

4. Private military and security companies in armed conflict

Overview

The last 20 years have witnessed the rapid growth of private military and security companies (PMSCs). This chapter begins by presenting an overview of the trend and highlights the issues of concern, the key legal and definitional complexities, and efforts to date to map the proliferation of PMSCs (section I). There is no universally accepted, legally binding, standard definition of a PMSC and the sector often operates in a legal lacuna: the employees of PMSCs are not soldiers or civilians, nor can they usually be defined as mercenaries. The wars in Iraq (2003–11) and Afghanistan (2001–21) reshaped perceptions of the private military and security industry, with the massive deployment of contractors by the United States leading to new market opportunities across the globe.

Today, PMSCs operate in almost every country in the world, for a broad variety of clients, assuming responsibilities for critical state and security functions. The main actors in the sector include both the host countries in which PMSCs are headquartered and key companies within those countries. A handful of home states host the majority of PMSCs: the USA, the United Kingdom, China and South Africa are estimated to collectively host about 70 per cent of the entire sector. Russia, while having a relatively small PMSC sector, has arguably used its contractors for combat more than others.

There are thousands of PMSCs around the world, most of which abide by the law, operate within their mandate, and in general contribute to stabilization and security in the settings where they operate. In the last two decades, however, the rising prominence of several high-profile PMSCs in conflict areas has prompted increased public interest in the industry. The more recent use of PMSCs by Russia in combat roles in Libya, Syria and Ukraine, as well as in several conflicts across sub-Saharan Africa, has intensified concerns. Many of these concerns centre on the activities of the Wagner Group, a Russian PMSC that has become a state proxy, promoting Russian foreign interests across multiple conflict areas. Wagner's activities have been linked with human rights abuses, violations of international humanitarian law, problematic and exploitative contracts, and election meddling. In Ukraine, the Wagner Group has been deployed en masse alongside Russian military units and it has redeployed operators from other conflicts and recruited nationals from Afghanistan, Libya and Syria.

Russia and China appear to be driving the current expansion of PMSC activity in Africa (section II), although earlier waves of activity were led by European former colonial powers or were part of cold war proxy rivalries. The

current phase of growing PMSC involvement in Africa has occurred in a context of increased geopolitical rivalry and internationalized armed conflict. Control and extraction of natural resources is a common focal point.

Western PMSCs remain active in Africa, especially in various counterterrorism initiatives, but not in direct combat roles. In contrast, Russian PMSCs, in particular the Wagner Group, engage directly in military operations, typically for governments (and currently juntas or military transition governments) threatened by rebels or insurgents, with payment often in high-value natural resources or mining concessions. The Wagner Group has been the focus of numerous UN reports or investigations for alleged human rights abuses and violations of international humanitarian law in sub-Saharan Africa.

Chinese PMSCs have emerged more slowly and in a more restrained and circumscribed manner, but with a close connection to Chinese investment, infrastructure development and trade expansion. This may portend a more lasting engagement for Chinese interests and actors, including PMSCs, and a greater strategic impact on access to natural resources and, more broadly, sub-Saharan African political dynamics.

While the use of PMSCs in armed conflicts and fragile environments appears to be growing, questions remain about the adequacy of existing international efforts and norms to regulate the sector (section III). One of the key regulatory challenges is the use of PMSCs, particularly by Russia and Türkiye, as proxy actors in armed conflicts. These deployments are often framed as lying outside the international legal definition of a mercenary, so some states have turned to counterterrorism approaches instead; for example, by seeking to impose terrorist designations on the Wagner Group or by sanctioning its leading personnel. Cases attempting to hold mercenaries and PMSC personnel to account under criminal justice regimes are rare.

Regulatory endeavours at the UN have been reinvigorated by the war in Ukraine and the activities of the Wagner Group. A UN intergovernmental working group process has been attempting to address the gaps between the international legal provisions addressing mercenaries and the softer regulatory approaches of multistakeholder initiatives addressing PMSCs, such as the Montreux Document and the International Code of Conduct for Private Security Providers. However, consensus on the necessity of a legally binding instrument, let alone substantive content, remains elusive. Several key issues arose in the working group discussions in 2022: states were still unable to agree on whether the instrument should be binding or non-binding, and there was lack of consensus on its scope, human rights provisions and the content on accountability and remedies for victims. Discussions will continue at the UN in 2023, but whether they will translate into concrete and credible regulatory change remains to be seen.