

# Normative-Legal Regulation of the Activities of International Private Military Companies

## Abstract

The article addresses the issue of normative-legal regulation concerning the operations of international private military companies (hereafter: PMCs). The specifics of the activities of international private military companies and their significance in the modern world are examined. The main emphasis is placed on analyzing documents that regulate the functioning of private military structures, particularly the Montreux Document, the International Code of Conduct for Private Security Service Providers, and the role of the International Association of the Code of Conduct in monitoring the actions of PMCs. Additionally, the mechanisms for regulating the activities of private military companies at the level of influential intergovernmental organizations such as the UN, EU, and NATO are analyzed. Challenges in the legal field resulting from the increased demand for PMC services are outlined. The conclusion drawn emphasizes the expediency of strengthening the normative-legal framework for regulating the activities of international private military companies.

**KEYWORDS:** international private military companies (PMCs), normative-legal regulation, security, armed conflicts, normative-legal framework, military services, legal status

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# 1 | Introduction

One of the contemporary trends in the global order is the active participation of private military companies (hereafter: PMCs) in armed conflicts, international peacekeeping missions, post-conflict region reconstruction, and other military operations. The emergence of such players as PMCs on the international stage entails a number of risks, primarily the loss by states of a monopoly on the use of military force, posing a serious threat to international security. While the actions of traditional military institutions are regulated by norms of national and international law, clear normative-legal regulation of the activities of international PMCs remains a pressing issue. It requires urgent resolution, as demand for the engagement of international PMCs is rapidly increasing in the conditions of conducting 'hybrid wars' and escalating 'asymmetric' conflicts.

States and other international actors increasingly turn to PMCs for various reasons. However, this trend is part of an existing process of decline or transformation of certain traditional instruments of state sovereignty in response to sharp changes in the international security environment. Thus, Western countries have faced such a phenomenon largely due to budgetary pressure, reaction to public opinion regarding the reduction of direct state investments in the military sphere, and the increasing complexity of some operations. In other countries, the growing popularity of PMCs can be seen as a direct result of the weakness of state structures in general and military structures in particular. At the same time, armed conflicts continue, intensify, and become longer-lasting, prompting governments to contract military services in the private sector, seeing this as a way to gain more advantages for national funds<sup>[1]</sup>.

Ordering „security by contract” provides governments with a several of operational advantages, including: rapid and covert deployment and redeployment; reduced dependence on bureaucratic procedures; fast decision-making and combat capability; and no need to coordinate PMC deployments with international structures<sup>[2]</sup>. Governments can circumvent restrictions imposed by institutional control mechanisms (for example,

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<sup>1</sup> The Business of War – Growing risks from Private Military Companies, Official website of the Council of the European Union, August 31, 2023. <https://www.consilium.europa.eu/media/66700/private-military-companies-final-31-august.pdf>.

<sup>2</sup> Vystup na temu „Pryvatni viiskovi kompanii ta yikh rol u suchasnykh rehionalnykh konfliktakh”, Official website of the Permanent Representation of Ukraine

restrictions on the use of troops abroad set by the legislature; on the types and number of troops that can be deployed; on financial expenditures for military operations, etc.) This, in turn, undermines the transparency and accountability of military actions of states, which are important components of democracy.

The changing structure of military companies, complex contractual relationships that define dependencies between entities that perform contracts with the government, create a win-win situation for both parties from the point of view of their interests. Both governments and companies can avoid liability for their actions to third parties or complicate the possibility of making claims<sup>[3]</sup>.

In addition, it should be understood that the use of PMC services by governments has certain advantages in the field of public relations. Employees of such companies, unlike members of national armies, are generally not perceived by the public as direct representatives of the state. Thus, cases of injury or death of PMC personnel usually cause less public resonance, including less criticism of the government, than when it happens to members of the armed forces. This also applies to the participation of private military contractors in combat operations, including their successes and failures, which do not attract much public attention. Whereas the defeats of regular troops can cause disappointment, fear, and other negative emotions among the population. Governments may also order the services of PMCs to reduce political tension, as their participation in conflicts reduces the appearance of direct military intervention. Besides, PMC members have more freedom to communicate with the media and the public, as they are not restricted by the protocols of state military structures.

Despite certain benefits of using the services of private troops, the lack of clearly defined legislative norms regulating this sphere leads to new threats and negative consequences for the stable, secure, and democratic development of the international community. Such legal uncertainty creates a favorable environment for violations of human rights and international law and blurs the lines of responsibility between states and private military structures.

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to international organizations in Vienna, 17 June 2020. <https://vienna.mfa.gov.ua/news/vistup-na-temu-privatni-viyskovi-kompaniyi-ta-yih-rol-u-suchasnih-regionalnih-konfliktah>.

<sup>3</sup> Karol Dobrzeńiecki, „Antropoarchiczna Krytyka Prywatyzacji Konfliktów Zbrojnych – Aspekty Prawne” *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, No. 1 (2016): 115.

The scientific hypothesis posits the weakness of normative-legal regulation of the activities of international private military companies, and the main questions of the presented study are:

1. to reveal various theoretical approaches to defining the concept of a 'private military company';
2. to identify the specifics of the activities of international private military companies;
3. to analyze the main normative-legal acts and documents regulating the activities of PMCs;
4. to examine the mechanisms for regulating the activities of PMCs at the level of international organizations.

## 2 | Conceptual content and features of Private Military Companies

According to statistical data, in 2020, there were already about 1,150 international private military companies operating, and the total number of PMCs employees was over 1.5 million worldwide. Several hundred PMCs operate in 50 countries, providing various security services<sup>[4]</sup>. The number of PMCs in the world has been dynamically increasing since 1980 and reached its peak in 2012 with 1,200 private structures<sup>[5]</sup>. However, it is worth noting that there is no unified approach to defining the concept of „private military companies” yet, while such terms as „private military companies”, „private military and security companies”, „private armies”, and „military contractors” are used interchangeably.

According to the interpretation by P. Singer, the author of a scientific work on the development of the private military industry, PMCs include

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<sup>4</sup> Yurii Semeniuk, „Zastosuvannia pryvatnykh viiskovykh kompanii dlia zabezpechennia natsionalnykh interesiv i bezpeky derzhavy” *Scientific notes of Taurida National V.I. Vernadsky University series Public Management and Administration*, No. 2 (2020): 231 <https://doi.org/10.32838/2663-6468/2020.2/38>.

<sup>5</sup> The Business of War – Growing risks from Private Military Companies, Official website of the Council of the European Union, 31 August 2023. <https://www.consilium.europa.eu/media/66700/private-military-companies-final-31-august.pdf>.

registered commercial structures that provide a wide range of military services to clients, operate under state control, and act in their favor<sup>[6]</sup>. Additionally, experts from the Geneva Center for the Democratic Control of Armed Forces define private military companies as highly organized commercial structures whose main tasks include conducting combat operations, gathering data, developing strategies, training military personnel, as well as providing technical support and logistical assistance<sup>[7]</sup>. From the point of view of Ukrainian Major General V. Skibitskyi, the activities of PMCs are closely related to ensuring security and promoting the interests of states in various regions of the world. Despite the commercial nature of such structures, they cooperate with defense ministries and special services of their countries and have highly qualified specialists, modern equipment, and sometimes heavy weaponry in their arsenal<sup>[8]</sup>.

As of today, the important tool that has made an attempt to define the status of international private military companies is the Montreux Document developed in 2008. According to this document, PMCs are business entities that provide military services, consultancy, and training to military personnel, perform tasks such as protecting individuals, guarding objects, or apprehending offenders, and engage in the development and technical maintenance of combat systems<sup>[9]</sup>.

A group of analysts and researchers from the EU Council, in their work *War Business – Growing Risks from Private Military Companies* characterizes PMCs as legal entities that are paid for providing military services, which can be extensive and include specialized tasks such as strategic planning, ground, maritime, or aerial reconnaissance, investigations, manned or unmanned flights, material and technical support for traditional

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<sup>6</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Cornel: Cornel University Press, 2003), 360.

<sup>7</sup> Ase Gilje Ostensen, *UN Use of Private Military and Security Companies: Practices and Policies* (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2011), 84. [https://www.dcaf.ch/sites/default/files/publications/documents/SSR\\_PAPER3.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/SSR_PAPER3.pdf).

<sup>8</sup> Vystup na temu „Pryvatni viiskovi kompanii ta yikh rol u suchasnykh rehionalnykh konfliktakh”, Official website of the Permanent Representation of Ukraine to international organizations in Vienna, 17 June 2020. <https://vienna.mfa.gov.ua/news/vistup-na-temu-privatni-vijskovi-kompaniyyi-ta-yih-rol-u-suchasnih-regionalnih-konfliktah>.

<sup>9</sup> Ebenezer Tetteh Matey, *Private Military Contractors And Piracy: The international Law Framework* (Masters diss., Graduate Institute of International and Development Studies, 2013), 3.

armed forces, satellite observation, and any form of military knowledge transfer<sup>[10]</sup>.

Foreign scholars have defined a number of key features that make it possible to identify an organisation as a private military company:

1. It has personnel equipped with weapons on a par with regular armed forces.
2. It performs security functions that until recently were the exclusive prerogative of the public services and thus inaccessible to the private sector.
3. Capable of deploying military potential sufficient to significantly influence the political situation in certain states<sup>[11]</sup>.

There are also some legal traits that a company has to have to be considered a PMC and not a criminal group. These characteristics include registration according to the legislation of the country of origin; commercial nature, with the primary motivation being profit (otherwise, it may be an instrument of indirect state policy); permanence, with the creation based on the desire for continuous provision of military services (temporary creation may be an attempt to legalize a militarized criminal group); and a contractual basis for the provision of services with specified details<sup>[12]</sup>.

Today, PMCs operate in almost every country in the world to attract a wide range of clients. However, the main part of the PMC market is concentrated in a limited number of countries: the United States (Academi (Blackwater), Fort Defence Group Corporation, etc.) Great Britain (Aegis Defence Services, Erinys, etc.), China (Beijing DeWe Security Service, Huaxin ZhongAn Security Group, etc.) and South Africa (Dyck Advisory Group, etc.). These four countries account for approximately 70% of the total sector. Russia has a relatively limited segment of private military companies, but is distinguished by the more active use of these contractors in combat operations compared to other countries. To a greater extent, this

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<sup>10</sup> The Business of War – Growing risks from Private Military Companies. <https://www.consilium.europa.eu/media/66700/private-military-companies-final-31-august.pdf>.

<sup>11</sup> Jakub Skupień, „Prywatne firmy wojskowe i ich rola we współczesnych konfliktach zbrojnych” *Annales Universitatis Paedagogicae Cracoviensis*, No. 224 (2016): 113.

<sup>12</sup> Aivaras Giedraitis, „Private Military Companies in the Foreign and Security Policy of the Russian Federation in 2014-2019” *Lithuanian Annual Strategic Review*, No. 18 (2020): 123-162. <https://doi.org/10.47459/lasr.2020.18.6>.

applies to the Russian PMC Wagner, an unofficial military group consisting of former Kremlin special forces. Operating under the auspices of the Wagner PMC, the group's personnel are involved in armed conflicts around the world and act in support of authoritarian regimes<sup>[13]</sup>. The Wagner PMC has been involved in several hundred crimes, including at least 14 war crimes in Ukraine and 298 crimes in Mali between 2021 and 2023<sup>[14]</sup>.

Besides, it should be noted that, according to various experts, Russian PMCs function as a means of implementing hidden strategic goals of the state or are a state-controlled coercive system for the realisation of its economic interests. Unlike independent commercial entities, these companies do not have the freedom to choose the range of services, locations or clients. This characterises them as an instrument of state policy rather than an independent business unit<sup>[15]</sup>.

The study *War Business – Growing Risks from Private Military Companies* identifies three main models of PMCs: South African, American, and Russian. PMCs of the South African model are described as private armies that lead autonomous military companies financed by the resources of the country where they operate. The American model is described as „military entrepreneurship”. This involves integrating PMCs into the regular armed forces of a powerful country and privatizing the armed forces as a way of fighting terrorism. The Russian model of PMCs can be seen as combining elements of both aforementioned models, but these PMCs also have engaged in actions that violate human rights and international humanitarian law with impunity. In contrast, Wagner PMC, which is a prime example of the Russian model, has been linked to violence, rape, torture, and even executions. It has been described as a hybrid of a special forces unit and an organized crime mafia<sup>[16]</sup>.

Summarizing the various approaches to interpreting the concept of „private military companies”, it is worth highlighting their fundamental

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<sup>13</sup> Ori Swed et al., „Private military and security companies in armed conflict” *SIPRI Yearbook*, (2023). <https://www.sipri.org/yearbook/2023/04>.

<sup>14</sup> “More Wagner Atrocities Reported in Mali” *ADF Magazine*, 15 August 2023. <https://adf-magazine.com/2023/08/more-wagner-atrocities-reported-in-mali/>.

<sup>15</sup> Natalia Olszanecka, „Rosyjskie Prywatne Firmy Wojskowe I Ich Rola W Polityce Wewnętrznej I Zagranicznej” *Athenaeum. Polskie Studia Politologiczne*, No. 2 (2022): 123-162.

<sup>16</sup> *The Business of War – Growing risks from Private Military Companies*. <https://www.consilium.europa.eu/media/66700/private-military-companies-final-31-august.pdf>.

idea, which lies in the fact that such entities are profit-oriented commercial structures that provide military services and/or carry out combat tasks, including certain „specific’ assignments. Thus, the activities of international PMCs are associated with „professional trade in the art of war”<sup>[17]</sup>, which, however, leaves open questions about the legality of such ‘trade’ and mechanisms for control or restriction.

### 3 | International mechanisms for regulating PMCs

The development of the phenomenon known as „military privatization” is an ambiguous and complex process that is difficult to regulate. Traditionally, processes that lack clearly defined legal boundaries create risks of human rights violations, national legislative infringements, and breaches of international law norms. Importantly, in the context of PMCs, both the subjects targeted by PMC actions and the participants themselves can be considered ‘victims’, as the rights of the latter also remain ambiguously defined.

The international community is accustomed to the negative perception of PMCs members, often associating them with the threats posed by criminals and killers. However, as K. Gallagher asserts, „those who fight in wars rarely bear the greatest responsibility for them”, and although soldiers are a fundamental part of war, they are not always the ones making decisions about its course<sup>[18]</sup>. Indeed, this position is justified if the actions of private military personnel do not violate laws of warfare. For example, engaging in violence and torture could be considered a conscious choice that changes warfare into genocide. Furthermore, Gallagher emphasizes that her position by no means implies that PMCs members are robots without free will, but rather argues that the „working conditions” of PMCs soldiers should also be subject to scrutiny and improvement<sup>[19]</sup>. It is worth considering

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<sup>17</sup> Kryvavyi biznes: yak pratsiuut pryvatni viiskovi kompanii ta chomu „Vahner” ne slid vvazhaty PVK, We Ukraine TV channel, 28 June 2023. <https://weukraine.tv/top/kryvavyj-biznes-yak-pratsyuyut-pryvatni-vijskovi-kompaniyi-ta-chomu-vagner-ne-slid-vvazhaty-pvk/>.

<sup>18</sup> Carolyn Gallaher, „Risk and Private Military Work” *Antipode: A Radical Journal of Geography*, No. 44 (June 2012): 13-18. <https://doi.org/10.47459/lasr.2020.18.6>.

<sup>19</sup> Ibidem.



PMCs members as ordinary individuals who have rights and freedoms that should not be violated.

Indeed, at this stage of analysis, if we avoid directly evaluating the actions of PMC members and delve into the normative component of their „work”, we can observe cases of violations of their labor rights. The legal risks that may be faced by PMC employees include the following examples: participation in combat operations in the conflict zone is potentially dangerous, however, unlike regular army personnel, PMC members do not receive legal guarantees from the state; the process of obtaining medical care and compensation is complicated; there may be breaches of contract that are difficult to resolve; there are no clearly defined working conditions, etc. This problem is difficult to resolve, as a significant number of PMC operations are conducted in areas where legal mechanisms for protecting labor rights are weak or non-existent, creating a so-called „legal vacuum” that poses serious challenges to the protection of labor rights and the interests of personnel. In least developed countries, employment in private military companies is often a consequence of difficulties in finding work. This can lead to a lack of consideration for the moral implications of the work to be performed and potential violations of labor rights<sup>[20]</sup>.

One attempt to establish high standards of conduct for the private sector in armed conflicts and post-conflict environments was the adoption of the Code of Conduct for Members of the International Stability Operations Association. The document applied to companies that voluntarily joined the organization and aimed to establish a list of exemplary principles of conduct for contracted military personnel, as well as the rights and benefits they receive by virtue of this status. A crucial aspect is the section on personnel duties and rights, which specifies requirements such as responsible and ethical treatment of personnel, compliance with instructions on legislative and ethical norms, work-specific characteristics and risks, as well as ensuring personnel have the necessary equipment and materials for training to guarantee their humane, honest, and objective conduct, compliance with international humanitarian laws and human rights during professional activities, and prohibition of human trafficking, sexual exploitation, and violence<sup>[21]</sup>.

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<sup>20</sup> Carolyn Gallaher, „Risk and Private Military Work”, 13-18.

<sup>21</sup> ISOA Code of Conduct, Official website of International Stability Operations Association, 2001. <https://stability-operations.org/page/Code>.

Overall, the ideas of the Code are essential for ensuring compliance with the laws and customs of war. However, the document could not become a genuinely authoritative source to regulate the problems of private military forces beyond the organization's borders and, moreover, could not prevent precedents of violations of members' rights and the rights of the organization itself. The fact that the International Stability Operations Association has a significant membership of 196 companies and is active in pursuit of its vision does not negate its inability to influence the private sector to truly act in accordance with the established standard of conduct, given the weak oversight mechanisms and the nature of accountability. The potential expulsion from the Association as a 'punishment' for non-compliance with the Code sounds like an important internal solution but is not strong enough to address the overall problem of breaches of the Code of Conduct by PMCs.

The urgent problem also remains the question of the absence of an officially established legal status for personnel of PMCs, that is, whether they are perceived as combatants with all the rights and obligations or as civilians who are not allowed to use force directly in armed conflict situations. Thus, defining PMC members as combatants would primarily provide an understanding of whether opponents can legitimately attack them as lawful military targets; whether PMC personnel have the prerogatives to use force and participate directly in combat operations; whether they can be held accountable for participating in armed conflicts; whether they can obtain prisoner of war status if captured<sup>[22]</sup>.

It is important to emphasize that categorizing members of private military companies as combatants is situational and depends on whether in a particular case their activities correspond to the criteria defined by international humanitarian law, particularly the Third Geneva Convention<sup>[23]</sup>. In fact, it is currently impossible to assert universally that all personnel of international PMCs are combatants. According to existing criteria, PMC members can be attributed such status only if they are part of the armed

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<sup>22</sup> Lindsey Cameron, „Private Military Companies: their Status under International Humanitarian Law and its Impact on their Regulation” *International Review of the Red Cross*, No. 863 (2006): 577-579. [https://www.icrc.org/en/doc/assets/files/other/irrc\\_863\\_cameron.pdf](https://www.icrc.org/en/doc/assets/files/other/irrc_863_cameron.pdf).

<sup>23</sup> Konstantyn Hromovenko, „Mizhnarodno-pravove rehuliuвання diialnosti pryvatnykh viiskovykh ta okhoronnykh pidpriumstv u peiroad zbroinykh konfliktiv mizhnarodnoho kharakteru” *Juridical scientific and electronic journal*, No. 6 (2015): 224-225. [http://www.lsej.org.ua/6\\_2015/64.pdf](http://www.lsej.org.ua/6_2015/64.pdf).

forces of a belligerent state or another armed entity recognized by the state. Such conditions are realistic but uncommon, as PMC affiliation with armed forces undermines the very „philosophy of outsourcing” and the essence of „militarization privatization”, which involves transferring to the private sector what was previously exclusively the prerogative of the state<sup>[24]</sup>. Since, according to the logic of international humanitarian norms during armed conflict, individuals can either be combatants or civilians, this creates a risk that if PMC personnel do not meet the necessary criteria, they are *de jure* considered civilians deprived of the right to directly participate in combat operations<sup>[25]</sup>.

In addition, the increasing involvement of civilian PMC personnel in combat operations poses a challenge to the clear delineation of the parties to the conflict, increasing the risk that civilians may be mistakenly targeted. As PMCs’ activities may not be subject to punishment mechanisms for violations of international law for various reasons, the possibility of filing complaints against violators is limited. Moreover, the PMCs operate on a free market basis, which makes their services available to both state and non-state actors (NGOs, transnational corporations, insurgent and terrorist groups). This significantly erodes the state monopoly on the use of force, which can result in a situation where traditional mechanisms for controlling the use of force become less effective, and civilians are at an increased risk of violating their rights and security<sup>[26]</sup>.

Analyzing the international mechanism for private military companies, it is necessary to highlight the key documents that have attempted to legislatively establish norms for PMC activities. An important international model for regulating the activities of private military companies at the global level is the Swiss Initiative. This Initiative aimed to create a single international body to control the activities of private military companies, which would have the authority to prohibit their activities in ‘aggressor countries’ or other states with possible revocation of their licenses as preventive punishment; establish international control over the licensing

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<sup>24</sup> Ibidem.

<sup>25</sup> Cameron, „Private Military Companies: their Status under International Humanitarian Law and its Impact on their Regulation”, 577-579.

<sup>26</sup> Andreas Schüller, „Rules and Responsibilities of Employees of Private Military Companies under International Humanitarian Law” *S&F Sicherheit und Frieden*, No. 25 (2008): 195. <https://www.nomos-elibrary.de/10.5771/0175-274x-2008-4-191/rules-and-responsibilities-of-employees-of-private-military-companies-under-international-humanitarian-law-volume-26-2008-issue-4?page=1>.

regime for PMCs; ensure monitoring of PMCs activities with the development of agreements between states where such companies operate<sup>[27]</sup>.

From 2006 to 2008, the Swiss government and the International Committee of the Red Cross initiated a working process involving government experts from seventeen countries most affected by the activities of PMCs or where such structures are actively used. As a result, in 2008, the Montreux Document was published with the objective of promoting respect for international humanitarian law and human rights in the field of private security. The document is more of a set of recommendations than legally binding, as it mainly contains a compilation of leading practices developed to assist states in situations where they need to take national measures to fulfil their obligations in connection with these new types of activities<sup>[28]</sup>.

The Montreux Document became the first international document to confirm the obligations of states under international law regarding the activities of PMCs<sup>[29]</sup>. This mechanism contains over 70 recommendations for regulating the activities of „contracting military” in conflict zones and monitoring compliance with international law by these entities<sup>[30]</sup>. The document offers a plan of action for national governments to more effectively regulate PMCs; provides a roadmap for states seeking to improve their policies and legal practices regarding private military companies; offers tools for implementing effective oversight and regulatory mechanisms for PMCs. A key principle underlying the Montreux Document is that private military companies operate in conditions of armed conflict. As an exception, the Montreux Document provides guidance on the use of PMCs to protect merchant vessels from piracy, which is a situation outside of armed conflict. According to the Montreux Document, PMC members cannot be classified as mercenaries unless they meet the criteria set out in Additional Protocol I to the Geneva Conventions. But if their characteristics

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<sup>27</sup> Hanna Kokhan, „Pravovi Pytannia Diialnosti Pryvatnykh Viiskovykh Kompanii: Mizhnarodnyi Aspekt” *Scientific notes of Taurida National V.I. Vernadsky University series Public Management and Administration*, No. 2 (2020): 193. <https://doi.org/10.32838/2707-0581/2020.2-3/31>.

<sup>28</sup> Private Military Companies Overview of the Phenomenon, The Practical Guide to Humanitarian Law, Médecins Sans Frontières/ <https://guide-humanitarian-law.org/content/article/3/private-military-companies/>. [accessed: 10.12. 2023].

<sup>29</sup> Legislative Guidance Tool for States to Regulate Private Military and, Security Companies, Montreux Document Forum, 2016. <https://www.montreuxdocument.org/pdf/Legislative-Guidance-Toolkit.pdf>.

<sup>30</sup> *The Montreux Document* (Switzerland: International Committee of the Red Cross & FDFA, 2009), 48.

fall under the aforementioned definition, they lose the right to combatant status and prisoner of war status, and their participation in armed conflict is prohibited by international law<sup>[31]</sup>.

Among the important decisions proposed by the Montreux Document was the prohibition of the transfer of state functions to the level of execution by members of PMCs, namely: detention and internment of prisoners of war, as well as internment of civilians. Considering numerous cases of abuses of law and crimes committed by PMC members, the Montreux Document calls on states to amend national criminal legislation at the national level to establish sanctions for their offences<sup>[32]</sup>. It is important to understand that the Montreux Document, which is of a recommendatory nature, neither approves nor condemns the activities of PMCs but seeks to emphasize their legal obligations and provide recommendations to states for regulating situations where decisions about the functioning of PMCs have been made<sup>[33]</sup>.

According to researcher Rebecca Shaw, the Montreux Document is a response to the legal uncertainty created by the involvement of PMC and an attempt to resolve the issue of legal obligations of the parties. The weaknesses of the Document are its non-binding voluntary nature, which leads to only minor changes in state practices, and its tolerance of states' refusal to participate in potentially binding international efforts to regulate PMCs<sup>[34]</sup>.

Overall, the achievement of the Montreux Document is considered the fact that over its 15 years of operation, the number of participating states has significantly increased from 17 to 59 states, and it is also supported by three powerful international organizations (EU, NATO, and OSCE). In addition, in 2014, the Montreux Document Forum was initiated as a platform for informal consultations on the experiences of implementing the rules and practices of the Montreux Document. However, we cannot disagree with

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<sup>31</sup> Supporting the Montreux Document: Why and How?, Montreux Document Forum, 2020, [https://www.montreuxdocument.org/pdf/2020-02-19\\_supporting-the-md\\_how-and-why.pdf?v=2020](https://www.montreuxdocument.org/pdf/2020-02-19_supporting-the-md_how-and-why.pdf?v=2020).

<sup>32</sup> *The Montreux Document*, 48.

<sup>33</sup> Supporting the Montreux Document: Why and How?. [https://www.montreuxdocument.org/pdf/2020-02-19\\_supporting-the-md\\_how-and-why.pdf?v=2020](https://www.montreuxdocument.org/pdf/2020-02-19_supporting-the-md_how-and-why.pdf?v=2020).

<sup>34</sup> Shaw Rebecca, „Private Military and Security Companies and International Humanitarian Law” [in:] *Civility, Barbarism, And The Evolution Of International Humanitarian* (Cambridge: Cambridge University Press, 2020), 156-176.

another conclusion that can be drawn over the years of its implementation, namely: The Montreux Document is useful only if it is used<sup>[35]</sup>. This thesis means that the effectiveness of the Document is directly proportional to how actively international actors apply its principles and norms in practice. In addition, it is important to monitor the implementation of the Document and ensure that all norms are followed.

The next step in enriching the arsenal of tools for regulating PMCs was the adoption of the International Code of Conduct for Private Security Service Providers in 2011 and the establishment of the International Association of the Code of Conduct in 2013. Companies that become signatories to the International Code of Conduct for Private Security Service Providers must share the principles of the Framework Program “Protection, Respect, and Legal Means of Protection,” embodied in the UN Guiding Principles on Business and Human Rights, as well as the Montreux Document. Thus, PMCs undertake to provide security services, promote the rule of law, respect for human rights, and support the interests of their clients<sup>[36]</sup>.

The norms described in the Code pertain to aspects such as humane treatment of individuals and respect for their dignity; the use of force (avoidance of the use of force or its application in accordance with applicable law without exceeding strictly necessary measures, ensuring that force is proportionate to the threat and appropriate to the situation); apprehension of individuals (only with the existence of a special agreement or training in current national and international law); torture or other cruel treatment; sexual violence and exploitation (including the prohibition of gender-based violence); discrimination (all forms of which are prohibited); human trafficking; slavery, forced labor, etc. <sup>[37]</sup>.

Institutional oversight, certification, monitoring, and audits regarding the activities of international private military companies conducted by the International Association of the Code of Conduct contribute to compliance with human rights standards. As of today, the International Association

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<sup>35</sup> Montreux Five Years On: An analysis of State efforts to implement Montreux Document legal obligations and good practices, Human Rights in Business Program, 2013. <https://ihrib.org/wp-content/uploads/2013/12/MontreuxFv31.pdf>.

<sup>36</sup> Kateryna Buriakovska, „Zoboviazannia Pryvatnykh Okhoronnykh ta Viiskovykh Kompanii u Sferi Prav Liudyny: Ohliad Suchasnoi Pravovoi Ramky ta Praktyk Aspekt” *Philosophy of Law and General Theory of Law*, No. 1 (2021): 267. <https://doi.org/10.21564/2707-7039.1.247620>.

<sup>37</sup> The International Code of Conduct for Private Security Service Providers, ICoCA, 2011. <https://icoca.ch/the-code/>.

of the Code of Conduct is an important initiative working on establishing a mechanism to ensure the effectiveness of human rights standards compliance and shaping expectations regarding accountability for their violation. Membership of PMCs in the International Association of the Code of Conduct also enhances the authority of the structure, as it is perceived as confirmation of the provision of quality services in accordance with the universally recognized Code<sup>[38]</sup>.

However, one can draw a conclusion about the weakness of the Association as a mechanism for ensuring compliance by PMC personnel with international humanitarian law, considering the absence of an effective system of accountability, sanctions, or other methods of punishment for crimes and violations. This situation should be considered in a global context, beyond the members of the initiative. Since a significant number of PMCs have not joined the Association, despite having the legal right to evaluate entities that are security service providers, its influence remains limited. A striking example is the criminal actions of the Russian PMC „Wagner”, which is not a member of the International Association of the Code of Conduct. Despite the General Assembly of the Association convening to assess the activities of this group and the potential recognition of it as a terrorist organization, no effective decisions leading to legal accountability for ‘Wagner’ PMC have been adopted. It is noteworthy that the full-scale war in Ukraine has become a catalyst for the ineffectiveness of a significant number of international initiatives and organizations, once again confirming the formalism, hypothetical nature, and practical impracticability of certain international processes.

In addition to the existing tools for regulating the activities of PMCs imposed from outside, the mechanism of self-regulation remains important, and it can be an effective way to overcome problems internally. Polish researcher Kaja Kowalczevska believes that informal regulation plays an important role in PMC governance, which can be divided into 5 types: collective self-regulation; market and reputational pressure; civil lawsuits against contractors; pressure from the insurance industry; specially designed contracts<sup>[39]</sup>. According to scientist Cedric Ryngaert, it is the

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<sup>38</sup> Buriakovska, „Zoboviazannia Pryvatnykh Okhoronnykh ta Viiskovykh Kompanii u Sferi Prav Liudyny: Ohliad Suchasnoi Pravovoi Ramky ta Praktyk Aspekt” 267.

<sup>39</sup> Kaja Kowalczevska, „Self-regulation of Private Military Corporations – the Optimal Solution” *Security Dimensions. International and National Studies*, No. 9 (2013): 2013.

legal process – public or private – that can stimulate PMCs to form their own mechanisms of corporate culture, including social responsibility and accountability<sup>[40]</sup>.

Considering trials as an opportunity to prove the commission of a specific offence by members of PMCs and establish liability for it, it is worth highlighting one of the main problems in the exercise of jurisdiction over PMCs' abuses, namely the difficulty of obtaining evidence abroad. The collection of evidence significantly complicates, and in some cases makes it impossible to conduct criminal investigations into events that occurred abroad. However, establishing effective cooperation between the state where the trial takes place and the state where the events occurred and where most of the evidence is usually located can increase the likelihood of a successful extraterritorial trial. In addition to the collection of evidence, the aspect of identifying the fact of abuse is problematic. This is most often the case in remote conflict zones where there is a weak government or where the territory is controlled by civil society<sup>[41]</sup>. The failure to identify an offence creates an environment of impunity, which in turn increases the risk of similar situations recurring in the future.

According to Polish researcher Łukasz Kurecki, the responsibility for the actions of PMC personnel lies primarily with the entity that orders its services. In this case, the state or organisation itself is obliged to guarantee compliance with humanitarian law and human rights by PMCs, to investigate, prosecute, and pay appropriate compensation in the case of a violation of international law<sup>[42]</sup>.

Serious violations of international humanitarian law are war crimes, which have a special status because they are subject to the principle of universal jurisdiction. Thus, any state can claim jurisdiction over such crimes, even without taking into account the nationality of the perpetrator or the place where the crime was committed. Theoretically, such actors can be prosecuted in any state or before an international tribunal with jurisdiction. In practice, despite the concept of universal jurisdiction, its implementation faces a number of obstacles:

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<sup>40</sup> Cedric Ryngaert, „Litigating Abuses Committed by Private Military Companies”, *European Journal of International Law*, No. 5 (2008): 1035.

<sup>41</sup> Ibidem, 1045-1046.

<sup>42</sup> Łukasz Kurecki, *Legal Status of Private Military Contractors in the Light of International Humanitarian Law* (Gdynia: Akademia Marynarki Wojennej, 2013), 349.



- legal restrictions: not all countries have implemented the relevant laws to apply universal jurisdiction.
- additional conditions: states often impose additional requirements, such as the suspect's residence in their territory or other links to the country.
- political factors: a noticeable reluctance of states to prosecute citizens of other countries for actions committed abroad.
- limited practice: a small number of lawsuits based on universal jurisdiction.
- lack of precedents on PMCs: there has been no case of universal jurisdiction being applied to PMC personnel<sup>[43]</sup>.

## 4 | Normative-legal regulation of the activities of international PMCs at the level of international governmental organizations

The legitimization of international PMCs occurs under the influence of the fact that their services are utilized by the governments of leading democratic states and influential international organizations. This situation is reinforced by the well-known law of the market, which proves that „demand creates supply”. It is evident that the current existence of a considerable number of PMCs confirms the existence and even growth of the demand for their services.

A significant client for security services within private structures is the United Nations (hereafter: UN), which has repeatedly utilized the capabilities of PMCs to implement its strategic goals or missions. Moreover, PMCs themselves are interested in participating in UN peacekeeping missions, as they perceive this as offering new perspectives and shaping their positive image. Among the mechanisms regulating the outsourcing conditions for services from private military and security structures is the document Guiding Principles on the Use of Armed Security Services from

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<sup>43</sup> Louise Doswald-Beck, „Private Military Companies under International Humanitarian Law” *Oxford Scholarship Online*, July (2007). <https://doi.org/10.1093/acprof:oso/9780199228485.003.0008>.

Private Security Companies, according to which the fundamental principle of utilizing security services from private companies is their involvement only in situations where the UN or the host country's government cannot adequately and appropriately provide armed security. Furthermore, the document contains a list of functions limited to PMCs commissioned by the UN, as well as certain standards for their functioning<sup>[44]</sup>.

The UN mechanism Guiding Principles on the Use of Armed Security Services from Private Security Companies is the first initiative to introduce unified rules for the use of armed security services within the UN. It guarantees transparency and accountability in decision-making procedures and details the criteria for selecting and hiring companies offering armed security services. However, researcher Lou Pingeot highlights the problematic aspects of such an instrument, in particular:

1. Over-reliance on self-regulation of PMCs. The UN only requires PMCs to provide written confirmation that they have undergone the necessary vetting and certification that personnel have been trained in accordance with the standards of the Guiding Principles. However, even the form of „certification” is not defined and leaves room for legal manoeuvres. This calls into question the ability of the UN to use the Guiding Principles to avoid companies with questionable reputations and to prevent potential threats to the organisation's image.
2. Non-compliance with basic human rights requirements. The Guiding Principles do not address the issue of liability for human rights violations and do not provide for effective remedies or complaints against contractors in case of human rights violations.
3. Failure to address the UN's use of PMCs as a „symptom of wider problems”. The Guidelines do not address the use of PMCs in a broader context that addresses the threats posed by PMCs to UN security policy and image.
4. Lack of clear criteria for determining the 'absolute necessity' under which PMC services can be used. This poses a threat of subjective interpretation of the situation when it is possible to turn to PMCs for services.

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<sup>44</sup> Guidelines on the Use of Armed Security Services from Private Security Companies, Official website of the Office of the High Commissioner for Human Rights, November 8, 2012. <https://www.ohchr.org/sites/default/files/Documents/Issues/Mercenaries/WG/StudyPMSC/GuidelinesOnUseOfArmedSecurityServices.pdf>.

5. Normalization of receiving services from PMCs. By enshrining the possibility of using PMCs, this process becomes the norm for the international community and creates a risk that the UN will increasingly contract with such companies without a thorough assessment of potential challenges<sup>[45]</sup>.

Also noteworthy is the Draft UN International Convention on the Regulation, Oversight, and Monitoring of Private Military and Security Companies, aimed at establishing a national and international legal regime for addressing challenges related to the activities of private military companies. The document recognizes the need for states to assume responsibility for PMC activities, including control over this sphere, licensing of companies, and the adoption of legislative acts defining the legal responsibility of PMCs. The Convention draft outlines functions that cannot be delegated to PMCs (i.e., conducting wars and combat operations, taking prisoners of war, espionage and intelligence, police powers). The document is regarded as a significant attempt to regulate the lack of clear frameworks for PMC actions. However, it is still in the draft stage and has several drawbacks. Among the weaknesses of the Convention, it can be noted that the draft does not take into account the limited capabilities of many states, which may not be able to fulfill the Convention's obligations. There is a likelihood that some states will not support unfavorable outsourcing policy conditions of the Convention, which will lead to their refusal to ratify the Convention and, at the same time, make it irrelevant to the world, as the states that are predicted not to join concentrate a significant portion of private military companies within them<sup>[46]</sup>.

As of mid-2024, the draft UN International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies has not been signed and has not yet entered into force. The draft is periodically reviewed and revised by open-ended intergovernmental working groups established by UN Human Rights Council resolution 36/11 in September 2017. The draft faces difficulties in reaching consensus among UN Member

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<sup>45</sup> Lou Pingot, „The United Nations Guidelines on the Use of Armed Private Security: Towards a Normalisation of UN Use of Security Contractors?” *International Community Law Review*, (2014).

<sup>46</sup> Ase Gilje Ostensen, *UN Use of Private Military and Security Companies: Practices and Policies* (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2011), 84. [https://www.dcaf.ch/sites/default/files/publications/documents/SSR\\_PAPER3.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/SSR_PAPER3.pdf).

States and members of the working groups, given the existing differences in views on how to regulate PMCs, which are reinforced by the awareness of the risks of human rights abuses by PMC personnel in the modern global world.

The European Union (hereafter: EU) as an influential regional organization also contributes to the regulatory and legal framework governing the activities of PMCs. This is primarily achieved through the imposition of sanctions against PMCs that violate norms of international law. For example, in 2023, sanctions were imposed against the Russian PMC „Wagner”, which operates as a militarized quasi-state criminal group. Additionally, the EU participates in ensuring the rules for the provision of military and security services and their export to third countries. Key regulatory acts in this area include the European Code of Conduct on Arms Exports and the relevant sections of the Common Foreign and Security Policy. Furthermore, the European Court has established the competence of the EU Commission in several decisions related to defining private security as an „economic sector”, which falls under the primary basis for regulating the internal market. On July 18, 2003, the Confederation of European Security Services and the European Trade Union Confederation signed the International Code of Conduct for Private Security Service Providers. However, EU Member States mostly regulate the activities of PMCs on their territory themselves, with national registration and licensing of such companies and their personnel being the main regulatory mechanisms, along with the control of private security and police services and the licensing of arms exports<sup>[47]</sup>.

It is worth noting that NATO also employs the services of PMCs, thus underscoring the importance of regulatory aspects regarding the relationship between the international military-political alliance and PMCs. A document relevant to regulating the receipt of services from PMCs by the North Atlantic Treaty Organization is NATO’s Policy on Contracting for the Support of Operations, which contains rules for purchasing goods and services in this area, as well as detailed instructions regarding the roles and responsibilities of military contractors, the selection criteria for contracting personnel, accountability aspects, and expectations regarding the ethical standards of contractor officers. This policy has the advantage of detailing the various requirements for military contractors that may potentially be hired. However, it does not disclose a significant part of

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<sup>47</sup> Elke Krahmman, „Regulating Private Military Companies: What Role for the EU?” *Contemporary Security Policy*, No. 1 (2005): 23.

the risks that the use of private military services entails and the practical ways to overcome such threats. As a result, the document does not provide a complete and systematic approach to the regulation of this area.

Additionally, there is a special policy aimed at regulating contracts with private security companies, namely Directive ACO 060-101, which is relevant to all military staff and organizations of NATO's Allied Command Operations. The Directive is based on the legal norms of the Montreux Document, while important contract conditions include verifying the compliance of private companies with international and national legislation, evidence of regular training in weapon handling and the use of force, and the functioning of a mechanism for handling complaints<sup>[48]</sup>. However, Directive ACO 060-101 focuses largely on procedural aspects of contracting, without providing a specific list of services that NATO can order from private security companies. The absence of a clear definition of the „catalogue of services” that is actually and legally available to NATO blurs the boundaries of the involvement of private contractors in Alliance operations, which can also lead to ambiguous interpretations of the scope of the PMCs' authority to carry out their tasks.

Nevertheless, it should be understood that acts of violence, torture and other human rights violations during military operations are not a characteristic feature of private sector of the military sphere, but also occur among regular troops. However, it is important for an international organisation to conclude a contract with a PMC that contains a clause on the terms of its termination and, most importantly, refusal to pay for services if it is proven that moral or legal standards have been violated. Since PMC personnel are mostly profit-driven, this option may be more effective than calling on regular troops to perform their missions with dignity<sup>[49]</sup>.

Thus, it can be concluded that there are documents and policies regulating contracts with private military companies at the level of individual international governmental organizations (i.e., UN, EU, NATO). It should be noted that some of them may serve as a basis for forming a comprehensive regulatory framework for the activities of international private military companies. However, the existing mechanisms are not perfect and cannot

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<sup>48</sup> Emmylou Boddi et al., *Putting Private Security Regulation Into Practice: Sharing Good Practices On Procurement And Contracting 2015–2016* (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2016), 55–56. [https://www.dcaf.ch/sites/default/files/publications/documents/DCAF\\_Procurement\\_v5.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/DCAF_Procurement_v5.pdf).

<sup>49</sup> Łukasz Szozda, „Prywatne firmy wojskowe” *Bezpieczeństwo Narodowe*, No. 11 (2006): 216.

guarantee secure arrangements between PMCs and international organizations. Moreover, it is important to emphasize that Member States of organizations may have specific requirements for military contractors or prohibitions on certain aspects of their activities due to the peculiarities of national legislation. The United States has the most developed regulatory framework for regulating PMC activities. However, it is not the only state whose national legislation contains provisions that can be applied internationally, making the national dimension of regulating the functioning of private military structures an important topic for further research.

## 5 | Conclusions

Summarizing the research, we can confirm the hypothesis regarding the weakness of the normative-legal regulation of the activities of international PMCs and draw several conclusions.

1. Despite various approaches to defining the concept of „private military company”, there has not yet been a unified interpretation of this phenomenon that would allow for a clear understanding of the nature of PMC actions and functions, as well as their primary purpose. This ambiguity in perception creates challenges in distinguishing between PMC members and mercenaries and does not provide a clear understanding of the spectrum of duties imposed on PMCs.
2. Private military companies are significant actors in contemporary military conflicts, shaping new trends, military strategies, and the geopolitical calculations of world states. The operational and political advantages of PMC personnel can make their involvement a significant instrument in altering the character of conflicts, including achieving battlefield success more quickly or employing prohibited methods of warfare. An example of a PMC whose arsenal of activities is based on an inhumane approach is the Russian PMC „Wagner”. The commercial nature of PMC activity, on the one hand, should encourage them to act solely within their competence. On the other hand, it does not exclude the possibility of „dirty deals” between states and private military structures for a certain financial reward.

3. The recommended practices, standards, and guidelines at the international legislative level lay the foundations for regulatory norms regarding the privatization of military forces. However, their recommendatory nature and limited effect of some of them cannot ensure a clear understanding of the rights and obligations of members of international private military companies. Such gaps in the legislative dimension form a series of legal challenges, including the uncertainty of the legal status of PMC personnel, the need for state control over the activities of such structures, the question of the necessity and nature of state responsibility for the actions of PMCs, and others. Key documents laying the foundations for the norms of PMC activities include the Montreux Document, the International Code of Conduct for Private Security Service Providers, and certain aspects of the regulation of their actions contained in the Geneva Conventions as laws of war. In addition, the activity of the International Association of the Code of Conduct is important in the context of outlining the norms of behavior for PMCs and responsibility in the field of private military forces. However, the existence of the aforementioned documents does not compensate for the lack of a comprehensive normative-legal framework for regulating PMCs, which would have a mandatory and universally recognized character, thereby reducing the possibility of forming „double standards” in cases of PMC actions, creating a unified approach to responsibility for violations of officially established norms, and ensuring the integrity of compliance with behavioral standards by eliminating states that have not joined.
4. Mechanisms for regulating the activities of private military companies by international organizations include separate resolutions, normative-legal acts, and other documents related to this area. At the UN level, documents such as the Guiding Principles on the Use of Armed Security Services from Private Security Companies, defining the functions of PMCs as service providers for the UN, and the Draft UN International Convention on the Regulation, Oversight, and Monitoring of Private Military and Security Companies, aimed at determining the measure and nature of state responsibility for the activities of PMCs, are notable. The EU regulates the activities of military contractors mostly through a sanction regime, the EU Code of Conduct on Arms Exports, and the Common Foreign and Security Policy. In turn, NATO regulates relations with PMCs through NATO

Policy on Contracting for Support to Operations, Directive ACO 060-101, which is based on the need to verify compliance of PMCs with international and national norms before concluding a contract.

An analysis of the regulation of interactions between private military companies and key international organizations in the modern world leads to the conclusion that the regulatory framework for outsourcing military services has already been laid. However, the weaknesses, legal conflicts and incompleteness of the existing documents create a significant number of risks to the customer's security at both the internal and external levels and leave room for potential manipulation, coercion, or corruption schemes that can be carried out by both sides. In addition, there is the question of the moral and ethical implication of commissioning services from PMCs by international actors that shape the global agenda, but at the same time tolerate the activities of private forces that often teeter on the edge of legality.

Therefore, the current developments in the world, where the number of active conflicts is consistently increasing, require clear coordination and consolidation of the mechanisms of normative and legal regulation of private military companies. An obvious indicator of the ineffectiveness of current regulatory systems is the dynamic increase in the number of crimes committed by PMC personnel. Therefore, monitoring the activities of PMCs, their licensing, conducting audits, strict criteria for selecting PMC personnel, and a defining mechanism for punishing violations of norms are essential tools that would strengthen the normative-legal basis for regulating PMCs and thus combat the threats posed by the functioning of „security by contract”.

In our opinion, the urgent problem of the lack of clear legal and regulatory frameworks and, accordingly, the obligations of PMCs cannot be solved by a single mechanism but requires a comprehensive approach. First of all, we see potential in the draft UN International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies, but only if all states accede to it, which will prevent the creation of a „club of non-accessionaires” with its own rules of conduct. However, even this document is not exemplary, given the long process of its adoption and amendment. In addition, the ineffectiveness of the UN as an institution calls into question the effectiveness of projects implemented under its auspices. The Montreux Document also becomes an important source for shaping the legal framework for PMCs. In any case, for us, a potentially successful formula for regulating PMCs should include



the following: International Convention on the Regulation of PMC Activities + national legislation (if the client is the government) + self-regulation of PMC personnel + Montreux Document.

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