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
Mercenaries and PMSCs

- **AP I, Art. 47**
  - Defines mercenaries in the context of an IAC
  - Requires individual to 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**
  - 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
  - States 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

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**Russian State is not responsible**

**Syrian State is responsible for some, not all**
Questions?