

WAGNER GROUP AND THE RUSSIAN INVASION OF UKRAINE: EXPLORING THE LEGAL PERSPECTIVE ON THE MEMBER OF THE RUSSIAN PRIVATE MILITARY COMPANY

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I. Wagner Group and The Russian Invasion of Ukraine

Throughout history, the conduct of warfare has predominantly relied upon the engagement of soldiers who bear the insignia of their respective nations. However, in the modern times, a notable shift has transpired on the battlefield, with the presence of Private Military Companies (PMC) assuming an increasingly prominent and influential role in global conflicts. Unlike traditional national armed forces, PMCs are characterized by their profit-oriented motives and contractual engagements. This means, PMCs are fundamentally incentivized by financial gain, potentially influencing their decision-making processes that may compromise the adherence to ethical and legal standards that safeguard the protection of non-combatants. Furthermore, the contractual nature between states and PMCs also blurs the lines of responsibility attribution, potentially allowing states to distance themselves from the actions of these private actors.

This phenomenon has been perfectly exemplified in the ongoing Russia-Ukraine war, in which Russia, aside from making a deliberate choice to invade Ukraine and disregarding international norms, have utilized the services of a PMC known as Wagner Group. The group is believed to have played a significant role in one of the deadliest fighting in Ukraine known as the Battle of Bakhmut where they sought victory. In this context, the

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deployment and participation of Wagner Group triggered the biggest legal and conceptual inquiries for the use of PMCs in the context of armed conflicts.

II. Legal Framework of Private Military Companies

The regulation of PMCs lacks specific provisions within binding legal texts of International Humanitarian Law (IHL). However, Article 47 of the Additional Protocol I (AP I), to which both Ukraine and Russia are parties, specified the rules on the conduct of mercenaries that by far has the closest definition with PMCs. The definition is also found in two other documents, namely the UN Mercenary Convention and the Convention on the Elimination of Mercenarism in Africa of 1977. According to Article 47(2) AP I, a mercenary is any person who:

- (a) is specifically recruited locally or abroad to fight in an armed conflict;*
- (b) does take a direct part in 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 excess of that promised or paid 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.*

Unfortunately, the cumulative definition under Article 47(2) AP I has raised some issues regarding its applicability to PMCs, in particular Wagner Group. In the case of Wagner Group, their personnel participation in Ukraine would not meet the criteria set out in Article 47(2)(d), as their personnel were nationals of the Russian Federation meanwhile Russia is a Party to the conflict in Ukraine. Similar issues have arisen, such as the exclusion of British and United States military contractors operating in Iraq after the 2003 invasion, where the nationality criteria excluded them from being defined as mercenaries due to NATO countries being party to the conflict. Hence, Wagner Group would likely be excluded from falling under the definition of mercenaries.

Recent efforts by the international community have resulted in the creation of the Montreux Document. Regrettably, the preface of the Montreux Document makes clear that

it lacks a legally binding instrument and does not affect existing obligations of States under customary international law or treaty law. Notwithstanding, it is important to understand its significance, as the document provides an important statement of *lex lata* on states' existing duties under IHL when dealing with PMCs. These responsibilities are delineated in the form of guidelines, addressing a spectrum of issues related to the use of force by PMCs, their direct involvement, training, and accountability. In essence, the document's lack of legal authority poses challenges for states in terms of enforcement.

Despite the difficulty in classifying PMCs and/or Wagner Group under contemporary IHL, it is important to understand a deeper meaning of Article 47 AP I, since both mercenaries and PMCs, by nature, are similarly driven by monetary incentive in their line of work. In the ICRC drafting conference, the problem of mercenaries was first raised at the United Nations Security Council (UNSC) in 1961 in connection to the Katangese secession that resulted in the adoption of UNSC Resolution 161A (1961), calling for the withdrawal of mercenaries from Congo. In 1968, the United Nations General Assembly (UNGA) also adopted resolutions 1565 (1968), stating that employing mercenaries to overthrow states' governments was a criminal act.

This might explain why the legal status of mercenaries came to a different conclusion in comparison to state armed forces under Article 43 AP I, which guarantee members of the armed forces a Prisoner of War status upon capture. Unlike Article 47(1) AP I, a mercenary shall not have the right to be a combatant or a Prisoner of War once they are captured. The question then becomes, given the existing legal loopholes to define PMCs, what laws apply to the personnel of Wagner Group and how should they be treated during the ongoing Russo-Ukrainian war?

III. Legal Status of Wagner Group Personnel under IHL

The armed conflict between Russia and Ukraine carries a potential classification as an international armed conflict (IAC), as stipulated by the provisions in Article 2 of the Geneva Convention III. This pertains to a conflict occurring between two or more Contracting parties, regardless of its intensity and duration.

However, it is crucial to recognize that the classification of the overall conflict does not inherently imply that conflict between Ukrainian troops and Wagner Group will be solely governed by the rules of IAC. The unique nature of Wagner Group as a private military personnel requires a closer examination of its organizational structure and their chain of command. A nuanced and specific examination of the event becomes important, thus the classification is analyzed as below:

A. Wagner Group as Part of State Armed Forces

Despite the absence of concrete evidence definitively categorizing Wagner Group as mercenaries, the mounting evidence otherwise underscores a material and mutually coordinated support that exists between Wagner Group and the Russian Government. This prompted a reevaluation of whether Wagner Group could potentially be classified as part of the Russian Armed Forces under AP I. Article 43(1) AP I underlines that the armed forces of a Party to a conflict may consist of all organized armed forces as long as they are under a command responsible to that Party. The commentary further clarifies that these forces can partake in fighting not only through regular army.

To establish that Wagner Group falls within the definition of armed forces, it must meet two key criteria: (1) being organized armed forces and (2) being under the responsible command of the Russian Government. As for the first criterion, IHL does not offer a definition of what constitutes organized armed forces. However, international courts and tribunals, such as the *Bemba* case have stipulated several factors determining a party to be recognized as an organized armed group in question. Although the parameter should be assessed on case-by-case basis, the factors may include: the presence of command structure and internal disciplinary mechanism, the existence of a headquarters, the fact that the group controls a certain territory, the operational capacity of the group, the logistical capacity of the group, the ability to speak with one voice and to participate in the negotiation of agreements. Wagner Group is evidently projecting to meet the criterias set by the precedence by having its leader, a headquarter, top-tier equipment, and a coordinated command structure in executing systematic operations.

The second criterion pertains to whether Wagner Group was consistently under the command of the Russian Government. Several pieces of corroborating evidence indicating likewise:

First of all, an intercepted communication was collected throughout 2014-2015 between Wagner field commander and the Main Directorate of the General Staff of the Armed Forces of Russian Federation (**GRU**), revealing conversations within the brigade level. Both entities also reported to have shared a main base located in Molmino, Russia - mainly for training and operation. Some officials have also made public statements including President Vladimir Putin which publicly admits to gave Wagner Group nearly \$1 billion in 2022, some Russian officials acknowledged the group's effort in the fight against Ukraine, and even a seven-minute audio message showing Wagner leader protesting the lack of ammunition provided by the Ministry of Defense, which established a reasonable grounds to believe that Wagner Group has been funded by the Russian Government.

The Russian Ministry of Defense also announced that "Russian volunteers must sign contracts directly with the Russian Ministry of Defense by July 1 2022." If this is correct, it suggests that upon signing contracts, Wagner personnel would be integrated into Russian Armed Forces and according to Article 43 of AP I, they would become part of the Russian Armed Forces.

This epitome on the possibilities of Wagner Group inclusion as part of Russian Armed Forces consequently affirms the clashes between Wagner Group against Ukrainian troops to be an IAC. Consequently, it puts Wagner Group as having rights equivalent to any member of the armed forces including to be treated as Prisoners of War (**POW**) upon capture. In principle, if any member of the Wagner Group is in the hands of the enemy as POW, they shall not be prosecuted merely for participating in hostilities. Nevertheless, this does not preclude them from prosecution for acts of IHL violations.

B. Wagner Group as an Independent Organized Armed Group

The recent coup in Moscow orchestrated by Wagner Group has sparked debates pertaining to the possibility of a non-international armed conflict (NIAC) between Wagner Group, Ukraine, and the Russian Government, which could lead to another question on the Group's status. To be acknowledged as NIAC, the non-governmental parties involved must be considered as an "organized armed group" and the situation has to fulfill a certain minimum level of intensity, with the armed group not being controlled by a State entity.

Despite having fulfilled the first criterion as explained above, the later threshold of intensity may prevent the situation from becoming a NIAC. The precedence also shows several factors of intensity which should be analyzed on a case-by-case basis, such as: the seriousness of attacks and whether there has been an increase in armed clashes. It is too premature to argue that Wagner Group's conduct of revolt in Moscow has reached the intensity as most requirements are not fulfilled. Even if the Wagner Group has evidently exerted a great amount of vehicles, weaponries, and troops, this is seemingly only a logical execution of a big PMC to project their military power. However, the war in Ukraine would certainly reach the level of intensity and thus the fight between Ukrainian Armed Forces and Wagner Group would likely establish a new condition of NIAC, assuming they are no longer supported by the Russian Government after the coup.

Members of organized armed groups are recognized as civilian detainees and hence are not granted with protection arising from such POW status once they are held captive by the enemy. In this case, similar to a POW, the captured Wagner Group members would still be conferred the right to be treated humanely. However, civilian detainees are not immune from criminal prosecution under the domestic law. Therefore, members of the Wagner Group that might be detained under the circumstance of NIAC are faced with the risk of getting prosecuted for participating in the coup or merely involved in the fight in Ukraine.

IV. Conclusion

The determination on the legality of Wagner Group personnel under IHL hinges heavily on the examination of factual evidence surrounding the events. The presence of critical factors, such as affiliations, parties involved, and the intensity of the fighting, can significantly impact the legal consequences. Eventually, the finding of this research suggests a possible shift of law from an IAC into a NIAC in the fight between Wagner Group against any of its adversaries.

In light of these considerations, the examination of Wagner Group and implication highlights the critical need for effective regulation of PMCs through international treaties. The evolving nature of modern conflicts, coupled with increasing reliance on PMCs necessitates a comprehensive framework to govern their conduct.

Reference:

[Geneva Conventions of 12 August 1949](#)

[Protocol Additional to the Geneva Conventions of 1949 \(Protocol I\)](#)

[The Montreux Document on Private Military and Security Companies](#)

[Prosecutor v. Ljube Boškoski and Johan Tarčulovski, Judgement, IT-04-82-T, para. 177.](#)

[Prosecutor v. Dusko Tadić, Judgement, IT-94-1-T, para. 562](#)

[Corporate actors: the legal status of mercenaries in armed conflict](#)

[Contracts Between Wagner Group and Russia's Defense Ministry: International Law Implications](#)

[Decoding Wagner Group: Analyzing the Role of Private Military Security Contractors in Russia Proxy Warfare](#)

[Putin Admits Kremlin gave Wagner nearly \\$1 billion in the past year](#)

[Inside Wagnergate: Ukraine's Brazen Sting Operation to Snare Russian Mercenaries](#)

[Wagner uprising: 24 hours that shook Russia](#)