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INSECURITY, INC.:
THE POLITICS, THE POLITIES, AND THE POLICIES OF THE PRIVATE MILITARY AND SECURITY INDUSTRY

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Abstract

The new crises emerging from international struggles have resulted in numerous conflicts and a considerable increase in insecurity. At the same time, the power of decision and intervention in security is being outsourced more often than before. In consideration of these changes in the institutional means that safeguard societies, this study attempts to examine and to understand how the outsourcing of the use of force, leading to private military and security companies, has given rise to various reactions both on the domestic and international levels. Due to the nature of the investigation into how mercenary-like businesses have acted in armed conflict and their parallel involvement in statal affairs, both primary and secondary sources are employed to obtain qualitative results in the fields of history, political science, international relations, and judicial and legal interpretations.

Chapters

Introduction

Significance of the Study

The participation of private actors in conflicts is not new. Several private actors, such as mercenaries, have already participated in wars throughout history. However, private military and security companies have become more important in post-Cold War armed conflicts. In the modern-day world, the causes of the process of security privatization can be classified on the basis of three main epistemological and ontological categories.

Firstly, and according to Peñate Domínguez (2018), the new world order has propagated the dismantlement of domestic armies. The end of the Cold War amplified the number of rogue actors, mainly due to an increase in countries or ideologies that did not exist before and due to a decrease in "the limited resources available to the regular armed forces" (Bakker and Sossai, 2011). As mentioned by Thümmel, Fechner, and Scheffran (2005), the fall of the Iron Curtain prompted many soldiers to lose their jobs and made arsenals of weapons redundant since they were not "needed for the balance of deterrence".

This leads to contemporary war being seen as something that generates a need for humanitarian intervention, yet it remains distant. Thus, in order to reduce the sending of soldiers from an army, more corporatist mercenaries are sent from private companies not necessarily from the country of origin or destination. Likewise, many armies license a good part of their logistics, mainly because of issues regarding resources, to private companies so as not to devote the large number of militants with solid training.

Secondly, the current "changed character and the complexity of current military operations" (Bakker and Sossai, 2011) undergone by most of the world has been led by a military affairs revolution (Bharadwaj Indian Navy, 2013). The new information and communication technologies in the military field with the premise of a "Clean War" have forced armies to reduce the number of their troops. This quantitative leap causes the phenomenon to change qualitatively, a trend that shows no sign of abating.

Thirdly, there is a greater influence of companies on governments. On the one hand, there has been a circumvention of "parliamentary control and constitutional constraints" to avoid the "democratic control of the armed forces" (Bakker and Sossai, 2011). On the other hand, many companies lobby governments or public administrations to influence

how decisions are made. Since the end of the Cold War, the variety of tasks applied related to war and security in areas of current armed conflict, whose Private Military and Security Company clients are very diverse, is related to the revolving doors of the *military industrial complex* (García Segura and Pareja Alcaraz, 2013).

Therefore, the study of the privatization of security and the involvement of civilian contractors in the private military industry is useful to understand the many transformations occurring in Westphalian States and, thus, in International Relations.

Theoretical Framework

Private offensive companies of a military nature and defensive ones of a civilian nature are supply actors that generate need. They are demanded by States, by other companies that want to protect their facilities and workers, international governmental organizations, humanitarian organizations, and organized transnational crime groups and rebels (Rees, 2011). According to Bakker and Sossai (2011), the "outsourcing of military and security services […] to perform functions previously exercised by regular armed forces […] is unlikely to be a temporary phenomenon".

These corporations, which are included within the multifaceted market of security and military services, are legally established non-governmental entities. The employees are known as new corporatist mercenaries, who are civilians authorized to accompany the armed forces on the battlefield. They may be workers carrying out coercive tasks for a company that is part of the armed forces or they could be civilians who may be victims of being in an armed conflict, such as non-military health workers. This private industry does not have many workers, but they have a great network of professionals depending on the type of contract or of localization.

Generally, when discussing points of view regarding military and security private corporations, it has become commonplace to distinguish the pessimistic position from the optimistic opinion.

On the one hand, according to the perspective of the pessimistic position, security should be a global good, but the privatization of security ends up generating institutional changes in management to such an extent that it can be said that they militarize the world. One of

the main results is the violation of *erga omnes*, also known as "respect towards all", through violence.

On the other hand, the optimistic view states that these types of companies have a high level of budgetary and legal mobility and speed, and involve different fields of politics, economy, and knowledge. This allows them to fill urgent capability and personnel gaps with little capital and low fixed costs. After subcontracting, corporatist mercenaries act according to their specialized *know-how* in order to expand and *technify* the participation in conflict as much as possible. These businesses do consultancy work, weapons maintenance and the use of force and armed security, operational support, and assistance in direct participation, among others.

For the reasons mentioned in the significance of the study and the arguments discussed above, research regarding private companies when it comes to security and military is in need of in-depth analyses, fundamentally because questions may arise, and there may exist a willingness to find alternatives to the current situation. It is, therefore, essential to study the effects of quasi-mercenary groups.

Research Question

Understanding violations of *erga omnes* in international armed conflict by private military and security companies addresses the foundation of these opaque businesses. Neither the duration nor the nature is specified when it comes to the volume and knowledge of their contractual conditions due to their opacity. Only what is paid is known. In other words, a great diversity of companies and services under the same name that exist in varied scenarios from *pre-* to *post*-conflict is hidden, making a major part of security devoted to secrecy. Furthermore, several of these companies disappear and are rebuilt in different companies, as in the case of Blackwater.

Most crimes go unpunished because who is responsible for the action is ambiguous as well as being very difficult to know. Furthermore, accountability is so diffused that it is difficult to conceptualize the contract. Although States hire companies that hire workers, States and the companies do not prosecute them and the governments that contract such corporations are not interested in transparency. The firms' employees are, in principle, "subject to the law of the country in which they are deployed", but "contracting States have relied on different […] sources" (Bakker and Sossai, 2011)

That is why, in this study, I want to investigate the role of private military and security companies. I would like to analyze how these new actors, who are in the field of international security and armed conflict, violate *ergo omnes* through violence. In this research regarding the considerable increase in insecurity, international conflict and how institutions can secure societies will be studied and help become more aware of the emergence of new crises that have resulted in numerous conflicts.

For this reason, in order to arrive at a thorough and precise conclusion to this study, I will try to answer the main research question of this dissertation, which is "*how has the involvement of companies that provide private security and military services in the field of international security affected the framework of international relations?"*.

Another analysis regarding the topic, even though minor, would be to answer the implicit sub-question for this research. Such inquiry would be "*what are the judicial and legal interpretations of the acts of private military and security companies in international armed conflict?*"

Being able to answer both of these research questions will help in the mapping and in the identification of the features of privatization of conflict. The questions discussed will aid research in order to further understand international law and the perspectives that focus on legal issues.

Since the main focus of this research question is to analyze how public actors and domestic administrations have promoted programs to reduce illicit or unethical non-Statal provision of security, the initial research hypothesis is that military and security services from private companies have an overall negative interaction when it comes to international law. The pessimistic assumption about their involvement in the field of international security and armed conflict is correlated with their violation of *erga omnes*.

Contrary to this statement, the null hypothesis is that private military and security companies do not purposely, directly, and/or actively violate Customary Law, *erga omnes* obligations, and other international and/or domestic norms that are either peremptory or not. Furthermore, intentions to reduce armed conflict and the use of private military corporations during international insecurities and crisis, even though based on solving problems rather than preventing them, has been somewhat successful when regarding to the collaborations with such companies.

Hence, and as stated in this section, this dissertation focuses on the study of private contractors who participate in the industry of the provision of security and military services. It also centers around the hiring of these firms, while also the activities of non-State actors within armed conflicts and other types of hostile situations. Answering the primary and secondary research questions provides the necessary premise to understand and better improve the various contemporary issues regarding to international security and internalized frictions.

Research Methodology

This section offers the reasoning behind the methodological aspect of the research and investigation conducted in this academic study. It is crucial to present the notion that qualitative methods, rather than quantitative ones, can be more useful for identifying and for characterizing the needed advanced examination and detailed interchange of information. In this study, therefore, the analysis of the private military and security industry will be done from many non-numerical different perspectives. This will permit the better understanding of the contractors who provide and have provided services in armed hostilities and violent conflicts.

In order to improve the comprehension of the actions of such companies and individuals, history will be a main viewpoint that will be taken into account. According to Momigliano (2016), the study of history consists of finding value in texts. In other words, it entails "collecting and interpreting documents to reconstruct and understand [one or several chains of] events in the past". Hence, a historian is "an interpreter of that reality of which his sources are telling signs or fragments".

History is an important perspective to take into consideration because it provides models and answers for current affairs, and it offers key elements for the insight of the cyclic phenomenon of hiring "pay-to-fight" combatants and noncombatants. Adequate and in-depth historicizing of this complex event and identifying both its continuities and ruptures is an essential key to contextualize as it explains how to avoid pitfalls.

In the meantime, some acknowledgements must be given to current laws that regulate security and military companies. Since institutional documents represent an irreplaceable source of empirical material for the study of momentous moments of a society (Corbetta,

2003), a more worldwide approach to the legal frameworks is needed to better comprehend the international community and the global provision of troops for hire.

Hence, another point of view is that of legal documents, seeing that comparing the existing legal documents with the activities of certain actors is one of the most common procedures for determining causal influences. In other words, an organized compilation of all that which includes regulations on both international and more local levels will be presented in this research.

The study of the various existing legal frameworks and their historical path-dependent backgrounds will permit me to analyze the tasks carried out, achievements, and possible areas for improvement. Such analysis will demonstrate the strengths, weaknesses, opportunities, and threats that exist at multiple administrative levels when it comes to the private contractors who partake in the industry of military and security services. The main source for formal and official resources will be treaties between States and United Nations regulations, which offer a middle point which encompasses and summarizes everything that has been written in many analytical reports.

Alongside legal and history-based examinations, the acquired knowledge from studies by other authors that identify gathered qualitative data from multiple sources at various time points and from a variety of perspectives provides more in-depth insight, which will permit me be able to answer my questions.

Literature Review

Background and Contextual Information[1]

War was considered the ultimate policy and political instrument to settle international disputes. Under the Clausewitzean terminology, war is merely a continuation of political intercourse carried on with other means. However, with the end of the Cold War, traditional armed conflict ended.

Things have dramatically changed with the outlawry of war. Therefore, the prohibition against using force and the obligation to settle disputes peacefully have become two sides of the same coin, a principle that has the status of Customary Law. States may seek early and just settlements to their international disputes by means of judicial or political negotiation and arbitration in such a manner that international peace, security, and justice are not endangered. When it comes to the political framework, States consent to such an outcome for it to be legally binding on them.

Nonetheless, the power of decision and intervention in security has recently been outsourced at higher frequency and rate than before. The Westphalian States have been incrementally losing their Weberian monopoly of violence by permitting the private sphere to have a role in the security and military industry. The use of force, traditionally forming part of public administrations, is gradually becoming more autonomous and international.

This transnational private industry is independent from domestic public institutions and, therefore, international law is the only alternative of regulating such companies. Nevertheless, there is no compulsory jurisdiction in international law and, thus, there is no formal system of international courts and tribunals even though such organs arbitrate via *compétence de la competence*. Paradoxically, although judicial settlements of international disputes are simple alternatives to direct settlements of disputes between countries and other entities, international judicial settlements always depend on the consent of the disputing States.

[1] All information in this chapter is based on notes from the 2019 lecture *Public International Law* thought by Aurélia Praslickova, and the 2020 lecture of *Security and International Conflicts* thought by Caterina Garcia Segura.

Additionally, security was not increased by the ending nor termination of the Cold War. The emergence of new crises has resulted in numerous conflicts and in a considerable increase in insecurity. There are new challenges and threats to security due to the lack of preparation to face them. 21st century violence does not fit the 20th century mold of interstate tensions and wars. The wars of the 21st century tend to continue to exist with no clear beginning or end, while the dividing line between warring parties and international organized crime has become increasingly blurred.

Nevertheless, it should be noted that there is a trend towards a conceptual and normative turn because the difficulty of managing armed conflicts is increasing due to their greater complexity. Contemporary violence is primarily privatized and/or criminal but, due to the success in reducing interstate warfare, the remaining forms of violence do not fit neatly into "war" or "peace" or into "political" or "criminal" violence because these are becoming obsolete and what remains are "residual combatants".

Historical Overview

Antiquity: An Outline

Before the creation of public and regular permanent armies, the use of mercenaries as a feature of the institutions of organized violence was relatively common and, until the French Revolution and its Napoleonic aftermath, *mercenarism* was not thought to be a dishonorable profession (Lynch and Walsh, 2000). Additionally, and according to Peñate Domínguez (2018), until the beginnings of the 19th century, the pre-eminence of professional soldiers in small brigades hired to fight in a foreign army on the battlefield was decisive.

There is some evidence to suggest that the relationships between the public sphere of administration and the private spheres of military force recruited by a foreigner within the Mediterranean States has existed since Carthage, Aetolia, Egypt, Achaemenid Persia, and the Hellenistic States such as the Kingdom of Pontus, Rome, and the Greek polis (Takashi and Gomez-Castro, 2018). Münkler (2005) holds the view that, at first, armies were made up of mercenaries organized according to the principle of *bellum se ipse alet*. In other words, professional soldiers lent their services by being enlisted for a limited time in exchange for a financial reward.

Nevertheless, in these early stages of *mercenarism*, the requirement for these external actors was nothing more with a purely military organization (Peñate Domínguez, 2018). Scholars such as Villamizar Lamus (2014) claim that the idea of using mercenaries to complement troops or as a fundamental part of them was one of the reasons why, in many pre-Medieval cultures, there was no word to designate those who fought for economic interests.

Middle Ages: A Medieval Follow-Up

According to Jiménez Reina *et al.* (2019), the Middle Ages saw the arrival of freelance individuals constituting short-term armies and those who sold their services to fulfill technical necessities. Therefore, the loyalty of the medieval feudal levies was relieved by payments and contracts. Between the 9th and 15th centuries, the growth of the market in Europe and the availability of hiring professional mercenary soldiers allowed fiefdoms to wage war on a much more frequent basis for the military protection or invasion of large areas of land. An example according to Rees (2011) would be William I of England when he filled his ranks with Italian mercenaries for the Normand invasion and of 1066.

Before the 13th century, the concept of the mercenary was fluid but, as their role became more clearly defined, since their worth was proven by the high demand for their services and their repeated and constant employment, the age of the *mercenarism* as a "unpopular or unreliable troops-for-hire commodity" began (Rees, 2011). This transformation vastly impacted medieval warfare by facilitating the extremely rapid spread of tactical reforms throughout Europe.

Paraphrasing Rees (2011), the hostility between Islamic and Christian in States during the Middle Ages was not enough to prevent mercenaries from being exchanged between kingdoms irrespective of religion or other lines of division that may have seemed too stark to allow such exchanges. One example of this provided by same author would be what occurred in the Iberian Peninsula during the Reconquista. The great Spanish hero Rodrigo Diaz de Vivar, also known es "El Cid", initially fought against the Moors and later for them against Christian kings such as Sancho of Aragon.

Another example would be the activity of mercenary troops, known as "military slaves", active in the Crown of Aragon. This became a recurring military practice between the 13th and the 14th centuries. According to Hussein (2016), such activity is linked to the political

processes combining sovereignty and religion that developed in Christian and Muslim societies of the Iberian Peninsula and North Africa. At the end of this period, these mercenary troops put aside their economic and political benefits when they saw what they considered as the unjustifiable Christian assault actions that threatened the kingdom of Granada (Hussein, 2016). With this, there was a gradual disappearance of mercenaries from the military ranks of the Crown of Aragon, breaking off the relationships they had maintained with the monarch of Aragon and ceasing to offer their services any longer.

Furthermore, Rees (2011) argues that, during the extended conflicts that occurred during the solidification of civic identity, it was easier to distinguish those who entered military service from outside these autonomous civic identities. This can be seen in the Italian Peninsula. During many centuries, the peninsula was fragmented due to its unstable political balance and, thus, became a fertile land for employment and extorsion. Since Italy was a region full of autonomous towns, it was made into a battlefield, mainly between Genoa and Venice, Pisa and Florence, Venice and Milan; not to mention that the Papacy was against everyone and against Italian unity.

Italian City-States sought military forces from outside. This includes the multicultural and multifaceted “Condottieri”, an organization which offered their men that previously partook in the Crusades and services through contract, having a major mercenary presence in Italy. Likewise, these corrupt Italian societies lacked the strong governments as in France or Spain to put an end to the use of troops by the different States. The unity and centralization of the armies of France and Spain caused these two to wage many wars, with the dynastic power in Naples being a main target. It was not until the dynasty set up by Spain in Savoy that a family put unification in motion.

Those who began their fame in this practice of providing services of mercenaries for the Swiss and Italians made a fundamental career in French conflicts (Villamizar Lamus, 2014). During the Hundred Years War (1337 – 1453), instability crystallized itself because “small conflicts and continuous hostility” deteriorated “the order established by the centralized control in numerous European States” (Wauters, 2018).

The financial burden of this Medieval war led to scarcer contracts for freelance soldiers, and a reduction of work for mercenaries. Such economic problems caused them to band together and form companies. This allowed mercenaries “to travel safely and improve

their employment rate by selling themselves" as groups even though, in many cases, their unity dissolved quickly because they did not have any political agenda (Wauters, 2018). An example given by Wauters (2018) would be the Great Mercenary Companies army. The monarch of France formed an army to subjugate mercenaries who placed a heavy burden on rural areas. Threatened, the mercenaries decided to unite and form the company previously mentioned, but it did not last long.

Ábrego (2013) states that it was not until the discovery of the American continent in 1492 that the need to professionalize a permanent and institutionalized military body and to concentrate of defense and security in the hands of a central authority were raised. This also helped with the unification of law and justice, which depended on the same power.

Theorists of the School of Salamanca made formulations about the justice and injustice of war (Villamizar Lamus, 2014). According to Vallenilla (2014), the ideas of the School of Salamanca founded the culture of the distinction between civilians and the military order, as well as establishing two rights. First, the right to *ius ad bellum* war if one of the parties violated the law and therefore the affected party was forced to restore order. Secondly, the right to *ius in bello* war can be called into play to regulate activities within the framework of armed conflict.

Modern Era: From Westphalia to Revolutionary France

During the 17th century, there was an increase of bourgeoisie or lesser nobility mercenary companies and entrepreneurs that contributed to the composition of European armies (Wauters, 2018). Santa Cruz (2019) holds the view that this continued until the 19th century given the economic forces at the time that encouraged and stimulated the market, the industry, and the benefits of owners and investors. These large commercial private companies were commissioned as hired armies to exploit colonies and defend maritime routes, while the new domestic armies devoted themselves to their role of defending the borders. This is exemplified by Wauters (2018) stating that it can be seen in the case of mercenaries establishing themselves in extra-European affairs. *Mercenarism* was incorporated into companies like the *Honourable English East India Trading Company*, which allowed these organizations to establish themselves in the Indian peninsula.

Nonetheless, the use of *mercenarism* in the period between the 17th century and 19th century must be approached with some caution because they do not rule out the influence

of other factors. Mainly, this era simultaneously saw the Thirty Years War (1618 – 1648), cost-reduction technological breakthroughs, and the Enlightenment-based "Long Nineteenth Century" between 1789 and 1914 (Hobsbawm, 2000).

First of all, the end of the Thirty Years War with the signing of the so-called Westphalian Treaties of 1648 established the foundations of "regular armies made from citizens rather than contractors" (Santa Cruz, 2019) and "conscription to establish and put together much bigger armies" (Wauters, 2018). The Peace of Westphalia founded the essentials of the consolidation of the Westphalian centralized Nation-States and contains the definition of the European vision of how the civilized world should be built "on the sovereignty of nations" (Santa Cruz, 2019).

The centralization of the monopoly of violence by the central political power progressively replaced mercenaries with specialized and professional military forces. This led to the marginalization of mercenaries' armies from political action because they "proved unreliable to the heads of the newly new European States" (Vallenilla, 2015). Therefore, the change in the political, economic, and social model of these Westphalian States "set aside [the use of mercenaries] due to the establishment of national armies with permanent forces" (Villamizar Lamus, 2014).

Secondly, Machiavelli (1532) argued that there must be a military policy based on a conscript army to go against the ambitious, disunited, undisciplined, and unfaithful mercenaries. In addition to the arguments of Machiavelli *et al.* warning the States that "mercenaries are useless and dangerous" (Rees, 2011), private armed forces also represented the generation of enormous economic and political costs because "money did not guarantee their loyalty or their adherence to the principle of national sovereignty" and because they were "scattered or dedicated to illicit activities" against civilian population, consequently generating great costs (Vallenilla, 2015). The emergence of permanent armies coincided with technological breakthroughs in weapons, in which troops required less training to be used, which "struck a blow to the technical advantage of mercenary soldiers" (Wauters, 2018).

Finally, Vallenilla (2015) states that the French Revolution raised the need to justify war with political objectives. As a consequence, bellicose armed conflict stopped being an end in itself and began to be adopted as a political means of the State. This had been an

important factor in the requirement to distinguish war from crime and to set a series of international norms which would define war as something undertaken only by the States for them to regulate the conduct and the treatment of armed hostilities (Vallenilla, 2015).

For these three reasons, and according to Vallenilla (2015), this transformation within war made armed conflict into one of the main means of political violence in international relations for resolving conflicts between States. This was also an effort in itself by the heads of State and government to control the wars their armed forces participated in. The change in the political, economic, and social model during what historians call the Long Nineteenth Century led to the prohibition of *mercenarism* because "it violated the basic principle of the Nation State, which grants it a monopoly on the use of force" (Santa Cruz, 2019). The use of mercenaries decreased as "States altered the conduct of war by raising citizen armies and eschewing the use of mercenaries in practice or in law" (Avant, 2000).

The findings by the research of Avant (2000) suggest that the interpretations of Enlightenment ideas and the degree to which the exogenous shock of pre-Napoleonic Europe military defeats were a catalyst to significant change molded by the strengths, ideas, and interests of domestic coalitions. Avant (2000) suggests two major themes of the Enlightenment which were important for developing a new paradigm "about the relationship between States and soldiers". Firstly, the development of the social contract. Secondly, the prestige of the natural sciences or natural philosophy. These two themes led to what Avant (2000) considers "the motif of the Enlightenment", which provided material issues to be observed and ideas about reason, nature and the development of natural law, and progress as relevant solutions and suggestions.

The way of thinking of the Enlightenment established that reason was the ultimate source of natural law. The doctrine of human and civil rights was provided and founded on the abstract reasoning capabilities of all people, which held implications for the potential for a broad range of citizenry to become officers and established new ideas about treatment of soldiers and the relationship between citizenship and service. These conceptions allowed natural law to be separated from the sphere of the State, which would be protected from the impositions of irrational absolutism of the State.

It has commonly been assumed that, by the 19th century, the social contract of the power of natural law binding the Enlightenment-era inalienable Human Rights and limits of civil

law implied the relevance of the notions of sovereignty of the political community. According to many scholars in the field such as Avant (2000), the defense of this sovereignty, which rested in the people, was an obligation held by all. Therefore, such an Enlightenment-oriented social contract implied the connection between citizens and States, which also contributed to new concerns about neutrality.

Nonetheless, the zeal for professionalization aimed at creating a military caste consistent with the portion of Enlightenment-focused ideas on reason was often in tension with the rationalization of the democratic process that informed the ideals of revolutionaries in France. Formal professionalism of efficient armies embodied by the standards and attention to merit transformed the image of the military into a new and modern entity even without having to deal with the relational triad between citizens, soldiers, and States (Avant, 2000).

Furthermore, the arming of citizens was disenfranchised on grounds of technical and political problems as well as the unwillingness of States' subjects to take up arms. (Avant, 2000). The actions of the citizens, as representatives of the State, became more important for discerning State policy and it became more difficult for heads of State and heads of government to distance themselves from the activity of their citizenry. State rulers would be held responsible to their State as criminals for any form of violence emanating from their jurisdiction if they waged war for their personal gain (Wauters, 2018). Hence, after great efforts, European States slowly cracked down on mercenary practices (Wauters, 2018) and branded mercenaries as an illegitimate means of waging war (Bharadwaj Indian Navy, 2013).

France was the first major power to experiment with a citizen army. Before the French Revolution (1789 – 1799) and Napoleonic France (1799 – 1815), the aristocracy's lack of commonality and very narrow sense of self-interests allowed the dominant policy-making coalition to implement significant military reforms based on Enlightenment ideas after the defeats of the Seven Years War (1756 – 1763) without contradicting the interests of such coalition.

In the words of Avant (2000), "France undertook more reform than other States in Europe before the Revolution because it had experienced a recent defeat in the Seven Years War and because its heterogeneous aristocracy shared little in the way of interests or ideas and

thus did not coalesce around a conservative focal point". In addition, the lack of homogeneity made the coalition silent on the issue of reforms on important issues. The reformist proposals "were also steeped in the Enlightenment with their attention to standardization and the inculcation of merit". In effect, their Enlightenment-inspired ideas did not appear threatening to the ruling coalition (Avant, 2000).

After the French Revolution, the shifting of the coalition in power left it open to the more radical changes. This country made a virtue of necessity after those in power who had constraints on reform changed. The French Revolutionary State did not financially improve in comparison to the way it had before the Revolution, yet it paradoxically used its severe material constraints and little capacity to supply its troops to its advantage. Firstly, France's lack of funds freed its military from its previous supply train and allowed greater flexible room for maneuver. Secondly, the officer corps was radically democratized, and all French male and female citizens were called on to serve their country in the war effort.

All in all, and according to Avant (2000), the French revolutionaries "had an incentive to emphasize the spirit of the French forces to enhance the legitimacy of the revolution and their place in power", as well as such revolutionaries choosing "to organize an army of citizens both because this institution would better reflect the rights of citizens in the New France and because it presented an organization with which they could fight against the old regime". In other words, the revolutionaries and eventually Napoleon had an interest in both enhancing and exerting the beliefs that the ideas and the efforts of citizen armies made the French army strong.

The interpretation of the victories of Revolutionary France as victories for citizen armies influenced the argument that a citizen army was an effective fighting tool, which in turn allowed Napoleon to foment the construction of a focal point that justifies his connection to the Revolution. The perceived success of the French citizen army during the Napoleonic Wars (1803 – 1815) laid the groundwork for material and ideational changes, including the separation of monarchical wars from the wars of the people as well as the incentive for the more democratic ideas of the Enlightenment. However, there is some evidence to suggest that Napoleon's victories resulted more from his strategy than from the will or number of his troops (Avant, 2000).

Consequently, Wauters (2018) argues that the era of the French Revolution and of the Napoleonic Wars reduced the influence, the flexibility, and the margin de maneuver of non-State actors in Europe for at least two centuries, which ended the importance of mercenaries in war. Once the new practice of domestic conditions of inaugurating its own citizenry in its armies implemented in the key State of Revolutionary and Napoleonic France produced what seemed like internationally successful and efficient outcomes, such behavior began to influence its adoption in a commonsensical manner and the disbanding of small professional mercenary forces for purely strategic reasons. In other words, internationally distributional issues shape the impact of ideas, and such interpretations affect assumptions later.

An example of this is the study carried out by Avant (2000) in which Prussia during the French Revolution pursued an alternate direction to the French. If Avant's (2001) findings are accurate, military leaders believed that mercenaries in a small professional army fought better, as they were seen as a more convenient tool of diplomacy that eased the strain between subjects and the Prussian State.

Furthermore, "the idea of a citizen army in Prussia was not universally accepted as an effective means for the State to control society" because it would mean worrying about potential revolts of armed citizenry (Avant, 2000). Nonetheless, the idea of a citizen army was promising in Prussia before the French Revolution because Prussian reformist leaders who were open to the Enlightenment ideas, even though with fewer pressing reasons to worry about reform, had greater potential because the elites have split on significant ideas.

Once a citizen army was created in France and demonstrated success against the Prussians at Auerstadt and Jena, such an army became a more appealing solution and, in the absence of a conservative focal point, interested actors had more freedom to construct a new way of thinking that valued connecting citizenship to military service "rather than the consequence of poor leadership or bad strategy" (Avant, 2000). Prussian defeats during the Napoleonic Wars "provided evidence for the belief that citizen-based armies were an effective force in modern warfare". It also bolstered the arguments made by reformists that "armies of citizens ought to fight wars in a modern Nation-State" while, at the same time, weakening "the arguments of the opponents of reform enhanced the reformers' chances for success" (Avant, 2000).

For this reason, king Frederick William III of Prussia recognized the power of the spiritual forces of ideals and acknowledged the necessity for connecting the military reformers, the constitutional reformers, and these new ideas to awaken new feelings in its citizenry. This includes improving the citizens' relationship to the State as a credible community and, therefore, empowering civilian armies with a potentially greater fighting capability. When Prussia won a battle with a citizen army in 1813, the model of citizen military as the preferred mode of organization became more appealing to reformers in other countries and enhanced the military backing of the constitutional reformist approach using the democratic ideas of the Enlightenment as a justification.

Prussia became the model for the citizen army in the 19th century since this country learnt the "lessons of the French Revolution" (Avant, 2000), making it even more likely that other countries would follow. As mentioned by Avant (2000), "the chances that a new solution would be chosen increased with the number of actors who shared ideas about why the solution should work and stood to benefit" once enacted.

Great Britain was the last major power to avoid the use of mercenaries because this country still had a general acceptance of foreigners while at conflict or during hostilities. Great Britain's defeat in the American Revolution (1765 – 1791) "was not enough to prompt reform" because responses to defeat can be traced to domestic factors, which tend to be conservative when important domestic actors share the worldview that they would benefit from the *Status Quo* (Avant, 2000). A possible explanation for this outcome may be the widespread support for a conservative focal point in Great Britain due to the dominant coalition being more homogenous in its perspective on the military and more hostile towards the ideas of the Enlightenment.

"Despite the lessons Prussia had drawn from the Napoleonic Wars, the British resisted" (Avant, 2000). It was "only as war broke out with France after the French Revolution did the British army […] institute some reforms", particularly in administrative restructurings to ease supply problems that would lead to the eventual monarchical success in the Peninsular War (Avant, 2000). However, during the Napoleonic Wars, Great Britain contracted Dutch and Swiss suppliers of mercenaries for the "many services that they [were] capable of providing" (Santa Cruz, 2019).

The immediate aftermath of the Napoleonic Wars and the end of Napoleonic France and the start of Prussia's internal preoccupation led Great Britain to neglect reforms and have relatively little interest in the Continent. Domestic political concerns that motivated Britain's resistance to reform and move from mercenaries to a citizen-based military remained until Parliament debated the British army's performance in the Crimean War (1853 – 1856) and the Indian Mutiny of 1857. Both elevated interests in military reforms among liberals, who previously opposed such changes in order to not upset the labor market and force new recruits into war.

Furthermore, Avant (2000) argues that the war and the mutiny also fomented two broad strains of military thinking in the British army. The first category, composed of the traditionalists, were very suspicious of military restructuring. The second one, composed of continentalists and imperialists, recognized the need for reform and looked to the European continent for ideas. The latter were able to promote reforms in the 1870s.

Contemporary Period: The Cold War and The Post-Cold War Era

It is a widely held view that the catastrophic effects of the two World Wars alerted the international community to limit State monopoly and external violence by limiting war first through the Kellogg Briand Pact of 1928 and then through the United Nations Charter in 1945. In addition, according to recent reports including the one by Santa Cruz (2019), the Bretton Woods agreements of 1944, which set the rules of the world monetary and financial system, demonstrates the long tradition of international institutions defining the relationships of interdependence between countries and requiring them to hand over part of their sovereignty.

The United Nations' normative and operational identity is based on the notion that such intergovernmental organization is simultaneously involved in peacekeeping and international development as well as the diffusion of international norms, making its legitimacy rely on its ability to exemplify and support widely held international principles (Bures and Cusumano, 2021). For instance, the dismal record of Human Rights and governance in many countries during the Cold War (1947 – 1991) led the international community to challenge the legitimacy of these States to manage the means of violence within their territory (Bharadwaj Indian Navy, 2013).

Moreover, and according to the Bharadwaj Indian Navy (2013), the security paradigm regarding the spectrum of war and peace during the Cold War was framed according to the prism of State centricity. Consequently, in order to discipline the citizenry while also protecting private and public property, the principal functions of State sovereignty were the establishment of the understanding and the emphasizing of the priority of the security discourse around the ideal that the State ought to organize and regulate the means of the acquisition of safety and the monopoly on legitimate violence both within and beyond boundaries.

Nevertheless, Bures and Cusumano (2021) argue that it is important to bear in mind that such norms cannot always be simultaneously adhered to when conducting peace operations. This discrepancy could be attributed to normative imperatives clashing "with both institutional and material constraints".

Furthermore, even though soldiers of fortune were made illegal in several countries after the emergence of regular permanent armies after the Westphalian Treaties and the supervisory aspect of the United Nations, they reappeared multiple times afterwards during the 1960s and in the 1980s under various guises (Wauters, 2018). All through the Cold War, much of the homogenized standard operating procedures were not able to be developed because the framework divided along ideological lines and between the Western and Soviet military industrial complexes primed the needs of the States of arming themselves in accordance with the self-help security paradigm (Bharadwaj Indian Navy, 2013).

Authors who analyze the historical setting of contemporary private military and security contractors generally place an emphasis on the promotion of "national self-determination and decolonization as a key part of the United Nations' agenda during the Cold War" (Bures and Cusumano, 2021). According to Bures and Cusumano (2021). Anti-soldiers of fortune norms offered a new opportunity to attack Private Military and Security Companies and place restrictions upon them concerning State neutrality, autonomous sovereignty, and freedom of movement.

Nonetheless, this norm was not as strong as its supporters suggest. The Cold War offered a geopolitical framework that favored the action of private military and security contractors because, given the impossibility of a direct confrontation to avoid the use of

nuclear weapons, the indirect nature of the hostilities between East and West caused clandestine actions to be generated, especially in zones where decolonization was being pursued (Villamizar Lamus, 2014).

If Wauters' (2018) findings are accurate, private military and security groups which operated in European colonies after the Second World War (1939 – 1945) were hired by governments and business interests to carry on secret operations. These new corporatist troops in private armies of fortune are considered as the "new protagonists" that coordinate with domestic armies and with multinational companies in "*strictu sensu* armed conflict[s] as in later periods" (Cano Linares, 2008). The strengthening of links between the *military industrial complex* and developed States in the post-Second World War era played a significant role of the military-market mix in the non-aligned counters of the Third World (Bharadwaj Indian Navy, 2013).

Moreover, some evidence by Nebolsina (2019) that can exemplify this is the United Kingdom, which was the first country in the 1960s to engage without involving national armed forces against the then newly formed government in Yemen, which had come to power because of a *coup d'état* that overthrew the ruling monarch, without involving national armed forces. This led to the involvement of private military and security contractors in the conflict to restore the monarchy as the legitimate power and the emergence of Watchguard International, "the first Private Military and Security Company" (Nebolsina, 2019). Paradoxically, both the United States and the Union of Soviet Socialist Republics simultaneity recognized the new regime.

As this case very clearly demonstrates, it can be argued that the 20th century saw private military and security contractors once again becoming the protagonists of conflicts, particularly in the various confrontations in the so-called Third World and especially in the immediate dismemberment of the European colonies during decolonization as it resulted in the creation of a power and stability vacuum (Villamizar Lamus, 2014). This can be illustrated by the weak social and government institutions and the lack of regulation put the Latin American's market of security services in a gray or even illegal zone. Additionally with a similar case in Africa, Nebolsina (2019) identified Private Military and Security Companies' heterogeneous nature, which can be seen with the growth in the number of business-minded contractors partly due to the States' inability to provide security on their own.

While the legal consequences of participating in activities as "soldiers of fortune" during these years were multiple, their legality did not yet exist (Peñate Domínguez, 2018). Peñate Domínguez (2018) lists the main features and aspects of the presence of the soldier of fortune in Africa after the 1960s the use of Private Military and Security Companies and of Quasi-Mercenary Organizations.

Firstly, the so-called Congo Crisis (1960 – 1965) became the contextual background for a new form of *mercenarism* that would propagate throughout the continent over the following decades. After the end of the hostilities that also ended the massive use and involvement of private military and security contractors in Congo, the soldiers of fortune began to look for other scenarios in which to be employed.

During this time, such companies composed of combatants had an internal structure and disciplined authority very similar to that of the bodies of domestic armed forces that they tried to emulate (Peñate Domínguez, 2018). However, in order to hide their soldierly nature from international scrutiny, many private military and security contractors posed as companies of another nature and, in such cases, Peñate Domínguez (2018) argues that "heterogeneity" would define the professional profile of the private military and security contractors of the period between the sixties and eighties of the 20th century. Therefore, such combatants for hire were employed as clandestine forces in charge of carrying out the work in which their clients did not want to be directly involved.

In general terms, this permitted that, when former metropolises accepted the self-determinism of their African and Asian colonies and released them during the second half of the 20th century, governments of former colonial powers found it easy to disassociate themselves from private military and security contractors and deny any relationship with them because they were not hired by conventional nor public means. The self-styled "volunteers" enjoyed an "ambiguous reputation among the States from which they obtained their human raw material", authorizing some soldier of fortune leaders to launch "real advertising campaigns with the aim of winning more men for their cause" (Peñate Domínguez, 2018).

Secondly, the Cold War encouraged the rivalry between the two blocs to gain spheres of influence in Africa, "a continent of great geostrategic importance and abundant in natural resources" (Peñate Domínguez, 2018). The prevailing political trend was right-wing,

which motivated some combatants to offer their services to any government or group that had a strong anti-communist or openly hostile attitudes towards the Soviet Union.

In addition, the leading roles of the activities of the "volunteers" of the time were former professional citizens of developed countries, most of them with an imperialist tradition. For this reason, the demand of war professionals by the world's leading powers who considered themselves anti-colonial did not reduce the colonial mentality that was ingrained amongst those individuals who partook in such conflicts.

Bures and Cusumano (2021) argue that, since the 1960s, and under the importance of the right to non-interfered political status and sovereignty, soldiers of fortune were explicitly labeled in the United Nations General Assembly's as agents against popular liberation movements and self-governing States. The normative opposition of bands of private troops resulted throughout the 1960s and 1970s the adoption and the enactment of several resolutions by the United Nations Security Council and the United Nations General Assembly criticizing soldiers for hire, such as referring to mercenaries as "outlaws" and condemning or even criminalizing States that permitted the recruitment or financing of soldiers of fortune. As mentioned by the Bharadwaj Indian Navy (2013), the United Nations passed resolutions in 1967 and 1989 against private military and security contractors.

Notwithstanding, responsibility for many of the violations that occurred were exclusively with the contracting entity. The States in which the Private Military and Social Company had its base of operations had the obligation to only supervise and control the activities in which these companies interfered. These types of international protocols presented the inability for the International Criminal Court to judge State members that have not adhered these norms, as the application of such resolutions mostly regulated to international conflicts.

Therefore, States with a "tendency to generate and host this type of business initiatives" had begun to implement their own legislation that was respected by the international community (Peñate Domínguez, 2018). This is evident in the case of the Convention of the Organization of African Unity for the Elimination of Mercenarism (1977), which introduced for the first time in Africa the concept of "*mercenarism*" as a crime against peace and security in Africa. This convention is characterized by prohibiting both

mercenaries and their activity and establishing obligations and responsibilities of the signatory States "in terms of prohibition, prevention and judicial prosecution of military actions related to mercenaries" (Ibáñez Gómez, 2009).

Finally, the fall of communism as an economic model ended the rivalry of the main powers and accelerated a demilitarization process in both ideological blocs. The proliferation of conflicts during decolonization, which were originally rooted in ideological causes, evolved into having a role based on economic reasons, which reduced the urgency of military initiatives for political reasons and left many private military professionals unemployed in many countries.

This abrupt transformation and interruption of foreign State presence on the African continent transferred conflicts from an international scale to a local one, "generating a new type of globalization in which private initiative played a fundamental role" (Peñate Domínguez, 2018). The internal regional, State, and local conflicts derived from the collapse of the Union of Soviet Socialist Republics paved way to the changing of the world order into the era of privatization, which emerged on the winning side.

The dynamics of the provision of public services for armed conflicts by private agents consequently took place in countries classified as "failed States", where the State lost the monopoly on the use of force and for which local actors who felt that they had the ability to dispute their power emerged. These are the so-called *new hybrid wars* (Santa Cruz, 2019). These armed hostilities have a warlike environment with irregular formations that are not easily identifiable, making internal conflicts expand in complexity and become a business in a global multipolarity. Within this context, attacks against Human Rights and other acts of violence on a large scale by States or organized armed groups have objectives associated with identity politics and the obtaining of natural resources and not necessarily related to political-territorial or ideological disputes (Santa Cruz, 2019).

It is believed by authors such as Vallenilla (2015) that, within the premise of the disintegration of the State, these new low-budget wars emerged at the end of the 20th century are related to the promotion of the disappearance of public institutions and administrations. The political objectives of the new forms of violence are based on the struggle to replace the fragmented State power and its monopoly on violence by claiming

inalienable labels or identities imposed through political violence against the civilian population.

Consequentially, this increases the State's inability to exercise its control over violence under the protection of the law and to provide welfare to the population. Therefore, and as Vallenilla (2015) argues, through the promotion of distinctions in a society or in a State, identity politics "cement new sectarian identities that undermine the sense of a shared political community and create dividing lines" and, thus, emphasizes legitimate and criminal violence.

The emergence of many local conflicts after the end of the Cold War increased the demand for Private Military and Security Companies' services to restore both stability and order at the local level and for such business to actively enter the markets of those countries which required their assistance (Nebolsina, 2019). In situations where foreign forces interfered in internal armed clashes, international organizations also began to use private contractors founded on security and military services for peacekeeping and humanitarian operations (Nebolsina, 2019).

As a result of the change of the motives of hostile proliferation during the last quarter of the 20th century, States began to experience serious "difficulties in mobilizing their citizens without raising public protests" and such demobilizations in domestic armies "were the main source of human material supply to the Private Military Companies" (Peñate Domínguez, 2018). This is a significant contributory factor to the development of a series of legislative documents to regulate the use of private military and security entities in both the international community and the different States in which these companies are registered or originate.

By the end of the 20th century, the soldiers of fortune had lost a large part of their freedom and ended up joining a network of interconnected and highly complex economic conglomerates and enterprises that included all kinds of companies dedicated to different functions, acting as their armed wing for finances, personnel, offensive operations, air and logistics divisions (Peñate Domínguez, 2018).

Having discussed Peñate Domínguez's (2018) main features and aspects of the use of Private Military and Security Companies and of Quasi-Mercenary Organizations after the 1960s, this paper will now move on to discuss that the multiple privatization changes

starting in the late 1980s due to the collapse of the centralized systems of the Warsaw Pact. The progressive dissolution of the Soviet Union has been announced as a justification of the superiority of business over government. This coincides with the "geoeconomical order" replacing the "geopolitical order" (Wauters, 2018).

According to Scott-Smith and Janssen (2014), this trend towards privatization of military and security, ranging from the provision of logistics and supply to the utilization of armed units, has spread across democratic States since the 1990s. Initial observations appear to support the assumption that, in view of the trends included under the umbrella term *globalization*, any renewed nationalization of politics at the global level would have the desired success only if elites capable of resisting corruption came to power in these States but, taking into consideration the developments currently being observed, this seems a rather unlikely prospect mainly because it occurs at different speeds.

Gallino (1978) suggests that globalization is "a process comprising States, international organizations, and multinational economic groups […] acting systematically with the aim of expanding the market economy to the totality of the globe" and within "different regions and societies". However, by contrast, even though there is some evidence that globalization may affect nationalization, there is not yet a strong and clear link between both variables. Rather, in the literature, instead the association of military and security privatization with the intended and unintended effects of globalization *per se*, the transforming States under the principles of the ideology of neoliberalism seems better suited (Wauters, 2018; Bharadwaj Indian Navy, 2013).

According to Wauters (2018), the Neo-Liberal Doctrine concerning the dissipation of coercive means between private and public groups and individuals laid the ground for the political support and the intellectual structure which allowed the extension of neoliberal ideas concerning the privatization of armed services and of the military industry. The arrival of the neoliberal State and the outsourcing of public functions by the monopoly of violence have allowed the birth and growth of armies nearly entirely made up of volunteers tasked to follow an entrepreneurial approach logistically avoiding controversial incidents by relying on multilateral coalitions and usurping traditional roles and dynamics.

The Bharadwaj Indian Navy (2013) argues that the revolution in the economic, political, and social environment of the post-Cold War international security system stems from the privatization of national security and military affairs due to the rapid rise in several private military companies and services, which impacts civil-military relations. This new fungibility, which refers to the degree of interchangeability of power, is a new complexity in the balances of power based on economic assets that transformed into military threats, making economic power more threatening (Wauters, 2018).

The post-Cold War shift in international political economy dictated by a neoliberal globalization blurs the line that separates the public-private gap (Bharadwaj Indian Navy, 2013). The hierarchical model of Western Private Military and Security Companies reflects the neoliberal division of work, where Private Military and Security Companies begin to be subsumed in broad commercial structures, forming part of a vast network of services that gave them autonomy (Peñate Domínguez, 2018). The private contractor does not retain collaborative nor professional identity as they have no responsibility to defend the country, nor remorse confessing that fiscal gains is their primary objective (Wauters, 2018).

This shift towards the privatization of security contests many of the beliefs based on the State monopoly on legitimate violence, changing the definition of war and the concept of national security. Within this context, Bharadwaj Indian Navy (2013) defines "sovereignty trap" as the issue of privatization of security directly imposed on the sovereignty of the State, where there is a close link between the public administration's verdict of security and its relationship with the Neo-Liberal Agenda.

Nebolsina (2019) argues that, during the mass mobilization of resources and means to fight in the Global War on Terrorism started in the early 2000s, the public-private partnerships after the privatization of various spheres and the "transfer of a multitude of functions at various levels to contractors" has evolved into a new phase in the development of the Western Private Military and Security Companies market. For example, during military campaigns in Iraq and Afghanistan as well as the military campaigns in Syria and Iraq against ISIS, the government of the United States of America transferred logistics functions to Private Military and Security Companies. They have bolstered this trend.

This section has attempted to provide a brief historical overview of the practical use of private actors within the industry of security and of the military, and within the monopoly of violence. In summary, non-public combatants and non-combatants are as old as war itself but, as aspects and effects of hostile armed conflicts and hostilities, they have evolved accordingly. Classic mercenaries and other types of soldiers of fortune originally used to support legitimately recognized governments with serious military shortcomings, as well as secessionist and insurgent movements. Nowadays, the private security and military industry only legally and publicly accepts contracts from legitimate entities. It is now necessary to explain the theoretical approaches of such cooperation and coordination with contractors. This will be provided in the following sections of this chapter.

Terminology

Having once discussed the evolution of soldierly businesses and the historical course of such entities, it is appropriate to conceptualize the privatization of security as a phenomenon in which the power of decision-making and intervention in security is outsourced on a global scale. Although differences of opinion still exist, there appears to be some agreement that "*mercenarism*" has historically been used to describe the direct participation of a foreign group in armed conflicts abroad while for a lucrative goal. A serious weakness is that, although the term "mercenary" is a commonly used term in the studies of security and international relations, it is a concept difficult to define precisely.

Therefore, descriptions by more contemporary organizations are based on the formal definitions used in international conventions and regulations such as the Montreux Document, the United Nations Human Rights Council's Working Group on Mercenaries, and the Geneva Conventions of 1977. These outline the emergence of private military and security corporations as private businesses that provide specialized services related to military action and/or armed guarding or protection for lucrative gain. This definition, even though the most precise produced so far, is in need of revision since it is inadequate for three main problematic reasons.

First of all, and according to Bures and Cusumano (2021), 21st century private military and security companies should not be considered mercenaries. According to Riemann (2020), the reason for this is that assuming or associating ideas, identities, and categories of modern accounts of the statist political community and of self-interest with the

phenomenon of the transhistorical figure of the mercenary would be incorrect because the definition can vary according to geographical situations and will continue to evolve throughout time.

Secondly, and paraphrasing Bures and Cusumano (2021), modern private military and security business, which are corporations that try to promote a differentiation between military forces and security services, avoid the restrictions of the regulatory scope of lucrative interventions in conflict by exploiting their definitional vagueness of the norm. The obfuscation of the clear understanding and nature of soldiers for hire and the private industry of security and military contractors shows a need to be explicit about exactly what is meant by the word "mercenary". Otherwise, the "mercenary trap" will link such companies to mercenaries without any justification, challenging the definition of both concepts, their extent and their impact, and their regulation (Gumedze, 2008).

Furthermore, the Geneva and Hague Conventions are based on differentiating combatants from the non-combatant civilian population as a fundamental distinction. These distinctions are important to determine the legal status of personnel operating in zones of armed conflict and to minimize the purpose of recruitment.

However, this dissimilarity has not escaped criticism by academics. Cano Linares (2008) questions the usefulness of such an approach, casting doubts on the assumptions of these Conventions. The differences within these international agreements fail to resolve the contradiction that exists given that some members of the Armed Forces are considered non-combatants, such as medical services that enjoy a special status (Cano Linares, 2008). This blurs the radicality of the distinction by differentiating between the legality of combatants versus those underdeveloped troops who illegally participate directly in hostilities or those civilians with a presence in military objectives.

Within this premise, definitions previously provided do not outline nor describe the motivation of many non-governmental entities engaged in combat or support functions, primarily because incentive is very difficult to verify. For example, even though these private contractors regardless of the category they form part of, are globally recruited to work for the profit-driven pursuit of commercial purposes of their multinational company, certain combat provider organizations maintain that they are fighting for a particular

cause such as for their country's interests in order to avoid the charged labels that tend to have universally negative connotations (Salzman, 2008).

Private contractors, organized according to corporate structures, can also classify the use of their services as them being recruited to fight in a specific armed conflict and meeting the requirements employed by legitimate States (Salzman, 2008). According to Salzman (2008), the differences between combatant and non-combatant private contractors who offer military and security services are often "blurry" or "fuzzy" because they perform a wide range of functions and roles. Furthermore, the nature and scope of the corporate hierarchy of private firms that offer military and security services is not covered by existing anti-mercenary international law, "which regulates individuals who sometimes group together on an *ad hoc* basis" (Salzman, 2008).

Taking into account these issues, Jezdimirovic Ranito and Mayer (2020) observe that "acceptance of vocabulary equalizing mercenaries with private military and security companies" and the "legal gap preventing non-State combat providers from identification as mercenaries" present ineffectiveness and irreparable damage to the anti-mercenary stance, especially when including the "lack of consequences" of "genuine mercenary-like activity" when it comes to both domestic and international laws. For example, since the Geneva Conventions defines a "mercenary" as someone who is independent of any State and whose motivation to partake in hostilities is for the promises of private gain and material compensation, such a vague international legal definition of "mercenary" permits private security and military contractors to never be found to qualify as such (Salzman, 2008).

This results in a deliberate confusion that undermines the legitimacy of properly regulated organizations and institutions, such as limiting the access to responsible accountability in military and security support and services and, at the same time, not doing enough to counter the proliferation of actual cases of alleged mercenaries. Therefore, establishing a clear definition will allow the categorization of entities within the existing international legal code and defining policies for dealing with them.

Gumedze (2008) argues that, since there are no specific considerations concerning private security and military companies within the legal outlines of the protection of individuals amid armed conflicts and other types of hostilities, the label that must be attached to them

must be decided on a case-by-case basis. In any case, while a variety of vague definitions of the term "*mercenarism*" have been suggested, the term used in this academic research when discussing "Private Military and Security Companies" will be referring to those *private corporate entities subject to applicable national regulation and international law while also being motivated by private compensatory gain to partake in hostilities in services that include maintenance and operation of weapons systems, detention, and advice or training*. In addition, this definition will be irrespective of how such companies describe themselves or by which natural or legal persons they are hired for.

Bures and Cusumano (2021) and Salzman (2008) argue that there is a distinguishable difference between an offensive use of military force in combat whose services are more focused on armed struggle and the provision of defensive security services focused on the protection of civilians and their property. Isenberg (2006) also mentions that there exists a difference between military logistics services firms (such as Blackwater) and private sector firms carrying out a variety of military and security missions.

According to Ibáñez Gomez (2009), private firms within the sectors of privacy and security that provide such services are playing an increasingly important role in providing a variety of services. They carry out combat activities, operational and logistical support, and military advice and training. This includes offering crime prevention services, as well as supplying both weapons and intelligence. Once the monopoly of violence is outsourced, these firms are contracted by State governments, the Armed Forces or Defense Ministries, multinational companies, humanitarian agencies, and peacekeeping organizations.

This are the reasons why Isenberg (2006), Salzman (2008), and Ibáñez Gomez (2009) suggest the dividing of Private Military and Security Companies into three different categories.

First, *Military Combatant Firms* are those businesses which provide military forces capable of engaging in actual combat, such as combat units or specialists. However, the trend in which these types of corporations receive the most publicity has been vigorously challenged in recent years by several writers in the field as they only constitute a minority of such firms (Isenberg, 2006). An example of this type of private organization is STTEP International, registered in the British oversee territory of Gibraltar.

Secondly, *Military Consulting Firms* are characterized by traditionally offering services that support military training and advisory recommendations but have recently expanded to provide personal protection and bodyguard services without participating in combat. These services are "integral to the operation and restructuring of the client's armed forces" (Salzman, 2008). This type firms range from the Spanish Prosegur Compañía de Seguridad to the Turkish Uluslararası Savunma Danışmanlık İnşaat Sanayi ve Ticaret, amongst others.

Finally, *Military Support Firms* are those companies that "provide nonlethal aid and assistance" (Isenberg, 2006), including "all those services that are not part of the central nucleus of the activities of the Armed Forces" (Ibáñez Gomez, 2009). According to Salzman (2008), these "logistical, technical, supply, and support" firms are the largest grouping. Examples include the American Kellogg Brown and Root and Raytheon Technologies Corporation, as well as the British International Intelligence Limited.

In addition, this paper will also use the definition of "Quasi-Mercenary Organization" suggested by Jezdimirovic Ranito and Mayer (2020) to refer to any commercial organization "not formally integrated into the armed forces of a State, the services of which include military combat operations and which directly participate in hostilities […] where accountability under [law] may be unclear, non-existent, or denied by sponsoring entities". This ambiguity is partially due to the fact that these establishments may not be registered or licensed as business or corporate entities.

In order to better understand the differences between Private Military and Security Companies and Quasi-Mercenary Organization, there must be a brief return to the issue of regulations especially seen throughout recent history. Within the context of the historical legislative development, a comparison between Russian non-governmental entities engaged in hostilities and Western-type private military and security business can be established.

Western Private Military and Security Companies are registered legal entities circumscribed by the commercial and other applicable laws of their State of origin, of the State where they conduct their operations, and of the State that contracts their service. In other words, they are legally accountable. Existing conventions aimed at restricting Private Military and Security Companies include the United States' regulations that

specifically prohibit contractors from engaging in or directing combat operations (Jezdimirovic Ranito and Mayer, 2020).

In contrast, even though official Russian statements regularly equate Russian organizations with Western contractors, differences between Western and Russian private security and military establishments include accountability, oversight, and regulation (Jezdimirovic Ranito and Mayer, 2020). Russia's non-State military related services providers share similarities with Western contractors (such as Dyncorp, Lockheed Martin, or Academi) or non-Western companies (such as the Chinese Frontier Services Group) as they train and advise security forces and ministries in topics and themes regarding defense and internal security, particularly site security for extracting natural resources and guard government officials. However, Russian Quasi-Mercenary Organizations are not formally registered corporations and, therefore, "fall into a legal gray area, neither being covered by Montreux and the various initiatives that derive from it nor by other international efforts to counter mercenary activity" (Jezdimirovic Ranito and Mayer, 2020).

As mentioned by Jezdimirovic Ranito and Mayer (2020), the use of the term Western-type Private Military and Security Companies to address Russian Quasi-Mercenary Organizations without acknowledging their difference may cause serious damage to vulnerable regulatory measures limiting Private Military and Security Companies in military operations put in place during the last two decades, nullify progress accomplished in the professionalization of Western-styled organizations, and restart the debate regarding the legitimacy of Private Military and Security Companies.

This chapter has demonstrated that the term "mercenary" is a term employed when referring to foreign combatants who have fought for lucrative goals in hostilities. As argued by Riemann (2020), *mercenarism* is "its own existence, grounded within itself". The 20th century marks the starting point of the establishment of a new world order based on a globalized international community, under the banner of United Nations, which attempts to prevent aggression and conflict. With the objectives of avoiding ambiguous vagueness, this new institutional framework has introduced a series of international guidelines and protocols to regulate "pay-to-fight" soldiers and non-combative partakers in conflict, which has set into motion the differentiation between participants in armed and safety situations and quasi-mercenaries.

Approaches

Paradigms

After defining what is meant by military-based and security-oriented private organizations and contractors, it is now necessary to mention the various theoretical attitudes towards the ideals and hypothesis of such companies. In this context, it is crucial to discuss the series of approaches and different points of view to understand the frameworks related to Santa Cruz's (2010) statements on the correlation between the decline in the militarization of armies and the increase in private security by hiring non-public companies to comply with the obligations of the national defense and security forces.

The theory on the different perceptions has distinguished and developed several taxonomies regarding the paradigms of knowledge regarding private industry of military and security services. Therefore, in this research, the models applied through methods and patterns will be classified into four categories. First, Rationalism and Neo-Realism. Second, Liberalism and Neo-Liberalism. Third, Network Security Governance. Fourthly, Securitization.

According to Rationalist approaches, what determines behavior is the power structure of the international system (Baldwin, 1993) and, thus, the struggle for power and peace is the reason for the "being" of States because they seek to maximize their power. Therefore, the State should be the center of security and the standard setter in a world characterized by self-help. The only way to defend security is the development of military measures and all other institutions are only important because they facilitate the promotion of benefits. The objective of institutions and discourse is to establish economic interactions and structures for economic growth. Therefore, the main objective of Rationalism is to obtain economic benefits generated from institutions or power, and not necessarily to create identities or establish other types of factors (Vasquez, 1998).

Paraphrasing Waltz (2010), in the paradigm of political Neo-Realism, which adds to Rationalism, the search for security is what moves States. The power structure of the international system is based on not having a supranational law that regulates all social life, on having material differences, and on having legal equality. According to Nebolsina (2019), security and military contractors within private industry are viewed as a new

strategical tool within this anarchic yet hierarchal international structure. Their use by States allows countries to promote diplomacy based on force as a means of protecting and promoting their geopolitical interests. This allows public administration to create an illusion of the absence of the regular army personnel on the territory of other countries and not jeopardize the lives of the armed forces.

In contrast to Rationalism, the Liberal paradigm assumes that decision-making is not influenced only by the interests of the State (Nebolsina, 2019). It recognizes the important role of international institutions and various non-State entities which cooperate to improve policy implementation and collective security. The effects of the interdependence of institutional relationships establishes more patterns and more control, which reduces subjective insecurity and violence. However, this does not mean that there will be no armed conflicts.

The worsening of the international economic situation in the 1970s inspired major countries in the developing world to begin to reform their defense sector to prevent any coercion by foreign arms exporters who seemed to be denying certain crucial technologies which could be used for both protection and peaceful applications (Bharadwaj Indian Navy, 2013). Nonetheless, as previously indicated, starting in the late 1980s, the Neo-Liberal Model was based on the "almost absolute market freedom animated essentially by the desire to obtain personal profit" (Cano Linares, 2008) and has presented certain facts supporting the superiority of business over government by focusing on the privatization of public goods and services, as well as the outsourcing of public functions.

As a consequence, "private military companies began to be included in broad corporate structures", making these firms appear like any other company situated in a vast autonomous network of services monopolized by the same services they are capable of providing (Pañete Domínguez, 2018). Nevertheless, Nebolsina (2019) acknowledges that, even though the existence of the diversity and of the number of new non-State actors within a chaotic continuation of liquid modernity, such entities exist in connection with States, and they should be integrated in the additional forces of the security system.

The methodological body of the theoretical corpus of Network Security Governance analyzes the relational ties connecting actors establishes a context in formal organizations, institutions, and structures systems (Nebolsina, 2019). In other words, it

investigates actors and relationship between members in a socio-contextual system, concentrating on the social environment and *ex-ante* defined systems. It therefore helps with the assessment of relations amongst individual actors in collective groups by identifying the associations which exist between them.

According to Nebolsina (2019), Network Security Governance focuses on cross-border and transboundary networks of activities connecting multiple local processes, actors, and settings. The set of relationships inside the changing decentralization of the State's positions in the sphere of security governance challenges the conventional views of power in international relations because the fragmented but overlapping networks denies sovereign exclusiveness of the role of States and implies an acceptance of the conflicting heterogeneous nature of interests.

Erbel (2016) holds the view that the interaction of a complex set of actors who network in certain domains or subsystems regarding a particular policy issue or policy process may usually "display a prominent selectivity". The composition of such policy networks and groups, "whose membership and structure are heavily influenced by factors such as security", are defined by their resources, which include legal authority to make binding decisions (Erbel, 2016). Resources are dispersed amongst a range of State and non-State actors who must coordinate their efforts in order to resolve common problems, especially since each actor has certain network power to influence other participants' activities by enhancing and exploiting their network positions.

Those who decide either what is a threat and how to defend against it or what to protect and how to carry out the defense correspondingly define and characterize an issue, field, or group as a reference object of security or threat. Therefore, Securitization is relevant in this case as it studies the context that leads to the process of assigning the status of a security threat and its politicization (Nebolsina, 2019), that is, it is the background and framework which identifies "enemies" and their politics.

The definition of a security issue allows for exceptionalities, for sensations of emergency, and for secrecy that is not necessarily legal. Some technify the security process, turning it into something very specialized and arbitrarily separating it from politics and the interests of the population. Actors such as States, the press and media, social networks, international organizations, and non-governmental organizations are included in this

process of Securitization. An example of this trend can be traced to Russia. By securitizing the problem of fighting terrorism in Syria, Russia intensified its armed operations by launching large-scale joint Russian-task military exercises (Nebolsina, 2019).

When it comes to Private Military and Security Companies, they have an interest in establishing a military approach to security and creating threats to obtain economic benefits. The evidence presented by Davitti (2019) supports the idea that Private Military and Security Companies which provide border security and migration control services "contribute to the framing of irregular migration as a security threat which can only be addressed through emergency-driven military responses".

This is exemplified with these firms' framing and symbiotic relationship, shaping and accelerating the securitization of the European Union's border and migration policies. The involvement of "private non-state actors […] in setting the priorities of the European Union's defense and security research agenda" also includes the implementation and establishment of "militarized responses" towards migration by the European Union through the European Agenda on Migration in a way that the private contractors "become almost indispensable to the practical development […] of such policies" (Davitti. 2019). Within Davitti's (2019) purposes of analyzing businesses and human rights, the consequence of Securitization of migration control in fragile contexts and the re-conceptualization of the development of the European Agenda on Migration's policies increases the risk of Private Military and Security Companies' "involvement in violations of international law".

De-securitization is a political process wherein the extraordinary measures caused by securitization are downgraded, while re-securitization concerns the procedure where an issue that has been previously de-securitized faces a series of new circumstances that renew the urgent engagement from the political elites. According to Jezdimirovic Ranito and Mayer (2020), "the issue of mercenaries has been securitized in the past, using the United Nations and other international and regional organizations".

The adoption of international conventions and their immediate soft outcomes de-securitized the anti-mercenary norm because such legislations established a legal framework allowing prosecution of the possible infringements through both international

and domestic courts. However, the United Nations re-securitized the process of Private and Military Security Companies' activities from a terminological and regulatory standpoint.

Political Rationale and Discussions

According to Cano Linares (2008), since the last decade of the 20th century, there has been a process where the multilateral mechanism of the collective security system is delegated to the State, which is an actor subject to privatization "in favor of private companies". Paradoxically, Lynch and Walsh (2000) argue that "the internationalization and marketisation of organized violence acts against […] the interests of the State in defending and further articulating its institutionalized systems of control" is "inconsistent with the logic of the modern system of sovereign Nation-States".

Therefore, in order to better understand how the tendency of the involvement of private contractors in conflicts may lead to dangers in security, Salzman (2008) lists the prioritization of these firms' "desire for private profit over the public's desire for security", the threatening of States' monopoly on the use of force, and the undermining of democratic governments as the major features or perceptions of private providers of security and military forces.

First of all, Salzman (2008) argues that, like any other corporation, Private Military and Security Companies work for the shareholder. Furthermore, private contractors do not have the necessary incentives to "encourage the resolution of conflicts that motivated their hire in the first place" and "sometimes remain in a country after the conflict […] has ended" (Salzman, 2008). This includes situations where governments have paid for the contractors' services for the protection of certain assets during a conflict, but such firms retain their militarized presence after their contract has ended.

This happened in Sierra Leone and the private military contractor Executive Outcomes, which established its militarized presence that "destabilized the already vulnerable country by creating a parallel force that ultimately became a challenge to the national army" (Salzman, 2008).

Secondly, Salzman (2008) highlights that the United Nations relies on the theory that force is used in the last resort by a sovereign State, an actor answerable to the United

Nations for their actions. However, Cano Linares (2008) adds that neoliberalism, which has been able to spread through the contemporary era by infiltrating globalization, has reached the monopoly of the use of the armed force of the State.

As previously mentioned, the periodization of private goods over public goods when it comes to security will transform it into a commodity not affordable to all. Cano Linares (2008) expands on this idea by stating that security as an unequally distributed good is a risk that has its foundations of the transformation of the State's role when it loses its monopoly on violence. The defiance the States' monopoly on the use of force by providers of security and military services disruptively breach one of the main fundamental features of the modern Westphalian Nation-State system. The private military market is sufficiently unregulated for private contractors working both for statal systems and for criminal organizations that oppose States. Salzman (2008) uses the Colombian conflict as an example of hired private soldiers fighting on both sides.

The enigma of the "spirit of corp-oration" (Santa Cruz, 2019) is based on the fact that, since these companies are not part of a State, the clarity as to which belligerent side their elements belong to is unclear. As a result of the creation of a market for violence where troops become a clear purchasable alternative, the use of private contractors and soldiers who provide security and military by democratic States de-privileges "the role of the State as the primary protector of its citizens" (Salzman, 2008).

This generates complaints regarding the training, financing, recruitment, and use of paid soldiers (Santa Cruz, 2019). The emphasis on the public's distrust of soldiers for hire entrenched in the perception that they violate the State's collective monopoly on the use of force is one of the reasons that "led to the international condemnation of mercenaries beginning in the 1960s" (Salzman, 2008).

Finally, the two formerly mentioned factors and features result in undermining a wide range of democratic movements whose goals include the "redistribution of resources and power" (Salzman, 2008). By hiring these private companies in armed conflicts where governments have interests or want to intervene by deploying auxiliary forces, the executive branch declares war without democratic restrictions, such as avoiding parliamentary controls (Cano Linares, 2008). Paraphrasing Salzman (2008), the private military industry threatens and undermines democracy, accountability, and popular

sovereignty because private contractors operate in the shadows of public attention by circumventing popular disapproval.

As stated previously, military and security companies, which have characteristics that allow them to be distinguished from a variety of historical actors, intervene in direct or indirect support of armed conflicts with different or diverse objectives or purposes and without giving priority to any of the contingencies in combat. Regarding the personnel of the military and security industry who are providing their services directly in zones of armed conflict, there is a plurality of regimes which have the potential for some obscurity to persist during said participation in hostilities. This includes a range of personnel, fluctuating from those who observe the norms of International Humanitarian Law and those illegal combatants that lack statutes participating in diffuse areas.

Working for Military and Private Security Companies is not in itself a violation of Humanitarian Law nor a crime according to the Statute of the International Criminal Court. Isenberg (2006) argues that "the Geneva Conventions and other laws of war do not […] forbid the use of civilian contractors in a civil police role in occupied territory." Likewise, and according to García Segura (2015), since most of the acts committed by private military and security contractors take place in contexts of armed conflict, the applicable legal framework should be International Humanitarian Law and International Public Law.

However, "the existing instruments and regulations are not precise enough since they respond to the needs of other historical moments and other problems" (García Segura, 2015). The ambivalent and confusing phenomenon of contract soldiers as new corporatist mercenaries in private armies of fortune often cause contractual problems with their ambiguous legal statutes on aspects of responsibility and transparency in management, which makes it easier for the State and non-State actors to commit legal breaches "considered as clear violations of Human Rights by the international treaties on the subject" (Cano Linares, 2008). Although not necessarily desired, national security objectives encourage the consideration of such abuses of international legalities as mere collateral damage (García Segura, 2015).

It should be noted that the transgression of violations of fundamental rights and breaches of regulatory standards is much more serious considering that the private security and

combat industry connects its abusive practices with lucrative businesses. Peñate Domínguez (2018) asserts that the worsening of the quality of respect for Human Rights comes from the decrease in the quality of contractors because, due to the negative connotations of (publicly) hired soldiers and the changing market opportunities, companies in the sector have lowered the recruitment threshold in order to increase the offer. Furthermore, the corporate competition for contracts produces the temptation of resorting to unethical means to have clients (Isenberg, 2006). An exemplary case of the combination between the violation of rights and the business cycle is what happened with the treatment of the prisoners in Abu Grahib.

Therefore, the range of private military and security services, increasingly varied and covering a wide segment of conflict participation, implies that specific and appropriate responses are required. Nevertheless, García Segura (2015) argues that the clients of the private military and security industry have no interest in determining responsibility or in punishing the criminal acts committed by the companies that provide said service because they help them achieve the desired objectives under a hidden agenda.

Moreover, according to Isenberg (2006), the governmental agencies which are charged with monitoring as neutral regulators or judges are "too few, too little trained, too overburdened in terms of contracts […], and kept on the job too little time to gain the experience they need". For this reason, political connections with government officials are important for Private Military and Security Companies, which act as associative interest groups aimed at exercising pressure and influence as well as being able to network broad interests.

This role of lobbying public institutional administrations and bureaucratic systems through specific communication know-hows can be observed with "current or former" governments of the United States (Isenberg, 2006). Lobbying also often contradicts transparency[2]. The wide-spread tailored need for transparency, a democratic principle which ensures the citizens that they are able to assess how the governments and parliaments behave and act, provides the basic understanding as well as additional informational between law and justice, including the presentation of information in a clear and easily accessible language and in a clearly meaningful overview. Nonetheless,

[2] All information regarding transparency is based on notes from the 2022 lecture *Law and Data* thought by Elisa Spiller and Andrea Pin.

transparency will be challenging when scrutinizing and evaluating the relationship between the State and private actors.

So far, this chapter has discussed the many adverse characteristics of the private industry of the service provided by military and security contractors. Paraphrasing Santa Cruz (2019), there is a need to determine the status of the specific acts they carry out in order to avoid the ambiguities of the "spirit of corp-oration", which include the uncertainty about the hierarchical lines of command. This makes it impossible to negotiate with them and increases the lack of knowledge of their responsibility in case of violations of international or local law.

In addition, the arguments regarding the motivations of commercial soldiering by Private Military and Security Companies connect the participants with the inherent pursuit of war through illicit and immoral reasons. This negative role of private forces, as argued by Lynch and Walsh (2000), is considered as "venal opportunism" because the personnel of such companies, who are too little willing to engage in life-threatening violence of warfare and are too untrustworthy for State policy, partake in conflict primarily due to the desire for making money through adventure and action. Hence, private soldiers for hire, who are cheaper to recruit, leads to States needing constant war because such combatants are loyal only for economic benefits.

On the other hand, in contrast to the negative aspects of private contractors of security and military services, Santa Cruz (2019) mentions that the hiring of private soldiers is appropriate as long as the combatants consider the justice of the armed conflict in which they fight or follow the authority of international law. As argued by Isenberg (2006), these civilian combatants and non-combatants working with the military are influenced by various factors, making some of the bigger businesses they are employed for have "a clear understanding of their legal responsibilities when operating in foreign countries" for the reason that they are "held accountable under laws that apply extraterritorially or within [a certain] jurisdiction".

Because it is a global industry, influences include universal ones such as international law, as well as some specific ones such as culture of origin and of destination (Isenberg, 2006). In addition, Private Military and Security Companies have learnt lessons about good practices on how to work with regular military forces and other competitors, even

though these customs may appear mostly tactical and operational. This dialogue and interconnection also comprise cooperation in operations and coordination in information, establishing general standards to adhere to (Isenberg, 2006). Moreover, most of the contracts are issued by Western public administrations or private firms, so any military and security within the private industry "that wins the contract must take great pains to live up to the strictures of that contract" (Isenberg, 2006).

Scott-Smith and Janssen (2014) hold the view that the United States and Britain, which are the leading countries when it comes to the contracting of private companies for military and security services, have pursued privatization across policy areas to reduce the involvement of the State and "increase the role of the corporate sector", which thus improves efficiency and innovation. Paraphrasing Scott-Smith and Janssen (2014), the shift towards privatization ought to be managed in legal terms and in terms of the States governments' roles to change the international context so that Private Military and Security Companies would no longer be a problem. Otherwise, the strict legalistic approach would push companies towards the illegal hiring of such firms.

Even if concerns over legal grey areas do "not solve the wider question of the merits of privatization itself" (Scott-Smith and Janssen, 2014), they may assist in the clarification of responsibilities and rules of engagement surrounding the use of private armed guards. Cano Linares (2008) and Ibáñez Gómez (2009) point out that the Armed Forces can focus more effectively on their activity if they outsource those functions that are not their own to armed groups that operate outside the state monopoly of violence and power, including providing security support to the members of international agencies responsible for providing humanitarian aid and carrying out tasks where it is not always easy to go with regular troops.

Likewise, observations from Cano Linares (2008) and Ibáñez Gómez (2009) suggests that the professionalization of the Armed Forces together with economic criteria can achieve various objectives, since military and private security companies can deploy actions abroad at a lower cost and increase the number of troops in the area quickly.

It has been suggested by Lynch and Walsh (2000) a "Good Mercenary" has "Mercenary Morality" that would be preferable to that of Statist societies. Soldiers employed within Private Military and Security Companies act as "participants in an unregulated market in

organized violence", and such forces paradoxically help "moderate the circumstances of violent engagement" (Lynch and Walsh, 2000).

The legitimacy of the State's monopoly on using physical forces when upholding claims does not exclude private military and security contractors and soldiers when they decide to fight in wars that abide by the legitimate terms of defensive struggles or other invasive threats (Lynch and Walsh, 2000). Lynch and Walsh (2000) argue that, since a hired private combatant may not have the practical necessity for deliberations dominated by financial considerations, they may consider justice when determining whether to partake in combat or not participate in the armed conflict, or even only fight when strongly identifying with the entity that hires them.

Professional national armies are politically considered citizens with "rights and reciprocal obligations to the community" that exist only as a conditional grant "governed by the logic of an expansionary all-encompassing State", an "institutionalized […] system of sovereign Nation-State" whose citizenry are tested according to their "sacrificial and transcendentalized violence" (Lynch and Walsh, 2000). This includes three features that influence public armies.

First, the ideal of sovereignty provides the patriotism of domestic soldiers a "transcendental personal glory" that excuses "any form of behavior" (Lynch and Walsh, 2000). National forces do not have sufficient or necessary constraints due to the "risks and advantages involved" (Lynch and Walsh, 2000).

Secondly, this also includes the notion that there is no assurance that the nature or structure of professional national armies have may seek what Lynch and Walsh (2000) call "lucrepathology". In other words, soldiers from domestic armies may have a perversive motivation for purely monetary and remunerative gain while partaking in armed conflict.

Finally, Lynch and Walsh (2000) propose the "Argument from State Corruption". This argument refers to the contradiction that marketized soldiering is required by governments that lack their citizens' allegiance.

Summarizing Isenberg (2006), the examination of the activities of private providers of military and security services would help with increasing the knowledge of conflict and

the troops involved. For example, in Iraq, many of the firms are subcontracted to offer bodyguard-like personal or property protection for companies or other entities seeking business opportunities, rather than for skills relating to military combat. The amenities include non-military security for civilian officials, sites such as buildings and infrastructure, and convoys (Isenberg, 2006). However, "a lack of strategic planning has affected private sector operations" in "difficult missions under trying circumstances" (Isenberg, 2006).

Furthermore, Vallenilla (2015) argues that the specialization in different areas and professionalization of these companies is due to the high number of people who have a competent job profile and experience. This includes the handling of modern weapons technology, speed of action and preparation, and independence from political and legal repercussions.

In summary, it has been shown from this section that the privatization of security and of military services ends up generating institutional changes in budgetary and mobility management of different fields. The specialized *know-how* of outsourcing public combative and defensive entities *technifies* conflict, making it more effective and efficient. This process facilitates the participation of States in hostilities, which has a number of serious drawbacks. Firstly, it may increase the militarization of international relations and the violation of *erga omnes*. Secondly, it may decrease the sovereignty and autonomy of countries.

Case Studies

In the analytical review of this project, I have chosen to do an in-depth investigation regarding the United States of America and the Russian Federation, while also taking into consideration some destination countries in low and middle-developed regions. The objective of this examination is to highlight the dynamic nature of the ubiquity of private contractors as direct fire combat on the battlefields of the "New Hybrid Wars". Furthermore, a secondary aim is to observe if Jezdimirovic Ranito and Mayer's (2020) difference between the use of military forces by the West in developing States and the involvement by Russia in Syria and Africa is significantly correct.

United States of America and Private Military and Security Companies

In the face of the multiplicity of new factors that mark the development of armed conflicts such as those in Iraq and in Afghanistan, Schwendimann (2011) argues that private military and security services companies have taken an increasingly leading role. However, this observation has been criticized. One of the limitations with it is that it does not explain how the government that hires the most private military and security companies, both to intervene abroad and to take charge of national security, is that of the United States of America (Peñate Domínguez, 2018). Alongside the United Kingdom of Great Britain and Northern Ireland, both countries "account for 75% of the global private military services market" (Nebolsina, 2019). A commonly held view is that the United States wants to be both the world's champion of peace and the leading supplier of war.

According to Driessen Cormenzana (2019), the use of private military and security services allows a greater margin of maneuver for the State, as well as the surpassing of pacts established with the citizenry. Likewise, as a mechanism for participating in conflicts and avoiding political responsibilities, the United States uses regular armed forces for democratic goals and outsources military functions to a "shadow" army outnumbering the official contingent armed forces (Nebolsina, 2019). This is evident in the case of the actions of the US government in the framework of "Plan Colombia". Using Private Military and Security Companies, the United States' Department of Defense deployed more than the allowed forces to prevent becoming involved in the Colombian Conflict (Laborie Iglesias, 2013).

In order to understand the reasons behind this, it is essential to start from an historical point of view. According to Erbel (2016), the second half of the 19th century was marked by the various interlinked factors in the United States' defense policy (Erbel, 2016). During the era following the Second World War, the creation of standing peacetime armies, "epitomized by forward leaning global defense postures", espoused and supplied expansive grand strategies (Erbel, 2016).

Erbel (2016) holds the view that the Cold War saw defense policymaking being dominated by a gap between political-strategic commitments, demands, and available resources. This accelerated the reinforcement of tentative practices of outsourcing because the United States sought to overcome this gap by opting for efficiencies from the marketplace instead of reducing their reliance on self-sufficient strategic commitments.

Therefore, over several decades, the growing role of the industry of the defense enterprise borrowed from the corporate world. This transformed the United States' military into a professional army that focuses narrowly on combat. "[F]ollowing decades of centralization that came at the expense of the armed services' autonomy", the modeling of this country's defense enterprise made the army gradually lose "much of [its] ability to oppose the incremental shift of responsibilities to the private sector" (Erbel, 2016).

Sukhankin (2010) states that, prior to 1991, the global Private Military and Security Company market was divided among Western actors, and it became even more Western-dominated in the aftermath of the US-led campaigns in Afghanistan and Iraq. By the early 1990s, Western private industry of military and security services reoriented themselves into business enterprises rather than instruments of warfare and military operations (Sukhankin, 2010). According to Sukhankin (2010), thorough knowledge of the local market and specificities, these Western corporations wield expertise, ties, and strong reputations.

The Clinton administration (1993 – 2001) "resulted in a reduction in the quality and quantity of the country's military installations" (Peñate Domínguez, 2018). The massacre at Columbine High (1999) and the terrorist attack against the USS Cole (2000) increased the concern and distrust regarding "the capabilities of public forces" and "on the fledgling private industry" (Peñate Domínguez, 2018).

The event that had decisive consequences on the conception of international security analyses and had caused the growth of private contractors hired in the private military and security services industry to their current levels was the terrorist operation of September 11, 2001. Nebolsina (2019) argues that the War Against Terror led the Private Military and Security Companies to accompany official armed forces, making them an important link in the military and security network. However, Singer (2004) argues that this image of the United States clashed with the theoretical objectives of the invasion, which were to create a rule of law as a way to put an end to the Islamic insurgency.

According to Driessen Cormenzana (2019), the George W. Bush administration made a miscalculation in the planning of the war, creating problems in the coordination and cooperation of the military-industrial complex. The lack of resources to sustain the prolonged occupations of Iraq and Afghanistan gave an opening for Private Military and Security Companies to present their activities as the alternative of those of the armed forces of the various belligerent countries, whose activities "were not capable of carrying out" (Peñate Domínguez, 2018).

Therefore, within this context, the George W. Bush administration, faced with the political cost represented by military casualties in sending troops and the unwillingness to delegate the task to the North Atlantic Treaty Organization or the United Nations, began to increase the use of private military and security services to avoid protests of the peace-industrial complex and "not admit that the executive branch had been wrong in its planning of the war" (Vallenilla, 2015).

Nevertheless, and taking into consideration that international terrorism is fought on a global scale, the subcontracting system in which a service is produced by several entities was moved to "a new theater of operations that would bear the brunt of the globe's soldier of fortune activity", which led to large flows of money being directly steered to contracting companies (Peñate Domínguez, 2018). Paraphrasing Peñate Domínguez (2018), such a maneuver was carried out during in Iraq, as several companies of foreign countries (and especially those of origin from the United States) were subcontracted.

According to Erbel (2016), "[t]he decades of increasingly industry-centric defense policymaking" directly affected the United States' defense services acquisition and composition of policy networks in such a way that the focus on resources was associated

with functional managerialism rather than political problem-solving, mainly because representatives and advocates of industry outsourcing evaded the legislatures and military in the process.

Erbel (2016) claims that, since the field of policy debates regarding the contracting of private security and military entities has become a non-partisan issue while the public is also disinterested in foreign defense policy, military outsourcing has become the default practice which governments seek in order to have a potentially alterable situation. Erbel (2016) illustrates this by mentioning that many extensive United States Congress debates on the topic of changing the practice of acquiring commercial items[3] of military services, such as common goods like the maintenance of equipment or the delivery of contracting, have concluded that decision-makers should follow the business industry's advocacy about the provision of expertise and opinions on acquisition policy.

The long chains of subcontracting between governments, companies and individual contractors make it difficult to establish responsibilities for the actions of Private Military and Security Companies. For this reason, García Segura and Pareja Alcaraz (2013) argue that the main sources of regulation of military and security corporate associations are the contractual clauses agreed with their clients.

Nonetheless, in general terms, this means that business codes of conduct have been drawn up with which they intend to avoid the generation of specific state or international regulations on their activity because they seek to preserve their situation of impunity. The contracts include "immunity clauses from jurisdiction in relation to the courts of the states in whose territory they act or competent by the nationality of their employees" (García Segura and Pareja Alcaraz, 2013). This is certainly true in the case of US regulatory provisions in 2008, where they expressly stated that the United States' Private Military and Security Companies "could not be brought before US or Iraqi courts in connection with operations conducted in Iraq" (García Segura and Pareja Alcaraz, 2013).

Jezdimirovic Ranito and Mayer (2020) maintain that such a development in the security industry and in the armed forces generated practical concerns about the contractors' control and the privatization of war. These two concerns are confirmed through

[3] Erbel (2016) defines *commercial items* as goods that should be available from commercial vendors to the general public.

unprovoked uses of lethal force and incidents of Human Rights abuses, smuggling, trafficking, and the willful destruction of property by Western Private Military and Security Companies.

The prime example of a Private Military and Security Company from the United States is the now defunct Blackwater, founded in 1997 by ex-serviceman Erik Prince and Al Clark. However, this corporation is "famous for its repeated massacres in Iraq and the practice of torture in the Iraqi prison of Abu Ghraib" (García Segura and Pareja Alcaraz, 2013). The criminal allegations and Human Rights violations for "smuggling, manslaughter, and extrajudicial killings" (Wauters, 2018) led the company to change its corporate name to Xe Services, Academi Worldwide, and Constellis.

In September 2007, when Blackwater personnel were escorting a convoy in the vicinity of Baghdad's Nissour Square, a shooting occurred where four contractors with machine guns killed seventeen Iraqi civilians while twenty-four others were injured (Vallenilla, 2015; Jiménez Reina *et al.*, 2019; Jezdimirovic Ranito and Mayer, 2020), a clear violation of International Humanitarian Law (Jiménez Reina *et al.*, 2019). The four security guards declared that they had been previously attacked (Vallenilla, 2015) and the Court of Appeals for the District of Columbia Circuit allowed the charges to be repeatedly annulled (Jiménez Reina *et al.*, 2019).

According to Jiménez Reina *et al.* (2019), a federal judge in the United States concluded in 2014 that they were guilty of homicide. One of the contractors was "sentenced to life imprisonment for murder when he started the shooting" while the others three received thirty-year sentences of house arrest for manslaughter and firearms charges (Jiménez Reina *et al.*, 2019). However, former U.S. President Donald Trump granted them full presidential pardons in 2020 on account of their status as veterans of the US Armed Forces who had a long history of service to the country (Haberman and Schmidt, 2020).

Regardless, Blackwater received millions of dollars in government contracts (Wauters, 2018). The United States, and especially the Central Intelligence Agency, renewed its contract with Blackwater, which by then was accused of Human Rights violations for the unjustifiable and indiscriminate shooting of unarmed civilians, in 2008 to provide its service for the protection of high-ranking US officials in Iraq.

According to Wauters (2018), "it would be a mistake to think that Blackwater is the only problem". Another notable example related to the United States contracting in the international markets is DynCorp, a United States company characterized by employing mercenaries to replace US soldiers in operations located in Afghanistan, Bosnia, Colombia, Haiti, and Iraq (Jiménez Reina *et al.*, 2019). Noneheless, this business has "a long history of abuses in its activity within the framework of Plan Colombia" (García Segura and Pareja Alcaraz, 2013). Furthermore, to add to its violations of Human Rights, this company had received accusations of sexual abuse while associating itself with the mafia during its operations (Vos, 2017) and for hiring the services of minors who were abused in a group (Jiménez Reina *et al.*, 2019).

The professional services corporation Military Professional Resources Incorporated, formed in 1988 by former senior military officers, engages in a "broad range of defense matters" and "law enforcement expertise" in public and private sectors (Bharadwaj Indian Navy, 2013). It also "provides a wide range of services" to the United States, while also trading with the Bosnian government in 1995 to equip its army (Bharadwaj Indian Navy, 2013). Vallenilla (2015) adds, nevertheless, that the corporation recruited personnel who have a past linked to the former Republican Guard of Saddam Hussein.

Russia and Quasi-Mercenary Organizations

The *Russian World Ideology*[4] is the manifestation of the *cesaropapistic* attitude of the *Russian soul*, in which the control of the Church over the State combines political power and spiritual control over culture. In the 19th century, the Russian anti-isolationism surged for the first time, creating complication with Russia's Asiatic character. Peter I and Catherine II, who understood the weaknesses of any policy of isolation, opened Russian society up to Western civilization to modernization by developing its values while also preventing the infection of Western culture. In other words, they sought for opening only just long enough to figure out the secret of the successful development of their Western neighbors in Europe but preserving both their original culture and the Russian soul.

This attempt at modernization caused an uprising and a confrontation between Western and Eastern Russia, originating the Russia intelligentsia. Amongst these new intellectuals

[4] All information regarding the *Russian World Ideology* is based on notes from the 2021 lecture *Contemporary European Political Thought* thought by Francesco Berti.

emerged a great discussion on the Westernization of Russia, a debate that became an indentation amid the thinkers of the second half of the 19th century. Amongst these thinkers, there were the Slavophiles, who were thinkers who did not want to take Western society into Russia.

For this reason, the *Russian World Ideology* aims to spread Russia's influence abroad by promoting values framed on Russian conservatism, language, and historical anti-Western narratives. The Russian collective imagination, which maintains its claim to be a model of stability and a great reference center, has the tacit mission of non-aggression to ensure the unity of traditional "Greater Russia" and preserve regional influence. However, the identity complexity of unstable neighboring countries with an unproductive population and infrastructural deficiencies presents problems for creating Russia's image of power.

Since 1812 and 1917, Russian "volunteers" fighters took part in foreign regional conflicts, playing an instrumental role in reshaping the geographical landscape they participated in (Sukhankin, 2010) by applying a simultaneous use of different military and non-military war strategies in the context of conflicts (Driessen Cormenzana, 2019). The various hostilities they partook in included areas and countries across Europe, the Americas, and Africa. The process of recruitment of irregular forces and the formation of volunteer mobilization demonstrated active involvement in the Balkan War (1875 – 1876), and "both the Greek independence and Italian national-liberation movements had Russian 'roots'" (Sukhankin, 2010). Thus, Driessen Cormenzana (2019) argues that Russia and non-linear conflicts have a considerable history in terms use of these military companies as an extension of their armed forces themselves.

There is some evidence to suggest that, during the Union of Soviet Socialist Republics, Soviet soldiers were sent on an *ad hoc* basis as military advisers in hybrid wars. Even though outsourcing military functions was not a conventional practice because delegation of any authority in any sphere was not well-regarded by public officials (Nebolsina, 2019), the Soviet Union used specialists of all kinds for settling numerous regional conflicts abroad. As mentioned by Driessen Cormenzana (2019), this included that, during the communist era and within in the framework of the ideological war against the West, irregular armed conflicts were being used in a structural manner for geopolitical reasons.

According to Sukhankin (2010), the collapse of the Union of Soviet Socialist Republics in the 1990s made Russia uphold a liberal façade to its new Western backers. For example, business-oriented activity within many public spheres increased, but this growth was short-lived. Nebolsina (2019) argues that the distorted forms of privatization posed a threat for the State's sovereignty, since the emergence of separatist movements and corporate raiding was triggered by the chaotic military activity of the 1990s. Amidst the series of military conflicts along its periphery and across its former sphere of influence, such a façade prevented Moscow from becoming openly involved in these conflicts. For this reason, Driessen Cormenzana (2019) argues that there was an attempt to institutionalize the hiring processes of private contractors at the end of the 1990s.

However, the arbitrary- and politicized-necessary legal norms in Russian law permitted the creation of entities of Russian nationality for specific international missions, which were used as "proxy tools that allow the Kremlin to intervene in foreign conflicts without assuming the responsibility that would entail acting officially to make its geopolitical fantasies come true" (Driessen Cormenza, 2019). After such assignments came to an end, these actors were dissolved. In addition, Sukhankin (2010) states that the "volunteering justice" of the notion of *dobrovolchestvo spravedlivost* permitted the neutral-sounding "volunteers" under an aura of the pursuit of justice-seeking compassion and volunteerism in hostilities to maintain the Russian footprint.

Driessen Cormenza (2019) has observed that the close relationship between the private and public sectors in the Russian Federation and the involvement of these Russian irregulars in regional conflicts allowed Kremlin present non-involvement and a lack of open military participation while also using Russian private military and security contractors to create zones of instability for various geopolitical purposes, such as to assert Russia's interests under the forces of discretion and impunity. A possible explanation is that Quasi-Mercenary Organizations are part of the hard core of Russia's "power economy" of *silovya ekonomika*. In other words, there exists a coercive State system whose goal is to achieve economic goals, which includes a contractual relationship that combines the provision of military and/or security services and the contribution to military operations. (Driessen Cormenza, 2019).

Once private contractors in the service of the Russian government signed the contract with the State, they would accept a series of secret and vulnerable ethical values. As

commented by Driessen Cormenza (2019), in exchange for receiving salaries higher than those of the Russian armed forces and their family getting a large amount of money in the event of death, those who participate in these private organizations must deny scandals or their presence in countries such as Libya and the Central African Republic. This also includes denying their dangerous unforeseen tasks to be linked with the Kremlin for fear of returning to Russia and being arrested as "mercenaries".

Paraphrasing Sukhankin (2010), the major military conflicts in the post-Soviet area, such as in Moldovan Transnistria (1992) and Abkhazia (1992 – 1993), were valuable training grounds that attracted large groups of Russian "volunteers". These irregular forces proved to be crucial in the impact of military successes. Furthermore, the first Chechen conflict (1994 – 1996) was characterized by the hybrid combination of para-military small-scale groups consisting of mercenaries and non-military means under the rhetoric of volunteering for the "protection of the Russian-speaking minority" (Sukhankin, 2010). Their functions were the backbone of a series of para-military features, such as curfew. Russian officials stated they were unaware of volunteers as an expeditionary force in the hostilities once they were decimated.

Sukhankin (2010) upholds the idea that the specificities of warfare in the Balkan theater were due to a sense of mass vendetta. The participation of Russian forces bore visible traits of a "hybrid" operation that contained the organic melding of strong non-military propagandist and ideological elements with military characteristics. The process of raising "volunteers" in the Balkans was not initiated, coordinated, or supported by the Kremlin. However, Sukhankin (2010) argues that it formed part of the intense political strife which unfolded between Moscow and the "Red Belt", the latter being a group of Russian peripherical regions hit particularly hard by the collapse of their Soviet-based heavy industry and that exhibited stable support for left-wing radical groups.

Many of the volunteers went to the Balkans with the sole purpose of gaining military experience. The participation of Russian militants in the Balkans became an effective "resumé builder" that helped many of the para-military combatants in their future "careers" and subsequent employment by firms within the private industry of military and security services in Iraq and Afghanistan (Sukhankin, 2010).

Driessen Cormenzana (2019) observes that the recent scenarios in which Russian Quasi-Mercenary Organizations have made their appearance "are very diverse". By 2014, many of the organizations that stood behind the "Balkan adventure" became actively involved in recruiting Russian militants to engage in hostilities in Ukraine and have been elevated by the Russian political leadership to the status of a Russian national idea (Sukhankin, 2010). Paraphrasing Jezdimirovic Ranito and Mayer (2020), Russian Quasi-Mercenary Organizations are allegedly instrumental to the Russian take-over of Crimea. The activity of these irregular "volunteers" after the annexation of the Crimean Peninsula continued with the subsequent fighting in Eastern Ukraine, including their participation as proxies in hostilities in the Donetsk and Luhansk regions. Later, these groups became active outside of the Ukrainian conflict, such as unconfirmed reports of Wagner Group activity in Venezuela.

Russian private military and security contractors have been present in the cases of Sudan, Venezuela, and Syria. A probable explanation from Driessen Cormenzana (2019) about the reason behind these three countries being a priority scenario for Russia is because, due to their natural resources and geostrategic advantages, they are "governed by a 'strong man'" and "confronted with situations of instability".

In the case of Sudan, according to the International Criminal Court, President Omar al-Bashir has committed crimes against humanity, war crimes, and genocide. Despite this, the Kremlin has provided an integration of Russian private security contractors to the regime's armed forces based in the Red Sea in exchange for commercial concessions and investments to Russian companies belonging to oligarchs in the oil, gas, and mineral sectors (Driessen Cormenzana, 2019).

Once a wave of protests began in Sudan in 2018, it was reported by the Sudanese civil society that the Wagner Group supported the Sudanese army to protect favorable treatment of Russian companies' extraction in mines and participated in the repression of the demonstrations. mineral resources (Driessen Cormenzana, 2019). Furthermore, under the framework of restoring public order against the uprising of the Sudanese population, the Russian corporations M-Invest and Prigozhin devised a reaction plan to discredit the protests by linking them with the image of "enemies of Islam and traditional values". According to Driessen Cormenzana (2019), hoaxes accusing the demonstrators of advocating Israel and liberal ideals such as the support for the community of sexual and

gender minorities, and of looting mosques and hospitals were spread. These methods can cause "a sense of *déja vu*" when considering in the 2016 United States of America presidential election, to which Prigozhin is also linked (Driessen Cormenzana, 2019).

When analyzing Venezuelan, it must be taken into account that both countries oppose the United States of America, making Russia favor positive relations with Russia in order to be granted a privileged strategic position in Latin America. An example given by Driessen Cormenzana (2019) of Russia trying to guarantee a position in favor of the Venezuelan government is when, due to "the null diversification of the Venezuelan economy", State-owned Russian energy companies who are also large shareholders have granted significant loans to Venezuelan State-owned companies suffering from the Andean country's delicate economic situation.

Symbolically, "Russia has made an effort to cultivate a strong friendship with Venezuela since the beginning of Chavismo because the fall of Maduro would be a serious blow to Russia" (Driessen Cormenzana, 2019). Therefore, in exchange for access to Venezuelan oil and diplomatic relations, the Wagner Group was provided in 2019 by Russia to defend Nicolás Maduro after "part of the international community recognized the opposition Juan Guaidó as the 'legitimate president'" (Driessen Cormenzana, 2019).

For the Russian Federation, Syria under al-Assad represents "a trading partner" and "military ally with a key geographical position in the Middle East" (Driessen Cormenzana, 2019). Russia supports the *Status Quo* in Syria, as it is an asset for Russian military bases. However, the troops to fight on various fronts grow the irregularization of the Syrian Arab Army. Therefore, Russia protects Syrian oil fields with "a wide network of companies engaged in a wide variety of activities" in exchange for production of certain resource military-oriented sites (Driessen Cormenzana, 2019).

However, the Arab Springs uprising against the Al-Assad regime that began in March of 2011 developed into a conflict fragmented by militias and armed groups oriented around ethnic and religious conflicts. This plurality lacking military capacity threatened Russia's interests, especially after the alteration of Russia's favorable *Status Quo* during the scattered chaos in the Ukrainian context. For this reason, the Kremlin officially intervened on the side of Al-Assad and unofficially used Quasi-Mercenary Organizations to carry out dangerous land invasions.

Russia continues to deny the presence of private contractors linked to the Kremlin in military operations in Syria so that "casualties would not be accounted for and public opinion would not be against intervention, as happened in the past in Chechnya and in the war in Afghanistan" (Driessen Cormenzana, 2019). However, the death of many Russian private contractors in Syria who did not exist made the soldiers of fortune" discontent with being within a *guaranteeless* legal limbo (Driessen Cormenzana, 2019).

According to many in the field, even though the Kremlin has never officially recognized the fighters, there is evidence of a relationship between the Russian public governmental administration and the private industry of military and security services. For example, in 2007, the Russian parliament supported a rule that allowed the use of weapons and "special security means provided by the State" to "strategically important" companies (Driessen Cormenza, 2019).

Another example is, since Putin seeks to legitimize his activities abroad, he suggested in 2011 the legalization of the use of corporations within the private sector of military and security services to influence abroad without the "direct action of the State" (Galeotti, 2017). Considering that Quasi-Mercenary Organizations have been clearly relevant in the conflict in Syria, Mikhail Yemelyanov, member of the Committee for Legislation and State Building, advocated in 2018 that there should be a change in Russian domestic legislation by legalizing them, as well as allowing them to "protect the sovereignty of allied States from external aggression" and carry out "anti-terrorist operations" (Bingham, 2018).

As mentioned previously, the private military industry never acquired legal status in Russia. Sukhankin (2010) holds the view that the lack of an appropriate legal foundation for these *de facto* "ghost" businesses non-existent in *de jure* realm makes them effectively private armies and their members mercenaries. Russian actors in this space, therefore, do not abide by the rules because they lack competitiveness on the global market and are generally unwelcomed. Thus, some Russian security and military services of the private sector apply 1960s-era patterns of private military and security business to 21st century contexts.

According to Jezdimirovic Ranito and Mayer (2020), during the Cold War, efforts were framed by the confrontations between the superpowers and primed within a context that

made many of the actors understand that, by participating in regulatory measures, they could participate in the debate and influence the outcomes. The current situation, however, is more chaotic. Jezdimirovic Ranito and Mayer (2020) propose two reasons for such complexity. First, the definition in each existing international convention is cumulative, meaning that an actor must meet all the requirements in order to be guilty of being a mercenary. Secondly, the use of Quasi-Mercenary Organizations may not have any direct relation to major power rivalry. This industry, which is the object of debates regarding its regulation, does not have any interest in being regulated.

These organizations provide services sometimes analogous to Western Private Military and Security Companies. Nonetheless, Jezdimirovic Ranito and Mayer (2020) argue that, while Western engagement with the sector of private security and military services has diminished over time, the activity of Russian affiliated armed groups which operate outside of established norms for Private Military and Security Companies has increased.

Furthermore, Western Private Military and Security Companies are legal entities registered under commercial law as well as the applicable law of their State of origin and the State of destination in which they conduct their operations, making them legally accountable. The services they offer are legally circumscribed by three types of States. The first is the Home State, which is the country of incorporation. The second one is the Territorial State, where they conduct the operations. The third type is the State that contracts their services or the State of incorporation of the private contracting entity.

In order to preserve the achievements made in the regulation of Private Military and Security Companies during the past decades and to protect their full compliance with the internationally recognized standards, solutions which address the activity of Quasi-Mercenary Organizations must oblige these entities to follow the regulatory guidelines of their Western counterpart and establish a well-defined concept for them so their presence can be properly addressed (Jezdimirovic Ranito and Mayer, 2020).

Nevertheless, as was previously indicated in an earlier chapter, even though military-related activities outside of Russia are illegal under Russian law, Russian Quasi-Mercenary Organizations are a new category of armed civilians that operate in opaque contracting arrangements without corporate identity. This includes situations such as

when some of these quasi-military entities have foreign registrations in other countries (Jezdimirovic Ranito and Mayer, 2020).

It is almost certain that vagueness would make law and policy difficult to apply and limit their legal accountability, since the central government of the Russian Federation has the possibility to deny responsibility for the activities of these allegedly non-existent armed groups that are not officially part of the Russian armed forces nor have official authorization but are clearly operating on behalf of Russian interests (Jezdimirovic Ranito and Mayer, 2020). The lack of corporate structures and of legal tools to oppose them makes it difficult to hold these entities responsible for misconduct, especially in situations of worn-torn societies where they are an additional burden (Jezdimirovic Ranito and Mayer, 2020). According to Sukhankin (2010), such uncertainty of the autonomy and of the regulatory legislative basis of Russian Quasi-Mercenary Organizations and its conflict with the expansion of its industry enables Moscow to cast accountability doubts amongst Western countries about the involvement of non-public military and security corporations and undermine any effective response.

This creates further ambiguity that facilitates the use of these companies to pursue Russian national interests while maintaining deniability (Jezdimirovic Ranito and Mayer, 2020). For example, Russian oligarch funded and State-sponsored quasi-mercenaries and quasi-mercenary military advisors are contracted in countries governed by leaders seeking unchallenged autocratic rule in order to secure Russian access to valuable natural resources on favorable terms, as well as being active combatants alongside armies and militia in zones of armed conflicts. Furthermore, Putin, while denying any responsibility for their actions, makes supportive statements about their operations.

Jezdimirovic Ranito and Mayer (2020) place an emphasis on the unregulated market of Russian Quasi-Mercenary Organizations, which makes direct combat activities that disrespect Human Rights a business model that has competitive advantage for States, for potential private sector purchasers, and for other organizations. Moreover, and according to Jezdimirovic Ranito and Mayer (2020), these non-transparent corporations promote pro-Russian national interests without official or direct authorization of the Russian Government.

The increase of Russia's role in the capability of combat, the augment of mercenarial control within the realm of recruitment, and the intensification of military-technical cooperation has allowed Putin's government to exert pressure by becoming the *de facto* power in the developing yet volatile world (Sukhankin, 2020). In such regions, Russia uses these mercenary-oriented organizations to support authoritarian governments that disregard Human Rights, to promote the proliferation of arms sales, and lock countries into unsustainable commitments. All of these features are factors which can make their use result in radicalization and conflict prolongation (Jezdimirovic Ranito and Mayer, 2020).

As can be seen through the historical record of proxy warfare, the current status of these Russian corporations enables the willingness by the international community for legal unaccountability and statal deniability (Jezdimirovic Ranito and Mayer, 2020). The use of these "volunteer" groups to achieve foreign policy goals makes the States lose interest in addressing problematic issue. Those interested in solving the cost-benefit of involvement or may even not have a voice enough to force change.

International regulations lack the formal contractual agreement that normally constitutes accountability within the paradigm of decision-making and policies. The absence of clear transnational norms for private industries within the sector of military and security services makes domestic laws be coded in a way that these firms can be used to avoid "the political risk that is associated with deploying troops" (Feldman, 2017).

In a context where the use of Quasi-Mercenary Organizations by the Russian Federation and the use of Private Military and Security Companies by the West are key enablers of "hybrid warfare" that exploit shortcomings in international law ambiguity, the denial of responsibility by the sponsoring State allows other States to not act against that sponsor in a tit-for-tat situation. This permits the Kremlin to rely on such opaque and a-legal entities in "various hybrid warfare scenarios and other regional conflicts" to conduct operations on multiple frontlines has prompted the government's use to remain deniable, to ensure the preservation of public secrecy in external military operations, and the commercialization of the loss of human life (Sukhankin, 2010).

Since 1998, Russia has experienced multiple attempts by Private Military and Security Companies to establish themselves similarly to the Western patterns of combining civilian roles with traits focusing on security and military spheres (Sukhankin, 2010).

The organization Antiterror-Orel, established in 1998, conducted niche tasks concerned with protection, training, and consultancy. The group planned to work in Iraq, but Operation Iraqi Freedom (2003) put Western Private Military Companies as the secure promoter of business in Iraq (Sukhankin, 2010). Therefore, Antiterror-Orel opted to support cargo transportation and security-related consultancy in India, and Nigeria, and Serbia (Sukhankin, 2010).

The Antiterri firm, founded in 2003 in a training center, developed cordial ties with Russia's "authoritative people" in the central government, allowing the corporation to sign security services contracts in Iraq and the creation of *ad hoc* groups operating under its umbrella (Sukhankin, 2010). Upon completion of its tasks and due to limited further opportunities, the group was disbanded in 2006.

Redut-Antiterror was established in 2008 as a broad platform comprised of several smaller organizations. It took part in missions in Iraq, Syria, Somalia, Caribbean countries, and countries within former Yugoslavia, and it participated as as military consultants during the Russo-Georgian conflict (Sukhankin, 2010).

The RSB Group, created in 2005, played some role in the "Crimean operation" in logistics or some other non-military capacity, including armed protection of non-persons, intelligence gathering and analytics, consultancy, and sapper works (Sukhankin, 2010).

Moran Security Group *de facto* represents a broad consortium of smaller companies, and it used to possess its own fleet. However, it became embroiled in a scandal involving one of its ships which, along with the crew, was detained by Nigeran authorities on suspicion of arms smuggling (Sukhankin, 2010).

The Wagner Group, also known as Chastnye Voennie Companiy, is a non-State military services provider led by a former Spetsnaz and has been involved in fighting in Donbas and together with pro-al-Assad forces in Syria (Wauters, 2018), used as a strategic tool in pursuing its national objectives (Jezdimirovic Ranito and Mayer, 2020).

The Wagner Group is headed by two people. First, Dmitry Valeryevich Utkin, the founder, is a former Soviet Military Intelligence officer who networks with "senior Russian government officials" (Jezdimirovic Ranito and Mayer, 2020). Secondly, Yevgeny Prigozhin, nicknamed "Putin's chef", is a prominent businessman who has a

close relationship with the Russian Defense Ministry (Driessen Cormenza, 2019). It needs to be taken into consideration that, since the regulation law attributes the oversight of the Wagner Group to either the Kremlin or the Ministry of Defense, both are fighting each other for the control of the Wagner Group in order to play a bigger role in Russia's geopolitics, especially with the Belt Road Initiative (Wauters, 2018).

Driessen Cormenza (2019) states that the Wagner Group is "financed and equipped by the Russian military", mainly evident in the evidence that it follows orders from the commanders of the Russian army and that it receives its personnel training at the base of the 10th Spetsnaz Brigade. Paradoxically, in the meanwhile, Wagner Group is an independent private company not officially registered as an arm of the State armed forces, so its security and armed forces support and relationship with the call of duty of the Russian State is known for its secrecy (Driessen Cormenza, 2019).

According to Jezdimirovic Ranito and Mayer (2020), the Wagner Group trains "the security forces of a client State and advise client State ministries", particularly within defense and internal security during the extracting of natural resources and the guarding of government officials. Furthermore, Russian law permits licensed private security companies to carry and use weapons, provide consulting and guard services, and protect premises and objects (Nebolsina, 2019). In these ways, they share similarities to Western contractors such as Dyncorp or Academi, and non-Western companies such as the Sino-Arabic corporation Frontier Services Group.

However, Nebolsina (2019) argues that the obscurity of the functions of Russian "soldiers of fortune" likens them to illegal groups. The personnel can be considered similar to the illegal foreign mercenaries who once operated in the 1960s Congo crisis in and in numerous African coup d'états rather than contractors.

Recent research has suggested that Russian journalists who have tried to investigate the relationship between the public administration and private military and security forces, such as the hiring of the Wagner Group by the government, are now dead or exiled. The victims include Maxim Borodin, Denis Korotkov, and Vladimir Neelov (Driessen Cormenzana, 2019).

Low and Middle-Developed Regions

The network strategy of business within the industry of security and services "is also applicable to [certain regions] where States are often unable to provide security on their own" (Nebolsina, 2019). In other words, "demand for private-sector soldiers [is] particularly strong in 'failed States' in which the army or the police [are] not willing or unable to secure public order" (Thümmel *et al.*, 2005).

Such proliferation of *mercenarism* in the internationalization of internal armed conflicts as well as the emergence of Private Military Companies and Private Security Companies raise Human Rights concerns (Gumedze, 2008). This is more than ever taken into consideration when contractors are hired by States that violate certain regulations of international governmental organizations, and by groups that operate in these types of countries.

For example, in the Middle East, para-military armed groups are sponsored by States for direct participation in conflicts to advance their interests. This is the case of Yemen, where the Shi'ite Legion is contracted by Iran and Saudi Arabia (Jezdimirovic Ranito and Mayer, 2020). Furthermore, examples of these cases also include Angola, Sierra Leone, and the Democratic Republic of the Congo. These States have entities, such as rebels and other actors within the world of transnational organized crime, which outsource private security. In the meanwhile, companies that to safeguard their mine and oil facilities and workers, and thus also outsource protection.

Since low and middle-developed regions do not have a legal framework similar to the countries of Europe or North America, several of the companies within the private industry of security and military services can carry out coercive tasks in armed hostilities and conflicts, even though they have the possibility to never define their character as being influenced by military characteristics. Thus, they often disappear and are reconstructed as different firms. This causes the diverse categories of new hybrid wars to evolve; making politics, economics, and knowledge from *pre-* to *post-* conflict more complex.

The People's Republic of China

An element that makes Chinese private security and military firms differ from Western-based Private Military and Security Companies is that they are partly or completely State-owned (Wauters, 2018). Because these corporations have State influence, it has commonly been assumed that China's is unwilling to allow its Private Military Companies many liberties, such as carrying weapons. Recent research (Drozhashchikh, 2018) suggests that, while not in the form of armed contractors, private security corporations "are expected to protect civilians [and] even themselves" because this safeguards resources and valuable assets. In other words, these Chinese companies specialize in risks as long as firearms are not individually transported.

However, many analysts now challenge this widely held view and state that China is discrete about its weaponization within its context of military mechanization, precision warfare, and battlefield robotics. Wauters (2018), for example, argues that China's One Belt One Road Initiative "creates a new market whose security needs are steadily increasing" as "the role played by Chinese [Private Security Companies] in the protection of the Silk Road is growing". Local Chinese security and military companies have evolved into international corporations able to maneuver in high-risk areas abroad (Wauters, 2018).

Arduino (2015; 2017, cited in Drozhashchikh, 2018) argues that China is extending its influence abroad under the pretext of its "vision of global connectivity", mainly through infrastructure and funds. As noted by Drozhashchikh (2018), **"**China will pursue the goal of strengthening its global security positions either solely or with the assistance from 'outside'". In addition, even though there exists China's reluctance to outsource the government's functions to private security structures, Chinese firms have become large security providers depending on foreign assessment and provision.

The People's Republic of China and its *professionalizing-centric* security providers are trying to agree on common code of conduct focused on an international point of view. This will make China seem as a State adhering to legally binding rules instead of being a hegemon. Wauters (2018) states that the murder of Chinese workers in Afghanistan by local gunmen in 2004 changed the Chinese People's Republic perceptions on commercial activities abroad and, consequently, introduced a new legal framework through the Regulation on the Administration of Security and Guarding Services.

However, China has a different regulatory background than that of the West or of Russia. Normally, there are general pieces of legislation with objectives, goals, tasks, and values that lay out broad principles without exact rules that reflect the agenda of the leading party, yet much of the job is deferred by and to subsidiary administrations. Therefore, although the government sets firm principles on the use firearms in Private Security Companies, there "still is a possibility to purchase some unreliable local security forces abroad" while Chinese business have a tendency to prefer Western Private Military Companies (Wauters, 2018).

African Continent as a Destination

According to Thümmel *et al.* (2005), the mineral resources and scarce fertile soils in Africa are the focus of interest between the powers of the central governments and the opposition that challenges them, making the continent have a high potential for conflict. Therefore, mercenary activity in Africa had been prevalent long before the 21st Century. For example, Greek mercenaries fought for Persia and Numidian mercenaries fought in ancient Egypt; other African States including Nigeria and Sudan, have witnessed mercenary activities (Gumedze, 2008).

Paraphrasing Rapoport (2004), since the newly formed United Nations Organizations proclaimed the right of self-determination, national liberation and other emancipatory struggles between 1919 and 1955 were held during times and places of various geostrategic upheaval. Since the enemy in these regions were prone to mutation, the axis of centrality of conflicts moved and hostile frictions went from intrastate to intrastate. Hence, the ideals of anti-imperialism and autonomy compelled the new States, which were former colonial territories admitted to the international organization previously mentioned, to give rise to several anticolonial sentiments. Furthermore, in the meantime, the European States that were losing their colonial possessions deployed a perception devoted to movements of resistance.

Within this context, subnational groups that defended national independence and clandestine State agents that defended the *Status Quo* had the premise for politically premeditated motivated violent acts or threats of violence in order to establish fear against non-combatant actors. According to Rapoport (2004), many movements led by mixed organizations that crossed nationalistic issues were given a new language to describe their

attacks perpetuated beyond the rules of war in territories with special political problems. This reduced political liabilities, which attracted potential political support.

Starting in the 1980s, the participation of non-state actors as an element of distortion makes military-oriented disputed based on a competitive struggle to organize the territory. As argued by Russell *et al.* (2009), many of those entities described as "mercenaries" in Africa were ideologically motivated to support certain governments. The use of these troops for hire kept the former colonies in the sphere of influence of the former metropoles, and their use was easily deniable. Additionally, these combatants often had politically radical connotations, combining both racial supremacism and anti-communism.

It is, therefore, important to mention that, in those cases where the center of gravity is the civilian population, such actors can be considered as a part of the wider problem of terrorism of State and terrorism in time of war. After all there was a connection between violence and political heroic narratives. An exemplary case is that of French Algeria. During the 1950s, the division in leadership in France led to a split between the forces of the colonial authorities and of the local French Army commanders in the continent. This culminated in a definitive break-off of political and military forces. Various paramilitary actors, such as the Organisation Armée Secrète and the Front de la liberation national, implemented radical policies to intimidate the local populations in order to establish territorial control as well as to eradicate rival movements, which included anti-colonial ones.

However, it is often suggested that one man's terrorist is another man's freedom fighter. The definition of what terrorism is, especially when regarding the use of private contractors for military and security services in the contexts of war and of State sponsorship, is contingent to a series of personal innate beliefs that depend on a vast array of social interactions. Despite the notion that the definition of terrorism is based on stable principles that help us interpret and structure reality, its definition related to the use of non-State actors who have a similar ideology to those entities who hire them is unstable over time.

With the advent of the new wars on terror in Iraq and Afghanistan led by the United States, the recruitment of former military and police personnel by Private Military and

Security Companies has been an ongoing trend in Africa (Gumedze, 2008). Cases of US-based companies contracted by the United States' government to train forces in post-conflict African states, reported by Gumedze (2008), support the hypothesis that the transnational nature of such companies complicate the issues of *mercenarism* and terrorism even further.

The scope of the private security and military sector within African *mercenarism* presents a major challenge to Africa. These continental protracted conflicts are a fertile ground for the thriving industry and business of *mercenarism* as mercenaries roam and take advantage of conflicts, which undermines further the continent's commodity of peace and security and adds to the lack of human security (Gumedze, 2008). Thümmel *et al.* (2005) also imply that there exists a negative correlation between the strength of a State, mainly because it lacks "the financial resources to maintain an effective police force and a reliable army", and the danger for that country of becoming dependent on firms. In other words, by transferring violence, war, and security into private actors, companies are "able to directly pursue the interests of their customers" because the "monopoly over legitimate force by the State is at stake" (Thümmel *et al.*, 2005). Contractors are now an integral part of those who hire them for "ambitious and complex missions", especially since private troops are more sustainable due to their increased efficiency and cost-savings hire (Feldman, 2017).

Therefore, "mercenary activities are completely intertwined with African conflicts and in its effects on all aspects of the notion of human security" (Gumedze, 2008). For this reasons, Gumedze (2008) argues that "[w]hile the use of soldiers and military personnel is as old as war itself, the concerted normative response seeking to address the practice only began in the latter part of the 20th century". For example, the General Assembly of the United Nations condemned *mercenarism* because it violates Human Rights and impedes self-determination.

In order to eliminate mercenaries and regulate the remaining private security and military actors, the African Union needs to ensure strategic efforts towards the elimination of *mercenarism* and consider guidelines regarding African security architecture in various forms. The control of the private security and military industry as an emerging key player includes the required dialogue that develops a common understanding amongst Member States.

The opposition to the corporate emergence of *mercenarism* requires States to address management of the African security architecture regarding the proliferation of Private Military and Security Companies within the security sector. This includes a clear definition of *mercenarism* and the contextualization of the intrastate nature of the conflicts on the African continent, and the conceptualization of "economic, food, health, environmental, personal, community and political security" (Gumedze, 2008).

According to Gumedze (2008), the United Nations, by establishing the corresponding UN Working Group, has set as the use of mercenaries and the privatization phenomenon within the context of protection as a priority to be committed to. This worldwide regulatory template controlling the transnational private security and military industry has on its agenda the Human Rights abuses and criminal activity in Africa by illegitimate non-State actors in hostile, while also encouraging legitimate private security services.

Furthermore, Nebolsina (2019) argues that, as international actors are increasingly getting involved in the governance system that used to be dominated by the *State-territory-power* triad, new forms of global governance are in high demand. External assistance in ensuring security in the African continent, which includes "international organizations, financial institutions, donor countries, and non-governmental organizations", is the best proponent to reorganize African public-private relations (Nebolsina, 2019).

Notwithstanding, it is important to bear in mind that the African Union has not persuasively participated "in the ongoing global debate on the use of mercenaries as a means of violating Human Rights and impeding the exercise of the right to self-determination" (Gumedze, 2008). This can be illustrated with the failure of the international organization to ensure that all its Member States ratify the 1977 Organization of African Unity Convention on the Elimination of Mercenarism in Africa, as well as the subpar implementation of the provisions of the African Union Non-Aggression and Common Defense Pact on human security. It has also failed to develop an instrumental organ to monitor and to regulate Private Military and Security Companies activities at the international.

South Africa, with the promulgation of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act of 2006, is the "only African country which made progress on a regulatory framework in which these world-

wide challenges are addressed" (Gumedze, 2008). Paradoxically, South Africa is "one of the most prominent suppliers of mercenaries in southern Africa" (Gumedze, 2008).

As argued by Thümmel *et al.* (2005), "transition strategies are needed in order to regenerate states so that they can effectively handle security problems". Such a situation calls for collective and individual African States to reconsider the phenomenon of the privatization of military functions and of the security sector. This can be done through clear guidelines for the formulation of legislative frameworks, which may include obliging companies and corporate warriors to "respect the applicable rules of international law", "to accept responsibility for violations of international law", and "to investigate activities that threaten the protection of human rights and […] punish violations of international law" (Gumedze, 2008).

However, and according to Nebolsina (2019), the various forms of external authority diversified by the premises of global security erode the sovereignty of quasi-States.

Latin America as a Destination

The use of Private Military and Security Companies has been growing dramatically in Latin America in recent years. Schwendimann *et al.* (2011) argue that this phenomenon has its roots in the situation of insecurity related to gangs. The activity of Private Military and Security Companies in urban warfare in Central and South America has its associations with United States companies, who have been contracted through agreements within the framework of international cooperation.

An example is in Mexico, where governmental and police forces have been battling several rival drug cartels for regional control during various decades. Part of the aid received by the State was done through private entities, and some Private Military and Security Companies oversee the training of the Mexican police in enhanced coercive interrogation techniques (Schwendimann *et al.*, 2011).

Schwendimann *et al.* (2011) illustrate that there have been violations of Human Rights by Latin American Private Military and Security Companies. This is exemplified with the Peruvian private corporate security service Forza, created in 1991 by a group of navy officers, who killed two environmental rights defenders in 2006 during a demonstration. Another example is a Chilean Private Military and Security Company contracted by a

forestry business, that “was involved in incidents against the indigenous Mapuche community in the south of the country”.

Paraphrasing Schwendimann *et al.* (2011), Private Military and Security Companies in Colombia offer several intelligence, logistics, and training services to the police and to the army in their fight against illegal groups in order to provide help to the government. The Colombian Conflict has established fertile conditions for the growth of the private security market. Colombia tries to control this industry through legal rules, but these laws lack the necessary efficiency, “[do] not take into account the transnational component of companies”, and have problems related to responsible accountability due to “the immunity that the Colombian jurisdiction provides to employees of […] Private Military and Security Companies” (Schwendimann *et al.*, 2011).

British Petroleum has contracted DSL, a Private Military and Security Company that employed former English Special Forces soldiers, to train the local police in Colombia. The contract was terminated when the police began to use tactics which “implied violations of Human Rights”, but “the lack of an adequate legal regime” has not allowed true investigations (Schwendimann *et al.*, 2011).

However, not all these companies are oriented towards the fight against intra-regional organized crime nor violate fundamental rights and freedoms. A recent example is the help provided by these companies to international organizations in Haiti after the earthquake in 2010 (Schwendimann *et al.*, 2011). Furthermore, and according to Jiménez Reina *et al.* (2019), Latin American contractors are employed by international Private Military and Security Companies to work in other countries.

An example of this is the Australian company named Unity Resources Group operating in Iraq, which is characterized by employing Latino soldiers. Furthermore, a similar case is the Peru-based company Defion International, which is specialized in logistics services and operations in Dubai, the Philippines and Iraq.

Legal Regime

In this chapter, the findings obtained from the principal legal regimes will be presented. As mentioned previously, this will permit a better understanding on the behavior of the private contractors and those actors who hire them for their services. The observations of the regulatory regimes can be divided into two levels, both with their distinctive and similar elements.

Firstly, there will be a description of the main goals and ideas that legislations and regulations at the local and domestic levels aim to achieve. After all, and according to Avant (2000), "the norm of State control over non-State violence" is tied to States themselves being concerned about the bellicose actions of their citizens and about their identification to the modern system. This has made the various heads of State and heads of government delegitimize and illegalize the use or hire of citizens to fight abroad by entering international agreements.

Secondly, a prerequisite to understand the key aspects of the attempts to rationally provide the resources of coexistence between the international community of States and the creation of a new authority that challenges the States is to observe International Law, which allows what is possible and what is not at the global level. However, the existing agreements at this level can only be followed if both private and public actors allow either the binding adaptation of the contemporary universal *Zeitgeist* of outsourcing troops, of the firm control of non-State actors, or a combination of both private and governmental intervention in conflict.

Before beginning with the legal analysis, however, it is important to note that a summary of the evaluation of these guidelines and protocols will help propagate a clear contextualization. Bures and Cusumano (2021) have observed that there exists a historical common thread between the pre-19th century variants of the anti-*mercenarism* and those post-20th century anti-mercenary norms. This continuity is "the belief that mercenaries are uncontrolled actors because they do not fight for a proper cause" and, therefore, undermine "the role of the State as the primary holder of the monopoly of the use of force" (Bures and Cusumano, 2021).

Apprehensions about private military and security forces bear a resemblance to the fears that led to the development of international law on mercenaries (Salzman, 2008). Such concerns regarding these private contractors have produced extraordinary political measures and a series of successes in regulations as responses (Jezdimirovic Ranito and Mayer, 2020). Earlier chapters have mentioned that "the initial laws on mercenaries were developed to check the hiring of mercenaries by regimes resisting the decolonization movement in Africa" (Salzman, 2008).

According to Jezdimirovic Ranito and Mayer (2020), such regulatory evolution has a measurable impact on the performance of Western-domiciled and Western-contracted private companies in the industry of security and military. For example, the voluntary adoption of these new international standards by these firms continues to increase, slowing or stopping legislative and executive functions from contracting their activity. If optimistic, this adaptive evolution will have a spillover effect and impact more companies and more countries.

As mentioned by Krahmann and Friesendof (2011), "there is no catch-all solution to these problems". These authors use the European Union as an example, adding that the current level of regulations "is clearly insufficient" despite how the coordination and cooperation of multiple countries effects the legislation of third-party countries because the of the cross-border effects of the transnational market. Mainly, not all the existing concerns "can be addressed through improved regulation and contractor oversight". However, the European Union "can take a leading role by improving its controls".

As commented previously in this research, the term "mercenary" describes a wide range of people. This includes the perception of them being "freelance dogs of war of no fixed abode, who, for large amounts of money", are "individuals killing for hire" and "fight for dubious causes" (Salzman, 2008). Hence, as Gumedze (2008) argues, within such "absence of a clear, unambiguous, and comprehensive legal definition", there exists challenges of defining and therefore combating mercenary activities.

Paraphrasing Salzman (2008), the labeling of mercenaries in such connotations is supported by the spirit and by the international law developed to discourage States from hiring private bands of soldiers. Although the weaknesses of the existing prohibitions suggest that the international community needs to both define and to redefine the existing

rules to effectively apply them to private soldiers, the anti-mercenary laws have some strength at least when it comes to rhetorical clout. Even though their difference is not very clear, most military and security companies within the private industry have attempted or are eager to distance themselves from the tarnishing associations connected with mercenaries so that the mercenary mal-repute does not to undermine their chances at future contracts.

García Segura (2015) expresses that the difficulty of establishing a global governance regime in terms of the process of regulating activities and determining the legal qualification of the actors in the establishment of responsibilities, thus avoiding impunity in case of violations of the Rights Human, is based on its complexity and legal controversy and on the lack of political will. According to Cano Linares (2008), since there is a plurality of regimes applicable to these businesses, the presence of military and security companies that operate in zones of armed conflict does not allow *a priori* standardization.

Salzman (2008) argues that "laws that were written to apply to mercenaries can appropriately be extended to cover private contractors" because these regulations and prohibitions, in theory, "exist" as a means for *supprimer et réprimer faits avec des dispositions pénales*. Furthermore, contrary to the industry's assertions, existing international laws designed to the discourage of *mercenarism* may be equally applicable to at least some private military contractors (Salzman, 2008).

However, according to many in the field, alternative remarks can be found. Gumedze (2008) claims that "it is improbable that a legislative regime meant to address *mercenarism* can also be used to address *newer ventures*" because these private security and military firms' multi-pronged approach is based on both domestic and international approaches, which fall outside the legal limitations that prohibit *mercenarism*. Due to the lack of legal parameters that regulates through thorough guidelines or principles the activities of citizenry in the context of armed conflict, there has been a predisposition in the global debate on private armies and security firms to prohibit of band of private soldiers and to control Private Military and Security Companies.

Additionally, in practice, they are "neither widely ratified nor respected" (Salzman, 2008). Salzman (2008) illustrates this when the fight against the Iraqi insurgency

"highlighted the involvement of private contractors in combat-like situations which are likely to meet the direct participation requirement".

For the reason previously stated, a consensus needs to be built to permit the evolution of a framework that opposes 'neo-*mercenarism*' within the private military services and the security sector. This agreement must maintain the abolitionist stance against old-styled traditional mercenaries, while it must develop "legal regimes aimed at addressing the burgeoning private security industry" (Gumedze, 2008). In the meanwhile, in order to proceed with mediating concerns regarding the distinguishing of the various roles of private contractors and their companies, "there is a need for breaking the link between Private Military and Security Companies and mercenaries" and consider "the new modalities in the form of [Private Military and Security Companies] which are sometimes involved in mercenary activities" (Gumedze, 2008).

Paraphrasing Gumedze (2008), the inadequacy of the current international, legal, and regulatory framework that addresses the various roles of the industry which provides private peace, security, and stability operations in conflict and post-conflict areas offers acknowledgments for constructing an effective premise for presenting major solutions for the several roles of these firms when it comes to the State's loss of their "traditional control of the resources and means to violence".

From the point of view of humanitarian law, it is necessary to affirm that all types of actors are subject to the regulatory principles of respect for both domestic and international standards for the protection of Human Rights. In this context, Cano Linares (2008) argues that the outsourcing of State functions or services should be based on a type of Pareto principle, that is, in which such externalization cannot increase the victims of conflicts nor can it degrade protection.

Domestic Laws

As argued by Vallenilla (2015), the globalization of new technologies that have improved the means of communication and the mobilization of people have also allowed the advancement of "the private" before "the public". Faced with the private sphere playing an important factor in muddling the features of sovereignty, war violence has been privatized. Since there is no longer a clear distinction between the civil and the military,

the privatization of violence is the archetypical model of the new unconventional wars. War is the greatest expression of political violence at the international level.

However, since the central political power of the State no longer has control of the monopoly of violence to maintain its system, the wide diversity of violent conflict that is part of the modern war effort uses the cheap labor of private contractors through coercion and commerce. With this, "there is no conventional regulation that regulates the war [...] where the enemy is blurred between the civilian population and the large armed forces" (Vallenilla, 2015).

According to Peñate Domínguez (2018), the terminology related to *mercenarism*, which did not exist until the middle of the last century, has advanced towards a legal and clear definition in legal documents issued by international organizations regarding the profession. States and the international community have begun to generate legislation to regulate the market for the rapidly expanding private industry of security services and the military sector and reinforce existing regulations. Within this premise taken into consideration, the legal framework that surrounds the profession has also been subject to not having any formal reference to having a progressively developed amalgamation of legislative regulations.

However, there is an inconsistency with this argument. Although the international law that regulates the industry is influenced by customary, human, humanitarian, and criminal law, it remains very lax and ambiguous, allowing companies to carry out their activities without fear (Peñate Domínguez, 2018). Peñate Domínguez (2018) states that, as the international community has broadened the acceptance of the existence of soldiers of fortune and their use, the definitions of their nature and intentionality, both for what is formally legal and those with ideological components, have gradually been altered.

However, as the "isolation and risk-aversion behavior" of employees is intensified by their "fortification and militarization" (Feldman, 2017), Cano Linares (2008) further adds that, even though the "determination of the legal status and protection of civilians who directly participate in hostilities has represented a constant concern throughout the history of the codification [and progressive development] of International Law Humanitarian", the established norms exclude mercenaries from the combatant status and therefore minimizes their protection.

Employees within the context of armed conflicts are not considered combatants since they do not meet the requirements established by International Humanitarian Law, but neither can they be defined as mercenaries *per se* (García Segura, 2015). For Cano Linares (2008), the legal classification that best fits reality is to consider these employees of military and security companies as non-combatants, since they are positioned outside the obligations of the international regulations that govern armed conflicts.

In the words of Isenberg (2006), contract employees, since they fall outside the military chain of command, could be at risk of losing their rights. For example, when their activity amounts to combat, they become targets who have the possibility of losing the right to be treated as prisoners of war and "could potentially be prosecuted as criminals for their hostile acts" if captured (Isenberg, 2006). Furthermore, employee rights in this sector are not fully respected due to differences between national jurisdictions and companies' respect for the well-being of their staff (Schwendimann, 2011).

The divergence of legal systems is due to the different legal values in each jurisdiction. In other words, depending on the jurisdiction, other interests can prevail and, hence, several jurisdictions put different regulatory brackets. Consequently, there exist several legal systems limiting (or not) the industry of private military and security services.

Within this context, much of the normative architecture is non-exhaustive, with legal basis and rules having mostly a principle-based approach. Therefore, as stated by Schwendimann (2011), since there are considerable variations between States, the elements of international level under the existing regional scope need to be maintained and take into account a regional focus of local culture. More countries need to develop local laws that eliminate *mercenarism* and make firms comply with the regulations.

Salzman (2008) argues that new norms "are needed to adequately reflect and address the privatization of force in the twenty-first century". According to Schwendimann (2011), more countries need to develop local laws that eliminate *mercenarism* and make firms comply with the regulations. The States, for a collaboration between definition and respected common standards, must be able to promote dialogue in partnership with the industry so that local practices are aware of international principles, which take into consideration everyday challenges.

Hence, States, when taking into account domestic and international humanitarian and human rights during the selection process and when carrying out the contracts, would provide "in their legal system jurisdiction over criminal matters for crimes against international law or the national law committed by the Military and Private Security Companies and by their personnel", as well as the study of "the possibility of establishing criminal responsibility for the crimes committed by [said firms]" (Schwendimann, 2011). For example, Santa Cruz (2019) suggests that governments of States of origin ought to tax them and benefit from outsourcing operations that carry risk.

International Laws

International Law is a hierarchy*less* system of rules which has more than one State or transnational private entities create the rules between themselves and for themselves. The different sources are treaties and customary rules, which are governed according to mutual benefit and to cooperation between the actors.

Additionally, *erga omnes* relates to the effect of essential collective interests and obligations of the international community to which they are owed. Some Customary Law of *erga omnes* obligations may be owned under norms that are not peremptory and that can therefore be derogated from mutual agreement, while *erga omnes partes* are obligations under multilateral treaties and not owed under peremptory customary norms.

Carl von Clausewitz formulates that war is "an act of violence to force the opponent to do our will" and which main characteristic is that it is a violent conflict that involves contending forces at the service of a centralized organization that plans armed operations involving the destruction of property and people (Villamizar Lamus, 2014). However, and according to Villamizar Lamus (2014), "war" has been regulated under doctrinal orders to reduce its negative effects, which includes legislation within the framework of *ius ad bello*[5], *ius in bello*[6], and *ius post bellum*[7]. Therefore, and for example, even though the international legal system lacks the necessary rule of law with regard to the notion of force, war as the ability to impose terms of effectiveness is prohibited.

[5] *Ius ad bello* is Latin for "law to war", meaning all those legal formalities required to initiate hostilities or to go to war.
[6] *Ius in bello* is Latin for "law in war", meaning all those conducts that must be abided in war once armed conflict has been initiated.
[7] *Ius post bellum* is Latin for "law after war", meaning justice after the ending of the war.

Every internationally wrongful conduct consisting of an action or omission that does not conform to the international obligation legally prescribed to the State is governed by the 2001 United Nations General Assembly's Articles on State Responsibility for Internationally Wrongful Acts[8], which sets the notion of responsibility under objective and subjective elements. States have responsibility for exercising aspects of administrative authority or functions commonly associated with governmental tasks, in which such acts are *de jure* acknowledged or *de facto* promoted during the absence of official statal governance.

Therefore, a State is responsible for the conduct of any actor that can exercise elements of the governmental authority in the absence of the official authorities or if they are instructed or controlled by a State, regardless of legislative, executive, judicial or any other functions. Conduct related to a direct or indirect contracted non-State armed entities can be attributable to sponsor States, who can be held accountable "only if it can be proven that the State exercised effective control over the actions of that […] group" (Jezdimirovic Ranito and Mayer, 2020).

However, Salzman (2008) observes that "there is an ongoing debate over whether private military companies and the private contractors that they employ should be treated just like any other transnational industry or whether they should be treated like mercenaries under international law". The fact that these actors participate in many armed conflicts in which they have the possibility to violate Human Rights or International Humanitarian Law has led the demand of civil liability of the functions specifically performed by these companies "because they are embodied in international treaties accepted by the States", that is, they form part of their respective internal regulations in cases of violations of legal norms (Cano Linares, 2008). Paradoxically, companies within the security and military services sector enjoy immunity, mainly because they could implicate some States that hire these companies to avoid direct legal liability (Cano Linares, 2008).

This dispute is raised on the international scene, especially since critics of warfare law argue that difficulties in the cases of Afghanistan and Iraq have showed that *inter arma silent leges*[9] has been present in both armed conflicts by way of conduct that avoids

[8] Most of the information regarding the Articles on State Responsibility for Internationally Wrongful Acts is influenced from the 2019 lecture *Public International Law* thought by Aurélia Praslickova.

[9] *Inter arma silent leges* is Latin for "between the arms, laws are silent", meaning that everything is permitted during war.

impunity for illicit acts (Villamizar Lamus, 2014). Such discussions also take into consideration the cases of war crimes or the complementarity of crimes against humanity where the subsidiarity of the jurisdiction of the International Criminal Court with respect to national jurisdictions can only operate "if the perpetrator under investigation is a party to the Statute of the Court" (Cano Linares, 2008).

Given legal mechanisms and tasks of International Law, a transnational legal regulation is necessary for the actions of Private Military and Security Companies. As mentioned previously, the General Assembly of the United Nations Organization decided in 1998 to examine the role of mercenaries as an instrument that violates Human Rights and hinders the free self-determination of peoples. For this reason, the aforementioned international organization expressed through the political will of the international community that the activities of these mercenaries have serious destabilizing effects in all the affected States.

In the cases where there are no third-party advisors or where the transnational regulations are not binding, it is hard for the signatories and other participating actors to judge non-compliance and obligations. Therefore, States assume their obligation to respect and ensure respect for International Humanitarian Law. They are also responsible for the acts carried out by their organs. Thus, in order for the prerogatives of public power and the right of the State to be exercised in a correct manner, the States impose specific commitment clauses to ensure security through the rule of law and instructions under the control of public administration.

Seeking justice for breaches of international law can be done at various levels, and the violation of international law can take criminal justice into consideration. Summarizing Villamizar Lamus (2014), the existence of a wide range of jurisprudential rulings from international courts supports a series of principles regarding law that govern the use of force in armed conflicts, *ius ad bellum* and *ius in bello*, and the protection of Human Rights. The violation of the norms, especially in regards with International Humanitarian Law and Human Rights, imply serious legal consequences.

The International Court of Justice[10] has a contentious advisory jurisdiction on any legal question and disputes according to the fundamental conditions of *locus standi et*

[10] Most of the information regarding the International Court of Justice is influenced by the 2019 lecture *Public International Law* thought by Aurélia Praslickova.

jurisdiction ratione personae. In other words, the International Court of Justice has binding authority to adjudicate upon subjects who are consented to the International Court of Justice's jurisdiction of international law, especially provided for in the Charter of the United Nations. This means that individuals, groups, or any other non-State entity do not have access to appear before the International Court of Justice.

However, institutions' authority, legitimacy, and resources are constrained by the internal expectations of their external environment and of other normative standards (Bures and Cusumano, 2021). Bures and Cusumano (2021) suggest the use of the term "organization of hypocrisy" to describe the tendency of institutionalist organizations to dissociate structures, processes, and behaviors when facing contradictory pressures. This leads to administrations addressing demands without acting upon them. The authors also indicate that the degree of duplicity is positively correlated with the complexity of collective entities. Bures and Cusumano (2021) give an example of a form of organized hypocrisy, which is that of the anti-mercenary entrepreneur norm.

On the one hand, Customary International Law distinguishes the forms of the use of force, making the use of an unjustified armed attack disproportionate, unjustified, and unnecessarily discretionary. Moreover, some bodies of the United Nations condemn the services of Private Military and Security Companies. This is evident to Article 2(4) of the United Nations Charter, refraining actors from the use of force against the territorial integrity of any State. Sanctions and non-forcible measures can be given to United Nations Member States, non-Member States, and non-States.

Bures and Cusumano (2021) were able to underline recurrent "key aspects" during several talks of United Nations working groups when referring to Private Military and Security Companies. According to these authors, there is some evidence that implies the use of derogatory terms when describing the activities provided by private firms that offer military and security services. Both the employees and the employers are "responsible for criminal behavior and wrongdoings" and "for instances of excessive or arbitrary use of force".

This distrust is due to the violation of certain regulations, which include "illegal acquisition of weapons", "poor vetting of employees", and "corruption and bribery […] to obtain contracts and lax legislation" (Bures and Cusumano, 2021). The adverse

outcomes of security privatization and businesses' exemption from punishment is opposed by the praise done towards normative use of State monopoly of violence and sovereignty (Bures and Cusumano, 2021).

On the other hand, Bures and Cusumano (2021) argue that other United Nations agencies increase the use of private security firms' defensive security amenities "because of the ever-increasing demand for the presence of such international organization in increasingly complex conflict and post-conflict areas, as well because of the protection of United Nations personnel and operations" (Bures and Cusumano, 2021). Furthermore, it is crucial to mention that, even though the United Nations' Security Council is the organ that determines peace and security, qualifying a situation as a threat to international peace and a breach of security is a political qualification and it is independent of any legal or judicial finding.

This ill-identified gap "conceptualizes the organization's failure to uphold the norms", making the international organization "developed separate responses to contradictory pressures". In other words, the persisting discrepancy between the moral connotations of the United Nations and the incoherently ambiguous contradictions regarding outsourcing challenges "the United Nations' credibility as a norm entrepreneur" and hinders "the effectiveness […] of its agencies" for further reform (Bures and Cusumano, 2021). This generates more problems than the establishment of long-term solutions.

Since the categories of warfare are evolving, it is difficult to apply explicit or specific regulation. Although there is no legal vacuum *per se*, much remains for interpretation. It is therefore necessary to determine which security functions inherent to the State cannot be delegated. In the West, non-State actors have their powers limited to defense, even though criminal and civil responsibilities are being demanded when it comes to their activity. However, co-complicit countries do not want to regulate companies, since this legal limbo serves to carry out actions that they could not do in a sector in which States can advance their interests.

International law determines what things are possible, but the only thing it requires are national regulations when applying primary rules of law. The universal order of security outsourcing is under international humanitarian law and private law subject to State legislation not subject to military authorities. When it comes to this public international

law, there is the *soft law*, made up of non-binding initiatives signed in codes of conduct. In other words, they are non-binding agreements that are followed if you will.

First, there is the Security Providers Code of Conduct for Private Security Service Providers (2010). In this international code, non-governmental organizations, such as private security companies, agree to ensure compliance with human rights and current legislation during the course of their contracts (Peñate Domínguez, 2018). However, such regulation is a loose agreement focused on a business-based mentality and logic. It also only mentions private security companies, and not necessarily military ones.

Second, there are the Piracy Guidelines. These principles demonstrate that, despite this absence of specific standards, the maritime security sector has adhered to non-binding instruments regarding recommendations of conduct through voluntary international certification (García Segura, 2015).

Since piracy has historically represented a threat that challenged the maritime security (García Segura, 2015) and the State's ability (Scott-Smith and Janssen, 2014), ship-owners have been implementing time-consuming tasks regarding private security, especially because piracy acts have been exponentially increasing in recent years (García Segura, 2015). Therefore, shipping companies have been demanding more governmental force and military protection to offer and to ensure sufficient deterrence. Parallelly, the United Nations established States as the only legitimate actors for conducting anti-piracy operations.

Within this context, evidence suggests that anti-piracy norms have been able to change the perception of the State's role in security provision, merging the field of maritime security with the phenomenon of the privatization of security (Scott-Smith and Jansen, 2014; García Segura, 2015). According to Scott-Smith and Janssen (2014), there has been cluster of States that took advantage of new anti-piracy principles, as it is a "potentially lucrative market for Private Military and Security Companies", who can "reduce the need for naval intervention".

The regulatory dynamics in this area joins the widespread phenomenon of the urgency to delimit the progressive consolidation of soft law instruments for the regulation of Private Military and Security Company activities. García Segura (2015) shows how

“International Maritime Organization guidelines have been promoted for maritime private security companies that provide armed security personnel on contract”.

Scott-Smith and Janssen (2014) illustrate the conditions of the framework and development of maritime law on private enterprises by focusing on the Netherlands. This country was able to emerge as a wealthy independent State in the 16th century mainly due to an “effective use of ‘privateers’ and irregular warfare against the superior Spanish forces” during the Flanders’ Eighty Year War (1568 – 1648), started by the Dutch Revolt. Non-State entities continued, with the chartered company known as the United Netherlands Patented East India Company even being referred as “the first private military company”. However, the post-Napoleonic constitution of 1815 codified the State’s claim to maintain its primary position as security provider.

Since the littoral States of the Gulf of Aden and in the Horn of Africa region are unable to project their effective legal apparatus, piracy attacks increased. This caused Dutch Government’s anti-piracy policies to protect Dutch merchant shipping.

Guidelines by public domestic administrations gave rise to a tense debate between various stakeholders regarding the division between political ambition and military capabilities, the desire for a globally deployable crisis response, and the consistently declining Dutch defense budget (Scott-Smith and Janssen, 2014). An example includes ship owners concerned about the costs and the responsibility of the security for personnel, and the Dutch government concerns about their ability to defend Dutch interests abroad while being responsible for maintaining its monopoly on the use of violence (Scott-Smith and Janssen, 2014).

In the meanwhile, several private security and military companies advertise their services for Dutch vessels. According to Scott-Smith and Janssen (2014), these corporations presented its services as adhering to Dutch law, such as promoting itself only for emergency situations and self-defense of the crew. The proposals to privatize sections of the defense apparatus had been made as early as 1985, but only a small number of businesses within the commercial-military connection existed up to the mid-2000s.

As a consequence, Dutch shipping companies followed what Scott-Smith and Janssen (2014) consider “stealth privatization”, in which ship owners illegally sought armed security to secure their vessels. However, since the Dutch military was unable to meet all

the potentially politically prudent placed pressures of outsourcing-oriented trends from the private sector arguing for a new approach, the Dutch government changed in 2013 its position and initiated the preparation of new legislation.

Finally, the Red Cross and Switzerland promoted the Montreux Document. It is a legal framework that works as an ethical-moral voice where International Law, International Humanitarian Law and International Human Rights law are applicable. It invokes the responsibility of the person who carries out the behavior and of their superior.

The Swiss Government partnered with the International Committee of the Red Cross. These two actors securitized private contractors by initiating the "Swiss Initiative", which eventually produced the Montreux Document and the subsequent International Code of Conduct. Switzerland's government and the International Committee of the Red Cross laid the groundwork for this initiative, publishing research on existing laws and policies between 2005 and 2006. From 2006 until 2008, 18 governments and the International Committee of the Red Cross "worked to identify existing pertinent international legal obligations and to recommend good practices for States regarding […] Private Military and Security Companies" (Jezdimirovic Ranito and Mayer, 2020).

Wauters' (2018) findings suggest that the early discussion between Switzerland and the International Committee of the Red Cross was focused on the need for an international dialogue on the application of international humanitarian and rights laws to private contractors. Since some States expressed doubts at the initial phases of the initiative, the Swiss Federal Department of Foreign Affairs and the International Committee of the Red Cross undertook diplomatic delegations fully aware of the extensive fragmented regulatory arrangements at the international arena. Therefore, as a long-term plan that institutions aim to achieve, they opted for consultations under a conservative approach.

For Wauters (2018), two main groups were formed during the negotiations. The first one was the skeptical one regarding the "extraterritorial reach of obligations engendered in Human Rights conventions", which included the United States. The second one, which was mostly comprised of non-governmental organizations, pushed for stronger State preventions and obligations, under Human Rights law. Non-governmental actors were not able to agree on common grounds, enabling States to modify the process of negotiation and exclude private actors.

However, the massacre of the Nissour Square in 2007 “created strong incentives for States to be seen acting to improve regulation of the industry” (Wauters, 2018). Furthermore, the rapid development and implementation of these standards soon after the initial securitization process induced the Swiss Government to accept the private contractor industry petition to develop an International Code of Conduct to facilitate an endorsement of Montreux Document principles by the sector of private security and military services. The immediate incorporation of the International Code of Conduct standards into government regulation “demonstrated what securitization could accomplish” (Jezdimirovic Ranito and Mayer, 2020).

Simultaneously, the United States of America Government initiated development of operations and management standards for private security companies. However, the eventual parallel United States’ active securitization effort enabled United States regulators “the opportunity to include the recommendations of the Montreux Document in the new regulations required by Congress” (Jezdimirovic Ranito and Mayer, 2020).

Therefore, and according to Jezdimirovic Ranito and Mayer (2020), the adoption and the application of the tools and the Montreux Document into regulations was a successful example of the securitization of Private Military and Security Companies. Over 50 countries as well as three intergovernmental organizations (the European Union, the North Atlantic Treaty Organization, and the Organization for Security and Co-operation in Europe) are signatures (Wauters, 2018).

The Montreux Document (2008) is of major relevancy because it assigns obligations in accordance with the role of the actors involved (Villamizar Lamus, 2014). Despite the non-binding nature of the Montreux Document, this document is a sign that the Military and Private Security Companies have made certain advances in self-regulation, thus becoming an ethical-moral instrument of legal *soft law* and the voice of the conscience whose principles identify the correct conduct for all actors in the field of security (García Segura, 2015).

On the one hand, the first part regulates the international legal obligations relevant to Private Military and Security Companies, also summarizing international legislation.

Paraphrasing Villamizar Lamus (2014), in order to avoid the legal vacuum of that private contractors and to address the misconceptions of their operations, this document

articulates international legal obligations by establishing the widespread belief that there is legislation with a forceful legal nature that determines the status of staff members under International Humanitarian Law. In other words, this intergovernmental statement provides the personnel of Military and Private Security Companies with a series of guarantees and reminds the contractor actors the orientation on obligations from International Law (Wauters, 2018).

It is crucial to point out that the description provided by this document defines these businesses as any type of private commercial entity that describe itself as providing military or security services. This includes services of guard and armed protection of people and objects, and advice for the training of personnel of the local security forces. In the meanwhile, this document includes private security companies and private military companies under the same term and no distinction is made.

On the other hand, the second part is dedicated to the good practices of said corporations and the States involved, intended to guide and orient the actions of all entities through supervision and accountability mechanisms (Villamizar Lamus, 2014). Regardless of the context, this allows the establishment of the expected behavior of both the institutions involved in the contract of private companies for security and military services, especially in the application of Human Rights norms and both legal and practical guide based on current International Law (Schwendimann *et al.*, 2011).

Firstly, the good practices of the Montreux Document, although they do not create new legally binding obligations, serve as a guide on international legal and practical issues (Schwendimann *et al.*, 2011). Thus, the members of those private conglomerations within the sector of security services and armed forces have the obligation to respect applicable International Law and the State's obligations under International Human Rights standards (Villamizar Lamus, 2014).

Secondly, and summarizing Schwendimann *et al.* (2011), these practices suggest that the State should provide, in its legal system, jurisdiction over criminal liability in accordance with the jurisdictional jurisdiction of the territorial State for crimes against international or domestic law committed by private businesses that are involved with the services providing security and military.

Schwendimann *et al.* (2011) stresses that such good practices are essential when focusing on business that "are used in the war against drugs or are contracted by transnational extractive industries for their security". However, "the intergovernmental declaration of the Montreux Document defines in a manner with little legal value the relevant international legal obligations and good practices of States with regard to operations during armed conflict" (Villamizar Lamus, 2014).

Furthermore, the Montreux Document makes a distinction between States and, therefore, there is a division that lies in "establishing the jurisdiction in which a violation of Human Rights should be judged and also helps to establish the line of responsibility" (Santa Cruz, 2019). The services private contractors perform are circumscribed by the legal system of the State of incorporation, the State where they conduct operations, and the laws of the State that contracts for their services or the State of incorporation of the contracting entity.

The first typology of State, known as the "Contracting State", is the type of country that directly contracts the services. In the words of Ibáñez Gómez (2009), these States are "those that directly contract the services of a [Private Military and Security Company], even if that company subcontracts its services to another".

These countries are under a series of obligations linked to the virtues of the enactment of the necessary international legislative instruments and to follow the duties of vigilance. The observation of the penal code and the consideration of the possibility that the personnel may commit crimes abroad determines responsibility and provides the necessary control bodies which ensure respect both domestic and international law (Ibáñez Gómez, 2009). In order to establish effective criminal sanctions that prevent normative violations, this legislative framework includes all actions committed by companies or their personnel when "they are attributable to the contracting State in accordance with customary international law" (Villamizar Lamus, 2014).

The second typology, that of "Territorial States", are countries that have Military and Private Security Companies operating in their territory. These countries have certain obligations in the field of International Humanitarian Law and Human Rights, but their State structures are deficient. Given the reality experienced by this type of State, it is difficult to apply legislative or regulatory norms.

These States have to seek a minimum order of territorial control and, therefore, they should assess whether their legal framework allows them to ensure that the conduct of the staff of these companies or whether it needs to be modified (Ibáñez Gómez, 2009). These countries must oblige private contractors to respect and comply with the obligations of International Humanitarian Law, enact the necessary legislative instruments to establish effective criminal sanctions in relation to the Geneva Conventions, and extradite people suspected of having committed crimes (Villamizar Lamus, 2014).

The last typology of countries is made up of "Home States", in which companies within the security and private military industry are registered or originate from. These States have the obligation to ensure that businesses that hold their nationality respect and comply with international regulations by adopting the measures that may be necessary for this obligation to promulgate the necessary legislative instruments to establish sanctions penalties (Villamizar Lamus, 2014).

However, "[a]ccountability […] remains a crucial issue for which [international protocols do] not provide clear answers nor guidance", especially since making the Montreux Document binding in law and ensuring private actors to not violate Human Rights depends on the States (Wauters, 2018). The gaps in agreed frameworks and continued destabilization indirectly imposed broad acceptance of the availability and acceptance of international standards of the Montreux Document and the operationalization of the International Code of Conduct by Western Private Military and Security Companies "opened opportunities for deniable State sponsored non-State armed groups", such as the combat providers Quasi-Mercenary Organizations who operate at the fringes of international law (Jezdimirovic Ranito and Mayer, 2020). The existence of some vagueness includes the lack of clear difference between direct participation and self-defense (Wauters, 2018).

In addition, a United Nations Working Group mandated to study responsible use of Private Military and Security Companies has been less successful in applying securitization measure. This is mainly due to the fact that the criteria and other guidelines of the document are currently being ignored by much of the United Nations (Wauters, 2018). The increase of number of the United Nations' contracts with private contractors at the lowest cost without concerns about the quality of the contracting nor about minimal requirements, "such as internationally supported standards which require inclusion of the

respect for Human Rights in their daily operations" (Jezdimirovic Ranito and Mayer, 2020).

A supplementary guideline, although having a regional-wise scope instead of a global one, is the 2011 PRIV-WAR recommendations for the European Union supervisory action in the field of providers of private security and military services. This document is financed by the European Commission's collaborative research project in the regulation of the privatization of war.

Bakker and Sossai (2011) argue that its main goal is to address if the Euorpean Union could "play an active role in ensuring compliance" with International Humanitarian Law and Human Rights. According to both authors, the document adopted "legally binding and non-legally binding instruments", the harmonization of domestic measures, and the regulation "of the export of such services to third countries".

Conclusion

Summary of Results

As a conclusion to this study, it can be asserted that the original hypothesis of the negative "effects" of army-oriented corporations is not rejected. There has been an increasing involvement of companies that provide private security and military services in the field of international security, and this has affected the framework of international relations. Even though there are judicial and legal interpretations of the acts of private military and security companies under the principle of "respect towards all" in international armed conflict, military and security services provided by private firms have an overall hazardous and adverse effect when it comes to international law. The involvement of these corporations in the field of international security and armed conflict is correlated with their violation of *erga omnes*.

It is of essence to clarify that, in the past, conflicts were due to an incompatibility between the objectives of the actors involved. Throughout history, there have always been such disputes often leading to violence. Therefore, mechanisms have been instituted to achieve individual and communitarian self-defense protection. The result has been the implementation of structures to ensure individual and group safety, which has often included the regulation of privatization of security and law enforcement officers, armed combatants, and defense and offense contractors. These non-public actors are as old as war itself, since they are inspired by the traditional concepts of privateers, watchmen, and mercenaries. However, the participation of private actors in hostile tensions has been opposed during many numerous historical epochs. These eras include the creation of the modern Westphalian State and the French Revolution.

With the end of the Cold War and the outlawing of combative warfare, traditional armed conflict ended. Interstate armed disputes have been reduced, but this did not lead to a decrease in armed conflict and insecurity. There has not been an increase in attitudes and structures that maintain peaceful societies and banish the specter of war as a means of resolution.

Furthermore, the increasingly interconnected world of the contemporary era has required States, as independent and sovereign units, to expand self-protective interactions. States

recognize that their individual security cannot be achieved without joint international security through the use of cooperation. Common security, which appears in a context of coordination, establishes disarmament negotiations and the division of responsibilities to limit the use of violence. If a State is not capable of ensuring its citizens' safety, the international community takes on this responsibility. In other words, an intergovernmental organization assumes responsibility when a State is so weak that it does not have the capacity to safeguard its citizens. This concept is revolutionary since it means that individual people take over and supersede the sovereignty of States.

Nevertheless, the current contemporary international society faces both old and new challenges when it comes to security threats. Since conflict management mechanisms are designed to react to traditional hostilities, tensions are difficult to control. These difficulties promote the lack of adaptation and adoption of practices and norms, limited by sovereignty and by world-wide problems that require global governance solutions.

The new changes in conflict are linked to socioeconomic transformations and the geopolitical composition of power. War, by evolving into a business, has allowed for the multi-polarity of actors, both globally and locally. This definitional coup challenged both domestic and international anti-mercenary norms, and such a sudden change in the structure of hostilities has generated many different reactions by various actors.

In some instances, armies for hire have been encouraged. This can be seen when investigating information about Russian Quasi-Mercenary Organizations. Paraphrasing Potočňák and Mareš (2022), Russian private military enterprises experienced a slow yet steady transformation that turned them from grassroots multipurpose tools into a suitable strategic and commercial instrument in hybrid warfare operations. Their non-transparent *modus vivendi*, under the premise of *de facto* illegality, was made possible by the liaison between private contractors and public authorities of the Russian Federation.

In other instances, there have been attempts to restrict private soldiers. This can be analyzed when studying the Western World, mainly because it pursues pluralistic private goods within a context where political considerations do not preclude the consequences of the analysis of international theory. As observed in this dissertation, there is collateral damage from the abuses and errors of impunity by companies that partake in hostilities.

There are a small number of regulatory instruments to manage the new contemporary security needs, and security and military firms do not have an army logic in the traditional sense. Private contractors comply with contracts and not orders of military discipline. This implies militarization by creating wars to sell security. War is a business so, implicitly, violence is a good. This encourages premature new paradigms that foster reluctance on the part of some emerging countries to accept the new conceptualization of Western interventionism.

Likewise, the West also has a series of legal systems that try to limit the widespread risky phenomenon of private providers of military and security services, fundamentally because democracies have the incentive to resolve conflicts with each other through peaceful means. Although there have been State-based attempts to adjust the pseudo-market of troops for hire, many of the decisions within a multilateral framework are taken from a bottom-up perspective within a regional approach. This has led to constraints to modify the market as well as balancing the system by nudging institutions and organizations to compensate a wide range of costs.

When it comes to Private Military and Security Companies, general rules that stipulate a series of codified metrics under several rule-of-law principles are currently being set for them to lawfully adhere to ethical principles based on fundamental freedoms and rights. As seen throughout this research paper, a view commonly held by many within public administrations and private spheres is that these types of firms are in need of substantive guidelines regarding compliance and are in need of formal activity according to understandings provided by laws.

Norms are multidimensional, multidirectional, multileveled, and multifaceted summaries of shared knowledge. The violation of these self-evident routines creates antisocial operations of chaos. Therefore, since international law promises the elimination of the use of armed forces and the prohibition of violence, private contractors who partake in armed hostilities must be subject to laws and respect on common values. Furthermore, the activity of these non-public actors must be based on operationalized fundamental rights and on the continuous tensions between ethical evaluations.

However, it is necessary to take into consideration the fact that legal systems require institutions to legitimize, enact, and enforce specific binding rules which a particular

community recognizes as mandatory. This permits both domestic and international organizations to enforce and implement key minimum standards that sanction or benefit all parties involved.

Taking all the above into consideration, law is not as global as the private contractors participating in conflict are. Regulations are different according to the different legal systems of States and of International Organizations, making soldiers for hire circumvent normative frameworks. In other words, current principles and rules regarding military and security firms are organized according to a certain premise. This context is a form of power oriented around choice architecture's nudges, which alters behavior without forbidding conducts and without changing incentives.

The material repetition of the use of the private industry of the security and military complex as well as the binding convictions of public administration follow the principle of *utere proprietate vel necessitate ita quod alteri non noceat*[11] within international law between States and corporations, but not between legal people and natural people. Primarily, such a relationship between government and private military and security companies impacts the humanitarian field and the governance of the nature of safety according to their private interests.

Firstly, private contractors do not have values defined by the State or the international system, especially because their main principle is that of economic profit. For this reason, international security is becoming a good that is obtained through the market. In other words, firms are curtailing the idea that security is a global public good.

Second, private providers of security and military services become securitizing actors who decide the needs for a product that is no longer a global public good. Legal assistance loses its neutral and general character, creating a new humanitarian market contrary to humanitarian ethics. These companies have an influence on knowledge and how to define concepts and practices, normalizing and depoliticizing what is considered as "the exceptional". In this sense, public interests may remain undefended.

Finally, and according to Susan Strange (1996), there is a new authority challenging modern States. New private security and military companies are actors that have occupied

11 *Utere proprietate vel necessitate ita quod alteri non noceat*, derived from Customary Law, is Latin for "use a property or necessity in such a way as not to harm another".

certain executive power and initiatives. This implies that the State withdraws from the security monopoly by delegating a space where it was the only actor, generating a relationship based on dependency. These companies question the capacity of the State to provide security to its citizens, erode its sovereignty by undermining the authority of the State, and polarize the legal use of force by being more efficient than the State. This company-government bond generates a different management of different problems, promotes needs, and creates threats.

Current proactive protection approaches regarding private contractors and other types of private providers of security and military services are precautionary instead of being preventive. In other words, legislation regulates uncertain hazardous dangers in a vague manner, establishing obstacles to progress within the field.

Nevertheless, it is almost certain that the situation regarding private businesses in hostile situations will improve in the long term. The analysis of existing negotiating mechanisms and regulatory instruments for Private Military and Security Companies activity shows that public-private cooperation is a slow but dynamic process "between what is desirable and what is possible" (García Segura, 2015).

Therefore, the optimized general norms regarding positive social expectations should be accurate and ratified according to legitimate and specified responsibility. As mentioned by García Segura (2015), security should be a Global Public Good and be managed through governance mechanisms that, while open to the participation of the plurality of actors in contemporary international society, "adopt a global approach in the analysis of the problems" in terms of its challenges and threats. This will ensure adequate and relevant compliance to basic principles of the rule of law. Preventive legal grounds to orient potential risk-based situations demand specific agreements, hybrids, and laws that both define safeguards and hinder probable insecurity.

In an ideal situation, various sensible policies and diplomatic alliances would avoid power imbalances while promoting an ethical and innovative economy. Governments, for a better future, should have a foreign policy based on fundamental human values. This is achieved thanks to the trust attained through the cooperation within a sincere international community. Such multilateral interdependence will emphasize responsibility. This would not diminish the self-interest of States or International Organizations, the stability of

having economic health and military strength, nor the maturity that is obtained through industrialization and trade. Rather, a strong international community reflected in open and two-way communications would protect mutual respect, uphold and maintain peace, and minimize violence.

Therefore, this dissertation can conclude by arguing that there exist negative effects of private corporations in armed hostilities. Although there have been disputes for different objectives and international conflicts have decreased since the end of the Cold War, it is difficult to control the new typology of armed hostilities with old methods. This has not halted violence because there has not been any major incentive to stop it, mainly because States want to maintain their sovereignty. People have always been paid to settle antagonisms by force, even though such practice has been opposed by many. In other words, the role of private contractors is present in the externalization of interests within security and safety. Consumers of this practice includes countries such as the United States' War on Terror and the Russian coercive defense on integrity during times of crisis, but also other actors such as militias and non-governmental entities.

However, the change in the types of conflict has given rise to different actors. Within this context, a new premise has emerged which sparked new reactions to what used to be considered as "*mercenarism*". This has prompted debates about the long-term consequences and ethics of the privatization of war. For this reason, since there have been attempts to restrict private armies under the ideals of democratic means to obtain peace, troops for hire have been pretending to be legal or have reduced their mercenary-oriented organization in order to evade international norms.

It is of upmost importance to suggest that security is central to international relations. Nevertheless, it is an underdeveloped concept. There are different theoretical explanations of "security". Sometimes, this term is even confused with the overlapping definition of "power". This ambiguity means that, by focusing much more on the analysis of non-threat situations and their development, safety against internal and external threats and other types of protection has been taken to the political-practical sphere. This frames and primes security as a value-laden concept which depends on how reality is interpreted, making it difficult to reach the optimal balance to create cost-efficient policies between security and defense.

Future Research

The academic research in this essay has used the traditional problem-solving theory, which aimed at finding solutions to complex problems. As observed, the current strategy regarding private contractors has not escaped criticism from governments, agencies, and academics. An example of a problematic aspect is that difficulties have arisen when attempting to implement policies and other plans of action. Therefore, it is hoped that this paper will help to better understand the renewed interest in the effectiveness of norms against private forces in armed conflicts and other hostilities.

Nonetheless, there can be other security approaches that can be applied. The study conducted in this paper would have been more significantly applicable to politics if there had been a wider range of systematically oriented reviews of all the relevant literature regarding the debates at institutional levels. The main weakness, thus, is the failure to address in an in-depth manner the means in which the various administrations have discussed the issues of private security and military services.

For example, there seems to be a definite need for the postmodern critical theory, which focuses on the explanation of social phenomena and analysis of structural causes of social change (Cox, 1996; Lyotard, 1979). Since the world is understood through broad and multidisciplinary knowledge constituted through language, the State should not be the center of study because such public actor is often separated from the various problems of insecurity. The approach also establishes that the deconstruction of narratives which describe the relations of power and security.

The interpretation by the traditional problem-solving theory also overlooks the introduction of the gender criteria. A reasonable approach to tackle this issue could take into consideration the many women who are active within the pro-security and anti-conflict paradigm while at the same time being victims of violence. It should be pointed out, although, that there is no general agreement when it comes to the female-oriented perception of private safety, making it rather controversial.

Another possible area of future research would be to take into account non-normative factors, such as cultural references. This includes the shared knowledge of ideas, the economic and/or military capacity of material resources, and social practices consolidated and repeated through structures. Many authors within the field (Wendt, 1992; Keohane

and Martin, 1995; Valentine *et al*., 2009; Bennett, 2015) consider that institutions exist in a social context not inherent to people, building interests through non-spontaneous social structures and knowledge founded socially and not naturally. Therefore, it is relevant to compare the perception by those countries where private troops participate in their conflicts with the observation by the foreign soldiers who are hired.

Case studies include the Second World War and during the decolonization period. In this dissertation, a series of corporate physical institutions have been analyzed for both cases. However, a more all-encompassing style of general thought is needed in order to have a distinction between ontological and epistemological systematic disciplines. The study of how a system constructs and controls the experience of the world will permit future research to understand, for example, how colonial thinking is closely connected to the system of political power.

It is also important to take into consideration the entry of the masses in the political arena with the doctrine of popular sovereignty and the spread of democratic ideas. Here, public opinion shifts the source of authority, legitimacy, and sovereignty. A subtopic within constructivist theories[12] is the explanation of the consequences of the passive consumption of State television content by the majority of the population, making public opinion simply indifferent when it comes to companies within the military and security services sector. Many academics in the field hold the view that the non-combatant civilian population, who passively follow events, usually do not have a desire to analyze the situation or to take a particular position. Because frames work best to the extent that the audience is unaware that the frame is being used, people receive information about affairs from the media which, over time, creates a dominant framework of expectation.

Although extensive research has been carried out on the unstandardized issues of private contracts, not many analyses exist which give due consideration to non-legal or para-legal responses from both the companies and the public sphere. Additionally, it is unknown if the various constructivist foundations, once consolidated, would be easy or difficult to socially change. Therefore, the assumptions taken from this field of research will hinder policymaking because the solutions would be too vague.

[12] All information regarding constructivist approach to media is paraphrased from the 2020 lecture of *Security and International Conflicts* thought by Caterina Garcia Segura.

Another important factor is the revolution of the new information and communication technologies[13], which began in the 1970s. There have been systemic changes which promoted a series of advances at different limits of human activity. The production levels of these new goods and services exist within a new interdependent network of infrastructures.

The protection capacity of a State regarding cyberthreats is of interest to the international community. Cyberspace is one more space where sovereignty and power and security can be projected, managed, and guaranteed. Technologically advanced States are the most interested and can be divided into two positions. The first is from those whose culture is based on security in traditional terms, which is to protect industry and companies. The second is the one that is based on security in terms of the critical spirit of protecting the *Status Quo*.

Cyberspace is one more space in international relations where there is no attribution of responsibilities, but States do not agree on the regulation for this new territory. They have preferred non-binding soft law instead of committing to international treaties, even though such networks are not independent from the struggle for power resulting of human action. This has allowed private actors to expand within a space in which security is free to be negotiated, leading to the involuntary conversion of cyberspace into a fifth battlefield where both public and private actors compete for the use of electromagnetic telecommunication. That is why, in the future, the study of the intervention and management of private security promoters in the field of cybersecurity is required.

[13] All information regarding cybersecurity is based on notes from the 2020 lecture of *Security and International Conflicts* thought by Caterina Garcia Segura and from the 2022 course *Law and Data* thought by Elisa Spiller and Andrea Pin.

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