

ARTICLE

PUBLIC JUSTICE FOR PRIVATIZED CONFLICTS: THE CHALLENGES PRIVATE MILITARY AND SECURITY COMPANIES PRESENT FOR TRANSITIONAL JUSTICE

Lisa K. Dicker*

ABSTRACT

In modern conflicts, private military and security companies (“PMSCs”) are prominent—and often dominant actors—sometimes even outnumbering state armed forces. Despite their prevalence, PMSCs fall into a gap in international law, rendering regulation of their activities and accountability for their wrongdoing exceedingly difficult. This gap not only creates a lack of accountability but also negatively impacts the other three pillars of transitional justice: truth-seeking, reparations, and institutional reforms. Because the pillars of transitional justice processes are complementary, impunity for PMSC perpetrators has the potential to exclude and marginalize victims and to result in an incomplete transition. The UN Human Rights Council’s intergovernmental working group to create a regulatory framework for PMSCs held its sixth negotiation session in April 2025 revising the fourth draft of a potential binding instrument that would finally provide international law on PMSCs. It is crucial for the future of transitional justice, though, that the design of an international convention enables not only prosecutions but all four pillars of transitional justice.

* Assistant Professor of Law at St. John’s University School of Law & Associate Director of the Hugh L. Carey Center for Dispute Resolution. Previously, Lecturer on Law at Harvard Law School and Senior Clinical Instructor in the Harvard Negotiation & Mediation Clinical Program. I would like to thank Kieran McEvoy, Radhika Kapoor, Danae Paterson Askar, and Erin Bloom for their review and feedback, and Luca Girodon for his research assistance.

I. INTRODUCTION	770
II. THE RISE OF PMSCS IN CONFLICTS	773
A. Emergence of PMSCs in Conflict.....	774
B. Functions and Composition of PMSCs in Conflicts	776
C. The Prominence of PMSCs in Conflicts.....	779
D. PMSC Harms and Abuses	788
III. THE GAP IN INTERNATIONAL LAW AND CHALLENGES TO THE PURSUIT OF ACCOUNTABILITY.....	789
A. Legal Status: Operating in a Gray Zone.....	790
1. PMSC Personnel's Restrictions and Obligations as Individuals	793
2. PMSCs' Restrictions and Obligations as Companies	797
B. Practical Challenges for Accountability	800
1. Barriers to Effective Monitoring and Documentation	800
2. Immunity Agreements	803
3. Barriers to Accessing Perpetrators.....	805
IV. CHALLENGES PMSCS PRESENT FOR THE FOUR PILLARS OF TRANSITIONAL JUSTICE	806
A. Prosecutions.....	809
B. Truth-Seeking.....	813
C. Reparations.....	816
D. Institutional Reforms	818
V. EFFORTS TO EXPAND LEGAL FRAMEWORK.....	822
A. Montreux Document and the International Code of Conduct for Private Security Service Providers	823
B. Intergovernmental Working Group on the Use of Mercenaries.....	824
C. Intergovernmental Working Group on PMSCs and a Draft Regulatory Framework.....	825
VI. CONCLUSION	836

I. INTRODUCTION

In 1998, UN Secretary-General Kofi Annan reflected on his decision not to use private contractors to assist in separating Rwandan refugees from fighters in refugee camps in Goma,

Democratic Republic of the Congo, saying “the world may not be ready to privatize peace.”¹ His consideration of private contractors and his ultimate decision against utilizing them occurred at a turning point in modern warfare in which irregular, for-hire forces were experiencing a global resurgence. By the late 1990s, conflict was becoming privatized. Also by this time, the use of transitional justice—a systematic public reckoning with the past—was becoming the norm for creating durable peace. In the intervening years, these concurrent trends have solidified within the landscape of conflict and peacebuilding. They now pull in opposite directions: conflict has become increasingly privatized, while peace has emerged as an increasingly large-scale public process.

Transitional justice is still a relatively young field, but in recent years it has become entrenched in practice as the process states should undertake to “respond to the legacies of massive and serious human rights violations”² and violations of humanitarian law.³ Transitional justice does so by utilizing both judicial and non-judicial mechanisms to “take account of the root causes of conflicts and the related violations of all rights”⁴ and address all violations to “achiev[e] the broader objectives of prevention of further conflict, peacebuilding and reconciliation.”⁵ The concept and practice of transitional justice emerged in the late 1980s and early 1990s as a response to mass, systemic violence and injustices across Latin America and Eastern Europe. These responses were made possible as multiple authoritarian regimes fell to revolutions in Latin America and as states dissolved in the fallout of the Soviet

1. Press Release, Secretary General, Secretary-General Reflects on ‘Intervention’ in Thirty-Fifth Annual Ditchley Foundation Lecture, U.N. Press Release SG/SM/6613 (June 26, 1998).

2. INT’L CTR. FOR TRANSITIONAL JUST., *What Is Transitional Justice?*, <https://www.ictj.org/what-transitional-justice> [<https://perma.cc/A9GL-QD4X>] (last visited July 27, 2025).

3. See Hakeem O. Yusuf, *Origin, Context and Development of Transitional Justice*, in TRANSITIONAL JUSTICE: THEORIES MECHANISMS AND DEBATES 6–8 (Hakeem O. Yusuf & Hugo van der Merwe eds., 2022); Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69, 70–94 (2003); see generally Ruti G. Teitel, TRANSITIONAL JUSTICE (2000); Michael Newman, TRANSITIONAL JUSTICE: CONTENDING WITH THE PAST (2019).

4. U.N. Secretary-General, Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice, 3, U.N. Doc. ST/SG(09)/A652 (Mar. 2010) [hereinafter *U.N. Transitional Justice Guidance Note 2010*].

5. *Id.* at 3.

Union disbanding in Eastern Europe.⁶ Despite marked differences between these contexts, in each case the primary perpetrators of harms were the state and its actors, security forces, and institutions. Transitional justice was thus designed to address exactly these types of harms and violations by the state and state personnel, forces, and institutions. International law, which has served as the foundation for transitional justice processes, too is designed to address the state and state personnel, forces, and institutions.

As the nature of conflicts has shifted over the last thirty years and the actors perpetrating harm have proliferated, these changes have tested the design and implementation of transitional justice. While there have been notable developments in international law and in the design of transitional justice processes to account for some categories of non-state actors—like non-state armed groups—perhaps no category of actors is more challenging to address than private military and security companies. For the purpose of this Article, “private military and security companies (“PMSCs”)” will be used to refer to private military contractors, private security companies, and all other such variations on terminology for privately organized entities providing armed services in exchange for compensation. Although the names of infamous PMSCs like Executive Outcomes, Blackwater, and the Wagner Group are recognizable in public conversation, PMSCs still operate in a legal gray zone. This gap in international law makes holding PMSCs and their personnel accountable for harms and abuses exceedingly difficult, and numerous scholars and advocates have discussed the need to close the gap to prevent impunity.

This Article aims to contribute to the critical discussion on PMSCs by examining how the gaps in law and lack of accountability for these actors also, in turn, impacts transitional justice more broadly. The gap in international law relating to PMSCs impacts not only the ability to hold PMSCs and their personnel accountable through prosecutions, but also the ultimate success of the other three pillars of transitional justice—truth-seeking, reparations, and institutional reforms. This Article’s examination is especially

6. INT’L CTR. FOR TRANSITIONAL JUST., WHAT IS TRANSITIONAL JUSTICE? 1 (2008), https://legal.un.org/avl/pdf/ls/Van-Zyl_RecReading1.pdf [https://perma.cc/JGJ2-S3BR].

timely, as an inter-governmental working group established by the Human Rights Council is currently negotiating and revising a draft regulatory framework for PMSCs. While this effort may still be years in the making, critiquing the in-progress draft is crucial to assess both its clarity on PMSC restrictions and obligations to further accountability and its potential impacts on the other pillars of transitional justice.

This Article will begin by examining the emergence of PMSCs as actors in conflicts, the services they provide, their prominence, and the harms and abuses they commit that make them necessary to address in transitional justice processes. Then, this Article will turn to illuminating the gap in international law that PMSCs fall in and the challenges in holding PMSCs and their individual personnel accountable. The Article will then analyze how PMSCs, the legal gray zone in which they operate, and the resulting lack of accountability affects each of the four pillars of transitional justice. Finally, this Article will discuss efforts to close the gap in international law, with an emphasis on the current draft regulatory framework, analyzed through the lens of transitional justice.

II. THE RISE OF PMSCS IN CONFLICTS

Transitional justice seeks to repair societies emerging from conflicts. Because of this, it is important to understand just how central PMSCs are in modern conflicts, what activities they undertake, and what harms and abuses they cause. PMSCs have expanded far beyond international humanitarian law's limited definition of mercenaries and into roles as prominent—and sometimes dominant—actors in every aspect of conflict zones. The “commodification of the use of force” and of other security sector-supporting activities⁷ has led to instances where PMSCs outnumber state forces in conflict zones, and where they are intertwined with state forces, leading state forces, or operating independently, without state oversight.

7. Marco Mussa & Matvej Dubianskij, “Black Cat in a Dark Room”: Examining the Impact of Russia's Wagner Group in the Central African Republic and Mali, 75 J. INT'L AFFS. 209, 209 (2023).

A. Emergence of PMSCs in Conflict

States utilizing irregular forces to fill military functions is a practice that has existed throughout history.⁸ Literature has described mercenaries as “the world’s second-oldest profession” and “as old as conflict itself.”⁹ The Thirty Years’ War (1618–1648) may have been both the historical height of mercenary warfare and its demise, as wealthy entrepreneurs leased whole regiments to states.¹⁰ The “devastation wrought by rogue mercenary units” resulted in the Westphalian Order’s shift to “state-controlled armies and an end to the free market for force in Europe.”¹¹ Mercenary warfare, which had been an openly operating market, became a diminished, stigmatized, shadow operation as state monopoly on the use of force became the norm.¹² As international humanitarian law solidified in the 1949 Geneva Conventions and their subsequent Additional Protocols of 1977, state monopoly on the use of force remained the dominant paradigm, and soldiers-for-hire were understood through a specific historical lens. While the Geneva Conventions are silent on mercenaries, Article 47 of the first Additional Protocol (“Additional Protocol I”) provides a narrow definition of mercenary¹³ that does not capture the PMSCs present today, as will be discussed in Section III(A).

Over a decade after Additional Protocol I was ratified, the world began seeing a resurgence in irregular forces for hire. In the aftermath of the Cold War, millions of demobilized soldiers were seeking new employment,¹⁴ and recently decolonized states in Africa suffered a security vacuum.¹⁵ In need of alternatives to the United States and the Soviet Union for “military and security support,” many African states turned to the newly emerging

8. ROBIN VAN DER LUGT, *THE 1%: DOING BUSINESS WITH PROXY MILITARY COMPANIES*, GENEVA ACAD. INT’L HUMANITARIAN L. & HUM. RTS. 3 (2024).

9. *Id.*

10. *Id.*

11. *Id.*

12. *See id.*; *see also* José L. Gómez del Prado, *A United Nations Instrument to Regulate and Monitor Private Military and Security Contractors*, 1 NOTRE DAME J. INT’L & COMP. L. 1, 4 (2011).

13. Additional Protocol I, *infra* note 119, art. 47.

14. John P. Ruehl, *Private Military Companies Continue to Expand in Africa*, LIBYA TRIB. (Dec. 15, 2023), <https://en.minbarlibya.org/2023/12/15/private-military-companies-continue-to-expand-in-africa/> [<https://perma.cc/BAH8-QPAP>].

15. *See* VAN DER LUGT, *supra* note 8, at 3.

industry of PMSCs. Notable examples included Angola, for instance, utilizing Executive Outcomes—whose members were largely former South African special forces—from 1993 to 1997 to counter the rebel group National Union for the Liberation of Angola (“UNITA”) and Sierra Leone similarly engaging Executive Outcomes in 1995 to defeat the Revolutionary United Front (“RUF”).¹⁶ The PMSCs did provide states immediate gap-filling, although this did not resolve the ongoing issues of weak governance and instability in many of these states.¹⁷ Over the following decade, the PMSC industry experienced rapid expansion. In 2003, the Center for Public Integrity reported that PMSCs were “training security forces in Iraq, flying gunships in Colombia, training civilian police in Bosnia and Kosovo and protecting Afghanistan’s President Hamid Karzai.”¹⁸ The same report revealed that the US Department of Defense alone had entered into over 3,000 contracts with PMSCs totaling around US\$300 billion between 1994 and 2002.¹⁹

There are many reasons why a state may seek the services of a PMSC. Some contracting states may use PMSCs to supplement the capacity of their own state forces or those of a partner state.²⁰ Contracting PMSCs allows for fewer physical risks to a state’s own forces, and some states leverage PMSCs because the loss of a contractor’s life is more politically palatable than those of state armed forces.²¹ PMSCs may also have operational advantages by being able to deploy more rapidly than state forces. They may also act as “a counterweight to national militaries in states with weak political institutions.”²² Moreover, some contracting states see PMSCs as an opportunity to exert influence in another state’s territory with “less or no formal attribution for their involvement.”²³ The customer base for PMSCs is also not

16. *Id.*; Alexandre Faite, *Involvement of Private Contractors in Armed Conflict: Implications Under International Humanitarian Law*, 4 DEF. STUD. 166, 166 (2007).

17. See VAN DER LUGT, *supra* note 8, at 3.

18. Michael Meyer, *Dogs of Peace*, NEWSWEEK (Aug. 24, 2003), <https://www.newsweek.com/dogs-peace-135697> [<https://perma.cc/B4WY-YKL2>].

19. *Id.*

20. CTR. FOR CIVILIANS IN CONFLICT, *PRIVATIZING WAR: THE IMPACT OF PRIVATE MILITARY COMPANIES ON THE PROTECTION OF CIVILIANS* 3 (2022) [hereinafter *CIVIC Privatizing War*].

21. *Id.*

22. DCAF—GENEVA CTR. FOR SEC. SECTOR GOVERNANCE, *PRIVATE MILITARY AND SECURITY COMPANIES (PMSCS)* 3 (2024) [hereinafter DCAF PMSCs].

23. *CIVIC Privatizing War*, *supra* note 20, at 3.

comprised solely of states, but can include corporations, international organizations, multinational corporations, non-state armed groups, individuals, and even non-governmental organizations and humanitarian organizations.²⁴ With broadening demand and a wide array of operational scenarios, it is no wonder the industry has expanded so significantly over the last three decades.

Since the early 2000s, PMSCs have worked in Afghanistan, Belarus, the Central African Republic (“CAR”), Colombia, Iraq, Libya, Madagascar, Mali, Mozambique, Niger, Nigeria, Somalia, Sudan, Syria, Ukraine, and Venezuela, among others.²⁵ The total size and value of the PMSC market is challenging to calculate because few governments are willing to “disclose details about the extent of their use of [PMSCs]” and in some cases, the PMSCs also derive income from the exploitation of resources in a territory in which they operate, making their budgets and operational costs difficult to ascertain.²⁶ The US-based PMSC industry alone is estimated to be valued at over US\$200 billion currently,²⁷ and is projected to more than double to US\$457 billion by 2030.²⁸

B. Functions and Composition of PMSCs in Conflicts

According to the Montreux Document—which both compiles existing legal obligations related to PMSCs and serves as a non-binding blueprint for increased state regulation over them²⁹—

24. Faite, *supra* note 16, at 167; DCAF PMSCs, *supra* note 22, at 2.

25. See BUSINESS OF WAR, *infra* note 26, at 6; CIVIC Privatizing War, *supra* note 20, at 3; Ruehl, *supra* note 14.

26. COUNCIL OF THE EUR. UNION GEN. SECRETARIAT, THE BUSINESS OF WAR—GROWING RISKS FROM PRIVATE MILITARY COMPANIES 6 (2023) [hereinafter BUSINESS OF WAR].

27. BUSINESS OF WAR, *supra* note 26, at 6; Martha Garcia, *War for Profit: Implications of the Growing Private Security Industry*, MOD. DIPL. (Dec. 6, 2023), <https://modern.diplomacy.eu/2023/12/06/war-for-profit-implications-of-the-growing-private-security-industry/> [https://perma.cc/6S7U-B2LG]; Michael Picard & Colby Goodman, *Hidden Costs: US Private Military and Security Companies and the Risks of Corruption and Conflict*, TRANSPARENCY INT’L 6, 11, 13 (2022); *Private Military & Security Services Market to Total \$457.3 Bn in 2030*, ASD NEWS (Feb. 19, 2020), <https://www.asdnews.com/news/defense/2020/02/19/private-military-security-services-market-total-4573-bn-2030> [https://perma.cc/J4J2-6JMY] [hereinafter ASD NEWS].

28. Picard & Goodman, *supra* note 27, at 11, 13; ASD NEWS, *supra* note 27.

29. See generally INT’L COMM. OF THE RED CROSS, THE MONTREUX DOCUMENT ON PERTINENT INTERNATIONAL LEGAL OBLIGATIONS AND GOOD PRACTICES FOR STATES RELATED TO OPERATIONS OF PRIVATE MILITARY AND SECURITY COMPANIES DURING ARMED CONFLICT (2008), <https://www.montreuxdocument.org/about/montreux-document.html> [https://perma.

PMSCs “are private business entities that provide military and/or security services, irrespective of how they describe themselves.”³⁰ Indeed, many PMSCs do not describe themselves as such. The activities of PMSCs vary greatly depending on the companies themselves and the contexts in which they operate.

This table describes many of the services PMSCs may offer:

Service	Description
Research & Analysis	Consulting, threat analysis, risk assessments, war-gaming, etc.
Intelligence	Reconnaissance, intelligence gathering, intelligence products
Communication & Propaganda	Campaigns to destabilize communication online and offline, creation and distribution of propaganda
Tech & Cyber Services	Cyber operations, cyber security, software development, information technology systems support, infrastructure development simulation
Systems & Operational Support	Support for the operation or maintenance of military, police, intelligence, or other state or non-state assets, equipment, and systems; logistical support such as managing supplies for armed forces
Facilities Management	Integrated management of military bases, offices, training facilities, outposts
Weapon Destruction & Disposal	Demining, unexploded ordnance clearance, weapons collection, weapons destruction, clearing firing ranges
Training	Advice or training to armed forces and security personnel, including police, military, intelligence, or other state or non-state actors
Detention	Prisoner detention and operation or management of prisons
Security	Armed protection for assets, persons, objects, sites, and facilities
Support in Combat	Armed combat or direct combat support activities

*Table 1*³¹

The various services PMSCs offer create different risk levels of harms and abuses that a transitional justice process would ultimately need to address. Supporting state armed forces in combat immediately puts the PMSC in contact with civilians and

cc/G8MD-9QGx] [hereinafter MONTREUX DOCUMENT]. The non-binding Montreux Document has been signed by 59 states.

30. *Id.* ¶ 9(a).

31. See BUSINESS OF WAR, *supra* note 26, at 3; Sam Perlo-Freeman & Elisabeth Sköns, THE PRIVATE MILITARY SERVICES INDUSTRY 6 (2008); see also MONTREUX DOCUMENT, *supra* note 29, ¶ 9(a); DCAF PMSCs, *supra* note 22, at 2; Faite, *supra* note 16, at 166–67; Antonio Giustozzi, *What Next for Wagner's Information Operations?*, ROYAL UNITED SERVS. INST. FOR DEF. & SEC. STUD. (Sep. 23, 2024), <https://www.rusi.org/explore-our-research/publications/commentary/what-next-wagners-information-operations> [<https://perma.cc/ZJS2-Y52L>].

civilian infrastructure, heightening the risk of violating civilian rights and freedoms. However, the chain effects of being proximate to conflicts and being in areas of instability with limited oversight can produce cascading effects that result in even the most tangential PMSC functions becoming a concern for transitional justice. For example, a PMSC tasked solely with guarding a facility may appear to pose little risk, yet if its personnel perceive themselves to be under attack, they may return fire. Do they stop if the perceived attackers retreat? Do they pursue them? Do they continue pursuit through a civilian area? Even more seemingly benign activities can implicate interests for transitional justice. For instance, intelligence gathered by a PMSC in a biased or inaccurate manner may then be relied upon by state forces in carrying out attacks that ultimately harm civilians, civilian infrastructure, or the environment. Additionally, training provided by PMSCs to military and police personnel may advise strategies that violate domestic or international law. As such, while certain services provided by PMSCs are more likely to be of more direct concern for a transitional justice process, no PMSC service is without risk. Each carries the potential to contribute, directly or indirectly, to harms and abuses that are relevant to transitional justice.

The Montreux Document only describes three different types of state relationships to PMSCs: contracting states, territorial states, and home states.³² However, the state of nationality for contracted personnel also bears on accountability, and, in turn, transitional justice.

RELATIONSHIP TO PMSC	DESCRIPTION
CONTRACTING STATE	State that directly contracts for the services of PMSCs, including, as appropriate, where such a PMSC subcontracts with another PMSC
TERRITORIAL STATE	State on whose territory the PMSC(s) operate

32. See generally *Preface* to MONTREUX DOCUMENT, *supra* note 29.

HOME STATE	States of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, then the State where the PMSC has its principal place of management is the “Home State”
STATE OF NATIONALITY	The State where the personnel of a PMSC is a national of. A PMSC that employs personnel from multiple States will have multiple states of nationality.

Table 2³³

The personnel of PMSCs are highly varied in terms of nationality. Many PMSCs primarily rely on home state and third-party state nationals for their workforce³⁴ and a single PMSC may have dozens of nationalities amongst its personnel. States also regularly contract with PMSCs incorporated in another state—or in multiple states if it is a multinational company and/or has subsidiary companies—and the contracting state may be doing so to supplement their own forces or those of an ally in a third territorial state. This may create scenarios wherein the contracting state, territorial state, home state, and state of nationality of any given individual PMSC personnel are all different.

C. The Prominence of PMSCs in Conflicts

PMSCs have risen in prominence from limited, supplementary actors—as they were in early PMSC engagements in Sierra Leone and Angola—to central players in conflicts. In some instances, PMSCs have outnumbered the deployed forces of their contracting states. There are also contexts in which they have conducted combat operations independently without direct oversight from state forces. PMSCs have even embedded themselves in the politics and economies of territorial states, including generating propaganda and controlling natural resources.

The rapid rise in prominence in recent years began with the United States’ involvement in Iraq and Afghanistan. During the height of the United States’ War on Terror, contractors accounted for more than fifty percent of US forces in Iraq and seventy percent in Afghanistan.³⁵ PMSCs were force multipliers supporting US combat operations, including “logistics, transportation, equipment maintenance, infrastructure construction, translation services,

33. MONTREUX DOCUMENT, *supra* note 29, ¶ 9(c)–(e).

34. VAN DER LUGT, *supra* note 8, at 4.

35. *Id.*

troop training, and auxiliary security operations.”³⁶ In contrast, PMSCs accounted for only two percent of US combat forces in Desert Storm³⁷ and 1.8 percent in Vietnam.³⁸ The increasing and sustained deployment of US troops in Iraq and Afghanistan proved very politically difficult; but the numbers of PMSCs “did not count against ‘force caps’ or troop strength limitations, and thus minimized the public exposure as to the level of U.S. involvement.”³⁹ In Iraq alone, the United States reportedly contracted with over 600 companies,⁴⁰ with at least 300 of those companies being PMSCs,⁴¹ with personnel from over thirty different states.⁴² Information published on CorpWatch based on a FOIA request found that in 2007, US contractors included 118,000 Iraqis, 43,000 non-US nationals, and 21,000 Americans.⁴³

Though many of the functions of contractors in Iraq and Afghanistan were not overtly combat-oriented, this did not equate to PMSCs being uninvolved in violence. In Iraq, there were over 20,000 armed contractors in 2007.⁴⁴ Twenty-five percent of US personnel killed in action in Iraq were contractors,⁴⁵ and contractor deaths resulting from the War on Terror ultimately outnumbered uniformed US personnel.⁴⁶ While engaged in armed activities, PMSCs were often proximate to civilians and caused harm.⁴⁷ The most prominent incident was the 2007 Nisour Square

36. *Id.*

37. Scott L. Efflandt, *Military Professionalism & Private Military Contractors*, 44 *PARAMETERS* 49, 52 (2014).

38. T.X. Hammes, *Private Contractors in Conflict Zones: The Good, the Bad, and the Strategic Impact*, 60 *NAT’L DEF. U. STRATEGIC F.* 26, 27 (2010).

39. Efflandt, *supra* note 37, at 58.

40. T. Christian Miller, *IRAQ: Private Contractors Outnumber U.S. Troops in Iraq*, *CORPWATCH & LA TIMES* (July 4, 2007), <https://www.corpwatch.org/article/iraq-private-contractors-outnumber-us-troops-iraq> [<https://perma.cc/4NKT-EBAF>].

41. Rep. of the Working Grp. on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, U.N. Doc. A/HRC/18/32/Add.4, ¶ B(14) (Aug. 12, 2011) [hereinafter *WG on Mercenaries 2011 Report*].

42. Efflandt, *supra* note 37, at 59.

43. Miller, *supra* note 40.

44. Hammes, *supra* note 38, at 27. In 2011 as the United States increasingly downsized its own deployed forces, the number of armed PMSC personnel rose to 35,000, including those contracted by the United States and Iraq. *See WG on Mercenaries 2011 Report*, *supra* note 41, ¶ B(13).

45. Efflandt, *supra* note 37, at 54; Hammes, *supra* note 38, at 28.

46. VAN DER LUGT, *supra* note 8, at 3.

47. *CIVIC Privatizing War*, *supra* note 20, at 22.

Massacre, in which Blackwater contractors were escorting a US Department of State convoy through Baghdad and—allegedly believing they were under attack—shot and killed seventeen Iraqi civilians, wounding twenty others.⁴⁸ Even outside of armed roles, PMSCs committed numerous violations. For example, two PMSCs—Engility Corporation (formerly known as L-3 Services and Titan Corp.) and CACI International, Inc.—were contracted to provide translation and interrogation services at the Abu Ghraib detention facility and allegedly tortured and abused detainees alongside US state forces.⁴⁹

In African contexts, PMSCs likewise continued growing in prominence, including in explicitly offensive combat roles. These combat roles often supplemented state forces that were unable to effectively contain or defeat non-state armed groups. For example, in 2020, the Mozambican government contracted Dyck Advisory Group—a South African PMSC—to provide “air support to national security and defense forces” in the northern region of Cabo Delgado where Al Shabaab and other local armed groups were clashing over territory and control.⁵⁰ In 2021, an Amnesty International report alleged that the Dyck Advisory Group had dropped hand grenades and fired machine guns at civilians and civilian infrastructure—including hospitals, schools, and homes—in villages held by Al Shabaab, killing an unknown number of civilians.⁵¹ Mozambique did not renew the Dyck Advisory Group’s contract and the PMSC withdrew.⁵² The government then contracted with the Paramount Group, but only for training Mozambican forces and equipment such as armored cars and helicopters.⁵³

Perhaps the most prominent and infamous PMSC in modern times has been the Russian-affiliated Wagner Group, which has

48. Madison Zeeman, *The Nisour Square Massacre*, INT’L CODE OF CONDUCT ASS’N, <https://icoca.ch/case-studies/the-nisour-square-massacre/> [<https://perma.cc/745A-4C CW>] (last visited July 27, 2025); VAN DER LUGT, *supra* note 8, at 3.

49. CTR. FOR CONST. RTS., ACCOUNTABILITY FOR TORTURE BY PRIVATE MILITARY CONTRACTORS (2015), <https://ccrjustice.org/files/PMC%20factsheet%20january%202015.pdf> [<https://perma.cc/UN62-5CRD>].

50. *CIVIC Privatizing War*, *supra* note 20, at 17.

51. AMNESTY INT’L, “WHAT I SAW IS DEATH”: WAR CRIMES IN MOZAMBIQUE’S FORGOTTEN CAPE 17 (2021); *CIVIC Privatizing War*, *supra* note 20, at 17–18.

52. *CIVIC Privatizing War*, *supra* note 20, at 17–18.

53. *Id.*

been known to operate across Africa, South America, Europe, and Asia.⁵⁴ The Wagner Group is a PMSC under the “nominal control” of the Russian security apparatus, and has accumulated significant resources and force strength at a scale unique among its contemporaries.⁵⁵ At the Wagner Group’s height of operations between 2017 and 2023, it reportedly employed between 35,000 and 40,000 fighters.⁵⁶

The Wagner Group has sought out engagements as Russia vies for regional influence in Africa, where it routinely fills gaps in fragile, impoverished, and unstable states where post-colonial governments struggle to provide security or enforce the rule of law. In 2017, Russia successfully lobbied the UN Security Council for an arms embargo exemption for the Central African Republic (“CAR”), and Russia then deployed five military and 170 civilian instructors to Bangui “under the guise of supporting U.N. peacekeeping operations.”⁵⁷ The precise moment when “instruction” of CAR forces gave way to robust Russian-affiliated PMSC operations remains unclear; but under this “veneer of legitimacy,”⁵⁸ and through bilateral arrangements between the CAR government and Russia, the Wagner Group soon displaced the initial Russian instructors and launched offensive combat operations by December 2018.⁵⁹ The Wagner Group’s personnel numbers in any given state are difficult to discern. The organization operates with notable opacity, often behind shadow

54. BUSINESS OF WAR, *supra* note 26, at 6. The Wagner Group is not Russia’s only PMSC partner. As of February 2024, Russia reportedly had thirty-five PMSCs around the world. Matthew A. Lauder, *State, Non-state, or Chimera? The Rise and Fall of the Wagner Group and Recommendations for Countering Russia’s Employment of Complex Proxy Networks* 8 (The Eur. Ctr. of Excellence for Countering Hybrid Threats, Hybrid CoE, Working Paper No. 33, 2024).

55. Lauder, *supra* note 54, at 6, 8.

56. *Id.* at 6.

57. Christopher M. Faulkner & Raphael Parens, *Russia in Africa: Private Military Proxies in the Sahel*, GEO. J. INT’L AFFS. ONLINE (Mar. 24, 2025), <https://gjia.georgetown.edu/2025/03/24/russia-in-africa-private-military-proxies-in-the-sahel/> [https://perma.cc/X3Y8-5VR6]; see Letter from the Panel of Experts on the Central African Republic Extended Pursuant to Resolution 2399 (2018), to the President of the Security Council, § II ¶ A(12), U.N. Doc. S/2018/729 (July 23, 2018).

58. CIVIC Privatizing War, *supra* note 20, at 14.

59. Lauder, *supra* note 54, at 15.

subsidiaries and shell companies.⁶⁰ However, in CAR alone, it rapidly scaled operations from over 1,000 known personnel in 2019⁶¹ to around 2,000 by early 2023.⁶² Notably, the CAR military itself has only around 14,000–15,000 troops (an increase from 10,000 in 2020).⁶³ The Wagner Group—and any additional PMSCs it coordinates alongside—have undertaken robust and sustained combat operations in CAR, with numerous reports of violations of human rights and humanitarian law following in its wake.⁶⁴ The Wagner Group has also conducted widespread propaganda campaigns, including producing an action film, *The Tourist*. Set in CAR, the film features local and Russian actors in a storyline portraying the Wagner Group as the country's savior.⁶⁵ Furthermore, the Wagner Group has “embedded itself within CAR's political, economic, and social structures,”⁶⁶ establishing considerable control over CAR's natural resources, and leveraging its military and police presence to secure economic interests in gold and diamond mines and the timber industry.⁶⁷ In a US Senate hearing in March 2022, General Stephen Townsend of the US Africa

60. *CIVIC Privatizing War*, *supra* note 20, at 14, 19 (“Wagner Group does not ‘exist,’ *per se*—instead operating through locally established entities” and discussing Wagner Group in CAR and its security subsidiary Lobaye Invest SARLU).

61. Faulkner & Parens, *supra* note 57.

62. *Russian Envoy Says 1,890 Russian ‘instructors’ are in CAR*, ALJAZEERA (Feb. 3, 2023), <https://www.aljazeera.com/news/2023/2/3/russian-envoy-says-1890-russian-instructors-in-central-african-republic-ria> [<https://perma.cc/DZN2-5AAD>] [hereinafter *Russian “instructors” in CAR*].

63. See Enrica Picco, *Central African Republic: Averting Further Fragmentation of the Armed Forces*, INT’L CRISIS GRP. (May 9, 2022), <https://www.crisisgroup.org/africa/central-africa/central-african-republic/central-african-republic-averting-further> [<https://perma.cc/ZT7P-AD3E>]; see also *Central African Republic Military Size*, MACROTRENDS, <https://www.macrotrends.net/global-metrics/countries/caf/central-african-republic/military-army-size> [<https://perma.cc/6DNS-MTTR>] (last visited Aug. 14, 2026).

64. See *CIVIC Privatizing War*, *supra* note 20, at 14–15; see also Lauder, *supra* note 54, at 15; see generally Letter from the Panel of Experts on the Central African Republic Extended Pursuant to Resolution 2536 to the President of the Security Council, U.N. Doc. S/2021/569 (June 25, 2021) (describing combat operations of PMSCs and numerous violations of human rights and humanitarian law).

65. Katja Lindskov Jacobsen & Karen Philippa Larsen, *Wagner Group Flows: A Two-Fold Challenge to Liberal Intervention and Liberal Order*, 12 POL. AND GOVERNANCE 1, 7 (2024); see Lauder, *supra* note 54, at 15.

66. Faulkner & Parens, *supra* note 57.

67. Ladd Serwat, Héní Nsaibia & Nichita Gurcov, *Moving Out of the Shadows: Shifts in Wagner Group Operations around the World*, ARMED CONFLICT LOCATION & EVENT DATA (Aug. 2, 2023), <https://acleddata.com/2023/08/02/moving-out-of-the-shadows-shifts-in-wagner-group-operations-around-the-world/> [<https://perma.cc/Y32D-Q8XJ>].

Command said of the Wagner Group, “they essentially run the Central African Republic.”⁶⁸

In 2021,⁶⁹ the Malian government—with Russian assistance—brought in around 1,500 Wagner Group personnel,⁷⁰ replacing French troops who had been supporting efforts against Salafi-jihadist groups.⁷¹ Wagner Group activities involved offensive military operations to recapture areas from separatist control,⁷² training Malian forces, and providing security for senior officials.⁷³ Wagner Group operations in Mali peaked in 2023 with 2,000 personnel, including a small air force.⁷⁴ During this period, Wagner Group personnel participated in more than ninety percent of Malian Armed Forces operations in central Mali.⁷⁵ For these services, Mali paid the Wagner Group approximately US\$10,000,000 per month—twice the budget allocated for Mali’s Department of Justice.⁷⁶ Frequent reports of the Wagner Group committing crimes and abuses in their combat operations have surfaced,⁷⁷ including a massacre in March 2022 in the village of Moura, during which Wagner Group forces, together with the Malian Armed Forces, killed more than 300 civilians during a five-day siege.⁷⁸ In June 2025, the Wagner Group announced its total

68. Russian “instructors” in CAR, *supra* note 62; *Russian Mercenaries are Putin’s ‘coercive tool’ in Africa*, ALJAZEERA (Apr. 2022), <https://www.aljazeera.com/news/2022/4/23/russia-putin-wagner-group-mercenaries-africa> [<https://perma.cc/NMG7-F7PR>].

69. Erin Bloom & Lisa K. Dicker, *The Wagner Group and Security Sector Reform: Challenges With Prolonged Entrenchment*, ARMED GRPS. AND INT’L L. (June 6, 2025), <https://www.armedgroups-internationallaw.org/2025/06/06/the-wagner-group-and-security-sector-reform-challenges-with-prolonged-entrenchment/> [<https://perma.cc/CG6A-XWUD>].

70. Christiaan Triebert et al., *How Wagner’s Ruthless Image Crumbled in Mali*, N.Y. TIMES (Nov. 1, 2024), <https://www.nytimes.com/2024/11/01/world/africa/russia-wagner-mercenaries-mali.html> [<https://perma.cc/V9KW-CZPC>].

71. Jared Thompson et al., *Tracking the Arrival of Russia’s Wagner Group in Mali*, CTR. FOR STRATEGIC AND INT’L STUD. (Feb. 2, 2022), <https://www.csis.org/analysis/tracking-arrival-russias-wagner-group-mali> [<https://perma.cc/XB5K-ZEP3>].

72. Triebert et al., *supra* note 70; Lauder, *supra* note 54, at 17.

73. Thompson et al., *supra* note 71.

74. Antonio Giustozzi, *A Mixed Picture: How Mali Views the Wagner Group*, ROYAL UNITED SERVS. INST. FOR DEF. & SEC. STUD. (Mar. 27, 2024), <https://www.rusi.org/explore-our-research/publications/commentary/mixed-picture-how-mali-views-wagner-group> [<https://perma.cc/TK9E-KNQY>].

75. Serwat, Nsaibia & Gurov, *supra* note 67.

76. *Id.*

77. Lauder, *supra* note 54, at 17.

78. Mussa & Dubianskij, *supra* note 7, at 222–23; Catrina Doxsee & Jared Thompson, *Massacres, Executions, and Falsified Graves: The Wagner Group’s Mounting Humanitarian*

withdrawal from Mali, asserting it had “completed its mission.”⁷⁹ However, remaining in its place is Africa Corps,⁸⁰ the Russian-backed successor to the Wagner Group which emerged in 2023 after tensions grew between the Wagner Group leadership and the Kremlin.⁸¹ Despite attempts to create distinctions between the two groups, reports often refer to the Wagner Group and Africa Corps as a single cohesive entity, reflective of the complex network of Russian-backed PMSCs.⁸²

The Wagner Group has also been a central actor over the last decade of conflicts in Libya, alongside dozens of other PMSCs contracted by both state and non-state actors. PMSCs have been present in Libya since at least 2011, when French PMSC Secopex made headlines when its founder was killed during the Libyan revolution.⁸³ It remains unclear what role precisely Secopex was filling in Libya.⁸⁴ PMSCs remained prominent and numerous in Libya throughout the initial revolution and the subsequent civil war between rival governments: the UN-supported Government of National Accord (“GNA”) and the House of Representatives, which was led by General Khalifa Haftar with the Libyan National Army (“LNA”). After the parties signed the 2020 ceasefire agreement, the

Cost in Mali, CTR. FOR STRATEGIC AND INT’L STUD. (May 11, 2022), <https://www.csis.org/analysis/massacres-executions-and-falsified-graves-wagner-groups-mounting-humanitarian-cost-mali> [https://perma.cc/94MB-E82F]. Violence continued with a 2024 Human Rights Watch report finding that between May 2024 and December 2024, “Malian armed forces and the Wagner Group . . . deliberately killed at least 32 civilians, including 7 in a drone strike, forcibly disappeared 4 others, and burned at least 100 homes in military operations in towns and villages in central and northern Mali.” *Mali: Atrocities by the Army and Wagner Group*, HUM. RTS. WATCH (Dec. 12, 2024), https://www.hrw.org/news/2024/12/12/mali-atrocities-army-and-wagner-group?gad_source=1&gad_campaignid=16363698676&gbraid=0AAAAADrFXcgLnLt-1M9B8s-BzRCSsx3sw&gclid=Cj0KCQjwgvnCBhCqARIsADBLZoL8M3nd80U9MHa0qeA6pS275LHc6-0_MyLZWS8uZz5Qx4_J59BvwWkaAhruEALw_wcB [https://perma.cc/4PRJ-JTJL].

79. Niko Vorobyov, *Wagner vs Africa Corps: The Future of Russian Paramilitaries in Mali*, ALJAZEERA (June 16, 2025), <https://www.aljazeera.com/news/2025/6/16/wagner-vs-africa-corps-the-future-of-russian-paramilitaries-in-mali> [https://perma.cc/3Z4W-5ZGE].

80. *Id.*

81. JULIA STANYARD, HANS SEIDEL FOUND., *MERCENARIES AND ILLICIT MARKETS: RUSSIA’S AFRICA CORPS AND THE BUSINESS OF CONFLICT 7* (2025).

82. See *The Wagner Group and Africa Corps*, ARMED CONFLICT LOCATION & EVENT DATA, <https://acleddata.com/actor-profiles/the-wagner-group/> [https://perma.cc/RKT3-AJFG] (last visited July 26, 2025); see also STANYARD, *supra* note 81, at 14.

83. Ruehl, *supra* note 14.

84. *Id.*

Government of National Unity was elected through a UN-backed dialogue process in February 2021. Though the House of Representatives originally voted to recognize the Government of National Unity in March 2021, by December 2021, the House of Representatives had established a new parallel body in the east, the Government of National Stability, leading to sustained and ongoing fighting between the two parties.⁸⁵ PMSCs from or supported by France, Russia, Turkey, the United Arab Emirates, the United Kingdom, and the United States, among others, have all been present in Libya continuously or at varied times.⁸⁶ PMSCs support both sides of the internal conflict, including the Wagner Group supporting General Haftar and his LNA.⁸⁷ Reports have attributed numerous violations of international law to PMSCs, including “sexual assault and abuse, injury or death caused by IEDs and booby traps, and death as collateral damage in the context of in-air or land operations in urban or village communities,” targeted attacks on civilian infrastructure, landmines left in civilian areas, and more.⁸⁸

Following a different pattern, the Wagner Group arrived in Sudan in December 2017 to provide then-president Omar al-Bashir with military and political support after Russia negotiated a set of economic and security deals—including gold mining concessions for M-Invest, a Russian firm associated with the Wagner Group.⁸⁹ After al-Bashir was removed from power in 2019 by a combination of civil protests⁹⁰ and a military coup d’état, the Wagner Group remained in the country and exploited opportunities during the transitional government.⁹¹ The Wagner

85. *Libya: Events of 2023*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2024/country-chapters/Libya> (last visited July 26, 2025); *Freedom in the World 2022: Libya*, FREEDOM HOUSE, <https://freedomhouse.org/country/libya/freedom-world/2022> (last visited July 26, 2025).

86. Ruehl, *supra* note 14.

87. *CIVIC Privatizing War*, *supra* note 20, at 16–17.

88. *Id.*

89. See Catrina Doxsee, *How Does the Conflict in Sudan Affect Russia and the Wagner Group?*, CTR. FOR STRATEGIC AND INT’L STUD. (Apr. 20, 2023), <https://www.csis.org/analysis/how-does-conflict-sudan-affect-russia-and-wagner-group> [<https://perma.cc/Y4TK-XDK3>]; see also Lauder, *supra* note 54, at 12–13.

90. *Russian mercenaries in Sudan: What is the Wagner Group’s role?*, ALJAZEERA (Apr. 17, 2023), <https://www.aljazeera.com/news/2023/4/17/what-is-the-wagner-groups-role-in-sudan> [<https://perma.cc/WWW3-4AHD>].

91. Doxsee, *supra* note 89.

Group subsequently provided support to the 2021 military coup, which removed civilian representatives from the transitional government—leaving only the Sudanese Armed Forces and its affiliated paramilitary, the Rapid Support Forces (“RSF”) in the government—and pulled Sudan closer to Russia.⁹² When conflict erupted between the Sudanese Armed Forces and the RSF, the Wagner Group reportedly backed the RSF, including by supplying missiles and arms, though it has denied any involvement.⁹³ The Wagner Group also appears to have hedged its bets, reportedly supplying additional arms to the Sudanese Armed Forces as well.⁹⁴

No discussion of PMSCs in modern times is complete without addressing the Wagner Group’s role in Ukraine. The Wagner Group first began combat operations in Ukraine in May 2014, and had approximately 450 personnel in country by 2015.⁹⁵ Just prior to Russia’s full-scale invasion of Ukraine in February 2022, Wagner Group operators were tasked with conducting sabotage missions and key political assassinations, though it is unknown whether or not any of these activities were successful.⁹⁶ When Russian forces invaded Ukraine, Wagner Group forces deployed alongside Russian troops and conducted joint and solo combat operations.⁹⁷ The Wagner Group also interrogated captured Ukrainian soldiers, detained civilians, and seized and held territory on behalf of the Russian military.⁹⁸ The Wagner Group has been implicated in numerous violations related to their activities, including the torture and execution of at least seventy-three civilians in Bucha.⁹⁹ The Wagner Group only ceased operations in Ukraine after tensions erupted between the then-leader of the Wagner Group,

92. *Id.*

93. Nima Elbagir et al., *Exclusive: Evidence Emerges of Russia’s Wagner Arming Militia Leader Battling Sudan’s Army*, CNN (Apr. 21, 2023), <https://www.cnn.com/2023/04/20/africa/wagner-sudan-russia-libya-intl> [<https://perma.cc/35RB-DGL8>]; Oscar Rickett & Mohammed Amin, *Sudan War: Russia Hedges Bets by Aiding both Sides in Conflict*, MIDDLE EAST EYE (May 6, 2024), <https://www.middleeasteye.net/news/russia-sudan-war-saf-rsf-hedges-bets-both-sides-support> [<https://perma.cc/86UA-BQP7>].

94. Rickett & Amin, *supra* note 93; Andrew McGregor, *Russia Switches Sides in Sudan War*, 21 EURASIA DAILY MONITOR (July 8, 2024), <https://jamestown.org/program/russia-switches-sides-in-sudan-war/>.

95. Lauder, *supra* note 54, at 10.

96. *Id.* at 18.

97. *Id.*

98. *Id.*

99. *Id.*

Yevgeny Prigozhin, and the Kremlin,¹⁰⁰ which prompted the Wagner Group to relocate its personnel and assets from Ukraine to Belarus in July 2023.¹⁰¹ In a rare statement in August 2024, the Wagner Group asserted that it was no longer present in Ukraine and was only operating in Belarus and Africa.¹⁰²

These examples are only a limited—though high-profile—set of instances of high-level PMSC involvement in armed conflicts around the globe.¹⁰³ In fact, one would be hard-pressed to identify a current conflict where PMSCs are not involved to a significant degree.

D. PMSC Harms and Abuses

The allegations of harms and abuses committed by PMSCs are widespread, wide-ranging, and—as will be assessed in Section III(B)—likely underreported. As discussed above, US-contracted Blackwater perpetrated a massacre in Iraq,¹⁰⁴ and two US-contracted PMSCs were implicated in torture and other abuses at Abu Ghraib prison.¹⁰⁵ US-contracted PMSCs have also been accused of crimes against detainees in Afghanistan.¹⁰⁶ In Mali and CAR, the Wagner Group and Africa Corps—operating alongside state forces—have disproportionately targeted civilians in their operations.¹⁰⁷ They are also accused of “massacres, rape, torture and arbitrary imprisonment” across the whole Sahel region.¹⁰⁸ These accusations are mirrored in the Wagner Group’s involvement in Ukraine.¹⁰⁹ The Wagner Group has also been accused of disinformation campaigns and election-rigging in

100. *See id.* at 19–22.

101. *Id.* at 21.

102. Guy Faulconbridge, *Russia’s Wagner Says it is not Fighting in Ukraine*, REUTERS (Aug. 26, 2024), <https://www.reuters.com/world/europe/russias-wagner-says-it-is-not-fighting-ukraine-2024-08-26/> [<https://perma.cc/9MRC-NCDE>].

103. For example, in late 2023 Africa Corps arrived in Burkina Faso to assist the state’s military junta in maintaining power. *See STANYARD, supra* note 81, at 8.

104. *See Zeeman, supra* note 48; VAN DER LUGT, *supra* note 8, at 3.

105. *See* CTR. FOR CONST. RTS., *supra* note 49.

106. *See* Cedric Ryngaert, *Litigating Abuses Committed by Private Military Companies*, 19 EUR. J. INT’L L. 1035, 1043 (2008) (discussing a felony conviction against David A. Passaro as one of the few examples of accountability for PMSC-perpetrated crimes in Iraq and Afghanistan).

107. *See* STANYARD, *supra* note 81, at 9.

108. *Id.*

109. *See* Lauder, *supra* note 54, at 18.

multiple contexts.¹¹⁰ The Dyck Advisory Group (“DAG”) was likewise accused of indiscriminately killing civilians and destroying civilian property in the Cabo Delgado region of Mozambique.¹¹¹ In many states, PMSCs have also been accused of environmental damage and exploitation of natural resources. For example, the Wagner Group in CAR is reported to have carried out “industrial-scale smuggling of gold, diamonds and timber.”¹¹²

A long list of harms and abuses can be replicated in nearly every context where PMSCs have been present. The challenge is not necessarily that PMSCs are more or less likely to commit violations than state forces, but rather that they are committing precisely the type of harms and abuses that transitional justice seeks to address without a clear legal framework for the application of accountability and justice. This creates significant challenges for the creation of peace and stability in post-conflict states because, as Julia Stanyard writes when discussing the Wagner Group, “not only are these atrocities in themselves, but they defeat any long-term hope of reconciliation and peacebuilding.”¹¹³ As PMSCs are now prominent actors in conflict, they also require a prominent focus during transitional justice.

III. THE GAP IN INTERNATIONAL LAW AND CHALLENGES TO THE PURSUIT OF ACCOUNTABILITY

As established, the field of activity of PMSCs is expanding; however, PMSCs “operate outside of any conventional legal framework.”¹¹⁴ Some argue that it is, in fact, their ability to circumvent domestic laws and their less stringent rules of engagement (in addition to their limited footprint and low cost) that has contributed to their success and growth.¹¹⁵ This section will examine the legal gray zone in international law in which PMSCs fall and the limited law applicable to PMSC personnel as individuals and PMSCs as companies. Each of these dimensions has made accountability exceedingly difficult. This section will also address the practical challenges to pursuing accountability that

110. See STANYARD, *supra* note 81, at 1.

111. See *CIVIC Privatizing War*, *supra* note 20, at 17–18.

112. STANYARD, *supra* note 81, at 1, 12.

113. *Id.* at 9.

114. BUSINESS OF WAR, *supra* note 26, at 2.

115. See *id.* at 4.

compound this gap in the law. The legal ambiguity surrounding PMSCs and practical challenges create a “culture of near-total immunity” for PMSCs and their personnel.¹¹⁶

A. Legal Status: Operating in a Gray Zone

There is no international convention on the use of PMSCs or their activities. Indeed, no international humanitarian law or human rights convention specifically mentions PMSCs.¹¹⁷ Though international law regulating the use of mercenaries is slightly more robust, it is extremely rare for a PMSC to qualify as a mercenary, despite them often being referred to as “mercenaries” in common parlance. The term “mercenary” is used in the public lexicon as a generic term, but it has a precise definition under international law.¹¹⁸

The 1949 Geneva Conventions do not mention mercenaries at all, but Additional Protocol I, Article 47 provides that “[a] mercenary shall not have the right to be a combatant or a prisoner of war,”¹¹⁹ and defines a mercenary in six cumulative steps:

2. A mercenary is any person who:

- (a) is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) does, in fact, take a direct part in the hostilities;
- (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
- (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- (e) is not a member of the armed forces of a Party to the conflict; and

116. VAN DER LUGT, *supra* note 8, at 5.

117. See MONTREUX DOCUMENT, *supra* note 29, at 38.

118. See Faite, *supra* note 16, at 169.

119. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 47, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I].

(f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.¹²⁰

This cumulative standard would generate state responsibility for a mercenary group and its members' actions taken under state instruction,¹²¹ but PMSCs almost never meet this, typically failing on one or more of the cumulative steps.¹²² For instance, the vast majority of PMSC personnel in US-contracted groups in Iraq were Iraqi¹²³ and thus those individuals would not qualify as mercenaries since they are a "national of a Party to the conflict."¹²⁴ The same holds true for Russian personnel of the Wagner Group who fought in Ukraine. Even third-party nationals in Iraq would often not meet this definition because many—especially those hailing from non-white majority countries—were paid substantially less than members of the US armed forces,¹²⁵ and thus do not meet the requirement that they be paid "substantially in excess" to the pay of similarly situated members of the state armed forces.¹²⁶ Moreover, many PMSCs are not hired specifically to fight in an armed conflict. Rather, as discussed above, PMSCs may be hired to serve in a variety of non-combat functions and end up participating in hostilities as a byproduct of other functions; PMSCs may be initially recruited for non-combat functions, such as the provision of operational support or training, but transition into combat functions over time; or PMSCs may continue to serve in non-combat functions but nonetheless commit harms and abuses in roles such as detention or transport security.

120. *Id.*

121. See INT'L COMM. OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, RULE 149: RESPONSIBILITY FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule149> [<https://perma.cc/XV3L-AJ3T>].

122. See Faite, *supra* note 16, at 169.

123. Miller, *supra* note 40.

124. Faite, *supra* note 16, at 169; see Miller, *supra* note 40.

125. See, e.g., Alain Vicky, *Cheap Help from Uganda*, GLOB. POL'Y F. (May 2012), <https://archive.globalpolicy.org/pmscs/51569-cheap-help-from-uganda.html%3Fitemid=id.html#1455> [<https://perma.cc/L67R-5KHK>] (discussing US compensation for PMSC contractors from white-majority countries in comparison to non-white-majority countries. For example, contractors from the United States, Israel, South Africa, the United Kingdom, France, and Serbia often received more than US\$10,000 per month, whereas average pay for contractors from Uganda was US\$700 per month in 2007 and US\$400 per month in 2009); WG on Mercenaries 2011 Report, *supra* note 41, n.17 (The Working Group was informed by one PMSC that Fijian employees received US\$35,000–40,000 per year, while US and EU employees earned as much as US\$75,000–100,000 per year.).

126. Additional Protocol I, *supra* note 119, art. 47(c).

Importantly, Additional Protocol I only applies to international armed conflicts (“IACs”). Additional Protocol II of 1977 (“Additional Protocol II”) applies to non-international armed conflicts (“NIACs”) but does not include a parallel provision and does not mention mercenaries.¹²⁷ The International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989 (“1989 Mercenary Convention”) kept the same strict definition of mercenaries as Additional Protocol I, but broadened the range of applicable circumstances, to include the non-armed conflict scenarios of being recruited to overthrow a government, undermine the constitutional order of a state, and undermine a state’s territorial integrity.¹²⁸ This still does not apply to circumstances in which states themselves hire a PMSC to, for instance, assist in combatting a non-state actor. The stated definition also maintains the Additional Protocol I requirements that to be a mercenary, the individual cannot be a national of a party to the conflict, they must be compensated substantially more than the state’s armed forces, and so forth, mirroring the Additional Protocol I definitional language. Moreover, the 1989 Mercenary Convention has been ratified by very few states and by none of the permanent five members of the UN Security Council.¹²⁹

The Organization of African Unity Convention for the Elimination of Mercenarism in Africa of 1977 (“OAU Mercenarism Convention”) similarly retains the definition of a mercenary from Additional Protocol I but expands it to include non-armed conflict scenarios, as well as NIACs in which the state itself hires mercenaries to oppose armed violence.¹³⁰ But this convention is only binding on the African states that have ratified it¹³¹ and nevertheless retains the cumulative definition of Additional Protocol I Article 47 thus rendering its applicability very limited.

In sum, the PMSCs of modern times are almost never legally classified as mercenaries. And, because there is no convention specific to PMSCs, they operate in a legal gray zone. PMSCs are not

127. *See Faite, supra* note 16, at 170.

128. *See id.* at 170; International Convention against the Recruitment, Use, Financing and Training of Mercenaries, art. 1(2), Dec. 4, 1989, 2163 U.N.T.S. 75.

129. *See Faite, supra* note 16, at 170.

130. Organization of African Unity Convention for the Elimination of Mercenarism in Africa, art. 1, July 3, 1977, 1490 U.N.T.S. 95.

131. *See Faite, supra* note 16, at 170.

organs of the state. They are defined instead as private companies comprised of civilians.¹³² As civilians, depending on their activities, individual personnel may at times qualify as direct participants in hostilities. It is then helpful to understand how international human rights standards and humanitarian law apply to restricting the conduct of both civilians and private companies.

1. PMSC Personnel's Restrictions and Obligations as Individuals

States are the primary duty-bearers under international law. This does not mean, however, that there are no restrictions that apply to the activities of a PMSC or its individual personnel in a conflict context.

Because PMSC personnel do not qualify as lawful combatants,¹³³ any direct participation in hostilities exposes them to prosecution by the territorial state if domestic law criminalizes such conduct.¹³⁴ Direct participation in hostilities is not limited to conducting combat operations.¹³⁵ Instead, "direct participation means acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces."¹³⁶ In this manner, many PMSC activities such as intelligence gathering, strategic planning, transportation of weapons and other military objects, procurement of weapons and military objects, guarding military bases, and other related functions may qualify as direct participation in hostilities.¹³⁷ Even so, precisely where this line falls remains heavily debated.¹³⁸ In

132. See *id.* at 172–73. It is true that if a PMSC fulfilled the requirements of Article 4(A)(2) of the Third Geneva Convention and was thus qualified as a militia (and thus belonging to a party to the conflict) the PMSC would be considered combatants. However, this is not the structure of modern PMSCs. See Gómez del Prado, *supra* note 12, at 9–10.

133. Gómez del Prado, *supra* note 12, at 12.

134. See MONTREUX DOCUMENT, *supra* note 29, at 39.

135. See Faite, *supra* note 16, at 172.

136. INT'L COMM. OF THE RED CROSS, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 618, § 1944 (1987) [hereinafter Commentary on Additional Protocol I]; see Faite, *supra* note 16, at 172.

137. See Faite, *supra* note 16, at 173; *International Humanitarian Law and Private Military/Security Companies – FAQ*, INT'L COMM. OF THE RED CROSS (Dec. 10, 2013), <https://www.icrc.org/en/document/ihl-and-private-military-security-companies-faq> [https://perma.cc/6A42-EM8K].

138. See MONTREUX DOCUMENT, *supra* note 29, at 39; Gómez del Prado, *supra* note 12, at 10–11.

other words, a territorial state could prosecute PMSC personnel for performing the very jobs they were hired to do, at least to the extent domestic law prohibits or regulates such activities. Practically speaking, though, if a territorial state contracts with a PMSC to perform these activities, or coordinates with a contracting state to provide a PMSC to perform such activities, they are highly unlikely to then prosecute PMSC personnel for performing said contracted services. Indeed, to the contrary, many states have formalized domestic procedures to hire contractors to provide such services. Even where a territorial state has the political will to prosecute—whether the PMSC was contracted by a hostile third-party state or a non-state armed group—doing so still requires that domestic penal law expressly address direct participation in hostilities.

Apart from potential domestic accountability for directly participating in hostilities, individual personnel of PMSCs could be held accountable for certain violations of international humanitarian law, international criminal law, and human rights law. As is true for all other armed actors present in conflicts, PMSCs are “governed by international rules, whether their presence and activities are legitimate or not.”¹³⁹

It is increasingly clear that individual non-state actors can be prosecuted at the international level for “gross human rights violations and serious violations of international humanitarian law which amount to crimes against humanity, war crimes and genocide.”¹⁴⁰ Even PMSC personnel who are not part of state or non-state armed groups are still subject to international criminal law, particularly war crimes, “insofar as a connection exists between their conduct and the armed conflict.”¹⁴¹ It is also becoming increasingly clear that all parties to NIACs, including non-state armed groups, have obligations under international humanitarian law, including the obligation to respect the principles of distinction and proportionality.¹⁴² However, this issue is unsettled in IACs; and, because PMSCs are not legally defined as parties to the conflict, it remains uncertain whether

139. MONTREUX DOCUMENT, *supra* note 29, at 41.

140. UNITED NATIONS, INTERNATIONAL LEGAL PROTECTION OF HUMAN RIGHTS IN ARMED CONFLICT 23 (2011).

141. *Id.* at 27.

142. *See id.* at 23–24.

these obligations apply to their personnel even in NIACs. When summarizing the currently existing application of international law in this context, the Montreux Document's commentary posits that:

All individuals have to respect international humanitarian law in any activity related to an armed conflict. PMSC personnel are no exception. If they commit serious violations of humanitarian law, such as attacks against civilians or ill-treatment of detainees, these are war crimes that must be prosecuted by States. While companies as such have no obligations under international law, their employees do.¹⁴³

Again, though, this only affirmatively points to serious violations, and does not indicate PMSC personnel's criminal responsibility for committing lesser violations of humanitarian law.¹⁴⁴ The muddled legal status of PMSCs under international humanitarian law further complicates any prosecution, as courts lack clear international jurisprudential footing from which to proceed. Instead, prosecutors and courts must rely largely on emerging customary international law and judicial decisions developed primarily in the context of non-state armed groups. To date, no PMSC personnel have ever been prosecuted at the international level for violations of international humanitarian law.

PMSCs and their individual personnel are not obligated to abide by international human rights law because it only applies to states.¹⁴⁵ Still, it is understood that territorial states "must prevent, investigate, punish and ensure redress for human rights violations committed by third parties, e.g., private individuals, commercial enterprises or other non-State actors."¹⁴⁶ The obligation of states to prosecute human rights violations committed by other actors within their territory thus implies that PMSCs can, indeed, commit

143. MONTREUX DOCUMENT, *supra* note 29, at 39.

144. See Eric Omo Enakireru & Ademiluyi Bukola Opeyemi, Interrogating the Action and Status of Private Military and Security Companies in International Humanitarian Law (Feb. 3, 2024) (unpublished manuscript), <https://ssrn.com/abstract=5000319> [<https://perma.cc/95SC-TJ7N>].

145. See DCAF PMSCs, *supra* note 22, at 5.

146. INTERNATIONAL LEGAL PROTECTION OF HUMAN RIGHTS IN ARMED CONFLICT, *supra* note 140, at 17; see Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, § I art. A ¶ 1 and Commentary, U.N. Doc. HR/PUB/11/04 (June 16, 2011) [hereinafter UNGPs].

international human rights violations, even though no international convention specifically mentions them as potential actors. To date, however, there has also not been a prosecution of a PMSC employee or contractor conducted at the international level for human rights violations.

In domestic courts, PMSC personnel could be prosecuted under international humanitarian law and human rights law, but this depends on how the state has or has not integrated international law into their domestic legal system.¹⁴⁷ Highlighting this challenge, in the many years of global operations of the Wagner Group, there has been only one known completed prosecution of a Wagner Group personnel or Wagner Group-affiliated personnel for violations of international law:¹⁴⁸ in March 2025 Finland convicted Russian national Yan Petrovsky (also known as Voislav Torden) of war crimes he had committed in the Donbass region of Ukraine¹⁴⁹ under a theory of universal jurisdiction. Individual personnel of PMSCs can also be held accountable for violations of the domestic laws—such as murder, assault, destruction of property, or rape—of the territorial state, contracting state, or state of nationality, depending on how the domestic laws are structured. However, these cases are also few

147. See MONTREUX DOCUMENT, *supra* note 29, at 40; see also UNGPs, *supra* note 146, part 1 § E.

148. See Candace Rondeaux, *The Wagner Group in Court: Justice Is Catching Up with Russia's Top Irregular Warfighters*, JUST SEC. (Dec. 17, 2024), <https://www.justsecurity.org/105758/russia-wagner-group-in-court/> [<https://perma.cc/4PSK-B7BE>]. Yan Petrovsky was a commander in the Wagner Group-affiliated Rusich. Rusich is a cadre of far-right Neo-Nazis that may operate as a sub-unit of the Wagner Group or, at least, a closely affiliated group. See also Michael Sheldon, *The Man in the Matching Uniform: Investigating a Rusich Atrocity in Syria*, BELLINGCAT (Jan. 23, 2024), <https://www.bellingcat.com/news/2024/01/23/the-man-in-the-matching-uniform-investigating-a-rusich-atrocity-in-syria/> [<https://perma.cc/TE4A-ZTZE>]; Dmitry Kozhurin, *Who Are The Neo-Nazis Fighting For Russia In Ukraine?*, RADIO FREE EUR. – RADIO LIBERTY (May 27, 2022), <https://www.rferl.org/a/russian-neo-nazis-fighting-ukraine/31871760.html> [<https://perma.cc/ZX9G-FQCT>]; Mark Townsend, *Neo-Nazi Russian militia appeals for intelligence on Nato member states*, THE GUARDIAN (Dec. 11, 2022), <https://www.theguardian.com/world/2022/dec/11/neo-nazi-russian-militia-appeals-for-intelligence-on-nato-member-states> [<https://perma.cc/KC55-3D3H>]; Jeanette Björkqvist, *Finland on the frontline for trying Russians for war crimes*, JUSTICEINFO (Jan. 23, 2025), <https://www.justiceinfo.net/en/140579-finland-frontline-trying-russians-war-crimes.html> [<https://perma.cc/UW68-NHBW>].

149. Essi Lehto, *Russian Jailed for life in Finland for Ukraine War Crimes*, REUTERS (Mar. 15, 2025), <https://www.reuters.com/world/finnish-court-convicts-russian-man-ukraine-war-crimes-2025-03-14/> [<https://perma.cc/4CZL-XZN5>].

and far between, given the practical challenges explained in Section III(B).

2. PMSCs' Restrictions and Obligations as Companies

The analysis of PMSC restrictions and obligations as companies is somewhat more straightforward, though unfortunately not in a direction that provides much applicable law or clear avenues for legal accountability. Companies do not have an obligation to respect international humanitarian law.¹⁵⁰ Companies can, however, be prosecuted specifically for atrocity crimes,¹⁵¹ including when the corporation is involved in the “commission of genocide, crimes against humanity, war crimes, or other gross human rights violations” in some jurisdictions.¹⁵² Because the International Criminal Court does not have jurisdiction over corporations,¹⁵³ nor has any other international mechanism exercised such jurisdiction to date, prosecution is dependent on what provisions states have included in their domestic laws. Most relevant domestic cases have involved corporations and their personnel not as direct perpetrators of atrocity crimes, but as contributors. Relevant examples include financing those who commit such atrocities or providing the resources in furtherance thereof.¹⁵⁴ To date, no corporation has been convicted of atrocity crimes, and convictions of individual personnel have been rare.¹⁵⁵

Due to their association with “mercenary” activities, PMSCs have been traditionally excluded from the mainstream Business and Human Rights (“BHR”) agenda. However, because PMSCs rarely qualify as mercenaries in practice, there are now efforts to integrate these companies into the BHR discourse¹⁵⁶ under the

150. See MONTREUX DOCUMENT, *supra* note 29, at 39.

151. “Atrocity crimes” refer collectively to the international crimes of genocide, crimes against humanity, and war crimes. UNITED NATIONS, FRAMEWORK OF ANALYSIS FOR ATROCITY CRIMES: A TOOL FOR PREVENTION 1 (2014).

152. See Annika van Baar, *Corporate Involvement in Atrocity Crimes—Trends and Patterns in Regulation*, 82 CRIME, L. & SOC. CHANGE 989 (2024).

153. See *id.* at 997.

154. See *id.* at 991–92.

155. *Id.* at 998.

156. VAN DER LUGT, *supra* note 8, at 13; Jelena Aparac, “PMSC Treaty” – *Why We Need an International Legally Binding Instrument to Regulate Private Military and Security Companies*, BUS. & HUM. RTS. J. ONLINE (May 30, 2023), <https://bhrj.blog/2023/05/30/>

theory that more robust corporate regulation could provide an avenue for legal accountability. Much like individuals, companies do not have an obligation to abide by international human rights law because states are the duty holders.¹⁵⁷ However, states are obligated to protect the human rights of persons within their territory, including from abuses committed by businesses and corporations, and to “investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” as reflected in the United Nations Guiding Principles on Business and Human Rights (“Guiding Principles on BHR”).¹⁵⁸ This responsibility does not extend to host states, as states are “not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction.”¹⁵⁹ However, host states could still provide for such regulations in their domestic law.¹⁶⁰ Meanwhile, contracting states do not have an obligation to investigate, prosecute, or provide redress for abuses caused by companies they contract with, though the Guiding Principles on BHR encourages contracting states to “exercise adequate oversight” when they contract with “business enterprises to provide services that may impact upon the enjoyment of human rights.”¹⁶¹ As such, according to the Guiding Principles on BHR, the responsibility to hold PMSCs accountable as corporations for international human rights violations lies in the hands of the territorial state, unless the host or contracting state has domestic laws that would allow them to also do so. Moreover, the efforts to include PMSCs in BHR discourse are nascent and unsettled, so while this may be an avenue to close the legal gap, it remains largely untested.

The structure of PMSCs themselves creates additional gaps in criminal and civil law. PMSCs are often multinational

pmsc-treaty-why-we-need-an-international-legally-binding-instrument-to-regulate-private-military-and-security-companies/ [https://perma.cc/4XHJ-TFZM] [hereinafter Aparac, *PMSC Treaty*].

157. See DCAF PMSCs, *supra* note 22, at 5; see also UNGPs, *supra* note 146.

158. UNGPs, *supra* note 146 § I art. A ¶ 1; see also *id.* § III art. A ¶ 25 (on access to remedy).

159. *Id.* § I art. A ¶ 2 and Commentary.

160. *Id.*

161. *Id.* § I art. B ¶ 5.

corporations.¹⁶² As such, these PMSCs are made up of entities that are legally separate with different home states, which are then governed by their respective state's laws.¹⁶³ While international law may recognize the "existence of the legally separate entities of the corporation" it does not determine the criteria for attributing nationality, leaving that as a jurisdictional matter for each state to decide.¹⁶⁴ Moreover, the home state of one entity may legally recognize that entity without recognizing the multinational corporation as a unit.¹⁶⁵ Whether or not the multinational corporation is recognized by international law depends on how each home state recognizes the legal personality of each entity.¹⁶⁶ Thus, corporations can "largely escape the control of States in their multinational dimension" and can also "[take] advantage of legal loopholes and escape all responsibility, including at the international level, where they are not recognized as either a subject of that law or in their multinational dimension."¹⁶⁷ PMSCs can leverage the difficulties of corporate accountability to avoid ramifications. For example, a PMSC may fold its corporate entity and re-register as a new entity in the same state or elsewhere to avoid scrutiny. They may also fold a subsidiary in a single state that has committed violations while the rest of the multinational corporation continues to function unimpeded. A PMSC that has committed violations may be acquired by another PMSC. They may also seek to register on the frontend in home states that have favorable regulations—or a lack thereof—for PMSCs, rather than ones that seek to regulate more robustly. The multinational nature of PMSCs affords them a fluidity that enables effective evasion of accountability, even where a legal framework would otherwise apply. Even grimmer still to the prospect of PMSC accountability, the Wagner Group—perhaps the most infamous PMSC in operation—is not a legally registered company.¹⁶⁸ Indeed, the

162. *CIVIC Privatizing War*, *supra* note 20, at 9.

163. Jelena Aparac, *Business, Human Rights, and Transitional Justice: Overcoming the Regulatory Dysfunction of International Law*, 10 *GLOB. BUS. L. REV.* 24, 32 (2022) [hereinafter Aparac, *BHR*].

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* at 33.

168. Mussa & Dubianskij, *supra* note 7, at 213.

Wagner Group is not a commercial entity registered in Russia¹⁶⁹ and instead only exists unofficially and through its subsidiaries in various territorial states in which it operates and holds assets, such as mines. The Wagner Group itself, as an entity, does not legally exist.¹⁷⁰

PMSCs overall have many avenues to obfuscate what is already difficult-to-enforce corporate accountability. Corporations “enjoy almost absolute impunity, even in cases where their abuses amount to international crimes.”¹⁷¹

B. Practical Challenges for Accountability

Beyond the gap in international law, a litany of practical challenges further obstructs accountability for PMSCs and their personnel. Taken together, these factors entrench a sense of impunity for PMSCs “who feel that they can operate with little regard for human rights violations and other war crimes.”¹⁷² Key practical challenges include barriers to effective monitoring and documentation, immunity agreements between contracting and territorial states, and difficulties accessing perpetrators.

1. Barriers to Effective Monitoring and Documentation

PMSCs are often opaque and shadowy entities, purposefully seeking to obscure their structure, personnel, and activities. This makes monitoring and documentation of the activities of, and violations committed by these entities very difficult. Very few PMSCs even refer to themselves as “private military contractors,” “private security companies,” “private military and security companies,” or any variation on those terms,¹⁷³ nor do they publicly describe themselves as taking on any such activities. For example, the US-based CACI International—which was accused of war crime violations in Iraq—states its purpose on its website as “[delivering] distinctive expertise and differentiated technology to U.S. government customers in support of critical national security

169. *Id.* at 214.

170. *CIVIC Privatizing War*, *supra* note 20, at 19.

171. Aparac, *BHR*, *supra* note 163, at 26.

172. *BUSINESS OF WAR*, *supra* note 26, at 8.

173. *CIVIC Privatizing War*, *supra* note 20, at 21.

missions.”¹⁷⁴ Furthermore, the contracts signed between PMSCs and governments, or other contracting entities like non-state armed groups, may not be public; PMSC personnel lists are rarely available, including information on the nationalities of their members; and even the presence of a PMSC in a particular context may not be public. As such, it is difficult to know which PMSCs are operating in a state, or even if they are present at all; what monitoring of those PMSCs should thus be taking place by state, international, or civil society actors; and what opportunities for accountability may exist in the contracting state, home state, or states of nationality if violations occur.

An additional challenge for monitoring and documentation is that PMSCs rarely wear any identifying uniforms or insignia, and are not required to do so under international law.¹⁷⁵ In Iraq and Afghanistan, for example, PMSCs were often mistaken for members of the armed forces when they wore general camouflage, and for unaffiliated civilians when they wore mufti.¹⁷⁶ Without identifying uniforms or insignia, it is exceedingly difficult to monitor and report who is committing what violations, especially if there are multiple PMSCs operating in the same territory. Indeed, PMSCs have “increasingly begun to operate in the same conflict zones.”¹⁷⁷ Given that the presence of a PMSC itself may not be publicly available information, confusion can be compounded where non-state armed groups are also operating in the same area, as these non-state armed groups also may not be wearing uniforms or insignia.

Data on PMSC violations are thus rarely disaggregated from information reported on violations generally. For example, the United Nations Support Mission in Libya (“UNSMIL”) reports data on civilian casualties, but does not disaggregate that data between casualties caused by the GNA, the LNA, foreign fighters, and PMSCs, even though PMSCs are the largest percentage of armed actors in Libya.¹⁷⁸ Similarly, a report released by the United Nations Multidimensional Integrated Stabilization Mission in the Central

174. *What We Do*, CACI, <https://www.caci.com/what-we-do> [<https://perma.cc/Z7WF-AZX2>] (last visited July 21, 2025).

175. Enakireru & Opeyemi, *supra* note 144, at 9.

176. *Id.*

177. Ruehl, *supra* note 14.

178. *CIVIC Privatizing War*, *supra* note 20, at 19.

African Republic (“MINUSCA”) and the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) on CAR found that both PMSC personnel and Russian instructors took part in combat operations alongside CAR state forces.¹⁷⁹ The report documented violations of both international humanitarian and human rights law, but did not distinguish between PMSC personnel and the Russian instructors.¹⁸⁰ The lack of ability to disaggregate data continues to pose challenges in terms of accurate reporting of harms and responsibility.¹⁸¹ However, if victims, witnesses, and documenters are not able to distinguish between various actors, they are unlikely to be able to assign blame to the specific entity or individuals that perpetrated the harms and abuses.

Creating further complications, organizations that do seek to collect specific data on PMSCs may find themselves and those they interview at risk of reprisals. When staff from the Center for Civilians in Armed Conflict (“CIVIC”) prepared a research brief on the contemporary use of PMSCs in CAR, Libya, and Mozambique, along with a historical case study on Iraq, they encountered many research obstacles, finding it “very difficult—and in some cases impossible—to obtain first-hand quantitative and qualitative data, such as estimated number of individuals harmed by PM[S]C activities, notional lists of PM[S]Cs recruited by states, and examples of prosecutions and open cases against PM[S]Cs in each country.”¹⁸² Even when individuals agreed to be interviewed, many interviewees would only mention instances of abuses by PMSCs, and hesitated to share specific data, videos, or pictures of PMSC personnel “due to security concerns.”¹⁸³ This concern is heightened when the PMSCs are contracted by or collaborating with the territorial state’s own forces. Commentators have observed that “[w]hen war is privatized, power is no longer exercised top-down, but rather horizontally and through social

179. See Hum. Rts. Div., U.N. Multidimensional Integrated Stabilization Mission in the Cent. Afr. Rep. [MINUSCA] & Off. of the U.N. High Comm’r for Hum. Rts. [OHCHR], *Rapport public sur les violations des droits de l’homme et du droit international humanitaire en République centrafricaine durant la période électorale, juillet 2020 – juin 2021* [Public Report on Human Rights and International Humanitarian Law Violations in the Central African Republic During the Electoral Period, July 2020 – June 2021] (2021).

180. CIVIC Privatizing War, *supra* note 20, at 20.

181. See *id.* at 20 (providing more examples).

182. *Id.* at 7.

183. *Id.*

influence” and with this, PMSCs “may conspire with their clients to commit or tolerate abuses, they may give assistance to abuses by states, or they may look the other way when abuses are committed, although they had the social power to prevent them.”¹⁸⁴

States seeking to prosecute violations also face issues in collecting evidence themselves, particularly if they are not the territorial state.¹⁸⁵ Even if these states have established jurisdiction in their domestic laws—whether they are the contracting state, home state, state of nationality, or operating under universal jurisdiction—gathering evidence in a state experiencing or emerging from armed conflict presents immense obstacles.¹⁸⁶ Moreover, if the territorial state is also the contracting state or has otherwise coordinated with the PMSC, the territorial state may not have an incentive to allow such evidence collection. While the territorial state is best positioned to document PMSC conduct, it is precisely in those cases where the state has contracted or coordinated with a PMSC that investigations are least likely—particularly where the state remains dependent on PMSC support. Furthermore, even if the territorial state sought to collect such evidence and pursue prosecution, a state experiencing armed conflict may lack the capacity to undertake such efforts, due to such factors as a weakened justice system.¹⁸⁷

2. Immunity Agreements

Immunity agreements that limit or effectively eliminate the territorial state’s ability to investigate and prosecute violations by PMSCs are also a barrier to accountability. Contracting states that supply PMSCs to a second territorial state—either alongside the contracting state’s forces or supplementing the territorial state’s forces—may execute immunity agreements with the territorial state that extend to PMSCs,¹⁸⁸ such as a status of forces agreement (“SOFA”). For example, the SOFA put in place in Iraq by the US-led Coalition Provisional Authority (which was then respected by the subsequent Iraqi government) provided that all coalition

184. Ryngaert, *supra* note 106, at 1052.

185. See MONTREUX DOCUMENT, *supra* note 29, at 40 (explanatory comments on Montreux Document).

186. See *id.*

187. See *id.*

188. See *id.*

contractors, sub-contractors, and their non-Iraqi personnel “be immune from Iraqi Legal Process with respect to acts performed by them within their official activities pursuant to the terms and conditions of a contract between a contractor and Coalition Forces or the CPA and any sub-contract thereto.”¹⁸⁹ It also provided that the coalition contractors and sub-contractors “shall not be subject to Iraqi laws or regulations with respect to licensing and registration of personnel, businesses and corporations in relation to such contracts.”¹⁹⁰ Effectively, the Iraqi government had no authority to investigate or prosecute the activities, abuses, and crimes of any non-Iraqi PMSC on its territory during this period without breaking the SOFA. As such, the Iraqi legal system could not conduct its own investigations and prosecutions when reports emerged of prisoner torture and abuse at Abu Ghraib prison in 2004, when Blackwater committed the Nisour Square Massacre in 2007, or any other instances of PMSC violations of international and domestic laws in Iraq. This arrangement held until late 2008, when the United States and Iraq negotiated a new SOFA providing for the withdrawal of US troops and bringing some US-contracted PMSCs and their personnel under Iraqi legal accountability.¹⁹¹ Even this new SOFA, however, only explicitly withdrew immunity for PMSCs contracted by the US armed forces, whereas PMSCs contracted by other US entities, such as the Department of State, seemingly retained their immunity from the prior agreement.¹⁹² The SOFA in Afghanistan similarly provided immunity for all coalition state forces and contracted PMSCs of coalition states, such that they were immune from arrest and detention by Afghan authorities and could not “be turned over to any international tribunal or any other entity or State without the express consent of the contributing nation.”¹⁹³

189. Coalition Provisional Authority Order No. 17, Status of the Coalition, Foreign Liaison Mission, Their Personnel and Contractors § 3 ¶ 2, June 17, 2003, CPA/ORD/26.

190. *Id.* § 3 ¶ 1.

191. See EBSCO, US-IRAQ STATUS OF FORCES AGREEMENT (SOFA) (2023), <https://www.ebsco.com/research-starters/law/us-iraq-status-forces-agreement-sofa> [<https://perma.cc/R34W-ECM3>]; see also WG on Mercenaries 2011 Report, *supra* note 41, § III ¶ C(27–28).

192. WG on Mercenaries 2011 Report, *supra* note 41, § III ¶ C(28); but see JENNIFER K. ELSEA, CONG. RSCH. SERV., R40991, PRIVATE SECURITY CONTRACTORS IN IRAQ AND AFGHANISTAN: LEGAL ISSUES (2010) (who interprets the agreement as a presumption that Iraq would have jurisdiction over US Department of State contractors as well).

193. ELSEA, *supra* note 192, at 14.

Immunity agreements move any potential accountability for PMSCs out of the territorial state and create a system that instead favors the jurisdiction of the contracting state. The contracting state then may or may not have an interest in pursuing any accountability.

3. Barriers to Accessing Perpetrators

Physically reaching any individual PMSC employee or contractor also poses significant challenges, particularly in conflict or post-conflict settings. Even identifying where an alleged perpetrator is located can be challenging. A company can quickly fly an individual out of the country if they believe the person committed a violation—whether back to the contracting state, the home state of the PMSC, or the state of nationality of the individual.¹⁹⁴ The PMSC may even transfer the individual to another conflict context in which the PMSC is engaged. Additionally, transitional justice prosecutions most often take place following the conclusion of a conflict, at which point the PMSC has likely already withdrawn and dispersed, other than any personnel they hired locally. For example, as discussed above, the government of Mozambique ended its contract with the South African DAG—which withdrew from the country in late 2021—after reports that it had indiscriminately killed civilians and destroyed civilian infrastructure.¹⁹⁵ If Mozambique were to now pursue investigations and accountability for DAG’s violations when Cabo Delgado stabilizes, it would be exceedingly difficult to do so, as DAG and its personnel have been gone for years, and PMSCs in the region have changed.¹⁹⁶

Moreover, even if the identity and new location of an individual PMSC personnel who is an alleged perpetrator can be identified, meeting the thresholds required for extradition will be immensely difficult. For example, if a territorial state seeks access to an alleged perpetrator now located in another state, extradition treaties between states often include requirements such as the territorial state having collected certain evidence, having formally charged the alleged perpetrator with a crime that is also a criminal

194. Hammes, *supra* note 38, at 30.

195. See *CIVIC Privatizing War*, *supra* note 20, at 17–18.

196. See *id.*

act in the requested state, having issued an arrest warrant, and so forth. This relies on the territorial state and the requested state having both included the particular harms and abuses in their domestic laws, given the gap in international law. If the territorial state had a SOFA with the contracting state that included immunity for PMSCs, they cannot move forward even if the acts are criminalized in domestic law. Likewise, evidence thresholds may be impossible to meet given the barriers to documentation and an inability to access witnesses, including the PMSC colleagues of the perpetrator or contracting state forces as witnesses.

Though the particulars of every extradition treaty are different, these challenges to successfully seeking extradition—apart from immunity agreements which are a unique issue for territorial states—generally hold true for contracting states, host states, states of nationality, and states seeking to exercise universal jurisdiction as well.

IV. CHALLENGES PMSCS PRESENT FOR THE FOUR PILLARS OF TRANSITIONAL JUSTICE

The legal gray area of PMSCs and their personnel presents significant obstacles in the field of transitional justice. PMSCs are not small players in modern conflicts; they wield significant power and are often responsible for inflicting substantial harm. Traditionally, the objective of transitional justice has been defined as reconciliation “between the parties to the conflict and the population affected by it, by restoring mechanisms of responsibility and sanctions”—a framing that has historically excluded external actors like corporations from the process.¹⁹⁷ But in modern conflicts, PMSCs are hardly peripheral actors. As previously discussed, they sometimes outnumber state forces, and they may train state forces, provide the intelligence or strategic advising upon which state forces make targeting decisions, lead state forces in offensive combat missions, independently conduct combat missions, make arrests, transport detainees, manage detention, and conduct interrogations, and more. While PMSCs may not be parties to a conflict in a legal sense, they are central actors, nonetheless.

197. Aparac, *BHR*, *supra* note 163, at 26.

According to the United Nations' guidance note on transitional justice, "transitional justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."¹⁹⁸ Throughout history, there has been a proclivity to seek justice in the aftermath of mass harm, yet the label of "transitional justice" and a wider, holistic move towards abating atrocities, and "bring[ing] those responsible to account, mak[ing] facts known, and to succor victims" are modern phenomena.¹⁹⁹ Today, transitional justice has attained global norm status and it is broadly accepted that as a "legal, social and moral norm, accountability for the past is crucial for lasting peace, as without it, transitional societies face the risk of continued political instability and renewed violence."²⁰⁰ By excluding a significant category of perpetrators—and thus their victims as well—from transitional justice, the question arises: "Do the categories of perpetrators provide only partial transitional justice and unfinished reconstruction of post war society?"²⁰¹

Transitional justice is typically understood to have four pillars that are mutually reinforcing and—when all implemented effectively—capable of offering holistic justice, and creating the foundation for a stable, peaceful society and the rule of law. The four key components of transitional justice are prosecutions, truth-seeking mechanisms, reparations programs, and institutional reforms, such as security sector reforms. The gap relating to PMSCs in international law impacts not only prosecutions but also every pillar of the transitional justice process, as the mechanisms are complementary and mutually reinforcing.

Some of these impacts are necessarily speculative because few states with high levels of PMSC involvement have reached a resolution sufficient for transitional justice to become viable. But it is notable that in early models of significant PMSC use, PMSCs were left largely out of domestic transitional justice processes. For

198. U.N. *Transitional Justice Guidance Note 2010*, *supra* note 4, at Introduction.

199. Yusuf, *supra* note 3, at 2 (quoting Naomi Roht-Arriaza, *The New Landscape of Transitional Justice*, in *TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY – BEYOND TRUTH VERSUS JUSTICE* (Naomi Roht-Arriaza & Javier Mariezcurrena eds., 1st ed. 2006)).

200. *Id.* at 3–4.

201. Aparac, *BHR*, *supra* note 163, at 28.

example, the Sierra Leone Truth and Reconciliation Commission published an 1,800-page final report, which includes only a handful of mentions of PMSCs, including Executive Outcomes and Sandline. The report mentions PMSCs' high monetary cost and negative impacts on the economy,²⁰² noting that "a large number of civilians were killed when Executive Outcome helicopter gunships attacked RUF jungle bases between 1995 and 1996,"²⁰³ and that "the government was extremely irresponsible in handing concessions to mine diamonds and gold to mercenary groups such as Executive Outcomes and the Ghurkhas."²⁰⁴ At the time of the report, Executive Outcomes was still receiving its concession of natural resources.²⁰⁵ The report also indicates that just two Executive Outcomes personnel were interviewed by the Commission; both no longer worked for Executive Outcomes, and one was working for the government of Sierra Leone at the time of the interview.²⁰⁶ Directly following the section discussing the civilians killed by Executive Outcomes, the very next line states that while "mercenaries in conflicts should be condemned, the Commission notes that when the Sierra Leonean Government contracted with Executive Outcomes it was in a desperate state of affairs."²⁰⁷ Sierra Leone pursued no accountability for PMSC perpetrators, and none faced prosecution. It is important to note that there were, in fact, quite a limited number of PMSC personnel in Sierra Leone at that time. Executive Outcomes was the most prominent company with only 250 personnel in Sierra Leone.²⁰⁸ Given the thousands of Wagner Group personnel operating in CAR and the thousands of US-contractors previously deployed in Iraq, PMSCs are no longer discrete or peripheral actors. Instead, their

202. SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION, FINAL REPORT, Vol. 2 ch. 2 ¶ 213 (2004) [hereinafter *Sierra Leone TRC Report*].

203. *Id.* Vol. 2 ch. 2 ¶ 403.

204. *Id.* Vol. 2 ch. 2 ¶ 567.

205. *Id.* Vol. 3(A) ch. 3 ¶ 520.

206. *See, e.g., id.* at Vol. 3(B) ch. 1 nn.122, 178 ("Neill Ellis, former Executive Outcomes helicopter pilot, TRC interview conducted in Freetown, 27 May 2003."); Vol. 3(B) ch. 1 n.92 ("Neill Ellis, former Executive Outcomes helicopter pilot who later transferred to the employment of the Government, TRC interview conducted in Freetown, 27 May 2003."); Vol. 3(B) ch. 1 nn.113, 151, 178 ("Fred Marrafono, former Executive Outcomes officer, TRC interview conducted in Freetown, 4 June 2003.").

207. *Id.* Vol. 2 ch. 2 ¶ 404.

208. *Id.* Vol. 2 ch. 2 ¶ 402.

scale of involvement and perpetration of harm demands that transitional justice processes account for them directly.

A. Prosecutions

Prosecutions during transitional justice may take a variety of forms, including domestic prosecutions in special courts or the regular criminal system of the territorial state, hybrid tribunals, international tribunals, or, more recently, through the International Criminal Court. Some states have also adapted traditional accountability practices for this purpose, such as the *gacaca* courts in Rwanda. Under international law, states have an affirmative obligation to investigate and prosecute those who violate human rights and humanitarian law, particularly when those crimes occur within their territory or are committed by individuals under their direction or control.

In transitional justice processes, prosecutions function as an important reestablishment of the rule of law in a state and signal a public commitment that the state, and particularly the judiciary, will not allow impunity. Thus, it is crucial that territorial states are at the forefront of prosecutorial design and strategy. But, because of the gaps in international law, the lack of jurisdiction of international courts over companies, limited law covering PMSC personnel, immunity agreements in SOFAs, and the inability or complicity of territorial states, scholarship and advocacy tends to focus on ways that contracting states could hold PMSCs responsible under domestic law. This is also, in practice, the default. Prosecutions of PMSCs are infrequent, but in the rare instances in which they occur, it is almost always by the contracting state. This creates an inadequate system for accountability that relies only or primarily on the potential of prosecutions in a contracting state, often thousands of miles away, inaccessible to victims and the affected public, and often conducted and reported on in another language. Furthermore, while transitional justice processes are, by design, tailored to the territorial state and the population affected by the conflict, these rare cases of prosecution in the contracting state are subject to the political whims of the contracting state, rather than focused on the needs of the victims.

For example, the Nisour Square Massacre led to a legal odyssey in the United States legal system, with a rare pursuit of

accountability for PMSC personnel. In December 2008, six Blackwater personnel were indicted in the United States District Court for the District of Columbia under US domestic laws. One pled guilty, agreeing to testify against the other five. In December 2009, the trial court dismissed all five cases after it excluded self-incriminating statements the defendants made when they believed they had immunity from prosecution. Two years later, in September of 2011, the charges against four of the personnel were reinstated on appeal, but the prosecutors dropped their case against one of the defendants. After a lengthy trial with seventy-five witnesses, including thirty Iraqis, three of the Blackwater personnel were found guilty in October 2014 of manslaughter and one of murder.²⁰⁹ These rare convictions of PMSC personnel were lauded globally,²¹⁰ as was the rare opportunity for victims and witnesses of PMSC harms to be heard and contribute to accountability. Then, in 2020, in a devastating blow to the rare accountability for PMSCs and redress for their victims, President Donald Trump pardoned all four men.²¹¹

Another avenue through which advocates currently seek to hold PMSCs accountable is civil cases in the domestic courts of the contracting state. These cases are also extremely infrequent, slow, and far removed from the affected population. Staying with examples in the United States, victims of PMSC abuses of international human rights and humanitarian law abroad have sought to leverage the Alien Tort Statute (“ATS”) and some have filed common law tort claims for violations of domestic law, such as wrongful death and assault and battery.²¹² Such tort litigation is

209. *Nisoor Square shooting (Baghdad)*, EBSCO (2021), <https://www.ebsco.com/research-starters/military-history-and-science/nisoor-square-shooting-baghdad> [<https://perma.cc/K2JP-UBP2>].

210. *Id.*; Press Release, U.S. Dep’t of Just., Four Former Blackwater Employees Found Guilty of Charges in Fatal Nisur Square Shooting in Iraq (Oct. 22, 2014), <https://www.justice.gov/archives/opa/pr/four-former-blackwater-employees-found-guilty-charges-fatal-nisur-square-shooting-iraq> [<https://perma.cc/69XC-4CLW>].

211. See Laurel Wamsley, *Shock And Dismay After Trump Pardons Blackwater Guards Who Killed 14 Iraqi Civilians*, NPR (Dec. 23, 2020), <https://www.npr.org/2020/12/23/949679837/shock-and-dismay-after-trump-pardons-blackwater-guards-who-killed-14-iraqi-civil> [<https://perma.cc/3QX4-PA97>]; *Trump pardon of Blackwater Iraq contractors violates international law – UN*, REUTERS (Dec. 30, 2020), <https://www.reuters.com/article/world/us/trump-pardon-of-blackwater-iraq-contractors-violates-international-law-un-idUSKBN294107/> [<https://perma.cc/3G9K-RXP5>].

212. Ryngaert, *supra* note 106, at 1037.

“riddled with procedural and substantive problems”²¹³ and is seldom successful. For instance, 250 Iraqis who were detained in military raids and held at prisons, including Abu Ghraib, filed suit in 2005 against Titan Corp. (later known as L-3 Services and now as Engility Corporation) and CACI International.²¹⁴ The plaintiffs in *Saleh v. Titan* brought claims under a wide variety of laws, including international law claims under ATS, the Racketeer Influenced and Corrupt Organizations Act, government contracting laws, and common law torts.²¹⁵ The case was ultimately dismissed in 2009 because of court findings that the PMSCs were part of the US military command structure, and thus state actors to whom sovereign immunity applies.²¹⁶ Although the US Congress had expanded the Uniform Code of Military Justice’s (“UCMJ”) jurisdiction in 2006 to include “in time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field,”²¹⁷ the attempts at court-martialing PMSCs, including for abuses at Abu Ghraib, were unsuccessful even though the cases against US soldiers were.²¹⁸ This indicates a notable gap in US domestic law that hamstrung an attempt at accountability.

One ongoing case against CACI International and Titan Corp. remains. In *Al Shimari v. CACI*, four plaintiffs—now three—brought claims alleging torture by the PMSCs under international law via the ATS, as well as claims under US domestic law.²¹⁹ The case was filed in 2008 and CACI International has sought to have the case

213. *Id.*

214. *Accountability for Torture by Private Military Contractors*, *supra* note 49; *Saleh et al. v. Titan Corporation & CACI International*, *Court of Appeals for the District of Columbia Circuit*, INT’L COMM. OF THE RED CROSS (Sep. 11, 2009), <https://ihl-databases.icrc.org/en/national-practice/saleh-et-al-v-titan-corporation-caci-international-court-appeals-district> [<https://perma.cc/6WD4-TDXU>] [hereinafter *ICRC Saleh et al. v. Titan & CACI*].

215. *Id.*

216. *Id.*

217. 10 U.S.C. § 802(a)(10).

218. *See generally* Aliya Brown, *Prosecuting Private Armies: Could the Uniformed Services Employment and Reemployment Rights Act of 1994 Provide a Template for Prosecution of Private Military Contractors?*, 32 GEO. J. LEGAL ETHICS 435 (2019) (examining the successful cases against US soldiers involved in Abu Ghraib crimes, in contrast to the lack of accountability for involved PMSCs due to challenges under US domestic and military law).

219. *Al Shimari, et al. v. CACI*, CTR. FOR CONST. RTS. (May 15, 2025), <https://ccrjustice.org/AlShimari> [<https://perma.cc/7ZR6-376W>] [hereinafter *CCR, Al Shimari*].

dismissed more than twenty times.²²⁰ The case finally proceeded to trial in early April 2024, after the US Court of Appeals for the Fourth Circuit found that the US military “failed to exercise actual control over the work conducted by the CACI interrogators.”²²¹ The case ended in a mistrial when the jury failed to reach a unanimous verdict and a new trial was scheduled for October 2024.²²² In November 2024, a jury found the PMSC liable and awarded damages totaling US\$42 million. Each of the three plaintiffs was awarded US\$3 million in compensatory damages and US\$11 million in punitive damages.²²³ CACI International appealed to the Fourth Circuit in March 2025. Both sides have filed briefs, and the litigation continues.²²⁴

Though it is yet unknown what will result from the appeal, *Al Shimari v. CACI* is currently considered a rare judicial victory for victims of PMSCs. Even so, these three cases lay bare the immense barriers to holding PMSCs accountable, even within the robust court system of a contracting state and with the full benefit of relevant domestic laws. They also represent a small fraction of the harms suffered by victims of PMSCs. These cases likewise relied on the PMSCs having been contracted by a state, and not another actor like a non-state armed group or an international organization. Relying on prosecutions in contracting states cannot fully close even the accountability gap, because PMSCs may be contracted not by states but by other actors, such as non-state armed groups and international organizations.²²⁵ Moreover, even when successful,

220. *Factsheet: Torture at Abu Ghraib and Al Shimari v. CACI*, CTR. FOR CONST. RTS. (Mar. 28, 2024), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/factsheet-torture-abu-ghraib-and-al-shimari-v> [https://perma.cc/C462-GBZF] [hereinafter *CCR Factsheet*].

221. *Al Shimari v. CACI Premier Tech., Inc.*, 840 F.3d 147, 156 (4th Cir. 2016).

222. *CCR Factsheet*, *supra* note 220.

223. *Abu Ghraib Verdict: Iraqi Torture Survivors Win Landmark Case as Jury Holds Private Contractor CACI Liable*, BUS. & HUM. RTS. RES. CTR. (Nov. 12, 2024), <https://www.business-humanrights.org/en/latest-news/abu-ghraib-verdict-iraqi-torture-survivors-win-landmark-case-as-jury-holds-private-contractor-caci-liable/> [https://perma.cc/N3R4-NWV6]; *Al Shimari v. CACI Premier Tech., Inc.*, No. 1:08-cv-827, Doc. 1814 (E.D. Va. Nov. 12, 2024) (jury verdict).

224. *CCR, Al Shimari*, *supra* note 219.

225. Gómez del Prado, *supra* note 12, at 6 (observing that “The problem of accountability of PMSC personnel becomes even more complex when private military contractors are used by international organizations, such as the U.N., the E.U., or NATO. The concept of institutional responsibility of intergovernmental organizations is still elusive and should prompt the U.N. to take precautionary measures to ensure that if and

prosecutions and civil cases in contracting state legal systems do not fulfill the goals of transitional justice accountability. In other words, the goal must include reestablishing the rule of law in the territorial state where the harms occurred and signaling a public commitment that impunity will not be tolerated within its borders.

Indeed, contracting state prosecutions and civil cases are disconnected from the territorial state's transitional justice mechanisms. This creates challenges for the ability of these complementary mechanisms to function properly, as discussed in the subsequent sections.

B. Truth-Seeking

Truth-seeking mechanisms include truth commissions, commissions of inquiry, fact-finding, and mapping efforts with an aim towards understanding the scope, scale, and causes of harms committed.²²⁶ According to the Office of the United Nations Commissioner for Human Rights, these mechanisms,

[U]ndertake investigations into past serious violations of international human rights and humanitarian law to ensure the victims and their families' right to know the causes and conditions of the violations and the reasons leading to their victimization. They also have the right to know the truth about the identity of the perpetrators and the fate and whereabouts of victims in the event of enforced disappearances.²²⁷

Whether there is a universal legal right to truth under international law—and if so, whether that right is individual or collective—is a complex and heavily debated topic.²²⁸ However, a right to truth exists in some jurisdictions as it concerns certain violations. For example, the individual right to truth for victims of enforced disappearances is enshrined in the internationally binding Convention for the Protection of All Persons from Enforced

when it outsources its security and protection functions, it does so in accordance with its own Charter.”).

226. *Transitional Justice: Truth*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/transitional-justice/truth> [https://perma.cc/EWZ5-EG9K] (last visited July 23, 2025).

227. *Id.*

228. See, e.g., Marloes van Noorloos, *A Critical Reflection on the Right to the Truth about Gross Human Rights Violations*, 21 HUM. RTS. L. REV. 874 (2021); MELANIE KLINKER & HOWARD DAVIS, *THE RIGHT TO THE TRUTH IN INTERNATIONAL LAW: VICTIMS’ RIGHTS IN HUMAN RIGHTS AND INTERNATIONAL CRIMINAL LAW* (2020).

Disappearance,²²⁹ and has been repeatedly recognized by regional courts.²³⁰ The Inter-American Court of Human Rights has recognized both an individual right to truth generally in *Velásquez Rodríguez v. Honduras*²³¹ and a collective right to truth in *Bámaca Velásquez v. Guatemala*, finding “preventive measures and those against recidivism begin by revealing and recognizing the atrocities of the past Society has the right to know the truth regarding such crimes, so as to be capable of preventing them in the future.”²³² The European Court of Human Rights has also acknowledged the right to truth,²³³ and numerous soft law documents, including non-binding United Nations treaty body instruments, guidance documents, and reports reference a right to truth.²³⁴

The current gap in international law on PMSCs sets up a complex situation surrounding the right to truth. Consider, for instance, that PMSC personnel are accused of torture and extrajudicial killings in a territorial state where the relevant regional court has established a right to truth and an obligation of the state to provide that truth. However, if the territorial state has signed an immunity agreement with the contracting state, the territorial state must ignore its obligation to investigate and prosecute to provide truth, or it must break its SOFA.

Practically speaking, truth-seeking mechanisms also “encourage societies to develop and agree upon a shared history or collective memory”—a key aspect of peacebuilding and non-

229. International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, art. 24(2), G.A. Res. A/61/177 (2006).

230. Economic and Social Council, Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening their Domestic Capacity to Combat all Aspects of Impunity, E/CN.4/2004/88, ¶¶ 14–16 (Feb. 27, 2004).

231. *Velásquez Rodríguez v. Honduras*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 (July 29, 1988).

232. *Bámaca Velásquez Case*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶ 77 (Nov. 25, 2000).

233. van Noorloos, *supra* note 228, at 874 (listing cases in which the Court has found a right to truth, including *El-Masri v. the Former Yugoslav Republic of Macedonia*, Application No. 39630/09, Merits and Just Satisfaction, 13 December 2012 (Grand Chamber); *Al Nashiri v. Poland*, App. No. 28761/11, Eur. Ct. H.R. (July 24, 2014); and *Husayn (Abu Zubaydah) v. Poland*, App. No. 7511/13, Eur. Ct. H.R. (July 24, 2014)).

234. See, e.g., G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ¶¶ 22, 24 (Dec. 16, 2005) [hereinafter G.A. Res. 60/147]; G.A. Res. 68/165, Right to the Truth (Jan. 21, 2014).

recurrence of harm—and empower victims to be heard, sharing their experiences in an official forum.²³⁵ For victims to feel comfortable coming forward with their own truth, they must feel safe enough to do so. When perpetrators face no accountability, victims are left with little sense of safety. Even where victims feel able to come forward, attribution and truth-telling remain difficult. The absence of uniform, emblem, and insignia requirements for PMSCs, the potential presence of multiple PMSCs operating in the same context, and the possibility that a PMSC's presence was never publicly known all compound this challenge. Victims may be able to express that they experienced harm, but naming who is responsible for that harm presents a significant hurdle. This is compounded by the difficulties discussed in Section III(B) above related to monitoring and documentation during the conflict itself. Without such reporting, truth-seeking mechanisms cannot identify responsible parties or corroborate and fill gaps in testimonial accounts.

In order to generate a holistic truth, truth-seeking mechanisms also typically engage perpetrators to also give testimony. Such engagement can not only help complete the societal narrative on root causes and enabling factors of harm, but it also provides victims access to the truth, like naming who was responsible for harm to them or their families, the location of remains, and so forth. Truth-seeking mechanisms face an immense barrier in accessing PMSC personnel when those personnel have no legal incentive to engage with a truth-seeking mechanism. Truth operates in the shadow of accountability. Indeed, a primary tool used by truth commissions to encourage perpetrator participation is by granting that perpetrator amnesty or reduced sentencing in exchange for providing the truth.

Truth-seeking can establish a collective, public narrative about what happened in a state, why it happened, who was responsible, and what must be done to prevent it from happening again. Typically, truth-seeking mechanisms also inform the other transitional justice mechanisms in a state, including

235. *Transitional Justice Tools: Truth Seeking*, U.S. HOLOCAUST MEM'L MUSEUM, <https://www.ushmm.org/genocide-prevention/simon-skjodt-center/work/ferencz-international-justice-initiative/transitional-justice/truth-seeking> [https://perma.cc/9G2M-Y8M2] (last visited July 24, 2025).

recommending certain prosecutions,²³⁶ identifying needed reparations programs,²³⁷ and calling for particular institutional reforms.²³⁸ As such, it is critical in a transitional justice process that truth-seeking mechanisms have access to a full range of victims and perpetrators so that the next steps in transitional justice are accurately informed. The obstacles to truth-seeking relating to PMSCs may result in an incomplete truth and marginalization of the victims of PMSCs in the truth-seeking process, outcomes, and subsequent recommendations.

C. Reparations

In transitional justice processes, reparations are both a juridical issue and a political issue, and seek to repair persons for the harm caused by a legal violation, while also aiming to “prevent future victimi[z]ation through addressing underlying structural inequalities that occasioned or escalated the violence.”²³⁹ Reparations programs may include monetary and non-monetary measures that provide redress to victims for the harms they suffered.²⁴⁰ These may include compensation, restitution, rehabilitation, satisfaction, and guarantees of non-recurrence,²⁴¹ and programs often include a combination thereof. The right to reparations for victims derives from a right to an effective remedy and redress for harms. Under international law, while individual perpetrators may be found liable for reparations, it is incumbent upon the state or states that did not prevent the harm from

236. See, e.g., 1 TUNISIA TRUTH & DIGNITY COMM’N, THE FINAL COMPREHENSIVE REPORT ch. 8 (2019) [hereinafter TUNISIA TDC REPORT]; 1 THE GAMBIA TRUTH, RECONCILIATION & REPARATIONS COMM’N, *Compendium Part B: Recommendations For Prosecution*, in FINAL REPORT (2021) [hereinafter THE GAMBIA TRRC REPORT].

237. See, e.g., TUNISIA TDC REPORT, *supra* note 236, ch. 6: *Reparation and Urgent Health Care for Victims*; The Gambia TRRC Report, *supra* note 236, vol. 16: *Reparations & Reconciliation*; 1 SOUTH AFRICA TRUTH AND RECONCILIATION COMM’N, FINAL REPORT ch. 5 ¶ 95, ch. 10 (1998).

238. See, e.g., TUNISIA TDC REPORT, *supra* note 236, vol. 2: *Dismantling the Despotic System*; THE GAMBIA TRRC REPORT, *supra* note 236, vol. 13: *Institutional Hearings: National Intelligence Agency (NIA)*, vol. 14: *Institutional Hearings: The Gambia Prison Services, Institutional Hearings: Justice Sector Entities*.

239. ANDREW SONGA ET AL., REPARATIONS, IN TRANSITIONAL JUSTICE: THEORIES MECHANISMS AND DEBATES 151 (Hakeem O. Yusuf & Hugo van der Merwe eds., 2022).

240. See U.N. *Transitional Justice Guidance Note 2010*, *supra* note 4, ¶ B(3).

241. See *id.* at ¶ B(3); see also G.A. Res. 60/147, *supra* note 234.

occurring to not only enforce any court-ordered reparations but also to provide any needed reparations programs.²⁴²

Many reparations programs are funded by the responsible state itself, often supplemented by international funds; but some are also funded in part by assets seized from perpetrators through civil settlements, or ordered through criminal trials. Victimhood for judicial reparations programs is determined by the applicable international law and domestic law, and thus clarity on what law applies and who can violate which laws is crucial. The qualifications of victimhood for administrative reparations in a particular transitional justice process are typically set forward by the state—often informed by the truth-seeking mechanisms—and may be linked to whoever perpetrated the harms. As such, who qualifies as a perpetrator, what qualifies as a violation of law, and what responsibilities a state has to prevent harm are key to providing comprehensive and adequate reparations programs.

The legal gray area surrounding PMSCs, the resulting lack of accountability, and inadequate truth-seeking all compound to undermine reparations programs in transitional justice contexts where PMSCs operated. Administrative reparations programs are often designed from the outcomes of the truth-seeking process; thus, if harms committed by PMSCs and their personnel are represented less frequently or not at all, it is unlikely that victims will receive adequate reparations, if any. Moreover, judicial reparations require a legal foundation in which victims, perpetrators, and crimes are defined by law. If domestic law is inadequate and international law has gaps, the victims of PMSCs may not have access to remedy and redress through judicial reparations.

Additionally, if territorial states do attempt to include victims of PMSCs in reparations programs, the territorial state will likely have to fully self-fund or be reliant on international funds for these harms because the convoluted, multinational nature of PMSCs will also create challenges for accessing the assets of PMSCs or their individual perpetrator personnel, whether through asset seizure, civil claims, or prosecutions. Furthermore, if the territorial state was also the contracting state, the exact opposite flow of money

242. See SONGA ET AL., *supra* note 239, at 148–49; see also G.A. Res. 60/147, *supra* note 234.

may be happening instead. Sierra Leone illustrates this starkly: even as its woefully underfunded reparations program struggled to function,²⁴³ the state was still paying the departed PMSCs in natural resource concessions.

As with a right to truth, the legal gray area surrounding PMSCs and the lack of legal accountability creates a tension between growing clarity on a right to reparations and what victims of PMSCs are entitled to. As PMSCs become increasingly significant actors in conflicts and perpetrators of abuse, if their victims do not have access to reparations, the customary international law on a right to reparations may begin to erode or become fractured, such that a right to reparations is dependent on who the perpetrator of harm was.

D. Institutional Reforms

The fourth pillar of transitional justice is institutional reforms, as the public institutions of the state in which the abuses occurred “must be transformed into institutions that sustain peace, protect human rights, and foster a culture of respect for the rule of law.”²⁴⁴ Institutional reforms are quite context specific since they depend heavily on what precisely is needed in the state to guarantee non-recurrence and remove perpetrators from power. Institutional reform mechanisms often include vetting and lustration of state officials and personnel, legal and policy reforms, restructuring or redesigning of institutions, training programs for officials and personnel, and, in some instances, new or revised constitutions. Like the other pillars of transitional justice when it comes to PMSCs, institutional reforms similarly suffer from the compounding effects of a legal gray area, the lack of legal accountability and prosecutions, and the inadequate truth-seeking related to PMSCs. Institutional reforms writ large are typically reliant on a robust truth-seeking process: to know what to reform to prevent future harms, states must know what allowed or caused these harms.

243. Fin-Jasper Langmack, *Reparations in Sierra Leone: News from the Periphery of Transitional Justice*, JUST. INFO. (Feb. 3, 2020), <https://www.justiceinfo.net/en/43710-reparations-in-sierra-leone-news-from-the-periphery-of-transitional-justice.html> [https://perma.cc/R26N-L2R4].

244. See U.N. *Transitional Justice Guidance Note 2010*, *supra* note 4, ¶ B(4).

Although each context is different, security sector reform (“SSR”) is almost always needed in a post-conflict context, as the state security forces are often implicated in abuses or, at the very least, had failed to prevent abuses and lost public trust. To be sure, SSR is a crucial mechanism for transitional justice, defined as “the political and technical process of improving state and human security by making security provision, management and oversight more effective and more accountable, within a framework of democratic civilian control, rule of law and respect for human rights.”²⁴⁵ SSR addresses the strategic, organizational, and operational level of state security forces²⁴⁶ to ensure that the forces operate under civilian authority, are trained to abide by domestic and international law, and abuse perpetrators are removed from the ranks. This is particularly relevant in instances where the territorial state is also the contracting state or where the territorial state at least collaborated with PMSCs contracted by another state.

SSR requires robust truth-seeking to inform the efforts needed to guarantee non-recurrence. To illustrate this need, if PMSC personnel and state forces conducted operations in which atrocities took place, it is important to understand precisely how and why those atrocities happened. The reforms required will depend on the nature of the command structure: whether state forces committed atrocities at the direction of the PMSC personnel, whether PMSC personnel alone committed the atrocities, or whether state forces commanded both their own troops and PMSC personnel in a manner that led to atrocities. The first instance may require state force restructuring, training in international and domestic law, leadership training, and potential vetting and lustration of the state forces involved in the incidents. The second may involve legal and policy reforms on the recruitment and licensing of PMSCs, as well as reforms as to how state forces oversee—and intervene in—PMSC activities. The third would likely require vetting and lustration of state force leadership involved in the incidents.

The growing role of PMSCs in training state security forces also presents a unique challenge for SSR. PMSCs may have trained state forces that then committed violations of international or

245. DCAF PMSCs, *supra* note 22, at 2.

246. *Id.* at 3.

domestic law. This may have been due to insufficient or incorrect training, or through purposeful training on strategies that involve committing violations. Robust truth-seeking that involves access to the PMSCs that conducted these trainings would be immensely beneficial to knowing what retraining of state forces is needed. SSR relies heavily on the applicability of international law to security forces, which provides both the foundation for assessing the security sector's compliance and the parameters that security sector personnel must be trained to follow.

A challenge of the legal gap that impacts SSR specifically, and institutional reforms generally, relates to vetting and lustration. Legal accountability through prosecution is itself a powerful tool of vetting and lustration. These prosecutions can both remove perpetrators from power and provide additional information through evidence gathering and testimony regarding the factors that allowed the harms to occur, including the roles played by state security forces and state officials, institutional corruption, and so forth. A gap in legal frameworks related to PMSCs can stymie these efforts.

Additionally, some PMSCs are becoming increasingly involved in state politics, which will have impacts on institutional reforms needed for a post-conflict government. For example, the Wagner Group has been accused of conducting propaganda campaigns and election-rigging in multiple states.²⁴⁷ The scope and scale of PMSC infiltration in a state's governance apparatus and politics must be established through truth-seeking and then addressed through institutional reforms.

Another set of challenges to institutional reforms that PMSCs uniquely present is that PMSCs may have ongoing relationships and interests in the territorial state. For example, if PMSCs were perceived as necessary to assist in state security during the conflict, there may also be a post-conflict gap in the state security apparatus that the state requires additional resources to fill. Territorial states may turn back to PMSCs to aid in post-conflict peacekeeping, state force supplementing, training, and more. In this fragile context as the state attempts to undergo reforms to bring state institutions in alignment with rule of law, it is crucial that the state does, indeed, have clear law to rely upon to know

247. STANYARD, *supra* note 81, at 1.

what PMSCs can and should be used for, what oversight is necessary, and how to hold them accountable if something goes wrong. Without this, a cycle of harm and abuses by PMSCs may repeat itself which would undermine state attempts to regain the trust of society, promote the respect of law, and establish competent state institutions.

In some instances, PMSCs have also entrenched themselves in the economy of territorial states, presenting additional challenges for institutional reforms. Because PMSCs fall within a gap in international law, there is not a limitation on the activities the PMSC can undertake and the manner in which they receive compensation for those activities, unless provided for in domestic law. This may result in the long-term exploitation of low-income territorial states in great need of security assistance but without the monetary means to afford services. In CAR and elsewhere, for example, the Wagner Group often provides services in exchange for states granting its subsidiary companies extraction access to “lucrative natural resources such as gold, gemstones and minerals, oil, natural gas, timber, and other goods.”²⁴⁸ This exchange is not unique to the Wagner Group. Executive Outcomes and Sandline International employed the same model in Sierra Leone and Angola, compensating PMSC services through natural resource concessions.²⁴⁹ Not only are these extractive activities often associated with environmental damage, human rights abuses, and exploitation of fragile and poor economies, but they also present longer-term consequences for institutional reform. The PMSCs will have particular interests in ensuring that reforms do not impact their extraction operations, and the PMSCs may have significant influence in the state’s economy and politics long after the conflict ends and during the transitional justice process. Furthermore, without truth-seeking and accountability, perpetrators of harm may remain in the state with impunity, hampering the ability of the affected populations to regain trust in state institutions or to realize justice and reconciliation.

248. Catrina Doxsee et al., *Central African Republic Mine Displays Stakes for Wagner Group’s Future*, CTR. FOR STRATEGIC AND INT’L STUD. (July 3, 2023), <https://www.csis.org/analysis/central-african-republic-mine-displays-stakes-wagner-groups-future> [https://perma.cc/RA58-2VQZ].

249. BRYANT BUTLER, NATURAL RESOURCES AND PRIVATE MILITARY SECURITY COMPANIES: HOW DO THEY AFFECT CIVIL WAR DURATION? 15 (2019).

The gap in international law addressing PMSCs impacts not only the ability to achieve accountability, but also impacts transitional justice more broadly, with every pillar affected. There is no one-size-fits-all approach to transitional justice and the component parts must be tailored to the context at hand. For example, some states may undertake significant numbers of domestic prosecutions alongside, prior to, or after a truth commission, whereas others may have only a few high-level perpetrator prosecutions done at the domestic, hybrid, or international level and instead trade amnesties in exchange for lower-level perpetrators appearing before a truth commission. Regardless of the sequencing and scope of each transitional justice mechanism in a process, the mechanisms are complementary and typically mutually inform each other. Prosecutions of perpetrators may lead to judicial reparations for victims, truth commission findings may result in recommendations for reparations programs and institutional reforms, the existence of criminal prosecutions may lead to perpetrators being willing to participate in a truth-seeking mechanism for a lesser sentence or amnesty, criminal prosecutions may effectively remove perpetrators from positions of power in institutions, and so forth. If one of the four pillars collapses, the others are less able to function. And, at the heart of each mechanism is a foundation in international law. As such, where the law fails to enable one or more mechanisms to adequately address a category of perpetrators, their victims risk exclusion from the process, and the transitional justice process as a whole is left incomplete.

V. EFFORTS TO EXPAND LEGAL FRAMEWORK

There are ongoing efforts to expand the legal framework to generate accountability for PMSCs and their personnel. Early efforts tended to focus on either promoting state responsibility, advocating for more robust domestic regulations for PMSCs, or encouraging PMSCs themselves to opt into commitments to abide by certain regulations, including respecting international human rights and humanitarian law. These efforts have since expanded and seek a binding international regulatory framework to form a more comprehensive legal foundation for regulating PMSCs that includes standardizing approaches to accountability, rather than a piecemeal state-by-state approach. While the gap in international

law still exists, there is promising momentum towards creating international law to address PMSCs. This section will examine these key international efforts to close the gap in sequence.

*A. Montreux Document and the International
Code of Conduct for Private Security Service Providers*

The two most notable outcomes of early efforts to understand how international law relates to PMSCs and provide parameters for their operation are the 2008 Montreux Document and the 2010 International Code of Conduct for Private Security Service Providers (“the Code”) and its affiliated International Code of Conduct Association (“ICoCA”).²⁵⁰ The Montreux Document both compiles existing legal obligations for states and PMSCs in Part One, and provides a non-binding set of good practices to increase state regulation of PMSCs in Part Two.²⁵¹ The Montreux Document focuses on the three different types of state relationships to PMSCs described above—contracting states, territorial states, and home states²⁵²—and examines obligations that already exist under international law and recommends best practices for each category of state. While Part One includes a summary of obligations for PMSCs themselves, Part Two focuses exclusively on the states themselves when recommending best practices for regulating PMSCs.²⁵³ The Montreux Document also does not include any information targeted at the state of nationality of individual personnel, nor does it include information envisioning a new international legal framework.

The International Code of Conduct for Private Security Service Providers was drafted through a multi-stakeholder Swiss-facilitated process that included states, PMSCs, and civil society organizations, and launched the ICoCA as its member oversight entity.²⁵⁴ The Code reflects the principles of the Montreux

250. See *CIVIC Privatizing War*, *supra* note 20, at 3.

251. See generally MONTREUX DOCUMENT, *supra* note 29.

252. *Id.*

253. MONTREUX DOCUMENT, *supra* note 29, pt. 2.

254. See generally INTERNATIONAL CODE OF CONDUCT FOR PRIVATE SECURITY SERVICE PROVIDERS (as amended Dec. 10, 2021) [hereinafter ICOC]; *The International Code of Conduct for Private Security Service Providers (ICoC)*, PRIV. SEC. GOVERNANCE OBSERVATORY, <https://www.privatesecurityobservatory.org/regulation-and-oversight/international-initiatives/international-code-conduct-private-security-service-providers-icoc.html> [https://perma.cc/L6JX-3HU5] (last visited July 21, 2025).

Document and commitments to international human rights and humanitarian law.²⁵⁵ The ICoCA is an opt-in professional association for PMSCs and members may be investigated by the ICoCA for violations of the Code, though it does not create legal obligations for the signatory companies.²⁵⁶ The United Nations now requires all PMSCs it contracts with to be a member company to the Code.²⁵⁷ Although violations of the Code do not themselves generate grounds for prosecution or resolve the jurisdictional and practical challenges to accountability, a PMSC's deviation from a self-imposed standard of care, such as a committed code of conduct, may give rise to litigation for breach of contract.²⁵⁸ While this may not assist victims in securing recourse, it could assist in providing some accountability if contracting states sue for breach of contract.

*B. Intergovernmental Working Group
on the Use of Mercenaries*

Since 2005, the UN Human Rights Council²⁵⁹ has had an ongoing expert "Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination" ("UN Working Group on Mercenaries").²⁶⁰ This five-member body's mandate—which was most recently renewed for another three years in 2025²⁶¹—monitors, studies, analyzes, and reports to the Human Rights Council on trends in mercenary and PMSC use, activities, and violations in both conflict and non-conflict contexts.²⁶² The use of

255. See generally ICOC, *supra* note 254.

256. *Id.* art. 14; Gómez del Prado, *supra* note 12, at 35.

257. U.N. Dep't of Safety and Sec., *Guidelines on the Use of Armed Security Services from Private Security Companies*, ¶ F(25)(a) (Nov. 8, 2012), <http://www.ohchr.org/Documents/Issues/Mercenaries/WG/StudyPMSC/GuidelinesOnUseOfArmedSecurityServices.pdf> [<https://perma.cc/D9J4-ZGLZ>].

258. Ryngaert, *supra* note 106, at 1039.

259. The UN Working Group on Mercenaries was established by the UN Human Rights Council's predecessor, the UN Commission on Human Rights. Gómez del Prado, *supra* note 12, at 15; *Working Group on the Use of Mercenaries*, U.N. OFF. FF THE HIGH COMM'R FOR HUM. RTS., <https://www.ohchr.org/en/special-procedures/wg-mercenaries> [<https://perma.cc/T44G-BE64>] (last visited July 23, 2025) [hereinafter *UNHCR WG on Mercenaries General Information*].

260. *UNHCR WG on Mercenaries General Information*, *supra* note 259.

261. *Id.*

262. *Id.*

the term “mercenary” in the title of the UN Working Group on Mercenaries may be a holdover from its predecessor entity, the “Special Rapporteur on the use of mercenaries” which ran from 1987 to 2005.²⁶³ Though “mercenary” is in its title, the UN Working Group on Mercenaries, in practice, focuses in large part on PMSCs that do not legally qualify as mercenaries.²⁶⁴

In 2010, the UN Working Group on Mercenaries issued two reports recommending the development of a legally binding instrument on PMSCs and “principles and main elements as well as a text for a possible International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies.”²⁶⁵ The draft text itself was met with controversy in the UN Human Rights Council, as well as the European Union, United Kingdom, and United States, with some questioning whether a working group in this Council was the appropriate body to draft such a document.²⁶⁶ However, thirty-two member states then voted in favor of establishing an intergovernmental working group to create a legally binding convention on PMSCs.²⁶⁷ This thus established the first international working group on the topic, which was replaced by a second iteration in 2017.

C. Intergovernmental Working Group on PMSCs and a Draft Regulatory Framework

In 2017, the Human Rights Council established a new “Open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies” (“OEIGWG on PMSCs”).²⁶⁸ The initial period of

263. *Id.*

264. *See, e.g.*, Rep. of the Working Grp. on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, U.N. Doc. A/HRC/51/25 (July 5, 2022); Rep. of the Working Grp. on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, U.N. Doc. A/HRC/48/51 (July 2, 2021); Rep. of the Working Grp. on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, U.N. Doc. A/HRC/45/9 (July 9, 2020).

265. Gómez del Prado, *supra* note 12, at 2–3, 44.

266. *See id.* at 52–57.

267. *Id.* at 58–59.

268. U.N. HUM. RTS. COUNCIL, *Open-ended Intergovernmental Working Group to Elaborate the Content of an International Regulatory Framework, without Prejudging the*

the OEIGWG on PMSCs was three years,²⁶⁹ and it has since been renewed twice.²⁷⁰ Although the European Union, United Kingdom, and United States expressed initial hesitance against the original draft of such an instrument by the UN Working Group on Mercenaries and the process being within the UN Human Rights Council, all three have been active participants in the drafting negotiations.

The sixth session of the OEIGWG on PMSCs took place from April 7 to April 9, 2025 at the Palais des Nations, where members negotiated using the fourth working draft of an “Instrument on an International Regulatory Framework on the Regulation, Monitoring of and Oversight Over the Activities of Private Military and Security Companies” (“Draft Regulatory Framework”).²⁷¹ The fourth version of the Draft Regulatory Framework draws from the Montreux Document as well as the draft text proposed by the UN Working Group on Mercenaries, but expands the scope of the actors addressed and provides both explicit obligations, restrictions, and prohibitions on PMSCs.

This process runs parallel to the “Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights” (“OEIGWG on BHR”).²⁷² The OEIGWG on PMSCs seems to have garnered less notice by the public than the OEIGWG on BHR.²⁷³ As

Nature thereof, Relating to the Activities of Private Military and Security Companies, <https://www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index1> [<https://perma.cc/33DU-4ZA2>] (last visited July 21, 2025) [hereinafter *UNHRC WG on PMSC Framework*]; Human Rights Council Res. 36/11, U.N. Doc. A/HRC/RES/36/11 (Oct. 9, 2017) [hereinafter H.R.C. Res. 36/11].

269. H.R.C. Res. 36/11, *supra* note 268, ¶ 1.

270. *UNHRC WG on PMSC Framework*, *supra* note 268.

271. *See id.*; *see also* Open-ended Intergovernmental Working Group to Elaborate the Content of an International Regulatory Framework, without Prejudging the Nature thereof, Relating to the Activities of Private Military and Security Companies, Instrument on an International Regulatory Framework on the Regulation, Monitoring of and Oversight Over the Activities of Private Military and Security Companies (Mar. 5, 2025), <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-military/session6/IGWG-PMSCs-Revised-fourth-draft-PMSCs-clean-version-copy.pdf> [<https://perma.cc/VXV3-Q2P7>] [hereinafter *Draft Regulatory Framework*].

272. U.N. HUM. RTS. COUNCIL, *Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights*, <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc> [<https://perma.cc/6ML8-AYDT>] (last visited July 21, 2025).

273. Aparac, *PMSC Treaty*, *supra* note 156.

noted by Jelena Aparac, former Chair of the Working Group on Mercenaries, although PMSCs have been typically excluded from the BHR agenda, “PMSC-related initiatives form a ‘*lex specialis*’ of BHR instruments.”²⁷⁴ The Draft Regulatory Framework seems to move in the direction of connecting PMSCs to BHR, referencing the principles of BHR and seeking to align the regulation of PMSCs with efforts to regulate businesses more generally. Even in the preamble of the document it recalls the “responsibility of businesses to respect International Human Rights Law, International Humanitarian Law and International Criminal Law and relevant legal obligations of such businesses and individual personnel under national and international law.”²⁷⁵ This indicates that the OEIGWG on PMSCs seeks not only to regulate state behavior and the conduct of individual PMSC personnel, but also to expand the obligations of PMSCs as corporate entities. It is possible that the resulting convention should be read in conversation with a resulting convention from the OEIGWG on BHR, but it is too soon to know how the instruments will ultimately relate to each other.

Though it does still have some notable gaps and will face significant challenges in state ratification, the Draft Regulatory Framework would be a significant step towards closing the gap in international law for PMSCs and their personnel. It includes important provisions that, in addition to creating a foundation for prosecutions, could assist other transitional mechanisms in their functions. This section will proceed with analyzing the Draft Regulatory Framework through a transitional justice lens, with the caveat that these provisions are still under negotiation and the text, though quoted here, is unlikely to remain stagnant.

The Draft Regulatory Framework takes significant steps in closing the gap in international law on PMSCs, making it clear in multiple places that PMSCs and their personnel can be held responsible for any violations of international human rights and humanitarian law, not only atrocity crimes.²⁷⁶ The draft also calls for investigation and prosecution by all states if PMSCs, their personnel, their sub-contractors, or their clients commit violations²⁷⁷ by criminalizing such violations in states’ domestic

274. *See id.*; *see also* VAN DER LUGT, *supra* note 8, at 13.

275. Draft Regulatory Framework, *supra* note 271, pmb. ¶ 5; *see id.* ¶¶ 14–15.

276. *See id.* arts. 1(i), 2(c), 4(3).

277. *Id.* art. 2(c).

laws.²⁷⁸ Crucially, the Draft Regulatory Framework also defines a list of prohibited activities that states cannot outsource to PMSCs under any circumstance. Article 1(f) describes such prohibited activities as:

[I]ncluding but not limited to, conducting and engaging in combat operations, taking prisoners and the interrogation of detainees or otherwise involving the treatment of persons deprived of liberty, law making, the use of, and other activities relating to, weapons of mass destruction, and any activity that International Humanitarian Law explicitly assigns to a State agent or authority or that would result in their participation in acts of aggression or other activities prohibited under the United Nations Charter.²⁷⁹

Notably, the list of prohibited activities is significantly more limited than the prohibitions proposed by the UN Working Group on Mercenaries in 2010, which included activities such as intelligence, security and policing, and knowledge transfer with military.²⁸⁰ Although the prohibited activities could be more robust, the Draft Regulatory Framework as it currently stands reflects years of negotiations between states, and could provide a clear set of restrictions.

This list of prohibited activities appears directly responsive to the most widely reported PMSC violations of international human rights and humanitarian law, and would significantly narrow the scope of services PMSCs may legally provide to states. On its face, this would allow for increased oversight of PMSCs by contracting and territorial states. PMSCs would be limited in their ability to operate independently, and those documenting PMSC violations would be working with the clarity of at least a few bright lines. For example, if a PMSC is conducting combat activities or engaging with detainees, something has already gone wrong and warrants investigations.

Interestingly, the current Draft Regulatory Framework stops short of saying that the prohibited activities in Article 1(f) must also be criminalized in domestic law. Instead, Article 2(e) notes disputed language in the draft, providing that an objective of the instrument is to “[urge to] prohibit Private Military and Security

278. *Id.* arts. 4(3), 13(1).

279. *Id.* art. 1(f).

280. Gómez del Prado, *supra* note 12, annex 1, art. 2; *see also id.* at 50.

Companies, their personnel and their sub-contractors, in view of the State monopoly on the use of force, from engaging in activities as defined in Paragraph/Article 1(f).” Should the OEIGWG on PMSCs opt to include “urge to” rather than simply “prohibit,” the ability to hold PMSCs accountable for violating the prohibited activities would be unclear. Instead, the fault would be solely held by the state that contracted those activities.²⁸¹ If no state contracted the activities and the PMSC undertook them at the behest of a non-state armed group, international organization, other actor—or entirely of its own volition—it is uncertain who could be held accountable. This minor shift in language could change the meaning of the text from prohibiting PMSCs from undertaking those activities, to only prohibiting states from contracting PMSCs to undertake those activities.

The Draft Regulatory Framework does make clear that territorial states “should determine which services may or may not be performed by Private Military and Security Companies within their respective jurisdictions”²⁸² allowing a higher threshold of criminalized activities. It also provides that home states “[shall] may, in addition to the activities defined under Paragraph/Article 1(f), determine in their domestic law, which military and security services cannot be exported and criminali[z]e the export of such services.”²⁸³ The difference in choice between “shall” and “may” will bear strongly on the prohibitions. The clear criminalization of prohibited activities is important not only for understanding when an international convention has been violated and which actors can be held responsible for that violation, but also for reasons of extradition.

Another significant step taken by the Draft Regulatory Framework is providing additional defined roles in the landscape of PMSCs. The Draft Regulatory Framework defines the “state of nationality” for PMSC personnel and includes an obligation for states of nationality to not only adopt or strengthen domestic laws that regulate their nationals joining PMSCs, but also ensure that they “prohibit their nationals to engage in any activity that is prohibited by this Instrument.”²⁸⁴ Such provisions could open the

281. Draft Regulatory Framework, *supra* note 271, art. 6(b).

282. *Id.* art. 7(1).

283. *Id.* art. 8(1).

284. *Id.* arts. 1(g), 9.

door to accountability where a PMSC employee returns to their state of nationality after perpetrating a crime, even where that state is neither the PMSC's home state, the contracting state, nor the territorial state in which the PMSC operated.

The Draft Regulatory Framework includes broad provisions on mutual legal assistance, extradition, and surrender.²⁸⁵ It requires states to provide for mutual legal assistance in the investigation and prosecution of violations contained in Article 4(3)²⁸⁶ and, consistent with the terms of their domestic law and extradition treaties, to extradite or surrender perpetrators suspected of violations contained in Article 4(3) to a "[s]tate or international criminal tribunal having jurisdiction over such crime."²⁸⁷ Article 4(3) discusses the application of both international human rights and humanitarian law to PMSCs and their personnel and stipulates that PMSCs, their personnel, and their subcontractors, must be held responsible for violations. It does not include the prohibited activities discussed in Article 1(f). Because of the dual criminality standards in many modern extradition treaties, the Draft Regulatory Framework would assist in PMSC personnel being extradited—including to a territorial state for purposes of transitional justice—if accused of violations of human rights or humanitarian law. However, the Draft Regulatory Framework does not make clear whether they could be extradited for only violations of Article 1(f)'s prohibited activities, in the absence of violations of human rights or humanitarian law. This also reflects the broader debate over whether Article 1(f) is intended primarily to restrict contracting states or to impose obligations directly on PMSCs.

While explicit criminalization of Article 1(f) activities would significantly strengthen accountability, even resolving the ambiguity surrounding PMSCs' capacity to violate international human rights and humanitarian law represents a substantial step forward. Moreover, doing so through an international convention that would require these violations to be folded into extradition treaties not only assists with accountability generally, but also with transitional justice, as territorial states seek to gain access to

285. *Id.* art. 14.

286. *Id.* art. 14(1).

287. *Id.* art. 14(2).

perpetrators to conduct prosecutions domestically or in collaboration with hybrid or international courts.

An unsettled question regarding extradition, however, relates to what territorial states can and cannot offer accused perpetrators who are extradited into their custody. For instance, territorial states undergoing a transitional justice process may have an interest in offering amnesty or reduced sentences in exchange for truth and apology in front of a truth commission or they may want to offer a diversion into a reparations-providing civil process. However, extradition treaties may include rules of specialty and other strict terms, requiring the receiving state to prosecute on specific charges or in a specific manner. To better enable the functioning of transitional justice in a territorial state, the Draft Regulatory Framework could include an acknowledgement in its extradition-related language that a receiving territorial state may have transitional justice interests, and that accused PMSC perpetrators extradited to a territorial state should either be prosecuted for the alleged violations or otherwise participate in the transitional justice process of the territorial state. This could be framed as being at the discretion of the territorial state or through negotiated agreement on a case-by-case basis between the territorial state and the requested state.

Jurisdiction is described in the Draft Regulatory Framework broadly, including home states, territorial states, or when a national of a state is involved as perpetrator or victim.²⁸⁸ Interestingly, the jurisdiction section does not explicitly include contracting states, and instead seems to shift the primary jurisdiction to home states and territorial states, with contracting states only included insofar as all state parties to the convention have a responsibility to ensure accountability.²⁸⁹ This view of jurisdiction is a shift away from the current default, in which contracting states are most likely to be the venue in which accountability for PMSCs is pursued. Because transitional justice would prefer prosecutions take place primarily in the territorial state,²⁹⁰ this would be a marked improvement for shifting more

288. *Id.* art. 10.

289. *Id.* art. 4(3).

290. Leveraging international and hybrid courts for prosecutions is considered the prerogative of a territorial state in a transitional justice process. If a territorial state decides to co-establish a hybrid tribunal or defer to international courts to take on some

prosecutions to the territorial state—thus promoting the ability of victims to access proceedings, reestablishing rule of law and trust in state institutions, opening the possibility of coordinating with truth-seeking mechanisms, allowing prosecutions to inform institutional reforms, and so forth.

A subsequent provision on immunity agreements, however, may negate this positive shift. The Draft Regulatory Framework seems to seek to address the impunity generated by some SOFAs by prohibiting immunity from prosecution for PMSCs and “their personnel or their contractors for crimes committed anywhere they operate” but provides the caveat “except for the purpose of the effective prosecution of perpetrators.”²⁹¹ This caveat could easily leave the door open to PMSC immunity in SOFAs if the contracting state argues, for instance, that the territorial state’s weak judicial system during the conflict would prevent effective prosecutions. Such a SOFA provision for immunity for PMSCs due to an inability of the territorial state to effectively prosecute during the conflict could continue to restrict the ability of the territorial state to pursue accountability even after peace is reached, institutional reforms in the legal system have taken place, and transitional justice is underway. While due process and fair trial standards are certainly crucial, this should be a matter for the already existing provisions in extradition treaties to address. Indeed, extradition treaties typically allow a state to deny extradition if the receiving state is likely to violate certain standards of due process and fair treatment.²⁹² The current caveat only serves as a way for contracting states to retain blanket immunity agreements for PMSCs, preemptively restricting a territorial state from prosecutions writ large, whereas refusals to extradite can happen on a case-by-case basis.

or all prosecutions instead of doing so only domestically, that does not negate a commitment, but rather can show the state cooperating with the broader international community to prevent impunity. There are certainly arguments against hybrid or international prosecutions, including that they often are less accessible to the impacted population. However, they are certainly more accessible than prosecutions that the territorial state and its population are not involved in at all and are conducted under another state’s laws.

291. Draft Regulatory Framework, *supra* note 271, art. 13(2).

292. See *Extradition*, U.N. OFF. ON DRUGS AND CRIME, <https://www.unodc.org/cld/pt/education/tertiary/organized-crime/module-11/key-issues/extradition.html> [<https://perma.cc/YN9W-XSPC>] (last visited Aug. 14, 2026).

The Draft Regulatory Framework also makes strides towards recognizing victims' rights, which will be a benefit to transitional justice processes. The Draft Regulatory Framework defines "victims" broadly to include individuals, their families, and their dependents harmed directly or indirectly by PMSC violations of international human rights and humanitarian law.²⁹³ It further identifies as an objective providing victims with "access to justice and effective avenues of reparation and remedy."²⁹⁴ Under the Draft Regulatory Framework, the contracting state has an obligation to ensure that contracts with PMSCs include "clear provisions on due diligence, access to justice, effective remedies and comprehensive assistance to victims"²⁹⁵ and all territorial states and states with jurisdiction have an obligation to ensure victims have "effective access to justice, adequate, effective, prompt and appropriate child-friendly and gender-responsive access to [request] a remedy and adequate, effective and prompt reparations."²⁹⁶ Importantly, the Draft Regulatory Framework also provides that "[a] person shall be considered a victim regardless of whether the perpetrator of such abuses and violations is identified, apprehended, prosecuted or convicted."²⁹⁷ This mirrors the language of the UN Basic Principles and Guidelines on the Right to Remedy and Reparation.²⁹⁸ These provisions are all crucial to ensuring PMSC victims have a strong basis for the right to reparation in transitional justice processes, as the Draft Regulatory Framework would make clear that the victims of PMSCs are entitled to reparations under international law. Moreover, given the practical challenges in identifying, accessing, and prosecuting PMSC perpetrators, the mirrored language that does not tie victimhood status to the status of the perpetrator will ensure that PMSC victims' rights are not undermined.

The vehicle for providing such reparations would remain challenging, as funding for reparations is always difficult, particularly for territorial states emerging from conflict. A unique option to assist in this hurdle is found in the good practices

293. Draft Regulatory Framework, *supra* note 271, art. 1(i).

294. *Id.* art. 2(d).

295. *Id.* art. 6(d).

296. *Id.* art. 12(1).

297. *Id.* art. 1(i).

298. G.A. Res. 60/147, *supra* note 234, ¶ 9.

provided in the Montreux Document, which encourages territorial states to require all PMSCs present in the state “to post a bond that would be forfeited in case of misconduct or non-compliance with the authorization, provided that the PMSC has a fair opportunity to rebut allegations and address problems.”²⁹⁹ Integrating this type of provision into the Draft Regulatory Framework could greatly assist in ensuring access to reparations funding and leveraging PMSC perpetrator assets while avoiding some of the complexities of civil claims against multinational corporations.

The Draft Regulatory Framework creates obligations for all states on the licensing and registration of PMSCs as well as the recruitment, operation, export, and import of PMSCs, to include assurances of appropriate PMSC vetting, due diligence, compliance with international law, and monitoring requirements, among others.³⁰⁰ While placing these requirements on all states with relationships to PMSCs is a positive step, leaving enforcement exclusively to individual states leaves open a significant concern: PMSCs are often multinational companies with numerous subsidiaries that may fluidly restructure, change registration, or fold specific subsidiaries to evade accountability. There are no provisions in the Draft Regulatory Framework, as it currently stands, that recognize the multinational nature of PMSCs. While broader regulation of multinational companies falls outside the scope of this Article, the Draft Regulatory Framework could close a significant loophole by requiring that to obtain licenses and register with relevant authorities, PMSCs must disclose their subsidiaries, affiliated companies, and prior formations. The Draft Regulatory Framework could also require PMSCs to register with a dedicated international monitoring body, though this would necessitate either establishing such a body or expanding the mandate of the joint monitoring mechanism that the Framework already envisions.

Extremely importantly for transitional justice efforts, the Draft Regulatory Framework would require states to ensure that, in order to qualify for registration or a license, PMSCs must have “clear identification of their personnel by means of distinctive

299. MONTREUX DOCUMENT, *supra* note 29, part 2 § B art. III ¶ 41.

300. Draft Regulatory Framework, *supra* note 271, art. 5.

uniforms, emblems, and insignia.”³⁰¹ This provision appears to apply to home states, territorial states, and contracting states given its placement in the section that governs the requirements of states to “establish an effective registration and licensing system/mechanism in their domestic law governing the recruitment, operation, export and import” of PMSCs,³⁰² but explicit clarification that all three are bound by it would be a welcome addition. This identification requirement meaningfully improves on both current practice, which imposes no requirement for outward identification, and the Montreux Document, which merely calls for PMSCs to be identifiable “where mission and context allow” or to carry an identification card that can be shown upon demand.³⁰³ As discussed, the lack of clear PMSC identification is an immense challenge for truth-seeking as well as prosecution, reparations, and institutional reforms. Even stronger language could be included that criminalizes PMSCs from performing services without wearing their distinctive uniforms, emblems, and insignia.

The Draft Regulatory Framework’s section on interstate cooperation represents another significant step toward both legal accountability and the broader facilitation of transitional justice. This section would require state parties to establish a “National Point of Contact or other authority for the collection, analysis and exchange of information” on PMSCs, any sub-contractors providing services, and “possible violations of national and international law provided for in this Instrument.”³⁰⁴ Additionally, this section calls for the establishment of joint monitoring mechanisms that state parties would report to on a biannual basis, and that would disseminate all reports to its membership.³⁰⁵ Such structured information-sharing may assist in alleviating some of the knowledge gaps and asymmetries on PMSC activities, and allow for more clear lines of communication between contracting states, home states, territorial states, and states of nationality. The Draft Regulatory Framework does not, however, indicate that non-state actors could also submit reports to the joint monitoring

301. *Id.* art. 5(2)(j).

302. *Id.* art. 5(2).

303. MONTREUX DOCUMENT, *supra* note 29, part 2 § A art. III ¶ 16.

304. Draft Regulatory Framework, *supra* note 271, art. 15(1).

305. *Id.* art. 15(3).

mechanism, meaning that the reporting would be solely reliant on each state in the network doing its own monitoring—and doing so effectively and honestly. Including reporting from non-state actors—such as civil society organizations, non-governmental organizations, international organizations, university researchers, and more—could create a more complete account of violations and perpetrators. Moreover, the structure and mandate of a joint monitoring mechanism could be expanded to allow it to undertake its own investigations and reporting. An active joint monitoring mechanism with multiple streams of information coming in could be of great assistance in providing a post-conflict transitional justice process with monitoring reports and documentation collected from a variety of sources.

The enhanced ability to conduct prosecutions and truth-seeking, and the foundational international law that the Draft Regulatory Framework would provide, will assist with institutional reforms in a transitional justice process. But an additional unique step that would have a high impact would be including a prohibition on PMSCs or their subsidiaries from being compensated in natural resource concessions. Such a provision would be directly responsive to the increasingly complex situations in which PMSCs or their affiliates have exerted significant economic influence over the state's economy and politics post-conflict. Even in the absence of such a provision, clear legal standards for PMSC conduct, combined with the increased ability to conduct effective prosecution and truth-seeking, would support institutional reform independence.

In sum, the Draft Regulatory Framework does have provisions that require further clarity and needs additional provisions to better bolster all four pillars of transitional justice, and it does fall short in truly centering the interests of territorial states and their populations as they navigate a post-conflict transitional justice process. However, the Draft Regulatory Framework even as it currently stands would do substantial work in addressing the primary challenge for transitional justice in contexts where PMSCs operate: closing the gap in international law on PMSCs.

VI. CONCLUSION

“When your house burns and you shout: ‘Fire! Fire!’ you don’t care if the water you are given is sweet or salty. All you care about

is that it extinguishes the flames.”³⁰⁶ Victor Bissekoin, Governor of Ouaka in CAR, expressed this sentiment in December 2023 in reference to the Wagner Group and Russia.³⁰⁷ And this sentiment captures why PMSCs are here to stay. When states are in need of supplementary forces, whether due to financial, structural, or political reasons, they are going to turn to soldiers for hire, as many have throughout history. PMSCs are the latest permutation in a long lineage of private actors in conflicts. Nevertheless, PMSCs are unique both in their structure as companies and in their existence at a time when the world is increasingly seeking to establish and protect rights and prevent harms and abuses through international law. Indeed, PMSCs are nimble enough to identify a gap in international law and stay in it, obfuscating accountability and operating with impunity. And some of their contracting states have supported this impunity. However, with increasing international focus on limitations during conflict and on the way in which societies heal after conflict, transitional justice has risen as a global norm with associated rights for victims and obligations for states.

The gap in international law that results in a legal gray zone and thus impunity for PMSCs and their individual personnel risks undermining transitional justice as PMSCs become increasingly prolific actors in conflict and perpetrators of harm. This gap must be closed through the design of an international convention that not only enables prosecutions generally, but supports all four pillars of transitional justice in the territorial state where harms occurred.

306. Yemisi Adegoke, *Why Wagner is winning hearts in the Central African Republic*, BBC (Dec. 10, 2023), <https://www.bbc.com/news/world-africa-67625139> [<https://perma.cc/A8ST-SM25>].

307. *Id.*