgart: Verlag W. Kohlhammer. P. 64.

54 Suchman, Mark C. (1995): Managing Legitimacy. Strategic and Institutional Approaches. In: The Academy of Management Review, Vol. 20 (3), Ps. 571–610. P. 594.

this question the four terms of Meyer and Walgenbach will be used: Values, norms, expectations and determinations.

When looking for shared values on the use of PMCs, it is necessary to look for common ground between a majority of states. In this case it is almost impossible to separate norms and values, as the norms towards PMCs are rooted in values. First and foremost, it needs to be noted that PMCs as such do not officially exist in International Humanitarian Law (IHL), as the structure of such companies did not exist when the relevant articles were written. The debate on how to treat private contractors in warzones according to IHL has been going on ever since the emergence of the first companies in South Africa.⁵⁵ According to IHL, there are only two statuses in a conflict: combatants and non-combatants. Who counts as a combatant is defined by the Third Geneva Convention of 1949 in article 4, A (1), (2), (3) and (6) and article 43 (2) of the First Additional Protocol to the Geneva Convention of 1949. Most scholars conclude that the combatant status of private contractors remains questionable in most cases. In the conclusion of her thorough analysis, Lindsey Cameron put it this way: “We must conclude that there is only a very limited basis in law for some PMCs in Iraq to be classified as combatants under international humanitarian law.”⁵⁶ Therefore, if a majority of PMCs have to be considered non-combatants, they are protected as civilians under IHL. Another approach could be to classify PMCs as mercenaries under article 47 (2) of the First Additional Protocol to the Geneva Convention from 1977. The debate about whether PMCs are mercenaries or not is as old as the companies itself. If accepted, it would label many PMC activities illegal under IHL, as it would deprive them of legitimate combatant status. However, there are several problems with this approach.

55 Cf. Drohan, Madelaine (2006). In: Bicancic, Nick; Bourque, Jason: *The Shadow Company*. Purpose Films. Time stamps: 6:08–7:06. URL: <https://www.youtube.com/watch?v=9yCONEdFgWo> [30.07.2023].

56 Cameron, Lindsey (2006): *Private military companies. Their Status Under International Humanitarian Law and its Impact on Their Regulation*. In: *International Review of the Red Cross* Vol. 88 (863), Ps. 573–598. P. 586.

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A debate would not be very promising for this work, as the outcome would not change the approach. If the result of the debate were that PMCs should not be considered mercenaries, we would still be at the same point thinking about norms and values. On the other hand, if the conclusion were that they should be considered mercenaries, it would also not really help the debate, as PMCs are present all over the world and one has to deal with them. Simply declaring them illegal and blocking any further debate does not match the realities on the ground. Therefore, this step will be skipped by immediately looking at possible shared values and norms towards PMCs. Nevertheless, the legal status of PMCs will be taken into account, as it is an important part of the shared norms and values.

The Montreux Document

One of the most prominent documents on PMCs in the international system is “The Montreux Document: On pertinent international legal obligations and good practices for states related to operations of private military and security companies during armed conflict,” which will only be called the ‘Montreux Document’ from now on. Between 2006 and 2008, a Swiss initiative brought together 17 governments in the city of Montreux to work on a common set of rules for PMCs. The countries coming together were rather diverse: On the one hand, they included the USA and the UK, namely the countries hosting many of the companies active around the world. On the other hand, there were also representatives from Iraq and Afghanistan, two countries where many PMCs were active at the time. Eventually, they agreed on a 43-page document, in which they established certain guidelines and “good practices” for the industry. Until today, 58 states have signed the Montreux Document, expressing their will to implement these rules in their countries. Furthermore, the European Union (EU), the Organization for Security and Cooperation in Europe (OSCE), and the North Atlantic Treaty Organization (NATO) have pledged their support for

the document.⁵⁷ As can be deduced from the title, the document wants to recapitulate existing rules and laws in IHL, as well as defining “good practices” for PMCs in armed conflicts. Before delving deeper into the analysis of the document, it is important to mention that “This document, and the statements herein, do not create legal obligations.”⁵⁸ The states which signed the Montreux Document can therefore not be held directly accountable if they do not stick to the rules mentioned in the document. However, as it is one of the few documents about PMCs that major players could agree on, it is still worth a closer look. Starting at the beginning, it defines PMCs in the following way:

“PMSCs” are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.”⁵⁹

While, this definition may seem very clear-cut at first glance, the first and second sentences contain a contradiction. In the beginning, PMCs are companies that perform military and security services. What a military is supposed to do, among many other things, is openly engaging in military conflicts. The second sentence even lists potential tasks which do not include any notions of offensive operations. Even though this paragraph is designed to clarify the operational spaces for PMCs, it leaves a certain grey area where it is unclear what tasks PMCs should

57 Cf. Montreux-Dokument. Eidgenössisches Department für auswärtige Angelegenheiten EDA. URL: <https://www.eda.admin.ch/eda/de/home/aussenpolitik/voelkerrecht/humanitaeres-voelkerrecht/private-sicherheitsunternehmen/montreux-dokument.html> [22.07.2023].

58 The Montreux Document: On pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict. Part I.

59 Ibid. Preface, Paragraph 2 (a), P. 9.

be allowed to carry out. To clarify, it is worth looking at the legal status of PMCs according to the document. There it says that PMCs

“are protected as civilians under international humanitarian law, unless they are incorporated into the regular armed forces of a State or are members of organized armed forces, groups or units under a command responsible to the State; or otherwise lose their protection as determined by international humanitarian law;”⁶⁰

This actually sheds some light on the matter, as PMCs should generally and primarily be considered civilians. It could be counted as an answer to the question of whether PMCs are allowed to participate in offensive military actions: The answer is yes, if they are integrated into the regular armed forces of a state. A question of a more practical nature arises now: How does one treat contractors who are clearly distinct from the army (therefore not incorporated into the army) guarding a military convoy? Considering the famous quote “Amateurs discuss tactics, professionals discuss logistics” (which unfortunately cannot be clearly attributed to one single person), it sounds like a very promising strategy to attack a country’s logistics during war. Would it be immediately illegal according to IHL if such a convoy was guarded by PMCs? Since this is not a work of a military practitioner, the pros and cons of attacking logistical lines will not be elaborated on. The question of whether the guarding personnel of a military convoy is a legitimate target is important to point out the difficulties arising from legal sources or legal recommendations like the Montreux Document. Another problem, which will be addressed in the chapter on operating states, is the nature of today’s conflicts. What if guerillas and terrorists fight a war in which they do not care particularly about IHL? Letting that question rest for a moment, it is still worth to look at the rest of the Montreux Document.

The first part of it differentiates between four kinds of states: contracting, territorial, home, and all other states, and recalls all legal obligations. While the terms are rather self-explanatory, this shows that

60 Ibid, Part One, Article 26 (b), P. 14.

not only a state that has a contract with the PMC or the state it is operating in have legal obligations, but that every state in the chain (and even outside of it) has certain responsibilities and has to make sure that the PMCs it is dealing with/hosting are acting in accordance with International Law and IHL. These rules include paragraphs from the Fourth Geneva Convention of 1949 and the 1977 and 2005 Additional Protocols. To quote every article of the Montreux Document would take up too much space, thus the following passages are portraying its most important outlines. Article 3 of the Montreux Document states that contracting states have to “ensure that PMSCs that they contract and their personnel are aware of their obligations and trained accordingly”.⁶¹ Article 4 establishes that “Contracting States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations.”⁶² Generally, the Montreux Document puts the biggest emphasis on contracting states, as there are eight articles concerning contracting states, five concerning operating states, and four articles for both home states and all the other states. Article 6 urges contracting states “to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law.”⁶³ Finally, if atrocities have been committed by a PMC working for a state, the latter has “to provide reparations for violations of international humanitarian law and human rights law caused by wrongful conduct of the personnel of PMSCs.”⁶⁴ The first part becomes rather repetitive from there, as home-, territorial-, and all the other states are all supposed to ensure, within their power, that PMCs act in accordance with IHL. As the document does not create legal obligations and is only supposed to recall already existing legal

61 Ibid. P. 11.

62 Ibid.

63 Ibid.

64 Ibid.

obligations, it is more interesting to move on to the good practices listed in the second part.

For the good practices the focus logically changes for every type of country. Looking at the contracting states, the most important is the selection procedure, as well as the arrangement of the contract. First of all, states should reflect on what tasks they expect a PMC to perform and then check whether or not it is capable of doing them. This includes financial and human resource capacity as well as training and equipment.⁶⁵ When selecting a PMC there are several criteria to be met, for example “ensuring that the PMSC has: a) no reliably attested record of involvement in serious crime (including organized crime, violent crime, sexual offences, violations of international humanitarian law, bribery and corruption).”⁶⁶ Criteria like these and several others should be taken into account when drafting a contract. The fifth part of the document offers some mechanisms to ensure oversight and accountability. States are “To provide for criminal jurisdiction in their national legislation over crimes under international law and their national law committed by PMSCs and their personnel.”⁶⁷ Looking at territorial states, the focus is shifted towards the process of authorization. “Territorial States should evaluate whether their domestic legal framework is adequate to ensure that the conduct of PMSCs and their personnel is in conformity with relevant national law, international humanitarian law and human rights law.”⁶⁸ Without going deeper into the analysis of the criteria presented in the document, the question of the practicability of this sentence comes to mind. In the documentary “The Shadow Company” by Nick Bicancic, Peter Singer was interviewed and gave the following statement about operational zones of PMCs: “They do not typically operate in healthy states. They are not operating in Iraq because good things are going on there. They typically operate in failed

65 Cf. Ibid. Part Two. P. 17–18.

66 Ibid. P. 17.

67 Ibid.

68 Ibid. P. 20.

state zones, in combat zones, that's the nature of the business.”⁶⁹ While the list of rules may have good intentions, it is questionable how a state that needs PMCs because it cannot provide security on its own, has the capacity to enforce certain rules on those PMCs that safeguard the very survival of the state. Considering the home states, the document recommends an authorization system that ensures only PMCs following certain rules can establish themselves within a country. As it has been questioned if and how some territorial states would even be able to enforce laws on their own territory, this is another point that tries to prevent any potential crimes through reliable rules in the home state of the PMC.

Generally, the Montreux Document offers some useful contributions, considering that there was no official document on the use of PMCs before. It offers a set of rules for states to follow, if they want to. Yet it is not legally binding and has a limited number of participants, which certainly limits its efficiency. Moving away from Montreux, a more general question pops up: Why do states decide to rely on PMCs instead of regular troops? What expectations do they have of them? What could a PMC achieve that the regular army could not? Possible reasons will be portrayed in the following chapter.

Reasons for the use of PMCs

Ever since the end of the Cold War, PMCs have become a regular sight in combat zones around the world. The first case which became very popular, and a very good advertisement for the industry, was the civil war in Sierra Leone, when the South African PMC “Executive Outcomes” (EO) was hired by the government to push back the Revolutionary United Front (RUF). EO had agreed to deploy “150 to 200 soldiers (fully equipped with helicopter support) to support, train, and aid the RSLMF [(Republic of Sierra Leone Military Forces)]; Authors

69 Singer, Peter Warren (2006): The Shadow Company. In: Bicancic, Nick; Bourque, Jason: The Shadow Company. Purpose Films. Time stamps: 29:18–29:28. URL: <https://www.youtube.com/watch?v=9yCONEdFgWo> [07.08.2023].

Note] in their war against the RUF.”⁷⁰ The RSLMF, which had suffered major defeats against the rebels, was suddenly advancing against the RUF, pushing them away from the capital and the biggest diamond mines of the country.⁷¹ Apparently, a small but well-equipped and trained force of only 150 to 200 could make a major difference in a civil war like the one in Sierra Leone. The example of EO shows two reasons why a state might rely on a PMC: First, the company showed a certain degree of *effectiveness*. Second, they had access to proper military equipment and training and thus were highly specialized (which also contributed to their effectiveness). The hiring of specialized outsiders is something that Peter Singer describes as very common throughout time, saying “When quality mattered more than quantity, the activity and significance of mercenaries was typically higher.”⁷² Given that military equipment – especially tanks, jets and helicopters – are getting more complex rather than easier, the hiring of a PMC because of its *specialization* is also noteworthy.

The story of EO in Sierra Leone was a good example of why companies became attractive for governments in need on their own turf. But what are the reasons for states operating in other countries to heavily rely on PMCs? Why did the number of contractors in Iraq exceed the one of every foreign military combined (excluding the US)?⁷³ One reason presented by Doug Brooks, a lobbyist for the PMC industry, is the financial aspect. The general idea is that a contractor may be paid more than a regular soldier, but due to the time limit of the contract it would eventually be cheaper than keeping a large army.⁷⁴ While this work does not intend to prove whether or not it is cheaper for govern-

70 Avant, Deborah D. (2008): *The Market for Force. The Consequences of Privatizing Security*. Fourth Printing. Cambridge/New York: Cambridge University Press. P. 86.

71 Cf. Singer, 2003. P. 4.

72 Ibid. P. 38.

73 Cf. Singer, Peter Warren (2004): *The Private Military Industry in Iraq: What have we learned and where we go next?* In: Geneva Centre for the Democratic Control of Armed Forces Policy Papers. November 2004. P. 4.

74 Cf. Brooks, Doug (2006): *The Shadow Company*. In: Bicancic, Nick; Bourque, Jason: *The Shadow Company*. Purpose Films. Time stamps: 27:55–28:04. URL: <https://www.youtube.com/watch?v=9yCONEdFgWo> [07.08.2023].

ments to hire PMCs instead of using regular armed forces, it needs to be noted that not everybody agrees with the opinion of the lobbyist. Peter Singer, for example, explained that 40% of the contracts given out by the Pentagon had no bidding on them, thus the potential to assess different offers by various companies to be able to negotiate was not used, which ignores the idea of a competitive free market.⁷⁵ In a short article, David Isenberg combines several arguments, pointing out that people like Doug Brooks keep saying that private contractors are cheaper than regular soldiers, but have failed to provide an evidence-based study to support their claim.⁷⁶ Another point is that the financial argument, be it true or not, can also apply to local governments like the one in Sierra Leone, which might have to pay other prices than only money. In fact, the argument is easier to understand in this case, as the government of Sierra Leone would most likely have been removed and its representatives killed had they not hired EO, which could be considered the ultimate price.

Another reason why a government might want to rely on PMCs is a certain form of “*disassociation*,” which comes in two forms. The first one can be taken from the following statement of Singer in 2005: “No one can give you the exact number of private contractors that have been killed in Iraq, because no one is formally tracking them. Our estimates [...] come together to be about right now 250.”⁷⁷ The death of a soldier abroad, especially one that has been killed in combat, is something that usually creates a huge outcry in a society. It also makes wars more and more unpopular when soldiers die abroad, as could be seen in Vietnam, Somalia after the Battle of Mogadishu, Iraq, or Afghanistan. For contractors it is different, as the quote from Singer already tells. Madeleine Drohan puts it even more plainly, when she says “These body bags don’t come home with a US flag on them”⁷⁸. The

75 Cf. Singer (2006): Time stamps: 28:11–28:17.

76 Cf. Isenberg, David (2009): Contractors and Cost Effectiveness. In: CATO Institute, 23.12.2009. URL: <https://www.cato.org/publications/commentary/contractors-cost-effectiveness#> [07.08.2023].

77 Singer (2006). Time stamps: 1:11:40–1:11:52.

78 Drohan (2006). Time stamps: 1:12:02–1:12:06.

chance for a public outcry is smaller if the dead person was not directly employed by the government. It should be noted though that this is not always true and very much depends on the case. When four members of the infamous “Blackwater” company were killed, humiliated, and burned in the streets of Fallujah in 2004, the pictures of the tortured bodies caused a huge outcry in the US.⁷⁹ Another factor of disassociation is the possible deniability for a country that uses a PMC. While the association of soldiers can and should be easily recognizable, there are no such clear rules for a PMC. Contractors could appear somewhere and work in the interest of a government, without notice of the public in the home state or even other governments.

One last point, which is also connected to the idea of disassociation, is the nature of the business that is supposed to be done. If a state’s army cannot and/or should not be linked to certain actions, then a PMC could be the better choice. An example is the “Sandline Affair,” when the government of Papua New Guinea wanted to clear a rebel camp which was holding an important mine and could not/did not want to use their own army.⁸⁰ Another example would be the failed “Wonga Coup” in Equatorial Guinea in 2004, when Sandline International was hired by private actors, namely Sir Mark Thatcher, son of former Prime Minister Margaret Thatcher, to overthrow dictator Teodoro Obiang.⁸¹ While both of these missions failed, it shows that at least some PMCs were ready to step in when no official military force was willing or able to perform certain tasks. Moving away from the practical reasons, there is another factor in the nexus between legal

79 Cf. Gettleman, Jeffrey (2004): Enraged Mob in Falluja Kills 4 American Contractors. In: The New York Times. 31.03.2004, URL: <https://www.nytimes.com/2004/03/31/international/worldspecial/enraged-mob-in-falluja-kills-4-american.html> [07.08.2023].

80 Cf. McCormack, Tim (1998): The ‘Sandline Affair’: Papua New Guinea Resorts to Mercenarism to End the Bougainville Conflict. In: Yearbook of International Humanitarian Law, Vol. (1), Ps. 292–300. P. 295.

81 Cf. Boffey, Daniel (2013): Margaret Thatcher ‘gave her approval’ to her son Mark’s failed coup attempt in Equatorial Guinea. In: The Guardian. URL: <https://www.theguardian.com/politics/2013/apr/14/thatcher-knew-of-equatorial-guinea-coup-attempt> [07.08.2023].

considerations and the pragmatic use of PMCs: The habituation of the world towards contractors in conflict zones.

As many different cases have been presented above, it can be seen that over the years the use of PMCs has become normalized in the international system. Starting with EO in South Africa, the US and the UK became major host countries for PMCs. At the same time, with conflicts unfolding in Afghanistan and Iraq, they also became major contract countries, in dire need of competence and manpower. Flying mostly under the radar at the beginning, the presence became known through several events, like the participation of PMCs in the Abu Ghraib torture scandal, the Nisour-Square-Massacre, or the aforementioned killing of four contractors in the streets of Fallujah.⁸²⁸³ It would go too far to claim that the extensive use of PMCs by many states (and also companies) all around the world made their appearance customary international law. The debate whether or not that is the case would be a legal and rather theoretical one, which is not the goal of this work. Leaving legality aside for a moment, it is more important to view the matter through a pragmatic lens. If many actors are relying on a system, in this case the use of PMCs, it is only logical that other countries will sooner or later copy their strategy. To put it boldly: The excessive use of PMCs by the US and other Western Partners may have paved the way for their emergence and use in other countries.

Concerning the legitimacy of PMCs, this work has cited different sources and given different ideas on how to approach the matter. First, there is the Montreux Document, which recapitulates the legal obligations of PMCs and gives some ideas about what could be good practices for the different kinds of states doing business with PMCs. One takeaway is that contractors should generally be considered civilians unless they are incorporated into the army. Even more important

82 Cf. Apuzzo, Matt (2014): Blackwater Guards Found Guilty in 2007 Iraq Killings. In: The New York Times. URL: <https://www.nytimes.com/2014/10/23/us/blackwater-verdict.html> [08.08.2023].

83 Cf. Ackerman, Spencer (2014): Abu Ghraib torture suit against contractor revived by federal court. In: The Guardian. URL: <https://www.theguardian.com/law/2014/jun/30/iraq-lawsuit-defense-contractor-torture-abu-graib> [08.08.2023].

though is the differentiation in the document. Contracting-, territorial-, and home states all have a certain degree of responsibility. These responsibilities vary, and it is important to look at the possibility of practical implementation. If a territorial state has only limited capacities to implement and prosecute laws on its own territory, it is clear that (if some amount of control is desired) home and contract states have a greater responsibility. The second section about legitimacy dealt with the practical reasons why states might want to hire PMCs, including *effectiveness*, a need for *specialization*, a hope for *economic advantages*, and the chance of a certain degree of *disassociation*. These, together with the *legal* aspects, are all criteria which might give a PMC a form of legitimacy in the eyes of their contracting partner. Note that these might not be the only ones, and that for every chapter it will also be necessary to look at the partners involved and look for individual reasons of legitimacy.

One important part of legitimacy, which has so far been neglected in this chapter, is the question of the relevant audience. The relevant audience very much depends on various factors: First of all, as was also presented in the Montreux Document, there are mainly three kinds of states in this equation: Contract-, home- and territorial states. The general idea here is that the contracting state is the most relevant as it uses and pays the PMC. While this might be true, one state can also have two functions at the same time. In the case of Sierra Leone and EO the contracting state was also the territorial state. A territorial state that is asking a PMC to participate in hostilities might have to answer to local actors more than others. In fact, referring to the Sandline Affair in Papua New Guinea once more, one could actually see what happens when the relevant audience is not convinced. Another example for a state embodying two functions at the same time is the use of PMCs by the US in Iraq, where home state and contracting state overlapped. While the audience of the territorial state is less of an issue in this case, there might be problems in the home state if something happens to a contractor, as seen after the Blackwater incident in Fallujah. A final point to be made about the relevance of the audience is its individuali-

ty: Every state in the world is different and has diverging interests. For this work, this means identifying the relevant audience for Russia, as well as for several states in which the Wagner Group operates in.

As the last point of this section, it is now necessary to link the different understandings of security to the legitimacy of PMCs. Many of the services PMCs offer claim to provide “security”, be it by transporting VIPs, guarding buildings, or -in the case of EO- driving back an entire rebel group to ensure the contracting government is not overrun. Even the training of soldiers could be described as a secondary provision of security, as they prepare others to provide it. It is crucial though to take into account what a contractor’s idea of security is when he moves into a country to provide security. The best example is Robert Young Pelton describing the way contractors in Iraq engaged civilian vehicles approaching their convoys:

“You tell people “yla 'iimashi”, you know, back, and if they don’t see your fist, if they don’t see, then the gun goes up. If they don’t see the gun a round is fired, usually from the PKM, creates like a zipper pad in front of the car and if they don’t stop, the second burst goes into the engine and if they continue to come, the third burst goes into the driver.”⁸⁴

Leaving aside all questionable legal matters in this case, this is the perfect example of how the understanding of security of the acting subject matters. Practically, (not necessarily morally) there is nothing wrong about these contractors’ understanding of security. They provided security for their referent object and themselves. Civilians were just not part of this equation and, due to the hostile environment in Iraq, were seen as a potential threat. The idea of security of these contractors was not one rooted in an approach of Human Security or the Critical Security Studies of the Aberystwyth School, but very much based on realism. Depending on who is considered the relevant audience, this can lead to

84 Pelton, Robert Young (2006): *The Shadow Company*. In: Bicancic, Nick; Bourque, Jason: *The Shadow Company*. Purpose Films. Time stamps: 32:37–32:54. URL: <https://www.youtube.com/watch?v=9yCONEdFgWo> [07.08.2023].

a loss of legitimacy. The Nisour-Square-Massacre, for example, caused an outrage in Iraqi society and led the Iraqi government to terminate all contracts with Blackwater.⁸⁵ On the other hand, and without pre-empting anything from the analytical chapter, if a nefarious government does not care about its citizens or their opinions, but wants a PMC that definitely performs its tasks without any moral questioning, a more realist understanding of security might even be desired. This then also affects the issues a contractor can be held accountable for. The next chapter will portray the idea of accountability for PMCs.

Accountability

For the concept of accountability, two different quotes from Oakerson and Schedler will be presented. Oakerson describes accountability this way: *“To be accountable means to have to answer for one’s action or inaction, and depending on the answer, to be exposed to potential sanctions, both positive and negative.”*⁸⁶ Schedler defines it a bit different: *“A is accountable to B when A is obliged to inform B about A’s (past or future) actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct”*⁸⁷ While both share some basic aspects- such as the fact that one actor has to answer to another and that the second actor can impose sanctions on the first one- there are some non-neglectable differences. Oakerson, for example, points out that sanctions can be both negative and positive, while Schedler only mentions punishment. Schedler’s concept contains not only one, but three parts: information, justification and punishment. Schedler himself though relativizes this list two sentences later, stating

85 Cf. Al Jazeera (2009): Blackwater end operations in Iraq. In: Al Jazeera, 07.05.2023. URL: <https://www.aljazeera.com/news/2009/5/7/blackwater-ends-operations-in-iraq> [09.08.2023].

86 Oakerson, Ronald J. (1989): Governance Structures for Enhancing Accountability and Responsiveness. In: Christensen, Robert K.; Perry, James L. (Ed.): Handbook of Public Administration. San Francisco: Jossey-Bass. Ps. 114–130. P. 114.

87 Schedler, Andreas (1999): Conceptualizing Accountability. In: Diamon et al. (Ed.): The Self-Restraining State. Power and Accountability in New Democracies. London: Lynne Rienner Publishers. Ps. 13–28. P. 17.

“they do not form a core of binary “defining characteristics” that are either present or absent and that must be present in all instances we describe as exercises of accountability. They are continuous variables that show up to different degrees, with varying mixes and emphases. Furthermore, even if one or two of them are missing we may still legitimately speak of acts of accountability.”⁸⁸

Both definitions have been presented here, since using only one would not have captured the full potential for an adequate definition. Oaker-son provides the idea that consequences of accountability do not have to be negative, as it is framed by Schedler. On the other hand, the second definition provides three potential categories which may not always be present but could still be useful as analytical categories. It is now necessary to identify how and by whom PMCs can be held accountable.

As already mentioned in the section about the Montreux Document, certain types of states can be identified when looking at PMCs: First of all, there is the contract state which hired the PMC to perform a certain task. Second, there are territorial states, the states in which the PMC is operating. Third, there are the home states where PMCs are based. The last category of state, which is also the least influential, are all the other states that do not fit into categories one to three. The question now is how these different types of states are able to hold a PMC accountable, and for what?

When asked about the accountability of his company, Tim Spicer, CEO of the PMC “Aegis Defence Services,” once claimed: “Not accountable to who? World opinion? Outside Politicians? I can only speak for [my company] but we were always accountable, to our own policies and ethos, and to our client government with whom we always have a binding contract.”⁸⁹ Referring to this quote, Marcus Hedahl claims that PMCs have a “contractual accountability,” which then refers

88 Ibid.

89 Stanger, Allison (1999): *One Nation Under Contract: The Outsourcing of American Power and the Future Foreign Policy*. New Haven: Yale University Press. P. 28.

to the contracting state.⁹⁰ The effectivity of this contractual accountability remains questionable, though. Hedahl and Stanger bring up the “problem of divergent interests” that a contractor might face.⁹¹ A contractor is supposed to defend, for example, a VIP or cargo; but what happens if a civilian vehicle approaches that might or might not be a threat? Singer put it as follows: “their private mission is different from the overall public operation. Those, for example, doing escort duty are going to be judged by their bosses solely on whether they get their client from point A to B, not whether they win Iraqi hearts and minds along the way.”⁹² This implies that while such contractual accountability may exist, it very much depends on the contract. A contractor working in Iraq put it even more bluntly when talking to former Provisional Authority advisor Ann Exline Starr: “Our mission is to protect the principal at all costs. If that means pissing off the Iraqis, too bad.”⁹³ This quote shows that, when in doubt, a contractor might have to prioritize the protection of the principal over the protection of civilians, as he would be held accountable for failure due to his contract. Therefore, if contractual accountability is supposed to protect everyone and not just make sure that a duty is carried out no matter the cost, the contract would need to include certain rules the PMC has to follow while performing its duties, and that not following these rules has consequences. An example of questionable contractual accountability can be found in the history of Aegis. In 2005, a former Aegis employee uploaded videos of him shooting at civilian Iraqi cars while driving in a convoy. An investigation by Aegis itself later confirmed that everything seen in the video happened in accor-

90 Cf. Hedahl, Marcus (2012): Unaccountable: The Current State of Private Military and Security Companies. In: *Criminal Justice Ethics* Vol. 31 (3), Ps. 175–192. P. 177.

91 Cf. *Ibid.*

92 Singer (2007): Can't Win with 'Em, Can't Go To War without 'Em: Private Military Contractors and Counterinsurgency. In: *Foreign Policy Paper Series* (4), Ps. 1–18. P. 6.

93 Fainaru, Steve (2007): Where Military Rules Don't Apply. In: *Washington Post*, 20.09.2007, Ps. 1–8, P. 8.

dance with the present rules of engagement.⁹⁴ Whether or not these engagements made sense from a military perspective, it was definitely the destruction of private property of Iraqi civilians, which did not face any consequences. It is therefore not surprising that Hedahl comes to the following conclusion: “contractual accountability can never provide the appropriate kind of accountability.”⁹⁵ Still, what could a contractual sanction be? The Montreux Document offers some ideas:

- “a) contractual sanctions commensurate to the conduct, including:
 - i. immediate or graduated termination of the contract;
 - ii. financial penalties;
 - iii. removal from consideration for future contracts, possibly for a set time period;
 - iv. removal of individual wrongdoers from the performance of the contract”⁹⁶

These potential penalties can be, especially from a financial perspective, painful for a company. Yet, it seems insufficient to have the termination of a contract as the sole punishment for crimes like murder. It appeared to be the only possibility for the Iraqi government after the Nisour-Square-Massacre, as was presented above. Responsible contractors were later tried in the US, but that was more because the US was the home state of the PMC Blackwater than because it was the contracting state. The question to what extent a state that only has a contract with the PMC and is neither the territorial- nor the home state could be held accountable is indeed interesting, but irrelevant for this work, as it is never applies to Wagner. What still needs some attention is the third point about not considering a company for future contracts. In a case where state A refrains from contracting company B because of referenced misconduct of company personnel in earlier contracts, this might even be described as holding them accountable for their earlier

94 Cf. Baer, Robert (2007): Iraq’s Mercenary King. In: Vanity Fair, 06.03.2007. URL: <https://www.vanityfair.com/news/2007/04/spicer200704> [15.08.2023].

95 Hedahl (2012). P. 177.

96 The Montreux Document: Part 2, Page 20.

wrongdoings. So, while a contracting state might not have the power or possibilities to hold a company or individuals working for a company accountable, they have the biggest potential to avoid misconduct and indirectly hold a company accountable by looking at past references of companies. As Kristine Huskey puts it: “During the Contracting Phase, the Hiring State is of paramount importance, as, during this stage, it is the primary enabler and gatekeeper.”⁹⁷ Thus, from the contracting perspective, the selection process and monetary punishments are possible ways of ensuring accountability, but a purely contractual accountability lacks certain aspects of ensuring punishment, especially for larger crimes like murder or torture. But do home- and territorial states have more potent sanctions at their disposal than a contracting state might have?

When it comes to territorial states, various factors further complicate matters. Since PMCs are mostly considered civilians, the territorial state would be in charge of prosecuting a suspect if they committed a crime. Coming back to Singer’s stance, that these companies do not operate in healthy states, it is questionable whether or not a territorial state is actually capable of prosecuting a contractor. Going even further, if the state is somehow occupied by other forces, as was the case in Iraq, these other nations might impose rules that make it impossible for territorial states to prosecute anybody, as the USA did in Iraq: “Contractors shall be immune from Iraqi legal process with respect to acts performed by them pursuant to the terms and conditions of a Contract or any sub-contract thereto.”⁹⁸ How contractors can be prosecuted by a territorial state therefore very much depends on how strong the institutions of this state are. However, one option that still exists is the deprivation of authorization for a company to operate in a country, like the Iraqi government did with Blackwater.⁹⁹ The case

97 Huskey, Kristine (2012): Accountability for Private Military and Security Contractors in the International Legal Regime. In: *Criminal Justice Ethics* Vol. 31 (3), Ps. 193–212. P. 196.

98 Coalition Provisional Authority Order 17, Section 4 (Contractors), Paragraph 3. 27.06.2004.

99 Cf. Al Jazeera (2009).

for solely territorial states therefore remains complex: In theory, they should have the potential to hold individuals or even entire companies accountable for actions on their territory. In practice, this is frequently not the case, as many states have limited sovereignty, particularly when they are subject to occupation by foreign powers. Furthermore, many contractors are foreigners. As soon as they leave the territorial state, the chance of prosecuting them (in the territorial state) is minimal. Robert Young Pelton put it this way when asked about the accountability of PMCs: “The only rule that I know of is that if you do something wrong “pouf”, you’re flown out of the country immediately.”¹⁰⁰ Even if a territorial state was willing to prosecute certain people, it gets almost impossible as soon as the suspected individual manages to flee the country. If a state is the contracting- and territorial state (as it was the case with EO in Sierra Leone), it is arguably in a stronger position. This might be true in some cases, as the state now has more different options to hold PMCs accountable. In this case, it is important to analyze what role the PMC plays in the state, or more specifically, whether it can be quickly and easily replaced. For example, if the PMC only provides some guarding services and can be replaced by another PMC on short notice, the territorial/contracting state has greater bargaining power. Yet, if the PMC is crucial for the security of the state, it is questionable whether or not the bargaining power of the state is bigger than that of the company. If a state has the choice between keeping a PMC and ignoring their misconducts or sending them away and risk being overthrown by rebels, is this actually a choice? This means that, while territorial states theoretically have the potential to hold PMCs accountable, the reality can look very different.

When looking at home states, there appears to be the greatest potential for the establishment of a functioning set of rules. First of all, while these companies might not operate in healthy states, their home states mostly are exactly that. That means laws are more likely to be applied. The home state has different potential here, especially before and after

100 Pelton (2006): Time stamps: 30:00–30:05.

a contract applies. The Montreux Document, for example, recommends the establishment of an authorization system:

“54. To consider establishing an authorization system for the provision of military and security services abroad through appropriate means, such as requiring an operating license valid for a limited and renewable period (“corporate operating license”), for specific services (“specific operating license”), or through other forms of authorization (“export authorization”).”¹⁰¹

Such a system would allow a state to look into companies before they are even allowed to go on their first mission and, if necessary, withdraw authorization if there are signs of misconduct. Aside from authorization, the home state also has the potential to evaluate its own laws and check if they are applicable to crimes which might be committed by contractors. This automatically leads to the second point where the home state is important: After contract responsibility. To avoid cases like the one mentioned by Pelton, the home state still has the option to prosecute somebody, even after they left the country where the misconduct happened. The potential difficulty for the home state lies in the investigation of cases. If the home state is not able to conduct their own investigations on the ground and has to rely on the territorial state to provide the necessary proof, it will hinder an investigation. Another factor comes into play when the home state is also the contracting state. If that is the case, there is another circumstance of divergent interests. Anything bad that happened might be reflected back upon the party who has offered the contract, i.e. the state. Even if certain parts of the judicial system are willing to investigate an issue, it is harder if parts of the state involved are not willing to cooperate or are even torpedoing the investigation. Nevertheless, as the conviction of the Blackwater em-

101 The Montreux Document. Part 2, P. 25.

ployees involved in the Nissour-Square-Massacre showed, home states can effectively hold contractors accountable.¹⁰²

Even though the three main categories have now been covered, there is still one last one which needs to be addressed: The international system. Could contractors be held accountable for their actions by institutions like the International Criminal Court (ICC)? As the ICC only prosecutes individuals, it cannot try whole companies. Still, if an individual working for a PMC committed a crime such as genocide, crimes against humanity, war crimes or crimes of aggression, and they fell under the preconditions of jurisdiction of the articles 12 of the Rome Statute, they could be tried¹⁰³ Either the home state or the territorial state would need to have recognized the ICC, accepted its jurisdiction, or if neither is the case, the UN Security Council needs to have sent the matter to the ICC for further investigation. The question whether this is actually probable will be discussed later with proper examples. Another point that should be addressed briefly is sanctions. If a state (or a group of them) decided that the behavior of a PMC was against their interests, they have the option of sanctioning them, hence forbidding any company from their own country to enter into a contract with them etc. But can that be described as an accountability mechanism? Moving back to the definition of accountability in the beginning, it is questionable whether a PMC has to answer for actions or inactions to a country it does not operate in, that is not its home state, and that it does not have a contract with. Yet the company might still be exposed to sanctions for certain actions, which is then part of an accountability dynamic. While not one of the classic accountability relations, sanctioning will still be taken into account.

The accountability of PMCs is multifaceted and cannot be described in a general way. One important criterion is the condition the territorial state is in: The weaker it is, the harder it becomes for it to

102 Cf. Spiegel: Blackwater-Söldner muss lebenslang in Haft. In: Spiegel Online 2019. URL: <https://www.spiegel.de/politik/ausland/massaker-im-irak-blackwater-soeldner-muss-lebenslang-in-haft-a-1282000.html> [17.08.2023].

103 Rome Statute, Article 5.

hold contractors accountable. Another matter of importance is the nature of the contract: Due to the lack of accountability when committing crimes in the territorial state on one side and the strong contractual accountability on the other side, a contractor might often be drawn towards putting the contract above everything else. The last point is the will of the home state, which has the biggest potential for holding companies accountable, but also the greatest responsibility. If the home state decides it is not willing to investigate a case, it is almost impossible for a territorial state to do anything about it after a contractor has left the country.

Concluding the theoretical chapter, it is now time to apply all the gathered knowledge on the case of the Wagner Group, asking:

1. What understanding of security do the Wagner Group, Russia, and the countries it operates in or work for have?
2. Where does the Wagner Group derive its legitimacy from?
3. Who is holding it accountable?