RIGA GRADUATE SCHOOL OF LAW

Accountability of Mercenaries and Private Military and Security Contractors in the existing International Legal Framework

MASTER'S THESIS

Author: Ieva Jankovska
LL.M 2017/2018 year student
student number M015038

SUPERVISOR: Ieva Miļūna
LL.M., PhD cand.

DECLARATION OF HONOUR:
I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) …….

RIGA, 2017

ABSTRACT

This thesis discusses the developing field of the use of private modern forces in the armed conflicts. Due to the active participation in several missions states as well as international organisations have supplemented their possibilities to take part in conflicts by hiring private modern forces.

Even if there are several legal international norms that examine the acts of war, including the private modern forces, they have several insufficiencies.

For instance, it was discovered that existing legal norms have almost inapplicable definition of mercenaries due to its specific requirements. As well as there is no definition of PMCs in the existing legal framework, except of one - Montreux document, which is not legally binding. Consequently, the private modern forces are put under examination for every possibility for entailing the accountability for their actions due to the fact that their status has to be determined from the existing definitions – mercenaries, combatants or civilians.

In addition, there are numerous international legal acts that deal with accountability of activities taken by mercenaries or PMCs, such as Hague Conventions, Geneva Conventions, Additional Protocols, OAU Convention, and UN Convention. Some of them lack relevant legal norms, others lack the territorial applicability or ratification. Nevertheless, there are several shortcomings in the existing international legal norms. The previously mentioned Montreux document addresses those shortcomings by providing several guidelines to the states as well as IOs. Montreux document also was the first and the only document to provide the definition of PMCs.

The thesis also discusses in detail the responsibility of states and IOs. For instance, what responsibility can be entitled to contracting state of PMCs as well as what responsibility might be assigned to territorial states or home states. There are some differences between the responsibilities of states, nevertheless, all of them have to fulfil the obligations under ARS, meaning that states have to do everything in their power to avoid and, if necessary, to act in order to terminate any activities that can constitute a wrongful act according to international law. Consequently, according to ARS also the omission is considered to be a wrongful act of that state. The regulation of the responsibility of IOs under DARIO is somewhat similar as for states.

The individual responsibility of PMC employees is being evaluated in two levels – international and national. Even though there exists a possibility that individuals may be prosecuted under international criminal law, meaning Rome Statute, there arise several complications in order to assign to PMCs the large scale crimes that are prosecuted in ICC, such as war crimes, genocide and crimes against of humanity.

Consequently, the individual responsibility mainly relies on the national jurisdictions and domestic laws of the states, which quite differ in each state. Nevertheless, several of states lack necessary law requirements to be able to successfully hold responsible PMCs. Also corporate responsibility is the responsibility of national states as international laws do not does not provide legal framework for responsibility of legal entities. As national laws quite differ and some lack quite a lot of important mechanisms to deal with accountability of PMCs and their employees, Montreux document has proposed several guidelines that states should follow.

Accordingly, the thesis analyse the insufficiencies in international legal norms with regard to the PMCs as well as discusses the difficulties of application of certain norms. Afterwards several alternatives are proposed in order to deal with accountability of modern private forces more efficiently. These alternatives include such options as establishment of the responsible institution, new legal convention, minimum requirements for national states laws, licensing requirements as well as necessity for monitoring, control and enforcement mechanisms.

TABLE OF CONTENTS

INTRODUCTION

The issue of modern private forces firstly was brought up during the Cold War when frequently mercenaries were used in conflict in Africa. The questions regarding the accountability were even more intensified in the 21st century after conflicts in Iraq and Afghanistan where private forces were a significant part during this time as well as in modern warfare.[1]

The term mercenaries and the use of such private forces has already been discussed in the end of 20th century. Contrary, the use of Private Military and Security Contractors (hereinafter referred to as PMCs) is a quite new field and international legal framework has not been sufficiently developed in order to control the use of PMCs.

For instance, the term mercenary has already been determined in several legal conventions while limiting the use of the forces that conform with such definitions. PMCs have not yet been precisely defined in any of the binding international legal documents, thus leaving a gap for interpretation, misunderstandings or completely unregulated field of law.

As the definition and regulation of private forces such as mercenaries and PMCs is quite ineffective and lacks not only adequate definitions that could be applied for modern private forces that are used today, but also do not provide control and enforcement mechanisms, it has resulted in uncertainty and diverse views for and against the use of private forces as such. Due to the lack of certainty the question regarding the accountability of the actions taken by mercenaries and PMCs is frequently discussed.

Therefore, the aim of this thesis is to discuss the issue of accountability for the actions taken by mercenaries and PMCs. As this practice has further developed only in the last decades it is still not clear on how to evaluate the actions taken by mercenaries and PMCs and who should be held responsible for their actions in each case - whether it is a responsibility of a hiring or employing state or rather individual responsibility of private contractors or corporate responsibility of private security and military companies. The thesis also will discuss whether the existing international legal framework is sufficient for assessing the conduct of mercenaries and PMCs in order to bring justice and if not, what alternatives could be considered.

Accordingly, the thesis research question is: **What legal complications may be encountered when assessing the conduct of mercenaries and private military and security contractors in the existing international legal framework?**

In order to answer to the research question and determine, what are the legal difficulties of applying existing international legal tools when examining activities of mercenaries and PMCs in order to hold someone accountable for their actions, the analysis will be made throughout the thesis.

Firstly, the meaning of mercenaries and PMCs will be analysed as well as differences between them in order to understand the variety of private forces used throughout the time form Cold War till nowadays. Further on, the role of the existing international legal tools will be analysed when governing the activities of mercenaries and PMCs, while indicating the

[1] Lam Jenny S. "Accountability for Private Military Contractors Under the Alien Tort Statute." *CALIFORNIA LA W REVIEW 1459* (2009). p 1459

shortcomings in each of the legal tools in order to understand the main issues of the use of private forces in a modern warfare. Moreover, also the responsibility of a state will be discussed - responsibility of a hiring state; sending state and the responsibility of a state in which territory the activities are carried out. This chapter will also briefly touch upon the institutional responsibility of international organisations that use private forces in their operations. And finally the sufficiency of the existing legal tools when examining the individual and corporate liability of mercenaries and PMCs will be discussed and analysed in order to underline the main problems that arise when the accountability of private forces is questioned. In this chapter after examining the sufficiency of already existing legal tools the possible alternatives will be proposed by the author for international legal tools as well as actors taking part in ensuring the successful enforcement of laws.

CHAPTER I THE DEFINITION OF MERCENARIES AND PRIVATE MILITARY CONTRACTORS IN THE EXISTING INTERNATIONAL LEGAL FRAMEWORK

In order to analyse the legal framework and existing problems of a use of private forces in the modern warfare it is important to understand the meaning of terms "mercenary" and "PMC" as well as the main differences between them. As the use of mercenaries is prohibited completely in several countries while PMCs are not precisely defined at all, thus much depend on the interpretation of law, it is crucial to differentiate between both in all cases. For the purpose of understanding the development of knowledge of private forces, the legal tools will be discussed in chronological order.

1.1. Definition of mercenaries in the existing legal framework

Mercenaries have been defined in several conventions already since the end of Cold War. Nevertheless, most of the existing definitions are very precise or inflexible and consist of several components that determine concrete criteria that have to be existent simultaneously in every case, thus it very much limits the opportunity of actually applying these norms to the modern private forces that are used today.

For instance, in international humanitarian law the definition of mercenaries is focused mainly on two elements - nationality of a person and motivation to participate in the operation. Meaning that the main elements of the norm have been created based on concerns about the legitimate control of mercenaries, as frequently they do not belong to the jurisdictions they operate with, as well as the usual motivation and purpose for carrying out their activities is due to financial reasons, not attachment to the state involved or cause of the operation. Accordingly, the norms were based on doubts about the possible illegal, unauthorised and unreasonable activities carried out by mercenaries due to the lack of legitimate control and non-existent motivation connected to the purpose of conflict itself. [2]

The Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (herewith and after below referred to as Hague Convention (V)), which entered into force in 1910 does not have a precise definition of a mercenary, nor does it mention a term mercenary throughout the Convention. Nevertheless, Article 4 of the convention determines that "[c]orps of combatants cannot be formed […] on the territory of a neutral Power to assist the belligerents",[3] therefore, even if the precise term 'mercenary' is not used, it can be interpreted that Hague convention (V) refers to mercenaries as 'corps of combatants' that are neutral to the conflict and involved parties and are created to assist other belligerents. Consequently, even the term 'mercenary' was not yet mentioned in that time of creation of convention, the basic ideas and concerns were already present in order to create such norm of prohibition.

Similarly as under Hague Convention (V) Geneva Conventions of 1949 do not include a precise definition of mercenaries either, nor the term 'mercenary' has been mentioned

[2] Kochheiser Steven R."Silent Partners: Private Forces, Mercenaries, and International Humanitarian Law in the 21st Century." *The University of Miami National Security & Armed Conflict Law Review* 86, (2012), p. 91.
[3] Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The Hague, 18 October 1907, entered into force 26 January 1910.

throughout the Geneva Conventions. There have been several discussions of reasons for not including the mercenaries into the law with opposite views from scholars. It was argued that the definition of mercenaries might have not been included due to the fact that Geneva Conventions do not recognise the use of private forces as such as they cannot be considered as combatants (combatant status will be discussed further below). Or completely opposite angle was that Geneva Conventions apply to all fighters equally, therefore, no distinction between mercenaries and other fighters is required.[4] Nevertheless, most scholars after examining the interpretation of norms of Geneva Conventions (relevant norms will be discussed further within theses in Chapter II) agree that they were meant for all fighters, whether combatants, mercenaries or others, therefore, even if there is no definition or mentioning of mercenaries as such, it shall be understood as applying for every single fighter of a conflict in question.

Even though Geneva Conventions of 1949 do not mention the mercenaries at all, completely opposite approach has been used in Additional Protocols to Geneva Conventions of 1977. Additional Protocol I contains a specific definition of a mercenary while proposing several criteria that have to be simultaneously present in each case in order to define fighters as mercenaries. Paragraph 2 of article 47 determines that a mercenary is:

> a) is specially recruited locally or abroad in order to fight in an armed conflict;
>
> b) does, in fact, take a direct part in the hostilities;
>
> c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
>
> d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
>
> e) is not a member of the armed forces of a Party to the conflict; and
>
> f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.[5]

Additional Protocol I was the first legal document to include a precise definition of mercenaries. However, the definition is with such a detailed character that it narrows and limits its use in very inflexible way, thus it can be applied in very rare cases during the modern warfare.

This definition requires the fighter is a private person that is directly participating in hostilities with a motivation of a private gain and cannot be nationally linked or be resident to the party of the conflict. The issue of motivation in article 47(2)(c) is that it is unrealistic to prove or interpret the motivation of an individual to participate in any activities while taking part in hostilities. Unfortunately, without the acceptable definition of one's motivation it is impossible to refer someone as a mercenary as it is one of the basic requirements to constitute a mercenary. Moreover, part (c) also sets an additional requirement of being materially compensated for participating in the conflict. It is not clear whether these requirements are meant to be connected and dependent on each other when interpreting this paragraph. Nevertheless, it sets an obligation that in order to be referred to as a mercenary one should

[4] *Op. cit.* Kochheiser. "Silent Partners" p. 97

[5] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, 1125 U.N.T.S. 3, entered into force 7 December 1978. Article 47.

have not only a specific motivation to participate in the hostilities that is not connected to the honour or commitment to one of the conflict parties, but also has to be materially compensated for the participation and actions taken. Thus, determining another requirement, which is subject to question of proof.[6]

This definition consists of that many specific elements that it limits the possibility of application of the norm in majority of cases. Thereof, it is clearly determined that all other private forces that do not fall within the criteria of this definition, are not mercenaries, thus are not prohibited to use by law.

It has to be noted that this definition is also acquired at international customary law level, therefore, is accepted as *ius cogens* norm and shall be applicable to all states, even if they are not member of the Additional Protocol I. Nevertheless, the narrow and inflexible definition that is used as custom does not ensure a successful regulation of mercenaries as only in rare occasions modern warfare private forces do fall within this definition as it is almost impossible to prove the motivation of a person to participate in a warfare by receiving a financial reward, even less possibility to apply all six criteria that are required to be declared as a mercenary.[7]

As mentioned above, the term mercenaries was frequently used due to the conflicts in Africa where private mercenaries were often used. Due to the reemergence of the use of mercenaries during the post-colonial Africa the Convention of African Unity (OAU) for the Elimination of Mercenarism in Africa (hereinafter referred to as OAU Convention) was invented in order to criminalise the acts of mercenaries.[8]

In contrast to the previously discussed international legal tools OAU Convention defines not only the mercenaries itself, but also the crime of mercenarism.

As the definition of mercenaries was invented at the same time when Additional Protocol I was established, the definition is almost identical to the one of Additional protocol I. that was discussed above.[9] The only difference is in the subparagraph (c) with regard to motivation and compensation of the actions taken by the mercenaries. As in Additional Protocol I the amount of the material compensation was specified in a way so that it has to be significantly higher than the sum that is being paid to the other combatants of the same rank and/or providing similar activities or tasks; OAU Convention determines that the motivation to take part in hostilities in order to get private gain and the fact itself that they are being materially compensated (without any further requirements of the amounts paid) is sufficient, therefore, this definition slightly reduces the inflexible and almost unrealistic requirements to be referred to as a mercenary. Nevertheless, the main idea and the problem of issue of proof of the fighter's motivation and evidence that they have been materially compensated, which has resulted in their motivation to take part in hostilities, is still unavoidable. Therefore, the similar problems of definition of mercenaries are observed when applying this definition to the modern private forces as with Additional Protocol I and customary international norms - the rule is too inflexible and strict to be actually applied in majority of cases.

[6] Fallah Katherine "Corporate actors: the legal status of mercenaries in armed conflict." *International Review of the Res Cross Vol. 88, No. 863* (2006), p. 605-606.
[7] International Committee of the Red Cross. Customary IHL: Rule 108. Mercenaries. Available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule108 Accessed: May 8, 2017.
[8] *Op. cit.* Kochheiser. "Silent Partners" p. 102
[9] *Supra note* 5

In addition to the definition of a mercenary, the OAU Convention also defines the crime of mercenarism as the convention was intended to criminalise the activities and use of mercenaries as such.

The OAU Convention determines that the crime can be committed by either - whether an individual person, a group or union of persons, a state representative or even a state as such, supposing that this state aims to disturb or interfere in one's self-determination or territorial integrity, and thus commits the following activities:

> a) Shelters, organises, finances, assists, equips, trains, promotes, supports or in any manner employs bands of mercenaries;
>
> b) Enlists, enrols or tries to enrol in the said bands;
>
> c) Allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above mentioned forces.[10]

The definition of a crime of mercenarism is clear and could be applied in many cases, however, as it has to be read and applied in conjunction with the definition of a term mercenary, it loses its enforceability as in majority of cases of modern warfare the definition of mercenaries may not be applied, thus also the definition of a crime becomes irrelevant as a subject of it is almost inexistent.

Taking into account the aforementioned, it can be concluded that the main difference of the OAU Convention in comparison with other international legal tools is that other legal tools define mercenaries for including and differentiating them as such while OAU Convention defines mercenaries with an aim to punish them if they fall within the requirements of the definition. Nevertheless, if the definition of mercenary may not be applied in a case, also the regulation of criminalisation of mercenarism becomes irrelevant and inapplicable to the modern private forces.

Another international legal tool that established the definition of mercenaries is the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (hereinafter referred to as UN Convention). This convention came into force only in 2001, which is rather late when comparing to other legal documents. The Convention has been ratified by 35 states, the latest one Ecuador completing the ratification on December 2016. Unfortunately, the main states that are involved with the usage of private forces, such as United States, United Kingdom, Russia and others have not ratified the UN Convention as it would limit their use of private forces.[11]

The same as OAU Convention, the UN Convention uses the basis of already existing definition of mercenaries that was included in the Additional Protocol I. [12] In contrast to the Additional Protocol I there have been some developments that broadens the applicability of the definition. For instance, one of the changes is that UN Convention has excluded from the

[10] Convention of the OAU for the Elimination of Mercenarism in Africa. Libreville, 3rd July 1977, entered into force 22 April 1985. Article 1(2).
[11] United Nations Treaty Collection. Status of Treaties: International Convention Against the Recruitment, Use, Financing and Training of Mercenaries. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-6&chapter=18&clang=_en. Accessed May 20, 2017.
[12] *Supra note* 5

definition the sub-paragraph that defines that a mercenary should in fact take part in hostilities.[13]

The second, more significant difference is that the article that contains the definition consists not only of the existing definition, but also adds additional paragraph that determines the conditions under which a person may be considered as a mercenary outside the context of armed conflict. The content of this paragraph is similar to the one discussed above, but it is adapted so that it would be applicable to other situations even if no armed conflict is ongoing. Nevertheless, according to this newly invented paragraph a mercenary may be any person who is participating in a violent act with a purpose to undermine a territorial integrity or constitutional order of a state. As well as the same criteria for motivation of private gain and material compensation are included. The rest of the criteria are similar, just adopted so that "parties of the conflict" would be broadened to the states and territories where activities take place, independently of the existence of the armed conflict.[14]

This paragraph significantly broadened the definition as it was known until then and lessened the threshold and level of inflexibility of application of such definition to the modern private forces. Nevertheless, the same issues are present regarding the conditions of the proof of motivation that the fighter is participating with an aim to private gain and that the material compensation is promised or already granted for the actions taken. Thereof, even if the definition is clearly improved, it still holds several difficulties of application and serving its purpose to criminalise the acts of mercenarism.

UN Convention does not provide a specific definition similar to the one that was invented in OAU Convention. Nevertheless, it refers to the offences committed, which can be interpreted as being with identical meaning to the crime of mercenarism as the aim of this convention is the same as of OAU Convention - to criminalise the acts of mercenarism. The conditions that are provided by UN Convention with regard to the offences committed by mercenaries as well as possible consequences and restrictions will be discussed further in the Chapter II.

The most recent document that discusses the issue of private forces and this contains the definition of mercenaries is the Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict (hereinafter referred to as Montreux Document).

This document is not a legally binding international legal instrument. Nevertheless, it is a summary of good practices and obligations that apply to states with regard to private military forces operating in an armed conflict territory; and it determines the guidelines for correctly applying already existing international legal tools. The document intends to interpret and comment the existing legal norms to help states effectively carry out measures at national level with a purpose to be able to meet the requirements of international law that regulate the use of private forces.[15]

[13] International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, New York, 4 December 1989, A/RES/44/34, entered onto force 20 October 2001. Available at: http://www.un.org/documents/ga/res/44/a44r034.htm. Accessed April 20, 2017. Article 1(1).
[14] *Op.cit.* UN convention Article 1(2).
[15] Federal Department of Foreign Affair FDFA of Switzerland. The Montreux Document. (2016). Available at: https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/montreux-document.html. Accessed: May 11, 2017.

These guidelines do not have their own legal formulation of mercenaries, but they are using already existing definition from Additional Protocol I discussed above.[16] Therefore, the same issues arise when applying this definition as it cannot be used when examining majority of private forces used in the modern warfare. Also in Montreux Document it is underlined that it is extremely difficult to prove the motivation of private gain of the private forces as well as it is unrealistic to measure the material compensation that is paid to private contractors and official armed forces, thus the definition of mercenaries may rarely be used in order to examine the activities of mercenaries as most of modern private forces do not fall within this definition. [17]

From the above-mentioned information it can be seen that there are several international legal tools that define mercenaries. Furthermore, all of these international sources do not grant a combatant status to the fighters that conform with the definition of mercenary. Nevertheless, there are several issues when applying the definitions to the existing modern private forces. The definitions provided by the legal tools are too narrow and inflexible by setting several requirements that have to be fulfilled in order to be defined as a mercenary. As it can be seen, the most difficult criteria to fulfil is the motivation of private gain requirement as well as burden of proof that the person has received or is promised to receive the material compensation for participation in the conflict. Accordingly, even if the definition of a mercenary is defined in several internationally or regionally applicable sources, the norms in this definition are frequently not applicable, thus are ineffective in the modern warfare.

1.2. The non-existent definition of PMCs in the existing legal framework

In previous subchapter the definition of mercenaries in the existing international legal sources was discussed. Nevertheless, in the modern conflict the private forces are much more diverse than just mercenaries. For instance, there are several private contractors and companies that operate as private forces in the armed conflict as well as outside the armed conflict zone. For instance, there can be a division made between private military companies (or contractors) and private security companies (or contractors). Originally they have different intentions and tasks, such as consulting, logistics and contractors that take active part in combat. Nowadays, frequently the duties and services provided by such contractors are overlapping, therefore, the division between them is not that strict and also the applicable legislation does not differ. Consequently, for the purpose of the thesis during this analysis mainly it will be referred to as private military and security contractors (PMCs) as a whole rather than dividing them according to the activities they conduct.

Contrary to the definition of mercenaries, there are no direct definitions of PMCs in the existing legal framework. Nevertheless, in several occasions it can be interpreted as applying to the PMCs when examining the existing norms. For instance, in majority of the existing legal tools PMCs may be interpreted as falling under the definition either of a mercenary, a combatant or a civilian. Therefore, this subchapter will discuss how PMCs may fall under the definitions of mercenaries, combatants or civilians, not the definition of PMCs itself. As international legal tools provide different rules for each of those actors with regard to the

[16] *Supra note* 5
[17] Federal Department of Foreign Affair FDFA of Switzerland and the International Committee of the Red Cross. The Montreux Document. (2009). Available at: https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf. Accessed: May 11, 2017.

possibility to be attacked, possibility to participate and influence others as well as possible consequences of prosecution, it is important to understand how one may fall within each of these definitions while acting as a PMC.

As can be understood from above-mentioned a PMC may be considered as a mercenary if it fulfils all the criteria determined in the definitions of mercenary in the existing legal tools.

For instance, the Hague Convention (V) does not refer explicitly to mercenaries but to "corps of combatants" or "recruiting agencies" of a neutral power that are introduced in order to assist to the belligerents.[18] As no specific criteria is set, it can be interpreted that all private companies and groups of private fighters are prohibited. However, Hague Convention (V) does not mention the use of individual citizens as private forces, therefore, the use of individual private forces are legitimate and may be used according to the Hague Convention (V). [19] Thus, according to the existing norms of Hague Convention (V), private force companies may fall under the definition of "corps of combatants", but the ones that do not fall under this norm consequently may be considered as combatants or non-combatants (everyone that does not fall under the meaning of a combatant) according to the Article 1 of the Annex to the Convention Respecting the Laws and Customs of War in Land (Hague Convention IV). Nevertheless, the term combatant has not been defined in this convention.[20]

As mentioned in the first part of this chapter Geneva Conventions do not contain a definition of mercenaries. Nevertheless, the meanings of combatants and civilians are clearly explained, therefore, it can be argued under which definition PMCs may fall in different cases.

Combatants are defined under Convention (III) relative to the Treatment of Prisoners of War (hereinafter referred to as Geneva Convention III), even if the Article 4 does not specifically set that it is a definition of a combatant. Nevertheless, from the Article 4 of Geneva Convention III it can be determined that the combatant is a following person: Whether components of armed forces or militias or volunteer corps, which are part of such armed forces that belong to the conflict party[21]; or

> (2) Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even of this territory is occupied, provided that such militias or volunteer corps, including such organised resistance movements, fulfil the following conditions:
>
> (a) that of being commanded by a person responsible for his subordinates ;
>
> (b) that of having a fixed distinctive sign recognisable at a distance;
>
> (c) that of carrying arms openly;
>
> (d) that of conducting their operations in accordance with the laws and customs of war.[22]

[18] *Op. cit.* Hague Convention (V). Article 4
[19] Barrie Bernard O 'Meara "PRIVATE MILITARY FIRMS AND MERCENARIES: POTENTIAL FOR LIABILITY UNDER INTERNATIONAL LAW." *Tilburg Foreign L. Rev. 324* (2004-2005), p. 332.
[20] Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, entered into force 26 January 1910. Article 1 of the Chapter I of the Annex.
[21] Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949, 75 U.N.T.S. 135, entered into force 21 October 1950. Article 4(1).
[22] *Ibid.* Article 4(2).

According to the definition there are two options to be considered as a combatant - whether to be part of the official armed forces or meet the four requirements such as operating under the command of the governmental authority and carrying arms openly as well as wearing a distinctive sign and operate within the limits and norms of law of war.

As Geneva Conventions do not prohibit the use of mercenaries or PMCs and does not even differentiate them form the rest of the fighters, there is no reason why PMCs could not fulfil the requirement of following the laws of war. Moreover, if the PMCs are hired by the conflict party (in rare occasions possibly being included in the armed forces or operating together under one command and thus meeting the definition of paragraph 1)[23] or by a party that have direct interests or connection with the conflict or party of the conflict, the PMCs could be able to act according to the instructions and command of a state authority, thus fulfilling also the first criteria. International legal tools do not determine what criteria have to be fulfilled to be included in the official armed forces of the state as it is a matter of internal laws and practices. Therefore, the occasions where PMCs are acting as a part of the official armed forces or together with armed forces are realistic, this also the definition of combatant may be applied on case by case basis.

If the PMCs in question are operating under ones command with military involvement (thus carrying arms openly) in the conflict as well as wearing some distinctive signs that differentiate them from usual civilians, also the rest of criteria can be met. The distinctive signs are not defined or limited by law, thereof it can be interpreted that also one piece of clothes or any other element may be considered as a distinctive sign. Therefore, theoretically when interpreting this article there might be occasions were PMCs meet the requirements of the second paragraph of this article to be defined as combatants.

The problem regarding the definition of PMCs as combatants (as well as civilians) is that it may be an internal matter how the PMCs are defined in relation to the official armed forces, whether as incorporated part or separate unity operating under the command of state authority of the involved party, is that the opposite side of the conflict may not be informed under which status the concrete state has defined them. Therefore, it is not clear, which of the criteria does or does not apply to the PMCs as the rights and protections differ depending on whether one is considered as a combatant or a civilian or other type such as unlawful combatant (which is not defined by law). Consequently, it is not clearly determined what activities may be conducted by the opposite side of the conflict if it is not clear who the involved actors of the conflict are.

Furthermore, the PMCs that rather want to be separated from the state government as an individual corporation most likely would not fall under the definition of a combatant within the meaning of article 4 of Geneva Convention III. For those individual PMCs it would be almost impossible to prove that they are operating under the command of a state party, nor that they belong to the armed forces or even militias. The definition of a level of connection between a state party and PMCs frequently also depend on the level of responsibility the state party is willing to undertake for the actions taken by the PMCs. As an addition, the possibility of determining the same PMCs as mercenaries under different legal tool encumbers the

[23] Cameron Lindsey "Private military companies: their status under international humanitarian law and its impact on their regulation." *International Review of the Red Cross Vol. 8, No. 63* (2008), p.583.

chances of applying the combatant definition to the PMCs, except where it is clear that PMCs belong to the party of the conflict.[24]

Usually, when the PMCs are employed the contract between the contracting officer of the armed forces and private contractor company is made, thus possibly may determine the status, obligations, rights and rewards for PMCs. According to these contracts, most likely the commander is the private company that instructs its employees, not the armed forces or contracting officer as such. Therefore, it can be so that those PMCs do not fulfil the requirement of organised command from armed forces and state authority. The contracting officer usually is as a connector between the armed forces and PMCs, not the direct commander. Consequently in several occasions PMCs may not be considered as combatants due to the fact that they receive instructions from their employers, not armed forces. If the private company is considered as a whole, not as unity of employees, possibly it can be still interpreted as acting under the command of armed forces, thus fulfilling the requirements set out in Geneva Convention III to be defined as combatants.[25] In addition, it has to be noted that the status of combatant may be possible only in the international armed conflict, not in the conflict with non-international character, thus leaving a place for armed forces or armed groups and civilians.

According to Geneva Conventions, the PMCs that may not be defined as combatants may fall under the meaning of civilians or civilians who take direct part in the hostilities. According terms defined by Geneva Conventions there are only two main actors in the armed conflict - combatants and civilians, consequently, PMCs that do not qualify to be combatants are civilians. Unfortunately, the problem arises with a fact that civilians are not allowed to participate in hostilities and may be punished for participation. In addition, civilians may not be attacked, therefore, according to this definition, PMCs that do not fall within the definition of combatants may not be attacked, unless they are directly participating in hostilities. What is more, Geneva Conventions are not clear on setting requirements that precisely define a direct participation in hostilities.[26] Therefore, there is a possibility that PMCs might be considered also as non-combatants. Meaning that under non-combatant status may fall not only civilians, but also military actors that do not fall within the definition of combatants.[27]

Moreover, the problem arise that defining PMCs as civilians does not meet all types of PMCs, which would have to be taken into account when determining their status. For instance, PMCs may directly participate in the combat, meaning that they can be considered either as combatants or civilians that are directly participating in hostilities. PMCs may also have roles of a bodyguard, support or supplying necessary accessories to the armed forces. Support or logistics activities should not necessarily mean the direct participation in hostilities. Moreover, if PMCs are acting as bodyguards not in the territory of military activities, they should not be considered as directly participating in hostilities. However, if this territory would at some point become a military objective, the PMC that would act as a bodyguard would automatically become the civilian that is participating in hostilities, which would mean that he becomes an unlawful actor that may be punished for being present.[28]

[24] *Ibid.* p.585-586.
[25] Vegh Karoly "Warriors for Hire? - Private military contractors and the international law of armed conflicts." *Miskolc Journal of International Law, volume 5*. (2008), p. 30-31.
[26] *Op. cit.* Cameron Lindsey "Private military companies. p.587-588.
[27] *Op. cit.* Vegh Karoly "Warriors for Hire? p.32
[28] *Op. cit.* Cameron Lindsey "Private military companies. p. 588-590

Accordingly, in some occasions, PMCs may meet the requirements determined in the Geneva Convention III in article 4(4), which determines that any person that is not a member of the armed forces but accompanies them

> such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces[29]

and has received the authorisation as well as identity card from the person they accompany may be considered as a non-combatant - civilian who accompanies the armed forces. Therefore, may be entitled to several protections that also combatants receive, assuming that those PMCs do participate only as support to armed forces, and do not participate in a combat.[30]

According to Additional Protocols of 1977 of Geneva Conventions the definition of PMCs as such has not been included, Nevertheless, Additional Protocol I determines three statuses under which one could be considered - mercenaries, combatants and civilians.

As discussed in the first subchapter, in order for the private force to be defined as a mercenary, certain criteria have to be fulfilled simultaneously. As modern private forces rarely may be defined as mercenaries, according to Additional Protocol I they may be determined either as combatants or non-combatants (civilians or assistance forces to the official armed forces that do not have combatant status).

The combatant status in Additional Protocol I is determined under the Article 43, which states that combatants are the armed forces that belong to one of the conflict parties, whether official organised armed forces or other groups or units, assuming that they are operating under the command of that party. Therefore, it can be interpreted, that if PMCs are operating under the command of a conflict party, they can be considered combatants.[31] Consequently, the definition anticipated the same requirements as Geneva Convention III, thus also incorporating the same issues regarding definition of PMCs as combatants, discussed above regarding the question of command under which PMCs are operating.

Additional Protocol I has not changed definitions regarding combatants and civilians, therefore, the same as in Geneva Convention III, the fighters that do not fulfil criteria of a combatant, are civilians or civilians taking a direct part in hostilities. Exceptions are PMCs that fall under the definition of mercenaries according to Article 47 of the Additional Protocol I, thus automatically are potentially punishable. Consequently, as definitions and conditions for civilians are similar in Geneva Convention III and Additional Protocol I, it can be concluded that also the issues and challenges when defining the PMCs as civilians are similar.

The only essential difference is that Commentaries of Additional Protocol I has defined the meaning of direct participation in hostilities. Meaning that in order to determine that one has directly participated in hostilities it has to be proved that there exists a causal link between the

[29] *Op. cit.* Geneva Convention III. Article 4(4).
[30] *Op. cit.* Vegh Karoly "Warriors for Hire? p.32
[31] *Op. cit.* Additional Protocol I. Article 43(1).

activity that was carried out and the harm done to the opposite side in the same time and place where the activity took place.[32]

In addition, the same as for Geneva Conventions, combatant status may be applicable only in international armed conflict, while in non-international armed conflict the PMCs may be defined only as armed groups and civilians.

The OAU Convention and UN Convention do not provide any other definitions than the definition of mercenary as the purpose of these conventions was to prohibit and criminalise the use of such private forces as mercenaries. Accordingly, those Conventions do not distinguish between the mercenaries and other private forces, therefore, it can be applicable only to those fighters that fall within the mercenary definitions discussed in the first subchapter. For private forces that do not fall within the definition of mercenary according to the OAU Convention and UN Convention, these international legal tools are not applicable at all.

Accordingly, there are several occasions where PMCs might be considered as combatants or civilians, however, the definition will depend on several aspects. For example, whether the PMCs fall within the requirements of the definition of combatants according to Geneva Convention III or Additional protocol I. What is more, it has to be kept in mind that the definition of PMCs may depend also on the state authority and internal legislation as states may be held liable at some level for the actions taken by PMCs. In addition, the issue of determining PMCs as combatants or civilians is that there is a possibility that the same PMCs may be defined as mercenaries, if they fall within the requirements of a mercenary under a different legal tool; exception is when PMCs are always hired by the party of the conflict, thus may not fulfil the requirements of being a mercenary. Several questions arise whether the terms "unlawful combatants" or "quasi combatants" might be used when defining PMCs under existing international legal framework, nevertheless, such definitions are not clearly established either. Consequently, the definition of PMCs has to be decided on case by case basis where all the facts and conditions have to be taken into account.

The newest legal tool Montreux document that provides legal guidelines based on the existing law and practice has determined the definition of PMCs quite clearly and applicable to the modern private forces that are operating nowadays. Unfortunately, this document is not binding and it has no legal force, therefore, it can be used as an example, but there are no obligations imposed to the member states to follow these guidelines. Nevertheless, the definition of PMCs is defined in paragraph 9 of Preface, which states that PMCs are:

> are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.[33]

In addition the Montreux document also explains the meaning of the PMCs' personnel in order to avoid any confusion while determining that any person that is in any way employed by the PMCs is considered to be a PMCs' personnel. It does not distinguish between simple

[32] International Committee of the Red Cross. Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949. Availvable at: http://www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf. Accessed May 20, 2017.
[33] *Op. cit.* The Montreux Document. p.9.

employees or commanders and managers, all persons that are employed by PMCs are their personnel, therefore, equal rules apply to all.[34]

The Montreux document is the only legal tool that has developed a modern definition of PMCs that can be applied in the warfare conflicts today. It does not determine the requirements of motivation of compensation measures, neither has it distinguished from which nationality or state one can or cannot be in order to be defined as a mercenary, combatant or other. The main requirement is to be an employ if a business entity, which can be applied to most of the PMCs in the modern warfare. Nevertheless, as mentioned above, this document is not legally binding and can be used only as an example and guideline, but it does not imply any obligation to any of the parties.

From the information discussed above it is clear that there are several international legal tools that are defining the meanings of mercenaries and private military forces. However, all existing legal tools have shortcomings when defining modern private forces, therefore, frequently the norms may not be applicable, thus precluding the accountability issues of mercenaries and PMCs as no concrete legal framework is applicable in each case as lot has been left for interpretation on case by case basis. The most sufficient definition is provided in the Montreux document, nevertheless, it is not binding to any of the member states and can be used only as an example.

Nevertheless, the main differences between mercenaries and PMCs are follows: Mercenaries are usually groups of soldiers that are invented for the concrete conflict or activity for gaining and individual profit while PMCs are permanent business organisations that operate in order to gain the profit for business. As mercenaries are usually employed in certain conflicts, PMCs may be employed to any territory, any activity that is being determined by the contract between the company and contracting officer of the armed forces. Moreover, PMCs do provide broader range of services, whether military, supply, assistance, logistics and others, while mercenaries were used mainly for combat.[35]

As in this chapter it was discussed how mercenaries and PMCs are defined under existing legal framework, the next chapter will analyse the role of existing tools when governing the activities of modern private forces and what problems may arise.

[34] *Ibid.* p.10.
[35] Zimmerman Margaret "Private Military Companies: Accountability Under International law"

CHAPTER II THE ROLE OF EXISTING LEGAL FRAMEWORK WHEN GOVERNING THE ACTIVITIES OF MERCENARIES AND PRIVATE MILITARY CONTRACTORS

As discussed in the first chapter there are various international legal tools that are applicable to mercenaries and PMCs. Even though the sources have developed from different chronological times and events, all legal documents lack several important aspects that are necessary to sufficiently regulate the use of mercenaries and PMCs in the modern warfare. For instance, the difficulty of adequately defining the mercenaries and PMCs according to the existing norms as discussed previously precludes the possibility of correctly applying the law to the private forces and involved parties.

This chapter will discuss the role of these international legal tools when governing the activities of mercenaries and PMCs while discussing the problems of the status of private forces and what are they entitled to, the possibility of criminalisation of their activities and existence of punishment under these legal tools. Furthermore, the bindingness of such tools will be discussed and possible problems that may arise when applying such rules will be analysed. As well as analysis of the control, monitoring and enforcement mechanisms in each of the legal tools. The same as in the first chapter the following legal tools will be analysed: Hague Conventions, Geneva Conventions, Additional Protocols, OAU Convention, UN Convention and Montreux Document.

2.1. Hague Conventions

As stated in the previous chapter, the Hague Conventions were one of the first legal documents that regulates the activities of private forces even if the precise definition of mercenaries and PMCs is not determined. Furthermore, Hague Convention seeks to limit the use of private force groups, but fails to regulate the individual private forces that engage themselves in the armed conflict.

As discussed in the Chapter I the private forces are mainly governed by the Hague Convention V, which regulates the activities of Neutral Powers. Hague Convention IV could be applicable only in those cases where the private forces, either mercenaries or PMCs would be nationals or residents of the conflict parties, not from the neutral state. Moreover, in such a case, the private forces would have to fall within the definition of belligerent combatants or non-combatants.

Similarly, as in Geneva Conventions and Additional protocols, not only armed forces as such would be entitled to the combatant status, but also militias and volunteers that fulfil the requirements of command, having distinctive emblem, carrying arms openly and operate in accordance with laws of war.[36] Nevertheless, as discussed above, not all PMCs conduct the activities of carrying arms openly as their work duties frequently include only logistical support and other assistance that does not include the participation in combat. Mercenaries and PMC employees that fall within the definition of a combatant or non-combatant would be entitled to the Prisoner of war status according to the Article 3 of Hague Convention IV.

[36] *Op. cit.* Hague Convention IV. Article 1.

Nevertheless, if a mercenary or PMC employee are conducting duties that are ordered by the belligerent commander, thus acting as a part of the conflict party, may be granted a prisoner of war status only if he holds the certificate from authorities of this conflict party.[37]

In case where the mercenaries or PMC employees fall within the definitions of a combatant or non-combatant belonging to the belligerent party, the State is responsible for all their activities and possible violations according to Article 3 of Hague Convention IV. Therefore, might be liable to pay the compensation if the case requires it.

According to Hague Convention V the groups of mercenaries or PMCs may not be opened in the territory of a neutral state as determined by Article 4. However, the groups of mercenaries or PMCs that are created within the territory of a conflict party do not fall within this Convention and may be subject to the Hague Convention IV, if they fall within the definitions of combatants or non-combatants.

Moreover, also individuals from neutral parties are not governed at all, meaning that the activities taken by individual mercenaries would be allowed. According to Articles 6 and 7 of the Hague Convention V the neutral state is not responsible in any way of the following activities taken by an individual: if the person individually crosses the border to provide services to belligerents[38] or if he acts as an exporter or transporter of arms, munitions and other necessary goods for the armed conflict.[39]

Therefore, Hague Convention V does not allow the activities of forming the groups of mercenaries and PMCs while implying the direct responsibility of this neutral state. But acts of individual mercenaries and PMC employees are not forbidden according to this convention, therefore, it is not applicable in case of examining the activities of individual private forces.

Nevertheless, the act of forming mercenary groups or PMC employees is not allowed under the Hague Convention V and Article 5 of this Conventions implies the direct responsibility of this neutral state to ensure that activities determined in Article 4 of forming groups of private forces do not take place on their territory. But states are not responsible for any other violations that take place outside its territory.

For the rest of the activities that are not of a neutral party, the Hague Convention IV might be applicable if private forces fall within the definition of combatants or non-combatants. Nevertheless, there are still several issues arising when determining the status of mercenaries and PMCs in a way so that the Hague Convention IV would apply and there are no guidelines on how to determine the rightful status of these private forces, nor there are any monitoring or enforcement mechanisms established in the Hague Conventions that would explicitly determine how the activities of mercenaries and PMCs could be controlled.

2.2. Geneva Conventions

Chronologically the next legal tools that were established in order to govern the armed conflicts were all four Geneva Conventions. As to the regulation of mercenaries and PMCs there are no specific definitions and requirements covered by the Geneva Conventions.

[37] *Ibid.* Article 13.
[38] *Op. cit.* Hague Convention V. Article 6.
[39] *Ibid.* Article 7.

Nevertheless, the closest norms in order to regulate the activities of mercenaries and PMCs are laid out in the Geneva Convention III as discussed in the Chapter I and Convention (IV) relative to the Protection of Civilian Persons in Time of War (hereinafter referred to as Geneva Convention IV) as according to the Geneva Conventions persons participating in the armed conflict may be either combatants or civilians. In addition also the non-combatant status may be applied in some cases.

It has to be noted that Geneva Conventions are ratified by 194 states, therefore, gaining a status of universally applicable legal tool, thus being one of the most efficient documents regulating the activities during the armed conflict.[40] Accordingly, this includes also the regulation of the activities of mercenaries and PMCs even if the Conventions lack the definition and norms that could be sufficiently applicable. Unfortunately, due to the lack of ratification of majority of the rest of the international legal tools, Geneva Conventions and their Additional Protocols as a customary law are the main documents regulating the armed conflict, including activities of the modern private forces.

As mentioned in the previous chapter, as Geneva Conventions do not have a specific definition for any private forces, nor mercenaries, nor PMCs, there are two possibilities - define private forces as combatants, or define them as civilians. There have been discussion whether to consider private forces as unlawful combatants similarly as terrorists, but it arises several issues due to the fact that terrorists as unlawful combatants are deprived of any special treatment or rules. Unlawful combatants do not deserve any protections that are provided by the Geneva Conventions. But as mercenaries and PMCs frequently are conducting the same activities as armed forces or personnel that works in accordance with armed forces, it does not seem to be adequate to deprive them form all the protections and advantages. Therefore, definition of unlawful combatants does not sufficiently address the mercenaries and PMCs, accordingly, possibility of applying norms of combatants or civilians are usually used.

When applying the Geneva Conventions it is important to distinguish the status of a person as different conditions apply. For instance, for private forces that would be defined as combatants, the prisoner of war status would be granted according to the Article 4 of Geneva Convention III.[41] However, in order to be defined as a combatant one should fulfil all the criteria sent in the Article 4(2) as analysed previously. Due to the specific requirements it would be only in rare cases when private forces would be referred to as legal combatants. Therefore, it would be difficult to entitle them with all the privileges and protections that are ensured to the combatants with prisoner of war status. For instance, prisoners of war have to be treated humanely, if captured. No torture, medical experiments or violent treatment is allowed according to Article 13 of Geneva Convention III.[42] Furthermore, prisoners of war have to be respected, they have several freedoms to own their property, to exercise their religion. They are entitled to the medical treatment, if necessary according to Article 15 of the Geneva Convention III.[43]

Also mercenaries and PMCs that fall under the definition of civilians accompanying armed forces are entitled to the prisoner of wars status, therefore, deserve the same protections as for

[40] International Committee of Red Cross. The Geneva Conventions of 1949 and their Additional Protocols. Available at: https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm. Accessed May 21, 2017.
[41] *Supra notes* 21 and 22.
[42] *Op. cit.* Geneva Convention III. Article 13.
[43] *Ibid.* Article 15.

combatants in terms of human treatment, respect and prohibition of violence, medical treatment and torture. However, unlike combatants, civilians may be punished for the criminal actions taken. Therefore, in case a mercenary or PMC that would be considered as civilian that is accompanying armed forces and would be involved in the self-defence situation during the military activity, they could be tried in court according to criminal laws and possibly be charged with murder and other crimes, which can be punished with imprisonment and death penalty in some states.

For the persons that are defined as combatants, they are protected with regard to criminalisation of the acts taken during the armed conflict. Meaning, that combatants may not be held criminally liable for actions taken during the combat, if they have been required in the course of the conflict. Combatants may be prosecuted only in courts that are applicable to warriors according to national law and can be tried only for crimes that are in violation of laws of war. In addition, all combatants have a right to fair trial and adequate representation for protection.[44] All combatants have a right to a privilege that relieves them from the criminal responsibility if the acts taken have been in accordance with laws of war. For example, a combatant may not be held criminally liable for killing other armed forces during the combat. Consequently, without this privilege one can be held criminally responsible and prosecuted for murder or other crimes.[45]

Accordingly, the mercenaries and PMCs that may be considered as combatants would be able to take part in a combat without the anxiety of being criminally responsible for his work duties while the mercenaries and PMCs that do not fall within the definition of combatant and are just civilians or civilians accompanying armed forces can be criminally punished. Therefore, mercenaries and PMCs may conduct only such activities that do not require them to directly participate in the conduct and do not require also the necessity for defence as it could lead for criminal prosecution. Nevertheless, also the mercenaries and PMCs that are considered to be civilians accompanying armed forces deserve the protection and insurance of human treatment, respect and prohibition pf torture etc.

The rest of the mercenaries that do not meet the requirements of combatants or accompanying persons may be considered as civilians or civilians taking a direct part in hostilities, depending on the activities that they are entitled to do. Civilians the same as combatants are entitled to fair trial, nevertheless, they can be prosecuted for all acts that constitute a crime under national and international laws, including murder in case of a death of another person during the combat. Therefore, mercenaries and PMCs may be prosecuted for their duties as employees if they do not fall within the definition of combatant under the Geneva Conventions. This is an issue due to the reason that the same acts that are conducted by armed forces would be considered as war duties while the same acts conducted by mercenaries and PMCs would be defined as criminal acts that require punishment. In addition, also the act itself of civilian taking a direct part in hostilities may be punished by criminal law.

The main problems apart from the lack of adequate definition that could be applied to the mercenaries and PMCs is that Geneva Conventions do not include any of the monitoring or control mechanisms that are necessary in order to regulate the activities of private forces. There is no institutional body that specifically monitors the actions and enforces norms and ensures the consequences for the violations of law. The monitoring, control and enforcement

[44] *Op. cit*. Geneva Convention III. Article 99.
[45] *Op. cit.* Kochheiser. "Silent Partners" p. 98

is left for the individual states to carry through according to their own initiative. Therefore, the sufficient application of norms of Geneva Conventions frequently depends on the goodwill of the state as there are no institutionalised enforcement and not enough consequences and punishment for not obeying the norms laid out in Geneva Conventions. In addition, it has to be emphasised that Geneva Conventions regulate only the activities that are taking place only during the international armed conflict, thus leaving the activities of mercenaries and PMCs completely unmonitored and unregulated during the non-international armed conflicts. Nevertheless, the modern warfare where also private forces are used frequently are with non-international armed conflict nature, therefore, a regulatory international framework is necessary in order to control the activities of mercenaries and PMCs and held private forces or states accountable for the possible violations.

2.3. Additional Protocols

In addition to Geneva Conventions of 1949 the Additional Protocols were established in order to complement the laws of war according to new developments. Additional Protocol II was the first legal tool that was established to examine the activities conducted during the non-international conflicts. In addition, unlike the Geneva Conventions, Additional Protocol included the definition of a mercenary as private forces were used frequently and new regulation was necessary. Nevertheless, the mercenary definition is applicable only during the armed conflict according to Additional Protocol I.

Additional Protocol I has been ratified by 174 states[46] while Additional Protocol II has been ratified by 168 states[47]. Unfortunately, there are several states including the United States that has not ratified either of the Additional Protocols. Even if there are some articles, for example Article 47 of Additional Protocol I that defines mercenaries that are universally applicable as customary law, there are several norms that are applicable only to the parties that have ratified the Protocols.

As discussed in the previous chapter, Additional Protocol I has the following division under which private forces may be defined. Firstly, private forces may be considered as mercenaries, if fulfil the criteria according to Article 47 of the Additional Protocol I.[48] As discussed in the first chapter the criteria for being a mercenary are rarely met as they are inflexible and very specific. Nevertheless, the activities of mercenaries are prohibited under Article 47, hence, they are not criminalised There are no control or monitoring mechanisms with regard to the use of mercenaries. The only consequence of being a mercenary is that there is no possibility of being awarded a prisoner of war status, thus not being entitled to any privileges or protections. However, human treatment and prohibition of torture is applicable

[46] International Committee of Red Cross. Treaties, States Parties and Commentaries: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=470. Accessed: May 21, 2017.

[47] International Committee of Red Cross. Treaties, States Parties and Commentaries: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Available at:https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=475. Accessed: May 21, 2017.

[48] *Supra note* 5

to all persons, whether mercenaries, civilians or combatants. As a consequence, mercenaries may be held liable according to national criminal laws, if captured.

Private forces may be considered as combatants if they fulfil the criteria set in the Articles 43 and are entitled to the prisoner of war status under Article 44.[49] Additional Protocol I expands the definition of combatants by limiting the requirements that have to be fulfilled, therefore, according to Additional Protocol I the private forces may be considered as combatants if they are groups or units of persons that are acting under the command of conflict party.[50] The same as in Geneva Conventions, combatants are allowed to take direct part in hostilities and have right to privileges and protective treatment. They may not be held criminally liable for the actions committed during the combat, except of actions that are violating the norms of laws of war, such as committing crimes against humanity, genocide and others.

The private forces that do not fall under the definitions either of mercenary or combatant have to be considered as civilians. The same as under Geneva Conventions, the civilians are protected and may not be attacked unless they are taking part in hostilities. In such a case, private forces that are defined as civilians may be punished not only for the criminal acts of committing a murder, but also for the fact itself of taking a direct part in hostilities.

According to Additional Protocol II, there are no division of mercenaries and combatants - the only division is between armed forces and civilians. Additional Protocol II is applicable to all conflicts that do not fall within the definition of armed conflict, meaning that it can apply to such internal conflicts as "riots, isolated and sporadic acts of violence and other acts of a similar nature as not being armed conflicts."[51] All persons, if captured, may be tried for criminal activities taken and for participation in hostilities.

Both Additional Protocols the same as Geneva Conventions are one of the most sufficient international legal tools for governing the activities or private forces due to the fact that it is one of the most ratified legal frameworks that regulate the activities during conflicts - whether international or non-international. Nevertheless, also Additional Protocols lack adequate definition or mercenaries as it is too precise and inflexible for modern forces and definition of PMCs is non-existent at all. Moreover, as well for Additional Protocols, there are no monitoring and control mechanisms of regulating activities of private forces. And as there are no institutionalised enforcement methods, it relies on the states themselves to regulate the activities of modern private forces. Therefore, in majority of cases the activities of mercenaries and PMCs are completely unregulated and impossible to punish as no concrete legal guidelines that are binding are established.

2.4. OAU Convention

As discussed earlier OAU Convention not only defines mercenaries, but also determines what the crime of mercenarism is,[52] thus being one of the first legal tools criminalising the use of mercenaries in the armed conflict. Unfortunately, it is not a convention of universal

[49] *Supra note* 31
[50] *Op. cit.* Additional Protocol I. Article 43.
[51] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non- International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force 7 December 1978. Article 1(2).
[52] *Supra note* 9 and 10

application as it has been ratified only by 32 states and thus apply only if a state is a party to the convention.[53]

Even though the OAU Convention has defined the acts that have to be criminalised, it fails to adequately address the definition of mercenaries due to the fact that it is very specific and unrealistic when applying to the modern private forces as discussed in the previous chapter. Moreover, it does not address the PMCs at all, therefore, this convention is mostly inapplicable to modern private forces as only in rare occasions one falls within the requirements of a mercenary.

According to Article 3 of OAU Convention any person that commits a crime of mercenarism commits an offence and it shall be punished. Nevertheless, it is limited to the crime that is committed in Africa, which makes this convention inapplicable to the conflicts where African state is not a party to.[54] However, there are no direct punishment conditions determined in the OAU Convention, therefore, it again is left for the individual states to decide on the appropriate punishment for the actions taken. Article 4 of the convention determines that a person that can be determined as a mercenary shall be responsible for everything, such as crime of mercenarism as such and all other offences committed that might be used as a basis for prosecution.[55]

The OAU Convention is the first convention that has established also the responsibility of a state with regard to the use of mercenaries. As well as determined obligations of a state to forbid the use of mercenaries, whether to hire or allow the activities of mercenaries on their territory. As well as obliges states to provide any information with regard to the use of private forces by any of the conflict parties.[56]

In addition to the obligations the parties of the OAU Convention are required to punish all the activities related to mercenaries and crimes of mercenarism "by the severest penalties under its laws including capital punishment."[57]

Even though the norms determined in OAU Convention are developed in terms of the punishment of the mercenaries, it has to be noted that the Convention does not include the definition of PMCs. And as the definition of mercenaries is so inflexible, it makes this convention almost inapplicable to modern private forces. Moreover, it covers only mercenaries as individuals and does not include the corporate criminal responsibility, which would have to be applied in majority of PMC cases.[58] Consequently, the OAU Convention may be applicable only to the cases where African states are involved and only with regard to private forces that fall within the definition of mercenaries according to Article 1 of this convention.

2.5. UN Convention

[53] African Union. Convention for the Elimination of Mercenarism in Africa https://www.au.int/web/en/treaties/convention-elimination-mercenarism-africa. Accessed: May 21. 2017.
[54] Convention of the OAU for the Elimination of Mercenarism in Africa. Libreville, 3rd July 1977, entered into force 22 April 1985. Article 3.
[55] *Ibid.* Article 4.
[56] *Ibid*. Article 6.
[57] *Ibid.* Article 7.
[58] Dumlupinar Nihat "Regulation of private military companies in Iraq." *Institutional Archive of the Naval Postgraduate School* (2010). p. 41.

One of the most recent development with regard to mercenaries is the UN Convention. Contrary to the OAU Convention it was not established for any specific territory or states and was intended for universal use. In addition, it is applicable to both - either international or non-international armed conflicts.

Unfortunately, the same as for OAU Convention it has barely been used as there are only 35 states that have ratified this convention.[59] Moreover, it has to be taken into account that the main states that are using the services of modern private forces like PMCs are not parties to this convention. Furthermore, also none of the permanent members of the Security Council of the United Nations are members to this convention, which sets a negative example to the rest of the United Nations member states. For example, the main PMC users that are not parties to this Convention are: United States, United Kingdom, "Canada, Colombia, Denmark, El Salvador, Israel [and] South Africa"[60].

Consequently, the problems arise due to the fact that one of the legal tools that could most adequately address the issues of private modern forces may not be applicable in majority of cases, therefore, it is not sufficient for regulating the use of PMCs and mercenaries.

Apart from the lack of ratification of UN Convention it can be seen that the definition of mercenaries has developed significantly, nevertheless, it still may not be applicable to most of the modern private forces as discussed during the first chapter.

Nevertheless, UN Convention has developed several conditions that results offence and shall be punished. For instance, "[a]ny person who recruits, uses, finances or trains mercenaries, (…) commits an offence" according to Article 2 of this convention.[61] In addition, also any mercenary that takes direct part in hostilities commits an offence even if not committing any actual crime according to the Article 3 of this Convention.

According to the Article 5, all activities concerning the mercenaries, whether use, recruitment of financing are prohibited and all activities with regard to mercenaries shall be punishable.

According to Article 9 of the UN Convention a state, which is a party of this convention has to take all necessary steps to ensure that national jurisdiction is established in order to be able to deal with any of the offences that are committed either in its territory or on boards of its aircrafts or ships; or offences that are committed by its nationals.[62] In addition, state also has to establish the jurisdiction that can deal with offences determined by Articles 2 and 3. What is more, UN Convention does not only set the obligations to establish jurisdiction over the offences determined by this convention, but also allows to use any criminal jurisdiction that is in accordance with national law of that state as determined by Article 9(3). What makes the content of this convention more effective is that any punishments are aimed not only to the persons who directly attempt or commit these offences, but also persons who accompany these offenders.[63]

---

[59] United Nations Treaty Collection. International Convention Against the Recruitment, Use, Financing and Training of Mercenaries https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-6&chapter=18&clang=_en Last accessed November 21, 2017.

[60] Gomez del Prado Jose L. "Mercenaries, Private Military and Security Companies and International Law," *UN Working Group on the Use of Mercenaries* (2007), p. 10

[61] *Op. cit.* UN Convention. Article 2.

[62] *Ibid.* UN Convention. Article 9.

[63] *Ibid.* Article 4.

When analysing the role of UN Convention in governing the activities of modern private forces it can be concluded that from the content point of view it has been a big step forward to attaining the sufficient legal tool. Moreover, it contains also possibility to punish the activities of mercenaries and PMCs as well as puts obligation to states to establish the relevant jurisdiction to carry out the conditions determined by the convention. However, it still contains the definition that is almost unrealistic to apply to modern private forces that are used today. Even though the UN Convention was intended to be as a universally applicable tool the lack of ratification of it and the bad example that is set by the permanent members of the United Nations Security Council has resulted for this Convention to be almost irrelevant in majority of the conflicts of today.

2.6. Montreux document

As discussed in the first chapter the Montreux document does not imply any obligations to states as it is not a legally binding document. Furthermore, the existence of this document does not affect any of the obligations that states already have under other international legal documents. Nevertheless, it has a role when dealing with modern private forces as it can be used as guidelines at least for appropriate application of already existing law. Moreover, it is the only document that provides information or definition not only to mercenaries, but also to PMCs, which makes it more flexible to apply the law. Montreux document is aimed at states and international organisations and is well supported from states and international organisations from different regions of the world, therefore, it is not limited to the use only in one region as was OAU Convention. Currently there are 54 states that are members to this document and three international organisations such as European Union, Organization for Security and Co-operation in Europe and North Atlantic Treaty Organization as well as the document is meant for it to be supported by any states and organisations worldwide.[64]

Montreux document is an assisting tool to states while summarising the existing laws and practices that could be used by states as an example for what should be implemented and applied to their national laws and activities. But it has to be taken into account that Montreux document does not imply any obligations and mostly relies only on the existing international conventions, such as humanitarian law and human rights law. Consequently, even if the Montreux document could be considered as a helpful tool, it still follows the same practices and laws that were found problematic in the chapters above. Therefore, the Montreux document could be used in cases where there exists a conflict in the interpretation of existing laws, but does not fully accomplish the step forward to be as a solution for insufficiencies in these laws.

For instance, the document relies on Geneva Conventions, Additional Protocols and International Human Rights law norms. Therefore, even the document does include its own definition of PMCs, it is not legally binding, therefore, if disputed, enforceable may be only the same definition of mercenaries as of Additional Protocol I. Consequently, there exist identical problems of application of this definition to modern private forces as the burden of proof for motivation and compensation of these private forces may not be reached. But it has

[64] Federal Fepartment of Foreign Affairs FDFA. Participating States of the Montreux Document https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/participating-states.html. Accessed November 22, .2017.

to be taken into account that PMCs rarely fall into the definitions of combatants, thus are mainly are treated as civilians, which may be prosecuted under certain circumstances.

On the other hand, Montreux document does provide the definition of PMCs, which would most likely be applicable to the majority to the modern private forces nowadays. Unfortunately, the existence of this definition does not solve the issues of criminalisation of their activities and the responsibility of a state, individual or corporate responsibility under international law when it comes to evaluating the violations of laws when private forces act or are used by states.

Nevertheless, the Montreux document has gathered several good practices that could be used by states and PMCs in order to implement their national laws in a way so that these issues and violations could be properly addressed. The Montreux document has made the following division in order to explain the possible actions for successful governance of PMC activities:

> c) "Contracting States" are States that directly contract for the services of PMSCs, including, as appropriate, where such a PMSC subcontracts with another PMSC.
>
> d) "Territorial States" are States on whose territory PMSCs operate.
>
> e) "Home States" are States of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, then the State where the PMSC has its principal place of management is the "Home State".[65]

Further detailed analysis of theses good practices will be discussed in the forthcoming chapter while discussing each of the actors separately.

Accordingly, it can be determined that Montreux document is an excellent tool for developing the necessary laws for the governance of the activities of modern private forces. Unfortunately, as it is not binding, none of the ideas summarised in the document may be enforced.

There are several international legal acts that take part in governing the activities of mercenaries and PMCs as analysed in this chapter. In addition to the legal tools mentioned above, also norms of international human rights law have to be applied when regulating the activities of modern private forces. As human rights issues are universally applicable independently of the existence of armed conflicts, the specific legal norms will not be discussed in detail in this thesis. Nevertheless, it has to be taken into account that several problems arise when applying the existing international legal norms to the issues related to mercenaries and PMCs. For instance, the insufficient definition of mercenaries due to its inapplicability and non-existent definition of PMCs in any of the binding legal instruments. As well as territorial limitations or lack of ratification of the existing international laws that govern the acts of modern private forces.

Consequently, it can be seen that even though there are several international conventions applicable in cases of use of mercenaries and PMCs, there are several shortcomings of these legal documents and thus they do not sufficiently regulate the modern private forces that are acting in conflicts today. In the further chapter the responsibility of different actors such as

[65] *Op. cit.* Montreux document, preface, point 9, p.10

states, international organisations as well as individual and corporate responsibility will be discussed in order to understand the role of each of these actors in governing the activities of modern private forces and determine what are the possible insufficiencies in existing legal norms.

CHAPTER III STATE RESPONSIBILITY AND INDIVIDUAL RESPONSIBILITY WITH REGARD TO MERCENARIES AND PRIVATE MILITARY CONTRACTORS

In previous chapters the meaning of mercenaries and PMCs were discussed as well as the role of existing international legal tools in dealing with the use of modern private forces nowadays. It can be seen that there have been established several international legal tools that take part in governing the activities of private modern forces. However, several problems and insufficiencies arise when applying the existing legal framework. For instance, the existence of binding sufficient definitions of mercenaries and PMCs as well as concrete monitoring mechanisms and accountability issue' instructions that could be implemented and used by all involved parties. Therefore, it is important to understand what is the role of states, international organisations, PMCs (as corporate entities) and individuals when governing the activities of mercenaries and PMCs. Accordingly, this chapter will discuss the responsibility of states and international organisations as well as individual and corporate responsibility with regard to mercenaries and PMCs in order to make conclusions about insufficiencies in the existing legal framework.

3.1. Responsibility of states when governing the activities of mercenaries and private military contractors

First of all, state responsibility is regulated by virtue by the Articles of Responsibility of States for Internationally Wrongful Acts (herewith and after below referred to as ARS). Furthermore, it has to be taken into account that it follows from regulation of the previously discussed international humanitarian law tools, the use of mercenaries is not allowed in humanitarian law. But only some of the tools are directed at criminalisation of their activities. Consequently, this chapter will mostly focus on the responsibility of states that arise with the use of different PMCs, which are not prohibited under international law. Nevertheless, even those PMCs that could be considered as falling under the definition of mercenaries would imply similar responsibility to states.

As determined by the Article 1 of ARS any state that breaches international law is entitled to being held responsible. Moreover, as further described in the Commentaries of Draft ARS, breach of an international law is "wrongful act of a State [that] may consist in one or more actions or omissions or a combination of both".[66] Consequently, it has to be understood that not only the direct actions that violate international law are subject to responsibility, but also a failure to act may constitute a wrongful act. The omission may constitute a violation in circumstances where a state knowingly decided not to react to the breach of international law even if there were no obstacles but it was required by law.

For example, if the state in questions would be aware of breaches of international law committed by PMCs they would be obliged to take all necessary measures to terminate such activities, independently on whether it is the state that hired these employees or the state in which territory the breaches took place. The state that was aware of these breaches is obliged

[66]Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), Article 1. p.32 Available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, Accessed November 20, 2017.

to act, therefore, a failure to act would constitute a wrongful act for which it could be held accountable. The sequence of obligation to act of different states involved will be discussed further in this chapter.

Furthermore, ARS also contain articles that might be directly applicable to the activities of modern private forces. For instance, Article 4 of ARS determines that any act of state organ must be considered as an act of that state. Thus, if PMCs would be incorporated into armed forces of that state, also all activities of PMCs would have to be considered as state activities, for which state may be held responsible. For the purpose of the clarification of that article it also determines that with a state organ one should understand "any person or entity which has that status in accordance with the internal law"[67]. Consequently, it is up to that state and its national law, which institutions or persons are to be considered as state organs, independently on what activities they are responsible for.

Furthermore, Article 5 of the ARS applies to the private forces, whether as individuals or groups, that are acting in a way that exercise governmental authority. This article determines that such activities exercised due to governmental authority are to be considered as acts of state. For example, these could be private entities that exercise governmental authority that is determined by the national law of that state. Therefore, these entities may act independently, but if by virtue of national law it is determined that this entity may exercise the governmental authority, the state may be held accountable for any violations committed due to this activity.[68]

In addition to the entities that exercise governmental authority, states may be held accountable also for the international law breaches that are committed by entities which are acting directly under the state control. As Article 8 of ARS determines, PMCs, either individual employees or PMC company as a whole, that act "on the instructions of, or under the direction or control of",[69] the state, are committing an act of that state. Therefore, this state may be held accountable for any violations and breaches of international law.

There has to be a clear division made between those two articles and PMC activities. For instance, under article 5 of ARS PMCs are acting as private institutions that exercise governmental authority under national law of that state, therefore, PMCs do not have to receive any orders from the state. Any activity that will fall under the national law requirements that determine which governmental authority that PMC is carrying out will be a state responsibility without any specific orders. On the contrary, under article 8 of ARS in order for the state to be directly responsible for the actions taken by that PMC or its employees the state has to give direct orders to that PMC or its employees or they have to be acting under the direct control of that state.

Consequently, states may be directly held accountable for actions taken by modern private forces if the conditions of Articles 5 and 8 of ARS are fulfilled, meaning that either the PMCs are entitled to exercise governmental authority or are acting directly under the control and directions of that state. Or states may indirectly be held accountable for breaches and violations of PMCs and their employees if that state was aware of these violations but did not do all in their power to terminate such activities.

---

67 United Nations. Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Article 4, Available at: http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

68 *Ibid*. Article 5

69 *Ibid*. Article 8

Nevertheless, with regard to the use of private modern forces states are mainly responsible for ensuring that relevant international humanitarian law and human rights laws are followed. This includes not only the state itself follows these norms but also PMCs and their employees follow all international legislative tools that are applicable to them. In addition, states are also responsible for ensuring that no breaches are committed also by relevant national laws with regard to the activities of modern private forces. Further below, the responsibility of such states will be discussed: contracting states, territorial states and home states as set out in the Montreux document.

3.1.1. Responsibility of a state that hires mercenaries and/or private military contractors

One of the actors that are responsible for governing the activities of private modern forces are states that hire these private actors under the contract - further on referred to as contracting states.

As contracting states are the ones that decide on the use of private modern forces by cooperating with PMCs in accordance with the contract concluded between them, usually the contracting states are the ones that may be most likely held accountable for the wrongful actions and violations committed by PMCs and their employees.

For instance, one of the primary conditions that determines the status and activities of PMCs are the contracts concluded between the contracting state and the PMC in question. According to the contract it shall be determined in what capacity, order and under what conditions they should operate. For example, if the PMCs for the time of the contract will be considered as part of the armed forces or other state organ (which is unlikely when looking at the recent examples of Iraq and Afghanistan[70]) contracting state may be held responsible for any of the violations committed by these PMCs as determined by the Article 4 of ARS. In such a case there is no requirement of burden of proof whether the instructions were provided by the state authorities. The incorporation of PMCs into any state organs automatically are considered as acts of states.

The same as under Article 5 of ARS also Article 5 may imply similar responsibility as it is applicable to the entities and persons that are empowered to act as governmental authority by national law of that state. Consequently, also in this case no proof should be provided that contracting state has given to PMCs the concrete instructions to act, but state may be held responsible in default for any violations that are committed by the PMCs if under their mutual contract and national law it is determined that PMCs are entitled to exercise governmental authority. Therefore, the responsibility of the contracting state implied by Article 5 of ARS depend on their national law with regard to the PMCs they contract. The problem arises due to the fact that in such case, it is still considered as governmental authority even if these PMCs would not follow the original terms of the contract by exceeding the given authority or contravening these instructions[71].

Contrary to the cases of PMC status analysed above in case of PMCs being incorporated into state organ of being empowered to exercise a governmental authority, the burden of proof of actual intentions and/or actions of the contracting state is required in cases that fall under the

[70] Hoppe Carsten "Passing the Buck: State Responsibility for Private Military Companies," *The European Journal of International Law, Vol. 19, no 5* (2008), p. 991
[71] *Op. cit.* ARS, Article 7

conditions of Article 8 of ARS. For example, in the contract between the PMC and contracting state there are determined the activities and tasks the PMCs are ordered to conduct. These tasks that are determined in this contract may be attributed to the state as direct instructions for which activities there exists an effective control and/or command of the contracting state authorities. Consequently, according to Article 8 contracting state might be held responsible only if these instructions and commands are the reason for committing wrongful acts and violating existing laws. Accordingly, this Article "excludes responsibility for actions contrary to orders and beyond the control"[72] of a contracting state.

Therefore, contracting states tend to use the contracts in accordance with this Article so that they could be held responsible only for those activities determined by this contract. While any other activity exceeding the contract provisions would be the responsibility of PMCs rather than a contracting state itself as it would be almost impossible to provide such proof that would imply the responsibility of state for other activities of PMCs as those determined by the contract. Consequently, the problems arise due to the fact that PMCs are used also for the reason for state to diminish its responsibility. For example, for the activities of the state armed forces the state would be held responsible according to Article 4 of ARS as armed forces are a state organ. While for PMC activities contracting state would be less responsible according to Article 8 due to the burden of proof with regard to instructions and effective control that should be exercised by the contracting state in order for it to be held responsible for activities of PMCs.[73]

In addition to the ARS also several international legal tools provide similar conditions. For instance, customary humanitarian law that is applicable to all states independently to which international treaties they are members to, which is also reflected in all four Geneva Conventions, Article 3 of Hague Convention (IV) and Article 91 of Additional Protocol I.[74] This customary law rule determines that state should be responsible for any of the breaches of international humanitarian law, such as:

> (a) violations committed by its organs, including its armed forces;
>
> (b) violations committed by persons or entities it empowered to exercise elements of governmental authority;
>
> (c) violations committed by persons or groups acting in fact on its instructions, or under its direction or control; and
>
> (d) violations committed by private persons or groups which it acknowledges and adopts as its own conduct.[75]

Consequently, it can be seen that similar norms and practice are required by state responsibility law as well as international humanitarian law, whether applicable through different conventions or customary law.

Furthermore, it can be argued that international humanitarian law tools also contain specific legal provisions that could be directed to contracting state responsibilities with regard to PMCs, which imply that contracting states are responsible for instructing PMCs with relevant laws and train them to be aware of the norms that may not be violated. For instance, under

[72] *Op. cit*. Hoppe C. "Passing the Buch" p. 992
[73] *Ibid.*
[74] Abrisketa Joana "Blackwater: mercenaries and international law," *FRIDE* (2007), p. 10
[75] *Op. cit*. Customary IHL, Chapter 42, Rule 149, p.530

Article 172 of Geneva Convention III as well as Article 144 of Geneva Convention IV require that "any civilian, military or other authorities, who in time of war assume responsibilities in respect of protected persons"[76] has to own the text of relevant legal norms and has to be informed on their regulations. It can be interpreted in a way that contracting states are responsible for ensuring that all of the PMCs that are hired have to be instructed on the provisions of Geneva Conventions, independently of what exact tasks are determined to the PMCs.[77]

Moreover, Article 1 of all four Geneva Conventions, which is also considered to be a customary international law norm determines that states shall "undertake to respect and to ensure respect for the present Convention in all circumstances"[78], meaning that contracting states shall do everything in their power to also ensure that PMCs respect the provisions of Geneva Conventions. Meaning that by hiring PMCs contracting states also undertake to train them and ensure that PMCs are well aware of the requirements of these laws. In addition, contracting states in order to ensure respect in all circumstances should also clearly define the tasks assigned to the hired PMCs and provide consequences for any violations, which would include also having control and monitoring mechanisms.

From the analysis above it can be seen that contracting states are obligated to several conditions and possible activities under international humanitarian law, some being very general and thus requiring interpretation with regard to their applicability to the use of PMCs. Nevertheless, also International Human Rights legal tools provide several obligations to states that could be also interpreted in a similar way as demanding contracting states to inform, train, control, monitor and provide consequences to the PMCs for any violations. In accordance with Human Rights norms contracting states have duties to "human rights obligations, the prevention violations, […] duty to investigate and […] prosecute and punish offenders."[79] Specific Human Rights provisions will not be discussed in detail. Nevertheless, one could rely on the possible suggestions and recommendations laid out in Montreux document with regard to the activities that shall be taken contracting states when hiring and using services of PMCs. Such as PMC hiring rules, training possibilities, licensing mechanisms, control and monitoring options as well as punitive measures that should be provided by national law of that state.[80]

3.1.2. Responsibility of a state in which territory the activities of mercenaries and private military contractors are carried out and a state where PMC is registered or has its place of management

Responsibility for activities of modern private forces may be attributed also to the states in which territory the activities of mercenaries and private military contractors are carried out - further on referred to as territorial states. As well as to the states of nationality of PMCs, meaning the place where PMC is incorporated or has its principal place of management – further on referred to as home states.

---

[76] *Op.cit.* Geneva Convention IV, Article 144(2)

[77] Doswald-Beck Louise, "Private military companies under international humanitarian law", in *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*, edited by Chesterman Simon and Lehnardt Chia, Oxford Scholarship Online, 2009, p. 19

[78] International Committee of Red Cross. The Geneva Conventions of 12 August 1949. Common Article 1 of Geneva Conventions.https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf, p.35

[79] *Op. cit.* Passing the Buck, p.994

[80] *Op.cit.* Montreux document, Part One, p. 11-12.

Even though there are several obligations that could be applicable to all states that are in any way connected with the use of private modern forces, it has to be noted that the main responsibility is attributed to the contracting state when it comes to following the norms of international laws.

However, also territorial states and home states may be held responsible in certain circumstances. For example, as analysed above, Article 1 of ARS assigns the obligation to all states to do everything possible to avoid breaches of international law, otherwise states may be held responsible. This provision shall be interpreted in a way that if home states or territorial states would not act to the violations committed by PMCs it shall be considered as an act of omission, which is a wrongful act according to ARS that is entitled to the responsibility and possible punishment of a state.

What is more, as it was discussed above common Article 1 of Geneva Conventions determines an obligation for the states to ensure respect of norms of international humanitarian law.[81] Furthermore, also customary international law determines the following:

> States may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law.[82]

Consequently, it can be interpreted as all states, concluding territorial and home states are under obligation to do all in their power to terminate any activities that could constitute a violation of international law. These norms are applicable either in international armed conflict or in non-international armed conflict.[83]

For example, it could be interpreted that territorial states are responsible to monitor any activities of modern private forces that are taking place in in its territory. It has an obligation to react to any of the violations, whether it acts on its own or informs the contracting state, which may be held directly responsible of PMC activities in certain scenarios. For this purpose, territorial state would have to establish jurisdiction for prosecuting PMCs as well as certain monitoring mechanisms in order to ensure the control and notice the breaches by PMCs in a timely manner. Moreover, territorial state should also establish the punitive measures in its national law in order to be able to prosecute the PMCs. As it can be interpreted that territorial state is responsible for providing all necessary measures to control, monitor and react to the PMC activities in its territory, it can also be interpreted that in case of the absence of such regulations and norms in its national law territorial state might be held responsible for not fulfilling obligations under international humanitarian law.[84]

With regard to the home states it can be interpreted that it has to provide information, education and training services to the PMCs that are incorporated or are managed from its state. This may include several trainings or requirements for examination or licensing procedures for PMC companies. Furthermore, also monitoring and control mechanisms could be established over the PMC companies, such as requirements for PMCs to report to the home state their activities. For this purpose, most likely the certain institution should be established or organ determined by law that would be assigned the functions of monitoring, licensing as well as receiving these reports. Furthermore, home state also should establish the jurisdiction

[81] *Supra note* 78
[82] *Op. cit.* Customary IHL, Rule 144, Chapter 41, page 509
[83] *Ibid.*
[84] *Op. cit.* Doswald-Beck Louise, "Private military companies", p.21

over PMCs in order to be able to prosecute and sanction PMCs that violate international law or does not comply with national laws that are established for the operation of PMCs. All of these activities could be considered as ensuring the respect of international humanitarian law, as well as non-existence of these norms and activities in national law of the home state could be considered as breaches of this law. Consequently, it can be interpreted that home states might be held responsible for failure to establish necessary norms, activities and requirements in their national law in order to ensure the respect to the international humanitarian law of PMCs by all possible means.

Accordingly, even if majority of responsibility should be assigned to the contracting states, due to the reason that international law provisions provide more circumstances under which contracting state could be held responsible as well as contracting states are the reason for the use of PMCs in a concrete situation, also other states may be held responsible. Both territorial states and home states have to do everything in their power to ensure the compliance of international laws as well as termination of any illegal activities by PMCs. Accordingly, if territorial states or homes states fail to ensure the necessary provisions in their national law and operation, it may constitute a violation of ARS as well as international humanitarian law norms, which may result in a state responsibility with possible punitive consequences.

3.2. Responsibility of International Organisations with regard to the mercenaries and private modern forces.

Nowadays, international organisations (further referred to as IO or IOs) have become very active actors in armed conflicts, which also includes the use of private modern forces in their activities. Therefore, this subchapter will analyse the possible responsibility of IOs with regard to the PMCs in accordance with Draft Articles on the responsibility of international organisations (herewith and after below referred to as DARIO). Similar as in the analysis of state responsibility only the PMCs will be discussed, taking into account that responsibility would not differ for IOs even if certain PMCs could fall under the definition of mercenaries.

IOs are subjects to international law and they have a separate personality[85], thus being entitled to all rights and obligations encountered by legal acts it is a party to, as well as customary law and *ius cogens* norms.[86] The same as states under ARS, IOs are responsible for any wrongful act committed by that IO. Any of the activities that result in a violation of international law constitute a wrongful act, which can entail the responsibility, independently whether this act is committed by the direct action or omission by an IO.[87] This has been also determined by the Special Rapporteur of International Law Commission in 1994 who stated that "omissions are wrongful when an international organisation is required to take some positive action and fails to do so"[88] when describing the role of the United Nations in prevention of genocide in Rwanda.

From practice it can be seen that IOs may be held responsible for activities of PMCs in two types of cases: either PMCs are directly contracted by the IO; or in case of peacekeeping

[85] United Nations. Draft articles on the responsibility of international organizations, 2011, Available at: http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf, Article 2(a)
[86] White Nigel D., MacLeod Sorcha "EU Operations and Private Military Contractors: Issues of Corporate and Institutional Responsibility," *The European Journal of International Law, Col. 19, no. 5* (2008), p. 970-971.
[87] *Op. cit.* DARIO Articles 3 and 4
[88] *Op. cit.* White N. "EU operations" p. 971-972

operations, which consist of troop-contributing nations that hire PMCs.[89] Nowadays, IOs are frequently participating in security and defence operations, therefore, also IOs have come to direct use of PMC services by concluding contracts with them. In such a case, IOs are also directly responsible for actions and violations committed by these PMCs. In case where peacekeeping missions are ordered by the IO, but states are the ones that contribute with troops or additional forces, contracts are concluded between separate member states and PMCs, not by the IO itself.[90]

As mentioned before, the responsibility of IOs is mainly regulated by DARIO, which according to Article 1 may be applied to either - to the responsibility of IOs or responsibility of a state with regard to the violations that have been conducted in accordance with an IO.[91]

Mainly, there are two scenarios under which IOs may be held responsible for violations of international law committed by PMCs. For example, under Article 6 of DARIO the responsibility of an IO is assigned when the wrongful act has been conducted by an agent or organ of the IO.[92] Therefore, in case PMCs will be directly contracted by the IO and its tasks will be determined in this contract, most likely it will be considered to be an act of the IO. Consequently, IO might be held responsible for any violation of an international law committed by PMCs as they act under instructions and control of an organ of that IO.

Under Article 7 of the DARIO

> [t]he conduct of an organ of a State […] that is placed at the disposal of another international organization shall be considered [an act of the IO if this] organization exercises effective control over that conduct.[93]

Therefore, in case when IOs participate in some defence of security missions by employing the troops or other sources with help from the member states that contribute their own forces, it can be so that direct contracts are concluded between that state and PMC. But IO is still held responsible for the activities of these PMCs as it exercises effective control of that mission. Therefore, also these PMCs that are hired by states are in fact acting under the control and orders from the IO.

In addition, DARIO also provides that PMCs that are acting in official capacity of the IO while completing the assigned tasks by that IO, are also considered to be acting as an IO. Consequently, the IO may be held responsible for all violations that are committed by these PMCs. The problems arise due to the fact that according to Article 8 of DARIO, IOs could be still held responsible even if these PMCs would not follow the given instructions or would exceed the given authority. Therefore, in certain circumstances IOs may be held responsible also for individual wrongdoings of PMCs if they are committed during the time of the contract.

Accordingly, it can be determined that IOs are responsible for ensuring PMCs that they hire directly or, which are under their command even if contracted by one of the member states. Consequently, IOs have certain obligations also under customary international law to ensure that PMCs that are hired by them or act in capacity of IOs or under their command do not

[89] White Nigel D. "Due Diligence Obligations of Conduct: Developing a Responsibility Regime for PMSCs," *Criminal Justice Ethics, Vol 31, No.3* (2012), p. 238.
[90] *Op. cit.* White Nigel D. "Due Diligence", p. 238
[91] *Op. cit.* DARIO, Article 1
[92] *Ibid.* Article 6
[93] *Ibid.* Article 7

violate international humanitarian law norms as well as respect human rights norms. This could include either institutional oversight mechanisms, training and education and possibly also some sanctions under their contracts.[94]

3.3. Individual responsibility of mercenaries and PMC employees.

It is clear from the analysis above that states or IOs may be held responsible for activities of mercenaries and PMCs. Nevertheless, also mercenaries and PMC employees may be held responsible for their activities. It has to be taken into account that mostly the responsibility will depend on the national laws of states involved as individuals are subjects rather to national not international laws, whether implying the civil or criminal responsibility. Nevertheless, human rights laws are applicable also to individuals as well as individuals may be subject accountability under International Criminal law for certain crimes and circumstances. Nevertheless, both of the levels mostly result in several difficulties with implication of responsibility. Further below the individual responsibility will be discussed of private forces and the likelihood of them being held accountable for their wrongful activities. Individuals are bound to follow all the applicable laws of human rights, international humanitarian law and national laws of the contracting state, home state and territorial state.

First of all, as discussed in first two chapters the responsibility of an individual depends on the status it acquires - whether it is a mercenary, combatant or civilian. The PMCs who fall under the definition of a mercenary are not allowed under international humanitarian law, therefore, a mercenary does not have any immunities and protections that are usually given to combatants or civilians. Mercenaries do not fall under the scope of the protected group under humanitarian law, meaning that mercenaries are not protected against attacks during the armed conflict. As mercenaries do not enjoy any of the protections that combatants are entitled to, consequently, they can be prosecuted for any of the acts that are considered to be wrongful under the international humanitarian law, human rights law and laws of national state. This includes not only the direct wrongful acts committed by a mercenary, but also for the fact itself of being a mercenary and directly participating in hostilities.[95] Nevertheless, as the definition of mercenaries is so specific, it is unlikely that PMCs of today will be considered as mercenaries and thus held responsible for the acts with regard to activities of mercenaries.

The second status that PMC individuals may acquire in certain circumstances is a combatant. However, also this status is quite unlikely due to the reason that PMC employees may be considered to be combatants only if they are

> incorporated into the armed forces of a [s]tate or can be considered as members of the armed forces, groups or units which are under command responsible to a party to the conflict,[96]

otherwise they most likely will be considered as civilians. However, the probability that PMCs will be included into the armed forces of state or will act under direct instructions from

[94] *Op. cit.* White Nigel D. "Due Diligence",p. 246
[95] *Supra notes* 9 and 10
[96] Tougas Marie-Louise "Commentary of Part I of the Montreux Document on Pertinent International Legal Obligations and Good Practices for State Related to Operations of Private Military and Security Companies During Armed Conflict," *International Review of the Red Cross Vol. 96, No. 893* (2014), p.353

state organs is unlikely to happen as it is completely opposite to the essence of the meaning of private forces as such.

Nevertheless, it has to be noted that PMCs that will be defined as combatants will be entitled to prisoner of war status as well as will be immune against any prosecutions of activities that are considered to be legitimate under international humanitarian law, but could be defined as crimes under national laws. For instance, combatants will not be prosecuted for killing other armed forces during the conflict. Nevertheless, combatants still can be prosecuted for such crimes as inhuman treatment, war crimes, genocide and other large scale crimes.

As it is difficult to define PMCs as mercenaries or combatants it is most likely that they will be considered as civilians. Civilians as such or civilians accompanying the armed forces if they will meet the requirements of Article 4(4) of Geneva Convention III.[97] If they are considered to be civilians that accompany armed forces PMCs will be entitled of prisoner of war status, nevertheless, they are not combatants. Consequently, these PMCs will be immune from crimes determined in international humanitarian law as long as they do not participate in hostilities. Civilians in general are a protected group, however, if they participate in hostilities and get involved in the armed conflict they can be attacked. The problem arises due to the fact that these PMC civilians may be prosecuted for any activities that are considered unlawful under national laws and international laws, such as killing a person. In addition, civilians may be prosecuted for the fact it self that they are participating in hostilities as civilians under international humanitarian law are not allowed to actively take part in hostilities.[98] Therefore, e.g. if PMCs that are defined as civilians accompanying armed forces are entitled to some protections under international laws, they are not able to become combatants even if participating in hostilities. But at the same time may be held accountable for activities that would normally be considered as lawful acts under international humanitarian law - like participating in hostilities.[99]

Even though as mentioned above in the previous subchapters, states are obliged to establish national jurisdiction and necessary laws to be able to prosecute PMC individuals for their activities in order to comply with international law norms, it has not been that well fulfilled in reality. There are several shortcomings when it comes to the states implementing the relevant laws. As well as frequently there are disputes with regard to which state has an obligation or right to prosecute concrete individuals. In addition, states are frequently limited to their abilities to investigate and gather proof of concrete activities that have been carried out by PMCs. Apart from that, frequently states that are involved in conflicts and use of PMCs conclude agreements that provide immunity to the PMCs, which makes it even more difficult to hold them accountable. Consequently, not only the problems arise in international level whether there are difficulties in defining PMCs and their status as it is done on case by case basis, but also when the status of a person is clear there are several difficulties to actually sentence these PMCs under national laws due to their shortcomings in law and practice.

If PMCs commit such large sale crimes as genocide, some war crimes or crimes against humanity, the employees may be held accountable not only in accordance with national law, but also international law. Rome Statute of the International Criminal Court (further referred to as Rome Statute) determines the grounds for individual criminal responsibility in Article

[97] *Supra notes* 29 and 30
[98] *Supra note* 45
[99] *Op. cit.* Tougas Marie-Louise "Commentary of Part I of the Montreux Document", p.354

25. Under this article individual may be held responsible and be punished if it commits a crime that is covered by the jurisdiction of International Criminal Court (further referred to as ICC). The person may be held accountable independently whether the crime was committed solely or in cooperation with others. What is more, individual may be held responsible if he/she "orders, solicits or induces"[100] such a crime or "aids, abets or otherwise assists"[101] or in any way collaborates in this crime.

Even though Rome Statute has established the basis for the prosecution of individuals for serious crimes, such as war crimes there are several problems with actual execution of the protection. For instance, ICC is able to prosecute individuals for only such crimes if they are "committed as part of a plan or policy or as part of a large-scale commission of such crimes,"[102] which is frequently hard or even impossible to prove. In addition, also the criteria for crimes against humanity are difficult to fulfil as it is determined that crimes against humanity are only those activities, which are "of a widespread or systematic practice [and are part of] state or organisational policy".[103] Furthermore, ICC can mainly prosecute cases where the criminals are connected with parties to the Rome Statutes, which makes it even more difficult. What is more, the actual case prosecution would also strongly depend on the cooperation with nation states as the assistance with investigation and evidence gathering would have to be carried out by state parties.

Rome Statutes also establish the responsibility for such individuals as commanders and superiors not only the PMC employees that directly participate in the conflicts. Article 28 of Rome Statutes determine that responsible may be also a person who is a "military commander or person effectively acting as a military commander"[104] that exercises effective control as well as superiors that exercise effective control over persons committing actual acts. This includes not only the direct acts and commands from these commands and superiors, but also failures to act, similarly as it was for responsibility of states and international organisations. If commanders or superiors gave instructions for commission of wrongful act or failed to instruct their employees to terminate such activities (if they were aware of such activities) they may be held responsible under Rome Statute as well as under domestic laws, if established by the states that have jurisdiction.

Furthermore, there are several discussions about inequality of treatment of majority of PMCs and state armed forces due to the fact that armed forces are entitled to be combatants while PMCs in majority of cases are not. Consequently, PMCs frequently may be prosecuted for the same activities as to combatants have protection from, which is an issue of unequal treatment. Nevertheless, PMCs may be held accountable for several crimes under national or international law in several different jurisdictions - jurisdiction of contracting state, home state, territorial state or in International Criminal Court for certain crimes.

3.4. Corporate responsibility of PMCs.

[100] Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002), Article 25 (b)
[101] *Ibid.* Article 25(c)
[102] Huskey Kristine A. "Accountability for Private Military and Security Contractors in the International Legal Regime," *Criminal Justice Ethics, Vo. 31, No. 3* (2012), p.202
[103] *Ibid*.
[104] *Op. cit.* Rome Statute, Article 28

The use of PMCs has risen another contemporary issue such as the corporate responsibility of the entity itself, not only individual responsibility of PMC employees. Unfortunately, it has to be noted that it is a quite unclear field that has not been fully developed in existent jurisdictions. First of all, it has to be taken into account that international law, such as international humanitarian law legal tools or Rome Statute has not established the jurisdiction over PMC entities. Consequently, the corporate responsibility is completely the field of national jurisdictions that have not been implemented that well either. Nevertheless, corporate responsibility would be adequate and necessary in several of the cases, especially when it comes to damages and compensations that would have to be paid once punished as PMC entities are mainly financially well-provided.

However, as corporate responsibility is more difficult to be obtained, in practice mainly the individual responsibility of PMC employees is being considered. The corporate responsibility is considered only in cases where the organisation structure of the PMC is established in a way to make it difficult to prosecute the individuals.[105] However, more frequently individual employees are being held responsible for acts that are committed by the company itself. Even though often it would be more beneficial to prosecute a company rather than an individual, it is more difficult to prove the fault of the company. In addition, as no international institution has a jurisdiction to prosecute and punish the PMC corporate entities it is left for the states to establish their own national laws. Due to the insufficiencies in these laws with regard to corporate liability for crimes conducted in the time of armed conflict it can be concluded that majority of national laws are not able to prosecute corporations. Moreover, it is more likely that the individuals, such as the usual employees, superiors and commanders will be prosecuted for the crimes committed rather than a company itself.[106]

Consequently, corporate responsibility is being established only in rare occasions where states such as contracting states, home states or territorial states have established national jurisdiction and sufficient regulation and punishment options. Nevertheless, it has to be taken into account that in cases where states that are parties of the conflict make an agreement where indicating that PMCs are immune from prosecution, PMC entities also would be protected from responsibility and possible punishment.

[105] Lehnard Chia "Individual liability of private military personnel under international criminal law," *European Journal of International law 2008, 19(5)*, (2017), p.1033
[106] *Ibid.*

CHAPTER IV SUFFICIENCY OF EXISTING LEGAL FRAMEWORK REGULATING STATE AND INDIVIDUAL RESPONSIBILITY OF MERCENARIES AND PRIVATE MILITARY CONTRACTORS

In this thesis there were analysed several aspects of existing international legal tools when examining the activities of mercenaries and PMCs with a purpose to hold someone accountable for wrongful acts committed by these private forces. It can be seen that there are several legal acts that could be used for analysing the activities of PMCs, nevertheless they have several shortcomings for them to sufficiently ensure the accountability. Therefore, this chapter will focus on providing possible alternatives for ensuring the better practice and options for assigning the responsibility for the wrongful acts committed as well as solutions for reducing the amount of crimes committed.

As discussed above, the first insufficiency that is problematic in the basis of the existing law is the lack of adequate definition of mercenaries and PMCs. The definition of mercenaries is so specific and inflexible that it will almost never be applicable to the modern forces used today. The definition of PMCs does not exist in any of the binding international legal tools, therefore, the statuses of mercenaries, combatants and civilians have to be applied to PMCs, which is not sufficient for adequately analysing the activities of these modern forces. Even though the newly established Montreux document contains a definition of PMCs, it is not legally binding and none of the rules contained imply any legal obligations.

What is more, the several of existing legal tools also have problems not only with regard to definition, but also with lack of ratification or territorial limitations. For example, the only legal tools that criminalise the activities of mercenaries are OAU Convention, which is applicable only to African states and UN Convention, which is barely ratified. Therefore, as a result they are almost inapplicable to the conflicts today.

Furthermore, none of the existing legal tools contain any mechanisms of monitoring or ensuring the enforcement of the existing norms. Consequently, it can be seen that there are several international legal tools that could be applicable in order to hold responsible either states, international organisations, individuals, but the norms will be open to interpretation with regard to PMCs, frequently will not be enforceable, while corporate responsibility is not established in international legal tools at all. Therefore, a large burden is put to the nation states to establish their jurisdiction and domestic laws in a way so that PMCs and their employees could be held responsible, which has also been fulfilled only partly, depending on a state.

As the use of private modern forces is increasing in conflicts nowadays it is important to have a sufficient legal framework for regulating their activities as well as there is a necessity for legal norms of accountability of activities committed by mercenaries and PMCs. It has been discussed that there are several international legal tools that regulate the activities of mercenaries and PMCs. However, international legal framework lacks several important issues of regulation but new proposed helpful tools do not imply any obligations. Consequently, “if the international community fails […] to create effective international law, […] accountability of PMCs will be left to the formal and informal devices of the individual

state."[107] Therefore, this chapter further on will discuss not only the possible solutions that can be done in international level, but also touch upon the alternatives that can be implemented by individual states in their national laws.

The first proposed solution is to establish a new legal tool for PMCs, which would include the appropriate definition of PMCs that could be applicable. This definition also should include references to whether PMCs will be entitled to any of the statuses determined by international humanitarian law, such as combatants or civilians, or whether there will be established a new status for PMCs and their employees specifically. Moreover, also the responsibilities of states, international organisations, individuals and legal entities should be described in order for better understanding and implementation also in internal practices of states. In addition, this tool should be prepared in a way so that it would not revoke the already exiting legal humanitarian or human rights conventions. Furthermore, it should include also the minimal requirements that should be implemented into national laws of its member states. The new legal tool could use basis of the Montreux document as it is well supported already at this moment. However, this new proposed legal document should be binding to all its members. In addition, it could be beneficial if in this new convention there would be and opportunity of supplement or amend it after reaching the unanimity or absolute majority. As well as there should be an opportunity to make reservations in order to increase the number of states that would ratify the convention if they will have a chance to opt-out from provisions that they are completely against to. Furthermore, this convention should include certain monitoring and control mechanisms as well as enforcement plan.

One of the ways how the new document could be enforced is establishment of an institution together with this convention. For instance, institution could be proposed and sponsored by the United Nations. Or the institution could be formed from the states that worked together in order to create the Montreux document. If the Montreux document would be made as basis for the new convention, it would be sensible that also the creators of this document would be in the institution of a new convention. The institution could also be responsible for monitoring and control mechanisms in order to ensure the validity and enforcement of this convention. The institution would need to have voting rights that are either unanimous or with absolute majority in order to ensure a larger number of states that would ratify the convention and implement its relevant norms also in its national legislation (for instance such norms as minimal criteria for licensing systems or punishment requirements).

With regard to the licensing system, it could be useful if there would be one institution and one licensing scheme that issues these licenses for all PMCs. This would ensure the equal and determined standards for all PMCs and their employees. Unfortunately, most likely such alternative would be denied due to "the lack of funding and consensus among states."[108] Consequently, the idea of common licensing system should be established as a recommendation, but the enforcement and implementation should be left for the states to carry out. Nevertheless, the minimum licensing criteria should be stated also in international level, for instance, determined with help of the proposed new convention or institution. Furthermore, such an institution could make a blacklist of PMCs that are not able to fulfil the criteria, therefore, may not be used as long as there exist these insufficiencies with minimal

[107] Goddard Major S., "The private military company: a legitimate international entity within modern conflict," *University of New South Wales* (1987), p. 75
[108] *Op. cit.* Silent Partners., p. 107.

criteria or there have been too many violations by the PMC.[109] This would motivate PMCs to acquire licenses and follow the existing international and national regulations.

Furthermore, in this convention it should be indicated in which order such states as contracting states, home states and territorial states are responsible to prosecute the PMCs of wrongful acts. Also some guidelines for cooperation between states with regard to investigation and evidence could be discussed in order to facilitate the process of sentencing PMCs as accountable for the wrongful acts as well as provide possible punishment options.

The establishment of an institution and proposal of a new international convention will have several difficulties. For instance, it will be time and finance consuming, which will encumber the process of creating this new legal tool. Furthermore, there is no guarantee that states will ratify the convention, even if they intended to during the process of negotiations, which may lead to the consequence to establish another legal tool, which again will not be applicable in majority of cases.
Apart from establishing new international legal tools or institutions with new obligations, several solutions could be performed by the national states already from the existing legal norms. For instance, states could take an example from the Montreux document and implement majority of the suggestions from guidelines in their domestic laws in order to establish appropriate jurisdiction and national laws for adequately dealing with PMCs. For instance, states should undertake to set the minimal requirements for hiring the PMC, which could be obtained by introducing licensing schemes and procedures in their national laws. Licensing schemes could be accomplished by either contracting, home or territorial states as all of them can have certain minimal criteria that would allow the operation of PMCs.[110]

> The system must be supplemented by national criminal [and civil] laws, oversight and enforcement mechanisms in order to provide control, effectiveness and efficiency.[111]

All national states should undertake the obligations to carry out education and training programs[112] for PMCs in order to introduce them with necessary laws and prohibitions, as well as possible punishments for wrongful activities.

States should introduce the relevant jurisdiction and laws in order to be able to prosecute both - either PMC as an entity or its personnel as individual persons. In addition, certain monitoring and control mechanisms should be proposed - for instance the minimum amount of the times PMC employees should report back to the entity as well as PMC as a company to report back to the state that hired the private forces. This could help with tracking the wrongful activities faster as well as would be beneficial for investigations and evidence collection.

Consequently, there are several possibilities that may be proposed as solutions for accountability issues of mercenaries and PMCs in international and national level. Nevertheless, the main necessities are: legally binding adequate definition of PMCs, clear determination of responsibility of states, international organisations, individuals and legal entities; as well as necessary monitoring and control mechanisms. Several minimum criteria

[109] Dumlupinar Nihat "Regulation of private military companies in Iraq," *Institutional Archive of the Naval Postgraduate School* (2010), p. 87
[110] *Op. cit.* Dumlupinar Nihat "Regulation of private military companies in Iraq," p. 81.
[111] *Ibid.*
[112] *Op. cit.* Montreux document, p.11-13

such as licensing criteria and accountability of all actors should be determined in both levels - national and international in order to ensure its reliability and enforcement.

CONCLUSIONS

Private modern forces are used more frequently in armed conflicts nowadays. Unfortunately, the industry of modern private forces has developed much faster than the existing international legal tools as well as applicable national laws.

This thesis analysed the existing legal tools in order to examine the applicability and sufficiency of them to modern private forces and possible accountability with regard to the activities of mercenaries and PMCs. For instance, it was analysed that the existing legal tools have developed very specific and inflexible definition of mercenaries, which arises several problems due to the fact that it is almost inapplicable to the modern private forces used today. Moreover, the definition of PMCs does not exist at all in any of the binding legal tools, which results in several difficulties as PMCs may be defined either as mercenaries, combatants or civilians under international humanitarian law. Unfortunately, also the application of such statuses to the PMCs is not unanimous, but depends on case by case basis interpretation of the legal norms to the specific situation.

Furthermore, also the role of the existing international legal tools was discussed in examining the activities of mercenaries and PMCs while determining that the existing legal conventions either have serious shortcomings with regard to PMCs or the legal instruments that are more sufficient in terms of the content lacks the ratification or is limited to certain territories, therefore, is also not applicable in majority of cases. Consequently, it can be concluded that there exist several international legal instruments but none of them is sufficient in examining the activities of modern private forces.

In addition, also the responsibility of states and IOs was analysed as well as individual and corporate responsibility. Responsibility of states can be interpreted from several legal acts that could be applicable to the armed conflicts, nevertheless, due to the non-existent definition of PMCs and inflexible definition of mercenaries, several difficulties arise with regard to the interpretation of applicability of certain norms to issues with regard to activities of modern private forces.

It was also discussed that in order to fulfil several international norms states would be obliged to act in order to establish the national jurisdiction and applicable national law, which also has not been often fulfilled due to the lack of control and enforcement mechanisms of international law tools. Consequently, a very good example of guidelines was established with help of Montreux document. Unfortunately it is not legally binding and thus does not imply any obligations to act. Nevertheless it can be used as guidelines in order for national states to establish their jurisdiction, national laws and requirements for private modern forces into their national laws.

It was concluded that even more than for state responsibility and responsibility of IOs, there are several problems with regard to individual and corporate responsibility of PMCs. For instance, if individual responsibility is being considered in both levels – international and domestic, corporate responsibility is completely dependent on national laws of states, which have not been that well established. Individual responsibility depends on the status awarded to the PMC – mercenary, combatant or civilian, which was found to be difficult. Moreover, due to the different statuses of PMCs also the accountability consequences differ quite a lot. International criminal law under Rome Statute mainly can deal with cases only of large scale crimes in the conflict, such as war crimes, genocide or crimes against humanity. Unfortunately, the difficulties arise when conducting investigations and gathering evidence

with regard to the fulfilment of the definitions of such crimes that can be prosecuted under ICC. Therefore, the prosecution of PMCs under Rome Statute is quite rare, thus leaving this responsibility to states that have to establish their national laws and jurisdictions in order to prosecute PMCs and hold them responsible for the wrongful acts committed.

Accordingly, the answer to the thesis research question is that there are numerous complications that can arise when assessing the conduct of mercenaries and PMCs in the existing legal framework. Starting from the lack of adequate definition that can be applicable to the modern private forces; lack of ratification of certain legal tools; as well as ambiguities when it comes to determining the responsibility of territorial, contracting or home states, IOs, individuals or corporate entities, thus frequently resulting in non-existent accountability of the acts of mercenaries and PMCs at all.

The last chapter provides as well some alternatives, such as a new legal instrument that would be binding as well as establishment of responsible institution in order to ensure the control, monitoring and enforcement mechanisms. Moreover, also the licensing system of PMCs was proposed in order to ensure that they are educated, trained and evaluated by responsible state or institution. In addition, proposals were made also for guidelines to national states that would have to adopt their national laws in accordance with international norms.

BIBLIOGRAPHY

Primary Sources

1. Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949, entered into force 21 October 1950.
2. Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949, entered into force 21 October 1950.
3. Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949, entered into force 21 October 1950.
4. Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, entered into force 21 October 1950.
5. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, entered into force 26 January 1910.
6. Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The Hague, 18 October 1907, entered into force 26 January 1910.
7. Convention of the OAU for the Elimination of Mercenarism in Africa. Libreville, 3rd July 1977, entered into force 22 April 1985.
8. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, 1125 U.N.T.S. 3, entered into force 7 December 1978.
9. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non- International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force 7 December 1978.
10. Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005, entered into force 14.January, 2007.
11. Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002)
12. United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.
13. United Nations. Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Available at: http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf Accessed November 20, 2017.
14. United Nations. Draft articles on the responsibility of international organizations, 2011, Available at: http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf Accessed November 20, 2017.
15. United Nations. International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, New York, 4 December 1989, A/RES/44/34, entered

onto force 20 October 2001. Available at: http://www.un.org/documents/ga/res/44/a44r034.htm. Accessed April 20, 2017.

Secondary sources:

Books:

16. Calazans Erika, *Private Military and Security Companies: The Implications Under International Law of Doing Business in War* (Cambridge Scholars Publishing, 2016), accessed November 20, 2017, https://books.google.lv/books?id=Kpb6DAAAQBAJ&pg=PA82&dq=individual+responsibility+of+private+military+contractors&hl=en&sa=X&ved=0ahUKEwjE9pfPj-nXAhVoQZoKHTL1C6MQ6AEIJzAA#v=onepage&q=individual%20responsibility%20of%20private%20military%20contractors&f=false. Nollkaemper André, Plakokefalos Ilias, Schechinger Jessica, *The Practice of Shared Responsibility in International Law* (Cambridge University Press, 2017), acessed November 30, 2017, https://books.google.lv/books?id=S4DuDQAAQBAJ&pg=PA771&dq=individual+responsibility+of+private+military+contractors&hl=en&sa=X&ved=0ahUKEwjE9pfPj-nXAhVoQZoKHTL1C6MQ6AEILTAB#v=onepage&q=individual%20responsibility%20of%20private%20military%20contractors&f=false.
17. Chesterman Simon, *Private Security, Public Order: The Outsourcing of Public Services and Its Limits* (Oxford University Press, 2009), accessed November 20, 2017, https://books.google.lv/books?id=LoNqcxIX51EC&pg=PA53&dq=individual+responsibility+of+private+military+contractors&hl=en&sa=X&ved=0ahUKEwjE9pfPj-nXAhVoQZoKHTL1C6MQ6AEISDAG#v=onepage&q=individual%20responsibility%20of%20private%20military%20contractors&f=false.
18. Doswald-Beck Louise, "Private military companies under international humanitarian law", in *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*, edited by Chesterman Simon and Lehnardt Chia, Oxford Scholarship Online, 2009.
19. Francioni Francesco, Ronzitti Natalino, *War by Contract: Human Rights, Humanitarian Law, and Private Contractors* (Oxford University Press, 2011), accessed November 20, 2017, https://books.google.lv/books?id=aA6rlrW46OEC&printsec=frontcover&dq=individual+responsibility+of+private+military+contractors&hl=en&sa=X&ved=0ahUKEwjE9pfPj-nXAhVoQZoKHTL1C6MQ6AEIMzAC#v=onepage&q=individual%20responsibility%20of%20private%20military%20contractors&f=false.
20. Kidwell Deborah C., *Public War, Private Fight? The United States and Private Military Companies* (Combat Studies Institute Press, 2011) accessed November 20, 2017, https://books.google.lv/books?id=-tgmAgAAQBAJ&pg=PA10&dq=individual+responsibility+of+private+military+contractors&hl=en&sa=X&ved=0ahUKEwjE9pfPj-nXAhVoQZoKHTL1C6MQ6AEIODAD#v=onepage&q=individual%20responsibility%20of%20private%20military%20contractors&f=false.

21. Schaub Gary Jr., Kelty Ryan, *Private Military and Security Contractors: Controlling the Corporate Warrior* (Rowman & Littlefield, 2016), accessed November 20, 2017, https://books.google.lv/books?id=wpg5DAAAQBAJ&pg=PA378&lpg=PA378&dq=Gomez+del+Prado+Jose+L.+%E2%80%9CMercenaries,+Private+Military+and+Security+Companies+and+International+Law%E2%80%9D+UN+Working+Group+on+the+Use+of+Mercenaries&source=bl&ots=XWRowWtu72&sig=Oa8kRHiXAR50TDt83ydAB3sVUoA&hl=en&sa=X&ved=0ahUKEwjKk4a2hunXAhWmYZoKHYaKCUEQ6AEIMjAC#v=onepage&q&f=false

Articles:

22. Abrisketa Joana "Blackwater: mercenaries and international law," *FRIDE* (2007).
23. Barrie Bernard O 'Meara "Private military firms and mercenaries: potential for liability under intrnational law," *Tilburg Foreign L. Rev. 324* (2004-2005).
24. Behnsen Alexander "The Status of Mercenaries and Other Illegal Combatants Under International Humanitarian Law," *46 German Y.B. Int'l L 494*, (2003).
25. Cameron Lindsey "Private military companies: their status under international humanitarian law and its impact on their regulation," *International Review of the Red Cross Vol. 8, No. 63* (2008).
26. Chapman Katherin J. "The Untouchables: Private Military Contractors' Criminal Accountability under UCMJ," *Vanderbilt Law Review, Col 63:4:1047*, (2010).
27. Christiansen Solvej Karlsoj "Private Military-and Security Companies and the lack of national legislation – Hired help or the way to the future?", *Aalborg Universitet*, (2010).
28. Dickinson Laura A. "Military lawyers, private contractors, and the problem of international law compliance," *N.Y.I.J. Int'l L & Pol., vol. 42:355*, (2009-2010).
29. Dumlupinar Nihat "Regulation of private military companies in Iraq," *Institutional Archive of the Naval Postgraduate School* (2010).
30. Faite Alexandre "Involvement of Private Contractors in Armed Conflict: Implications under International Humanitarian Law," International Committee of the Red Cross
31. Fallah Katherine "Corporate actors: the legal status of mercenaries in armed conflict," *International Review of the Red Cross Vol. 88, No. 863* (2006).
32. Francioni Franesco "Private military contractors and international law: an introduction," *The European Journal of International Law, Vol. 19, no 5* (2008).
33. Goddard Major S., "The private military company: a legitimate international entity within modern conflict," *University of New South Wales* (1987).
34. Gomez del Prado Jose L. "Mercenaries, Private Military and Security Companies and International Law," *UN Working Group on the Use of Mercenaries* (2007).
35. Hinds Lennox S. "The legal status of mercenaries: a concept in international humanitarian law," *Philippine law journal, Vol. 52*, (1977).
36. Hoppe Carsten "Passing the Buck: State Responsibility for Private Military Companies," *The European Journal of International Law, Vol. 19, no 5* (2008).

37. Huskey Kristine A. “Accountability for Private Military and Security Contractors in the International Legal Regime,” *Criminal Justice Ethics, Vo. 31, No. 3* (2012).

38. Kochheiser Steven R.”Silent Partners: Private Forces, Mercenaries, and International Humanitarian Law in the 21st Century,” *The University of Miami National Security & Armed Conflict Law Review* 86, (2012).

39. Lam Jenny S. “Accountability for Private Military Contractors Under the Alien Tort Statute,” *CALIFORNIA LA W REVIEW 1459* (2009).

40. Lehnard Chia “Individual liability of private military personnel under international criminal law,” *European Journal of International law 2008, 19(5),* (2017).

41. Morrison Melissa “Understanding the Emergence of Private Security Companies & Variance in Security Contracting,” *University of Ottawa,* (2015).

42. Moya Vanessa Ballesteros “The Privatization of the Use of Force Meets the Law on State Responsibility,” *Am. U. Int’l L.Rev* (2015).

43. Nwogugu Edwin I. “Recent developments in the law relating to mercenaries,” *Mil L. & L. War review. Vol 20* (1981).

44. O’Brien, James M. “Private military companies: an assessment,” *Institutional Archive of the Naval Postgraduate School* (2008).

45. Osakwe Chukwuma, Umoh Ubing Essien “Private Military Contractors, War Crimes and International Humanitarian Law,” *Scientia Militaria, South African Journal of Military Studies, Vol 42, Nr 1* (2014).

46. Rothe Dawn L., Ross Feffrey Ian Ross “Private Military Contractors, Crime, and the Terrain of Unaccountability,” *Justice Quarterly, Volume 27, number 4* (2010).

47. Roughton Philip Andrew “Publi Wars, Private Warriors: An Analysis of Private Military Contractors in American Foreign and Domestic Policy,” *Eastern Illinois University* (2014).

48. Ryngaert Cedric “Litigating Abuses Committed by Private Military Companies,” *The European Journal of International Law, Vol. 19, no 5* (2008).

49. Snell Angela “The absence of justice: private military contractors, sexual assault, and the U.S. government’s policy of indifference,” *University of Illinois Review, volume 3.* (2011).

50. Tougas Marie-Louise “Commentary of Part I of the Montreux Document on Pertinent International Legal Obligations and Good Practices for State Related to Operations of Private Military and Security Companies During Armed Conflict,” *International Review of the Red Cross Vol. 96, No. 893* (2014).

51. Vegh Karoly “Warriors for Hire*?* - Private military contractors and the international law of armed conflicts,” *Miskolc Journal of International Law, volume 5*. (2008).

52. White Nigel D. “Due Diligence Obligations of Conduct: Developing a Responsibility Regime for PMSCs,” *Criminal Justice Ethics, Vol 31, No.3* (2012).

53. White Nigel D., MacLeod Sorcha “EU Operations and Private Military Contractors: Issues of Corporate and Institutional Responsibility,” *The European Journal of International Law, Col. 19, no. 5* (2008).

Other sources:

54. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), Available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, Accessed November 20, 2017.
55. Draft articles on the responsibility of international organizations, with commentaries (2011) Available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf, Accessed November 28, 2017.
56. Federal Department of Foreign Affair FDFA of Switzerland. The Montreux Document. (2016). Available at: https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/montreux-document.html
57. Geneva Centre for the Democratic Control of Armed Forces. *The Montreux Document on Private Military and Security Companies. Proceedings of the Regional Conference for Southeast Asia*. (2013), Available at: https://www.dcaf.ch/sites/default/files/publications/documents/DCAF_SEAsia_web_FINAL.pdf, Accessed November 28, 2017.
58. International Committee of Red Cross. The Geneva Conventions of 1949 and their Additional Protocols. Available at: https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm. Accessed May 21, 2017.
59. International Committee of Red Cross. The Geneva Conventions of 1949 and their Additional Protocols. Available at: https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm. Accessed May 21, 2017.
60. International Committee of Red Cross. The Geneva Conventions of 12 August 1949. Common Article 1 of Geneva Conventions.https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf , p.35
61. International Committee of Red Cross. The Montreux document. Available at: https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf , Accessed November 28, 2017.
62. International Committee of Red Cross. Treaties, States Parties and Commentaries: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=470. Accessed: May 21, 2017.
63. International Committee of Red Cross. Treaties, States Parties and Commentaries: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Available at:https://ihl-

databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=475. Accessed: May 21, 2017.

64. International Committee of Red Cross. Treaties, States Parties and Commentaries: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=470. Accessed: May 21, 2017.
65. International Committee of Red Cross. Treaties, States Parties and Commentaries: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Available at:https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=475. Accessed: May 21, 2017.
66. International Committee of the Red Cross. Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949. Availvable at: http://www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf. Accessed May 20, 2017
67. International Committee of the Red Cross. Customary IHL: Rule 108. Mercenaries. Available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule108 Accessed: May 8, 2017.
68. Montreux Document Forum. The Montreux Document in a nutshell. Available at: http://www.mdforum.ch/pdf/The-Montreux-Document-in-a-Nutshell.pdf, Accessed November 28, 2017.
69. Participating States of the Montreux Document https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/participating-states.html. Accessed November 22, .2017.
70. United Nations Treaty Collection. International Convention Against the Recruitment, Use, Financing and Training of Mercenaries https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-6&chapter=18&clang=_en Last accessed November21, 2017.
71. United Nations Treaty Collection. Status of Treaties: International Convention Against the Recruitment, Use, Financing and Training of Mercenaries. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-6&chapter=18&clang=_en. Accessed May 20, 2017.

Non-scholarly documents:

72. Zimmerman Margaret “Private Military Companies: Accountability Under International law”