

Revisiting the Legal Framework for Private Military and Security Contractors: Maritime Perspective

Vijaya Singh Gautam* & Vijay Mishra**
<https://doi.org/10.21827/GroJIL.8.1.166-182>

Keywords

PRIVATE MARITIME SECURITY COMPANY; PRIVATE CONTRACTED ARMED SECURITY PERSONNEL (PCASP); PRIVATE MILITARY AND SECURITY COMPANY; INTERNATIONAL HUMANITARIAN LAW (IHL); LAW OF THE SEA; STATE RESPONSIBILITY

Abstract

The paper aims to analyse legal lacunas and suggest possible solutions for the acts and wrongdoings of Private Military and Security Companies within the lens of maritime activities. The paper has been divided into three parts. Part I deals with the necessity and role of Private Military and Security Companies in the present times. Part II discusses the legal status of Private Military and Security Companies and ways of ensuring responsibility for their acts. Part III examines the legal framework for the acts of Private Maritime Security Companies. An assessment of the rules of international humanitarian law (IHL), state responsibility, applicability of the Montreux document and efforts such as GUARDCON have been discussed to highlight the inadequacy of the laws on Private Maritime Security Companies. There has been an upsurge in the employment of Private Maritime Security Companies since 2008 to cope with a myriad of problems at sea including piracy and robbery. However, an umbrella of rules including employment procedures, agreements, training techniques, responsibility in peacetime as well as in times of conflict and the guidelines of IHL must be restructured or enhanced in order to be made applicable to Private Maritime Security Companies.

I. The Need for Private Military and Security Companies in the 21st Century: Hegemonic Control over the Sea and Increased Security Issues

A. Relevance of Sea Power

Supremacy over the sea has been contested many times. The sea promotes life on land multifariously through colossal trade, transportation, rich mineral and metal deposits, oxygen provision and sea-dwelling marine life functioning as climate moderators, making it – to an extent – the conductor of life on Earth. The United Nations (UN) Secretary General aptly remarked that it would not be wrong if we substitute the name ‘planet Earth’ with ‘planet water’,¹ as the surface of Earth predominantly consists of water

* Vijaya Singh Gautam, Final Year Student of BA LLB (Hons) at Rajiv Gandhi National University of Law, India. She is the Convenor for Centre for Advanced Study in International Humanitarian Law. Email: vijayasingh1507@gmail.com. Contact No.: +91-8289013215.

** Vijay Mishra, BA LLB (Hons) from Rajiv Gandhi National University of Law, Punjab, India. Associate Advocate, Legacy Law Offices, India. Email: mishravijay781@gmail.com. Contact No.: +91-9454911014.

¹ United Nations Secretary General, ‘Secretary-General’s opening remarks to the Ocean Conference’ (*United Nations Secretary General*, 5 June 2017) <un.org/sg/en/content/sg/statement/2017-06-05/secretary-generals-opening-remarks-ocean-conference-delivered> accessed 17 July 2019.

(approximately 70%). The struggle for the title of hegemon is irrefutably routed via seaways. The undisputable master of the sea could easily elevate his dominance to rule the entire world. The great strategist Alfred Mahan theorised the supremacy of sea power and substantiated the theory with examples from history.² The democratisation of the world has unshackled the sea from being a despotic kingdom to being under the rule of none. The segmentation of power has brought major challenges to seaways. In 1982, the UN Convention on the Law of the Sea (UNCLOS) became the official word on maritime governance.³ Nevertheless, the quest for power continues in individuals, agencies and nations as approximately 60% of the area of the sea remains untamed and beyond the direct control of any country.⁴

B. Need for Private Military and Security Companies

Prior to the establishment of the UN, world domination and intolerance remained a prevalent hidden agenda across the globe. The UN emerged in 1945 and made a paradigm shift by advocating for peace and prosperity in the world. The globalised nations then faced promising challenges in terms of achieving peace, with better connectivity, emerging economic needs and technical advancement. The need for Private Military and Security Companies lay in the non-participation of Member States, as nations deviated from their duty to pool support for peacekeeping missions,⁵ which were created to address international security breaches. Threats from emerging non-State actors (repression of the public, extending unaccountable power and indirect control over failing States) remains one of the latent prerogatives for the establishment of Private Military and Security Companies, as these provide instant solutions and available professionals to offer varied security, military and technical assistance. They have even seeped into the maritime industry by providing on-board guards and logistical services.

Modern problems can be fathomed and resolved only with modern solutions and the privatisation of peace has become inevitable, despite the world not being completely ready for this.⁶ Growing pressure from the world community and lack of muscle in the UN framework are two essential reasons for peace being susceptible to privatisation. This apathy from fellow nations has led to the privatisation of not only peace but the use of force, which is a key function associated only with nation States.

Private Military and Security Companies function as close substitutes for military or security forces for individuals, companies, nations and international organisations. The price of safety is too high to be borne by the common people, hence these services tend to evade the core balance of rights in the society. The legitimacy of Private Military and Security Companies is based on the flimsy foundation of speedier and more efficient service provision, hence incorporating into the world a new non-State actor, the strongest

² Office of the Historian, 'Milestones 1866-1898, Mahan's The Influence of Sea Power upon History: Securing International Markets in the 1890s' (*Office of the Historian*) <history.state.gov/milestones/1866-1898/mahan> accessed 17 July 2019.

³ UN Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397.

⁴ Global Environment Facility, 'Areas beyond National Jurisdiction' (*GEF*) <thegef.org/topics/areas-beyond-national-jurisdiction#:~:text=Marine%20Areas%20Beyond%20National%20Jurisdiction,95%20percent%20of%20its%20volume.> accessed 4 August 2020.

⁵ Tristan Ferraro, 'The applicability and application of international humanitarian law to multinational forces' (2013) 95(891/892) *International Review of the Red Cross* 561, 603.

⁶ United Nations, 'Secretary-General Reflects On 'Intervention' In Thirty-Fifth Annual Ditchley Foundation Lecture' (*United Nations*, 26 June 1998) <un.org/press/en/1998/19980626.sgsg6613.r1.html> accessed 17 July 2019.

amongst all in the contest for world dominance. The bidding of Private Military and Security Companies has not only changed the way in which we look at State functions and the division of power, but has set out a distinct archetype for governance and safety. In the future, we may see the emergence of non-State superpowers who are capable of ruining nations with active military bases in almost all regions of the world. Currently, the majority of Private Military and Security Companies are British or American in origin, leading to consolidation of strategies to compete for hegemonic rule. The power seems to have already started to corrupt them. This is evident in contemporary incidents like that of the Nisour Square, where Blackwater guards employed in Iraq started shooting on a civilian-occupied road whilst they were escorting the US Ambassador's convoy. The guards later were tried and convicted for different charges: murder (of Nicholas Slatten) and manslaughter. Fourteen civilians lay dead and several were injured in this fire, including children and women.⁷ In another infamous incident known as the Abu Ghraib scandal, several gruesome acts and human rights violations were performed in a prison camp that was held by the US-led coalition occupying Iraq. The guards were claimed to have committed several crimes against the detainees, including rape, sodomy and torture. Later the guards were convicted, as was the company rendering services to the Pentagon (CACI) for working in the prisons of Iraq.⁸ The tales of atrocities committed by Private Military and Security Companies are several in number and the atrocities are being performed in several parts of the world.⁹ Despite these violations, there is a dynamic increase in the demand for employment of Private Military and Security Companies. The reasons behind this could be the urge to establish control over occurrences of resistance, control wars, impose de facto control over other States' territories and the denial of responsibilities to cooperate with fellow nations for pooling resources for peacekeeping missions. The breach of obligations and the misconduct of the Private Military and Security Companies raises concerns about the governance of employment of Private Maritime Security Companies which function at sea.

II. Legal Status of Private Military and Security Companies

The legal status of Private Military and Security Companies under international law is not yet clear. Their status depends on the functions they perform. For example, within the scope of IHL, their legal status will be derived from concepts such as civilian, combatant and mercenary.¹⁰ Confirming the legal status of these private firms is necessary to attribute responsibility and liability in the event that they breach any international obligation, especially considering that they are present in diverse regions of the world.

Under international law, these private firms and their employees can be recognised as non-State actors. A State does not have any responsibility for the actions of non-State actors unless and until the State has knowledge of the acts or the non-State actors act on

⁷ Matt Apuzzo, 'Blackwater Guards Found Guilty in 207 Iraq Killings' (*The New York Times*, 22 October 2014) <nytimes.com/2014/10/23/us/blackwater-verdict.html> accessed 4 August 2020.

⁸ Carolyn Patty Blum et al, 'Prosecuting Abuses of Detainees in U.S. Counter Terrorism Operations' (ICTJ Policy Paper 21, 2009).

⁹ Spencer Ackerman, 'Abu Ghraib torture suit against contractor revived by Federal Court' (*The Guardian*, 30 June 2014) <theguardian.com/law/2014/jun/30/iraq-lawsuit-defense-contractor-torture-abu-graib> accessed 22 July 2019.

¹⁰ Louise Doswald-Beck, 'Private Military Companies under International Humanitarian Law' in Simon Chesterman and Chia Lehnardt (eds), *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (OUP 2007).

the direction of the State.¹¹ The definition of non-State actor comprises all entities not related to any State and which have the power to influence international relations.¹² Private Military and Security Companies can be broadly defined as those companies which are not allied to any particular State when it comes to performing their functions. They consist of employees which belong to different States and work under contract with other States.

The *Tadic* case prescribes an ‘overall control’ test for ascertaining the responsibility of a State for the acts of non-State actors. According to this test, the State must have control over the actors, not over the act.¹³ Any sort of direct involvement of the State is not necessary for it to be held responsible. Hence, if the State recruits Private Military and Security Companies for any State function, then they are responsible for the wrongs of these entities.

The employees of Private Military and Security Companies can be held accountable under individual criminal responsibility, or these entities can be held liable under corporate responsibility.¹⁴ The unclear status of employees hired for functions other than taking part in hostilities makes it difficult to charge the individual with any criminal wrong. These entities cannot be considered as *de jure* or *de facto* members of the armed forces, nor can they come under the ambit of mercenary; instead, they are classified as civilians. Hence, in compliance with Article 25(2) of the Rome Statute,¹⁵ the individual can be held accountable for crimes they commit.

The concept of corporate civil liability has gained recognition in relation to several violations of human rights law.¹⁶ However, in cases of violations of IHL, there is no international instrument specifically attributing responsibilities to transnational corporations. Nevertheless, jurisprudence from the US Military Tribunal discusses the liability of transnational corporations for violations of IHL. In a decision passed by the US Military Tribunal where a company was held liable for war crimes and crimes against humanity via its officers, it was held that, as a company cannot run by itself, persons in authority shall be made responsible for the breach of humanitarian obligations.¹⁷ Consequently, a breach of humanitarian law by a Private Military and Security Company engaged in performing military or security services shall entail liability for the company in accordance with the status of the company and employees as civilians, combatants or mercenaries.¹⁸ Moreover, Article 75 of the Rome Statute provides emerging powers to the International Criminal Court to pass discretionary orders of reparation against legal persons in case breach of humanitarian laws takes place.¹⁹

¹¹ David Isenberg, ‘State or Non-state: Ay, There’s the Rub’ (*Global Policy Forum*, 14 February 2012) <globalpolicy.org/pmscs/51281-state-or-nonstate-ay-theres-the-rub.html?itemid=id> accessed 4 August 2020.

¹² ESCR, ‘Non-state Actors’ (*ESCR-Net*) <escr-net.org/resources/non-state-actors> accessed 4 August 2020.

¹³ Antonio Cassese, ‘The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia’ (2007) 18 *EJIL* 649, 651.

¹⁴ Andrea Carcano, ‘International, Corporate and Individual Responsibility for the Conduct of Private Military and Security Companies’ (35th Round Table on Current Issues of International Humanitarian Law, Sanremo, 6–8 September 2012) 108, 111, 115.

¹⁵ Rome Statute of the International Criminal Court (entered into force 1 July 2002) 2187 UNTS 90 (Rome Statute), art 25(2).

¹⁶ OHCHR, *The Corporate Responsibility to Respect Human Rights* (United Nations 2012).

¹⁷ *The United States of America v Carl Krauch et al* (Judgment) US Military Tribunal (30 July 1948) Concurring Opinion of Judge Hebert On the Charges of Crimes Against Peace para 1214.

¹⁸ Emanuela-Chiara Gillard, ‘Business goes to war: private military/security companies and international humanitarian law’ (2006) 88(863) *International Review of the Red Cross* 530–541.

¹⁹ Rome Statute (n 15) art. 75.

The Geneva Conventions and their Additional Protocols recognise three types of person having obligations and rights during an armed conflict. A question raised here is into which of these categories Private Military and Security Companies and their employees fit: civilian, combatant or mercenary?

A. Mercenary

Article 47(2) of Additional Protocol I to the Geneva Conventions (API) defines the parameters for what constitutes a mercenary. This is any person, who is neither a national nor a resident of a party to the conflict, recruited for the purpose of *fighting* in *armed conflict* and taking *direct* part in hostilities.²⁰ If we analyse the functions of Private Military and Security Companies, their primary function is providing logistical support such as weapons management, guarding, food service, training military personnel: therefore, they do not take part directly in hostilities. Private Military and Security Companies' personnel will only come under the category of mercenary under IHL if they directly take part in hostilities.

B. Combatant

'Combatant' is defined in Article 43 of Additional Protocol I. Combatants are those persons who are legally allowed to take direct part in hostile activities. However, any person who is a member of the armed forces and does not obey international law ceases to be a combatant. The personnel of Private Military and Security Companies must fulfil the following criteria in order to be considered combatants: they should work under the authority of a person responsible for his subordinates; be recognisable with a fixed, distinctive sign; handle and carry arms openly; and lastly, but most importantly, abide by the laws and customs of war.²¹ Therefore, those taking part in an armed conflict, fulfilling all the above-mentioned criteria, can enjoy the protection given to combatants under IHL.

C. Civilian

Civilians are provided with extensive protection during an armed conflict. IHL clearly states that civilians and civilian objects cannot be attacked. Civilians are described as those persons who are neither part of the armed forces nor act as combatants.²² This makes it evident that Private Military and Security Companies' personnel, who do not take part in hostilities but provide logistical support for the armed forces, will be treated as civilians. Hence, the status of Private Military and Security Companies' personnel under IHL is dependent on the functions performed by them.

D. State Responsibility

State responsibility for the acts of Private Military and Security Companies can be entailed if the State is their employer and, by the virtue of the task assigned to them by the State,

²⁰ Protocol Additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (entered into force 8 June 1977) 1125 UNTS 3 (Additional Protocol I), art 47(2).

²¹ Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention) (adopted 1929, revised 12 August 1949) 75 UNTS 135 (Geneva Convention III), art 4A(2).

²² Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (adopted August 1949, entered into force 12 August 1949) 75 UNTS 287 (Geneva Convention IV), art 4(3).

the company qualifies as a mercenary.²³ In practice, it is difficult for Private Military and Security Companies to have the status of mercenaries because of the high threshold provided under Article 47 of Additional Protocol I.²⁴ However, State responsibility can be established by several means. For example, if the Private Military and Security Company has a certain legal status according to internal law of a State, or is a State organ, then Article 4 of Articles of Responsibility of States for Internationally Wrongful Acts (ARSIWA) is applicable.²⁵ The reference to a State organ is intended in the most general sense. It is not limited to the organs of the central government, to officials at a high level or to persons with responsibility for the external relations of the State. It extends to organs of government of whichever kind or classification, exercising whatever functions, and at whatever level in the hierarchy, including those at provincial or even local level.²⁶

Moreover, it was held by the ICJ that if an entity is completely dependent on the State, State responsibility cannot be curtailed on the ground that it does not fit the internal legal definition of an organ of the State. It is, in this case, accepted as an organ of the State.²⁷ This is an increasingly common phenomenon in relation to parastatal entities, which exercise elements of governmental authority in place of State organs, as well as in situations where former State corporations have been privatised but retain certain public or regulatory functions under which State responsibility arises.²⁸ Further, if direction, instruction or control over the wrongful act is exercised by the State, then the State will be responsible for that act.²⁹ In situations where no such attribution exists, but later the State acknowledges or adopts the act as its own, then State responsibility arises.³⁰

III. Evaluating the Legal Framework on Private Military and Security Company at Sea

A. Montreux Document

The Montreux Document is an agreement with 54 signatories as of 2018, initiated by the Swiss government and International Committee of the Red Cross (ICRC) in 2006. This document is neither a treaty nor soft law, but a restatement of binding laws on military and security companies.³¹ It was made in light of the deliberations amongst governmental experts, civil societies and the Private Military and Security Company industry. It came in force to fill the legal vacuum existing in the context of international regulations for Private Military and Security Companies and is applicable even in the times of conflict. It also highlights best practices and acknowledges the already existing obligations to be respected by the companies and nation States. It levies indispensable international obligations on

²³ Won Kidane, 'The Status of Private Military Contractors Under International Humanitarian Law' (2010) 38 *Denver Journal of International Law and Policy* 411–412.

²⁴ Additional Protocol I (n 20) art 47.

²⁵ ILC, 'Articles on Responsibility of States for Internationally Wrongful Acts' (12 December 2001) UN Doc A/56/10 (ARSIWA), art 4.

²⁶ ILC, 'Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) 40.

²⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Serbia & Montenegro)* (Judgment) [2007] ICJ Rep 43; Marie-Louise Tougas, 'Commentary on Part I of 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' (2014) *International Review of the Red Cross* 305–358.

²⁸ ARSIWA (n 25) art 5.

²⁹ ARSIWA (n 25) art 8.

³⁰ ARSIWA (n 25) art 11.

³¹ Philip Spoerri, 'The Montreux Document' (35th Round Table on Current Issues of International Humanitarian Law, Sanremo, 6–8 September 2012).

States and non-State actors, being one of a kind in addressing the issue of governing Private Military and Security Companies.³² It contains guiding obligations of IHL, international human rights law and State responsibility which are also applicable to Private Maritime Security Companies in the high seas in times of armed conflict.³³ The document can also be distinguished in terms of legal obligations or in terms of capacities of States.

States in issue are categorised as contracting, home or territorial States. The contracting State is the one with which a contractual legal obligation in terms of work is established; the home State is the State of incorporation of the Private Military and Security Company; and the territorial State is the territory in which the Private Military and Security Company works or provides a service.

The concept of the territorial State per the Montreux document denotes the State under whose territorial jurisdiction a Private Military and Security Company operates. This becomes complex when we apply it in a maritime setting as the active jurisdiction of States is decided by UNCLOS and there exists the possibility that more than one State can be considered a territorial State for the purpose of the dispute at hand. In land disputes, an area can come under one State's jurisdiction only until the control of the land is disputed. Meanwhile, at sea, the port, coastal and flag States may all exercise territorial control by law and accepted State practice, since UNCLOS does not preclude concurrent jurisdiction.³⁴ In the case of Private Maritime Security Companies, as many as seven contenders can claim territorial jurisdiction. These are: the flag State of the merchant ship; the State where the shipping company is registered; the home State or States of the merchant crew; the State where the Private Security Company is registered; the home States of the individual security guards; the coastal States whose waters the vessel transits; and the port State on which the ship enters.³⁵ This creates a variety of obligations and rights for each State, which sometimes results in mayhem as overlapping obligations dilute responsibility in the event of any breach of international law.

The 1856 Paris Declaration proclaimed that the ability to use force at sea was in the hands of States and disallowed the private use of force.³⁶ Subsequently, international law grew to prioritise States as agents to wage war and bring peace.³⁷ The employment of Private Military and Security Companies at sea, also known as Private Maritime Security Companies in this context, is growing heavily in order to guard merchant ships and is seen as an effective tool to hunt pirates. UNCLOS was not drafted with Private Military and Security Companies in mind; it merely breaks down the responsibilities of vicinal States in terms of their distance from water. It is suggested to amend UNCLOS to create a consistent regime for the regulation of the sea. New stakeholders, like Private Maritime Security

³² ICRC, 'The Montreux Document' (ICRC, 2009) <icrc.org/en/doc/assets/files/other/icrc_002_0996.pdf> (accessed 30 July 2020) foreword.

³³ Marie-Louise Tougas, 'Commentary on Part I of 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' (2014) *International Review of the Red Cross* 305–358.

³⁴ Anna Petrig, 'Looking at the Montreux Document from a Maritime Perspective' (2016) 2 *Maritime Safety and Security Journal* 1.

³⁵ Anna Petrig, 'Regulating PMSCs at Sea: Operational and Legal Specificities' (UN Human Right Council 5th Session of Intergovernmental Working Group on Private Military and Security Companies, 12–16 December 2016).

³⁶ The Declaration of Paris Respecting Maritime Law (Paris, 16 April 1856).

³⁷ Natalino Ronzitti, 'Regulating and Monitoring the Privatization of Maritime Security' (35th Round Table on Current Issues of International Humanitarian Law – Private Military and Security Companies, Sanremo, 6–8 September 2012) 1.

Companies, should be enumerated and formal, binding responsibilities should be levied upon them.

Most of the existing legal guidelines like UNCLOS, the Montreux Document and UN Security Council Resolution 2316³⁸ either do not apply to private entities or do not regulate the general activities taken up by such private companies at sea. The Montreux Document is not directly relevant to situations of piracy and armed robbery in the maritime domain and does not provide sufficient guidance for Private Maritime Security Companies.³⁹ Activities at sea are far more complex than on land and clarification on, inter alia, the applicability of self-defence, the responsibility of masters and ship owners, flag status, rules of engagement, the use of force and transportation of weapons is needed.⁴⁰

The Montreux Document Forum was established in 2014 to discuss implementation and problems arising in the employment of Private Military and Security Companies. The consultations and deliberations amongst nations were supposed to help solve the problems not directly addressed by the Montreux Document, thus making the application thereof more efficient. Foreseeing disputes regarding Private Military and Security Companies at sea, a Working Group on the use of Private Military and Security Companies in maritime security (hereafter Maritime Working Group) was initiated.⁴¹ This group sat together for the first time in 2018 to deal with interpretation of the Montreux Document and the needs of law and policy in the maritime sphere with regard to Private Maritime Security Companies. Work is in progress to develop a legal framework for Private Maritime Security Companies within the guidelines of the Montreux Document.⁴²

B. International Maritime Organization

The International Maritime Organization (IMO) has, for years, taken multiple stances on the issue of access to weapons for private personnel and their legality, discouraging the carrying and usage of firearms for the protection of a ship or individual at sea.⁴³ Currently, it only raises a duty of care for the flag State to ensure that violence does not escalate through armed personnel in a ship, and the applicable law has always been complied with.⁴⁴ Private Maritime Security Companies have captured the market so influentially that it became crucial to determine minimum agreed performance standards for the conduct, liability and responsibility of their Private Contracted Armed Security Personnel (PCASP). It began with the issue of piracy in Somalia, affecting the shipping community in all regions surrounding the Gulf of Aden, the Arabian Sea and the Northern Indian Ocean. The IMO suggested numerous basic ways to protect ships, including razor wires, water spray, foam

³⁸ United Nation Security Council Resolution 2316 (9 November 2016) UN Doc S/RES/2316; OHCHR Human Rights Resolution 2005/2 (7 April 2005) E/CN.4/RES/2005/2; UNGA Human Rights Council Resolution 15/26 (7 October 2010) A/HRC/RES/15/26.

³⁹ IMO 'Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area' (2012) MSC.1/Circ.1443.

⁴⁰ Natalino Ronzitti, 'Regulating and Monitoring the Privatization of Maritime Security' (35th Round Table on Current Issues of International Humanitarian Law – Private Military and Security Companies, Sanremo, 6–8 September 2012).

⁴¹ Montreux Document Forum, 'The Montreux Document Forum is Launched' (*MD Forum*, 16 December 2014) <mdforum.ch/mobile/news/2014-12-16.html#:~:text=Dec.,16%2C%202014&text=The%20Montreux%20Document%20Forum%20(MDF, increase%20support%20for%20the%20initiative> accessed 4 August 2020.

⁴² Montreux Document Forum, 'Working Group on the use of private military and security companies in maritime security (Maritime Working Group)' (*MD Forum*, 29 November 2018) <mdforum.ch/pdf/2018-11-29mdf_maritimeworkinggroup_chairrsummary_29-november-2018.pdf> accessed 4 August 2020.

⁴³ IMO 'Piracy and Armed Robbery against Ships' (2009) MSC.1/Circ.1334 23.

⁴⁴ IMO 'Piracy and Armed Robbery against Ships' (2015) MSC.1/Circ.1333/Rev.1.

monitors and armed Private Maritime Security Companies.⁴⁵ The circulation entitled 'Piracy and Armed Robbery against Ships in Waters off the Coast of Somalia' laid responsibility on the employment of Private Maritime Security Companies for conducting risk assessments of individual merchant ships with due approval of the flag State.⁴⁶ Moreover, it did not endorse or recommend the usage of the armed Private Maritime Security Companies but suggested it as an additional layer of insulation to prevent any harm to the ships.⁴⁷ Hence, Private Maritime Security Companies are not an alternative to best management practices, but a part of these, which has been reiterated several times in documents issued by IMO.⁴⁸

The 'Revised Interim Guidance To Shipowners, Ship Operators And Shipmasters On The Use Of Privately Contracted Armed Security Personnel On Board Ships In The High Risk Area'⁴⁹ came subsequently to the 'Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area'⁵⁰ to revise and fill the void in the guidelines governing the legitimate transport, carriage and use of firearms. It is noted that the IMO circulars MSC.1/Circ.1443 and MSC.1/Circ.1406/Rev.2⁵¹ mention that flag State has jurisdiction and thus any laws and regulations imposed by the flag State concerning the use of Private Maritime Security Companies apply to their ships. Furthermore, it is also important to note that port and coastal States' laws may also apply to such ships.⁵² In addition, it includes the procedure for reporting the use of force, the criterion of risk assessment and management of firearms and ammunition from embarkation to disembarkation.⁵³

Subsequently, the 'Recommendations for Flag States Regarding the use of Privately Contracted Armed Security in High Risk Area' expanded the earlier guideline but failed to evaluate all the legal issues that might arise while deploying PCASP on ships.⁵⁴ However, it did attend to the responsibilities of the flag States, which should provide clarity to masters, seafarers, ship-owners, operators and companies with respect to national policies

⁴⁵ IMO 'Piracy and Armed Robbery against Ships in Waters off the Coast of Somalia' (2011) MSC.1/Circ.1339, section 8.

⁴⁶ IMO 'Piracy and Armed Robbery against Ships in Waters off the Coast of Somalia' (2011) MSC.1/Circ.1339, section 4.

⁴⁷ IMO 'Piracy and Armed Robbery against Ships in Waters off the Coast of Somalia' (2011) MSC.1/Circ.1339.

⁴⁸ IMO 'Revised Industry Counter Piracy Guidance' (2018) MSC.1/Circ.1601.

⁴⁹ IMO 'Revised Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area' (2012) MSC.1/Circ.1405/Rev.2.

⁵⁰ IMO 'Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area' (2012) MSC.1/Circ.1443.

⁵¹ *ibid*; IMO 'Revised Interim Recommendations For Flag States Regarding The Use Of Privately Contracted Armed Security Personnel On Board Ships In The High Risk Area' (2012) MSC.1/Circ.1406/Rev.2.

⁵² IMO 'Revised Interim Recommendations For Port And Coastal States Regarding The Use Of Privately Contracted Armed Security Personnel On Board Ships In The High Risk Area' (2012) MSC.1/Circ.1408/Rev.1.

⁵³ IMO 'Revised Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area' (2012) MSC.1/Circ.1405/Rev.2.

⁵⁴ IMO 'Revised Interim Recommendations For Flag States Regarding The Use Of Privately Contracted Armed Security Personnel On Board Ships In The High Risk Area' (2015) MSC.1/Circ.1406/Rev.3, Annex para 3.

on the carriage of armed security personnel.⁵⁵ Moreover, compliance with all relevant requirements of flag, port and coastal States was made necessary.⁵⁶

In light of Circulars 1405 and 1406 issued by the IMO, the Standards for Private Maritime Security Company (also known as SAMI) Accreditation Programme was established for the accreditation of Private Maritime Security Companies.⁵⁷ It lays down a detailed assessment to check upon the credibility and suitability of Private Maritime Security Companies, assessing their accountability and providing a track record of their previous misconducts. The evaluation follows a three-tiered approach, beginning with the assessment of the financial, legal and insurance status of the Private Maritime Security Companies. Then, once the earlier stage has been cleared, it consists of valuing the company's infrastructure, including physical verification of the premise system and their documents. Lastly, the Private Maritime Security Companies' personnel are evaluated on a pre- and post-operational basis to check on their background, conduct, knowledge and skills.⁵⁸

The IMO 'Interim Recommendations for Port and Coastal States Regarding the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area' help in assessing the management, staff and operations conducted by Private Maritime Security Companies. The port and coastal States are major facilitators of firearms and security-related equipment which may be linked to the use of force, hence this lacuna was filled and the need to make national laws and policies to curb such activities was emphasised by these guidelines. The rules governing embarkation, disembarkation and situations which may arise during porting and voyaging in the High Risk Area when carrying PCASP were also addressed, suggesting a need for uniform guidelines.⁵⁹ Further, an attempt to effectively regulate Private Maritime Security Companies was also made with the IMO 'Revised Interim Recommendations for Port and Coastal States Regarding the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area', which envisaged the legal obligation of the company towards the flag State, the Private Maritime Security Company's home State and the territorial/transit State.⁶⁰ Although the guidelines were not legally binding, they provided for the minimum standards to be followed by companies and by the selectors before employing any Private Maritime Security Companies.

The 'Revised Interim Recommendations for Port and Coastal States Regarding the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area' marked the missing standardisation in governing the PCASP and assisted in opening the forum for questions on the certification process of any Private Maritime Security Company. A proper solution to piracy can be worked out by employing PCASP who are well-regulated. For the better functioning of PCASP, they could be employed through a

⁵⁵ *ibid.*

⁵⁶ IMO 'Revised Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area' (2012) MSC.1/Circ.1406/Rev.2.

⁵⁷ SAMI, 'Standards for Private Maritime Security Company (PMSC) Accreditation' (*SAMI*, 2011) <psm.du.edu/media/documents/industry_initiatives/sami_standard_executive_summary.pdf> accessed 21 July 2019.

⁵⁸ *ibid.*

⁵⁹ IMO 'Interim Recommendations for Port and Coastal States Regarding the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area' (2012) MSC.1/Circ.1443.

⁶⁰ IMO 'Revised Interim Recommendations for Port and Coastal States Regarding the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area' (2012) MSC.1/Circ.1408/Rev.1.

documented procedure, and a standard framework could be laid down to enable the shipowners to make an informed decision between competing Private Maritime Security Companies.

The Private Maritime Security Companies must at all times have an understanding of the law applicable to them, which is influenced by the location of an incident and/or the nationality of the ship, the companies and the individuals employed by them.⁶¹ The master and the PCASP team should sign an undertaking that they have read and understood the rules concerning the use of force and that the use of force will be reported and a record will be maintained about the same. Finally, basic rules for vetting, training and selection of PCASP teams for better deployment and success are suggested, in order to have consistent standards for employment.

C. International Humanitarian Law

The Geneva Conventions and their first Additional Protocol are applicable in situations of armed conflict of an international character.⁶² They also contain, in their Common Article 3, obligations and rights of the High Contracting Parties when the conflict is of a non-international character. There is no rule or practice which allows derogation from IHL by any corporation.

IHL specifically applies in times of conflict between two or more High Contracting Parties.⁶³ As discussed earlier, the status of Private Military and Security Companies' employees under IHL can be that of civilian, combatant or mercenary depending on the part they take in hostilities. The prime function of the private military security company is to accompany the armed forces of a State and provide logistical support in times of conflict. Article 4(4) of Geneva Convention III provides that people who accompany the armed forces, such as suppliers or contractors, will be provided the status of Prisoner of War, provided that those people are equipped with IDs authorised by the armed forces.⁶⁴

The application of the Geneva Conventions and their Additional Protocols to Private Military and Security Companies begins when their personnel start taking part directly in hostilities. When the conflict is of an international character, the Private Military and Security Company's employees will be qualified as combatants.⁶⁵ If the Private Military and Security Company's members start taking part in hostilities, they will become part of a military object and all the rights and obligations of the members of the armed forces will be applicable to them. However, when the conflict is of a non-international character, Common Article 3 of the Geneva Conventions would be applicable even to the Private Military and Security Company's employees taking direct part in hostilities.⁶⁶ Persons captured during a non-international armed conflict would be subject to the national laws of that country.

⁶¹ IMO 'Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area' (2012) MSC.1/Circ.1443 25.

⁶² Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 1929, revised 12 August 1949) 75 UNTS 135 (Geneva Convention I), art 2; Additional Protocol I (n 20) art 1.

⁶³ Geneva Convention III (n 21) art 2.

⁶⁴ Geneva Convention III (n 21) art 4.

⁶⁵ Additional Protocol I (n 20) art 43.

⁶⁶ Geneva Convention III (n 21) common art 3.

Furthermore, in case of an international armed conflict, people who are not taking direct part in hostilities are protected with civilian status.⁶⁷ The status of civilian ceases only when a member is inflicting actual harm upon a member of the rival armed forces,⁶⁸ though a clear definition of direct participation in hostilities is not given. Private Military and Security Companies hence do not generally take direct part as their role is restricted to mere service providers.

One of the functions of Private Maritime and Security Companies which function at sea is to guard and protect ships from acts of piracy. Here, a pertinent question arises which is whether the collection of intelligence data also amounts to taking part in hostilities. Guarding and other security activities do not, per se, fall under the domain of direct part in hostilities. Article 52(2) of Additional Protocol I, which has become a customary international obligation,⁶⁹ suggests that the target of an attack should only be military objectives. Military objectives are those objects which are making an effective contribution to the military action.⁷⁰ This brings a new debate on whether private contractors protecting army bases, barracks and other facilities would be deemed to be taking direct part in hostilities. On this note, the US Air Force Commanders Handbook provides some clarity and states that Private Military and Security Companies would not be protected under the status of civilian when they function as guards for army bases, barracks or military objects, and thus would not be immune from direct attack.⁷¹

The training of Private Military and Security Companies depends on their status as members of the armed forces. If Private Military and Security Companies are not treated as members of the armed forces, then the application of Geneva Convention III also comes into consideration. Article 127(2) of Geneva Convention II,⁷² and Article 144(2) of Geneva Convention IV,⁷³ provide that any authority who assumes the responsibility to protect persons in times of war must comply with the Convention. The term 'other authorities' has not been defined, thus Private Military and Security Companies can fall within the ambit of the Convention if they are hired with responsibilities to protect persons.

Private Military and Security Companies are specifically governed with the help of the Montreux Document.⁷⁴ In regard to the maritime perspective, the Second Geneva Convention for the Amelioration of the Conditions of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea would be applicable to Private Maritime Security Companies. This Convention applies during times of conflict between land and naval forces.⁷⁵ Article 12 of Geneva Convention II provides protection to members of armed forces or *other members* who are wounded, sick or shipwrecked at sea.⁷⁶

⁶⁷ Additional Protocol I (n 20) art 50.

⁶⁸ Y Sandoz et al, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (ICRC/Martinus Nijhoff 1987) art 51.3 para 1944.

⁶⁹ Jean-Marie Henckaerts, *Customary International Humanitarian Law* (Cambridge University Press 2005) 31.

⁷⁰ Additional Protocol I (n 20) art 52(2).

⁷¹ Department of the Air Force of the United States 'Commander's Handbook on the Law of Armed Conflict' Air Force Pamphlet 110-34 (25 July 1980) 2-2.

⁷² Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention) (adopted 12 August 1949, entered into force 12 August 1949) 75 UNTS 85 (Geneva Convention II) art 127(2).

⁷³ Geneva Convention IV (n 22) art 144(2).

⁷⁴ Marie-Louise Tougas, 'Commentary on Part I of 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' (2014) *International Review of the Red Cross* 305-358.

⁷⁵ Geneva Convention II (n 72) art 4(2).

⁷⁶ Geneva Convention II (n 72) art 12.

In the case of Private Maritime Security Companies, performing security functions would not cause them to come under the ambit of armed forces but as *other members*. Hence, any member of the Private Maritime Security Company who is wounded, sick or shipwrecked during the conflict must be provided with the protection and rights enshrined in Geneva Convention II. Additionally, members of Private Maritime Security Companies have the right to private self-defence if they are not taking part in hostilities. Thus, they are allowed to attack and protect themselves in response to an attack by pirates or another contracting party.⁷⁷ Therefore, Private Maritime Security Companies can fall within the scope of the Geneva Conventions if the conflict is between two High Contracting Parties and is of an international or non-international character.

D. ISO PAS 28007: Part 1 – Guidelines for Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel on board Ships (and Pro Forma Contract)

The International Standard Organization (ISO) pilot project, ISO/PAS 28007,⁷⁸ has emerged as a standard for States, service providers and service users to ascertain the credibility and professionalism of any Private Maritime Security Company. Approval is given when international standards, human rights standards and relevant laws and regulations are abided by. The guidelines provided are applicable to Private Maritime Security Companies providing PCASP.⁷⁹

The guidelines are inclusive of rules on the rights and liabilities of flag States and coastal States and regulations for the licensing of the Private Maritime Security Companies deploying PCASP. Moreover, a register must be maintained for interested parties and stakeholders relevant to the functioning of the organisation, considering, inter alia, their perceptions, values, needs and risk tolerance. This is done to foster consultation and deliberation amongst clients and service providers. Further, the scope of ‘security’ is defined, with a clear and distinct management system. A high level of commitment and competence is expected out of the employees of the Private Maritime Security Companies at all times.

E. Part 2 – The 100 Series Rules: An International Model Set of Maritime Rules for the Use of Force

The Model Set of Maritime Rules for the Use of Force (RUF) sets out situations under which the use of force as self-defence against piracy, armed robbery or hijacking is permissible,⁸⁰ as the Geneva Conventions and military guidelines do not apply to the private sector. The purpose of the RUF is to set the mandate to be followed for the lawful use of force and to increase the threshold of liability for such use of force. RUF was drafted in conjunction with IMO Circulars and ISP PAS 28007, as well as in coherence with the international laws prevalent in the current times. In situations of actual or perceived threat,

⁷⁷ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 51.

⁷⁸ International Organization for Standardization ‘Guidelines for Private Maritime Security Companies (PMSC) Providing Privately Contracted Armed Security Personnel (PCASP) On Board Ships (And Pro Forma Contract)’ (2015) ISO/PAS 28007.

⁷⁹ International Organization for Standardization ‘Guidelines for Private Maritime Security Companies (PMSC) Providing Privately Contracted Armed Security Personnel (PCASP) on Board Ships (and Pro Forma Contract) – Scope’ (2015) ISO/PAS 28007.

⁸⁰ Human Rights at Sea ‘The 100 Series Rules of the use of force (RUF)’ (May 2013) (hereafter RUF), Rule 103.

the use of force requires detailed risk assessment, which has been addressed in the RUF,⁸¹ though no comprehensive standard operating procedures are laid down by it. The division of decision-making power between PCASP and the master of the ship has not been sufficiently clarified. Fundamental principles are laid down in the document and it is lucidly stated that the right to individual self-defence shall not be derogated from by any means. The principles of reasonable and necessary use of force are upheld.⁸² To reduce casualties, the reduction of probability in order to avoid confusion in the nature of the threat perceived is advocated.⁸³ Further, at all times, all available information must be noted and considered, hence reducing liability for incorrect decision making or delayed communication of facts.⁸⁴

The rules from 100 to 103 in the RUF differ in accordance with increased threat; the application and degree of lawful force which may be applied is increased on par with the potential attack. All the rules provide for the intimation of the use of force and several measures of deterrence to prevent conflict. In the event of the absence of the team leader, fellow members of the PCASP must suggest to the master of the ship that they must invoke the rules of use of force under actual, perceived or threatened attack by third parties.⁸⁵ Moreover, in case of craft showing behaviours or signs of being a potential threat, non-kinetic warnings must first be displayed, of which a non-exhaustive list has been provided in the document. Display of, but not use of, weaponry is permitted.⁸⁶ Arms can be used to deter the craft against an actual, potential and perceived attack and, further, their usage may only be from an assessed safe distance around the attacker/potential attacker's threatening craft.⁸⁷ If all other RUF measures fail then the last resort remains the use of force when attack is imminent and it becomes necessary to save lives and the ship.⁸⁸ The force must be reasonable and necessary, hence the use of force as self-defence becomes legitimate in such circumstances.⁸⁹

F. GUARDCON

GUARDCON is a standard contract when making use of security services in the maritime zone. It is not a shortcut to due diligence but it tends to increase the standards which security companies must attain, in terms of insurance cover for their risks and permits and licences to allow them to lawfully transport and carry weapons.⁹⁰ Moreover, it rules out the possibility of a smaller company participating in such a contract, due to rigorous requirements.

GUARDCON is an agreement between the owner of the vessel and the security contractors, where authorities delegated with any responsibility for the vessel is said to be done on the owner's behalf, and this agreement can be used for the employment of both armed and non-armed guards. The applicability of this contract is not only for High Risk Areas but as agreed upon in the contract. The security service regulations require a

⁸¹ *ibid* Scope, para 3.

⁸² *ibid* Rule 103.

⁸³ *ibid* Fundamental Principles, para 14.

⁸⁴ *ibid* Fundamental Principles, para 15.

⁸⁵ *ibid* Rule 100.

⁸⁶ *ibid*.

⁸⁷ *ibid* Rule 102.

⁸⁸ *ibid* Rule 103 Note 3.

⁸⁹ *ibid* Rule 103.

⁹⁰ BIMCO 'GUARDCON: Standard Contract for the Employment of Security Guards on Vessels: Explanatory Notes' (2017) V1.4 24-02-2017.

minimum employment of four guards, which can be lowered under extreme circumstances. Additionally, all reasonable care and skill must be employed by the contractor.⁹¹ The authority of the master in matters concerning the ship is unquestionable, but they may heed to advice in the context of security from the security guards employed. The contract makes the security service agencies traceable and records their liabilities so that insurance and relevant documents are easily available if necessary.

The obligations of the contractors are explicitly mentioned, distinguishing between the owner and the contractor. For example, in case of sick personnel, the carrying and repatriation of such personnel ashore is the responsibility of the owner of the ship, whereas the cost for this transportation and carrying home is the contractor's responsibility.⁹² The agreement provides bare minimum standards such as personnel having training in first aid, and group leaders having prior experience of this,⁹³ but this does not overpower the due diligence mechanism to check the guards and their abilities. Moreover, subcontracting must be done in liaison with the owner of the ship.⁹⁴

The owners of the ship do not have many obligations except monetary responsibility.⁹⁵ The master's obligation is one of a nascent character. Though the supremacy of the command of the master is undoubted, he or she is required to respond to the invoking of the RUF by the team leader of the security guards, and in the absence of the master the officer of watch is required to fulfil this obligation.⁹⁶ The decision to use force lies with the guards themselves and the master has no role or liability.⁹⁷ The master has authority to stop the firing at all times,⁹⁸ but not to start it, as it is done in adherence to the RUF Rules.

In the event of hijacking, the responsibility is to stop the hijacking by all reasonable means, and if the contrary occurs then the loss cannot be held against the contractors. The crew members at this point include the security guards, and the ransom if asked is levied on the owner and not the contractors. The permit and licenses include requirements for both the owners and the contractors, with the obligation to indemnify each other if there is failure to comply.⁹⁹ The motive behind such failure to abide by laws is generally to carry illegal weapons. Lastly, liabilities are mutually distributed with a duty to indemnify each other on failure to perform the contractual obligations.¹⁰⁰ GUARDCON guidelines are very wide and cover all sorts of employees, whereas ISO PAS 28007 is specifically designed for the Private Maritime Security Companies deploying PCASP. Hence, GUARDCON covers extensive responsibilities and liabilities applicable while contracting with Private Maritime Security Companies for any services on board.

IV. Conclusion

⁹¹ BIMCO, 'GUARDCON' (*BIMCO*) <bimco.org/contracts-and-clauses/bimco-contracts/guardcon> accessed 4 August 2020.

⁹² BIMCO 'GUARDCON: Standard Contract for the Employment of Security Guards on Vessels' (2012), clause 12.

⁹³ *ibid* clause 6(b)(ii).

⁹⁴ *ibid* clause 6(d).

⁹⁵ *ibid* clause 7.

⁹⁶ *ibid* clause 8(b).

⁹⁷ *ibid* clause 8(c).

⁹⁸ *ibid* clause 8(d).

⁹⁹ *ibid* clause 9.

¹⁰⁰ *ibid* clause 15(b).

It cannot be denied that the UN recognises the existence of Private Military Security Companies and uses them in order to meet the goals of peace and international cooperation. Private Military and Security Companies are shadowing almost all major functions performed by the State, although their status is not yet uniform, consistent or clear. This paper was an attempt to analyse various legal frameworks which cover the functioning of Private Military and Security Companies, especially Private Maritime Security Companies which function at sea. However, there is no universal policy or framework for the functioning of Private Maritime Security Companies. In this situation, the liability and responsibility of Private Maritime Security Companies is a major question and is hard to resolve even with the aid of general principles of international law and existing soft laws.

Specific laws guiding Private Maritime Security Companies must be drafted, keeping in mind the roles they can and are taking up at the sea. There exists a void in terms of standards for professionalism, keeping in mind human rights and international humanitarian law for Private Maritime Security Companies. Although several initiatives have been taken in making the levels at which Private Maritime Security Companies function more uniform, via pro forma contracts and good practices, there is a need for a global body for intervention in cases of breach by Private Maritime Security Companies, regulation of arms and ammunition at sea, extradition of wrongdoers and redress of the grievances of victims affected by wrongdoings of Private Maritime Security Companies.

An attempted draft Convention on Private Military and Security Companies still awaits acceptance and confirmation by the international community. The draft contains provisions guiding non-outsourcing of necessary State functions, regulation and monitoring of works by Private Military Company Security Companies. It also suggests amendment of domestic laws as per the Convention for better implementation, extradition and transfer of proceedings. Another feature of the draft is the enhancement of responsibilities on States to comply with relevant rules and be responsible for the acts of Private Military and Security Companies operating and registered under their laws.¹⁰¹ Uniform laws will deter smuggling of illegal weapons and violations of international laws by Private Military and Security Companies.

The fundamental principles of the UN Charter are upheld in the draft Convention by providing for non-intervention clauses, respect for State sovereignty and human rights for all. Remedies, duties and liabilities have been mentioned regarding issues with Private Military and Security Companies, but not all possible situations are analysed, leaving loopholes within the framework contemplated to be explored by Private Military and Security Companies. The document also lacks the comprehensiveness in laws required for different situations such as the functioning of Private Military and Security Companies at sea, on land and in the air. It is the need of the hour to deal with the legality of the functioning of Private Maritime and Security Companies, and the State responsibilities entailed, before there is more contravention of the principle of non-use of force and violations of human rights at sea.¹⁰²

It is suggested to draft a convention which must include adequate provisions addressing all the ambiguities of the functions and liabilities of Private Military and Security Companies, also relevant to their operational base: land, air or sea. Uniform draft contracts and background databases can be sanctioned as formal steps for the usage of

¹⁰¹ 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: Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council – Annex' (2010) UN Doc A/HRC/15/25.

¹⁰² *ibid.*

Private Military and Security Companies. A temporary tribunal to address the conflicts arising due to the acts of Private Military and Security Companies can be proposed to interpret the draft convention, enhance jurisprudence and hold wrongdoers accountable. This will accelerate the remedial process and will act as a deterrent to wrongdoers. The use of Private Military and Security Companies does not seem to be lessening; instead, their ambit is evolving to cover even sea routes. Hence, effective steps must be taken for their proper handling and to hold them responsible for breaches. First, the function of Private Military and Security Companies must be strictly outlined and subsequent laws must be made in accordance with international laws for their employment and formation. Secondly, it is suggested that the status of members of Private Military and Security Companies must be clarified for their usage in times of war and peace. Thirdly, the liability of the individual companies and States must be dealt with in separate heads. All three suggestions should be dealt with comprehensively. The law regarding Private Military and Security Companies must be codified, especially for those employed at sea, to pave a way for peace and love among nations. Good practice must be taken into account to establish standard practice. Keeping in mind the objectives of the UN Charter, it is necessary to harmonise the end results of any change occurring in our global set-up. Policies and reforms to regulate Private Military and Security Companies and Private Maritime Security Companies will be a step towards the realisation of one such objective.

*

grojil.org