

PRIVATIZATION OF WARFARE: LEGAL STATUS OF PRIVATE MILITARY COMPANIES (PMCs)

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Introduction

On 27 October 2005, a video of soldiers shooting randomly at civilian cars in Baghdad was uploaded to the internet. After the investigations, the footage was unofficially linked to Aegis Defence Services, a Private Military Company (hereinafter, PMC) operating on Iraqi soil under a contract with the United States Army.¹

On the other hand, Wagner Group, a late PMC based in Russia, has been offering a variety of military services in Africa since 2017. Covering activities ranging from advising and training military groups to directly participating in combat operations against rebels, Wagner Group was also a subject of investigations about systematic torture, rape, enforced disappearance, and other war crimes.²

While the above examples are a portrayal of how PMCs may act as tools for violations of international law, such contractors may also be quite an efficient industry for States. This law blog does not aim to act as a detailed analysis of the legal responsibility of PMCs in international humanitarian law, but rather to give a general overview of their practical use, legal status, and perspective for Azerbaijan.

What are PMCs, and why do States hire them?

The concept of PMCs or PMSCs (Private Military and Security Companies) mainly evolved after the end of the Cold War. While there is no universal definition, such companies are usually divided into three main groups in accordance with the closeness of their physical position to the front lines:

- military provider firms;
- military consultant firms; and

¹ "A Government in Search for Cover: PMCs in Iraq", David Isenberg, British American Security Information Council, 2006, p. 12.

² "State Responsibility for Violations of International Humanitarian Law and Human Rights Law by Private Security Companies in Africa: The Case of the Wagner Group and Africa Corps", Shannon Joy Bosch and Matthew Kimble, Journal of African Law 70, 2026, p. 2.

- military support firms;³

The reasons why States hire such companies differ. States with demographic, political, and economic disadvantages, which are unable to maintain armed forces regularly (i.e., Mali, Mozambique, Syria, etc.), usually find hiring PMCs efficient and effective. States with already capable armed forces, on the other hand, resort to PMCs for different reasons.⁴

Most people think the main reason is avoiding state responsibility for brutal activities during warfare. Nevertheless, although challenging, it is not impossible to hold PMCs legally accountable for their violations.⁵ So, it would not make much sense for States (especially for ones like the United States and Russia) to compromise a crucial part of their sovereign activities only to cause legal confusion.

A much more plausible reason for hiring PMCs would be the economic and political advantages these companies offer. For instance, when a U.S. Marine dies on Iraqi soil, the casualty is a statistic and a financial liability. The State is obliged to pay 100.000 USD worth of death gratuity and issue "Survivor Benefit Plans" (SBPs) to the fallen soldier's family. Furthermore, it is an increase in the statistics representing fallen members of the U.S. Armed Forces, which will draw more public attention to the competence of interim administration. A fallen "Blackwater" soldier, on the other hand, is neither entitled to social programs nor appears in a sensational statistic. The above reasons make PMCs a universally "attractive" tool for warfare.⁶

Legal Status of PMCs in warfare

Geneva Conventions do not reserve a separate legal personality for PMCs. Yet, this is not an obstacle for the employees of these companies to be held accountable for their actions. The real question lies in what the legal personality of these employees is.⁷

Geneva Conventions contain three legal personalities:⁸

- combatants;

³ *"Corporate Warriors: The Rise of the Privatized Military Industry"*, Peter Singer, 2003, p. 91.

⁴ See, Bosch and Kimble, p. 9.

⁵ See, *"Defining State Responsibility for Private Military Security Companies (PMSCs)"*, Anne-Marie Buzatu and James Siebens, 2024.

⁶ *Survivor Benefits Overview*, United States Department of Defense, March 2022.

⁷ *"The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of PMSCs during Armed Conflict"*, DIL and ICRC, 2009, p. 36

⁸ See, *"International Humanitarian Law: Theory, Practice, Context"*, Daniel Thürer, 2011.

- civilians; and
- mercenaries;

Therefore, members of PMCs need to fall under one of these three personalities. “Which one” has always sparked a huge discussion.

While the obvious answer may seem like “mercenaries”, that option may actually be the first to scratch out. Article 47(2) of Additional Protocol I to the Geneva Conventions dictates that a mercenary “is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict”.⁹ This controversial article is the result of heated diplomatic negotiations in the 1970s – a political compromise.¹⁰ It also makes it challenging for PMC members to be labeled as mercenaries.

Finally, the core question remains: “civilians” or “combatants”. In theory, it may seem like an easy choice – “combatants”. In practice, the complex nature of PMCs’ fields of specialty necessitates that law enforcement assess their legal personality on a case-to-case basis. If combatant, PMC members can be killed without legal consequences during hostilities, but may not be held legally accountable for being directly involved in combat. If civilian, PMC members who actively engaged in combat will be “unlawful combatants” and will be prosecuted for their military activities. Furthermore, civilians do not acquire POW (prisoner of war) status when captured by hostile forces.¹¹

Albeit intensely discussed, arguments in favor of PMCs possessing a “combatant” status seem more convincing. In almost all cases, PMCs are actively utilized for causing maximum damage to the hostile forces. In most cases, they are physically present on the front lines. Prosecuting PMC members for participating in combat activities would be logically against the whole concept of their existence. Additionally, it would deprive them of POW status at war times.¹² International Tribunal for the former Yugoslavia stated that in cases where the party to the conflict has the allegiance of such militias and

⁹ The use of the Wagner Group in the Russo-Ukrainian War, U.S.-based PMCs in the Iraq and Afghanistan Wars, etc., complicates the classification of PMCs as mercenaries.

¹⁰ See for more, “*Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*”, Geneva, Volume VI, Plenary Meetings, Summary Records of the Thirty-Fourth to Forty-Sixth Meetings, pp. 156–204

¹¹ “*Business Goes to War: PMSCs and International Humanitarian Law*”, Emanuela-Chiara Gillar, *International Review of the Red Cross* 88, 863, 2006, pp. 531-533.

¹² “*The Legal Situation of “Unlawful/Unprivileged Combatants”*”, Knut Dörmann, *International Review of the Red Cross* 85, 849, 2003, p. 45.

is able to give direct orders,¹³ which is the case for PMCs, the strong link may suggest that the requirement of Article 4A(1) of the Third Geneva Convention is satisfied.¹⁴

Perspective for Azerbaijan

In 2016, Article 9 of the Constitution of the Republic of Azerbaijan was amended with a statewide referendum. Article 9.1 was redrafted from “*The Republic of Azerbaijan creates Armed Forces and other armed groups to maintain its safety and security*” to “*The Republic of Azerbaijan organizes Armed Forces to maintain its safety and security. The Armed Forces consist of the Azerbaijani Army and other military groups*”.¹⁵

There is no visible difference between the first and amended texts. Nevertheless, the amendment as a whole may be interpreted as a switch of perspective. In the future, the provision may be interpreted as being more welcoming towards a private initiative for a professional armed militia, since the “*other military groups*” (lawmaker mainly refers to the law enforcement agencies like State Security Service (SSS), State Border Service (SBS), Internal Forces, etc.) are no longer required to be *created* by the State, but are part of the Armed Forces that are *organized* by it.

The reason why we have to jump into far-fetched interpretations while discussing regional perspective relies on the fact that very few states have incorporated PMC regulations into their legislation, and Azerbaijan is not one of them.

While there is an increased number of government-led private initiatives in the military industry, there is no PMSC founded in the country. This is mainly due to a lack of need for a private initiative in the South Caucasus. Azerbaijan is capable enough to maintain a professional and highly capable armed forces, yet the scale of its international operations does not necessitate outsourcing a military objective.

However, the constant mobilization and modernization efforts do create space for private military industrial companies in Azerbaijan’s internal market, which may cause a compilation of private initiatives, as in the former practice of Türkiye.¹⁶

¹³ ICTY, *The Prosecutor v. Dusko Tadic* (IT-94-1), Judgment of 15 July 1999, paras. 93–94.

¹⁴ “*Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces*”, See, Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949.

¹⁵ “*Azərbaycan Respublikası öz təhlükəsizliyini və müdafiəsini təmin etmək məqsədi ilə Silahlı Qüvvələr yaradır. Silahlı Qüvvələr Azərbaycan Ordusundan və başqa silahlı birləşmələrdən ibarətdir.*”

¹⁶ i.e., “Bayraktar”, “ASELSAN”, “HAVELSAN”, “DEARSAN”, “MKE”, etc.