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YASMIN DE OLIVEIRA GUEDES

The absence of a specific international regulation on private military and security companies and its impacts

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Dissertação apresentada ao Programa de Pós-Graduação em Relações Internacionais do Instituto de Relações Internacionais da Universidade de São Paulo, para a obtenção do título de Mestre em Ciências.

Orientador: Prof. Dr. Leandro Piquet Carneiro

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To my mother, Vânia, who has always supported me through my studies.

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ABSTRACT

A lot has been debated about private security over the past decades, particularly regarding private military and security companies and their regulation. Even though they are not directly mentioned in any international documents on the subject, there is somehow a consensus that PMSCs must abide by humanitarian norms. However, the field still lacks a detailed and systematic description of the most relevant documents concerning PMSCs and humanitarian and human rights laws: the Montreux Document, the International Code of Conduct for Private Security Providers and the draft of a possible Convention on Private Military and Security Companies. This dissertation thus provides this definition and analyses the existing limitations on regulation and oversight derived from the absence of a specific regulation and the documents presented.

Keywords: Humanitarian Rights. Private Military and Security Companies. Montreux Document. ICoC.

RESUMO

Muito tem-se debatido a respeito de segurança privada nas últimas décadas, particularmente sobre empresas militares e de segurança privada e sua regulação. Mesmo não sendo diretamente mencionadas em documentos internacionais sobre o assunto, existe um consenso de que essas empresas deve respeitar as normas humanitárias. No entanto, o campo ainda não conta com uma descrição detalhada e sistemática dos documentos mais relevantes sobre empresas militares e de segurança privada e normas de direitos humanos e humanitários, como o Documento de Montreux, o Código Internacional de Conduta para Prestadores de Serviços de Segurança Privada e o rascunho de uma possível Convenção sobre Empresas Militares e de Segurança Privada. O objetivo dessa dissertação, então, é fornecer essa definição e analisar as limitações na regulamentação e acompanhamento derivadas da ausência de uma legislação específica sobre o assunto e dos documentos apresentados.

Palavras-chave: Direito Humanitário. Empresas Militares e de Segurança Privada. Documento de Montreux. ICoC.

LIST OF TABLES

LIST OF ABBREVIATIONS AND ACRONYMS

ICC – International Criminal Court

ICoC – International Code of Conduct for Private Security Providers

ICoCA – International Code of Conduct Association

IHL – International Humanitarian Law

IO – International Organizations

NGO – Non-governmental organizations

NPM – New Public Management

PMSCs – Private Military and Security Companies

PSED – Private Security Events Database

UN – United Nations

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1 INTRODUCTION

This study aims at studying the international documents related to private military and security companies (PMSCs) regarding humanitarian and human rights. Although there has been some debate on the subject, a detailed analysis of the existent bibliography indicated that no study with a comprehensive description and analysis of all the pertinent documents had been done up until this moment. My main goal with this study is thus to fill this gap and do the groundwork to serve as a basis for future researches.

In order for this detailed description to make sense, one must first understand what private military and security companies are. They are generally understood as companies that provide services that were once performed by states and their Armed Forces. PMSCs offer a wide variety of services: logistic, intelligence gathering, training and even, in some cases, the actual deployment of personnel.

A very important consequence of the outsourcing to PMSCs, particularly by states, is that when one outsources a service, it does not develop its own abilities. This means that states and their Armed Forces are not developing their own capabilities when they outsource some of the services, which may lead to deeper implications then usually thought. If states will no longer be able to perform certain functions in the future because they are not taking the measures to develop their abilities in the present, one thing that must be taken into account then is how we can make sure these private companies abide by the same norms states themselves must abide.

PMSCs then achieved a new proportion never seen before over the last years. PMSCs are now part of big enterprises – some are even public-held by shareholders. They are a phenomenon that has come to stay and that have a great impact on how we view politics in general. Even with their importance and proportion, PMSCs are not mentioned in any international treaty regarding humanitarian and human rights norms – not even the Geneva Conventions. Because of these, some argue that they operate in a legal vacuum. This is misleading: even if they are not directly mentioned in any treaty, there are norms and laws by which they must abide.

Even so, saying PMSCs do not operate in a legal vacuum and broadly defending that they should abide by humanitarian norms are two different things from actually specifying how that should be accomplished – and how this inclusion must actually take place in reality. It was in this context that the Montreux Document emerged in 2008 and started the movement of

defining how this relationship is regarding the already existing norms of human and humanitarian laws and what States' responsibilities are towards them.

Another side of the same initiative was the International Code of Conduct for Private Security Providers. It was a self-regulation document adopted by some of the companies and other supporters. Whereas the Montreux Document is focused on states, the code lies its focus solemnly on PMSCs, stablishing good practices and a certification mechanism for companies which choose to go through the process. The last document presented is the draft of a possible Convention on Private Military and Security Companies, which, however innovative and important it may have been, it has never fully achieved its potential because it has never become more than a draft.

One of this dissertation's conclusions is there is a great deal of limitations in the current legal framework due to how it is structured. While there are three main international documents on the subject, two of them, the Montreux Document and the draft Convention, focus mainly on states, leaving little to no agency left for the companies themselves. Besides, two of the documents presented, the Montreux Document and the International Code of Conduct (the ones which have actually been adopted by international actors given that the draft Convention has never been adopted), are purely recommendatory and create no legal obligations whatsoever for those who show their support.

Based on what was presented, one of the main contributions this work has to offer then is serving as a basis for this further development of the legal framework revolving around PMSCs and humanitarian and human rights by identifying its main limitations and rooms for improvement. Even though I do not seek to provide an alternative to the current structure at this moment, this work seeks to fill an existing gap regarding the description and analysis of the most important documents in the subject so that this alternative can be better developed in future works – either conducted by me or other scholars. Without a deep understanding of the current state of things, it is not possible to build on it in order to create a better framework – and thus, a better reality.

To achieve this goal, the current dissertation is divided into four chapters, not including this introduction and the final conclusions. In the first chapter, I explain methodological issues: which method was used, how the authors and statistical data presented in the following chapters were selected; and why the three international documents were chosen. It is worth noting at this moment that this work is strictly based on qualitative methodology, even if it does mention some quantitative data at some points – this is used more as a means of illustration of the PMSC phenomenon than anything else.

The other chapters follow the logic used in this introduction. The second chapter is concerned with the description of PMSCs: what they are; the services they provide; how they came to be what they are today; their clients; and other important information in order for the reader to be able to fully understand the impact of this research. The third chapter is about the legal issues: authors which discuss the matter of the existence or not of a legal vacuum are mentioned and the three international documents selected are describe in full detail. In the fourth and last chapter, I discuss the limits and implications of the current structure presented in the previous chapters.

2 METHODOLOGY

Before we start the discussion, it is necessary to explain how this research was structured: how data was collected, how the authors were chosen, how international documents were selected. It is worth noting that though this work mention some statiscal data, it is mainly based on qualitative methodologies.

When statistical data was used, it was not a primary one. Due to budget constraints as well as time limitations, statistical data was not directly collected by the author. I thus turned to already available datasets on the subject – which by its turn sets some other limitations to the research. Finding data on the matter is not an easy task – PMSCs are, after all, private entities and they protect their information quite well. Their contracts, for instance, are not subject to public eye scrutiny – precisely because they are private. Even if the process of finding information on the subject vert often led to dead-ends because of the highly-private characteristic of the matter, it is worth noting this does not mean the subject is not relevant or important – as put by King, Keohane and Verba (1994), "an important topic is worth studying even if very little information is available" (KING et al., 1994, p. 06).

During this data-seeking step, some datasets were found. The first was the Uppsala Data Conflict Program[1], which provides an interesting overview of conflicts that occurred between 1975 and 2019. Developed by the Uppsala University, it is over 40 years old and is one of the world's main provider of data on organized violence and armed conflicts (DEPARTMENT…, 2021). The information provided by the Uppsala University is quite interesting and relevant – nevertheless, it does not concern private military and security events *per se*.

Then there is also the Data on Armed Conflict and Security Project (DACS). It was a project initiated and the umbrella of another project: the Control of Violence in Civil Wars. Founded by the German Science Society, the DACS' dataset "compiles and analyzes spatially and temporally disaggregated data on the use of violence in the context of civil wars in Sub-Sahara-Africa, starting with the end of the cold war until 2009" (DACS, s/d, s/p). It thus does not deal specifically with private security events, which made the data unfit for the purposes of this work.

And then there also the two initiatives selected for this paper: the Private Security Events Database (PSED) and the Shock Monitor. Any statistical data presented throughout this paper is taken mainly from these two databases. Both were chosen because it is this author's belief

[1] Data can be found on this link: https://ucdp.uu.se/?id=1&id=1.

that they help capture the dimension PMSCs have gained throughout the years and that their data help paint a picture of the situation describe in this work.

As briefly mentioned in the introduction, the PSED is an initiative taken by the University of Denver in the United States. It is a project whose goal is to help policy makers and scholars to better understand the relationship among what they identify as private security providers, conflict and human rights abuses (PSED, s/db).

They collect data on what they call private security events. A private security event "is defined as a newsworthy action, activity or outcome in which one or more private security providers were involved" (PSED, s/db, s/p). These events usually took place in discrete locations through discrete periods of time (often days). Private security providers, on the other hand, are identified as "vendors that deliver services intended to manage violence" (PSED, s/db, s/p).

It also worth noting, however, that the database focuses solemnly on events that took place in Africa, Latin America and Southeast Asia from 1990 to 2012[2]. Another limitation is the fact that data is collected through news reports – and so the database only comprises events that were actually reported in the media.

Shock Monitor, on the other hand, seeks to document the evolution of private war and its impact on human rights. It is coordinated by the International Institute for Nonviolent Action (NOVACT) (SHOCK MONITOR, s/db), created "through the collective effort of those active in international civil society" in order "to contribute to a peaceful, just and dignified world" (NOVACT, 2021, s/p).

Their data research process is

> based on collecting factual data of PMSCs and their impact through different sources of published data such as testimonies from people and communities affected by PMSCs' operations, official investigations by governmental or international bodies, judicial decisions, news agencies, reports from human rights organizations and oversight bodies, amongst others (SHOCK MONITOR, s/db, s/p).

It is also important to say that this data is referent only to events that took place in the 21st century because they consider that, even though PMSCs date from the previous century, PMSCs only acquired their contemporary dimensions after the September 2001. That being said, any allegation of human rights violations is individually checked because there is "1) a minimum of three different informational sources on a given impact; 2) one of the sources of

[2] According to the information available on their website, data until 2016 is currently being analyzed.

the impact is an official investigation carried out by a governmental or international body; 3) there is an subsequent judicial process regarding the incident." (SHOCK MONITOR, s/db, s/p).

Another source of information was the work that has already been done by scholars in the field. The reading process started with some of classic authors, such as Singer and Uesseler. Their works are widely mentioned in the field by other scholars, specially Singer's. In this context, it would be unproductive to simply ignore what they have already said – the best option (and the chosen one) was to build on their knowledge. In this sense, one of the reasons why this work is important is because it follows one of the principles of qualitative research specified by King et al. (1994) and makes "a specific contribution to an identifiable scholarly literature by increasing our collective ability to construct verified scientific explanations of some aspect of the world" (p.15) and it explicitly locates the "research withing the framework of the existing social science literature" (KING et al. 1994, p.16).

After reading these authors, the next step was gather as much information as possible on the subject. I searched through journals on the subject and from these works, looked up the authors they mentioned themselves. The main scholars mentioned on this dissertation were selected through a process of relevance. It was taken into consideration when their works were published; whether they supported different views on the matter at hand; the works they themselves mentioned and if they were mentioned by other scholars. The idea was to have a broad spectrum of information from which to build the analysis.

Some of the authors whose works have been read will be presented in the third chapter. They were generally categorized into two groups: the ones who discussed the subject of Private Military and Security Companies before 2008 – the year the Montreux Document was elaborated – and those who wrote about international documents after that year. This distinction was based on the idea that works done before 2008 are still extremely relevant to the understanding of the phenomenon at hand. Scholars such as Uesseler, Signer and Cameron played an important role in defining PMSCs and advocating for the notion that they do not exist in a legal vacuum in matters concerning International Humanitarian Law (IHL).

Based on all this reading, I realized we still have a long way to go to proper deal with private military security companies on what concerns human and humanitarian rights. One of the main gaps I found was the lack of a structured analysis of the most important and current international documents on the subject – which was then what I sought out to do. And even more, an analysis that was done by someone with a perspective different from that of the European countries or the United States – the places where most of the research on the subject comes from.

Another conclusion I came to while doing this step of the work was that there is a lot of controversy on many areas related to PMSCs. The first step then while structuring this dissertation was to take a stand on what I believe is the correct view and thus, the one that is going to base the rest of the work. This was done regarding what is understood by PMSCs in this work, whether they should be classified by the type of services they provide or not. This part is, then, about understanding the phenomenon.

The next step was that of providing a comprehensive description of the documents selected. Three main documents were chosen to be analyzed: the Montreux Document; the International Code of Conduct for Private Security Providers; and the draft of a possible Convention on Private Military and Security Companies. These documents were selected because they comprise the biggest international effort to deal with PMSCs and humanitarian rights – even if they do not entail any legal obligations *per se*. And, in this sense, one of the goals with this work is to provide a more full understanding of how these documents are related to the companies themselves, which has practical consequences considering the consequences of these companies actions have very real impacts on the real world – and a "research project should pose a question that is 'important' in the real world" (KING et al. 1994, p.15).

It is impossible to conduct a relevant research on the subject without coming across them – and even so, no single work has attempted to deeply describe all of them in a broader context. All of the contributions made by the scholars presented in this work were important to the development of the debate, but, even so, there has been no broader attempt to describe these documents and "careful descriptions of specific scientific phenomenom are often indispensable to scientific research" (KING et al., 1994, p.7) – and that is one of the reasons behind this dissertation.

This is not say, of course, that these have been the only attempts to regulate the actions of PMSCs. South Africa has taken several steps in that sense (which will be briefly discussed in this work), and so have the companies themselves attempted to adopted other self-regulations documents in countries such as the United Kingdom. For example, the British Association of Private Security Companies has adopted a code of conduct to set some ground rules for those companies which wish to be part of the association. Another example of a private military association is the International Peace Operations Association (IPOA), which has also adopted a set of rules to regulate the actions of PMSCs. However relevant these associations may be, their scope is somehow limited when compared to the documents selected.

Following this description, the documents were analyzed *vis à vis* the information previously provided about the PMSCs. The goal here was to acknowledge the limitations and

the possibility of development of the documents presented given the nature of the business they seek to regulate. As previously said, descriptions are fundamentally important for any social work – however, descriptions for descriptions sake have little impact and relevance for the society. So, besides merely describing here, another goal is to make inferences about unobserved facts based on what we can in fact observe – which, according to King et al. (1994) is one of the greatest contributions qualitative researches have to offer to their fields.

It is thus important to emphasize, once again, that this work has been based on qualitative methodology – even if it presents some statistical data at some points. Based on all data and information presented, I try to provide a comprehensive analysis of the phenomenon in order to contribute to the development of the debate. Even so, it is important to note that the conclusion to which I come in this work are not even close to definite and absolute – after all, "uncertainty is a central aspect of all scientific research and all knowledge about the world" (KING et al., 1994, p.9).

Perhaps another important note is on how the examples of violations of humanitarian and human rights committed by these companies were selected. Some of them are extremely well known for scholars in the community, such as the Abu Ghraib case; others are not well publicized and they were selected based on how much information is available on them. Even though first contact with these second cases came usually through other scholars' works, I tried to research all of the examples in order to provide a more detailed description and fully impress upon the reader the relevance and consequences of these companies' actions.

3 THE PRIVATE MILITARY AND SECURITY COMPANIES PHENOMENON

This dissertation seeks to study the current structure of the international laws regarding the so called private military and security companies (PMSCs). The first matter that needs discussing regards what is understood by private military and security companies in this work. They are generally defined as entities that perform activities that would otherwise be performed by the military. This much is somewhat a consensus amongst the scholars. There is some debate as to whether they should be classified according to the type of service provided or not – companies that provide "offensive" operation services would be called military companies and ones that provided "defensive" operation services would be called security companies.

However, as Doswald-Beck (2010) defends, this distinction can be counterproductive for international humanitarian law (IHL) purposes. Another author who takes a critical stand against this classification is Singer (2008). He argues that attempts at a general classification of PMSCs' have been both analytically and theoretically unsuccessful and that the best approach would be to think "about them only on a case-by-case basis" (SINGER, 2008, p.89). Another scholar who does not make use of the distinction in her work is Huskey, arguing that they often provide services that overlap in the categories. Hence, they "should be viewed as one group and held to the same standards" (HUSKEY, 2019, s/p). Daza (2017) also argues that, based on evidence gathered by the Shock Monitor[3], most companies provide both types of services, rendering the distinction outdated and not reflecting the industry's true essence. It is also this author's opinion that any such attempts at trying to categorize PSMCs in groups is fruitless, which is why the term Private Military and Security Companies will be used in this work to refer to all companies, regardless of the services provided (DAZA, 2017).

Even so, it is extremely important to understand the services they provide in order to comprehend why this has been such an important issue in the past years. Simply saying that they "are private business entities that deliver to consumers a wide spectrum of military and security forces, once generally assumed to be exclusively inside the public context" (SINGER, 2008, p.8) is too broad a definition that does not begin to embrace the complexity at hand. What does it entail saying that they offer services that were otherwise considered "to be exclusively inside the public context"?

[3] Shock Monitor is an initiative coordinated by the International Institute for Nonviolent Action. It is based on the cooperation of international, field researches, human rights organizations and experts who gather information on violations committed by Private Military and Security Companies in their communities (SHOCK MONITOR, s/da).

It means that these companies perform activities that were once inside the states' dominium. In fact, the entire modern definition of state is based upon the notion that they are the only entities which can use force legitimately. As such, they must also ensure that force is used appropriately within acceptable limits – wherever and whenever force is in fact used. This leads to an interesting debate as to whether these companies pose some sort of threat to states' sovereignty and if one needs to change its understanding as to what a state is. If this understanding was to change, the international relations field may never be exactly the same. Even though this debate is highly important, it isn't the focus of this work.

The fact is that states have an obligation towards its population and the society in general to respect certain rules regarding the use of force in any and every context it needs to be used – particularly democratic states. And, moreover, they need to ensure that every agent acting on its behalf is perfectly aware of these restrictions and they are observant of these norms at every moment. That is one of the reasons why trainings often include human and humanitarian rights and how to better act in this grey area (ADDITIONAL…, 1977). For example, Canada has developed a code of conduct for its military on how to engage with child soldiers in conflict zones. It stablished what is and what is not acceptable when encountering these children and the best path to be taken in these situations (MELACON, 2021).

Nevertheless, what would happen if Canada was to hire a company to act in this context instead of sending its own Armed Forces? Even better for a debate context, what would happen if a company providing military-like services encountered child soldiers without even having been hired by a state, but by another private entity? This issue is even more important when one takes into account that child soldiers are often found in places where hardly ever those who disrespect the rules of engagement are brought to justice for their actions.

Private military and security companies are private entities with a high likelihood of finding themselves in situations like this one. This is one the things that performing activities considered "to be exclusively inside the public context" implicates. And one cannot particularly count on people to be naturally good hearted and that they will always respect each other's rights and lives – one needs only to take a look on national judiciary and prison systems to know that is not true. PMSCs' employees are not different.

This is even more relevant considering that when they perform activities for the states and their Armed Forces (as will be shown later on, states are not the only ones who hire these companies), these entities are not developing their own abilities in the field. "(…) as time progressed and the applications of NPM principles expanded, so many traditional 'military-specific' tasks such as training, educations, research, intelligence gathering and so forth were

outsourced to the private sector" (HEINECHEN; MOTZOURIS, 2011, p. 79). This means that, division about offensive and defensive services apart, they offer a wide range of activities related to the military. Even though at first more logistical services were the ones outsourced, as previously mentioned, overtime other more traditional activities were outsourced as well, such as training, intelligence gathering, research, education and others (HEINECKEN; MOTZOURIS, 2011). The increasing outsourcing of these activities has made countries increasingly more and more dependent on the private sector.

Uesseler (2008) estimated, already back in 2008, that the United States itself could no longer hold warfare for long periods of time without resourcing to PMSCs. Even today, for example, as the departure of American troops from Afghanistan is being implemented, there are a lot of concerns about what will happen when the contractors that came along with American troops leave as well. American presence in the country was heavily dependent on PMSCs and these companies have been responsible, for example, for helping the Afghan Air Force.

> Not only does the small but professional fleet provide air support to beleaguered troops, but it is also essential to supplying and evacuating hundreds of outposts and bases across the country – the quickly thinning line that separates government and Taliban-controlled territory. With their ability to maintain their aircraft diminishing, Afghan pilots who fly over Taliban-held territory are finding that the condition of their aircraft upon their return is as pressing a concern as the success of their mission (GIBBONS-NEFF et al., 2021, s/p).

The Afghanistan case presented above is a good example of the dependence problem. And, it also highlights that, although it is truly important to understand all the services PMSCs can provide and the differences between them, it is only relevant to the extent to which it gives us context into the phenomenon and helps us shine a light on the importance of further studying these companies. Understanding and the process of outsourcing came to be and how it now compasses a great variety of military-related activities helps us comprehend in a much better way the current state of the matter – even so, these different types of services should not be used as excuses to not hold them responsible for their actions towards human and humanitarian rights. Regardless of the service provided, according to the Geneva Conventions (1949) everyone involved in an armed conflict is responsible for ensuring respect for these rights – and is subject to the consequences in case they do not.

An important note to be made at this point is that this work does not argue for the prohibition of these companies. Quite the contrary, it assumes that these have become too entangled into the reality of international affairs for that to occur – as the Afghanistan example

showed us. In fact, I start from the idea PMSCs are here to stay and thus I seek to understand how we can better deal with the phenomenon – more precisely, how these companies are related to the protection of human and humanitarian rights. In order to do so in the best way possible, one must also comprehend how these companies have achieved the proportion they currently have.

3.1 A brief history on private military and security companies

The use of hired force is not unprecedented throughout history. In fact, it has been quite the opposite, having been present in a great number of armed conflicts. However, these people were then called mercenaries, whose definition will be presented in the following topic. Their services were hired, for example, by Greek cities and ancient Rome. A good example was the so called The White Company, which was widely hired by Italy between the years of 1338 and 1354. The Pope's guards, the Swiss Guard, were also originated in a group of mercenaries (SINGER, 2008).

Mercenaries are not exclusive to old history. A recent example is Michael "Mad Mike" Hoare. Born in India with Irish parents, Mad Mike was known for turning to mercenary work after serving the British army during the Second World War. In 1964, he was hired by Moïse Tshombe to deal with the Simba Rebellion[4]. When the mission finished after 18 months, Mad Mike and his company had earned international recognition. After trying to take down Seychelles' government in 1981, he was arrested for high jacking a plane back to South Africa with his companions (BBC, 2020).

So what are the differences between common mercenaries and private military and security companies? Even though there is a lot of debate as to whether these companies can be considered mercenaries or not, there is no denying that some major differences do exist. The main difference is related to the corporate level. While mercenaries like Mad Mike usually act alone or with a smaller group of people, PMSCs are now part gigantic corporations and they employ a high number of people (HEINECKEN; MOTZOUFIS, 2011).

A great example is related to the company related to the Facebook-Cambridge Analytical data scandal. Cambridge Analytical Ltd. was a political consulting company which became involved with the inappropriate use of data in the 2016 US presidential election. It,

[4] The Simba Rebellion was a communist rebellion which occurred in the Democratic Republic of Congo in the 1960s. Moïse Tshombe, Prime Minister of the Democratic Republic of Congo between the years of 1964 and 1965, hired mercenaries to try and kill the rebellion (VILLAFAÑA, 2009).

however, belonged to a former military contractor, SCL (which started as SCL Defense). SCL used to train British Military, American Military, the CIA and other institutions. They were specialized in communication warfare and had acted in places like Iraq and Afghanistan. This company decided to start using information warfare tactics in elections through Cambridge Analytica. It applied the same methodology as its parent company had used to influence military-related situations, but now to influence elections in Argentina (2015), Trinidad and Tobago (2009), Thailand (1997), USA (2016) and many others throughout the world (THE…, 2019).

As defended by the Shock Monitor (s/db), the phenomenon of PMSC took unprecedented proportions in the beginning of the 21st century. This was only possible because private military and security companies had gained strength with the end of Cold War. As shown in Uesserler's work (2008), following the dismantlement of the Soviet Union in the 1990s, a certain feeling of freedom spread throughout different peoples in the world. In this context, there was a popular demand that military expanses were lessened because "there was no immediate need to provide external security, this presented the ideal opportunity to cut back on wasteful defense expenditure and channel state resources to more pressing social and welfare needs" (HEINECKEN; MOTZOURIS, 2011, p.78). As consequence, around 7 million soldiers found themselves unemployed, which meant there was a great number of workforce available with expertise in the security area – at a somewhat low cost. Besides human capital, there was also availability of weapons and other related objects at low prices as well (HEINECKEN; MOTZOURIS, 2011).

There was also a market for this kind of service. Third world countries that had been witness to the Cold War processes through the interference of both the United States and Soviet Union were now left to their own devices. The security previously provided by these two countries was withdrawn, leading to the opening of a window of opportunity for ex-military professionals to organize themselves in the private realm and fill this gap with their own expertise and services (UESSELER, 2008). As put by Heinecken and Motzouris (2011), "changes in the security environment, coupled with the inability to respond to the array of conflicts that sprang up across the globe (but mostly in Africa), left a vacuum of security in the global marked" (HEINECKEN; MOTZOURIS, 2011, p. 77).

In this context,

> (…) just as armed forces were adjusting to their force and organizational structures to the new security environment, a new wave of violence flared up in various parts of the world, posing a new threat to global peace and security. Although these new

> security concerns gave the armed forces a new-found legitimacy, many no longer possessed the capacity to deal with these complex emergencies. There was also a political reluctance to become involved in these messy, low-intensity wars with their complicated ethnic agendas and blurred boundaries between combatants and civilians (HEINECKEN; MOTZOURIS, 2011, p.78-79).

Since then, PMSCs have grown both in presence and importance in international politics and in world economy. In the United States, for example, some of the companies have already become open traded ones (as examples one can mention CACI International; L3 Harris, former MPRI; G4S; and Northrop Grumman, which owns Vinnel Arabia). That is not to say that this is the case for all the companies; some are still privately-held, such as the Garda Group, owner of Aegis Defense; Constellis, a group which owns both Blackwater and Triple Canopy; and Amentum, which owns Dyncorp International[5]. Some of these names might seem familiar to scholars who study the subject due to the fact that they were involved in human and humanitarian rights scandals – such as CACI International, in the case that took place in Abu Ghraib.

3.2 The matter of violations

In February 2004, General Major Antonio Tabuga, member of the US Armed Forces, conducted an investigation regarding the Abu Ghraib prison and elaborated the US Army 15-6 Report of Abuse of Prisoners in Iraq. In this document, a CACI International employee, Steve Stephanowics, is pointed as one of the masterminds behind tortures conducted during interrogations in the prison. Stephanowics

> Allowed and/or instructed MPs, who were not trained in interrogation techniques, to facilitate interrogations by "setting conditions" which were neither authorized and in accordance with applicable regulations/policy. He clearly knew his instructions equated to physical abuse (US…, 2004).

Cases such as Abu Ghraib's shine light on the fact that these companies have mostly operated without any specific oversight, which creates an opening for them to take actions such as those**.** According to data from the Private Security Events Database (PSED), developed by the University of Denver in the United States, there have been 1.208 private security events from 1990 to 2012. The initiative has recorded some characteristics for each of these occurrences, including the clients who hired them: PMSCs have been contracted by

[5] This information was acquired on the company`s own websites in March 2021.

governments, rebels, civilians, companies and others, as can be seen on Table 1 presented below.

Table 1 - Distribution of PMSCs' clients[6]

Type of client	Number
Commercial	475
Governments	343
Rebels	118
Civilians	110
Others	162
Total	1.208

Source: Elaborated by the author based on Private Security Events Database (s/d).

As can be seen from the information above, PMSCs are open for hire for anyone who can afford their prices. They have worked from governments to those who oppose them; from public entities to private ones. It is a reflection of one of its most important characteristics: they are companies, profit-driven entities. Their services goes to whomever pays best and they compete against each other in an open market context. In doing so, they also need to be able to accomplish its clients' goals in the best way possible – which usually means the cheapest way.

Understanding the different kinds of entities which can hire PMSCs` services is extremely relevant due to (among other reasons) one of the main differences between these companies and regular Armed Forces: there is no enforced, internal code of conduct stablishing what is acceptable to be done during their missions, which can have important consequences when dealing with conflict situations that impact human and humanitarian rights. Without this set of guidelines on how to act, it is difficult to ensure that PMSCs are going to act according to generally accepted norms such as International Humanitarian Law (IHL).

This is of particular relevance specially considering the places and contexts within which these companies usually operate. They seek to fill the gap left when public security forces are weak, non-existent, uncapable or even wiling to operate – just remember the market gap

[6] Commercial is identified as local or transnational organizations. Government is understood as "formally recognized local, national or foreign governing authority". Rebel is "a group involved in armed opposition to a government". Civilians are non-political and non-commercial individuals or groups. Others include politicians, political organizations, non-governmental organizations, criminals and intergovernmental organizations (PSED, a/d)

they initially sought out to fill. This means they often act on places where the state structure is also weak (HEINECKEN; MOTZOURIS, 2011). Therefore, these are also places where investigating and prosecuting violators of human and humanitarian rights may be extremely difficult. Without proper oversight, they may operate in security vacuums making them more open to violations.

As pointed out by Tzifakis (2012), sometimes the mere possibility of being held accountable for violations does not even occur to PMSCs' employees and the companies themselves. If there is no one actually overseeing their actions, these companies might be left in a sort of Machiavellian/Hobbesian context in which the ends justify the means, making it easier for them to justify human and humanitarian violations if these help them achieve their goal (TZIFAKIS, 2012).

Some would argue that this is not the case: there is a way and inceptives for companies to respect human and humanitarian rights. According to Brooks and Streng (2015), the main way of ensuring PMSCs behave in a certain manner is through their contracts: the client should specify what is and what is not acceptable while performing the services. This, some advocates for non-regulation say, is sufficient to ensure respect for human and humanitarian norms: companies must abide by their contracts if they want to maintain their businesses. Nevertheless, a contract between two private parties is private as well. Relying on the good will of private entities to add clauses in this sense is not quite effective considering that it is difficult to determine how these terms are defined in the text private companies are not usually concerned with truly ensuring respect for these norms – and, as can be seen from Table 1, private entities ("Commercial") are the main clients of PMSCs.

Another important observation to be made from Table 1 is regarding governments. In spite of having the entire capacity of their own Armed Forces at their disposal, they have chosen over and over to outsource some of its activities to PMSCs. This may prove problematic regarding whether states are responsible or not for violations committed by PMSC personnel as they are for violations of their own personnel. When talking about states and their military forces, the first ones must make sure that the second ones are fully informed and trained on human and humanitarian rights. They must also ensure that the so called laws of war known and respected not only by their Armed Forces *per se*, but the entire population as well.

Even though they must ensure these laws are known, states are not actually responsible for all violations committed by their nationals. They are only responsible for those committed by people acting on their behalf – such as the Armed Forces. This leads to a question as to whether they are responsible for violations committed by those to whom they have outsourced

some activities – such as private military and security companies, for example. As a matter of fact, this issue has already been discussed elsewhere and some have tried to deal with it by specifying what state functions are not to be contracted out to PMSCs, as will be discussed in chapter 3.

This obligation to ensure knowledge of the laws of war and respect for those acting on their behalf is true for every state because they have been accepted through the universal acceptance of the Geneva Conventions of 1949[7]. Following this universal acceptance, the norms outlined on the Geneva Conventions should observed at any place in the world, by any person – even PMSC personnel and even if states are not responsible for these people's actions. Even so, the University of Denver initiative has also identified through its Private Security Events Database 200 allegations of human rights abuse committed by the 347 PMSCs active between 1900 and 2012. Those are understood by the PSED as involving violations of non-combatants[8] rights and were categorized according to the type of abuse, as shown on Table 2 below.

Table 2 – Categories of non-combatants' rights violations (1990-2012)

Type of abuse	Number
Physical	136
Development	49
Work	8
Environmental	5
Others	2
Total	200

Source: Elaborated by the author based on Private Security Events Database (s/da).

As shown in Table 2, five types of abuse were identified. The first one concerns the violation of a person's right to physical integrity, and corresponds to 68% of all allegations. The second one, called "development" regards individual and people's rights to develop

[7] There are four conventions: the I Geneva Convention, which discusses the rights of wounded soldiers and sickling during armed conflicts on land; the II Geneva Convention; which protects military personnel, sickling and shipwreck victims during armed conflicts on water; the III Geneva Convention, which stablishes the rights of the war prisoners; and the IV Geneva Convention, which outlies protection to the civilians. In addition to these conventions, there are also three additional protocols: Additional Protocol I, on international conflicts; Additional Protocol II, on non-international conflicts; and the Additional Protocol II, on the distinctive emblem (CICV, 2020).

[8] Non-combatants are generally defined in the Geneva Conventions (1949) as those who are not entitled to take active part in the hostilities – they are also called civilians. Opposed to them are the combatants, people who do have the right to take direct part in the hostilities.

themselves and sums up to 24,5% of allegations. The category “work” comprises violations of workers’ rights, adding up to 4%. “Environmental” revolves around violations of rights to land, environment and natural resources, corresponding to 2,5% of the allegations; last, the category “others” involves any other allegations, including the ones related to health, and represents 1% of the total number (PSED, s/da).

The PSED (s/da) also allows the analysis of other events, such as the involvement in the planning of coups, strikes, crimes and violence. However, the initiative does not make a distinction as to whether the involvement was to prevent/combat these actions or to enable them – both are possible lines of conduct predicted by the initiative. This raises the question of whether there should be some kind of regulation in the sense of prohibiting the companies to perform certain activities – such as acting in a coup. Throughout history, the services of the so called mercenaries have been widely employed in situations like that – including in recent history, as was shown in Chapter 2 with the case of Mad Mike. This is an important analysis that needs to be done. In spite of this, due to the complexity of the available data and this work’s goal, doing so goes beyond the scope of this study since it seeks not to analyze all the times situations like these occurred, but actually understanding how PMSCs are related to IHL in a broader sense.

Besides the Geneva Conventions, another important document related to the laws of war is the Rome Statute of the International Criminal Court (1998). Under its article 8, it is defined what is called as “war crimes”: these actions that disrespect the set of rules specified in the article and in the Geneva Conventions in general. It stablishes that war crimes are “serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law” (ROME…, 1998, s/p). Some examples of war crimes would include the attacking of those not taking direct participation in the hostilities (also known as civilians); killing a combatant who has surrendered; subjecting people to torture; and others (ROME…, 1998).

Iraq has been a case study of several of these violations, one of them having being already mentioned in this work, the Abu Ghraib case. In 2007, there was another incident involving a PMSC called Blackwater: 17 civilians were killed by the company’s guards. Investigations conducted about the killings showed that “14 of the shootings were unjustified and violated deadly-force rules in effect for security contractors in Iraq, according to civilian and military officials briefed on the case” (JOHNSTON; BRODER, 2007, s/p).

Of course, this does not mean that Iraq has been the only stage to violations. There are reports of incidents in other parts of the world as well. One example would be the incident that

took place in Colombia in 2003. AirScan, a PMSC, helped the Colombian military to bomb a village, which lead to the death of 18 civilians, amongst which 7 were children (MILLER, 2003). Other examples involve Russian companies which are acting on Central African Republic. According to a UN report to which the New York Times had access[9], violations have been committed by Russians, allied government troops and private contractors and involve excessive use of force; indiscriminate killing; and others (WALSH, 2021).

If this has been the case over and over again, it is then extremely important to study how these companies are inserted into the international laws regarding the protection of human and humanitarian rights – which is the next step.

[9] The reported was dated to be released after this paragraph was written on 2nd July 2021.

4 A LEGAL VACUUM?

The first thing to be said is that there is no mention whatsoever of PMSCs on any international humanitarian document. These companies postdate some of the most important documents, such as the Geneva Conventions and falls out of the scope of others, such as the Rome Statute. The closest thing to an existing document is the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted in 1989 – even so, the convention does necessarily concern PMSCs. It identifies mercenary as a person who:

> (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
> (b) 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 rank and functions in the armed forces of that party;
> (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
> (d) Is not a member of the armed forces of a party to the conflict; and
> (e) 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. (INTERNATIONAL…, 1989, s/p).

As the name of the convention itself suggests, employing people who fit the criteria is forbidden for all those who have adopted the document. The use of mercenaries, however, is not prohibited according to the Geneva Conventions. The subject is discussed on the Additional Protocol I, which also presents a definition of mercenary as 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 terri- tory controlled by a Party to the conflict;
> *e)* is not a member of the armed forces of a Party to the conflict; and
> *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 (ADDITIONAL…, 1977, s/p).

For one to be considered a mercenary under any of these definitions, one must meet all the criteria stablished, which makes it hard to a person to actually fall into this category. Even so, there is much debate surrounding this notion and if whether PSMCs are eligible to be understood under the category of "mercenary". Debating whether PMSCs can be considered mercenaries is, however, extremely theorical and, to some extent, useless. They cannot meet all the criteria and, though they are motivated by profit, they are also enterprises and, as such, very

different from one single person acting on their own. The reality is that PMSCs are a phenomenon that is not going anywhere and must be delt with accordingly. As such, it does not matter whether they theoretically fit the definition of mercenary – in "real world" they do not and they are not outlawed. The question in the then how we will deal with the phenomenon.

This leads to some arguing that these companies operate under some sort of legal vacuum. This view, however, is extremely limited. Even if there is specific legislation on private military and security companies, every person that either is a national of a state member to the ICC or that commits a violation in the territory of a country which is subject to the court's jurisdiction, for example. Moreover, on a company level, multiple countries have adopted national legislation regarding the use of their services – the greatest example being South Africa[10].

Therefore, as defended by the works of many scholars such as Singer (2008), Doswald-Beck (201), Lehneardt (2010, Tsikafis (2012) and Cameron (2006) these companies do not operate under any legal vacuum of sorts – even if they are not directly mentioned in any of the documents presented so far. Quite the contrary: they might not be mentioned by name on any legislation, but that does not mean they are not responsible for their observation. It is, hence, extremely important to study the international regulations regarding PSMCs and their work – which is the purpose of this study.

The first step taken in the development of this study was that of reading scholars' works on the subject. One important scholar in the field is P. W. Singer (2008), whose book is widely mentioned by many other authors. Singer's contribution is crucial to the understanding of PMSCs phenomenon: he approaches their definitions, their history, their morality, the reasons behind the privatization of security and many other subjects. Mainly, it provides a very important perspective to the field: the market-oriented one. In this context, he doesn't dwell on the international law realm – which is the focus of this work. Nevertheless, his work is a must read for anyone seeking to understand the PMSCs phenomenon.

Another important researcher is Rolf Uesseler (2008). His work predates all of the others that will be mentioned here and his contribution was crucial to the development of the field. He takes a critical stand on this phenomenon, arguing that the usage of PMSCs by states is strongly related to the weaking of democracies – considering the classic idea that a state is defined by

[10] In 1998, South Africa approved the Regulation of Foreign Military Assistance Act, which stablished parameters to be met for the PMSCs which wish to operate in the country, including the need of an authorization (REPUBLIC…, 1998).

the monopoly of the use of force. However relevant his work might be, it does not cover the subject of PMSCs' relation to international law on the matter of human and humanitarian rights.

From the works that do mention this relation, most of the existing literature focus on the status of PMSCs and their employees under international humanitarian law (IHL). This is precisely the subject of Cameron's 2006 article published by the International Review of the Red Cross. She defends that for proper regulation to be developed and effective, first one needs to openly define whether PMSCs' employees are to be regarded as combatants or civilians in armed conflict. "Ideally", she says, "any state wishing to employ a PMC whose employees are likely to engage in combat would integrate those individuals into its armed forces through its normal recruitment procedure" (CAMERON, 2006, p.596) – and, in doing so, extend to these people the status of combatants. She believed that the development of an international convention was extremely unlikely and that one alternative would be the adoption of a "code of minimum human rights standards that such companies must respect" (CAMERON, 2006, p.586). As will be shown, her expectations regarding the international convention possibility somewhat corresponded to reality.

Even though her work is extremely relevant to the field, it has also been outdated by recent developments. For example, a draft of an international convention regarding private military and security companies had been developed and brought forth by the UN Working Group on Mercenaries – though it hasn't been adopted. Another point is that the relevance of the status matter is tidily related to the conduction of armed conflicts – e.g. if PMSCs' employees can be seen as a valid target. Regardless of this, the distinction is not quite so relevant to the matter of war crimes: according to the Rome Statute both civilians and combatants alike can be trialed for the commitment of such crimes.

The debate of whether PMSCs' employees should be seen as civilians or combatants is also the subject of Doswald-Beck's work (2010). She uses the distinction to talk about how PMSCs' employees should be treated regarding the prisoner-of-war status and whether or not they are valid targets. She also explores certain aspects of the idea of state responsibility, arguing that states are supposed to ensure respect to IHL norms in each and every circumstance. She defends that "as states have undertaken certain duties under humanitarian law, these cannot be avoided by giving them to PMSCs. It logically follows, therefore, that states should ensure that PMCs are properly trained and that their contract contains clear rules of engagement" (DOSWALD-BECK, 2010, p.132-3). One can only agree with her position. However, this responsibility hasn't been very much present outside the theoretical sphere. Besides that, as shown in the statistics pretend earlier on, states are not the only possible PMSCs' clients. In

fact, according to the PSED data (s/da), governments correspond to less than one third of the costumers.

To some extent, Lehnardt (2010) approaches similar matters regarding state responsibility. One the main differences between Lehnardt's work and Doswald-Beck's is the development of the notion of other states' responsibilities. She defends that when states outsources some of its activities, they are responsible for the private actors' acts and that "where no such attribution exists, the state can still be internationally responsible if it failed to take appropriate measures to prevent the violation of international law, or to ensure that the wrongdoer make suitable reparation or is punished" (LEHNARDT, 2010, p.143). In doing so, she attributes some sort of responsibility the to the exporting state (country from which the PMSC is) and, mainly, the host state (country where the PMSC acts). Though the author recognizes the existing limitation of the international law, she also defends that a regulatory framework which deals with state responsibility should be brought forward, since PMSCs act "where their presence is either requested or accepted by the state" (LEHNARDT, 2010, p.157).

Something these three scholars agree with is that PMSCs do not operate in a legal vacuum, as has already been said. Despite of their relevance to the field of private military and security companies, due to the time when they were written, these works don't comprise some important developments that have taken place in this last decade, with their focus revolving mainly around the Geneva Conventions and why PMSCs ought to abide by its norms. there is no denying that analyzing the situation strictly from these lenses is somehow limiting: the fact that the Geneva Conventions do not mention PMSCs still creates a loophole of sorts that enables disrespect. Expecting PMSCs to guide their behavior out of good faith for the principles stablished in the conventions is at the very least naïve. Besides, all of them are also extremely stated focused and, as Lehnardt herself recognizes, treaties amongst states can only take us so far.

A work which provides an interesting overview of the phenomenon as a whole was the one written by Daza (2017). As founder and researcher of Shock Monitor, he presents the initiative's findings in a clear manner. The main information presented revolves around the fact that most of the activities performed by PMSCs are state functions which were outsourced and their impact on human rights. Much like this dissertation, the author seeks to present a detailed description of the phenomenon based on empirical evidences gathered by Shock Monitor. It is an interesting and important source of information, even more to provide a general understanding of how PMSCs impact the provision of human rights. Differently from this

dissertation, it does not analyze international documents nor the legal structure surrounding these companies.

Hedahl (2019), on the other hand, argues that the current state of PMSCs holds no possibly for these companies and their employees to be properly held accountable for their actions regarding IHL. Hedahl defends that contractual accountability, contrary to what is defended by PMSCs advocates, is the wrong kind to deal with this matter. As he puts it "legally, one is not obligated to fulfill a contract; one is legally bound to fulfill or compensate for a breach" (HEDAHL, 2019, s/d) which is not the best option when dealing with IHL. As a consequence, some radical changes are required in order to make PMSCs and their employee truly accountable for their actions. These changes, in turn, would lead to the elimination of PSMCs as we know them, once they would require PMSCs to be more like public employees than private entities (HEDAHL, 2019).

However interesting and relevant his work is, Hedahl does not properly address the phenomenon as a whole. His focus rests mainly on the United States and its relation to PMSCs and, even though the US is one of the PMSCs' greatest clients, it is not the only one. As was shown, the bulk of PMSCs' services is hired by businesses. Besides, he analysis situations mostly related to conflicts and IHL, ignoring sometimes that PMSCs also act in contexts in which IHL does not apply nor does he analyze initiatives such as the Montreux Document and the Draft Convention.

And, even though it cannot be denied the relevance of this analysis at a first moment, it also lacks some further development. It is important to understand how those international documents relate themselves to the missions conducted by private enterprises. Defending that they are responsible for ensuring and observing humanitarian rights while working is not an irrelevant effort and has been crucial in creating an environment fertile for other ideas. The works of Huskey, Perrin and DeWinter-Schmitt are relevant in this regard. They identified an aspect of the subject that had been overlooked and then proceeded to systematically studying it: not ignoring the Geneva Conventions, they sought out to analyze other initiatives.

In her 2019 article, Huskey proposes a different approach to understanding accountability for Private Military and Security Companies. She defends that instead of focusing mainly on how to hold PMSCs accountable after violations, the focus should be on rearranging the international regime so that it became more pre-conduct oriented. She believes understanding the different roles states can perform when dealing with PMSCs is crucial, for each role entitles different responsibilities. The "Hiring State" is the one who hires the services of a company and can determine what activities can be outsourced; who can be hired and how

personnel ought to be selected; and the entire scope of the contract. The “Home State”, on the other hand, refers to the state where the PMSC is registered or has it main place of management. As such, it “has the capability to determine the requirements for companies to operate in its state (for example, licensing structures)” (HUSKEY, 2019, s/p) and may remove/suspend PMSCs corporate statues if it sees fit. Both these roles are predominant in the contracting phase. The third role, “Host State”, refers to the state where PMSCs` operations take place (HUSKEY, 2019).

Another interesting point the author makes is related to the focus on PMSCs and international humanitarian law. However important this analysis may be, she argues that it must not be done in detriment of the relation between PMSCs and international human rights law. Firstly, IHL is only appliable when there is a recognized armed conflict – which is not always the case. Secondly, human rights law can provide a wider range of accountability mechanisms and recognizes individual rights to petition for alleged violations of its norms. She believes this of the utter importance: current emphasis falls on the accountability for the companies and their employees and not necessarily on redressing the victims (HUSKEY, 2019).

Another work which has contributed to the discussion is the by Perrin published in 2019. The author works to identify the existing gaps in the current international legislation structure. Analyzing from international customary law perspective, he considers gaps related to PMSCs’ responsibility, client responsibility as well as general states responsibility towards these companies and their actions. In this context, Perrin identifies six main gaps related to PMSCs committing IHL violations, international human rights violations as well as ordinary crimes (PERRIN, 2019).

The first one is that PMSCs themselves are not likely to face international criminal responsibility due to the fact that the ICC has jurisdiction to judge only individual and there is no recognition of them as international legal persons. The second one is that the so called “Home States” of PMSCs enjoy the benefits of their profits without the need of being held accountable should these companies commit any of the acts mentioned. The third one is related to the fact that, considering international human rights law envisions to protect people against violations committed by states, it is extremely unlikely that PMSCs will be held accountable for human rights violations when hired by a non-state actor precisely because these actions will hardly be characterized as international human rights violations. The fourth is related to the lack of specificity or enforcement in international treaties regarding states obligation to regulate PMSCs. The fifth and sixth are related to the practice of granting immunity to PMSCs’ employees and states’ incapability of prosecuting ordinary crimes (PERRIN, 2019).

Perrin's work provides an interesting perspective on the subject and is, therefore, extremely relevant to the field. It is also a basis for arguing for a change in how international law perceive PMSCs and a valid critic of the state-centric view that has been predominant in this line of study (PERRIN, 2019). Even so, it also lacks a deeper analysis of initiatives such as the Montreux Document and the Draft Convention, which are only briefly mentioned in the article. Their limitations are identified, but there's no further description as to why they are written into these documents in the first place. Besides, the International Code of Conduct (ICoC) is not mentioned at all.

DeWinter-Schmitt (2017) has also made an interesting contribution. From all the articles mentioned, hers is the one that comes closer to what is this dissertation's main goal. She sought out to analyze some soft law initiatives related to the subject – more precisely, the Montreux Document and the International Code of Conduct (which she calls the "Two-Part Swiss Initiative"), while also discussing some United Nations Guiding Principles, "Protect, Respect and Remedy". She points out that neither document introduces new obligations and duties to its members, but are actually structured in a manner in which they work as a summary of what already exists.

Even so, the last part of her work focuses mainly on national and international standards related to security operations. From all the works mentioned here, hers is the only one to take this into analysis. She discusses mainly two of them: the ANSI/ASIS PSC.1 and the ISO 18788. Both use the documents from the two-part Swiss initiative as normative references. Both

> are third-party auditable risk management and quality assurance management system standards that contain requirements and guidance to ensure quality security operations consistent with respect for human rights, legal obligations, and good business practices in areas of weakened governance (DEWINTER-SCHMITT, 2017, p.120).

They are presented as a different type of certification than the one offered by ICoC (DeWinter-Schmitt, 2017). I believe the analysis of these points is the main contribution DeWinter-Schmitt's article has to offer – which is why it is so important that her article is structure in a way which makes her analysis "culminate" on these standards. Regardless, it still lacks a deeper analysis of the Montreux Document and the International Code of Conduct as well as the analysis of the Draft Convention.

There are three main initiatives, which will be deeply studied in this work. Around their analysis revolves the following topic. Reading through papers and books that have been written about them is an important job - but so it reading the documents themselves. On this note,

primary data was extremely relevant in the shape of the International Code of Conduct, Montreux Document and the Draft Convention. The great descriptive contribution this work can give is the detailed description of how these two documents shape and may shape the reality of PMSCs.

4.1 The international documents

In order to offer a relevant and detailed description of how the legislation revolving around both humanitarian and human rights law and Private Military and Security Companies is structured, it is now necessary to turn our attention to the existing international documents. Three documents were selected to be presented in this study: the Montreux Document, the International Code of Conduct for Private Security Providers (ICoC) and the Draft of a possible Convention on Private Military and Security Companies.

As mentioned in Chapter 1, the selection process took into consideration the relevance of the documents. Both the Montreux Document and the ICoC are part of a Swiss initiative to fill the international legal gap that surrounds PMSCs. The main goal was to formalize the notion that there is no legal vacuum in which PMSCs operate. As will be shown, they are voluntary documents and create no legal obligations whatsoever for those who choose to support them. The Draft Convention, on the other hand, was proposed was a way to create legal obligations for States on how they deal with the phenomenon. However, as will also be shown, it was never more than a draft since it was never adopted by the UN and its members.

4.1.1 The Montreux Document of September 2008

Internationally, one of the most relevant documents is 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) – or, simply, Montreux Document, as it will addressed here. The document was an initiative of the Swiss government alongside the International Committee of the Red Cross. It was developed through the participation of 17 countries[11] and consults to members of the civil society and of PMSCs (MONTREUX…, 2008).

[11] They are: Afghanistan, South Africa, Germany, Angola, Australia, Austria, Canada, China, United States of America, France, Iraq, Poland, Sierra Leone, Switzerland, Sweden and the United Kingdom of Great Britain and North Ireland (MONTREUX…, 2008).

The document was structured in a way to serve as a summary of international norms regarding States' duties vis à vis PMSCs and IHL – though it mentions human rights law, it is not the focus. Hence, it does not seek to propose any new regulations to be adopted, but rather be a consult mechanism for States, non-governmental organizations (NGOs), international organizations (IO), PMSCs themselves, civil society, etc. Nor does it entail any legal obligations in international law for the actors who show their support (MONTREUX…, 2008), which means that there is no hard law involved in its acceptance – there is no punishment for those who disrespect its norms.

This was a calculated choice made by the Swiss government and the International Committee of the Red Cross based on the notion that an international treaty would take a very long time to be developed and this process would involve a great deal of political will and debates and in the end it might not be adopted at all – which was the case of the Draft Convention, as will be shown later on. However, they considered that the problem of Private Military And Security Companies *vis à vis* States responsibilities regarding the first's actions, was such a serious matter that needed to be dealt with in a faster manner (MONTREUX…, 2008). In doing so, they created a space for states that do not agree with the guidelines outlined in the document to simply not declare their support. Even so, the number of actors which have actually demonstrated support is at 56 States and 3 international organizations in the moment this chapter was written - around January 2021[12].

Even if it entirely based on soft law ideas, the Montreux Document is considered useful by its developers

> because it enhances the protection afforded to people affected by armed conflicts. It does so by clarifying and reaffirming international law, by encouraging the adoption of national regulations on PMSCs designed to strengthen respect for international law, and by offering guidance on how and in what light this should be done, based on lessons learnt (MONTREUX…, 2008).

Which is a perception aligned with soft law perspective. The developers and Montreux's members believe the document can contribute by shining a light on the matter of human rights and humanitarian laws and PMSCs – which was something that had never been done up until that moment. In this context, it raises awareness throughout all spheres to the subject in hand

[12] For more information, see: https://www.mdforum.ch/en/participants.

and creates the possibility for the practice of "naming and shaming"[13], so common in human rights and humanitarian international documents.

As shown in its name, the Montreux Document is mainly focused on States. It thus specifies three main categories of States: Home States; Contracting States; and Territorial States[14]. All of them have the same duty: to ensure that international humanitarian and human rights laws are respected by themselves and by others (MONTREUX…, 2008). One of the reasons for being like this is that human rights laws and international humanitarian law are developed based on the idea that it is necessary to safeguard citizens against the actions of States. Hence, the idea of protecting citizens against the actions of private actors acting on their own is not actually foreseen on them. What a state can and must do in this context is to ensure due diligence regarding all accusations against both private and public actors.

The extent to which each of the states can take effective measure in ensuring due diligence and discouraging disrespect is somewhat different. For example, a Home State may specify some guidelines for its PMSCs to be able to hired by third states and to operate abroad – or even to be hired by the Home State itself and act in its own territory. However, once the company starts its services, a Home State's influence on its actions is very limited when they operate in third countries. Even prosecuting potential violators might also prove itself tricky, since it is hard to investigate actions that took place in another country's territory. This reality was taken into consideration when the Montreux Document was elaborated (MONTREUX…, 2008).

The document itself is divided into two parts. Part one discusses pertinent international legal obligations relating to Private Military and Security Companies regarding some relevant actors: Contracting States, Territorial States, Home States, all other States, PMSCs and their personnel and superior responsibility. The reason why different categories of states are specified has already been explained in previous paragraphs: it is related to the notion that depending on their relation with a said PMSC, states can have different impacts. Superior

[13] The practice of "naming and shaming" is based on the idea that violations of the norms can be made public so that the all society can "shame" the perpetrators and hold them accountable to some degree (RITTBERGER et al., 2012).

[14] A Home State is the state where the companies maintain their headquarters; a Contracting State is the state which contracts PMSCs to perform certain services on their behalf; and a Territorial State is the place where the company actually performs their activities (MONTREUX…, 2008). It is possible that one state plays all these roles at the same time, but this is not usually the case. A common practice is the hiring of a company by a state "A" to act on a "B" state, so that the state "A" does not need to send its own military personnel to act on foreign land - this avoiding certain types of scrunity from the public eye. Data from Data on Armed Conflict and Security (2011) show that only 50% of States have hired PMSCs to act on their own territory. Half the time States hire PMSCs is for them to act on another State's territory. The United States, for example, have never hired a PMSC to act in its own territory (DATA…, 2011).

responsibility revolves around the notion that superiors of PMSC personnel (e.g., governmental officials, directors or managers of PMSCs) “may be liable for crimes under international law committed by PMSC personnel under their effective authority and control, as a result of their failure to properly exercise control over them” (MONTREUX…, 2008, p.15).

Part two, on the other hand, discusses good practices relating to private military and security companies. While Part One deals with liability, this second part focuses on stating practices that are to be expected from the three main types of states: Contracting States, Territorial States and Home States. These practices are related to authorization processes through which states may be better able to regulate PMSCs’ activities (MONTREUX…, 2008).

One of the actions to be taken by States most advocated for in the Montreux Document is the adoption of national legislation regarding what services can be outsourced to Private Military and Security Companies; how to select these companies and how they in their turn should select their personnel; and if there must be any sort of punishment for the companies which disrespect the principles of humanitarian and human rights laws. Such a punishment could be the loss of their licenses, the prohibition of them signing new contracts for a certain period of time, and others. The degree to which these laws may impact Private Military and Security Companies during your missions is different: depending on the role States play, their national legislation might not be effective in all circumstances (MONTREUX…, 2008) – as discussed in the previous paragraph.

Another important characteristic of the Montreux Document is that it focus lies mainly on conflict situations (MONTREUX…, 2008). This may be a consequence of how PMSCs are perceived – as actors who perform activities which would otherwise be performed by a country’s Armed Forces. Even if conflict situations are relevant because they usually involve sensible humanitarian and human rights events, they are not the only ones in which PMSCs act. They are often hired to act in post-conflict situations as well and, even though the document also states that it can be used as a guide for all situations and not only conflict ones, there is no denying that the human rights perspective is somehow a little underdeveloped in comparison to the humanitarian one.

It is important to notice that it is made clear in its preamble and comments that the document does not legitimize the actions of Private Military and Security Companies. It merely acknowledges that these companies are part of reality and a force to be reckoned with, and so there was a need for a document which demystified the common notion that these companies operated in a legal vacuum. Even so, the document is guided by the notion that States are the only actors in international law. Regardless of the fact that it encourages companies to respect

and abide by human rights and humanitarian laws, it also says that they have no obligation to do so in an international law perspective (MONTREUX…, 2008).

In doing so, it sets aside another important actor: the PMSCs themselves. In this context, the Swiss government took a new initiative which led to the International Code of Conduct for Private Security Service Providers (ICoC), a self-regulatory document adopted by Private Military and Security Companies also in 2010 that will be analyzed next.

4.1.2 The International Code of Conduct for Private Security Service Providers (ICoC)

The International Code of Conduct for Private Security Service Providers is the second part of the Swiss initiative that started in 2008 with the Montreux Document. In its preamble, it recognizes that "in providing these services, the activities of PSCs can have potentially positive and negative consequences for their clients, the local population in the area of operation, the general security environment, the enjoyment of human rights and the rule of law" (ICoC, 2010, p.3) – which means that the companies which accept the Code believe their actions impact on human rights in the areas where they take place.

While the Montreux Document focuses on States, the ICoC lies its focus on the companies. Its purpose is "to set forth a commonly-agreed set of principles for PSCs and to establish a foundation to translate those principles into related standards as well as governance and oversight mechanisms" (ICoC, 2010, p.3). In this context, Signatories Companies to the Code commit

> a) to operate in accordance with this Code;
> b) to operate in accordance with applicable laws and regulations, and in accordance with relevant corporate standards of business conduct;
> c) to operate in a manner that recognizes and supports the rule of law, respects human rights, and protects the interests of their clients;
> d) to take steps to stablish and maintain an effective internal governance framework in order to deter, monitor, report, and effectively address adverse impacts on human rights;
> e) to provide a means for responding to and resolving allegations of activity that violates any applicable national or international laws or this Code; and
> to cooperate in good faith with national and international authorities exercising proper jurisdiction, in particular with regard to national and international investigations of violations of national and international criminal law, of violations of international and humanitarian law, or of human rights abuses (ICoC, 2010, p.3).

This means that the companies which have shown support for the code do so as a way to show their willingness to abide by these norms. Becoming a "Signatory Company" must see the support process as a first step towards full compliance with the code and other humanitarian

and human rights norms. They also agree "to work with national standards bodies as appropriate to develop standards, with the intent that any national standards would eventually be harmonized in an international set of standards based on the Code" (ICoC, 2010, p.4).

Therefore, the International Code of Conduct for Private Security Service Providers stablished general norms of conduct for companies, as well as rules for the use of force and for some specific aspects of their missions. The norms are divided into "General Commitments"; "Specific Principles regarding the conduct of personnel"; and "Specific commitments regarding management and governance" (ICoC, 2010) – all of which will be presented in the following paragraphs.

The "General Commitments" deal mostly with contractual issues. It stablishes that companies must make compliance with the code "an integral part of contractual agreements with Personnel and subcontractors" (ICoC, 2010, p.7) and any other parts which may carry out activities under their contracts. They also commit to adhere by the code even when the code itself is not directly included in their contracts and recognize that their contracts are not be used as justification for engaging in any action that may lead to "war crimes, crimes against humanity, genocide, torture, enforced disappearance, forced of compulsory labour, hostage-taking, sexual or gender-based violence, human trafficking, the trafficking of weapons or drugs, child labour or extrajudicial, summary or arbitrary executions" (ICoC, 2010, p.7).

Another commitment specified in this section is that of reporting "known or reasonable suspicion of the commission of any of the acts" mentioned in the previous paragraph. This report may be done by the company and its personnel to the clients and one or more of the following entities: competent authorities in the country where the act happened, the victim's or the perpetrator's country of nationality (ICoC, 2010).

The so called "specific principles regarding the conduct of personnel" are guided by the notion that all "Signatories Companies will, and will require their Personnel to, treat all persons humanely and with respect for their dignity and privacy and will report any breach" of the code (ICoC, 2010, p.8). They are concerned with matters such as the use of force; detention; apprehension of people; prohibition of torture or other cruel, inhumane or degrading treatment or punishment; sexual exploitation and abuse or gender-based violence; human trafficking; prohibition of slavery and forced labour; prohibition of the worst forms of child labour; discrimination; and identification and registering of personnel (ICoC, 2010).

Besides these specifications, the ICoC also mentions subjects beyond the conduct of missions *per se*. The so called "specific commitments regarding management and governance" stablish a process through which select personnel and subcontractors, as well as internal

contract, training and other policies. It also touches on the subject of weaponry. It requires that Signatories Companies "acquire and maintain authorizations for the possession and use of any weapons and ammunition required by applicable law" and personnel must also be trained in the use of these weapons (ICoC, 2010, p.13). Another commitment is that any event in which PMSC personnel involving the use of any weapons is to be reported. This is because personnel is not supposed to use force unless under some very specific situation, such as self-defense of defending their clients (ICoC, 2010).

Other commitments include the creation of a safe and healthy working environment for their personnel; a zero-tolerance stand on harassment; the establishment of grievance procedures to address claims related to disrespect of the code; and ensuring "that their Personnel who report wrondoings in good faith are provided protection against any retaliation for making such reports" (ICoC, 2010, p.15). Besides, "Signatory Companies will ensure that they have sufficient financial capacity in place at all times to meet reasonably anticipated commercial liabilities for damages to any person in respect of personal injury, death or damage to property" (ICoC, 2010, p.15).

One important characteristic of the code is that, just like the Montreux Document, the ICoC does not entail any legal obligations to its members either. It is a voluntary commitment made by companies which have no obligation whatsoever to actually abide by the norms stablished in the code. The general notion is that, by supporting the document, companies demonstrate the will to abide by humanitarian and human rights laws – both national and international ones. Companies must also help with good faith any and all investigations conducted by authorities (ICoC, 2010).

One of the contributions made by the code is the creation of an oversight mechanism which is responsible for ensuring that companies follow the principles stablished in the ICoC and for granting them certification if they meet all the criteria. Such mechanism should be created within two years of the adoption of the code (ICoC, 2010) – and this is how the International Code of Conduct Association came to be in 2011 (ICoCA).

The ICoCA is responsible for "running" things related to the code. It deals specially with member certification; monitoring of ICoC's norms; and it is responsible for receiving formal complaints against its members (ICoCA, s/d). In order to become a member of the association, a company needs to accept the ICoC and the association itself, just as it is specified in the International Code of Conduct for Private Security Providers' Association – Articles of Association (s/d), which stablished the association's functions.

This notion that actors voluntarily choose to be a member of an association which to some degree restricts their actions is extremely relevant. The ICoCA has 137 members at the moment this chapter is being written (January 2021) and they are divided among states (7)[15], civil society organizations from numerous countries (35)[16] and private security and military companies (95) – including one company in Brazil[17]. Even though this number is somewhat high, only 26 out of 95 companies are certified by ICoCA (ICoCA, s/d).

Certification is understood as

> a process through which the governance and oversight mechanism will certify that a Company's systems and policies meet the Code's principles and the standards derived from the Code and that a Company is undergoing Monitoring, Auditing, and verification, including in the field, by the governance and oversight mechanism (ICoC, 2010, p.4).

Simply put, certification means that the companies' systems and policies "meet the principles and standards derived from the International Code of Conduct for Private Security Providers" (ICoCA, s/d). It is also "one element of a larger effort needed to ensure the credibility of any implementation and oversight initiative (ICoC, 2010, p.4).

This then leads to the question of how the certification process occurs. The certification is valid for three years and its requirements were to be defined by the ICoCA Board as stablished in the Articles of Association from 2011. They were supposed to be

> based on national or international standards and processes that are recognized by the Board as consistent with the Code and specifying any additional information relevant to the human rights and humanitarian impact of operations it deems necessary for assessing whether a company's system and policies meet the requirements of the Code and its readiness to participate in the Association (ICoCA, 2011, p.6).

[15] The countries are: Australia, Canada, Norway, Switzerland, Sweden, United Kingdom of Great Britain and Northern Ireland and the United States of America (ICoCA, s/da).

[16] The organizations are: Action Contre l'impunité pour les droits de l'homme; African Law Foundation (AfriLaw); American University Center for Human Rights & Humanitarian Law; Cadre de Concertation sur la Reforme de Services de Securité et de la Justice (CCRSSJ); Center for Civilians in Conflict; Centre for Environment, Human Rights and Development (CEHRD); Centre for Human Rights University of Pretoria; Collectif camerounais des organisations des droits de l'homme et de la democratie COCODHD; COMPPART Foundation for Justice and Peace; Dynamique des Femmes des Mines (DYFEM); EIRIS Foundation; Hainan CGE Peace Development Foundation; Human Rights First; Human Rights Watch; Indepaz; Institute of Democracy and Human Rights of the Catholic Univerity of Peru; Institute de Enseñanza Para el Desaroollo Sostenible (IEPADES); International Corporate Accountability Roundtable; Iraqi Al-Amal Association (IAA); Keen and Care Initiative (KCI); Ligue Rwandaise pour la Promotion et la Défense des Froits Humains (LIPRODHOR); Lumière Synergie Développement; Maison de Gouvernance du Secteur Extractif (MGSE); New Nigerian Foundation; Observatoire d'Etudes et d'Appui à la Responsabilité Sociale et Environnementale (OEARSE); Observatoire de la Société Civile Congolaise pour les Minerais de Paix (OSCMP); Observatoire Gouvernance et Paix (OGP); One Earth Future' Rencontre pour la paix et les droits de l'homme; Réseau des Organisations pour la Transparence et L'Analyse Budgétaire; Socios Perú: Centro de Colaboración Cívica; Tammuz Organization For Social Development (TOSD); Usalama Reforms Forum; Youths for Peace Building Development in Africa (YOUPEDA) (ICoCA, s/da).

[17] See Appendix A for a list of companies.

More details regarding the certification process were required to the Association, due to the fact that the process is not completely disclosed on their website. However, as for the moment this section is being written (April 2021), no response has been received.

The Association is also "responsible for exercising oversight of Member companies' performance under the Code, including through external monitoring, reporting and a process to address alleged violations of the code (ICoCA, 2011, p.7).

4.1.3 Draft of a possible Convention on Private Military and Security Companies (PMSCs)

Another document which deserves attention is the draft convention proposed in 2011 by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination – which will be referred to as the Working Group. Article 7 would stablish that:

> Each State party shall take legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel are held accountable in accordance with this Convention and to ensure respect for and protection of international human rights and humanitarian law (DRAFT…, 2011, p.7).

This means that states should all necessary measures to ensure that norms stablished in the Convention are observed within their territory and their legal system if the document was approved. This recognizes the need for the international and national legal systems to work side by side in order to ensure that PMSCs abide by humanitarian and human rights norms.

Besides, the States would recognize their responsibility towards military and security activities undertaken by PMSCs registered under their jurisdiction or when said actions take place in a place over which the States have jurisdiction – regardless of whether the companies were hired or not by the States themselves. One possibility for the exercise of jurisdiction apart from the territorial situation, is cases in which the perpetrators and/or victims are their nationals (DRAFT…, 2011).

Another interesting approach the document would take is the idea that some actions, which are considered inherently States functions, must not be outsourced to PMSCs. These actions are understood as involving the state's monopoly on the legitimate use of force. Actions such as these are identified in Article 2, paragraph i and in Article 9, which says that

> Each State party shall define and limit the scope of activities of PMSCs and specifically prohibit the outsourcing to PMSCs of functions which are defined as inherently State functions, including direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, knowledge transfer with military, security and policing application, use of and other activities related to weapons of mass destruction, police powers, especially the powers of arrest or detention including the interrogation of detainees, and other functions that a State party considers to be inherently State functions (DRAFT…, 2011, p.9)

This means that States would still be ultimately responsible for security matters within its territory and abroad – States would still maintain monopoly on the legitimate the use of force. The prohibition would still help ensure that States do not become fully dependent on PMSCs to undertake military and security actions. Other important contexts in which the use of these companies would be illegal are specified in Article 8, which states that

> Each State party shall take such legislative, administrative and other measures as may be necessary to prohibit and make illegal the direct participation of PMSCs and their personnel in hostilities, terrorist acts and military actions aimed at, or which States have ground for suspects would result in:
> (a) The overthrow of a Government (including regime change by force) or undermining the constitutional order, or the legal, economic and financial bases of the State;
> (b) The coercive change of internationally acknowledged borders of the State;
> (c) The violation of sovereignty, or support of foreign occupation of a part or the whole territory of State;
> (d) Explicitly targeting civilians or causing disproportionate harm (…) (DRAFT…, 2011, p.8).

This means that PMSCs could only be hired to perform activities in legitimate situations. The bey concept presented in the quote is that PMSCs would have to, first and foremost, respect states' sovereignty. Attempting against it would render their actions illegal under international law. Alongside these prohibitions, PMSCs are also forbidden to use weapons considered illegal in the laws of war – as well as to illegally acquire, possess or traffic "firearms, their parts and components and ammunition" (DRAFT…, 2011, p.9), as stablished in Articles 10 and 11. This means that these companies but also abide by general laws of war (such as the Geneva Conventions), even if those were not created specifically with PMSCs in mind.

It also tries to address an important issue regarding chain of command. The Rome Statute stablishes that commanders might be liable for the actions of their subordinates in cases that lead to violations of human and humanitarian rights in which the first ones had knowledge of the acts of the second and did nothing to prevent them from occurring and failed to report (ROME…, 1998). When we usually deal with PMSCs' actions this provision is difficult to be met because usually there is no clear chain of command – the draft Convention however would stablish under its Article 7 that superiors of PMSCs personnel may involve "(a) government

officials, whether they are military commanders or civilian superiors; or (b) directors or managers pf PMSCs" (DRAFT…, 2011). These people "may be liable for crimes under international law committed by PMSC personnel under their direct effective authority and control, as a result of their failure to properly exercise control over them" (DRAFT CONVENTION…, 2011).

Part III of the Draft Convention stablishes obligations regarding *Legislative regulation, oversight and monitoring*. The main idea is that PMSCs should not be regulated solemnly by market forces – States would commit to adopting "national legislation to adequately and effectively regulate the activities of PMSCs" (DRAFT…, 2011, p.10). As will be shown in the following chapter, even though some argue that market forces alone are sufficient to regulate the activities of these companies, that is not the case – nor is it the point of view on which the Draft Convention is based.

In this context, the Draft Convention also proposed the creation of a licensing regime under which PMSCs and their employees could carry out their activities. Only a company with the proper license and authorization would be allowed to operate in a given territory and this regime could even be extended to importing and exporting these services, as Articles 14 and 15 would stablish. States would then be obliged to make sure companies within their territories were operating within all the proper legislative, judicial and administrative frameworks (DRAFT…, 2011).

Hence, legislation must foresee the possibility that "States parties shall take appropriate action against companies that commit human rights violations or engage in any criminal activity, inter alia by revoking their licenses and reporting to the Committee on the record of activities of these companies". (DRAFT…, 2011, p.11). The licensing regime would then work as a means to change the incentives for the companies to respect humanitarian and human rights: those who do not, have their licenses revoked; and those with revoked licenses are forbidden to operate.

States would also have obligations vis à vis the PMSCs themselves and their personnel, stablished in Article 17. Apart from having obligation to investigate and prosecute the companies and their employees regarding any alleged violation, they first have an obligation to "ensure that personnel of PMSC are professionally trained to respect relevant international human rights law and international humanitarian law" (DRAFT…, 2011, p.12). This goes beyond the notion that states must ensure personnel of companies who act on their behalf are fully trained on these norms: this goes to all the companies operating in their license regime, whether they are hired by the state or not.

Regarding the investigation and prosecution of alleged violations (stablished in Article 23), states must also consider that these crimes would be automatically added to any extradition agreement between them (Article 24). What is more, states also

> shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings (…) and shall reciprocally extend to one another similar assistance where the requesting State party has reasonable grounds to suspect that the victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State party (DRAFT…, 2011, p.17).

This notion revolves around the idea that every country is responsible for ensuring that human and humanitarian rights are observed and that they are all entitled to prosecute those who do not do so. A perspective such as this, however, is easier defended on paper than done. It would be necessary to develop further how assistance could and should be provided by states.

Part V of the draft Convention discusses the creation of an international oversight and monitoring mechanism through the creation of the Committee on the Regulation, Oversight and Monitoring of PMSCs. The 2011 document did not specify how many members the Committee was to have, only that would responsible for analyzing reports submitted by states party as well as solving controversies among them (DRAFT…, 2011).

5 LIMITS AND POTENTIAL

As was said in the introduction, description is an essential first step in any qualitative work. Even so, description for mere description does little to contribute to any debate in any area of the humanities. With that in mind, this chapter will focus on the relation between the international documents presented in chapter 3 and the private military and security companies phenomenon presented in the second chapter. More precisely, how do the documents impact PMSCs? To answer this question, one must critically analyze all the information presented so far.

There is no denying the importance the Montreux Document and the International Code of Conduct have – or that the Draft Convention could come to have. They are relevant marks in the field of humanitarian rights and PMSCs, incorporating and shaping the idea that these companies do not exist in any sort of legal vacuum – this is, in fact, the main purpose of the Montreux Document. These documents corroborate the view of the scholars presented in the second chapter regarding the defense of the idea that there is no such a thing as a total legal vacuum in which PMSCs operate. Regardless, there is no denying that they are not completely effective in promoting respect for human and humanitarian rights by private military and security companies. As data from the Shock Monitor and the PSED shows, there is still a great number of reports of violations committed by these entities. One of the reasons for this may come from the fact that these companies usually operate in places where it is extremely difficult to enforce humanitarian norms – as presented in chapter 2.

The first thing that needs to be taken into account about the documents presented is that they are mostly state-focused: the Montreux Document, for example, basically specifies what is expected from states regarding the usage of private military and security companies, particularly when they are the clients. It is highly important to recognize that states have duties towards their populations regarding the actions of these companies. Customary international laws identify the contexts in which states are responsible for the actions of companies hired by them to perform certain activities. These involve mainly situations that business is hired to perform functions that intrinsically states ones – and as such, they can be considered as acting on behalf of the state.

The Montreux Document adopts a similar take on the matter. It specifies activities that should not be outsourced to PMSCs precisely because of their nature. Even so, the document only works as a summary of all the existing norms and international laws regarding how states should regard their relationship with PMSCs. Because it does not entail any legal obligations,

states that do outsource the activities there identified are not subject to any international sanctions.

Even if this state-focused approach is limiting, it is important to the preservation of the notion of modern state. Due to the fact that some activities are not to be outsourced, it can be understood as something that seeks, among other things, to preserve states' ideal of monopoly over the legitimate use of force. The core functions related to the use of force are the ones that should be performed only by the states themselves and their Armed Forces, which would somehow lead them to maintaining their legitimate monopoly – or, at least, their perceived monopoly.

Another perspective related to this prohibition is one of the most fundamental structuring principles of human rights documents: they specify rights that must be protected from the actions of the states themselves. States may be considered as the legitimate users of violence, but there must also be some limits as to how much violence can be used – and in what contexts it is appropriate to resource to it. Violence is not something that can be used whenever and however states want it: there are rules in place to ensure that human dignity is respected by the actors.

This is true even for humanitarian norms. The Geneva Conventions, for example, are not originally from 1949. The first Geneva Convention was actually created in the previous century by Henry Durant. But given the events of the Second World War and the atrocities committed during the conflict by various parts (specially by the Nazis), they were reformulated in order to provide further protection for the human person against the actions of states and their Armed Forces. This is even more emphatical considering the definition of armed conflict presented in the Conventions involves the notion that for there to be an international armed conflict, two or more states must be involved. In this sense, the activities that are not to be outsourced represent a great potential for violations human and humanitarian rights.

Another evidence of this perspective is the understanding of the role the Armed Forces of a state play on a given armed conflict. Armed Forces are usually viewed as combatants, which means that they are entitled to take directly part in the hostilities. They are, then, considered as valid target by international law – including the Geneva Conventions. On the other hand, non-combatants must not be targeted, as well as hospitals and schools and other places specified in the Geneva Conventions. These, in reality, are to be protected from the fall outs of armed conflicts and from the Armed Forces and other parts involved in them. This is not merely a matter of not being targeted, which could somehow be viewed as a "neutral" protection. They must be given a "positive protection", in the sense that efforts must be done

so that they are affected as little as possible by the conflict. This is an important notion when one considers that the Geneva Conventions identify Armed Forces and states as the main actors who can be involved in an armed conflict. In this sense, the norms stablished in the documents mean to protect different peoples from the actions of states and their agents, which, as said earlier, is an important trait of the humanitarian and human rights regime.

Based on this notion, one of the reasons why some functions must not be outsourced is that companies themselves are not directly accountable for providing such "positive protection" to those affected by their actions. There is even a lot of debate concerning the idea of whether they can be considered combatants or not in armed conflicts, which leads to a blurry line as to whether they should be ones providing the protection or being protected. This, however, is a much broader debate outside the scope of this dissertation.

On the other hand, there are also activities that can be outsourced – otherwise, states would not hank in the second place as clients of this type of service. One of the main idea behind these activities is that they should not involve the direct use of force by these companies and their employees – and, in being so, they are not activities which would violate states' monopoly over the use of force, because they are not inherently state functions. Therefore, according to international customary law, states are not to be held responsible for the actions committed by the private entities who perform such activities because they would not be acting on behalf of the state, which means that their actions cannot be considered states' actions as well. In cases like these, states cannot be held accountable for PMSCs' actions – only the companies themselves and their employees may be accountable.

This is already a delicate situation when countries hire these companies to act on their behalf and it gets even more complicated when PMSCs are hired not but states, but by other private entities. This is where the current structure starts showing greater signs of limitations. However complicated it may be holding a state accountable for the actions of PMSCs, this situation is somehow foreseen by international law and there are mechanisms to deal with it – even if dealing with provides a difficult and rare attempt.

The focus on states shown in the documents presented and in international law in general leaves little agency left for the companies themselves. Of course, this derives from a much bigger issue revolving around the idea that no actors other than states are entitled to the status of international legal personality – and, as such, they are the only ones who can actually sign any international documents (MAZZUOLLI, 2011). This, however, another much deeper debate outside the scope of this work and a subject for future work.

In spite of their lack of international legal personality (thus also of the ability to sign international treaties), the companies themselves have tried voluntarily to solve this is problem of lack of agency through the adoption of the International Code of Conduct for Private Security Providers. Somewhat opposed to the Montreux Document, the ICoC focus falls mainly on the companies and how they should behave in order to demonstrate what is considered a necessary commitment to humanitarian norms.

The attempts at self-regulation can be seen as coming from a similar mindset as the one which defends that writing better contracts is enough to provide insurance of humanitarian and human rights norms. Contracts could have clauses that could include, for example, the possibility that a company must help with any and all investigations conducted into their actions taken when the contract is being executed and that, if found guilty, clients will not hire their services for future endeavors. They could also specify the possibility that companies act in order to make amends with those affected by the violations. This notion also comes from an idea that defends that companies themselves have incentives to respect these norms because doing otherwise could possibly lead them to a situation in which it would be harder to sign new contracts, particularly with public clients. People who defend this idea argue that being seen as a company that disrespects humanitarian and human rights is bad for business.

A way to identify companies which comply with the norms is through certification, which is where the International Code of Conduct Association comes. The ICoCA works as a sort of certification institution, grating the document to those who abide by the norms specified in their Code of Conduct. Having a certification may be seen as something good for business, since ideally it would open doors to contracts that could not otherwise be signed. This brings us back to the better-contract-writing idea: in order for the good-for-business strategy to work, first contracts must directly state that the hired company must be a certified one.

A flaw in this logic is that writing this condition into the contracts is not mandatory *per se* in most countries around the world – it is usually seem just as a good practice (which is not always adopted) and not an obligation. Another very important point made by Hedahl (2019) is that companies are not really obliged to fulfill their contracts: they must actually either fulfill the contracts or pay compensation to the other part. Using contracts to deal with the matter is then a very limiting strategy – they should be adopted, but they alone are not capable of ensuring respect for humanitarian and human rights norms.

This brings us to another limit in the ICoC and the ICoCA. Showing support for the document and the association can be seen a sign of good faith towards humanitarian norms. But this is only that: a sign of good faith. Even if the ICoC and the ICoCA do focus mainly on the

companies opposed to the focus of the Montreux Document, giving them agency, both documents actually have one thing in common: neither create any legal obligations for those who support them – they are not legally binding documents. This means that there is no legal consequences for those who disrespect the norms – the only possible consequence is that they may lose their certification, but no international nor national sanction is attached to it. And, considering that having a certification is not something mandatory in the business, this is not much.

ICoCA's limitations are further endorsed by the number of companies which have actually become certified over the years. As previously said (and can be seen in Appendix A), only over a hundred companies have shown support for the association and an even smaller numbers have actually taken the steps and become certified.

In this context, it is necessary to understand how the code can actually impact a company's behavior. Simply put, if a company wishes to be certified, it must adequate its behavior to what is expected from a certified enterprise. Therefore, they must not commit war crimes or any sort of humanitarian and human rights violations. Moreover, they must also subject themselves to investigations when accused of these acts in order to "clear" their names with the ICoCA – they must also show themselves as willing to cooperate with any authority responsible for investigating the allegations in order to either regain or maintain their certification. Again, this is all a voluntary process, meaning that the companies can withdraw from it at any time without any legal fall out.

As said, neither the Montreux Document nor the ICoC create any sort of legal obligation for the parts who support them. This is to say that there is no specific international legislation regarding the actions of Private Military and Security Companies: this is left to the national sphere. The Montreux Document and the Draft Convention even incentivize national states to adopt legislation on the matter – the difference, of course, is that, had the Draft Convention been adopted, it would have created actual international legal obligations for its state parties, including the obligation to adopt national legislation.

National legislations are extremely important. States are entitled and somehow obligated to keep track of what companies operate in their territories and what types of services they provide. National laws are even more crucial when one thinks about the different cultural realities existing throughout the world – some practices and habits differ from place to place. It is important that this guidelines exist to guide behavior and practices in different societies and also to serve a guideline for foreigners which wish to operate inside the country's territory.

PMSCs are no exception: when operating in a foreign country, are legally obliged to abide by the customs and laws of the places where they want to operate.

These national laws are even more relevant when we take into account the fact that many countries hire PMSCs to act on third-party countries. A good example is the case of the private contractors which operate in Afghanistan mentioned in the second paragraph. They are currently on American pay roll operating in Afghan territory. Afghanistan is a country with very different values from the Western-American ones and its laws serve as a guideline and must be observed by the companies which are helping their Air Force. National legislation have then an important role to play in regulating PMSCs' actions.

In spite of their importance, national legislations themselves are not fully equipped to deal with the phenomenon at hand. As shown by Uesseler (2008), PMSCs are transnational companies and take full advantage of this fact. Some have their divisions spread throughout different countries so that they can close and open up offices as they see fit. In this context, a country alone adopting a national legislation is more likely to merely cause companies to change their offices to a state with more favorable laws. In this sense, if there is no international cooperation to regulate their activities around the globe, they will simply keep on moving from country to country based on which ones have the best legislation to benefit them – or, even, no legislation at all.

Adopting legislation regarding the actions of private military and security companies is also a tricky business due to their corporate nature. They are, after all, companies - and as such, they are adepts of the "states shouldn't regulate market" philosophy. Some advocates for the non-adoption of regulation defend that market forces themselves are more than enough to ensure respect for human and humanitarian rights. One of their arguments was already presented: that if a client wishes to ensure that a PMSC respect humanitarian and human rights norms, they should simply state so in the contract. Another argument for the self-regulation is the "bad for business" one, that has already been presented in this chapter.

They may have a point. Some of these companies are indeed publicly held as was shown in the second chapter and, as such, are subject to stock changes and must also submit periodical reports to their shareholders. By this logic, the "naming and shaming" practice of human rights regimes is highly adequate to deal with the relationship between humanitarian norms and PMSCs. Once companies that have violated these norms are named, they can be publicly shamed as well – which would probably, in turn, lead to a drop in value of their shares and no shareholder wants that. On their side, they might do their best to make sure their companies abide by these norms so that they do not lose any assets they may have invested in them.

Even though it seems that market forces would ensure that humanitarian rights are respected by the companies, it is quite naïve to believe that logic works every single time. If that was the case, there would be no reports of violations at all since these market forces have been in place since before PMSCs begun to exist as companies. Cases such as Abu Ghraib, civilian shootings and the report of current violations in Africa by companies hired by Russia would not be a part of reality. They would belong only to bad nightmares of those who were indeed affect by the actions of these companies.

A more rational conclusion would be that what actually happens is that the companies have inceptives to make sure the public does not find out of any violations they may have committed. And, if by any chance the public got hold of that information, they would ensure they could keep on doing business in other ways. For example, Blackwater, following the mentioned incident that killed 17 civilians in September 2007, simply created new subsidiaries so that it could continue biding for US contracts (TZIFAKIS, 2012). Market-forces alone thus are not capable of dealing with PMSCs and humanitarian and human rights in the best way possible.

In addition, it is important to highlight the fact that not all of these companies are public held. As shown in the second chapter, there are still companies that are still strictly held by private capital and, in turn, not subject to the oversight of shareholders. They are, of course, still subject to the naming and shaming practice, but its limitations have already been presented. Other than the fact that they do not have to report to a body of share-holders, they are very similar to the public-held companies when considering the matter at hand.

Based on everything that was presented, it is logical to conclude that the effects the international documents have on how PMSCs act are very limited. One of the reasons for this limit is the focus on states: however willing they are to uphold humanitarian and human rights norms, it is not viable for a state to monitor all actions taken by these companies – particularly when the actions take place abroad. Even if they could, it is important to note that states are not the only ones to hire PMSCs – and that should also be taken into account. All in all, there is still much room for disrespect to be committed by these companies, which in turn means there is still much room for improvement. It is then a question of how the international community could work to change this reality.

One could turn to game theory at this point. Simply put, humanitarian and human rights can be understood as a common good which, ideally, should be provided to everyone by everyone. Nevertheless, precisely because it is a common good, it is also sometimes very easy for an actor to justify actions against the provision based on the idea that the actions of one

actor may not impact the overall provision of this common good. This leads to what is called a free rider behavior: one does not contribute to the provision of the common good, but collects its benefits in a similar manner to the one they would had they contributed.

One of the problem with free rider behavior is that, if all the actors were to act like this, the common good would not be provided at all – in this case, humanitarian and human rights. There are various types of free rider behavior that can happen in this context – and by the different types of actors involved. The general idea, however, would be that some states and companies do commit to respect humanitarian and human rights law and improve the overall situation for everybody. Companies would be better viewed in the public eye and so would states. Even so, some companies and states may benefit from the overall improvement without actually contributing to its provision.

The question left to be answered is then of how we can make personally advantageous for each single actor to abide by these norms, thus actually contribute to the provision of the overall good instead of merely harvesting the profits from others' efforts, which means, thinking about how to change the current structure so that they can better affect actors' behavior. This would involve changing the incentives the actors have to respect the norms – thus changing the way the system is currently structured in general.

One of the important aspects of this change of incentives is ensuring that companies that do not abide by the norms can longer maintain their businesses as they were. They must rearrange themselves to change their behavior in light of the humanitarian norms – and not merely dismantling and rearranging into new companies so that they can keep their business without changing anything in fact other than their names. This could be done by two main paths: them not finding clients willing to hire their services and them not being legally allowed to remain in the country where they operate (or their home states as well, for that matter), which would entail being forbidden of signing new contracts. This is not, however, easily accomplished nor has it ever been done for one to be able to say for sure it would be enough.

Given the nature of the services provided by these companies and the importance of humanitarian and human rights, there aren't many ways to make it possible. The easiest way may well be that of certification already in place – though it would need some updates. It would have to be a group effort in the sense that all actors involved would need to contribute in order for it work. One may even consider the possibility of changing how these companies are perceived in international public law so that they can be internationally held responsible for their actions. Another possibility could take place through the adoption of an international

document that actually takes PMSCs' agency into account. All of these possibilities are extremely interesting and deserve attention – however, they fall beyond the scope of this work.

6 FINAL CONSIDERATIONS

This dissertation sought to study international documents related to humanitarian and human rights norms in the realm of private military and security companies are currently structured. This is important for many reasons, one of which is the nature of the services provided by these companies. In this context, the first step taken was understanding what these companies are and the types of services they provide.

It was shown that they are usually understood as private entities that perform activities that were once performed by states and their Armed Forces. These activities range from a more logistical perspective to strategy developing, intelligence gathering and actually deployment of troops. Identifying these services and comprehending them is to important to understand why it is so crucial to better deal with PMSCs and humanitarian and human rights.

Military structures have internal code of conducts that guide their every action. They also have a clear chain of command and internal justice to deal with breaches of humanitarian and human rights by the troops. In this context, they are properly trained to respect documents such as the Geneva Conventions when conducting their missions. Besides, being part of states' apparatus, states are also ultimately responsible for their Armed Forces actions and may be held accountable for any violations committed.

This is something that is not present in the structures of PMSCs: nor do they have such internal codes of conducts nor are they states always responsible for their actions. Another situation is when states are actually the ones to hire PMSCs' services. When they do so, they are not developing their own technologies and structures. In fact, there has also been a trend in downsizing military structures. Thus, Armed Forces and states are becoming more and more dependent on this kind of service in order to provide security, as was shown by the case of the US presence in Afghanistan and Afghan Air Force dependence on American contractors.

This increasing dependence of the state on the private sector to perform a function that is so close to what makes a state may be highly problematic. If one considers the modern definition of state that is related to the monopoly over the use of force, what is to come of states when they outsource their monopoly? There is a lot of debate on this matter and no consensus has been achieved yet – and I don't believe it ever will. What is clear is that if we are to change how we perceive states, the international relations field will never be the same.

Another aspect to take into consideration is that states are not even the greatest clients – as shown in the second chapter. Most of PMSCs' clients are private enterprises and they are even more far from being responsible for PMSCs' actions than some states. It is a matter then

of thinking how PMSCs can be held accountable for their actions regardless of who was the one to hire their services.

This is not saying that PMSCs operate in a legal vacuum in which they can take any action they see fit. Even if they are not mentioned in the Geneva Conventions, for example, there are mechanisms in place related to trying to ensure that they abide by humanitarian and human rights norms. In this context, three documents were described: the Montreux Document; the International Code of Conduct for Private Security Providers; and the draft of a possible Convention on Private Military and Security Companies.

Based on the description of the documents, it was shown that, however important they may be, their impact is still very limited. First of all, none of them is legally binding to those who show their support – either the supporters are PMSCs, states, IOs or any other type of organization. Due to this lack of legal responsibility, there is no sanction for those who decide not to respect the norms stablished in them. The only practice in place is that of naming and shaming, in which violators are identified and "shamed" by the international community. And, even when this practice is somehow effective, companies can simply dismantle and rearrange themselves into "new" companies with different names so that they can continue operating, just as Blackwater did.

Another possible consequence of a violation for PMSCs is the loss of their licenses granted by the International Code of Conduct Association. Even so, the loss may not be very impactful to companies. The licenses are not mandatory for them to acquire new contracts and perform their services: they are only required in some of the contracts because it is not an obligation for clients to ask for this type of license.

Based on everything that was presented, it is clear that there is still much room for improvement in this field. How these improvements will take shape is yet to be seen, but it is important to emphasize that the current structure is not capable of adequate dealing with the PMSC phenomenon in the proportion it now holds.

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APPENDIX A - List ICoCA's members (companies)

Company	Certified	Country of origin
ACADEMI	Yes	United States
Al Hurea Security Services	Yes	Iraq
Al Murabit Security Services	Yes	Iraq
Al Sur Security Services	No	Iraq
Alastora for Security Services Co.	No	Iraq
Alphard Maritime	Yes	Singapure
Amarante International SAS	No	France
American K-9 Detection Services LIc (AMK9)	No	United States
Anticip S.A.S.	No	United States
Ardan Energy Services DMCC	No	United Arab Emirates
ARGOS Security BV	No	Netherlands
Argus Security Projects Ltd.	No	Chipre
Arpida Corp.	No	Seychelles
Black Pearl Maritime Security Management Limited	No	United Kingdom
Blue Hackle Limited	Yes	Iraq
BM Security	No	Kenya
Centurion Security	No	Guatemala
Chenega Security & Support Solutions, LLC	Yes	United States
China Security Technology Group Co. Ltd.	No	China
Control Risks	Yes	United Kingdom
CORPGUARD Group	No	France
Delta Security Ltd	No	Poland
Duguf Enterprise Security Services	No	Somalia
Eaglematrix Security Agency, Inc.	No	Philippines
Eagles Egypt Security	No	Egypt
Empresa de Seguridad Privada e Instalaciones Especialies (ESPIE)	No	Honduras
Eos Risk Management	No	United Kingdom
Erinys Iraq Limited	Yes	Iraq
Erys Group	Yes	France
Excel Security Solutions AG	No	Switzerland
Flash Intervetion	No	Cote d'Ivoire
Frontiline Responses Finland (FRF)	Yes	Finland
G4S Risk Management Limited	No	United Kingdom
G4S Secure Solutions Tanzania	No	Tanzania
GadaWorld	Yes	United Arab Emirates
GEOS	No	France
GIPP World Company	No	United Kingdom
Groupe Tara S.A.	Yes	Switzerland
Gulf Shield Company for Security Services	No	Iraq
Hanwel International Security Services Co. Ltd	No	China
Hart Security Limited	Yes	Cyprus
Hua Xin Zhong An (Beijing) Security Services Co. Ltd (HXZA)	Sim	China
IDG Security	No	United Arab Emirates
Innovative Security Technologies	No	Trinidad e Tobago
Integrated Security Services	No	Guiana
Interglobal Seguridad y Vigilancia Ltda	No	Colombia
ISN International Security Network	No	Germany
Janus Global Operations	Yes	United States
K2 Solutions, Inc.	No	United States
KAR Security	No	Iraq
LandMarck Security Ltd	No	Ghana

Libertine Global Solutions Ltd	Yes	Nigeria
Mando Risk Management Company Ltd	No	Iraq
Marine One (Private) Ltd	Yes	Sri Lanka
Maritime Defence Force	No	United Kingdom
Meridian Global Consulting, LLC	No	United States
Metropolitan Security S.a.l.	No	Lebanon
MS Risk Limited	No	United Kingdom
Nibras Company for Security and Safety	No	Libya
Olive Group	Yes	United Kingdom
Page Protective Services Ltd	No	Cyprus
PalSafe	No	Palestine
Patriot Group Internationa, Inc.	No	United States
PBi2	No	Somalia
Physical Risk Solutions	No	Somalia
Pro Interactive Services (India) Pvt.	No	India
Professional Security Services, S.A. (PSSSA)	No	Haiti
Prudential Guards Limited	No	Nigeria
Pyramid Temi Group	No	Italy
Reed International Inc.	Yes	United States
Safeguard Security Services (Pvt) Ltd	No	Zimbabwe
Saladin Security	No	United Kingdom
Salama Fikira International	No	Mauritius
Sallyport Global Holdings Ltd	No	Unites States
Scandinavian Risk Solutions	Yes	Sweden
Sea Guardian Maritime Security Services	No	Cyprus
Seakey Marine Limited	No	Nigeria
Sediqi Security Services	No	Afghanistan
Seguroc S.A.	No	Peru
Servicios Integrales de Seguridad Privada (Security SIS)	No	Honduras
Siete24 Letda	No	Colombia
SOS LLC	Yes	United States
Somali Risk Management (SEM)	Yes	Somalia
Team Fusion Ltd	No	United Kingdom
Torred International LIc & Torres Advanced Enterprise Solutions LIc	No	United States
Triple Canopy	Yes	United States
Ukrainian Private Military Company	No	Ukraine
United Guards Services Ltd.	No	Cyprus
Unity Resources Group, Middle East, LLC	No	Iraq
Universal Maritime Solutions (BVI) Ltd.	No	Singapore
Vesper Group	No	Sweden
VSC Security Solutions	No	Iraq
VxL Enterprises LIc	No	United States
WS Insight	No	Mauritius
Yutees Services Ltd.	No	Ghana

Source: ICoCA (s/da, adaptated).