PRIVATE MILITARY AND SECURITY COMPANIES
IN INTERNATIONAL LAW
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For Einat
You will always be an inspiration
FOREWORD

This is a well-written and well-argued monograph, which explores in great detail the position of private military and security companies (PMSCs) in international law, specifically the value and effect of softer forms of regulation embodied in the recently adopted Montreux Document for states and the International Code of Conduct for PMSCs themselves.

The book starts (in the introduction and chapter 1) by establishing the hypothesis to be tested, that PMSCs are a growing development and problem as states increasingly outsource (some of) their military functions, whose presence and conduct in post-conflict and conflict zones lead to violations of international law and that, unlike states’ militaries where direct state responsibility is inherent, there are problems in making both the private contractors and the states that employ them responsible for any violations of international law. Traditional forms of international law, treaties and custom, are inapplicable to PMSCs themselves, and so the thesis explores whether softer forms of international law in the form of a non-binding document (the Montreux Document) and a code of conduct (the International Code of Conduct for Private Security Providers) can fill that normative gap, and moreover, can provide for regulation of the norms they purport to contain.

The methodology is primarily doctrinal, but with any doctrinal analysis of soft law, which does not sit comfortably within the traditional sources of international law, it is necessary to look at the normative effect of soft law and to this end the thesis considers relevant conceptual discussions of norms, rules and legal orders. The story and analysis of the Draft Convention on the regulation of PMSCs provides a useful counterpoint throughout the thesis, enabling the author to point to the problems of trying to achieve a traditional form of regulation, and the advantages and disadvantages that such an approach has in comparison to softer forms of regulation.

While chapter 1 establishes the normative challenge the thesis aims to address, chapter 2 considers the phenomenon of PMSCs themselves, distinguishing them from mercenaries in a convincing manner and considering relevant methods of classification of types and functions of PMSCs. Chapter 3 lays out in impressive detail the existing international law applicable to PMSCs, in order to expose the lacunae and gaps in the normative framework and regulation of PMSCs in international law. This chapter shows a fine grasp of the rules and problems in their application, especially those of human rights law, international humanitarian law and the rules on state responsibility (from host state, home
state and contracting state perspectives), as well as institutional, individual and corporate responsibility. As a piece of sustained and comprehensive legal analysis of the current position of PMSCs under international law, this forms the heart of the book, and its comprehensive accuracy enables the author to go on to make original contribution by examining the development of soft law against this broader legal background. Chapter 3 is a detailed, rigorous and sustained piece of legal exposition, laying bare the bones of the international legal framework applicable to PMSCs and thereby exposing its weaknesses. The analysis is soundly based on traditional sources and literature, but also incorporates the latest developments and debates (for example in the area of institutional responsibility). The section on due diligence obligations also shows how the analysis considers all angles in relation to PMSCs.

Chapter 4 then explores the content and meaning of the Montreux Document and digs deeply into its layered provisions, exploring both existing obligations and good practices that exist within a non-binding document. The examination of the premises upon which the Document is constructed, and the comparison made with the Draft Convention (which has a much stronger notion of state functions) is again insightful and moves the debate forward. No aspect is left unconsidered and the section on good practices is particularly noteworthy and informative when considered alongside the due diligence obligations of states unearthed in chapter 3. The conclusion is a sober and forensic analysis of both the strengths and weaknesses of the Montreux Document, and leads nicely into chapters 5-6 on corporate social responsibility, the International Code of Conduct and the development of the Oversight Mechanism. The account of the International Code is both thorough and convincing in terms of its analysis of the general and specific commitments. John Ruggie’s ‘Protect, Respect and Remedy’ framework for business and human rights, in particular, is deployed to critical effect. Chapter 6 includes a comparative analysis of the Oversight Mechanism and existing corporate social responsibility tools discussing potential benefits and deficiencies.

The doctrinal and evaluative elements of the thesis in chapters 1-6 are convincing in themselves, but the author shows her inquisitive side by pushing further into thinking (rather convincingly) about the normative contribution of the Montreux Document and of the International Code of Conduct. Deploying the theoretical positions of Hart and Teubner, the author shows the reader the contribution of the applicable soft law, but also introduces us to a method for evaluating how, in the future, we should judge the internalization of the norms contained in the Document and the Code. The book is then completed by an authoritative and convincing conclusion – while these soft instruments make positive steps toward filling the gaps in regulation they do not (and cannot) do that completely and, therefore, a Convention may well be necessary after all.
Overall this book contributes significantly to the growing debate and concern about the rise of corporate security and the difficulties in achieving its effective regulation.

Professor Nigel D. White
University of Nottingham, UK
PREFACE

This book is the result of four years of research conducted at the University of Lucerne and the University of Nottingham. The eighteen months spent at the University of Nottingham were made possible through a fellowship for prospective researchers funded by the Swiss National Science Foundation and the kind support of Professor Nigel White. It provides an in depth analysis of international law applicable to PMSCs with a focus on the contribution of the Montreux Document and the International Code of Conduct for Private Security Service Providers. The topic is part of a wider debate under contemporary international law on business and human rights, shining a light on the content of the state duty to protect and the corporate responsibility to respect in the context of PMSCs. This was only possible through the support of many people. Many thanks to my family, Helga, Jürg and Jessica for always supporting me and to Rory, for his musical distraction, love, support and encouragement. Thank you, Thorsten, Clotilde and Isabel – you know for what. I would also like to thank Luzia and Nico for their advice regarding my proposal for Nottingham and great times on their lovely balcony. Thank you Kelly, Ana and the law PhD students at the University of Nottingham for being so welcoming and inspiring. Many thanks to Flavia for her moral support throughout this process. I would like to thank Professor Nigel White and Professor Sebastian Heselhaus for their professional advice and support. Finally, I would like to thank my team from the Health and Education Project of Usthi Foundation Switzerland in Odisha for giving me perspective and inspiration.

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CONTENTS

Foreword ................................................................. vii
Preface ..................................................................... xi
List of Abbreviations ............................................... xxi
Table of Cases ......................................................... xxiii
Table of Treaties, Legislation and International Instruments .... xxvii
Table of Reports and Other Documents .......................... xxxv

Introduction ............................................................. 1

I. Significance of the Project ........................................... 1
   1. The Case for Stronger PMSC Regulation ................. 1
   2. Legal Concerns with the Use of PMSCs ............... 3
   3. Relevance of Non-Binding Norms for PMSC Regulation .. 5
      A. A Political Climate in Favour of Self-Regulation .... 5
      B. Non-Binding PMSC Norms ............................ 8

II. Structure ............................................................ 11

Chapter 1. Conceptual Framework ............................... 13

I. Scope: Foreign PMSCs Active in a Territorial State in the Context of Stability Operations .................. 13
   1. Foreign PMSCs Active in a Territorial State .......... 13
   2. Stability Operations: Pre-, During- and Post- Conflict Environments ........................................ 14
   3. International Legal Framework Applicable to the Use of PMSCs ........................................... 16

II. Method .............................................................. 16

III. Definition of Key Concepts ......................................... 20
   1. Regulation and Self-Regulation .......................... 20
   2. Standard Setting and Standards .......................... 23
   3. PMSCs as Corporate Non-State Actors ............... 24
   4. Non-Binding Norms: Soft Law and Codes of Conduct ... 26
      A. Soft Law .................................................. 26
         a) The Concept of Soft Law ......................... 26
         b) Reasons for Choosing Soft Law over Hard Law .... 28
         c) Functions of Soft Law ............................ 29
      B. Codes of Conduct .................................. 31
Chapter 2. Private Military and Security Companies

I. The Nature of PMSCs
   1. Services Provided by PMSCs
   2. Why is there a Market for PMSCs?
   3. PMSCs and Peace Operations

II. Defining Elements of PMSCs
   1. The Different Approaches for a PMSC Terminology
      A. The Active / Passive, Offensive / Defensive and Combat / Non-Combat Divide
      B. The Security / Military Distinction of PMSC Services
      C. The ‘Tip of the Spear’ Typology and the Two-Dimensional Approach
         a) The ‘Tip of the Spear’ Typology
         b) The Two-Dimensional Approach
   2. Evaluating the Social-, Political Sciences Taxonomy

III. Defining PMSCs in International Law
   1. International Law on Mercenaries and PMSCs
      A. Defining Mercenaries
      B. The Proximity between PMSCs and Mercenaries
      C. International Legal Instruments Addressing Mercenaries
         a) Legal Definition of a Mercenary under International Law
         b) Consequences
   2. International Law on PMSCs
      A. The Montreux Document
      B. The Draft Convention on the Use of PMSCs
      C. International Code of Conduct for Private Security Service Providers

IV. Concluding Remarks on PMSC Definition and Terminology

Chapter 3. International Law Applicable to the Use of PMSCs

I. Accountability of States for Unlawful PMSC Conduct
   1. State Obligations under Human Rights Law (HRL) and International Humanitarian Law (IHL)
      A. HRL

a) International Jurisprudence on Extraterritorial Application of Human Rights ........................................ 77
B. IHL ........................................................................ 80

2. Attribution of Unlawful PMSC Conduct to the State: ILC Articles on State Responsibility ........................................ 82
   A. Attribution of Conduct of Organs of the State .................. 83
      a) Article 4 .................................................................. 83
      b) The PMSC as a De Facto Agent of the State ................ 84
   B. Conduct of Persons or Entities Exercising Elements of Governmental Authority (Article 5) ...................... 85
   C. Conduct Instructed, Directed or Controlled by a State (Article 8) 88

3. State Accountability Based on a State’s Failure to Show Due Diligence ....................................................... 92
   A. Due Diligence in International Law .................................... 92
   B. Due Diligence of Territorial- Contracting and Home States . 94
      a) Due Diligence Obligations of the Territorial State ......... 94
      b) Due Diligence Obligations of the Home State .......... 94
         aa) Due Diligence Based on Extraterritorial Jurisdiction ... 94
         bb) Due Diligence Based on the Place of Incorporation of the PMSC ............................................ 95
      c) Due Diligence Obligations of the Contracting State ....... 96
         aa) Due Diligence Based on Extraterritorial Jurisdiction ... 96
         bb) Due Diligence Based on a Contractual Relationship ... 96

II. Accountability of International Organisations for Unlawful PMSC Conduct ..................................................... 97
   1. Obligations of International Organisations Contracting PMSCs under International Law ............................ 97
   2. Attribution of Unlawful PMSC Conduct to the UN ................ 99
      A. UN Practice of Institutional Responsibility: PMSCs Acting under UN ‘Authority, Command and Control’ ........ 100
         a) Establishing ‘Authority, Command and Control’: Effective Control or Overall Control? .................... 102
      B. The Approach Taken by the ILC Draft Articles on the Responsibility of International Organisations ......... 103
         a) Article 7 ILC Draft Articles: Attribution of PMSC Conduct as Part of a Subsidiary Organ of the UN .......... 104
         b) Article 6 ILC Draft Articles: Attribution of PMSC Conduct as Agents of the UN ............................ 104
         c) Applicability of the ‘Effective Control’ Test and Attribution of Responsibility to International Organisations .... 105

III. Individual Accountability for Unlawful PMSC Conduct ................................................................. 106
   1. The Status of PMSC Employees under IHL ....................... 106
Private Military and Security Companies in International Law

A. Are PMSC Employees Civilians or Combatants under IHL? .... 106
   a) PMSC Employees as Members of the Armed Forces? .... 106
   b) PMSC Employees as Combatants – Part of a Militia or Volunteer Force Belonging to a Party to the Conflict? .... 107
   c) PMSC Employees as Civilians Accompanying the Armed Forces? ................................................. 109
B. Consequences of the Civilian Status of PMSCs under IHL ..... 110
C. PMSC Employees in Non-International Armed Conflicts ...... 112

2. Individual Criminal Accountability of PMSC Employees .......... 113

IV. Accountability of the Corporation for Unlawful PMSC Conduct? ..... 116
   1. Direct Obligations under HRL and IHL for Corporations? .... 116
   2. Domestic Regulatory Approaches on PMSCs ..................... 116
   3. Corporate Social Responsibility ........................................ 117

V. Conclusion: Limitations, Gaps and Grey Zones of International Law on PMSCs ............................................. 118

Chapter 4. The Montreux Document ........................................ 123

I. The Structural Characteristics of the Document .................. 123
   1. The Evolution, Structure and Negotiation of the Document ..... 123
   2. The UN Draft Convention on PMSCs as a Parallel Process of PMSC Regulation ........................................ 129
 II. Premises, Obligations and Recommendations Applicable to States ... 130
   1. Premises Regarding Outsourcing of State Functions and the Position of States Regarding PMSC Use on Foreign Territory .... 130
      A. Non-Transferable Responsibilities .................................. 130
      B. Territorial, Contracting, and Home State .................... 132
   2. International State Obligations, State Responsibility and Due Diligence ........................................ 134
      A. Obligation to Ensure Respect for IHL .............................. 134
      B. Obligation to Protect Human Rights .............................. 135
      C. State Responsibility for Unlawful PMSC Conduct .......... 135
      D. State Accountability Based on Due Diligence ............... 138
   3. Good Practices to Ensure Compliance with State Obligations .... 139
      A. Compliance with IHL and HRL .................................. 139
         a) Licensing and Authorisation Systems ...................... 139
         b) Transparency and Supervision ............................... 142
         c) Evaluation of Past Conduct .................................. 142
         d) Subcontracting ........................................ 143
         e) Use of Force, Use and Possession of Firearms ............ 144
         f) Recommendations Similar for all States .................. 145
         g) Recommendations to Ensure Human Rights Compliance .... 146
B. Recommendations to Monitor Compliance and Ensure Accountability .............................................. 147
   a) Individual Criminal Accountability .............................................. 147
   b) Non-Criminal Accountability ..................................................... 148


III. Institutional Accountability ........................................ 150

IV. Individual Status, Rights and Duties of PMSC Employees .......... 151
   1. Status under IHL ............................................... 151
   2. Right to Self-Defence ........................................... 152
   3. Superior Criminal Responsibility ............................................. 153
   4. PMSCs and Mercenaries ........................................ 153

V. Corporate Responsibility .......................................... 154

VI. Conclusion: Does the Montreux Document Address Gaps and Grey Zones in International Law as Applicable to the Use of PMSCs? ............................. 156

Chapter 5. The International Code of Conduct for Private Security
Service Providers ........................................... 161

I. The Structural Characteristics of the Code ......................... 161
   1. The Evolution of the Code ........................................ 161
   2. Scope: Private Security Companies Performing Security Services in Complex Environments ..................................................... 162

II. The Material Commitments of the Code ............................................. 167
   1. General Commitments Implementing a Corporate Human Rights Policy ............................................... 167
      A. Acting in Accordance with the Law ........................................ 167
      B. Implementing a Corporate Policy Commitment through Contracts .................................................. 168
      C. Preventing or Mitigating Adverse Human Rights Impact of Others ..................................................... 169
   2. The Code's Human Rights Principles Reflecting Areas of Potential Adverse PMSC Impact ............................................. 169
      A. The Human Rights Catalogue ........................................ 169
         a) General Conduct ........................................ 169
         b) Rules for the Use of Force and Use of Firearms .................. 170
         c) Detention and Apprehending Persons ......................... 174
         d) Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment ..................... 176
         e) Sexual Exploitation and Abuse or Gender-Based Violence and Human Trafficking ......................... 177
f) Prohibition of Slavery and Forced Labour and
   Prohibition of the worst Forms of Child Labour .......... 178

  g) Discrimination ............................................. 178

  h) Identification and Registration of Vehicles and Material 178

  i) Human Rights Guarantees Missing in the Code .......... 179

B. Evaluation ...................................................... 179

3. Specific Commitments Regarding Management and Governance
   Providing a Starting Point for a Human Rights Due Diligence
   Process .................................................................. 181

A. The Codes Compilation of Management and Governance
   Commitments ....................................................... 181

  a) Incorporation of the Code into Company Policies .... 181

  b) Selection and Vetting of Personnel ...................... 182

  c) Company Policies and Personnel Contracts ........... 183

  d) Training of Personnel and Weapons Training .......... 184

  e) Management of Weapons and Management of Materiel
     of War .......................................................... 185

  f) Incident Reporting ........................................... 185

  g) Safe and Healthy Working Environment ................ 185

  h) Company Internal Grievance Procedures ............... 186

  i) Meeting Liabilities .......................................... 187

B. Evaluation ......................................................... 187

4. Review of the Code ................................................ 188

III. Conclusion: Does the International Code of Conduct Implement the
    Requirements of the Responsibility to Respect? ........ 189

Chapter 6. The ICoC Oversight Mechanism – Benefits and Deficiencies
    in Light of Existing CSR Tools .................................. 191

I. The Oversight Mechanism Established by the Articles of Association .. 192

  1. Establishment of the Private Security Service Providers’
     Association ...................................................... 192

  2. Legal Structure, Organs and Membership ................ 192

  3. From Signatory Company to Member Company .......... 195

     A. Certification ............................................... 196

     B. Performance Assessment .................................. 196

         a) Reporting ............................................... 197

         b) Monitoring ............................................. 198

         c) Specific Compliance Review ......................... 199

         d) Outcome of Performance Assessment ............... 200

         e) Sanctions ............................................... 201

     C. Complaints Process ........................................ 201

  4. Standardisation ................................................ 203
II. Comparative Analysis: Benefits and Deficiencies of IGOM and Existing Corporate Tools for PMSC Oversight ....................... 205
  1. The UN ‘Protect, Respect and Remedy Framework’ .................. 205
  2. The Voluntary Principles on Security and Human Rights .......... 208
  3. Other CSR Frameworks Relevant to the Use of PMSCs ............ 209
     A. The OECD Guidelines for Multinational Corporations .......... 209
     B. The Global Compact ........................................ 212
  4. Regional Codes and Industry Self-Regulation Applicable to PMSCs ........................................................ 214
     A. Regional Codes ................................................ 215
        a) The Sarajevo Code of Conduct for Private Security Companies ........................................ 215
        b) CoESS Code of Conduct and Ethics ....................... 216
     B. Industry Association Codes ..................................... 217
        a) BAPSC Charter, PSCAI Code of Conduct, PASA Code of Principles and Code of Conduct ..................... 217
        b) ISOA Code of Conduct and Enforcement Mechanism .... 219

III. Evaluation ........................................................ 222

IV. Conclusion ....................................................... 225

Chapter 7. The Normative Contribution of the Montreux Document and the ICoC to the International Legal Framework on PMSCs.... 229

I. The Conceptual Approach to Assess the Contribution of Non-Binding Norms in International Law ........................... 229
  1. Contribution .................................................. 229
  2. The Process of Internalisation as a Pre-Stage of Opinio Juris .... 231
     A. Internalisation According to Hart ............................ 231
     B. Applied to the Montreux Document and the ICoC .......... 232
        a) The Montreux Document ................................ 232
        b) The ICoC ............................................... 234

II. The Contribution of the Montreux Document .......................... 239
  1. The Potential of the Montreux Document to Fill Gaps and Grey Zones .......................................................... 239
  2. The Potential Contribution of the UN Draft Convention ........ 241
  3. The ‘Normative’ Value of the Montreux Document ............... 243
     A. Participants ................................................ 243
     B. State Practice ............................................... 245
        a) Explicit State Practice Implementing the Montreux Document ........................................ 245
        b) Non-Explicit State Practice Implementing the Montreux ... 250
     C. Evaluation ................................................. 254
a) The Montreux Document’s Potential to Develop into
   Customary International Law ................................. 254
b) The ‘Normative’ Value of the Montreux Document below
   the Threshold of Customary International Law ............ 255

III. The Contribution of the International Code of Conduct for Security
     Service Providers .................................................. 257
     1. The Potential of the ICoC to Fill Gaps and Grey Zones ...... 257
     2. The ‘Normative’ Value of the ICoC ............................ 260
        A. State Support for the ICoC: the Interplay between the
           Montreux Document and the ICoC .......................... 260
        B. The Potential Development of a ‘Corporate Custom’ Based on
           the ICoC .......................................................... 262
           a) Participants ................................................ 262
           b) Corporate Practice ......................................... 263
           c) Evaluation: Evolution of a Common, Accepted Set of
              Core Principles and Standards? .......................... 266

IV. Conclusion and Outlook ........................................... 266

Conclusion ............................................................. 271

Bibliography .......................................................... 279
Index ................................................................. 291
LIST OF ABBREVIATIONS

ACHR American Court of Human Rights
AP I Additional Protocol I
AP II Additional Protocol II
art/arts Article/s
BAPSC British Association for Private Security Companies
ECHCR European Court of Human Rights
dn Edition
ed/eds Editor/s
CoESS Confederation of European Security Services
ICCCPR International Covenant on Civil and Political Rights
ICESCR International Covenant on Economic, Social and Cultural Rights
ICoC International Code of Conduct for Private Security Service Providers
ILC International Law Commission
IO International Organisation
ISOA International Stability Operations Association
LNSTS League of Nations Treaty Series
NGO Non-governmental Organisation
para/paras Paragraph/s
PASA Pan African Security Association
PISCAI Private Security Company Association Iraq
PMSCs Private Military and Security Companies
UDHR Universal Declaration of Human Rights
UNCHR United Nations Commission on Human Rights
UNGA United Nations General Assembly
UNHCR United Nations High Commissioner for Refugees
UNHRC United Nations Human Rights Council
UNSC United Nations Security Council
UNSRSG UN Special Representative to the Secretary-General
UNTS United Nations Treaty Series
## TABLE OF CASES

### PERMANENT COURT OF INTERNATIONAL JUSTICE

*Case of the S.S. “Lotus” (France v Turkey)* [1927] PCIJ Rep Series A No 10

### INTERNATIONAL COURT OF JUSTICE

*Corfu Channel Case (UK v Albania) (Merits)* [1949] ICJ Rep 4  
*Asylum Case (Colombia v Peru)* [1950] ICJ Rep 266  
*Fisheries Case (United Kingdom v Norway)* [1951] ICJ Rep 116  
*Nottebohm Case (Liechtenstein v Guatemala) (second phase)* [1955] ICJ Rep 4  
*Case Concerning the Right of Passage Over Indian Territory (Portugal v India) (Merits)* [1960] ICJ Rep 6  
*North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark/Federal Republic of Germany v Netherlands)* [1969] ICJ Rep 3  
*Fisheries Jurisdiction Case (United Kingdom of Great Britain and Northern Ireland v Ireland)* [1974] ICJ Rep 3  
*Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits)* [1986] ICJ Rep 14  
*Case Concerning Elettronica Sicula S.p.A. (ELSI) (United States v Italy)* [1989] ICJ Rep 15  
*Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226  
*LaCrand (Germany v United States of America)* [1999] ICJ Rep 466  
*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep 136  
*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* [2005] ICJ Rep 168
Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) [2007] ICJ Rep 43

INTERNATIONAL CRIMINAL TRIBUNAL OF THE FORMER YUGOSLAVIA

Tadić Case (Decision on Defence Motion for Interlocutory Appeal on Jurisdiction) ICTY-94-1-1 (2 October 1995)
Tadić Case (Judgement) ICTY-94-1-T (7 May 1997)
Tadić Case (Judgement) ICTY-94-1-A (15 July 1999)
Delalic Case (Judgement) ICTY-96-21-A (20 February 2001)

INTER-AMERICAN COURT OF HUMAN RIGHTS

Velasquez Rodriguez Case, Judgement, Inter-American Court of Human Rights Series C No 4 (29 July 1988)
Alejandre et al v Cuba, Case 11.589, Report No. 86/99, Inter-American Court of Human Rights (29 September 1999)

AFRICAN COMMISSION ON HUMAN AND PEOPLE’S RIGHTS

Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria, Comm Nr 155/96, African Commission on Human and People’s Rights (27 October 2001)

EUROPEAN COMMISSION OF HUMAN RIGHTS

W. M v Denmark (App no 17392/90) (1993) 15 EHRR 28

EUROPEAN COURT OF HUMAN RIGHTS

Young, James and Webster v United Kingdom (1981) Series A no 44
Drozd v France (1992) Series A no 240
Costello Roberts v United Kingdom (1993) Series A No 247-C

xxiv Intersentia


Table of Cases

Loizidou v Turkey (Preliminary Objections) (1995) Series A no 310
Behrami and Behrami v France & Saramati v France and others (App nos 71412/01 and 78166/01) ECHR 182 (9 June 1999)
Bankovic and others v Belgium and others (App no 52207/99) ECHR 890 (12 December 2001)
Ilascu and others v Moldova and Russia (App no 48787/99) ECHR 318 (8 July 2004)
Issa and others v Turkey (App no 31821/96) ECHR 629 (16 November 2004)
Al-Skeini and others v The United Kingdom (App no 55721/07) ECHR 858 (09 June 2010)

HUMAN RIGHTS COMMITTEE

Delia Saldias de Lopez v Uruguay (Communication no 52/1979) UN Doc CCPR/C/OP/1 (1984) 88
UN Human Rights Committee, ‘Concluding Observations of the Human Rights Committee: Israel’ (21 August 2003) UN Doc CCPR/CO/78/ISR

IRAN UNITED STATES CLAIMS TRIBUNAL

Ephanian v Bank Tejarat, 2 Iran-USCTR 157 (1983)
Hyatt International Corporation v Iran, 9 Iran-USCTR 72 (1985-II)
Rankin v Iran, 17 Iran-USCTR 135 (1987-IV)
Yeager v Iran, 17 Iran-USCTR 92 (1987-IV)

DOMESTIC CASES

UNITED STATES

Saleh v Titan Co 436 FSupp2d 55 57–58 (DDC 2006) (Saleh I)
Ibrahim v Titan Corp 556 FSupp2d 1 (DDC 2007) (Ibrahim II) aff’d Saleh v Titan 580 F3d 1 14–16 (DC Cir 2009) (Saleh II)
In re XE Services Alien Tort Litigation 665 FSupp2d569 588 (ED Va 2009)
United States of America v Slough et al 677 FSupp2d 112 (DDC 2009) (No 1:08:cr-360)
2009 WL 192243.
Al-Quaraishi v Nakhra 728 FSupp2d 702 741-60 (D Md 2010)
Kiobel v Royal Dutch Petroleum Co 621 F3d 111 145 (2d Cir 2010)
United States v Slough et al No 10-006 2011 WL 1516148 (DC Cir, 22 April 2011)

Intersentia
THE NETHERLANDS

*Mothers of Srebrenica v The Netherlands & the UN*, Case number / cause-list number: 200.022.151/01, Case number District Court: 07-2973, Court of Appeal Judgment on Jurisdiction (30 March 2010)
TABLE OF TREATIES, LEGISLATION
AND INTERNATIONAL INSTRUMENTS

INTERNATIONAL INSTRUMENTS

1907 Hague Convention IV Respecting the Laws and Customs of War on Land, Roberts
and Guelff (eds), Documents on the Laws of War (3rd edn, Oxford University Press
2000) 67
Annex to the Convention: Regulations Respecting the Laws and Customs of War on Land,
Roberts and Guelff (eds), Documents on the Laws of War (3rd edn, Oxford 2000) 73
Slavery Convention (1926) 60 LNTS 253
ILO Conventions 29 (Forced Labour Convention, 1930), 87 (Freedom of Association and
Protection of the Right to Organise Convention, 1948) and 98 (Right to Organise and
Collective Bargaining Convention, 1949) 100 (Equal Remuneration Convention,
1951) and 111 (Discrimination (Employment and Occupation) Convention, 1958), 105
(Abolition of Forced Labour Convention, 1957), 138 (Minimum Age Convention),
182 (Worst Forms of Child Labour Convention) (Minimum Age) as referred to in the
Tripartite declaration of principles concerning multinational enterprises and
social policy (MNE Declaration) (4th edn, 1 January 2006) in connection with the ILO
Declaration on Fundamental Principles and the Rights at Work and its Follow up,
adopted by the International Labour Conference at its Eighty-sixth Session, Geneva,
UN Charter 1945, 1 UNTS x vi
Statute of the International Court of Justice (1945) 156 UNTS 77
Universal Declaration of Human Rights, UNGA Res 217A (II) (1948) UN Doc A/810
1949 Geneva Convention III Relative to the Treatment of Prisoners of War, Roberts and
Guelff (eds), Documents on the Laws of War (3rd edn, Oxford 2000) 243
1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War,
Roberts and Guelff (eds), Documents on the Laws of War (3rd edn, Oxford 2000) 299
European Convention on Human Rights (ECHR) 1950, 213 UNTS 221 (No. 2889)
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions
and Practices Similar to Slavery (1956) 226 UNTS 3
International Covenant on Civil and Political Rights (ICCPR) 1966 and Optional Protocol,
999 UNTS 171 (No. 14668)
International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, 993
UNTS 3 (No. 14531)
American Convention on Human Rights (1969) 1144 UNTS 123
The Vienna Convention on the Law of Treaties (1969) 1155 UNTS 331
Charter of Economic Rights and Duties of States, UNGA Res 3281 (12 December 1974)
UN Doc A/RES/29/3281
Organisation of African Unity Convention for the Elimination of Mercenarism in Africa 1977, 1490 UNTS 96 (No. 25573)
Statute to the international Tribunal for the Law of the Sea (1982) 1833 UNTS 3
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, 1465 UNTS 85 (No. 24841)
International Convention against the Recruitment, Use, Financing and Training of Mercenaries 1989, 2163 UNTS 75 (No. 37789)
International Criminal Court (ICC) Statute 1998, 2187 UNTS 91 (No. 38544)
ILO Resolution concerning decent work and the informal economy (1 June 2002)
Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law, International Committee of the Red Cross (Geneva 2009) <www.icrc.org/eng/resources/documents/article/ review/review-872-p991.htm> last accessed September 2013
The Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict annex to ‘Letter Dated 2 October 2008 from the Permanent Representative of Switzerland to the United Nations Addressed to the Secretary-
Table of Treaties, Legislation and International Instruments


UNITED NATIONS

UN COMMISSION ON HUMAN RIGHTS


UN GENERAL ASSEMBLY

UNGA Res 1001 (ES-I) (7 November 1956) UN Doc A/RES/1001 (ES-I)
UNGA Res 1599 (XV) (15 April 1961)
UNGA Res 2465 (XXIII) (20 December 1968)
UNGA Res 2548 (XXIV) (11 December 1969)
UNGA Res 2708 (XXV) (14 December 1970)
UNGA Res 3103 (XXVIII) (12 December 1973)
UNGA Res 3314 (XXIX) (14 December 1974) UN Doc A/RES/3314 (XXIX)
UNGA Res 33/24 (8 December 1978)
UNGA Res 66/100 (9 December 2011) UN Doc A/RES/66/100

UN HUMAN RIGHTS COUNCIL

UNHRC Res 7/21 (28 March 2008)
The UN Draft Convention on the use of PMSCs, annex to UNHRC ’Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination’ (2 July 2010) UN Doc A/HRC/15/25
UNHRC Res 15/12 (6 October 2010) UN Doc A/HRC/15/L.31
UNHRC Res 15/26 (7 October 2010) UN Doc A/HRC/RES/15/26
UNHRC Res 17/4 (6 July 2011) UN Doc A/HRC/RES/17/4
UNHRC Res 22/33 (19 April 2013) UN Doc A/HRC/RES/22/33

UN SECURITY COUNCIL

UNSC Res 405 (16 April 1977) UN Doc S/RES/405 (1977)

OTHER

Office of Legal Affairs (OLA), UN General Conditions of Contract, Second Interim Revision, OLA Version (9 February 2006)

EUROPEAN UNION

European Parliament resolution of 11 May 2011 on the development of the common security and defence policy following the entry into force of the Lisbon Treaty P7_TA(2011)0228
DOMESTIC LEGISLATION AND OTHER INSTRUMENTS

CANADA


FRANCE

Code pénal <www.legifrance.gouv.fr/affichCode.do;jsessionid=D8CE2665 DE897BD35FBCB844272AB310.tpdjo17v_3?idSectionTA=LEGISCTA000006149818&cidTexte=LEGITEXT000006070719&dateTexte=20120508> last accessed September 2013

IRAQ

Order of the Coalition Provisional Authority (CPA) No 17 <www.iraqcoalition.org/regulations/> last accessed September 2013
Memoranda to Order of the Coalition Provisional Authority (CPA) No 17 <www.iraqcoalition.org/regulations/> last accessed September 2013

SWITZERLAND

The Swiss Penal Code, SR 311.00 (21 December 1937)
Postulat Stähelin, Postulat 04.3267 'Private Sicherheitsfirmen' (1 June 2004)
Motion Wyss, Motion 04.3748 'Schaffung rechtlich verbindlicher Bestimmungen über den Umgang der Schweiz mit privaten Militärunternehmen und Sicherheitsfirmen' (16 December 2004)
UNITED STATES

Alien Tort Statute 28 USC § 1350 (Alien Tort Claims Act)
Restatement (Third) of the Foreign Relations Law of The United States (1987)
Department of Defense Directive 5200.8, ‘Security of DOD Installations and Resources’
(25 April 1991)
Field Manual No. 100-10-2, 'Department of the Army, Contracting Support on the Battlefield' Headquarters Department of the Army, Washington, DC (15 April 1999)
Field Manual No. 3-100.21, ‘Contractors on the Battlefield’ Headquarters Department of the Army, Washington, DC (3 January 2003)
War Crimes Act 18 USC § 2441 (a) (2006)
DODI 3020.50 Private Security Contractors (PSCs) Operating in Contingency Operations (22 July 2009)

SELF-REGULATORY INSTRUMENTS

The Voluntary Principles on Security and Human Rights (December 2000) <http://voluntaryprinciples.org/> last accessed September 2013
The International Code of Conduct for Private Security Service Providers (9 November 2010) <www.icoc-psp.org/> last accessed September 2013

OECD Guidelines for Multinational Enterprises (2011 update) <www.oecd.org/document/28/0,3343,en_2649_34889_2397532_1_1_1_1,00.html> last accessed September 2013


TABLE OF REPORTS AND OTHER DOCUMENTS

UNITED NATIONS

UN Committee on Economic, Social and Cultural Rights
____‘General Comment No. 13 on the Right to Education (8 December 1999) UN Doc E/C.12/1999/10
____‘General Comment Nr. 21 on the Right of Everyone to Take Part in Cultural Life’ (2-20 November 2009) UN Doc E/C.12/GC/21


UN Human Rights Committee
____‘Concluding Observations of the Human Rights Committee: Israel’ (21 August 2003) UN Doc CCPR/CO/78/ISR
____General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13
____‘Civil and Political Rights: The Human Rights Committee’ Factsheet No. 15 (Rev. 1) 18 <www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf> last accessed September 2013

ILC Commentaries on Draft Articles on Institutional Responsibility
____‘First report on responsibility of international organizations’ (26 March 2003) UN Doc A/CN.4/532
____‘Second report on responsibility of international organizations’ (2 April 2004) UN Doc A/CN.4/541
____‘Third report on responsibility of international organizations’ (13 May 2005) UN Doc A/CN.4/553
____‘Responsibility of International Organizations’ (30 May 2008) UN Doc A/CN.4/L.725

Intersentia

XXXV
‘Report of the International Law Commission on the Work of its 61st Session’ (4 May to 5 June and 6 July to 7 August 2009) UN Doc A/64/10

‘Report of the International Law Commission on the Work of its 63rd Session, Responsibility of International Organizations’ (26 April to 3 June and 4 July to 12 August 2011) UN Doc A/66/10 and Add. 1

ILC Commentaries on Articles on State Responsibility

‘Third Report on State responsibility, by Mr Roberto Ago, Special Rapporteur, the internationally wrongful act of the State, source of international responsibility’ (5 March, 7 April, 28 April and 18 May 1971) UN Doc A/CN.4/246, YILC 1971 II (1)


Intergovernmental Working Group on the use of PMSCs

Report, ‘Open-ended Intergovernmental Working Group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, summary of the first session’ (5 August 2011) UN Doc A/HRC/WG.10/1/CRP.2

Report, ‘Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its second session’ (24 December 2012) UN Doc A/HRC/22/41.

UN Secretary-General


‘Secretary-General proposes global compact on human rights, labour, environment’ in address to World Economic Forum’ (1 February 1999) Press Release SG/SM/6881

‘Secretary-General’s Bulletin on Observance by United Nations Forces of International Humanitarian Law’ (6 August 1999) UN Doc ST/SGB/1999/13


UN Special Rapporteur on the Use of Mercenaries, Report, ‘The Right of Peoples to Self-Determination and the Application to Peoples under Colonial or Alien Domination or Foreign Occupation’ (24 December 2003) UN Doc E/CN.4.2004/15
Table of Reports and Other Documents

**UN Special Representative on Business and Human Rights**

**UN Working Group on the Use of Mercenaries**
- Report, ’Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination’ (17 August 2005) UN Doc A/60/263
- Source statement of PMCs appended to Report, ’Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination’ (17 August 2005) UN Doc A/60/263
- ’Report of the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination’ (2 July 2010) UN Doc A/HRC/15/25
- ’Why we need an International Convention on Private Military and Security Companies (PMSCs), submission by the Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination’ (17 May 2011) UN Doc A/HRC/WG.10/1/CRP.1

____‘Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, addendum Mission to Iraq’ (12 August 2011) UN Doc A/HRC/18/32/Add.4

DOMESTIC REPORTS AND OTHER DOCUMENTS

AFGHANISTAN


FRANCE


SWITZERLAND

‘In Konfliktgebieten tätige private Sicherheitsfirmen werden nicht registriert’ News release to the decision of the Bundesrat (21 May 2008) <www.ejpd.admin.ch/content/ejpd/de/home/dokumentation/mi/2008/2008-05-211.html> last accessed September 2013)
Factsheet Federal Department of Foreign Affairs (FDFA) <www.icoc-psp.org/> last accessed September 2013

UNITED KINGDOM


UNITED STATES


‘Additional information about Blackwater USA’ memorandum from Majority Staff to the Members of the Committee on Oversight and Government Reform, Committee on Oversight and Government Reform (1 October 2007) <http://graphics8.nytimes.com/packages/pdf/national/20071001121609.pdf> last accessed


Commission on Wartime Contracting


Congressional Research Service
- Schwartz M, ‘Department of Defence Contractors in Iraq and Afghanistan: Background and Analysis’ (Congressional Research Service, 2 July 2010)
- Schwartz M, ‘Department of the Defence Contractors in Iraq and Afghanistan: Background and Analysis, and Options for Congress’ (Congressional Research Service, 13 May 2011)

INTERNET DOCUMENTS


‘Case Profile KBR Lawsuits, alleged rape of former employee’ Business and Human Rights Resource Centre <http://businesshumanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/KBRlawsuitsreallegedrapesinIraq> last accessed September 2013.

‘Case profile: Abu Ghraib lawsuits against CACI, Titan (now L-3)’ Business and Human Rights Resource Centre <www.businesshumanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/AbuGhraiblawsuitsagainstCACITitannowL-3> last accessed September 2013.


Private Military and Security Companies in International Law


Mindesten Mittelpunktene, Der Bundesrat ‘Söldnerfirmen in der Schweiz verbieten’ (23.01.2013) <www.ejpd.admin.ch/content/epjd/de/home/dokumentation/mi/2013/2013-01-23.html> last accessed September 2013

Minutes, Steering Committee ICoC <www.icoc-psp.org/ICoC_Steering_Committee.html> last accessed September 2013


Ruggie J G, ‘10th OECD Roundtable on Corporate Responsibility, Updating the Guidelines for Multinational Enterprises Discussion Paper’ (30 June 2010) <www.oecd.org/document/43/0,3746,en_2649_33765_45356907_1_1_1_1,00.html> last accessed September 2013


xlii Intersentia
NEWSPAPER ARTICLES


Paul Lewis, 'Not Just Governments Make War or Peace' The New York Times (28 November 1998)


'The Baghdad Boom: Mercenaries' The Economist (27 March 2004)


Intersentia
Private Military and Security Companies in International Law


xlv

Intersentia

Simon Neville, ‘G4S had a disastrous Olympics – but the company will barely notice’ The Guardian (22 July 2012) <www.guardian.co.uk/business/2012/jul/22/g4s-disastrous-olympics-barely-notice> last accessed September 2013


