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# PRIVATE MILITARY AND SECURITY COMPANIES: SEARCH FOR INTERNATIONAL LEGAL AND NATIONAL LAWS

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## *Abstract*

Nowadays Private Military and Security Companies (PMSCs) operate in more than 110 countries. The total number of companies is equal to several hundred with a total number of employees of more than 5 million people. The annual volume of services provided by PMSCs is about 350 billion US dollars (it is growing annually. In this regard, in the absence of an "obvious legal regulation" of such activities, the current situation negatively affects existing conventional international law in general and, in particular, international humanitarian law, and human rights law. Thus, the uncertainty of the clear legal status of MPSCs and its employees leads to undermining the fundamental principles of international humanitarian law, in particular those that regulate the rules of warfare (problems of the status of combatant/non-combatant, proportional application of force, responsibility for complying with IHL) and protection of armed conflict victims. The increasing scale of human rights violations in the conditions of both an obvious armed conflict and local armed clashes, according to a number of experts, directly depend on the "unregulated" increase in the number of PMSCs. Another problem relates to the uncertainty in classical instruments or regulations that makes researchers think that PMSC personnel should be classified as mercenaries whose status and ability to hold accountable are problematic for practical application. According to the caustic remark stated in G. Best's work "a mercenary who cannot refute his belonging to this profession in court is worthy of being shot on the spot together with his lawyer!".



**Keywords:** Private security companies, international law, legal instrument.

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## 1. Introduction

Private armies is not a new phenomenon. Thus, it is known that in the 19th century private armies were used in Qing China to suppress the Taiping uprising, when government troops were unable to cope with the rebels.

However, in the modern sense, the concept of private military company (PMC) first appeared in the UK in 1967. A well-known English colonel David Sterling later founded a private military company. By the middle 1970s, there was a great number of contractors who wanted to earn money working in paramilitary structures. In 1974, one of the first major agreements in this area was signed between a private military company and the US government. The mission was to prepare the national guard of Saudi Arabia and to protect the oil fields in the state. However, due to the fact that such activities in the absence of legal instruments were often identified with the mercenarism this caused a great concern for the states. On 14 December 1979, the UN General Assembly adopted a resolution on the development of a convention, in which mercenaries were defined as a threat to international peace and security. It was necessary to prohibit the recruitment, training and financing of mercenaries. In 1989, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries was adopted. The provisions of this Convention in determining the definition of "mercenary" reproduced the definition of a mercenary given in the Article 47 DPI, and, in addition, consolidated the position, somehow expanding the existing definition. So, according to Part 2 of the Article 1 of the Convention, 1989, the term "mercenary" implies any person, in any other situation who is specially recruited locally or abroad to participate in joint violent actions aimed at overthrowing the government or otherwise undermining the constitutional order of the state or undermining the territorial integrity of the state (one-time violent acts). Thus, the list of criteria for categorizing a person as a mercenary is exhaustive and fundamental in qualifying that the recognition of a person as a mercenary necessarily requires the presence of a complete set of criteria. For more details see (Khabachirov, 2002). The severity of the problem for the period of the 1980–1990s of the last century was stopped.

In modern conditions, starting 2000, a new path for similar "paramilitary" activity was shaped. In addition to states, large international corporations (TNCs), whose interests are located in the countries with unstable political conditions, began to use services of private military companies. The market size of these companies is about 20 billion US dollars. According to experts, in the 21st century this narrow and specialized market has turned into a global sector of economy with a multi-billion dollar turnover. Most often, Western governments use the services of such organizations to represent their interests in the emerging countries. One of the largest representative offices is in Iraq and Afghanistan.

At the same time, their uncontrolled activities in terms of compliance with international law turned into a serious factor that caused numerous violations of human rights in many conflicts. At the same time, the ability of PMSCs to decisively influence regional stability and provoke military conflicts was revealed. In addition, another feature describing the activities of PMSCs was obviously manifested as the absence of ability of progressive development of the contractual process to strengthen collective security both at the regional and universal levels without further improvement of international and national legal regulators using PMSCs.

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This article is a continuation of the scientific and practical understanding of the legal problems associated with the search for effective instruments and regulations in the field of PMCs. For example, such as authors Bashkirov (2013), Volevodz (2010), Rusinova (2009), Savryga (2014) and others. Of course, not only the analysis of domestic lawyers, but also foreign ones, as well as specialists from related fields, i.e. military, political scientists, etc., are of some importance.

In addition, information on the process of discussion of interested states within the United Nations and analysis of their results with the aim of developing legally binding regulators of PMSC activities is introduced into the scientific circulation.

## 2. Problem Statement

The current situation, characterized by processes resulting in a rapid increase in the number of PMSCs, has updated the issue of legal of activities of such companies from the point of view of international law. The states often confront with the question to what extent they are ready to abandon their traditional prerogative and monopoly on the use of force and cede it to non-state actors and whether they should reconsider the concept of the responsibility of a modern state for resolving the issues of security and the use of force.

## 3. Research Questions

A study of the presence or absence of international and legal instruments regulating relations related to the activities of PSCs. The subject of the study are the following documents:

- *International*: “Montreux document” (adopted in 2008); International Code of Conduct for Private Security Companies (adopted in 2010, more than 592 PSCs from 70 countries have already joined, including -199 companies from the UK; 62 from the USA), resolutions of international organizations, scientific doctrines;
- *National legislative acts of states*, including the draft domestic Federal Law “On Private Military and Security Companies”.

It also examines current international law regarding the prohibition of the use of mercenaries, as well as the rules of warfare (1949 Geneva Convention and Article 47 of its 1977 Additional Protocol; 1977 OAU Convention on the Elimination of Mercenaries in Africa: International Convention to Combat Recruitment, Use, Financing and Training of Mercenaries (UN Department, 1989)).

## 4. Purpose of the Study

Within the limited format, the task is to determine the presence or absence of international legal and national regulation on the creation, use and control of PMSC activities. Identification of legal force, i.e. its obligatory nature for states of such regulation, which, obviously, poses a task for us to study the entire array with the need to identify the problems of existing legal instruments and make appropriate proposals on the possibility of developing legally binding documents.

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In addition, one of the goals is to introduce the scientific process and the results of practical discussions at international sites (at the UN, ICRC and others) on the issues of regulation of relations in the field of PMSC activities.

## 5. Research Methods

The study involves the following research methods:

- The topic is disclosed from the standpoint of general scientific methods (sociological, systemic, structural and functional, concrete and historical, statistical), general logical methods of theoretical analysis, particular scientific methods (comparative law, technical and legal analysis, substantiation, interpretation);
- In addition to general research methods, there were used the analysis of theoretical sources and regulatory sources; comparison; generalization; analysis of documents; modeling.

## 6. Findings

In modern international and national law, the issue of combating mercenarism has long been the focus of attention of the UN and its specialized agencies. It is generally recognized that the consequences of mercenarism are expressed in violation of the right of peoples to self-determination, sovereignty of states, principles of peaceful coexistence, stability of governments and state structures elected by constitutional means in the regions or the prevailing legal order. In a situation where a new challenge to global stability and security at the turn of the 20$^{th}$–21st centuries was an armed conflict at the international and domestic levels with the involvement of mercenaries the negative effect resulting from these consequences has increased significantly. Official data confirm the rapid growth in the number of mercenaries around the world and rather complex nature of their activities.

The focus of our attention will be those processes that occurred after the termination of the work of the Working Group on the issue of the involvement of mercenaries as a means of violation of human rights and impeding the exercise of the rights of peoples to self-determination and Special Rapporteur (Resolution 1987/16).

For more than 15 years, the Special Rapporteur has compiled and presented to the UN unique analytical materials. They testify to the progressive expansion of “privatization of the use of force” by non-state actors, which takes the following form:

- Individual mercenaries;
- Activities of illegal military formations during conflicts within the country or between states;
- Export of PMC and PSC services to foreign states or non-state entities.

The first two of these forms belong to the so-called “traditional” mercenarism, the fight against which is possible based on the International Convention for the Suppression of the Recruitment, Use, Financing and Training of Mercenaries.

Export of PMC services represents, in the opinion of the Special Rapporteur, a new type of mercenaryism in the sense in which this concept is stated in the Convention.

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These trends and the lack of clarity on the legal status of PMCs were one of the reasons why the Special Rapporteur, completing the work in 2005, noted that the status of PMCs and security companies is not clear. According to the existing definition of a "mercenary", many of them can be attributed to mercenaries or those who use the services of mercenaries, although they regard their activities differently. Such companies work under contracts with Member States, non-governmental organizations, and mostly with the UN, providing security, logistical support and training in conflict and post-conflict situations, for example, in Iraq and Afghanistan (Volevodz, 2010).

**The next stage of discussions** can be considered the first legal initiatives that appeared in the first decade of the 21st century on the need to create legal instruments to control PMSCs activities by states, in particular:

- *Green Paper*;
- *Swiss Initiative* (Swiss government jouintly with the organization of the International Red Cross).

These initiatives have found support in 17 states, including Australia. Austria. Angola, Afghanistan, United Kingdom, Germany, Iraq, Canada, China, Poland, Sierra Leone, USA, France, Sweden, Switzerland, Ukraine and South Africa. The essence of these initiatives was as follows:

- To create single international body (secretariat) of control over the activities of PMCs, which has the right to prohibit their activities in the "aggressor countries" and other states with the possible deprivation of their license to operate as a punitive measure;
- To establish international control of the licensing regime of PMSCs;
- To monitor international bodies over the activities of PMCs with the development of agreements between countries having such companies.

It was assumed that the functions of an international body (secretariat) for monitoring PMC activities could consist in examining complaints about companies in the event of incidents, keeping records of PMC personnel, conducting inspections of signed contracts, and also collecting possible financial fines.

The international body will be empowered to conduct international inspections and the right to withdraw from the companies permits for professional activities. It is assumed that the headquarters will be located in Geneva.

These initiatives culminated in the adoption of *the Montreux Document* in 2008 and the *International Code of Conduct for Private Security Companies* in 2010, to which more than 592 PMCs from 70 countries have already joined and signed: 367 companies (62%) of 20 NATO members (including UK – 199, USA –62) (Bashkirov, 2013).

The Montreux Document contains about 70 recommendations for regulating the activities of PMC employees (PMSC is used in the document) directly in the areas of military conflict. According to the document, states of origin of PMSCs, counterparty states, and states of territorial jurisdiction are responsible for violating IHL. All the states commit to stop violations of the IHL PMSC, investigate violations, enact relevant laws, seek and prosecute violators.

In this regard, it makes it possible to disagree with the point of view of a number of authors, in particular Bashkirov (2013), who argue that these acts made the basis for legalization of mercenarism by

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closely linking the international legal framework for attracting mercenaries with international humanitarian law and human rights law. That opened the official path to the legalization of mercenaries at the international level, while until recently the IHL attributed mercenaries to a crime (Bashkirov, 2013).

The analysis of these documents leads to the conclusion that, on the contrary, today the task is to fully control PMSC services on the world market through the creation of a single licensing and audit/monitoring body (international).

To confirm the above stated conclusions, one may look at the subsequent actions of the countries that supported these initiatives, as well as the discussions that took place later on various platforms, which will be discussed below. So, Switzerland for the first time forbade a private military company to take an order from abroad, referring to the provisions of the new Swiss federal law "On private military security activities carried out abroad by private military companies registered in the Confederation" (Swiss Government, 2018) that entered into force on 1 September 2015. In addition, in a short time, over 20 military private firms registered in Switzerland sent official notifications to the Swiss authorities that they had carried out about 200 foreign missions. It is mainly about personal protection or armed protection of valuable property in the areas of military conflict, as well as measures in the field of intelligence and counterintelligence.

What is it, if not effective control, using national legal instruments?

Compliance with the standards based on the Montreux Document and the International Code of Conduct is a prerequisite for concluding any contracts for the provision of private military services at the international level. Washington and London are already taking steps to implement the Code in the main PMSCs. For example, in June 2011, the British Foreign Office set the task for the British Association of Private Entrepreneurs of Aerospace Defense and Security (Aerospace, Defenee & Security-ADS) to bring all industry enterprises in line with the rules of this document.

At the same time, it should be borne in mind that neither the Montreux Document nor the International Code of Conduct for Private Security Companies are legally binding and are advisory in nature. They are not limiting, infringing, expanding or altering in any way the existing applicable norms of the international law or relevant national laws or establishing, developing new obligations of international character.

**The next stage** of discussions was held at a more representative venue, i.e. the UN Human Rights Council.

In the Resolution 15/26, the Human Rights Council decided to establish an open-ended intergovernmental working group with the mandate to consider creating an international regulatory framework, including, inter alia, the option of developing a legally binding instrument to regulate, monitor and control the activities of private military and security companies to ensure their accountability, taking into account the principles, main elements and the draft text proposed by the working group on the involvement of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination. The Human Rights Council also decided that an open-ended intergovernmental working group would hold an annual five-day session for two years. The first session was held from 23 to 27 May 2011. The second session was held from 13 to 17 August 2012.

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Opening the second session of the working group, the Director of the Research and Right to Development Division of the Office of the High Commissioner for Human Rights (OHCHR), Crane (2008), noted that the issues under consideration were complex, starting with identifying private military and security companies that are engaged in a variety of activities and provide a wide range of services both internationally and domestically. She recalled the importance of a *clear definition of* "private military and security companies", and the question was raised of the *need to distinguish between the activities* of private military companies on the one hand and private security companies on the other (para 12).

In addition to specific issues related to the regulation of PMSCs, Crane (2008) pointed out the human rights problems created by the growing practice of outsourcing private companies to security-related public functions, especially given that such companies often operate at the transnational level. Such growth also raises questions about the extent to which *private actors can be held accountable for human rights violations* and how this should be done. In such contexts, it is especially important *to ensure the accountability of private military and security companies (PMSCs)* and their employees for their activities in accordance with international human rights and humanitarian law.

Thus, this stage of discussions on the development of necessary legal instruments was very representative, in which more than 70 states and organizations took part). Discussions were reduced mainly to the following areas:

- *Definition, scope and nature of private military and security companies and related problems, in particular in connection with extraterritorial activities of PMSCs;*
- *Stuart Groves* (regional expert) devoted his speech to the UN process of introducing clear criteria for using the services of armed private security companies. He noted that as part of the policy being developed, the United Nations would not contract with companies that have not signed the International Code of Conduct, or with states that do not comply with the Montreux Document and do not follow good practices outlined therein. In his view, a legally binding international convention on the regulation of PMSCs would enable the United Nations to rely on the signatories to provide reliable information on security companies whose services the Organization may wish to use.

Let us recall that the Montreux Document uses the concept of "private military and security companies" (PMSCs), which is defined as follows: PMSCs are "private business entities that provide military or security services, regardless of how they describe themselves. Their services include, in particular, the armed security and protection of people and facilities, maintenance and operation of combat complexes, detention of prisoners, counseling or training of local military personnel and security guards".

The IHL indirectly prohibits the use of PMCs to perform functions that are directly attributable to the state or government, for example, maintenance of prisoner of war camps or interned civilians in accordance with the Geneva Conventions.

Other delegates focused their statements on the definition of PMSCs. The view was expressed that a clear distinction was needed between private security companies, private military companies and mercenaries.

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Due to the need for a clear distinction between PMSCs and mercenaries, another delegation suggested that the definition of PMSCs should focus on either the nature of the company or the services it provides in a particular case.

In this regard, one may say that it is difficult to draw a line between security and military companies and that the classification in the definition should be based on the type of services that are provided in each case.

*Possibilities of creating an international regulatory framework, including the possibility of developing a legally binding document.*

In his report on specific initiatives, *Niels Meltzer* (Director of the Research Program of the Expert Center for Human Rights at the University of Zurich) recalled the primary responsibility of states for the regulation, control and accountability of PMSCs and their activities (ICRC, 1977). He then drew attention to existing initiatives: the Montreux Document, the International Code of Conduct and initiatives sponsored by the Human Rights Council, including the Working Group on the Use of Mercenaries and the Intergovernmental Group on PMSC activities.

He informed about the development of the *draft charter for the supervisory mechanism of the International Code of Conduct*. Currently, the project envisages a certification process, which companies that have signed the Code are required to successfully pass in order to obtain the status of member companies, as well as a mechanism for continuous performance evaluation and complaints. He acknowledged that although the proposed complaint mechanism allows victims to seek substantive consideration of their complaints, there might not be a practical possibility for the fact mechanism to investigate complaints on the ground with sufficient credibility due to practical obstacles and security concerns. Because of this, instead of clarifying the facts on charges of violating the Code, the mechanism should probably focus on considering whether the companies involved are cooperating sufficiently to deal effectively with complaints.

We believe that although the existing initiatives have many positive features, they remain significant gaps that need to be addressed through an international convention. For example, the Montreux Document does not clarify the legal status of armed PMSC personnel whose presence in conflict zones creates problems in ensuring compliance with the principle of demarcation. It also does not set limits on the number of employees whose services can be used and the types of activities where they can participate. In this regard, the term “private military companies” is problematic, since some Member States consider military functions to be purely a prerogative of states. It does not provide for remedies for victims. Since the Code is a voluntary initiative of the industry, it cannot be invoked in the courts if its provisions are not included in contracts or in national legislation.

Some delegations noted that existing initiatives did not criminalize abuses committed by PMSC personnel. In this regard, one of the delegations of non-governmental organizations presented the findings of a study conducted in one of the countries that have recently experienced armed conflict. According to this study, none of the PMSC employees accused of serious crimes, including allegations of violation of international human rights and international humanitarian law, were held accountable by either the state in whose territory they operated, the state where they are based, or the contracting state.

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In his statement on the status of private security companies, Chris Sanderson (Chairman of the ADS Security Services Group) noted that such companies provide armed and unarmed security services to a number of governments, international and non-governmental organizations, as well as commercial clients in the presence of political, ideological or criminal threats requiring such specialized protection. He emphasized that private security companies must be distinguished from private military companies that take part in military operations, such as interrogating enemy combatants, training and providing specific military services.

Sanderson (as cited in ICRC, 1977) indicated that the regulatory framework, whether national or international, should meet four key criteria, which are the following:

a) Efficiency in the sense that it should have a real, significant and positive impact on the work of companies instead of being a clean process without significant changes, and for this purpose should be based on regulation by third parties, and not on self-regulation;

b) Comprehensive in the sense that it should influence the work of all companies, and not just those companies that have already achieved the proper standards, although perhaps not in a fully measurable and non-verifiable way by independent experts;

c) Transparency achieved through viable and independent processes that address broader aspects related to the integrity of voluntary and self-regulatory systems, and

d) Affordability meaning that measures should be commensurate with operational need and companies should only demonstrate compliance with a uniform and recognized standard. He pointed out that, from his point of view, standards should apply to elements of leadership, management and command, operational processes, selection, verification and approval of personnel and subcontracting organizations, collective and individual training and record keeping related to training, procurement, licensing and regulation of firearms, rules on the use of force, compliance with international and national law, including human rights obligations and specific regulatory requirements jurisdictions where the companies operate, reporting and documenting incidents, as well as complaint processes. He stressed that many companies have already invested a lot of money in these areas; however, official measurable standards and an independent verification process are necessary to achieve market differentiation and identify those who do not comply with the norms, and to stop their work or, at least, to create unfavorable commercial conditions for them.

*Speaking about the possibilities and prospects of developing a legally binding document for the regulation, monitoring and control of activities of private military and security companies*, James Cockayne (Expert Co-director of the Center for Global Cooperation against Terrorism) said that in his opinion legally binding agreements would most likely appear as a result of the development of a set of coordinated international regulatory positions implemented through national law or international framework conventions that coordinate national mechanisms (ICRC, 1977), and not as a result of the immediate transition to the adoption of a single international treaty or code or the creation of a supervisory body.

Cockayne noted that the development of an effective regulatory framework would require, first of all, the identification of common regulatory positions on specific aspects of regulation, including licensing, export control and remedies in case of abuse and violation of human rights (as cited in ICRC,

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1977). He suggested that discussions should focus on five areas, i.e. the conclusion of contracts by the government for provision of private military and security services, state support for respecting human rights in conflict zones by PMSCs, state licensing of private military and security services, export control mechanism respecting human rights, and the issue of effective remedies and appropriate complaint mechanisms.

During the discussion, a number of delegations recalled the need to adopt a legally binding international instrument.

In addition, some delegations expressed concern that the state monopoly on the use of force and the main state functions related to security were turning into goods and outsourced to PMSCs. Other speakers expressed concern about the involvement of PMSC into situations that allow the direct participation of their staff in hostilities. They also emphasized the need for export controls and the introduction of stringent regulations in this area.

However, a number of delegations stated that at that stage it would be premature to consider the issue of negotiations on a legally binding instrument. They emphasized the need to strengthen existing initiatives related to PMSCs, namely the Montreux Document and the International Code of Conduct. Besides, they mentioned that it is necessary to analyze the consequences of their application before embarking on new initiatives that may require a review of priorities and the use of additional resources, and result in a development that would be ratified by only a few countries. An “endless” convention could unlawfully affect PMSCs whose activities do not require international regulation, such as companies providing ordinary security services within their countries.

One of the delegations advocated a gradual approach, aimed at achieving fundamental agreement on the substance of the issues in various fields and choosing a specific form of regulatory framework.

*Accountability of private military and security companies in cases of violation.*

The issue of PMSC accountability in cases of violation was considered from the point of view of national instrument for accomplishing regulation. A number of national legal acts governing activities in the field of PMSCs were analyzed.

*The representative of the United States of America* said that PMSCs and their activities were regulated in the United States through a system of interrelated norms. The United States law prohibits the employment of PMSCs to perform functions that are the responsibility of the government. The laws governing the export of goods and services of military importance, including weapons and military training, are also applicable to PMSCs (Arms Export Control Act). Government contracts with PMSCs include clearly defined standards for the selection and verification of personnel, training and standards of conduct. Any violation of such agreements may entail certain consequences, including a reduction in the amount of payments due to non-fulfillment of the agreed work, refusal to extend or terminate the contract, as well as a ban on participation in other call for bids. In addition, PMSC personnel may, in certain circumstances, be prosecuted for offenses committed outside the United States, in accordance with the Military Extraterritorial Jurisdiction Act and the Unified Criminal Justice Code.

*The representative of Switzerland* said that a draft law had been developed in the country (subsequently adopted and entered into force in 2015), which would require PMSCs registered in Switzerland to notify Swiss authorities of their activities abroad, and would prohibit certain types of

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PMSC activities, including direct participation in hostilities. Any violation can entail criminal liability, including imprisonment. The law requires the government to contract exclusively with PMSCs that have signed the International Code of Conduct.

There is no legislation in the United Kingdom defining which functions of the government can be outsourced, but there is an understanding that military activity can only be carried out by military personnel under the command of the officer corps. The United Kingdom considers the certification system, based on the industry specific standards, the most effective way to resolve human rights issues related to PMSCs, and is working to establish such a certification system. The United Kingdom will also use its influence as a contracting state for private security services to ensure compliance with the principles set forth in the International Code of Conduct. Under the International Criminal Court Act 2001, British PMSC employees involved in gross violations of the Geneva Conventions, torture, genocide, war crimes and crimes against humanity committed by British citizens can be held criminally liable. Some other serious crimes committed abroad by British citizens may be prosecuted in British courts. Domestically, the UK Security Companies Authority, established by the Private Security Companies Act 2001, is the organization responsible for regulating private companies in the field, in particular by introducing a licensing regime.

*The representative of South Africa* stated that, according to the Foreign Military Assistance Act of his country, any military assistance provided by South Africans abroad should be authorized and that appropriate authorization is not granted in cases where the assistance provided could lead to an encroachment on human rights and fundamental freedoms, threat to peace, escalation of regional conflict or constitute support for terrorist activities. The Private Security Companies Act 2002 provides for strict standards for such companies and related controls.

*The representative of China* said that in 2009, his country adopted new standards of security services, as a result of which the surveillance system covers all types of security services and controls over the activities of the companies operating in this area. These standards provide for a licensing system for security companies and a system for confirming the qualifications of security guards. They also provide for accountability mechanisms, including administrative and criminal sanctions, as well as civil remedies.

If the world practice in regulating private military companies, as we have seen in the example of the above discussions, seeks to create the necessary universal regulators, **Russian national law**, so far, has carefully "avoided" this problem. The Russian Criminal Code contains articles 359 "Mercenary" and 208 "Organization of an illegal armed formation". One cannot but pay attention to such a fact as the lack of legal opportunities for acquiring modern military weapons.

At the same time, there is an opinion that the wording of the amendments to the Articles 34.1., 37, 38 of the Federal Law "On Military Duty and Military Service" (Federal Law of 28.12. 2016 "On amendments to the Federal Law" On Military Duty and Military Service") open a hidden Pandora's Box regarding PMSCs. In the framework of these wordings, the citizens who are in reserve are considered to be performing military service if they participate in activities aimed at "suppressing international terrorist activities outside the territory of the Russian Federation". Since many men in Russia have been conscripted, the amendments to the law affect almost all Russians. Now, if they are fighting terrorists,

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they are considered military personnel, even if they do not officially belong to any part of the Ministry of Defense. In other words, changes in the Law on military service allow the use of Russian mercenaries around the world and legalize PMCs in the country.

According to our opinion, such understanding of these norms is incorrect and contradicts the provisions of the Constitution of the Russian Federation. So, in accordance with Part 5 of the Article 13 of the Constitution of the Russian Federation, the creation and activities of public associations, the goals and actions of which are aimed at the creation of armed groups, are prohibited. According to the Article 71 of the Constitution of the Russian Federation, defense and security, war and peace, foreign policy and international relations of the Russian Federation are under the jurisdiction of the Russian Federation. Together with the Articles of the Criminal Code mentioned above, it can be argued that Russian law at this stage prohibits the creation and existence of private military companies. In Russia, only security companies have a legal right for their existence.

Besides, there have long been a couple of dozen private military companies in Russia (RSB Group, Antiterror-Orel) that work in a "gray zone", meeting the interests of Russian business. They are registered abroad as "security agencies" and privately act as individuals. However, since there is no legislative framework, they work at their own risk.

The first attempt to introduce a law on PMSCs was made in October 2014. However, he was not supported by the Government of the Russian Federation. They did not support this draft law in the Ministry of Defense of Russia, Ministry of Finance, Ministry of Foreign Affairs of the Russian Federation, and in a number of other law enforcement agencies, in particular in the Russian Guard, the FSB, SVR, and FSO. The General Prosecutor and the Ministry of Justice of Russia also opposed the draft.

Thus, it can be stated that **Russia** lacks national legal instruments in the field of PMSC activities. Moreover, taking into account that neither the Montreux Document nor the International Code of Conduct was supported by the Russian Federation it can be stated that Russia lacks international legal instruments in the field of PMSC activities as well.

## 7. Conclusion

Summing up the discussions on the search for legal instruments of PMSC activities, the following should be noted:

1. PMSCs are neither the subjects of the international law nor the carriers of obligation stipulated by the UN Charter not to use force regarding international relations. However, they are contracted by individual states and international organizations to provide military and security services in the territories of emerging countries, i.e. the independent subjects of international law and participants in the international relations. Current international law does not contain any legally binding rules on the principles and conditions of such activities, which, by and large, put under threat the sovereignty and independence of the states where PMSCs operate.

The Montreux Document and the International Code of Conduct, which are not legally binding acts, are aimed at the following:

- To facilitate intergovernmental discussion of the issues arising from the use of PMSCs;

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- To reaffirm and clarify the existing obligations of States and other actors under international law, in particular international humanitarian law and human rights law;
- To offer good practices, regulatory models, and other relevant measures at the national and regional or international levels to help states comply with and ensure respect for international humanitarian law and human rights law.

2. The international community is aware of the need to establish universal legal regulators that, on the one hand, will prevent the transformation of PMSCs and their personnel into mercenaries. And on the other hand, prevent them from transferring inalienable state military functions, which, in accordance with the principle of the state's monopoly on the legitimate use of force, involve direct participation in military conflicts, military operations, capture of prisoners of war, military intelligence, use of weapons of mass destruction or any activity related to such weapons and others.

In this regard, it seems that it is necessary to develop special legal requirements designed to regulate at the international level, which could be the following:

- Export of military and/or security services outside the state in which the PMSC is registered, and
- Import of military and/or security services in the territory of the state of PMSCs registered in a foreign state.

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