

# GOVERNANCE

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## Private Military Companies: international humanitarian law considerations affecting their regulation

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Concerns about the erosion of the state monopoly on the use of military force that may accompany the rise of private military companies (PMCs) will significantly influence the choices States make in determining how to regulate those companies. Policy concerns aside, however, existing public international law – and in particular the international humanitarian law (IHL) of armed conflicts – sets certain parameters affecting the scope of possible action private companies may take in the context of armed conflicts. It is therefore imperative to understand how IHL applies to and governs private military companies in order to ensure that any regulations that are developed are commensurate with existing law.

This paper will therefore provide the legal framework for PMCs operating in international armed conflicts, non-international armed conflicts and in peace operations. Arguing that there are no gaps in IHL with respect to these actors, but that any regulatory framework must operate within the confines of existing IHL, this paper will outline the different categories of persons and what they may do as established under IHL. As such, it will set out the definitions of combatants and civilians (the only two possibilities under IHL) and map PMCs onto that framework, taking into account PMCs that provide support services such as catering and construction, weapons maintenance, and combat activities. In so doing, it will briefly explain the legal definitions of mercenaries and show why that framework is mostly unhelpful for the legal

regulation of private military companies. The paper will use examples from Iraq to demonstrate the consequences of the prohibition on civilians to directly participate in hostilities and to consider the related question of the use of human shields.

Private military companies themselves are seeking an increased role in peace-keeping, both in reconstruction activities and in “peace-enforcement”. The application of IHL to peace-enforcement operations and the possible use of PMCs in those ventures will be discussed. This is a significant, new direction for PMCs with complex legal implications that attempts at regulation must take into account.

The absence of a specific convention or even of a particular provision in the Geneva Conventions and their Protocols on PMCs does not mean that there is a legal vacuum when it comes to these companies under humanitarian law. Nevertheless, some form of regulation of such companies may help States to ensure that they fulfill their existing obligations under IHL when engaging such companies and may help to clarify state responsibility in case of wrongs. This paper will aim to provide a clear, concise overview of IHL and legal issues that need to be considered when contemplating regulation of such companies. If requested by the conference convenors, the author may also provide some overview of current initiatives to regulate PMCS.