

HASALMUN'25



DISEC

STUDY GUIDE

Under-Secretary General: Emir Esad Temiz

"Youth will shape the world"

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1. Letter from the Secretary-General

Dear Delegates of the DISEC committee,

It is my utmost pleasure and honour to welcome each and every one of you to the 12th annual session of HASALMUN and specifically to the DISEC committee. I am proud to say, on behalf of our whole academic and organisation team, that every detail of this conference was devised with careful dedication and sincere enthusiasm so as to provide all of you with pleasant and unforgettable memories.

MUN is not just about building connections, the value of it goes much deeper; MUN is about bonding over world issues. It is about realising how all human beings are bound by different problems and understanding that the world is waiting for courageous, intellectual, kind-hearted leaders and individuals to heal the broken hearts, and rebuild the shadowed dreams.

HASALMUN has, since its day of foundation, been a stage where everyone is provided with the opportunity to express, debate, and negotiate. Every delegate is received with the greatest amount of excitement, happiness and pride; because, as young individuals ourselves, we know the importance of being recognized as worthy individuals. I assure you that HASALMUN'25 will be a place for growth, in every possible context.

This year, the GA-1: DISEC committee will be tackling an issue that requires great technical knowledge, a versatile approach, deep thought processes and heated debates. Luckily, our irreplaceable Under-Secretary General **Mr. Emir Esat Temiz** has prepared this amazing study guide with invaluable efforts in order to ensure that all delegates receive every piece of information they need from this document alone. I thank him for being the greatest in his job and his marvellous commitments to the conference. Moreover, I also want to thank our academic trainee **Ms. İdil İskender** for her contributions to the study guide.

Last, but definitely not the least, I want to thank you delegates for making this conference truly meaningful. Without your words and actions, HASALMUN would not be what it is today. Thank you to all the youthful minds for adding value into this conference and the world we live in. Youth will shape the world!

Best wishes & Yours sincerely,

Öykü Tekman

Secretary-General of HASALMUN'25

2. Letter from the Under-Secretary General

Most Esteemed Delegates,

It is a distinct honour to welcome you to HASALMUN 2025 as the Under-Secretary-General of the Disarmament and International Security Committee (DISEC). Your enthusiasm for diplomacy, your curiosity for global affairs, and your commitment to collective problem-solving are what make this platform truly meaningful. I am thrilled to accompany you on this journey of negotiation, cooperation, and intellectual growth.

Allow me to introduce myself. My name is Emir Esat Temiz, and by the time this conference takes place, I will be a third-year law student at Boğaziçi University. I had the privilege of participating in the 32nd Willem C. Vis International Commercial Arbitration Moot as an oralist, an experience that has significantly shaped my understanding of international legal systems and advocacy. Since 2018, Model United Nations has been a formative part of my academic and personal life, offering me insight into the challenges and responsibilities of global citizenship.

I am especially grateful to my dear friend **Mr. Emir Elhatip**, whose kind invitation to take part in HASALMUN 2025 I accepted with genuine passion. I would also like to extend my sincere thanks to **Ms. Öykü Tekman**, our Secretary-General, for her vision, leadership, and tireless effort in organizing this conference. Their trust and support are deeply appreciated.

This year, DISEC will engage with a matter of growing urgency: *Determining the Roles of Private Military and Security Companies (PMSCs) in International and National Armament*. As PMSCs increasingly shape the dynamics of warfare and global security, it is our responsibility to critically examine their legitimacy, regulation, and strategic impact within the framework of international law. I invite you to approach this agenda with nuance, empathy, and rigor.

Together, let us make HASALMUN 2025 a space for mutual learning, informed debate, and bold yet respectful diplomacy. I eagerly look forward to witnessing your contributions and working alongside each of you.

Warm regards,

Emir Esat Temiz (Under-Secretary General for DISEC–HASALMUN 2025)

LIST OF ABBREVIATIONS

AECOM

AMISOM

ARSIWA

AU

CENTCOM

CoE

CPA

DCAF

DISEC

EO

EU

GNS

GNU

HAF

ICoC

ICoCA

ICRC

IHL

ILC

IMO

LOGCAP

MEJA

MPRI

NAM

NATO

NGO

OAU

OECD

REFERENCE

An American multinational infrastructure consulting firm

African Union Mission in Somalia

Articles on the Responsibility of States for Internationally Wrongful Acts

African Union

The United States Central Command

Council of Europe

Coalition Provisional Authority

Geneva Centre for Security Sector Governance

The Disarmament and International Security Committee

Executive Outcomes

European Union

Government of National Stability

Government of National Unity

Haftar Affiliated Forces

International Code of Conduct for Private Security Service Providers

International Code of Conduct Association

International Committee of the Red Cross

International Humanitarian Law

International Law Commission

International Maritime Organization

Logistics Civil Augmentation Program

Military Extraterritorial Jurisdiction Act (2006)

Military Professional Resources Inc.

Non-Aligned Movement

North Atlantic Treaty Organization

Non-governmental organization

Organization of African Unity

The Organisation for Economic Co-operation and Development

LIST OF ABBREVIATIONS

PAE

PMC

PMPF

PMSC

SSA

UAS

UCMJ

UK

UN

UNCLOS

UNGA

UNSC

US

REFERENCE

Pacific Architects and Engineers

Private military company

Puntland Maritime Police Force

Private Military and Security company

Stability Support Apparatus

Uncrewed aerial systems

Uniform Code of Military Justice

United Kingdom of Great Britain

United Nations

United Nations Convention on the Law of the
Seas

United Nations General Assembly

United Nations Security Council

United States of America



3. Introduction to the Committee - DISEC

The Disarmament and International Security Committee (DISEC), officially recognised as the First Committee of the United Nations General Assembly, is one of six principal committees of the UNGA. It is tasked with addressing matters related to international peace and security, with a specific focus on disarmament, global arms regulation, and the threats posed by both conventional and unconventional weapons. DISEC provides a deliberative platform in which all 193 UN member states are entitled to participate equally, reflecting the UN's foundational commitment to sovereign equality and multilateral diplomacy.¹

DISEC plays a crucial role in the formulation of international norms and political instruments pertaining to disarmament. Though its resolutions are not legally binding, they carry considerable political weight and often serve as the foundation for subsequent negotiations of treaties and confidence-building measures. DISEC has historically considered a wide spectrum of disarmament-related issues, including nuclear non-proliferation, chemical and biological weapons, the militarisation of outer space, cyber warfare, and conventional arms transfers.²

In recent decades, DISEC has evolved to meet emerging global security challenges, including the proliferation of non-state actors, arms trafficking networks, and the increasing role of private actors in the field of international security. The involvement of private military and security companies (PMSCs) in armed conflicts has emerged as one of the committee's contemporary concerns, particularly regarding the implications for international humanitarian law, state sovereignty, and the regulation of force. In this regard, DISEC functions not only as a forum for norm development but also as a mechanism through which states can coordinate efforts to maintain peace and prevent the misuse of force beyond state control.³

¹Wikipedia, 'United Nations General Assembly First Committee'

https://en.wikipedia.org/wiki/United_Nations_General_Assembly_First_Committee

² United Nations Office for Disarmament Affairs, 'General Assembly First Committee' (UNODA)

<https://www.un.org/disarmament/institutions/ga-first-committee/>

³Franz Kernic, 'Privatising Security: Law, Practice and Governance of Private Military and Security Companies' (2010) 15(1) Journal of Conflict and Security Law 143, 144–147

Through its work, DISEC reinforces the UN's foundational goals of preventing war and fostering disarmament. It provides critical recommendations to the Security Council and cooperates with other UN bodies such as the UN Disarmament Commission and the Conference on Disarmament. In this way, DISEC serves as a vital pillar of the UN system in ensuring collective action in response to evolving threats to international peace and security.⁴

3.1 Mandate and relevance in arms control and military ethics

The DISEC holds a unique mandate within the United Nations system. As the First Committee of the General Assembly, it is tasked with addressing matters related to international peace and security, particularly the regulation, limitation, and eventual elimination of armaments. While DISEC does not wield legislative authority in the form of binding resolutions, it plays a pivotal role in shaping global discourse on arms control, disarmament ethics, and emerging threats to international stability.

Its relevance to military ethics is underpinned by the growing international scrutiny over the privatisation of security and the involvement of non-state actors—especially PMSCs—in theatres of war. PMSCs, while often presented as cost-effective alternatives to national militaries, challenge the foundational ethical assumptions of just war theory and state responsibility. Their existence and use call into question who may legitimately use force, for what reasons, and under what regulation. These are questions DISEC is particularly well-positioned to address.

Sarah Percy's work on the evolution of norms against mercenary use illustrates the moral weight states continue to attach to the question of military legitimacy. She identifies two crucial elements that differentiate mercenaries from regular soldiers: a lack of legitimate control and the absence of motivation by an appropriate cause.⁵ Mercenaries—and by extension, many PMSCs—fall outside the ethical boundaries traditionally established by the *jus ad bellum* and *jus in bello* frameworks. The historical preference for citizen armies over mercenaries was not merely functional but deeply normative: it signalled a belief that warfare should be conducted by those with a legitimate stake in the political community.⁶

⁴ UNODA (n 2).

⁵ Sarah Percy, 'The Definition of a Mercenary and the Definition of the Proscriptive Norm' in *Mercenaries: The History of a Norm in International Relations* (OUP 2007) 49–67.

⁶ Sarah Percy, 'How Citizens Became the Standard' in *Mercenaries* (n 1) 121–166.

James Pattison expands on this by arguing that there ought to be a global public monopoly on the provision of military force.⁷ He contends that the outsourcing of war erodes democratic oversight, reduces transparency, and undermines moral responsibility. In his view, the decision to privatise military functions shifts the moral calculus of war from questions of right authority and just cause to cost-efficiency and market availability.⁸ Pattison warns that PMSCs may not only act in ways that contravene international humanitarian law but also contribute to what he calls “normative drift,” wherein the rules of war slowly degrade due to unchecked and unaccountable actors.⁹

DISEC’s continued engagement with these ethical questions is crucial. By convening states to debate the use and regulation of private force, the committee helps sustain a global dialogue on the limits of acceptable military conduct. Its relevance lies not in enforcement but in norm-setting: DISEC fosters international consensus around the values that should govern the use of force in the 21st century, particularly when that force is wielded by corporate actors rather than states.

3.2 Role in promoting international peace and disarmament

DISEC’s central role within the UN disarmament machinery is to promote peace by encouraging the progressive reduction of arms, improving transparency in weapons transfers, and addressing the security implications of emerging military technologies. Its contribution to international peace and disarmament is twofold: first, it provides a universal platform where all UN member states can engage in dialogue on global security concerns; second, it advances international norm-building, creating the moral and political groundwork for multilateral treaties and frameworks.

The committee’s resolutions have addressed a broad range of topics, including nuclear non-proliferation, regulation of conventional weapons, transparency in military budgets, and the security implications of cyber warfare.¹⁰ More recently, DISEC has begun to explore the implications of private military actors in conflict zones. The participation of PMSCs in active combat, peacekeeping operations, and post-conflict reconstruction missions challenges both

⁷ James Pattison, *The Morality of Private War: The Challenge of Private Military and Security Companies* (OUP 2014) 197–200.

⁸ Ibid 205–210.

⁹ Ibid 213–219.

¹⁰ United Nations Office for Disarmament Affairs, ‘General Assembly First Committee (Disarmament and International Security)’ <https://www.un.org/disarmament/institutions/ga-first-committee/> accessed 21 May 2025.

the ethical foundations of military deployment and the legal standards established under international humanitarian law.¹¹

The UN's use of PMSCs in logistical and security roles has often been controversial. Reports suggest that while PMSCs have occasionally contributed to operational efficiency in peacekeeping missions, their involvement also raises concerns about accountability, jurisdiction, and compliance with international legal norms.¹² The blurring of lines between public and private security provision can lead to situations where violations go unpunished and victims are left without recourse. In this context, DISEC serves as a forum where states can call for international guidelines, promote ratification of soft-law instruments like the Montreux Document, and advocate for transparent contracting mechanisms.

Burak Güneş notes that DISEC is uniquely suited to examine the ethical dimensions of force within the broader structure of just war theory.¹³ By fostering consensus on disarmament, DISEC helps build the ethical scaffolding necessary for global peace: a system in which the use of force is justified only under transparent, lawful, and publicly accountable conditions. The promotion of disarmament thus becomes not only a political goal but an ethical imperative—one rooted in the prevention of suffering, the promotion of global justice, and the reaffirmation of the UN Charter's principles.

¹¹ Jonathan Crowe and Anna John, 'The Status of Private Military Security Companies in United Nations Peacekeeping Operations under the International Law of Armed Conflict' (2017) 18 *Melbourne Journal of International Law* 1.

¹² Ibid.

¹³ Burak Güneş, 'Orta Doğu'da Devlet Dışı Aktör Olarak Özel Askeri ve Güvenlik Şirketleri' (2020) 13(2) *Uluslararası Güvenlik Akademisi Dergisi* 543, 548–550.

4. Introduction to the Agenda Item

The emergence and expansion of Private Military and Security Companies marks a profound shift in the conduct and structure of modern warfare. The agenda item—“Determining the Roles of Private Military and Security Companies (PMSCs) in International and National Armament”—invites member states to consider the implications of privatised military force for international peace, security, and state sovereignty. PMSCs now operate in a growing number of armed conflicts, post-conflict reconstruction zones, and even United Nations peacekeeping missions, raising urgent legal and ethical questions regarding their use of force, regulation, and legitimacy.

4.1 What are PMSCs?

PMSCs are defined broadly as private business entities that provide military and/or security services. These services include armed guarding, intelligence gathering, military training, strategic consultancy, equipment maintenance, logistical support, and in some cases, direct involvement in combat operations.¹⁴

The academic literature offers several typologies to categorise these companies. Peter W. Singer’s ‘tip-of-the-spear’ model distinguishes between: (1) military provider firms, which engage in actual combat or tactical operations; (2) military consulting firms, which offer strategic advice and training; and (3) military support firms, which provide logistics, intelligence, and technical services.¹⁵ This categorisation is widely accepted but is not without criticism, as many companies function across multiple categories, blurring the lines between military and security services.¹⁶

Other scholars, such as Shearer, propose a five-part functional classification: (i) direct support to military operations, (ii) military advice and training, (iii) logistics, (iv) security services and political analysis, and (v) crime prevention.¹⁷ Given this diversity, the term

¹⁴ Crowne and John (n 11) 3-5.

¹⁵ Peter W Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Cornell University Press 2008) 91–97.

¹⁶ Pattison (n 7) 22-25.

¹⁷ David Shearer, ‘Private Armies and Military Intervention’ (1998) *Adelphi Paper* 316, International Institute for Strategic Studies 25.

“PMSC” is commonly adopted as an umbrella term that captures the multifunctional and transnational character of the industry.¹⁸

4.2 Why their role in armament and international security is significant

PMSCs have become prominent actors in both national and international security landscapes. Their clients include not only states but also international organisations, humanitarian agencies, and transnational corporations. Their operational presence spans conflict zones such as Iraq, Afghanistan, Somalia, Libya, and Syria.¹⁹

The appeal of PMSCs lies in their rapid deployability, specialised expertise, and perceived cost-efficiency. For states facing budget constraints or political reluctance to commit national troops, PMSCs offer a politically expedient solution.²⁰ However, their engagement in armed operations often takes place in loosely regulated environments, raising concerns over human rights abuses, accountability gaps, and the erosion of the state’s monopoly on violence. Notably, incidents such as the 2007 Nisour Square massacre in Iraq—perpetrated by Blackwater personnel—have drawn international condemnation and renewed scrutiny of the legal frameworks governing such actors.²¹

Additionally, PMSCs complicate the application of international humanitarian law. Their hybrid status—as neither state military nor traditional civilians—creates ambiguity in their classification under the Geneva Conventions.²² In peacekeeping operations, for instance, PMSC personnel may carry arms and engage in use-of-force scenarios, yet they often fall outside formal accountability structures. This undermines the legitimacy of peace operations and may lead to violations of the laws of war.²³

¹⁸ Pedro Barge Cunha, ‘Somalia as a Market for Private Military and Security Companies’ in *State and Societal Challenges in the Horn of Africa* (OpenEdition Books 2023) <https://books.openedition.org/cei/272> accessed 21 May 2025.

¹⁹ Güneş (n 13) 547-553.

²⁰ Deborah D Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge University Press 2005) 3–7.

²¹ Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (Nation Books 2007).

²² Lindsey Cameron and Vincent Chetail, *Privatizing War: Private Military and Security Companies under Public International Law* (Cambridge University Press 2013) 400–405.

²³ Crowne and John (n 11) 6-9.

4.3 Central questions of regulation, sovereignty, and legitimacy

The rise of PMSCs challenges traditional notions of sovereignty, particularly the idea—famously articulated by Max Weber—that the state possesses a monopoly on the legitimate use of force.²⁴ When coercive power is delegated to private actors, especially in weak or failing states, the authority and effectiveness of the state are diminished. This has been observed in contexts such as Somalia and Libya, where governments have relied heavily on PMSCs for regime security, effectively outsourcing core functions of statehood.²⁵

The problem is exacerbated by the fragmented nature of existing regulatory frameworks. The Montreux Document and the International Code of Conduct for Private Security Service Providers (ICoC) are important but non-binding instruments. Attempts to draft a binding international convention—such as the UN Working Group’s proposed “International Convention on PMSCs”—have encountered political resistance.²⁶

The legitimacy of PMSCs also remains contested. While their services may be necessary in some contexts, critics argue that they commodify violence, erode democratic oversight, and enable states or non-state actors to bypass legal and political constraints.²⁷ As James Pattison notes, the use of PMSCs introduces a “problem of private choice,” whereby contractors may refuse morally justified missions and accept morally questionable ones depending on financial incentives.²⁸

Given these complexities, the central questions DISEC must address include: How should the international community regulate PMSCs? What role, if any, should they play in national armament policies? And how can their operations be aligned with international legal and ethical standards?

²⁴ Max Weber, ‘Politics as a Vocation’ in H H Gerth and C Wright Mills (eds), *From Max Weber: Essays in Sociology* (Routledge 1970) 77–78.

²⁵ Güneş (n 13) 553–555.

²⁶ Pattison (n 7) 201–203.

²⁷ Anna Leander, ‘Eroding State Authority? Private Military Companies and the Legitimate Use of Force’ (2005) 35(4) *Journal of Peace Research* 803, 808.

²⁸ Pattison (n 7) 221–224.

5. Key Definitions and Legal Terminology

5.1 PMSC vs. mercenary (per ICRC criteria)

The distinction between Private Military and Security Companies (PMSCs) and mercenaries remains a contentious yet crucial point in international humanitarian law and the broader regulation of violence. Although both actors operate beyond the traditional framework of state-sanctioned military force, international legal instruments and scholarly literature suggest significant definitional and normative differences.

The most authoritative legal definition of a mercenary is found in Article 47 of Additional Protocol I to the Geneva Conventions (1977). This provision outlines six cumulative criteria that must be met for an individual to be classified as a mercenary: they must be specially recruited to fight in an armed conflict; take a direct part in hostilities; be motivated essentially by private gain; receive material compensation substantially in excess of that paid to comparable members of armed forces; not be a national or resident of a party to the conflict; and not be a member of any state's armed forces or acting on official duty for a state not party to the conflict. If any single criterion is not met, the person cannot be legally deemed a mercenary under the Geneva framework.²⁹

This narrow and complex definition has attracted criticism for rendering most individuals and corporate entities involved in conflict ineligible for classification as mercenaries. Scholars such as Sarah Percy argue that this restrictiveness dilutes the proscriptive force of the norm and makes enforcement nearly impossible.³⁰ Percy emphasises that the norm against mercenarism has evolved from practical battlefield exclusion to a symbolic legal boundary aimed at delineating legitimate and illegitimate combatants.³¹

By contrast, PMSCs, as outlined in the Montreux Document, are defined as "private business entities that provide military and/or security services, irrespective of how they

²⁹ Protocol Additional to the Geneva Conventions of 12 August 1949 (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (Additional Protocol I), art 47; see also International Committee of the Red Cross (ICRC), *Commentary on the Additional Protocols* (Martinus Nijhoff 1987) 573–580.

³⁰ Sarah Percy, 'The Mercenary and the Proscriptive Norm' (2007) 94(378) *International Affairs* 319, 327–328.

³¹ *Ibid* 329–332.

describe themselves."³² These services range from armed guarding and convoy protection to training of local forces and the operation of weapons systems. Crucially, PMSC employees do not automatically lose their legal protections unless they directly engage in hostilities in a manner that would classify them as mercenaries under Article 47.

Indeed, the Council of Europe's 2024 memorandum acknowledges that while some PMSC operatives may meet the criteria for mercenaries, the corporate and contractual structure of PMSCs complicates such classifications. Moreover, PMSC personnel are typically subject to licensing, vetting, and oversight mechanisms—however weak these may be in practice—which differentiate them from ad-hoc mercenary groups of the past.³³

From a regional perspective, Turkish legal scholarship, such as that by Burak Güneş recognises the gap between the law and reality in the Middle East, where PMSCs often engage in military functions without state accountability, thus flirting with mercenarism under international standards. Güneş notes the dual risk posed by PMSCs: the erosion of state monopoly on violence and the obfuscation of accountability when harm is inflicted on civilians or sovereign interests.³⁴

In summary, while both mercenaries and PMSCs operate in conflict zones and may perform overlapping functions, the legal and normative frameworks treat them differently. The ICRC's criteria for mercenarism emphasise individual intent, remuneration, and foreign status, whereas PMSCs are treated as corporate entities subject to state regulation. However, as practice demonstrates, these distinctions are often blurred, necessitating further international effort to harmonise legal categories with operational realities.

5.2 Combat vs. non-combat functions

A central legal and operational distinction in the regulation of PMSCs lies in differentiating combat from non-combat functions. This distinction is not only crucial for understanding the scope of permissible activities under international law, but also affects

³² Swiss Federal Department of Foreign Affairs and ICRC, *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* (17 September 2008) Part I para 9.

³³ Council of Europe, *On Private Military Companies, Mercenaries, Foreign Fighters and their Impact on Human Rights: Introductory Memorandum by Mr Andrea Orlando AS/Jur(2024)05* (26 February 2024) paras 11–13.

³⁴ Güneş (n 13) 573&574.

accountability frameworks, status under the law of armed conflict, and the applicability of licensing and oversight requirements.

Peter W. Singer's influential typology classifies PMSCs into three broad categories: military provider firms, which directly engage in hostilities; military consulting firms, which provide strategic, training, and advisory services; and military support firms, which handle logistical operations, technical maintenance, and intelligence gathering.³⁵ The classification highlights a spectrum of involvement, where only some activities cross the threshold into active participation in hostilities.

However, the boundaries are often blurry in practice. According to Pedro Barge Cunha's study on Somalia, firms engaged in "non-combat" tasks such as intelligence or protection of humanitarian assets may still influence the dynamics of a conflict, particularly when their activities directly support military operations or occur in high-risk environments.³⁶ The presence of armed personnel, even in ostensibly defensive roles such as convoy protection, challenges the neat dichotomy between combatant and non-combatant roles. As Cunha notes, many firms perform hybrid roles that fluctuate depending on contract requirements and battlefield exigencies.³⁷

Deborah Avant offers a functionalist framework that shifts focus from the nature of the service to its effect on the conflict environment. For Avant, the crucial question is not whether a company engages in combat per se, but whether its presence alters the distribution of coercive power in a way that affects outcomes on the battlefield.³⁸ In this sense, non-combat services like satellite surveillance, logistics coordination, or cyberintelligence can have strategic consequences comparable to direct firepower.

The UN Human Rights Council's 2024 report further complicates this issue. The Working Group on Mercenaries notes that some PMSCs perform roles that, while nominally administrative or protective, result in the direct support of combat operations—including the management of weapons stockpiles, operation of uncrewed aerial systems (UAS), and intelligence analysis used for targeting.³⁹ This phenomenon reflects what the report calls the

³⁵ Singer (n 15) 91-97.

³⁶ Cunha (n 18).

³⁷ Ibid.

³⁸ Avant (n 20).

³⁹ UN Human Rights Council, 'Role of Mercenaries, Mercenary-Related Actors and Private Military and Security Companies in the Trafficking and Proliferation of Arms' (9 September 2024) UN Doc A/HRC/57/45, paras 18–19, 64.

"civilianization of conflict," where distinctions between fighters and support personnel, or between combatants and civilians, become increasingly blurred.⁴⁰

Furthermore, contractual provisions often omit or mischaracterise the functional realities of a PMSC's deployment. As reported in the *Mercenarism and PMSCs* overview, many states regulate only "private security" and neglect to address military functions explicitly.⁴¹ This allows firms involved in training armed forces or advising on combat strategy to legally operate as non-combat entities, even while substantially contributing to the prosecution of hostilities.

In summary, the line between combat and non-combat roles is both conceptually unstable and operationally porous. The regulatory vacuum in many jurisdictions only exacerbates this ambiguity. For the international community, especially actors like DISEC, this ambiguity poses a legal and ethical challenge: to develop criteria that accurately reflect the functional impact of PMSC activities rather than relying solely on formal labels.

5.3 Contracting, Home, and Territorial States (per Montreux Document)

The Montreux Document distinguishes three principal types of state responsibility with respect to PMSCs: Contracting, Home, and Territorial States. This tripartite model, while originally framed in terrestrial armed conflicts, has profound implications for maritime security, where the regulation of PMSCs intersects with the law of the sea, international humanitarian law, and human rights obligations.

Contracting States are those that directly hire PMSCs to perform security services. In the maritime context, this is typically either a flag State that charters PMSCs to protect its vessels or, more commonly, private shipping companies employing armed guards. Though these companies are often commercial entities, the Montreux Document assigns duties to States when they are themselves clients—especially in conflict or piracy zones such as the Horn of Africa or the Strait of Malacca.

⁴⁰ Ibid paras. 15&16.

⁴¹ UN Human Rights Council, *Mercenarism and Private Military and Security Companies: An Overview of the Work Carried Out by the Working Group* (2018) HRC/NONE/2018/40, 17–19.

Under the Montreux framework, Contracting States are expected to:

- Vet PMSCs carefully, ensuring they have no record of human rights abuses;
- Incorporate compliance clauses with IHL and human rights standards in contracts;
- Provide remedies and oversight mechanisms for misconduct.⁴²

The practical maritime application involves scrutiny of embarkation procedures, rules for the use of force, and liability clauses in case of accidental harm or escalation at sea.

Home States are those in which PMSCs are legally registered, have their headquarters, or are incorporated. They are uniquely positioned to exercise effective regulatory control by issuing licenses, vetting personnel, and monitoring operations through reporting obligations.

In the maritime domain, the transnational nature of operations presents added difficulties: PMSCs may be headquartered in one state, recruit personnel from another, and deploy in global waters far from either. The DCAF notes that Home States are under increasing pressure to harmonise export controls and share information about the companies they authorise to operate in foreign and international maritime zones.⁴³

Burak Güneş observes that in regions like the Middle East, the lack of transparency and licensing regimes for PMSCs leads to opaque and potentially unlawful uses of force, particularly in disputed or semi-regulated zones such as the eastern Mediterranean.⁴⁴

Traditionally, Territorial States are those on whose territory PMSCs operate. In the maritime context, this model must be adapted. Scholars and the IMO interpret Territorial States to include:

- Flag States, under whose registry a vessel operates;
- Port States, where vessels dock and may be searched, inspected, or detained;
- Coastal States exercise limited but significant jurisdiction within their territorial sea (up to 12 nautical miles) and contiguous zones.

⁴² Montreux Document (2008) Part One, paras 3–5; see also DCAF, *Private Military and Security Companies and State Responsibility* (2011) 12–15.

⁴³ DCAF, *Backgrounder No. 26: Private Military and Security Companies* (Geneva Centre for Security Sector Governance, 2011) 5–6.

⁴⁴ Güneş (n 13) 556–558.

Under the UNCLOS, Flag States bear exclusive jurisdiction over vessels on the high seas, including control of weapons, personnel, and criminal acts occurring onboard.⁴⁵ However, Port and Coastal States may:

- Prohibit or restrict the entry of vessels carrying armed PMSC personnel;
- Require notification and disarmament before allowing port access;
- Enforce customs, arms, and navigation laws to uphold domestic and international law.⁴⁶

For instance, the *South China Sea Arbitration* (Philippines v. China) reaffirmed that even lawful sovereignty claims are limited by UNCLOS obligations—especially in regard to navigation, environmental protection, and resource exploitation.⁴⁷ Likewise, the *Corfu Channel* case emphasised that a state must ensure the safety of navigation within its waters and may not conceal hazards that risk maritime security.⁴⁸

The IMO's guidance confirms that while coastal and port States retain rights to enforce entry conditions, transit passage through international straits (e.g., Bab el-Mandeb or Hormuz) must remain unimpeded, limiting the ability of Territorial States to restrict the passage of vessels with PMSCs onboard unless safety is threatened.⁴⁹

In summary, the Montreux Document's state responsibility model remains applicable to PMSCs at sea, but must be adapted to the realities of maritime jurisdiction. While Flag States are primarily responsible for regulation, shared jurisdiction among Contracting, Home, and Territorial States is essential to closing legal loopholes that allow for abuse or impunity. DISEC and IMO alike are urged to coordinate efforts in clarifying and enforcing these maritime responsibilities through global instruments, licensing regimes, and harmonised use-of-force standards.

⁴⁵ Donald R Rothwell and Tim Stephens, *The International Law of the Sea* (3rd edn, Hart 2023) 58–61.

⁴⁶ Ibid 234–238.

⁴⁷ *South China Sea Arbitration* (Philippines v China) PCA Case No 2013–19, Award of 12 July 2016, paras 260–265.

⁴⁸ *Corfu Channel Case* (UK v Albania) [1949] ICJ Rep 4, 22–23.

⁴⁹ Emir Esat Temiz, *IMO – GITOMUN'24 Explanatory Notes* (2024) 6–8.

6. Historical Background of PMSCs

6.1 From traditional mercenaries to Post-Cold War corporate security actors

The use of private actors in warfare has a long and storied past. From Greek hoplites serving as mercenaries to the chartered companies of the early modern period, non-state military actors have been key participants in global security long before the rise of the modern state. As P.W. Singer explains, the state monopoly on violence was historically the exception rather than the norm; private forces were the rule in earlier centuries of international relations.⁵⁰

The classical mercenary model, however, began to wane with the emergence of the Westphalian state system. The citizen-soldier ideal, particularly in Republican Europe and the United States, tied military service to civic identity. Krahmann describes this transformation as foundational to the legitimacy of modern democratic states, wherein armed force was supposed to be wielded by citizens for the collective good.⁵¹ But the ideological rejection of mercenarism also had practical roots: mercenary forces were viewed as unpredictable, politically dangerous, and unaccountable.⁵²

Following decolonisation, the legal and moral codification of this anti-mercenary norm became embedded in international instruments such as Article 47 of Additional Protocol I to the Geneva Conventions, which established a narrow, six-part test for defining mercenaries. As Sarah Percy notes, this definition was intentionally restrictive, not to criminalise all profit-driven combatants, but to protect state monopoly on legitimate force and stigmatise rogue actors without addressing emerging corporate models.⁵³

This legal environment influenced how post-Cold War actors framed themselves. Private Military and Security Companies deliberately positioned themselves as corporate professionals rather than as mercenaries. Percy emphasises that PMSCs adopted a language

⁵⁰ P W Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Cornell University Press 2008) 18–21.

⁵¹ Elke Krahmann, 'Citizen-soldiers, professional warriors and contractors: Constitutional constraints and normative challenges to the privatization of military security' in *States, Citizens and the Privatization of Security* (CUP 2010) 38–41.

⁵² Ibid 42.

⁵³ Percy (n 30) 325-327.

of regulation, human rights compliance, and contract-based legitimacy in order to differentiate themselves from the outlaw image of the mercenary.⁵⁴

James Pattison reinforces this point, arguing that although PMSCs and mercenaries share motivations rooted in profit and autonomy from state control, PMSCs attempt to clothe their operations in a veneer of legitimacy through government contracts, organisational structure, and sometimes even participation in peacekeeping or humanitarian operations.⁵⁵ Nevertheless, their normative legitimacy remains contested, especially when they engage in direct combat roles.

This transformation was accelerated by global structural shifts. As Güneş points out, the weakening of state capacity across much of the Middle East and Africa created an operational vacuum that PMSCs were uniquely positioned to fill—particularly in roles such as infrastructure protection, counter-insurgency support, and regime security.⁵⁶ These roles historically belonged to standing armies, but were now being subcontracted to private firms due to either state incapacity or political expediency.

6.2 The Rise of the Global Private Military Industry Post-1990s

The 1990s witnessed the institutionalisation of PMSCs as global actors, catalysed by both demand and supply-side changes in the international security marketplace. As Singer outlines, the end of the Cold War led to significant military downsizing, producing a surplus of trained military personnel and second-hand equipment. At the same time, new post-Cold War conflicts—particularly internal wars and state collapses—created unfulfilled demand for military services. This imbalance constituted what Singer calls the “security gap,” into which PMSCs moved quickly and profitably.⁵⁷

Elke Krahmann further observes that this coincided with the neoliberal transformation of Western states, particularly the US and UK, where the logic of privatisation overtook long-held commitments to the public provision of security.⁵⁸ Ministries of defence began outsourcing logistics, training, and even front-line roles to PMSCs under the guise of fiscal responsibility and flexibility.⁵⁹

⁵⁴ Ibid 332-334.

⁵⁵ Pattison (n 7) 44-47.

⁵⁶ Güneş (n 13) 556-558.

⁵⁷ Singer (n 50) 49-56.

⁵⁸ Krahmann (n 51) 93-97.

⁵⁹ Ibid 98.

Avant frames this period as one of structural realignment. States were no longer the exclusive providers of military services. Instead, she notes, PMSCs emerged as "intermediaries" capable of performing tactical operations, intelligence gathering, and strategic planning—services that previously required the apparatus of the state.⁶⁰ This functional substitution undermined traditional civil-military relationships and fragmented military accountability.

Cunha provides a case study of how PMSCs filled governance voids in Somalia, where state structures collapsed entirely. There, PMSCs became enmeshed not just in conflict security, but also in humanitarian aid logistics, port protection, and anti-piracy operations, demonstrating the full-spectrum nature of their capabilities in lawless environments.⁶¹

B. Güneş similarly documents how, in the Middle East, PMSCs were deployed to protect critical energy infrastructure and border zones in contexts where the national military had either disintegrated or been co-opted by internal political factions.⁶² These developments illustrate the global normalisation of PMSCs as tools of both state and non-state power.

In short, the global private military industry did not emerge in a vacuum. It arose from a confluence of factors: the delegitimization of traditional mercenarism, the downsizing of state militaries, the liberalisation of security policy, and the operational demands of post-Cold War conflict environments. These conditions turned PMSCs from marginal actors into central nodes of global security governance.

⁶⁰ Avant (n 20) 67-72.

⁶¹ Cunha (n 18).

⁶² Güneş (n 13) 558–561.

7. Typologies and Services of PMSCs

7.1 Military provider, consultant, and support firms (per Singer's typology)

One of the most influential typologies for classifying Private Military and Security Companies (PMSCs) is Singer's "Tip-of-the-Spear" framework. Singer divides PMSCs into three categories based on their proximity to direct combat:

- A. Military Provider Firms are at the tip of the spear. These companies engage in direct combat or command field units. Notable examples include Executive Outcomes and Sandline International. These firms operate on the battlefield and may provide armed personnel, tactical units, and command-level expertise to client states or actors.⁶³
- B. Military Consultant Firms are located further from the front lines. They primarily offer advisory services, such as training military personnel, developing strategic doctrines, or restructuring security forces. Examples include MPRI and Vinnell Corporation.⁶⁴
- C. Military Support Firms perform logistical, technical, and operational support functions. These include transportation, intelligence, supply chain management, and equipment maintenance. They represent the largest segment of the market and tend to operate under long-term contracts with national governments or international organisations. Companies like Brown & Root and PAE exemplify this category.⁶⁵

While this tripartite typology is widely accepted, scholars like Deborah Avant warn that real-world overlaps blur the boundaries among these categories, as many firms shift roles depending on contract demands.⁶⁶

⁶³ Singer (n 50) 91-93.

⁶⁴ Ibid 94&95.

⁶⁵ Ibid 95-97.

⁶⁶ Avant (n 20) 40-42.

7.2 Intelligence, logistics, close protection, strategic advice

Beyond Singer's typology, PMSCs today offer a wide array of services tailored to state, corporate, and NGO clients. These include:

- Intelligence Gathering and Analysis: Private contractors now perform intelligence functions ranging from satellite surveillance to strategic assessments. The sector has grown rapidly, often replacing state intelligence services in data collection and analysis.⁶⁷
- Logistics and Operational Support: PMSCs dominate logistical functions in theatres of conflict. The U.S. Department of Defense's LOGCAP program outsourced tasks such as fuel delivery, troop housing, and equipment maintenance to private firms, demonstrating how deeply PMSCs are embedded in modern warfighting support structures.⁶⁸
- Close Protection and Armed Escort: Many PMSCs provide bodyguard services, diplomatic security, and convoy escort, especially in high-risk environments like Iraq, Afghanistan, and Somalia. These roles often bring them close to direct combat despite being formally categorised as "non-combat".⁶⁹
- Strategic Advice and Military Reform: PMSCs such as MPRI have been hired to assist in designing national security strategies and reforming armed forces. Notably, MPRI helped plan Operation Storm in Croatia, blurring the line between consultancy and operational planning.⁷⁰

UN reports corroborate these findings. The Human Rights Council noted that PMSCs also engage in operating unmanned aerial systems, managing arms depots, and assisting in detention-related services, raising serious human rights and legal concerns.⁷¹

⁶⁷ Leander (n 27) 806&807.

⁶⁸ Singer (n 50) 103-107.

⁶⁹ Cunha (n 18).

⁷⁰ Leander (n 27) 807&808.

⁷¹ UN Human Rights Council (n 39) paras. 16-20.

7.3 Differentiation by Impact on Conflict Intensity

While typologies of Private Military and Security Companies often focus on their functions—such as combat, training, or logistics—a critical and often underexplored perspective concerns the impact of different services on the intensity and nature of conflict. Some PMSC activities can escalate violence, while others may contain or prevent conflict, or at least stabilise volatile contexts. This section draws on regional case studies to highlight the nuanced effects of PMSCs in conflict zones.

Perhaps the most notable example of PMSCs escalating (and then stabilising) a conflict is Executive Outcomes (EO) in Sierra Leone during the civil war. Hired in 1995 by the Sierra Leonean government, EO successfully expelled rebel forces from major territories, recaptured key diamond mines, and helped negotiate a temporary peace settlement. However, EO's actions were deeply entangled with corporate mining interests, including Branch Energy, raising concerns about conflict prolongation in exchange for mineral access.⁷² The intervention was militarily effective but economically exploitative, with EO reportedly paid through mining concessions rather than cash.⁷³

Following EO's withdrawal in 1997, the conflict reignited, leading to another PMC-led intervention by Sandline International. This episode—also tied to diamond revenues—further blurred the line between stabilisation and commercially motivated militarism.⁷⁴ In both cases, PMSC operations directly affected the scale, scope, and tempo of the conflict. As Rita Abrahamsen and Michael Williams conclude, Sierra Leone illustrates how PMSCs can become deeply embedded in “global security assemblages” that simultaneously stabilise and undermine sovereignty.⁷⁵

⁷² Rita Abrahamsen and Michael C Williams, *Security Beyond the State: Private Security in International Politics* (CUP 2011) 153–155.

⁷³ Avant (n 20) 82–85.

⁷⁴ Ibid 90&91.

⁷⁵ Abrahamsen and Williams (n 72) 166–167.

8. International Legal and Ethical Frameworks

8.1 The Montreux Document and its limitations

The Montreux Document, adopted in 2008, remains the most comprehensive soft-law instrument addressing the regulation of Private Military and Security Companies in armed conflict. Jointly initiated by the Swiss Government and the International Committee of the Red Cross, it was developed in response to growing reliance on PMSCs and widespread regulatory ambiguity.⁷⁶

The document comprises two parts:

- Part One outlines existing international legal obligations derived from international humanitarian law (IHL), human rights law, and state responsibility doctrines.
- Part Two presents 73 good practices for Contracting, Territorial, and Home States, covering areas like licensing, oversight, accountability, and sanctions.⁷⁷

Despite its breadth, the Montreux Document is non-binding. It imposes no legal obligations and avoids evaluating the legitimacy of PMSC use, assuming their existence while seeking to clarify state duties and PMSC conduct standards.⁷⁸ This voluntary nature significantly weakens its enforcement capacity, relying on the political will of states to adopt and implement its guidance.⁷⁹

Although over 50 States and international organisations have endorsed it, including NATO and the EU, Russia has not, making it the only permanent member of the UN Security Council to abstain.⁸⁰ Scholars and practitioners have criticised this limited uptake and the potential for selective implementation, particularly by states that lack incentives or capacity to regulate PMSCs.⁸¹

⁷⁶ Montreux Document (2008) preamble.

⁷⁷ Ibid Part One and Part Two.

⁷⁸ UN Human Rights Council (n 83) para 26.

⁷⁹ Crowe and John (n 11) 44-47.

⁸⁰ Council of Europe (n 33) para 14.

⁸¹ Ibid paras 11&12.

The framework's tripartite division of state roles—Contracting, Territorial, and Home States—is conceptually useful but often unworkable in practice. In fragile or failed states, Territorial States may lack enforcement capacity. Home States, especially those with strong commercial PMSC lobbies, may under-regulate. And Contracting States sometimes exploit jurisdictional ambiguity to outsource sensitive or risky operations beyond domestic scrutiny.⁸²

UN experts and human rights bodies, including the CoE, have noted that despite its normative utility, the Montreux Document does not adequately address accountability. Calls to transform it into a binding treaty or supplement it with institutional enforcement have not been heeded by the Committee of Ministers, which has cited operational constraints.⁸³

As the UN Working Group on the Use of Mercenaries has emphasised, the Montreux Document serves as a valuable starting point, but must be complemented by binding international frameworks that include mechanisms for victims' redress and independent oversight.⁸⁴

In sum, while the Montreux Document reflects significant consensus-building, it lacks the enforceability and precision needed to constrain PMSC misconduct across conflict zones. It remains an essential tool—but not a sufficient one.

8.2 International Code of Conduct for Private Security Service Providers (ICoC)

The International Code of Conduct for Private Security Service Providers was adopted in 2010 and amended in 2021. It represents a major step toward transnational private governance for PMSCs operating in high-risk and complex environments. The Code articulates a comprehensive set of human rights and humanitarian principles that apply to private security actors, including standards on use of force, detention, anti-torture obligations, and non-discrimination.⁸⁵

⁸² Montreux Document Commentary (2009) paras 24–36.

⁸³ Council of Europe (n 33) para 14.

⁸⁴ UN Human Rights Council (n 83) paras 27–30.

⁸⁵ International Code of Conduct for Private Security Service Providers (ICoC), as amended 10 December 2021, paras 16–27.

What distinguishes the ICoC from earlier voluntary initiatives is the establishment of a formal governance and oversight mechanism—the International Code of Conduct Association. Member and Affiliate Companies are required to align internal procedures with the Code, submit to independent audits, and establish grievance and whistleblowing procedures to address complaints of misconduct.⁸⁶ As stated in the Preamble of the Code, companies commit to “operate in a manner that supports the rule of law, respects the human rights of all persons, and protects the interests of their clients.”⁸⁷

However, despite these developments, the ICoC remains a non-binding instrument. Membership in ICoCA is voluntary, and companies that do not join face no formal legal consequences. Even among member firms, compliance is often limited to internal reporting, with few mechanisms to enforce accountability across jurisdictions. As the Council of Europe notes, no ICoCA member has yet been suspended or deregistered for breach of the Code’s principles, raising concerns about transparency and deterrence.⁸⁸

Furthermore, the 2021 amended text clarifies that the Code “creates no legal obligations or liabilities beyond those which already exist under national or international law.”⁸⁹ In this sense, the ICoC reflects a soft-law mechanism that depends on reputational incentives rather than legal enforcement.

Critics such as Dickinson and Abrahamsen argue that this model of accountability is insufficient in armed conflict zones where formal oversight by state actors is weak or nonexistent.⁹⁰ As of 2023, ICoCA had reviewed fewer than 35 formal complaints, and none resulted in public disciplinary action.⁹¹

Nevertheless, the ICoC remains an influential instrument. It has been adopted as a reference standard by multiple international organisations, including the UN and the OECD, and serves as a pre-qualification criterion in some state and donor contracts.⁹² Its effectiveness, however, depends on whether states and institutional clients require ICoCA membership as a condition for procurement.

⁸⁶ Ibid 44-68.

⁸⁷ ICoC (n 122) para 3.

⁸⁸ Council of Europe (n 33) paras 18-21.

⁸⁹ ICoC (n 122) para 14.

⁹⁰ Dickinson (n 87) 142-144.

⁹¹ Council of Europe (n 33) para 20.

⁹² UN Human Rights Council (n 83) para 31.

In summary, the ICoC contributes significantly to standard-setting in the private security industry, but its voluntary nature, limited public enforcement, and lack of binding force mean that it cannot replace formal international regulation. Experts widely agree that it should be complemented by national legislation, mandatory licensing schemes, and stronger victim redress mechanisms.

8.3 *Jus ad bellum* and *jus in bello* obligations of contractors

Private Military and Security Companies operating in armed conflict zones must comply with both *jus ad bellum* (the law governing the resort to force) and *jus in bello* (international humanitarian law applicable during conflict). Although PMSCs are not states, their actions are often attributable to state actors under international law, particularly where states exercise control, direction, or acknowledge their conduct as their own.⁹³

Under the UN Charter, only self-defence or Security Council authorization can justify the use of force between states. PMSCs must not be employed in a manner that violates this fundamental norm. According to Article 2(4) of the UN Charter, any use of force not consistent with collective security or self-defence constitutes aggression.⁹⁴ States that employ PMSCs to bypass international prohibitions—for instance, by arming groups in third countries—risk incurring responsibility under Article 16 of the ILC Articles on State Responsibility (ARSIWA) for aiding another state’s internationally wrongful acts.⁹⁵

In the context of the Wagner Group’s deployment in Ukraine, scholars and UN bodies have raised concerns that Russia’s use of PMSCs has functioned as a de facto circumvention of *jus ad bellum* obligations.⁹⁶

Under *jus in bello*, PMSCs and their personnel are obliged to follow IHL norms, including the principles of distinction, proportionality, and necessity.⁹⁷ These obligations arise whether or not PMSCs qualify as combatants, and their breach can amount to war crimes.

⁹³ International Law Commission (n 109) Arts 5, 8, and 11.

⁹⁴ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, Art 2(4).

⁹⁵ International Law Commission (n 109) Art 16.

⁹⁶ UN Human Rights Council (n 83) para 37.

⁹⁷ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, common art 3.

Personnel employed by PMSCs are often deemed civilians under IHL, unless they directly participate in hostilities.⁹⁸ This distinction is vital, as civilians lose protection from attack during such direct participation but do not acquire combatant privileges. When PMSCs engage in combat operations without clear affiliation to regular armed forces, their legal status becomes ambiguous, complicating questions of detention, prosecution, and accountability.⁹⁹

Furthermore, under Articles 5 and 8 of ARSIWA, a state's responsibility arises when PMSCs exercise governmental authority on its behalf, or act under its control.¹⁰⁰ States must ensure their contractors are trained in IHL and held accountable for violations, including through criminal prosecution and reparation mechanisms.¹⁰¹

As emphasised by the UN Working Group on the Use of Mercenaries, *jus in bello* obligations are not diminished by outsourcing: the contracting state remains accountable for IHL breaches by PMSCs operating under its direction or control.¹⁰²

In sum, PMSCs do not operate in a legal vacuum. They are subject to international law on the use of force and conduct during armed conflict. However, gaps in enforcement, ambiguity of status, and fragmented jurisdictional responsibility undermine the realisation of these norms. Moving forward, international legal reform should prioritise clarification of combatant status, harmonised enforcement, and mandatory compliance training for contractors deployed in conflict zones.

⁹⁸ ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities* (2009) 43–48.

⁹⁹ Pattison (n 7) 88-91.

¹⁰⁰ International Law Commission (n 109) Arts 5 and 8.

¹⁰¹ UN Human Rights Council (n 83) paras 45-48.

¹⁰² Ibid para 49.

9. Benefits and Justifications for Using PMSCs

9.1 Efficiency, Rapid Deployment, Specialised Knowledge

Private Military and Security Companies have often been justified on operational grounds, with arguments centred on their capacity to provide efficient, rapidly deployable, and highly specialised services. This rationale is particularly relevant in scenarios where national armed forces are overstretched, under-trained, or constrained by political considerations.

PMSCs are frequently contracted due to their efficiency and flexibility, offering services such as combat support, intelligence collection, logistical operations, and protection of assets. Their corporate structure allows them to function without the bureaucratic inertia that characterises many state-run military bodies. As noted by the Geneva Centre for Security Sector Governance, PMSCs are “motivated by private gain,” which incentivises performance and responsiveness in high-risk, fast-paced environments. Their services have been deemed crucial in environments where “armed forces can no longer afford to train personnel,” and PMSCs often act as a force multiplier by bolstering limited public security capabilities.¹⁰³

Another advantage is rapid deployment. Unlike conventional forces which require political mandates or legislative oversight, PMSCs can be deployed swiftly to crises, filling critical security gaps without delays. Pattison has acknowledged this feature within his *Cumulative Legitimacy Approach*, where he states that in rare circumstances, PMSCs may be preferable to public forces if their deployment results in significant improvements to human security outcomes, especially when timely intervention is essential to protect human rights or prevent atrocities.¹⁰⁴

PMSCs also offer specialised knowledge and technical expertise often unavailable in national militaries. These include advanced training, cyber and intelligence capabilities, risk assessment, and security architecture services. According to Samuel Hallhammar’s empirical analysis, PMSCs routinely deliver military consultancy and tactical expertise in regions where state actors lack the requisite skills due to prolonged underinvestment or institutional

¹⁰³ DCAF – Geneva Centre for Security Sector Governance, *Private Military and Security Companies (PMSCs)*, SSR Backgrounder Series (DCAF 2024) 3–4 <https://www.dcaf.ch> accessed 28 May 2025.

¹⁰⁴ Pattison (n 7) 180&181.

collapse. Their niche capabilities are often crucial in hostile or unstable terrains where precision and competence are vital for mission success.¹⁰⁵

Despite these advantages, these operational benefits must be weighed against the normative concerns regarding accountability, oversight, and long-term strategic impact. Nonetheless, from a utilitarian standpoint, the efficiency and specialisation of PMSCs may justify their deployment under constrained circumstances.

9.2 Potential to fill security gaps in failed or fragile states

In regions characterised by state collapse, conflict, or institutional fragility, PMSCs have often been positioned as pragmatic alternatives to public security forces. Their capacity to deliver security services in volatile contexts allows them to serve as stabilising actors, especially in areas where traditional state apparatuses have lost their coercive and administrative capacities.

A paradigmatic example is Somalia, where the breakdown of governmental authority, combined with protracted civil conflict and the absence of a functioning military, has generated fertile ground for PMSCs. These companies stepped in to secure strategic enclaves, protect humanitarian operations, and combat piracy in the Gulf of Aden. The study conducted by Pedro Barge Cunha identifies PMSCs as effective tools for counterbalancing warlords, denying them access to natural resources that could perpetuate cycles of violence. In doing so, PMSCs have indirectly facilitated the redirection of resources toward state rebuilding and economic recovery efforts.¹⁰⁶

In fragile contexts, PMSCs also bridge the vacuum created by international disengagement. After the Cold War, major powers and international organisations grew increasingly reluctant to intervene in African conflicts, creating a vacuum that PMSCs were quick to fill. As Dennis Jett observed, states found it less politically costly to hire PMSCs than to justify troop deployment in far-flung civil wars.¹⁰⁷

DCAF affirms that in fragile states, PMSCs are frequently employed to compensate for the limited or absent capacity of public security institutions. These companies are capable

¹⁰⁵ Samuel Hallhammar, *Fighting for Profit in Modern Warfare: The PMSC Dilemma in Empirical Perspective* (Uppsala University 2023) 32–37.

¹⁰⁶ Cunha (n 18) 78–85.

¹⁰⁷ Ibid 83 (citing Dennis Jett, *Chicago Tribune* (2000)).

of reinforcing public order, providing essential services, and supporting state capacity-building in areas like detention centre management, border control, and infrastructure protection. They have also become crucial actors in protecting NGOs, extractive industries, and international agencies operating in conflict zones.¹⁰⁸

Nevertheless, the use of PMSCs in such contexts remains contentious. Critics argue that PMSCs can undermine sovereignty, particularly where rulers use them to entrench power or suppress opposition. There are concerns that their involvement may lead to commercialised security provision, where access to safety is determined by the ability to pay rather than universal rights.¹⁰⁹ This risks entrenching inequality and further eroding public trust in the state's role as the primary guarantor of security.

Despite these challenges, when subject to robust oversight and clear mandates, PMSCs can play a constructive role in crisis-affected settings. Their presence can deter violence, support humanitarian missions, and help rebuild security structures in ways that public institutions alone may not be able to achieve during acute state weakness.

¹⁰⁸ DCAF (n 140) 3-5.

¹⁰⁹ Ibid 6&7.

10. Regional and Political Positions

10.1 NATO and the U.S.: Emphasis on regulation and self-regulation

The United States and NATO member states have taken a regulatory and pragmatic approach to the governance of Private Military and Security Companies, emphasising industry self-regulation, oversight mechanisms, and voluntary codes of conduct rather than international legal prohibition.

In the U.S., the integration of PMSCs into military operations became especially prominent during the wars in Iraq and Afghanistan. Through frameworks such as the LOGCAP (Logistics Civil Augmentation Program) and region-specific regulations (e.g., CENTCOM contracting guidelines), PMSCs were tasked with supporting and sometimes replacing public forces in non-combat and quasi-combat roles. Oversight was based on contract compliance and internal disciplinary systems, rather than subjecting contractors to the Uniform Code of Military Justice or international criminal law in most cases.¹¹⁰ Peter Singer identifies this as part of a broader post-Cold War "outsourcing trend", in which military functions once monopolised by states were privatised to increase efficiency and reduce political costs.¹¹¹

NATO countries, while differing in their reliance on PMSCs, have largely endorsed soft-law instruments such as the Montreux Document (2008) and the International Code of Conduct for Private Security Providers (2010). These instruments do not bind states legally but establish best practices and guidelines for the responsible use of PMSCs in conflict and post-conflict settings. For NATO members, especially those engaged in expeditionary operations, these frameworks provide a flexible yet standardised model for PMSC accountability without requiring binding treaty obligations.¹¹²

The International Code of Conduct Association, which monitors and certifies PMSC compliance with the ICoC, is actively supported by NATO states and Western-aligned

¹¹⁰ Congressional Research Service, *Private Security Contractors in Iraq: Background, Legal Status, and Other Issues* (CRS Report RS21839, 2008) <https://sgp.fas.org/crs/natsec/RS21839.pdf> accessed 28 May 2025.

¹¹¹ Singer (n 50) 152-158.

¹¹² DCAF (n 140) 4&5.

PMSCs. The U.S. and many NATO countries have made ICoCA membership a contractual requirement, embedding voluntary accountability into procurement processes.¹¹³

This approach has not been without criticism. Scholars like Avant argue that contractual governance lacks transparency and independent public oversight, and that reliance on voluntary compliance mechanisms risks creating a legitimacy gap—especially in situations involving human rights abuses⁵. Nonetheless, from the perspective of operational necessity and interoperability, the U.S. and NATO's approach reflects a calibrated compromise between strategic utility and normative caution.

10.2 African Union: Historical Opposition to Mercenarism

The African Union (AU), and its predecessor the Organization of African Unity (OAU), have historically upheld a prohibitionist position on non-state military actors, viewing them through the lens of colonial subversion, regime change, and external manipulation. This approach crystallised in the OAU Convention for the Elimination of Mercenarism in Africa (1977), a binding regional instrument that denounced mercenarism as a threat to sovereignty, self-determination, and regional peace.¹¹⁴

The Convention defines a mercenary as any individual engaged in armed conflict for private gain and not affiliated with the armed forces of a party to the conflict. This definition, though narrower than that found in international law (e.g., Additional Protocol I to the Geneva Conventions), reflects Africa's unique historical sensitivity to foreign-sponsored armed actors, particularly during the Cold War and anti-colonial struggles.¹¹⁵

Building on this normative foundation, South Africa's Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act (2006) stands out as one of the most stringent national legislative efforts to operationalise the OAU Convention. The Act criminalises participation in armed conflict abroad without ministerial

¹¹³ International Code of Conduct Association (ICoCA), 'The Code' <https://icoca.ch/the-code/> accessed 28 May 2025.

¹¹⁴ Convention for the Elimination of Mercenarism in Africa (adopted 3 July 1977, entered into force 22 April 1985) OAU Doc CM/817 (XXIX).

¹¹⁵ Regional Legal Frameworks on PMSCs in Africa' <https://search.ebscohost.com> accessed 28 May 2025.

approval and has been used to prosecute former military personnel and contractors linked to PMSC-type activities, even when their actions fell short of formal combat.¹¹⁶

Despite this strong normative position, the AU's practice has shown signs of evolution. In complex peacekeeping environments, such as in Darfur and Somalia, PMSCs have been contracted indirectly to provide logistical, medical, and training support. These engagements reflect operational necessity, even if they contradict the AU's rhetorical commitment to excluding non-state military actors from African conflicts.¹¹⁷

Scholars argue that the AU's position increasingly distinguishes between mercenaries and PMSCs, the latter being seen as potentially legitimate actors if regulated properly. This regulatory shift is reflected in ongoing dialogues about implementing international soft-law instruments, such as the Montreux Document, in African contexts. However, the lack of adequate legal and institutional frameworks continues to inhibit effective governance of PMSCs in the region.¹¹⁸

Thus, the AU's approach reflects a tension between political ideals and operational realities: while the organisation remains normatively committed to eliminating mercenarism, it is slowly adapting to the fact that PMSCs have become integral to security provision in fragile African states.

10.3 Latin America and Non-Aligned Movement: Calls for prohibition and transparency

Latin American countries and the Non-Aligned Movement (NAM) have historically adopted a cautious and often critical stance toward the use of Private Military and Security Companies, rooted in both regional experiences and ideological commitments to sovereignty and anti-imperialism. A significant number of Latin American states—shaped by the legacy of military interventions, coups, and foreign interference—have aligned their positions with prohibitionist approaches that regard PMSCs as modern incarnations of mercenaries.

In this context, Latin America's scepticism is shaped by its legal traditions, many of which retain prohibitions or severe restrictions on the engagement of foreign private actors in

¹¹⁶ Republic of South Africa, *Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006*.

¹¹⁷ Cunha (n 18) 82-85.

¹¹⁸ DCAF (n 140) 6&7.

armed conflicts. These restrictions are partly grounded in the historical experience of U.S. involvement in the region via private actors, which continues to inform political discourse and policy making. States in this region have often advocated for strict transparency measures and public accountability regarding the activities of PMSCs, especially in international and peacekeeping contexts.

The Non-Aligned Movement, a bloc of over 120 states including many Latin American and Global South countries, has echoed these concerns in various international fora. It has consistently opposed what it terms the “privatisation of war” and called for the creation of a binding international regulatory framework on PMSCs. The NAM has further expressed its support for the elaboration of a comprehensive international convention, such as the one currently under discussion by the United Nations Intergovernmental Working Group, aimed at closing accountability gaps and imposing clear prohibitions on certain inherently governmental functions being outsourced to PMSCs.¹¹⁹

This regulatory ambition is in line with the broader transparency and accountability agenda endorsed by many Latin American civil society organisations and legislatures. Instruments such as the Draft Convention on PMSCs—discussed within UN bodies and supported by NAM members—propose supervisory mechanisms and binding standards regarding the conduct of PMSCs, their relationship with states, and the obligations of the contracting parties.¹²⁰

Given the region's deep-rooted legal and political objections to mercenarism, Latin America remains one of the most vocal constituencies in favour of transforming soft-law guidelines like the Montreux Document into enforceable international law. The DCAF guidelines further support this position by recommending participatory, transparent, and legally accountable frameworks for all states engaging PMSCs.¹²¹

¹¹⁹ ‘Private Military and Security Companies in International Law’ <https://search.ebscohost.com> accessed 28 May 2025.

¹²⁰ UN Human Rights Council, ‘Open-ended Intergovernmental Working Group to Consider the Possibility of Elaborating an International Regulatory Framework on the Regulation, Monitoring and Oversight of the Activities of Private Military and Security Companies’, 1st–4th sessions, Geneva (2011–2023).

¹²¹ DCAF (n 140) 4&5.

11. Case Studies

11.1 Somalia: Piracy, anti-insurgency, and the fragmentation of state security

The case of Somalia exemplifies how Private Military and Security Companies thrive in collapsed state environments, where national security infrastructures have disintegrated. Marked by decades of civil war, maritime insecurity, and fragmented governance, Somalia became a key theatre for the global private security market.

The collapse of Somali state institutions following the fall of Siad Barre in 1991 created a security vacuum that allowed local warlords, militias, insurgents, and foreign actors to assert territorial control. As Pedro Barge Cunha argues, this institutional vacuum enabled PMSCs to become “tools for territorial stabilisation and political consolidation,” as well as providers of essential services in lieu of formal state forces.¹²²

From the early 2000s, international actors began contracting PMSCs for logistics, training, and operational support. The United States employed firms such as DynCorp, AECOM, and PAE to assist African Union (AMISOM) and Transitional Federal Government (TFG) forces. Firms like Bancroft provided strategic training and planning to AMISOM units, operating under contractual arrangements with the US State Department.¹²³

Simultaneously, local authorities like the Puntland government hired PMSCs to construct regional security forces. Saracen International (later renamed Sterling Corporate Services) was instrumental in establishing the Puntland Maritime Police Force (PMPF), ostensibly designed to fight piracy but also used against internal insurgents, including the Galgala militia.¹²⁴ These deployments demonstrate the dual role of PMSCs in both security provision and domestic political enforcement.

PMSCs have also played a critical role in anti-piracy operations off Somalia’s coast. Hart Security, Salama Fikira, and other firms provided armed escort services to international shipping and trained coast guard personnel in Puntland and Somaliland.¹²⁵ These interventions proved effective: not a single ship escorted by armed PMSCs was hijacked

¹²² Cunha (n 18) 75.

¹²³ Ibid 81-83.

¹²⁴ Ibid 86&87.

¹²⁵ Ibid 88&89.

during peak piracy years.¹²⁶ However, scholars such as James Pattison caution that these successes mask serious accountability concerns. PMSCs at sea operate under fragmented legal frameworks, often with unclear rules of engagement, posing a challenge to international humanitarian law.¹²⁷

A further complexity arises from the intersection of PMSCs, piracy, and insurgency. Initially, Al-Shabaab had minimal involvement in maritime crime. But post-2010, the group began consolidating control over pirate hubs like Haradhere, establishing extortion-based relationships with pirate networks.¹²⁸ This evolution further blurred the lines between criminal, insurgent, and political actors, complicating the security environment for PMSC operations.

UN documents and the Human Rights Council have expressed concern over the regulatory black holes in which PMSCs operate. The Working Group on Mercenaries noted that some Somali-based PMSCs functioned without adequate oversight, contributing to a militarisation of local politics that circumvented both national and international accountability mechanisms.¹²⁹

Thus, Somalia serves as a compelling example of how PMSCs can both stabilise and fragment conflict zones. Their impact depends largely on their clients, mandates, and oversight—factors that vary significantly across contracts and regions.

11.2 Iraq (Blackwater): Nisour Square and Questions of Accountability

The case of Iraq, and more specifically the Blackwater Worldwide (later Xe, then Academi) incident at Nisour Square, stands as the defining example of the challenges posed by PMSCs to international humanitarian law, accountability mechanisms, and state sovereignty. It represents a watershed moment in the debate surrounding the regulation and oversight of private military and security companies in conflict zones.

On 16 September 2007, Blackwater contractors opened fire in Nisour Square, Baghdad, killing 17 Iraqi civilians and wounding at least 20 more. The contractors were part

¹²⁶ Krahmann (n 51) 93-95.

¹²⁷ Pattison (n 7) 198-201.

¹²⁸ Stig Jarle Hansen, *Al-Shabaab in Somalia: The History and Ideology of a Militant Islamist Group* (Hurst 2013) 141–145.

¹²⁹ UN Human Rights Council, 'Report of the Working Group on the Use of Mercenaries' (9 September 2020) UN Doc A/HRC/45/9, paras 20–25.

of a convoy providing armed escort for US diplomatic personnel. Although Blackwater claimed the convoy had come under insurgent fire, multiple independent and US military investigations found no evidence supporting this claim and deemed the use of force excessive and unprovoked.¹³⁰

The incident triggered international outrage and brought renewed scrutiny to the unchecked power of PMSCs operating under US contracts in Iraq. As P. W. Singer explains, the incident revealed structural weaknesses in the command, control, and legal accountability of private security actors embedded in high-risk operational environments.¹³¹

The lack of an effective accountability framework was a primary concern. At the time of the Nisour Square shootings, Blackwater personnel operated under Order 17 of the Coalition Provisional Authority (CPA), which granted foreign contractors functional immunity from Iraqi law.¹³² Although the US retained legal jurisdiction over contractors, few mechanisms were in place to enforce this.

Laura Dickinson notes that, despite later legislative reforms such as the 2006 Military Extraterritorial Jurisdiction Act (MEJA), the reality in Iraq was a patchwork of incomplete enforcement and contractor-friendly policies.¹³³ The Nisour Square case took more than a decade to resolve in US courts, and even then, the legal outcome was controversial. In December 2020, four convicted Blackwater contractors were pardoned by then-President Donald Trump, prompting condemnation by the United Nations and human rights groups.¹³⁴

The UN Human Rights Council, in its 2020 report, highlighted Blackwater's role in the erosion of humanitarian norms in Iraq. It cited the Nisour Square massacre as a turning point for international advocacy on PMSC regulation and accountability. The report emphasized that “contractor impunity” damages not only victims' rights but also the credibility of peacekeeping and reconstruction efforts.¹³⁵

¹³⁰ Ibid para 23.

¹³¹ Singer (n 50) 210-213

¹³² Coalition Provisional Authority Order 17 (Revised) (27 June 2004) Section 2.

¹³³ Laura A Dickinson, 'Uniformed Military Lawyers and the Evolution of PMSC Accountability' in *Outsourcing War and Peace* (Yale University Press 2011) 131–133.

¹³⁴ UN OHCHR, 'UN Experts Decry Pardons for Blackwater Contractors Convicted in Iraq Killings' (30 December 2020)

<https://www.ohchr.org/en/press-releases/2020/12/un-experts-decry-pardons-blackwater-contractors-convicted-iraq-killings> accessed 21 May 2025.

¹³⁵ UN Human Rights Council (n 83) paras 22-27.

The Working Group on the Use of Mercenaries further underlined that the failure to ensure legal accountability for PMSCs undermines both international human rights law and international humanitarian law. It recommended more robust national legislation and international cooperation mechanisms to prevent recurrence.¹³⁶

The Nisour Square incident also galvanized diplomatic attention. Iraq participated in the formulation of the Montreux Document (2008) and later became one of its endorsing states. The Montreux framework outlines the responsibilities of:

- Contracting States (like the United States) to select and monitor PMSCs;
- Home States (where PMSCs are registered, i.e. the US for Blackwater) to ensure prosecution and licensing;
- Territorial States (like Iraq) to retain or reclaim jurisdictional control when immunity clauses expire.¹³⁷

Despite this framework, its non-binding status limited enforcement. The Iraqi government attempted to pass legislation banning foreign PMSCs in the aftermath, but diplomatic dependencies and lack of capacity undermined its application.¹³⁸

While the US did expand the application of the Uniform Code of Military Justice (UCMJ) to cover contractors and revised MEJA, implementation remains inconsistent. As Dickinson argues, the continued reliance on PMSCs without transparent oversight mechanisms enables further legal grey zones, particularly when contractors act outside direct military command.¹³⁹

Moreover, as the Council of Europe's 2020 memorandum reports, victims of Blackwater-related violence struggled for years to achieve justice, and civil lawsuits (e.g., *Abtan et al. v. Prince*) faced obstacles due to sovereign immunity claims and contractor

¹³⁶ UN Human Rights Council, 'Report of the Working Group on the Use of Mercenaries' (2 July 2010) UN Doc A/HRC/15/25, para 31.

¹³⁷ Montreux Document (2008), Part One, paras 3–9.

¹³⁸ Michael D Gambone and John J McGarry, 'Private Security and Operation Iraqi Freedom' (2014) *Yale Journal of International Affairs* 9, 28–30 <https://www.yalejournal.org/issues/winter-2014/> accessed 21 May 2025

¹³⁹ Dickinson (n 87) 15-17.

indemnification clauses.¹⁴⁰ These barriers illustrate systemic flaws in holding PMSCs accountable within both domestic and international law.

11.3 Libya and Ukraine (Wagner Group): Hybrid Warfare and Sovereignty Erosion

Between 2020 and 2022, Libya witnessed significant developments concerning the activities of armed groups, violations of international humanitarian and human rights law, and systemic breaches of the UN Security Council sanctions regime. These dynamics were extensively documented by the Panel of Experts established pursuant to UNSC Resolution 1973 (2011), and the final reports submitted in accordance with Resolution 2571 (2021).¹⁴¹

Throughout this period, Libyan armed groups retained decisive control over key territories and state institutions, despite nominal affiliations with the central government. Armed entities such as the Nawasi Brigade, the Stability Support Apparatus (SSA), the Tripoli Revolutionary Brigade, and Haftar Affiliated Forces (HAF) maintained their own command structures, engaged in political bargaining, and leveraged their positions to consolidate local power. The SSA, created in January 2021, rapidly expanded its operational capacity and political influence, engaging in confrontations with rival groups and participating in maritime operations.¹⁴²

Despite the formation of the Government of National Unity in February 2021, alliances remained fluid. Armed groups often shifted loyalties between the GNU and the competing Government of National Stability (GNS), formed under Fathi Bashagha in early 2022. These developments severely undermined Libya's political transition process and directly impacted the feasibility of holding national elections in December 2021.¹⁴³

Grave violations of international humanitarian and human rights law continued to be perpetrated across Libya. Armed groups systematically engaged in arbitrary detention, torture, enforced disappearances, and extrajudicial killings. Seven major armed groups, including the SSA, HAF, the Special Deterrence Forces, and Al-Kaniyat, were identified as

¹⁴⁰ Council of Europe (n 33) paras 15-17.

¹⁴¹ UN Security Council, 'Final Report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011)' (27 May 2022) UN Doc S/2022/427.

¹⁴² UN Security Council, 'Final Report of the Panel of Experts on Libya' (8 March 2021) UN Doc S/2021/229.

¹⁴³ Ibid.

running unlawful detention facilities. Victims, including political detainees and migrants, were subjected to starvation, rape, forced labor, and other forms of abuse. Particularly egregious was the documented use of female detainees, including minors, as victims of sexual slavery in facilities in Bani Walid.¹⁴⁴

The judicial system remained severely weakened. Lack of accountability was exacerbated by threats to legal professionals, and the absence of any effective domestic remedy or prosecutorial action. Consequently, violations were committed with near-complete impunity. The UN Human Rights Council emphasized in its 2020 report that the activities of PMSCs and affiliated armed groups in Libya have further entrenched impunity and obstructed transitional justice efforts.¹⁴⁵

Despite UN sanctions, violations of the arms embargo persisted. Member States continued to supply arms, dual-use technologies, and military support to factions in Libya. Notably, military cargo and naval vessels were used to transfer materiel under the guise of humanitarian support. Armed groups exploited technological advancements to convert civilian goods into combat assets.¹⁴⁶

The SSA and HAF both operated maritime units, some employing civilian vessels retrofitted with weapons to evade embargo restrictions. HAF's Susah Combat Marine Squadron engaged in piracy by detaining foreign-flagged merchant vessels in international waters and extracting unlawful payments for their release.¹⁴⁷ These maritime activities align with broader patterns described in the Montreux Document Commentary, which warns of the legal ambiguity when PMSCs operate naval or hybrid combat roles without accountability frameworks.¹⁴⁸

Documents from the Council of Europe and Burak Güneş's analysis highlight how PMSCs such as Wagner Group were deployed in Libya to support HAF and other factions.¹⁴⁹ Their deployment often coincided with human rights violations, and they operated outside clear chains of command, intensifying the fragmentation of sovereignty.¹⁵⁰

¹⁴⁴ Ibid.

¹⁴⁵ UN Human Rights Council (n 83)

¹⁴⁶ UN Security Council (n 96).

¹⁴⁷ Ibid.

¹⁴⁸ Montreux Document (2008), Part One, paras 20–30.

¹⁴⁹ Council of Europe (n 33).

¹⁵⁰ Güneş (n 13).

Rita Abrahamsen and Michael C Williams argue that this represents a shift toward "security assemblages," where hybrid governance by state and non-state actors blurs the boundary between public and private power.¹⁵¹ In Libya, this has manifested in competing claims of legitimacy by armed actors, further deteriorating the prospects for coherent state rebuilding.

In light of these findings, the Panel of Experts underscored the need for:

- Enhanced monitoring of arms flows and dual-use items;
- Immediate accountability mechanisms for violations committed in detention facilities;
- International support for judicial reform and victim reparations;
- Clear identification of legitimate state security forces for embargo enforcement purposes;
- Strengthened international regulation of PMSCs through binding instruments aligned with the Montreux Document.

Between 2014 and 2022, the Wagner Group also became a key actor in Ukraine, where its deployment illustrates the use of PMSCs as instruments of hybrid warfare. Initially operating covertly during the annexation of Crimea and the destabilization of Donbas, Wagner's forces enabled the Russian Federation to engage in hostilities without formal attribution.¹⁵² Their presence in eastern Ukraine was marked by sabotage, targeted assassinations, and direct support to separatist militias in Donetsk and Luhansk, blurring the distinction between state and non-state actors.¹⁵³

Wagner's involvement expanded significantly following the full-scale invasion of Ukraine in February 2022. Reports by the UN and independent investigators allege that Wagner personnel have committed serious violations of international humanitarian law, including summary executions, torture, and indiscriminate shelling of civilian infrastructure.¹⁵⁴ These acts contributed to widespread displacement, civilian deaths, and destruction of critical facilities, raising urgent questions about state responsibility and accountability for mercenary-related conduct.

¹⁵¹ Abrahamsen and Williams (n 72) 143-165.

¹⁵² UN Human Rights Council (n 83) para 37.

¹⁵³ UN Security Council (n 96) paras 167-172.

¹⁵⁴ UN Human Rights Council (n 83) paras 45-48.

The Montreux Document Commentary warns that PMSCs operating under de facto state control—even without formal attribution—may trigger state responsibility under Article 8 of the International Law Commission's Articles on State Responsibility, which holds states liable for the conduct of actors under their effective control.¹⁵⁵ Russia's official denial of operational ties to Wagner is contradicted by abundant evidence of coordination in logistics, financing, and command structure.¹⁵⁶

The 2020 and 2021 UN Panel of Experts reports further document the transnational logistics framework shared by Wagner operations in Libya, Syria, and Ukraine.¹⁵⁷ These reports note consistent patterns in recruitment, armament sourcing, and battlefield tactics, revealing a strategically networked deployment model that undermines territorial integrity and fuels regional instability.

Abrahamsen and Williams argue that Wagner exemplifies a broader transformation in global security governance, wherein the deployment of force occurs within “security assemblages”—hybrid constellations of public and private power.¹⁵⁸ In Ukraine, Wagner's actions not only challenge traditional doctrines of combatant status and command responsibility but also expose the weaknesses of existing international regulatory regimes. The persistence of such actors in contested zones reveals the fragility of the international legal order when confronted with state-supported but officially deniable military contractors.

In light of these developments, observers including the UN Working Group on the Use of Mercenaries have reiterated the urgency of:

- Binding international instruments to regulate transnational PMSCs;
- Enhanced prosecutorial cooperation to address mercenary-linked war crimes;
- Reassessment of state accountability standards under existing customary and treaty-based frameworks;
- Greater transparency in the use of contractors by state and non-state actors in armed conflict.

¹⁵⁵ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001) Art 8.

¹⁵⁶ UN Security Council (n 95) para 56.

¹⁵⁷ Ibid.

¹⁵⁸ Abrahamsen and Williams (n 72) 167-174.

12. Questions to be Addressed

1. What international legal framework should govern the activities of Private Military and Security Companies (PMSCs), and how can it be enforced?
2. Should the international community adopt a universally binding definition and classification of PMSCs and their permissible activities?
3. How can existing legal instruments, such as the Montreux Document and the International Code of Conduct, be strengthened or expanded (if possible)?
4. What mechanisms can ensure the accountability of PMSCs and their personnel for violations of international humanitarian law or human rights?
5. Should PMSCs be subject to licensing or registration by an international authority such as the United Nations? If so, how should compliance be monitored and enforced?
6. How can states effectively regulate PMSCs that operate beyond their borders or in collapsed/conflict-affected regions?
7. Does the increasing use of PMSCs undermine the state's monopoly on the legitimate use of force? If so, how should this be addressed?
8. In what circumstances, if any, is it ethically permissible to outsource core military functions to private actors?
9. How do the profit motives of PMSCs affect their behavior in conflict zones compared to state militaries?
10. Can PMSCs contribute to peacekeeping, anti-piracy operations, or stabilization missions in fragile states? Under what conditions should this be permitted?
11. What risks do PMSCs pose to international peace and security, particularly in terms of prolonging conflicts, fueling arms races, or enabling resource exploitation?
12. How should international law distinguish between PMSCs and mercenaries, and what legal implications should this distinction carry?
13. Should combat roles be categorically restricted to state armed forces, or can PMSCs fulfill such roles under defined limits?

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