

Phenomenon of Modern Mercenaries.

Use of Private Military Companies in Contemporary Armed Conflicts: Conclusions for Ukraine

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Use of Private Military Companies in Contemporary Wars and Armed Conflicts Alongside Regular Forces.

Concept of PMCs and Their Boundaries

The most essential thing to do when discussing private military companies and the practice of their use is to clearly define the terminology. If this definition and distinction is not made, we will inevitably drown in the narrative imposed by Russia that everything it calls “PMC” is indeed a private military company, and the world should accept this approach.

- ▶ **Private Military Company (PMC)** – a commercial enterprise that offers specialized services related to security, protection (defense) of persons or facilities. Often, the activities of private military companies are associated with participation in military conflicts, as well as with intelligence gathering, strategic planning, logistics and consulting. Can interact with governments, act as their contractors, but in this case licensing and a certain procedure for concluding contracts is envisaged.
- ▶ **Private Security Service** – a commercial structure that provides security services. Such enterprises can provide physical security of facilities, ensure access control, respond to alarm signals, as well as provide other services related to security. Must undergo licensing in accordance with the legislation of the state of location regarding security activities.
- ▶ **Work of Special Services Under a Foreign Flag, with Direct Vertical Chain of Command** – work of separate units of special services that may bear the name “PMC”, but are coordinated directly by the vertical chain of one or another special service. In such a case, there will be an absence of both PMC legislation in the country of origin and one specific legal entity that claims to call itself such a PMC, with which contracts could theoretically be concluded. This is precisely the case with the Russian Federation and its attempt to present the Wagner Group as a PMC, distorting the framework of what PMCs as such can and cannot be. In fact, the framework is quite clear and the activities of this group, subordinated to the Main Directorate of the General Staff of the Armed Forces of the Russian Federation (GU GS RF), absolutely do not correspond to it.

In addition to state legislation (if available), PMC activities are also regulated by:

- ▶ the Montreux Document – a document aimed at creating guiding [principles](#) on a number of legal and practical issues regarding the activities of private military and

security companies during armed conflict. The document recognizes that established norms of international law apply to states in their relations with private security service providers, and provides for proper practice regarding private security companies;

- ▶ the ICoCA organization – International Code of Conduct Association – The Responsible Security Association – an organization based in Switzerland that [certifies](#) private companies, while providing advisory services for military and security companies based on the International [Code](#) of Conduct for Private Security Service Providers.

However, the Montreux Document does not have binding legal force until it is incorporated into national legislation. The International Code of Conduct for Private Security Service Providers is also not mandatory for anyone except structures that have joined it.

Legal Regulation of PMCs in Leading World States (USA, United Kingdom)

In the United States of America, PMCs are not only legalized but represent a huge market. Their activities are [controlled](#) by the US State Department, Directorate of Defense Trade Controls (DDTC). Since 2004 and in accordance with the Contractor Accountability Act, PMCs based in the United States must obtain a license from DDTC. Instruction No. 3020/41 entitled “Contractor Personnel Authorized to Accompany the U.S. Armed Forces”, adopted on October 3, 2005, supplements these provisions. This instruction did not resolve debates about the threshold necessary to qualify PMC activities as direct participation in hostilities under the Geneva Conventions and protocols. However, it at least clarified some elements regarding PMC responsibility and prosecution. In the Instruction, the US government establishes policy and assigns responsibilities to contractor personnel authorized to accompany US armed forces, called “contractors deploying with the force” (CDF). However, the Instruction applies only to contractors working with US armed forces and does not apply to contractors working with other US government agencies or, for example, with American reconstruction companies performing security missions. The specific rights and responsibilities of PMC personnel authorized to accompany US armed forces were clarified as follows:

- ▶ **Status determination:** when properly designed, they can support military operations as “civilians accompanying forces”. However, if captured by a hostile state during international armed conflict, they will be entitled to prisoner of war status.
- ▶ **Use of force:** contractors will not be allowed to possess or carry personal firearms or ammunition, nor be armed during emergency operations. But this principle has the following exception: contractors deploying with forces have the right to be armed for individual self-defense on a case-by-case basis and only when protection by military forces and legitimate civilian authority are deemed unavailable or insufficient.
- ▶ **Legal obligations:** contractors deploying with forces must comply with international humanitarian law and US laws, as well as applicable legislation of the host country and third-country nationals.
- ▶ **Individual responsibility:** if CDFs do not have immunity from host country jurisdiction based on international agreement or international law, they may be subject to prosecution and civil liability by the US or host country.

Since 2007, the gap in their criminal liability in the United States has been partially filled by a revision of the Uniform Code of Military Justice approved by Congress. According to this [revision](#), contractors are under the jurisdiction of the United States Military Court if they violate rules of engagement or engage in criminal activity.

In the United Kingdom, the activities of private military and security companies are regulated by the Private Security Industry Act (2001). This Act created a separate body to oversee implementation of the Act – the Security Industry Authority (SIA), which reports to the Home Secretary. This is a structure responsible for licensing companies and individuals operating in the field of security services, investigating unlicensed company operations. Overall, the structure [supports](#) Home Office priorities regarding reducing terrorism, preventing and combating crime, and ensuring community security. Companies or individuals providing security-related services will need licensing under the following conditions:

- ▶ in the case of an individual – if a person engaged in security activities performs work that is part of a service contract and includes licensed activities (for self-employed persons). Licensed activities include personal protection, manned guarding, immobilization of vehicles (Northern Ireland only);
- ▶ in any case, if frontline work is to be performed – regardless of whether it concerns an employee, manager or company.

American, British and Israeli PMCs represent the foundation of the market today.

Wagner “Error”: Why the Wagner Group Cannot Be Considered a PMC. Use of This Term as an Attempt to Blur the Essence of the Russian Construction

Russia tries to call the work of the Wagner Group the work of PMCs and talks about its active use of PMCs outside the state. However, in the case of the Wagner Group, it is absolutely obvious that this is the case described above as work of special services under a foreign flag, because:

- ▶ The country has no legislation that would regulate PMC activities. Legislation regulating the activities of volunteer formations under the Armed Forces of the Russian Federation or the National Guard of Russia (Rosgvardia) cannot be considered its substitute, since this is not about the activities of private companies concluding contracts with private individuals. We are talking about the state’s decision to create additional formations under law enforcement structures. Also, granting veteran status to combat veterans, which representatives of Russian Federation structures commonly referred to as “PMCs” have been entitled to since 2023, is not a solution. Other “PMCs”, besides the Wagner Group, formed under corporate branding, were directly subordinated to the Ministry of Defense of the Russian Federation without being a contractor of this structure. Simultaneously, mercenary activities were and remain criminalized under the Criminal Code of the Russian Federation (Article 359);
- ▶ There is no legal basis – the legal entity “Wagner PMC” did not exist and does not exist in the Russian Federation. Previous stages of the group’s existence were the “Moran Security Group” and “Slavonic Corps Limited” projects (originating from the first ship security company, they registered the second in Hong Kong). But after returning from

the first major deployment of “Slavonic Corps Limited” to Syria, its founders were arrested in Russia for mercenary activities. There is no formal legal succession between these projects and the Wagner Group (since a legally non-existent structure cannot inherit anything in any way), except for a certain history.

Legal Consequences for States Forming “Foreign Legions” on Their Territory; Threats and Risks of Criminal Prosecution of Participants Under “Mercenary” Articles

There is another separate category of military activity that will differ and will be erroneously attributed to PMC issues – the question of foreign legions based on army or law enforcement structures of one or another state. For example, there is the case of the French Foreign Legion, which is part of the French Army and is subordinated to the French Ministry of Defense and the President of France. The Foreign Legion consists of the Foreign Legion Command (COMLE) and eleven regiments or units forming corps (nine on mainland France, two abroad). Of these, six regiments are assigned to the Land Forces Command (CFOT) as part of their combined military brigades. They regularly participate in external operations (OPEX), internal missions (MISSINT) and short-term missions (MCD) of the French army. Two formations outside mainland France are part of the combined system. Three separate formations are directly [subordinated](#) to the Foreign Legion Command and work for the benefit of the entire institution (1st Foreign Regiment, 4th Foreign Regiment and the Foreign Legion Recruitment Group). That is, we are talking about a unit within the regular French army and contract-based service, not a commercial agreement with a certain commercial unit.

An example of another similar case is the activity of the International Legion for the Defense of Ukraine. These are separate special purpose [battalions](#) directly subordinated to the command of the Ground Forces of Ukraine. Foreigners wishing to join these units also enter contract service. Ukraine also has an International Legion under the Defence Intelligence of Ukraine of the Ministry of Defense of Ukraine. In this case, the volunteer also enters contract service and becomes a serviceman of the Defense Forces of Ukraine (DFU). In both the first and second cases, the volunteer is provided with the same material guarantees as Ukrainian servicemen of the DFU.

Thus, contrary to Russian attempts to present the situation with foreign volunteers in the ranks of the Defense Forces of Ukraine as “mercenary activities”, there are no prerequisites for calling service in the above-mentioned units by this term, since:

- ▶ this concerns service in regular military units with the presence of a contract;
- ▶ this concerns participation in combat operations as part of the armed forces of a party participating in the conflict;
- ▶ this concerns participation in combat operations with unconcealed carrying of weapons and open marking of oneself as a serviceman (wearing uniform);

- ▶ this concerns the same level of material rewards and guarantees as other servicemen participating in combat operations on the side of the state party to the conflict.

Thus, in this case, it can be argued that, according to Article 47 of the First Additional Protocol to the Geneva Conventions, this is not about mercenary activities. We are talking about persons who should have the right to respect their rights as prisoners of war.

Russia actively violates these rights of foreign volunteers fighting for Ukraine. The case of sentencing to death by the occupation authorities of ORDO (certain districts of Donetsk region) of foreign volunteers – two British citizens and one Moroccan citizen – was [egregious](#). However, they were released from captivity, and the reaction of the world community was unambiguous – these servicemen have combatant rights and should have been treated as prisoners of war.

Although certain complications may arise not only due to manipulations by the Russian Federation, but also due to the requirements of legislation of individual countries and its specifics. For example, before going as a volunteer to Ukraine, a Czech citizen must obtain appropriate permission from the president. According to Czech [legislation](#), citizens of this country are prohibited from serving in foreign armed forces, but they can apply for special permission from the president, and he can approve or reject such a request.

On the official page of the International Legion for the Defense of Ukraine, it is separately emphasized: a volunteer joining the Legion is a serviceman and combatant and will have all corresponding rights. However, it is necessary to carefully check the legislation of the volunteer's country of origin for prohibition of service in foreign armed forces.

State and Prospects of Legislative Regulation of Mercenary Issues in Ukraine

The issue of decriminalizing such activities as working for the private security and defense sector outside Ukraine is very urgent. Already today, despite martial law and serious restrictions for a large number of veterans, Ukraine is viewed as a source of personnel for PMC work and the private security services sector in general. Understanding the quality of training and value of combat experience gained during the years of war that Russia started against Ukraine (truly and without exaggeration – unique) by our partners has a reverse side. Already now, in closed conversations, questions arise about the future regulation of the private security and defense services market in Ukraine and the need for control from a security point of view.

Of course, this issue will not concern only the Criminal Code of Ukraine or separate acts that can regulate the distinction between security and defense services and mercenary activities. This is also a problem with post-war weapons circulation, licensing of relevant specialists, and Ukraine's security issues in general. However, already today it is worth recognizing the reality – demand for expertise from our security specialists will only grow. And such interest will actually form a market – as serious material opportunities will open up for many specialists in the field. That is, the question of involving veterans of the Russia-Ukraine war is not even at stake. It only lies in whether these people will see the opportunity to return home, since today such activity fully falls under the definition of the Criminal Code in Article 447 "Mercenary Activities". This article is set forth in the following formulations:

Article 447. Mercenary Activities

1. Recruitment, financing, material support, training of mercenaries for use in armed conflicts, military or violent actions aimed at violent change or overthrow of the constitutional order, seizure of state power, obstruction of state authorities or violation of territorial integrity, as well as use of mercenaries in armed conflicts, military or violent actions – are punishable by imprisonment for a term of five to ten years.
2. The same acts committed by an official using official position – are punishable by imprisonment for a term of seven to twelve years with or without confiscation of property.
3. Actions provided for in parts one or two of this article that resulted in human death – are punishable by imprisonment for a term of ten to fifteen years or life imprisonment with or without confiscation of property.

4. Participation of a mercenary in armed conflict, military or violent actions – is punishable by imprisonment for a term of five to ten years.
5. A mercenary is released from criminal liability for actions provided for in part four of this article if he voluntarily ceased participation in armed conflict, military or violent actions before being brought to criminal responsibility and reported his participation in conflict, military or violent actions or otherwise contributed to cessation or disclosure of crimes provided for in parts one through three of this article, if his actions do not contain elements of another crime.

Note: A mercenary in this article should be understood as a person who:

1. is specially recruited in Ukraine or abroad to participate in Ukraine or other states' territory in armed conflict, military or violent actions aimed at violent change or overthrow of the constitutional order, seizure of state power, obstruction of state authorities or violation of territorial integrity;
2. participates in military or violent actions for the purpose of obtaining any personal benefit;
3. is neither a citizen (subject) of a party in conflict nor a person who permanently resides legally in territory controlled by a party in conflict;
4. is not part of the armed forces of the state on whose territory such actions are carried out;
5. is not sent by a state that is not a party in conflict to [perform](#) official duties as a person who is part of its armed forces.

That is, in today's formulation, the article allows sentencing to real imprisonment almost any representative of the field – possibly except consultants who do not perform any actions with weapons at all. This article should be corrected with understanding that our specialists will become part of the private security and defense services market, whether we want it or not. The task is to ensure they have the opportunity to return to Ukraine without fear of being convicted for their profession. And precisely for this, it is necessary to provide clear definitions of what a PMC is and how licensing of companies and specialists will be carried out in Ukraine. It is advisable to prepare appropriate draft documents and appropriate personnel to ensure such activity (licensing and control).

Conclusions and Recommendations for Ukraine

- ▶ Ukraine should insist on correct use of terminology regarding criminal actions of the Russian Federation, namely the Wagner Group, committed both against Ukraine and against other states – the Wagner Group cannot be called a private military company. Use of this terminology blurs the responsibility of the Russian Federation as a state for crimes committed by it, which is unacceptable.
- ▶ Ukraine should more actively communicate information about the status of foreign volunteers and the guarantees they receive from the state of Ukraine as servicemen of regular armed forces. This will not only help counter Russian propaganda narratives that result in specific war crimes against prisoners of war, but will also strengthen capabilities for recruiting foreign volunteers.
- ▶ The Ministry of Foreign Affairs can quite take on a role similar to that taken by the US State Department regarding control over future PMC activities. The Ministry of Foreign Affairs seems an optimal choice also because such an approach does not create imbalance in law enforcement structures, rejects any accusations that “Ukraine has set out to build its own Wagner”, and allows balancing business interests of specific representatives of this employment field and the image of the state, which one way or another is represented by all its citizens.
- ▶ It is necessary not only to transform the article of the Criminal Code of Ukraine regarding mercenary activities, but also to prepare detailed proposals for a draft Law on regulation of private services in the field of security and defense. Such a draft should contain clear definitions of PMCs, PMC contractors, licensing procedures and licensing subject(s).