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Addressing risks to human rights and the rule of law posed by mercenaries and private military and security companies: a call for comprehensive regulation

Report[1]
Committee on Legal Affairs and Human Rights
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Summary

Lack of sufficient international regulation governing the operations of private military and security companies (PMSCs) negatively impacts human rights and the rule of law. Following the Russian Federation's full-scale invasion of Ukraine in 2022, entities such as the Wagner Group committed numerous war crimes and human rights violations, for which the Russian Federation should be held accountable.

The use of PMSCs often results in the erosion of States' authority, loss of democratic oversight, and increased impunity for human rights violators. The existing non-binding regulatory frameworks, such as the Montreux Document, are insufficient to tackle the issue, preventing victims of human rights violations from seeking justice. Although PMSCs often play an important role in humanitarian missions, their unregulated operation can compromise the perceived neutrality of such efforts.

The Committee on Legal Affairs and Human Rights calls for stronger international regulation to ensure PMSCs' activities align with democratic principles and human rights. It suggests a number of minimum requirements for States when regulating PMSCs, involving licensing mechanisms, human rights compliance training, operational transparency, and victim compensation. The committee also calls on Council of Europe member and observer States to ratify relevant international conventions and endorse the Montreux Document, and it recommends the Committee of Ministers to draft a binding regional framework on PMSCs to ensure accountability and victim redress.

1. Reference to committee: Doc. 15771, Reference 4750 of 19 June 2023.

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A. Draft resolution[2]

1. Since the beginning of the 21st century, particularly in the context of the Global War on Terrorism, non-State actors, such as private military and security companies (PMSCs), mercenaries and foreign fighters have become increasingly involved in military operations. Although these entities are clearly distinct from one another, and in particular the deployment of PMSCs can often serve legitimate aims, the Parliamentary Assembly notes with concern the scarcity of international regulation governing their operation, which negatively affects the respect for human rights, democracy and the rule of law.

2. Following the full-scale invasion of Ukraine by the Russian Federation on 24 February 2022, Russian private military companies, the very existence of which is prohibited under Russian law, such as the Wagner Group and Redut, carried out numerous acts of torture and extrajudicial executions, including mass executions, of Ukrainian prisoners of war and civilians, and targeted attacks on civilian infrastructure. In line with its previous resolutions, notably Resolution 2556 (2024) "Legal and human rights aspects of the Russian Federation's aggression against Ukraine", the Assembly considers that the Russian Federation bears full international responsibility for these actions because of its acknowledged links and financial and operational support extended to the Wagner Group during its participation in the war, including the use of pardoned convicts as fighters and co-ordination on the ground with the regular forces. It further notes that these so-called "Russian private military companies" should be distinguished from PMSCs, which are registered and operate within the legal framework of their home States.

3. The Assembly firmly rejects statements made by senior representatives of the Russian Federation, describing members of the International Legion for the Defence of Ukraine as "mercenaries". The Assembly considers that under international law and international humanitarian law, members of the International Legion for the Defence of Ukraine are clearly to be regarded as members of the Armed Forces of Ukraine, benefitting from full legal and humanitarian protection afforded to lawful combatants. The Assembly reiterates its full support for Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders.

4. The Assembly reiterates the concern it expressed in Recommendation 1858 (2009) "Private military and security firms and erosion of the state monopoly on the use of force", about the erosion of the States' authority, loss of democratic oversight and accountability, and impunity of perpetrators of human rights violations resulting from the increased involvement of PMSCs. It further pointed out possible conflict of interests when PMSCs stand to benefit from prolonging conflicts to increase their profits.

5. Notwithstanding the adoption of the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, which sums up legal obligations under existing international law and provides best practices related to PMSCs' activities, and the establishment by the United Nations Human Rights Council of an open-ended intergovernmental working group tasked with preparing an international regulatory framework governing PMSCs, the Assembly notes with concern that the regulatory landscape on this matter remains scarce.

6. Despite repeated allegations of severe violations of human rights or humanitarian law and crimes committed by PMSC personnel, the existing regulatory gap often prevents victims from obtaining redress or seeking justice. Some States are deliberately using PMSCs to conceal their involvement in conflicts. Deployment of PMSCs allows States to conduct military operations without the same level of public scrutiny or approval processes required for deploying regular armed forces, thus removing one of the essential democratic checks on the use of force. Given the functioning of PMSCs as private corporations, their activities are often exempted from public scrutiny and lack the same chain of command and disciplinary procedures as regular armed forces. Corporate interests thus risk prevailing over the public good in sensitive policy areas.

7. In States with fragile institutions, deploying PMSCs can further undermine State authority, contributing to the erosion of the rule of law and democratic governance.

8. The Assembly shares the concern of the United Nations Working Group on the use of mercenaries that violations by mercenaries and mercenary-related actors are escalating in scale and intensity while accountability remains mostly absent.

9. The Assembly also acknowledges the increased involvement of PMSCs in humanitarian missions, providing security for NGOs and international organisations. The growing security challenges in conflict zones and the limited capacity of some States to provide adequate protection for humanitarian workers increase the

2. Draft resolution adopted unanimously by the committee on 9 December 2024.

demand for private military and security contractors, who offer their clients access to specialised expertise, flexibility and rapid deployment. Nevertheless, the involvement of PMSCs in humanitarian missions blurs the lines between military and humanitarian actors. This may negatively affect the perceived neutrality and independence of humanitarian work and undermine the trust of local communities.

10. The Assembly notes that the existing rules of customary international law of State responsibility, as codified in the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, establish a high threshold for attributing actions of non-State actors to States themselves, requiring the exercise by the State of "effective control" over the non-State actor.

11. Addressing these issues requires robust international and domestic regulatory frameworks to ensure that PMSCs' activities align with democratic principles and respect human rights. The Assembly therefore reiterates that only a legally binding instrument could adequately guide States in managing the PMSC industry and mitigate risks of human rights violations and democratic erosion posed by the unregulated operation of such companies. Pending the adoption of such an instrument, the Assembly reminds States of their existing positive obligations under international human rights law, associated with licensing, contracting, operating and deploying PMSCs.

12. The Assembly considers that under international human rights law, the following should be regarded as minimum requirements incumbent on States whenever licensing, contracting, operating or deploying PMSCs:

12.1. to enact legislation regulating PMSCs, including criteria for their licensing and registration, and oversight mechanisms, and establishing precise accountability mechanisms for PMSCs and their personnel for human rights violations;

12.2. to require PMSCs to comply with international standards applicable to business and human rights, such as the United Nations Guiding Principles on Business and Human Rights and ISO 26000:2010 (Guidance on social responsibility);

12.3. to vet, train, instruct, and supervise PMSCs personnel, in particular when contracting services involving the use of coercive measures, such as combat operations, guarding or transporting prisoners, and conducting interrogations;

12.4. to require a human rights impact assessment to be conducted before authorising PMSCs operations;

12.5. to establish an effective legal framework enabling swift, transparent and impartial investigations of any allegations of human rights violations committed by PMSCs where such PMSC are registered in the State, operate in its territory or in a territory under that State's jurisdiction, or are employed by that State, and to provide any victims with proper means of redress;

12.6. to take such measures as may be necessary to establish jurisdiction over crimes committed by their nationals who are part of PMSCs personnel deployed in other States, irrespective of whether such PMSCs are registered or employed by the State in question or operate in a territory controlled by that State;

12.7. to require PMSCs to maintain insurance sufficient to provide an adequate compensation to victims of human rights violations committed by these companies;

12.8. to provide appropriate and regular training and instructions to PMSC personnel on compliance with international human rights law and international humanitarian law;

12.9. to require PMSCs to establish internal human rights protection policies and compliance mechanisms;

12.10. to publish information on the public procurement of PMSC services, allegations of human rights violations and their consequences, thus facilitating external oversight;

12.11. to require PMSCs registered or operating within their territory to adhere to the International Code of Conduct for Private Security Service Providers and to endorse the Montreux Document.

13. The Assembly calls on the Council of Europe member and observer States who have not yet done so, to:

13.1. ratify the United Nations International Convention against the Recruitment, Use, Financing and Training of Mercenaries;

13.2. endorse the Montreux Document;

13.3. actively lead and co-ordinate with the United Nations open-ended intergovernmental working group, proposing a concrete timeline and commitments to expedite the development and adoption of an international regulatory framework on the regulation, monitoring and oversight of the activities of PMSCs, to promote a human rights-oriented approach to the issue of PMSCs and prepare a binding instrument aimed at regulating the relations of States with PMSCs and laying down minimum standards for the activity of these companies, in line with the present Resolution.

14. The Assembly calls on the Council of Europe member and observer States to:

14.1. actively lead and co-ordinate with the United Nations open-ended intergovernmental working group, proposing a concrete timeline and commitments to expedite the development and adoption of an international regulatory framework on the regulation, monitoring and oversight of the activities of PMSCs;

14.2. promote a human rights-oriented approach to the issue of PMSCs;

14.3. prepare a binding instrument aimed at regulating the relations of States with PMSCs and laying down minimum standards for the activity of these companies, in line with the present Resolution.

B. Draft recommendation[3]

1. Referring to its Resolution … (2025) "Addressing risks to human rights and the rule of law posed by mercenaries and private military and security companies: a call for comprehensive regulation", the Parliamentary Assembly reiterates its concern about the erosion of States' authority, loss of democratic oversight and accountability, and the impunity of perpetrators of human rights violations, which result from the increased use of private military and security companies (PMSCs), including those registered or operating within the territory of the Council of Europe member States.

2. The Assembly believes that numerous reports of grave human rights violations perpetrated by PMSCs call for stronger regulation of this industry. Although their deployment might serve legitimate purposes, such as providing security and expertise to international organisations and humanitarian workers, some States might be keen to use their services simply to hide their involvement in military operations by invoking plausible deniability and prevent victims of abuses from obtaining compensation and seeking justice.

3. Notwithstanding the fact that matters relating to national defence do not fall within the scope of the Council of Europe, the Assembly notes that the scarcely regulated operation of PMSCs poses grave risks to the rule of law and protection of human rights. Therefore, pending the outcome of works of the United Nations open-ended intergovernmental working group to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of PMSCs, the Assembly invites the Committee of Ministers to examine the feasibility of drawing up a Council of Europe convention governing the use of private military and security companies, ensuring accountability, victim redress, and adherence to international human rights standards.

4. The Assembly believes that such a legally binding regional framework should address, at minimum, issues associated with PMSCs' licensing, registration and oversight and require the introduction of effective remedies for victims of possible human rights violations and developing training programs aimed at preventing such abuses. The initiative on the creation of a legally binding regional framework would complement ongoing efforts within the United Nations by providing a robust regional framework tailored to the specific challenges faced by member States. PMSCs might operate in a grey area where human rights would fall on deaf ears, due to a plausible deniability from the State. As PMSCs are already wreaking havoc on the European continent, the Council of Europe should reinforce trust in its role as a defender of democratic values and human rights, while setting an example of leadership that inspires confidence in multilateral mechanisms and rule of law.

5. Finally, the Assembly recommends that the Committee of Ministers:

5.1. endorse, on behalf of the Council of Europe, the Montreux Document on pertinent international legal obligations and good practices for States related to operations of PMSCs during armed conflict;

5.2. pending the adoption of a convention, draw up a draft recommendation to member States, focused on mitigating risks to human rights, democracy and the rule of law posed by private military and security companies;

5.3. intensify political dialogue with the United Nations, in line with the Reykjavik Declaration, by ensuring that the Council of Europe contributes to 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.

3. Draft recommendation adopted unanimously by the committee on 9 December 2024.

C. Explanatory memorandum by Mr Andrea Orlando, rapporteur

1. Introduction

1. On 20 June 2023, the Bureau of the Parliamentary Assembly referred a motion for a resolution entitled "On private military companies, mercenaries, foreign fighters and their impact on human rights"[4] to the Committee on Legal Affairs and Human Rights, for report. The committee appointed me as rapporteur at its meeting on 10 October 2023.

2. The authors of the motion for a resolution called for examining the challenges of holding foreign fighters, mercenaries, and private military and security companies (PMSCs) accountable for human rights abuses, with a view to recommending that the Committee of Ministers examine the feasibility of drawing up a legally binding instrument. In their view, this could include the clarification of the legal consequences of the actions of PMSCs, drawing clear lines between what is legally acceptable and what is not, as well as limiting their ability to cause harm around the world.

3. To address various aspects of this complex subject matter, the committee organised a hearing with experts. Professor Antonios Tzanakopoulos of Oxford University shared his expertise on rules of attribution of conduct of non-State actors to States and discussed possible room for regulation, taking into account the Council of Europe's mandate. Dr Federica Saini Fasanotti of the Italian Institute for International Political Studies spoke about the historical and political aspects of the operations of PMSCs, highlighting their role in various conflicts and possible consequences of their deployment. Dr Matt Pollard of the International Committee of the Red Cross spoke about the PMSC phenomenon through the lens of the Montreux Document[5] and shared his perspective on relations between PMSC personnel and international humanitarian law. I would like to extend my gratitude to the experts for their valuable contributions to the preparation of this report.

4. These eminent experts confirmed my initial thoughts, namely that there is a huge gap in international regulation governing PMSCs. The distinction between PMSC personnel, mercenaries and foreign fighters, although relevant from the perspective of international humanitarian law, has little consequence for attributing their conduct to States. Notwithstanding the fact that matters relating to national defence do not fall within the scope of the Council of Europe, I wish to address the issue of PMSCs from the perspective of risks that their operation might pose for human rights and the rule of law.

5. In this report, I will present the historical background of "guns for hire" (section 2), clarify the differences between PMSCs, mercenaries and foreign fighters (section 3) and present the existing international legal framework concerning these categories of non-State actors (section 4). I will then discuss the phenomenon of foreigners serving in armed forces of some States and their legal status (section 5). Finally, I will summarise some of the most egregious cases of human rights violations reportedly perpetrated by PMSCs (section 6) and present proposals for action by the Council of Europe and its member States (section 7).

2. Historical background

6. The phenomenon of hiring external forces to fight in conflicts has been known to humanity for millennia. Already in the fifth century BC, after the Peloponnesian wars in ancient Greece, the demand for such services was high, owing to extreme poverty and protracted warfare. Crusaders in the Holy Land often used the services of turcopoles – light cavalrymen paid to fight alongside the Christian invaders. The Hundred Years' War between France and England (1337–1453) saw the formation of "free companies" who would sell their services to the highest bidder. The economic power of Italian city States was undermined by a shortage of manpower, resulting in the employment of *condottieri* – individuals who fought in exchange for money. In the 19th century, private armies of the East India Company hired regular regiments of the British Army, and funded their own navy, the Bombay Marine. The vast resources of the company allowed it to eventually employ over 250 000 well-trained and well-equipped fighting men. The French Revolution and subsequent victories of the Napoleonic armies consisting of conscripts put a break on the common use of mercenaries.

7. The phenomenon of foreign fighters became particularly relevant during the Russian Civil War (1917-1923), during which many experienced combat veterans from abroad joined the Red Army. A desire to secure greater national self-determination was important for some volunteers; but others, notably those from

4. Doc. 15771.
5. 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.

Europe, signed up to defend the Revolution.[6] Foreign fighters played a prominent role during the Spanish Civil War (1936-1939), when more than 35 000 men and women joined the fight against Francisco Franco and Spain's nationalists, by forming the International Brigades. In the last two decades of the 20th century, many foreign fighters participated in conflicts in Yugoslavia and Afghanistan. Between 2011 and 2016, more than 40 000 foreign fighters are believed to have travelled to Syria and Iraq[7] to participate on all sides in the conflict with Daesh. Many decided to support the Daesh terrorist agenda because of the radicalisation processes in their countries of origin, fuelled by messages spread on social media on an unprecedented scale. Undoubtedly, extremist Islamist fundamentalism has played a significant role in the emergence of the phenomenon of foreign (terrorist) fighters.

8. The problem of mercenarism resurfaced in the early 1960s, during the decolonisation of Africa, when Moïse Tshombe (the self-proclaimed president of the breakaway "State of Katanga") hired mercenaries to assist his *gendarmes*. Among those hired by the Tshombe regime was Robert Denard – a French mercenary in command of his own group called "the awful ones" (*les affreux*), which was known to have operated in Biafra (a partially recognised republic which declared independence from Nigeria), Rhodesia, Iran, Zimbabwe, Angola, Zaire and the Comoros.

9. By far the best-known PMSC of its time was Blackwater – an American entity founded in 1997 by two former US Navy SEALs operators. In early 2000s, Blackwater engaged in assistance to US forces pursuing Osama Bin-Laden.[8] According to the New York Times, up until 2007 Blackwater had received over US $1 billion in government contracts.[9]

10. Since 2014, one particular so-called "private military company" has become infamous for participating in operations infringing State sovereignty and human rights – the Russian private military company Wagner (also known as the Wagner Group, which has reportedly been restructured and renamed as "Africa Corps" in Africa[10]). Its fighters first appeared in Crimea during the Russian Federation's illegal attempts to annex this autonomous Ukrainian republic, fought against Ukrainian forces in eastern Ukraine and left their bloody footprints in Syria, Libya, the Central African Republic, Mali, Sudan and other African States. Its ability to provide the Russian regime with plausible deniability and help in circumventing economic sanctions proved extremely useful, particularly in order to evade consequences of the Russian Federation's violations of international law. Whilst Russian law expressly prohibits the existence of private military companies, since the Russian Federation's full-scale invasion of Ukraine in 2022, the Wagner Group has been engaged in multiple war crimes and the Assembly called for its designation as a terrorist group, following the example of several national parliaments.[11] Consequently, I decided to focus on other, legitimate PMSCs in my work.

3. Distinguishing between PMSCs, mercenaries and foreign fighters

11. Although the common understanding of the terms "private military and security companies", "mercenaries" and "foreign fighters" might result in them being often used interchangeably, there are significant differences between the three, which can be summarised as follows.

12. As regards the PMSCs, the only international instrument that articulates existing requirements for regulating their operation is the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict.[12] It defines PMSCs as "private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel."[13] Personnel of PMSCs are further defined as "persons employed by, through direct hire or under a contract with, a PMSC, including its employees and managers".[14]

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6. Whitewood, Peter. "Nationalities in a Class War: «Foreign» Soldiers in the Red Army during the Russian Civil War." Journal of Modern European History, vol. 14, no. 3, 2016, pp. 342–58.
7. Institute for Economics and Peace 2016.
8. www.theguardian.com/world/2009/aug/20/cia-blackwater-assassination-programme.
9. www.nytimes.com/2007/10/03/opinion/03iht-edblack.1.7733227.html.
10. https://foreignpolicy.com/2024/02/07/africa-corps-wagner-group-russia-africa-burkina-faso/.
11. Resolution 2506 (2023) "Political consequences of the Russian Federation's war of aggression against Ukraine".
12. The Montreux Document is the result of an initiative launched by Switzerland and the International Committee of the Red Cross in early 2006. A first draft of the Montreux Document was prepared during four intergovernmental meetings that took place between January 2006 and September 2008. The final document was adopted by consensus of the participating States at the fourth and last meeting, which took place in Montreux from 15 to 17 September 2008.
13. The Montreux Document, p. 9.

13. The Collins English Dictionary and Merriam-Webster define a mercenary as someone who is "a person hired to fight for a foreign army" and "one that serves merely for wages, especially a soldier hired into foreign service".[15] These two definitions refer to a common understanding of the term, however, the legal definition is much stricter. It was first included in Article 47(2) of the Additional Protocol I to the Geneva Conventions[16] and sets forth six criteria which have to be cumulatively fulfilled in order to classify someone as a mercenary. They require that such a person: "(a) is specially recruited locally or abroad in order to fight in an armed conflict; (b) does, in fact, take a direct part in the hostilities; (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; (e) is not a member of the armed forces of a Party to the conflict; and (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces." Definitions included in other treaties (discussed in detail in section 4 below) are quite similar to the one contained in Additional Protocol I. It is quite striking that whereas common understanding of the term "mercenary" is essentially "paid soldier", its legal definition is far more complex (as I explain further in this report).

14. The term "foreign fighter" has not been defined in any international legal instrument.[17] It commonly refers to individuals who leave their home countries to join and fight for or support militant groups in conflicts abroad. The phenomenon has gained significant attention, with many individuals from various countries, including Western European States, participating in conflicts abroad, such as the Syrian Civil War.[18] Academics defined "foreign fighter" as someone "who (1) has joined, and operates within the confines of, an insurgency, (2) lacks citizenship of the conflict state or kinship links to its warring factions, (3) lacks affiliation to an official military organization, and (4) is unpaid"[19] or (in less complex terms) "non-citizens of conflict States who join insurgencies during civil conflicts".[20] The United Nations Security Council refers to the phenomenon of foreign fighters by making a direct connection with terrorism and using the term "foreign terrorist fighter". The definition first appeared in the Security Council's Resolution 2178 (2014) and related to "individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict".[21] The Council of Europe reacted by adopting the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217, 2015), becoming the first international organisation to set up a regional legal instrument to implement the obligations imposed by the United Nations regarding foreign terrorist fighters. Although the Additional Protocol does not define the term "foreign fighter", it refers to "travelling abroad for the purpose of terrorism", which it defines as travelling to a State, which is not that of the traveller's nationality or residence, for the purpose of the commission of, contribution to or participation in a terrorist offence, or the providing or receiving of training for terrorism.[22]

15. While personnel of PMSCs and mercenaries are usually presumed to have a military background, foreign fighters are more similar to insurgents, who make up their lack of combat experience with ideological spur. The key factor distinguishing foreign fighters from mercenaries thus appears to be their motivation. While mercenaries are considered to be motivated essentially by a desire for private financial gain, foreign fighters usually fight out of a desire to defend a particular cause, be it religious or ideological.[23] The difference between mercenaries and PMSCs, depending on the circumstances, might be less obvious (in some cases, personnel of PMSCs could even be considered as mercenaries, especially under the law of armed conflicts).

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14. Ibid., p. 10.
15. www.collinsdictionary.com/dictionary/english/mercenary; www.merriam-webster.com/dictionary/mercenary.
16. 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 Article 47 www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and.
17. See C, Forcese and L, Sherriff, "Killing Citizens: Core Legal Dilemmas in the Targeted Killing of Canadian Foreign Terrorist Fighters" (2017) 54 Canadian Yearbook of International Law 134-139; M, Lloydd, "Foreign Fighters under International Law and Beyond" (2017) 18 Melbourne Journal of International Law 95, 96.
18. D. Malet, "Foreign Fighters: Transnational Identity in Civil Conflicts", Oxford University Press 2013.
19. T. Hegghammer, "The Rise of Muslim Foreign Fighters: Islam and the Globalization of Jihad" (2011) 35, International Security, pp. 53, 57–8.
20. D. Malet, "Foreign Fighters: Transnational Identity in Civil Conflicts", (Oxford University Press 2013), p. 9.
21. UNSC Resolution 2178 (24 September 2014), UN Doc S/RES/2178, preamble.
22. The Explanatory Report states that individuals travelling abroad for the purposes of terrorism are often referred to as "foreign terrorist fighters".
23. S. Chesterman, "Dogs of War or Jackals of Terror? Foreign Fighters and Mercenaries in International Law" (2016), International Community Law Review (Vol. 18), pp. 389, 390.

Mercenaries usually lack official affiliation and may be seen as operating outside the boundaries of conventional military and legal structures, whereas employees of legitimate PMSCs are often associated with recognised companies or organisations and may operate within the legal framework of their home country or the country where they are deployed. Furthermore, PMSCs may be involved in a wide range of activities, including logistics, training, and security, and their roles can extend beyond combat operations, unlike those of mercenaries, who are primarily hired for combat-related tasks.[24]

4. Existing international legal framework

16. Unlike mercenaries and foreign fighters, PMSCs are a relatively new concept and the international legal framework related thereto is somewhat scarce. The issue of mercenarism has been addressed in several sources, although with limited practical effects. In this section, I will summarise the existing international legal framework and ongoing works on new legal instruments.

4.1. International humanitarian law

17. As stated in paragraph 13 above, Article 47(2) of Additional Protocol I to the Geneva Conventions[25] requires the cumulative fulfilment of six criteria in order to classify a person as a mercenary. Pursuant to Article 47(1) of Additional Protocol I "[a] mercenary shall not have the right to be a combatant or a prisoner of war". In consequence, mercenaries are not entitled to lawfully participate in hostilities and will not be accorded protection and privileges afforded by international humanitarian law to combatants and prisoners of war.

18. The effect of the denial of the status of combatant and prisoner of war in case of capture is to deprive the mercenary of the treatment of prisoner of war as laid down in the Third Geneva Convention, and to make him/her liable to criminal prosecution. Such prosecution can be instigated both for acts of violence which would be lawful if performed by a combatant, in the sense of the Protocol, and for the sole fact of having taken a direct part in hostilities.[26]

19. Notably, international humanitarian law does not ban the use or recruitment of mercenaries as such. This does not come as a surprise, as the relevant provisions of Additional Protocol I focus on the treatment of prisoners of war. Given that qualification as a mercenary results, essentially, in the loss of protection afforded to prisoners of war, it is understandable that the criteria contained therein are quite restrictive. Regrettably, as will be demonstrated below, similar criteria (for classification as a mercenary) were adopted in treaties whose aim was to eliminate the phenomenon of mercenarism, thus significantly limiting their impact.

4.2. The Organization of African Unity Convention for the Elimination of Mercenarism in Africa

20. The Convention of the Organization of African Unity (OAU) was adopted in July 1977.[27] Its definition of a mercenary is similar to the one used in Additional Protocol I to the Geneva Conventions, with an important difference being that an individual needs only to be motivated by the "desire for private gain" and there is no requirement for it to be substantially more than that offered to members of the armed forces of a State.

21. Most notably, in the preamble to the OAU Convention it is considered that the practice of States and international organisations is indicative of the development of new rules of international law making mercenarism an international crime. This approach is further reflected in Article 1(2) of the OAU Convention, which makes it a crime to shelter, organise, finance, assist, equip, train, promote, support or in any manner employ bands of mercenaries; to enlist, enrol or attempt to enrol in such bands; allow the mercenary activities to be carried out in any territory under the responsible entity's jurisdiction or in any place under its control or to afford facilities for transit, transport or other operations of the above mentioned forces.

22. The OAU Convention was ratified by 32 African countries. Among those who have still neither signed, nor ratified it are the Republic of South Africa, Kenya, Namibia, Mozambique, the Central African Republic and Botswana.[28]

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24. https://www.trtworld.com/americas/are-private-military-contractors-any-different-from-mercenaries-20680.
25. 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, Article 47, available at: www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and.
26. Sandoz et al (eds.), "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949" (Geneva: Martinus Nijhoff, 1987), p. 1796.
27. Organization of African Unity (OAU), OAU Convention for the Elimination of Mercenarism in Africa, CM/817 (XXIX) Annex II Rev.1, 3 July 1977.

23. Unfortunately, the OAU Convention does not provide for the establishment of any oversight mechanism, limiting its practical effectiveness. This shortcoming, coupled with the lack of African-wide ratification of the OAU Convention and the still narrow definition of the term "mercenary", results in this treaty not being sufficiently adapted to the reality.[29]

4.3. The United Nations International Convention against the Recruitment, Use, Financing and Training of Mercenaries

24. In 1989, the UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries was adopted. It entered into force on 20 October 2001.[30] In its preamble it is acknowledged that the recruitment, use, financing and training of mercenaries is intended for activities "which violate principles of international law, such as those of sovereign equality, political independence, territorial integrity of States and self-determination of peoples".

25. The UN Convention also employs a list of criteria similar to those contained in Additional Protocol I to the Geneva Conventions for a person to be considered a mercenary. One notable exception is that it does not require that a person directly participate in hostilities. However, its Article 3 criminalises mercenarism, understood as "[direct participation] in hostilities or in a concerted act of violence". The criminal provision also covers those who recruit, use, finance, or train mercenaries. The definition of a mercenary thus essentially replicates the one contained in Additional Protocol I to the Geneva Convention, significantly narrowing its scope of application.

26. As of November 2024, the convention has been ratified by 37 States, and signed but not ratified by further 9 States. No permanent member of the UN Security Council has either signed or ratified it. Only ten Council of Europe member States are parties to this Convention: Armenia, Azerbaijan, Belgium, Croatia, Cyprus, Georgia, Italy, the Republic of Moldova, Serbia and Ukraine. Additionally, Germany, Montenegro, Poland and Romania have signed, but not yet ratified it.

4.4. The Montreux Document

27. 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 is an intergovernmental document, intended to promote respect for international humanitarian law and human rights law in the context of PMSCs.[31] It is not legally binding but contains a compilation of relevant international legal obligations and good practices. The Montreux Document was finalised by consensus on 17 September 2008 by 17 States (including Austria, Canada, China, France, Germany, Poland, South Africa, Sweden, Switzerland, United Kingdom, Ukraine and United States of America). It is currently supported by 59 States. Among Council of Europe member States, the Montreux Document is yet to be formally supported by Andorra, Armenia, Azerbaijan, Latvia, Republic of Moldova, San Marino, Serbia and Türkiye. The Montreux Document has also been endorsed by the European Union, the Organization for Security and Cooperation in Europe (OSCE) and the North Atlantic Treaty Organization (NATO).[32] The Russian Federation remains the only permanent member of the UN Security Council not to have supported the Montreux Document. The Montreux Document is open to all States and international organisations.

28. The Montreux Document contains some 70 statements recalling certain existing international legal obligations for States, as well as good practices related to the regulation of PMSCs. Part One identifies pertinent obligations for States under international human rights and humanitarian law, in particular for Contracting, Territorial and Home States.[33] The responsibilities of PMSCs and their personnel, and the liability of superiors are also addressed. Part Two outlines good practices for State regulation of PMSCs. This includes the establishment of transparent regulatory regimes, terms for granting licenses and measures to

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28. https://ihl-databases.icrc.org/en/ihl-treaties/oau-mercenarism-1977/state-parties.
29. Arthur Boutellis, "Are Mercenaries Friends or Foes of African Governments and the UN?", IPI Global Observatory (7 February 2019).
30. UN General Assembly, International Convention against the Recruitment, Use, Financing and Training of Mercenaries, A/RES/44/34, 4 December 1989.
31. www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/montreux-document.html.
32. www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/participating-states.html.
33. The Montreux Document defines "Contracting States" as States that hire PMSCs, "Territorial States" as States on whose territory PMSCs operate, and "Home States" as States in which PMSCs are headquartered or based.

improve national oversight and accountability. To ensure that only PMSCs capable of complying with international human rights and humanitarian law provide services, good practices in the areas of training, appropriate internal procedures and oversight are proposed.

4.5. The International Code of Conduct for Private Security Service Providers

29. The International Code of Conduct for Private Security Service Providers is the result of a multi-stakeholder initiative formed in 2013 to ensure that providers of private security services respect human rights and humanitarian law. It requires its members and affiliate companies to endorse the principles of the Montreux Document and commit to the responsible provision of security services so as to support the rule of law, respect the human rights of all persons, and protect the interests of their clients. It also provides for improved accountability of the industry by establishing an external independent governance and oversight mechanism. Since 2015, the International Code of Conduct Association (ICoCA) has received only 33 complaints, none of which resulted in the determination that the code has been breached by a member entity.[34] No details are available as to the nature of the complaints.

4.6. United Nations 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

30. The Working Group was established in July 2005 pursuant to the UN Commission on Human Rights Resolution 2005/2.[35] It succeeded the mandate of the Special Rapporteur on the use of mercenaries, which had been in existence since 1987. In a 2018 overview of its activities, the Working Group noted that while traditional forms of mercenarism had waned due to the changing nature of armed conflict, the activities of foreign fighters remained on the rise. With regard to PMSCs, the Working Group observed that States mostly focused their regulations on private security companies and seldom regulated private military companies. PMSCs often engaged in direct participation in hostilities. The Working Group concluded that vetting of personnel, licensing and registration criteria, limitations on permissible functions, accountability for perpetrators of human rights violations and enforceable remedies for their victims could only be assured through strong regulatory measures established within domestic and international law.[36]

31. In its report presented to the UN General Assembly in 2023, the Working Group stressed that violations at the hands of mercenaries and mercenary-related actors, including mass killings, torture, forced disappearances, arbitrary detention, sexual and gender-based violence, looting, harassment of human rights defenders, journalists, and victims, and indiscriminate targeting of civilians, were escalating in scale and intensity. At the same time, accountability remained mostly absent for perpetrators and remedy was rare for victims.[37] Among the Working Group's latest recommendations was for States to take all measures necessary to ensure the legal liability of companies based in or managed from the State party's territory regarding human rights violations as a result of their activities conducted domestically and abroad, or the activities of their subsidiaries or business partners. National legislation should contain extraterritorial provisions, which can facilitate the prosecution of PMSCs and their personnel for abuses committed abroad.[38]

4.7. 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

32. On 28 September 2017, the Human Rights Council in its Resolution 36/11 decided to establish an open-ended intergovernmental working group "with a mandate to elaborate the content of an international regulatory framework, without prejudging the nature thereof, to protect human rights and ensure accountability for violations and abuses relating to the activities of private military and security companies, to be informed by the discussion document on elements for an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, as prepared by the Chair-Rapporteur, and further inputs from Member States and other stakeholders."[39]

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34. https://icoca.ch/registering-a-complaint/.
35. UN Commission on Human Rights, Human Rights Resolution 2005/2: "The Use of Mercenaries As a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination", E/CN.4/RES/2005/2, 7 April 2005.
36. www.ohchr.org/en/documents/tools-and-resources/mercenarism-and-private-military-and-security-companies-2018.
37. A/HRC/51/25.
38. A/HRC/54/29.

33. In January 2024, the Chair-Rapporteur released the third draft instrument on an international regulatory framework on the regulation, monitoring of and oversight over the activities of private military and security companies.[40] Some of its provisions are obviously inspired by the Montreux Document, including definitions of PMSCs. The draft defines "military services" as specialised services that resemble or are related to military action, including strategic planning, intelligence, investigation, reconnaissance, flight operations, manned or unmanned, satellite surveillance, transfer of military technologies, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities, whether on land, in the air or at sea, or whether in cyberspace or space. It further introduces obligations and restrictions with regard to the operation of PMSCs, licensing mechanisms, vetting, and access to justice for victims of human rights violations. The draft is still under discussion, and, at this point, it is hard to predict what will be its final outcome and whether it will take the form of a binding treaty.

4.8. Council of Europe work

4.8.1. Assembly Recommendation 1858 (2009)

34. The Assembly, in its Recommendation 1858 (2009) (report by Mr Wolfgang Wodarg (Germany, SOC)), Committee on Political Affairs and Democracy), noted the erosion of the State monopoly on the use of force, caused by the increased demand for PMSCs' services. In consequence, the Assembly recommended that the Committee of Ministers draw up a Council of Europe instrument aimed at regulating the relations of its member States with PMSCs and laying down minimum standards for the activity of these private companies, listing 16 minimum elements to be included therein. It also recommended that the Committee of Ministers support, on behalf of the Council of Europe, the Montreux Document.[41] The Committee on Legal Affairs and Human Rights, in its opinion (rapporteur: Mr Kimmo Sasi, Finland, EPP), fully supported the proposal to draft a binding legal instrument on this subject.[42]

35. In its reply to the recommendation, the Committee of Ministers did not take any position on the issue of endorsing the Montreux Document. It informed the Assembly that it had communicated its recommendation to the Steering Committee for Human Rights (CDDH)[43] and to the European Committee on Crime Problems (CDPC), for information and possible comments, and to the European Commission for Democracy through Law (Venice Commission) for information and for it to be taken into account in its future work. Regrettably, the Committee of Ministers did not draw up a binding legal instrument concerning PMSCs, nor did it endorse the Montreux Document on behalf of the Council of Europe.

4.8.2. Venice Commission's Report on Private Military and Security Firms and Erosion of the State Monopoly on the use of force

36. The Venice Commission's 2009 report[44] provided an extensive overview of the international legal framework applicable at that time and discussed the feasibility of drafting a treaty under the auspices of the Council of Europe. It considered the endorsement of the Montreux Document as highly advisable and found three additional subjects suitable for a Committee of Ministers recommendation to Council of Europe member States. The first was to recommend to States to review their national laws dealing with registration/licensing of PMSCs, to examine whether these provide a proper degree of regulation of the extraterritorial activities of PMSCs. The second was for States to review their laws, to determine whether there was criminal jurisdiction over serious offences committed by personnel of PMSCs, at least where these personnel were nationals of the State in question. Finally, it recommended that States begin the process of reviewing their civil law systems to determine whether it was possible at all to make claims for damages for extraterritorial civil wrongdoing against PMSCs incorporated in the State, and possibly even their foreign-incorporated subsidiaries, and if not, to consider enacting appropriate legislation on the issue.

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39. UN Human Rights Council, Resolution A/HRC/RES/36/11: "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.
40. www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index/5th-session-igwg-military.
41. Recommendation 1858 (2009) "Private military and security firms and erosion of the state monopoly on the use of force" of 29 January 2009.
42. Committee Opinion, Doc. 11801, 27 January 2009.
43. The CDDH adopted an Opinion at its 69th meeting held on 24-27 November 2009 (CDDH(2009)019), and – while sharing the concerns expressed by the Assembly – observed that from an operational point of view, the Council of Europe was not the most appropriate body to deal with these questions.
44. Report CDL-AD(2009)038 on Private Military and Security Firms and Erosion of the State Monopoly on the use of force, adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009).

4.8.3. Opinion of the Committee of Legal Advisers on Public International Law on the suggestions made in the Venice Commission's report

37. The Committee of Legal Advisers on Public International Law (CAHDI), in an opinion adopted at its 40th meeting (Tromsø, 16-17 September 2010), stated that it would not be appropriate at that time to engage into possible negotiations of a Council of Europe treaty regarding the PMSCs. The CAHDI observed that national provisions should be reviewed bearing in mind the key objectives of international humanitarian law and, as applicable, the findings of the Montreux Document.[45]

4.9. The European Union

4.9.1. European Parliament Resolution of 25 November 2021 on the human rights violations by private military and security companies, particularly the Wagner Group

38. In its resolution of 25 November 2021, the European Parliament observed that the current regulatory situation in the PMSC sector comprises a series of inconsistent rules which vary enormously between countries; and that the non-homogenous national legislation and the self-regulation adopted by some PMSCs are not sufficient to deter abuse, given the lack of penalties, and can have a major impact on how PMSCs operate in multilateral interventions and conflict regions. The resolution further states that resolute action needs to be taken in order to address the accountability gap of PMSCs, including with regard to transparency oversight and monitoring, underlines the need to ensure judicial remedies, including criminal sanctions, for human rights violations resulting from the activities of PMSCs. The European Parliament further demanded that unhindered access to justice and redress for all victims of violations be ensured, including for abuses committed by Russian mercenaries in Africa, the Middle East and Ukraine.[46]

5. Foreigners in armed forces: the International Legion for the Defence of Ukraine, the French Foreign Legion and the British Royal Gurkha Rifles

39. When discussing the issue of foreign fighters, mercenaries and PMSCs, it is impossible not to address the wider topic of foreigners in the armed forces. By far, the most well-known military unit to include foreigners is the French Foreign Legion. It was created in 1831 to allow foreign nationals into the French Army and has become one of the most elite military outfits in the world.[47] Another example of a military unit consisting of foreigners is the British Army's regiment "the Royal Gurkha Rifles", whose soldiers are recruited from Nepal, which is neither a dependent territory of the United Kingdom nor a member of the Commonwealth. They have a reputation of being amongst the finest and most feared soldiers in the world.[48] As regards Ukraine, on 27 February 2022, the Ukrainian Foreign Minister announced the creation of the International Legion for the Defence of Ukraine to aid the fight against the Russian invaders.[49] Its creation was made possible by the Presidential Decree No. 248 of 10 June 2016,[50] which allowed non-Ukrainian citizens to join the armed forces of Ukraine.[51]

40. Given the emergence of groundless allegations put forward by Russian defence officials,[52] I consider it imperative to address the topic of the Ukrainian International Legion, as well as other similar outfits, and clarify their legal status.

41. Volunteers joining the Ukrainian International Legion become fully legal servicemen of the Ukrainian Armed Forces and receive the standard pay of a Ukrainian soldier,[53] similarly as members of the Foreign Legion in France and the Royal Gurkha Rifles in the United Kingdom. As such, it cannot be concluded that

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45. Opinion of the CAHDI on the suggestions made in the Venice Commission's report on Private Military and Security Firms and Erosion of the State Monopoly on the Use of Force, adopted at the 40th meeting (Tromsø, 16-17 September 2010).
46. European Parliament Resolution of 25 November 2021 on the human rights violations by private military and security companies, particularly the Wagner Group (2021/2982(RSP)) (2022/C 224/11).
47. www.legion-etrangere.com/mdl/page.php?id=81&titre=Un-statut-particulier.
48. www.army.mod.uk/who-we-are/corps-regiments-and-units/infantry/the-royal-gurkha-rifles/#:~:text=The%20Gurkhas%20are%20a%20unique,feared%20soldiers%20in%20the%20world.
49. www.newsweek.com/ukraine-creates-foreign-legion-volunteers-abroad-join-fight-russia-1683024.
50. https://zakon.rada.gov.ua/laws/show/248/2016#Text.
51. "The Strategic Framework of the Council of Europe and forthcoming activities", 131st Session of the Committee of Ministers, Hamburg (videoconference), 21 May 2021, section "On forthcoming activities of the Council of Europe", paragraph 12.
52. www.newsweek.com/russia-vows-prosecution-foreign-fighters-after-16k-join-ukraine-1684671.

any of them are being promised "material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces". Furthermore, all of them formally become members of the host States' armed forces. Given the necessity to cumulatively fulfil the conditions stipulated in Article 47(2) of Additional Protocol I (see paragraph 13 above) in order to be qualified as mercenaries, none of these units' members can be considered as such. In consequence, members of the abovementioned units are to be considered regular soldiers, benefitting from the full legal protection extended to lawful combatants under the fundamental principles of international humanitarian law.

6. Allegations of human rights violations by private military and security companies and their consequences

42. Over the past three decades, countless allegations of human rights violations committed by PMSCs have emerged. In this section, I will summarise some of the most relevant examples and, where possible, provide an overview of the consequences faced by their perpetrators, home States or contracting States.

43. In the aftermath of the terrorist attacks of 11 September 2001 and during the Global War on Terrorism, US authorities contracted numerous PMSCs to assist the coalition forces in logistics support, training of local military and police forces in Iraq and Afghanistan, weapons management and security of US Army bases. PMSCs contractors made up to 52% of the work force in Iraq and Afghanistan.[54]

44. CACI International Inc. is a US-based company that provides a range of services, including software development, cybersecurity, intelligence support, military training and data analysis. In late 2003, it was contracted, on behalf of the US Department of Defence, with eleven orders, valued at over US$66 million. Of the eleven orders, six were for interrogation, screening, and other intelligence-related services, and five were for logistics support services.[55] In 2008, the Centre for Constitutional Rights (an American NGO) filed a lawsuit against CACI, acting on behalf of former detainees of the Abu Ghraib Prison in Iraq. This facility became notorious for grave human rights abuses, after a series of horrific photographs became public, depicting smiling US soldiers posing in front of tortured or dead prisoners.[56] In the lawsuit, CACI employees who conducted interrogation and provided other services at Abu Ghraib were accused of directing or encouraging torture, in part to "soften up" detainees for questioning, while managers were accused of covering it up.[57] Plaintiffs claimed that they had endured physical and sexual violence during detention, such as being subjected to electric shocks; sensory, food, medical and oxygen deprivation; attacks of dogs. Despite arguments put forward by CACI's lawyers that CACI could not be liable for the alleged acts, considering that it had acted at the US Government behest and, therefore, benefited from immunity, in 2023 a federal judge rejected these arguments.[58] On 12 November 2024, a jury in a federal court found CACI Premier Technology Inc. liable for its role in the torture of three Iraqi men at Abu Ghraib prison in 2003-2004 and ordered it to pay each of the three plaintiffs US$14 million in compensation.[59] It was the first case of its kind to make it to trial and, moreover, to result in a measure of justice being delivered to victims of torture perpetrated by private security contractors.

45. Another PMC contracted by the US Government to operate in Iraq was a telecommunications defence contractor, Titan (later acquired by L-3). Titan/L-3 was also implicated in the abuses perpetrated in the Abu Ghraib and other Iraqi prisons under US control. *In Saleh et al v. Titan* case, more than 250 former detainees lodged a complaint against Titan for aiding torture and other acts of ill-treatment. Mr Saleh and the other plaintiffs alleged to have been physically assaulted, sleep deprived and forced to witness rape and mock executions. The case was dismissed by a federal court in 2009 and in 2011 the Supreme Court denied the appeal petition, ending 5 years of litigation.[60] In the case *Al-Quraishi, et al. v. Nakhla and L-3 Services*, 72 Iraqi plaintiffs claimed they had been subjected to torture at the hands of the contractors: beatings, electric shocks, prolonged hanging from the limbs, hooding, forced nudity. The litigation ended when a confidential settlement was reached in 2012, marking it the first positive outcome of a US case challenging detainee treatment outside the USA in the "war on terror" context.[61]

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53. https://ildu.com.ua/#join-us.
54. Peters, "Department of Defense Contractor and Troop Levels in Iraq and Afghanistan: 2007-2017".
55. United States Government Accountability Office, Report to Congressional Committees: "Problems with DOD's and Interior's Orders to Support Military Operations", April 2005, GAO-05-201, p. 2.
56. https://web.archive.org/web/20080306020142/http://www.salon.com/news/abu_ghraib/2006/03/14/introduction/.
57. www.reuters.com/world/us/us-supreme-court-rebuffs-defense-contractors-abu-ghraib-torture-appeal-2021-06-28/.
58. https://apnews.com/article/abu-ghraib-lawsuit-caci-torture-virginia-iraq-7ea9c063161d204c2b35e9e05a4f0bf2.
59. https://ccrjustice.org/home/press-center/press-releases/abu-ghraib-verdict-iraqi-torture-survivors-win-landmark-case-jury.
60. https://ccrjustice.org/home/what-we-do/our-cases/saleh-et-al-v-titan-et-al.

46. In 2007, a lawsuit was filed against Blackwater (later Academi) regarding the Nissor Square massacre, where Blackwater employees opened fire, killing 14 civilians (including 2 children), and injuring more than 20 others.[62] Four former Blackwater security agents were later convicted on multiple charges of voluntary and attempted manslaughter, however, in 2020, President Donald Trump pardoned them.[63]

47. DynCorp was an American PMSC founded in 1946, which provided intelligence training and security services to the US military in several countries, such as Bosnia, Kosovo*,[64] Colombia, Somalia, Angola and Bolivia. In 2020, Dyncorp was acquired by Amentum, a government and commercial services contractor founded earlier that year. In early 2000s, DynCorp was described as the largest company contracted by the US Government to outsource services in the so-called War on Drugs in Latin America. In 2001, Kathryn Bolkovac, an American policewoman, was hired by DynCorp to work for the UN International police task force in Bosnia and Herzegovina, which was set up in the aftermath of the Yugoslav Wars. She was supposed to crack down on sexual abuse and forced prostitution in Bosnia but after a few months of collecting evidence, she found out that her fellow employees (from DynCorp and the UN) were themselves involved in the sex trafficking of Eastern European women.[65] She claimed that DynCorp employees forged documents for trafficked women, aided their illegal transport through border checkpoints into Bosnia and tipped off sex clubs' owners about raids. After reporting it to DynCorp, she was fired. Her colleague, Ben Johnson had been fired before her, after uncovering that DynCorp employees were involved in sexual slavery and weapons trafficking in Bosnia. Ms Bolkovac sued DynCorp for wrongful termination but none of the employees implicated faced criminal prosecution. DynCorp continued to be contracted by the UN and the US Government afterwards.[66] DynCorp has also operated in Afghanistan, contracted by the US Government to provide security services in the US Embassy in Kabul. In 2010, WikiLeaks revealed that DynCorp employees in Afghanistan paid child sex workers to entertain Afghan officials.[67] After this, DynCorp fired 4 senior managers and established a chief compliance officer position, focused on ethics, business conduct and regulatory compliance. Its successor (Amentum) established a code of conduct, according to which Amentum has a zero-tolerance policy with regard to the use of forced labour, child labour or human trafficking. Amentum asserts that it performs due diligence through third-party screenings to assure that partner entities are legitimate and trustworthy enterprises that respect human rights.[68]

48. Aegis Defence Services is a British PMSC providing security, training and consulting services. It is known that the company has operated in 18 African countries. It is a founding member of ICoCA, as well as of the British Association of Private Security Companies (BAPSC),[69] a body lobbying for the regulation of the British PMSC sector. In 2016, Aegis' former director admitted that the firm had employed former child soldiers from Sierra Leone to help US forces in Iraq, because they were cheaper.[70] There was no due diligence process put in place to assess if new employees were in fact former child soldiers. Aegis, which in 2015 was taken over by the Canadian company GardaWorld, claimed that its agents were authorised by the relevant national authorities of the countries where they recruited and that the company worked with experts to develop and implement procedures for the management of trauma risk.

49. Dyck Advisory Group is a South African PMSC, founded by an ex-colonel of the Zimbabwean Army Lionel Dyck, who had fought in the Mozambican civil war as part of the Zimbabwean intervention forces. In 2019, Dyck Advisory Group was contracted to support Mozambique's operations against the Islamic insurgent groups in Cabo Delgado, after the Wagner Group had left the country.[71] In 2021, Amnesty International published a report on alleged war crimes committed in Cabo Delgado in 2020. The report claims that during the fighting against the jihadist group Al-Shabaab, employees of the Dyck Advisory Group conducted indiscriminate attacks resulting in the death of hundreds of civilians. According to testimonies obtained by Amnesty International, Dyck's employees fired machine guns from helicopters and dropped hand grenades

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61. https://ccrjustice.org/home/what-we-do/our-cases/al-quraishi-et-al-v-nakhla-and-l-3-services.
62. www.tidingsmedia.org/blog/nisour-square-massacre. https://ccrjustice.org/home/what-we-do/our-cases/abtan-et-al-v-prince-et-al-and-albazzaz-et-al-v-prince-et-al.
63. www.theguardian.com/world/2020/dec/23/trump-pardons-blackwater-contractors-jailed-for-massacre-of-iraq-civilians.
64. *All reference to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.
65. www.theguardian.com/world/2001/jul/29/unitednations.
66. https://allthatsinteresting.com/kathryn-bolkovac; www.dw.com/en/bolkovac-un-tries-to-cover-up-peacekeeper-sex-abuse-scandal/a-19082815.
67. www.theguardian.com/world/2010/dec/02/foreign-contractors-hired-dancing-boys.
68. www.amentum.com/ethics-compliance.
69. www.devex.com/organizations/british-association-of-private-security-companies-bapsc-23301.
70. www.aljazeera.com/features/2022/4/28/white-hands-the-rise-of-private-militaries-in-african-conflict; www.theguardian.com/global-development/2016/apr/17/uk-firm-employed-former-child-soldiers-as-mercenaries-in-iraq.
71. https://greydynamics.com/dyck-advisory-group-dag-from-south-africa-to-mozambique/.

indiscriminately into crowds of people, as well as repeatedly fired at civilian infrastructure, including hospitals, schools, and homes.[72] Dyck Advisory Group denied the allegations, claiming that insurgents were using civilians as human shields. The company also claimed that it had engaged with an independent law firm to investigate Amnesty International's allegations.[73] Despite the passage of time, I was not able to find any information regarding the outcome of that investigation. There is no public record of any employee of the Dyck Advisory Group being charged or otherwise investigated for the alleged violations of international humanitarian law.

50. G4S is a world-renowned British private security company founded in 2004, which has operated in more than 85 countries. In 2011, G4S became a signatory to the UN Global Compact – a voluntary corporate sustainability initiative that establishes an international standard to promote socially responsible business behaviour. G4S is also among the founding signatories of the already mentioned International Code of Conduct Association. It boasts of a human rights policy based on the UN Guiding Principles on Business and Human Rights, and a number of measures aimed at combating slavery and human trafficking.[74] Despite having one of the most robust human rights policies and reinforced code of conducts in the industry, G4S' history is marred by allegations of human rights violations. Over the past 20 years, G4S has been repeatedly implicated in investigations concerning deaths and ill-treatment in children's prisons.[75] In 2010, a teenage girl claimed that she had been left locked in her room, alone, while experiencing a miscarriage.[76] In spite of the numerous reports to G4S and the relevant monitoring bodies, the abuses continued. In 2016, the company announced they would pull out of youth prisons. However, in 2021, a whistle-blower contacted an NGO – Article 39 – with a series of allegations relating to child protection in the Oakhill prison, managed by G4S.[77] The firm then announced an action plan to prevent new abuses.[78]

51. In 2013, G4S was contracted by the Australian federal Government to oversee management and security at an immigration detention centre on Manus Island in Papua New Guinea. The centre was criticised by NGOs and the UN High Commissioner for Refugees for breaching minimum standards of care.[79] A year later, a riot that broke out at this detention centre left one asylum seeker dead and 77 others injured.[80] In 2022, 15 former G4S employees were compensated by G4S and the Australian Government for what they described as "catastrophic" failures in relation to the riots, including by inadequately training staff and not making personal protective equipment available to them.[81]

52. In 2021 the company was struck by another human rights scandal with an investigation into G4S recruitment practices that discovered that migrant workers from south Asia and east Africa were being forced to pay a fee to recruitment agents working for G4S in the United Arab Emirates.[82] Workers claimed that G4S was aware of these practices but turned a blind eye to the situation. In response to these allegations, G4S claimed that, since 2020, its migrant workers in the United Arab Emirates no longer paid any recruitment fees.

7. Conclusion and recommendations

53. It appears quite obvious that a significant regulatory gap exists with regard to the PMSC industry. Despite their ability to severely undermine human rights, democracy and erode the rule of law, PMSCs only abide by soft law instruments or voluntary self-regulation. Sadly, it seems that their unrestrained operation encouraged the likes of Mr Putin and Mr Prigozhin (the deceased founder of the Wagner Group) to exploit this weakness for outright criminal purposes.

54. During the hearing before the committee, Professor Tzanakopoulos noted that, save for rare situations when, for example, the domestic law provides for contracting out governmental authority and the contract is available for review, the attribution of conduct of private actors to States is extremely cumbersome. He

72. www.amnesty.org/en/latest/news/2021/03/mozambique-civilians-killed-as-war-crimes-committed-by-armed-group-government-forces-and-private-military-contractors-new-report/.
73. https://edition.cnn.com/2021/03/30/africa/lionel-dyck-mozambique-insurgents-hold-palma-intl/index.html
74. www.g4s.com/humanrights.
75. www.theguardian.com/commentisfree/2021/nov/03/violence-force4-abuse-childrens-prisons-report-oakhill-dominic-raab.
76. Ibid.
77. "G4S to continue running child prison despite serious child protection failings" – Article 39.
78. www.bbc.com/news/uk-england-beds-bucks-herts-59418245.
79. www.unhcr.org/news/briefng-notes/update-humanitarian-situation-refugees-and-asylum-seekers-manus-island.
80. www.theguardian.com/world/2014/feb/18/manus-island-unrest-one-dead-dozens-injured-and-man-shot-in-buttock.
81. www.theguardian.com/australia-news/2022/sep/11/government-and-security-company-reach-multimillion-dollar-settlements-with-manus-island-guards.
82. www.theguardian.com/global-development/2021/jan/18/g4s-migrant-workers-forced-to-pay-millions-in-fees-for-jobs.

suggested that it might be more prudent, especially from the human rights law perspective, to address the issue of PMSCs through the lens of positive obligations. Failure to comply with positive obligations is easy to attribute as attribution of omissions is generally far easier.

55. I agree with his analysis. Given the scope of the Council of Europe's mandate, I have decided to compile a list of recommendations that I consider fundamental in order to address risks associated with PMSCs' operation. These include vetting, regular training, licensing mechanisms, transparent remedies in cases of reported abuses and inevitable accountability.

56. Nevertheless, it must be stressed that PMSCs also often serve important purposes. They offer expertise and resources that are indispensable to humanitarian and international organisations working in various conflict zones. The demand for their services also increased owing to budgetary constraints in many States, which resulted in the reduction of the size of their armed forces. Dr Fasanotti emphasised during our hearing that PMSCs play a crucial role in filling security gaps in States with weak institutions. They can provide food security and tackle terrorism, although lack of accountability coupled with indiscriminate violence (especially against civilians) can lead to radicalisation of terrorist cells. I agree with her view, that the key issue resulting from the legislative *lacunae* is that victims of abuses perpetrated by PMSCs have no means to obtain any form of redress or seek justice.

57. I firmly believe that the Assembly should send a clear political signal that erosion of the core State functions, especially in combat- and military-related activities, risks undermining the three pillars of the Council of Europe – human rights, democracy and the rule of law. PMSCs should be subjected to strict domestic and international regulation, preferably by means of a binding international instrument. I regret that the Committee of Ministers decided not to act on the Assembly's Recommendation 1858 (2009) in this regard. As the UN is currently working on a possible instrument dedicated to the issue of PMSCs, I think it would not be prudent for the Council of Europe to launch parallel work. Instead, I believe that the Council of Europe should be represented in these negotiations and promote a human rights-oriented approach in line with the Reykjavik Declaration. Pending the adoption of this instrument, the Committee of Ministers should stress the urgency of the issue by recommending to member States to endorse the Montreux Document and by endorsing it on behalf of the Council of Europe as a whole.

58. Soft law instruments and self-regulation cannot replace a binding international instrument. The last three decades have made it abundantly clear that urgent action is required to bring an end to human suffering and foreign interference caused by the essentially unrestrained operation of PMSCs. The Council of Europe should remain at the forefront of efforts to create such a framework and I hope that this report will add a sense of urgency to this cause.