

PRIVATE MILITARY AND SECURITY COMPANIES POLICY IN AFRICA: REGIONAL POLICY STASIS AS AGENCY IN INTERNATIONAL POLITICS

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Abstract

The purpose of this article is to explain the policy stasis around private security regulation in Africa. Africa is one of the largest theatres of private military and security company operations in the world. Yet, there is still no new regional convention or policy on their regulation. Previous studies focused on Western efforts to formulate regulatory instruments as well as the role of private military and security company activities in Iraq and Afghanistan and previous controversies of Executive Outcomes. This article examines factors that inhibit the continent from moving on from the Organisation of Africa Unity Mercenary Convention of 1977. It broadly argues that the regulatory policy stasis is primarily a question of agency and preferences. The African Union and its member states have pursued two forms of ‘agency slack’—shirking and slippage—in order to favour a legally binding international convention through the United Nations. This position is the sum of historical and incumbent experiences at a regional and international level, most of which are outside the control of regional institutions. Thus, the African Union and its member states have used shirking tactics to minimize participation in non-United Nations initiatives. They also used slippage tactics to justify exemption from such initiatives while stating their understanding of private military and security companies. These two tactics summarily shield African regional preferences in a world where the region has relatively lower power in international politics.

Keywords: African Union, Private Military and Security Company, agency, regulation, inter-regionalism

Scientia Militaria, South African Journal of Military Studies, Vol 44, No. 2, 2016, pp. 68–86.
doi : 10.5787/44-2-1176

Introduction

In Africa, the activities of private military and security companies (PMSC) have grown into an intricate transnational network of various actors since the famed cases of Executive Outcomes (EO) activities in Angola and Sierra Leone.¹ PMSCs operate in different countries serving different clients: from guarding corporate installations in the Democratic Republic of Congo to providing services to the United Nations (UN) in Somalia. They also provide services to international military organisations such as the North Atlantic Treaty Organization (NATO) and the United States Africa Command (US AFRICOM) in Sudan, Somalia and West Africa. All the aforementioned are the major international security partners of the African Union (AU); yet, the AU does not directly contract PMSCs for any of its missions. It is bound by policy and empirical factors that are peculiar to the continent.

The existing literature is yet to provide an explanation of why the African continent still has to promulgate a policy on PMSCs. A recent article reviewing the scope and limitations of the study of PMSCs, omitted the fact that the literature does not explain why the AU has not produced a new convention since the Organisation of African Unity (OAU) Convention on Mercenarism of 1977.² The fact that Africa is the largest theatre of PMSC operation next to Iraq and Afghanistan,³ and is still without a regulatory framework deserves explanation. Furthermore, the PMSC-sending regions and states, such as the European Union (EU) and the United States (US), are working on regulatory frameworks while the receiving continent seems less spirited about similar initiatives. A discussion of PMSC policy is necessary in light of increased African agency in international affairs.

African agency and positionality are important given that the continent is intricately woven into the fabric of international security. Generally speaking, African scholars see a Western imperialistic global security order as encroaching on African interests.⁴ In the early 1990s, Buzan predicted that African security, alongside the entire global South, would constitute the periphery of a Western-centred global security order.⁵ Furthermore, African security arguably exists under the shadow of an “American imperium”.⁶ However, Africa and other developing regions have increased their role and agency in international affairs over the years. African agency has been of interest as well. As Zondi argues, collective positions are an indication of agency in international affairs.⁷ Since the transition from the OAU to the AU, there have been efforts to gain control of a number of continental issues or, more importantly, to have a stake in any process that occurs on African

territory. Given Africa's rise in international politics, it is surprising that the continent has not played a bigger role in PMSC regulation.

The main argument in this article is that PMSC policy stasis at the AU is a question of regional agency, which is the sum of regional and inter-regional factors. The fact that the AU has not explicitly repealed the OAU Mercenary Convention of 1977 is a result of 'agency slack', whereby the AU takes independent action to produce undesirable or unexpected outcomes (defined below). It does this through shirking, which is a form of agency slack wherein an actor minimizes the effort it is capable of exerting. The shirking comes as a result of two sets of intertwined factors that are found at regional and international levels. Regionally, the shirking is the sum of historical developments, which gridlocked the OAU and AU into an old cognitive framework that treats PMSCs as mercenaries. This cognitive framework influenced the work of the AU Commission. Furthermore, PMSC-producing African states have not adequately interceded between national and continental policy processes that could effectively replace the 1977 convention. Internationally, Africa's quest to protect its agency oscillates between non-binding processes in Europe and an ailing UN policy formulation overshadowed by the former. Contrary to popular opinion, African states were not actively involved in the drafting of the Montreux Document and the resultant International Code of Conduct of Private Security Service Providers. The AU is also reluctant to be associated with the Montreux Document. The reluctance of the AU to be associated with this non-legal process is further influenced by dynamics of PMSC operations in mission spaces. The AU and its member states are unable to monitor PMSCs or hold them to account due to the power asymmetry in the partnership.

Private security, Africa and global security: A literature review

The literature on critical theory provides a useful account of international cooperation. In the section that follows the main assumptions of the theory and its central concepts are explored. This is done by considering the taxonomy of PMSC, the idea of limited statehood in the African context, and finally the attempts at international regulation of PMSCs.

Critical theory and African agency in international cooperation

As a study premised on critical security theory, it is important to highlight a few useful concepts and assumptions. African agency is an increasingly important element of critical security studies. One of the main assumptions within critical

security theory is that many mainstream studies fail to transcend a ‘Eurocentric’ view.⁸ As Mbembe points out, Africa is still treated as “absolute otherness”, which is used to draw attention to a lack of European self-reflection in most studies.⁹ Africa’s marginalisation in international relations goes as far back as Morgenthau.¹⁰ At its worst, anything African with a pre-colonial identity has been yawned away as irrelevant.¹¹ However, the changes in Africa since the early 2000s have increased the number of studies on Africa as a significant actor in international cooperation, although Africa is still treated as sitting on the periphery of a Western order.¹² This enduring treatment of Africa invites a discussion that places an emphasis on African agency in global politics, especially given that the use of PMSCs is slightly contested between the AU and its partners.

African agency has become a source of interest to a number of scholars who seek to highlight the contribution of the continent in international processes. Agency, as a concept, can be assessed by exploring its nature and dimensions. Wight, as cited in Brown, argues that agency “is a freedom of subjectivity in action, involving both meaning and intentionality”.¹³ Brown argues that agency has three dimensions, namely doing something, positionality in a simultaneously enabling and constraining context, and formal or informal roles, which may also enable or constrain their choices.¹⁴ This resonates with what Hawkins et al. call “agency slack” where *agency slack* refers to an independent action that is undesirable to contracting parties.¹⁵ According to Hawkins et al., this takes two forms: *shirking*, which refers to an agent minimising the effort it exerts, or *slippage*, which refers to an agent who shifts policy away from a preferred outcome to its own preferences. These concepts were useful for the present study, and were used to examine the actions of the AU. AU actions should thus be understood as being exercised on behalf of member states under a principal agent model.

PMSC definitions, taxonomy and perceptions

There is a scholarly debate on whether or not PMSCs are ‘mercenaries’ in new clothing. The acronym PMSC is a merger of ‘private military companies’ (PMCs) and what is referred to as ‘private security companies’ (PSCs). Notionally, the former have a military nature, while the latter have a policing function. However, the terms are difficult to distinguish as PMSCs often provide more than one type of service.¹⁶ The changeable nature of PMSCs inadvertently plays into definitional and conceptual ambiguities. It is for this reason that the UN Working Group on Mercenaries also tends to use the two terms interchangeably.¹⁷ In the

study reported here, the author therefore chose to remain neutral on definitions so that the actual perceptions of policymakers may be self-evident.

Perceptions of PMSCs as a corporate incarnation of mercenaries are entrenched in the African continent. For instance, even though the OAU did not take much action, Burkinabe mercenaries operated in conflicts in Liberia and Sierra Leone for years before the advent of military companies.¹⁸ To compound the matter, these mercenaries later worked alongside Sandline International (a British PMSC) conducting the same type of operations.¹⁹ This collaboration between African mercenaries and Western PMSCs further reinforced perceptions of PMSCs as mercenaries in corporate clothing. The modus operandi of Africa's classic PMC, Executive Outcomes, resembled that of mercenaries.²⁰ The difference between the old mercenaries and this new corporate entity is that the latter comprised a fully registered commercial enterprise with a host state, consisted of typical corporate structures, and became part of the global market of conflict.²¹ This did not help perceptions in Africa because there was a similarity of objectives between the two entities. This had deep implications for the revision of the existing convention on mercenary activities.

The continental convention on this phenomenon is yet to be revised. The referent convention is the OAU Convention for the Elimination of Mercenarism in Africa of 1977 (hereafter OAU Convention on Mercenarism). One scholar posited, "this international legislation is hopelessly outdated".²² It would seem that some observers would have preferred a newer convention under the AU. However, to dismiss this as 'hopelessly outdated' is far-fetched. The OAU Convention on Mercenarism contains most of the international obligations in the purportedly newer Montreux Document, which reminds practitioners of obligations under international humanitarian law (IHL) and international human rights law (IHRL).²³ Furthermore, the literature on international institutions evinces the fact that international regimes and institutions do not exist in a vacuum but are a result of systematic efforts to show complementarity between institutional transitions.²⁴ Similarly, some laws can be applicable across different political or institutional dispensations. That is why there are ad hoc structures at the AU Commission to manage the revision of conventions promulgated under the OAU. Furthermore, there are multiple initiatives, however political and imperfect, to find a compromise between a strong norm and international convention on this issue.²⁵ Instead of impugning old conventions, this study explains why this convention is yet to be revised.

PMSCs and limited statehood in Africa

The role of PMSCs in African security should also be seen as a function of limited statehood in Africa. This article ties PMSC activity to the concept of limited statehood because “most states are neither consolidated nor failed”.²⁶ The role of PMSCs tends to fill the vacuum in the ability of some African states to provide security to its citizens. In the cases of Angola and Sierra Leone, the armies under legitimate governments did not have complete control over their territory. PMSCs provided a supporting role to the efforts to eliminate armed conflicts and create stability.

The involvement of PMSCs in African security can be understood from different perspectives. From one perspective, PMSCs are considered useful actors in the quest for peace and stability on the African continent. Some scholars argue that PMSCs break cycles of violence in conflicts.²⁷ Such cycles of violence are common in conflict hotspots such as in the Great Lakes Region (GLR).²⁸ These states often have weak or underequipped armies that cannot provide security to their entire territories. It was in this vein, that Executive Outcomes supported Sierra Leonean and Angolan governments by providing advanced expertise that these governments did not possess.²⁹ From another perspective, PMSCs often improve the low capacity of African militaries. Howe argues that most of the military forces of Africa are weak and vulnerable.³⁰ This partially explains why ill-equipped non-state armed actors can hold off government forces.³¹ For that reason, Shearer posits that PMSCs could help improve the capacity of African armies.³² These PMSCs are highly trained, and have competence in the areas of combat, intelligence and reconnaissance, which is transferrable to such armies.³³ However, these inputs into debates concerning African security should be prefaced with a caveat, this is because they do not take into account the fact that, for the most part, many governments in Africa did not want to deal directly with PMSCs but often preferred military assistance from countries such as the United States, Britain, France, Russia, Israel and China.

PMSCs also have a number of controversies that derive from their historical legacy in the Global South. The main concern revolves around the corporatisation of security services. As Leander points out, it is difficult to guarantee that PMSCs can always adhere to contracts signed with respective governments.³⁴ The underlying argument here is that PMSCs are market-driven service providers, which may switch sides in a conflict across time. In a bizarre case, the British government was alleged to have worked closely with Sandline International (alongside Nigerian troops) to overthrow President Kabbah’s regime.³⁵ PMSCs operatives from Sandline International acted as Kabbah’s strategic advisors while simultaneously supplying rebel groups.³⁶ Suffice it to say, contrary to Shearer’s argument, PMSCs may actually recycle conflict. Another

controversy surrounds the possibility of PMSCs ballooning to larger proportions within a more robust, growing market for force.³⁷ Although the UN is of the view that conflicts have declined by 46% since the end of the Cold War,³⁸ this may not be the case. To the contrary, many of the emerging PMSCs take a less virulent (or militaristic) form.³⁹ However, that should be taken with a pinch of salt, given that most of the personnel in such non-combat PMSCs come from a combat background.

International regulation of PMSCs

The scholarship on the regulation of PMSCs largely matches the progress made at policy level. This is because these scholars have themselves been involved in the formulation of regulatory policy. Percy argues that states have failed to create an international anti-mercenary law because there was a strong anti-mercenary norm that was superseded by events.⁴⁰ This only explains the limitations in the UN system, which has hitherto not completed the formulation of a binding international instrument. The other major effort towards an international regulatory framework is the Montreux processes, which resulted in the Montreux Document and the International Code of Conduct for Security Service Providers (ICoC). Cockayne posits that this regulatory framework has promises and weaknesses in its detailed outline of the obligations of existing state and non-state parties under international law.⁴¹ These two regulatory frameworks differ in that the first is a state-centric process that portends to have a legally binding status, while the latter is a Swiss-sponsored initiative that leans towards self-regulation, and which hopes to gain political buy-in from more states.

Why does the Swiss government initiative matter? Processes and initiatives such as this one form the daily business of lobbying in Geneva. Following on the logic of Keck and Sikkink on transnational advocacy networks, if the Montreux Document and the International Code of Conduct Association (ICoCA) gain widespread political support, it could result in a strong international norm, which would likely influence a resultant international convention at the UN General Assembly.⁴² Even if this takes decades, it has the potential to form what is known as ‘interstitial law’, wherein legal obligations are inferred from existing customary practices and indirectly applicable laws.⁴³ As it stands, the Montreux Document provides such a threshold. From another perspective, it would seem as if the African continent could invoke the principle of a ‘persistent objector’ should the Montreux Document and ICoCA eventually influence a UN international convention.⁴⁴ However, two things threaten to undermine African agency in such a context. First, although African states may be in a position to withdraw from such a law as international customary law permits,⁴⁵ the UN membership of all AU

member states would undermine the ability of the latter for agency slack due to limited buy-in. Second, international customary practice is not set on the viability to withdraw, as it now seems to suggest that such a law would still be binding on a persistent objector.⁴⁶ In cases such as this one, whether or not the AU would agree with the application of such an international convention would be left to the devices of political coercion, which already define Africa's international interactions.⁴⁷ Thus, the way in which the AU approaches the Montreux initiative has significant implications for the future of PMSC regulation.

Regional and international dynamics of private security in Africa: Policy and realities

The historical legacy left by mercenaries influences policymaking in several ways. As highlighted in the preceding section, mercenaries have an ugly legacy in Africa. They may be perceived as a destabilising political factor, as they have attempted to dislodge legitimate or elected governments in several African states.⁴⁸ In most cases, such mercenaries have been from other countries.⁴⁹ Their transnational operations threaten regional stability wherein the security of several states is intertwined. The idea of mercenaries operating across porous borders and confronting national armies in states with limited statehood is certainly a source of concern. Part of the concern was that external powers tended to use mercenaries to undermine state building in Africa. The use of Belgian mercenaries in Katanga in the 1960s as well as Portuguese mercenaries in Guinea in the 1970s also played into the fears of governments and policymakers across Africa. These experiences have had a profound cognitive impression on the processes of policymaking at different levels of government.

Perceptions of PMSCs as mercenaries still linger in policymaking circles including those at the AU Commission. This argument is based on the similarities in functions and objectives between PMSCs and mercenaries. An official AU statement highlights these concerns by stating, "of late some groups have decided to move their mercenary activities and hide them under private security activities".⁵⁰ This shows that the AU considers PMSCs to be mercenaries operating under a corporate cloak. The fact that such a policy position was taken seven years since the Iraqi and Afghan wars and three years since NATO's use of PMSCs in its support to the AU Mission in Darfur, is telling. This suggests that policymakers are fully aware of the realities of the mission space.

The promulgation of such a position is a form of shirking. Here the AU is deliberately minimising its effort in promulgating a policy despite its experiences. AU member states, such as South Africa and Angola, are among PMSC-producing

states. Furthermore, the AU's main partners, such as NATO and the US AFRICOM, occasionally contract PMSCs for some of their support operations in Sudan and Darfur.⁵¹ Moreover, the UN also contracts some PMSCs for protection services in places such as Somalia (discussed later).⁵² The reinstatement of this policy at an important meeting in 2015 signifies the seriousness of the AU's position on the nature of PMSCs.

The policy processes and mechanisms at the AU Commission portend an unlikely speedy revision of the OAU Convention on Mercenarism. The structural configuration and synergy of the union suggests that this may take long. The revision of this convention would involve a chain of organs and departments that have a footloose relationship. First, the primary onus to expedite the revision rests with the AU Commission on International Law (hereafter AUCIL). The AUCIL is charged with revising all OAU conventions to make them applicable under the AU.⁵³ However, the AUCIL does not have a strong relationship with the Peace and Security Directorate (PSD), which works closely with the AU's international security partners. Moreover, there is little interaction between the (AU) Office of the Legal Council and the Peace and Security Department.⁵⁴ The fact that the PSD considers PMSCs as mercenaries suggests that this convention may not be a top priority among several others.

The aforementioned position of the PSD on PMSCs signifies agency slack in the form of slippage. This means that the AU will use its structural weaknesses as a way of shifting attention away from this policy. In any case, the current reliance on international donor support puts the AU in a vulnerable position. Conversely, a delay in policy promulgation works in its favour. Whatever policy recommendations can be issued by the AUCIL will need to pass through the Permanent Representatives Committee (PRC). Important states, such as Algeria and Egypt, have already stated that they will not participate in processes that involve PMSCs, including humanitarian processes.⁵⁵ Such a position is likely to gain support as a result of the experiences of other key member states (discussed below). This recalcitrance of member states suggests that the Assembly of Heads of State and Government (AHSG) – which is the ultimate source of power in the Commission – is unlikely to vote in favour of the revision of this law in such a way that such revision will differ vastly from the current optic in which PMSCs are mercenaries reincarnated. This reluctance of several states informs the shared preference for a more binding regulatory law under the auspices of the UN (discussed in the next section).

African states mutually lobby for a collective international instrument, which is legally binding on the private security industry. The promulgation of a

UN convention would then provide a precedent for the AU and member states to formulate laws that could effectively regulate the private security industry. For instance, South Africa's Foreign Assistance Act of 1998 was influenced by the UN International Convention on the Recruitment, Use, Financing and Training of Mercenaries of 1989.⁵⁶ The Africa Group at the UN in New York vehemently lobbied for the UN Convention on Mercenaries, which came into force in 2001. Similarly, the Africa Group strongly lobbied for a new convention to regulate PMSCs.⁵⁷ Some observers worry that most AU member states have not commented on the existing draft of the UN convention.⁵⁸ However, the UN approach is a two-track process and slightly overshadowed by the Swiss initiative (discussed below). AU member states lean towards a UN convention because such convention would carry more weight as it will have uniform legitimacy and legality across the world.

The preference of the African region for an international convention with a universally binding legal status derives from the outcomes of regulatory experiments at the national level. Although South Africa, Angola and Uganda are key PMSC-producing or PMSC-hosting states, the case of South Africa makes for interesting discussion. Sections 4 and 7 of South Africa's Private Security Industry Regulation Act No. 56 of 2001 require the clearance of all ex-employees of the entire security sector prior to employment in a PMSC and close monitoring of the change of name and trade of PMSCs, respectively.⁵⁹ As a result of this law, some of the PMSCs ceased trading in South Africa and opened under different names in the Seychelles and the Middle East. The ability of companies to take advantage of transnational legal loopholes encourages regulation across the region. The foregoing case suggests that an AU convention may not be enough. A convention that transcends regions would help to prevent this opportunistic behaviour by PMSCs. the absence of such a law across regions undermines some national efforts in a different way.

The heterogeneity of approaches to PMSC regulation across African tips external pressure against national regulatory efforts. South Africa's seminal legislation, the Regulation of Foreign Military Assistance Act of 1998, was made to prevent (or limit) the spread of PMSC activities into the rest of the continent.⁶⁰ However, this was still not signed into law by the end of Thabo Mbeki's presidency. When President Jacob Zuma sought to sign it into law in 2007, the United Kingdom was against it and threatened to grant citizenship to all South Africans serving in the British army.⁶¹ Without such a law in a member state with the largest number of PMSCs, the African continent has no experiential precedent. This lack of a clear precedent leaves the continent, especially the AUCIL, at the mercy of others' experiences, which might not be consistent with African realities.

This could cause policy hiccups at an operational level as it could undermine Africa's agency within security partnerships.

Inter-regional and global dynamics: Agency, asymmetry and preferences

At an international level, African states are channelling efforts towards a binding international law on PMSCs. Historically, the Africa Group at the United Nations played a lead role in the adoption of the UN international convention on mercenaries. When the question of PMSCs arose in the early 2000s, the group sought to have the same influence in a draft form that was initially sponsored by Russia and some Asian states. However, the United States, United Kingdom and EU states rejected this idea, mainly arguing that PMSCs are distinct from mercenaries.⁶² As a corollary, two processes ensued in the context of the UN: draft legislation and a special rapporteur on the same issue. In 2005, Resolution 2005/2 of the Commission on Human Rights ended the mandate of the UN Special Rapporteur and replaced it with the UN Working Group on Mercenaries.⁶³ Five years later, Resolution 15/26 of the UN Human Rights Council created a more open-ended intergovernmental working group on PMSCs.⁶⁴ However, through the UN, these initiatives have done little to improve the role of African member states.

The agential role of African member states in this regard becomes difficult. First, although this seems inclusive with sixty participating states, the possibility of influencing a stronger norm in Geneva appears difficult. For instance, South Africa – as a leading African state in this area – does not appear to be in a position to be a strong norm entrepreneur. In several instances, it has given vague statements that do not convey a strong national or regional position.⁶⁵ Second, as of 2010, most African governments have not commented on the Working Group's draft convention.⁶⁶ Part of the reason is that the AHSG and the Executive Council of Ministers (at the AU) are yet to work on this issue and produce a common position. Such a position would provide a uniform response to the UN draft international convention. Third, shirking or slippage is difficult because the UN Working Group on Mercenaries is labouring in the backyard of a more powerful self-regulatory initiative sponsored by the Swiss government.

The role of African states in the Montreux Document should not be overstated. No African state is an official party to the Montreux Document. The Montreux Document and the ICoCA are part of a self-regulatory initiative sponsored by the Swiss government. This initiative co-sponsored by the Red Cross, reminds non-state armed actors of their obligations under international law.⁶⁷ The information provided by the Swiss foreign ministry and Singer's article suggests that Angola, Sierra Leone and South Africa have been participants in the Montreux

process since 2008, while Uganda and Madagascar acceded to the initiative in 2009.⁶⁸ However, according to the South African ‘representative’, none of the African participants were official representatives of their member states.⁶⁹ For instance, the person in question was then based at the Institute for Security Studies (ISS) and was in one case asked to lobby for buy-in from the Department of International Relations and Cooperation (DIRCO), which the latter rejected. This overstatement of the South African role portends a manipulation of political buy-in for a process that is likely to overshadow the UN process, and thus undermine African agency in this international process.

The AU’s response to the Montreux Document is clearly vindictive. It should be realised that the Montreux Document is not meant to be a binding legal instrument, but it attempts to create a strong international norm that is likely to produce an international regime. Geneva is an ideal place for norm entrepreneurship and lobbying.⁷⁰ In the same vein, the Geneva Centre for the Democratic Armed Forces (DCAF), which housed the Montreux Document, has been lobbying for political buy-in from various states. The DCAF has lobbied the AU twice: in 2010, alongside South Africa, and again in 2015.⁷¹ (South Africa responded by producing a shadow document on PMSCs⁷²). The AU’s response in 2015 was exactly the same as in 2010. The Common African Defence and Security Policy (CADSP) expert gave the same speech, which purported that PMSCs are a corporate incarnation of mercenaries. The statement also suggested that it was for the AU to deal with the issue using its internal structures and processes.⁷³ This suggests that the AU is ambivalent towards a non-binding initiative that is sponsored by states which rejected the initial draft convention at the UN. Such an initiative would not address current PMSC dynamics in the African peace support missions.

The agency slack exhibited by the AU draws from the dynamics of partnership collaboration in the mission space. These issues relate to regulation and accountability. The AU’s key international partners in Sudan and Somalia are NATO and US AFRICOM. These two subcontract some of their activities to PMSCs. For the most part, NATO subcontracted American and East European PMSCs for logistics and airlift in Darfur, while the United States used different kinds of PMSCs in the Somali mission space.⁷⁴ Accountability has become a hot issue because PMSCs are accountable only as far as they are contractually obligated. In this case, it is challenging when an organisation does not have a transformational partnership with the AU.⁷⁵ The difficulty is that the host states can do little when the contracting parties are the AU and its partners.

PMSCs also compound the issue of accountability through a tendency to shift purposes from military to policing activities within a single mission. The case of DynCorp International in Liberia is illustrative. DynCorp was contracted by the US government for a demobilisation, disarmament and reintegration (DDR) programme in Liberia, as part of its contribution to the latter's post-conflict reconstruction and development.⁷⁶ Soon after, DynCorp shifted its mission from DDR to logistics as well as a contract to build airports and to train Nigerian troops deployed in Liberia.⁷⁷ This fluidity of PMSCs, which enables them to shift between militaristic and policing (or even non-security activities) complicates issues relating to accountability. In this case, these shifts are linked to the various different projects sponsored by the United States. African actors, including Nigeria, which is one of the main norm entrepreneurs on the continent, are not in a position to raise issues of accountability because they are benefactors of US aid and military assistance (which is contracted to American PMSCs). Regulation thus becomes difficult where the African parties are not funding the processes and mechanisms that add up to an international convention.

Finally, the political economy of PMSCs in African peace support operations is increasingly compromising African states that play a critical role in African security. The majority of African troop-contributing countries in Somalia and Darfur are all sponsored by the West.⁷⁸ These include Rwanda, Burundi, Botswana and Uganda. The political economy of private security takes two forms. In the first instance, found in Somalia and Sudan, the AU's partners directly contract Western or East European private security firms leaving out African private security firms.⁷⁹ The second and more recent development concerns the agency of Africa's key states in the African Union Mission to Somalia (AMISOM). Following an attack on the UN compound in Mogadishu, the UN Secretary General announced the creation of a UN Guard Unit made up of three battalions from the Uganda People's Defence Force (UPDF).⁸⁰ This UN Guard Unit is constitutively and operationally a quasi-PMSC. Senior officers from the UPDF have retired to manage this guard unit.⁸¹ This development sets a precedent for a market for force which is likely to undermine future deliberation of a regional policy among African states.

Conclusion

This article has argued that the African regional policy stasis on the regulation of private military and security companies is primarily a function of African agency in norm and agenda setting. This policy position steadfastly portrays PMSCs as a corporate incarnation of mercenaries. The historical precedent

of mercenary activity in Africa has entrenched such perceptions among policymakers. Key among these precedents is the inference by external actors using mercenaries. To that end, the African continent is adamant on a legally binding international convention through the UN. However, such a process is slow, fluid and subject to high politics. It risks being overshadowed by two European initiatives, namely the Montreux Document and ICoCA. The AU and key AU member states resisted being formally associated with these initiatives. The experiences of key member states within their countries also contributed to the current policy position. The interference of external powers, who are also PMSC-sending states, has also affected the position of Africa as a collective. Overall, the AU and member states have used two forms of agency slack, shirking and slippage, to assert its agency on this issue. They primarily minimized efforts to repeal the OAU Convention on Mercenarism (of 1977) without a strong UN international convention which would have stronger legal status. The AU has also consciously played the AU Commission's structural weaknesses in its favour in order to escape a Western-driven initiative that could undermine its regional preferences. However, the (limited) individual responses of AU member states to the UN draft convention have been weak or sluggish. Thus, this policy stasis is not an act of institutional ineptitude but one of protecting agency and continental preferences in international affairs.

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