Quasi-Mercenary Organizations: challenges of definition, politics and international law

Jovana Jezdimirovic Ranito[1] and Christopher T. Mayer[2]

[1] Jovana Jezdimirovic Ranito is a postdoctoral fellow at University of Porto, Portugal.
[2] Christopher Mayer is an independent consultant for the U.S. national security and is on the advisory council of the International Stability Operations Association.

Introduction

After several years of brutal civil war in an African country, marked by human rights abuses and varying degrees of international sanctions, the introduction of well-organized mercenary forces seemed to tip the balance – or at least spurred the international community under the United Nations to take action. A peace agreement was reached; the terms of which included a requirement for those mercenary forces to leave the country. This scenario could be from a film, such as “The Wild Geese;” the problem is that it is not. It describes several situations that have plagued Africa since de-colonization.

The scenario directly applies to Sierra Leone in 1995, referring to the government’s contract with Executive Outcomes (Pelton, 2006; Spicer, 1999). The scenario repeated itself in 1998, with that government’s contract with Sandline International (Spicer, 1999). After the demise of both of these organizations, many academics and diplomats believed that such entities were no longer a concern and, instead, focused on a different form of armed contractor, now offering military support services, including armed security but not direct combat (International Committee of the Red Cross, 2006). Examples include Sandline’s successor organization, Aegis in Iraq and the more notorious Blackwater, owned by Erik Prince (Pelton, 2006).

But then, in January 2020, the scenario was repeated in Libya, calling out the Russian quasi-mercenary organization Wagner (United Nations Meetings Coverage and Press Releases, 2020). This time, it is unlikely that they will leave. Clearly, the issue of combat provider or quasi- mercenary organizations is not a thing of the past and initiatives designed to address legitimate private military and security companies, such as the Montreux Document and the International Code of Conduct (ICoC), may not be adequate to the challenge of these private combat provider organizations.

In 2013, the Russian Chief of the General Staff, General Valery Gerasimov, published an article which described his perception of trends in 21st century warfare (Kofman, 2016). In his view, he saw a permanent state of conflict where separate notions of peace and war would no longer apply. The era of purely military solutions was past, giving way to “whole of government” warfare, fusing and exploiting the

capabilities of both hard and soft power. Although his view was primarily based on what he observed from U.S. engagement in the post-Cold War world, this notion of "hybrid warfare" is most often applied to Moscow's reliance on proxies, disinformation, and measures short of war in Ukraine, Syria, Africa, and elsewhere (Rumer, 2019).

One of the most noteworthy aspects of this hybrid warfare by both the United States and Russia is the ubiquity of contractors on the battlefield. Although almost unheard of during the Cold War era, they are now essential combat enablers of Western military forces, developing States, and -- for Russian engagement in Syria and Africa -- direct fire combat (Sukhankin, 2019). This development drove practical concerns within military forces about employment and control of these contractors and political concerns over an apparent privatization of war (Mayer, 2008). At the lower end of the operational spectrum, those practical and political concerns were validated through reported incidents of human rights abuses by Western private military and security companies (PMSCs). Charges included willful destruction of property, smuggling, arms trafficking, human trafficking, and unprovoked use of lethal force, including the shooting of 17 civilians by the U.S. PMSC Blackwater at Nisour Square, Baghdad, Iraq in September, 2007 (DeWinter-Schmitt, 2013, p.27).

By 2015, extraordinary political measures responding to these concerns produced noteworthy successes in regulations and had a measurable impact on the performance of PMSCs domiciled in or contracted by Western governments. With apparent success, political interest began to wane. Although the number of PMSCs voluntarily adopting the new international standards continues to increase (Department of Defense, 2020), government activity in both legislative and executive functions slowed or stopped entirely.

As Western government engagement in PMSCs waned, the activity of Russian affiliated armed groups gained notoriety. In 2014, the Russian annexation of Crimea and subsequent fighting in Eastern Ukraine included activity of armed groups that were not officially part of the Russian armed forces yet were clearly operating on behalf of Russian interests (Sukhankin, 2018). Later, these groups became active outside of the Ukrainian conflict, beginning with Syria. These organizations provide

services that are sometimes analogous to Western PMSCs, including advice for military forces and personal protection for individuals and commercial entities. They also offer services such as combat and riot control that Western PMSCs have not performed since the dissolution of Sandline International (Browne, 2019). Russian sponsored combat provider entities have fought or are currently fighting in Chechnya, Ukraine, Syria, Central African Republic, Libya, Sudan, and Yemen (Marten, 2019). Because their activities do not have official authorization, the Russian Government can deny responsibility for the activities of these organizations (Spearin, 2018). Only recently has President Putin admitted that they exist (Borshchevskaya, 2019). They operate outside of, and sometimes with deliberate disregard to the recently established norms for PMSCs (Sukhankin, 2019). This disassociation from the government monopoly of violence and accountability raises dangers for regional stability, and may risk great power confrontation (Østensen & Bukkvoll, 2018).

In addition to these dangers, public reaction to the activity of Russian actors may threaten the progress made since 2008 in promoting the regularization, accountability, and legitimacy of contractors employed by both Western governments and the private sector. The regulation of PMSCs by contracting States has been addressed by scholars throughout the last decade. From the standpoint of national regulation, the most recent examination by Jezdimirovic Ranito (2019) described the U.S. national regulatory process, encompassing various aspects and dynamics between the stakeholders involved. The dynamics between the private agents and the entities contracting them, whether States or organizations, have also been addressed by several scholars. Krahmann (2016) advocated that the principal-agent theory is suitable to address the drives and limitations of better oversight and accountability of contractors. Diphoorn (2016) used security assemblages to explore the relationship between private security contractors and public agents.

The Russian use of similar entities follow a different model. There is a growing and more refined analysis of the evolution of Russia’s use of non-governmental combat providers in conflict settings, from both legal and strategic perspectives (Marten, 2019; Spearin, 2018; Sukhankin, 2018). Most of the research is from the military, concerned with the rise of the use of such organizations in an offensive capacity.

(Østensen & Bukkvoll, 2018; Spearin, 2019). Only recently has the academic community seriously addressed this topic, exploring the political dynamics in the proliferation of these organizations and the fundamental differences between the Russian model and Western PMSCs (Borshchevskaya, 2019; Rondeaux, 2019).

Despite differences in regulation, accountability, and oversight, media reports and official Russian statements regularly equate Russian organizations with Western contractors (Peter, 2018; Tekingunduz, 2018). Public statements in the media and by some government officials promote a concept of moral equivalency between the Russian organizations and Western PMSCs (Bingham, 2018; Linder 2018; Schmitt, 2019; Spearin, 2018). Both deliberate and unwitting obfuscation will undermine the legitimacy of properly regulated PMSCs, limiting access to responsible and accountable military support and security services, while doing nothing to counter the proliferation of Russian and other quasi-mercenary organizations[3].

This paper advocates securitization of the regulation of non-governmental combat providers. Governments, working with civil society and other private sector stakeholders, must identify and expose the hazards these actors present to both International Humanitarian Law and Human Rights Law, to identify appropriate controls to manage risk, and to take appropriate action against individuals and governments that use these providers in violation of international law. This securitization is necessary to avoid several negative effects. First, to counter a present ineffectiveness in the anti-mercenary norm regarding these new entities. Second, without addressing that present ineffectiveness, the Russian model may become so widespread as to annul the last two decades of efforts in regulating and limiting PMSCs in military operations. Third, this is likely to nullify progress accomplished over the last 10 years in the professionalization of western style PMSCs and revive debating the legitimacy of PMSCs. This paper maintains that the starting point for the securitization must address the irreparable damage that can come from acceptance of vocabulary equalizing mercenaries with private security companies, the current legal gap preventing non-state combat providers from

[3] The quasi-mercenary organizations (QMOs) are properly defined in the following section.

identification as mercenaries, and the lack of consequences regarding national/international law when genuine mercenary-like activity is unpunished.

What is a Mercenary?

In solving any problem, the first step is to define the problem that needs to be solved. This itself is a problem. These military and security service providers have been called by many names, including private military companies, private security companies. Private military and security companies, and more comprehensively and often disparagingly, mercenaries. None of these terms have universally understood definitions, and none of the commonly accepted definitions fit the various forms of non-governmental military and security services providers operating in armed conflict and fragile States today. The most commonly used term, Private Military and Security Company, for example, has a specific definition under the Montreux Document:

> PMSCs are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel (International Committee of the Red Cross, 2008).

This definition is accepted by the 56 States and three international organizations that participate in the Montreux Document. It accurately describes most – if not all – of the contractor support used by the governments that endorsed the Montreux Document. The United Nations Human Rights Council's 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 (hereafter the UN Working Group on Mercenaries or UNWG-M) uses a different definition of PMSC:

Private Military and/or Security Company (PMSC): refers to a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities (Patel, 2012).

The UNWG-M describes military services as “specialized services related to military action, including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities”. Security services are described as “armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities” (United Nations, 2009). This definition is more comprehensive that of the Montreux Document. Although the UNWG-M definition is not formally accepted by any government, it demands due consideration. If accepted, this definition will apply to nearly all contractors employed by Western governments supporting military or other security activities.

The problem is that neither definition applies to Russian or other non-governmental entities engaged in combat or combat support functions. Both the Montreux Document and the UNWG-M definitions specifically omit combat activity. Nor would these definitions have applied to previous organizations, such as Sandline International and Executive Outcomes. Further, Russian and other combat provider organizations may not be registered and licensed business or corporate entities (Marten, 2019). These organizations have no publicly available articles of incorporation and no official registration as a business entity in a particular State.

The other term used with regard to all of these organizations -- mercenary -- is also inadequate. For different reasons, both the common definition and the definition used in international conventions does not clearly apply to any of these past or current non-governmental combat providers.

The common definition as used in Encyclopedia Britannica (2019) defines mercenary as

> Mercenary: A hired professional soldier who fights for any state or nation without regard to political interests or issues.

This definition is inappropriate since many of the people in these organizations maintain that they are fighting for a particular cause. This includes Russian groups such as Wagner, who believe that they are fighting for their country's interests (Marten, 2019), Iranian sponsored Shi'ite Legions in Syria and Yemen (Ghaddar, 2018), and even Executive Outcomes and Sandline International, who insisted that they only worked for "the good guys" (Pelton 2006; Spicer, 1999).

The formal definition used in international conventions, such as Additional Protocol to the Geneva Conventions in 1977 and the *International Convention against the Recruitment, Use, Financing, and Training of Mercenaries* (1989) also falls short. A key part of this definition states that the individual:

> 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 (Patel, 2012)

This is difficult for two reasons. First, as described in the British Foreign and Commwealth Office's report, *Private Military Companies: Options for Regulation* (2002), motivation is very difficult to prove. Although an individual may be paid a substantial amount of *material compensation*, that does not mean money is his or her essential motivation for taking part in hostilities (Rondeaux, 2019). Further "excessive" material compensation is an almost irrelevant factor. As is the case for U.S. government PMSC contracts, a non-U.S. national might be paid $450 a month to work under a Defense Department contract for private security functions. This may be substantial material compensation to that individual, but only 1/8th the compensation of a private first class (one of the lowest ranks) in the US Army who is deployed to the same combat zone. Where the alleged mercenary is paid more than the regular troops of that party, there could be an argument that this person brings

special knowledge, skills, and abilities beyond those of the regular troops (Scheimer, 2009).

As a result, actual cases of alleged mercenaries have tended to charge individuals of crimes such as arms trafficking or murder, rather than mercenarism (Major; 1992 pp. 134-141). In cases where individuals were successfully convicted of mercenary activity, the trial itself may have violated the human rights of the accused. In the case of the 2005 trail in Equatorial Guinea, which included the son of former British Prime Minister Margaret Thatcher, Amnesty International cited a series of prosecutorial human rights abuses that questioned the validity of the charges and the outcome (Amnesty International 2005). Even if a suitable definition of mercenary could be constructed, it would not solve the problem. First, it will remain a very politically charged term with universally negative connotations (Ettinger, 2014). Second, it will not help to distinguish PMSCs as defined in the Montreux Document -- who are subject to applicable national regulation and international law -- from combat providers who are not clearly accountable to government regulation, and may operate without regard or impunity to applicable international humanitarian or human rights law.

Defining the problem requires a new taxonomy that is clear and distinct, accurately describing the organization and distinguishing it from other organizations. For that purpose this paper will use the Montreux Document definition of PMSC to describe companies that are regularly organized business entities that are accountable under law, as the Montreux Document describes, to contracting, territorial, or home States and the services of which do not include operations aimed at using combat power to locate close with and destroy opposing armed groups. This paper will refer to other groups, the services of which closely align with traditional definitions of mercenary activity, but do not meet the strict definition of mercenary in contemporary usage or international conventions, as *Quasi-Mercenary Organizations.* We consider that:

> Quasi-Mercenary Organization (QMO) applies to any group not formally integrated into the armed forces of a State, the services of which include combat operations and which directly participate in hostilities. QMO particularly applies to commercial organizations that provide uniquely military

services where accountability under International Humanitarian Law, International Human Rights Law, or applicable national law may be unclear, non-existent, or denied by sponsoring entities.

The Challenge of Quasi-Mercenary Organizations

There are about a dozen Russian affiliated QMOs known to conduct combat and combat related activities in various hotspots of the world today. The best known of these is the so-called Wagner Group, led by former Soviet Military Intelligence (GRU) officer, Dmitri Utkin (Rondeux, 2019). Wagner Group officers have strong relationships with senior Russian government officials, and its personnel are either Russian or citizens of former Soviet Republics. Their activities clearly support Russian national interests, but they operate without official authorization, direct involvement of, or attribution to the Russian Government (Østensen and Bukkvoll, 2018). President Putin has made statements supportive of their operations while simultaneously denying any responsibility for their actions (Bingham, 2018).

Other Russian QMOs include Eagle Antiterror, RSB Group, Moran, ENOT, and Patriot. Some of these have legal registration to provide private security services inside of the Russian Federation. *Military related activities outside of Russia, however, are illegal under Russian law*. To circumvent this restriction, some of these companies have foreign registrations in Argentina, Belize, Cyprus, and other countries (Østensen and Bukkvoll, 2018, pp. 22–27). This creates ambiguity that facilitates using these entities to pursue Russian national interests while maintaining (implausible) deniability. Under this legal ambiguity, Russian QMOs directly participate in hostilities or train combat and security forces in developing countries (DEBKAfile, 2017). Often, they do both. General Thomas Waldhauser, commander of U.S. Africa Command, told the US Senate Armed Services Committee “in some countries, they [Russian quasi-mercenaries] have been seen protecting valuable mineral and oil deposits, securing Russian access to them in the process… In a select few, they are active combatants in war zones, fighting alongside armies and other militia groups.” General Waldhauser then cautioned “by employing oligarch funded, quasi-mercenary military advisors, particularly in countries where leaders seek unchallenged autocratic rule, Russian interests gain access to natural

resources on favorable terms" (Browne, 2019). This demonstrates how Russia is using these organizations to directly promote strategic objectives described in the *Russian Federation's National Security Strategy*. Russian QMOs are alleged to have been instrumental to the Russian take-over of Crimea in 2014 and the shootdown of a Ukrainian IL-76 military transport aircraft later that same year (Lasynskyi, 2017). There are also unconfirmed reports of Wagner Group activity in Venezuela (Tsvetkova and Zverev, 2019).

Russia is not alone in contracting QMOs for direct participation in hostilities. In the Middle East, there are number of other state-sponsored armed groups. In addition to the Shi'ite Legion contracted by Iran, Saudi Arabia and United Arab Emirates use mercenary-like groups to advance their interests in Yemen. Similar activity has been reported in Libya, working for unknown paymasters (Ryan, Dawsey and Tate, 2019).

State sponsored does not always mean state-controlled. There is a concern over how much direct control Moscow has over these QMOs and who in Moscow controls them (Marten, 2019; Østensen, 2018). There may be cases when the use of that force is not, in fact, exclusively directed by the Kremlin. This may include the abortive attack led by Wagner against the Conoco gas plant in Syria, which was defended by U.S. Special Operations Forces (Klein, 2019). The uncertainty of the autonomy of Russian PMC operations enables Moscow to cloud accountability (American Bar Association…, 2019), cast doubt among Western countries about its involvement, and delay or undermine any effective response (Reynolds, 2019). On the other hand, Russia could also decide to claim the right to protect attacks on its citizens, even those directly participating in hostilities abroad, leading to unintended escalation of conflict. Most likely, however, is the outcome observed to date: the protection of repressive totalitarian regimes or warlords who cannot find support from any Western government (Klein, 2019).

Taken together, the proliferation of QMOs, ambiguous control, and doubtful accountability challenge the norm that States have ultimate authority and responsibility for the use of armed force in support of their interests.

Another very serious concern regarding these Russian and other combat providers is one of vocabulary – and the meaning attached to those words. News reports, academics, diplomats, and Russian statements frequently refer to Russian affiliated military service providers as PMSCs and equate U.S and Western based PMSCs with mercenary activity (Reynolds, 2019). These reports include sources as reputable as the BBC (Peter, 2018), Jane's Intelligence Review (Bingham, 2018), CSIS reports (Linder, 2018), the US Army War College's *Parameters* (Spearin, 2018), and statements of an adjunct professor of the National Defense University (Tekingunduz, 2018). Russian media and government statements promote this notion of equivalence while denying any State responsibility for Russian affiliated entities (Associated Press, 2017). This confusion is understandable in that, although the term PMSC does not have a universally agreed definition, it is a broadly understood term. Nonetheless, what seems to be commonly understood reflects a lack of knowledge of that industry, what has been accomplished in the last decade – and especially since incidents like Nisour square -- the improvement of government regulation and oversight, and the professionalization of the industry through the adoption of standards. QMOs are not PMSCs by nature or activity, and using the same term for both groups obscures the real problem while undermining the progress made in the regulation of PMSCs. The use of the term PMSCs to address Russian QMOs, such as Wagner, without acknowledging their difference from Western-type PMSCs may cause serious damage to vulnerable regulatory measures put in place so far. The reputation of PMSCs, particularly after being tainted by Blackwater incident for over a decade, is fragile. The regulatory measures are not yet mature, and their application in practice is still very limited. If Western govenrments intend to keep an option in future to outsource some services to these companies, they need to acknowledge their difference and dinstiction --both ethical and legal -- between PMSCs unregulated and unaccountable QMOs.

But what are these clear differences?

The challenge QMOs present to worn-torn societies.

Russia uses non-state military services providers, including the Wagner Group, as a tool in pursuing its national strategic objectives. According to *The Russian Federation's National Security Strategy, Edict 683* (2015) these aims include "to

enhance the competitiveness and international prestige of the Russian Federation," to develop the Russian economy by securing access to natural resources and, "widening markets for the sale of Russian products" (primarily armaments). Specific objectives include "the expansion of international military and military-technical cooperation" and "the exploitation of hydrocarbon deposits outside the Russian Federation". All of this in a way that overcomes or circumvents the "imposition of restrictive economic measures against the Russian Federation".

To achieve these security strategy objectives, Russia uses putatively private organizations that provide military related services. They train the security forces of a client State and advise client State ministries, particularly defense and internal security. They may also perform site security for extracting natural resources and guard government officials. In these ways, they share similarities with Western contractors such as Dyncorp, Lockheed Martin, or Academi – or non-Western companies such as the Chinese/United Arab Emirates Frontier Services Group, run by Erik Prince.

However, this similarity is only superficial. Western PMSCs are legal entities registered under commercial and other applicable law in their home states and, as appropriate, the country where they conduct operations (International Committee of the Red Cross, 2006). They are accountable under the law for acts as corporate entities and can also be held accountable for acts of their employees when they are acting in an official capacity. The services they offer or perform are circumscribed by the laws of the State of incorporation (Home State), the State where they conduct operations (Territorial State), and the laws of the State that contracts for their services (or, when working for the private sector, the State of incorporation of the contracting entity). For example, U.S. regulation specifically prohibits contractors from performing "uniquely military functions" including "deliberate destructive and/or disruptive action against the armed forces or other military objectives of another sovereign government or against other armed actors on behalf of the United States" (Department of Defense,,., 2017).

This may not apply to Russian QMOs. In many cases, these organizations are not formally registered as corporations (Rondeux, 2019). This results in opaque contracting arrangements and difficulty in identifying applicable law. Without

registration, licensing, or corporate identity, Russian organizations have no or limited accountability under law (Marten, 2019). Where contracts exist, they are with Russian shell corporations, such as Concord Management and Consulting, operated by Yvgeny Prigozhin[4] (Mayer, 2019; U.S. Treasury, 2018). They exist in a web of legal and extra-legal organization, semi-state sponsorship, and confusing ownership that makes them seem more like organized crime syndicates than legal business entities (Rabin 2019). In this way, Russia can deny any responsibility for or accountability over these allegedly non-existent armed groups or their activities.

In the developing world, Russia uses these organizations to prop-up authoritarian governments that exhibit wanton disregard for human rights (Østensen and Bukkvoll, (2018)). These QMOs and holding agencies such as Concord Management do not pretend to be constrained by human rights norms or international standards and their murky legal status obscures accountability for their actions (Reynolds, 2019). Russian QMOs operate in an integrated fashion to facilitate the proliferation of arms sales across the region and lock countries into unsustainable and opaque debts and commitments (President, 2017). The use of QMOs sponsored by other governments, such as the Iranian Shi'ite Legion, can result in both a radicalization and prolongation of a conflict. They are also noted for brutal methods when dealing with the civilian population (United Nations 2008).

Political challenges of addressing quasi-mercenary organizations.

Challenges of international law.

A primary goal of the Montreux Document was to establish that PMSCs and their activities were subject to existing international law. Part One of that document clearly sets out existing obligations applicable to PMSCs, as well as the States that hire them, the States where they operate, and the States where PMSCs have a corporate registration or headquarters (International Committee of the Red Cross, 2008). QMOs, however, may very well fall into a legal gray area, neither being covered by

[4] both the company and the person are the subject of U.S. sanctions.

Montreux and the various initiatives that derive from it nor by other international efforts to counter mercenary activity.

To begin, the definitions of PMSC in Montreux and in the proposed international convention produced by the UNWG-M do not include combat provider organizations. These definitions include a wide array of military support functions but stop short of including active combat operations. U.S. regulations specifically prohibit contractors from engaging in or directing combat operations (Department of Defense, 2017). As stated earlier, existing conventions aimed at restricting mercenaries is difficult to apply to QMOs. Although direct participation in hostilities is specifically addressed by these conventions, one or more of the other elements required in those conventions may be missing from QMO activity. In addition to direct participation and motive, described earlier, the other elements of being a mercenary require that the individual is not a national of a party to the conflict; not a member of the armed forces of a party to the conflict; and is not sent by a State other than a party to the conflict on official mission as a member of the armed forces of that State (Ettinger, 2014). The definition in each existing international convention is cumulative. That means to be guilty of being a mercenary, the subject has to meet all of the requirements. If one element is missing, the charge of being a mercenary is not applicable. Also, the existing conventions only apply to individuals, not to the QMOs that hire those individuals, the States that sponsor them, or the governments that allow or are supported by these QMOs (Major, 1992, p.133). The International Code of Conduct is derived from the Montreux Document and is even more limited in its application, focusing only on guard services. Both the Code and its Association are entirely voluntary, and therefore inadequate as an enforcement mechanism. The combat operations performed by Russian and other QMO's therefore, are not currently addressed by these initiatives.

QMOs should be subject to applicable national law, and especially national law implementing International Human Right Law. The lack of transparency of these organizations, lack of corporate structures, shell organizations, and denial by sponsoring governments including, but not limited to, Russia, make investigation and prosecution difficult – or deadly (Marten, 2019).

Going up from individual or corporate responsibility to State responsibility has its own problems. As described in UN General Assembly Resolution 56/83 of 12 December 2001 *Articles on State Responsibility*, States have responsibility for the actions that are committed by organs of a State; persons or entities exercising elements of governmental authority; persons acting de facto on the instructions of, or under the direction or control of, the State; carried out in the absence or default of the official authorities; or persons whose conduct is acknowledged and adopted by a State as its own. Therefore, should a State contract out functions, and particularly those commonly associated with governmental functions, then conduct by that contracted entity can be attributable to the State (Gillard, 2006). The International Court of Justice has held that sponsor States can be held accountable for the actions of non-state armed groups, but only if it can be proven that the State exercised effective control over the actions of that non-state armed group. This has been difficult to prove, as demonstrated in cases involving the United States in Nicaragua and the Former Republic of Yugoslavia in Bosnia (American Bar Association…, 2019). Proving those linkages to QMOs may be even more difficult and when proven there are no accountability mechanisms to apply. As described previously, these organizations may not have formal corporate structures, registrations, or licensing. Contracts, where and in what form they exist, are opaque and can be nested in subcontracts to management or holding firms. Knowing that the QMO is operating under the authority and direction of a State and proving it are two different things.

The lack of corporate structures, registration, and licensing also makes it difficult to hold individual members of QMOs responsible for misconduct. International Human Rights Law can apply to individuals, but only through implementing national law. Like PMSCs, regions where QMOs operate may be ungoverned spaces or places where the rule of law is weak or non-existent. States of nationality may not have extraterritorial jurisdiction for human rights laws. In conditions of armed conflict, war crimes under International Humanitarian Law are subject to universal jurisdiction, as is criminal activity that rises to the level of crimes against humanity. Even there, the opaque nature of QMOs makes it very difficult to track that a certain person was even a member of a QMO at a specific time or place. Only in the most unusual circumstances will there be sufficient evidence that a particular individual was involved in that crime.

Even if legal accountability and State responsibility could be traced, there is the question of willingness to do so by the international community. The historical record of proxy warfare and recent actions by the United Nations and other international organizations indicate a lack of resolve to address this problem for what it is (United Nations Human Rights Special Procedures, 2018).

***The legal fiction of proxy warfare*.**

The use of QMOs by Russia and PMSCs by the West are key enablers of "hybrid warfare" and exploit another shortcoming in international law (Kofman, 2016; Østensen, 2018). Proxies operate under a fiction of being independent of their Sponsor, or Principal. The Principal can reap the benefits of success while denying responsibility for failures or atrocities. United Arab Emirates use of mercenaries in Yemen, Sudan's use of "Janjaweed" militia in Darfur and Russian quasi-mercenary organizations in general follow this model (Mayer, 2020). This fiction enhances the ability of a State to project power or expand influence with limited risk of escalating confrontation with other major powers, either in that region or elsewhere (Rondeaux 2019). The success of that requires ambiguity around the nature of the sponsor/proxy relationship. This ambiguity works two ways. It allows the sponsoring State to deny responsibility and allows other States to an excuse not to take action against that sponsor, even when deniability is implausible. This unaccountable non-attribution exists only because other States accept the fiction (Smith, 2020). They allow the Principal to hide behind the curtain of deniability while the proxy engages in actions that violate or undermine regional peace and stability. This is true for Russian backed QMOs and other State sponsored armed groups, such the Iranian Shi'ite Legion. In most cases, other governments know who is behind the curtain but fear the consequences of holding the Principal accountable (Østensen, 2018). In this way, the availability of proxies adds to instability while the agreement not to hold Principals responsible for their proxies manages the risk of great power confrontation (American Bar Association…, 2019). It is a global stage where major powers engage in the willing suspension of disbelief. The perceived cost-benefit of proxies, however, is only positive as long as other States participate in the theater. This may be changing. In December 2019, the United States made it clear that an attack on U.S.

citizens by Iranian proxies would be answered by direct counter-strikes on Iran (Smith, 2020). The United States had not been so clear about piercing the proxy veil since the beginning of the Cuban Missile Crisis (Mayer, 2020).

An inconvenient truth in international organizations.

Since 2008, the UNWG-M's mandate was changed to address PMSCs. Since then, its reports have focused almost exclusively on PMSCs with little attention to mercenary-like activity, including QMOs. In 2018, the UNWG-M report to the UN Office of the High Commissioner for Human Rights returned to addressing mercenaries, in the form of foreign fighters acting as mercenaries in Syria, Ukraine, and other locations (United Nations Human Rights Special Procedures, 2018). This report, however, did not specifically address Russian sponsored QMO's or similar organizations sponsored by Iran, the UAE or other countries. It did not, therefore, produce any effective action by UN member governments in addressing such foreign fighters or QMOs.

In February of 2019, the UN Security Council took up the issue of mercenary activity in Africa. Eight government representatives, including four of the five permanent members of the security council, insisted on a clear distinction between legitimate PMSCs necessary for security and capacity development of governments and (per the U.S. intervention) "other organizations that operate without mandate, oversight or accountability of a sovereign state" (United Nations, 2019). The only permanent member of the security council that was ambiguous about the distinction between PMSCs and mercenaries was Russia. Interventions of five other governments, however, maintained there was no effective difference between PMSCs and mercenary activity in Africa. None of the countries participating in the debate made any direct mention of Russian QMOs, and two of the governments calling for conventions have Russian QMOs working in their countries – in one case, even holding cabinet level positions.

On a more positive note, the Parliamentary Assembly of the Organization for Security Cooperation in Europe called for member States to report on their use of PMSCs in the OSCE's annual information sharing (OSCE Parliamentary Assembly,

2019). This resolution will be addressed later in this paper, but for now, it is important to remember that resolutions of the Parliamentary Assembly are not binding on OSCE member States or OSCE's decision-making bodies but may strongly influence OSCE policies from a political viewpoint.

The political reluctance to deal with the QMOs by States that have an intention to use or are actively using them is not hard to understand. As mentioned above, there are number of States that use QMOs for their own foreign or domestic policy goals. These States are also known for their lack of protection and respect of human rights. Russia, for example, did not endorse the Montreux Document and is actively using QMOs. It is also a permanent member of the UN Security Council with veto powers, clearly indicating the challenges to addressing these issues by the UN. Such is not new by any means. It has been recognized both by scholars (Clapham, 2001) and high UN officials (Lederer, 2019).

Why QMOs Need To Be Securitized

As previously demonstrated, QMOs represent an additional burden to worn-torn societies, as there are no legal tools to use against them. There is no accountability framework to hold them responsible and no international organizations dealing with it. Human rights abuses, including killing of the innocent civilians are simply not addressed, as there is no international norm applicable to these organizations. Securitizing QMOs would bring them to the front stage of the political debate which needs to happen in order to begin dealing with those entities.

The cycle of securitization and desecuritization.

Securitization refers to a political process in which State actors identify a particular issue alleged to threaten security on national or international level, transform it into a political issue that needs means and methods to address it, and then invokes a necessity for extraordinary measures secure those means and methods and resolve the issue. This approach was established and developed by Ole Wæver (1995) and the Copenhagen school (Balzacq 2005; Buzan, de Wilde, & Wæver 1998). Their aim was to gain visibility over issues that were not seen as a priority and to address them

from a political standpoint. The process usually takes several phases, beginning when political actors use speech acts to call for an urgency to address a certain issue by presenting it as an imminent security threat to national or international security. This issue or issues may be broad spectrum and might not directly affect the survival of the State. Examples include climate change, migration, and terrorism. Their common denominator is portraying concerns as an existential problem if not addressed urgently or could cause great harm to existing system. The ultimate purpose is to seize extraordinary attention from political leaders and media over the issue and to solicit resources and promote results that would not otherwise be possible. These extraordinary political measures may culminate in the establishment of special working groups, commissions, or multilateral agreements, with an aim to convey that the issue is being managed, until resources and regulations are in place that justify downgrading the imminent threat and returning the issue to normal channels.

The securitization theory is tightly connected to political reality and inspired by it. Its purpose is to influence the action of the politically engaged actors, whether politicians, decision-makers, activists, technocrats or the academic community. By providing these actors with evidence from the ground, they are asked to elevate the selected issue as a serious security threat and asking them to consider implications of doing or not doing something about it (Wæver, 1999, p. 334). The process itself consists of the interaction of a securitizing actor, a referent object, and an audience (Buzan, de Wilde, & Wæver 1998, pp. 36–40). A securitizing actor is a politically engaged and relevant actor with the ability to influence and effectively elevate an issue to be perceived as an imminent security threat which must be securitized. This issue to be addressed, called the referent object, might be an ideal to defend (as human rights) or an object that is under threat which requires protection. To be successfully securitized, the population targeted by the securitization process – for the purposes of this paper, the political elites[5] -- needs to be persuaded to accept the referent object as an imminent security threat that requires urgent mobilization and extraordinary measures in response to that threat. To be successful, the persuasive

[5] When referring to political elites, we consider actors playing a key role in setting the political agenda. They consist of representatives in major legislative and executive branches of government, and they are central to a deeper understanding of politics and policy-making processes.

effort emphasizes the circumstances that make securitization necessary, namely the inadequacy and unviability of existing tools and measures to deal with the issue.

Successful securitization at the international level would include dynamization of the international community regarding the selected issue, resulting in multi-stakeholder conferences, proposals of new treaties and conventions, new rules or regulations with appropriate implementing mechanisms, or the development of consensus-based norms addressing that issue.

The issue of mercenaries has been securitized in the past, using the United Nations and other international and regional organizations. Well publicized atrocities related to mercenary activity in Africa through the de-colonization period (Gleijeses, 1994; Hughes, 2014) led to successful securitization of mercenaries. The massive mobilization by practitioners, political elites and academics first resulted in International conferences defining the concept and the security threat posed by mercenaries. This was followed by codification proscribing mercenaries through international conventions (International Commission of the Red Cross, 1977; International Convention Against the Recruitment Financing and Training of Mercenaries, 1989). Even though very few States ratified the 1989 UN Convention, they continue to benefit from the existence of the international anti-mercenary norm and import some of the vocabulary and principles in their national legislation (Torroja, 2017, p. 63).

While securitization of the mercenary issue was originally successful, the UNWG-M is an example of the re-securitization related to the private use of force. Its establishment, resulting from General Assembly resolution 58/162 of 22 December 2003 and Commission on Human Rights resolution 2003/2 of 14 April 2003, represents clear speech acts calling out the imminent threat that mercenaries and the private use of force represent, and particularly in the most vulnerable places. With the rise of the private security industry, and particularly their involvement in the stability and reconstruction missions by States and organizations, the issue of regulating their activity surged (Brooks 2007; Carney 2005). In the beginning, there was no agreement to the on appropriate terms or definitions when referring to these contractors on the battlefield. Detractors referred to them as mercenaries (Adams

1999; Brayton 2002; Brooks 2000), as it was a concept that was well-known by the wider public and had the added benefit of being inflammatory. Other terms in political and academic circles included “Privatized Military Forces” (Singer 2003) and “Private Military Companies/PMC” (Spicer 1999), while the United States Defense and State Departments used “Private Security Company” or “Private Security Contractor” (PSC) reflecting terms used for similar services provided outside of areas of armed conflict (Mayer 2008). The use of these organizations by the United States and coalition partners in Iraq and Afghanistan brought new attention to these contractors in armed conflict environments and required a proper definition and distinction from the mercenary term, as they did not fit the definition of the mercenaries or the anti-mercenary legal framework.

The Montreux Document.

The Montreux Document was a successful example of the securitization of PMSCs. In 2005, with the entry of Switzerland into the United Nations, the Swiss Government securitized this issue and, in partnership with the International Committee of the Red Cross (ICRC), began the “Swiss Initiative,” which produced the Montreux Document and subsequently, the International Code of Conduct (Buzatu, 2015). The Swiss and the ICRC laid the groundwork for this initiative in 2005-2006, publishing research on existing law, policy, and action regarding “Private Military Companies” (International Committee of the Red Cross, 2006). From 2006 to 2008, 18 governments, with the ICRC, worked to identify existing pertinent international legal obligations and to recommend good practices for States regarding what was now defined as “Private Military and Security Companies,” using the definition cited earlier in this paper. Unlike earlier State-centric efforts regarding mercenaries, the Swiss Initiative was informed by advice from academics, civil society organizations, and the PMSC industry. During the period of this work, the PMSC Blackwater, working under a U.S. State Department contract, opened fire in Nisour Square, Baghdad, killing 17 civilians and injuring another 20. This added impetus to the securitization issue pushed the Montreux Document through to completion in September 2008, with endorsement by 17 States (Buzatu, 2015). The 18th participating State, Russia, refused to endorse the document, giving notice 48 hours ahead of the planned endorsement ceremony (Ralby, 2016).

The U.S. Government was a particularly active participant in this securitization process, with numerous extraordinary congressional hearings, a special commission, and new laws affecting the Defense Department's use of PMSCs (Office of the Assistant Secretary of Defense Sustainment , n.d.a). The securitization effort within the U.S. Government occurred in parallel with the Swiss Initiative, This enabled U.S. Government, regulators the opportunity to include the recommendations of the Montreux Document in the new regulations required by Congress. The following year, the PMSC industry petitioned the Swiss Government to develop an international code of conduct (ICoC) to facilitate an endorsement of Montreux Document principles by the PMSC industry, while, nearly simultaneously, the U.S. Government initiated development of operations and management standards for private security companies (Buzatu, 2015). Both the ICoC and PMSC standards were true multi-stakeholder activities, where non-state actors were not just advisers, but took part as decision makers. The rapid development and implementation of these standards, which incorporated the ICoC, and the immediate insertion of those standards into government regulation demonstrated what securitization could accomplish. The Montreux document, therefore, represents the ultimate example of securitization of the PMSC issue.

The UNWG-M also found itself involved as a part of the regulatory debates of the PMSC industry. The establishment of the working group coincided with the rapid proliferation PMSCs and in the following decade the UNWG-M was involved in the regulatory debates of the industry. In 2008 – as work on the Montreux Document was nearing completion -- the UNWG-M mandate expanded from reporting on mercenaries to include investigating PMSCs and drafting basic principles governing them (United Nations, 2009). The securitization attempts of the UNWG-M proposed an international convention that would significantly restrict the ability of States to contract for all PMSC related services (Patel 2012). The UNWG-M proposal was not accepted by the pretended audience (States) and progress stalled.

Even though the role of the UN in the regulation of PMSCs wasn´t significant due to political constraints (Gómez del Prado 2012), as described above, the issue was securitized by other political agents more interested in the subject. These other

international initiatives were more successful as they resulted in extraordinary measures and produced certain tools useful in addressing these entities (International Code of Conduct for Private Security Service Providers, 2010; International Committee of the Red Cross, 2008). They also addressed both defining PMSCs as entities and developing an international framework under which PMSCs can legally operate (namely Montreux Document and ICoC), differentiating them clearly from the mercenaries and existing anti-mercenary norm. However, within the UN itself, there is still misuse of term mercenary to explain activities that are committed by other actors, such as QMOs (Lederer, 2019).

The success of securitization may be seen not solely as adoption of the tools, but their application by the contracting agents. Concerning the application of the measures established by the Montreux and ICOCA, the U.S. has been so far the most proactive State in assimilation of these tools in their contracting procedures (Jezdimirovic Ranito, 2019). The UN, however, has been less successful in applying securitization measure. Paradoxically, at the same time that the UNWG-M was mandated to study responsible use of PMSCs, the United Nations was increasing the number of its contracts with PMSCs (Østensen, 2011; Østensen, 2013; Spearin, 2011) without particular concerns on the quality of the contracting. The contracting of PMSCs within the UN favors the lowest cost over higher quality, without imposing minimal requirements such as internationally supported standards (e.g., PSC.1 or ISO 18788), which require inclusion of the respect for human rights in their daily operations (Jezdimirovic Ranito, 2019, p. 116).

De-Securitization of the anti-mercenary norm.

De-securitization occurs when the extraordinary measures caused by securitization are considered sufficient to justify downgrading the previously securitized issue to normal political channels, that is, the issue no longer demands urgent attention (Buzan, de Wilde, & Wæver, 1998, p. 4). Like securitization, de-securitization is also a political process, as it builds the narrative for political elites to support downgrading the threat that was originally considered urgent. Just as an issue begins by being portrayed as an imminent threat to security, thereby demanding urgent and extraordinary measures, when that issue is assessed by political elites as

addressed, the opposite is also valid (Wæver 1995, p. 47). While the process of securitization implies public discourse claiming urgency and additional measures and tools to deal with a threat, de-securitization may not have any action at all. The lack of action demonstrates that the issue has been returned to normal political channels and does not require further extraordinary action. The tools that associated with the process of securitization are deliberation, negotiations and contestation, and are preferred when addressing issues that are considered `above´ politics (Wæver, 1989, p. 314; 2004, p. 10; Wæver, 1995; Wæver& Carlton, 1993, p. 189).

The de-securitization process was very clear with the anti-mercenary norm. With adoption of the International Conventions, and particularly the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* (1989), the political elite deemed the mechanisms established as adequate[6] to deal with the challenges that mercenary activity would present. These included the establishment of the legal framework allowing prosecution of the possible infractions through International and domestic courts. The extraordinary measures undertaken by Governments, activists, industry, technocrats, and scholars resulted in the establishment of soft norms and brought some sense of distinction between what is desirable and what is not. This was similarly true for the issue of PMSCs. With the completion and broad acceptance of the Montreux Document and its immediate outcomes – including the ICoC and its Association, International Standards for PMSCs, and incorporation of Montreux Document recommended practices in national policy or regulation, the imminent threat to security was perceived as having passed, and the issue became de-securitized. This was particularly visible on the national level in the US where internal executive structures changed. In making these changes, senior decision makers in the Department of Defense determined that issues regarding PMSCs were resolved. As a resultthe Deputy Assistant Secretary level office responsible for the oversight and accountability of contingency contractors – including PMSCs – was eliminated (Office of the Assistant Secretary of Defense for Sustainment, n.d.b.). The Organization for Security Cooperation in Europe (OSCE) provides yet example of de-securitization. The several OSCE

[6] The adequacy of the tools in this case does not necessarily pass through the number of the states that have adopted and ratified the Convention. The effects of the outcomes might be found with an inclusion of the essence of the Convention within national legal frameworks.

member States introduced an initiative within the OSCE's Forum for Security Cooperation to include reporting on PMSCs by OSCE member States in their annual information sharing (Burdzy, 2018). This initiative was introduced in 2015, while the international securitization process still had momentum. However, this was also the turning point for beginning de-securitization, and the effort stalled, returning it to the normal political process. It took until 2019 for the OSCE parliament to approve a resolution allowing the initiative to move forward. Within the UN, as a response to the UNWG-M proposal for an international convention on PMSCs, in 2010, the UN Human Rights Council established an Open Ended Inter-Governmental Working Group to consider whether that proposed convention should be elaborated. The response was de-securitization. The proposal was returned to the normal UN deliberative process, to be reviewed by working groups, and committees, ending extraordinary movement towards international regulation.

Re-securitization concerns the process where an issue that has been previously addressed by urgent extraordinary measures and then de-securitized, faces a new set of circumstances that calling for renewed and urgent engagement from the political elites (Lupovici, 2014). For example, re-securitization of anti-mercenary norm occurred in the beginning of the current century with the appearance and rapid growth of PMSCs, revealing another dimension to the problematic use of private force. As demonstrated above, while UN was not particularly successful in addressing the issue, either from standpoint of definition and regulation of the PMSCs activities or from the logistical/contractual standpoint, it served as a re-securtizing agent in the process.

Why re-securitization is important and necessary.

During the last five years, there appears to be a renewed interest in the effectiveness of anti-mercenary norm and it´s (in)ability to follow up with current developments in the use of private force (Torroja, 2017). As described previously, the appearance of the Wagner Group and other QMOs, expanding activity in conflict zones, spurred vocal attention from the general public, scholars and practitioners to a perceived a gap in the international legal framework that would address activities of these organizations. Also as described previously, they are not quite mercenaries, as they

do not meet all of the criteria required in the definition of the mercenary from the UN Convention. Neither are they PMSCs, as they fight in combat, a role not addressed in the Montreux Document definition of PMSCs. This time, re-securitization is related to a need to address this gap of previous securitization efforts -- these Quasi-Mercenary Organizations. The renewed call for action has been particularly active through last year, with a growing number of actors bringing attention the threat QMOs represent to peace and security. From media reports (Brown 2018; Tahar 2018), to academic publications (Gasser & Malzacher 2020; Marten 2019) to governmental political initiatives, as in the US with the hearing organized by US Helsinki Commission (2019), and recent bills proposed by US Congress (Caesar Syria Civilian Protection…, 2019; Defending American Security…, 2019; Stengthening American Security…, 2019), there is growing concern that those organizations require urgent policy action and perhaps a new legal framework.

Re-securitization to address QMOs is important for several reasons. QMOs are a new category of armed civilian, not previously addressed by other initiatives. They need to be well defined so their presence and activities can be properly addressed in policy and law. As it was demonstrated in the past, precise and agreed definitions and the concepts of mercenaries and PMSCs led to policy and legal means and methods for addressing each of these. Defining what entities can and cannot do facilitates moving the issue from the politically charged to be technically solved. This was true for the original anti-mercenary norm, through the adoption of the international conventions; it was equally valid for the establishment of the PMSC category and addressing it from the standpoint of policy and regulation. Because QMOs are a new category and are not clearly defined, they operate at the seams of existing international law. As described earlier in this paper, this status facilitates unaccountability for the QMO and its actions, and deniability for States that sponsor QMOs. Another serious concern is that the QMO business model may be successful. The unaccountability and deniability may be seen as a competitive advantage by other States, potential private sector purchasers of their services, and other organizations that may seek to emulate their success. This could even be true of currently legitimate PMSCs and undermine much of the progress made in previous anti-mercenary efforts.

Although the good practices of the Montreux Document are non-binding, one of the most important things it did was to recall existing international law and describe how it applied to PMSCs, the States that contract for their services, the States where they conduct their operations, and the States where they are registered. This framework does not apply to QMOs and securitization will require a different approach than either the Swiss Initiative or anti-mercenary conventions. Differences between the first and second iteration of addressing the “mercenary issue” reflected the changes that occurred in the international politics: while the second half of the 20th century was state-centered, and solutions were based on assuming the ultimate power belong to States, the 21st century approaches to addressing PMSCs clearly demonstrates that state-centered approach is not efficient (Gomez del Prado, 2011). Multi-stakeholder initiatives joined Interested parties, including industry, civil society, scholars and governments, and reached agreement on measures that are acceptable for all the parties involved. To a certain degree, these have been embraced by both industry and governments. As an example, very few States signed the anti-mercenary convention in the years following its introduction (none of the five permanent members of the UN Security Council did) and few are unlikely to sign the more proposed convention addressing PMSCs. The Montreux Document, however, which is not a hard law and was negotiated with multi-stakeholder input, is endorsed by 56 States and three international organizations (Federal Department of Foreign Affairs, 2019).

The difficulty of definition and regulation of QMOs lies in their differences from the previous two issues. Earlier efforts were framed by the Cold War and the immediate aftermath of superpower confrontation. The current situation is more complex or even chaotic, as States use QMOs to pursue their own purposes, which may not have any direct relation to major power rivalry. Those governments that are using them to achieve their foreign policy goals are certainly not interested in addressing this issue. Those that might be interested in dealing with it would weigh the cost/benefit of involvement in such discussions. The most interested ones, those who are volatile and have suffered from the hand of those actors themselves (Lederer, 2019), don´t have voice strong enough to force change. Contrary to the PMSC debate, this time, the industry that is the object of regulation does not have any interest in being regulated. While some PMSCs may have been reluctant

regarding regulatory measures, they understood that by participating they could participate in the debate and influence the outcomes (Jezdimirovic Ranito, 2019). As explained previously, QMOs are not legal entities, and they are not aiming to become so. They are not concerned if their business earns a reputation for human rights abuses or violations of International Humanitarian Law making them less desirable by clients. The only reputation QMOs care about is whether they are combat effective. They see the gaps between them and PMSCs as an opportunity to exploit -- promoting their services and expanding their business opportunities.

The fact that this effort will be more difficult than previous initiatives, doesn´t mean that the effort is impossible or not worth the effort. The existence of QMOs represents a threat that if not carefully addressed, could become widespread and eventually enter the mainstream of warfare. It is crucial to distinguish QMOs from PMSCs and from mercenaries; without that distinction their equivalence brings danger moral acceptance and legitimacy of their operations. The legal framework surrounding these entities requires clarification: are they organized criminal organizations and to be treated as such or are they similar enough to mercenaries to warrant calling for revision of the anti-mercenary norm to include QMOs? Establishing clear definition of these entities will allow their categorization within the existing international legal code and defining national and international policies for dealing with them. The misuse of terms, particularly by high officials (Lederer, 2019) is contributing to mystification and impeding a clear definition of the new category.

There are some existing tools among international organizations that could be adapted to monitor QMOs. For instance, the recent OSCE resolution on PMSCs cited earlier includes dialog and including PMSCs in the OSCE’s annual information sharing. Even though current information sharing only includes regularly established elements of the armed forces and other national security forces (Burdzy, 2018), it could expand also include vigilance of QMOs. Such a tool could improve reporting by other member governments, increase transparency and further distinguish acceptable from unacceptable use of contracted support.

Defining QMOs would not solve the damage caused by the narrative of equating QMOs with PMSCs. Repairing the damage would require further public engagement

and education through media and public debates, to clearly distinguish crucial differences between actors. The securitization initiative regarding PMSCs did not include a campaign was distinguishing PMSCs from mercenaries, and for that reason PSC activities are often equated with mercenaries. A re-securitization effort must include clear messaging among various stakeholders for the general public to understand differences between mercenaries, PMSCs and QMOs, .

This messaging must transcend general public discussions and should engage governments to ensure a common understanding regarding various actors and their legal standing. These governments must repeat that common message in every international venue at every opportunity. Messaging must incorporate defining the scope of ethical contracted support: the appropriate reasons for contract support; which services may be contracted which services should not be contracted; and identifying contracting methods to assure proper authority, oversight, and accountability. Taking control of the vocabulary is a critical component of this messaging. As an absolute minimum, the terms PMSC, PMC, PSC, QMOs and mercenary must be clearly described, separated and consistently applied. In addition to governments and the public in general, the PMSC industry has an important role in this messaging as false equivalence with QMOs will severely affect PMSC legitimacy and business opportunities. The two major associations committed to the ethical provision of PMSC services (the International Stability Operations Association (ISOA) and the Security in Complex Environments Group (SCEG), should take an active role in promoting this distinction.

Summary and the Way Forward

Although the anti-mercenary norm gained acceptance over the last century, the impetus for regulating mercenaries and other non-state armed groups has ebbed and waned. This change in impetus is an example of securitization and de-securitization of an issue. This paper described a cycle where severe breaches of the human rights were followed by followed a period where political elites successfully securitized issue, reached agreements on possible measures to deal with the phenomenon, and returned it to normal political channels. Those urgent

political interventions have been very different one from another, as the circumstances in which they occurred where different.

In the first iteration of securitization, States were the only actors involved in the regulation of the mercenaries- both because the state-centric nature of the system and because mercenary activity was not, at that time, prohibited under international law. Negotiations through international organizations produced international norm on the issue, although not universally accepted by all major States.

In the second iteration, with the rise of the PMSC industry, both processes and outcomes were different. In addition to States, there was active participation of various stakeholders, including the PMSC industry and civil society organizations. The outcomes included restatement of international legal obligations, and soft-law outcomes that shaped some national regulation.

With broad acceptance of the Montreux Document, the availability and acceptance of international standards by Western PMSCs, and the operationalization of the ICoC Association, the U.S. and other governments could believe that the situation had been resolved. The de-escalation of PMSC activities by Western governments in Iraq and Afghanistan, along with adoption of standards by these PMSCs, reduced the number and severity of PMSC associated incidents. The work was not complete, however. Gaps in agreed frameworks and continued destabilization in other parts of the developing world opened opportunities for deniable State sponsored non-state armed groups – or quasi-mercenary organizations -- such as the Wagner Group.

QMOs represent the current threat to stability. These combat providers operate at the edges of international law, and their actions include specific violations of human rights law. This requires a renewed State emphasis to address this threat. However, other stakeholders, including civil society, scholars and the PMSC industry also have important roles. Exposing criminal acts and calling on the political elites to monitor and find appropriate tools to hold those committing criminal activities accountable is the responsibility of all stakeholders and society in general. Properly defining terms and concepts and clarifying of what is legal, what is not, and what is on the edge is part of education for all of stakeholders.

Seeking solutions which address the activity of QMOs is also necessary to preserve and protect the achievements made in the regulation of PMSCs over little more than a decade. Although the U.S. Government decreased its use of PMSCs, these achievements are being fully tested by many States, and a growing number of PSCs that are in full compliance with the internationally recognized standards (Department of Defense, 2020). While the number of PMSCs that became independently certified to these standards for private security services doubled in the past two years, the market for force outside of these international frameworks also seems to be growing (Boutellis, 2019; McFate, 2019). This unregulated market makes disrespect for human rights and execution of direct combat activities into a competitive advantage over norms and standards compliant PMSCs. In extremis, this could lead legitimate PMSCs or their employees to adopt a more successful QMO business model. If the international organizations and Western governments intend to continue to employ PMSCs in the future, they must invest in their differentiation and distancing from QMOs. From a more global standpoint, ignoring these entities would not make them disappear, but lead to their widespread and acceptance as normal, which would damage advances made not only to the regulation of the private security industry, but also to international law over the last 50 years.

References

Adams, T. K. (1999). The new mercenaries and the privatization of conflict. *Parameters*, 29 (2), 103–116.

American Bar Association's Center for Human Rights & Rule of Law Initiative. (2019). *Report on the legal framework regulating proxy warfare.* https://www.americanbar.org/content/dam/aba/administrative/human_rights/chr-proxy-warfare-report-2019.pdf

Amnesty International. (2005, June 7). *Equatorial Guinea: New report shows trial of alleged 'mercenary coup plotters' unfair.* Amnesty International UK Press Release. https://www.amnesty.org.uk/press-releases/equatorial-guinea-new-report-shows-trial-alleged-mercenary-coup-plotters-unfair

Associated Press. (2017, December 13). *The massive Russian army you've never heard of.* NewsComAu. https://www.news.com.au/world/europe/thousands-of-private-russian-fighters-in-syria-under-wagner-force-investigations-claim/news-story/12a24076a19b496a992737ff7c6de171#.iiz18

Balzacq, T. (2005, June 1). The three faces of securitization: Political agency, audience and context. *European Journal of International Relations*, 11(2), 171–201. https://doi.org/10.1177/1354066105052960

Bingham, J. (2018). *Private companies engage in Russia's nonlinear warfare.* Jane's Military & Security Assessments Intelligence Centre. https://www.janes.com/images/assets/018/78018/Private_companies_engage_in_Russias_non-linear_warfare.pdf

Borshchevskaya, A. (2019, December 18). *Russian private military companies: Continuity and evolution of the model*. Foreign Policy Research Institute. https://www.fpri.org/article/2019/12/russian-private-military-companies-continuity-and-evolution-of-the-model/

Boutellis, A. (2019). *Are mercenaries friends or foes of African governments and the UN?* IPI Global Observatory. https://theglobalobservatory.org/2019/02/are-mercenaries-friends-foes-africa-un/

Burdzy, A. M. (Ed.). (2018, June 15). *Supporting enhanced dialogue on PMSCs; Analysis of information provided to the annual OSCE information exchange*. Organization for Security and Co-operation in Europe. https://www.osce.org/forum-for-security-cooperation/384552

Buzan, B., de Wilde, J., & Wæver, O. (1998). *Security: A new framework for analysis*. Lynne Rienner.

Buzatu, A. (2015). *Towards an international code of conduct for private security providers: A view from inside a multistakeholder process*. Geneva Center for the Democratic Control of Armed Forces. https://www.jstor.org/stable/j.ctv6zdbkk

Brooks, D. (2000). Messiahs or mercenaries? The future of international private military services. *International Peacekeeping*, 7(4), 129–144. https://doi.org/10.1080/13533310008413867

Brooks, D. (2007). In search of adequate legal and regulatory frameworks. *Journal of International Peace Operations*, 2(5), 4.

Browne, R. (2019, February 7). *Top US General warns Russia using mercenaries to access Africa's natural resources*. CNN. https://www.cnn.com/2019/02/07/politics/us-russia-mercenaries-africa/index.html

Caesar Syria Civilian Protection Act of 2019, H.R.3. [Reported to Senate]. (2019, June 3). https://www.congress.gov/bill/116th-congress/house-bill/31/text

Carney, H. (2005). Prosecuting the lawless: human rights abuses and private military firms. *The George Washington Law Review*, 74, 317. https://doi.org/10.1177/0967010610382108

Clapham, A. (2001). *The mercenary issue at the UN Commission on human rights: The need for a new approach*. International Alert. http://www.operationspaix.net/DATA/DOCUMENT/6041~v~The_Mercenary_Issue_at_the_UN_Commission_on_Human_Rights.pdf

DEBKAfile. (2017, August 2). *Russia flies 2,000 mercenary troops into Syria.* DEBKAfile. https://www.debka.com/russia-flies-2000-mercenary-troops-into-syria/

Defending American Security from Kremlin Aggression Act of 2019, S. 482 [Introduced in Senate]. (2019, February 13). https://www.congress.gov/bill/116th-congress/senate-bill/482/text

Department of Defense. (2017, December 1). Policy and procedures for determining workforce mix. *Department of Defense Instruction*, 1100.22. https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/110022p.pdf?ver=2019-03-11-081731-063

Department of Defense. (2020 January). *Contractor support of U.S. operations in the U.S. CENTCOM area of responsibility*. https://www.acq.osd.mil/log/PS/.CENTCOM_reports.html/5A_January_2020.pdf

DeWinter-Schmitt, R. (Ed.). (2013). *Montreux five years on: An analysis of State efforts to implement Montreux Document legal obligations and good practices* American University Washington College of Law.

Diphoorn, T. (2016). Surveillance of the surveillers: Regulation of the private security industry in South Africa and Kenya. *African Studies Review*, 59(2), 161–182. https://doi.org/10.1017/asr.2016.31

Encyclopedia Britannica. (2013, October 4). Mercenary. *Encyclopedia Britannica*. https://www.britannica.com/topic/mercenary

Ettinger, A. (2014). After the gold rush: Corporate warriors and the market for force revisited. *International Journal: Canada's Journal of Global Policy Analysis,* 69(4), 559-569. https://doi.org/10.1177/0020702014542754

Federal Department of Foreign Affairs. (2020, Jan 6). *Participating States of the Montreux Document*. Swiss Confederation Federal Department of Foreign Affairs. https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/participating-states.html

Foreign and Commonwealth Office. (2002). *Private military companies: Options for regulation*. https://www.gov.uk/government/publications/private-military-companies-options-for-regulation

Gasser, M. & Malzacher, M. (2020, January). Beyond banning mercenaries: The use of private military and security companies under IHL. In E. Heffes, M. Kotlik, & M. Ventura (Eds.), *International humanitarian law and non-state actors debates, law and practice*. (pp. 47–77). T.M.C. Asser.

Ghaddar, H. (Ed.). (2018, February). *Iran's Foreign Legion: The impact of Shia militias on U.S. Foreign Policy, PN46*. The Washington Institute for Near East

Policy. https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyNote46-Ghaddar-2.pdf.

Gleijeses, P. (1994, April). Flee! The white giants are coming!: The United States, the mercenaries, and the Congo, 1964–65. *Diplomatic History*, 18(2), 207–237. https://doi.org/10.1111/j.1467-7709.1994.tb00611.x

Gillard, E.-C. (2006, September). Business goes to war: Privatemilitary/security companies and international humanitarian law. In T. Pfanner (Ed.), *Humanitarian debate: Law, policy action – private military companies.* International Review of the Red Cross, 88(863) (pp. 525-572). https://international-review.icrc.org/articles/business-goes-war-private-militarysecurity-companies-and-international-humanitarian-law

Gomez del Prado, J. L. (2011). A United Nations instrument to regulate and monitor private military and security contractors. *Notre Dame Journal of International, Comparative, & Human Rights Law*, 1(1), 1–79. https://scholarship.law.nd.edu/ndjicl/vol1/iss1/1/

Hughes, G. (2014). Soldiers of misfortune: the Angolan Civil War, The British mercenary intervention, and UK policy towards Southern Africa, 1975–6. *The International History Review*, 36(3), 493–512. https://doi.org/10.1080/07075332.2013.836120

Iasynskyi, S. (2017, October 19). *Wagner mercenaries: what we know about Putin's private army in Donbas.* Euromaidan Press. http://euromaidanpress.com/2017/10/19/wagner-mercenaries-what-we-know-about-putins-private-army-in-donbas/

International Committee of the Red Cross. (1977, June 8). *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)*. https://www.icrc.org/ihl/INTRO/470

International Committee of the Red Cross. (2008). *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. https://www.icrc.org/en/doc/assets/files/other/icrc_002_0996.pdf

International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, Chapter XVIII, 6. (1989, December 4). https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-6&chapter=18&clang=_en

Jezdimirovic Ranito, J. (2019). *Regulating US private security contractors*. Palgrave Macmillan.

Klein, M. (2019). *Private military companies – a growing instrument in Russia's foreign and security policy toolbox*. The European Centre of Excellence for Countering Hybrid Threats. https://www.hybridcoe.fi/wpcontent/uploads/2019/06/HybridCoE_StrategicAnalysis_3_2019.pdf

Kofman, M. (2016). *Russian hybrid warfare and other dark arts*. War on the Rocks. https://warontherocks.com/2016/03/russian-hybrid-warfare-and-other-dark-arts/

Krahmann, E. (2016, November 4). NATO contracting in Afghanistan: the problem of principal–agent networks. *International Affairs*, 92(6), 1401–1426. https://doi.org/10.1111/1468-2346.12753

Lederer, E. (2019, February 4). UN chief: Mercenaries are "feeding off" terrorism and crime. *Associated Press*. https://apnews.com/525e7c32d83a4bb3991949e5df32b6f9

Linder, A. (2018, October 18). *Russian private military companies in Syria and beyond*. Center for Strategic and International Studies, (16). https://www.csis.org/npfp/russian-private-military-companies-syria-and-beyond

Lupovici, A. (2016). Securitization climax: Putting the Iranian nuclear project at the top of the Israeli public agenda (2009-2012). *Foreign Policy Analysis*, 12(3), 413–432. https://doi.org/10.1111/fpa.12081

Major, Marie-France, (1992) Mercenaries and international law, *Georgia Journal of International and Comparative Law*; 22(22), pp 103-150; https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1508&context=gjicl

Marten, K. (2019, March 26). Russia's use of semi-state security forces: the case of the Wagner Group. *Post-Soviet Affairs*, 35(3). 181-204. https://doi.org/10.1080/1060586X.2019.1591142

Mayer, C. T. (2008, May 9). *Opportunities and risks for the employment of private security companies in complex contingencies*. U.S. Army War College. https://apps.dtic.mil/docs/citations/ada486660

Mayer, C. T. (2019, December 6). *Do Russian mercenaries matter?* International Policy Digest. https://intpolicydigest.org/2019/12/06/do-russian-mercenaries-matter/

Mayer, C. T. (2020, January 17). *Looking behind the proxy curtain.* International Policy Digest. https://intpolicydigest.org/2020/01/17/looking-behind-the-proxy-curtain/

McFate, S. (2019, February 7). *Mercenaries and war: understanding private armies today*. National Defense University. https://ndupress.ndu.edu/Media/News/Article/2031922/mercenaries-and-war-understanding-private-armies-today/

Office of the Assistant Secretary of Defense for Sustainment. (n.d.a). *Private Security Companies -U.S. Law*. Author. https://www.acq.osd.mil/log/PS/psc_us_law.html

Office of the Assistant Secretary of Defense for Sustainment. (n.d.b). *Sustainment Organization*. Author. https://www.acq.osd.mil/log/LMR/LMR_orgchart.html

On the Russian Federation's National Security Strategy, Edict 683. (2015, December 31). http://www.ieee.es/Galerias/fichero/OtrasPublicaciones/Internacional/2016/Russian-National-Security-Strategy-31Dec2015.pdf

OSCE Parliamentary Assembly (July, 2019), *Luxembourg Declaration and resolutions adopted by the OSCE Parliamentary Assembly at the twenty-eighth annual session*.

https://www.oscepa.org/documents/annual-sessions/2019-luxembourg/3882-luxembourg-declaration-eng/file

Østensen, Å. G., & Bukkvoll, T. (2018). *Russian use of private military and security companies–the implications for European and Norwegian security* (FFI Report 18/01300). Norwegian Defence Research Establishment (FFI). https://www.cmi.no/publications/file/6637-russian-use-of-private-military-and-security.pdf

Patel, F. (Ed.). (2012). Private military and private security companies: 35th round table on current issues of international humanitarian law. *Studi Politica*. http://iihl.org/wp-content/uploads/2018/12/35th-Round-Table.pdf

Pelton, R. (2006). *Licensed to kill -- hired guns in the war on terror*. Crown Publishers.

Peter, L. (2018, February 23). *Syria War: Who are Russia's shadowy Wagner mercenaries?* BBC News. https://www.bbc.com/news/world-europe-43167697

Pfanner, T. (2006, September). Humanitarian debate: law policy, action -- private military companies. *International Review of the Red Cross*, 88(863). https://www.cambridge.org/core/journals/international-review-of-the-red-cross/issue/12D2A4624F5C875A64956C173BCBF83B

President of the United States. (2017). *National security strategy of the United States.* https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf

Ralby, I. (2016). The Montreux Document, Legal Significance of a Non-Legal Instrument. In G. Schaub, & R. Kelty (Eds.), *Private military and security contractors: Controlling the corporate warri*or (pp. 235-264). Roman & Littlefield. https://irconsilium.com/wp-content/uploads/2019/04/The-Montreux-Document-The-Legal-Significance-of-a-Non-legal-instruement.pdf

Reynolds, N. (2019, July 8). *Putin's not-so-secret mercenaries: Patronage, geopolitics, and the Wagner Group*. Carnegie Endowment for International Peace. https://carnegieendowment.org/2019/07/08/putin-s-not-so-secret-mercenaries-patronage-geopolitics-and-wagner-group-pub-79442

Rondeaux, C. (2019, November 7). *Decoding the Wagner Group*, New America.

Rumer, E. (2019, June 5). *The Primakov (Not Gerasimov) Doctrine in action.* Carnegie Endowment for International Peace. https://carnegieendowment.org/2019/06/05/primakov-not-gerasimov-doctrine-in-action-pub-79254

Ryan, M., Dawsey, J., & Tate, J. (2019, June 25). *U.S. Air Force veteran accused as mercenary in Libya's civil war is freed.* Washington Post. https://www.washingtonpost.com/world/national-security/us-air-force-veteran-accused-as-mercenary-in-libyas-civil-war-freed/2019/06/25/08cafbe6-49b2-4295-88e0-56c2377312e3_story.html

Scheimer, M. (2009). Separating private military companies from illegal mercenaries in international law: Proposing an international convention for legitimate military and security support that reflects customary international law. *American University International Law Review*, 1(23), 609-647. https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1097&context=auilr.

Schmitt, E. (2019, March 31). Russia's military mission creep advances to a new front: Africa. *The New York Times*. https://www.nytimes.com/2019/03/31/world/africa/russia-military-africa.html

Singer, P. W. (2003). *Corporate warriors: the rise of the privatized military industry*. Cornell University Press.

Smith, L. (2020, January 7). Iran and America are suddenly naked. *Tablet.* https://www.tabletmag.com/jewish-news-and-politics/296604/iran-and-america-are-suddenly-both-naked

Spearin, C. R. (2011). UN peacekeeping and the international private military and security industry. *International Peacekeeping*, 18(2), 196–209. https://doi.org/10.1080/13533312.2010.546099

Spearin, C. R. (2018). Russia's military and security privatization. *Parameters*, 48(2), 39.

Spearin, C. R. (2019). Russian military and security privatization: implications for Canada. *Canadian Military Journal*, 19(2) 4–14.

Spicer, T. (1999). *An unorthodox soldier, peace and war and the Sandline affair*. Mainstream Publishing.

Strengthening America's Security in the Middle East Act of 2019, S.1 [Passed Senate]. (2019, February 5). https://www.congress.gov/bill/116th-congress/senate-bill/1

Sukhankin, S. (2018, July 13). Continuing war by other means: The case of Wagner, Russia's premier private military company in the Middle East. *Russia in the Middle East*, *Jamestown Foundation*. https://jamestown.org/program/continuing-war-by-other-means-the-case-of-wagner-russias-premier-private-military-company-in-the-middle-east/

Sukhankin, S. (2019, June 25). From "volunteers" to quasi-PMCs: Retracing the footprints of Russian irregulars in the Yugoslav wars and Post-Soviet conflicts. *Global Research & Analysis*, *Jamestown Foundation*. https://jamestown.org/program/from-volunteers-to-quasi-pmcs-retracing-the-footprints-of-russian-irregulars-in-the-yugoslav-wars-and-post-soviet-conflicts/

Tahar, A. A. (2018, June 20). Saudi Arabia increases reliance on African and Latin mercenaries for Yemen war effort following Arab allies' withdrawal. *Military Watch Magazine*. https://militarywatchmagazine.com/article/saudi-arabia-increases-reliance-on-african-and-latin-mercenaries-for-yemen-war-effort-following-arab-allies-withdrawal

Tekingunduz, A. (2018, October 16). *Are private military contractors any different from mercenaries?* TRT World. https://www.trtworld.com/americas/are-private-military-contractors-any-different-from-mercenaries-20680

Torroja, H. (Ed.) (2017). *Public international law and human rights violations by private military and security companies*. Springer.

Troianovski, A. (2018, August 1). Russian filmmakers killed in Africa were investigating mercenaries close to the Kremlin. *Washington Post*. https://www.washingtonpost.com/world/europe/russian-filmmakers-killed-in-africa-were-investigating-mercenaries-close-to-the-kremlin/2018/08/01/8dac1c8c-9589-11e8-818b-e9b7348cd87d_story.html

Tsvetkova, M., & Zverev, A. (2019, January 25). *Exclusive: Kremlin-linked contractors help guard Venezuela's Maduro... Reuters*. https://www.reuters.com/article/us-venezuela-politics-russia-exclusive-idUSKCN1PJ22M

United Nations. (2009, February 13). *Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, *A/RES/63/164*. https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/480/63/pdf/N0848063.pdf?OpenElement

United Nations. (2019, Feb 4). *Debate on threats to international peace and security: Mercenaries activities as a source of instability and destabilization in Africa - security council, 8456th meeting* [Video]. UN Web TV. http://webtv.un.org/search/debate-on-threats-to-international-27peace-and-security-mercenaries-activities-as-a-source-of-instability-and-destabilization-in-africa-security-council-8456th-meeting/5998337747001

United Nations Human Rights Special Procedures. (2018). *Mercenarism and Private Military and Security Companies*. https://www.ohchr.org/Documents/Issues/Mercenaries/WG/MercenarismandPrivateMilitarySecurityCompanies.pdf

United Nations Meetings Coverage and Press Releases. (2020, Feb 12). *Security council endorses conclusions of Berlin conference on Libya, adopting*

resolution 2510 (2020) by 14 votes in favor, 1 abstention, SC/14108. https://www.un.org/press/en/2020/sc14108.doc.htm