

# Towards an international legal framework regulating the activities of private military and security companies

April 2025

## **Context**

In recent years, private military and security companies (PMSCs) have played an increasingly significant role in global conflicts and a range of high-risk sectors, operating on behalf of both States and corporate actors. From the agricultural and extractive industries to the management of migrant detention centres and deployments in conflict zones, regulating the use of private military and security actors across the globe remains critical.

Despite recent progress in international justice - most notably the landmark *Al Shimari, et.al. v. CACI Premier Technology, Inc.*<sup>1</sup> judgment delivered in the United States in November 2024 - significant challenges persist. In this case, the company was finally brought to trial after more than 15 years for human rights violations committed at Abu Ghraib prison in Iraq, yet alleged individual perpetrators remain unpunished. The absence of clear and enforceable accountability mechanisms continues to allow PMSCs to operate in legal grey zones, evading responsibility for serious violations. To prevent impunity and ensure justice and reparation for victims, a robust international legal framework regulating their activities is urgently needed.

## **Legal background**

In October 2010, the UN Human Rights Council established an open-ended intergovernmental working group (IGWG) to consider a possible international legal framework on the regulation, monitoring of, and oversight over the activities of PMSCs. The IGWG held six sessions between 2010 and 2017, but did not manage to finalise and adopt the text of this new legal instrument.

In 2017, resolution 36/11 established a new IGWG for a period of three years, with a mandate to develop the content of the framework to protect human rights and ensure accountability for violations and abuses relating to the activities of PMSCs. It did not determine whether the framework should be binding. The mandate was subsequently renewed in resolutions 45/16 of October 2020, and 54/11 of October 2023. The latter extends the mandate of the IGWG for three more years (until October 2026), "recognising the ongoing need to protect human rights and ensure accountability for violations and abuses relating to the activities of PMSCs by mainstreaming a victim-centred approach."

Between May 2019 and February 2025, the IGWG held five sessions and a number of inter-sessional consultations. The sixth session of the IGWG will take place in Geneva from 7 to 11 April 2025, to discuss the revised version of the draft instrument. The revised fourth version of the draft of 5 March 2025 is available here.

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1. *Al Shimari v. CACI Premier Tech., Inc.*, 684 F. Supp. 3d 481 (E.D. Va. 2023); <https://casetext.com/case/shimari-v-caci-premier-tech-1>.

## **Why is a new multilateral instrument on PMSCs needed?**

It is widely recognised that PMSCs, and companies that employ them, can potentially be involved in the commission of crimes under international law, as well as abuses or violations of International Human Rights Law and violations of International Humanitarian Law<sup>2</sup>. For this reason, the operations and other activities of PMSCs, their personnel and sub-contractors, have been and remain a matter of concern for the international community. States are obligated to prevent violations and to respect victims' rights to access to justice, remedies, and reparation. Albeit valuable, guidance and regulation efforts of PMSCs activities through different initiatives, such as the Montreux Document on pertinent international obligations and good practices for States relating to operations of PMSCs during armed conflict and the International Code of Conduct for Private Security Providers, need to be complemented and strengthened.

## **What is the added value of a multilateral instrument?**

A multilateral instrument would regulate States' obligations vis-à-vis the activities of PMSCs in a coherent manner, spelling out in detail what States are expected to do in terms of the regulation, monitoring of, and oversight over, PMSCs. This would also promote accountability and duly guarantee victims' rights, including to remedies and reparation.

## **What are the objectives of the new instrument?**

The new instrument is directed at States and aims at:

- setting out States' obligations to regulate, monitor and control PMSCs activities;
- ensuring States hold PMSCs, their personnel, sub-contractors (and clients) accountable for any crimes under international law, abuses or violations of International Human Rights Law and violations of International Humanitarian Law they may be involved with;
- ensuring States provide victims with access to justice, remedies and reparation for crimes, abuses or violations committed by PMSCs, their personnel, sub-contractors (and clients).

## **What is the nature of the instrument?**

States have not yet decided whether the new instrument will be binding. Arguably, a binding legal instrument would fill a gap in international law.

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2. In this regard, see, for instance, 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, access to justice, accountability and remedies for victims of mercenaries, mercenary-related actors and private military and security companies, 5 July 2022, UN Doc A/HRC/51/25, para. 81.

## **Why should civil society organisations become involved in the initiative ?**

Civil society organisations (CSOs) are instrumental in ensuring that the voices of victims of crimes, violations, and abuses committed by PMSCs are heard, and that the new instrument upholds the highest standards in terms of protection of fundamental rights and the corresponding States' obligations. CSOs have also historically played a critical role in providing legal expertise in the negotiation process of a number of international legal instruments, and in strengthening their language accordingly.

## **How can they do so?**

CSOs can:

- Participate in **inter-sessional consultations** and in the **sessions** of the IGWG, whereby they can make oral statements, written submissions and interventions in the discussions, including by proposing specific language to be included in the draft instrument;
- Undertake **advocacy activities** (e.g. through the submission of letters, meetings with State representatives, and the organisation of events);
- Raise **awareness** on the ongoing work of the IGWG, especially with CSOs in the field and with victims.
- Consider forming a **coalition with other CSOs** for the above purposes, or joining informal ones.



For more information on the Open-ended intergovernmental working group to elaborate an international regulatory framework relating to the activities of PMSCs and the relevant documentation  
<https://www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index1>

Additional questions, including on the process of accreditation to participate in sessions and inter-sessional consultations, can be addressed to: [ohchr-igwg:pmsc@un.org](mailto:ohchr-igwg:pmsc@un.org)

**For more information on the CSOs informal coalition following the process, please contact:**  
[c.gabriele@trialinternational.org](mailto:c.gabriele@trialinternational.org).

# Towards an international legal framework regulating the activities of private military and security companies

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## **Victims' rights to reparation**

This briefing note outlines victims' right to reparation under international law, and how a future international legal framework regulating the activities of private military and security companies (PMSCs) can considerably increase victims' access to adequate and effective remedy and reparation for crimes under international law, abuses or violations of International Human Rights Law (IHRL) and violations of International Humanitarian Law (IHL) committed by PMSCs.

## **Practical example: Al Shimari v. CACI Premier Technology, Inc. case**

The landmark case of *Al Shimari v. CACI Premier Technology, Inc. (CACI)*<sup>1</sup> in the U.S. marks a rare instance where a private military contractor was held liable for human rights violations and reparation was awarded to victims. On 12 November 2024, a federal jury found CACI, a Virginia-based private military contractor hired by the U.S. government to provide interrogation services at Abu Ghraib prison in Iraq, liable for conspiring to torture three Iraqi civilians from 2003 to 2004. It ordered CACI to pay a total of \$42 million – \$3 million in compensatory damages and \$11 million in punitive damages to each victim.

The victims lodged their claim under the Alien Tort Statute, which allows foreign nationals to file cases before U.S courts concerning alleged violations of international law committed abroad. However, there has been disagreement amongst the courts and challenges arose in several courts regarding whether the legislation prohibited all claims against PMSCs for overseas conduct. For this reason, other cases against PMSCs for human rights violations committed in Abu Ghraib have been dismissed<sup>2</sup> or settled for amounts disproportionate to the harm suffered.<sup>3</sup>

The case highlights the broader issues faced by victims seeking reparation for PMSCs abuses. Currently, PMSCs operate in a legal 'grey zone' under complex structures established in multiple jurisdictions. As a result, victims of violations committed by PMSCs face insurmountable obstacles when seeking reparation, particularly where harms are committed in a country different from the one where the PMSC is established. These may include:<sup>4</sup>

- Lack of extraterritorial jurisdiction in national legislations;
- Lack of adequate reparation frameworks;
- Challenges in tracing and seizing perpetrators' assets to enforce reparation awards.

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1. *Al Shimari v. CACI Premier Tech., Inc.*, 684 F. Supp. 3d 481 (E.D. Va. 2023); <https://casetext.com/case/shimari-v-caci-premier-tech-1>

2. <https://www.business-humanrights.org/en/latest-news/abu-ghraib-case-against-caci-dismissed-usa/>

3. <https://archive.globalpolicy.org/pmcs/52175-defense-contractor-awards-abu-ghraib-torture-victims-meager-5-million-settlement.html%3Fitemid=id.html#50208>

4. Policy Brief on Mutual Legal Assistance, p. 12: <https://redress.org/publication/policy-submission-enhancing-victims-rights-in-mutual-legal-assistance-frameworks/>

A strong multilateral framework allowing for States' international cooperation is crucial to overcome these challenges.

### **What does the draft instrument on PMSCs currently envisage?**

By explicitly outlining the obligations of States regarding victims' right to reparation and strengthening international cooperation, the instrument can guarantee an effective remedy and reparation for victims of crimes under international law, and abuses and violations of human rights and humanitarian law committed by PMSCs. Victims' right to an effective remedy and reparation is well-established in international law.<sup>5</sup> Whilst the right to a remedy refers to the legal processes that provide for the establishment of the truth, justice and reparation, the right to reparation refers to substantive measures designed and implemented to repair the harm done as a result of crimes under international law, and abuses and violations of human rights and humanitarian law.<sup>6</sup>

Reparation must be prompt, adequate and effective, and include five categories of measures to ensure full and effective redress: compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition.<sup>7</sup> Under international law, a State must provide reparation to victims for violations attributable to it. Where legal persons or entities, such as PMSCs, are found liable, they must provide reparation to the victim or compensate the State if the State has already provided reparation to victims.<sup>8</sup>

The right to an effective remedy has been understood to entail the right to reparation,<sup>9</sup> since the right to an effective remedy obligates States to ensure that victims can access reparation. This requires them to create the necessary framework and mechanisms to enable victims to seek and obtain reparation, through judicial, administrative or other procedures.<sup>10</sup> However, as outlined above, victims face difficulties in obtaining effective reparation. The instrument can play an important role in addressing these issues, ensuring the full scope of a victim's right to effective reparation.

### **What does the draft instrument on PMSCs currently envisage?**

The revised fourth version of the draft of 5 March 2025 is available [here](#). One of the central aims of the draft instrument is to provide effective reparation to victims of crimes under international law, and abuses and violations of human rights and humanitarian law committed by PMSCs. This aim is reflected in the Preamble (PP13), which refers to the need to provide "*access to judicial and other effective remedies [and reparation] as provided (informed) by International Human Rights Law.*"<sup>11</sup> Draft Article 12(1) outlines the obligations on States to ensure, through judicial, administrative, legislative or other appropriate means, that victims within their territory or under their jurisdiction have access to "*adequate, effective and prompt reparations [as provided for in International Human Rights Law].*"

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5. Universal Declaration of Human Rights, Article 8; International Covenant on Civil and Political Rights, Article 2; International Convention on the Elimination of All Forms of Racial Discrimination, Article 6; International Convention for the Protection of All Persons from Enforced Disappearance, Article 24; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 14; Convention (IV) respecting the Laws and Customs of War on Land, Article 3; International Committee of the Red Cross Customary International Humanitarian Law Rules, Rule 150; Rome Statute, Article 75; Ljubljana-The Hague Convention, Article 83; see also: UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines).

6. REDRESS, Practice Note on Reparation for Torture Survivors, March 2024 (hereinafter REDRESS Practice Note), p. 6.

7. see UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

8. Ibid.

9. Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para 16

10. REDRESS Practice Note, p. 8; see also: Article 83 of the Ljubljana-The Hague Convention, which recognises victims' right to reparation: when "[t]he crime has been committed in any territory under the jurisdiction of that State Party; or [when] that State Party is exercising its jurisdiction over the crime."

11. This includes provisions as detailed in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Draft Article 12(4) also indicates State Parties should provide, and encourage PMSCs to provide for “non-judicial grievance procedures that are legitimate, independent, accessible, predictable, equitable, transparent, rights-compatible and [a source of continuous learning] [incorporate the participation and perspectives of affected populations].”

### **Which issues remain to be addressed?**

There are several ways in which the draft instrument could be improved:<sup>12</sup>

- Refer to the five categories of measures to ensure full and effective reparation (compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition), as well as specific measures of reparation vis-à-vis environmental damage in Draft Article 12;
- Encourage the establishment by States of national reparation programmes;
- Encourage States to develop mechanisms to allow victims’ meaningful participation in the design, implementation, monitoring and evaluation of national reparation programmes;
- Add a paragraph to Draft Article 12 allowing for the enforcement of reparation judgements by States under their domestic laws. The future instrument should also include provisions on the identification, freezing, seizing, confiscation and disposal of assets of perpetrators of crimes and violations for the purpose of providing reparation to victims, and mutual legal assistance to be afforded by States in whose jurisdiction these assets lie;<sup>13</sup>
- Ensure the grounds to exercise jurisdiction encompass sufficient extraterritorial avenues, since these are often the only means by which victims can seek access to justice and reparation. Further details as to specific amendments can be found in the jurisdiction briefing note.



12. See December Briefing paper on Comments and selected recommendations on the fourth draft of the international regulatory framework on the regulation, monitoring of and oversight over the activities of private military and security companies.

13. See, for instance, the language contained in the Ljubljana-The Hague Convention, Arts. 45-48, in conjunction with Art. 83, and Opinion Juris Symposium on the Ljubljana-The Hague Convention on Mutual Legal Assistance: Critical Reflections – Paving the Way for Asset Recovery and Reparations: <https://opiniojuris.org/2023/08/02/symposium-on-ljubljana-the-hague-convention-on-mutual-legal-assistance-critical-reflections-paving-the-way-for-asset-recovery-and-reparations/>

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## **Victims' rights to information, meaningful participation and protection**

This briefing note outlines victims' rights to information, meaningful participation and protection, and how the future international legal framework regulating the activities of private military and security companies (PMSCs) can protect these rights for victims of crimes under international law, abuses or violations of International Human Rights Law (IHRL) and violations of International Humanitarian Law (IHL) committed by PMSCs.

### **Practical example: *Al Shimari v. CACI Premier Technology, Inc.* case**

The landmark case of *Al Shimari v. CACI Premier Technology, Inc.* (CACI)<sup>1</sup> in the U.S. marks a rare instance where a private military contractor was held liable for human rights violations and reparation was awarded to victims. On 12 November 2024, a federal jury found CACI, a Virginia-based private military contractor hired by the U.S. government to provide interrogation services at Abu Ghraib prison in Iraq, liable for conspiring to torture three Iraqi civilians from 2003 to 2004. It ordered CACI to pay a total of \$42 million - \$3 million in compensatory damages and \$11 million in punitive damages to each victim. The case was lodged under the Alien Tort Statute, which allows foreign nationals to file cases before U.S. courts concerning alleged violations of international law committed abroad.

The sixteen years of legal proceedings only emphasise the importance of victims' rights to information, meaningful participation and protection. CACI made more than 20 attempts to have the case dismissed<sup>2</sup> over the years, and the 2024 ruling was preceded by a mistrial following the jury's inability to reach a verdict. The case highlights the vital role of victims' rights to ensure they are regularly informed on the progress and results of their complaints, as well as by the availability of clear and accessible systems to understand the process. The case emphasises the importance of guaranteeing these rights, particularly where proceedings are extra-territorial. The three victims resided in Iraq,<sup>3</sup> with one of the victims travelling to the U.S. to participate in proceedings.<sup>4</sup> The other two testified and participated in proceedings through video link.<sup>5</sup>

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1. *Al Shimari v. CACI Premier Tech., Inc.*, 684 F. Supp. 3d 481 (E.D. Va. 2023); <https://casetext.com/case/shimari-v-caci-premier-tech-1>.

2. <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/factsheet-torture-abu-ghraib-and-al-shimari-v>

3. <https://ccrjustice.org/sites/default/files/assets/Al%20Shimari%20Complaint.pdf>

4. <https://www.npr.org/2024/11/12/nx-s1-5188530/abu-ghraib-detainees-contractor-case-iraq-war-abuse>, <https://www.hrw.org/news/2013/05/31/joint-letter-secretary-kerry-alleged-torture-abu-ghraib>

5. <https://www.npr.org/2024/11/12/nx-s1-5188530/abu-ghraib-detainees-contractor-case-iraq-war-abuse>

## **How can a future international legal framework address these problems?**

By explicitly outlining the obligations of States regarding victims' rights to information, meaningful participation and protection, the instrument can guarantee effective support for victims of crimes under international law, and abuses and violations of human rights and humanitarian law committed by PMSCs. Victims' rights to information,<sup>6</sup> meaningful participation<sup>7</sup> and protection<sup>8</sup> are well-established under international law. The right to information includes guarantees that victims receive and have access to information regarding the violations, legal proceedings, and their rights. The right to information is a prerequisite to victims' meaningful participation in proceedings.<sup>9</sup> Their right to participation encompasses meaningful participation in every stage of the justice and reparation processes.<sup>10</sup> This requires acknowledging victims as rights-holders.

The right to protection ensures victims are not subject to ill-treatment and intimidation as a result of lodging a complaint or participating in investigations or proceedings. Consequently, guarantees of protection for victims are necessary to enable them to safely and meaningfully participate in proceedings. Participating can expose victims to risks of reprisals and heightened insecurity, and so they require special protection against intimidation, retaliation and repeat or secondary victimisation.<sup>11</sup>

Despite the strong normative framework which exists for victims' rights to information, meaningful participation and protection, victims often face obstacles when exercising these rights. Extra-territorial proceedings pose distinct problems, where national authorities may not provide arrangements for victims to follow legal proceedings from abroad.<sup>12</sup> National authorities may also fail to adequately implement outreach activities to keep victims informed, such as translation of judgments, accessible case summaries for victims or the issuance of press releases in a language that they can understand.<sup>13</sup> Explicit guarantees for victims' rights to information, meaningful participation and protection in the legal instrument can mitigate these problems, allowing the instrument to be truly victim-centred.

## **What does the draft instrument on PMSCs currently envisage?**

The revised fourth version of the draft of 5 March 2025 is available [here](#). One of the central aims of the draft instrument is to offer adequate protection, support and information to victims of crimes under international law, and abuses and violations of human rights and humanitarian law committed by PMSCs. This is reflected by the objective referred to in Article 2(d) of the instrument, *"to ensure (promote) access to information and provide, (in accordance with the rules of international law) inter alia fair, adequate, effective, prompt, non-discriminatory, appropriate and gender-sensitive access to justice and effective avenues of reparation and remedy for victims"*.

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6. Compare e.g. International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), art. 18; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPCRSC) art. 8(1)(b); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (PPSPT), Article 6(2)(a). See also EU Victims' Directive, arts. 4 and 6.

7. Compare e.g. ICPPED, art. 24(2); OPCRCSC art. 8(1)(c); PPSPT, art. 6(2)(b); Rome Statute of the International Criminal Court, art. 68. See also EU Victims' Directive, art. 10.

8. Compare e.g. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 13; ICPPED, art. 12; PPSPT, art. 6(1) and (5); OPCRCSC, art. 8(1)(f). See also Convention on crimes against humanity (CAH convention), art.12 (1)(b); Council of the European Union, Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2019 Revision of the Guidelines, p. 29; EU Victims' Directive, arts. 18-24.

9. see Policy Submission on Victims' and survivors' rights in a CAH convention; <https://redress.org/wp-content/uploads/2024/03/Victims-Rights-in-a-Convention-on-the-Prevention-and-Punishment-of-Crimes-Against-Humanity-2.pdf>

10. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/27/56 (August 2014), p.18 para [92]; <https://digitallibrary.un.org/record/788448?ln=en&v=pdf>

11. Policy Brief on Mutual Legal Assistance (MLA), p. 13: <https://redress.org/publication/policy-submission-enhancing-victims-rights-in-mutual-legal-assistance-frameworks/>

12. Policy Brief on MLA, p. 11: <https://redress.org/publication/policy-submission-enhancing-victims-rights-in-mutual-legal-assistance-frameworks/>

13. *ibid.*



Draft Article 12(3) outlines how this will be realised, ensuring that victims have “access to information in relevant languages and accessible formats, and legal aid relevant to pursue effective remedies to the extent possible or practical in accordance with domestic law.” Draft Article 12(2) also sets out measures providing for the protection of victims, referring to guarantees that victims “are treated with humanity and respect for their dignity and human rights, and their personal integrity, safety, physical and psychological well-being and privacy is protected.”

## **Which issues remain to be addressed?**

There are several key areas in which the draft instrument could be improved. In particular, Draft Article 12 should:<sup>14</sup>

- Include a dedicated paragraph on provisions of proper assistance to victims, including psychosocial and medical support, as well as specific obligations to protect victims from re-victimisation. This includes safety from intimidation and retaliation, before, during and after any proceedings;
- Include a separate paragraph to recognise that States must regularly inform victims of the progress and results of the examination of the complaints they might have submitted, as well as of the investigations and their outcome;
- Include a paragraph to recognise that States must provide access to relevant information concerning violations and reparation mechanisms;
- Include a paragraph referring to guarantees of meaningful participation in proceedings, transparency (access to information), and independence of reparation processes;
- Include provisions to broaden the scope of victims’ rights to participation beyond criminal proceedings, namely to administrative, civil, and other proceedings.<sup>15</sup>



14. see December Briefing paper on Comments and selected recommendations on the fourth draft of the international regulatory framework on the regulation, monitoring of and oversight over the activities of private military and security companies.

15. see prospective CAH convention: <https://redress.org/wp-content/uploads/2024/03/Victims-Rights-in-a-Convention-on-the-Prevention-and-Punishment-of-Crimes-Against-Humanity-2.pdf>

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## **Strengthening accountability for crimes under international law**

This briefing note outlines why and how the discussions within the open-ended intergovernmental working group (IGWG), which is elaborating an international regulatory framework on the regulation, monitoring of, and oversight over, the activities of Private Military and Security Companies (PMSCs), offer a critical opportunity to reinforce and make effective their accountability for crimes under international law. This can be done by ensuring corporations and their personnel, sub-contractors and client companies are held accountable under international human rights law (IHRL), international humanitarian law (IHL) and international criminal law (ICL), including by being held criminally responsible for crimes under international law and subject to other non-criminal sanctions.

### ***Imagine...***

MiSeCo, a fictional PMSC, is incorporated in Heatland and mainly hires Heatland nationals. The company has been hired by the Government to protect mining operations in Lidovia, a country which is involved in a non-international armed conflict between the Lidovian armed forces and a non-state armed group, Ecosia. During a clash with Ecosia rebels, four Heatland nationals, members of MiSeCo, commit war crimes by summarily executing a dozen prisoners and pillaging the nearby village. The victims of pillaging and relatives of the deceased want to seek justice for these crimes, including in Jurisdica, where one of the perpetrators now lives, and in Heatland, where the other Heatland nationals have returned. Their lawyer highlighted the three forms of responsibility that may arise in this case:

- **State responsibility:** Lidovia may be internationally responsible for MiSeCo's conduct if the act of MiSeCo were attributable to it, for example, because it acted under its effective control. Lidovia (the contracting State) and Heatland (the home State) may also incur responsibility if they failed to take appropriate measures to prevent, investigate and provide effective remedies and reparation for these crimes.
- **Corporate criminal responsibility:** There is no mechanism under domestic laws in Lidovia and Heatland to hold corporations criminally liable for crimes under international law. Even in Jurisdica, where natural persons may be held criminally responsible, domestic frameworks lack extraterritorial reach for corporate liability, leaving MiSeCo effectively beyond the reach of criminal justice.
- **Individual criminal liability:** MiSeCo personnel responsible for participating in war crimes may escape accountability due to gaps in Lidovia's domestic criminal law, which does not fully incorporate these crimes. Jurisdica's laws lack extraterritorial reach, and Heatland often refrains from prosecuting nationals for crimes committed abroad, despite the gravity of such acts.

## **Why is it relevant to mention international criminal law in the future international legal framework, alongside international human rights and international humanitarian law?**

ICL is the branch of international law that enables the criminalisation and punishment of the most serious violations of international law. Alongside IHRL and IHL, it is an essential source for identifying acts constituting crimes under international law. Thus, mentioning this branch of law in the future instrument is vital to ensuring its scope captures the full range of acts whose gravity engages the interest of the international community and triggers the obligations of States to investigate and prosecute, as well as to provide reparation. In addition, ICL provides a strong basis for holding PMSCs, their personnel, their sub-contractors and their client companies criminally accountable. It thereby complements other forms of responsibility, namely the responsibility that States may bear under international law for the acts of PMSCs attributable to them, as well as the civil and administrative responsibility of the company itself and/or its sub-contractors and client companies under domestic law.

## **What are crimes under international law and how do PMSCs contribute to them?**

Crimes under international law encompass:

- So-called “core” international crimes, i.e. war crimes, crimes against humanity, genocide, and aggression;
- Other serious human rights violations and abuses that are directly criminalised under international law and/or that States are required by international or regional instruments and case-law to penalise, such as slavery and the slave trade, torture, enforced disappearance, extrajudicial, summary or arbitrary executions, arbitrary detention, trafficking in persons, and sexual and gender-based violence.<sup>1</sup>

Given the nature and contexts of their activities, PMSCs and their personnel, as well as their sub-contractors and client companies, can be and have been involved in the **perpetration of these crimes**, including unlawful killings, torture, disappearances and the forced displacement of civilians. PMSCs have become increasingly prominent in modern armed conflicts and often operate in zones of instability where State institutions are weak, providing protection, intelligence, and logistical support to armed and security forces.

Even when they do not directly commit crimes under international law, alone or in collaboration with others, such as State’s armed forces, they may **facilitate the commission of these crimes**, for example by providing logistical support (weapons, intelligence, transportation) to forces committing atrocities or guarding facilities in which persons are tortured or arbitrarily detained. In so doing, they participate in crimes under international law and should be held accountable for them. Indeed, under international law, **forms of liability** are not limited to committing or ordering these crimes but also include attempting to commit them, and soliciting, inducing, aiding, abetting, or otherwise assisting in, or contributing to, the commission or attempted commission of these crimes. Superiors may also be responsible for crimes under international law if they knew or should have known that their subordinates were committing or about to commit these crimes and failed to take all necessary and reasonable measures to prevent or repress them or to submit the matter to the competent authorities for investigation and prosecution.

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1. Legal instruments imposing this obligation include: League of Nations, Convention to Suppress the Slave Trade and Slavery (1926), art. 6; U.N. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1948), art. 1-4; U.N. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), art. 4; U.N. Convention against Enforced Disappearance (2006), art. 7 and 25; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994), art. 7(c); Council of Europe, Convention on preventing and combating violence against women and domestic violence (2011), art. 33-41. This obligation has also been confirmed by U.N. charter and treaty human rights bodies as well as regional courts and commissions.

## **What does the draft instrument on PMSCs currently envisage?**

The revised fourth version of the draft of 5 March 2025 is available here. It contains relevant provisions, in particular Draft Articles 4.3, 10 and 13. Draft Article 10 provides for the establishment of States' jurisdiction over PMSCs, their personnel and subcontractors. Draft Article 13 provides that States should conduct *"effective, thorough and impartial investigations in relation to alleged crimes provided for in Paragraph/Article 4(3) of this instrument"*.

## **What issues remain to be addressed?**

There are several ways in which the draft instrument could be improved to effectively promote accountability:

- Refer to crimes under international law and to international criminal law, throughout the text, to adequately capture the full scope of conduct that is criminal under international law and/or that States are required to penalise, in particular in Draft Articles 2.c, 4.3 and 12
- Explicitly require States to establish the criminal liability of both legal and natural persons (in addition to civil and administrative liability) in Article 4.3. This is crucial to ensure that both the companies and their personnel, as well as sub-contractors or client companies involved in crimes under international law, may be held accountable - keeping in mind that the liability of the companies should be without prejudice to that of individuals.
- Clearly require States to ensure that the participation of PMSCs, their personnel, their sub-contractors or client companies in crimes under international law constitute criminal offences under their criminal law in the provision on criminalisation in Draft Article 4.3, specifying that:
  1. the definition of these crimes in domestic laws should be in line with international law, including the essential elements required by applicable legal instruments;
  2. forms of liability are not limited to committing or ordering but also encompass all forms described above, including superior responsibility and aiding and abetting. In this regard, Article 4.3 could draw from the language used in 6.2 and 3 of the Draft Articles on prevention and punishment of crimes against humanity.
- Clarify States' obligation to ensure that crimes under international law are punishable by appropriate criminal penalties that take into account their grave nature and that other violations and abuses of IHRL and violations of IHL are subject to effective sanctions that are not necessarily criminal in nature but may include civil and administrative sanctions in the provision on effective sanctions in Draft Article 4.3.
- Provide that the obligation to investigate crimes under international law, violations of IHL as well as violations and abuses of IHRL contained in Draft Article 13, reflect international standards and best practices, such as those set out by the Minnesota or Istanbul protocols,<sup>2</sup> in particular requiring investigations to be prompt, impartial, and transparent.



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2. Office of the U.N. High Commissioner for Human Rights, ed. *The Minnesota Protocol on the Investigation of Potentially Unlawful Death: The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*. 2nd ed. New York, Geneva, 2016, para. 22-33; Istanbul Protocol: *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*. 2nd ed. New York, Geneva, para. 193, 2022.

# Towards an international legal framework regulating the activities of private military and security companies

April 2025

## **Extraterritorial jurisdiction**

This briefing note outlines the core principle of extraterritorial jurisdiction under international law, and how a future international legal framework regulating the activities of private military and security companies (PMSCs) can provide for extraterritorial jurisdiction options to allow victims to access justice, remedies and reparation for crimes under international law, abuses and violations of International Human Rights Law (IHRL) and violations of International Humanitarian Law (IHL).

### ***Imagine...***

Three members of a PMSC headquartered in State A are involved in the attempted killing of four civilians in State B where the PMSC is operating, performing military tasks linked to a non-international armed conflict. One of the civilians dies, while the others suffer physical and mental damage. The three members of the PMSC leave State B: one returns to State A, while the other two are redeployed to State C. The victims and relatives of the deceased lodge a complaint against the three members of the PMSC, as well as a claim to obtain reparation with authorities in State B, where the crimes were committed. State B rejects the requests as it lacks willingness to pursue the case, especially since the alleged perpetrators are now abroad. A similar attempt is made before the authorities of State A, where the PMSC is incorporated. State A finds that victims of alleged war crimes perpetrated in State B lack the right to bring forward legal action in State A; it does not have legislation providing for the responsibility of legal entities, nor jurisdiction for crimes allegedly committed abroad. Another attempt is made before the authorities of State C, where two of the alleged perpetrators have redeployed. State C declares to lack any jurisdiction as the alleged perpetrators are not citizens.

**As a result, impunity prevails and victims are unable to seek and obtain any redress.**

## **How can a future international legal framework address these problems?**

PMSCs and their personnel often operate in States with weak legal and judicial frameworks, and can take advantage of the lack of effective oversight mechanisms to escape accountability.

Existing international instruments<sup>1</sup> contain provisions to fight impunity for individuals responsible for crimes under international law, abuses or violations of IHRL and violations of IHL. Specifically, some of them require the State to establish the (criminal) jurisdiction of its domestic courts (i.e. the competence to hear

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1. See for instance (among others) the Geneva Conventions of 12 August 1949 and the Additional Protocol I thereto of 1977, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention for the Protection of All Persons from Enforced Disappearance. See also the UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity; the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law as well as the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989).

and adjudicate certain cases). Moreover, several widely ratified instruments provide for the liability of legal persons for serious offences<sup>2</sup>.

In order to ensure that victims of crimes under international law, abuses or violations of IHRL and violations of IHL can realise their right to an effective remedy, and to prompt, adequate and effective reparation, it is essential to establish criminal, civil, and administrative jurisdiction. Furthermore, as the example in the box above illustrates, only extraterritorial jurisdiction (i.e. the ability of a State's courts to adjudicate cases of crimes committed abroad) can avoid legal loopholes and the impunity they entail. Finally, a clear distinction must be made between the liability of the PMSCs (i.e. the legal entities) and that of their personnel. The first shall be without prejudice to the liability of the individuals who are responsible for the offence.

### **What do extraterritorial (including universal) criminal jurisdiction and the obligation to extradite or prosecute (*aut dedere aut judicare*) entail?**

**Extraterritorial criminal jurisdiction** enables a State's courts to hear and adjudicate cases concerning crimes that were committed in another country. Grounds for exercising it include, for instance, the nationality or residence of victims and alleged perpetrators.

**Universal criminal jurisdiction** is a specific form of extraterritorial criminal jurisdiction that enables a State's courts to prosecute persons accused of having committed crimes under international law (including crimes against humanity, genocide, war crimes, torture, and enforced disappearance - see the list of crimes referenced in the *Briefing Note on Strengthening Accountability for Crimes under International Law*), even if the alleged offender or the victim is not a national of the State and if the crime was committed abroad.

Although those are effective tools to combat impunity, very few cases have been litigated so far against economic actors – whether companies or individuals - (see [TRIAL International Universal Jurisdiction Interactive Map](#)). This is partially due to limited domestic legal frameworks that need to be strengthened and complemented – especially as extraterritorial avenues are often the only means for victims to seek access to justice and remedy. For this reason, it is paramount that the instrument provides for extraterritorial and universal criminal jurisdiction.

In order to effectively promote accountability and fight against impunity, the above must be complemented by the State's actual **obligation to prosecute or extradite** (*aut dedere aut judicare*) persons suspected of crimes under international law who are present in any territory under their jurisdiction (see the list of crimes referenced in the *Briefing Note on Strengthening Accountability for Crimes under International Law*). Pursuant to this principle, the State concerned is required to exercise jurisdiction over a person suspected of certain crimes, or to extradite the person to a State able and willing to do so, or to surrender the person to an international criminal court or tribunal with jurisdiction over the suspect and the crime.

### **What does extraterritorial (including universal) civil jurisdiction entail?**

Extraterritorial civil jurisdiction enables a State's courts to hear and adjudicate cases concerning civil wrongs committed abroad. Grounds for exercising it include, for instance, the domicile of alleged perpetrators<sup>3</sup>.

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2. For a list of international instruments providing for the liability of legal persons, see : 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid, Articles 3, (States parties 110) ; 1999 International Convention for the Suppression of the Financing of Terrorism, Article 5, (States parties 190) ; 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Article 3(4), (States parties:178) ; 2000 United Nations Convention against Transnational Organised Crime, Article 10, (States parties 192) ; 2003 United Nations Convention against Corruption, Article 26, (states parties 191) ; Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes, Article 15.

3. For basis of jurisdiction see the [Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights](#).

**Universal civil jurisdiction** entails the ability of the courts of any State to hear and adjudicate civil tort claims based on certain crimes (including crimes against humanity, genocide, war crimes, torture and enforced disappearance) irrespective of any link to the forum State.

The establishment of extraterritorial civil jurisdiction is essential to guarantee victims' right to an effective remedy and reparation and complements criminal jurisdiction. It allows victims' to bring civil lawsuits in countries where companies are headquartered, even if this is not where the crimes were committed, increasing their chances of obtaining remedy and reparation. Recent cases (see for instance the [Al Shimari v. CACI Premier Technology, Inc](#) and [Doe v. Chiquita Brands International](#)) represent examples of victims' attempts to seek reparation for human rights abuses committed by PMSCs and paramilitaries.

### **What does the draft instrument on PMSCs currently envisage?**

The revised fourth version of the draft of 5 March 2025 is available [here](#). Draft [Article 10](#) provides for criminal jurisdiction over PMSCs, their personnel, and subcontractors. Administrative and civil jurisdiction are provided for in brackets. Jurisdiction is established over offences committed within a State's territory and some grounds of extraterritoriality are included.

### **Which issues remain to be addressed?**

There are several ways in which the draft instrument could be improved to effectively promote accountability and access to reparation. In particular, Draft Article 10 should:

- Complement/expand the provision of jurisdiction over criminal offences provided in Article.10(1) with jurisdiction over civil wrongs and administrative offences.
- Maintain the grounds for exercising different kinds of jurisdiction, encompassing both territorial and extraterritorial options, bearing in mind that extraterritorial avenues are often the only feasible options whereby victims can seek access to justice and remedy.
- Clearly provide for universal criminal and civil jurisdiction, given the severity of the offences.
- Add a paragraph providing for the independence of the liability of PMSCs (i.e. the legal entity) from that of their personnel; the first shall be without prejudice to the liability of the individuals who are responsible for the offence.
- Add a paragraph including the obligation to extradite or prosecute (*aut dedere aut judicare*) at a minimum in relation to crimes under international law to reduce "safe havens" for alleged perpetrators.