

Submission by the International Code of Conduct Association (WGN0015)

This submission reflects the views of the contributor, who is responsible for the accuracy of all claims made in the submission. It does not necessarily reflect the views of the Foreign Affairs Committee. As a written submission accepted by a parliamentary committee, it is protected in the usual way by parliamentary privilege. No legal or other action may be taken against any person on any grounds arising from the fact that they have provided such material.

Distinguished Members of the Foreign Affairs Committee,

1. The International Code of Conduct Association (“ICoCA” or “the Association”) is a non-profit multi-stakeholder initiative, based in Geneva, Switzerland, and established in 2013 to ensure that providers of private security services respect human rights and international humanitarian law through implementation and oversight of the International Code of Conduct for Private Security Service Providers (“the Code”). ICoCA ensures that Member and Affiliate companies act in accordance with the Code by conducting due diligence through monitoring and certification, as well as the provision of guidance and the handling of complaints to raise the standards of the private security industry.

2. The Code was adopted in 2010, the result of a multi-stakeholder initiative launched by Switzerland. The Code articulates responsibilities of private security companies under human rights and international humanitarian law to ensure the responsible provision of private security services, including when operating in complex and otherwise high risk, unstable or fragile environments where there is a risk of human rights abuses and/or violations of international humanitarian law and/or civilian harm.

3. The Government of the United Kingdom is one of 7 governments presently members of the Association. More than 105 security providers, including a number of UK based companies, and 45 Civil Society Organisations globally have joined the Association.

4. This submission will seek to address the following set of questions formulated by the Committee:

How effectively do international law and UK national law govern and police the activities of PMCs? Does the existing ‘rules-based international order’ provide a response? Are updates required?

Generally, how do the activities of PMCs challenge the 'rules-based international order'?

5. For reference purposes, current international law includes the 1949 Geneva Conventions and their 1977 Additional Protocols, the 1989 United Nations Convention on International Convention against the Recruitment, Use, Financing and Training of Mercenaries and relevant international human rights treaties such as the 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.¹ Of possible interest to the Committee would be the ongoing work of United Nations Open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies, which was established by the United Nations Human Rights Council in 2017.²

6. In line with the evidence sought by the Committee, this submission will address issues related principally to the activities of private non-state actors, notably 'private military companies' and where relevant private security companies, be they natural persons, legal entities or organized armed groups, operating in conflict and high-risk environments.

7. Whilst the focus of this enquiry is on the operations of the so-called 'Wagner Group' it should be recalled that the use and the presence of private non-state actors in such environments is not a new phenomenon. The second half of the 20th Century is replete with examples of private contactors and mercenaries operating in a variety of contexts, hired by a range of entities, including States. More recently, similar actors have grabbed the headlines. These have included the Wagner Group, described by some as a 'shadowy mercenary army waging secret wars', by others as a both 'paramilitary organization' and 'private military company' as well as a 'Russian PMSC in Russian proxy warfare';³

¹ The 1989 International Convention Against the Recruitment, Use, Financing and Training of Mercenaries is the main international instrument specifically prohibiting and regulating mercenary activities. Unlike Additional Protocol I to the 1949 Geneva Conventions, which aims simply to prevent mercenaries from being granted prisoner of war status in international armed conflicts, the Mercenary Convention looks to regulate and prohibit mercenaries. It also extends beyond international armed conflicts to include any armed conflicts or other situations involving concerted acts of violence aimed at overthrowing Governments, undermining the constitutional order of a State or undermining the territorial integrity of a State.

² See <https://www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index1>

³ The Rise and Fall of a Russian Mercenary Army, October 2019 <https://foreignpolicy.com/2019/10/06/rise-fall-russian-private-army-wagner-syrian-civil-war/>, Global Security, Wagner Group, Private Military Company 'Wagner', a.k.a. Chastnaya Voennaya Kompaniya 'Vagner', a.k.a., Chvk Vagner, a.k.a. PMC Wagner, a.k.a.

former Colombian soldiers alleged hired by Saudi Arabia and the UAE to fight in Yemen, Sudanese and Russians operating in Libya, and South Africans hired to combat Boko Hara in Nigeria⁴.

8. Given then the current and likely future role of private non-state actors in high risk and conflict environments, it is appropriate to consider the effectiveness and relevance of existing international law.

9. As the Committee may be aware, there are different view points in this regard. One school of thought is that international law as it stands is ill-equipped to regulate the conduct of these private non-state actors, and that new international conventions and treaty mechanisms are urgently needed in this field.

10. Another viewpoint, as reflected in the 2008 Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, is that existing international instruments provide a comprehensive legal framework from which to work.⁵ That which is needed are not new treaties but implementation of these obligations through appropriate legislation, regulation and oversight.

11. Each view point has its merits. However, whilst developing a new treaty regime may bring further clarity to the legal obligations and responsibilities of States for the actions of private security companies, private military companies and mercenaries, this is likely to be a drawn-out process. Indeed,

<https://www.globalsecurity.org/intell/world/russia/vagner.htm>, Decoding the Wagner Group: Analyzing the Role of Private Military Security Contractors in Russian Proxy Warfare, November 2019, <https://www.newamerica.org/international-security/reports/decoding-wagner-group-analyzing-role-private-military-security-contractors-russian-proxy-warfare/>

⁴ Hundreds of Colombian mercenaries to fight for Saudi-led coalition in Yemen, November 2015, <https://www.middleeasteye.net/fr/news/hundreds-columbian-mercenaries-fight-saudi-led-coalition-yemen-964433925>, The United Arab Emirates has deployed a team of Colombian mercenaries to fight in Yemen, December 2015, <https://www.businessinsider.com/uae-deployed-colombian-mercenaries-to-yemen-2015-12?r=US&IR=T>, Mercenaries flock to Libya raising fears of prolonged war, December 2019, <https://www.theguardian.com/world/2019/dec/24/mercenaries-flock-to-libya-raising-fears-of-prolonged-war>, Nigeria: is South Africa really joining the fight against Boko Haram? March 2016, <https://www.dailymaverick.co.za/article/2016-03-08-nigeria-is-south-africa-really-joining-the-fight-against-boko-haram/>, SA mercenaries are 'giving Boko Haram a hiding', December 2015, <https://mg.co.za/article/2015-04-16-sa-mercenaries-turn-the-tide-in-nigeria/>, Who are the Russian mercenaries waging war in Libya?, December 2019, <https://www.euronews.com/2019/12/18/who-are-the-russian-mercenaries-waging-war-in-libya>

⁵ The Montreux Document is the result of an international process launched by the Government of Switzerland and the ICRC. It is an intergovernmental document intended to promote respect for international humanitarian law and human rights law whenever private military and security companies are present in armed conflicts. It is not legally binding as such but, rather, contains a compilation of relevant international legal obligations and good practices. It has been signed by 58 States to date, including the United Kingdom. Available at <https://www.icrc.org/en/publication/0996-montreux-document-private-military-and-security-companies>

current debates point to lack of consensus on key issues, including on definitions, jurisdiction, the outsourcing of government functions, as well as opposing views between States on fundamental questions and approaches.

12. Notwithstanding the outcome of processes in international multilateral fora, there is a strong case to be made that a more concerted approach is required by States to fully meet their pre-existing international legal obligations. To do so requires *inter alia* the development of national regulatory frameworks, the strengthening of oversight and transparency and ensuring accountability for any human rights abuses or humanitarian law violations committed by private non-state actors. Thus, rather than updating the existing international legal order, prioritization should be on effective implementation of existing legal obligations. Based on this approach, ICoCA makes the following recommendations for the Committee's consideration.

13. First, a clear understanding of and delineation between the various non-state private actors operating in high risk, complex and conflict environments, must be established. As witnessed in contexts such as Mozambique, Libya, Central African Republic, Syria and Ukraine, there has been a growth in the reliance on private non-state actors to carry out a range of activities, giving rise to a complexity of issues and concerns. These actors potentially include, or have been described as, quite often interchangeably, as mercenaries, 'private military companies' and private security companies.

14. In a limited range of circumstances, there may be some perceived overlap in the nature of the services being offered by these private non-state actors. However, based on existing international law, and where relevant, domestic regulatory and licensing regimes, States should endeavour to clearly differentiate between them.

15. On this, the Montreux Document explains that the 'mercenary definition' in Article 47 of Additional Protocol I excludes most employees of private military contractors and security companies. It adds that such employees do sometimes meet the conditions for definition as mercenaries in which case they would be not entitled to combatant or prisoner-of-war status in an international armed conflict. The European Parliament, in its 2017 Report on private security companies, similarly noted the "importance of drawing clear legal distinctions between the operations of private security companies and private actors engaged in military activities"⁶.

⁶ European Parliament resolution of 4 July 2017 on private security companies ([2016/2238\(INI\)](#))

16. By contrast to ‘private military companies’, private security companies play an important role in protecting a range of state and non-state clients in the relief and development sector, the extractive industry, corporations, diplomatic missions and the agri-business. They are hired by their clients to defend the client's assets, both staff and property. Their activities are entirely defensive.⁷

17. By way of reference, the European Parliament recalled that the “EU and its Member States should only resort to private security companies in conflict zones to protect their premises or ensure transport security, and only if they fully respect human rights and international humanitarian law”. It stressed further “that no activities should be outsourced to PMSCs that would imply the use of force and/or active participation in hostilities, except in cases of self-defence”.⁸

18. The UK’s Ministry of Defence has noted that “private security companies offer several advantages that are likely to make them attractive in the future, particularly if (as seems probable) the currently high numbers of minor conflicts and multinational missions continue. [...] The advantages of using private security companies are likely to endure, and possibly increase, meaning that they could be an increasingly important feature of future conflicts”.⁹

19. Second, ICoCA recommends that the United Kingdom continues to support national and international efforts to improve accountability and the provision of remedies to address violations of international humanitarian law and abuses of human rights by private security companies and private

⁷ The International Code of Conduct for Private Security Service Providers defines private security companies as “any Company (as defined in this Code) whose business activities include the provision of Security Services either on its own behalf or on behalf of another, irrespective of how such Company describes itself.” For the purposes of the Code, Security Services include but are not limited to “guarding and protection of persons and objects, such as convoys, facilities, designated sites, property or other places (whether armed or unarmed), guarding and transporting prisoners, operating prison facilities and assisting in operating camps for prisoners of war or civilian detainees, the checking, detention, or searching of persons, searching of premises or containers, and seizure of objects, counter-piracy services, armed or unarmed maritime escorts or onboard vessel protection, operational and logistical support for armed or security forces, including training and advice, intelligence, surveillance and reconnaissance activities, crowd management, operating and maintaining weapons systems, guard dog services, the recruiting and training of security personnel, directly or as an intermediary, for a company that offers private security services, and any other protective activity for which the personnel of companies are required to carry or operate a weapon in the performance of their duties.”

⁸ European Parliament resolution of 25 November 2021 on the human rights violations by private military and security companies, particularly the Wagner Group ([2021/2982\(RSP\)](#)).

⁹ Global Strategic Trends, The Future Starts Today, Sixth Edition.

military companies. Under international law, the responsibility for prosecuting human rights abuses and humanitarian law violations lies first and foremost with States.

20. The Committee should take note of the pertinent international legal obligations and best practices detailed in the Montreux document for contracting States, territorial States, home States and all other states to improve compliance and accountability.¹⁰ Generally, the Montreux Document recalls that all States should take measures to suppress violations of international humanitarian law committed by the personnel of private military contractors and security companies through appropriate means such as military regulations, administrative orders and other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate. Greater international cooperation, mutual legal assistance and extraterritorial jurisdiction should be encouraged.

21. Third, ICoCA recommends that due consideration should be given to providing increased support to civil society organisations to build their capacity to collect, document, and report on the activities of private military companies operating in high risk and conflict environments.

22. There are notable challenges faced by civil society organisations to systematically document and denounce abuses of human rights and violations humanitarian law by private military companies in such environments. Concerns for their own security, fear of reprisals and limited capacity regularly hamper the contributions that civil society organisations can make in closing the impunity gap, and helping to bring to justice personnel of private military companies. Too often then, victims are left with no redress, and perpetrators are not held to account.

23. The Committee may be interest to note that ICoCA and its civil society organization Members work to promote and monitor respect for human rights in the private security sector. A list of ICoCA's current 45 CSO Members is available on the website.¹¹ ICoCA seeks to empower the work of CSOs at the local level with their own missions, building their knowledge of the private security industry in order to increase their capacity for oversight of these actors in complex environments with few available resources.

¹⁰ The Montreux Document

https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/20192511-montreux-document_EN.pdf

¹¹ <https://icoca.ch/membership/>

24. As a fourth recommendation, ICoCA would encourage the UK Government to engage more robustly with humanitarian agencies and relevant implementing partners operating in high risk and conflict environments on issues related to the use of and interaction with private security companies. The UK Government should ensure that the contracting policies of their humanitarian partners are in line with humanitarian principles and that guidelines are established, shared, and applied.

25. Aid agencies rely on security companies for a range of services. Armed and unarmed security guards are generally hired to protect agency staff, property, and convoys. Companies have also been contracted to assist and manage security at migration centres, medical facilities, and refugee camps. However, whilst humanitarian organisations are increasingly using and need to use the services of private security providers in many contexts, humanitarian organisations are not systematically equipped to make informed decisions when contracting their security providers. Findings in a recent ICoCA report highlighted the need to raise awareness of the potential issues related to private security contracting across the whole sector and to involve a wide range of actors to achieve more responsible and safer practices.

26. Whilst this recommendation is more specific to the use of private security companies, it should be noted that in contexts affected by ongoing or recent hostilities it may be difficult to distinguish between them and 'private military companies'. Security personnel may be former members of the armed forces, rebels, or militias, or have allegiances to parties to the armed conflict. Humanitarian agencies may inadvertently or through weak oversight end up contracting the services of private military companies, rather than legitimate security companies. As such, failure to carry out the required level of due diligence on security providers can result in the reputation and independence of the relevant humanitarian agency being undermined, access to local communities jeopardized and the safety of staff and beneficiaries being put at risk.¹²

27. Finally, and as a fifth recommendation, the UK Government should continue to support efforts to improve oversight and accountability of private security companies operating in conflict and high-risk environments. In signing the Montreux Document, developing the International Code of Conduct, and being an active Government member of ICoCA, as well as partnering with Aerospace Defence and Security (ADS) and the Security in Complex Environments Group (SCEG) to establish a monitoring regime

for UK-based Private Military and Security Companies, the UK Government has shown international leadership.

28. By continuing to invest in and actively shape these initiatives, the UK Government is assuming a critical role internationally to ensure that private security companies are fully regulated and operating in accordance with international law. Yet, as this Committee has noted, the recent activities of military type entities such as the Wagner Group, and increased presence of mercenaries in a variety of conflicts, including Libya, Syria and Ukraine, have given rise to new dynamics and issues of concern. Broader inter-governmental cooperation should therefore be considered by the UK Government to address these specifically.

29. For its part, the International Code of Conduct Association remains committed to raise private security standard and practices that respect human rights and international humanitarian law and to engage with key stakeholders to achieve widespread adherence to the International Code of Conduct for Private Security Providers globally.

Respectfully submitted,

On behalf of the International Code of Conduct Association,

A handwritten signature in black ink, appearing to read "J.A. Williamson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jamie Williamson

Executive Director

May 6th, 2022