Policy Brief

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Navigating in a Grey Zone: Regulating PMSCs

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Although there have been efforts to regulate the privatization of security, the problem is not the lack of international regulation, but the lack of convergence between international and national law on one hand, and government regulation and industry self-regulation, on the other. The growing number of actors in the contemporary security environment has added a layer of complexity, as it made accountability more diffuse and difficult to track, since the responsibility lies with multiple actors. As shown by the UN Working Group on the Use of Mercenaries, there is a regulatory legal vacuum covering the activities of PMSCs. International law only covers actions of mercenaries, and does not include PMSC's actions. There is a lack of common standards on the registration and licensing of these companies, for the vetting and training of their staff processes, and on the safekeeping of weapons. Although a number of rules in IHL and IHRL could be applied to states in their relationships with PMSCs, the UN Working Group also showed that there are numerous challenges to the application of domestic laws, in particular for international PMSCs that operate in foreign states. Investigations in conflict zones are extremely difficult, which is why PMSCs and their personnel are rarely held accountable for violations of human rights. The only international documents that specifically analyze the role of PMSCs are the Montreux Document, the Working Group's guidelines and, to some extent, the International Code of Conduct and the Voluntary Principles on Security and Human Rights. However, the latter only focus on PSCs, leaving PMCs in a legal grey zone. The main issue is not that PMSCs are beyond the law, but the fact that the law does not define what PMCs are and, hence, does not regulate the full scope of their activities, focusing only on security services provided by these PMSCs. Attempts by both the UN and OAU to criminalize mercenarism have failed to include the operations of modern private forces in the states that are parties to these conventions. Further research is required to appraise the relative utility of the different legal frameworks and legislative measures in order to boost their effectiveness.

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INTRODUCTION

Private contractors have maintained, throughout the years, a critical role as "silent partners"—as Kochheiser called them[1]—to parties in armed conflicts. However, ineffective definitions of both mercenary and private military and security companies (PMSCs) in Protocol I, the UN Convention (1989), the OAU Convention (1977), and different non-binding guiding principles, reflect the misguided state and non-state attempts to regulate the privatization of force in all its forms.

One of the issues is that the regulation of PMSCs is intrinsically linked to its definition. As long as there is no single definition of what these companies are, each state can regulate the activities of these companies without pushing for an international and legally binding treaty. The UN's Working Group on the Use of Mercenaries asserts that "international law does not contain any provisions which address the outsourcing of State Functions to PSCs"[2]. However, another controversy lies in the outsourcing of what is considered to be inherently 'state functions'. The Draft International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies (2009) defines them as "functions that a State cannot outsource or delegate to non-State actors" such as "waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence and police powers, especially the powers of arrest or detention, including the interrogation of detainees" (Article 2(k)).

As Bosch and Kimble explained, "even in this grey area where states, corporations and sometimes individuals contract the services of PMSCs, their dealings are subject to several rights or duties under international law. These include state responsibility for the actions of these PMSCs, provisions which determine when individuals can face prosecution for their actions, laws which prohibit the use of certain weapons, international human rights laws, and IHL" (2015: 439). Nonetheless, as Perrin (2012) explained, although PMSC employees can be held criminally liable by the territorial states, in many cases the latter may simply be unable or unwilling to pursue the prosecution of ordinary crimes. Furthermore, in some cases, a status of forces agreement grants the private contractor immunity from domestic criminal prosecution (Perrin, 2012: 228). Hence, universal jurisdiction for war crimes gives the right to each nation state to prosecute employees of a PMSC. Moreover, the International Criminal Court cannot exercise jurisdiction over PMSCs, and the provisions for attributing criminal liability to a PMSC are still not clear under international law (Perrin, 2012: 228).

While PMSCs operate in a grey area of international law, this does not mean they operate in a complete lawless environment. There are rules and principles that regulate the activities of both PMSCs and their employees, and the responsibilities of the states that hire them. However, as explained above, there are still legal issues with the enforcement of international criminal law against PMSCs and their contractors. It is unclear whether or when security contractors can be directly targeted in hostilities, to what extent private security personnel are permitted to directly participate in the conflict, and what consequences might follow from their actions if they end up participating directly in hostilities (Perrin, 2012: 228).
In this context in which regulatory governance has become more and more complex, and

1. Steven R. Kochheiser, Silent Partners: Private Forces, Mercenaries, and International Humanitarian Law in the 21st Century, 2 U. Miami Nat'l Security & Armed Conflict L. Rev. 86 (2012).

2. 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', Second Session, Geneva, 13-17 August 2012, A/HRC/WG.10/2/CRP.1, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/189/42/PDF/G1218942.pdf?OpenElement (last accessed 5 August 2021).

in which there is a lack of clear boundaries between international humanitarian law and human rights law, this paper provides a comprehensive overview of the different regulatory frameworks put in place to regulate the operations of PMSCs, and the issues that arise in terms of accountability and transparency.

ATTEMPTS AT REGULATING PMSCS

International Humanitarian Law

As detailed in the two first papers of this series, the regulation of PMSCs is still an undeveloped topic, as neither international humanitarian law (IHL) nor international human rights law treaties make any reference to PMSCs or the individuals they employ. Many of these international treaties were drafted before the boom in security privatization (Perrin, 2012: 8). Moreover, since the mid-seventeenth century, the traditional approach to the international order has been based on the fact that only sovereign states enjoy international legal personality, meaning that only states have rights and obligations under international law (Buzatu, 2015: 12). International and regional conventions refer only to mercenary activities, and do not mention nor regulate the activities of PMSCs.

IHL does not address the legality of mercenary activities nor does it establish the liability of those who participate in mercenary activities. Instead, it only defines the status of a mercenary and its implications should a mercenary be captured (United Nations Human Rights Office of the High Commissioner). Some authors have argued that this omission is because private contractors are perceived simply as mercenaries, whose status, and the implications of their capture, are defined by the law of armed conflict (IHL), through its two international anti-mercenary treaties[3]. Nonetheless, IHL is still relevant due to the nature of PMCs' activities, which directly touch upon the laws and customs of war, and because these companies provide services that are globalized[4].

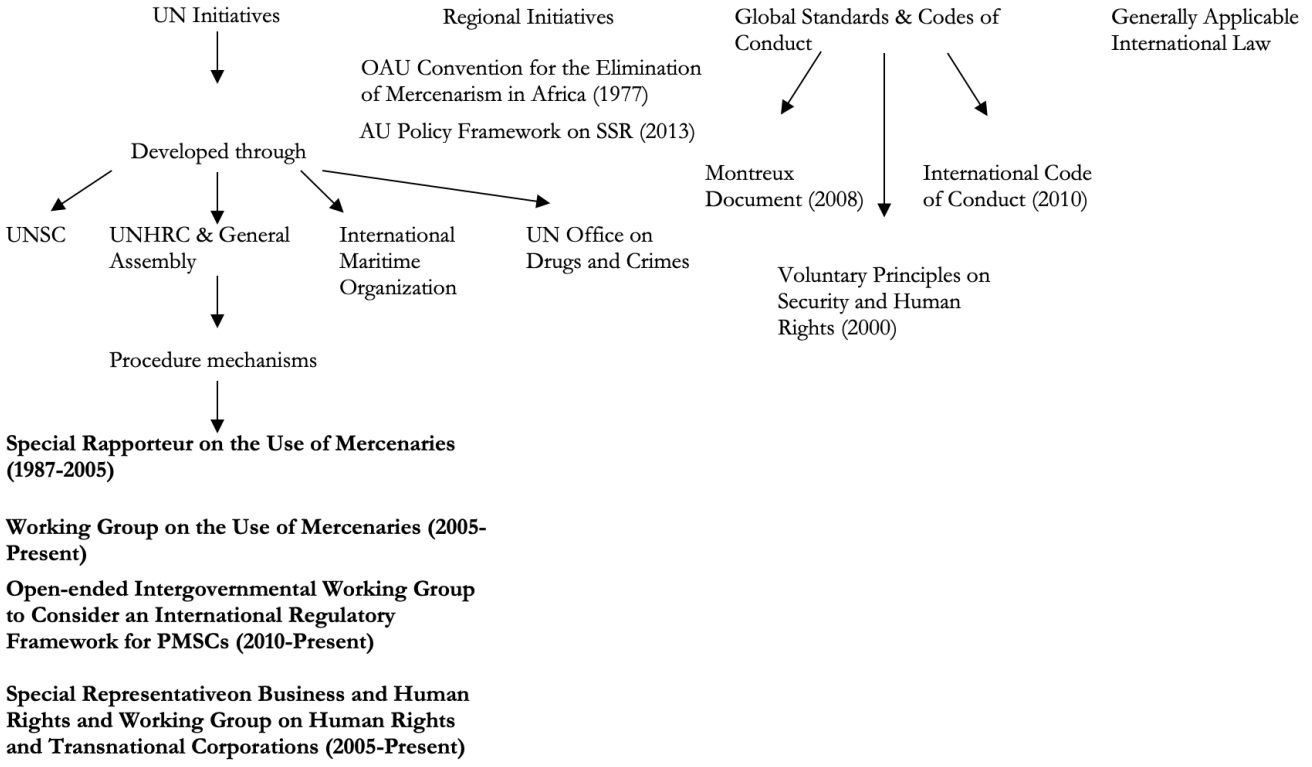
To add a layer of complexity, the literature categorises PMSC personnel as either civilians or combatants, and the way they are regulated depends on the nature of their activities and their relationship with the armed forces of one of the belligerents. If perceived as combatants, private contractors will be required to distinguish themselves from civilians; if seen as civilians, they will not be allowed to take a direct part in hostilities, and if they do, it would deprive them of any protection to which they might be entitled under IHL, opening them to prosecution under the relevant domestic law.

IHL and the Geneva Conventions, including the Additional Protocol I, only define the status to be given to mercenaries in times of armed conflict and the protections they could be offered if captured. For IHL, mercenaries are civilians not entitled to take a direct part in hostilities. On the contrary, UN and OAU/AU Conventions seek to criminalise mercenarism and the use of mercenaries, making criminal prosecution possible.

3. 1977 Convention for the Elimination of Mercenarism in Africa (OAU Mercenaries Convention) and 1989 International Convention Against the Recruitment, Use, Financing and Training of Mercenaries.

4. See Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. (The Hague Convention (1907)). See also The Geneva Convention I to IV of 1949 (GC I to IV 1949).

International Standards



International Standards

Hague Convention V respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (1907)

Although there is no explicit mention of mercenaries in the articles that form the Hague Convention V, it has been argued that Arts. 4, 5, 6 and 17A can apply to mercenary activities in specific cases[5].

Article 4 of the Hague Convention V, considered to represent customary law, states that "Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents." Hence, the neutral power has an obligation to prevent such activities from happening in its territory, but cannot be held responsible where individuals cross the border and offer their services to the belligerents. However, this article creates an obligation for States to prevent the creation and/or formation of

5. Art 4. Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents.
- Art 5. A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.
- Art 6. The responsibility of a neutral Power is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents.
- Art 17 A neutral cannot avail himself of his neutrality
(a) If he commits hostile acts against a belligerent;
(b) If he commits acts in favor of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.
In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent State could be for the same act.
Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, The Hague, 18 October 1907.

mercenary groups on their territory for the purpose of intervention in an armed conflict to which they have chosen to remain neutral. If they do not fulfil the obligation, these States will be in violation of their obligations under international law.

Geneva Conventions (1949)

The Geneva Conventions and their Additional Protocols are international treaties that contain important articles to protect people who do not take part in fighting, such as civilians, medics, and aid workers, and those who can no longer fight, such as the wounded, sick and shipwrecked troops, and prisoners of war. The Conventions and their Protocols call for measures to be taken to prevent or put an end to all breaches. They contain stringent rules to deal with what are known as "grave breaches"[6]. Those responsible for grave breaches must be sought, tried, or extradited, whatever nationality they may hold (ICRC, 2010). However, none of the four Conventions contains an article that deals specifically with the question of mercenaries. Nonetheless, as explained above, under the 1949 Geneva Convention, mercenaries are entitled to be treated as prisoners of war, as explained in Article 4, if they are members of the "armed forces of a Party to the conflict" or of a "militia or volunteer corps forming part of such armed forces", or if they meet the requirements in Article 4[7]. In any other case, mercenaries are treated like any other civilian who has taken up arms, subject to trial and punishment by the detaining power (Major, 1992: 144). In the case of non-international armed conflicts, mercenaries are not protected, except for those

6. See the International Committee of the Red Cross, "How 'grave breaches' are defined in the Geneva Conventions and Additional Protocols", available at: https://www.icrc.org/en/doc/resources/documents/faq/5zmgf9.htm

7. Article 4 states:
A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:
(1) Members of the armed forces of a party to the conflict, as well as members of militia or volunteer corps forming part of such armed forces.
(2) Members of other militia and members of other volunteer corps, in- cluding those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied provided that such militia or volunteer corps, including such organized resistance movements fulfill the following conditions:
(a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance;
(c)that of carrying arms openly;
(d) that of conducting their operations in accordance with the laws and customs of war.
(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
(4) Persons who accompany the armed forces without actually being mem- bers thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labor units or of services responsible for the welfare of the armed forces, provided that they have
received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.
(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and crews of civil aircraft of the Parties to the conflict, who do not benefit by more favorable treatment under any other provisions of international law.
(6) Inhabitants of a non occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.
B. The following shall likewise be treated as prisoners of war under the present Convention:
(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or when they fail to comply with a summons made to them with a view to internment.
(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or nonbelligerent Powers on their territory and whom these Powers are required to intern under inter- national law, without prejudice to any more favorable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or nonbelligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.
Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 4, 6 U.S.T. 3316, 75 U.N.T.S. 135

protections provided by Article 3 of the Geneva Convention[8].

The Geneva Conventions entered into force in October 1950. The four Conventions have been ratified by 196 states, including all UN member states, the two UN observers (the Holy See and the State of Palestine) and the Cook Islands (ICRC).

Protocol I Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflict (1977) art. 47

Following the end of the Second World War and the recognition of the right of peoples to self-determination, mercenaries were used to hinder national liberation movements, as explained in the second paper in this series of papers on PMSCs. This shift created a change of attitude in the international community, and mercenaries were no longer perceived as an integral part of armies, but as criminals. This change pushed the UN to start condemning the use of mercenaries, and the first definition of mercenary was given in Art. 47 of the Additional Protocol I (Major, 1992: 106-107):

> 1. A mercenary shall not have the *right to be a combatant or a prisoner of war.*
> *2. 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*[9].

Hence, according to this article, mercenaries have neither the right to be a combatant nor to be treated as a prisoner of war. The words used in this definition have been chosen carefully to exclude several categories of actors, including: foreign nationals in the service

8. Article 3 of the Convention provides:
In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party in the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arm and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.
To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above- mentioned persons: (a) Violence to the life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
(2) The wounded and sick shall be collected and cared for.
An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.
The Parties to the conflict should further endeavor to bring into force, by means of special agreement, all or part of the other provisions of the present Convention.
The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.
Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 3.

9. "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)," International Committee of the Red Cross, 8 June 1977, available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=9EDC5096D2C036E9C12563CD0051DC30

of the armed forces of another country (for example the individuals that served in the International Brigades in the Spanish Civil War); foreign military personnel integrated into the armed forces of another state (for example in the French Foreign Legion or the Gurkhas in the British Army); foreigners employed as advisors and trainers; those induced by ideology or religion; and those who may not participate directly in hostilities. During the Angolan civil war, mercenaries claimed they did not fight for money, but against communism. Hence, they were excluded from this definition, as they fought for ideology, highlighting once again the difficulty of proving the profit-driven motive behind the involvement of an individual in mercenary activities (Kinsey in Petereyns, 2016: 22). One of the main issues with this definition is that its provisions are cumulative; if fighters do not meet even one of the criteria, they will not be considered mercenaries. As Cassese (cited in Percy, 2007: 376) points out, states can avoid the mercenary label by simply integrating private fighters into their own forces. This way, states could either avoid impunity or, contrarily, allow that some individuals be identified as mercenaries in order to avoid legal consequences.

However, it is worth mentioning that Art. 47 of the Additional Protocol I applies only to international armed conflicts, and that IHL does not contain any provision on mercenaries in non-international armed conflicts. Still, even if Article 47 has reached customary law status, its narrow definition is very difficult to apply to modern private forces.

International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989)

The International Convention against the Recruitment, Use, Financing and Training of Mercenaries was adopted by Resolution 44/34 on December 4, 1989, following nine years of discussion and debates between member states. It entered into force on October 20, 2001. This Convention was finally approved following the international community's recognition of the need for a multilateral convention, as previous attempts at controlling and regulating mercenaries were considered a failure. It was largely pushed by states of the so-called Third World, seconded at the time by socialist countries.

The definition of mercenary in the Convention is derived from Article 47 of Protocol I and from the OAU Convention, but it broadens the scope to include mercenaries operating in both international and non-international armed conflicts, but also in "any other situation" (Art. 1 paragraph 2). Any of the activities cited in the Convention are considered an offence regardless of whether perpetrated by the mercenaries themselves (Art. 3) or by any other person (Art. 2). Attempts and complicity to commit any of the offences set forth are also considered an offence (Article 4).

However, this definition excludes PMSCs that have operated in Iraq or in Afghanistan, contracted to protect the government and the territorial integrity of the state in which they operate.

As with other instruments of international criminal law, States Parties undertake to try to extradite suspected offenders as stipulated by the Convention (Articles 9 to 12) (IHRC). Similarly to the OAU Convention (analysed below), the UN Convention also perceives mercenaries as a threat to the territorial integrity of states and the rights of people to self-determination. Unlike the OAU Convention, the UN Convention does not provide any justification for hiring mercenaries, whereas the former allows states to hire mercenaries in order to resist rebel groups (Sheeby & Maogoto, 2005: 260). Art 16 of the UN Convention does not state explicitly that mercenaries have no right to be combatants or prisoners of

war. This contrasts with Art. 47 AP I and Art. 3 of the OAU Convention. The UN Convention merely states that the rules of armed conflict and IHL apply in any case (such as in the treatment of captured mercenaries). On the other hand, the OAU Convention does not foresee universal jurisdiction, whereas the UN Convention does. However, the latter does not distinguish between legitimate and illegitimate activities, and no monitoring body exists, leaving the application of the convention and its enforcement to member states[10].

UN Initiatives

In 1987, the United Nations Commission on Human Rights appointed a Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination[11]. The Resolution of the 47th General Assembly (A/RES/47/84) denounced the use of mercenaries and urged all states to be vigilant against any mercenary activities within their territories. It mentioned South Africa in particular as facilitating the recruitment and use of mercenaries to counter national-liberation movements. The Special Rapporteur's mission was to look into allegations while encouraging states to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which entered into force on October 20, 2001 (Avant, 2006: 9). However, since the UN treated the rise of the private military and security industry as a resurgence of mercenarism, it raised questions and led to many arguments about what the Convention is really trying to abolish. Furthermore, the Special Rapporteur was also tasked with promoting the adoption of national legislation targeting mercenary activities. Many countries, including African ones, subsequently passed national laws to prohibit their activities[12]. At its 60th session in resolution 2004/5, the Commission on Human Rights requested the Special Rapporteur to pay particular attention to the activities of PMSCs[13].

By resolution 36/3, the Commission on Human Rights decided to end the mandate of the Special Rapporteur and established a working group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people's self-determination. The working group was made up of five independent experts, one from each regional group. The creation of this working group came at a critical time, as the UN became aware of the 'corporatisation' of mercenary activity, in the form of PMSCs. Hence, the group's main task was to monitor and research the impact on human rights, especially the right of peoples to self-determination, of mercenaries and mercenary-related activities in all their manifestations, including companies that provide military and security services. In the past few years, the working group has also focused on the impact of mercenarism, foreign fighters, and PMSCs on human rights in different contexts, including within the extractive industries. This was also the focus of the Voluntary Principles on Security and Human Rights, analysed below.

10. Department of Public Information, Yearbook of the United Nations, vol. 55, 2001, 631.

11. "Special Rapporteur on use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination", United Nations Human Rights Office of the High Commissioner, available at: https://www.ohchr.org/EN/Issues/Mercenaries/SRMercenaries/Pages/SRMercenariesIndex.aspx

12. South Africa passed in 2007 the "Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act of 2006"; and in 2001 the "Private Security Industry Act 56". The South African Constitution (Act 108 of 1996) is a pioneer in this issue, as it is the only country to have adopted a legislative tool that seeks to address issues associated with PMSCs. The Constitution sets the general legal framework governing the provision of military and security services in South Africa on one hand, and the involvement of its citizens in armed conflicts abroad, on another hand.

13. "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination," Office of the High Commissioner for Human Rights, Commission on Human Rights resolution 2004/5, 8 April 2004, available at: http://psm.du.edu/media/documents/international_regulation/united_nations/human_rights_council_and_ga/wg_on_mercenaries/resolutions/e-cn_4-res-2004-5.pdf

The working group developed guidelines, conducted country visits, received individual complaints, published annual reports, studies and articles, and continued to encourage the reinforcement of human rights. Its most important work was two reports that included a draft proposal for a new international legal instrument regulating PMSCs, and a recommendation to the Human Rights Council to establish an intergovernmental open-ended working group with the task of drafting a new convention[14]. The main elements of the proposed convention were to reaffirm the state monopoly over the legitimate use of force, the identification of state functions that cannot be outsourced to PMSCs, and the application of international human rights standards to regulate PMSCs' use of force and firearms. However, the draft proposal was based on the working group's findings following its missions to Afghanistan—where there were U.S. and UK-based companies—and hence, not really applicable to the rest of the world.

Moreover, the UN Working Group on the Use of Mercenaries was tasked, in March 2009, with drafting an international convention on the regulation, oversight, and monitoring of PMSCs. Hence, the UN's official position, expressed through the Working Group on the Use of Mercenaries pursuant to the UN Commission on Human Rights Resolution 2005/2, is that PMSCs operate legally in a "grey zone, which is not defined at all, or at least not clearly defined by international legal norms" (Mancini et al, 2011: 340). The Human Rights Council adopted Resolution 15/26, by which it established an open-ended intergovernmental working group to consider and develop the draft convention.

In 2010, the 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' presented a draft convention on private military and security companies, Resolution 15/26. The following countries voted against it: Belgium, France, Hungary, Japan, Poland, Republic of Korea, Republic of Moldova, Slovakia, Spain, Ukraine, the United Kingdom, and the U.S. The countries that voted in favour were, in most cases, countries in which PMSCs had operated directly, intensifying conflicts[15].

The Special Representative and the Working Group on Business and Human Rights

The post of Special Representative of the UN Secretary-General on Business and Human Rights, was tasked with defining the roles and responsibilities of states, companies, and other social actors in the business and human rights sphere. The Special Representative, whose mandate ended in 2011, reported to both the UN Human Rights Council and the UN General Assembly.

In 2008, after extensive research and consultations with governments, business, and civil society, the Special Representative presented to the HRC the non-binding 'Protect,

14. "Report of the 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," A/HRC/15/25, United Nations Digital Library, Geneva, 5 July 2010, available at: https://digitallibrary.un.org/record/688383?ln=en ; "Report of the 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," A/HRC/10/14, UN Human Rights Council, Geneva, 21 January 2009, available at: https://digitallibrary.un.org/record/647828?ln=en

15. The countries in favour were: Angola, Argentina, Bahrain, Bangladesh, Brazil, Burkina Faso, Cameroon, Chile, China, Cuba, Djibouti, Ecuador, Gabon, Ghana, Guatemala, Jordan, Kyrgyzstan, Libyan Arab Jamahiriya, Malaysia, Mauritania, Mauritius, Mexico, Nigeria, Pakistan, Qatar, Russian Federation, Saudi Arabia, Senegal, Thailand, Uganda, Uruguay, and Zambia.

Respect and Remedy' Framework for Business and Human Rights. The Framework outlines the responsibilities of companies (including security companies and firms that hire them) to protect citizens against human rights abuses through the implementation of appropriate policies, regulations, and remedial measures. In June 2011, the compliance and oversight mechanism or 'Guiding Principles' for the Framework was completed and endorsed by the HRC[16].

In 2011, the HRC established a working group on the issue of human rights and transnational corporations and other business enterprises, to carry on the work of the Special Representative. The working group has since created a Forum in which good practices and lessons learnt on the implementation of the Framework and Guiding Principles can be debated. The 10th Annual Forum on Business and Human Rights was held in Geneva from November 29, 2021 to December 1, 2021[17].

International Standards and Codes of Conduct

Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict (2006)

The Montreux Document was the result of an initiative by the Swiss government and the International Committee of the Red Cross in early 2006. The text was finalized and adopted by participating states on September 17, 2008.

It was the first document to reaffirm the international legal obligations of states regarding the activities of PMSCs in armed conflict, by bringing together 17 governments, industry representatives, academic experts, and NGOs. It is a reflection of the consensus that international law is also applicable to PMSCs and hence, that they do not operate in a legal vacuum. However, the Montreux Document does not go into detail on which rules (existing obligations under IHL and IHRL) must be applied in a specific situation (Petereyns, 2016: 43). Although the document contains answers to legal questions raised by the use of PMSCs, it does not create new obligations and is not legally binding. Nonetheless, it emphasizes that the document should not be viewed "as an endorsement for the use of PMSCs, [and does not] take a stance on the legitimacy of the presence of these companies in armed conflict" (Petereyns 2016: 43).

However, the Montreux Document does encourage states to implement the practices in their national law.

The Document provides 73 statements aimed to recall certain existing international legal obligations of states regarding PMSCs, drawn from various international humanitarian and human rights agreements and customary international law.

The Montreux Document distinguishes three categories of states, based on their relationships to PMSCs, and provides best practices for each category:

16. International Justice Resource Center, "Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises", available at: https://ijrcenter.org/un-special-procedures/working-group-on-the-issue-of-human-rights-and-transnational-corporations-and-other-business-enterprises/

17. United Nations Forum on Business and Human Rights, "10th United Nations Forum on Business and Human Rights 29 November – 1 December 2021," Concept Note, available at: https://www.ohchr.org/Documents/Issues/Business/2021ForumConceptNote.pdf

- **Contracting States**: states that directly contract the services of PMSCs, including, as appropriate, where such a PMSC subcontracts with another PMSC. The document suggests 23 best practices to contracting states. It advises them to consult international law to determine whether a service is permitted to be contracted out and states that anything that may cause PMSC personnel to become involved in direct hostilities should be considered suspect. It also encourages contracting states to select PMSCs carefully following transparent processes according to criteria that account for the past behaviour, resources, and personnel policies of firms, and also to establish requisite laws to be able to prosecute firms or individuals that commit crimes abroad, punish non-criminal misbehaviour, and establish monitoring tools to insure misbehaviour is identified (Avant, 2006: 22);

- **Territorial States**: states on whose territory PMSCs operate. The Document advises territorial states to develop procedures for licensing and keeping track of PMSCs and their personnel in a transparent way that is sensitive to national and international legal guidelines; it also offers guidelines for them to make sure weapons carried by private contractors are limited, legally obtained, registered, and operated by trained personnel. Furthermore, territorial states are also advised to provide for criminal jurisdiction in their laws over crimes committed by PMSC personnel, to negotiate agreements on legal coordination with contracting states, and to cooperate with contracting states and home states over the investigation of matters of common concern (Avant 2006: 22);

- **Home States**: states of nationality of a PMSCs, i.e. where a PMSC is registered or incorporated; if the state where the PMSC is incorporated is not the one where it has its principal place of management, then the state where the PMSC has its principal place of management is the "Home State". The Montreux document advises home states to focus on export policies that limit and license services and weapons, to require relevant information about them, and to ensure that they abide by national and international law. It also advises home states to coordinate with contracting and territorial states on monitoring and compliance issues.

International Code of Conduct

Similar to the Montreux Document, the International Code of Conduct for Private Security Service Providers (ICoC) is the second voluntary regulatory initiative launched by the government of Switzerland in cooperation with private stakeholders and relevant experts. It responds to a need for a more detailed guidance (Petereyns, 2016: 45). The ICoC articulates a set of standards for companies providing private security services to adhere to in order to comply with International Human Rights and IH. But it fails to include companies that provide military services. What is new with the ICoC is that it requires signatory companies to comply with the obligations independently of national laws and legal frameworks in the countries concerned, and it attempts to improve accountability of the PMSC industry by establishing an independent oversight mechanism, that would include certification, auditing, monitoring, and reporting. The ICoC Association (ICoCA) includes a steering committee of representatives from three stakeholder groups: signatory companies, governments, and civil society. The committee's main task was to develop a proposal for the accountability mechanism, which they did in 2012 by releasing the Draft Charter for the Oversight Mechanism of the ICoC.

In 2013, ICoCA was established to ensure the effective implementation of the ICoC and to promote responsible provision of private security services. It is governed by a board of directors with equal representation from the three stakeholder pillars, whose main functions are to provide and support certification, monitoring, and complaint resolution.

Voluntary Principles on Security and Human Rights

In December 2000, the governments of the United States, the United Kingdom, the Netherlands, and Norway agreed alongside a group of six extractive companies and seven NGOs, on a set of voluntary principles to assist oil, gas, and mining companies to provide the required security for their operations, while protecting and promoting human rights[18]. Many of the Voluntary Principles are non-prescriptive guidelines aimed to guide the conduct of private security companies. The tools developed are divided into four modules: stakeholder engagement, risk assessment, public security providers, and private security providers.

The Voluntary Principles (VPs) offer a good opportunity to foster socio-economic and political benefits in resource-rich countries, as it is the case in many African countries. As Vandome and Vines (2021) stated, "in complex environments, the VPs provide an important framework for due diligence and guidance on identifying and mitigating human rights risks", as the government is either unwilling or unable to respect human rights[19]. However, these benefits require all parties to demonstrate a mutual commitment to implementation. The fact that the VPs are not legally binding and are designed to be—as their name indicates—voluntary, over time, they did not help shape the development of harder standards. Nonetheless, they have been unsuccessful in ensuring that their members actually implement them. In fact, until 2007, there were no rules or procedures that required companies to implement the VPs once they joined the VP plenary. Furthermore, the new rules agreed in 2007 only target individual cases. In resource-rich countries with poor human rights records, the VPs failed to create an environment in which human rights are addressed and the VPs respected, despite its aim to bring new government members to address these abuses on their territory.

Hence, the VPs do not have a mechanism that effectively monitors whether or not a company has implemented the principles during its operations. The burden then falls on human rights organizations, which have to carry out the monitoring of each company in every country it operates in[20].

Regional Initiatives: the African Case

The presence of foreign mercenaries in Africa in the post-decolonization era has had a profound destabilizing influence on the continent, by undermining state power and weakening the processes of building strong institutions. African governments developed a strong anti-mercenary sentiment, and urged the international community to take international legal action through the United Nations and the Organisation of African Unity (OAU), to define mercenarism and its status (Francis, 1999: 321). The first time the problem of mercenaries was raised was in 1961 at the United Nations, following the Katanga secession. However, it was not until 1967 that the Security Council and the Conference of Heads of State and Government of the OAU urged states to prevent the recruitment of mercenaries on their territory to overthrow the governments of foreign states. African governments

18. See Voluntary Principles' website: https://www.voluntaryprinciples.org/the-initiative/.

19. Christopher Vandome & Alex Vines, "Mozambique and the Voluntary Principles on Security and Human Rights," Chatham House, Research Paper, 24 November 2021, available at: https://www.chathamhouse.org/2021/11/mozambique-and-voluntary-principles-security-and-human-rights/introduction

20. "Business and human rights – Debate: Volutnary Principles on Security and Human Rights – do the Voluntary Principles safeguard human rights?," EC Newsdesk, 2 June 2008, available at: https://www.reutersevents.com/sustainability/business-strategy/business-and-human-rights-debate-voluntary-principles-security-and-human-rights-do

perceived mercenarism as being partly responsible for 'propping up' illegitimate colonial regimes and threatening the independence aspirations of the African people.

The suggested definitions of mercenarism were examined by the Ad Hoc Committee for Expulsion of Mercenaries, and in 1971 by the OAU's Council of Ministers' Committee of Legal Experts. This Committee was charged with drafting a convention on mercenaries, and presented a report in 1972 (OAU Doc. CM/1/33/Ref. 1, 1972). The OAU adopted the Convention for the Elimination of Mercenarism in Africa at Libreville in 1977; it entered into force in 1985. The Convention was the first attempt to tackle the phenomenon of mercenarism through international criminal law, by condemning the use of mercenaries and criminalizing both the hiring of mercenaries and participation in hostilities as one. Hence, it stands in contrast with the Geneva Conventions and its additional protocols, which only deny prisoner-of-war and combatant status to mercenaries (Petereyns, 2016: 27).

Article 1 of the Convention defines a mercenary as "anyone who, not a national of the state against which his actions are directed, is employed, enrols or links himself willingly to a person, group or organization whose aim is:

a. To overthrow by force or arms or by any *other means the government of that Member State of the OAU;*
b. *To undermine the independence, territorial integrity or normal working of the institutions of the said State;*
c. *To block by any means the activities of* any liberation movement recognized by the OAU."

Hence, according to this article, a mercenary cannot be a national of the state against which his actions are directed, and he must be employed willingly to either overthrow by force the government of a member state of the OAU, or to hinder the activities of a liberation movement. In contrast to what UN conventions and the Geneva Conventions state, the OAU's Convention does not mention the question of private gain or compensation received for carrying out mercenary activities. The OAU Convention is considered one of the strongest frameworks for dealing with the privatization of force, but it is worth stating that it only applies to the countries that have ratified it. It still lacks an enforcement mechanism, it does not anticipate in its definition the recruitment of mercenaries by African state governments seeking to maintain sovereignty, and it does not explicitly prohibit non-nationals who fall outside the definition of a mercenary to be employed by a government in order to defend its territorial integrity. Because of the historical presence of mercenaries in Africa during and after the decolonization processes, the OAU Convention only criminalizes the use of mercenaries when they hinder or oppose "by armed violence a process of self-determination stability or the territorial integrity" of an African state. In this regard, the convention would have been difficult to enforce against Executive Outcomes, for example, which operated under contract for the government of Sierra Leone; or Wagner, which is operating in the Central African Republic under unclear terms with the country's government[21].

Furthermore, according to Art. 11 of the Convention, a person on trial for mercenarism is entitled to all the guarantees normally granted to any ordinary individual by the state on the territory of which he or she is being tried (Kochheiser, 2012: 102; Musah & Fayemi, 2000: 35; Milliard, 2003: 54; Juma, 2008: 209)

21. Russia has provided military support to the Central African Republic (CAR) since 2017 following the UNSC's decision to approve an exemption to the arms embargo on the country. The Russian PMC Wagner is present in the CAR, but Russia denies having ties with the company and the CAR's President Touadéra has repeatedly stated his country has not signed a contract with Wagner. See more: https://www.crisisgroup.org/africa/central-africa/central-african-republic/russias-influence-central-african-republic

This Convention is the only regional attempt at regulating mercenary activities. It is important to note that the 1977 Convention only refers to mercenaries. The evolution of the phenomenon of security privatization led the African Union to issue a number of general references relating to the regulation of the private security sector. It refers exclusively to private security companies (PSCs) and not to PMSCs or PMCs.

In January 2013, the 20th Ordinary Session of the Assembly of the African Union adopted the African Union Policy Framework on Security Sector Reform (SSR), which recognizes PSCs as non-state security bodies whose use by Regional Economic Communities, AU member states or their international partners compels them to conform to relevant international, regional and national frameworks that regulate the activities of PSCs. However, the only mention of PMCs is to deplore their use, and the framework does not cover the use of PSCs or PMCs by private corporations[22].

Two years later, the African Commission on Human and People's Rights adopted the Principles and Guidelines on Human Rights while Countering Terrorism in Africa during its 56th Ordinary Session, in Banjul, Gambia, from April 21 to May, 7 2015. This did not attempt to provide a new regulatory framework, but rather focused exclusively on accountability of 'Private Security Contractors', which the document identifies as being military and non-military[23]. In another document, the same Commission presented the General Comment No. 3 On the African Charter On Human And Peoples' Rights: The Right To Life, which widely recognized the right to life as a foundational right, and also emphasizes the obligation of states to hold accountable private individuals and corporations, including PMSCs, who are responsible for causing or contributing to "arbitrary deprivations of life in the State's territory or jurisdiction". It also addresses transnational responsibility by stating that "Home states also should ensure accountability for any extraterritorial violations of the right to life, including those committed or contributed to by their nationals or by businesses domiciled in their territory or jurisdiction"[24].

Industry Self-Regulation

Throughout the years, the industry has attempted to regulate itself, although some initiatives have been purely individual. Examples include the public statements made by Sandline, in which it claimed to be an ethical company, Executive Outcomes' decision to "only work for legitimate governments", and MPRI's prohibition on its employees carrying weapons. In 2001, Doug Brooks, a graduate student who researched PMCs for several years and at the time was doing research in Sierra Leone, founded International Peace Operations (IPOA) and introduced a code of conduct for military and security companies. In its first Code of Conduct, adopted in 2001, the IPOA stated that its members would adhere to international law on human rights, be transparent, support accountability and investigation of alleged human rights abuses, work only for legitimate governments, International Organizations (IOs), and NGOs, abide by their client's monitoring, support ethics, negotiate rules of engagement with their clients, work to end the conflict, support IOs and NGOs working to end conflict, acquire weapons legally, and ensure their personnel

22. See African Union's Policy Framework on Security Sector Reform adopted in 27-28 Janaury 2013, available at https://www.peaceau.org/uploads/au-policy-framework-on-security-sector-reform-ae-ssr.pdf (last accessed 13 September 2021).

23. See part 8 of Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, African Commission on Human and Peoples' Rights, 2015, available at https://www.achpr.org/legalinstruments/detail?id=9 (last accessed 13 September 2021).

24. General Comment No. 3 on the African Charter on Human and People's Rights: the Right to Life (article 4), African Commission on Human and People's Rights, Pretoria University Law Press, 2015, 11.

were properly trained and vetted. If members violate the Code, they are subject to dismissal from IPOA. Furthermore, the IPOA has a mechanism for outside parties to lodge complaints against IPOA members, and also has a mechanism for investigation of alleged violations of the code. Its accountability standards are also more detailed, requiring that companies take action—including the notification of relevant authorities—if their personnel engage in unlawful activities, and there is a long section on the responsibilities of companies to and for their personnel (Avant, 2008).

The initiative caused a polarized reaction, with some seeing it as a promising start but others claiming the standards were vague and lent legitimacy to an illegitimate industry.

The British Association of Private Security Companies (BAPSC) also advertises that its members adhere to a strict Code of Conduct, but does not post the Code on its website. It does have a detailed self-assessment workbook for firms that is suggestive of what this Code of Conduct might contain. The BAPSC and IPOA were participants in the process that led to the Montreux Document.

However, despite attempts at self-regulation, it is worth noting that an important issue remains unsolved. As Avant (2006) argues, "The regulatory environment surrounding the private security industry in this period reflected the fragmented global governance that was increasingly common in the 1990s – with a variety of state and non-state actors at work. It also reflected a dissonance among the goals of would be regulators". Furthermore, it is worth mentioning that the lack of clear regulation is also due to the different perspectives of the different countries leading the privatization of security. For example, the efforts of the UN and South Africa were clearly—and largely—at odds with the efforts of the U.S. In fact, many South African companies sold their services to the U.S. and the UK. In the case of the UN, its main objective while pushing for regulation was to abolish the mercenary elements, whilst South Africa pushed for the complete and absolute outlawing of the industry. The U.S. and the UK, meanwhile, supported by many European countries, aimed to regulate the industry as it served its national interests to privatize security. Adding a layer of complexity, industry efforts were aimed at both a more global standard while abiding by the laws of individual states, which sometimes led to contradictory impulses. Although most companies tried to separate themselves from mercenaries and pretended their behavior was regulated, reality showed that competition over agenda-setting, competing rules, and the lack of cooperation to implement and enforce standards of behavior, led private contractors to behave in unlawful ways, as there actually was no agreement on standards of behavior to begin with. Hence, the behavior of firms in the industry reflected the uncertain regulatory environment.

ANSI/ASIS International Standards

In the wake of growing public criticism and increased scrutiny by governments and international organizations, some PMSC industry leaders decided to introduce self-regulation. The move came in 2012, when the American Society for Industrial Security (ASIS), in close cooperation with the American National Standard Institute (ANSI), developed voluntary standards and guidelines for security professionals, and for PSCs in particular. Funded partially by the U.S. Department of Defense, the ASIS Commission on Standards introduced four sets of standards for PSCs, approved only by the U.S. and the UK[25]:

25. Sié Chéou-Khang Center for International Security and Diplomacy, undated, Private Security Monitor – Industry Initiatives – ASIS, available at: http://psm.du.edu/industry_initiatives/asis_international.html

- PSC.1—Management System for Quality of Private Security Company Operations—Requirements with Guidance;
- PSC.2—Conformity Assessment and Auditing Management Systems for Quality of Private Security Company Operation;
- PSC.3—Maturity Model for the Phased Implementation of a Quality Assurance Management System for Private Security Service Providers;
- PSC.4—Quality Assurance and Security Management for Private Security Company's [sic.] Operating in the Maritime Environment.

Stakeholders of the American PMSC industry and their British PSC business partners then requested the International Standards Organization secretariat in Geneva to circulate an ANSI/U.S. request for the creation of a new working group to develop an ISO PSC standard to be approved by the entire international membership of the ISO. After a first refusal by the ISO secretariat, the request was approved by all international members of the ISO family of national standards organizations. Despite the progress achieved, it is worth noting that the main issue with these standards is that they are only applicable for certification of PSCs and not PMCs, raising once again the issue of regulation due to the blurred lines between the two types of companies. No mention is made of accountability under international humanitarian law and respect for human rights, as in the standards it is formulated as a general suggestion and not as a requirement. Finally, as Raymond Saner states:

"The PMSC industry has presented an astonishing ability to protect itself from regulatory sanctions by showing evidence of entrepreneurial efforts, such as the creation of the new ISO standard described above. This suggests that the industry has the ability to fend off criticism and create a new quasi-regulatory space that it can use to counter attempts to tighten regulation through new inter-governmental initiatives such as the Montreux Document and the related ICoC described below"[26].

CONCLUSION

Although there have been efforts to regulate the privatization of security, the problem is not the lack of international regulation, but the lack of convergence between international and national law on one hand, and government regulation and industry self-regulation, on the other. As Dickinson explained, efforts were made to make PMSCs respect and act accordingly to human rights, but they are not always held accountable in the case of misbehavior (2005). The growing number of actors in the contemporary security environment has added a layer of complexity, as it made accountability more diffuse and difficult to track, since the responsibility lies with multiple actors (Singer, 2008: 220). As shown by the UN Working Group on the Use of Mercenaries, there is a regulatory legal vacuum covering the activities of PMSCs. As Isenberg stated, PMSCs are sometimes subject to the laws of the country in which they operate, but they can also be subject to domestic criminal law and civil liability in their country of origin. International law only covers actions of mercenaries, and does not include PMSC's actions. There is a lack of common standards on the registration and licensing of these companies, for the vetting and training of their staff processes, and on the safekeeping of weapons.

26. Raymond Saner, "Private Military and Security Companies: Industry-Led Self-Regulatory Initiatives versus State-Led Containment Strategies," The Centre on Conflict, Development and Peacebuilding, CCDP Working Paper, 2015, available at: http://www.diplomacydialogue.org/images/files/CCDP_Working_Paper_11_-_PMSCs.pdf

Although a number of rules in IHL and IHRL could be applied to states in their relationships with PMSCs, the UN Working Group also showed that there are numerous challenges to the application of domestic laws, in particular for international PMSCs that operate in foreign states. Investigations in conflict zones are extremely difficult, which is why PMSCs and their personnel are rarely held accountable for violations of human rights.

PMSC personnel cannot be classified as mercenaries for multiple reasons (including criteria of nationality and residence, civilians or combatants, and financial gain as the main motivation) as they do not meet all the requirements in the definition given by international instruments. PMSCs are registered commercial companies in their home countries and a large number of them have obtained contracts from governments. The fact that only 32 states have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and that states that contract these companies are not parties to the Convention, proves that this international instrument has become obsolete as a means to deal with this new form of privatization of security.

The only international documents that specifically analyze the role of PMSCs are the Montreux Document, the Working Group's guidelines and, to some extent, the International Code of Conduct and the Voluntary Principles on Security and Human Rights. However, the latter only focus on PSCs, leaving PMCs in a legal grey zone. As Isenberg stated, the problem is not that PMSCs are beyond the law, but the fact that the law does not define what PMCs are and, hence, does not regulate the full scope of their activities, focusing only on security services provided by these PMSCs. Attempts by both the UN and OAU to criminalize mercenarism have failed to include the operations of modern private forces in the states that are parties to these conventions. Further research is required to appraise the relative utility of the different legal frameworks and legislative measures in order to boost their effectiveness.

ANNEX

Participating States of the Montreux Document

STATE	DATE OF SUPPORT
Afghanistan	17 September 2008
Angola	17 September 2008
Australia	17 September 2008
Austria	17 September 2008
Canada	17 September 2008
China	17 September 2008
France	17 September 2008
Germany	17 September 2008
Iraq	17 September 2008
Poland	17 September 2008

Sierra Leone	17 September 2008
South Africa	17 September 2008
Sweden	17 September 2008
Switzerland	17 September 2008
United Kingdom	17 September 2008
Ukraine	17 September 2008
United States of America	17 September 2008
North Macedonia	3 February 2009
Ecuador	12 February 2009
Albania	17 February 2009
Netherlands	20 February 2009
Bosnia and Herzegovina	9 March 2009
Greece	13 March 2009
Portugal	27 March 2009
Chile	6 April 2009
Uruguay	22 April 2009
Liechtenstein	27 April 2009
Qatar	30 April 2009
Jordan	18 May 2009
Spain	20 May 2009
Italy	15 June 2009
Uganda	23 July 2009
Cyprus	29 September 2009
Georgia	22 October 2009
Denmark	9 August 2010
Hungary	1 February 2011
Costa Rica	25 October 2011
Finland	25 November 2011
Belgium	28 February 2012
Norway	8 June 2012
Lithuania	13 June 2012

Slovenia	24 July 2012
Iceland	22 October 2012
Bulgaria	8 January 2013
Kuwait	2 May 2013
Croatia	22 May 2013
New Zealand	14 October 2013
Czech Republich	14 November 2013
Luxembourg	27 November 2013
Japan	6 February 2014
Ireland	13 November 2014
Monaco	1 April 2016
Madagascar	5 November 2015
Estonia	6 July 2016
Montenegro	12 December 2018
Panamá	14 June 2019
Malta	29 September 2020
Slovakia	14 July 2021
International Organisations	Date of support
European Union	27 July 2012
Organization for Security and Cooperation in Europe (OSCE)	21 November 2013
North Atlantic Treaty Organization (NATO)	6 December 2013

Source: Swiss Federal Department of Foreign Affairs. Last update 15/07/2021

OAU Convention for the Elimination of Mercenarism in Africa. Libreville, 3rd July 1977.

STATES	DATE OF SIGNATURE	DATE OF RATIFICATION/ ACCESSION
Algeria	21/07/1978	06/06/2007
Angola	19/07/1979	
Benin	16/07/1978	17/01/1979
Burkina Faso	05/03/1984	06/07/1984
Cameroon	19/07/1978	11/04/1987
Cape Verde	10/07/2012	
Chad	06/12/2004	02/08/2012
Comoros	26/02/2004	18/03/2004
Congo-Brazzaville		01/04/1988
Côte d'Ivoire	27/02/2004	
Djibouti	15/11/2005	
DRC	20/03/1979	13/07/1979
Egypt	31/03/1978	10/05/1978
Equatorial Guinea		20/12/2002
Eritrea	25/04/2012	
Ethiopia		07/02/1982
Gabon		19/05/2007
Gambia	24/12/2003	30/04/2009
Ghana	08/06/1978	20/07/1978
Guinea	10/02/1978	14/03/2003
Guinea-Bissau	08/03/2005	22/01/2015
Kenya	17/12/2003	
Lesotho		29/10/1982
Liberia	19/07/1985	31/03/1982
Libya		25/01/2005
Madagascar	17/03/2004	31/08/2005
Mali		25/09/1978

Mauritania	31/01/2011	
Morocco	12/02/1980	
Niger	08/11/1979	11/07/1980
Nigeria	10/02/1978	14/05/1986
Rwanda	13/03/1978	08/05/1979
Sao Tomé & Principe	01/02/2010	
Senegal	08/02/1978	02/10/1981
Seychelles		15/10/1979
Sierra Leone	09/12/2003	
Somalia	23/02/2006	
South Sudan	24/01/2013	
Sudan	13/11/1978	26/08/1978
Swaziland	07/12/2004	
Tanzania	30/05/1979	04/03/1985
Togo	16/07/1978	30/03/1987
Tunisia	18/07/1985	24/04/1984
Uganda	02/07/2004	
Zambia	14/04/1982	21/01/1983
Zimbabwe		27/01/1992

Source: African Union. Last update 15/06/2017[27]

27. List of countries which have signed, ratified/accessed the OAU Convention for the Elimination of Mercenarism in Africa African Union, 15 June 2017, available at: https://au.int/sites/default/files/treaties/37287-sl-oau_convention_for_the_elimination_of_mercenarism_in_africa_1.pdf

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About the Policy Center for the New South

The Policy Center for the New South: A public good for strengthening public policy. The Policy Center for the New South (PCNS) is a Moroccan think tank tasked with the mission of contributing to the improvement of international, economic and social public policies that challenge Morocco and Africa as integral parts of the Global South.

The PCNS advocates the concept of an open, responsible and proactive « new South »; a South that defines its own narratives, as well as the mental maps around the Mediterranean and South Atlantic basins, within the framework of an open relationship with the rest of the world. Through its work, the think tank aims to support the development of public policies in Africa and to give experts from the South a voice in the geopolitical developments that concern them. This positioning, based on dialogue and partnerships, consists in cultivating African expertise and excellence, capable of contributing to the diagnosis and solutions to African challenges.

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