

Forum:	Disarmament & International Security Committee (GA1)
Issue:	Addressing the Impact of Private Military Security Contractors on Global Security
Student Officer:	Jo Anagnostopoulou
Position:	Co-Chair

PERSONAL INTRODUCTION

Dear Delegates,

It is my greatest pleasure and honor to welcome you all to the Disarmament and International Security Committee GA1 of the 13th PS Model United Nations Conference. My name is Jo Anagnostopoulou, I am a sixteen-year-old student from Ekpedeftiki Anagennisi School, and I am beyond excited and happy to be serving as one of your Co-Chairs.

I would like to begin by congratulating you on your decision to join the MUN community. Via UN simulations, you will familiarize yourselves with diplomacy, politics, and global issues that today's society encounters. MUN will help you cultivate various virtues, including critical thinking and problem-solving skills. During the conference, you will not only be able to discuss intriguing matters and policies, but you will also create long-lasting bonds.

Having said that, it is my utmost honor to serve as a member of the Presidency on such a prestigious committee. GA1 has always fascinated me since it addresses crucial issues for the maintenance of international security. As the next generation, it is our duty to pave the way for peace and prosperity. I feel delighted to inspire young delegates such as yourselves with my passion for such matters.

Should you have any further questions, I am more than willing to help. You can contact me via email at jo.anagnostopoulou.08@gmail.com. I look forward to seeing you all in March!

Kind Regards,

Jo Anagnostopoulou

INTRODUCTION

Throughout the past decades, the use of private military and security contractors (PMSCs) has become a common phenomenon. PMSCs refer to private businesses that offer both military and security services to different actors, primarily states. Especially in the aftermath of the Cold War, the United States of America reshaped its military policy and budget to increase its influence, leading to the rise of a vital and profitable private sector for international security. “In 2010, the global PMSC market was estimated to total \$200 billion and employ about one million personnel.”¹

Private military and security companies are associated with functions normally performed by state and governmental organs, such as security and defense. “Guarding military bases against attacks, gathering tactical military information, and operating weapons systems are examples of tasks undertaken by PMSC personnel during their direct participation in hostilities”.² According to the UN, countries are increasingly relying their military operations on private military and security firms, which has resulted in the huge growth of these exact contractors. These companies have gained their appeal, since they can provide all essential human resources and relatively inexpensive military equipment to employer states. Thus, nations sacrifice global security for the sake of profit.

PMSCs are associated with numerous risks that put global security in danger. To be more specific, they are able to follow undemocratic procedures that lead to illegal missions and activities against the international democratic mandate, with no accountability on the part of state officials or governments. As a natural outcome, the involvement of such companies in conflicts can dramatically increase human rights violations and crimes of war. Moreover, having revenue as the only motivation, PMSCs can have a catalytic impact on conflict escalation, impairing any controlling mechanisms of the executive power of states.³

The impact of PMSCs on Global Security ought to be addressed in this year’s PSMUN, considering that the main theme of the conference is “The Paradox of Progress”. Despite the fact that PMSCs were initially established so as to boost and support regular armed forces, it has been proven that they deteriorate conditions in times of war, as shown in Iraq, Afghanistan, and Ukraine. Thus, it is high time that the international community addresses the implications caused by PMSC activities,

¹ “Doctors without Borders | The Practical Guide to Humanitarian Law.” Guide-Humanitarian-Law.org, <https://guide-humanitarian-law.org/content/article/3/private-military-companies/>.

² “International Humanitarian Law and Private Military/Security Companies - FAQ.” Wwww.icrc.org, 18 Oct. 2016, www.icrc.org/en/document/ihl-and-private-military-security-companies-faq.

³ “The Awakening of Private Military Companies.” Warsaw Institute, 20 Aug. 2020, <https://warsawinstitute.org/awakening-private-military-companies/#:~:text=With%20the%20use%20of%20private%20military%20companies%20come>.

discusses the gaps in existing legal instruments, and combats all potential threats PMSCs may pose to international peace, security and stability.

DEFINITION OF KEY TERMS

Coup d'état

“The sudden, violent overthrow of an existing government by a small group. The chief prerequisite for a coup is control of all or part of the armed forces, the police, and other military elements”⁴. Private military companies usually support coups to help authorities avoid responsibility.

Global security

“The preservation of the norms, rules, institutions and values of society”.⁵

International Humanitarian Law (IHL)

“A set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict by protecting persons who are not directly or actively participating in hostilities, and imposing limits on the means and methods of warfare.”⁶ When IHL is violated, perpetrators must be brought before justice. PMSC employees have been accused on various occasions of committing such felonies, but have never been held accountable for their actions.

Mercenary

By this term, we refer to “a professional soldier who fights for any state or nation without regard to political interests or issues”.⁷ Article 47 of Additional Protocol I mentions all conditions for a person to be a mercenary, such as “being specially recruited locally or abroad in order to fight in an armed conflict, taking a direct part in the hostilities, and being motivated to take part in the hostilities essentially by the desire for private gain and to be promised”.⁸

Military industry

“A network of individuals and institutions involved in the production of weapons and military technologies. The military-industrial complex in a country typically attempts

⁴The Editors of Encyclopedia Britannica. “Coup d’État | Political Intervention.” Encyclopædia Britannica, 15 Dec. 2014, <mailto:www.britannica.com/topic/coup-detat>

⁵ Osisanya, Segun. “National Security versus Global Security.” United Nations, 2022, www.un.org/en/chronicle/article/national-security-versus-global-security.

⁶ INTERNATIONAL COMMITTEE OF THE RED CROSS. “What Is International Humanitarian Law?” International Committee of the Red Cross, 30 Dec. 2014, www.icrc.org/en/document/what-international-humanitarian-law.

⁷ “Mercenary | Soldier.” Encyclopedia Britannica, www.britannica.com/topic/mercenary.

⁸ “Mercenaries | How Does Law Protect in War? - Online Casebook.” Casebook.icrc.org, https://casebook.icrc.org/a_to_z/glossary/mercenaries.

to stabilize military spendings by the national government”.⁹ PMSCs in the recent years have become an active sector of the military industry, due to their engagement in armed conflicts worldwide.

Private Military and Security Contractor (PMSC)

“A private business entity that provides military and/or security services, such as armed guarding of persons and objects, maintenance and operation of weapons systems, and training of local forces and security personnel”.¹⁰ Nowadays, they pose a threat to global security, since they commercialize warfare and commit internationally wrongful acts for which they are not punished.

Public International Law

Public International law is the “body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors.”¹¹

Regular armed forces

By this term, we refer to “the constituent element of a country’s combined military services. Modern armed forces are commonly divided into specialized branches dealing with land, naval, and air warfare”.¹² Private military companies do not operate under a state's regular armed forces, instead they function independently.

Self defense

In accordance with Article 51 of the UN Charter: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”¹³

Self-defense is one of the few legitimate exceptions to the prohibition of the use of force. States who have suffered an armed attack may lawfully employ PMSCs in order to exercise their inherent right to self-defense.

⁹ Weber, Rachel N. “Military-Industrial Complex.” Encyclopædia Britannica, 2019, www.britannica.com/topic/military-industrial-complex.

¹⁰ “Private Military and Security Companies (PMSCs) | How Does Law Protect in War? - Online Casebook.” Casebook.icrc.org, <https://casebook.icrc.org/a-to-z/glossary/private-military-and-security-companies-pmscs>.

¹¹ “International Law”. I Britannica.” Wwww.britannica.com, <https://www.britannica.com/topic/international-law/Custom>

¹² “Armed Force | Definition, Examples, & History | Britannica.” Wwww.britannica.com, www.britannica.com/topic/armed-force.

¹³ Article 51, United Nations, Charter of the United Nations, 24 October 1945, 1 U.N.T.S. XVI. <https://www.un.org/en/about-us/un-charter/full-text>

State Responsibility

The international responsibility of States arises when States can be held accountable for internationally wrongful acts they commit. “There is an internationally wrongful act of a State when conduct consisting of an action or omission is firstly attributable to the State under international law; and secondly constitutes a breach of an international obligation of the State.”¹⁴ In modern warfare, states usually employ PMSCs to avoid being held responsible for violating international law.

State Sovereignty

State sovereignty is a legal term that refers to the authority and responsibility of an independent state to govern and regulate its domestic affairs without foreign intervention.¹⁵

BACKGROUND INFORMATION

Historical background

PMSCs constitute an integral but deeply controversial part of today’s military industry. PMSCs specialize in providing military skills, including combat operation, strategic planning, intelligence, risk assessment, operational support, training, and technical skills, while their work ranges from running small-scale training missions to providing big combat units equipped with powerful weaponry and equipment.

The practice of using mercenaries and employing paid soldiers of different nationalities or ethnicities in armed conflicts was widespread in ancient times, marking the period of the early Egyptian, Persian, and Chinese empires, and later on in the Roman and Byzantine eras and the medieval ages. The reasons behind that were mainly the fact that the states needed huge armies to defeat their opponents and that the mercenaries provided their employers with much needed expertise on the battlefield. The use of military force by private-sector organizations has been widely known for centuries, while the use of mercenaries has faded over time, as mercenaries worked for the highest bidder, whereas PMSCs are hired by legitimate actors, including businesses, international organizations, national governments. The East India Company, for example, had at its disposal a large army during the 18th and 19th centuries, aiming to tackle piracy.

PMSCs made their first appearance during World War II. The post-World-War-II geopolitical changes, in addition to the restructuring of many states’ regular armed forces, resulted in the rapid growth of the private military industry. At the end of the Cold War, the international military market was flooded with military specialists and

¹⁴ Article 2, ILC, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, UN Doc.A/CN.4/L.602/Rev.1 (2001).

https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

¹⁵ “Sovereignty” | Stanford Encyclopedia of Philosophy, 2003.

<https://plato.stanford.edu/entries/sovereignty/>

surplus equipment due to the intensification of the situation globally. The Cold War was also followed by the eruption of numerous small-scale armed conflicts, especially across Africa and Asia. Today, more than 150 companies offer their services in over 50 countries, with the most common of all being Iraq, Afghanistan, the United States of America, and Russia, due to their common engagement in armed conflicts.

The reason behind the dramatic rise of PMSCs

The world order shifted once the Cold War-era confrontation ended. As a natural outcome, a huge variety of new challenges emerged, including upcoming terrorist groups. In the aftermath of the 1990s, a surprisingly large number of discharged soldiers appeared on the market.

PMSCs provided the required human resources and relatively inexpensive military equipment. Especially, nowadays, when new ways of warfare are emerging, new technologies are essential for states. In this context, PMSCs started getting bolder proposals to intervene by taking part in new armed conflicts. “With globalization efforts, local state authorities have lost their initial influence, resulting to them eventually relying heavily on foreign-made military hardware. States found the idea of private companies appealing since they were rather cost effective and responsibility for war-crimes became a blurred line that could easily be crossed by states.

For the major powers that hire PMSCs, including the United States and the Russian Federation, missions operated exclusively by PMSCs are, in fact, serving as convenient means for proxy warfare. The deployment of PMSCs offers plausible deniability of a country’s indirect involvement in a foreign conflict and as such helps mitigating the potential domestic tensions over those foreign wars.¹⁶

The role of PMSCs during conflict

Overall, the activities of PMSCs during hostilities can be divided into three main sectors: military provider firms whose service includes front-line combat, military consulting firms that provide strategic advice and training, and lastly, military support firms that provide logistics, maintenance, and intelligence services to regular armed forces.

An example of a first-sector-firm was the Executive Outcomes firm, a former South African company that carried out operations in Angola, Congo, and Sierra Leone. The firm's tactic was to quickly regain control of a client country's mineral-rich regions. “Within a month of Sierra Leone's hiring of Executive Outcomes in May 1995, government forces had regained control of the diamond-rich Kono district, which produced two-thirds of Sierra Leone's diamonds. In Angola, oil- and diamond-producing regions were the first areas secured by government forces trained by

¹⁶ Al-Marashi, Ibrahim. “Blackwater Paved the Way for Wagner.” *Al Jazeera*, 12 Aug. 2023, <www.aljazeera.com/opinions/2023/8/12/blackwater-paved-the-way-for-wagner>

Executive Outcomes. The firm also reportedly mined gold in Uganda, drilled boreholes in Ethiopia and had a variety of interests in the other countries”.¹⁷

The second-sector-firms can improve the military capacity of a client. “For example, advice and training from the firm Military Professional Resources Inc (MPRI) is generally credited with turning the ill-trained Croat militia into a NATO-style army that carried out the highly successful “Operation Storm” in 1995, the last major battle of the Croatian War of Independence that shaped the outcome of the Bosnian War”.¹⁸

The third-sector-companies carry out multi-billion contracts that promise logistic services to regular armed forces. “Companies such as Vice President Dick Cheney's old Halliburton firm and its Kellogg, Brown & Root division provide the logistics for every major U.S. military deployment”.¹⁹

Moreover, PMSCs are not only used by states to enhance the regular armed forces but also by humanitarian organizations, non-governmental organizations, and private corporations to provide security during their operations, especially in the trade and shipping industries. Contractors that cooperate with shipping industries are named Private Maritime Security Companies and must be able to “comply with all applicable international, national, and regulatory legal requirements, protect security sensitive data, both digital and hard copy, manage risk, minimize the effects of incidents and identify the relevant legal and regulatory requirements”.²⁰ These groups use PMSCs specifically to help them function in dangerous environments.

Additionally, it has been observed that states as well as individuals and opposing groups exploit PMSCs for more politically-driven purposes in order to overthrow, for instance, the existing government or perform otherwise illegal activities. Private security companies have been functioning without all national regulatory frameworks being set, leading to lack of control for their weapons and a monitoring system to overview their activities”.²¹ Considering that recognizing responsibility to PMSCs for crimes and violations is almost implausible in domestic and international law, states reach out to private contractors to cover their illegal actions. Especially when it comes to attempted coups d'état or otherwise illegal use of force, authorities opt for PMSCs

¹⁷ “Executive Outcomes (EO).” Wwww.globalsecurity.org, www.globalsecurity.org/military/world/para/executive-outcomes.htm#google_vignette.

¹⁸ Singer, Peter. GENEVA CENTRE for the DEMOCRATIC CONTROL of ARMED FORCES (DCAF) POLICY PAPER the PRIVATE MILITARY INDUSTRY and IRAQ: WHAT HAVE WE LEARNED and WHERE to NEXT? 2004. https://www.dcaf.ch/sites/default/files/publications/documents/pp04_private-military.pdf

¹⁹ Singer, Peter. GENEVA CENTRE for the DEMOCRATIC CONTROL of ARMED FORCES (DCAF) POLICY PAPER the PRIVATE MILITARY INDUSTRY and IRAQ: WHAT HAVE WE LEARNED and WHERE to NEXT? 2004 https://www.dcaf.ch/sites/default/files/publications/documents/pp04_private-military.pdf

²⁰ Guidance for the Employment of Private Maritime Security Companies. 2021. https://maritimecyprus.com/wp-content/uploads/2021/10/OCIMF_PMSC_Guidance_2021.pdf

²¹ “The Role of Private Military and Security Companies in Modern Warfare – Impacts on Human Rights.” Archive.globalpolicy.org, <https://archive.globalpolicy.org/pmscs/51834-the-role-of-private-military-and-security-companies-in-modern-warfare-impacts-on-human-rights.html>.

so as to evade responsibility, leading them in never being held accountable for their heinous actions.

The impact of PMSCs on global security

Destabilization and post-conflict challenges

Despite arguments that PMCs help boost national security and stability of the hiring state, the truth is that their deployment leads to the rise of proxy wars. As such PMSCs can effectively destabilise and essentially weaken the political institutions and the domestic organization of state against which they launch their operations. It is with no surprise that PMSCs usually operate in territories where institutions including the police, the judiciary, the legislature or even the army are fragile and malfunctioning, where there is no democracy or rule of law. These point to particular challenges for countries emerging from such conflicts.

Human rights' violations

PMSCs are believed to commit human rights violations during times of war. To be more precise, they often neglect safety by putting their employees in dangerous or vulnerable situations for the sake of profit. PMSCs launch missions in gray and disputed areas as well as in politically fragile communities where internal conflicts, proxy wars, instability and extremism prevail, for instance in Iraq and Afghanistan. The military missions of PMSCs exacerbate the situation, threatening the lives and security of the civilian population. In addition, PMSCs' operations go sometimes beyond states' control leading to severe human rights violations. In the past, PMSCs have been accused of abusing and torturing detainees, destroying property, harassing, and participating in illicit trade activities such as human trafficking.

An example of the aforementioned atrocities would be the involvement of United-States-based corporations, CACI International and L-3 Services, in torturing Iraqi detainees at the Abu Ghraib prison in Baghdad. The two private companies, employed by the U.S. Government, were responsible for interrogation and translation services in several detention facilities in Iraq. The victims claimed that they were subjected to rape, electric shocks, prolonged hanging from limbs, and forced nudity, and they were prevented from praying and otherwise performing their religious practices.²²

Commercialization of warfare

In this day and age, the privatization of the global security industry is intertwined with a change in views on the role and means of warfare in today's international sphere. Furthermore, private military businesses are steadily replacing states' regular armed forces and performing actions that were

²² "The Role of Private Military and Security Companies in Modern Warfare – Impacts on Human Rights." Archive.globalpolicy.org, <https://archive.globalpolicy.org/pmscs/51834-the-role-of-private-military-and-security-companies-in-modern-warfare-impacts-on-human-rights.html>.

traditionally undertaken by the latter. As a result, armed conflicts constitute a very successful and profitable business for PMSCs.

With financial incentives being their only motive, PMSC fighters are usually detached from any ideology that motivates them to take part in hostilities. This could further result in a lack of morals during the conduct of hostilities, having a devastating outcome for human rights and international humanitarian law.

With this means of warfare being used more often than ever, a new danger has emerged. It is often assumed that PMSCs and the hiring governments have harmonized goals, interests, and incentives and that their policies are synchronized. Although PMSCs usually act on the commands and directions of the hiring state, these two stakeholders may sometimes have conflicting goals; for PMSCs, it is their private interest, meaning profit, while for states, it is their security interest and the expansion of their own political and economic agendas. In a world where conflict is commodified, the strategies of the marketplace start to apply to war, meaning that military strategies blend with business ones in ways that are still incomprehensible. Profit-warriors are not bound by neither patriotism nor political interest, which means they have little interest in achieving peace and stability or addressing the underlying socioeconomic and political causes of the conflicts in which they intervene, as it is the very existence of conflict that fuels their business. “Their constraint is not the law of war but the law of supply and demand. Historically, we know they start or elongate wars for profit; a world awash in mercenaries means more war”.²³

The recent events between the Russian Government and the Wagner Group have come to certify that the allegiance of these groups is beyond questionable. When private military companies run out of independent political instruments, a new destabilizing threat arises. It’s a concern whether these companies have a policy of their own and if this policy is in alignment with or in opposition to the welfare of the international community.

The regulations of international law

The prohibition of the use force and State Responsibility

International law is the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors. International law regulates relations among states and establishes their respective rights and duties. Subjects of international law in accordance with the traditional theoretical approach are first and foremost states. Other actors, including private companies such as PMSCs, usually do

²³ McFate, Sean. “Opinion | Venezuela Shows How Mercenaries Have Become a Global Security Threat.” *The Washington Post*, WP Company, 14 May 2020, www.washingtonpost.com/opinions/2020/05/14/venezuela-shows-how-mercenaries-have-become-global-security-threat/.

not have rights and duties stemming directly from international treaties. As such, PMSCs are not held directly responsible, even if their operations lead to human rights violations, which makes their deployment particularly appealing to states as they can easily evade accountability for their actions.

The most fundamental rule of international law is the prohibition of the use of force laid down in Article 2(4) of the UN Charter. The article reads, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”²⁴

In modern warfare, states usually employ mercenaries, or PMSCs, in order to avoid being held responsible for violating this provision of UN Charter. If states deployed their regular armed forces, they would be directly and clearly using force against another state, in violation of the UN Charter. When deploying PMSCs, states try to blur the lines so that it appears that a PMSC, a non-state organization, and not the state itself are using force.

However, as the International Court of Justice, the principal judicial organ of the UN, has ruled in the case “Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)”²⁵ any act of sending irregular armed bands or mercenaries across the frontier of another state constitutes a breach of the prohibition on the use of force.

As such, employing PMSCs and exercising effective control over their extraterritorial armed activities constitutes a clear violation of the UN Charter. It is important to clarify that the obligation under Article 2(4) of the UN Charter is imposed upon States. Therefore, states and not PMSCs are the ones held responsible for violating the prohibition on the use of force, as long as the latter are, in fact, acting on the instructions of, or under the direction or control of the former in carrying out their conduct. In such cases, States are internationally responsible for violating the UN Charter.

This is not the case, however, if the State has employed PMSCs while exercising their inherent right to self-defense in response to an armed attack as stipulated in Article 51 of the UN Charter.

It is also important to note that the question of effective control over PMSCs actions is a clear question of fact, that needs material evidence to hold truth. In practice, proving this factual link between the hiring state and the PMSC may be very difficult and could lead to impunity.

²⁴ United Nations, Charter of the United Nations, 24 October 1945, 1 U.N.T.S. XVI.

<https://www.un.org/en/about-us/un-charter/full-text>

²⁵ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgment, 1986 I.C.J. Rep. 14. <https://www.icj-cij.org/sites/default/files/case-related/70/070-19841126-JUD-01-00-EN.pdf>

Considering the previous analysis, it follows that in international law, the central prohibition does not concern PMSCs per se but the recourse to force, irrespective of the means used. There is no international binding instrument that completely bans or legitimizes the use of PMSCs. Their illegality is only indirectly documented as a violation of Article 2(4) when further criteria are met. And here lies the lacuna: their legal status is undefined, which causes misconceptions and destabilization.

International Humanitarian Law governing operations by PMSCs

Although International Law is somewhat clear on the provisions regulating when states can resort to violence by employing PMSCs, it still remains rather vague when it comes to regulating the actual conduct of hostilities and the status of PMSCs under International Humanitarian Law (IHL).

Under IHL, conflicts are either international (state v. state) or internal/non-international (civil wars). Those involved in an armed conflict are divided into two large categories that further determine their status, obligations, and rights. In international armed conflicts between two or more states, those involved are either combatants or civilians. All members of the armed forces of a party to the conflict are combatants.²⁶ The Geneva Conventions of 1949 have detailed provisions with regards to the definition of combatants and the requirements one must meet in order to be accorded this status.²⁷ Combatants are the only ones authorized to use force in situations of armed conflict. Consequently, they may be attacked at any time, and they may also be held criminally responsible for committing war crimes or crimes against humanity. Those who do not fit into the definition of combatants are civilians. Civilians shall be immune from attack and have specific rights accorded to them by the 4th Geneva Convention of 1949.²⁸

In internal/non-international armed conflicts, states' forces typically encounter rebel groups. In those situations, the status of combatant and civilian is rather difficult to bestow because the Geneva Conventions are silent on that specific part. Practice shows that state armed forces are considered to be combatants, while the members of armed opposition groups are civilians directly participating in hostilities that can be attacked.²⁹

²⁶ International Committee of the Red Cross. "Rule 3. Definition of Combatants" IHL Database <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule3>

²⁷ See Article 4, Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75 U.N.T.S. 135. and Article 43, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S. 3.

²⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 U.N.T.S. 287.

²⁹ International Committee of the Red Cross. "Rule 3. Definition of Combatants" IHL Database <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule3>

The status of the personnel of PMSCs in an armed conflict (meaning the question of whether they are civilians, combatants, or civilians directly participating in hostilities) is not pre-decided by a treaty. On the contrary, it must be determined on a case-by-case basis while taking into account the nature and circumstances of each conflict. It is important to note that determining the status of PMSC personnel is of paramount importance because it leads to the activation and application of a set of rights and duties accorded to them by international humanitarian law.

Unless they are incorporated into the regular armed forces of a State or have combat functions of an organized armed group belonging to a party to the conflict as required by the Geneva Conventions, the staff of PMSCs are civilians. As a result, they should remain immune from attack unless they directly take part in hostilities. This means that if PMSCs' personnel perform military acts, including guarding military bases, gathering military intelligence, and operating weapons, which is usually the case, they completely lose civilian protection status. It follows that they can be attacked at any time, and if captured, they are not entitled to Prisoner of War protection status and can, thus, be tried for merely participating in hostilities.

In any case, during the conduct of hostilities, PMSC personnel are obliged to respect the laws and customs of war, namely the fundamental principles of distinction, precaution, and proportionality, although they do not as they are aware that they will not be punished for their tremendous actions. Under the principle of distinction, parties to an armed conflict must “at all times distinguish between the civilian population and combatants, between civilian objects and military objectives and direct accordingly their operations only against military objectives.”³⁰ Under the principle of precaution, “constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects”.³¹ Lastly, the principle of proportionality prohibits attacks against military objectives which are “expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.³²

If the fighters repeatedly violate those principles included in the 1949 Geneva Conventions by attacking civilians, for instance, they may be held criminally

³⁰ “Distinction I How does Law protect in war? - ICRC Online Casebook.” Casebook.icrc.org

https://casebook.icrc.org/a_to_z/glossary/distinction

³¹ ICRC “Rule 15 Principle of precautions in attack” IHL Database <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15>

³² “Proportionality I How does Law Protect in War – ICRC Casebook” Casebook.icrc.org https://casebook.icrc.org/a_to_z/glossary/proportionality

responsible for committing war crimes and/or crimes against humanity. However, the international community rarely sees the perpetrators of such hideous crimes before competent tribunals.

Case studies

Nisour Square massacre³³

On September 16, 2007, employees of an American private military contractor named Blackwater killed 17 civilians and injured 20 more in Nisour Square, located in Baghdad, Iraq, while they were escorting a convoy of the US Embassy. The private guards of the company stated that they felt threatened and only acted in defense. However, the Iraqi government stated that the killings were unprovoked and unjustified. The US government acted upon the Iraqi officials' accusations by bringing the responsible PMSC fighters before justice seven years later. The trial proved that the Blackwater employees had, indeed, exploited their forces, and the perpetrators were punished accordingly.

This incident stresses the fact that PMSCs commit various inhuman crimes while hired, and the international community must reach out to justice. Its importance, however, lies in the fact that the perpetrators were held criminally liable and were accordingly punished by a competent authority, something that does not occur in most cases.

Plan Colombia

The armed conflict in Colombia against guerillas has acted as an opportunity for the growth of private military and security companies in Latin America, particularly in Colombia.

The Colombian private security market was divided between the domestic market regulated by Colombian public institutions and international PMSCs hired by the United States (US). Indeed, the US and Colombian governments for several decades have been cooperating so as to eliminate the phenomenon of drug trafficking. In 2000, their bilateral cooperation was officially established with the implementation of the "Plan Colombia".³⁴

It was estimated that around 1.3 billion US dollars were invested in the plan. 55% of the aid provided was, in fact, directed by 25 Private Security Companies.³⁵ The US hired PMSCs to undertake actions including the training

³³ Apuzzo, Matt. "Blackwater Guards Found Guilty in 2007 Iraq Killings." *The New York Times*, 22 Oct. 2014, www.nytimes.com/2014/10/23/us/blackwater-verdict.html.

³⁴ United States Department of State. "Report to Congress On Certain Counternarcotics Activities in Colombia" 2007 <http://justf.org/files/primarydocs/0706cont.pdf>

³⁵ Perret Antoine. "Private Military and Security Companies' regulation in Colombia". OHCHR 1 December 2015, https://www.ohchr.org/sites/default/files/Documents/Issues/Mercenaries/WG/Event2015/AntoinePerret_December1_2015.pdf; Brancoli Fernando. 16 November 2010. "A New Security Dilemma: Plan

of Colombian troops, the use of Unmanned Aerial Vehicles (UAV), direct participation in hostilities against guerrilla forces, especially with air support, combating the illicit production and trafficking of cocaine, protecting politicians, and providing intelligence.³⁶

US PMSCs working under the framework of Plan Colombia were operating under the direct control of the US. This raises important legal issues with regards to US's role and participation in the Colombian armed conflict. What is equally important is the fact that US PMSCs employees benefited from special treatment: all US contractors enjoyed full immunity for their actions and could not be tried, since they were treated like US military.

This immunity clearly limited Colombian authorities from effectively controlling US PMSCs. This was highly concerning because numerous scandals came to surface associating US PMSCs with human rights violations. Specifically, in 2004, a video of pornographic content was publicly released in which minors in the Colombian base of Tolemaida were sexually abused by US contractors. As a result of their immunity, US employees were never brought before competent judicial courts.

Another incident took place in August 2007, when an American soldier and a PMSC contractor were accused of raping a twelve-year-old girl. Although the Colombian judicial system tried to initiate investigations, the perpetrators were never brought to justice because of their immunity, thus, such crimes could not be prevented from happening in the future.

Operations of the Wagner Group

The notorious Wagner Group gained much publicity after the Russian Federation initiated the “Special Peacekeeping Operation” against Ukraine’s territorial integrity and political independence in February 2022.

Wagner is a Russian company that was founded in 2014 by Prigozhin. Since mercenaries are illegal under Russian law, Wagner was registered as a private military company in 2022. From the very beginning, the group has had strong ties with the Kremlin’s regime, and its first field commander was Dmitry Utkin, a former officer in Russia's special forces. Wagner’s personnel mostly came from Russia's elite regiments and special forces.

The group has been operating in different countries on the African and Asian continents. Since December 2021 around 1,000 fighters have been placed in

Colombia and the Use of Private Military Companies in South America”. International Center for Research and Analysis <https://cesran.org/a-new-security-dilemma-plan-colombia-and-the-use-of-private-military-companies-in-south-america.html>

³⁶ Brancoli Fernando. 16 November 2010. “A New Security Dilemma: Plan Colombia and the Use of Private Military Companies in South America”. International Center for Research and Analysis <https://cesran.org/a-new-security-dilemma-plan-colombia-and-the-use-of-private-military-companies-in-south-america.html>

Mali, where they are confronting armed extremist groups linked to al-Qaeda.³⁷ In accordance with British intelligence, an additional 1,000 fighters have been operating behind a front-organization called “Officers Union for International Security” in the Central African Republic, training its members, and protecting major city-supply-lines.³⁸ In June 2021, a report conducted by UN Security Council investigators was published with regards to the impact Russian PMSCs have on human rights. The UN officers in their report highlighted the extensive violations of international humanitarian law by Russian PMCs in the Central African Republic, including excessive use of force, the murder of civilians, rape, torture, occupation of schools, and widespread looting.³⁹ A similar pattern of human rights abuses has been observed in Mali.⁴⁰

With regards to Sudan, evidence suggests that Wagner has placed its forces in strategic locations since 2017, providing military training to governmental forces. In 2017, Sudan's government awarded M-Invest, a private company owned by Prigozhin and affiliated with Wagner, gold-mining contracts. Wagner's troops have, also, participated in the civil war in Syria since 2015, supporting President Asad and his forces.

Several western countries, including the USA and the UK, have sanctioned Wagner's affiliated businesses in Africa, accusing them of murders and torture in Mali and the Central African Republic and threats to peace and security in Sudan. In 2020, the US military accused Wagner mercenaries of purposely planting landmines in the Libyan capital, Tripoli.

However, to this day, the most famous operation undertaken by the Wagner Group is the ongoing conflict between Russia and Ukraine. It was estimated that about 25,000 Wagner fighters were participating in hostilities on behalf of Russia. It is alleged that Wagner troops took part in the Bucha massacre in March 2022 and have killed and tortured thousand civilians across cities in Eastern Ukraine. Recently, Wagner troops participated in the critical battle for Bakhmut, which ended with the city's occupation by Russian forces in May 2023.

The battle in Bakhmut proved to be decisive not for the course of the war itself but for Russia's internal stability. During the encounter, Prigozhin appeared to repeatedly voice his criticism towards Russia's Army Chief, Valery Gerasimov, and Defense Minister, Sergei Shoigu, for not strengthening and logistically

³⁷ BBC News. “What Is Russia's Wagner Group, and What Has Happened to Its Leader?” *BBC*, 29 Aug. 2023, www.bbc.com/news/world-60947877

³⁸ BBC News. “What Is Russia's Wagner Group, and What Has Happened to Its Leader?” *BBC*, 29 Aug. 2023, www.bbc.com/news/world-60947877

³⁹ Doxsee, Catrina. “Putin's Proxies: Examining Russia's Use of Private Military Companies.” *CSIS*, 15 Sept. 2022, www.csis.org/analysis/putins-proxies-examining-russias-use-private-military-companies.

⁴⁰ Doxsee, Catrina. “Putin's Proxies: Examining Russia's Use of Private Military Companies.” *CSIS*, 15 Sept. 2022, www.csis.org/analysis/putins-proxies-examining-russias-use-private-military-companies.

supporting Wagner's troops and fighters, many of whom were killed or injured in the course of the war. Prigozhin further accused the Russian officials of the country's overall military shortcomings in the Ukrainian war. This feud, which had already started when the Russian army suffered its first significant casualties at the beginning of the war, had by May 2023 reached a critical level.

On June 23, 2023, around 5,000 Wagner soldiers, under the instructions of Prigozhin, organized a commune, occupied the city of Rostov-on-Don in Southern Russia, and started marching towards Moscow. Prigozhin depicted the rebellion as a response to an alleged attack on his forces perpetrated by the Ministry of Defense and demanded that Shoigu and Gerasimov be turned over to him.

In his public address, Putin made clear that he had no intention of surrendering to Prigozhin's demands and that if he and the other Wagner leaders and fighters continued their coup, they would be criminally charged with treason.

The mutiny ended after the successful intervention of Belarusian President Alexander Lukashenko, who acted as mediator and managed to reach a settlement. The agreement provided that Wagner fighters had to immediately cease their advancement towards Moscow and return to their base in exchange for safety guarantees against criminal charges.

Apart from the wide range of human rights violations incidents, the Wagner case study proves that PMSCs can be detrimental to the country hiring them by causing internal political instability. The political and military power PMSCs constantly gain, they can have at the end of the day adverse effects to the territorial country's democratic procedures and security. Therefore, the global community ought to act now by renewing the international legislative system, so as to hold accountable.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

Russian Federation

Russia has boosted the use of PMSCs as a tool of foreign policy and irregular warfare in pursuit of its geopolitical and economic agenda since 2015. Russian PMSCs have a long history of extraterritorial military operations and a rather heavy record of human rights abuses that have essentially contributed to regional instability. The extensive recourse to PMSCs as a means of foreign policy was mainly driven by Moscow's desire to expand its influence. Ever since the illegal annexation of the Crimean Peninsula in 2014 and the start of the Russo-Ukrainian war, PMSCs have played a key role in

achieving Russia’s goals.⁴¹ By using PMSCs, Russia frequently preys on resource-rich nations with weak governance structures. Russian PMSCs are currently active in Africa, the Middle East, Europe, Asia, and Latin America, including countries such as the Central African Republic (CAR), Libya, Sudan, Mali, Syria, Ukraine, and Venezuela. PMSCs that collaborate with the Russian government provide training and operational services to strengthen Moscow’s influence, increase its military power, and ensure access to financial and natural resources.

Wagner, the main Russian PMSC, has been vital in executing Russia’s agenda in Syria and Ukraine. Especially in the situation in Ukraine, Russia employed Wagner rather than its regular military, not only to avoid domestic scrutiny for casualties but also to falsely allege that all fighters were indigenous separatists, members of the Russian minority in Eastern Ukraine and were allegedly exercising their right to self-determination ⁴².

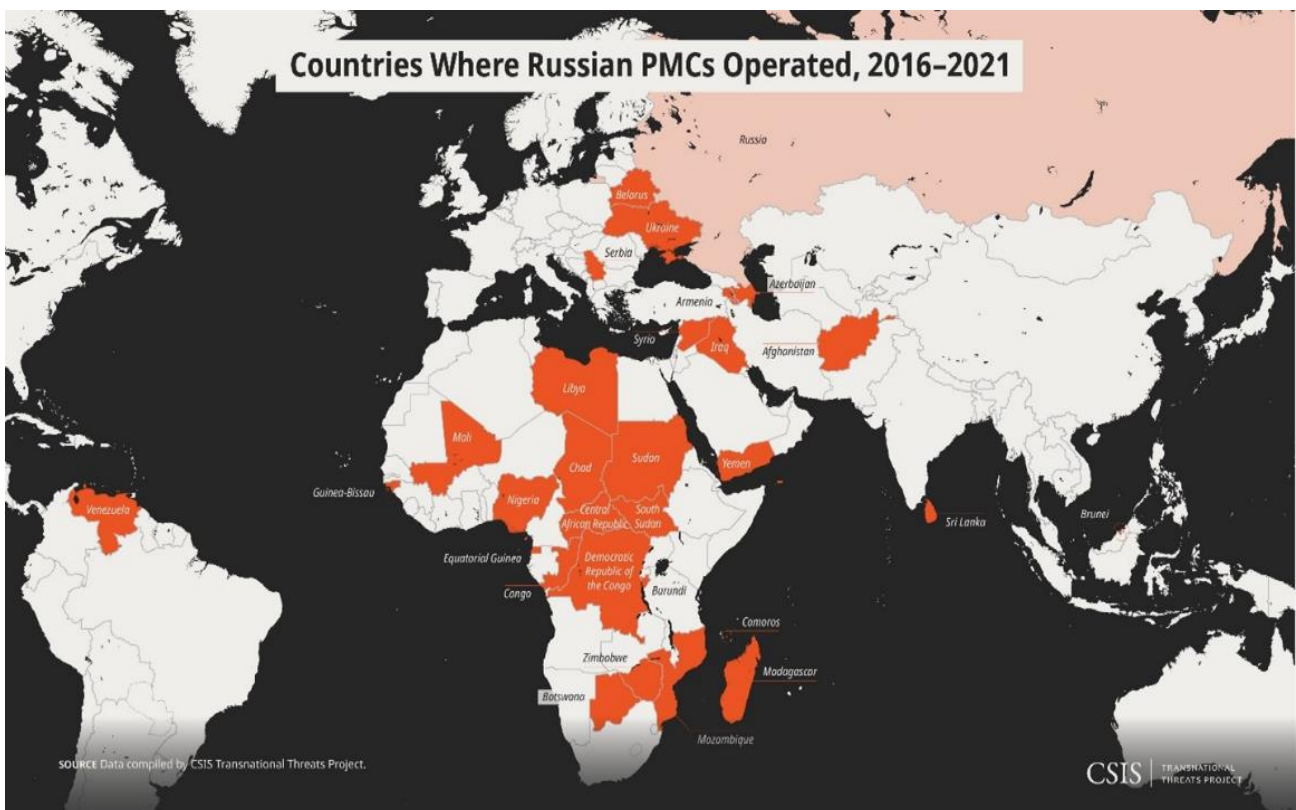


Figure 1: Map depicting countries where Russian PMCs operated between 2016 and 2021⁴³

⁴¹ Doxsee, Catrina. “Putin’s Proxies: Examining Russia’s Use of Private Military Companies.” Wwww.csis.org, 15 Sept. 2022, www.csis.org/analysis/putins-proxies-examining-russias-use-private-military-companies.

⁴² Doxsee, Catrina. “Putin’s Proxies: Examining Russia’s Use of Private Military Companies.” Wwww.csis.org, 15 Sept. 2022, www.csis.org/analysis/putins-proxies-examining-russias-use-private-military-companies.

⁴³ Doxsee, Catrina. “Putin’s Proxies: Examining Russia’s Use of Private Military Companies.” Wwww.csis.org, 15 Sept. 2022, www.csis.org/analysis/putins-proxies-examining-russias-use-private-military-companies.

United States of America (USA)

Even at the times of the World War II, 10% of American armed forces were privately contracted.⁴⁴ PMSCs have periodically been used by the U.S. forces to boost military policies not approved by Congress or the public. The sharp increase in the deployment of PMSC was documented after 2001, as a result of US's launch of the 'war on terror'. At that critical point at least 50% of American forces were privately contracted.

In 2002, the U.S. military established a plan named Third Wave, which aimed to increase its long-term reliance on the private sector. The Third Wave aimed to free up military man-power and resources for the global war on terrorism, obtain products and services from the private sector to enable Army leaders to focus on the Army's core competencies and to support the President's Management Agenda. However, the initiative came to a temporary standstill in April 2003.

In 2008, a year critical for US's counterinsurgency effort in Iraq, the number of private contractors reached 163,400 compared to the 146,800 regular US troops employed.⁴⁵ In the same vein, amid the Taliban crisis in Afghanistan in 2010, around 112,100 private contractors were hired.⁴⁶

China

China has been using PMSCs for many decades for both domestic and foreign affairs. Belt Road Initiative, China's strategy to improve connectivity and cooperation among organizations and nations, has urged Chinese international corporations to employ domestically registered Chinese PMSCs to safeguard assets overseas. Furthermore, Chinese contractors, which are believed to be indirectly driven by the authorities, are also offering their services in states like Iraq, Sudan, and South Sudan to protect resources and facilities. However, there are political and social risks linked to the use of PMSCs. "These privatized forces undermine the sovereignty of states as the sole entity having the monopoly on legitimate use of violence in their territory".⁴⁷ Due to these states' reliance on China's financial investments and loans, China has already exercised substantial power and influence there.

Switzerland

The Swiss Federal Council has decided to end the involvement of PMSCs in armed conflicts on foreign soil. According to Minister of Justice Simonetta Sommaruga, the recently adopted draft bill, which will be making its way through parliament, "aims to safeguard neutrality, ensure respect for international law, and preserve Switzerland's

⁴⁴ Al-Marashi, Ibrahim. "Blackwater Paved the Way for Wagner." *Al Jazeera*, 12 Aug. 2023, www.aljazeera.com/opinions/2023/8/12/blackwater-paved-the-way-for-wagner.

⁴⁵ Al-Marashi, Ibrahim. "Blackwater Paved the Way for Wagner." *Al Jazeera*, 12 Aug. 2023, www.aljazeera.com/opinions/2023/8/12/blackwater-paved-the-way-for-wagner.

⁴⁶ Al-Marashi, Ibrahim. "Blackwater Paved the Way for Wagner." *Al Jazeera*, 12 Aug. 2023, www.aljazeera.com/opinions/2023/8/12/blackwater-paved-the-way-for-wagner.

⁴⁷ kclgpris. The Modern Usage of Private Military Companies and Private Security Companies in Zones of Conflict. 4 Dec. 2019, <https://kclgpris.com/2019/12/04/the-modern-usage-of-private-military-companies-and-private-security-companies-in-zones-of-conflict/>.

image abroad”.⁴⁸ Companies that are not participating directly in hostilities but are offering “security services, logistical support, provision of supplies, transport, or personal protection”,⁴⁹ must be in communication with the authorities to ensure they are not in breach of the law. The Federal Council has organized case-by-case reviews rather than a vague licensing system. Switzerland can be seen as a model by member states, since it prioritizes international law rather than its profit.

Venezuela

In May 2020, foreign PMSCs arrived on the country’s coast, aiming to start an armed rebellion in the country. The coup d’état was allegedly planned by Silvercorp, led by Juan Guaidó,⁵⁰ a U.S. private company that acts mainly within the region of South America.⁵¹ Juan Guaidó declared himself the legitimate president of Venezuela, and more than 50 nations worldwide recognized him. Nevertheless, his plan failed due to miscommunication, poor planning, and the infiltration of the operation by Venezuela’s agents. President Maduro’s forces managed to kill 8 Venezuelan members of the group and arrested another 13 members.⁵²

The attempted coup and the involvement of a PMSC therein contributed to the deterioration of Venezuela’s political stability, worsening the opposition’s national and international standing. In fact, it strengthened the Maduro regime and its effort to demobilize his political opponents. The US denied any direct role or involvement in the operation. Overall, the failed coup is indicative of the destabilizing effects arising from PMSCs intervention in domestic affairs of other countries.

South Africa

In accordance with the report published in July 2023 by the Human Rights Council, South Africa has one of the most comprehensive approaches and effective national legislation with regards to PMSCs.⁵³ South Africa has not only attempted to regulate the private security industry operating in its territory and providing service abroad, but has, additionally, prohibited the export of military and security services. In 2001, the country passed the “Private Security Industry Regulation Act No. 56”,⁵⁴

⁴⁸ “Switzerland, the End of Private Armies | How Does Law Protect in War? - Online Casebook.” Casebook.icrc.org, <https://casebook.icrc.org/case-study/switzerland-end-private-armies..>

⁴⁹ “Switzerland, the End of Private Armies | How Does Law Protect in War? - Online Casebook.” Casebook.icrc.org, <https://casebook.icrc.org/case-study/switzerland-end-private-armies..>

⁵⁰ BBC News. “Venezuela’s Guaidó Accused of Coup Attempt by Government.” *BBC News*, BBC, 30 Apr. 2019, www.bbc.com/news/world-latin-america-48103858.

⁵¹ Ward, Alex. “The ‘Ridiculous’ Failed Coup Attempt in Venezuela, Explained.” *Vox News*, 11 May 2020, www.vox.com/2020/5/11/21249203/venezuela-coup-jordan-goudreau-maduro-guaido-explain.

⁵² Ward, Alex. “The ‘Ridiculous’ Failed Coup Attempt in Venezuela, Explained.” *Vox News*, 11 May 2020, www.vox.com/2020/5/11/21249203/venezuela-coup-jordan-goudreau-maduro-guaido-explain.

⁵³ UN Human Rights Council. “Annual report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination”, 1 July 2023 A/HRC/24/45. <https://undocs.org/en/A/HRC/24/45>

⁵⁴ Republic of South Africa, Act No. 56 of 2001: Private Security Industry Regulation Act, 2001, Government Gazette Vol. 439 Cape Town 25 January 2002 No. 23051, http://www.dcssl.gov.za/Priv_Security_Indust_Reg_Activ.pdf

establishing the Private Security Industry Regulatory Authority. The Authority is responsible for reviewing the companies that want to be registered in its systems and accordingly granting them licenses. The Act entails specific conditions that companies must meet in order to be successfully registered as security service providers, including the fulfilment of training requirements, the submission of a clearance certificate, criminal record of members etc. Furthermore, South Africa has adopted the “Regulation of Foreign Military Assistance Act No. 15” and the “Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act No. 27” in ⁵⁵1998 and 2006, respectively. These clearly prohibit mercenary activities and regulate the provision of assistance or services to a party to an armed conflict or to another country.

European Union (EU)

The European Union and its Member States are heavily reliant on PMSCs since they purchase the technological equipment they offer. In 2017, the European Parliament adopted a resolution that called for the establishment of various guarantees and control mechanisms to minimize the use of companies and to restrict their activities within conflict zones. EU has, also, attempted to limit transactions, especially with contractors that violate human rights, such as Wagner, on which sanctions were imposed for a series of violations of human rights and humanitarian law. In April 2023, the Council included the Wagner Group and RIA FAN to the list of entities subject to EU restrictive measures for undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine.

TIMELINE OF EVENTS

DATE	DESCRIPTION OF EVENT
18 th October 1907	The Fifth Hague Convention – Respecting the rights and Duties of Neutral States is adopted during the International Peace Conference that took place in the Hague, Netherlands.
21 st May 1929	The Convention on Duties and Rights of States in the Event of Civil Strife enters into force, thus, becoming legally binding for the ratifying states.
1977	The Organization of African Unity Convention is adopted.
4 th December 1989	The UN International Convention against the Recruitment, Use, Financing and Training of

⁵⁵ Republic of South Africa, Act No. 27 of 2006: Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006, Government Gazette Vol. 509 Cape Town 16 November 2007 No. 30477, https://www.saflii.org/za/legis/num_act/pomaarocaicoaca2006940.pdf

	Mercenaries is adopted.
26 th December 1996	Blackwater is founded.
July 2000	“Plan Colombia” is launched.
July 2005	The Working Group on the Use of Mercenaries of the UN Human Rights Council is established.
16 th September 2007	The Nisour Square massacre occurs.
17 th September 2008	The Montreux Document is adopted.
May 2014	Wagner group is founded.
20 th February – 21 st March 2014	Wagner group participates in the annexation of Crimea.
September 2015	Wagner group participates in the Syrian civil war supporting Assad’s forces.
December 2017	Wagner group starts providing military and political support to Sudan’s then President Omar al-Bashir.
28 th September 2017	The UN Human Rights Council adopts Resolution 36/11 establishing the Open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies.
December 2021	Wagner engages in military operations in Mali.
September 2022	Wagner is officially registered as a Private Military Company.
22 nd February 2022 - Present	Wagner troops participate in the ongoing Russo-Ukrainian War.
4 th – 31 st March 2022	The Bucha Massacre takes place.
29 th July 2023	Wagner group attempts a military coup in Russia.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

International Law on Neutrality

The Law of Neutrality, which originally stems from the Fifth Hague Convention Respecting the Rights and Duties of Neutral States (1907)⁵⁶ establishes the rights and

⁵⁶ Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, 205 Consol TS 277. [https://ihl-databases.icrc.org/en/ihltreaties/hagueconvv1907?activeTab=default#:~:text=IHL%20Treaties%20%2D%20Convention%20\(V\),The%20Hague%2%2018%20October%201907.&text=Citation,Convention%20\(V\)%20respecting%20the%20Rights%20and%20Duties%20of%20Neutral%20Powers,Case%20of%20War%20on%20Land.](https://ihl-databases.icrc.org/en/ihltreaties/hagueconvv1907?activeTab=default#:~:text=IHL%20Treaties%20%2D%20Convention%20(V),The%20Hague%2%2018%20October%201907.&text=Citation,Convention%20(V)%20respecting%20the%20Rights%20and%20Duties%20of%20Neutral%20Powers,Case%20of%20War%20on%20Land.)

duties of neutral powers during international armed conflicts between states. Specifically, Article 4 establishes the essentially neutral duty of a third state not to be involved in hostilities and to prohibit the recruitment of mercenaries on its territory that could be used to assist any of the belligerent powers.

The legally binding Convention Concerning the Duties and Rights of States in the Event of Civil Strife has incorporated similar rules that are applicable in internal armed conflicts, such as civil wars. Article 1 of the said Convention obliges states to “use all means at their disposal to prevent their citizens from participating in, gathering elements, crossing the boundary, or sailing from their territory for the purpose of starting or promoting civil strife. Mercenaries are included in this prohibition”. Further states have the duty to disarm and intern every rebel force crossing their boundaries.

Those treaties, although important at the time they were signed, do not cover modern practices, including PMSCs. Their regulations simply cover acts of mercenarism and volunteer soldiers, thus, excluding from their scope of application the deployment of PMSCs.

[The International Convention against Mercenaries](#)

The evolution in the laws of state neutrality and the expansion of mercenary activities in post-colonial Africa led to the adoption of the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries in 1989 by the UN.

The Convention does not impose a strict and total ban on mercenary-related activities. It only prohibits activities aimed at overthrowing or undermining the constitutional order and violating territorial integrity of states. Further, the recruitment, use, financing, and training of mercenaries are treated as violations of the principles of sovereign equality, political independence, and territorial integrity.

Although the Convention tried to adapt to the developments and practices relating to the use of mercenaries, it has not gone beyond criticism. Firstly, the Convention defines the term “mercenary” narrowly, thus, excluding from its scope of application the activities of Private Military Security Companies. Secondly, the Convention’s scope only extends to the country where the mercenary activity has actually taken place, while there is no monitoring or enforcement mechanism in place. Therefore, the measures contained in the Convention are rather inadequate.

[The Organization of African Unity Convention](#)

This Convention has a regional character as it was adopted in 1977 under the auspices of the Organization of African Unity. It officially entered into force in 1985, but since then, it has rarely been enforced. The OAU Convention follows the same path as the UN Convention but is much regarded as an improved version, since it goes beyond the simple prohibition on recruiting, use, financing and training of mercenaries to the substantive prohibition of the elements of mercenary. Similarly, to the provisions of the International Convention still does not cover the activities of private military companies.

The Montreux Document

The Montreux Document⁵⁷ is the outcome of an initiative launched by Switzerland and the International Committee of the Red Cross. States from all around the world participated in the negotiations process and contributed to its drafting, including Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, Ukraine, and the United States of America. The document was finalized on September 17, 2008.

Although the document is not legally binding, it reflects important principles of international law and encompasses good practices for the safe use of PMSCs. It further sets out important proposals for reviewing mechanisms, authorization procedures, compliance, and enforcement frameworks. It also clarifies the different rights and duties of contracting states; territorial states and home states.

The aim of the Montreux document is not to legitimize the use of PMSCs but to regulate how PMSCs can act and engage in combat during conflicts. It is, thus, neither rejecting nor welcoming the use of PMSCs but rather following a more humanitarian approach to the matter.

With the conclusion of the Montreux Document, the focus has now shifted to its dissemination and practical implementation. As the circle of participating States grows, it is likely that it will prove to be a reference for all issues relating to PMSCs.

Human Rights Council, Resolution 36/11 (2017)

On September 28, 2017, United Nations Human Rights Council adopted Resolution [36/11](#)⁵⁸ and decided to establish a new open-ended intergovernmental working group on the issue of PMSCs. The Group is particularly charged with the mandate to conclude an international regulatory framework, safeguard human rights, and ensure accountability for violations and abuses emerging from the activities of PMSCs.

To fulfill its obligation and strengthen its work academically and policy-wise, the group has the ability to invite academic experts and other relevant stakeholders, including governmental officials, regional groups, other intergovernmental organizations, civil society members, the PMSC industry, the Co-Chairs of the Montreux Document Forum, and the International Code of Conduct Association.

On October 6, 2020, the Human Rights Council renewed the duration of the group's work for an additional period of three years. During May 2022, the group negotiated upon the "Revised zero draft instrument on an international regulatory framework on the regulation, monitoring of and oversight over the activities of private military and

⁵⁷ International Committee of the Red Cross & Swiss Confederation, The Montreux Document, 17 September 2008 https://www.icrc.org/en/download/file/135841/montreux_document_en.pdf

⁵⁸ Human Rights Council, Mandate of the open-ended intergovernmental working group to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, 9 October 2017, UNDoc. A/HRC/RES/36/11 <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/36/11&Lang=E>

security companies”⁵⁹. This draft is an important step towards regulating the status of PMSCs, the registration and licensing procedures, the obligations of states, and the proper measures to ensure accountability for human rights violations. Although it is not yet a Treaty, meaning a legally binding instrument, it definitely serves as a foundation for future round as of negotiation. The draft does not prohibit the use of PMSCs but rather aims at regulating their conduct with respect to human rights. It established each state’s obligation to respect, protect and fulfil human rights and International Humanitarian Law and to ensure that Private Military and Security Companies and their personnel within their jurisdiction abide by them. Additionally, it provides for an elaborate registration and licensing mechanism that states ought to implement in order to better control PMSCs actions and prevent atrocities.

POSSIBLE SOLUTIONS

Establishment of a legally binding document

Acknowledging the absence of an international document that addresses and defines the status of PMSCs, States are highly encouraged to first ratify the UN Convention against mercenaries and, then, engage in negotiations in order to draft a legally binding agreement that directly regulates the status of PMSCs and clearly defines the rules of their engagement in armed conflicts. The Montreux Document as well as the Intergovernmental Group’s draft may be used as a foundation for the provisions of the new Treaty. Keeping in mind that drafting an international agreement will prove to be difficult, states are also encouraged to become members of the Montreux Document and further change their respective national laws with regards to license mechanisms.

Holding States, fighters and PMSCs accountable

The legal issue of accountability has been a rather complicated one and very difficult to resolve. Accountability lies at the very heart of the problem, bearing in mind that states mainly hire PMCSs so that they avoid being held responsible for violations of international law. Simultaneously, PMCSs, leaders, and fighters are rarely brought before justice for committing different crimes and atrocities.

When discussing accountability, one should distinguish state responsibility from individual criminal liability of PMSCs’ leaders and fighters. As explained before, state responsibility arises when a state, via its organs or even by non-state groups that act on its explicit directions and guidance, violates its responsibilities under international

⁵⁹ Open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies. “REVISED ZERO DRAFT INSTRUMENT ON AN INTERNATIONAL REGULATORY FRAMEWORK ON THE REGULATION, MONITORING OF AND OVERSIGHT OVER THE ACTIVITIES OF PRIVATE MILITARY AND SECURITY COMPANIES .” *OHCHR*, May 2022, www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index1.

law (for instance, the responsibility not to use force and not to intervene in another state's domestic affairs). When a state has committed an internationally wrongful act, it must pay reparations to the injured state.⁶⁰ Usually, this kind of dispute is deliberated in the International Court of Justice. However, the injured state seeking reparations must prove the factual link between the wrongdoing state and the PMSC, meaning it has to prove that the state exercised effective control over the activities of the PMSC. This is not always easy in practice.

Besides state responsibility, individuals working for PMSCs may be held criminally responsible for committing international crimes such as war crimes, crimes against humanity, and genocide. The principle of individual criminal responsibility for war crimes and crimes against humanity is a long-standing rule of international law dating back to the Nuremberg Trials.⁶¹ The suppression of international crimes and the administration of justice are particularly seen to be within the interests of the international community as a whole.⁶² It follows that crimes such as willful killings, torture, inhuman and degrading treatment, willful cause of unbearable suffering or serious injury to body or health, and unlawful deportation are subject to mandatory universal jurisdiction, meaning that any state's courts can investigate those crimes irrespective of the nationality of the perpetrator and the victim or the territory on which the crime was committed.⁶³ Universal jurisdiction in cases of PMSCs acts is a legal tool for the proper administration of justice and the protection of victims. Usually, the injured state on whose territory the atrocities have been committed is financially unable to bring the perpetrators to justice, while the hiring state is rather reluctant due to political reasons. That's why the principle of universal jurisdiction can be used as a jurisdictional basis for the initiation of criminal proceedings by third states equipped with strong law enforcement mechanisms. States are encouraged to modify their domestic Criminal Codes in accordance with the suggestions of the Intergovernmental Group's Draft proposals and address the issue of jurisdiction. Additionally, injured states are highly advised to accept the jurisdiction of the International Criminal Court and strongly cooperate with its organs so that perpetrators of the crimes listed in the Rome Statute are brought before the Court.

⁶⁰ Article 36, ILC, "Draft Articles on the Responsibility of States for Internationally Wrongful Acts", 2001, UN Doc.A/CN.4/L.602/Rev.1

https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

⁶¹ International Commission of the Red Cross. "Individual Criminal Responsibility." *How Does Law Protect in War? - Online Casebook*, casebook. www.icrc.org/a_to_z/glossary/individual-criminal-responsibility#:~:text=Besides%20State%20responsibility%20for%20violations,against%20humanity%2C%20and%20genocide

⁶² Lehnardt, Chia. "Individual Liability of Private Military Personnel under International Criminal Law". *The European Journal of International Law*, 2008, Vol. 19 no. 5, 1015 – 1034. <https://academic.oup.com/ejil/article/19/5/1015/505543>

⁶³ Lehnardt, Chia. "Individual Liability of Private Military Personnel under International Criminal Law". *The European Journal of International Law*, 2008, Vol. 19 no. 5, 1015 – 1034. <https://academic.oup.com/ejil/article/19/5/1015/505543>

Lastly, an area of particular interest and limited state practice is that of PMSC corporate criminal liability. Although World War II set a legal precedent with regards to the fact that individuals can be held responsible for acts committed by private corporations and entities, the issue of whether a PMSC itself can be held criminally liable has not yet been adequately addressed. Directly prosecuting corporate entities may be very advantageous, especially when it comes to victim-compensation, but little to no steps have been taken in that direction. The prevailing view excludes the possibility of criminal investigations and sanctions against legal entities, which are only exposed to administrative sanctions instead. In that realm, no international treaty has been signed prescribing criminal accountability to private corporations and no International Court has jurisdiction to prosecute legal persons for international crimes. This, of course, does not exclude the possibility – slim as it may be – of victim-states altering their Penal Codes so as to establish and enforce PMC criminal liability on their domestic level.⁶⁴ To achieve that end, states need to define the legal term “corporate fault”, possibly requiring proof of PMSC headquarters’ knowledge of crimes committed by its employees. In that way, states that have suffered from PMSCs’ actions on their territory or even third states can bring before their criminal courts -in addition to individual fighters- foreign PMSCs. But that is a rather pioneering and unprecedented proposal, that the vast majority of states may refuse to follow for political and economic reasons. However, the appointment of a UN Special Representative on Human Rights and Transnational Corporations is indicative of society’s increased awareness of private corporations’ role in armed conflicts around the world.⁶⁵ The UN representative with the collaboration of states and other UN Organs including the International Law Commission and the GA6 Committee, can contribute to the progressive development of the notion of corporate criminal responsibility for international crimes.

Obligations of the hiring state

On the one hand, the governments that hire private military companies are responsible for their conduct, particularly with respect to the use of force and international humanitarian and human rights law. Should the staff of the PMSCs commit violations of international humanitarian law by attacking civilians or civilian objects, the hiring State may be held responsible via trial if the violations can be attributed to it, supposing the PMSC has acted under instructions or control of the State authorities.

Apart from that, hiring states must further ensure that the personnel of PMSCs are well-trained in order to respect international humanitarian law. Important measures for achieving this include intensive and proper training in international humanitarian

⁶⁴ Lehnardt, Chia. “Individual Liability of Private Military Personnel under International Criminal Law”. *The European Journal of International Law*, 2008, Vol. 19 no. 5, 1015 – 1034.
<https://academic.oup.com/ejil/article/19/5/1015/505543>

⁶⁵ Lehnardt, Chia. “Individual Liability of Private Military Personnel under International Criminal Law”. *The European Journal of International Law* (2008) Vol. 19 no. 5, 1015 – 1034.
<https://academic.oup.com/ejil/article/19/5/1015/505543>.

law issues and the establishment of a mechanism with regards to the rules and standards of engagement. Moreover, States have the obligation to establish judicial procedures and assist one another in holding accountable PMSCs staff accused of committing criminal offences and war crimes. When addressing such heinous matters, nations should have the ability to try each other when observing a IHL violation.

Obligations of the territorial state

On the other hand, states on whose territory private military companies are registered and/or operate are required to control and prevent military actions targeted against the territorial integrity and independence of other states.

One effective way for the territorial States to strengthen their control and oversight over PMSCs operating on their territory is the establishment of a licensing and regulatory system, in accordance with the suggestions of the Montreux Document, either on an international or on a national level, that is legally binding. Key elements of this regulatory framework should include the clear determination of the services that may or may not be carried out by PMSCs. The issuance of the above-mentioned licenses can be subject to the fulfillment of certain criteria, including requirements that PMSCs in performing their activities will train their staff in respecting IHL and will additionally adopt standard operating procedures and rules of engagement similar to the ones applicable in states' regular armed forces and appropriate disciplinary measures.

Apart from issuing licenses, territorial states could, moreover, come up with a mechanism to approve possible contracts between PMSCs and their clients, especially if the client is a private company, depending on the nature, scale, and effects of the proposed activities and the situation in the country where the PMSC has been asked to operate.

Additionally, territorial states should establish a disciplinary mechanism by taking appropriate judicial measures and imposing necessary sanctions on PMSCs and their personnel for operating without having obtained the necessary licenses or authorizations or in violation thereof.

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