



The Impact of PMSCs on Contemporary Armed Conflicts:

*Where do they fit and which legal framework
applies to them?*

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Legal Framework Applicable to PMSCs in Contemporary Armed Conflicts

PMSC –

“Private business entities that provide military and/or security services, irrespective of how they describe themselves.”

- Montreux Document



Legal Framework

Hard law

Int'l Humanitarian Law (*lex specialis*)

Int'l Human Rights Law (*lex generalis*)

1989 Mercenary Convention

Law of State Responsibility

Soft Law

Montreux Document – 2008

Swiss gov't/ICRC initiative

Legal obligations & best practices

2019 - 56 States & EU, OSCE, NATO

Int'l Code of Conduct for Private Security Service Providers – 2010

Swiss gov't initiative

Personnel & Management/Governance

2019 - 7 Gov't, 87 PSC, 32 Orgs

U.N. Draft Conv. on PMSCs – 2010

HRC OEWG on Mercenaries

Mandate continues into 2020



Legal Framework

Applicable Legal Regime in Armed Conflict

- Is there an armed conflict, and, if so, what kind?
- Who are the parties?
 - States
 - Organized Armed Groups/Non-State Actors
- What is the PMSC's relationship to the parties to the conflict?



Legal Framework

IHL and PMSCs

- **Status in Armed Conflict:**

1. Combatants
2. Civilian

- **Targeting in Armed Conflict:**

1. Armed Forces
2. Organized Armed Groups
 - All members or CCF?
3. Civilians directly participating in hostilities



Legal Framework

Mercenaries and PMSCs

- **AP I, Art. 47**
 - Defines mercenaries in the context of an IAC
 - Requires individual take a direct part in hostilities to qualify as a mercenary
 - Permits states to deny POW status and/or combatant immunity
- **1989 Int'l Convention Against the Recruitment, Use, Financing, & Training of Mercenaries**
 - 36 states party, incl. Libya (2000), Syria (2008), Venezuela (2013)
 - Applicable in armed conflict and peacetime
 - Individual mercenary who participates directly in hostilities or commits a concerted act of violence commits an offense under the convention
 - State are obligated to make mercenarism “punishable by appropriate penalties”
 - States are prohibited from recruiting, using, financing, or training mercenaries



Legal Framework

Mercenaries and PMSCs

Mercenary:

- a. Specially recruited ...to fight in an armed conflict;
- b. Motivated to take part in the hostilities by...desire for private gain and... is promised, by... material compensation substantially in excess of...combatants... in the armed forces;
- c. Neither a national of a party to the conflict nor a resident of territory;
- d. Not a member of the armed forces of a party to the conflict;
- e. Not sent on official duty by a State not a party to the conflict.



Legal Framework

Law of State Responsibility and PMSCs

- 2001 Draft Articles reflect ILC's restatement of customary law and the progressive development of the law
- Internationally Wrongful Act (IWA) = Breach + Attribution
 - Breach
 - Action or omission
 - Attribution:
 - Article 4 – *de jure* or *de facto* organs of the State
 - Article 5 – Empowered by law of the State to exercise elements of Gov't Authority (use of force; detention)
 - Article 8 – Instructions, Directions or Control



Case Study: Wagner Group in Syria

Wagner Group

- **Origins**
 - Incorporated in Argentina; Offices in Russia and Hong Kong
- **Administration**
 - Training
 - Arms, Logistics, and Transport
 - Compensation, Medical Treatment, Death Gratuity
- **Composition**
 - Former soldiers, primarily Russian, but also Ukrainian and Serbian
 - Command structure and organization similar to Russian forces
- **Operations**
 - Ukraine
 - Syria
 - Sudan, Libya, Congo, Venezuela



Case Study: Wagner Group in Syria

Significant Events

- **Sept. 2015:** Russian forces arrive in Syria
- **Oct. 2015:** Group arrives in Syria under contract to guard infrastructure, including Syrian & Russian military bases
- **Mar. 2016:** Group leads the offensive to retake Palmyra
- **Feb. 2018:** Group attacks U.S. forces in Deir-ez Zour; approx. 200 members KIA



Case Study: Wagner Group in Syria

Application of IHL to Wagner Group

- **Status:**
 - Civilians
- **Targeting:**
 - Organized Armed Group (for targeting purposes only)
 - ✓ Guarding military objectives (e.g. Russian/Syrian military bases)
 - ✓ Offensive operations to retake Palmyra
 - ✓ Attack on oil refinery in Deir-ez Zour
 - Reporting suggests all members in Syria have a CCF



Case Study: Wagner Group in Syria

Applicability of Mercenary Convention to Wagner Group

- Russia is not a party to the Mercenary Convention; Syria acceded in 2008
- Individual members of the Group qualifying as mercenaries?
 - Specially recruited ...to fight in an armed conflict;
 - Motivated to fight for private gain & promised monies substantially in excess of Syrian forces;
 - Not a Syrian or Russian national, nor a resident of territory controlled by a party to the conflict;
 - Not a member of Syrian or Russian forces
 - Not sent on official duty by State this is not involved in NIAC
- Russian citizens are nationals of a party to the conflict
- Ukrainian and Serbian nationals may qualify



Case Study: Wagner Group in Syria

Law of State Responsibility and Wagner Group

- Article 4
 - *de jure* or *de facto*
- Article 5
 - Empowered by law to exercise elements of gov't authority
- Article 8
 - Instructions, directions, or control

Russia

- Article 4 – No
- Article 5 – No
- Article 8 – No

Russian State is not responsible

Syria

- Article 4 – No
- Article 5 – Yes
- Article 8 – No

Syrian State is responsible for some, not all



Questions?