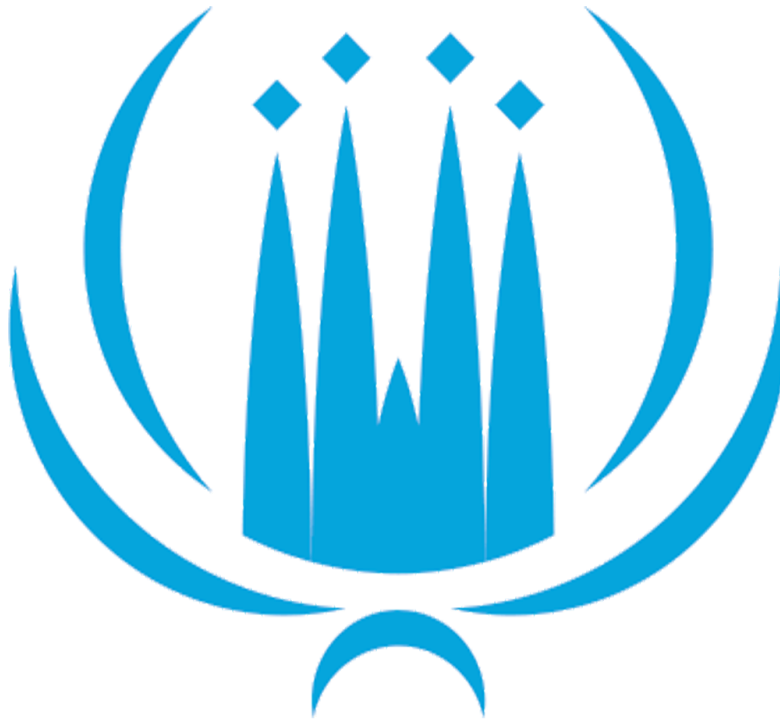




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From Crisis to Cooperation:
Navigating Instability in a Globalized World

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Topic: Expanding regulations to mitigate the unsupervised resurgence of private military and security companies

Chair: Alexander Boevé

Position: Expert Chair

Introduction

In recent years, parties involved in armed conflict have increasingly resorted to the assistance of Private Military and Security Companies (PMSCs) to execute specific tasks otherwise undertaken by state military forces. PMSCs primarily focus on protecting military and personal assets, protecting weapon systems, training armed forces, interrogating detainees, and in certain occasions, combat. Their resurgence has occurred in large numbers as the wars in Iraq (2003-2011) and Afghanistan (2001-2021) altered public perceptions of the private military and security sector. Furthermore, the rise of this industry can be attributed to its ability to provide services and skills that the home state does not possess or is unable to develop themselves. As of today, PMSC's have expanded their operations to nearly every country, with the main home states being China, South Africa, the United Kingdom, and the United States. Russia, while possessing a small portion of the PMSC industry, is known for assigning the contracting company to combat more than other Member States.

There is no universal, legally binding, and specific definition agreed upon for PMSCs and their employees. Therefore, the way in which International Humanitarian Law (IHL) applies to PMSCs has been thoroughly questioned. For context, non-state actors are bound by IHL if they are directly involved in the conflict or when they carry out tasks connected to the conflict. PMSCs are usually not parties to conflict. However, individuals such as the employees of PMSCs are considered to be directly involved in conflict, thus being more likely to be bound by IHL. The nuance behind the laws around these companies has forced multiple groups to work to create a strict, legally binding instrument that addresses the legal gaps in initiatives such as the Montreux Document and the International Code of Conduct for Private Security Providers. Nevertheless, dissensus on the said framework persists. As a result, the primary concern and implications of PMSCs is their ability to exploit legal loopholes and remain unaccounted for in armed conflict zones. In a global landscape where armed conflict is becoming ubiquitous, it is

imperative to come together as a global community to ensure that all military acts are properly accounted for and regulated

Definition of Key Terms

Private Military and Security Company (PMSC)

A private firm that offers specialized security and military services. These services encompass combat support; intelligence collection; operational and logistical support; the training of public security forces; the protection of goods, infrastructure, and people; and the maintenance of weapons systems. While certain activities related to combat are directly linked to private military companies, the inclusive term PMSC encompasses all business associated with military and security services.

Mercenary

A professional soldier specifically recruited for combat in conflict zones primarily motivated by financial gain. A mercenary participates in hostilities and is not linked to any of the Member States involved with the ongoing conflict. Note that the definition of a mercenary falls under law unlike a PMSC.

Contracting State

A state that directly procure the services of PMSCs in order to provide security and military support. A contracting state is responsible for setting clear limits on the use of force, choosing reputable companies, and effectively monitoring personnel.

Home State

A country where a PMSC is registered, incorporated, domiciled, or where its principal place of management is located. It represents the state of nationality of a PMSC and is where the corporate entity was legally formed under the nation's domestic laws. Its primary responsibilities are enforcing national law, regulating the company, and prosecuting violations of IHL.

Territorial State

While there are varying definitions of a territorial state due to distinct legal obligations for such states, the agreed upon definition describes a territorial state as a country on whose territory a PMSC is actively deployed. This definition applies regardless of whether a PMSC is registered in the country it's currently operating in. A territorial state, under International Humanitarian Law, is required to oversee any activity conducted by such companies and hold them accountable for any abuses of IHL.

Legal Vacuum

Also known as a legislative gap or lacuna, this is when an emerging technology, a specific situation, or behaviour is not accounted for by legislation. While PMSCs are governed by IHL, a legal vacuum in this context refers to the absence of legally binding global regulatory frameworks.

Neoliberalism

A political and economic ideology that flourished in the twentieth century promoting free-market capitalism, privatization, deregulation, and minimal government spending.

Multinational Private Military and Security Companies

PMSCs that operate across borders, partnering with multinational corporations, the United Nations, and sovereign states.

Background Information

Historical Background Information

The rise in neoliberalism among global powers such as the United Kingdom and the United States allowed for the distribution of governmental tasks to private companies during the Cold War. The private sector undertook tasks through the control of corporate leaders, guaranteeing cost-efficiency.

The first PMSCs appeared in the United Kingdom as a movement spearheaded by British officers and ex-officers during the end of the Cold War. Groups such as Watchguard International and Control Risk Group emerged as the first of their kind, serving as the precedent for a future of war privatization. Other countries such as Australia, Belgium, Canada, France, and Israel joined, but the United States became the home of rapid development for PMSCs. The Persian Gulf War, which began in 1990, saw the US's deployment of its groundbreaking technologies. Complex technologies, logistical demands, and other tasks were fulfilled by ten PMSCs. The territories in which PMSCs operate continued to diversify. The United States' Office of the State Department for Diplomatic Security contracted Private Military and Security Companies as their Specialized Security Personnel and deployed them. In Colombia, a company known as DynCorp brought their services of aerial spraying against illicit crops and assistance to national police in raids to counter the production and exportation of narcotics. Bosnia, Israel, Afghanistan, and Iraq would soon join as territorial states, marking the globalization of the private war industry.

While the end of the twentieth century underscored the rise in PMSCs, the first decade of the twenty-first century highlighted a period of consolidation and excess. In other words, this time saw larger

firms merging or acquiring small companies to form multinational PMSCs while the soaring demand for such companies drastically increased budgets and costs. President Bush's administration in the United States was the main catalyst of such an unprecedented boom. In the first Gulf War, the ratio of military personnel to PMSC employees was fifty to one. That ratio became one to one as a result of the operations in Afghanistan in 2001 and Iraq in 2003, meaning that for every military personnel there was a PMSC employee assisting in an operation. The numbers peaked in 2005 and 2006 when the number of PMSCs increased by ninety-two percent.

However the massive scaling of PMSCs also saw controversy, as alongside their rise, PMSCs carried accusations of violating human rights. In September 2007, guards from the American PMSC Blackwater shot and killed 17 unarmed Iraqi citizens, injuring 20 others as a result of this massacre. Another prime example can be seen in between 2003 and 2004. During this time period, employees from the PMSCs CACI and L-3 (Titan) were accused of complicity in the torturing of detainees at the Abu Ghraib prison during the Iraqi War. While International Non-Governmental Organizations (INGOs) managed to participate in saving the reputation of the private sector, the horrific actions of PMSCs came to light, sparking the concern behind the operations of these firms.

Current Situation in the World

The links between PMSCs and instances of harm continue to terrorize the regulatory landscape around Private Military and Security Companies. Russia's invasion of Ukraine in 2022 called upon the Wagner Group, the most popular Russian PMSC and proxy actor. Since the summer of 2022, the Wagner Group's contributions to the war primarily consisted of the year-long battle against the Ukrainian forces for Bakhmut, a Russian-controlled city near the Russo-Ukrainian border. However, their services go beyond the confines of this war. The group has been deployed in combat in Africa, particularly in Libya, Mali, Central African Republic, Niger, and Sudan. The Wagner Group's activities have been constantly tied to violations of IHL and human rights abuses. According to the Stockholm International Peace Research Institute, the deaths of 450 Malian civilians across 2020-2022 have been traced back to the Wagner Group.

Similarly, SADAT International Defense Consultancy, a PMSC registered in Turkey has been utilized for conflict zones in Libya and Nagorno Karabakh. Like the Wagner Group, SADAT has been accused of violating human rights and IHL. Furthermore, they share their methods of recruitment. Both companies engage in predatory recruitment practices, meaning they exploit vulnerable groups and populations to fulfill their labour needs. This is done by hiring people in conflict-affected areas which in certain cases could be categorized as human trafficking according to the UN definition . Furthermore, this

recruitment method can lead to coercive and dehumanizing labour practices, also violating human rights and IHL. These companies tend to target the Global South where existent socioeconomic, political, and social weaknesses are taken advantage of. This practice became noticeably more popular among PMSCs after the COVID-19 pandemic where individuals in Least Economically Developed Countries (LEDCs) migrated hoping for better work opportunities.

Chinese PMSCs are in a process of development globally, although at a much slower rate compared to other PMSCs. They are closely connected to Chinese economic interests, raising concern that this is a deliberate act to broaden their access to essential natural resources and strategically engage in sub-Saharan politics.

As these PMSCs diversify their operations and continue to branch out to the Global South, many are troubled by the fact that these territorial states are compensated with access to natural resources. For instance, Mali and Sudan pay with gold, whereas in Nigeria they offer oil. This non-monetary payment ultimately encourages PMSCs to follow a military extractive economy where they prioritize investor's profits over the well-being of the public.

One of the major concerns with the private military and security sector is its transition into intelligence services. Some can now offer surveillance, cyber security, threat analysis, and disinformation campaigns. As intelligence, military, and security services fuse, accountability measures become increasingly more challenging to sustain. This exacerbates the existing opaque legal status of the private armed combat industry, emphasizing the need for multilateral policy rules.

Major Countries and Organisations Involved

The United States of America (USA)

The USA's dependence on PMSCs during the wars in Afghanistan and Iraq have left their mark on the current government's security sector. The country remains a fundamental private actor in the security and military industry as many PMSCs based in the United States of America continue to provide their services in conflict-affected zones. Recent reporting emphasizes that the controversy behind America's PMSCs is not legality but rather about the lack of oversight, accountability, and the risk of corruption. Transparency International UK, an anti-corruption and independent body, highlights how minimal enforcement has led to several unfortunate circumstances. For example, the organization notes how the failure of oversight allowed the US State Department to sign a contract approving the training of Saudi Arabian operatives through an American PMSC called Tier One Group. This training ultimately led to the brutal assassination of Jamal Khashoggi, a Washington Post journalist. Moreover, the former CEO of a prominent US based PMSC confessed to bribing Nigerian officials in order to obtain a six billion

dollar contract to create and enhance hydrocarbon infrastructure in the conflict zone where the PMSC operated.

The United Kingdom (UK)

The UK maintains its position as a primary home state to multiple Private Military and Security Companies. Their efforts go beyond the scope of housing the private war industry, however. The United Kingdom has helped shape standards-based approaches to developing firm regulations for PMSCs. They support and promote complex and diverse approaches alongside international cooperation. Furthermore, the UK proactively addressed the Wagner Group, collaborating with the Foreign Affairs Committee to strengthen the links between the Russian PMSC and terrorist crimes.

Russia

Russia serves as a prime example of a country where PMSCs can act with blatant impunity and receive minimal consequences. As previously mentioned, Russia housed the Wagner Group. The nation is a home state to more PMSCs, but their purpose is relatively similar. Russia uses these companies as a form of irregular warfare to expand their influence stealthily, reinforce state and non-state partner capacity, and increase financial interests. To fulfill these objectives, the Kremlin conducts several combat operations, trains and equips forces, collects and analyzes intelligence, executes protective security services, provides site security, and propagates disinformation and propaganda. Unsurprisingly, it is through these services where the Russian government and its PMSCs have been accused of severe IHL violations, raising concern over the legal status and oversight measures on PMSCs.

South Africa

Since the dismantling of apartheid in 1994, South Africa has become a major supplier of PMSCs. Nevertheless, the country has adopted a restrictive and regulatory approach to PMSCs, enacting numerous acts to control and ban its citizens from participating in illegal activities. In 1998, President Mandela signed the Regulation of Foreign Military Assistance Act (RFMAA) as immediate executive action to counter the involvement of South African mercenaries in the Civil War in Sierra Leone three years prior. The government tightened its legislation with the Prohibition of Mercenary Activities and Regulation of Certain Activities in Countries of Armed Conflict Act which stands as the primary domestic legal document handling mercenarism and PMSCs. Signed in November of 2007, the act mirrors South Africa's restrictive approach to the private military and security sector. Recently, South African police closed a military training camp based in the outskirts of White River, Mpumalanga. Ninety-five Libyan nationals being trained by Milites Dei Academy, a PMSC, were arrested for entering South African

territory despite having their fraudulent visas revoked by the Department of Home Affairs. The point of controversy behind the military training of the Libyan individuals originates from reporting highlighting that the training was heavily militarized and performed outside the authorized security training limits. The arrest of these individuals is an example of how South Africa's domestic policy is strict and regulatory, constantly being invoked to ensure PMSCs adhere to the nation's laws.

The Geneva Center for Security Sector Governance (DCAF)

The Geneva Center for Security Sector Governance (DCAF) is an international foundation specialized in making states and their citizens safer by making security more accountable and effective. DCAF also serves as the Montreux Document Forum Secretariat, hosting international dialogue on one of the key frameworks on PMSCs. The think-and-do tank headquartered in Geneva, Switzerland proactively approaches PMSCs and the legal status around them, raising awareness, conducting research, knowledge sharing and building, and provides advisory training on how to integrate the Montreux Document within governments. Their work has been extensive, focusing on the Wagner Group during its peak and creating partnerships with the MENA region to focus on those states that are being exploited by PMSCs.

The International Committee of the Red Cross (ICRC)

The International Committee of the Red Cross is an independent organization ensuring those affected by violence and armed conflict are protected and provided aid. Their work on PMSCs was fundamental in the production of the Montreux Document in collaboration with the Swiss Document. Furthermore, they support other codes such as the International Code of Conduct, aiming towards a future where PMSCs do not violate International Humanitarian Law.

Timeline of Events

Date	Description of Event
1967	The Origins of PMSCs The concept of a PMSC first appeared in England when the famous British colonel David Sterling founded Watchguard International. It was one of the first commercial training and security companies recognized officially.

1974

First Major Contract

The United States of America and a private military and security firm sealed a major contract. The objective of this partnership was to train Saudi Arabian national forces to protect their own oil fields. This operation was limited by the absence of legal frameworks, potentially classifying the task as mercenarism.

1979

The UN Responds to the Rise of PMSCs

The United Nations General Assembly adopted a resolution regarding the introduction of a convention on mercenarism. This resolution framed mercenary activities as a danger to IHL and peace.

1989

First Major Convention on Mercenarism

The International Convention against the Recruitment, Use, Financing and Training of Mercenaries was established. The convention provided a broad definition of a mercenary and thus turned mercenarism into a criminal offense worldwide.

1999

First Signs of Danger

In 1999, the United Nations hired DynCorp, an American PMSC, to maintain police monitors to survey public security in the UN's peacekeeping mission in Bosnia and Herzegovina. After the mission, discoveries emerged of the alleged trafficking of Eastern European women that some of DynCorp's employees were engaging in. The employees that were allegedly involved in the

human trafficking chain were never brought to trial, underlining the lack of accountability measures imposed on these companies.

2001

The Influence of Terrorism on PMSCs

The Nine-Eleven attacks reshape the US's counter-terrorism approach and their reliance on PMSCs begins. Analysts believe the wars in Iraq and Afghanistan forced governments to hire private contractors to undertake military and security operations.

2007

The Nisour Square Massacre

Blackwater, a PMSC now known as ACADEMI, saw four of their employees shooting and killing seventeen Iraqi citizens while injuring another twenty in Baghdad's Nisour Square. This event shed a light on the threat of the industry.

2008

The Montreux Document

After nearly two years of development, the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict comes into fruition. This initiative was led by the Swiss Government and ICRC since the beginning of 2006.

2010

The International Code of Conduct

In late 2010, the International Code of Conduct for Private Security Providers was opened for signatures. The initiative was introduced by the Swiss government and included several stakeholders to introduce clear international rules

for PMSCs.

2014

The Founding of the Wagner Group

In 2014, the Russian-backed Wagner Group was created by Yevgeny Prigozhin. This establishment marked the rise of PMSCs in general as the operations of this industry expanded to several regions across the globe.

2023

The Shift of the Industry

As Artificial Intelligence technologies became more advanced, PMSCs redirected the focus of their services to intelligence services. The industry centered their services around the force of AI, posing a potential great threat if not controlled and regulated adequately.

Relevant UN Treaties and Resolutions

HRC Resolution 15/26 (2010)

In 2010, the United Nations Human Rights Council adopted Resolution 15/26, which called upon the creation of an open ended intergovernmental working group dedicated to drafting an international regulatory framework for the regulation, monitoring, and oversight of PMSCs. The passing of this resolution stands as the UN's first contribution to establishing a global policy for PMSCs, demonstrating their concern over accountability gaps and the human rights abuses directly tied to these private contractors.

HRC Resolution 36/11 (2017)

In 2017, the Human Rights Council renewed and bolstered the previous resolution, assigning a new intergovernmental working group to elaborate measures that could potentially be incorporated into a dedicated universal framework for PMSCs. The resolution urges multiple stakeholders and experts to present innovative solutions and takes inspiration from previous documents such as the Montreux Document and the International Code of Conduct.

Previous Attempts to solve the Issue

The Montreux Document

As stated previously, the Montreux Document was a joint soft-law initiative headed by the ICRC and the Swiss government. The document outlines Member States' existing obligations in regards to PMSCs under IHL while describing a set of practices that nations could implement to uphold their legal obligations when being involved in the private armed conflict sector. Moreover, this code dives into the responsibilities of each party involved in the use of PMSCs: the home state, the contracting state, and the territorial state.

The International Code of Conduct (ICoC)

The International Code of Conduct is a multi-stakeholder initiative that was produced in order to raise guidelines for PMSCs operating in armed conflict zones. The standards the document sets out are based on human rights and IHL and include restrictions on force, bans on torture, discrimination, trafficking, and describes expectations for employees. The ICoC is closely connected to the International Code of Conduct Association (ICoCA), a body which oversees the implementation, enforcement, and reformation of the document. Alongside the Montreux Document, the ICoC is the firmest soft-law instrument to enforce principles on PMSCs.

Possible Solutions

Creating a Legally Binding International Code

Evidently, there is an urgent need among countries to create a legally binding international framework specifically dedicated to PMSCs. While multiple intergovernmental working groups have been assigned to finally design a code tailored to the private military and security sector, an official document has never been finalized. Therefore, Member States are encouraged to collaborate to introduce a comprehensive legal framework that conforms to IHL and aligns with human rights. Moreover, the policy should outline anti-corruption measures and strict limits on countries using PMSCs recognized for their violations of law. Finally, the work of Member States should include broad definitions of PMSCs and their services, including cybersecurity and intelligence, while also assigning specific responsibilities to each party involved in the usage of PMSCs.

Expanding Transparency Measures and Oversight Systems

When expanding transparency measures for PMSCs, countries should ensure that the roles of PMSCs and their actors are clearly defined to clarify the responsibilities of each individual involved. Furthermore, States must guarantee all processes related to licensing, registration, and procurement align with international laws through supervision and mandate that these processes are shared through reporting to home, contracting, and territorial states. Additionally, the reports should include a list of current contracts between governments and PMSCs, incidents regarding the use of violence, personnel changes, and other data about the services of these companies. Similarly, in the process of strengthening oversight systems, governments could hire contract monitors and implement performance indicators that show contract violations and uses of force.

Strengthening Domestic Policies

Nations should begin to direct their focus to adjusting their own domestic policies to ensure they are thorough and enforceable. These domestic policies should prioritize licensing processes; oversight mechanisms led by the government and parliament; training aimed at preventing corruption and tracking activity; contract transparency; and periodic investigations. This process could also include North-South and South-South knowledge sharing to close any legal gaps in contracts. Strengthening domestic policies can be explored through several paths, but ultimately, these frameworks should account for all services of PMSCs ranging from personnel training to armed security.

Adequately Training Personnel

In order to uphold human rights, the personnel of PMSCs should be trained in general and specific scenarios. Employees should be trained in locations and ways that follow domestic and international law and ensure each individual is skilled in specific aspects, such as direct contact with an ill intended person. Those involved in armed combat should be no exception. Each individual's skills with any sort of weapon should be thoroughly evaluated and only validated once they reach the appropriate level to be deployed into combat.

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