

# State Practice and Policy on the Wagner Group

Stuart Casey-Maslen  
January 2023

GCSP Policy Brief No.2



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Geneva Centre for  
Security Policy

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ISBN: 978-2-88947-404-2

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## About the author

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## Introduction

The Wagner Group is a Russian paramilitary organisation that first came to prominence in 2014, when its personnel were involved in operations in Crimea in Ukraine. It is said to be named after the former call sign of erstwhile Russian army officer, Dmitri Utkin. Utkin, a veteran of the armed conflicts in Chechnya, was a former special forces officer and a lieutenant-colonel in the GRU, Russia's military intelligence service.<sup>1</sup> However, the Wagner Group has been under the influence of the Russian oligarch Yevgeny Prigozhin from the outset, although until September 2022 he continued to deny any connection with the organisation.<sup>2</sup> In early November 2022 the Group became more public with the official opening of the PMC Wagner Centre in St Petersburg.<sup>3</sup>

Since first appearing operationally in 2014, the Wagner Group has operated in a number of countries at the behest of the territorial government in question. It was present in Syria in 2015, fighting alongside pro-government forces and guarding oilfields. In 2017 the Group was invited to the Central African Republic (CAR) to guard diamond mines, and its defence of the country's capital, Bangui, in January 2021 is seen as one of its few military success stories on the African continent.<sup>4</sup> The Group is also reported to have been operating in Sudan, protecting gold mines.<sup>5</sup> Wagner Group fighters appeared in Libya in April 2019 when they joined the forces of General Khalifa Haftar, after he launched an attack on the United Nations (UN)-backed government in the capital, Tripoli. The conflict ended with a ceasefire in October 2020.<sup>6</sup> In 2019 the Wagner Group sent men to fight jihadists in Cabo Delgado province in northern Mozambique,<sup>7</sup> but it withdrew after ten of its fighters were killed, including some who were beheaded. Personnel from the Group have since been deployed to Mali.<sup>8</sup>

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<sup>1</sup> BBC, "What Is Russia's Wagner Group of Mercenaries in Ukraine?", 3 October 2022, <http://bit.ly/3EBjlks>.

<sup>2</sup> "Who Is Yevgeny Prigozhin, the Man behind the Wagner Group?", *The Economist*, 29 September 2022, <https://bit.ly/3OEYTDd>.

<sup>3</sup> Al Jazeera, "Inside the Wagner Group, Russia's Mercenary Force", 18 November 2022, <https://bit.ly/3AM1OVf>.

<sup>4</sup> B. Posthumus, "Analysis: The Curious Case of Russia in Central African Republic", Al Jazeera, 20 May 2022, <https://bit.ly/3GQfxOY>.

<sup>5</sup> BBC, "What Is Russia's Wagner Group of Mercenaries in Ukraine?", 3 October 2022, <https://www.bbc.com/news/world-60947877>.

<sup>6</sup> BBC, "Wagner: Scale of Russian Mercenary Mission in Libya Exposed", 11 August 2021, at: <https://bit.ly/3u3luzk>.

<sup>7</sup> P. Sauer, "In Push for Africa, Russia's Wagner Mercenaries Are 'Out of Their Depth' in Mozambique", *Moscow Times*, 19 November 2019, <https://bit.ly/3gFoMqv>.

<sup>8</sup> *The Economist*, "Small Bands of Mercenaries Extend Russia's Reach in Africa", 15 January 2022; <https://www.economist.com/middle-east-and-africa/2022/01/15/small-bands-of-mercenaries-extend-russias-reach-in-africa>; N. Roll, "Russia's Wagner Group in Mali Spurs Refugee Spike in Mauritania", Al Jazeera, 20 June 2022, <https://bit.ly/3XPA7oS>.

In April 2022 the invasion of Ukraine was said to be “straining Moscow’s foreign deployments”.<sup>9</sup> As a consequence, a number of Wagner Group personnel were shifted from the CAR, Libya and Syria to bolster Russian forces in Ukraine. This may have occurred even before the invasion began in late February 2022.<sup>10</sup> CAR citizens are among the Group’s personnel in Ukraine.<sup>11</sup> Commentators have speculated that if the Ukraine conflict persists, this may constrain Russia’s ability to compete further afield in security operations.<sup>12</sup>

This Policy Brief will consider the security challenges arising from the use of private military companies (PMCs) in general, and the Wagner Group in particular. It will then address the policy implications of that use, including through a review of selected states’ practice and policy. As the brief explores, states have differing views as to the desirability and - indeed - legality of using PMCs. The sometimes narrow distinction between such companies and mercenaries is also described. The brief concludes with conclusions and policy recommendations.

## Security challenges

For the Russian regime, reliance on PMCs such as the Wagner Group can keep the costs of military operations abroad lower than they would be with regular troops while maintaining a degree of deniability about the presence of Russian forces in a theatre of combat. In addition, personnel losses can be protected from unauthorised disclosure, reducing the risk of opposition at home.<sup>13</sup> Wagner personnel are strongly discouraged from speaking about their experiences with the Group, while leaving does not appear to be a realistic option for many members. Graphic footage from Ukraine showed a defector from the Wagner Group, Yevgeny Nuzhin, aged 55, whom Russian officials had handed over to Wagner operatives, being murdered by them with a sledgehammer in November 2022. At the time Prigozhin sought to justify the killing of the “traitor”, declaring publicly that it was a “dog’s death” for a “dog”.<sup>14</sup>

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<sup>9</sup> S. Al-Atrush and L. Pitel, “Russia Reduces Number of Syrian and Wagner Troops in Libya”, *Financial Times*, 27 April 2022, <https://www.ft.com/content/88ab3d20-8a10-4ae2-a4c5-122acd6a8067>.

<sup>10</sup> B. Bostock, “Russian Mercenaries Are Being Pulled from Africa to Eastern Europe as Troops Amass near Ukraine, Report Says”, Yahoo! Finance, 1 February 2022, <https://uk.finance.yahoo.com/news/russian-mercenaries-being-pulled-africa-121240079.html>.

<sup>11</sup> J. Newman, “Mercenaries Hired from Central African Republic to Fight in Ukraine by Wagner ‘Complain They Have Been Abandoned and Left to Starve with No Ammo’”, *Mail Online*, 28 November 2022, <http://bit.ly/3Ujivjr>.

<sup>12</sup> D. Rassler, “External Impacts and the Extremism Question in the War in Ukraine: Considerations for Practitioners”, *CTC Sentinel*, Vol.15(6), June 2022, p.16, <https://bit.ly/3VzXuR8>.

<sup>13</sup> P. Stronski, “Implausible Deniability: Russia’s Private Military Companies”, Carnegie Endowment for International Peace Commentary, 2 June 2020, <https://bit.ly/3ARfte2>.

<sup>14</sup> Newman, 2022.

The risk of abuses occurring at the hands of personnel employed by an unaccountable paramilitary organisation is already extremely high.<sup>15</sup> When operating in a context in which regular forces are committing serious violations of international humanitarian law (IHL) with apparent impunity from their own chain of command, this risk is further exacerbated. Indeed, the Wagner Group has been accused of murdering, raping, and torturing civilians and prisoners wherever it has operated, beginning with Syria. In that conflict, mobile phone footage taken at al-Shaer gas plant near Palmyra in 2019 showed a Syrian man lying on the ground surrounded by Russian-speaking men in military fatigues. They beat his extremities with a sledgehammer before decapitating him, setting his body on fire and posing for photographs with his remains.<sup>16</sup> In March 2022 accusations emerged from the UN Multidimensional Integrated Stabilization Mission in Mali that Wagner personnel were complicit in the massacre of 30 civilians in the town of Niono in the Ségou region, north-east of the capital, Bamako.<sup>17</sup>

Abuses are even more likely when recruitment to a paramilitary organisation includes convicted prisoners, as appears to be the case with the Wagner Group's deployment in Ukraine. Thus, Yevgeny Prigozhin was filmed in September 2022 exhorting prisoners in a penal colony in Russia's central Mari El republic to join the Group in exchange for a commutation of their sentence.<sup>18</sup> One (unverified) claim suggested that Prigozhin may have recruited many thousands of prisoners to fight in Ukraine, including a killer convicted of cannibalism, "hundreds of murderers" and many rapists.<sup>19</sup> The list of recruits seemingly also included a Zambian student jailed in Russia for the possession of drugs, who later died while serving on the front line for the Group.<sup>20</sup> The United Kingdom has emphasised the lack of training provided to new recruits.<sup>21</sup>

In Ukraine, the Wagner Group has been linked to some of the worst atrocities perpetrated by Russian or Russian-backed forces, amid a plethora of alleged war crimes and crimes against humanity. In May 2022 two Belarussian nationals become the first international fighters from the Group

<sup>15</sup> E.g. see CIVIC (Center for Civilians in Conflict), *Privatizing War: The Impact of Private Military Companies on the Protection of Civilians*, Issue Brief, November 2022, <https://bit.ly/3VwXO3x>.

<sup>16</sup> A. Mackinnon, "New Report Exposes Brutal Methods of Russia's Wagner Group", *Foreign Policy*, 11 June 2020, <https://bit.ly/3XG6vdu>.

<sup>17</sup> C. Faulkner, "Undermining Democracy and Exploiting Clients: The Wagner Group's Nefarious Activities in Africa", *CTC Sentinel*, Vol. 15(6), June 2022, <https://bit.ly/3VzXuR8>.

<sup>18</sup> BBC, "Wagner Group: Head of Russian Mercenary Group Filmed Recruiting in Prison", 15 September 2022, <http://bit.ly/3EIUL1c>.

<sup>19</sup> Newman, 2022.

<sup>20</sup> N. Vasilyeva, "Zambian Student Recruited from Russian Prison Killed in Ukraine", *Daily Telegraph*, 29 November 2022, <https://bit.ly/3uaVKIQ>.

<sup>21</sup> "Global.Security.org, "Russo-Ukraine War – 18 July 2022 – Day 145", 18 July 2022, <https://bit.ly/3ORmnWn>.

to face war crimes charges since the invasion began on 24 February 2022.<sup>22</sup> Wagner Group fighters are accused of having played a leading role in the litany of atrocities perpetrated in Bucha in the early weeks of the war.<sup>23</sup> Ukraine's minister of defence, Oleksiy Reznikov, stated that Wagner Group troops were being deployed in the "most difficult and important missions" in the conflict, playing a key role in Russian victories in Mariupol and Kherson.<sup>24</sup> As of the end of November 2022, with heavy fighting continuing around the town of Soledar in the Donetsk region, Wagner Group fighters were said to be still in the forefront of the hostilities.<sup>25</sup>

## Policy Implications

One of the core issues pertaining to the Wagner Group concerns its legal status and therefore that of its personnel engaged in hostilities. PMCs and mercenary organisations are generally unlawful under Russian domestic law, and the Constitution of the Russian Federation reserves all matters of defence, foreign policy and security for the state.<sup>26</sup> That said, state-run enterprises are permitted to have private armed forces and security foundations.<sup>27</sup> But the Wagner Group has never been formally integrated into the armed forces, for instance as a militia group or volunteer force.<sup>28</sup> Accordingly, under the 1977 Additional Protocol I to the Geneva Conventions, if any member of the Group is captured in an international armed conflict, he has no entitlement to prisoner-of-war status and thus to enjoy belligerents' privilege against prosecution for direct participation in hostilities.<sup>29</sup> (In any event, benefitting from such legal privilege will not preclude a charge and a criminal trial on the basis of an international crime.)

The remainder of this section summarises the position of key states (other than the Russian Federation) and the European Union (EU) on the issues

<sup>22</sup> E. Graham-Harrison et al., "Alleged Wagner Group Fighters Accused of Murdering Civilians in Ukraine", *The Guardian*, 25 May 2022, <https://bit.ly/3ub76q4>.

<sup>23</sup> B. Cole, "Russia's Wagner Group Soldiers behind Bucha Killings, German Intel Claims", *Newsweek*, 7 April 2022, <https://bit.ly/3gKSw5q>.

<sup>24</sup> K. Atwood, "US Considering Designating Russian Mercenary Group as a Foreign Terrorist Organization", *CNN*, 30 November 2022, <https://bit.ly/3XK1Ffb>.

<sup>25</sup> P. Beaumont, "Fighting in East Ukraine Descends into Trench Warfare as Russia Seeks Breakthrough", *The Guardian*, 28 November 2022, <https://bit.ly/3VrqScq>.

<sup>26</sup> N. Vorobyov, "Shrouded in Secrecy for Years, Russia's Wagner Group Opens Up", *Al Jazeera*, 10 August 2022, <https://bit.ly/3u7RjIA>; Stronski, 2020.

<sup>27</sup> CSIS (Center for Strategic and International Studies), "Band of Brothers: The Wagner Group and the Russian State", Blog Post, 21 September 2020, <https://bit.ly/3VBCBoX>.

<sup>28</sup> See Convention (III) Relative to the Treatment of Prisoners of War, art. 4(A)(2); adopted at Geneva, 12 August 1949; entered into force, 21 October 1950.

<sup>29</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 47(1); adopted at Geneva, 8 June 1977; entered into force, 7 December 1978. Both Russia and Ukraine are states parties to the Protocol.

of the legality and status of the Wagner Group. States have taken different positions on the Group as well as, more generally, on the use of PMCs to participate directly in the hostilities in an armed conflict. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries entered into force in 2001, but has only 37 states parties.<sup>30</sup>

## The policy and practice of the United States

The US Treasury has imposed sanctions personally on both Dmitri Utkin and Yevgeny Prigozhin (the latter in 2020).<sup>31</sup> New sanctions were added against Prigozhin after the February 2022 invasion of Ukraine.<sup>32</sup> In late November 2022 the United States was reported to be considering classifying the Wagner Group as a terrorist entity.<sup>33</sup>

In other respects, the United States is something of an outlier on the issue of mercenaries under IHL/the law of armed conflict. Thus, in the US Department of Defense's *Law of War Manual* from 2015, it is stated that:

The act of being a mercenary is not a crime in customary international law nor in any treaty to which the United States is a Party. Under the customary law of war and the [Geneva Convention III], "mercenaries" receive the rights, duties, and liabilities of combatant status on the same basis as other persons.<sup>34</sup>

In August 2022 a lieutenant-colonel working as a reservist in the US Office of the Judge Advocate General (but writing in a personal capacity) argued that the Wagner Group was "a paramilitary group under overall Russian state control acting as a de facto unit of the Russian military".<sup>35</sup> Lieutenant-Colonel Alex Kostin argued that the correct standard for the attribution of conduct by an armed group to a state was not "effective control" (as reaffirmed by the International Court of Justice in its judgment in the 2007 *Bosnian Genocide case*),<sup>36</sup> but "overall control", as earlier claimed by

<sup>30</sup> International Convention against the Recruitment, Use, Financing and Training of Mercenaries; adopted at New York, 4 December 1989; entered into force, 20 October 2001.

<sup>31</sup> Prigozhin was designated for sanctions pursuant to Executive Orders 13848, 13694 (as amended) and 13661 (US Department of the Treasury, "Treasury Targets Financier's Illicit Sanctions Evasion Activity", Press Release, 15 July 2020, <https://bit.ly/3u87FRc>).

<sup>32</sup> N. Wadhams and J. Jacobs, "U.S. Sanctions Usmanov, Prigozhin among Russian Elites", Bloomberg UK, 3 March 2022, <https://bit.ly/3glBsgj>; African Times, "U.S. Adds New Sanctions to Yevgeniy Prigozhin over Ukraine Invasion", 3 March 2022, <https://bit.ly/3VyhB2l>.

<sup>33</sup> D. Flatley and S. Baker, "US Is Weighing a Terrorism Label for Russia's Wagner Group Mercenaries", Bloomberg UK, 29 November 2022, <https://bit.ly/3VAmack>.

<sup>34</sup> US Department of Defense, *Law of War Manual*, updated December 2016, 2016, para. 4.21.

<sup>35</sup> A. Kostin, "Wagner Group Atrocities – Holding Russia Accountable under Prosecutor v. Tadic?", Guest Blog Post, Lawfire, Duke University, 13 August 2022, <http://bit.ly/3XEmLfl>.

<sup>36</sup> ICJ (International Court of Justice), *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007, paras. 400-407.



the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in its 1999 judgment in the *Tadić* case.<sup>37</sup>

## The policy and practice of the United Kingdom

The United Kingdom *does not oppose* the use of PMCs in armed conflict. This was reaffirmed most recently in October 2022 in hearings for an inquiry entitled “The Wagner Group and Beyond: Proxy Private Military Companies” before the Foreign Affairs Committee (FAC) of the UK House of Commons. The Foreign, Commonwealth and Development Office (FCDO) made a written submission to the inquiry in which it stated that:

The UK Government is not seeking to disincentivise the use of PMCs by States in principle, as this activity is not necessarily illegal or harmful. However, the malign use of PMCs as proxies of States increasingly forms part of an intensified competition over norms and values, where certain State blur and test the boundary between conflict and peace to undermine and coerce others. In addition, the use of proxies by certain States has also led to destabilising activity, human rights abuses and malign practices.<sup>38</sup>

The United Kingdom has condemned the *illegal* actions of the Wagner Group. Thus, in its written submission to the FAC the FCDO pointed to the UK government’s sanctioning of Yevgeny Prigozhin for his involvement in the Wagner Group’s activities in Libya: “On 31 December 2020, the UK designated Prigozhin for his involvement in the activities of the Wagner Group which undermine the peace, security, stability of Libya, including by breaching the UN Libya arms embargo”.<sup>39</sup> On 24 March 2022 the United Kingdom designated the Wagner Group as part of its package of sanctions in support of Ukraine. It has also expressed its concern at the Group’s presence in Mali on a number of occasions. Furthermore, the FCDO written submission pointed out that “the Secretary of State [for defence] has consistently spoken out specifically about the destabilising influence of the PMC Wagner Group in Africa and the Middle East and in the context of Russia’s invasion of Ukraine”.<sup>40</sup>

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<sup>37</sup> ICTY (International Criminal Tribunal for the former Yugoslavia), *Prosecutor v. Tadić*, Judgment, Appeals Chamber Case No. IT-94-1-A), 15 July 1999, paras. 120, 123, 145.

<sup>38</sup> FCDO (Foreign, Commonwealth and Development Office), “FCDO Written Submission for FAC Inquiry on the Wagner Group and Beyond: Proxy Private Military Companies (WGN0025)”, October 2022, <https://bit.ly/3itijj2>.

<sup>39</sup> *Ibid*-

<sup>40</sup> *Ibid*.

## The policy and practice of Brazil

No laws or administrative regulations govern the activity of PMCs in Brazil,<sup>41</sup> but the country has called for the negotiation of an international instrument on private military and security companies at the UN.<sup>42</sup> It has *not expressed its views publicly* on the Wagner Group. In the past, however, a predecessor entity to the Wagner Group, RusCorp International, had a registered office in Brazil.<sup>43</sup>

## The policy and practice of China

China does not have domestic legal regulation of PMCs, although it does have detailed regulation of private security companies.<sup>44</sup> It has *not made public its views* on the Wagner Group. In March 2022, however, it was reported that China was assessing the benefits of expanding its use of private armed contractors. Thus far, evidence indicates that China has engaged solely in private security company activities and has intentionally avoided PMC activities,<sup>45</sup> but this may be about to change. One Chinese-language article has noted that China's experience of providing security services in Afghanistan together with its experiences in Somalia and elsewhere have built the workforce skills and methods the country needs to grow these services. The article cites the possible exploitation of Afghanistan's minerals as a ripe opportunity for Beijing and identifies China's more than 3,200 private security workers overseas as an immediately available and experienced workforce.<sup>46</sup>

## The policy and practice of Estonia

Estonia listed the Wagner Group as a *terrorist organisation* in October 2022.<sup>47</sup> In late November 2022 the Estonian foreign minister, Urmas Reinsalu, declared that organisations similar to the Wagner Group are

<sup>41</sup> F. Lusa Bordin and I. Dolganova, *The Regulatory Context of Private Military and Security Services in Brazil*, Technical Report, National Reports Series 17/09, June 2009, p.7, <https://bit.ly/3GX1a1E>.

<sup>42</sup> Brazil, "Open-ended Intergovernmental Working Group to Consider the Possibility of Elaborating an International Regulatory Framework on the Regulation, Monitoring and Oversight of the Activities of Private Military and Security Companies: 4th Session", Letter of the Permanent Mission of Brazil to the UN Office and Other International Organizations in Geneva, n.d., <https://bit.ly/3GXnQZd>.

<sup>43</sup> C. Rondeaux, *Decoding the Wagner Group: Analyzing the Role of Private Military Security Contractors in Russian Proxy Warfare*, New America Report, November 2019, <https://bit.ly/3ELJfH>.

<sup>44</sup> OHCHR (Office of the United Nations High Commissioner for Human Rights), *Mercenarism and Private Military and Security Companies: An Overview of the Work Carried out by 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*, Geneva, 2018, p. 18, <https://bit.ly/3udpXR8>.

<sup>45</sup> C. Weinbaum, "China's Security Contractors Have Avoided the Fate of Russia's Military Contractors, So Far", The RAND Blog, 11 March 2022, <https://bit.ly/3Vl85zF>.

<sup>46</sup> *Ibid.*, citing "The Dust Has Settled on the Situation in Afghanistan", 9 March 2022, <https://bit.ly/3ipEeaU>.

<sup>47</sup> VisitUkraine.Today, "The Parliament of Estonia Declared Russia a Terrorist Regime: What Does It Mean", Blog, 18 October 2022, <https://bit.ly/3OOPCjw>.

terrorist in nature, and participation in such a terrorist organisation should be considered a criminal act. He called for Europe to apply the same approach to the Wagner Group as to the Islamic State non-state group. He said, “Ban them in Europe and freeze their assets”.<sup>48</sup>

## The policy and practice of France

France *has not generally criticised* the use of PMCs. In February 2022 France announced it would withdraw its troops from Mali amid tensions with the country’s ruling military junta and the latter’s decision to employ Russian mercenaries from the Wagner Group. There has been growing tension between France and its former colonies over competition from the Group.<sup>49</sup> In April the French military stated that it had videos of Russian mercenaries from the Wagner Group burying bodies near an army base in northern Mali, which it says was part of a smear campaign against the French, who handed the Gossi base over to Malian forces earlier in the week.<sup>50</sup> In June 2022 Marat Gabidullin, a former employee of the Wagner Group, went public with his asylum claim in France.<sup>51</sup>

## The policy and practice of the United Arab Emirates

The United Arab Emirates (UAE) has not taken a public position on the Wagner Group but it has endorsed PMCs in its practice. It reportedly hired the Spear Operations Group, a US PMC,<sup>52</sup> to support its military operations in Yemen.<sup>53</sup> A number of military contractors, such as the EDGE Group, are headquartered in Abu Dhabi.<sup>54</sup> Furthermore, the UAE has been implicated in the activities of the Wagner Group for several years. In 2019 reports appeared that the UAE had supplied the Wagner Group and General Haftar’s forces in Libya with several of its upgraded Pantsir S1M missile platforms.<sup>55</sup> In 2020 the US Department of Defense suggested that the UAE was funding the Group’s activities in Libya.<sup>56</sup> In March 2021 the UN issued a report

<sup>48</sup> Yahoo News, “Wagner Group Should Be Treated Same as ISIS, Estonian FM Says”, 28 November 2022, <https://bit.ly/3VjT1Cy>.

<sup>49</sup> D. Lawler, “Inside the French Effort to Counter Russian Mercenaries in Africa”, Axios Blog, 14 October 2022, <https://bit.ly/3GX6WtP>.

<sup>50</sup> W. Nasr, “France Says Mercenaries from Russia’s Wagner Group Staged ‘French Atrocity’ in Mali”, France24, 22 April 2022, <https://bit.ly/3OLaCAR>.

<sup>51</sup> E. Beardsley, “An Ex-member of One of the World’s Most Dangerous Mercenary Groups Has Gone Public”, NPR, 6 June 2022, <https://bit.ly/3UIPhiB>.

<sup>52</sup> See: <https://speargroupsec.com/>.

<sup>53</sup> A. Roston, “A Middle East Monarchy Hired American Ex-soldiers to Kill Its Political Enemies: This Could Be the Future of War”, BuzzFeed.News, 16 October 2018, <https://bit.ly/3B3tgOz>.

<sup>54</sup> See: <https://edgegroup.ae/about>.

<sup>55</sup> S. Mitzer and J. Oliemans, “Tracking Arms Transfers by the UAE, Russia, Jordan and Egypt to the Libyan National Army since 2014”, Oryx, 23 March 2021, <https://www.oryxspioenkop.com/2020/06/types-of-arms-and-equipment-supplied-to.html>.

<sup>56</sup> A. Mackinnon and J. Detsch, “Report: Pentagon Says UAE Possibly Funding Russia’s Shadowy Mercenaries

implicating the UAE in backing the joint operations of Wagner Group fighters and Haftar’s Libyan National Army forces.<sup>57</sup>

## The policy and practice of the European Union

The EU imposed sanctions against Yevgeny Prigozhin as early as in 2020 for the Wagner Group’s activities in Libya. In December 2021 the EU imposed broader sanctions on the Group for its responsibility for sending mercenaries “to conflict zones around the world to fuel violence, loot natural resources and intimidate civilians in violation of international law”. Then in April 2022 Prigozhin was also among the Russian politicians, officials and oligarchs sanctioned by the EU for “undermining the territorial integrity and sovereignty of Ukraine”.<sup>58</sup>

In June 2022 the European Court of Justice denied an attempt by Prigozhin to be removed from an EU sanctions list. The General Court in Luxembourg held that the 2020 sanctions for his part in financing Wagner Group fighters who committed human rights abuses in Libya were legally sound, citing “specific, precise and consistent evidence”. The EU had frozen his assets in the bloc and placed him on a visa blacklist.<sup>59</sup>

There has also been a move towards action in the European Parliament. Cross-party members of the European Parliament (MEPs) have been calling for the EU to list the Wagner Group as a terrorist organisation. The MEPs, which represent the full spectrum of the Parliament’s groups, from the far-right ID to The Left, Renew, the EPP, the S&D and the Greens, sent a letter dated 11 November 2022 to European Council president Charles Michel and Czech prime minister Petr Fiala, whose country holds the rotating Council presidency, citing “ongoing violations of international law in Ukraine” by the Wagner Group and its “previous exploits in other conflicts”.<sup>60</sup> At this stage the EU *has not designated* the group as a terrorist organisation, however.

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in Libya”, *Foreign Policy*, 30 November 2020, [bit.ly/3Uk74Xe](https://bit.ly/3Uk74Xe).

<sup>57</sup> See C. Rondeaux et al., *The Abu Dhabi Express: Analyzing the Wagner Group’s Libya Logistics Pipeline & Operations*, Report, New America, November 2021, <https://bit.ly/3VwsfXu>.

<sup>58</sup> CoEU (Council of the European Union), “Ukraine: EU Sanctions Two Additional Businesspeople in Relation to the Illegal Annexation of Crimea”, Press Release, 21 April 2022, <https://bit.ly/3gIgNjr>.

<sup>59</sup> B. Fox, “Wagner Chief Loses Bid against EU Sanctions”, EURACTIV, 3 June 2022, <https://bit.ly/3ONpsXv>.

<sup>60</sup> J. Hanke Vela, “Brussels Playbook: Russian Oil Price Cap — Hungary’s Money — Kosovo Woe”, Politico, 22 November 2022, <https://bit.ly/3OLNh1U>.

## Policy Recommendations

The definition of a mercenary under the 1977 Additional Protocol I lays down six cumulative criteria:<sup>61</sup> the individual concerned must have been “specially recruited locally or abroad” in order to fight in an armed conflict and must have taken a direct part in the hostilities. He or she must have been motivated to fight essentially by the desire for money, which must be considerably more than that paid to combatants of similar ranks and functions in the armed forces of the party to the conflict for which they are fighting. He or she may be neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict. Accordingly, most Wagner Group employees operating in Ukraine are not mercenaries under the definition in the Additional Protocol, because they are Russian nationals.

Furthermore, to be a mercenary one must not be a member of the armed forces of a party to the conflict nor have been sent by a state not party to the conflict on official duty as a member of its armed forces. The distinction between a mercenary and an employee of a PMC can thus sometimes be one of semantics or nationality. This is so when the PMC employee has not been incorporated into the relevant armed forces.

Greater clarity on when a PMC employee has been incorporated into the relevant armed forces continues to be needed. But it is clear that it is not unlawful per se under customary international law to be a mercenary. That said, holding an employee of a PMC to account for violations of IHL other than through international criminal law is a practical challenge. Over-reliance on corporate social responsibility is unlikely to bear great fruit in this regard. As a first step, however, it is important that states strongly condemn the Wagner Group and comparable entities to ensure that these types of groups do not become internationally acceptable.

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<sup>61</sup> 1977 Additional Protocol I, art. 47(2).

## Conclusion

The very real danger of the commission of serious violations of IHL being perpetrated by employees of PMCs such as the Wagner Group has been clearly manifested in its operations in several countries in Africa and Europe. Poor training and limited - if any - command and control from a legal perspective have led to frequent abuses. But there does not seem to be a desire on the part of many governments in the international community to outlaw the existence and use of PMCs per se, as the above review of selected state practice and policy demonstrates. PMC personnel are, in theory at least, subject to international criminal law and charges of war crimes. But very few have so far been held to account by such means. It is, however, essential that organisations like the Wagner Group and its actions do not become the new normal of global warfighting.

# People make peace and security possible

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ISBN: 978-2-88947-404-2



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