



Security Council

Expert report on the topic: «International Legal Status of Private Military and Security Companies»

The report is devoted to an analysis of the legal status of private military and security companies, the national specifics of their use, and the documents regulating their activities.

The report examines the key differences between the concepts of "mercenarism" "private military company," and "private security company," as well as key precedents confirming the need to clarify the legal status of PMSCs.

The report identifies key problems associated with the underdeveloped system of regulating their activities.

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1. Introduction.

Military services began to be provided at the dawn of human history. Moreover, it was not only soldiers: since ancient times, every army was accompanied by translators, blacksmiths, doctors, sutlers etc. They provided paid services while attached to the troops. However, the situation with the dominance of mercenaries on the battlefield began to change with the improvement and strengthening of the monarch's central power and the creation of the first large armies. Mercenaries began to fade into the background, and the system of supplying the troops began to change. Everything finally changed with the Great French Revolution and the Napoleonic Wars. The renaissance of mercenarism occurred only after World War II, in the late 1950s and early 1960s. It was also then, in the middle of the last century, that the first private military and security companies began to be created. Over the past thirty years — since the end of the Cold War, when demobilized military specialists around the world began to offer their services on a commercial basis en masse — these structures have transformed from a marginal phenomenon into a systemic instrument of foreign policy for a whole range of states: from guarding embassies and oil fields to full-fledged participation in combat operations and training armies

They have firmly established themselves on the international stage, occupying those niches where governments were either unable to operate or voluntarily delegated their powers. Their services are used by states, TNCs, non-governmental and international organizations, among which the UN should also be noted. At the same time, there is no universal, legally binding international treaty that would regulate the activities of PMCs as such. International law operates in this sphere with a rather old and narrow category of "mercenary," which almost never covers modern employees of private military companies, and at the national level, the approaches of states differ radically.

2. Terminological differentiation of terms

For a more comprehensive understanding of the problem, key terms should be identified.

First, there is the classic "mercenary." According to Article 47, paragraph 2 of the Additional Protocol I to the Geneva Conventions of 1977, a mercenary is any person who:

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) Does, in fact, take a direct part in the hostilities;
- (c) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
- (d) Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- e) Is not a member of the armed forces of a Party to the conflict; and
- (f) Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

Second, there is the "private military company" — a commercial structure that can provide a full range of military services: from logistics, training, and maintenance of weapons to direct participation in combat operations. An employee of such a company very rarely formally meets all five criteria of the definition of a mercenary.

Third, there is the "private security company" — a structure providing essentially non-military, security services: protection of facilities, convoying, personal protection — which formally may operate both in peacetime and in a conflict zone, but must not conduct offensive combat operations. The boundary between PMCs and PSCs in practice is often blurred, which is why contemporary international documents use the collective term — private military and security companies.

3. International legal framework.

The regulation of PMSC activities by international norms still largely remains a "grey zone." Nevertheless, there are a number of international treaties that partially define the position of these organizations, their responsibility, and the legal status of their personnel.

Geneva Convention III of 1949 and Additional Protocol I of 1977

According to Article 4 of the Geneva Convention of 1949, "persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals." Articles 44 and 45 of the Additional Protocol of 1977 define the status of combatants and prisoners of war and their rights to protection. At the same time, Article 47 formulates the aforementioned definition of a mercenary and deprives such persons of the right to the status of combatant and prisoner of war. Based on the above provisions, PMC personnel legally fall into several categories: if employees are integrated into the regular armed forces of a state and act under its effective command, they may be regarded as combatants; if they accompany the army but do not participate directly in hostilities, as civilians accompanying the armed forces; if, however, they independently and for payment participate in combat operations without being nationals of a party to the conflict, they risk falling under the category of mercenaries with all the ensuing consequences. In practice, most employees of contemporary PMSCs operate in the grey zone between these categories, and this is precisely what gives rise to the systemic uncertainty of their status.

International Convention against the Recruitment, Use, Financing and Training of Mercenaries

The key specialized treaty remains the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the UN General Assembly by resolution 44/34 of 4 December 1989. The Convention obliges states parties to criminalize not only mercenary activity as such, but also the recruitment, financing, and training of mercenaries on their territory. However, this document has a systemic weakness: as of 2025, its participants are only about thirty-six states out of the 193 UN members. Not one of the major countries — "suppliers" or "clients" of private military services — the United States, the United Kingdom, Russia, France, China, or South Africa — has ratified this document, which sharply limits its practical effectiveness. Moreover, the convention inherited the same narrow five-criteria definition of a mercenary as Additional Protocol I, as a result of which contemporary PMC employees almost never formally fall under it: they are either nationals of the country in whose interests they act or are integrated into broader

organizational structures, which allows them to avoid the criterion of "special recruitment for a specific conflict."

OAU Convention of 1977

Even before the UN convention, the Organization of African Unity (OAU, the predecessor of the African Union) gave its own response to the problem of mercenarism, for which the phenomenon of mercenaries — recruited both by former colonial powers and by private interested parties to intervene in Africa's post-colonial conflicts — was especially painful after a series of high-profile incidents, including the trial of mercenaries in Luanda in 1976: 13 British and American citizens were accused of mercenary participation in the Angolan civil war on the side of the anti-government movement FNLA and its leader Holden Roberto. It ended with four death sentences, which were carried out. The OAU Convention for the Elimination of Mercenarism in Africa of 1977 went further than the UN convention, declaring mercenary activity a crime against the peace and security of the African peoples and establishing broader responsibility, including for states that tolerate such activity on their territory. Nevertheless, this document also suffers from a limited number of ratifications and the same conceptual problem — the narrow definition of a mercenary, because of which contemporary PMCs operating, for example, in Mali, the CAR, or Sudan do not formally fall under its scope.

Montreux Document of 2008

Since rigid conventional regulation proved ineffective, the main norm-setting activity in the 2000s shifted toward "soft law." The most important result was the Montreux Document — 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," developed on the initiative of Switzerland together with the International Committee of the Red Cross and agreed on 17 September 2008 initially by seventeen states, including the United States, the United Kingdom, Russia, China, France, South Africa, Afghanistan, and Iraq. Since then, the number of participants has grown to almost sixty states, and the European Union, the OSCE, and NATO have also joined the document. The Montreux Document expressly states that it does not create new legal obligations, but merely systematizes already existing norms of international humanitarian law and human rights law as applied to the activities of PMCs, adding to this over seventy

recommendations of good practice. Its conceptual innovation is a three-part classification of states bearing different responsibility: "contracting states" (hiring PMCs), "territorial states" (on whose territory PMCs operate), and "home states" (where companies are registered or from which they are managed). Despite growing recognition, the Montreux Document remains legally non-binding — its violation entails no formal international legal responsibility, only reputational costs.

On the basis of the above-described international acts, it may be concluded that the international legal status of a PMSC participant is in an extremely precarious state. This often leads to situations in which it becomes de facto impossible to impose legal responsibility for offenses committed by members of PMSCs.

It should be noted that since 2005, a Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination has operated under the UN Human Rights Council — a special procedure that prepares annual reports, visits countries, and responds to specific incidents. Recognizing the inadequacy of existing instruments, this same group has since the early 2010s been promoting the idea of developing a new legally binding international regulatory mechanism for PMSCs. However, the process is proceeding extremely slowly: meetings gather a limited number of delegations, and key states either do not actively participate in the negotiations or are openly skeptical of the idea of a new binding treaty, preferring the existing combination of soft law and national regulation.

3. National specifics of regulating PMSC

In essence, the only effective means of regulating the activities of PMSCs still remains national legislation. The approaches of each state differ radically. Let us examine some of them.

The United States remains the world's largest client for the services of private military and security companies, yet it has no special comprehensive law dedicated specifically to private military companies as such. Regulation is made up of disparate elements: contract law, as well as criminal jurisdiction, which has historically proven extremely fragmented. An illustrative example of this fragmentation was the incident in Nisour Square in Baghdad on 16 September 2007, when security guards from the

company Blackwater, escorting a US State Department convoy, opened fire on peaceful Iraqis, killing, according to various sources, between fourteen and seventeen and wounding dozens. Since Blackwater worked under a contract with the State Department rather than the Department of Defense, it was not covered by the jurisdiction of the Uniform Code of Military Justice (UCMJ), and the Military Extraterritorial Jurisdiction Act (MEJA), written for Pentagon military contractors, was initially considered inapplicable as well. As a result, the first attempts at prosecution were dismissed by the court on procedural grounds, and only in 2014, after many years of proceedings, the court found one guard guilty of first-degree murder and three others guilty of manslaughter and attempted murder, sentencing them to lengthy terms of imprisonment. However, in December 2020, President Trump fully pardoned all four, which drew sharp condemnation from five independent UN experts, including the chair of the Working Group on Mercenaries, who stated that the pardon violates US obligations under the Geneva Conventions to ensure accountability for war crimes, even when committed by private contractors.

South Africa is a rare example of a country that attempted to build a detailed and comprehensive national system for regulating specifically private military activity, which is connected to its own history: it was South African former military specialists, primarily through the company Executive Outcomes, who in the 1990s became the de facto pioneers of the modern PMC industry, fighting under contract on the side of the governments of Angola and Sierra Leone against rebels. In response to international criticism and its own experience of a failed and scandalous coup in Equatorial Guinea in 2004, the South African parliament first adopted the Regulation of Foreign Military Assistance Act of 1998, which prohibited mercenary activity and required authorization from the National Conventional Arms Control Committee (NCACC) for providing military assistance to foreign forces.

In the China, there is no legal concept of a "private military company" — the state does not permit private structures conducting combat operations — but since 2009-2010, regulation has been in effect that legalized the domestic market for private security services (in particular, the "Regulation on the Administration of Security Services"), and today there are several thousand private security companies operating in the country. As the "Belt and Road" initiative expands and the number of Chinese citizens, investments, and infrastructure projects in unstable regions of

Africa, Central Asia, and the Middle East grows, these companies have begun to expand their activities abroad to protect Chinese facilities and personnel. At the same time, their foreign activity is in a distinct legal grey zone: Chinese domestic legislation does not extend to it, international law does not regulate it separately, and the actual behavior of such companies is determined exclusively by the legislation of the host country.

4. Problems of PMSC activities

Summarizing, several key legal problems can be identified.

The central problem of international regulation of private military and security companies (PMSCs) lies in the deep conceptual gap between the narrow conventional definition of a "mercenary" and the real diversity of the forms of activity of contemporary PMSCs. International conventions, including the 1989 UN Convention against the Recruitment, Use, Financing and Training of Mercenaries, as well as the additional protocols to the Geneva Conventions of 1977, were formulated with the classic mercenary in mind — an individual or a small group directly participating in combat operations for personal material gain. Contemporary PMSCs are organized as corporate structures providing a broad range of services: protection of facilities and personnel, logistics, intelligence, consulting, maintenance of military equipment, and sometimes direct participation in combat operations. An employee of such a company formally does not meet the criteria of a "mercenary." As a result, the existing conventional norms prove practically inapplicable to most real situations, and the very category of "mercenary" turns into a legal anachronism that does not reflect contemporary practice.

This is compounded by the extremely low level of ratification of the existing specialized treaties. The 1989 UN Convention has been ratified or acceded to by only about thirty-six states, and among its participants the largest "players" in the private military services market — the United States, the United Kingdom, Russia, and China — are completely absent, as are most countries actively using PMSCs or providing their territory for their basing. Without the participation of these states, any international treaty remains a declaration incapable of influencing the real activities of companies registered in their jurisdictions or hired by their governments. Moreover, many states deliberately avoid ratification, since it would limit their own

freedom to use private contractors for tasks that, for political reasons, it is undesirable to assign to the regular army.

The most authoritative contemporary instruments — the Montreux Document of 2008 and the International Code of Conduct for Private Security Service Providers — are legally non-binding in nature. They formulate high standards: the obligation to comply with international humanitarian law and human rights, rules on the use of force, principles of personnel selection, and requirements for training and accountability. However, these documents do not create effective enforcement mechanisms. They do not provide for an international court, sanctions for violation, or mandatory audit. Companies may sign them voluntarily, but nothing prevents them from ignoring these standards in practice.

Jurisdictional gaps and the practice of granting immunities complete the picture of impunity. Even where violations are proven — killings of civilians, torture, extrajudicial executions — holding the perpetrators accountable proves extremely difficult.

Finally, all of this comes up against a fundamental political disagreement among states regarding the very desirability of a new binding international treaty. Some delegations, primarily within the UN and PACE, insist on the need to create an international registration and licensing body, as well as a legally binding convention that would close the existing gaps. Others, including the largest consumers of PMSC services, consider the existing combination of national regulation and soft law sufficient and fear that a new treaty would limit their operational flexibility. For them, PMSCs are a convenient instrument of foreign policy, allowing them to act where direct military intervention is politically unacceptable or legally impossible.

6. Conclusion

Despite the fact that the regulation of PMSC activities is currently largely carried out at the national level, the most important task of the UN and in particular of the Security Council remains the creation of an effective legal framework in the sphere of private military and security services. The adoption of a decision on this issue will depend not only on legal and organizational factors, but also on the political will of member states, their readiness for compromises in the Security Council, and the

ability of the UN to adapt to a rapidly changing international environment. Nevertheless, certain steps in this direction are already being taken. The UN Working Group on the use of mercenaries has since the early 2010s consistently promoted the idea of developing a new legally binding regulatory mechanism, and the Parliamentary Assembly of the Council of Europe in 2025 called for the creation of a binding regional instrument. These initiatives, even without being fully implemented, perform an important function: they keep the topic on the international agenda, shape the language and standards that gradually penetrate national legislations, and create political pressure on states that prefer to maintain the status quo. Future regulation must be flexible enough not to paralyze the legitimate activities of bona fide security companies ensuring the safety of humanitarian missions, diplomatic missions, and critical infrastructure, and at the same time strict enough to exclude impunity for violations of international humanitarian law and human rights. Achieving this balance will require from UN member states a readiness for compromises, and from the Security Council an ability to adapt to a rapidly changing international environment. Regardless of the form of implementation, the main goal remains unchanged — ensuring sustainable peace, preventing conflicts, and protecting human rights throughout the world.

7. References

1. Charter of the United Nations <https://www.un.org/en/about-us/un-charter/full-text>
2. International Convention against the Recruitment, Use, Financing and Training of Mercenaries
3. Geneva Convention of 12 August 1949
4. Additional Protocol I to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977
5. "Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict"