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



Hard law

Int'l Humanitarian Law (*lex specialis*)

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

1989 Mercenary Convention

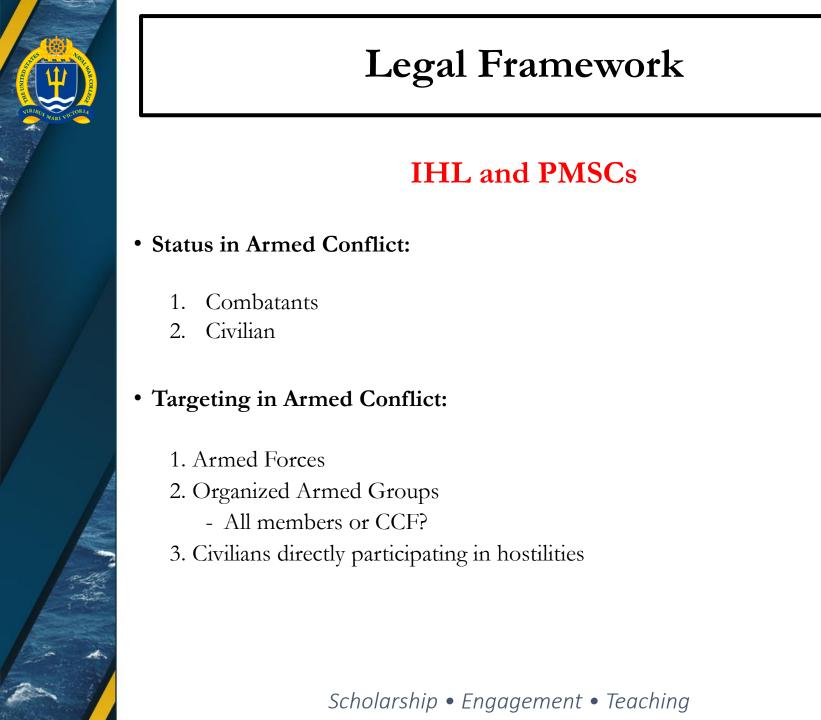
Law of State Responsibility

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

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?



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

Mercenaries and PMSCs

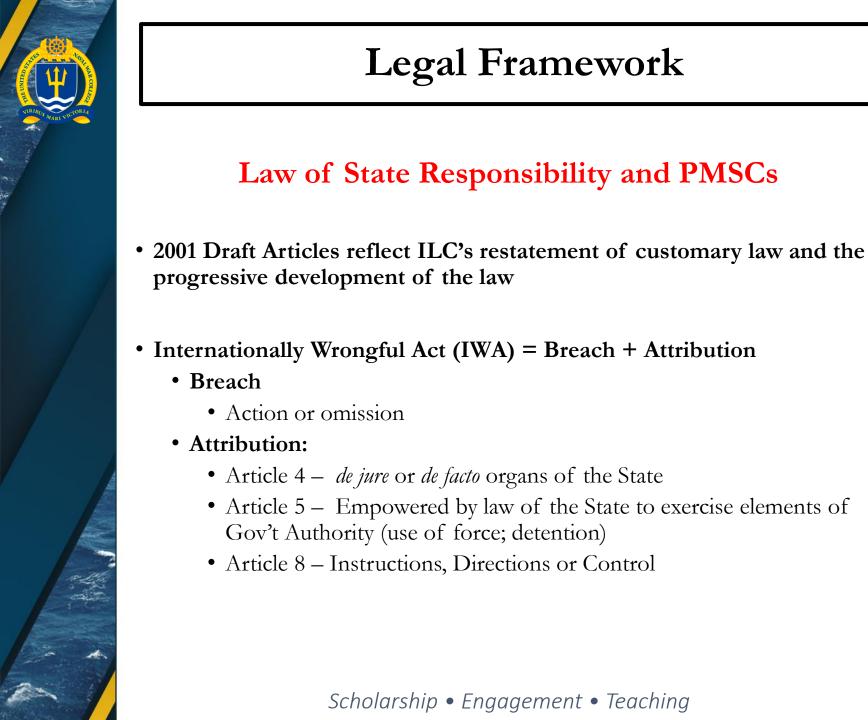
Mercenary:

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. *Scholarship* • *Engagement* • *Teaching*



THERE A ARE NUCLOBED

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



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



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



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



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	Syria
 Article 4 – No Article 5 – No Article 8 – No 	 Article 4 – No Article 5 – Yes Article 8 – No
Russian State is not responsible	Syrian State is responsible for some, not all

Questions?