



# Normalization of mercenary-like private military and security companies: the need for re-securitization of regulation

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## Abstract

Sudden proliferation of contractors in armed conflict and post-conflict situations and severe incidents in the first decade of this century drove to securitization of their regulation. Accomplishments included establishment of international principles and national regulations that improved contracting processes of Western governments and the practices of these contractors. The appearance of Russian-affiliated mercenary-like entities and assertions of their moral equivalence to western private military and security companies (PMSCs) threaten the outcome of the securitization effort. Further, the Russian model of mercenary-like entities may proliferate, propping up totalitarian governments and destabilizing at-risk democracies. We argue that re-securitization is necessary to safeguard the current progress in limiting the internationally accepted governmental use of PMSCs in military operations. This re-securitization must include addressing vocabulary and reviewing existing legal obligations regarding combat provider companies to determine applicability of existing law and make recommendations for good practices to set ordinary regulatory processes back on track.

**Keywords** Quasi mercenary organizations · PMSC · Securitization · Mercenaries

## Introduction

During the night of February 7, 2018, a pro-Assad force of ~500 men with tanks, other armored vehicles, and artillery attacked a natural gas plant defended by Kurdish and Arab militia and a little more than two dozen US special operations soldiers. During the four-hour battle, the defenders employed direct fire, artillery, helicopters, and strike aircraft. When daylight came, there were no American casualties or coalition partner

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deaths, but several hundred pro-regime fighters lay dead on the battlefield, along with the burnt hulks of almost all of the attacking armored vehicles. What brought the world's attention to this battle was that many of the dead were Russian citizens from a quasi-mercenary organization known as the Wagner Group (Reynolds 2019).

In the first decade of this century, public and private thought leaders perceived the rise of commercial military services as undermining the state's sovereign prerogative in warmaking, eroding state accountability, and generally threatening the stability, security, and human rights of at-risk populations. In response, states, international organizations, non-governmental organizations, and some private military and security companies (PMSCs) worked together in an unprecedented fashion, in a process known as securitization. The international initiatives resulting from this securitization aimed at multi-stakeholder approaches to formal and informal regulation of PMSCs and their services. The past few years, however, have seen a desecuritization as states scaled back their leadership in the regulation and accountability of PMSCs and their activities. Coincidental to this stepping back was the appearance of new forms of commercial military services. These services, such as those performed by the Wagner Group, include combat operations with little to no evidence of state accountability or respect for the international frameworks governing PMSCs. This caused uncertainty about their role under international law and put in question the regulatory progress so far achieved regarding private military and security companies. The time has come to re-securitize the regulation of PMSCs, for states to pick up where previous work left off.

This paper argues that re-securitization is necessary to avoid two negative effects. First, the progress accomplished over the last 10 years in the legitimization and professionalization of western style PMSCs would be nullified and would lead to a return to the debate as to whether PMSCs should be used, instead of more productive debates regarding efficient oversight. Second, the Russian model of the use of PMSCs may become so widespread as to annul the last two decades of efforts in regulating and limiting PMSCs in military operations. We propose that re-securitization should focus on two elements: re-evaluation of the vocabulary and currently adopted measures of international organizations and review of existing legal obligations regarding combat provider companies to determine applicability of existing law to these companies and to make recommendations for good practices by States regarding them. The argument begins with a section introducing securitization and how PMSCs regulation was securitized. This is followed by explaining how and why desecuritization occurred. In continuation is an examined re-securitization and why this is necessary, arguing for a re-assessment of existing policies when it comes to state contracting of PMSCs and promoting awareness of differences between mercenary-like companies and currently regulated PMSCs.

## Securitization of PMSCs

Securitization is a political process where state actors transform and politicize subjects into issues of security, enabling the use of extraordinary measures to address them. This process and framework was established and developed by Ole Wæver



(1995) and the Copenhagen school (Buzan et al. 1998; Balzacq 2005), who sought to elevate certain issues that have not been seen as a priority to be addressed politically. This process occurs when political agents use their voice through *speech acts* to call attention to the urgency of addressing certain issues, presenting them as a growing security concern, be it nationally or internationally, or both. Their ultimate goal is to obtain disproportionate attention from political leaders and the media to achieve resources and results that would otherwise not be attainable.

The purpose of the politics of securitization, as Wæver claimed, is to influence political action. This theory is intricately connected to political reality; by giving a political nature to the designation of security issues, you essentially ask politicians, decision-makers, and activists why they have called it a security issue and what are the implications of doing/not doing something about it (Wæver 1999, p. 334).

The agents that may influence the securitization process include the public, political elites, and the technocratic and scientific communities. During the process of securitization, the actor involved identifies an urgent need to address by employing extraordinary measures, with the justification that circumstances surrounding it have changed and measures previously undertaken to address it are no longer viable. The referent object that threatens ideals are founded on democratic values that western democracies hold close, like the protection of human rights, sovereignty, or a threat to the normal function of democratic regimes. The process usually occurs through statements, where actors with international credibility invoke recent incidents that threaten democratic ideals, to call for an urgent need to address these issues by using extraordinary measures. Those measures may be translated into an organization of international conferences, proposals of new treaties and conventions, or new rules or regulations, both nationally and internationally.

## Desecuritization of the PMSCs

Downgrading an issue from emergency mode to a normal bargaining process is considered desecuritization (Buzan et al. 1998, p. 4). The process of desecuritization is political in nature, as it constructs a narrative that downgrades the threat back to the level where usual measures may continue to deal with it. As “something is a security problem only when the elites declare it to be so” in the sense of securitization, the opposite is very valid as well (Wæver 1995, p. 47). Desecuritization—in contrast to securitization that implies speech acts—does not imply any action. The *lack* of any such speech acts implies that the issue has been returned to normal priority. Exposing an issue to the normal political process, where democratic tools are used to reach agreement and overcome difficulties, is the preferred way to deal with an issue. Tools that involve deliberation, negotiations, and contestation are associated with desecuritization and are preferred when addressing issues “above” politics (Wæver 1989, p. 314; 2004, p. 10; Wæver et al. 1993, p. 189; Wæver 1995).



## Re-securitization of PMSCs

Re-securitization refers to the process when an issue that has previously been successfully securitized and has been an object of extraordinary political attention and measures—which have led to its desecuritization—is again in need of such actions (Lupovici 2014). The change in circumstances surrounding the issue and new elements coming up are reasons to use this tool again. New circumstances leading to the employment of these mercenary-like entities, often recently discussed in the media (Brown 2018; Sukhankin 2019b), have caused apprehension regarding the consequences of further employment of such entities and the impact on the regulatory process itself. These apprehensions are not solely from the general public, but also from academics and professionals as well (Browne 2019; Darnell 2019; Klein 2019). Their employment in mercenary-like circumstances and the lack of consequences when their actions result in committing crimes and contravening international law, and confusion of their activities compared to those of legal private military and security companies, are causing irrevocable damage to the regulatory process of private security contractors.

## What is a private military and security company?

There are currently competing usages for terms and scope of private security functions, private military companies, and the collective term of PMSC. For example, the Montreux Document defines PMSC as “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/Swiss Federal Department of Foreign Affairs 2008). The Montreux Document definition does not encompass combat provider companies. The United Nations Working Group on Mercenaries (UNWG-M) uses a more comprehensive definition (Shameem 2010). The UNWG-M is so broad as to apply to all contractors supporting armed forces, regardless of what service is being provided. The exception to this confusion is combat operations. Both the Montreux Document and the UNWG-M definitions specifically omit combat activity. Nonetheless, lack of coherence in definition creates confusion that is exploited by those using combat provider companies and can be used by others to undermine the legitimate use of PMSCs. This paper uses the Montreux Document definition while acknowledging the UNWG-M definition.

## Mercenaries

Although there may be no agreed definition of PMSCs, it is clear that, under international law, these entities are not mercenaries. 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), requires each of five different elements to be met for the definition to apply. These include a requirement that, in the case of an armed conflict, the individual not be a national of a party to the conflict and “is motivated to take part in the hostilities essentially by the desire for private gain.” The UNWGM has noted that “motivation” is difficult, if not impossible, to prove (Patel 2012). Outside of the of armed conflict as defined in international law, the individual must intend to either overthrowing a Government or otherwise undermining the constitutional order of a State, or undermining the territorial integrity of a State (United Nations 1989). As the definition of PMSC excludes combat, and no PMSC has been accused of attempting either overthrow or undermine the territorial integrity of a state, the legal definition of mercenary does not apply.

### Quasi-mercenary organizations

Wagner and similar organizations seem to be neither one nor the other. These organizations provide services that are sometimes analogous to PMSCs. Their services include training and advice for military forces and personal protection for individuals and commercial entities. They are not, however, PMSCs as defined in the Montreux Document. First, they also offer services such as combat and riot control that Western PMSCs will not perform (Browne 2019; Sukhankin 2019c). Second, even the term “company” can be a misnomer. These organizations lack corporate structure as understood in the West and may not even be registered as a commercial entity in any state. This makes it difficult, if not impossible, to hold these entities responsible or accountable under law. Neither do these groups meet all of the requirements for being a mercenary under international law (Jezdimirovic Ranito and Mayer 2020). Individual combatants of these organizations, therefore, may not be accountable as mercenaries under existing anti-mercenary laws. For this reason, this paper will refer to these non-state combat provider organizations as “quasi-mercenary organizations” or QMOs. Russian sponsored QMOs have fought or are fighting in Chechnya, the Ukraine, Syria, Central African Republic, Libya, Sudan, and Yemen (Marten 2019). Their activities promote Russian interests but operate without the official authority of the Russian government (Spearin 2018). This allows the Russian Government to deny responsibility for or even knowledge of their activities. These QMOs operate outside of, and sometimes with deliberate disregard to the recently established norms for PMSCs (Sukhankin 2019a). This disassociation from the government monopoly of violence and accountability raises dangers for regional stability and may risk great power confrontation (Østensen and Bukkvoll 2018).

### The 21st century privatization of armed conflict

One of the most noteworthy aspects of twenty-first century hybrid warfare is the ubiquity of private military and security companies (PMSCs). Differing in organization, accountability, and activity associated with mercenary groups of the 1960's,



they were almost unheard of during the Cold War era. Organized, licensed, and sometime publicly traded corporations, these PMSCs, are now essential combat enablers of Western military forces and provide decisive combat capabilities in Africa. Their appearance drove practical concerns within military forces about employment and control of these contractors accompanying the armed forces and political concerns over an apparent privatization of war (Mayer 2008). Both practical and political concerns seemed to have validation through reported incidents of human rights abuses by PMSCs. Charges included willful destruction of property, smuggling, arms trafficking, human trafficking, and unprovoked use of lethal force (*Montreux Five Years On: An analysis of State efforts to implement Montreux Document legal obligations and good practices*, 2013, pp. 161–4). These concerns culminated in the shooting of 17 civilians by the US private security company (PSC) Blackwater at Nisour Square, Baghdad, Iraq, in September, 2007. In Afghanistan, PMSCs were accused of being complicit with warlords and criminal organizations (U.S Government 2010). PMSCs immediately changed from being perceived as combat enablers to being strategic liabilities.

The circumstances that brought continuous concern over activities of PMSCs in the media, academia, and eventually between political elites started in the early years of combat operations in Iraq, with a growing insurgency targeted against reconstruction and stabilization activities. In the absence of an effective civilian police force, protection of these civilian reconstruction activities was, largely outsourced to PMSCs, leaving coalition military forces to conduct active counter-insurgency operations (Parks 2005). The academic community, alarmed with an apparent lack of accountability tools and appropriate regulation of these entities, initiated the call for securitization (Singer 2003; Avant 2005; Kinsey 2005; Gaston 2008). These concerns found resonance with the Swiss government and the International Committee of the Red Cross, who sponsored a “Swiss Initiative” addressing PMSCs. The intent was to reaffirm existing international legal obligations of States regarding PMSCs and to recommend elements for regulation. This work was concluded in October 2008 with the endorsement of the *Montreux Document on Pertinent Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict* (International Committee of the Red Cross / Swiss Federal Department of Foreign Affairs, 2008).<sup>1</sup> The Montreux Document served as a touchstone for subsequent securitization.

The Blackwater incident at Nisour Square in September 2007 occurred between the opening and closing sessions of the Swiss Initiative. Although it did not directly affect the progress of drafting the Montreux Document, this event generated outrage and a clamor for national and international regulation of the PMSC industry. Facilitating such regulation was the desired goal of the Swiss Initiative (ICRC 2008).

Nearly parallel to the elaboration of the Swiss Initiative, in 2005, the UN Human Rights Council established the UN Working Group on Mercenaries (UNWG-M), succeeding the previous “Special Rapporteur” on Mercenaries. In 2008, following

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<sup>1</sup> Seventeen governments initially endorsed the document and ten years later, fifty-six governments, and three international organizations currently participate in this international framework (FDFA 2019).



the Nisour Square incident, the UNWG-M mandate expanded from mercenaries to investigate PMSCs and to draft basic principles governing them (United Nations 2008). The UNWG-M proposed an international convention that would significantly restrict the ability of states to contract for all PMSC related services (Patel 2012).

In the USA, securitization drove legislation in the National Defense Authorization Act of 2008. This resulted in entirely new regulations for Defense Department use and oversight of private security contractors (U.S. Public Law 110-181). From 2008 to 2011, a number of initiatives demonstrated growing political attention by Congress. A multitude of hearings and bills did not always result in concrete measures but implied extraordinary involvement (Elsea and Serafino 2004; S. 2147 2007; Clinton 2008; Grasso 2008; Bluemenauer 2010). The establishment of the Commission on the Wartime Contracting was one example of such extraordinary measures undertaken in the USA.

In 2009, the US Congress directed the Defense Department to report on the suitability of developing and certification to “business and operational standards” for private security operations following a positive recommendation from DoD in this report, Congress directed the development of such standards and their integration into DoD regulations and instructions (U.S. Public Law 111-353). These quality management standards were published in 2012 as American National Standard ANSI/ASIS PSC.1-2012 (ASIS International 2012) and in 2015 as an International/ISO standard 18788 (ISO 2015). The standards incorporated the provisions of the Montreux Document applicable to PSCs, the statutory requirements in the 2008 legislation, and other applicable regulations. The standards also required PSCs to adhere to the International Code of Conduct for Private Security Providers, an initiative addressed later in this section. Compliance with the ANSI PSC.1 standard was first required by Defense Department acquisition regulations in 2012 (PGI 225.7401 (a)). Since 2015, compliance with either the ANSI or ISO standards is necessary in all procurements for security functions supporting overseas military operations (Office of the Assistant Secretary of Defense 2018). Today, these standards are in use by more than 150 companies in twenty-two countries (DOD 2019).

Internationally, other multilateral initiatives ran concurrent with these developments. Most notable was the multi-stakeholder initiative producing the International Code of Conduct for Private Security Service Providers (ICoC) and an association founded under Swiss law to implement the provisions of that Code. The ICoC represents the private security industry’s commitment to implement the Montreux Document. Rather than a statement of self-regulation, it is also a commitment to abide by applicable national laws and work with governments (“International Code of Conduct for Private Security Service Providers,” 2010). The association implementing this Code includes Montreux Document participating governments, human rights advocacy non-governmental organizations, and about one hundred PSCs.

The USA was not the only government involved in outsourcing security services and adopting regulatory tools. In 2012, the British Foreign and Commonwealth Office issued a requirement for British PSCs to comply with the recently published American National Standard (United Kingdom 2012), and in 2013 the Swiss Government published its own law implementing the good practices of the Montreux Document (FDFA 2018). Swiss law and Swedish regulation require membership in





the ICoC Association, as does the US State Department for some of its PSC contracts. Full membership in the ICOC Association requires certification to either the ANSI or the ISO standard.

By 2015, the extraordinary political measures associated with securitization produced noteworthy successes. Securitization worked as a pressure from public opinion and from private and public groups and political leaders to perceive PMSCs as a threat that urgently needed to be addressed. The idea behind was that their use may only continue (particularly after Nisour square incident) if they have clear rules under which they may operate. Their engagement in the conflict zones was intended as a support to operations, and the clarification of their status (different than mercenaries) was the reason of why there was an international pressure to address it. Pressures came in form of public speeches, television debates, and wide media coverage of incidents.

After initial successes in developing international frameworks such as the Montreux Document the ICoC, and international standards for private security services, impetus and interest in regulating PMSCs started to wane. The desecuritization of regulatory process is reflected by the number of new governments participating in the Montreux Document, which slowed down, with only three new participants in the last three years (FDFA 2019) and the number of companies in the International Code of Conduct Association remaining relatively stable, with new companies not quite replacing those dropping out and only one new government member since 2015 (ICOCA 2015, 2018). Although the number of PMSCs voluntarily adopting the new international standards continues to increase, government activity in both legislative and executive functions slowed or stopped entirely. The US Government—and particularly the Defense Department—also began to disengage from PMSC issues in last couple of years, not only following the desecuritization trend, but going beyond it with new administration policies. In mid-2018, the Defense Department stopped sending a representative to meetings of the Montreux Document and the International Code of Conduct Association, the reorganization of the Office of the Under-Secretary of Defense for Acquisition and Sustainment eliminated the Program Support Office—with the position of the Director responsible for armed contingency contractors (DOD 2019). Furthermore, oversight and accountability of contractors accompanying the armed forces, including PMSCs, is not listed as a priority of the reorganized office nor has the responsibility for those contractors been transferred to any other office in the Pentagon (Under Secretary of Defense for Acquisition and Sustainment, 2019). Although the State Department continues international engagement with the ICOCA and the Montreux Document, it can no longer access Defense Department expertise.<sup>2</sup> Also, with the US Government's recent decision to withdraw from the Human Rights Council, it no longer participates in the Inter-Governmental Working Group looking at an international regulatory framework (Haley and

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<sup>2</sup> Through whole regulatory process of PMSCs, both nationally and internationally, the USA has counted on expertise of Department of Defense when it comes to understanding of the topic and suggestions that would be useful and executable in practice, while State Department presence has been only to transmit and support it.





Pompeo 2018). This desecuritization does not imply that regulation is complete and therefore removed from political radar, rather regulation is returned to the normal political process without further need for extraordinary measures.

Another example of how the regulatory process has been returned to normal political channels is an initiative in the Organization for Security Cooperation in Europe (OSCE) to include reporting on PMSCs by OSCE member states in their annual information sharing (DCAF 2018).<sup>3</sup> This initiative was introduced in 2015, but it took until 2019 before the OSCE parliament approved of a resolution allowing the initiative to move forward. Responding 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. This essentially stopped extraordinary movement toward international regulation, returning the initiative to the normal UN deliberative process. The only progress occurred in 2017, when it was agreed to establish a new Inter-Governmental Working Group to elaborate an international framework on PMSCs. The first meeting of this new group did not take place until June 2019 (United Nations Human Rights Council 2019).

One problem with this relaxation of government regulation efforts is that the apparent successes of securitization did not apply outside of Montreux Document participating states. PMSCs and other commercial non-state armed groups proliferated in the developing world (ICRC, 2020). Russia does not participate in the Montreux Document, and the activity of Russian affiliated combat provider organizations attracts particular notoriety.

Neither was the work of the Montreux Document and other initiatives, such as the ICoC complete. None of these initiatives address the full spectrum of PMSC activity. The standards, the ICoC and its Association are, by intent, limited to PSCs and do not cover companies that provide other military related services. As noteworthy a success as the ICoC Association appears to be, at less than 100 member companies, the Association represents only the smallest fraction of armed security contractors active in combat zones (ICOCA 2018; ICRC 2020).

## **Wagner group and a need for re-securitization**

The attack of the Wagner Group in Syria in February 2018 generated international interest. This interest brought a growing realization that while political leaders in the West were moving to normalizing the regulation of PMSCs, other governments were drawing different lessons. Wagner is only the best known of several Russian affiliated combat provider organizations active in various hotspots of the world today. 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

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<sup>3</sup> At this point, this measure is still in negotiation.



Government (Østensen and Bukkvoll 2018). President Putin has made statements supportive of their operations while simultaneously denying any responsibility for their actions (Bingham 2018).

There is a growing and ever more refined analysis of how the Russian government has been flirting with the use of PMCs and QMOs in conflict settings, from both legal and strategic perspectives (Spearin 2018; Sukhankin 2018; Marten 2019). Most of the research is from the military, concerned with the rise of the use of PMSCs in an offensive capacity. For instance, Norway and Canada have been looking into the implications of the rise of such a phenomenon for international security (Østensen and Bukkvoll 2018; Spearin 2019). There are about a dozen Russian affiliated QMOs known to conduct combat and combat related activities. In addition to Wagner, these include Eagle Antiterror, RSB Group, Moran, ENOT, and Patriot. Some of these are registered in Moscow to provide protective services within Russia. Their military-related activities outside of Russia, however, are illegal under Russian law. Therefore, these companies also have foreign registrations in Argentina, Belize, Cyprus, and other countries (Østensen and Bukkvoll 2018, pp. 22–27). This gray status facilitates using these companies to pursue Russian national interests while maintaining (implausible) deniability. They directly participate in hostilities or train combat and security forces in developing countries (Debka file 2017). Often, they do both. General Thomas Waldhauser, commander of US Africa Command, told the US Senate Armed Services Committee, “In some countries, they [Russian PMCs] 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 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). Russian QMOs are alleged to have been instrumental to the Russian takeover of Crimea and the shoot-down of a Ukrainian IL-76 military transport aircraft (Iasynskiy 2017). There are also unconfirmed reports of Wagner Group activity in Venezuela (Tsvetkova and Zverev 2019).

These Russian affiliated organizations are challenging the norm that states should have ultimate authority and responsibility for the use of armed force in support of their interests. There is a concern over how much control Moscow has over these QMOs and who in Moscow controls them (Marten 2019). There may be cases when the use of that force is not, in fact, under state control (Klein 2019). The uncertainty of the autonomy of Russian QMO operations can be used by Moscow to 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).

Although the most researched, Russian QMOs are not the only non-state combat provider organizations active in the developing world. Some entities are ephemeral organizations with no official structure while others are organized and registered



corporate entities, true Private MILITARY Companies (Ryan, Dawsey and Tate 2019).

In 2015—just as desecuritization became apparent—the Nigerian government procured the services of a South African private military company, STTEP, which trained the Nigerian military to fight Boko Haram in addition to direct combat and air support (Petersohn 2019).

In 2019, the Wagner group, working under a contract with the Mozambican government, suffered a series of setbacks and defeats at the hands of the Islamist rebels. The Mozambican government replaced them with a firm registered in the Seychelles, Dyck Advisory Group (DAG). DAG has armed helicopters and reconnaissance aircraft operating in Mozambique. According to DAG's CEO, Lionel Dyck, DAG's near term objective is to "get good men into the field and take the fight back to the enemy from the air and on the ground" (Rhino Review, 2020). The Seychelles are not Montreux Document participants and Dyck does not participate in the International Code of Conduct for Private Security Service providers, but it is participant in the UN Global Compact. The actions of STTEP and DAG are clearly in support of the recognized government and do not threaten regional peace and stability. However, the need of a government to use privatized military force to fight insurgencies calls into question the ability of that government to hold those private military forces to accountability under the law (Petersohn, 2020).

In the Middle East, there are a number of other PMSCs contracted by Saudi Arabia and United Arab Emirates to advance their interests in Yemen. Other mercenary activity has been reported in Libya, working for unknown paymasters (Ryan, Dawsey and Tate, 2019).

China (a Montreux Document participant) shows growing interest in the use of private security to promote their One Belt One Road (OBOR) Initiative (Sukhankin 2020). Their majority interest in Frontier Services Group, a multi-faceted security management firm headed by former Blackwater CEO, Erik Prince, is worth watching. With the exception of maritime security, Chinese firms are forbidden from carrying weapons outside of China. Continued decline in the stability of OBOR target countries or continued success of other QMOs may drive changes to that policy.

Recently, UN working group on the use of mercenaries has addressed activities of PMSCs and foreign fighters acting as mercenaries in these and other locations (United Nations Human Rights Special Procedures 2018; United Nations 2020). This recognition, however, has not produced any effective action by UN member governments addressing this activity.

## The need for re-securitization

Despite the clear differences between Western and Russian contractors, media reports continue to equate US- and Western-based PMSCs with mercenary activity (Reynolds 2019). More disturbing is that 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 responsibility for Russian QMOs (Associated Press 2017). The danger is that media attention and misdirection may result in diplomatic and legal action that will adversely affect the responsible use of PMSCs while doing nothing to stop unregulated and unaccountable Russian private military operations.

In February of 2019, the UN Security Council took up the issue of mercenary activity in Africa (UN 2019). Eight government representatives insisted on a clear distinction between legitimate PMSCs necessary for security and capacity development of governments and (per the US intervention) “other organizations that operate without mandate, oversight or accountability of a sovereign state.” Interventions of five other governments, however, maintained there is no effective difference between PMSCs and mercenary activity in Africa. These and other countries also called for broader acceptance of the UN Convention against mercenary activity and the acceptance of the convention proposed by the UNWG-M. None of the countries participating in the debate made any direct mention of Russian mercenary-like entities, and two of the governments calling for conventions have Russian QMOs working in their countries—in one case, even holding cabinet level positions.

The consequence of political legitimization and normalization of the Russian model of use of private sector combat providers is it becoming a model for other countries. The Russian business model seems to be based on offering a “competitive advantage” that Western PMSCs eschew. They offer services, such as combat, which are not available from the West. They do not pretend to be constrained by human rights norms or international standards and neither the Russian QMOs nor the Russian Government are accountable due these organizations’ murky legal status (Reynolds 2019). Finally, they cost far less than human rights-compliant PMSCs. This can provide a competitive advantage when offering services to totalitarian regimes in the developing world (Klein 2019). If this business model proves successful, then it could loosen inhibitions against the privatization of war by other countries. This would threaten the norm of responsible contractor support established by the US government and its partners over the past fifteen years and undermine regulatory outcomes accomplished so far.

To protect regulatory measures accomplished so far, there is an urgent need to focus on two major areas of concern which would separate these mercenary-like entities from the PSCs that have been regulated so far. The first is to re-evaluate the vocabulary and currently adopted measures of international organizations such as the UN and regional or purpose driven intergovernmental organizations such as the OSCE. The second will be to review existing legal obligations regarding combat provider companies to determine applicability of existing law to these companies and to make recommendations for good practices by States regarding them.

The first opportunity to meet both areas of concern is a government led public outreach to promote and describe implementation of the Montreux Document. The USA, as the best known, and perhaps the largest contractors of PMSC services globally, should describe US Government implementation of the *Montreux Document* and provide clarity of what the USA allows and does not allow in its contracting, and that this use is entirely consistent with international norms. The USA should facilitate and promote access to how its implementation of the



good practices of the *Montreux Document* is backed up in US law, procurement regulations, and military orders. The US Government should also cite corrective action (e.g., prosecutions) when those laws and regulations are violated. The US Government is not alone in its implementation of the *Montreux Document*, and other governments should also promote their own initiatives. The *Montreux Document* includes an enumeration of obligations and good practices for governments that contract for PMSC services, governments where PMSCs operate, and governments of countries where PMSCs are registered or headquartered. The public outreach described above could apply to all *Montreux Document* participating states, in accordance with their status as contracting, home, or territorial states. Western governments involved in regulatory process so far can also work with States where Russian QMOs are known to operate, encouraging them to endorse the *Montreux Document* and offer assistance in developing appropriate national regulation. That effort is less likely to be successful than working with States of PMSC registration as many “territorial” States (as defined in the *Montreux Document*) have reputations for government sanctioned human rights abuses (Østensen, 2018) and may welcome the Russian business model.

A second opportunity is supporting the recent OSCE resolution on PMSCs that includes dialog and including PMSCs in the OSCE’s annual information sharing. Current information sharing only includes regularly established elements of the armed forces and other national security forces (DCAF, 2018). As PMSCs exist to augment the capacity of the armed forces and other security forces, including PMSCs seems to be logical and important for overall awareness of capability and activity of member governments. It is unlikely that Russia would self-report in any truthful manner, but reporting by other member governments, would increase transparency and further distinguish acceptable from unacceptable use of contracted support.

A third opportunity is emphasized on clear and consistent messaging about the use of contracted support to the armed forces by both the USA and its partners. This messaging must begin by engaging allied and partner governments to ensure a common understanding regarding PMSCs. These governments must repeat that common message in every international venue at every opportunity. Messaging must include defining ethical contracted support. The elements of this message include identifying appropriate reasons for contract support, the services that may be contracted and those that should not, and contracting methods that assure proper authority, oversight, and accountability. For example, it should be emphasized that very few Western PMSCs carry weapons, rather, they perform non-military roles in capacity building for developing countries. Western PMSCs also provide protection and other support for nongovernmental humanitarian relief organizations. Taking control of the vocabulary is a critical component of this messaging. As an absolute minimum, the terms PMSC, PMC, PSC, and mercenary must be clearly described and consistently applied. There is an important role in this messaging for US and British industry associations that are committed to the ethical provision of these services. In the USA, this includes the International Stability Operations Association (ISOA). In Britain, there is the Security in Complex Environments Group (SCEG).



Throughout all of this, there must be clear use of proper vocabulary, not allowing what this paper refers to as QMOs to use PMSC, PSC, PMC, or any other such term that implies that these companies share in the efforts at regulation and accountability undertaken by the Swiss Initiative and national regulatory efforts.

## Objections to securitization

Maria Nebolsina holds that the very act of securitization, using the color of norms and law, can lead to an expansion of, or intensify the use of force, and the opportunities to use PMSCs (Nebolsina, 2019). She states that the expanded use of legitimized private security, operating under the authority of a strong State, such as the USA, does not undermine State sovereignty. The State maintains effective control over use of force by that actor. However, where a PMSC operates as a private entity in a weak state, it can undermine State authority. The legitimization of PMSCs by strong countries, such as the USA, the UK, Russia, and even China, has led to an explosion in demand for PMSC services. In some cases, writes Nebolsina, the demand exceeds the availability or the ability of developing states to effectively license or control PMSC activity, undermining State authority and security. Although Nebolsina does not point out the rise of Wagner and other QMOs as an example of past securitization leading the current rise of QMOs, it is a logical conclusion. The argument could be made, and therefore, that renewed securitization could lead to greater acceptance and demand for PMSCs, with or without effective State control and accountability.

This argument has merit. It parallels the rise in demand for other products and services which, once perceived as desirable, can generate a demand far exceeding available supply. This in turn leads to the supply of goods and services that do not meet government regulation for safety or other controls in the public interest. Could renewed securitization of PMSCs lead to an expansion of the market for QMOs? The answer seems to be, yes, it could.

This paper recognizes that risk and proposes the three implementing measures described earlier to control the opportunity for QMO activity and limit the impact of such activity where it occurs: first, to promote awareness of the Montreux Document and national regulation to provide effective control for the use, export, and activity of PMSCs. Voluntary regulation of the industry by the industry cannot be seen as an acceptable alternative to State regulations and accountability under law. Voluntary regulation is important, but that can only be complementary to, and not a replacement for, effective State control, second, to share information about the use of PMSCs by States, self-reporting to international forums, such as the OSCE. Transparency and reporting opens up the use of PMSCs to international review and comment. There should also be an opportunity within these forums to call out known or suspected PMSC activity that is not being reported.

Third is the consistent an effort to control the vocabulary. Governments, international organizations, and academics must not allow the use of force outside of the parameters of international agreements to be called by terms used for legitimate actors. Similarly, there must be an effort to avoid terms that do not strictly apply, such as mercenary, when the organization does not meet all criteria under existing



international law. The terms PMSC, PMC, PSC, and mercenary must be accurately and consistently applied. As described, there is a vocabulary gap regarding combat provider organizations that are neither PMSC nor mercenary. Until a better term is agreed, this paper proposes the term Quasi-Mercenary Organization.

Another objection to a renewed securitization effort is that key states may not see further international conventions regarding this as beneficial or desirable. For instance, the USA is not a party to any current international conventions on mercenary activity and is unlikely to become a party to either the current anti-mercenary convention or the one proposed by the UNWG-M. These international conventions, however, can still affect the ability of the US Government to acquire, deploy, or employ PMSCs. For instance, Iraq and Afghanistan both support the UNWG-M initiative. The overly broad definition of “military services” and a definition of “inherently state functions” contrary to US law and practice could lead these countries—and other countries that may ratify it—to prohibit deployment of US PMSCs on their national territory (United Nations 2010). These prohibitions would extend to the ability of the USA to hire third country nationals. PMSCs contracts typically employ more third country nationals than US citizens. These include citizens of Bulgaria, Croatia, Fiji, Kenya, Nepal, North Macedonia, the Philippines, Romania, South Africa, Turkey, Uganda, the UK, and others (HQ US Forces Afghanistan 2018). If these countries implement the proposed convention, they might no longer be sources for PMSCs contractor personnel and subcontractors. Development of further conventions at this point is therefore not probable or beneficial for solving the problem of mercenary like companies without prior clarification and uniformization of the vocabulary used when dealing with different types of private force.

## The way forward

The regulation of PMSCs by contracting states and organizations has been tackled by scholars throughout the last decade. From the standpoint of national regulation, the most recent examination by Jezdimirovic Ranito (2019) looked at the US national regulatory process, encompassing various aspects and dynamics between the stakeholders involved. The dynamics between the private agents and the entities contracting them (states or organizations) have been addressed by several scholars. Krahmenn (2016) advocated that the principal-agent theory is suitable to address the drives and limitations of the better oversight and accountability of contractors. Diphoorn (2016) used security assemblages to explore the relationship between private security contractors and public agents. A common theme in all of these studies is that voluntary or self-directed regulation, although appropriate to many other commercial goods and services, is not sufficient for PMSCs. The use of force, including deadly force, is an inherently sovereign act and can only be tolerated with the specific authorization and control of by the State (Weber, 1920). Therefore, while voluntary codes of conduct and international commercial standards may be important for improving the quality and performance of PMSC activity, ultimate control and accountability must be exercised through regulation, oversight, and accountability by the state.





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 US 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, such as Wagner.

The Russian model of QMOs eschewing international standards for PMSCs services and conducting combat operations is inconsistent with the law of armed conflict and damages the existing regulatory advances of the private military and security industry. This sector is still in its very early phase of regulatory process and the results are tenuous.

For a long time, the USA has been a powerful voice in dictating how the industry develops and setting standards to employ such companies. This is changing due to a shrinking business possibilities in the US market and an emergence of a market in the Middle East and Africa, where countries that employ such entities are not primarily concerned with democratic values and respect for human rights. Indeed, these employers are often interested in companies that demonstrate the exact opposite, in order to accomplish their regional political goals (Roston 2018; Tahar 2018). Although these circumstances may be difficult to control, the political attention toward the use of such entities and their differentiation from private security companies is certainly not.

If the US and Western governments intend to continue to employ PMSCs in the future, they must invest in their differentiation and distancing from quasi-mercenary entities. Western governments in Europe that have seen a growth in contracting security should also be concerned with these developments, if for no other reason than to maintain that viability in their national public opinion. From a more global approach, the ignorance of these entities would not make them disappear, but lead to a normalization of their use, 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.

In conclusion, in addition to demonstrating that securitization of the regulatory process of the private security industry was successful once, we argued that new circumstances raised here demonstrate the clear need to re-securitize it again. These concerns have been raised by academics and professionals worldwide, and they need to reach the attention of political elites once more. The path to combat normalization of the employment of these entities rests with academics and the professional community focusing on private security contracting within governments and organizations, who need to call awareness to the blatant human rights abuses, and the ignorance of western society of the dangers of employing such companies, within war zones.



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