

This study on the limits on the use of private military and security companies (PMSCs) in armed conflict and peace operations addresses three issues that are at the heart of the on-going process of regulating the industry.

First, having concluded that most PMSC contractors have the status of civilians under international humanitarian law, the work delves into the concept of direct participation in hostilities. It is widely acknowledged that PMSCs should not be given tasks which will entail a direct participation in hostilities. Since many PMSCs exploit the right to use force in self-defence in order to fulfil their contractual duties, understanding when a use of force ostensibly taken in self-defence may in fact constitute direct participation in hostilities is crucial to respecting that limit on their use. This analysis also takes into account the unique meaning of self-defence in the context of peace operations and its relevance for the use of PMSCs.

Secondly, in the absence of an international convention prohibiting the use of PMSCs by states and/or international organizations, this study attempts to discern existing limits under international law on recourse to them. For states, it concludes that an implicit prohibition to delegate the power to take a decision to use force against another state to a private actor has ramifications for the roles PMSCs may be given when operating drones or conducting cyber operations, among other things. For international organizations using PMSCs in peace operations, it relies on an analysis of the principles of peacekeeping and international humanitarian law to identify limits on the roles for which PMSCs may be used, in particular as a component of the peacekeeping force or as security guards.

Finally, this study provides an analysis of the potential responsibility of states and international organizations for wrongful acts of PMSCs. Using a critical examination of the International Law Commission's Draft Articles on Responsibility of International Organizations, it concludes that it may be possible to attribute wrongful acts of PMSC contractors – particularly security guards and civilian police – to the United Nations, including when attribution contravenes the UN's internal policy or rules. It acknowledges that attributing PMSCs to international organizations is not a panacea, however, and explores the paucity of mechanisms to enforce the responsibility of international organizations.