Topic B: Accountability framework for Private Military and Security Companies (PMSCs)

Security Council

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Voices of a new era: youth facing global challenges

Introduction to the committee

We are pleased to welcome you to this edition of the Model United Nations of Universidad Anáhuac Querétaro (UAQMUN 2027). The School of International Relations and the organizing team sincerely thank you for participating, and we wish you a formative, challenging, and enriching experience in this model.

Founded in 1945, the Security Council's primary responsibility is maintaining international peace and security. It is composed primarily of fifteen members, comprising ten elected members serving two-year terms and five permanent members: China, France, the Russian Federation, the United Kingdom, and the United States. Guided by and rooted in the UN Charter, the Council investigates disputes and seeks to maintain international peace and global security, using measures permitted under the Charter. Substantively, among member states, the Council's axial decisions require at least 9 affirmative votes and no veto from a permanent member (United Nations, 1945, United Nations Security Council)

On this occasion, the committee will focus on the following debate:

"Accountability framework for Private Military and Security Companies (PMSCs)."

Private Military and Security Companies have become increasingly involved in activities that were once carried out almost exclusively by State forces. Their services range from protecting facilities and escorting personnel to military training, weapons maintenance, and other forms of operational support. The problem is not necessarily their existence, but what happens when their activities cross borders and responsibility becomes divided between the company, the State that hired it, the State where it operates, and the States where its personnel were recruited (ICRC, 2013).

This fragmentation becomes especially relevant when fractures occur. A territorial State may have access to victims and witnesses while company records remain abroad; the contracting State may possess operational information but not exercise criminal jurisdiction over every person involved. At the same time, describing all private security personnel as "mercenaries" does not solve the problem, since international law gives that term a much narrower definition than the one commonly used in political debate.

Different initiatives have attempted to address these gaps. The Montreux Document, national regulatory systems and the continuing United Nations discussions on PMSCs have developed standards for State supervision, company conduct and access to accountability, but they have not produced a single universal enforcement system (ICRC & FDFA, 2009; OEIGWG, 2025). The debate before the Security Council therefore concerns how these existing mechanisms can be strengthened when private military or security activity begins to affect international peace, civilian protection, and the ability of States to investigate unlawful conduct.

Topic “B”: Accountability framework for Private Military and Security Companies (PMSCs)

Private Military and Security Companies (PMSCs) are commercial entities that provide military or security-related services. Depending on the contract, these activities may involve protection of personnel and infrastructure, convoy escorts, training, logistical assistance, maintenance of weapons systems and, in some circumstances, functions connected with detention or military operations. Their private nature does not place their personnel outside applicable national or international law. What changes is the difficulty of determining who exercises authority, who must supervise their conduct, and which jurisdiction should act when an incident occurs abroad (International Committee of the Red Cross, 2013).

The expansion of private security services has created a particular problem for accountability. A company may be registered in one State, hired by another, operate in the territory of a third, and recruit personnel from several other countries. If an unlawful act occurs, different authorities may possess only a fraction of the information required to investigate it. The territorial State may have access to victims and witnesses but not to company records; the home State may regulate the business but have little investigative presence abroad; while the contracting State may possess operational information without being the jurisdiction where the offence took place. The existence of applicable law does not automatically mean that an effective mechanism exists to enforce it.

It is also important to distinguish PMSCs from mercenaries. Although both terms are frequently mixed in political debate, they are not legally interchangeable. Article 47 of Additional Protocol I establishes several cumulative conditions for a person to qualify as a mercenary, including special recruitment to fight in an armed conflict, direct participation in hostilities, and motivation essentially based on private gain. Nationality, foreign origin, or receiving payment for security work are not sufficient by themselves to satisfy that definition (Protocol Additional I, 1977, art. 47).

This distinction does not create immunity for personnel who fall outside the mercenary definition. PMSC employees may remain civilians, become incorporated into the armed forces, or directly participate in hostilities depending on the factual relationship and activity involved. In the same way, whether an individual technically qualifies as a mercenary does not determine whether murder, torture, unlawful detention, or another offence has occurred. The legal classification of the person and the legality of the conduct remain separate questions (ICRC, 2013).

Accountability extends beyond criminal proceedings to include licensing rules, contract supervision, corporate liability, individual criminal responsibility, and potential State

responsibility. Victims also need accessible routes to report abuses, preserve evidence, and seek remedies. Without clear investigative authorities, frameworks risk losing effectiveness in cross-border operations. The Security Council faces clear limitations: it is not a global licensing authority, nor can its resolutions replace domestic law or create universal criminal jurisdiction. Its mandate remains tied strictly to maintaining international peace and security.

History of the topic

International concern surrounding privately recruited combatants existed before the contemporary PMSC industry. During the period of decolonization, the participation of foreign mercenaries in armed conflicts and attempts to destabilize governments produced increasing pressure for international regulation. This process resulted in instruments such as the 1977 Convention of the Organization of African Unity for the Elimination of Mercenarism in Africa and the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The United Nations Convention entered into force in 2001 and requires its States parties to criminalize specific mercenary-related conduct and cooperate in its prevention and prosecution. Its scope, however, does not constitute a general regulatory system for all private military and security companies (International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989).

The growth of commercial military and security services after the Cold War changed the dimensions of the issue. States, international organizations, and private actors increasingly relied on companies for functions that had traditionally been associated with public security institutions. Guarding facilities or transporting supplies does not present the same legal implications as conducting interrogations or participating directly in hostilities, yet both may occur under the general description of contracted security. Regulation therefore began to move away from the sole question of mercenarism and toward the supervision of the companies themselves.

One of the most relevant developments was the Montreux Document, prepared through an initiative of Switzerland and the International Committee of the Red Cross in 2008. The document does not create a binding international treaty. Instead, it restates existing international legal obligations applicable to States in relation to PMSC operations during armed conflict and proposes good practices for their implementation. Particularly important for accountability is its distinction between contracting States, which hire PMSCs; territorial States, where the company operates; and home States, where the company is incorporated or based. These categories expose one of the main difficulties of the debate: responsibility for oversight may be distributed among several governments rather than concentrated in one jurisdiction (ICRC & Federal Department of Foreign Affairs [FDFA], 2009).

The Montreux approach also challenged the assumption that a State can transfer its international obligations merely by outsourcing a security function. A commercial contract may define duties between the company and its client, but it cannot by itself determine the State's international responsibility or remove obligations imposed by international humanitarian law.

Implementation still depends on national legislation, supervision, and the ability of authorities to investigate conduct beyond their territory.

Further initiatives introduced a stronger focus on corporate conduct and prevention. The United Nations Guiding Principles on Business and Human Rights, endorsed in 2011, organized the issue around three elements: the State duty to protect human rights, the corporate responsibility to respect them,em and access to effective remedy. Applied to PMSCs, this approach places importance on risk assessment, human rights due diligence, and mechanisms capable of responding to harm rather than waiting until an abuse has already produced criminal proceedings (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2011).

At the same time, industry-based initiatives developed voluntary standards for private security providers. The International Code of Conduct and its oversight association introduced certification, monitoring, and complaint mechanisms for participating companies. Such mechanisms can support prevention and establish common practices, although they do not replace courts, national regulators or binding legal obligations. Their effectiveness remains tied to participation, contractual requirements and the capacity to supervise operations in practice.

The United Nations has continued to discuss whether a broader international regulatory framework is necessary. In 2023, the Human Rights Council renewed the mandate of the open-ended intergovernmental working group addressing the regulation, monitoring, and oversight of PMSCs. Negotiations continued through a sixth session in 2025 and a seventh session in April 2026. The process demonstrates that States continue to disagree not only on whether international regulation should become legally binding, but also on its jurisdictional reach and the activities that should fall within its scope. The negotiations have not produced an adopted universal PMSC treaty (OEIGWG, 2025; United Nations Office at Geneva, 2026).

Discussion of the topic

The principal accountability gap surrounding PMSCs does not originate from a complete absence of applicable law. International humanitarian law applies when the factual conditions of armed conflict are present; human rights obligations, criminal law, labour regulation, and administrative rules may also become relevant according to the activity and jurisdiction involved. The greater difficulty appears when several legal systems can potentially act, but none possesses the complete evidence, jurisdiction,n or institutional capacity needed to do so effectively.

State responsibility is one of the clearest examples of why the distinction matters. Under the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, conduct may be attributable to a State when it is performed by State organs, by entities empowered to exercise elements of governmental authority, or under certain circumstances by persons acting on the State's instructions, direction or control. Hiring or financing a company does not automatically transform every act committed by its employees into conduct attributable to the contracting State. The particular relationship and evidence must be examined (International Law Commission, 2001, arts. 4, 5, 8).

This should also be separated from a State's own failure to comply with obligations that may require prevention, supervision or investigation. A contractor's conduct might not be attributable to a State, while the State itself could still face a different legal question concerning what it failed to do. Treating both questions as identical would make attribution considerably broader than the rules permit.

Individual criminal responsibility presents another limit. The International Criminal Court exercises jurisdiction over natural persons, not companies as corporate entities, and only within the jurisdictional and admissibility requirements of the Rome Statute. A PMSC employee does not fall within the Court's jurisdiction simply because the company participated in an armed conflict. Likewise, command or superior responsibility depends on the required relationship of authority, knowledge, and failure to take necessary measures; holding a managerial position alone is not sufficient. The Security Council may refer situations to the ICC under Article 13(b) of the Rome Statute, but such a referral creates jurisdiction over a situation rather than

determining the guilt of any contractor beforehand (Rome Statute of the International Criminal Court, 1998).

For companies themselves, domestic systems remain particularly important. States may use licensing restrictions, administrative sanctions, procurement exclusions, civil claims and, where national law permits it, forms of corporate criminal responsibility. These mechanisms do not necessarily compete with individual prosecutions. They address a different problem: an accountability system that can reach the employee who physically committed an act but cannot obtain records, assets, or decisions from the company behind the operation remains incomplete.

Guiding Questions

1. To what extent may States outsource functions traditionally connected with the exercise of sovereign authority, and which military or security activities should remain ratione materiae within the exclusive competence of public institutions?

2. How should an international accountability framework define PMSCs without unlawfully assimilating contractors, mercenaries, foreign fighters and members of regular armed forces into a single legal category?

3. Where contracting, territorial, and home States exercise concurrent jurisdiction, which principles should determine jurisdiction ratione personae, ratione loci,i and ratione materiae, and how should conflicting claims of jurisdiction be reconciled?

4. What evidentiary threshold should be required before the conduct of PMSC personnel may be attributed to a State under the doctrines of instruction, direction, or control, and how can the Council prevent contractual relationships from becoming a presumption of State responsibility?

5. To what extent can a State incur responsibility through its own failure to regulate, supervise, prevent or investigate PMSC misconduct even where the underlying conduct itself is not attributable to that State?

6. How should the framework distinguish between administrative suspension, civil or corporate liability, individual criminal responsibility, and international criminal jurisdiction without violating the principles of nullum crimen sine lege, proportionality,y and due process?

7. When several States possess jurisdiction over the same conduct, what safeguards should prevent contradictory proceedings, selective prosecution, or violations of ne bis in idem, while still avoiding jurisdictional gaps that allow perpetrators or corporate decision-makers to escape accountability?

8. What disclosure, preservation and evidentiary obligations should be imposed upon contracting States, PMSCs and relevant authorities when operational records, witnesses and corporate assets are dispersed across several jurisdictions, and when may claims of national security legitimately restrict access to such evidence?

9. Under Chapter VII of the United Nations Charter, how far may the Security Council impose reporting requirements, targeted sanctions or investigative mechanisms concerning PMSC activity before such measures risk becoming ultra vires or encroaching upon matters principally reserved to domestic jurisdiction?

10. What procedural guarantees should accompany sanctions designations, licensing restrictions and investigative findings so that accountability mechanisms respect audi alteram partem, preserve the presumption of innocence and remain subject to meaningful review rather than functioning as de facto criminal punishment without trial?

List of participants

- Kingdom of Bahrain
- People's Republic of China
- Republic of Colombia
- Democratic Republic of the Congo
- Kingdom of Denmark
- French Republic
- Hellenic Republic
- Republic of Latvia
- Republic of Liberia
- Islamic Republic of Pakistan
- Republic of Panama
- Russian Federation
- Federal Republic of Somalia
- United Kingdom of Great Britain and Northern Ireland
- United States of America

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