

**PRIVATE MILITARY COMPANIES  
AND THE LAW OF ARMED CONFLICT:  
SHINING A SPOTLIGHT  
ON INVISIBLE ARMIES**

*Jakob Gammons\**

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#### INTRODUCTION

*“Being a mercenary, though... Hey, we just go wherever there’s a mixture of money and trouble, and everyone in the galaxy is a potential customer.*

*Even the people you’re paid to shoot at?*

*Well, yeah. There are customers we serve, and customers we service”*

— Howard Tayler<sup>1</sup>

The role of Private Military Companies (PMCs) in armed conflict has gradually shifted from its original purpose of providing security services and logistical support. In the modern era of armed conflict, PMCs are used to carry out military functions including front-line combat and intelligence gathering operations. Unlike traditional military forces, PMC contractors often operate under a different set of rules and without the legal restraints that traditional forces have. Despite numerous concerns regarding the complications of culpability for actions taken by PMCs and a general lack of oversight, PMCs are regularly employed by various state actors across the globe, sometimes with disastrous results.

This Comment focuses on the use of PMCs in armed conflict and examines the role that a PMC plays in various types of armed conflict. This Comment evaluates three main effects of PMCs: (1) the effect on stabilization efforts and military dependence (2) the

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<sup>1</sup> See generally HOWARD TAYLER, SCHLOCK MERCENARY: RESIDENT MAD SCIENTIST (2010).

impact on civilian protection and human rights violations and (3) the effect on both conflict duration and severity.

The Comment posits that the current international (and where applicable, domestic) laws of armed conflict are ill suited to address the risks of PMCs in armed conflict. Further, the corporate identities of PMCs protect them from investigations from both domestic and international criminal courts. Because of these corporate identities, it is vital for both the importing and exporting states of PMCs to buy into effective oversight and regulation of this industry.

### I. A MERCENARY EXPOSÉ

In 2007, Ahmed Haithem Ahmed was driving with his mother through Nisour Square when he was killed by a bullet to the head, resulting in his foot depressing the accelerator, setting the car on a collision course with a nearby convoy of the U.S.-based private military company, Blackwater.<sup>2</sup> The convoy responded with a hail of gunfire, spraying the car with forty bullet holes before shooting a grenade into the vehicle.<sup>3</sup> After the gunfire and explosions ceased and the smoke cleared from the air, the result of these actions could be seen on the global stage: seventeen Iraqi civilians dead and twenty-four wounded.<sup>4</sup>

In 2005, a “trophy” video was posted online showing civilian cars in Iraq being fired upon with automatic rifles.<sup>5</sup> The footage contains no explanation as to why these vehicles were fired upon, resulting in the loss of human life.<sup>6</sup> While the videographer’s face is not included, a distinct Irish or Scottish accent can be heard.<sup>7</sup> The splatter film is accompanied by Elvis Presley’s top ten single “Mystery Train.”<sup>8</sup>

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<sup>2</sup> James Glanz & Alissa J. Rubin, *From Errand to Fatal Shot to Hail of Fire to 17 Deaths*, N.Y. TIMES, Oct. 3, 2007, at A1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See Sean Rayment, *IRAQ: Video Exposes Private Security Convoys Shooting Iraqi Drivers*, CORPWATCH (Nov. 27, 2005), <https://www.corpwatch.org/article/iraq-video-exposes-private-security-convoys-shooting-iraqi-drivers> [<https://perma.cc/5RSW-86DA>].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

In 2004, CBS released photographs that showed horrific abuses perpetrated by Americans against Iraqi prisoners in the “Abu Ghraib” detention facility.<sup>9</sup> These abuses included “severely beating an Iraqi prisoner nearly to death, having sex with a female Iraqi prisoner, and ‘acting inappropriately with a dead body’” in addition to a videotape of personnel raping young boys.<sup>10</sup>

What do all of these events have in common? These incidents were not carried out under the authority of the armed forces of a particular nation. These atrocities were performed by mercenaries employed by private military companies.<sup>11</sup> Additionally, few of these actors were punished appropriately, if at all, for their appalling actions. While four employees of the Blackwater private military company involved in the Nisour Square massacre were convicted of first-degree murder and voluntary homicide, they were later pardoned by President Trump.<sup>12</sup> President Trump commented on the fact that they had a long history of service to the U.S., as well as being veterans of the armed forces, despite the fact that they were not acting in this capacity when committing these atrocities.<sup>13</sup>

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<sup>9</sup> *Abuse Photos II*, CBS NEWS (May. 21, 2004, 12:55 PM), <https://www.cbsnews.com/pictures/abuse-photos-ii/> [<https://perma.cc/24T6-MX8U>].

<sup>10</sup> Seymour M. Hersh, *Chain of Command*, THE NEW YORKER (May 9, 2004), <https://www.newyorker.com/magazine/2004/05/17/chain-of-command-2> [<https://perma.cc/EV54-3M53>].

<sup>11</sup> See Diane Bartz, *Rumsfeld Okayed Abuses Says Former U.S. General*, REUTERS (Jan. 20, 2007, 4:10 PM), <https://www.reuters.com/article/us-iraq-rumsfeld-idUSL2572641320061125> [<https://perma.cc/396W-6VXM>]. Even though Abu Ghraib was officially under the control of the United States military, they employed civilian contractors to carry out some of their torture, sometimes with specific instructions detailing the torture. *Id.* In November 2006, Janis Karpinski, who had been in charge of Abu Ghraib prison until early 2004, told Spain’s *El País* newspaper that she had seen a letter signed by Rumsfeld, which allowed civilian contractors to use techniques such as sleep deprivation during interrogation. *Id.* (“The methods consisted of making prisoners stand for long periods, sleep deprivation ... playing music at full volume, having to sit in uncomfortably ... Rumsfeld authorized these specific techniques.”)

<sup>12</sup> Maggie Haberman & Michael S. Schmidt, *Trump Pardons Two Russia Inquiry Figures and Blackwater Guard*, N.Y. TIMES (Feb. 21, 2021), <https://www.nytimes.com/2020/12/22/us/politics/trump-pardons.html> [<https://perma.cc/C7CC-D9BB>].

<sup>13</sup> Press Release, THE WHITE HOUSE, Statement from the Press Secretary Regarding Executive Grants of Clemency (Dec. 22, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-executive-grants-clemency-122220/> [<https://perma.cc/M944-XFWB>].

In the aftermath of the Abu Ghraib exposé, the U.S. army found that “contractors were involved in 36 percent of the [Abu Ghraib] proven incidents and identified 6 employees as individually culpable.”<sup>14</sup> However, the contractors were never prosecuted like their counterparts who were employed by the U.S. military.<sup>15</sup>

An investigation into the “trophy” video found that an employee of Aegis Defence Services, a London-based PMC with the largest U.S. government security contract of any PMC in Iraq, was the individual shooting at and into civilian vehicles.<sup>16</sup> When the company attempted to fire the employee responsible, his entire team threatened to resign.<sup>17</sup> During the time the video was filmed, Aegis Defence Services had a \$293 million U.S. government security contract.<sup>18</sup> An independent investigation conducted by the U.S. Army determined that there was no “probable cause to believe that a crime was committed.”<sup>19</sup>

Why were none of the individuals involved truly punished for their crimes? Unlike military soldiers, these individuals were acting as mercenaries employed by a private military company (PMC). Why is this important? Because mercenaries play, and engage in armed conflict, by a different set of rules, or rather, play without following the rules at all. When people think of mercenaries, the most accessible examples are those from fiction such as Slade Wilson/Deathstroke or Boba Fett.<sup>20</sup> However, even

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<sup>14</sup> P. W. Singer, *Outsourcing War*, 84 FOREIGN AFFS. 119, 127-28 (Mar. 1 2005).

<sup>15</sup> *Id.*

<sup>16</sup> Jonathan Finer, *Contractors Cleared in Videotaped Attacks*, WASH. POST (Jun. 11, 2006), <https://www.washingtonpost.com/wp-dyn/content/article/2006/06/10/AR2006061001011.html> [<https://perma.cc/656E-XK4Z>].

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See *Deathstroke*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Deathstroke> [<https://perma.cc/M8S9-YCAK>]; MATTHEW K. MANNING & ALEX IRVINE, *THE DC COMICS ENCYCLOPEDIA: THE DEFINITIVE GUIDE TO THE CHARACTERS OF THE DC UNIVERSE* 85 (DK Penguin Random House, 1st ed., Oct. 25, 2016); see *Boba Fett*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Boba\\_Fett](https://en.wikipedia.org/wiki/Boba_Fett) [<https://perma.cc/F3RA-7DMQ>].

these characters followed some sort of governing personal code of ethics.<sup>21</sup>

This Comment provides some insight into the multibillion-dollar industry of PMCs and their employees, often referred to as mercenaries or “contractors.” This Comment argues that PMCs extend and exacerbate armed conflicts by committing human rights violations, intensifying the severity of the ongoing conflict, and extending the duration of certain conflicts for a variety of reasons.<sup>22</sup>

First, this Comment provides a brief history of mercenaries and how they are defined today, distinguishing between traditional mercenaries and PMC contractors. The Comment then explores how PMCs became popular and utilized by various state actors across the globe. After looking at the background, this article examines the legal landscape, looking at where these groups obtain the legal authority to engage in armed conflict, and what rules (if any) govern these entities. Additionally, the Comment looks at the legal “loopholes” and examines why culpability is so difficult to assign to individual contractors. Part IV examines the common uses of PMCs and their impacts. Finally, this Comment examines how the use of PMCs impacts and contributes to armed conflict across the globe. The conclusion offers solutions that may help further regulate the PMC industry.

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<sup>21</sup> See Meg Downey, *Deathstroke Endures: The Many Shades of Slade Wilson*, DC UNIVERSE (May 15, 2018), <https://www.dc.com/blog/2018/05/15/deathstroke-endures-the-many-shades-of-slade-wilson>; Mansoor Mithaiwala, *The Mandalorian Code Explained: What Rules They Must Follow*, SCREEN RANT (Nov. 11, 2020) <https://screenrant.com/mandalorian-code-rules-follow-canon-explained/> [https://perma.cc/Z9VU-XM2H].

<sup>22</sup> Previous articles in the last couple of decades attempt to define which international laws or treaties should apply to PMCs (and their employees) and how to hold them culpable for violations of the International Law of Armed Conflict. See generally Michael Schheimer, *Separating Private Military Companies from illegal Mercenaries in International Law Proposing an International Convention for Legitimate Military and Security Support that Reflects Customary International Law*, 24 AM. U. INT'L L. REV. 609 (2009); P.W. Singer, *War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law*, 42 COLUM. J. OF TRANSNATIONAL L. 521 (2004). Conversely, this Comment focuses on the various ways PMCs are utilized by state actors. Additionally, this Comment discusses the various impacts that PMCs have on armed conflict including duration and severity.

## II. HISTORICAL BACKGROUND

A. *Mercenary Historical and Modern Overview*

Mercenaries, or “guns for hire,” have existed throughout history. The Bible describes King David employing the Cherethites and Pelethites, a group of elite mercenaries, to act as both his bodyguards and a component of his army.<sup>23</sup> In the classical era there are many examples of the use of mercenaries such as Xerxes employing Greek mercenaries when he led the Persian invasion of Greece.<sup>24</sup> During the medieval period, Byzantine Emperors employed the Varangian Guard, consisting of fierce-fighting Norsemen, to protect both the emperor himself and the empire as a whole.<sup>25</sup> Norsemen were specifically sought out because they had no connection to the Greeks or Byzantines.<sup>26</sup> The lack of connection to either faction meant that the Norsemen lacked local political allies and had no issue with suppressing revolts started by disloyal Byzantine groups.<sup>27</sup> During the 1855 civil war in Nicaragua, the Liberals (the Democratic party of Nicaragua) recruited an American citizen named William Walker to bring mercenaries to Nicaragua to help their cause.<sup>28</sup> Walker and over 100 mercenaries were able to turn the tide and win the war for the Liberals.<sup>29</sup>

More recently, in 1999, the United States announced “Plan Colombia.”<sup>30</sup> The goal was to combat both the Colombian drug

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<sup>23</sup> See CYRUS ADLER ET. AL, *THE JEWISH ENCYCLOPEDIA* 11 (Singer et al. eds., 4th ed. 1902).

<sup>24</sup> See GRAHAM SPEAKE, *THE PENGUIN DICTIONARY OF ANCIENT HISTORY* 411, 482 (Puffin ed., 1995).

<sup>25</sup> See RAFFAELE D’AMATO, *THE VARANGIAN GUARD 988-1453* (Osprey Publ’g ed., 2010).

<sup>26</sup> *Id.*

<sup>27</sup> EDWARD J. MAGGIO, *PRIVATE SECURITY IN THE 21ST CENTURY: CONCEPTS AND APPLICATIONS* 4 (1st ed., 2009).

<sup>28</sup> ALAN AXELROD, *MERCENARIES: A GUIDE TO PRIVATE ARMIES AND PRIVATE MILITARY COMPANIES* 97 (2014); see also *William Walker (filibuster)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/William\\_Walker\\_\(filibuster\)#:~:text=The%20Democratic%20Party%20sought%20military,service%20of%20the%20Democratic%20government](https://en.wikipedia.org/wiki/William_Walker_(filibuster)#:~:text=The%20Democratic%20Party%20sought%20military,service%20of%20the%20Democratic%20government) [https://perma.cc/G6Z5-YWXX].

<sup>29</sup> See AXELROD, *supra* note 28.

<sup>30</sup> *Clinton Announces §§.3B in Aid to Colombia*, ABC NEWS (Aug. 31, 2000, 4:46 AM), <https://abcnews.go.com/International/story?id=82756&page=1> [https://perma.cc/EG4D-FEFP].

cartels in addition to left-wing insurgency groups.<sup>31</sup> The U.S. employed a multitude of PMCs to carry out anti-narcotics operations and other activities related to Plan Colombia.<sup>32</sup> In 2004, the U.S. hired the private security company Blackwater USA to provide an armed escort for food supplies and equipment.<sup>33</sup> When four Blackwater employees were ambushed and killed in Fallujah, the conflict established justification for the First Battle of Fallujah.<sup>34</sup>

While there are various colloquial definitions of “mercenary,” the official definition was notated in the 1989 United Nations (UN) “International Convention against the Recruitment, Use, Financing and Training of Mercenaries.”<sup>35</sup> The First Additional Protocol to the Geneva Convention states that a mercenary shall not have the right to be a combatant or a prisoner of war.<sup>36</sup> Secondly, the Protocol lists the requirements an individual must meet in order to be classified as a mercenary which include:

- (a) 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

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<sup>31</sup> *Id.*

<sup>32</sup> See JOSÉ ALVEAR RESTREPO LAWYERS’ COLLECTIVE, *Private Security Transnational Enterprises in Colombia*, (Feb. 8, 2008), [https://ia800608.us.archive.org/34/items/colombia-enterprises/Private\\_Security\\_Transnational\\_Enterprises\\_in\\_Colombia.pdf](https://ia800608.us.archive.org/34/items/colombia-enterprises/Private_Security_Transnational_Enterprises_in_Colombia.pdf) [<https://perma.cc/WH77-AJQF>].

<sup>33</sup> Spencer E. Ante & Stan Crock, *The Other U.S. Military*, BLOOMBERG (May 31, 2004), <https://www.bloomberg.com/news/articles/2004-05-30/the-other-u-dot-s-dot-military> [<https://perma.cc/F2JF-GEXC>].

<sup>34</sup> *Id.* See also BING WEST, NO TRUE GLORY: A FRONTLINE ACCOUNT OF THE BATTLE FOR FALLUJAH xxi, 3-4 (2005) (“The second phase began in March 2004, when four American contractors were killed and the bodies mutilated in broad daylight in the heart of the city. The United States Marines were ordered to seize the city, but then, due to international outrage over televised reportage of the assault, were told to stop. For six weeks the Marines engaged in fierce but inconclusive siege warfare.”).

<sup>35</sup> G.A. Res. 44/34, (Dec. 4, 1989).

<sup>36</sup> Int’l Comm. of the Red Cross, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I)*, (June 8, 1977), <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977> [<https://perma.cc/6E4W-5L4R>] [hereinafter *Additional Protocol (I)*]. Additional GC 1977 (APGC77) is a 1977 amendment protocol to the Geneva Conventions. *Id.* Article 47 of the protocol provides the most widely accepted international definition of a mercenary, though not endorsed by some countries, including the United States. *Id.*



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.<sup>37</sup>

It is important to note that all six criteria must be met in order for a combatant to be considered a mercenary under the Geneva Convention.<sup>38</sup>

Because the definition of a “mercenary” is so rigid and must be determined on an individual basis, it is often difficult to classify a PMC contractor as a “mercenary.” The most difficult element to overcome in the above definition may be the second, which states “one who does in fact take a direct part in the hostilities.” Because PMCs are mainly hired in a “security” capacity, the element is not satisfied via this loophole.<sup>39</sup> It is crucial to emphasize that while PMCs may provide security services in conflict zones, their role primarily focuses on safeguarding personnel and assets, which is distinct from directly engaging in combat operations. This distinction highlights the complexity of categorizing PMC contractors under the traditional definition of mercenaries. Despite the façade of being hired as “security,” a UN report showed that PMCs regularly performed military duties.<sup>40</sup>

The significant and abrupt expansion of the private military contracting industry, along with the emergence and growing prevalence of PMCs, adds a layer of complexity to the legal

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<sup>37</sup> *Id.*

<sup>38</sup> Practical Guide to Humanitarian Law, *Mercenaries*, <https://guide-humanitarian-law.org/content/article/3/mercenaries/> [<https://perma.cc/ULH2-TH36>].

<sup>39</sup> Press Release, U.N. Gen. Assembly/ Third Comm’n, Outsourcing Military Functions to Private Contractors Leads to Privatization of War, Third Committee Warned, U.N. Press Release GA/SHC/3902 (Nov. 7, 2007), <https://press.un.org/en/2007/gashc3902.doc.htm> [<https://perma.cc/9VVG-883T>]. The United Nations released a two-year study that stated, that although hired as “security guards,” private contractors were performing military duties. *Id.*

<sup>40</sup> Alexander G. Higgins, *US Rejects UN Mercenary Report*, THE OKLAHOMAN, <https://www.oklahoman.com/story/news/2007/10/16/us-rejects-un-mercenary-report/61700858007/> [<https://perma.cc/33C8-LPZ4>] (last updated October 17, 2007, 6:09 AM).

framework concerning accountability. This evolution has transformed what was once a scenario involving specific groups or individuals offering their mercenary services in armed conflicts into a situation where these entities have become part of PMCs equipped with the resources necessary to engage in battle against the armed forces of other nations. This shift underscores the need to differentiate between traditional mercenaries and PMCs in assessing their roles and legal responsibilities.

### *B. Private Military Company Historical and Modern Overview*

A PMC is a privately owned and operated company that provides military services to national governments, international organizations, and substate actors for financial gain.<sup>41</sup> Their employees are generally referred to as “security contractors” or “private military contractors” which advertise better than “mercenaries.” What used to be small bands of mercenaries offering their services to empires/states, has transformed into a multibillion-dollar industry where these mercenaries are incorporated into large companies.

The first incorporated PMC in the twentieth century can be traced back to 1965 when the founder of the British Special Air Service founded “WatchGuard International” as a company whose services could be contracted out for both security and military purposes.<sup>42</sup> For the next few years, multiple parties hired WatchGuard for various purposes including training forces and advising on security issues in Zambia and Sierra Leone, organizing weapons deals between countries for privatized foreign policy operations, and even supporting a regime change as the company was also linked with a failed governmental overthrow in Libya in 1971.<sup>43</sup>

Today, the work of PMCs can be separated into three categories: “(1) military provider firms that can include serving in front-line combat; (2) military consulting firms that provide

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<sup>41</sup> Duncan Bell, *Private Military Company*, ENCYC. BRITANNICA (July 14, 2023), <https://www.britannica.com/topic/private-military-firm> [https://perma.cc/XW8D-4ETK].

<sup>42</sup> See BRIAN T. CONTOS ET AL., *PHYSICAL AND LOGICAL SECURITY CONVERGENCE: POWERED BY ENTERPRISE SECURITY MANAGEMENT* 51 (Andrew Williams ed., 2007).

<sup>43</sup> ANTHONY KEMP, *THE SAS: SAVAGE WARS OF PEACE: 1947 TO THE PRESENT* 88-89 (1994).

strategic advice and training; and (3) military support firms that provide logistics, maintenance, and intelligence services to armed forces.”<sup>44</sup>

PMCs became more popular and received an influx of qualified personnel in the 1990s (post-Cold War) after over six million Western military personnel no longer had obligations to their countries’ armed forces.<sup>45</sup> This included groups such as the Canadian Joint Task Force 2, the British Special Air Service, and various U.S. Special Operations Forces.<sup>46</sup>

What started as a single company in 1965 has evolved into “The Global Private Military Security Services Market.”<sup>47</sup> In 2021, the private military contracting industry was valued at roughly \$241.7 billion, and by 2028 it is expected to be valued at \$366.8 billion.<sup>48</sup> Additionally, these companies combined have over 625,000 “contractors” (or rather, mercenaries) at their disposal.<sup>49</sup> The biggest PMCs include the Wagner Group, Academi (formerly known as Blackwater), Define Internacional, Aegis Defence Services, Triple Canopy and DynCorp.<sup>50</sup> These companies are based

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<sup>44</sup> Françoise Bouchet-Saulnier, *Private Military Companies*, THE PRACTICAL GUIDE TO HUMANITARIAN LAW, <https://guide-humanitarian-law.org/content/article/3/private-military-companies/> [<https://perma.cc/ULH2-TH36>] (last visited Mar. 28, 2024).

<sup>45</sup> See Joel A.C. Baum & Anita M. McGahan, *Outsourcing War: The Evolution of the Private Military Industry after the Cold War 27* (Oct. 5, 2009) (unpublished manuscript), [https://www.chaire-eppp.org/files\\_chaire/10\\_14\\_2009\\_TCE\\_paper.pdf](https://www.chaire-eppp.org/files_chaire/10_14_2009_TCE_paper.pdf) [<https://perma.cc/JYM3-U78S>] (“By the mid-1990s PMCs had established themselves as viable commercial ventures and carved a niche for their services among leaders of developing countries facing internal political crises and threats to their authority.”) (citation omitted).

<sup>46</sup> David Pugliese, *Special Forces Get Pay Raise*, NAT’L POST, (Aug. 26, 2006), A4. See also JOEL A.C. BAUM & ANITA M. MCGAHAN, *OUTSOURCING WAR: THE EVOLUTION OF THE PRIVATE MILITARY INDUSTRY AFTER THE COLD WAR 21-22* (2009).

<sup>47</sup> *Private Military Security Services Market Size Worth USD 366.8 Billion by 2028 | with Stunning 7.2% CAGR, Says Vantage Market Research*, GLOBENEWSWIRE (Jun. 22, 2022, 06:11AM), <https://www.globenewswire.com/en/news-release/2022/06/22/2466892/0/en/Private-Military-Security-Services-Market-Size-worth-USD-366-8-Billion-by-2028-With-stunning-7-2-CAGR-Says-Vantage-Market-Research.html> [<https://perma.cc/Z7CF-T2EB>].

<sup>48</sup> *Id.*

<sup>49</sup> Eric Sof, *Top 9 Private Military Companies in the World*, SPEC. OPS MAG. (June 21, 2015), <https://special-ops.org/top-9-private-military-companies-in-the-world/> [<https://perma.cc/479A-F4G8>].

<sup>50</sup> *Id.*

in a variety of countries including the United States, Russia, Peru and Scotland.<sup>51</sup>

While mercenaries were mainly used throughout history as armed guards/escorts, they have evolved into forces capable of performing military style functions and engaging in armed combat.<sup>52</sup> Not only do PMCs perform these roles, they are also able to hold their own weight against official armed forces and have the capabilities to repel and even defeat their opponent due to the resources available to them. PMCs are often well equipped with modern weaponry and military grade equipment. Wagner mercenaries engaged in armed conflict in Syria were described as having mortars, howitzers, tanks, infantry fighting vehicles, armed personnel carriers, man-portable surface-to-air missiles, anti-tank systems and grenade launchers at their disposal.<sup>53</sup> Additionally, other PMCs “recruit human intelligence sources, guide [intelligence, surveillance, and reconnaissance] platforms and systems, collect signals intelligence, and analyze intelligence and open-source information.”<sup>54</sup> This combination of high-grade military equipment and access to intelligence sources makes PMCs an attractive alternative to a state using its own military resources. With this in mind, the following section delves into the legitimate uses of PMCs, shedding light on the variety of functions a PMC can provide including logistical support, training of armed forces, and security functions.

### *C. Justifiable Uses of Private Military Companies*

It can certainly be argued that PMCs provide legitimate services to the contracting state. PMCs can be used for a variety of military purposes without being directly engaged in armed conflict. Some of these purposes include providing logistical support,

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<sup>51</sup> *Sof, supra* note 49.

<sup>52</sup> Emma Schroeder et al., *Hackers, Hoodies, and Helmets: Technology and the Changing Face of Russian Private Military Contractors*, ATLANTIC COUNCIL (July 25, 2022), <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/technology-change-and-the-changing-face-of-russian-private-military-contractors/> [https://perma.cc/65MR-VX7N].

<sup>53</sup> *Id.*

<sup>54</sup> SETH G. JONES ET AL., CTR. FOR STRATEGIC AND INT’L STUDS., *RUSSIA’S CORPORATE SOLDIERS: THE GLOBAL EXPANSION OF RUSSIA’S PRIVATE MILITARY COMPANIES* 18-20 (2021).

assisting with the training of new forces, and providing security functions for both military purposes and non-government organizations.

### 1. Logistical Support

Logistical support includes the functions associated with “procuring, receiving, storing, distributing and disposing of material that is required to maintain military equipment and supply forces.”<sup>55</sup> Logistics play a vital role in any military operation because military forces cannot succeed without a bridge between military personnel and industrial equipment. The outsourcing of logistics can have multiple benefits. The contracting of a U.S.-based PMC named KBR during the Iraq war allowed the majority of U.S. logistic and security operations to be handled by a third party.<sup>56</sup> This allowed more military units to focus on direct participation in armed conflict.<sup>57</sup> Another example of the outsourcing of logistical operations includes Camp Doha in Kuwait. The Camp Doha base (which served as the launching pad for the Invasion of Kuwait) was not only built by a PMC but was also guarded by one.<sup>58</sup> Additionally, PMC contractors maintained and loaded U.S. weapons systems including the B-2 stealth bomber and the Apache helicopter.<sup>59</sup> In both Iraq and Afghanistan, the U.S. Army utilized PMCs heavily for logistic support such as “construction of military bases[,] food preparation for the military,” and security for U.S. military bases.<sup>60</sup> The utilization of PMCs was so great that, by 2011, the Department of Defense had more contractor personnel in these states than uniformed personnel.<sup>61</sup> Ultimately, PMC

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<sup>55</sup> NORTH ATL. TREATY ORG., Logistics, [https://www.nato.int/cps/en/natohq/topics\\_61741.htm](https://www.nato.int/cps/en/natohq/topics_61741.htm) [https://perma.cc/5DR4-SYLG] (last updated Jun. 21, 2017).

<sup>56</sup> Mark Cancian, *In Afghanistan, Contractors Were Unsung Heroes of US Efforts*, BREAKING DEFENSE, (Aug. 30, 2021, 10:15 AM), <https://breakingdefense.com/2021/08/in-afghanistan-contractors-were-unsung-heroes-of-us-efforts/> [https://perma.cc/2NH4-T4LV].

<sup>57</sup> See OLEKSI TSARIUK, UTILIZATION OF PRIVATE MILITARY COMPANIES IN THE CONTEMPORARY INTERNATIONAL SECURITY ENVIRONMENT 19 (2021) (masters dissertation, National Defense University).

<sup>58</sup> Singer, *supra* note 14, at 122.

<sup>59</sup> *Id.*

<sup>60</sup> Bouchet-Saulnier, *supra* note 44.

<sup>61</sup> Bouchet-Saulnier, *supra* note 44.

contractors accounted for fifty-two percent of the U.S. workforce in Iraq and Afghanistan.<sup>62</sup>

## 2. Training of Armed Forces

Another legitimate use of PMCs for training new forces. However, this “training” is a double-edged sword as it may actually exacerbate or lengthen ongoing armed conflicts.<sup>63</sup> There are two excellent examples of the positive training of new forces in Liberia and Bosnia.

DynCorp’s efforts in Liberia and MPRI’s efforts in Bosnia and Herzegovina highlight how PMCs can have a positive impact via training. Following a brutal civil war in Liberia, DynCorp won an “indefinite delivery indefinite quantity” contract for peacekeeping within the continent of Africa.<sup>64</sup> This type of contract allowed DynCorp to be paid for an “indefinite” quantity of services for a fixed time which can be quite the lucrative business arrangement.<sup>65</sup> They were tasked with building the army from the ground up, including designing, recruiting, vetting, training, equipping, and fielding the new force.<sup>66</sup> A case study conducted at Leiden University analyzing various risk factors including “resurgence of violence, militarization, ethnicization, corruption and lack of

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<sup>62</sup> *Id.*

<sup>63</sup> See Seth H. Loven, *Private Soldiers in Africa: A Look at the Effects of Private Military Contractors and Mercenaries on the Duration of Civil Wars in Africa from 1960-2003* 15 (May 2013) (unpublished manuscript) (master thesis, University of Nebraska Lincoln) (“New weapons, foreign combatants (in the form of Executive Outcomes), and new training for Angolan government forces (by Executive Outcomes) all combined to bring the government back from the edge of defeat and possibly discouraged an earlier or durable peace settlement.”).

<sup>64</sup> RIANNE SIEBENGA, *PRIVATE MILITARY COMPANIES AND MILITARY REFORM: A CASE STUDY OF DYNCORP IN LIBERIA AND MPRI IN BOSNIA AND HERZEGOVINA* 33 (Dec. 2016) (master’s thesis, Leiden University).

<sup>65</sup> See U.S. GEN. SERVS. ADMIN., *INDEFINITE DELIVERY, INDEFINITE QUANTITY*, <https://www.gsa.gov/small-business/register-your-business/explore-business-models/indefinite-delivery-indefinite-quantity-idiq>[<https://perma.cc/ZS36-UH7F>] (last updated Nov. 9, 2020).

<sup>66</sup> *Additional Protocol (I)*, *supra* note 36.

professionalism” concluded that DynCorp was successful in their mission of creating a capable and sustainable military force.<sup>67</sup>

From 1992-1995 Bosnia dealt with a war that consisted of “widespread ethnic cleansing, systemic sexual assault and forced displacement.”<sup>68</sup> On July 16, 1996, the U.S. launched the Train-and-Equip Program for the Bosnian Federation.<sup>69</sup> The objective was to create an “independent, unified and professional military under civilian control which [was] capable of defending the people and territory of the Federation.”<sup>70</sup> The ultimate goal was to create long-term peace in Bosnia and Southern Europe as a whole.<sup>71</sup> The training was conducted by MPRI, an American-based PMC consisting of “170 skilled and experienced former leaders of the United States Army.”<sup>72</sup> In under two years, the Train-and-Equip program brought military parity between the Bosnian Serb and Federation forces while using less resources than what was originally quoted.<sup>73</sup> The newfound parity assisted the warring parties in viewing themselves as equal *without* beginning new hostilities.<sup>74</sup> A case study analyzing various risk factors concluded that MPRI’s efforts in Bosnia were successful in creating a unified and professional military force.<sup>75</sup>

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<sup>67</sup> SIEBENGA, *supra* note 64, at 37, 46 (“Out of the twelve indicators, two were unidentifiable leaving the total indicators at ten. Of these ten, eight were absent, which produces a rate of success of 80%. As this is above the set minimum of 75%, although not perfect by any means, the military reform of the AFL can be considered a qualified success.”).

<sup>68</sup> *Id.* at 57.

<sup>69</sup> U.S. DEP’T OF STATE, BRIEFING ON TRAIN-AND EQUIP PROGRAM FOR THE BOSNIAN FEDERATION (Jul. 24, 1996), [https://1997-2001.state.gov/regions/eur/bosnia/724brief\\_bo\\_snia\\_federation.html](https://1997-2001.state.gov/regions/eur/bosnia/724brief_bo_snia_federation.html) [<https://perma.cc/CYZ8-NJZZ>].

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Christopher J. Lamb et al., INST. FOR NAT’L STRATEGIC STUD. STRATEGIC PERSPECTIVES, THE BOSNIAN TRAIN AND EQUIP PROGRAM: A LESSON IN INTERAGENCY INTEGRATION OF HARD AND SOFT POWER 3 (Mar. 2014), <https://inss.ndu.edu/Portals/68/Documents/stratperspective/inss/Strategic-Perspectives-15.pdf> [<https://perma.cc/RM4D-5K6X>].

<sup>74</sup> *Id.* at 1 (“Contrary to the concerns of the Central Intelligence Agency and other observers, the program did not embolden the Federation to initiate hostilities.”).

<sup>75</sup> SIEBENGA, *supra* note 64, at 74 (“Out of the ten indicators, one was unidentifiable. From the remaining nine indicators, eight were absent, thus creating a rate of success of 89%. As this is above the arbitrarily set 75%, this case study can be qualified as a success.”).

### 3. Security Functions

In addition to providing logistical support and training forces, PMCs have also been hired to provide security for military bases and non-governmental organizations (NGOs). Additionally, certain PMCs have focused their work on conservation efforts and natural resource protections.

During or after periods of armed conflict, there are humanitarian NGOs willing to travel to those regions where the conflict is occurring or has occurred to help the survivors of armed conflict and the people suffering as a result of that conflict.<sup>76</sup> Because they are working in zones of conflict, NGOs must have plans in place to provide protection for their staff. PMCs are uniquely positioned to fulfill this capacity as private companies which these NGOs can hire. Serving in this security capacity allows the PMC industry to advertise itself as a humanitarian service “as essential as water, food, education, health and shelter to human well-being.”<sup>77</sup>

Other companies have dedicated their services to wildlife protection and conservation efforts. The increased (and armed) effort to protect wildlife is sometimes referred to as “green militarization.”<sup>78</sup> These environmental efforts have taken place in various locations including Mali, Nigeria and India.<sup>79</sup> In Mali, a combination of NGOs work with the anti-poaching brigade to prevent elephant poaching which was being used to fund ongoing conflicts.<sup>80</sup> In Limpopo, South Africa, the American-based organization “Veterans Empowered To Protect African Wildlife” (Vetpaw) works to prevent the poaching of South Africa’s rhino

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<sup>76</sup> See UNIV. OF CAL. BERKELEY LIBRARY, *Non Governmental Organizations (NGOs)*, <https://guides.lib.berkeley.edu/c.php?g=496970&p=3626027> [<https://perma.cc/YF45-ULB4>] (last updated Feb. 13, 2024) (“Humanitarian NGOs aid people who are suffering, particularly victims of armed conflict, famines, and natural disasters. Sometimes these organizations are also called relief societies.”).

<sup>77</sup> Daniel Hellinger, *Humanitarian Action, NGOs and the Privatization of the Military*, 23 REFUGEE SURVEY Q. 192, 193 (2004), <https://gisf.ngo/wp-content/uploads/2014/09/0226-Hellinger-2004-humanitarian-action-NGOs-privatisation-of-military.pdf> [<https://perma.cc/LH2Q-5796>].

<sup>78</sup> Rosaleen Duffy, *We Need to Talk About the Militarisation of Conservation*, THE GREEN EUROPEAN J. (July 20, 2017), <https://www.greeneuropeanjournal.eu/we-need-to-talk-about-militarisation-of-conservation/> [<https://perma.cc/Q7V4-69BE>].

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*



population.<sup>81</sup> The threat to these animals is great. In 2017, a South African government spokesperson said that the poachers are “criminal gangs armed to the teeth, well-funded and part of transnational syndicates who will stop at nothing . . . .”<sup>82</sup> Vetpaw serves as a legitimate deterrent to these armed poachers as they consist of combat veterans “equipped with vehicles, trail bikes, assault rifles, sniper suits and radios.”<sup>83</sup>

However, it is worth noting that a majority of poachers are not members of large criminal gangs, but instead are people who “are financially poor or lack alternative livelihood strategies.”<sup>84</sup> In the most unfavorable scenario, a PMC’s actions could actually hinder progress and create a divide within the crucial communities required for successful conservation efforts.<sup>85</sup> For example, a leaked internal report from the World Wildlife Fund (WWF), an international NGO devoted to conservation efforts, shows that their presence in Cameroon negatively impacted the native Baka “Pygmies.”<sup>86</sup> Specifically, this leaked report revealed that WWF did not even consult with the Baka about the patrolling of their land.<sup>87</sup> Additionally, many of the villagers reported abuse from the “ecoguards” and claimed the guards regularly engaged in “terrifying crackdowns” on the local population.<sup>88</sup> To make matters even worse, the internal report showed that the perpetrators of the

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<sup>81</sup> See generally Jason Burke, *US Army Veterans Find Peace Protecting Rhinos from Poaching*, THE GUARDIAN (May 30, 2017, 1:00 AM), <https://www.theguardian.com/environment/2017/may/30/us-army-veterans-find-peace-protecting-rhinos-poaching-south-africa> [https://perma.cc/Q7V4-69BE].

<sup>82</sup> *Latest Official South African Rhino Poaching Statistics*, SA PEOPLE NEWS (Feb. 27, 2017, 7:30 PM), <https://www.sapeople.com/news/latest-official-south-african-rhino-poaching-statistics/> [https://perma.cc/DQW9-V4A9].

<sup>83</sup> See Burke, *supra* note 81.

<sup>84</sup> Rosaleen Duffy et. al, *Toward a New Understanding of the Links Between Poverty and Illegal Wildlife Hunting*, 30 CONSERVATION BIOLOGY 14, 14 (2016), <https://doi.org/10.1111/cobi.12622> [https://perma.cc/XY4C-VPKN].

<sup>85</sup> Rosaleen Duffy et. al, *Foreign ‘Conservation Armies’ in Africa May Be Doing More Harm Than Good*, THE CONVERSATION (Jul. 17, 2017, 11:34 AM), <https://theconversation.com/foreign-conservation-armies-in-africa-may-be-doing-more-harm-than-good-80719> [https://perma.cc/223S-YKWY].

<sup>86</sup> *Leaked Report Reveals WWF Knew About ‘Pygmy’ Abuse*, SURVIVAL INT’L, (Jan. 23, 2017), <https://www.survivalinternational.org/news/11561> [https://perma.cc/B6LW-6LF2] [herinafter *Leaked Report*].

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

abuse were not disciplined “despite the communities’ condemnation, with proof.”<sup>89</sup>

PMCs have also been hired to protect and guard natural resources on multiple occasions, including the Angolan Civil War, the Sierra Leone Civil War, and Russian PMC Wagner’s involvement in Africa over the past few years. However, there are significant harmful side effects when PMCs are hired in this capacity. The most impactful side effect being that “the duration of civil wars in resource-wealthy states is prolonged due to the interests of multiple actors in exploiting said resources.”<sup>90</sup> Natural resources have also been used as a method of payment to PMCs. In 2018, the current president of the Central African Republic (CAR), Faustin-Archange Touadéra, entered into an agreement with the Wagner group for personal protection and training of the CAR’s army, specifically for protection from coup efforts.<sup>91</sup> In exchange for this protection, President Touadéra granted a mining company owned by Yevgeny Prigozhin (who also controls the Wagner PMC) exploratory mining rights for seven gold and diamond mines in his territory.<sup>92</sup> This type of arrangement (resources for security services) is not new for the Wagner group. Since 2015, the Wagner group has been essential to the survival of Bashar al-Assad’s regime in Syria. Wagner helps Assad’s regime by increasing its manpower in addition to training its military personnel.<sup>93</sup> In exchange for Wagner’s efforts, Assad allows the Russian military to operate on Syria’s Air Base on the Mediterranean Sea in addition to exploring its potential offshore oil reserves.<sup>94</sup>

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<sup>89</sup> *Leaked Report, supra* note 86.

<sup>90</sup> LEROY B. BUTLER, NATURAL RESOURCES AND PRIVATE MILITARY SECURITY COMPANIES: HOW DO THEY AFFECT CIVIL WAR DURATION? iii (2019) (graduate degree monograph, Command and General Staff College).

<sup>91</sup> COUNCIL ON FOREIGN RELS., *Coup-Proofing: Russia’s Military Blueprint for Securing Resources in Africa* (Mar. 10, 2021 10:13 AM), <https://www.cfr.org/blog/coup-proofing-russias-military-blueprint-securing-resources-africa> [<https://perma.cc/MZD2-HBT7>].

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

### III. LEGAL LANDSCAPE

#### A. *Legal Authority to Operate*

When discussing the legality of private military companies operating on an international scale, it is important to look at both International Humanitarian Law and the applicable domestic law from the exporting country in which the PMC is based. This Comment will examine the domestic laws regarding PMCs in the U.S. and Russia.

##### 1. International Law

There are numerous sources of International Humanitarian Law that attempt to address the use of private military companies in armed conflict. The two most significant documents regarding the use of PMCs include 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 (the “Montreux Document”) and the International Code of Conduct for Private Security Services Providers (“IcoC”). The oversight mechanism for the ICoC is the ICoC Association.

The Montreux Document is an agreement, created in 2008, between fifty-eight states and three international organizations regarding the use of PMCs in war zones and armed conflicts.<sup>95</sup> The document was developed through a Swiss initiative and serves as a non-binding political declaration outlining international legal obligations and best practices for states when it comes to the activities of private military and security companies (PMSCs) in armed conflict situations.<sup>96</sup> The document was signed in response to the increasing concerns related to the use of PMSCs in armed

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<sup>95</sup> Int’l Comm. of the Red Cross, *Montreux Document on Private Military and Security Companies* (Sep. 17, 2008), <https://www.icrc.org/en/publication/0996-montreux-document-private-military-and-security-companies> [<https://perma.cc/EG2G-MQW4>].

<sup>96</sup> NELLEKE VAN AMSTEL & TILMAN RODENHÄUSER, *THE MONTREUX DOCUMENT AND THE INTERNATIONAL CODE OF CONDUCT: UNDERSTANDING THE RELATIONSHIP BETWEEN INTERNATIONAL INITIATIVES TO REGULATE THE GLOBAL PRIVATE SECURITY INDUSTRY 4-6* (2016), [https://www.files.ethz.ch/isn/196480/DCAF\\_PPPs\\_Series\\_Paper\\_The\\_MD\\_and\\_ICoC\\_Understanding\\_the\\_Relationship.pdf](https://www.files.ethz.ch/isn/196480/DCAF_PPPs_Series_Paper_The_MD_and_ICoC_Understanding_the_Relationship.pdf) [<https://perma.cc/L44T-T82C>].

conflict zones.<sup>97</sup> Some of these concerns included human rights violations, lack of accountability for PMCs and the desire for clear international standards to govern the activities of PMC's.<sup>98</sup>

While the Montreux Document is not legally binding, it recommends some practices that states should engage in.<sup>99</sup> Some of these practices include ensuring training and compliance with International Humanitarian Law, verifying the PMCs' track record where it regards their performance in armed conflict and the prosecution of PMCs when breaches of law occur.<sup>100</sup>

The ICoC shortly followed the Montreux Document and was created in 2010. While sharing the objective of regulating the PMC industry, their target audience differs. The main difference is that, while the Montreux Document attempts to address *states* regulation of PMCs, the ICoC attempts to implement oversight and principles directly to PMCs.<sup>101</sup> The ICoC was developed to establish a set of standards and principles for the responsible and ethical conduct of private security companies operating in complex environments, including conflict zones.<sup>102</sup>

The ICoC is the result of a collaborative effort involving governments, industry representatives, civil society organizations, and other stakeholders to address issues related to the regulation and oversight of private security services in these contexts.<sup>103</sup> The ICoC outlines a framework for responsible business practices, human rights standards, and mechanisms for accountability within the private security industry.<sup>104</sup> It seeks to promote transparency, respect for human rights, and adherence to the rule of law among private security providers.<sup>105</sup>

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<sup>97</sup> AMSTEL & RODENHÄUSER, *supra* note 96, at 4

<sup>98</sup> *Id.* at 4

<sup>99</sup> *See generally id.*

<sup>100</sup> *Id.* at 10.

<sup>101</sup> *See id.*

<sup>102</sup> *Id.* at 7-10.

<sup>103</sup> *The International Code of Conduct for Private Security Service Providers (IcoC)*, PRIV. SEC. GOVERNANCE OBSERVATORY, <https://www.privatesecurityobservatory.org/regulation-and-oversight/international-initiatives/international-code-conduct-private-security-service-providers-icoc.html> [https://perma.cc/2DSF-ZMU6] (last visited May 9, 2024).

<sup>104</sup> *See id.*

<sup>105</sup> *See id.*

Additionally, while the Montreux Document is not legally binding, the ICoC provides more concrete regulation.<sup>106</sup> In addition to the document having over 650 PMC signatories, the UN requires membership of the International Code of Conduct for Private Security Services Providers Association (“ICoCA”) in order for a PMC to be hired by UN agencies.<sup>107</sup> The UN has employed PMCs for a variety of operations including: humanitarian, peacekeeping, and political missions; security and protection services; and peacebuilding support services.<sup>108</sup>

The ICoCA is an independent non-profit organization that serves as the oversight mechanism of the ICoC. The ICoCA has three main functions; (1) certifying a PMCs systems and policies under the Code’s principles and standards (2) monitoring PMCs performance and impact with a focus on human-rights and (3) “maintain[ing] a process to support Member companies . . . in discharging their commitments . . . to address claims alleging violations of the Code by establishing fair and accessible grievance procedures.”<sup>109</sup> In summation, the ICoC is the foundational document that outlines the standards and principles for responsible conduct by private security service providers, while the ICoCA is the organization established to oversee the implementation and enforcement of those standards by its member PMCs. Since 2015, the ICoCA has received forty-one complaints of code violations

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<sup>106</sup> *The Montreux Document on Private Military and Security Companies*, MONTREUX DOCUMENT F., <https://www.montreuxdocument.org/about/montreux-document.html> [<https://perma.cc/3S7J-JUT7>] (last visited May 9, 2024) (“The [d]ocument seeks to provide guidance on the basis of existing international law, but is not a legally binding treaty.”).

<sup>107</sup> UNITED NATIONS DEP’T OF SAFETY & SEC., UNITED NATIONS SUPPORT MISSION: OPERATION MANUAL - GUIDANCE ON THE USE OF ARMED SECURITY SERVICES FROM PRIVATE SECURITY COMPANIES (Nov. 8 2012), [http://psm.un.org/media/documents/international\\_regulation/united\\_nations/internal\\_controls/un\\_unsms-operation-manual\\_guidance-on-using-pmsc\\_2012.PDF](http://psm.un.org/media/documents/international_regulation/united_nations/internal_controls/un_unsms-operation-manual_guidance-on-using-pmsc_2012.PDF) [<https://perma.cc/E8X9-8P2N>].

<sup>108</sup> *See generally* ÅSE GILJE ØSTENSEN, THE GENEVA CTR. FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, UN USE OF PRIVATE MILITARY AND SECURITY COMPANIES: PRACTICES AND POLICIES (2011), [https://www.dcaf.ch/sites/default/files/publications/documents/SSR\\_PAPER3.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/SSR_PAPER3.pdf) [<https://perma.cc/L8B2-XDXC>].

<sup>109</sup> INT’L CODE OF CONDUCT FOR PRIVATE SECURITY SERV. PROVIDERS’ ASS’N, Articles of Association § 13.1, <https://icoca.ch/wp-content/uploads/2020/10/ICoCA-Articles-of-Association.pdf> [<https://perma.cc/H9XX-UWPX>].

including complaints of apprehension, modern slavery, and failure to protect against sexual exploitation and abuse.<sup>110</sup>

## 2. United States and Russian Domestic Law

Being a mercenary/contractor for a private military company as a U.S. citizen is not explicitly “illegal.” While the Anti-Pinkerton Act of 1983 states that the federal government cannot hire mercenaries,<sup>111</sup> in 1977 it was held that the Pinkerton Act only applied in the context of “strike breaking” and therefore does not apply currently.<sup>112</sup> The closest relevant law that addresses U.S. based mercenaries is the Neutrality Act.<sup>113</sup> However, this statute only prohibits participation in a military or naval expedition “within the United States,” and therefore is not applicable to acts committed outside of the borders of the U.S.<sup>114</sup>

Furthermore, despite the United States signing the ICoCA, American-based PMCs still lack official international oversight.<sup>115</sup> The U.S. federal government currently issues contracts for PMCs

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<sup>110</sup> INT’L CODE OF CONDUCT ASS’N, *Registering a Complaint*, <https://icoca.ch/registering-a-complaint/> [<https://perma.cc/D8HY-S955>]; *see also* Procedures for Receiving and Processing Complaints under Article 13, INT’L CODE OF COND. ASS’N, <https://icoca.ch/wp-content/uploads/2020/10/Art-13-Procedures.pdf> [<https://perma.cc/666C-8967>].

<sup>111</sup> 5 U.S.C. § 3108 (“An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the government of the United States or the government of the District of Columbia.”).

<sup>112</sup> U.S. GOV’T ACCOUNTABILITY OFF., COMMENTS CONCERNING THE ANTI-PINKERTON ACT (Mar. 6, 1980), <https://www.gao.gov/assets/b-139965.pdf> [<https://perma.cc/X83W-KXU7>]. The initial court case that interpreted the Act, dating back to 1977, concluded that the Act’s purpose was primarily focused on Pinkerton’s historical actions, which involved providing quasi-military armed services for hire during events like the Homestead strike in 1892. As a result, the Act was deemed to have limited relevance to the present-day organization. Jakob, you need to add citations to whatever court case you are referencing (one citation after each of these two sentences).

<sup>113</sup> *See* 18 U.S.C. § 960.

<sup>114</sup> *Id.*

<sup>115</sup> *See* CTR. FOR CIVILIANS IN CONFLICT, *PRIVATIZING WAR: THE IMPACT OF PRIVATE MILITARY COMPANIES ON THE PROTECTION OF CIVILIANS* 5 (Nov. 2022), [https://civiliansinconflict.org/wp-content/uploads/2022/12/CIVIC\\_PMC.pdf](https://civiliansinconflict.org/wp-content/uploads/2022/12/CIVIC_PMC.pdf) [<https://perma.cc/8L54-5K8L>] (“Home states—and, arguably, contracting states as well—tend to have insufficient regulation controlling PMCs’ conduct and accountability[.]”).

through the Worldwide Protective Services (“WPS”) program.<sup>116</sup> Despite announcing that they may require membership of the ICoCA in order to bid on the contract, that is still not the case.<sup>117</sup> In the last three years, the federal government spent over \$17 billion on these WPS contracts.<sup>118</sup> The only statute which provides consequences for PMC contractors who engage in extrajudicial killings is 18 U.S.C. § 1116. This statute states that “[w]hoever kills or attempts to kill a foreign official, official guest, or internationally protected person shall be punished . . . .”<sup>119</sup> Additionally, in 2006, the Uniform Code of Military Justice was amended to allow prosecution of military contractors who are operating in a “declared war or a contingency operation.”<sup>120</sup>

In contrast to U.S. statutes, the utilization of PMCs are strictly prohibited under Article 359 of the Russian Criminal Code.<sup>121</sup> However, Russian PMCs operate regularly on a global scale despite

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<sup>116</sup> U.S. DEPT STATE, WORLDWIDE SECURITY PROTECTION, <https://2009-2017.state.gov/documents/organization/137787.pdf> [<https://perma.cc/H952-9E2S>]. The Worldwide Protective Services (“WPS”) program is the federal contract vehicle upon which the United States Department of State’s Bureau of Diplomatic Security (“DS”) uses to execute a range of security and protection activities conducted by DS. *See id.* The WPS program is designed to provide security services and protection for U.S. government officials, diplomats, and other individuals working in high-threat or high-risk environments overseas. *See id.*

<sup>117</sup> Press Release, U.S. Dept. of State, State Department to Incorporate International Code of Conduct into Worldwide Protective Services Contract (Aug. 16, 2013), <https://2009-2017.state.gov/r/pa/prs/ps/2013/08/213212.htm> [<https://perma.cc/63SU-593F>].

<sup>118</sup> NAICS 561612 - Security Guards and Patrol Services, GOVTRIBE INC., <https://govtribe.com/category/naics/561612-security-guards-and-patrol-services> [<https://perma.cc/J3CZ-E7EU>].

<sup>119</sup> 18 U.S.C. § 1116(a).

<sup>120</sup> Memorandum from the Secretary of Defense, UCMJ JURISDICTION OVER DOD CIVILIAN EMPLOYEES, DOD CONTRACTOR PERSONNEL, AND OTHER PERSONS SERVING WITH OR ACCOMPANYING THE ARMED FORCES OVERSEAS DURING DECLARED WAR AND IN CONTINGENCY OPERATIONS OSD 02927-08, at 1 (Mar. 10, 2008), <https://www.justice.gov/sites/default/files/criminal-hrsp/legacy/2011/02/04/03-10-08dod-ucmj.pdf> [<https://perma.cc/K4ZY-GR9K>].

<sup>121</sup> Catrina Doxsee, *Putin’s Proxies: Examining Russia’s Use of Private Military Companies: Statement before the House Oversight and Reform Subcomm. on National Security*, CTR. FOR STRATEGIC & INT’L STUD. (Sept. 15, 2022), <https://www.csis.org/analysis/putins-proxies-examining-russias-use-private-military-companies> [<https://perma.cc/WXK7-G8KX>] (noting that Article 359 of the Russian Criminal Code provides “[r]ecruitment, training, financing, or any other material provision of a mercenary, and also the use of him in an armed conflict or hostilities, shall be punishable by deprivation of liberty for a term of four to eight years”).

this statute. They are able to do this because they are not legally registered organizations and therefore do not pay taxes to the state.<sup>122</sup> For all intents and purposes, PMC groups like Wagner are not considered a Russian entity, effectively rendering them non-existent in a formal capacity.<sup>123</sup> Despite the illegality of using PMCs on a state level, it is well documented that Russia utilizes PMCs to “carry out irregular warfare operations abroad to support Russian strategic objectives and project Russian influence.”<sup>124</sup> Russia’s use of PMCs allows the Kremlin to carry out its aggressive foreign policy agenda at a cheaper cost while still maintaining plausible deniability.<sup>125</sup> Since 2014, when Russia utilized PMCs in their acts of aggression against Ukraine, Russian PMCs “have deployed in Syria, the Central African Republic (CAR), and several other countries.”<sup>126</sup> Russia continues to vehemently deny any official involvement with the Wagner group.<sup>127</sup>

### 3. How Should PMC Contractors Be Classified?

PMCs often operate under the guise of providing security or logistical support (even when direct participation in hostilities is likely) in hostile areas which begs the question of how their contractors should be classified under International Humanitarian Law (IHL). When considering how to hold these contractors culpable for violations of the laws of armed conflict, the principle of distinction is paramount.

When discussing how PMC contractors should be classified, and held accountable, under international law there are several classifications in which these contractors *could* fit under both the

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<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Paul Stronski, *Implausible Deniability: Russia’s Private Military Companies*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Jun. 2, 2020), <https://carnegieendowment.org/2020/06/02/implausible-deniability-russia-s-private-military-companies-pub-81954> [<https://perma.cc/QF5Q-TV9A>].

<sup>126</sup> *Id.*

<sup>127</sup> Nathan Hodge, *Wagner ‘Does Not Exist’: Why Putin Claims a Rift in the Mercenary Group*, CNN (Jul. 14, 2023, 12:27 PM), <https://www.cnn.com/2023/07/14/europe/russia-putin-wagner-prigozhin-tensions-intl/index.html> [<https://perma.cc/S784-AXY8>].



Third Geneva Convention and Additional Protocol 1, including: mercenary, combatant or civilian.<sup>128</sup>

When discussing holding PMC contractors culpable for violations of international law, assigning them the status of mercenary may not be the most helpful. The first reason is that being a mercenary is not actually a violation of the law of armed conflict.<sup>129</sup> The second issue is that under Article 47 of Additional Protocol 1 to the 1949 Geneva Conventions, a case-by-case individual determination of status is required which cannot apply generally to PMC contractors.<sup>130</sup> Additionally, the mercenary definition refers to the recruitment of mercenaries in order to fight, but it does not address situations when PMCs are hired for “security” or “defensive forces” and later become involved in an armed conflict.<sup>131</sup>

The status of “combatant” could be assigned to contractors and is defined as “persons . . . authorized to use force in situations of armed conflict by international humanitarian law.”<sup>132</sup> This status also means that they are viewed as legitimate military targets during armed conflicts and are entitled to prisoner-of-war status.<sup>133</sup> Under the Third Geneva Convention, a combatant cannot be prosecuted for participating in hostilities.<sup>134</sup> However, they can still be prosecuted domestically or internationally if they commit war crimes, crimes against humanity and/or acts of genocide.<sup>135</sup>

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<sup>128</sup> See generally The Practical Guide to International Humanitarian Law, *Combatant*, DOCTORS WITHOUT BORDERS, <https://guide-humanitarian-law.org/content/article/3/combatants/> [<https://perma.cc/W33Y-KS5M>] (last visited Apr. 4, 2024) [hereinafter *Combatant*].

<sup>129</sup> See generally Bouchet-Saulnier, *supra* note 44.

<sup>130</sup> *Id.*

<sup>131</sup> See Lindsey Cameron, 88 INT’L REV. OF THE RED CROSS 449, 589 (2006), [https://international-review.icrc.org/sites/default/files/irrc\\_863.pdf](https://international-review.icrc.org/sites/default/files/irrc_863.pdf) [<https://perma.cc/7G XN-AERA>] (“The second and third issues highlighted above raise similar problems, since they illustrate that the determination whether a person actually does directly participate in hostilities does not necessarily depend on whether that person intended to do so. The problems posed by the lack of distinction between offensive and defensive attacks are best illustrated by the use of private military companies as security guards.”).

<sup>132</sup> *Combatant*, *supra* note 128.

<sup>133</sup> *Id.*

<sup>134</sup> Convention for the Protection of War Victims, Aug. 12, 1949, T.I.A.S. No. 3364 [hereinafter Geneva Convention].

<sup>135</sup> *Id.*

Additionally, combatants are entitled to “prisoner of war status.”<sup>136</sup> The *difficulty* in classifying PMC contractors as combatants lies in the element of “authorization to use force” outlined in the 1977 Additional Protocols to the Geneva Convention which also states that combatants must be members of national armed forces or organized groups placed under “effective control” of those forces.<sup>137</sup> Even though PMCs may be frequently hired by states for various purposes, they are usually not incorporated into the states national armed forces.<sup>138</sup>

At first glance, it may seem unlikely that PMC contractors could be classified as “civilians” under IHL, but it could be possible in certain circumstances. Under IHL, a “civilian” refers to an individual who does not belong to any of the various categories of combatants and are therefore granted protections from military operations and hostilities.<sup>139</sup> This also means that they may not directly partake in hostilities. Under the Additional Protocols, a civilian who takes direct part in hostilities in armed conflict retain their civilian status and do not lose the accompanying protections under IHL.<sup>140</sup> Because PMC contractors are rarely formally incorporated into the states armed forces, it may be most fitting to classify them as civilians.<sup>141</sup> However, the lack of transparency and

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<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> See Lindsey Cameron, *Private Military Companies: Their Status Under International Humanitarian Law and Its Impact on their Regulation*, 88 INT'L REV. RED CROSS 573, 583 (Sept. 2006), [https://international-review.icrc.org/sites/default/files/irrc\\_863\\_5.pdf](https://international-review.icrc.org/sites/default/files/irrc_863_5.pdf) [<https://perma.cc/9ZRP-7TND>] (“The first means by which PMC employees may qualify as combatants – which corresponds inversely to the fifth criterion of the definition of a mercenary – is to determine whether they are members of the armed forces of a party to the conflict. Article 43.2 of Protocol I stipulates that ‘[m]embers of the armed forces of a Party to a conflict . . . are combatants, that is to say, they have the right to participate directly in hostilities.’ It is thus necessary to assess whether private military company employees are incorporated within the armed forces of a party to a conflict, as defined in Article 43.1 of Protocol I or Article 4A(1) of the Third Geneva Convention. It is conceivable that in rare cases they might be.” (footnote omitted)).

<sup>139</sup> See The Practical Guide to International Humanitarian Law, *Civilians*, DOCTORS WITHOUT BORDERS, <https://guide-humanitarian-law.org/content/article/3/civilians/> [<https://perma.cc/RRX8-SMW4>] (last visited Apr. 5, 2024).

<sup>140</sup> *Id.*

<sup>141</sup> Hanna Blüme, *Private Military and Security Companies in Armed Conflict: Privatisation of Violence as a Challenge to Contemporary International Humanitarian Law* 6 (2021) (thesis, Örebro University), <https://www.diva-portal.org/smash/get/diva2:1599007/FULLTEXT01.pdf> [<https://perma.cc/UT6K-XW6V>].

“coercive and violent nature” of PMC services challenged this distinction and accompanying legal status.<sup>142</sup>

It may be more fitting to classify these contractors as “unlawful combatants” under IHL. “The term ‘unlawful combatant’ . . . refer[s] to an individual who belongs to an armed group, in a context where either the individual or the group do not fulfil the conditions for combatant status.”<sup>143</sup> Further, it can be used to “describe persons who are . . . neither combatants nor civilians but belong to a third category of persons who can be attacked at any time and can be detained indefinitely without trial.”<sup>144</sup>

### B. Culpability Complications

When attempting to decipher why it seems so hard to hold PMC contractors accountable for violations of IHL, we must first understand that there is no coherent, binding legal framework that is applicable to PMCs utilizing force.<sup>145</sup> As corporate entities, PMCs as a whole cannot be investigated by domestic or international criminal courts, but they can be held financially liable for damages.<sup>146</sup> On the contrary, individual criminal responsibility can be levied against a violator in front of criminal courts. The avenue to justice gets even more complicated when considering that PMCs often enter into plea agreements with the contracting territorial state.

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<sup>142</sup> *Id.* at 11, 18.

<sup>143</sup> *Unlawful Combatants*, INT’L COMM. RED CROSS, [https://casebook.icrc.org/a\\_to\\_z/glossary/unlawful-combatants](https://casebook.icrc.org/a_to_z/glossary/unlawful-combatants) [https://perma.cc/X7KV-YDUF] (last visited Apr. 5, 2024).

<sup>144</sup> *Id.*

<sup>145</sup> Cameron, *supra* note 131, at 592.

<sup>146</sup> Bouchet-Saulnier, *supra* note 44 (“As corporate bodies, PMCs cannot be investigated by international or domestic criminal courts. Only individual criminal responsibility of their employees could be engaged in front of criminal courts. This leaves aside the issue of the responsibility of the entity as such, which, contrary to an army, does not obey military hierarchical orders leading to State responsibility but fulfils mere commercial contracts. They could only be held financially liable for damages deriving from their actions at country level. This ability is deliberately limited by the fact that PMCs are closed down and created under new names on a regular basis. It is also limited by the immunity they frequently enjoy through benefiting immunity agreements passed between contracting and territorial States or included in the Status of Force Agreements.”).

IV. CONTRIBUTION TO AND EFFECT ON ARMED CONFLICT  
AROUND THE GLOBE

A. *Controversial Uses of Private Military Companies and their  
Effects*

Although PMCs may provide some legitimate benefits to the international theater, they have a greater track record of being used to promote internal and state interests which often carry negative rather than positive results. The use of PMCs has been shown to have destabilizing effects on certain contracting states and may present national security issues for other countries including the U.S.<sup>147</sup> Additionally, PMCs can be hired by state actors to carry out extrajudicial missions while maintaining plausible deniability.<sup>148</sup> This issue is exacerbated by the striking absence of regulation, oversight and enforcement as it regards the PMC industry.

1. Destabilizing Effects and Threat of Dependence

The transition of international security being conducted primarily by state actors to being conducted by PMCs indicates that states no longer have a monopoly over the exertion of violent force.<sup>149</sup>

This transition can actually hinder the restoration of state legitimacy in situations of armed conflict.<sup>150</sup> A key part of restoring public order is a state's ability to protect its population and maintain order.<sup>151</sup> When that role is assigned to private actors, it can create "parallel structures of government" which not only erode the public's trust in the government but also the economic and political power of the state itself.<sup>152</sup>

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<sup>147</sup> See *supra* note 117.

<sup>148</sup> See *supra* note 121.

<sup>149</sup> See Christopher Wood, Private Military Companies and International Security: Do Private Military Companies Undermine or Contribute to International Security? A Theoretical Approach 2 (E-International Relations ISSN 2053-8626) (Mar. 21, 2013), <https://www.e-ir.info/pdf/34804> [<https://perma.cc/MY63-S4XS>].

<sup>150</sup> *PMSCs: Risks and Misconduct*, GLOB. POL'Y F., <https://archive.globalpolicy.org/pmscs/50208-contractor-misconduct-and-abuse.html> [<https://perma.cc/4596-3TVB>] (last visited Apr. 8, 2024) [hereinafter PMSCs].

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

This may be beneficial to a “strong” state actor (e.g., the U.S.) that can transform their economic prowess “into the tangible reality of ‘boots on the ground.’”<sup>153</sup> The use of PMCs can augment military forces and provide certain services which the contracting state cannot execute themselves.<sup>154</sup> Even in the scenario of a “strong” state actor, however, there is a possibility of becoming dependent on PMCs when they are essentially integrated into military operations.<sup>155</sup>

This change may also present a threat to destabilizing state-centric security structures in addition to the possibility that *certain* states may become dependent on private security rather than a state’s official military.<sup>156</sup> This dependence by certain states also presents an opportunity for violent actors and terrorist organizations to expand their interests.<sup>157</sup> It is important to remember that PMCs are *private corporations* and, therefore, carry their own interest in addition to maximizing their own profit. When a PMC is able to essentially replace the contracting state’s official force, they can utilize this leverage to either gain political power or a more profitable contract.<sup>158</sup>

## 2. Plausible Deniability and National Security Threats

PMCs also present national security threats to various state actors including the U.S. PMCs allow contracting states to advance strategic interests and expand their influence, financial gain, or

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<sup>153</sup> Wood, *supra* note 149, at 2.

<sup>154</sup> *Id.*

<sup>155</sup> *See id.*

<sup>156</sup> *See PMSCs, supra* note 150 (“This is a phenomenon unfolding in so-called ‘failed states’ such as Somalia, but also in gated communities all over the world. A major concern that has been raised is hiw PMCs potentially undermine state institutions.”).

<sup>157</sup> Doxsee, *supra* note 121.

<sup>158</sup> Wood, *supra* note 149, at 2 (“It follows logically that, by surreptitiously undermining the capacity of the client state to provide its *own* security, the PMC maximizes its political leverage and thus increases its chances of securing more profitable contract terms - the existence of a large body of critical literature that has adopted an inquiring eye into both the extent of ‘overspend’ on PMC services on behalf of state actors and the pervasive reach of corporate lobbying serves to suggest that Realist concerns over an abusive ‘culture of dependency’ between the PMC actor and the client state are strongly grounded in fact.” (footnote omitted)).

both.<sup>159</sup> The biggest culprit of using PMCs in this manner is Russia, and they do all this while still being able to maintain a thin veneer of plausible deniability. Russia's use of PMCs allows them to spread both their military power and intelligence capabilities.<sup>160</sup> This presents a particular threat to the U.S. and its forces abroad. In 2018, local militias in Syria supported by Wagner contractors encountered U.S. forces near Deir el-Zour, which was the agreed-upon deconfliction line between Russian and U.S. forces.<sup>161</sup> The U.S. forces inflicted heavy casualties on the militias and even after reports of Russian casualties, the Kremlin denied "official Russian involvement."<sup>162</sup> This encounter shows that the U.S. should be prepared for further encounters with PMCs from a variety of states.

### *B. Impact on Civilian Protection and Human Rights Violations*

Because of the lack of oversight and consequences for the actions of PMC contractors, they are more likely to commit human rights violations in addition to presenting an increased threat to civilian protection. The most vulnerable group to these abuses may be women and children. Female PMC contractors have brought actions against their employers for sexual assault, and there have also been reports of PMC contractors operating "forced prostitution rings."<sup>163</sup> One of these instances occurred in Bosnia and involved the PMC company "DynCorp."<sup>164</sup> A U.S. congressional hearing revealed that PMC contractors were involved in sexual slavery and that the situation was fueled by a "lack of any requirement for

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<sup>159</sup> Rodrick H. McHaty & Joe Moyer, *The US Military Must Plan for Encounters with Private Military Companies* (Mar. 30, 2021), BROOKINGS INST., <https://www.brookings.edu/articles/the-us-military-must-plan-for-encounters-with-private-military-companies/> [<https://perma.cc/89WT-5N9B>].

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> Elzbieta Karska, *Violações de Direitos Humanos Cometidas por Militares Privados e por Empresas de Segurança Privada: Uma Análise do Direito Internacional [Human Rights Violations Committed by Private Military and Security Companies: An International Law Analysis]*, 17 Espaço Jurídico: Journal of Law [EJLL] 753, 758 (2016), <https://pdfs.semanticscholar.org/19e0/32d46f46a689e19e31492e30feb6dffeeb12.pdf> (quoting ANA FILIPA VRDOLJAK, *Women and Private Military and Security Companies, in WAR BY CONTRACT: HUMAN RIGHTS, HUMANITARIAN LAW, AND PRIVATE CONTRACTORS* 280 (2011)).

<sup>164</sup> *Id.* (quoting Vrdoljak, *supra* note 163, at 283-84)

private contractors to report or punish employees engaged in such conduct.”<sup>165</sup> Children are also an especially vulnerable group subject to abuses by PMCs. For example, in 2004, a group of U.S. PMC contractors and U.S. Marines “committed acts of sexual violence against three minors and widely distributed videos of the abuse among the local population.”<sup>166</sup> No official investigation was conducted because both U.S. military personnel and U.S. PMC contractors enjoyed an immunity agreement between Colombia and the U.S.<sup>167</sup> In the infamous Nisour Square incident in Iraq, one child was killed and several others were injured when a grenade impacted a nearby school.<sup>168</sup> Although five contractors were indicted in U.S. domestic court, the charges were later dismissed on the grounds of a violation of “the rights of the defendants.”<sup>169</sup>

These instances have become so rampant that the United Nations compiled a report in 2019 titled, *Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*.<sup>170</sup> The report found that PMCs (specifically ones operating in a maritime capacity to repel pirates) commit various human rights abuses and that this situation is exacerbated by a lack of monitoring and oversight.<sup>171</sup> Some of the recorded human rights violations include the use of force and weapons, deprivation of liberty, and torture and other cruel, inhumane or degrading treatment.<sup>172</sup> More recently in the Russia-Ukraine conflict, Russian PMC “Wagner” has been accused of killing fifty-three Ukrainian war prisoners, in addition to being allegedly responsible for the bodies of over 1,000 Ukrainian

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<sup>165</sup> Karska, *supra* note 163.

<sup>166</sup> *Id.* at 758-59 (quoting CHRISTINE BAKKER & SUSANNA GREIJER, *Children’s Rights: The Potential Impact of Private Military and Security Companies*, in WAR BY CONTRACT: HUMAN RIGHTS, HUMANITARIAN LAW, AND PRIVATE CONTRACTORS 265 (2011)).

<sup>167</sup> *See Id.*

<sup>168</sup> *Id.* at 759 (quoting BAKKER & GREIJER, *supra* note 166).

<sup>169</sup> *Id.*

<sup>170</sup> *Special Rapporteur on Use of Mercenaries as a Means of Impeding the Exercise of the Right of Peoples to Self-Determination*, U.N. COMM. ON HUM. RTS., <https://www.ohchr.org/en/special-procedures/wg-mercenaries/special-rapporteur-use-mercenaries-means-impeding-exercise-right-peoples-self-determination> [<https://perma.cc/V6SW-5PLS>] (last visited Feb. 19, 2024).

<sup>171</sup> *See* U.N. Secretary-General, *Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, U.N.Doc. A/74/244 (July 29, 2019).

<sup>172</sup> *Id.*

civilians in the Kyiv region during Russia's invasion.<sup>173</sup> An additional joint report conducted by the Center for Civilians in Conflict and the Geneva Centre for Security Sector Governance found that PMCs pose various threats to civilian populations including: “[c]ivilians caught in the line of fire, whether from on the ground operations or air strikes, especially when in urban settings[;] [s]exual exploitation and abuse[;] . . . [d]isplacement of populations as an indirect result of fear[;] [d]estructions of buildings, electric grids, water supplies and other primary services[;]” and various other grievous acts.<sup>174</sup>

### C. *Effect on Conflict Duration and Severity*

The use of PMCs in armed conflict also has an impact on both the duration and severity of armed conflict. The potency of these effects varies depending on the type of conflict and type of hiring state actor. Research suggests that in both local armed conflict and civil wars, PMCs increase both the rate and severity of armed conflict.<sup>175</sup> This is likely because a state tends to hire a PMC after their own forces have proven incapable of standing up to rebel forces.<sup>176</sup> In these types of situations, it is even easier for a PMC to exploit the host state and prolong conflict because they have essentially taken over as the host state's official military.

Additionally, these effects are even more detrimental in developing countries and when there are natural resources present. Conversely, when PMCs are hired by a “superpower” (like the U.S.

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<sup>173</sup> Aleksandra Klitina, *Worse Than Nazis – PMC Wagner's Role in Ukraine*, KYIV POST, (Aug. 2, 2022, 10:40 AM), <https://www.kyivpost.com/post/1971> [<https://perma.cc/CVM5-G4Z3>].

<sup>174</sup> CENTER FOR CIVILIANS IN CONFLICT & GENEVA CTR. FOR SEC. SECTOR GOVERNANCE, *THE GROWING USE OF PRIVATE MILITARY AND SECURITY COMPANIES IN CONFLICT SETTINGS: HOW TO REDUCE THREATS TO CIVILIANS?* 4 (2022), [https://www.dcaf.ch/sites/default/files/publications/documents/CIVIC\\_Workshop\\_EN\\_July2022.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/CIVIC_Workshop_EN_July2022.pdf) [<https://perma.cc/T6VJ-KTYZ>].

<sup>175</sup> See Ulrich Pertersohn, *Private Military and Security Companies (PMSCs), Military Effectiveness, and Conflict Severity in Weak States, 1990-2007*, 61 J. OF CONFLICT RESOL. 1046 (2017) (discussing how PMCs increased military effectiveness translates into increased conflict severity).

<sup>176</sup> See PAUL R. OLANDER, *PRIVATE MILITARY AND SECURITY CORPORATIONS IN CIVIL CONFLICTS* vii (May 2021) (Ph.D. dissertation, Loyola University Chicago), [https://ecommons.luc.edu/cgi/viewcontent.cgi?article=4941&context=luc\\_diss](https://ecommons.luc.edu/cgi/viewcontent.cgi?article=4941&context=luc_diss) [<https://perma.cc/J9ET-C8YR>].



or Russia) there seems to be an effect on the duration of an armed conflict. Specifically, the use of PMCs by superpowers tends to extend the *duration* of an armed conflict.

Research has shown that PMCs do in fact increase conflict severity for a variety of reasons.<sup>177</sup> One of these reasons can include an escalation strategy by the hiring state in order to “regain territory from rebels.”<sup>178</sup> Another reason is that PMCs are usually hired to fill in operational gaps or free up conventional forces to further engage in offensive efforts. In both of these instances, conflict severity was shown to increase “substantially.”<sup>179</sup>

When looking at civil wars specifically in Africa, research has shown that the behavior and ultimate effect of PMCs on armed conflict is based on an “opportunity structure.”<sup>180</sup> Conversely, when there is a lack of competition, PMCs are more likely to underperform in order to extend conflicts and thereby maximize their profit.<sup>181</sup> Interestingly, when natural resources are present (and PMCs have an arrangement to extract said natural resources) PMCs are motivated to put an end to the conflict because resource extraction has been shown to generate more wealth during times of peace.<sup>182</sup>

For an excellent example of a superpower using a PMC to increase the *duration* of armed conflict, there is no need to look further than the Russia-Ukraine conflict that began in 2022. Vladimir Putin has had a difficult time assembling the man-power necessary to engage in a multi-year ground conflict. In the beginning of 2022, Putin began the process of conscripting citizens for the purpose of a “special military operation” not related to the

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<sup>177</sup> See generally Nicholas Lees & Ulrich Petersohn, *To Escalate, or Not to Escalate? Private Military and Security Companies and Conflict Severity*, 46 *STUD. CONFLICT & TERRORISM* 2622 (2021), <https://doi.org/10.1080/1057610X.2021.1935700> [<https://perma.cc/86S7-25NR>].

<sup>178</sup> *Id.* at 2622

<sup>179</sup> *Id.*

<sup>180</sup> See generally Seden Akcinaroglu & Elizabeth Radziszewski, *Private Military Companies, Opportunities, and Termination of Civil Wars in Africa*, 57 *J. CONFLICT RESOL.* 795, 795 <https://doi.org/10.1177/0022002712449325> [<https://perma.cc/5LYL-XBZG>].

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 804.

invasion of Ukraine.<sup>183</sup> However, just a day later, the Russian “Ministry of Defense . . . confirmed that Russian . . . conscripts” were not only “involve[ed] in the invasion of Ukraine,” but also “that some were taken prisoner.”<sup>184</sup> Despite the shortfalls of its own military prowess, Wagner PMC has been heavily involved in the 2022 Ukraine invasion, including “capturing territory that other mercenary groups (and even the army) couldn’t.”<sup>185</sup> This heavy reliance has not come without consequences. Between deploying thousands of soldiers abroad and holding a section on the Ukraine front (accompanied by extensive Wagner casualties), their numbers are being stretched thin.<sup>186</sup> The current armed forces for Wagner in Ukraine now consist of disgraced Russian generals and recruits from Russian gulags.<sup>187</sup>

## V. PROPOSED SOLUTIONS

When thinking about possible solutions (and consequences) for PMC misconduct, it is important to remember that difficulties exist in multiple areas, including: “outdated or obsolete” laws (looking at you Pinkerton); “generic licensing, registration and contracting requirements, inadequate oversight and accountability of PMSC activities; [and] ineffective or non-existent grievance mechanisms

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<sup>183</sup> Sarah Dean & Rob Picheta, *Russia Admits Conscripts Have Been Fighting in Ukraine, Despite Putin’s Previous Denials*, CNN (Mar. 9, 2022, 7:27 PM), <https://www.cnn.com/2022/03/09/europe/russia-conscripts-fighting-ukraine-intl/index.html> [<https://perma.cc/B8SJ-BHCM>].

<sup>184</sup> *Id.*

<sup>185</sup> Christopher Faulkner & Marcel Plichta, *Win, Lose, or Draw, the Wagner Group Benefits From the War in Ukraine*, LAWFARE (Oct. 23, 2022, 10:01 AM), <https://www.lawfaremedia.org/article/win-lose-or-draw-wagner-group-benefits-war-ukraine> [<https://perma.cc/6UKU-RSXA>].

<sup>186</sup> Thomas Gibbons-Neff & Natalia Yermak, *Two Cities, Two Armies: Pivot Points in the Fight in Ukraine’s East*, N.Y. TIMES (Sept. 26, 2022), <https://www.nytimes.com/2022/09/26/world/europe/ukraine-donbas-russia-lyman-bakhmut.html> [<https://perma.cc/8H74-J4PC>].

<sup>187</sup> Olga Romanova, *No Sitting This One Out. Head of Russia Behind Bars on the Military Recruitment of Inmates*, THE INSIDER (Sept. 10, 2022), <https://theins.ru/en/opinion/olga-romanova/254906> [<https://perma.cc/M5J3-FYLV>].

for victims of human rights abuses.”<sup>188</sup> Additionally, when thinking about regulation solutions, it is paramount to consider solutions in both an international and domestic context.

Internationally, there are numerous methods that could be utilized to address some of the issues that PMCs present. The Geneva Centre for Security Sector Governance offered the following solution:

develop specific measures to support the efforts and build the capacities of monitoring agencies, local CSOs, INGOs, and other organizations who have the mandate or otherwise are in a position to monitor incidents of civilian harm happening in areas where PMSCs are operating, including financial and political support, as well as supporting the development of enhanced training, and reinforced security and data protection protocols.<sup>189</sup>

Another solution offered by the Geneva Centre includes supporting “the establishment of and sufficient funding for local actors including National Human Rights Institutions, so they can conduct and support investigations.”<sup>190</sup> Both of these recommendations focus on monitoring and exposing misconduct by PMCs and their contractors, but they do not address the administration of consequences for these actors. The issue of consequences may be better addressed by domestic laws of the country where the PMC is based/headquartered. It is also important that, in addition to condemning PMC conduct, implemented legal solutions promote reputable PMC activities.

With the U.S. being both the largest exporter and contractor of PMCs, it could be inferred that the U.S. especially should implement domestic law to hold PMCs accountable for violations of the International Law of Armed Conflict. This accountability can be achieved in a variety of ways including “domestic legal reforms modeled after the Foreign Corrupt Practices Act (FCPA) and

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<sup>188</sup> CENTER FOR CIVILIANS IN CONFLICT & GENEVA CTR FOR SEC. SECTOR GOVERNANCE, *supra* note 174, at 6 (citing *Legislative Guidance Tool for States to Regulate Private Military and Security Companies*, GENEVA CTR. FOR SEC. SECTOR GOVERNANCE (2016), [https://www.dcaf.ch/sites/default/files/publications/documents/Legislative-Guidance-Tool-EN\\_1.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/Legislative-Guidance-Tool-EN_1.pdf) [<https://perma.cc/HPZ4-7XNB>]).

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

International Traffic in Arms Regulations (ITAR).”<sup>191</sup> These reforms would further promote “compliance with the ICoC and ensure the [ICoC] Association is able to serve its [oversight] function.”<sup>192</sup> Oversight legislation modeled after the FCPA is important because the legislation would work extraterritorial, meaning that the law would apply to “all U.S. citizens, nationals, and residents, all U.S. companies, and all foreign companies . . . regardless of the location of the illegal act.”<sup>193</sup>

Similar to the FCPA, the Department of Justice would be authorized to pursue both civil and criminal enforcement for violations of the law of armed conflict. While this solution would not apply to foreign PMCs it would establish a foundation for the largest PMCs to ensure compliance with the international laws of armed conflict. Additionally, the ITAR’s provides that Americans are prohibited from training foreign militaries without the approval of the State Department.<sup>194</sup> However, this restriction has rarely been enforced due to understaffing at the Directorate of Defense Trade Controls who is responsible for monitoring these offenses.<sup>195</sup> Both of these solutions would assist with the oversight of PMCs and enforcement of consequences through the Department of Justice.

Looking forward, effectively addressing the dangers posed by PMCs will require a comprehensive and collaborative approach that involves both domestic U.S. law and international law. Not only should the legal framework regulate the activities of PMCs, it should also ensure avenues of accountability for human rights violations. The most effective approach, albeit the most difficult, would be the development of an international treaty, modeled after the Montreux Document that would establish a binding legal framework for not only the state that is contracting the PMC, but the exporting state as well. This international treaty would require states to ensure that PMC operations are in compliance with International Humanitarian Law and provide mechanisms to hold both the state and the PMC accountable for any violations.

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<sup>191</sup> See Reema Shah, Comment, *Beating Blackwater: Using Domestic Legislation to Enforce the International Code of Conduct for Private Military Companies*, 123 YALE L. J. 2559, 2560 (2014).

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* at 2568.

<sup>194</sup> See International Traffic in Arms Regulations, 22 C.F.R. §§ 120.1, 120.2 (2022).

<sup>195</sup> Shah, *supra* note 191, at 2570.

States can contribute to enhanced transparency and oversights by implementing extensive licensing and registration processes for PMCs, requiring them to disclose their ownership, operations, and personnel. For further transparency, governments should disclose their contracts with PMCs to assist the public's awareness of the nature and scope of the PMC activity. Further, states can implement laws that explicitly prohibit immunity for PMC contractors who engage in human rights abuses. Last but not least, states can implement legal mechanisms for civil liability actions against PMCs for victims of human rights abuses to obtain justice.

### CONCLUSION

In summary, the use of PMCs in contemporary armed conflicts has raised, and will continue to raise, a multitude of concerns regarding their impact on conflict dynamics, human rights violations, and the broader privatization of armed forces. As elucidated in this Comment, PMCs have been implicated in the exacerbation and prolonging of conflicts through their involvement in a range of activities that extend beyond their "official" roles. Their engagement in covert operations, disregard for international humanitarian law, and profit-driven motives often result in dire consequences for both conflict-affected populations and the overall stability of regions engulfed in strife.

Most notably, PMCs have been, in numerous instances, complicit in gross human rights violations, undermining the very principles that underpin international law. Their actions, which may include indiscriminate violence, torture, and extrajudicial killings, not only inflict immediate harm but also perpetuate cycles of violence, vengeance, and radicalization. The persistence of such violations not only leaves a trail of victims and shattered communities but also sows seeds of mistrust and deep-seated grievances, making prospects for peace and reconciliation increasingly elusive.

Moreover, the profit-driven nature of PMCs introduces a disconcerting incentive structure that can perpetuate conflict. In their quest for financial gain, these entities may actively seek to prolong conflicts because prolonged conflicts mean sustained contracts and increased profits. This creates a moral hazard, where

the interests of these companies do not align with the objectives of conflict resolution and peacebuilding. Consequently, PMCs may inadvertently contribute to a vicious cycle in which conflict becomes a lucrative business, hindering diplomatic and political solutions.

In addition to their detrimental impact on conflict dynamics, the privatization of armed forces and violence via PMCs raises profound societal concerns. The outsourcing of military and security functions to private entities can erode state accountability and oversight, blurring the lines of responsibility and potentially shielding wrongdoers from justice. The lack of transparency in PMC operations and the potential for conflicts of interest in their contractual relationships with governments pose a threat to democratic governance and the rule of law.

Furthermore, the use of PMCs by private individuals or non-state actors introduces a concerning dimension to the privatization of violence. The availability of military-grade capabilities to private individuals and groups challenges the monopolization of force by the state and can lead to increased insecurity, lawlessness, and conflicts of interest. It also undermines state sovereignty and can hinder international efforts to promote peace and security.