



The legal status of private military contractors in international armed conflicts: an analytical study in light of international humanitarian law

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Abstract:

This article contends that the traditional tripartite classification of private military and security company (PMSC) personnel as civilians, combatants or mercenaries fails to reflect the diversity of their roles in contemporary armed conflicts, and advances a functional- contextual approach that differentiates between civilians accompanying the armed forces, de facto incorporated combatants, civilian intelligence agents and spies, and “grey- zone” contractors who fall short of the treaty definition of mercenaries yet operate beyond ordinary civilian functions. Using a normative doctrinal method grounded in treaty law, customary IHL and recent UN and state practice, it argues that only such a functional- contextual reclassification, coupled with a new binding international instrument on PMSCs, can remedy current enforcement gaps and better align IHL protection and responsibility with the realities of modern outsourcing of force.

Keywords: International law, Private military companies, international humanitarian law, international responsibility, mercenaries.

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Introduction :

Recent decades have witnessed an unprecedented expansion in the reliance on private military and security companies (PMSCs), which have become an integral component of the power structures of many states, particularly in the context of international armed conflicts. This development has reshaped the traditional understanding of the state's monopoly on the legitimate use of force and has sparked intense controversy over the permissibility of delegating core military and security functions to profit-driven private actors, with direct implications for the protection of civilians and the enforcement of international humanitarian law (IHL).

Existing scholarship and practice have largely examined PMC personnel through the traditional tripartite framework of civilians, combatants and mercenaries, drawing on the Geneva Conventions, Additional Protocol I and the anti-mercenary regime. However, this literature remains divided over how to classify contractors whose functions range from logistical support and facility protection to intelligence activities and direct participation in hostilities, and it frequently relies on the vague notion of "civilian contractors" without a clear foundation in IHL. This reveals a significant research gap: the prevailing tripartite classification is insufficient to capture the functional diversity and contextual complexity of contemporary PMC operations, which often blur the civilian-combatant divide and complicate the allocation of responsibility for serious violations.

Against this background, the central question of this article is: how should the legal status of private military and security contractors in international armed conflicts be determined under IHL, and how does this status affect both state responsibility and individual criminal responsibility? The article argues that the traditional civilian-combatant-mercenary scheme is inadequate for regulating PMC personnel and develops a functional-contextual classification framework that distinguishes, inter alia, between civilians accompanying the armed forces, de facto incorporated combatants, civilian intelligence agents and spies, and contractors situated in a normative "grey zone" below the cumulative treaty definition of mercenaries.



Methodologically, the study adopts a normative doctrinal analysis grounded in treaty law, customary IHL and relevant UN and state practice, interpreted through functional and contextual criteria. Structurally, the article first sets out the conceptual and legal framework of PMSCs and the main IHL categories applicable in international armed conflicts, then develops and applies the proposed functional- contextual classification and its implications for protection, state responsibility and individual criminal responsibility, and finally engages with recent doctrinal debates and contemporary practice up to 2025 to assess persisting regulatory gaps and the prospects for a new binding international instrument on PMSCs.

THE FIRST TOPIC : Conceptual and legal framework for private military contractors.

To study the conceptual framework of private military contractors, we decided to examine its concept and origins, and then delve into the classification of persons according to international humanitarian law during international armed conflicts, so that we can describe the employees of private military companies in the second part of the research, which we will address successively:

FIRST REQUIREMENT: The concept of private military companies and the nature of their activity in international conflicts

Before delving into the topic of private military companies, I must identify the reasons for their emergence and the reasons for using them, and then address the explanation of their tasks and how they were defined in various international documents. This is what we will explain in detail as follows:

Firstly: Origin and meaning of the term "private military companies"

Private military companies emerged in their modern form at the end of the twentieth century, in the context of major transformations in the international environment, most notably the end of the Cold War, the increase in internal conflicts, and the decline in the ability of some countries to maintain large armies¹.

¹ Ben Daouia, M., "Private security and military companies in the African continent," *African Journal of Political Science*, vol. 4, no. 2, 2023, pp. 259–281.



Companies such as "Executive Outcomes" in Africa and "Black water" in Iraq emerged as a clear example of this transformation².

Despite the increasing expansion of private military and security companies, a comprehensive and universally accepted definition remains elusive. The Montreux Document offers one of the most prominent definitions, considering them private commercial entities that provide military or security services such as armed guarding, operation and maintenance of weapons systems, detention of prisoners, and the provision of consulting or training to military and security forces³.

The draft international convention on private military and security companies adopts a broader definition, encompassing any legal entity that provides, in exchange for financial compensation, military or security services through individuals or legal entities operating under the license of a State Party. These services include strategic planning, intelligence, reconnaissance, technical and logistical support for armed forces, as well as protection services and the transfer of security expertise⁴.

The Geneva Centre for Democratic Control of Armed Forces (DCAF) adopted a broad, practical definition that includes all companies that provide military or security services without separating them, given the overlap of these activities and the difficulty of distinguishing between them, and for regulatory and legislative purposes that facilitate the control of this growing sector⁵.

Secondly: Reasons for the expansion of the use of private military companies

The main reasons can be summarized as follows:

² El Mquirmi, N., Private military and security companies: A new form of military intervention (Policy Brief PB-08/22), Policy Center for the New South, 2022.

³ SIPRI, Private military and security companies in armed conflict, in SIPRI Yearbook 2023 (Chap. 4), Stockholm International Peace Research Institute, 2023; Switzerland & International Committee of the Red Cross, 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, p. 9, 2008, https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0996.pdf.

⁴ UN Working Group on the Use of Mercenaries, Draft convention on private military and security companies (Annex to Report A/HRC/15/25, art. 2), United Nations Human Rights Council, 2010.

⁵ Geneva Centre for the Democratic Control of Armed Forces, Private military and security companies (PMSCs) (SSR Backgrounder No. 26), p. 2, DCAF, 2017.

https://www.dcaf.ch/sites/default/files/publications/documents/DCAF_BKG_26_PrivateMilitarySecurityCompanies.pdf.



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-Reducing the cost of regular armies, as many countries have turned to private military companies as a less expensive alternative to maintaining large armies since the end of the Cold War⁶.

-The desire of states to avoid direct legal accountability by delegating sensitive tasks to the private sector, thus creating a layer of "legal distance" between the state and the actions attributed to it⁷.

-The operational flexibility offered by private companies, which are characterized by rapid deployment and response, without the bureaucratic constraints inherent in traditional armies⁸.

-The economic dynamics driving the privatization of security sectors within the global trend towards a market economy and the redefinition of the state's role⁹.

Third branch: The tasks undertaken by private military companies vary in the context of armed conflicts.

The tasks of private military companies can be summarized as follows:

-Direct participation in combat operations, which puts them in direct conflict with the rules of international humanitarian law relating to combatants and mercenaries¹⁰.

-Providing logistical and technical support to armed forces, including supply management, equipment maintenance, and operation of complex systems¹¹.

-Protecting vital installations and convoys associated with military operations or the economic interests of contracting states¹².

⁶ Singer, P. W., *Corporate Warriors: The Rise of the Privatized Military Industry*, Ithaca, NY: Cornell University Press, 2003, https://books.google.com/books/about/Corporate_Warriors.html?id=VyI13fdeadIC.

⁷ Chesterman, S., & Fisher, A. (Eds.), *Private Security, Public Order: The Outsourcing of Public Services and Its Limits*, Oxford: Oxford University Press, 2009, <https://academic.oup.com/book/8631>.

⁸ Carmola, K., *Private Security Contractors and New Wars: Risk, Law, and Ethics*, London & New York: Routledge, 2010, <https://www.routledge.com/Private-Security-Contractors-and-New-Wars-Risk-Law-and-Ethics/Carmola/p/book/9780415681919>.

⁹ Percy, S., *Mercenaries: The History of a Norm in International Relations*, Oxford: Oxford University Press, 2007, <https://global.oup.com/academic/product/mercenaries-9780199214334>.

¹⁰ Végh, K., "Private military contractors and the international law of armed conflicts," *Miskolc Journal of International Law*, vol. 5, no. 2, 2008, <http://www.mjil.hu/20081vegh1.htm>.

¹¹ Moesgaard, C., *Private military and security companies – from mercenaries to intelligence providers* (DIIS Working Paper 2013:09), Danish Institute for International Studies, 2013, https://www.diis.dk/files/media/publications/import/wp2013-09_moesgaard_web.pdf.

¹² European Parliament, *The role of private security companies (PSCs) in CSDP* (EXPO/B/SEDE/FWC/2009-01/Lot6/21), 2011,



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-Gathering intelligence, whether through technical means or field operations, which raises issues related to the concept of "direct participation in hostilities"¹³.

-Training local armies and forces in the use of weapons and developing combat capabilities, one of the most widespread roles of these companies since 2003¹⁴.

This wide variety of tasks contributes to the complexity of the legal classification of private military company employees, given the overlap between their roles in civilian tasks and combat-related activities¹⁵.

SECOND REQUIREMENT: The international legal framework for classifying persons in international armed conflicts

International armed conflicts are defined in international humanitarian law as conflicts that arise between two or more states, even if one of them does not recognize a state of war. They also include cases of partial or total occupation of the territory of another state¹⁶. Non-international armed conflicts, on the other hand, are those that take place within the territory of a state between its armed forces and organized armed groups, or between these groups among themselves, provided that a certain level of violence is reached and the groups are organized according to the standards of the Geneva Conventions and Additional Protocol II¹⁷. The distinction between them represents a basis for determining the rules

[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/433829/EXPO-SEDE_ET\(2011\)433829_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/433829/EXPO-SEDE_ET(2011)433829_EN.pdf). [1]

¹³ Gillard, E.-C., "Business goes to war: private military/security companies and international humanitarian law," *International Review of the Red Cross*, vol. 88, no. 863, 2006, https://international-review.icrc.org/sites/default/files/irrc_863_4.pdf.

¹⁴ Singer, P. W., *Corporate Warriors: The Rise of the Privatized Military Industry*, Ithaca, NY: Cornell University Press, 2003, <https://www.pwsinger.com/corporate-warriors/>.

¹⁵ El Mquirmi, N., *Private Military and Security Companies: A New Form of Mercenarism?*, Policy Brief No. 08/22, Policy Center for the New South, February 2022, https://www.policycenter.ma/sites/default/files/2022-02/PB_08-22_Mquirmi.pdf.

¹⁶ International Committee of the Red Cross, *How is the term "armed conflict" defined in international humanitarian law?*, ICRC Opinion Paper, March 2008, https://www.icrc.org/sites/default/files/document_new/file_list/armed_conflict_defined_in_ihl.pdf.

¹⁷ Akbar, M., Putri, A. R., & Rahayu, D., "Addressing non-international armed conflicts vis-à-vis international human rights regime," *Jurnal Hukum dan Peradilan*, vol. 12, no. 2, pp. 347–370, 2023, <https://doi.org/10.25216/jhp.12.2.2023.347-370>.



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applicable to the parties to the conflict and the legal obligations incumbent upon them¹⁸.

Based on this data, we will attempt to describe the main categories in international armed conflicts according to the rules of international humanitarian law, in order to later apply them to employees of private military companies, as follows:

Firstly: The Concept of Civilian Law in International Humanitarian Law

Civilians are defined as all persons who do not belong to the categories participating in hostilities and are not members of armed forces, militias, or organized resistance movements. This definition is affirmed by the provisions of international humanitarian law, which broadly define combatants and distinguish them from civilians. Additional Protocol I adopted this concept extensively, stipulating that a civilian is any person not belonging to the armed forces, as defined in Article 43, and that protection extends to all those not directly participating in hostilities, according to Article 50¹⁹.

The Fourth Geneva Convention defines civilians as anyone who, during a conflict or occupation, is under the control of a hostile power and is not a national of that power²⁰. The legal protection afforded to civilians is based on the presumption that they are not participating in military operations or providing direct support to combatants, in accordance with the general rules established in the Convention.²¹

It is worth noting that the definition of civilians in the Fourth Geneva Convention offers a legal advantage, as it extends protection to foreigners residing in the territory of a belligerent state- specifically, foreign nationals or non-nationals of that state who are present in the territory of a state party to the conflict.

Secondly: The Concept of the Combatant in International Humanitarian Law

¹⁸ International Committee of the Red Cross, How is the term “armed conflict” defined in international humanitarian law?, ICRC Opinion Paper, 2008, https://www.icrc.org/sites/default/files/document_new/file_list/armed_conflict_defined

¹⁹ International Committee of the Red Cross, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), 8 June 1977, arts. 43, 50, 1125 UNTS 3.

²⁰ Fourth Geneva Convention, Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Article 4, 75 UNTS 287.

²¹ Geneva Convention (IV), Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Article 4, 75 UNTS 287.



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In international armed conflicts, a combatant is defined as any individual belonging to the armed forces of a party to the conflict who enjoys combat privilege, meaning the right to participate in hostilities without their actions -under international humanitarian law- constituting criminal offenses simply by virtue of their participation in combat²². However, this privilege is conditional upon belonging to regular forces or to militias and volunteer units that meet specific criteria stipulated by international humanitarian law, the most important of which are:

- The presence of a commander responsible for their subordinates.
- The open carrying of arms during engagement or during deployment prior to an attack.
- Compliance with the laws and customs of war during hostilities²³.

These criteria are fundamental in determining the legal status of a combatant, which entails their right to prisoner-of-war status upon capture, in accordance with the provisions of the Third Geneva Convention of 1949²⁴.

Third: The concept of a mercenary in international humanitarian law

Additional Protocol I of 1977 defines a mercenary through six cumulative conditions in Article 47; all of them must be satisfied for an individual to fall under this status (Protocol I, 1977 art. 47(2))²⁵. Building on this provision, recent practice stresses in particular the financial motive the absence of organic links to a party to the conflict, and the exceptional level of remuneration²⁶.

Participation in hostilities driven essentially by private gain: A mercenary must take a direct part in hostilities and be motivated essentially by the desire for private gain, rather than by military, political or ideological convictions (Protocol I, 1977,

²²International Committee of the Red Cross, Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law, 2009, p. 23, <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc-002-0990.pdf>.

²³Geneva Convention (III), Convention relative to the Treatment of Prisoners of War, 12 August 1949, Article 4(A)(2)(d), 75 UNTS 135.

²⁴ Geneva Convention (III), Convention relative to the Treatment of Prisoners of War, 12 August 1949, Article 4, 75 UNTS 135.

²⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 47(2), 1125 UNTS 3.

²⁶ Office of the United Nations High Commissioner for Human Rights, 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/78/___), 2023, <https://reliefweb.int/report/world/report-working-group-use-mercenaries-means-violating-human-rights-and-impeding-exercise-right>.



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art. 47(2)(a), (c))²⁷ . Recent UN reporting underlines that this profit- driven participation, combined with the absence of a broader public or political commitment, remains at the core of contemporary uses of the mercenary concept²⁸

No membership in the armed forces of a party to the conflict: The individual must not be a member of the armed forces of any party to the conflict, which excludes regular soldiers and lawfully incorporated foreign volunteers from the mercenary category (Protocol I, 1977, art. 47(2)(b))²⁹ . Contemporary analyses confirm that this criterion reflects the intention to reserve the label “mercenary” for actors operating outside formal military structures³⁰ .

No permanent residence in the territory of a party to the conflict: The person must not be a resident of territory controlled by a party to the conflict, a requirement that serves to distinguish mercenaries from local volunteers or inhabitants who take up arms in defense of their own community (Protocol I, 1977, art. 47(2)(d))³¹ . This “outsider” element continues to be emphasized in recent doctrinal work as a key marker separating mercenarism from locally rooted participation in hostilities³² .

Remuneration substantially higher than that of regular combatants: The person must be promised or receive material compensation substantially exceeding that paid to regular combatants of similar rank and function in the armed forces of a

²⁷Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 47(2)(a), (c), 1125 UNTS 3.

²⁸Office of the United Nations High Commissioner for Human Rights, 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, UN Doc. A/78/535, 2023, <https://reliefweb.int/report/world/report-working-group-use-mercenaries-means-violating-human-rights-and-impeding-exercise-right>.

²⁹Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 47(2)(b), 1125 UNTS 3.

³⁰Office of the United Nations High Commissioner for Human Rights, 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, UN Doc. A/78/535, 2023. Riemann, M., “As old as war itself? Historicizing the universal mercenary,” *Journal of Global Security Studies*, vol. 6, no. 1, ogz069, 2021, <https://doi.org/10.1093/jogss/ogz069>.

³¹Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 47(2)(d), 1125 UNTS 3.

³² Office of the United Nations High Commissioner for Human Rights, 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, UN Doc. A/78/535, 2023. Riemann, M., “As old as war itself? Historicizing the universal mercenary,” *Journal of Global Security Studies*, vol. 6, no. 1, 2021, <https://doi.org/10.1093/jogss/ogz069>.



party to the conflict (Protocol I, 1977, art. 47(2)(c))³³, UN and academic studies between 2020 and 2025 treat this wage premium as a practical indicator for identifying mercenary activity in contemporary conflicts, even where the broader treaty definition remains difficult to apply³⁴.

THE SECOND TOPIC: The legal classification of employees of private military companies and its implications in international law

The principle of distinction is a cornerstone of international humanitarian law. All parties to a conflict must respect this principle at all times by distinguishing between civilians and combatants, and between civilian objects and military objectives, and by directing military operations exclusively against military objectives³⁵.

This means establishing clear boundaries between civilians, who are protected from attack unless they change their status by directly participating in hostilities, and combatants, who may be legitimately targeted in armed conflict³⁶. The importance of this classification is particularly evident in international armed conflicts where the Third Geneva Convention grants captured combatants the status of prisoners of war, with all the legal protections and guarantees that entails. This does not, however, preclude their prosecution for serious violations of international law³⁷.

Professor Elka Krahnmann observes that until the 1990s, there was a firm belief that the state possessed sovereign functions that could not be relinquished, particularly concerning the use of military force, especially in foreign

³³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 47(2)(c), 1125 UNTS 3.

³⁴ Office of the United Nations High Commissioner for Human Rights, 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, UN Doc. A/78/535, 2023. Geneva Academy, "The involvement of mercenaries and private military security companies in armed conflicts," 2025, <https://www.geneva-academy.ch/news/detail/482-the-involvement-of-mercenaries-and-private-military-security-companies-in-armed-conflicts>.

³⁵ International Committee of the Red Cross, Customary international humanitarian law: Volume I—Rules, Cambridge University Press, 2005, Rules 1, 7.

³⁶ International Committee of the Red Cross, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 51(3), 1125 UNTS 3.

³⁷ Geneva Convention (III), Convention relative to the Treatment of Prisoners of War, 12 August 1949, Articles 4, 13, 85, 129, 75 UNTS 135.



interventions. However, contemporary political and economic transformations have led to a new trend: that the state's responsibility for military intervention does not necessarily mean that it must carry out the military action itself. Consequently, according to this trend, it has become justifiable to employ private military companies, provided that the state exercises effective oversight over how these delegated tasks are executed³⁸.

Based on the above, we have divided this element as follows:

FIRST REQUIREMENT: Classifying employees of private military companies according to international humanitarian law.

One of the most contentious issues concerns the ambiguity surrounding the legal status of private military and security contractors employed by states in international armed conflicts. The activities of these companies are so broad and diverse that classifying their personnel under international humanitarian law is extremely complex. Contemporary legal literature underlines that, depending on the circumstances, such personnel may in principle qualify as civilians under the Fourth Geneva Convention of 1949, or as combatants if they are effectively incorporated into a party's armed forces or organized armed groups that meet the conditions for combatant status. At the same time, it is widely accepted that only a very limited number of private contractors meet the cumulative treaty criteria for "mercenaries", even though debates about so-called "neo-mercenaries" continue to emphasize the role of financial gain and exceptional remuneration in discussions on their legal characterization³⁹.

However, from a legal standpoint, the classification may differ depending on the environment in which company members operate and the tasks assigned to them, as we will explain in turn as follows:

Firstly: Considering employees of private military companies as civilians

American politicians refer to private military company (PMC) employees as "civilian contractors," but this designation lacks a clear legal basis under international humanitarian law. Several researchers argue that this term fails to accurately describe the nature of the tasks these companies perform, particularly

³⁸ Krahnmann, E., *States, Citizens and the Privatisation of Security*, Cambridge University Press, 2011, <https://doi.org/10.1017/CBO9781139042727>.

³⁹ Cameron, L., "Private military companies: Their status under international humanitarian law and its impact on their regulation," *International Review of the Red Cross*, vol. 88, no. 863, pp. 573–598, 2006, https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/irrc_863_cameron.pdf.



when their work is combat-oriented or operational in nature, exceeding the bounds of traditional civilian work⁴⁰.

Conversely, PMCs seek to exploit civilian status to benefit from the protections afforded by the Fourth Geneva Convention⁴¹. However, this status stipulates that individuals must not bear arms or participate directly in hostilities⁴². While some legal scholars consider anyone who does not belong to the categories of combatants, mercenaries, or civilians accompanying armed forces to be a civilian, international humanitarian law recognizes other categories such as spies, civilian intelligence agents, and civil defense forces⁴³. This further complicates the status of PMC employees, and the issue is exacerbated by the fact that these employees are often heavily armed and wear military-like attire, characteristics that define combatants under the Geneva Conventions⁴⁴.

Therefore, parties to the conflict must, to the greatest extent possible, move civilians and civilian objects away from areas adjacent to military objectives. They must also avoid establishing military objectives within densely populated areas and take all necessary precautions to protect civilians from the dangers arising from military operations⁴⁵.

⁴⁰Enakireru, Eric Omo and Opeyemi, Ademiluyi Bukola, "Interrogating the Action and Status of Private Military and Security Companies in International Humanitarian Law," 3 February 2024, SSRN <https://ssrn.com/abstract=5000319> or <http://dx.doi.org/10.2139/ssrn.5000319>.

⁴¹Albasoos, H. and Al-Maashani, M., "The private military and security contractors in armed conflicts under international humanitarian law: Case study of Russian PMSCs," *International Journal of Research in Business and Social Science*, vol. 9, no. 3, pp. 149-156, 2020, <https://doi.org/10.20525/ijrbs.v9i3.653>.

⁴²Ben Salem, R., "Determining the legal status of workers in international private military and security companies in light of the provisions of international humanitarian law," *Journal of Law and Politics*, 2023, <https://asjp.cerist.dz/en/article/224637>.

⁴³Touati, H., "The legal status of private security and military companies under the rules of international humanitarian law," *Revue Académique de la Recherche Juridique*, vol. 11, no. 2, pp. 410–426, 2020, <https://asjp.cerist.dz/en/article/126035>.

⁴⁴International Institute of Humanitarian Law, 35th Round Table on Current Issues of International Humanitarian Law (section on PMSCs and the blurring of the line between civilians and combatants), 2013 .

<https://iihl.org/wp-content/uploads/2022/07/35th-Round-Table.pdf> . El Mquirmi, N., *Navigating in a Grey Zone: Regulating PMSCs* (Policy Brief No. 27/22), Policy Center for the New South, April 2022, <https://www.policycenter.ma/publications/navigating-grey-zone-regulating-pmscs>

⁴⁵Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>.



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Given these broad guarantees for the protection of civilians, the question arises concerning the nature of armed forces contracting with civilians to provide services during armed conflicts, and whether this affects their legal status⁴⁶. The most likely scenario is that these individuals fall under the category of “civilians accompanying the armed forces.” However, this classification requires them to belong to one of the categories defined in Article 4, paragraph 4 of the Third Geneva Convention of 1949, which includes civilian crew members of military aircraft, war correspondents, catering contractors, and labor and entertainment units, provided they obtain authorization from the armed forces they are accompanying⁴⁷. Contemporary scholarship further demonstrates that the expansion of military outsourcing -particularly through private military and security companies- has deepened the ambiguity surrounding the civilian-combatant divide, raising concerns regarding compliance with international humanitarian law. Studies emphasize that responsibility for violations committed by contracted civilians or PMSCs may still be attributable to the state, especially where command responsibility or effective control can be established⁴⁸. Moreover, recent analyses highlight the “grey zone” created by the increasing reliance on private contractors, which complicates the practical implementation of protections afforded to civilians who accompany armed forces in the field⁴⁹. Empirical case studies, such as those examining Russian PMSCs in contemporary conflicts, further illustrate how authorization, status, and affiliation determine whether such individuals retain civilian protection or risk losing it through direct participation in hostilities⁵⁰.

⁴⁶Ali Abdulla Ali Khalfalla, "The Legal Status of Private Military and Security Companies in International Humanitarian Law," *Al-Haq Journal for Sharia and Legal Sciences*, vol. 4, no. 1, pp. 429–443, 2024, <https://doi.org/10.58916/alhaq.vi.266>.

⁴⁷International Committee of the Red Cross, *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War, Article 4, para. 4* ("Persons who accompany the armed forces"), 2020 (updated 2021), <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/commentary/2020>.

⁴⁸Fellmeth, A. and Crawford, E., "'Reason to know" in the international law of command responsibility," *International Review of the Red Cross*, vol. 104, no. 919, pp. 1223–1266, 2022, <https://doi.org/10.1017/S1816383122000236>.

⁴⁹El Mquirmi, N., *Navigating in a Grey Zone: Regulating PMSCs* (Policy Brief No. 27/22), Policy Center for the New South, April 2022, <https://www.policycenter.ma/publications/navigating-grey-zone-regulating-pmscs>.

⁵⁰Albasoos, H. و Al Maashani, M., "The private military and security contractors in armed conflicts under international humanitarian law: Case study of Russian PMSCs," *International Journal of*



However, the inclusion of private military company employees in the armed forces raises additional problems, especially in the absence of an explicit provision that includes them within these categories. Moreover, their armed deployment within civilian areas may endanger the population due to the possibility of confusion between them and combatants, which may make the locations where they are present potential military targets⁵¹. This situation has further complicated the issue of protecting civilians, especially when the presence of irregular armed elements within civilian environments is seen as direct participation in hostilities⁵²

Therefore, international humanitarian law warns against deploying personnel from these private military companies in areas that may be subject to hostilities, to avoid endangering civilians or creating situations resembling the use of human shields⁵³.

For our part, we believe that Article 4 of the Third Geneva Convention of 1949 and Article 50 of Additional Protocol I of 1977 explicitly define who constitutes civilians accompanying armed forces. International humanitarian law does not provide a definition for the term "civilian contractors," which makes it difficult to classify them within regular armed forces, let alone with personnel from private military companies contracted by states to perform specific tasks within their militaries.

Secondly: Private military company employees considered combatants

Employees of private military companies may, under specific and objectively verifiable conditions, be incorporated into a state's regular armed forces. This possibility emerges when a set of structural, functional, and legal indicators are fulfilled. Foremost among these is functional integration, expressed through the subordination of private military personnel to the state's chain of

Research in Business and Social Science, vol. 9, no. 3, pp. 149–156, 2020, <https://doi.org/10.20525/ijrbs.v9i3.653>.

⁵¹ International Committee of the Red Cross, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, Geneva: ICRC, May 2009, https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0990.pdf.

⁵² Cameron, L., & Chetail, V., *Privatizing War: Private Military and Security Companies under Public International Law*, Cambridge University Press, 2013, p. 145, <https://www.cambridge.org/9781107032408>.

⁵³ International Committee of the Red Cross, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, Geneva: ICRC, May 2009, pp. 68–70, <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc-002-0990.pdf>.



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command and their participation in military operations under direct supervision⁵⁴. This criterion reflects the central notion that membership in armed forces is determined not by formal labels but by the reality of military control exercised by the state.

A second requirement concerns the existence of a formal contractual relationship, through which the state clearly defines the scope of authority, obligations, and liabilities of private military personnel⁵⁵. This contractual clarity is essential, as it offers legal evidence of the state's intent to integrate the company into its defense apparatus rather than merely outsource auxiliary tasks. Similarly, the use of military uniforms or official insignia functions as a visible marker of affiliation and contributes to the identification of combatants under IHL⁵⁶, thereby reducing risks of misclassification in the battlespace.

Another crucial element is adherence to military discipline and hierarchical authority, which distinguishes integrated forces from independent corporate actors who operate primarily according to commercial interests. In addition, compliance with international humanitarian law is indispensable, as combatant status cannot be extended to units operating outside the normative framework governing conduct in armed conflict⁵⁷. Collectively, these conditions allow private military personnel to be legally regarded as "combatants" under Article 43(1) of Additional Protocol I and Article 4(1) of the Third Geneva Convention of 1949.

Contemporary legal scholarship offers further analytical tools to evaluate this integration through three interpretive criteria. The first is the criterion of de facto control, which examines the degree of effective command exercised by state armed forces over private actors, thereby emphasizing factual authority rather than

⁵⁴Urueña-Sánchez, M., & Olásolo, H., "Private military and security companies, responsibility of states and international humanitarian law: Toward an interdisciplinary definition," *Revista Derecho del Estado*, no. 57, pp. 135–160, 2023, pp. 148–149, <https://doi.org/10.18601/01229893.n57.06>.

⁵⁵DCAF – Geneva Centre for Security Sector Governance, *Addressing New Challenges of Private Military and Security Companies*, DCAF, 2024, pp. 21–22, <https://www.dcaf.ch/sites/default/files/publications/documents/new-challengesPMSCs-SSGR-EN.pdf>.

⁵⁶Fuchs, I., & Owens, S., "A combatant or not a combatant that is the question: Arguing the case of combatant status for non-military government personnel and private military contractors engaged on the modern battlefield," *Emory International Law Review*, vol. 39, pp. 165–210, 2024, pp. 165-166, <https://scholarlycommons.law.emory.edu/eilr/vol39/iss1/6>.

⁵⁷International Committee of the Red Cross, "International humanitarian law and private military/security companies - FAQ," 2 September 2013 <https://www.icrc.org/en/document/ihl-and-private-military-security-companies-faq> [accessed 16 December 2025], sec. "Are PMSCs and their staff bound by IHL?"



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contractual formalities. The second is the criterion of legal control, realized when domestic legislation places private military personnel under explicit military command structures. Finally, the contractual criterion assesses whether the terms of the contract reflect full subordination to state authority—thus transforming the company functionally into an extension of the national armed forces rather than a private contractor⁵⁸.

If one of these criteria is satisfied, many of the classification challenges typically associated with private military companies—such as determining responsibility, accountability, and status under IHL—become substantially alleviated. However, this approach reveals a conceptual tension: integrating private actors into state military structures contradicts the original logic of privatization, which aims to shift sovereign functions away from the state. Despite this contradiction, recent legal analyses indicate that private military and security company personnel may indeed qualify as members of a state's armed forces when factual circumstances demonstrate a sufficient nexus of control, authority, and integration.⁵⁹

Third: The problem of applying Article 47/2 of Additional Protocol I to employees of private military companies.

Article 47(2) of Additional Protocol I of 1977 presents a fundamental challenge when applied to employees of private military companies (PMCs). The article adopts a cumulative definition of a “mercenary,” requiring that all conditions be simultaneously fulfilled, which significantly narrows its applicability and renders it ill-suited to the complex reality of contemporary non-state armed actors. In practice, PMC personnel are not always recruited for the purpose of direct participation in hostilities, nor do they always operate primarily for private financial gain. Moreover, the definition explicitly excludes foreign fighters who join national armies or those who participate in armed conflicts for ideological,

⁵⁸ Calazans, É. L. B., "The state responsibility for international humanitarian law violations and human rights abuses committed by private military and security companies," *International Multidisciplinary Research Journal*, vol. 11, pp. 7–12, 2019, pp. 9–10, <https://imrjournal.info/wp-content/uploads/2020/05/%C3%89rika-L.Calazans.pdf>.

⁵⁹ Blüme, H. de H., "Private military and security companies in armed conflict: Privatisation of violence as a challenge to contemporary international humanitarian law" (LL.M. thesis, Örebro University [Uppsala University repository]), 2021, pp. 31–32, <https://www.diva-portal.org/smash/get/diva2:1599007/FULLTEXT01.pdf>.



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political, or religious reasons rather than material incentives⁶⁰. This rigid framework fails to capture the multifaceted motivations and functions of PMC personnel in modern conflicts.

Financial motivation has traditionally been upheld as the central criterion distinguishing mercenaries from ideologically driven volunteers, despite objections from numerous states⁶¹. This approach has generated substantial practical difficulties, particularly because states often overlook or deliberately ignore ideological or political motivations when categorizing foreign fighters. As a result, some delegations — most notably that of the Democratic Republic of the Congo — argue that the current wording permits the emergence of a new category of “ideologically driven mercenaries,” thereby rendering Article 47(2) outdated and incapable of regulating the evolving operational models of private military companies⁶². Such critiques underscore the need to revisit and modernize the legal concept of mercenarism.

This view is reinforced by Emanuela-Chiara Gillard of the International Committee of the Red Cross, who maintains that most PMC employees do not satisfy the cumulative criteria of Article 47(2), and that their legal status cannot be predetermined but must instead be assessed on a case-by-case basis. The persistence of the definitional gap is largely attributable to the political reluctance of certain states to engage in reforms that might restrict the strategic use of mercenaries, given the impact such restrictions would have on foreign policy agendas. Consequently, the term “mercenary” has shifted from a strictly legal category into a politicized notion whose meaning varies across contexts and over time⁶³.

⁶⁰ Lehnardt, C., "Private military companies," in Max Planck Encyclopedia of Public International Law, R. Wolfrum (ed.), Oxford University Press, 2011, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e2091>.

⁶¹ Lloyd, M., "Unpacking foreign fighting: New Zealand's legislative responses to transnational combatants," *National Security Journal*, vol. 5, no. 1, pp. 1–25, 2023, p. 11, <https://doi.org/10.36878/nsj20230329.07>.

⁶² Syrians for Truth and Justice, "The dilemma of mercenarism and volunteering during armed conflicts: A critical reading into law and practice," 18 April 2023, pp. 7–9, <https://stj-sy.org/en/the-dilemma-of-mercenarism-and-volunteering-during-armed-conflicts/>.

⁶³ Gillard, E.-C., "Business goes to war: Private military/security companies and international humanitarian law," *International Review of the Red Cross*, vol. 88, no. 863, pp. 525–551, 2006, pp. 528–529, 548. United Nations General Assembly, "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/75/259, 29 March 2021.



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Despite these limitations, even in instances where PMC personnel might hypothetically fall under the definition of Article 47(2), international humanitarian law continues to afford them the minimum set of fundamental guarantees enshrined in Article 75 of Additional Protocol I. These guarantees include humane treatment, due process rights, and the absolute prohibition of torture, cruel treatment, or any form of harm to physical or psychological integrity⁶⁴. This ensures that, regardless of their disputed status, PMC personnel remain protected under the core principles of humanitarian law.

The 30th International Conference of the Red Cross and Red Crescent (Geneva, 2007) showed a clear paradox, as on the one hand it called for the regulation and monitoring of private military companies, and on the other hand it gave a kind of legitimacy to their existence, and went so far as to consider their members - in some limited cases - as part of the armed forces of the contracting state in accordance with Article 4 of the Third Geneva Convention⁶⁵. Although the document acknowledged the legal conditions for mercenaries, it explicitly stated that employees of private military companies are not considered mercenaries.

Because many private military contractors meet some, but not all, of these criteria, the term “new mercenaries” is more of a socio-political designation than a precise legal one. This is due to the different nature of their contracts and their association—in most cases—with registered companies that contract with states officially⁶⁶.

Thus, a fundamental difference emerges between the activities of traditional mercenaries—who are seen as profit-seeking actors operating outside legal oversight—and the activities of private military companies, which often operate with the knowledge of major powers and achieve objectives that these states prefer not to pursue directly to avoid international accountability⁶⁷.

⁶⁴ Blüme, H. de H., "Private military and security companies in armed conflict: Privatisation of violence as a challenge to contemporary international humanitarian law" (LL.M. thesis, Uppsala University), 2021, <https://www.diva-portal.org/smash/get/diva2:1599007/FULLTEXT01.pdf>.

⁶⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art. 75, 1125 UNTS 3.

⁶⁶ Carmola, K., *Private Security Contractors and New Wars: Risk, Law, and Ethics*, Routledge, 2010, pp. 12–15, <http://ndl.ethernet.edu.et/bitstream/123456789/15764/1/183.pdf>.

⁶⁷ International Committee of the Red Cross, *International humanitarian law and the challenges of contemporary armed conflicts*, Document 30IC/07/8.4 prepared for the 30th International Conference of the Red Cross and Red Crescent, Geneva, 26–30 November 2007, pp. 25–29,



Four: Considering employees of private military companies as civilian intelligence agents or spies

The Third Geneva Convention of 1949 did not explicitly address the issue of espionage, and the status of spies remained undefined until Additional Protocol I of 1977 clarified the matter. International humanitarian law now distinguishes between legitimate intelligence gathering and prohibited espionage.

Information gathering is considered legitimate when carried out by members of the armed forces in uniform within enemy-controlled territory, according to Article 46(2). Furthermore, an individual residing in occupied territory who gathers information for their own forces is not considered an espionage suspect unless they use deception or concealment, and they only lose their prisoner-of-war status if captured in the act (Article 46(3)). A non-resident individual does not lose their prisoner-of-war status unless captured before returning to their own forces (Article 46(4)).

Customary rules of international humanitarian law stipulate that in international conflicts, those captured while engaged in espionage are not entitled to prisoner-of-war status, but they cannot be tried without a fair trial⁶⁸.

According to some practices of private military companies (PMCs), which have become more cautious and no longer employ the "superman" approach, despite their increased activity, political science professor Florian Florsheimer states: "One of the most important services these security companies provide is the protection of property and individuals, especially in war zones, as well as obtaining information through interrogation and traditional methods of espionage. In addition, these companies conduct aerial reconnaissance when the necessary resources are available. But perhaps most importantly, they train government personnel⁶⁹."

From the above, we can infer the possibility of PMC employees engaging in intelligence and espionage activities. Given the diverse nationalities of the

<https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/ihl-challenges-30th-international-conference-eng.pdf>.

⁶⁸ International Committee of the Red Cross, Customary International Humanitarian Law, Rule 107: "Combatants who are captured while engaged in espionage do not have the right to prisoner-of-war status. They may, however, not be convicted or sentenced without previous trial," <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule107>.

⁶⁹ Florian Florsheimer, *Private Military and Security Companies: Functions and Implications in Contemporary Conflicts* (Frankfurt: Institute for Political Science, 2018), p. 45.



individuals involved and recruited by these companies, PMC employees could be used to spy on their home countries for the benefit of other states. This is due to their ease of movement back to their home countries, their integration into society, and the difficulty in identifying them and uncovering their intentions .

SECOND REQUIREMENT: Legal implications and responsibilities arising from the activities of private military companies

In this section, we will address the legal protection of company employees, and then we will discuss the criminal liability of both companies and states for the illegal actions of these entities, according to the rules of international law in general and international humanitarian law in particular. This is what we will address in turn:

Firstly: Legal Protection for Employees of Private Military Companies

The legal status of private military company (PMC) personnel raises complex issues given the evolving nature of their roles in armed conflicts. These individuals are often classified as civilians under the Fourth Geneva Convention and enjoy protection as long as they do not directly participate in hostilities⁷⁰ . However, this protection is forfeited once they become involved in combat activities or offensive operations, as was the case with Blackwater personnel in Iraq (2007) who used firearms in Baghdad's Nisour Square, thus rendering them participants in hostilities and stripping them of civilian protection⁷¹ .

In contrast, members of the armed forces retain combatant privilege and, upon capture, are entitled to prisoner-of-war status. Mercenaries, however, are denied these protections under Article 47 of Additional Protocol I, which excludes them from combatant and POW status⁷² .

The Angola conflict in the early 1990s, where the government contracted the private military company Executive Outcomes, has often been discussed in the literature as illustrating the legal and political controversies surrounding the use of

⁷⁰International Committee of the Red Cross, "International humanitarian law and private military/security companies - FAQ," 29 November 2020, <https://www.icrc.org/en/document/ihl-and-private-military-security-companies-faq>.

⁷¹ Human Rights Watch, "Blackwater in Baghdad: 'It was a horror movie'," 14 December 2007, <https://www.hrw.org/news/2007/12/14/blackwater-baghdad-it-was-horror-movie>.

⁷²Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art. 47, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-47>.



mercenaries and the application of the anti-mercenary norm, rather than granting them combatant protection⁷³.

Secondly: Individual Criminal Liability of Employees of Private Military Companies

Some precedents have established that contractors working for private military companies can be held legally accountable for any war crimes, crimes against humanity, torture, or extrajudicial killings. Several examples have emerged in the last two decades, most notably:

➤ The conviction of four Blackwater employees in the United States in 2014 for the murder of Iraqi civilians in Baghdad. They were sentenced to prison terms ranging from 30 years to life⁷⁴.

➤ The long-running civil litigation against CACI over its role in torture and other abuses at Abu Ghraib prison in Iraq, brought on behalf of Iraqi detainees and culminating in a U.S. jury verdict finding CACI liable for conspiring to torture and awarding millions of dollars in damages⁷⁵.

But in practice, investigators and human rights defenders often face challenges in accessing evidence that incriminates private military companies in the face of victims. Anyone who tries to investigate is threatened, intimidated, and sometimes even physically eliminated. Even the United Nations has failed to access the sites where it is alleged that private military companies committed criminal acts⁷⁶. In addition, Article 93 of the Rome Statute of the International

⁷³ Percy, S., *Mercenaries: The History of a Norm in International Relations*, Oxford University Press, 2007, pp. 124–130. Petersohn, U., "The anti-mercenary norm and the market for combat force," *International Journal*, vol. 76, no. 1, pp. 106–128, 2021, <https://doi.org/10.1177/0020702021994519>.

⁷⁴ *United States v. Slough et al.*, U.S. District Court for the District of Columbia, verdict of 22 October 2014 (Nisour Square case). Center for Civilians in Conflict (CIVIC), *Privatizing War: The Impact of Private Military Companies on the Protection of Civilians*, 2022, <https://civiliansinconflict.org/publications/policy/privatizing-war-the-impact-of-private-military-companies-on-the-protection-of-civilians/>.

⁷⁵ *Al Shimari et al. v. CACI Premier Technology, Inc.*, United States District Court for the Eastern District of Virginia (Abu Ghraib litigation). Center for Constitutional Rights, "Al Shimari, et al. v. CACI",

<https://ccrjustice.org/AlShimari>. Center for Constitutional Rights, "Factsheet: Torture at Abu Ghraib and Al Shimari v. CACI Premier Technology, Inc.," 2024, <https://ccrjustice.org>

⁷⁶ UN Human Rights Council, "Access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies" (Report of the Working Group on the use of mercenaries, A/HRC/51/25), United Nations, 2022, pp. 15–17, <https://docs.un.org/en/A/HRC/51/25>.



Criminal Court allows a State Party, in conjunction with Article 72, to refuse certain forms of assistance to the Court, including the production of documents or disclosure of evidence, where such disclosure would prejudice its national security interests. (Rome Statute, art. 93(4), read together with art. 72)⁷⁷.

Third: Corporate Liability as Legal Entities

Responsibility is not limited to individuals; it extends to the companies themselves, which may face civil claims or national sanctions if found to have engaged in illegal activities or failed in their supervisory duties. Prominent examples include:

- The case against DynCorp for human trafficking and exploitation of minors by its employees in Bosnia (1999), which led to a series of investigations and legal proceedings against the company⁷⁸.
- The prosecution of security companies in Afghanistan accused of providing indirect financial support to armed groups in exchange for protecting US supply convoys, which prompted the US Department of Defense to terminate contracts with several of them in 2010.⁷⁹

These cases underscore that companies can be subject to national sanctions or international measures if they violate international humanitarian law.

However, a legal and practical gap remains. Although the International Code of Conduct for Private Security Service Providers (ICoC) requires companies to establish internal grievance and whistleblowing mechanisms and to cooperate in good faith with competent national and international authorities, including in investigations and prosecutions of serious human rights abuses, effective implementation and compliance in practice remain limited⁸⁰. This is primarily due to the absence, in many jurisdictions, of effective national licensing and oversight

⁷⁷ Rome Statute of the International Criminal Court, 17 July 1998, 2187 U.N.T.S. 3, arts. 72, 93(4), https://legal.un.org/icc/statute/99_corr/9.htm.

⁷⁸ Human Rights Watch, *Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*, section "US SFOR Contractors and Trafficking," November 2002 (<https://www.hrw.org/reports/2002/bosnia/Bosnia1102-11.htm>). International Code of Conduct Association, "Sex trafficking scandal in post-conflict Bosnia," 20 February 2024, <https://icoca.ch/case-studies/sex-trafficking-scandal-in-post-conflict-bosnia/>

⁷⁹ U.S. Senate Committee on Armed Services, *Inquiry into the Role and Oversight of Private Security Contractors in Afghanistan*, S. Rep. 111-345, U.S. Government Printing Office, 2010, pp. 87–89, <https://info.publicintelligence.net/SASC-PSC-Report.pdf>.

⁸⁰ International Code of Conduct for Private Security Service Providers (ICoC), 9 November 2010 (amended 10 December 2021), paras. 16(f), 66–67, <https://icoca.ch/the-code/>.



frameworks for private security providers, which results in inconsistent and often weak adherence to international best practices and human rights standards in the security sector⁸¹.

Despite the existence of a limited number of audit and certification bodies accredited by the International Code of Conduct Association (ICoCA) to assess companies' compliance with recognised professional standards, a significant proportion of private security companies has yet to obtain the required certification, which is granted only upon demonstrable conformity with these standards⁸². The American ANSI/ASIS PSC.1 standard, together with ISO 18788 and ISO 9001, are among the most widely used and internationally recognised technical benchmarks for responsible private security operations and management systems⁸³.

Section Four: The Liability of the State Contracting with Private Military Companies

States that engage with private military and security companies bear international responsibility if it is established that these companies acted under their instructions, direction, or effective control, or were legally empowered to exercise elements of governmental authority. This follows the 2001 International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts, which allow for attributing the conduct of private entities to the state under Articles 5, 8, and 11⁸⁴. These articles define the criteria for attribution as follows:

⁸¹ International Code of Conduct Association, Annual Report 2021–2022, sections on certification, monitoring and complaints (<https://icoca.ch/wp-content/uploads/2022/12/ICoCA-2022-Annual-Report-Final.pdf>). International Code of Conduct Association, "Member monitoring – 2022 summary," 10 January 2023, <https://icoca.ch/2023/01/10/member-monitoring-2022-summary/>. DCAF, "A view from inside a multistakeholder process: The ICoC and its Association," 2015, <https://www.files.ethz.ch/isn/195090/DCAF-SSR-12.pdf>.

⁸² International Code of Conduct Association (ICoCA), ICoCA accepted certification bodies and the related certification and monitoring framework, 2025. Available at :<https://icoca.ch/what-we-do/certification/icoca-accepted-certification-bodies/>

⁸³ Intertek; International Organization for Standardization (ISO); URS Certification, references on ISO 18788 / PSC.1 management systems for private security operations and ISO 9001 quality management systems – requirements, various years (2015–2025), electronic resources, available at: <https://www.intertek.com>; <https://www.urs-certification.com>; <https://www.iso.org/standard/62085.html>, browsing date: 13 January 2026.

⁸⁴ International Law Commission, Draft articles on responsibility of States for internationally wrongful acts, with commentaries, Yearbook of the International Law Commission, 2001, Vol. II (Part Two), arts. 5, 8, 11, United Nations, 2001, available at:



Delegated governmental authority (Article 5): When a company is empowered by domestic law to perform functions involving elements of governmental authority (such as law enforcement or other sovereign functions), its conduct in that capacity is attributable to the state .

Direction or effective control (Article 8): When the company's conduct is carried out on the instructions of, or under the direction or effective control of, the state in relation to the specific operation, the conduct is attributable to that state. Mere general influence or support is not sufficient .

Subsequent adoption (Article 11): When the state clearly acknowledges and adopts the conduct of the company as its own, after the fact, that conduct is considered an act of the state .

The United States, in its wars in Iraq and Afghanistan, provides a prime example. It faced sustained criticism for fragmented and weak oversight of private security contractors such as Blackwater and Triple Canopy, which contributed to serious incidents involving excessive and indiscriminate use of force against civilians, most notoriously the 2007 Nisour Square massacre in Baghdad⁸⁵ . These failures of control and accountability have been widely cited in the literature as evidence of the risks posed by outsourcing core security functions to private actors during armed conflicts⁸⁶ .

In 1995, Sierra Leone entered into a contract with the private military company Executive Outcomes and deployed its personnel, under governmental operational direction, in hostilities against the Revolutionary United Front (RUF). This arrangement has since been treated in the legal and political science literature as a salient case study for analysing the circumstances in which the conduct of private

https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf, browsing date: 13 January 2026.

⁸⁵International Code of Conduct Association (ICoCA), The Nisour Square massacre (case study), International Code of Conduct Case Map, 2024; and Human Rights First, 3 years after Blackwater massacre in Iraq, contractors still lack accountability and oversight, 2010, both available at : <https://icoca.ch/case-studies/the-nisour-square-massacre/> and <https://humanrightsfirst.org/library/3-years-after-blackwater-massacre-in-iraq-contractors-still-lack-accountability-and-oversight> , browsing date: 13 January 2026

⁸⁶Deborah Avant, *The Market for Force: The Consequences of Privatizing Security*, Cambridge University Press, Cambridge, 2005, pp. 201–230.



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military companies may be attributable to a state under the rules on state responsibility⁸⁷.

We can infer that state responsibility arises when private military companies are used as instruments under its supervision or within official missions, or when the state subsequently adopts their actions. Therefore, the international legal framework remains inadequate if the conditions for international responsibility of states are not met when these companies violate the rules of international humanitarian law. All of this reinforces the need for a binding international instrument to regulate the activities of these companies.

Conclusion:

The study demonstrated that the legal classification of private military contractors remains highly complex due to the evolving nature of their tasks and the diverse contexts in which they operate. The current international legal framework is insufficient to accurately define their status, leading to legal gaps that affect protection and accountability.

Results:

✓ The absence of a unified legal classification for private military contractors under international humanitarian law necessitates the use of a functional- contextual framework that distinguishes between civilians accompanying the armed forces, de facto incorporated combatants, civilian intelligence agents or spies, and “grey- zone” contractors, and requires a case- by- case assessment of each contractor’s status within this framework.

✓ The difficulty in applying the mercenary designation to private military contractor employees, perhaps because the creators of these entities have found legal loopholes to evade this classification.

✓ While states retain responsibility as long as these companies operate on their behalf, this is difficult to demonstrate in practice due to the gray area in which these companies operate.

✓ The inadequacy of existing legal frameworks to keep pace with the legal system governing these entities, both in terms of regulation and oversight.

⁸⁷ Hultman, M., “Mercenaries or peacekeepers? Comparing Executive Outcomes and ECOMOG in Sierra Leone,” *Africana Studia*, no. 33, 2020, pp. 69–92, available at: <https://ojs.letras.up.pt/index.php/AfricanaStudia/article/view/10390> , browsing date: 13 January 2026.



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Recommendations:

- The need to adopt an international agreement specifically regulating the work of private military companies and to strengthen oversight of states that deal with these companies.
- The necessity of considering any use of private military companies in complex environments as inherently military tasks, since there are no clear dividing lines between security and military tasks during armed conflicts.
- It has become necessary to reassess the traditional definition of mercenaries, as it no longer reflects the nature of new actors in armed conflict, particularly private military companies. Updating this definition to align with contemporary realities would close the legal loopholes that have allowed these companies to evade being classified as mercenaries, thereby strengthening the effectiveness of the legal framework governing their activities.
- The United Nations should take action against states and compel them to enact legislation regulating the work of these entities in all aspects, including licensing, armament, and accountability mechanisms, while expanding the scope of international humanitarian law to include new non-state actors.

Bibliography List setting:

Legal texts

1. International Committee of the Red Cross, How is the term “armed conflict” defined in international humanitarian law?, ICRC Opinion Paper, 2008.
2. International Committee of the Red Cross, Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, Geneva, 2009.
3. International Committee of the Red Cross, Customary International Humanitarian Law: Volume I—Rules, Cambridge University Press, 2005.
4. International Committee of the Red Cross, Customary International Humanitarian Law, Rule 107: “Combatants who are captured while engaged in espionage do not have the right to prisoner-of-war status. They may, however, not be convicted or sentenced without previous trial”.
5. International Committee of the Red Cross, International humanitarian law and the challenges of contemporary armed conflicts, Document prepared for the 30th International Conference of the Red Cross and Red Crescent, Geneva, 2007.



The legal status of private military contractors in international armed conflicts: an analytical study in light of international humanitarian law

6. International Committee of the Red Cross, Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War, 2020 (updated 2021).

7. International Code of Conduct for Private Security Service Providers (ICoC), 9 November 2010 (amended 10 December 2021).

8. International Law Commission, Draft articles on responsibility of States for internationally wrongful acts, with commentaries, Yearbook of the International Law Commission, Vol. II (Part Two), United Nations, 2001.

9. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3.

10. Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 3.

11. Geneva Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135.

12. Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287.

13. UN Human Rights Council, Access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies (Report of the Working Group on the use of mercenaries, A/HRC/51/25), 2022.

14. UN Working Group on the Use of Mercenaries, Draft convention on private military and security companies (Annex to Report A/HRC/15/25), 2010.

15. United Nations General Assembly, 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/75/259, 2021.

Books

1. Avant, D., *The Market for Force: The Consequences of Privatizing Security*, Cambridge University Press, Cambridge, 2005.

2. Cameron, L., & Chetail, V., *Privatizing War: Private Military and Security Companies under Public International Law*, Cambridge University Press, 2013.

3. Carmola, K., *Private Security Contractors and New Wars: Risk, Law, and Ethics*, Routledge, London & New York, 2010.

4. Chesterman, S., & Fisher, A. (eds.), *Private Security, Public Order: The Outsourcing of Public Services and Its Limits*, Oxford University Press, Oxford, 2009.

5. Flörsheimer, F., *Private Military and Security Companies: Functions and Implications in Contemporary Conflicts*, Institute for Political Science, Frankfurt, 2018.



The legal status of private military contractors in international armed conflicts: an analytical study in light of international humanitarian law

6. International Committee of the Red Cross, *Customary International Humanitarian Law: Volume I—Rules*, Cambridge University Press, 2005.
7. Krahmman, E., *States, Citizens and the Privatisation of Security*, Cambridge University Press, 2011.
8. Lehnardt, C., “Private military companies,” in Wolfrum, R. (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2011.
9. Percy, S., *Mercenaries: The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007.
10. Singer, P. W., *Corporate Warriors: The Rise of the Privatized Military Industry*, Cornell University Press, Ithaca, 2003.

Theses / Dissertations (Memory)

1. Blüme, H. de H., *Private Military and Security Companies in Armed Conflict: Privatisation of Violence as a Challenge to Contemporary International Humanitarian Law*, LL.M. thesis, Uppsala University, 2021.

Articles

2. Akbar, M., Putri, A. R., & Rahayu, D., “Addressing non-international armed conflicts vis-à-vis international human rights regime,” *Jurnal Hukum dan Peradilan*, vol. 12, no. 2, 2023.
3. Albasoos, H., & Al-Maashani, M., “The private military and security contractors in armed conflicts under international humanitarian law: Case study of Russian PMSCs,” *International Journal of Research in Business and Social Science*, vol. 9, no. 3, 2020.
4. Ali Abdulla Ali Khlfalla, “The Legal Status of Private Military and Security Companies in International Humanitarian Law,” *Al-Haq Journal for Sharia and Legal Sciences*, vol. 4, no. 1, 2024
5. Ben Daouia, M., “Private security and military companies in the African continent,” *African Journal of Political Science*, vol. 4, no. 2, 2023.
6. Ben Salem, R., “Determining the legal status of workers in international private military and security companies in light of the provisions of international humanitarian law,” *Journal of Law and Politics*, 2023.
7. Calazans, É. L. B., “The state responsibility for international humanitarian law violations and human rights abuses committed by private military and security companies,” *International Multidisciplinary Research Journal*, vol. 11, 2019.
8. Cameron, L., “Private military companies: Their status under international humanitarian law and its impact on their regulation,” *International Review of the Red Cross*, vol. 88, no. 863, 2006.
9. DCAF – Geneva Centre for Security Sector Governance, *Addressing New Challenges of Private Military and Security Companies*, DCAF, 2024.



The legal status of private military contractors in international armed conflicts: an analytical study in light of international humanitarian law

10. El Mquirmi, N., *Private Military and Security Companies: A New Form of Mercenarism?*, Policy Brief No. 08/22, Policy Center for the New South, 2022.
11. El Mquirmi, N., *Navigating in a Grey Zone: Regulating PMSCs*, Policy Brief No. 27/22, Policy Center for the New South, 2022.
12. Enakireru, E. O., & Ademiluyi Bukola, O., “Interrogating the Action and Status of Private Military and Security Companies in International Humanitarian Law,” *SSRN Electronic Journal*, 2024.
13. Fellmeth, A., & Crawford, E., “‘Reason to know’ in the international law of command responsibility,” *International Review of the Red Cross*, vol. 104, no. 919, 2022.
14. Fuchs, I., & Owens, S., “A combatant or not a combatant that is the question: Arguing the case of combatant status for non-military government personnel and private military contractors engaged on the modern battlefield,” *Emory International Law Review*, vol. 39, 2024.
15. Gillard, E.-C., “Business goes to war: Private military/security companies and international humanitarian law,” *International Review of the Red Cross*, vol. 88, no. 863, 2006.
16. Hultman, M., “Mercenaries or peacekeepers? Comparing Executive Outcomes and ECOMOG in Sierra Leone,” *Africana Studia*, no. 33, 2020.
17. Lloyd, M., “Unpacking foreign fighting: New Zealand’s legislative responses to transnational combatants,” *National Security Journal*, vol. 5, no. 1, 2023.
18. Moesgaard, C., *Private military and security companies – from mercenaries to intelligence providers*, DIIS Working Paper 2013:09, Danish Institute for International Studies, 2013.
19. Petersohn, U., “The anti-mercenary norm and the market for combat force,” *International Journal*, vol. 76, no. 1, 2021.
20. Riemann, M., “‘As old as war itself’? Historicizing the universal mercenary,” *Journal of Global Security Studies*, vol. 6, no. 1, 2021.
21. *Syrians for Truth and Justice*, “The dilemma of mercenarism and volunteering during armed conflicts: A critical reading into law and practice,” 2023.
22. Touati, H., “The legal status of private security and military companies under the rules of international humanitarian law,” *Revue Académique de la Recherche Juridique*, vol. 11, no. 2, 2020.
23. Urueña-Sánchez, M., & Olásolo, H., “Private military and security companies, responsibility of states and international humanitarian law: Toward an interdisciplinary definition,” *Revista Derecho del Estado*, no. 57, 2023.
24. Végh, K., “Private military contractors and the international law of armed conflicts,” *Miskolc Journal of International Law*, vol. 5, no. 2, 2008.

Forum works / Institutional reports



The legal status of private military contractors in international armed conflicts: an analytical study in light of international humanitarian law

1. DCAF – Geneva Centre for the Democratic Control of Armed Forces, Private Military and Security Companies (PMSCs), SSR Backgrounder No. 26, 2017.
2. DCAF, A View from Inside a Multistakeholder Process: The ICoC and Its Association, 2015.
3. European Parliament, The Role of Private Security Companies (PSCs) in CSDP, EXPO/B/SEDE/FWC/2009-01/Lot6/21, 2011.
4. Geneva Academy, The Involvement of Mercenaries and Private Military Security Companies in Armed Conflicts, 2025.
5. International Code of Conduct Association, Annual Report 2021–2022.
6. International Code of Conduct Association, Member Monitoring – 2022 Summary, 2023.
7. International Institute of Humanitarian Law, 35th Round Table on Current Issues of International Humanitarian Law, 2013.
8. SIPRI, Private Military and Security Companies in Armed Conflict, in SIPRI Yearbook 2023, Stockholm International Peace Research Institute, 2023.
9. Switzerland & International Committee of the Red Cross, 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, 2008.
10. U.S. Senate Committee on Armed Services, Inquiry into the Role and Oversight of Private Security Contractors in Afghanistan, S. Rep. 111-345, 2010.

Websites and other electronic sources

1. Al Shimari et al. v. CACI Premier Technology, Inc., United States District Court for the Eastern District of Virginia (Abu Ghraib litigation). Center for Constitutional Rights, “Al Shimari, et al. v. CACI” and related factsheet, 2024, available at: <https://ccrjustice.org/AlShimari> .
2. Center for Civilians in Conflict (CIVIC), Privatizing War: The Impact of Private Military Companies on the Protection of Civilians, 2022, available at: <https://civiliansinconflict.org/publications/policy/privatizing-war-the-impact-of-private-military-companies-on-the-protection-of-civilians/> .
3. Geneva Centre for Security Sector Governance (DCAF), Addressing New Challenges of Private Military and Security Companies, 2024, available at: <https://www.dcaf.ch/sites/default/files/publications/documents/new-challengesPMSCs-SSGR-EN.pdf> .
4. Human Rights Watch, Blackwater in Baghdad: “It was a horror movie”, 2007, available at: <https://www.hrw.org/news/2007/12/14/blackwater-baghdad-it-was-horror-movie> .
5. Human Rights Watch, Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution, 2002, available at: <https://www.hrw.org/reports/2002/bosnia/Bosnia1102-11.htm>.



The legal status of private military contractors in international armed conflicts: an analytical study in light of international humanitarian law

6. International Code of Conduct Association, *The Nisour Square Massacre (case study)*, 2024, available at: <https://icoca.ch/case-studies/the-nisour-square-massacre/> .

7. Human Rights First, *3 Years after Blackwater Massacre in Iraq, Contractors Still Lack Accountability and Oversight*, 2010, available at: <https://humanrightsfirst.org/library/3-years-after-blackwater-massacre-in-iraq-contractors-still-lack-accountability-and-oversight> .

8. International Code of Conduct Association, *ICoCA Accepted Certification Bodies and the Related Certification and Monitoring Framework*, 2025, available at: <https://icoca.ch/what-we-do/certification/icoca-accepted-certification-bodies/>.

9. Intertek; International Organization for Standardization (ISO); URS Certification, references on ISO 18788 / PSC.1 management systems for private security operations and ISO 9001 quality management systems – requirements, 2015–2025, available at: <https://www.intertek.com>; <https://www.urs-certification.com>; <https://www.iso.org/standard/62085.html>.

10. International Committee of the Red Cross, “International humanitarian law and private military/security companies – FAQ,” 2013 and 2020, available at: <https://www.icrc.org/en/document/ihl-and-private-military-security-companies-faq> .

11. Syrians for Truth and Justice, “The dilemma of mercenarism and volunteering during armed conflicts,” 2023, available at: <https://stj-sy.org/en/the-dilemma-of-mercenarism-and-volunteering-during-armed-conflicts/> .

12. *United States v. Slough et al.*, U.S. District Court for the District of Columbia, verdict of 22 October 2014 (Nisour Square case). For background, see: U.S. Department of Justice, “Four Former Blackwater Employees Found Guilty in 2007 Shooting at Nisur Square in Iraq,” available at: <https://www.justice.gov/archives/opa/pr/four-former-blackwater-employees-found-guilty-charges-fatal-nisur-square-shooting-iraq> .

13. UN Office of the High Commissioner for Human Rights, *Report of the Working Group on the Use of Mercenaries (A/78/535)*, 2023, available at: <https://docs.un.org/en/A/78/535>.