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# International Efforts to Combat the Phenomenon of Mercenarism

## In Its Traditional and Contemporary Forms and Its Implications for National Security

### *Introduction:*

*There is no doubt that the phenomenon of using and employing mercenaries in armed conflicts is among the most serious contemporary international issues. This challenge has persisted for decades, particularly during the era of struggles for national liberation and the fight against colonialism. Given the grave consequences of this phenomenon for both national and international security especially in light of the activities of private international military and security companies and their role in fueling armed conflicts through the recruitment and deployment of former combatants calls have intensified for urgent action to suppress and prevent this threat. There is also a growing demand to hold those involved legally accountable for their criminal actions to ensure they do not escape punishment <sup>(1)</sup>.*

### **Research Problem:**

Countries experiencing armed conflicts suffer significantly from the repercussions of the recruitment and involvement of mercenaries in ongoing hostilities. These nations, in particular, endure escalating levels of violence and the perpetration of severe human rights violations by mercenaries. Such actions obstruct peaceful settlement efforts and hinder the achievement of security and stability in affected societies for extended periods. The danger posed by this phenomenon is further amplified by the purely financial motivation that drives mercenaries to participate in hostilities on behalf of any conflicting party whether through combat, advisory roles, or training. Mercenaries and those who employ them often seek to prolong the duration of the conflict in which they are engaged, as doing so yields substantial profits and immense wealth.

### **Objectives of the Study:**

This study aims to analyze the nature and root causes of the mercenarism phenomenon. It seeks

to shed light on its origins and contemporary evolution, particularly under the label of “Private International Military and Security Companies.” The study also aims to clarify the serious implications this phenomenon has on the national security of individual states and on international security at large. Finally, it presents an overview of the most significant international efforts to combat mercenarism and the global initiatives aimed at regulating the activities of such military companies in accordance with international law.

### **Research Questions:**

The scientific and methodological approach to studying this phenomenon raises several important questions, most notably:

- 1- What is the exact meaning of the phenomenon of mercenarism? And who qualifies as a mercenary?
- 2- What are the reasons behind the renewed rise of mercenarism within the context of the activities of private international military and security companies? And what are the



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- implications of this phenomenon for both national and international security?
- 3- What are the most prominent international efforts aimed at combating the involvement of mercenaries in hostile activities?
  - 4- How does international humanitarian law regulate the conduct of personnel working for private international military and security companies?
  - 5- What are the key proposals that can be put forward to enhance and develop international efforts to combat mercenarism and regulate the activities of private military and security companies?

### **Methodology of the Study:**

This study adopts the legal analytical method to examine the phenomenon of employing mercenaries and personnel of private international military and security companies in armed conflicts. It focuses on identifying the causes, risks, and implications of this phenomenon for the security of states and societies. Additionally, the study analyzes relevant international legal instruments that address the participation of unlawful combatants in hostilities during armed conflicts, along with the regulatory framework of international humanitarian law in this context.

### **Contents of the Study:**

- 1- The concept of mercenarism and the distinction between mercenaries and other types of combatants.
- 2- The reasons behind the renewed growth of the phenomenon and the implications of recruiting mercenaries and private international military and security company personnel in armed conflicts for both national and international security.
- 3- Efforts to combat the employment of mercenaries in hostilities and violent acts in light of international law.
- 4- Combating the activities of private international military and security company personnel in accordance with the rules of international humanitarian law.
- 5- Study findings, including proposed opportunities and alternatives for addressing the phenomena of recruiting mercenaries and private international military and security personnel.

### **First: The Concept of Mercenarism and the Distinction Between Mercenaries and Lawful Combatants**

The phenomenon of employing mercenaries in hostilities is considered one of the most serious

international issues that obstruct the enforcement of international legal norms related to humanitarian protection. Accordingly, the international community has long been concerned with defining the rights and obligations of conflicting parties in the conduct of hostilities and with prohibiting the use of mercenaries in armed conflicts, in order to reduce the suffering of innocent civilians. To this end, the Hague Conventions namely, the First Hague Convention of 1899 and the Second Hague Convention of 1907 were adopted, followed by the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. These instruments established a set of rules and principles that must govern the conduct of hostilities during armed conflicts, with the aim of minimizing the resulting human losses to the greatest extent possible.

International humanitarian law defines the categories of individuals entitled to protection during armed conflicts. These include all civilians who do not take part in the hostilities, as well as prisoners of war who are captured combatants. The scope of this protection is determined based on the principle of **“distinction between civilians and combatants,”** as outlined in the relevant Geneva Conventions. Referring to Article 43 of Additional Protocol I, it is stated that members of the armed forces who are lawfully authorized to participate in hostilities are defined as follows: **“The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible for the conduct of its subordinates... Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict”**<sup>(2)</sup>.

In contrast, mercenaries, militia members, and other groups of fighters who are not part of regular armed forces are collectively referred to as **“unlawful”** or **“unprivileged combatants,”** despite their participation in hostilities on behalf of one of the warring parties. This distinction sets them apart from lawful combatants who are granted protection under international humanitarian law<sup>(3)</sup>. Consequently, the legal status of these mercenaries differs from that of national combatants who hold the nationality of one of the parties to the conflict and fight within its regular armed forces in accordance with the rules of relevant international law. The actions of the former group are deemed unlawful, whereas the participation of the latter group in combat and hostilities is considered lawful under international legal frameworks. Nevertheless, their

engagement remains subject to the binding rules of international humanitarian law, which emphasize the obligation to respect the rights of civilians and to refrain from harming them or their property except in cases of military necessity, and even then, only as an exception. This is in line with the principles established in the collective human conscience and upheld by the teachings of divine religions.

The implication of the above is that the right to lawfully participate directly in hostilities is, as a general principle, limited exclusively to lawful or regular combatants in armed conflicts. Only they are authorized to target enemy fighters and destroy military objectives provided that such actions are dictated by military necessity and are carried out within the constraints of international humanitarian law, including its established principles, rules, and customs. By contrast, the participation of mercenaries in hostilities on behalf of any of the conflicting parties is deemed unlawful under international jurisprudence, as their presumed status is that of neutrality<sup>(4)</sup>. Articles 4 and 5 of the Hague Regulations concerning neutrality explicitly state that forming units of unlawful combatants is prohibited. These articles further affirm the obligation of neutral contracting states to refrain from allowing recruitment offices to be established on their territory for the benefit of parties involved in an armed conflict. Any breach of this obligation incurs direct international responsibility on the part of the violating state.

This conclusion is consistent with the explicit confirmation found in Article 47(1) of the First Geneva Protocol of 1977, which clearly states: ***“A mercenary shall not have the right to be a combatant or a prisoner of war.”*** However, a mercenary remains entitled to a minimum set of rights, in accordance with the provisions of both international human rights law and international criminal law, particularly the requirement that individuals suspected of committing international crimes must be treated fairly<sup>(5)</sup>.

It is worth noting that there was no specific legal definition of a mercenary prior to the adoption of the First Geneva Protocol in 1977. During the preparatory consultations for its adoption, the Nigerian delegate whose country had suffered greatly during the civil war between 1967 and 1970 submitted a proposal to the working group of the Third Committee of the International Humanitarian Law Conference (1974–1977). The proposal called for the inclusion of Article 42, which introduced a definition of the term mercenary into the draft protocol<sup>(6)</sup>.

This initiative sparked widespread international debate. Developing countries maintained that any foreigner who does not hold the nationality of the armed forces he joins to fight on behalf of a state should be considered a ***“mercenary”***. In contrast, developed countries adopted an opposing view, arguing that a foreigner loses the status of mercenary if the state whose forces he joins officially recognizes him as a combatant within its regular armed forces. The debate between the two camps continued until the Third Working Committee proposed a compromise during the fourth session, which was adopted by consensus among the conference delegates. ***This compromise later became the text of Article 47(2) of the First Geneva Protocol, which defines a “mercenary” as any person who:***

- 1- Is specially recruited, locally or abroad, to fight in an armed conflict;
- 2- Does, in fact, take a direct part in the hostilities;
- 3- Is motivated essentially by the desire for private gain, and is promised, by or on behalf of a party to the conflict, material compensation substantially exceeding that promised or paid to combatants of similar rank and function in the armed forces of that party;
- 4- Is neither a national of a party to the conflict, nor a resident of territory controlled by one of the parties to the conflict;
- 5- Is not a member of the armed forces of a party to the conflict;
- 6- Has not been sent by a state which is not a party to the conflict on official duty as a member of its armed forces.

Despite the significant alignment between the definition of mercenaries under Article 47 of Additional Protocol I and that provided by the 1977 Convention of the Organization of African Unity (OAU) for the Elimination of Mercenarism in Africa, the latter adopts an important ideological dimension that reflects the African continent's experience and suffering from the repercussions of mercenary activity. Article 1 of the African Convention states that, in addition to financial or material motivations, mercenaries may also pursue political objectives, primarily aiming to undermine the right of peoples to self-determination and to violate the principle of territorial integrity of the states targeted by their attacks. Moreover, the Convention broadens the scope of criminalized conduct to include participation in mercenary groups and/or recruitment of such groups and/or providing any form of support to their members.





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In parallel, Article 28(h) of the Amended Protocol to the Statute of the African Court of Justice and Human Rights extends the definition of mercenary related crimes even further, to include acts such as ***“assisting a government in retaining power”*** and ***“helping a group of individuals to seize power.”*** Notably, the African Convention on the Elimination of Mercenarism stands as the only international legal instrument that expands criminal responsibility for mercenarism to encompass both natural and legal persons, including groups, organizations, and states alike.

In line with this definition, mercenaries are distinct from military and technical trainers, advisors, and consultants who may be called upon by a state to command or support its forces on the battlefield. The core distinction lies in the fact that a mercenary is a professional, paid soldier who participates directly in military operations on behalf of one of the parties to a conflict and is specifically recruited for this purpose through a contractual agreement, regardless of its duration. Mercenaries are also different from military or technical personnel dispatched by one state to another party to an armed conflict in support of mutual defense obligations, such as those arising within the framework of military alliances. The same applies to troops sent by one country to assist another at its request.

With the adoption of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries on December 4, 1989<sup>(8)</sup>, the international community endorsed a broader definition of mercenary. According to Article 1(2) of the Convention, a mercenary is: ***“Any person who is not a national of the State concerned, nor a resident of it, nor a member of its armed forces, and who is recruited locally or abroad to take part in a concerted act of violence aimed at:***

***1) Overthrowing a government or otherwise undermining the constitutional order of a State; or : 2) Undermining the territorial integrity of a State, and who is motivated to do so primarily by the desire for significant personal gain.”***

It is clear from the above definition that certain conditions must be met for an individual to be classified as a mercenary, which are as follows:

1- The individual must be present outside the territory of their country of nationality or habitual residence in other words, they must be considered a foreigner in relation to the destination state to which they travel. Additionally, they must meet specific criteria that distinguish them from foreigners present under normal circumstances.

- 2- The destination country must be experiencing an armed conflict or widespread acts of violence, regardless of the parties involved or the causes of the conflict.
- 3- The individual must be recruited specifically through a contract of employment for the purpose of direct participation in hostilities or organized acts of violence, carried out on behalf of the party that recruits or employs them.
- 4- The person must not be a member of the armed forces of the party employing them, nor should they be officially dispatched by the state of their nationality or habitual residence to participate in hostilities as part of a pre-existing international obligation with the party to the conflict they are fighting for.
- 5- The individual's primary motivation must be financial gain, i.e., material compensation must be the key driver for their involvement in hostilities, regardless of the specific context in which the violence is committed.

### ***Second: Reasons Behind the Resurgence of Mercenarism and the Implications of Recruiting Mercenaries and Private Military and Security Company Personnel in Armed Conflicts for National and International Security***

Despite ongoing international efforts to eliminate the phenomenon of mercenarism, it continues to persist and even witness increasing demand in the context of armed conflicts. In recent years, this phenomenon has acquired a more institutionalized form through the emergence and operations of private international military and security companies (PMSCs). These companies often contract with retired generals and high-ranking military officers, individuals with advanced skills and extensive experience in combat strategies, warfare tactics, and military operations management. PMSCs then employ these professionals and dispatch them to conflict zones at the request of the host states<sup>(9)</sup>.

In light of globalization and the worldwide trend toward economic liberalization and privatization, mercenaries today are no longer disorganized individuals operating independently. Instead, they have become institutionalized actors engaged in armed conflicts through employment and training contracts signed with private military and security companies (PMSCs). These companies operate on an international scale, recruiting, training, and deploying mercenaries to conflict zones in

exchange for exorbitant fees, which in some cases have reached up to \$2,000 per day for a single mercenary. As a result, mercenary activity has evolved into a globalized industry, estimated to be worth over \$100 billion. This industry is dominated by large corporations based in countries such as the United States, Russia, France, the United Kingdom, and South Africa, although it is also supported by smaller companies in terms of workforce and funding operating in other parts of the world.

Although the initial role of these companies was limited to providing basic security-related services such as protection, surveillance, and guarding they quickly underwent a significant transformation, increasingly engaging in armed conflicts and performing various military functions and operations that, until recently, were the exclusive domain of national armed forces. This shift has led some observers to declare that we are now living in the era of “*privatized warfare*” and “*proxy wars*,” in which such companies play active roles across both domestic and international conflict landscapes. This transformation has occurred in parallel with the global expansion of the private military industry, often referred to as part of the military-industrial complex<sup>(10)</sup>.

Some trace the origins of the use of private international military companies (*PMSCs*) and their collaboration with regular armies back to the Vietnam War, when the *CIA* launched a covert program known as “*Black Operations*.” Under this program, mercenaries were deployed to carry out assassinations and sabotage missions targeting critical infrastructure and Vietnamese military leaders operations the *U.S.* government did not want to be directly or publicly associated with, in order to evade legal accountability.

*What are the underlying reasons for the renewed growth of this phenomenon and the expanding role of private military and security companies in global conflict zones and hotspots?* The following analysis seeks to explore and explain these driving factors in detail:

**1- The Proliferation of Armed Conflicts:** The relentless pursuit of victory at any cost by warring parties without regard for the human suffering and devastation it causes has led many states to employ non-nationals as combatants, integrating them into their armed forces to directly and actively participate in hostilities. On the other hand, these widespread armed conflicts across various parts of the world have resulted in the emergence of a large number of former soldiers and military commanders who

possess substantial combat experience and have undergone intensive field training through their prior involvement in wars. Once these conflicts ended, many of them were demobilized, making them highly attractive to private military and security companies (*PMSCs*), which eagerly recruited and redeployed them into other conflict zones<sup>(11)</sup>.

**2- Weak Oversight and Lack of Effective Remedies:**

A major factor contributing to the persistence of mercenarism is the lack of accountability mercenaries and their recruiters often manage to escape punishment, sometimes enjoying complete impunity for the heinous crimes they commit, despite ongoing international efforts to combat the phenomenon. The situation has worsened with the emergence and expansion of private international military and security companies (*PMSCs*), which often operate under the guise of licensed commercial entities. While they claim to provide security services in conflict zones, these companies frequently use such claims as a cover for engaging in hostile activities or delivering services that, in essence, constitute mercenary acts<sup>(12)</sup>.

**3- Difficulty in Attributing Legal Responsibility:**

By recruiting and employing mercenaries, contracting states can achieve their military and political objectives more easily and efficiently, without the burden of human cost acting as a limiting factor. This has led to the increasing reliance on mercenaries over national armed forces in modern conflicts. States now find hiring *PMSCs* to be a safe haven for engaging in warfare while avoiding direct legal responsibility for any violations committed by these actors<sup>(13)</sup>.

**4- Fragile Security Environments and the Spread of Illicit Arms Trade:**

Another key driver of the growth in mercenary recruitment is the fragile security environment in many countries, where national armed forces are weak, domestic security agencies lack capacity, and terrorist and criminal organizations are actively operating. In such settings, mercenary activity flourishes, particularly where the illicit arms trade is widespread, making it easier for these actors to access the weapons and equipment needed to participate in armed conflicts.

**5- Escalation of Ethnic Divisions and Separatist Movements:**

The chronic spread of ethnic tensions and separatist groups across



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many parts of the world also fuels the demand for mercenaries and boosts the market for private military and security companies. These groups often rely on hired fighters to strengthen their combat capabilities and sustain their resistance in pursuit of political goals. Real-world examples abound where national armies have hired mercenaries to counter insurgencies, coups, or rebellions, with the African context serving as a particularly vivid illustration of this trend<sup>(14)</sup>.

Among the most notable private military and security companies proven to be involved in mercenary activities are the American company Blackwater and the Russian Wagner Group. The implications of mercenary operations and the companies employing them can be observed across several major dimensions affecting both national and international security, as outlined below:

**1- Threatening National Security, Stability, and Territorial Integrity:** The increasing employment of mercenaries in armed conflicts has led to heightened instability and insecurity in the affected states, undermining development efforts and obstructing human security for their populations. Notably, the preamble of the International Convention against the Recruitment of Mercenaries explicitly acknowledges this, stating that mercenary activities violate the principles of sovereign equality, political independence, and territorial integrity. Since the post-9/11 global conflict escalation and the launch of the U.S. “*War on Terror*,” the frequency and intensity of armed conflicts have surged, resulting in the reemergence of mercenarism in an institutionalized form, largely enabled by the expanding role of PMSCs<sup>(15)</sup>.

**2- Fueling Armed Conflicts, Prolonging Their Duration, Increasing Violence, and Undermining Peace Efforts:** The activities of mercenaries pose a dual threat: first, their presence in conflict zones and direct involvement in hostilities significantly intensify armed conflicts leading to their escalation, prolongation, and increased complexity, which in turn hinders peaceful resolution and threatens international peace and security. In many cases, contracts with mercenaries and personnel from private military and security companies result in unregulated military escalations and create dangerous imbalances between the conflicting parties. Since the primary motivation for these unlawful combatants is rapid financial

gain, with no regard for humanitarian or legal considerations, they have a vested interest in prolonging and intensifying the conflict to ensure the continuation of their employment and income. This leads to a self-sustaining cycle of violence that can persist indefinitely<sup>(16)</sup>.

This problem is compounded by the fact that many conflicts that were initially local in nature have become internationalized, due to the multinational composition of the actors involved. As a result, predicting or containing the effects and repercussions of these conflicts has become exceedingly difficult. Moreover, there are serious security risks associated with the cross-border movement and operations of mercenaries, which impact their countries of origin, the countries they transit through, the countries they operate in, and even neighboring states to active conflict zones.

**3- Gross Human Rights Violations:** the mercenary labor market thrives in times of war, which often produces mass casualties, injuries, displacement, and widespread human suffering. In such contexts, serious violations of human rights including war crimes, genocide, ethnic cleansing, and crimes against humanity have become tragically common. This is largely due to the absence of effective accountability mechanisms for those involved. In its 2022 report, the UN Working Group on the use of mercenaries emphasized the broad range of harms caused by PMSCs and mercenary activities, particularly against civilians, with women, children, migrants, refugees, and persons with disabilities being among the most vulnerable groups<sup>(17)(18)</sup>.

**4- Undermining the Right of Peoples to Self-Determination:** while modern international law especially post-1945 with the founding of the United Nations prohibits the use or threat of armed force in international relations, it allows limited exceptions, including the use of force to exercise the right to self-determination and achieve national independence. When mercenaries engage in armed hostilities, whether in the context of wars or violent efforts to overthrow governments, they directly undermine this collective right of peoples to determine their own political future. Some legal scholars and observers argue that the contracting of *PMSCs* by states constitutes a new form of foreign intervention in the internal affairs of targeted countries, thus violating the principles of sovereignty and non-interference<sup>(19)</sup>.



***Third: Combating the Recruitment of Mercenaries to Participate in Hostile Acts and Violence in Light of the Rules of International Law***

At the outset, it is noted that combating mercenarism was traditionally regarded under classical international law as a matter governed by the domestic law of the state in which the armed conflict occurred, or the state to which the mercenary belonged. Consequently, international law did not address or regulate the issue. As a result, there was ambiguity surrounding the concept of a mercenary, and a lack of precision in defining the conditions that must be met for an individual to be classified as such. While national laws did address mercenarism, they nevertheless differed relatively in defining its components<sup>(20)</sup>.

The seriousness of this matter becomes evident when we realize that the general rule regarding the scope of application of a state's legal and judicial jurisdiction is, first, the principle of territoriality, and second, the active nationality principle. This means that the national judiciary of a state does not have jurisdiction to rule on a specific crime unless that crime was committed within its territory, in accordance with the first principle, or the perpetrator is one of its nationals, even if the crime was committed abroad, in accordance with the second principle. Accordingly, it was not possible to hold a mercenary accountable or prosecute them for the unlawful activities they commit except before the judiciary of their home country or before the judiciary of the state where the crime was committed. In any other case, they could not be prosecuted, which means they could find a safe haven in a country other than those two and thus escape punishment. And assuming that the mercenary to be held criminally accountable for such a heinous act is stateless, and committed their crime in a state whose national law does not criminalize mercenarism, then in that case as well, they would escape punishment. Hence, there arose an urgent need to adopt international legal provisions that criminalize mercenarism and allow for the prosecution and accountability of mercenaries for their crimes in this context.

The issue of combating mercenary activity was first addressed at the level of international documents issued by the United Nations in Security Council Resolution No. 239, which was adopted unanimously on 10 July 1967. In this resolution, the Council condemned the conduct of states that allow the recruitment of mercenaries and provide them with facilities for the purpose of using them

to overthrow the governments of any member state of the Organization. Although the resolution was issued specifically in the context of the Council's management of the crisis in the Democratic Republic of the Congo at the time, the Council used this crisis to emphasize the necessity for member states to ensure that their territory and/or nationals are not used for planning sabotage operations, or for the recruitment, training, or transit of mercenaries with the aim of toppling governments<sup>(21)</sup>.

Subsequently, the Security Council issued further relevant resolutions, most notably Resolutions 404 and 405 of 1977. It is worth noting the evolution in the language used by the Council in characterizing and criminalizing mercenary activities: while Resolution 239 described such activities as a form of foreign intervention, later resolutions redefined them as acts of aggression. This marked a significant development in the criminalization of mercenary activities at both the national and international levels.

In light of the growing global awareness of the seriousness of the phenomenon of mercenarism and the need to confront it through prevention and suppression, the international community has made deliberate efforts to establish binding legal frameworks to criminalize this phenomenon, given its grave negative consequences for states and societies. As a result, the member states of the Organization of African Unity adopted, during the 1977 Summit Conference, the Convention for the Elimination of Mercenarism as the first binding international agreement on the matter.

***The Convention imposes a set of fundamental obligations on the parties thereto, the most important of which are:***

- 1- The obligation to prevent mercenaries, whether they are nationals or foreign residents, from engaging in their unlawful activities from within the state's territory.
- 2- The obligation to prevent the use of its territory by mercenaries as a transit route to the territory of another member state for the purpose of conducting their unlawful activities.
- 3- The obligation to exchange information among member states of the Organization concerning mercenary activities.
- 4- The obligation to take all legal measures and procedures necessary to ensure the accountability of mercenaries for their activities and to impose appropriate penalties, including the death penalty. Member states of the Organization are to undertake such measures whether or not they extradite the mercenaries



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to the state or states against which they were deployed thus affirming the necessity to pursue and punish mercenaries for the crimes they commit in any of the member states.

The aforementioned convention also served as a catalyst for many African states to enact national legislation to combat the same phenomenon, with the provisions of such legislation being inspired by the terms of the convention itself.

In a related context, the United Nations General Assembly, through Resolution No. 44/34, adopted on 4 December 1989, endorsed the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which consists of a preamble and 21 articles. The scope of this convention is not limited to regions experiencing armed conflict, but also extends to planned acts of violence committed outside the context of armed conflict, highlighting the risks of employing mercenaries even during peacetime in the context of orchestrated violence.

After defining a mercenary in Article 1 as a paid foreign soldier who fights in the context of an armed conflict or participates in premeditated acts of violence aimed at overthrowing a government or undermining the constitutional order of a state, the Convention, in Article 2, criminalizes the recruitment, use, financing, and training of mercenaries.

Article 4 also criminalizes participation in any of these acts, as well as attempting to commit or attempting to participate in the commission of such acts<sup>(22)</sup>.

Article 5 obliges States Parties to the Convention to take appropriate measures to punish perpetrators of any of these crimes with penalties that reflect their serious nature. Article 6 stipulates that each State Party must take all possible measures, within its territory, to prevent the planning or commission of these crimes, whether they occur inside or outside its territory. Under Article 8, States Parties are also required to cooperate by informing the targeted State or the Secretary-General of the United Nations of any relevant information about crimes addressed in the Convention that the reporting State believes have been, are being, or may be committed in the territory of the first-mentioned State.

Furthermore, States Parties must take the necessary measures to establish jurisdiction over any of the crimes specified in the Convention, in order to ensure the prosecution and accountability of perpetrators and to prevent them from escaping punishment. They must also implement procedures to initiate preliminary investigations into such crimes and to extradite offenders, if necessary<sup>(23)</sup>.

In the context of strengthening international cooperation to combat, prosecute, and punish mercenary activities with appropriate sanctions, Article 13 of the Convention obligates States Parties to exchange legal assistance, particularly in the field of criminal proceedings. It is self-evident that international crimes and issues require collective solutions, which is why the drafters of the Convention emphasized the need for cooperation among its Parties to ensure more effective suppression of this dangerous phenomenon that threatens the security and stability of states and societies within a framework that respects the principles of sovereign equality among states and adherence to the rule of law.

An analysis of the provisions of the International Convention against the Recruitment of Mercenaries clearly shows its adoption of the principle of universal jurisdiction, which is expressed in the formula: “*extradite or prosecute*.” This principle is intended to ensure the applicability of the jurisdiction of the States Parties to the Convention over perpetrators of mercenary-related crimes, regardless of their nationality or the territory where the crime was committed. Under this principle, when a state is requested to extradite a foreign individual on its territory who has committed an act of mercenarism outside its borders, the state is obligated either to extradite that person to the requesting state or to prosecute them in its own courts. The goal of this principle is to ensure that mercenaries are prosecuted either by their home governments, where domestic legislation permits, or extradited to a state that allows for such prosecution and is willing to do so. This would render the world a place without refuge for mercenaries or their recruiters, by denying them access to any safe haven. It should be noted that implementing this principle requires the adoption of national legislation that includes the necessary precautionary and enforceable measures to achieve criminal justice, along with a stronger international commitment to prosecute mercenaries in cases where extradition is not feasible.

### ***Fourth: Combating the Activities of Private International Military and Security Company Personnel in Light of International Humanitarian Law***

As previously mentioned, the nature of the activities carried out by private international military and security companies is diverse some of which even fall at the core of hostile acts committed in the context of various types of armed conflicts.



Although there exists a legal gap in the international framework governing the work of these companies in general, the rules of international humanitarian law nonetheless make a significant contribution in providing a substantial body of applicable provisions that can serve to regulate the activities of these companies and their operations, particularly when they participate in hostilities or perform strictly military tasks. Private international military and security companies have become key actors in today's international interactions and an essential tool used by states in the pursuit of their foreign policy objectives across different issues. However, like other non-state armed actors, they are not directly addressed by the provisions of international humanitarian law, and they pose genuine challenges to the enforcement of its rules<sup>(24)</sup>.

One of the central difficulties lies in the legal classification of private international military and security companies' personnel, due to the varying nature of their roles, which leads to inconsistent legal status based on the commonly recognized distinction between civilians and combatants. On close examination of their activities, it is evident that *PMSC* employees cannot be universally categorized under a single classification. It is overly simplistic to classify them all as civilians a category that enjoys full protection under international humanitarian law because some of them are directly involved in hostilities, and their unlawful conduct actively fuels armed conflicts, in clear violation of international legal norms. At the same time, they are not considered combatants in the strict sense of the term as defined by international humanitarian law. Therefore, they may not be lawfully targeted during hostilities, nor are they entitled to prisoner-of-war status if captured. Furthermore, the fact that some of these individuals engage in hostile acts even indirectly, or on behalf of a party to the conflict does not necessarily strip them of their civilian status, given that they were initially recruited by commercial companies. Thus, the more accurate interpretation is that private international military and security companies' personnel occupy a legal grey area where it is difficult to precisely determine their status. Some international legal scholars classify them as civilians engaged in quasi-military operations, in line with the commonly accepted definition of these companies as: ***“Commercial firms that provide services in the military and security sectors, either abroad or domestically, with the primary goal of making a profit.”***

The increased outsourcing of military functions has led to the growing reliance on employees

of private international military and security companies (*PMSCs*) to carry out certain military and security tasks beyond the borders of the contracting state. This development has brought the issue of compliance by *PMSC* personnel with the rules of international humanitarian law to the forefront of international and academic debate.

In this context, the majority of legal scholars argue that Common Article 1 of the 1949 Geneva Conventions, along with Article 1 of Additional Protocol I of 1977, obligates States Parties to respect and ensure respect for the established rules of international humanitarian law, whether or not they are parties to an armed conflict. Accordingly, all states whether contracting with *PMSCs*, hosting such companies under their domestic law, or on whose territory the companies operate and/or whose nationals are employed by them must take the necessary legislative, judicial, and administrative measures to fulfill their international obligations in this regard, as established by the aforementioned articles. This applies without distinction between the regular armed forces and the contracted personnel of *PMSCs* engaged in hostilities on behalf of and in the interest of the contracting state<sup>(25)</sup>.

The state's obligation to ensure *PMSC* compliance with international humanitarian law in armed conflicts is also evident in the restrictions imposed on parties to the conflict to protect individuals covered by IHL. These restrictions prohibit delegating such powers to non-state entities. States must not relinquish responsibility for protected persons such as civilians and prisoners of war by, for example, leaving detention camps or facilities under the control of armed entities other than regular forces, such as *PMSCs*. Furthermore, it is prohibited to assign combat functions traditionally reserved for national armies to these non-state actors<sup>(26)</sup>.

In line with the above, legal opinion generally holds that the state bears legal responsibility for violations committed by *PMSC* employees when participating in hostilities if their acts are carried out on behalf of and in the interest of the state. While the presence of the private company as an intermediary may appear to break the link between the state and the contractors, this cannot exempt the state from accountability. The non-applicability of international humanitarian law obligations directly to *PMSCs* does not justify impunity for violations nor shield the contracting, employing, or benefiting state from legal responsibility. This is in addition to the recognition of individual criminal liability of the employees involved,



## *International Efforts to Combat the Phenomenon of Mercenarism In Its Traditional and Contemporary Forms and Its Implications for National Security*

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based on the Draft Articles on State Responsibility for Internationally Wrongful Acts formulated by the International Law Commission, which recognizes **PMSCs** as entities whose conduct may be attributed to the state<sup>(27)</sup>.

As part of efforts to regulate PMSC compliance with **IHL**, the Montreux Document of 2008 was adopted as a code of conduct that outlines the rules that should govern the behavior of **PMSC** personnel during armed conflicts, ensuring their activities are consistent with both international human rights law and international humanitarian law<sup>(28)</sup>.

This document was the result of joint cooperation between the Government of Switzerland and the International Committee of the Red Cross. It emphasizes a guiding principle: while these companies, as legal entities, are not formally addressed by **IHL**, they are still obliged to respect the domestic law of the states to which they belong. This opens the door to indirect application of **IHL** standards, until a collective international approach is adopted to govern their operations and define responsibility for violations committed in the context of both international and non-international armed conflicts.

In 2005, the United Nations Human Rights Council requested the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination to consult with all relevant parties to draft an international instrument that would oblige **PMSCs** to respect human rights and human dignity in the performance of their activities. These efforts culminated in the first draft of the proposed convention regulating the activities of **PMSCs** in armed conflict, published in 2010. The key contribution of this initiative is the definition of a minimum set of international standards that states must uphold when regulating **PMSCs** and their personnel through national legislation<sup>(29)</sup>.

The Working Group also emphasized the need for international consensus on a list of military activities that must not be outsourced to the private sector, and called for efforts to create a continuously updated international registry of **PMSCs** operating in conflict zones. This registry would enable ongoing supervision and oversight of their work by relevant governments and international organizations. Despite the importance of these collective steps toward regulating **PMSCs**, they still lack genuine political will from some states, which continues to hinder the timely achievement of consensus on an appropriate and binding international regulatory framework.

### *Fifth: Study Findings and Proposed Opportunities and Alternatives for Addressing the Phenomena of Mercenary Recruitment and the Use of Private International Military and Security Company Personnel*

A number of final observations and proposals can be outlined regarding how to address the phenomenon of mercenarism in both its traditional and contemporary forms, as follows:

#### *1- Study Findings:*

- A- The phenomenon of employing mercenaries in armed conflicts is considered one of the most serious contemporary international challenges, due to its grave implications for both national and international security, most notably the threat of prolonged violence and instability.
- B- Given the complex risks and threats previously discussed, the matter requires serious attention from the international community to elevate the level of discourse directed toward private international military and security companies **PMSCs** which today play the primary role in recruiting and facilitating mercenaries on behalf of states so that such discourse becomes more binding and effective, accompanied by measures to ensure its enforcement and compliance by those addressed.
- C- Despite the presence of legal frameworks relevant to the suppression of mercenarism, the lack of political will on the part of some states, and their insistence on utilizing the services of mercenaries and **PMSC** personnel, continues to perpetuate the phenomenon and exacerbate its dangers and repercussions. The issue is further complicated by the commercial nature of these companies and the variation in national legal systems governing their activities, despite the transnational nature of the threats they pose. Furthermore, the existing international legal framework lacks comprehensiveness and fails to address all aspects of the phenomenon, underscoring the need to review and amend it to ensure it effectively tackles both individual mercenary acts and institutional mercenarism through **PMSC** operations.
- D- It is also observed that there are practical difficulties in meeting all the conditions required for an individual to be legally classified as a mercenary, which implies, by contrast, that some unlawful combatant activities may fall outside the scope of criminalization under the relevant international instruments for example, foreign terrorist fighters may fall outside the technical definitions provided.

E- Finally, while mercenaries and **PMSC** personnel are unlawful combatants and thus not entitled to prisoner-of-war status, as established by applicable legal rules, they must still be granted certain guarantees, in accordance with the standards of fair trial and humane treatment, applicable to all individuals in similar circumstances. This is to ensure that the enforcement of the law does not result in violations of human rights of these individuals.

## **2- Study Proposals:**

An effective and meaningful response to the criminal and unlawful activities of mercenaries and private international military and security company (**PMSC**) personnel requires the adoption of a comprehensive strategy based on a set of pillars across the political, security, and legislative/legal domains, as outlined below:

### **A- In the Legislative / Legal Domain:**

- Based on the principle of “**no crime and no punishment without a legal provision**,” it is essential to adopt strict laws both at the national and international levels that criminalize all forms of mercenarism, ensure the prosecution of those who engage in it, and impose appropriate legal penalties upon offenders once their involvement in such criminalized activities is proven. This would serve two critical objectives: suppressing and punishing the perpetrators, and deterring others who may be tempted to pursue mercenarism as a profession thus preventing the recurrence of such criminal behavior in any context.

- It is also necessary to encourage states to ratify and accede to existing international conventions concerned with the suppression and criminalization of mercenarism, in addition to related treaties on combating terrorism financing, money laundering, and illicit arms trafficking, among other relevant international crimes. This would ultimately contribute to depriving mercenaries and **PMSC** personnel of self-financing sources, and would help at least partially in eliminating the phenomenon and mitigating its grave consequences for national and international security.

- Furthermore, the activation of the principle of “**universal jurisdiction**,” which obliges any state where individuals wanted for serious international crimes are present to either: prosecute them before its national courts, or extradite them to the state(s) requesting their prosecution, provided those courts have jurisdiction in accordance with recognized international legal rules, is a crucial safeguard to prevent impunity for such offenders.

### **B. In the Political Domain:**

- The presence of genuine political will among members of the international community and their serious commitment to eliminating the phenomenon under analysis is among the most critical elements to be addressed. This is because the use by certain states and regimes of mercenaries and **PMSC** personnel only serves to strengthen these criminals, expanding the scope of their unlawful activities, which pose grave threats to international peace and security at all levels.

- It is equally important to promote international cooperation and multilateral collective action for more effective efforts to combat mercenarism as a global issue one that cannot be adequately addressed by national efforts alone, despite their importance. It is true that two major international initiatives have been adopted in this regard: the Montreux Document (2008) on international legal obligations and good practices of states related to **PMSC** operations during armed conflicts, and the International Code of Conduct for Private Security Service Providers (2010). However, the general observation about both is that they do not yet carry binding legal force, and thus compliance by **PMSCs** remains minimal at best. This highlights the urgent need to continue joint international efforts toward the adoption of binding legal frameworks that criminalize and regulate the activities of these companies and the illicit actions associated with them.

- Thirdly, greater efforts must be devoted to peaceful solutions and political settlements of armed conflicts, which constitute the primary market for mercenary and **PMSC** operations. Their presence undermines international efforts to combat such activities, as even the most binding legal initiatives will remain limited in their effectiveness so long as there is continued demand for mercenaries and **PMSCs**, driven by the ongoing cycle of violence that feeds this phenomenon.

### **C- In the Security Domain:**

- It is necessary to adopt measures to monitor shared borders between states in order to prevent the cross-border movement of mercenaries and private international military and security company personnel without oversight or accountability. This should be implemented as part of a comprehensive strategy to combat their criminalized activities.

- It is also essential to monitor suspicious financial transactions and undermine the ability of mercenaries and **PMSC** personnel to rely on other criminal elements to secure funding for the purchase of weapons, equipment, and other resources.





### **Conclusion:**

*The phenomenon of mercenarism, in both its traditional and modern forms as represented by the activities of private international military and security company personnel constitutes one of the most serious contemporary international political challenges. It poses grave risks across multiple dimensions: political, humanitarian, security, and economic, necessitating collective efforts to confront it and the adoption of a comprehensive strategy to address its root causes and the factors driving its spread, particularly in the context of both international and non-international armed conflicts. Naturally, the legal approach through the adoption of national legislation and binding international agreements that criminalize and combat this phenomenon remains one of the most vital avenues for tackling the issue and mitigating its consequences for both national and international security.*

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## International Efforts of Combating Mercenarism in its Traditional and Recent Forms and its Repercussions on National Security

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### **Abstract:**

The phenomenon of “using and employing mercenaries in the context of armed conflicts” is one of the most contemporary international problems that imposes serious repercussions on both national and international security, including the fueling of armed conflicts and the occurrence of gross human rights violations. The phenomenon of mercenarism has recently taken an institutional dimension with the emergence of private international military and security companies and their practice of various activities in times of peace and war. Therefore, for decades, the international community has been interested in making efforts to combat the illegal activities of mercenaries and employees of military companies by adopting some binding international agreements. Despite this, combating the phenomenon of mercenarism in its traditional and contemporary forms requires following a comprehensive, multi-dimensional political, security and legal strategy. This study discusses the causes of the spread of the phenomenon of mercenarism, its risks and its repercussions on the security of both countries and societies, examines international efforts to combat it, and then presents some suggestions about activating combat efforts to prevent the impunity of mercenaries and employees of military companies involved in hostilities, in a way that ensures the elimination of this dangerous phenomenon and eradicating its roots.

**Keywords:** Mercenarism, International Military Companies, Armed Conflicts.

## الجهود الدولية لمكافحة ظاهرة الارتزاق في صورتها التقليدية والمعاصرة وتداعياتها على الأمن القومي

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### **المستخلص :**

تُعد ظاهرة استخدام المرتزقة وتوظيفهم في سياق النزاعات المسلحة واحدة من أخطر المشكلات الدولية المعاصرة التي تفرض تداعيات خطيرة على الأمنين القومي والدولي، تشمل من بين جملة أمور أخرى: تآجيج النزاعات المسلحة ووقوع انتهاكات جسيمة لحقوق الإنسان. ولقد اتخذت ظاهرة الارتزاق مؤخرًا بعداً مؤسسياً ظهر بوضوح مع نشأة الشركات العسكرية والأمنية الدولية الخاصة وبرز دورها في سياق التفاعلات الدولية وممارستها أنشطة متنوعة في أوقات السلم والحرب على السواء. لذلك، اهتبت الجماعة الدولية منذ عقود خلت ببذل الجهود لمكافحة الأنشطة غير المشروعة لهؤلاء المرتزقة ومن في حكمهم من موظفي الشركات العسكرية والأمنية الدولية الخاصة من خلال اعتماد بعض الاتفاقيات الدولية الملزمة. ومع ذلك، فإن من المتفق عليه، أن مكافحة ظاهرة الارتزاق بصورتها التقليدية والمعاصرة على نحو فعال، إنما تتطلب اتباع استراتيجية شاملة متعددة الأبعاد سياسياً وأمنياً وقانونياً. ناقشت هذه الدراسة أسباب انتشار ظاهرة الارتزاق ومخاطرها وتداعياتها على أمن الدول والمجتمعات، كما عرضت أهم الجهود الدولية المبذولة حتى الآن لمكافحتها. وأخيراً، قدمت الدراسة بعض المقترحات حول تفعيل جهود مكافحة هذه الحيلولة دون إفلات المرتزقة وموظفي الشركات العسكرية المنخرطين في الأعمال العدائية من العقاب، بما يضمن في نهاية المطاف مساءلتهم عما قد يقتربونه في هذا السياق من جرائم وانتهاكات لأحكام وقواعد القانون الدولي ذات الصلة.

**الكلمات المفتاحية :** الارتزاق، الشركات العسكرية الدولية، النزاعات المسلحة.