



Legal Challenges of Hybrid Warfare: Accountability of Mercenaries and Private Military Companies

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Abstract. Hybrid warfare, which combines conventional and unconventional tactics and often relies on proxies, has become a defining feature of modern conflicts. This study examines its connection with international criminal law, focusing on the role of mercenaries and private military companies (PMCs). It argues that these actors are used as tools of ‘plausible deniability’, hiding accountability and complicating the enforcement of international law. After defining hybrid warfare, the paper places mercenaries and PMCs within this framework and analyses their status under international humanitarian law. Although they are usually excluded from lawful combatant status, they remain personally responsible for criminal acts. The Russo-Ukrainian war, especially Russia’s use of PMCs such as the Wagner Group, demonstrates the legal and moral challenges of identifying responsibility and prosecuting violations. The analysis reveals significant legal gaps and difficulties in proving individual responsibility, which allow mercenary actors to operate with impunity and weaken the effectiveness of international criminal law. The study concludes by proposing reforms to close these gaps, clarify legal definitions, expand jurisdiction, and strengthen accountability for both individuals and states in order to better address the threats posed by hybrid warfare to international peace and security.

Keywords: hybrid warfare, mercenaries, private military companies, international humanitarian law, international criminal law, Wagner Group, state responsibility, war crimes, deniability

1. Introduction

Hybrid warfare has become a central strategy in modern conflicts, merging military and non-military tactics to blur the boundaries between war and peace.

In such conflicts, both state and non-state actors combine conventional combat, irregular warfare, cyber operations, and information campaigns, often using proxy forces to achieve political goals without open confrontation.¹ A key feature of this approach is the use of mercenaries and private military companies (PMCs), which allow states to outsource violence while maintaining plausible deniability. These private actors provide operational flexibility, but their ambiguous legal status complicates accountability and the application of international law.

The Russo-Ukrainian conflict offers a clear example. Russia's use of PMCs, particularly the Wagner Group, shows how hybrid warfare challenges international norms. Since the 2014 annexation of Crimea, Russian-linked PMCs have advanced Moscow's interests while allowing official denial of involvement.² The full-scale invasion of Ukraine in 2022 further exposed legal tensions regarding combatant status, prisoner-of-war rights, and the prosecution of war crimes. Reports of atrocities, including civilian massacres and summary executions, attributed to Wagner Group fighters highlight the urgent need to clarify legal responsibility for such acts.³

This study explores how international law addresses these challenges, focusing on international humanitarian and criminal law. It defines hybrid warfare, examines the legal position of mercenaries and PMCs, and analyses how war crimes and related offences by these actors can be prosecuted. The paper distinguishes between individual and state responsibility, drawing on examples from Ukraine and other conflicts. Finally, it offers policy recommendations to close existing accountability gaps, strengthen universal jurisdiction, and regulate private warfare more effectively.

Hybrid warfare involving mercenaries and PMCs threatens to erode the foundations of international law. By assessing these developments through a legal and ethical lens, this study seeks to promote a clearer understanding of current weaknesses and to propose realistic ways to uphold accountability and global security.⁴

2. Hybrid Warfare and the Use of Proxy Forces

Hybrid warfare⁵ is a complex and evolving form of conflict in which an aggressor combines conventional military force with unconventional tactics. It is not simply about battles between armies but about blending traditional warfare with

1 Foley and Kaunert, 2022.

2 Patrichev, 2024.

3 Tondo, Koshiw, Graham-Harrison, and Sauer, 2022.

4 Cameron, 2006.

5 Veress, 2024.

cyberattacks, disinformation, economic pressure, and the use of irregular fighters. The purpose is to weaken both the military and the psychological resilience of the targeted society. Frank Hoffman defines this strategy as the coordinated use of several types of warfare, whether by state or non-state actors, to achieve overlapping effects. In practice, it means that the lines between peace and war, or between combatants and civilians, become increasingly blurred.⁶

Ambiguity lies at the heart of hybrid warfare. Aggressors often act through covert channels or intermediaries to conceal responsibility and avoid retaliation. As Peter Pindják notes, such tactics aim to ‘avoid attribution or retribution’, making it difficult to identify who is truly behind the attack. This uncertainty leaves the victim state in a legal and political dilemma: should it treat the event as an armed attack, a cyber operation, or merely a case of subversion? The lack of clear attribution allows aggressors to operate in a grey zone below the threshold of open war.⁷

While hybrid tactics have existed throughout history, their modern form has been transformed by technology, globalization, and the rise of private military actors. Information networks, social media, and global finance provide new tools for manipulation. At the same time, private combatants and mercenaries play an increasing role in these operations, giving states deniability and flexibility.⁸

Today, hybrid warfare poses serious challenges to democratic states and international law. It exploits legal loopholes and the openness of societies that value transparency and free information. From Russia’s involvement in Ukraine and Syria to the rise of ISIS,⁹ recent conflicts show that hybrid warfare is now a defining feature of global security. Confronting it requires more than new military strategies. It demands a clearer legal framework and stronger international cooperation to ensure that accountability keeps pace with the changing nature of war.

3. Mercenaries and PMCs as Tools of Hybrid Warfare

Among the many tools of hybrid warfare, the use of mercenaries and private military companies (PMCs) is one of the most striking. These actors enable states to fight indirect wars while maintaining a veil of deniability. Mercenaries, often described as soldiers of fortune, fight for profit rather than political loyalty. PMCs, on the other hand, present themselves as corporate providers of military and security services. Both serve as convenient proxies: by hiring them, a state can pursue its military or political objectives without formally committing its own armed forces.

6 Hoffman, 2007.

7 Williams and Maddocks, 2025.

8 D’Cunha, Ferraro, and Rodenhäuser, 2025.

9 Fudhali and Qosim, 2024.

This allows governments to obscure responsibility for actions that might otherwise violate international law or provoke international condemnation.¹⁰

Russia's use of such actors illustrates this method clearly. The Kremlin has relied on private military groups such as Wagner, Moran Security, and the Slavonic Corps to advance its foreign policy interests in Ukraine, Syria, Libya, Mali, and the Central African Republic.¹¹ Officially, Russian leaders have denied that these groups are part of the state apparatus. The claim that 'de jure we do not have such legal entities' serves to sustain an illusion of separation between the government and the fighters. Yet in practice, evidence shows strong connections. The Wagner Group's bases were located near Russian military installations, its commanders were often former Russian officers, and its financing came from individuals closely tied to the Kremlin.

This deliberate ambiguity is legally convenient. Russian domestic law formally prohibits private armed formations under the Constitution and the Penal Code, yet these rules are selectively ignored. By keeping PMCs technically illegal, Moscow can claim that they act independently, shielding itself from direct legal responsibility. An effort in 2018 to legalize such companies¹² was blocked precisely because recognition would have undermined this fiction of independence.

The operational benefits of using mercenaries in hybrid warfare are equally important. They allow a state to act without openly deploying its troops, as seen in Eastern Ukraine in 2014. Russian fighters in unmarked uniforms and local mercenaries led separatist forces, creating confusion about who was truly involved. Similar tactics were used during the annexation of Crimea and in the early phases of fighting in Donbas. The blurred identity of these forces delayed international recognition of the aggression and complicated the political response.

Beyond deniability, PMCs also contribute to psychological and information warfare. They can pose as local insurgents or independent contractors, deepening confusion on the ground and in the international community. Scholars such as Foley and Kaunert note that Russian PMCs serve as extensions of state power, advancing Moscow's strategic objectives while maintaining a façade of independence.¹³ The Wagner Group, for example, became an essential instrument of Russian foreign policy, acting as a surrogate arm of the state's military reach.

From a broader security perspective, the spread of PMCs represents a deeply troubling development. These actors operate in legal grey zones where accountability is weak or non-existent. Their activities allow states to sustain or escalate conflicts while avoiding direct responsibility. This strategy undermines

10 Bahnareanu, 2015.

11 Sukhankin, 2019.

12 Ashraf and Akram, 2024.

13 Snyman, 2025.

transparency, frustrates collective security efforts, and erodes respect for international law.¹⁴

As mentioned above, mercenaries and private military companies have evolved into central tools of hybrid warfare. They serve both strategic and political objectives by enhancing military operations and concealing the role of the sponsoring state. This strategy thrives on the ambiguity that separates lawful and unlawful conduct, as well as the thin line between peace and armed conflict. The next sections will explore how international law addresses these actors, the extent to which their activities are regulated, and how international criminal justice can ensure accountability for their conduct.

4. Mercenaries and Private Military Companies under International Law

The term *mercenary* carries a negative meaning and is narrowly defined in international law. According to Article 47 of Additional Protocol I to the 1977 Geneva Conventions,¹⁵ a mercenary is a person who fights mainly for private gain, is neither a national nor a member of the armed forces of a party to the conflict, and meets several other strict conditions. All six criteria must be fulfilled at once, making the definition so narrow that few individuals legally qualify. As a result, most fighters commonly described as mercenaries fall outside this category and escape the legal consequences attached to it. For example, members of the Wagner Group in Ukraine, many of whom are Russian nationals, do not meet the definition because they are citizens of a party to the conflict.¹⁶

This rigidity has been widely criticized. Scholars argue that the provisions of Article 47 are more symbolic than practical, as clever legal arguments can easily exclude an accused from the definition.¹⁷ Even when applied, the rule only denies mercenaries' combatant immunity and prisoner-of-war status; it does not criminalize mercenarism itself. The Protocol also applies only to conflicts between states, leaving national authorities free to decide how to treat mercenaries under domestic law.

To fill this gap, the United Nations adopted the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which entered into force in 2001.¹⁸ It criminalizes mercenary activity and obliges states to punish it. However, with only around fifty ratifications and the absence

14 Leander, 2005.

15 Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I), 1977.

16 Oleinik, 2024.

17 Odagiu and Beda, 2023.

18 Gentil-Fernandes, Morrison, and Otto, 2024.

of major powers such as Russia, the United States, and the United Kingdom, its impact remains limited. The African Union's earlier 1977 Convention on Mercenarism reflects a similar intent but suffers from the same enforcement problems. Still, both treaties express a strong moral stance: that mercenarism is contrary to international order and justice. Historical examples, such as Angola's 1976 Luanda Trial,¹⁹ demonstrate how some states treated captured mercenaries as enemies of humanity, even when such prosecutions had political undertones.

Private military and security companies (PMCs or PMSCs) are more modern and institutionalized versions of private combat forces. They are legally registered firms that provide military and security services, ranging from combat operations and training to protection of diplomatic missions. PMCs typically insist they are not mercenaries, arguing that they operate transparently and within contractual and legal boundaries. Nonetheless, their activities often take place in unstable regions and blur the line between state and private responsibility.

No binding international treaty directly regulates PMCs. They are generally treated as civilians under international law unless they meet the mercenary definition or are formally integrated into a state's armed forces. To address this gap, several soft-law initiatives have emerged. The 2008 Montreux Document outlines states' existing obligations under international humanitarian and human rights law and lists best practices for managing PMCs. The International Code of Conduct for Private Security Service Providers (ICoC)²⁰ adds industry standards and monitoring mechanisms, though participation remains voluntary.

Even without specific treaties, PMCs are still bound by international humanitarian law. Their employees are accountable for any violations of the laws of war, and states that hire them remain responsible for ensuring lawful conduct.²¹ A state cannot legally outsource prohibited acts, such as targeting civilians or torturing prisoners, through private contractors. The legal relationship among the hiring state, the host state, and the company itself creates a complex web of accountability – one that too often allows violations to go unpunished.

5. Mercenaries and Combatant Status under IHL

One of the main legal consequences of being classified as a mercenary is the loss of combatant and prisoner-of-war (POW) status. Under International Humanitarian Law (IHL), lawful combatants, such as members of a state's armed forces or organized militias, enjoy immunity for lawful acts of war and, if captured, must

19 Abdumutalibov, 2025.

20 International Code of Conduct Association (ICoCA), n. d.

21 Droege, 2024.

be treated as POWs.²² Mercenaries, by contrast, are denied these protections under Article 47 of Additional Protocol I. They are considered unlawful combatants and may be prosecuted by the capturing state under domestic law for actions that would otherwise be lawful acts of war. During the Gulf War, Iraq warned that captured mercenaries would be treated as criminals.²³ In the current Ukraine conflict, Russian-controlled courts in Donetsk sentenced captured foreign fighters to death as ‘mercenaries’, a move widely condemned as unlawful.

It is important to note that being a mercenary is not itself a war crime. It is a status that affects treatment upon capture. Even those labelled as mercenaries must be treated humanely under the Geneva Conventions²⁴ and given a fair trial. Executions without due process, such as in the Donetsk cases, violate international law and show how easily the ‘mercenary’ label can be manipulated for political purposes.

The position of private military company (PMC) personnel is more complex. In certain cases, they may qualify as lawful combatants if they are formally integrated into a state’s armed forces or operate under a responsible command that meets the requirements of the Geneva Conventions. This situation is uncommon because states generally hire PMCs to maintain flexibility and to avoid direct responsibility. In most circumstances, PMC fighters are treated as civilians who take a direct part in hostilities. They lose civilian protection while fighting but do not receive POW status if captured and can face prosecution under national law. Those engaged in defensive or logistical roles remain civilians, although in practice the distinction is often blurred.

In hybrid conflicts, determining the legal status of PMCs is particularly difficult.²⁵ The Wagner Group in Ukraine demonstrates this ambiguity. While the group’s operations are closely coordinated with the Russian military, Moscow’s refusal to acknowledge formal control keeps its members in a grey legal area. Even if Russia effectively directs their actions, the absence of an open command structure allows it to deny that these fighters are part of its armed forces.

Since most PMC personnel are not formally incorporated into state militaries, they generally lack combatant privilege and are vulnerable to prosecution if captured. Some states, including Russia, criminalize mercenary activity in their domestic legislation although such laws are often enforced selectively for political reasons.

In conclusion, under IHL, both mercenaries and most PMC employees are treated as unprivileged belligerents. They have no legal right to participate in hostilities and no guaranteed POW status if captured. While the law intends to discourage

22 Fuchs and Owens, 2024.

23 Jumaa and Asfour, 2024.

24 The Geneva Conventions of 12 August 1949.

25 Leach, 2025.

mercenary activity, the practical effect is limited. In reality, outcomes depend more on political circumstances than on consistent application of legal standards.

6. International Criminal Law: Accountability for Mercenaries and PMCs

The realm of International Criminal Law (ICL) deals with individual responsibility for serious violations such as war crimes, crimes against humanity, genocide, and aggression. Unlike IHL, which primarily regulates conduct and status during conflict, ICL is concerned with *punishing perpetrators* of the most egregious offences.²⁶ In the context of mercenaries and PMCs, the key question is as follows: how does ICL address wrongful acts committed by these actors, and can they be held accountable just like regular soldiers or commanders? Additionally, is the very act of *being* a mercenary or using mercenaries a crime under ICL? We address these issues by separating individual criminal responsibility from state (or organizational) responsibility while noting points of intersection.

As discussed, the UN Mercenary Convention requires states to criminalize mercenarism domestically, but it does not create a direct international tribunal competence to try mercenaries. There is no provision in the Rome Statute of the International Criminal Court (ICC) that makes ‘mercenarism’ or ‘being a mercenary’ a crime under the Court’s jurisdiction.²⁷ The ICC’s subject-matter jurisdiction is limited to genocide, crimes against humanity, war crimes, and (since 2018) the crime of aggression. Mercenarism *per se* does not fit neatly into these categories, except possibly as a form of aggression. Indeed, international law has long regarded the *state* use of mercenaries to wage armed attacks as potentially constituting aggression. The authoritative 1974 UN General Assembly Resolution 3314 on the Definition of Aggression²⁸ includes in Article 3(g) the scenario of a state’s ‘sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries’ to carry out acts of armed force against another state of sufficient gravity. This reflects an understanding that mercenaries can be a conduit for a state to commit indirect aggression. In the Nicaraguan Civil War context (1980s), the International Court of Justice (ICJ) used similar language, noting that the US support for Contra rebels (termed ‘mercenary’ forces by Nicaragua) could amount to aggression if the control were such that it was tantamount to sending them.²⁹ With the activation of the crime of aggression at the ICC (for state parties who accept it), one could envision a scenario where a leader who hires a mercenary army to invade another country might be

26 Khane, 2025.

27 O’Gli, 2024.

28 Wilmshurst, n. d.

29 International Court of Justice, 1986.

liable for aggression. However, such a case is unprecedented and would face high evidentiary and jurisdictional hurdles (not least that major users of mercenaries are not ICC members, e.g. Russia, the US, etc., and the ICC cannot exercise aggression jurisdiction over non-members absent a UN Security Council referral).

Setting aside the crime of aggression, being a mercenary could also implicate domestic criminal law or extraterritorial statutes. Some countries (e.g. South Africa's Foreign Military Assistance Act³⁰ or Russia's Article 359 CC³¹ as noted) criminalize unauthorized military service abroad. If enforced, these could deter or punish nationals who become mercenaries. But again, enforcement tends to be selective. In general, *international criminal tribunals have not prosecuted anyone solely for being a mercenary*. For instance, no one was charged as a mercenary at the International Criminal Tribunal for the Former Yugoslavia, International Criminal Tribunal for Rwanda, or International Criminal Court to date.³² Thus, the label 'mercenary' mostly has legal impact by negating combatant immunity rather than by itself triggering international prosecution.

7. War Crimes and Crimes Against Humanity by Mercenaries/PMCs

International criminal law becomes directly relevant when mercenaries or private military company (PMC) personnel commit war crimes or crimes against humanity. In such cases, they bear individual responsibility like any other perpetrators. Nothing shields a mercenary from prosecution for atrocities. Without combatant immunity, their actions are judged entirely under domestic and international criminal law. War crimes include grave breaches of international humanitarian law, such as the deliberate killing of civilians, torture, hostage-taking, or the targeting of protected sites. Crimes against humanity, involving widespread or systematic attacks on civilians, may also apply.³³ Mercenaries have historically been implicated in atrocities, from conflicts in the Congo and Nigeria during the 1960s to recent allegations against Wagner Group operatives in the Central African Republic and Mali.³⁴

There are three primary paths for prosecution. The first is through the courts of the state where the crimes occurred. Ukraine, for example, has taken the lead in prosecuting mercenaries and Wagner Group members accused of war crimes. In 2022, Ukrainian prosecutors charged several Russian and Belarusian nationals

30 Republic of South Africa, 1998.

31 Russian Federation, 1996.

32 Lehnardt, 2008.

33 Plachta, 2025.

34 Fyanka, Popoola, and Ogundeji, 2024.

linked to Wagner with murder and torture of civilians near Kyiv.³⁵ Although many trials proceed in absentia, they establish records for future accountability.

The second path is through the International Criminal Court (ICC), which opened an investigation into crimes committed in Ukraine after Kyiv accepted its jurisdiction. This includes all individuals operating on Ukrainian territory, whether mercenaries, PMC personnel, or regular soldiers. The ICC has so far focused on other aspects of the conflict, but legal experts continue to debate whether the Wagner Group's leadership should face charges for war crimes such as the intentional targeting of civilians.³⁶

A third and increasingly important mechanism is universal jurisdiction. Several European countries, including Germany, France, Sweden, and the Netherlands, have opened investigations into war crimes committed in Ukraine, potentially covering acts by mercenaries and PMCs. Courts have also used this principle in other contexts: an Iraqi militia member was convicted in Germany in 2021, and a Russian Wagner Group fighter was tried in Ukraine in 2022. Universal jurisdiction allows states to prosecute individuals for grave international crimes regardless of nationality or location, provided they come under that state's authority.³⁷

No legal gap protects mercenaries or PMC employees from prosecution for war crimes or crimes against humanity. While there have been few successful cases, the difficulty lies in practical barriers such as gathering evidence, securing suspects, and maintaining political will, not in the absence of law. The principle of universal jurisdiction reaffirms that certain crimes are so serious that any state may pursue justice, ensuring that mercenaries who commit atrocities cannot rely on anonymity or safe havens to escape accountability.

8. Command Responsibility and Mercenaries/PMCs

International criminal law applies not only to those who personally commit crimes but also to those who give orders or fail to stop subordinates from committing them. The doctrine of command responsibility makes a superior criminally liable if they knew, or should have known, that subordinates were engaging in war crimes and failed to take reasonable measures to prevent or punish those acts. This principle, developed after World War II and refined through cases before the ICTY and ICTR, such as *Čelebići*³⁸ or *Blaškić*,³⁹ can also apply to commanders of mercenary groups or private military companies (PMCs).

35 Tondo, Koshiw, Graham-Harrison, and Sauer, 2022.

36 Rizqulloh and Prawira, 2025.

37 Dabas, 2025.

38 Akram, 2024.

39 O'Sullivan, 2024.

Applying this doctrine to PMCs is complicated. It requires proof of a clear superior–subordinate relationship within what is often a flexible corporate or paramilitary structure. In some cases, it may also involve connecting that chain of command to a state’s military hierarchy, which can be difficult when states deliberately blur such lines.

The Wagner Group illustrates these challenges. Its financier and *de facto* leader, Yevgeny Prigozhin, and its field commander, Dmitry Utkin, both acted as superiors despite lacking formal military rank. If Wagner Group fighters committed widespread atrocities, such as those reported in Bucha, Soledar, or Mali, both men could theoretically have been held responsible for failing to prevent or punish these crimes.⁴⁰ In practice, however, accountability was hindered by jurisdictional barriers and their protection by Russian authorities before their deaths in 2023.

Command responsibility may also extend to state officers who exercised effective control over mercenary or PMC units. Analysts have suggested that Russian military officers may have coordinated or commanded Wagner Group elements during joint operations, such as those in Severodonetsk. If this control can be proven, those officers could be liable for crimes committed by Wagner Group fighters under their operational authority. Conversely, when the Wagner Group acted independently, the chain of responsibility would likely remain internal to the group itself.

The issue of shared or overlapping command is not unique to the Wagner Group. The Abu Ghraib prison abuses in Iraq demonstrated how private contractors can hold *de facto* authority over regular soldiers.⁴¹ Investigations found that military personnel viewed certain contractors as the competent authority in interrogation operations, illustrating that command responsibility can attach to private actors when they direct or influence military conduct.

Determining who gives the orders and who exercises control remains central to establishing accountability for crimes committed by mercenaries or PMC staff. These individuals are fully subject to international criminal law, and their private status provides no protection from liability. The main obstacles are not legal but practical: identifying effective command structures, securing evidence, and gaining custody over those responsible.

While international criminal law focuses on individual guilt, the question of state responsibility for the conduct of mercenaries and private military companies (PMCs) remains central in international law. State responsibility does not involve criminal punishment but concerns whether the actions of private actors can be attributed to a state, making that state internationally accountable for violations such as aggression or breaches of humanitarian law. Attribution can result in

40 U.S. Department of State, Global Engagement Center, 2024.

41 Sungur, 2025.

obligations to cease the wrongful act, provide assurances of non-repetition, and offer reparations to victims or affected states. Recognizing state responsibility also carries moral and political significance, as it acknowledges that an ostensibly private act was in fact the work of the state itself.⁴²

The rules governing attribution are reflected in the International Law Commission's articles on State Responsibility (ASR). Several key provisions are relevant. Article 4 assigns state responsibility for acts of state organs, including the armed forces. Since mercenaries and PMCs are usually kept outside this structure, this article rarely applies unless a company has been formally incorporated into the state's military system. Article 5 allows attribution when private entities are legally empowered to exercise governmental authority. However, this requires authorization under domestic law, which is precisely what many states avoid granting. In Russia, for example, PMCs are technically illegal, which helps the government deny formal links and avoid attribution under Article 5.

Applying this to the Wagner Group and Russia, one must examine whether Russian officials exercised control over particular Wagner Group operations such as those resulting in atrocities. If Russian officers ordered or coordinated specific attacks, those actions could be legally attributed to the state. Evidence such as state financing, shared logistics, and operational coordination strengthens the case for attribution. President Putin's statement in June 2023 that the state fully funded the Wagner Group between 2022 and 2023 represents a rare admission that directly links the group to the Russian government. The use of state equipment, bases, and medical facilities further supports the view that the Wagner Group acted under Russian direction or, at minimum, with state approval.

Some scholars argue that insisting on the strict effective control test enables impunity in cases of deliberate deniability. They propose that the overall control standard should inform a more pragmatic approach to attribution when a state clearly uses private groups as proxies. In this interpretation, Russia's systematic reliance on the Wagner Group across several conflicts would satisfy the threshold for state responsibility.⁴³

Establishing state responsibility for mercenary operations remains difficult, but the legal framework provides the necessary tools. The Wagner Group case illustrates how states exploit ambiguity to benefit from proxy warfare while avoiding formal accountability. This manipulation of the boundary between public and private force exposes one of the deepest weaknesses of the current international legal order.

42 Patrichev, 2024.

43 Akbariman et al., 2024.

9. Case Study: The Russo-Ukrainian War and Modern Mercenarism

The war between Russia and Ukraine, ongoing since 2014, provides one of the clearest examples of hybrid warfare and modern mercenarism. Russia's systematic use of mercenaries and private military companies (PMCs) such as the Wagner Group has blurred the line between state and non-state warfare, testing the limits of international law.

Russia's annexation of Crimea and the outbreak of fighting in the Donbas marked the beginning of a strategy based on plausible deniability. Unmarked armed men seized key sites in Crimea, while in eastern Ukraine separatist militias – trained, equipped, and financed by Russia – declared independence. The Wagner Group emerged during this period as a covert tool of Russian power. Founded by Dmitry Utkin and financed by Yevgeny Prigozhin, the group provided trained fighters, many of them former Russian soldiers, to support pro-Russian forces in Luhansk and Donetsk. Moscow denied involvement, calling the fighters 'volunteers', while evidence showed they operated under Russian direction.

This approach allowed Russia to destabilize Ukraine without officially declaring war. Fighters described as 'vacationers' or 'volunteers' provided the Kremlin with military flexibility and political cover. Ukraine initially labelled these groups as 'terrorists', only later recognizing the conflict as international in nature. A Dutch court in 2022 confirmed that the separatists operated under Russia's overall control by mid-2014, making the conflict international. Yet, because Russia denied involvement, those fighters were not treated as lawful combatants – illustrating how mercenaries create both factual and legal ambiguity.⁴⁴

When Russia invaded Ukraine on 24 February 2022, the Wagner Group and other irregulars played a central role alongside regular troops. Estimates suggested that up to 20,000 mercenaries and foreign fighters participated, including recruits from Syria and Libya. The Wagner Group became infamous for its brutality during key battles such as Mariupol, Popasna, and especially Bakhmut. Many Wagner Group fighters were convicts promised amnesty, sent into high-casualty assaults with little training. Reports documented executions of prisoners and other war crimes, reflecting the absence of any internal discipline or adherence to international humanitarian law.

Under the Geneva Conventions, these fighters are unlawful combatants: they wear no identifiable insignia, operate outside official military command, and disregard the laws of war. Ukraine has charged Wagner Group members under domestic criminal law and for war crimes, including the 2022 indictments of Belarusian fighters accused of murdering civilians near Kyiv. Meanwhile, Russian-backed authorities in Donetsk sentenced captured foreign volunteers

44 Yadvav and Gupta, 2024.

fighting for Ukraine to death as ‘mercenaries’, a move condemned internationally as a violation of the prisoners’ lawful combatant status.⁴⁵

Throughout 2022–2023, Wagner’s operations became increasingly intertwined with Russia’s official military structure. The Russian Ministry of Defence publicly praised Wagner’s role in battles like Soledar, effectively acknowledging the group as part of Russia’s war efforts. President Putin’s 2023 admission that the state had fully funded Wagner between 2022 and 2023 erased years of deniability, linking the group directly to the Kremlin. Legally, this strengthens the argument that Wagner’s actions are attributable to the Russian state.

Internationally, accountability efforts have grown. Ukraine has led prosecutions, while Western governments and the EU imposed sanctions on Wagner and its leaders. The United States designated Wagner a Transnational Criminal Organization, and the UK formally listed it as a terrorist group in 2023. The UN has called for investigations into Wagner’s alleged atrocities in Ukraine and Africa, including the massacre in Moura, Mali.

Following Prigozhin’s death in August 2023, the Kremlin moved to integrate Wagner fighters into official military and National Guard units. Once absorbed into state structures, these individuals would acquire combatant status under international law, making Russia directly responsible for their conduct. This transition also reflected Moscow’s desire to regain control after Wagner’s mutiny and to limit the risks of operating through an unruly proxy.

The Wagner episode in Ukraine demonstrates how mercenaries can shape the course of modern warfare and intensify legal challenges. Their use has produced military gains but at enormous human and political cost. It has also exposed the fragility of international legal norms in confronting hybrid conflicts, while prompting renewed global attention to the need for accountability and reform.⁴⁶

10. Policy Recommendations and Future Perspectives

The growing use of mercenaries and private military companies (PMCs) in modern warfare exposes a serious gap between current international law and the realities of conflict. Bridging this divide requires coordinated legal, political, and institutional action. The following policy recommendations propose practical and normative steps to improve accountability and strengthen the rule of law in hybrid conflicts.

1. Broaden and Clarify Legal Definitions

Current legal definitions of ‘mercenary’ are too narrow to cover modern actors. States could work through the United Nations to revise or supplement existing

45 Al Kaabi, 2024.

46 Manishevska, 2024.

treaties, defining a broader category such as ‘unlawful proxy combatant’. This would include both individuals and corporate entities engaged in hostilities for private gain. Such a framework could obligate states to regulate and criminalize unauthorized armed participation and make them cooperate in enforcement. Even without a new treaty, the ICRC or states could issue interpretive guidance establishing a presumption that proxy forces are under the control of the sponsoring state unless proven otherwise.

2. Enforce and Expand the Montreux Framework

The 2008 Montreux Document remains a voluntary guideline. States should incorporate its principles into domestic law by requiring PMCs to be licensed, vetted, and trained in international humanitarian law (IHL). Contractors should face penalties for violations, including licence revocation or prosecution. Hiring states must include IHL compliance clauses in contracts, while host states can criminalize unauthorized combat participation by foreign fighters. Countries like the US and the UK have already developed models for extraterritorial accountability. Wider adoption and consistent enforcement would help close key gaps.

3. Strengthen Universal Jurisdiction and Cooperation

Because mercenary crimes often cross borders, states should rely more on universal jurisdiction and mutual legal assistance. European states leading war crimes investigations in Ukraine could extend their scope to mercenaries like the Wagner Group’s. Coordinated mechanisms such as the EU’s Genocide Network and the International Centre for the Prosecution of Aggression can share evidence. Targeted extradition requests, Interpol notices, and civil lawsuits against PMC entities or financiers can add further pressure. Even a few successful prosecutions abroad could have strong deterrent value.

4. Disrupt Financial and Logistical Networks

Mercenary groups rely on complex funding chains involving natural resource deals, front companies, and illicit trade. International sanctions and coordinated asset freezes should target not only the fighters but also the financiers and logistics providers who sustain them. Coalitions of states could impose travel bans, arms embargoes, and financial penalties. Private companies should be held responsible if they knowingly supply equipment or services to illegal armed actors.

5. Develop Guidelines for Hybrid Warfare

An international expert group could draft a document similar to the Tallinn Manual, setting out how international law applies to hybrid warfare. This would clarify that using proxy forces does not exempt states from legal obligations under *jus ad bellum* or *jus in bello*. The document could also reaffirm that organizing or tolerating armed groups committing atrocities engages state responsibility. Such soft-law guidance could evolve into customary law through widespread endorsement.

6. Engage the International Criminal Court and Hybrid Tribunals

Although mercenarism itself is not a crime under the Rome Statute, the ICC can prosecute mercenaries or PMC personnel for war crimes or crimes against humanity. The Prosecutor could prioritize such cases to highlight accountability gaps. A future special tribunal for aggression in Ukraine could also cover mercenary participation. Strengthening mutual legal assistance treaties and creating joint investigative teams would enhance evidence collection and cross-border prosecutions.

7. Regulate PMCs as Corporate Actors

PMCs operate as businesses and should face both corporate and individual liability. Governments could require PMCs to comply with the International Code of Conduct for Private Security Service Providers (ICoC) and undergo external audits. Persistent violators should lose contracts, while executives could face prosecution for complicity in war crimes. A global licensing or registration regime for PMCs, maintained under UN or ICRC oversight, could promote transparency and prevent the hiring of unregistered firms.

8. Reinforce the Norm against Mercenarism

Mercenarism was historically viewed as morally unacceptable, but PMCs have blurred that stigma. The international community should reaffirm that privately waged warfare is incompatible with global security and human rights. States should avoid normalizing the use of mercenaries and instead ensure contractors operate under military or governmental law. Reviving this norm could make the use of mercenaries politically and reputationally costly.

9. Support Victims and Documentation Efforts

Accurate documentation of mercenary abuses is essential for future justice. International organizations and NGOs should assist local prosecutors in collecting witness statements, digital evidence, and satellite imagery. Ukraine's cooperation with international investigators can serve as a model. Similar initiatives should be supported in African contexts where PMCs operate, to ensure evidence is preserved for eventual trials.

10. Address Structural Causes

Mercenaries thrive where states are weak or unwilling to act openly. Reducing demand requires strengthening legitimate military and peacekeeping capacities, offering accountable alternatives to private force. Providing security assistance to vulnerable states under transparent conditions could reduce their reliance on mercenary groups.

Reinforcing international and domestic mechanisms against mercenarism demands both legal reform and political will. The Wagner Group case showed that while proxy forces may serve short-term goals, they ultimately threaten global stability and their sponsors alike. A coordinated international response

can help ensure that private warfare does not become a normalized feature of the 21st-century battlefield.

11. Conclusions

Hybrid warfare, exemplified by the use of mercenaries and private military companies in conflicts such as the Russo-Ukrainian war, has exposed the limits of international law. This study examined how international humanitarian and criminal law apply to these actors and whether existing mechanisms can ensure accountability.

International law does contain tools to address mercenarism, but they are narrow and inconsistently applied. Mercenaries lack lawful combatant status under the Geneva framework, and while international conventions prohibit mercenary activity, few major states have ratified them. PMCs meanwhile exist in a legal grey area: they are not outright banned and often operate under state contracts, yet their involvement in hostilities challenges the clear legal categories of combatant and civilian. As a result, many participants in such conflicts remain outside both protection and accountability.

The Wagner Group illustrates how mercenaries blur the line of state responsibility. By using PMCs, Russia has pursued military goals while denying direct involvement, exploiting legal ambiguity and evading accountability. International law, built around state-centred warfare, struggles to address these forms of proxy conflict. While individuals could theoretically be prosecuted for war crimes, capturing and trying them remains rare, and linking their actions to the sponsoring state is even more difficult.

Still, the Ukraine conflict has prompted some progress. Ukrainian prosecutions, ICC investigations, and European cases under universal jurisdiction show that impunity is not absolute. Sanctions and public condemnation have also imposed political costs on states using mercenaries, hinting at a slow shift towards deterrence through reputational pressure.

Closing the legal gap requires reform at multiple levels: clearer definitions, stronger domestic legislation, improved international cooperation, and revitalized norms against mercenarism. The problem lies not only in weak law but in weak enforcement. By increasing transparency and ensuring accountability, the international community can reduce the appeal of mercenary warfare.

Ultimately, hybrid warfare and mercenarism reflect deeper power asymmetries and the temptation to fight through deniable means. Law alone cannot eliminate these practices, but it can set boundaries and enforce consequences. Strengthening those boundaries is essential if international law is to remain relevant in an age where war is increasingly privatized and concealed behind corporate fronts.

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