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Rizaldy Anggriawan[*]
https://orcid.org/0000-0002-7195-769X

DECONSTRUCTING PLAUSIBLE DENIABILITY AND ATTRIBUTING RESPONSIBILITY FOR THE CONDUCT OF PRIVATE MILITARY COMPANIES

Abstract. The proliferation of private military companies (PMCs) challenges the state-centric international legal system, enabling states to use proxies while maintaining plausible deniability. This paper deconstructs that legal and political fiction, aiming to identify and analyze existing pathways to accountability for PMC misconduct under international law. The analysis focuses on two primary legal avenues: state attribution under the International Law Commission's (ILC) Articles on State Responsibility (ARSIWA) and corporate criminal liability. It demonstrates that these legal frameworks are fraught with difficulties, including a deep jurisprudential divide between the ICJ and ICTY on attribution standards and significant procedural hurdles for corporate prosecution. The Wagner Group serves as a case study. This study concludes that the core problem is not a legal vacuum, but rather a "compliance vacuum," where states deliberately avoid their obligations. Overcoming this will require a more robust application of the law.

Keywords: accountability, international law, private military companies, state responsibility, Wagner group

DEKONSTRUKCJA WIARYGODNEGO ZAPRZECZANIA I PRZYPISYWANIE ODPOWIEDZIALNOŚCI ZA POSTĘPOWANIE PRYWATNYCH FIRM WOJSKOWYCH

Streszczenie. Proliferacja prywatnych firm wojskowych (PMC) stanowi wyzwanie dla zorientowanego na państwo międzynarodowego systemu prawnego, umożliwiając państwom korzystanie z usług pełnomocników przy jednoczesnym zachowaniu wiarygodnego zaprzeczenia. Niniejszy artykuł dekonstruuje tę fikcję prawną i polityczną, dążąc do zidentyfikowania i przeanalizowania istniejących ścieżek odpowiedzialności za niewłaściwe postępowanie PMC na gruncie prawa międzynarodowego. Analiza koncentruje się na dwóch głównych drogach prawnych: przypisaniu odpowiedzialności państwu na mocy Artykułów Międzynarodowej Komisji Legislacyjnej (ARSIWA)

[*] Universitas Muhammadiyah Yogyakarta, rizaldyanggriawan@umy.ac.id

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oraz odpowiedzialności karnej korporacji. Pokazuje, że te ramy prawne są obarczone wieloma trudnościami, w tym głębokim podziałem jurysprudencji między MTS a MTKJ w zakresie standardów atrybucji oraz znacznymi przeszkodami proceduralnymi w ściganiu przedsiębiorstw. Grupa Wagnera stanowi studium przypadku. Niniejsze badanie dowodzi, że zasadniczym problemem nie jest próżnia prawna, lecz raczej „próżnia zgodności", w której państwa celowo unikają swoich zobowiązań. Przezwyciężenie tego problemu będzie wymagało bardziej rygorystycznego stosowania prawa.

Słowa kluczowe: odpowiedzialność, prawo międzynarodowe, prywatne firmy wojskowe, odpowiedzialność państwa, grupa Wagnera

1. INTRODUCTION

The conventional Westphalian system, wherein the state is the sole or central actor with both authority and autonomy, is currently experiencing significant and unprecedented change. The state monopolies of the legitimate use of force are being undermined by the growth of powerful non-state actors, specifically Private Military Companies (PMCs) (Amoah 2023, 133). The term PMC is meant to encompass non-state companies that provide military and security services (Nebolsina 2019, 78). While there is nothing inherently novel about PMCs, private actors have long played a role in militarized activities, with historical examples such as the East India Company, which maintained a significant and independent private army during the 18th and 19th centuries (Galai 2016, 1). However, to be clear, PMCs are neither historical antecedents nor classical mercenaries, but rather a new and contentious aspect of the privatization of the military industry. The purpose of PMCs is to perform functions that states wish to augment or even replace in one way or another. These functions can run the gamut from providing logistical support and local force training to providing military combat units with advanced weapons systems, tanks, and helicopters.

At the heart of the legal and political dilemma associated with the rise of PMCs are its states' ability to use PMCs as a means of foreign policy and proxy warfare in a way that allows it to act in a military or paramilitary capacity while retaining the shield of plausible deniability (Galai 2022, 236). In the contemporary context the Wagner Group is the paradigmatic case study for this situation (Larsen 2025, 643). For years, Wagner acted as a PMCs funded by the Russian state, even though PMCs were technically illegal under Russian law. Ultimately, the legal gray area permitted the Russian state to claim and deny any affiliation to Wagner's actions abroad (Firmian 2025, 785).

The study has characterized the frequent declaration of a legal vacuum involving PMCs as mischaracterization of colliding legal regimes at the international level (Galai 2019, 5). Rather it posits the existence of a compliance vacuum, where states intentionally select to exist outside of compliance with complex, albeit far from perfect, legal regimes. This paper's aim is to examine the contested legal pathways to accountability, showing that while legal pathways exist, they may be consistently problematic vis-a-vis the factual, evidentiary, and political marketplace.

The paper will address three key research questions. First, what factual threshold can be applied in determining the extent of a PMC's conduct that may be attributed to a state so as to invoke state responsibility for an internationally wrongful act? This analysis focuses on the International Law Commission's Articles on State Responsibility (ARSIWA), and the debate between the effective control and overall control tests in the critical cases. Second, the analysis aims to answer in what ways might PMCs – acting as corporate entities – be held accountable for criminal liability under international criminal law and national jurisdictions? This analysis will engage various domestic legal doctrines and the barriers to prosecution, both procedural and substantive. Third, to what extent do existing international regulatory frameworks – including the Montreux Document – address or inadvertently entrench the compliance vacuum, and what reforms might more effectively discipline state conduct in relation to PMCs?

2. DEFINING THE PMC-STATE RELATIONSHIP

2.1. PMCs vs. mercenaries: Legal distinctions and the restrictive definition of Article 47 of Additional Protocol I

A critical first step to any legal inquiry into the activities of a PMC is determining their international law status, especially regarding traditional mercenaries. While the legal and popular meaning of these terms is often conflated, there is an important and far more restrictive distinction within the realm of international law. The use of PMCs is assigned a different classification than mercenary activity, among other reasons that both the United States and other major military powers have openly rejected.

Article 47 of the Additional Protocol I to the Geneva Conventions offers the definitive legal definition of mercenaries. The legal definition requires the individual to not be a national of a party to the conflict, to not be a member of the armed forces of that party, and to be engaged in the public demonstration of hostility. The legal definition of a mercenary relies in part on evidence that the individual is motivated primarily by private financial gain and has been promised material compensation substantially greater than that paid to comparable members of the armed forces involved in the conflict. Generally, the criteria outlined in the legal definition are so stringent that most employees of PMCs do not fit the legal definition of mercenary (Maican 2019, 93).

The legal distinction has significant consequences. Unless incorporated into the state's armed forces, the employees of PMCs are classified as civilians under International Humanitarian Law (IHL). The distinction of civilian status means that they are protected from attack but lose that protection whenever taking a direct part in hostilities (Fuchs, Owens 2024, 139). These direct examples of participation include not only guarding the military base against combat operations but acting as the weapon's system operator in an active combat operation or conducting tactical military intelligence (Sarjito 2023, 39). Conversely, if an individual is a legally recognized mercenary, the individual is not entitled to be afforded the same combatant or prisoner of war status under the law during an international armed conflict. Although the mercenary is still entitled to protection against summary execution and a fair trial, the individual does not possess the legal status as a lawful combatant. The relevant legal framework entails complications in both the operational regulation of the private actors during armed conflict and the determination that PMCs and their employees do not operate in a legal void.

2.2. Analyzing the non-binding nature of international efforts under the Montreux document and other regulatory frameworks

The multifaceted nature in defining and regulating PMCs sparked an initiative between Switzerland and the International Committee of the Red Cross in 2008 to produce a document in Montreux summarizing findings from their conference. The Montreux Document is a landmark instrument addressing the misconception that PMCs are operating in a legal void by reiterating states' pre-existing obligations to respect international law, particularly pertaining to IHL and human rights law, with respect to the activities of PMCs in armed conflict. While the Montreux Document does not create legally binding obligations through treaty formation, it is important from both political and legal contexts (Antonopoulos 2025, 52). The Document represents a contribution from the perspective of practicality and reality that provides states with modelling for good national regulation of PMCs.

The Document illustrates the obligations of three primary types of states as follows: the Contracting State (the state that engages the PMC), the Territorial State (the state in which the PMC operates in), and the Home State (the state where the PMC is incorporated). Additionally, the Document identifies a number of practices to assist states in meeting their obligations including licensing, requiring training in IHL, and establishing practices to foster transparency, accountability and oversight. The example of the hiring of a PMC by a Contracting State does not relieve the State of its obligations under IHL, and the State remains responsible for ensuring the PMC's compliance with the law.

Notably, the Montreux Document is frequently criticized for failing to impose legally binding obligations upon states, a characteristic many scholars identify as its principal weakness. However, this characterization overlooks the document's broader legal and political significance, particularly its codification of existing customary international law and treaty obligations (White 2019, 102). Moreover, the fact that more than 60 states and three international organizations have expressed support for the Document reflects more than mere political goodwill; it further reinforces the Montreux Document's status as a form of soft law that reaffirms and strengthens pre-existing legal obligations. Consequently, where states depart from the Montreux good practices, such conduct may not constitute a breach of the Document itself, but it may provide compelling evidence of failures to comply with international humanitarian law or human rights obligations, especially duties of due diligence. The Document therefore transforms what might otherwise appear to be merely political or moral failings into relevant evidence for assessing state responsibility. By contrast, the 1989 UN Mercenary Convention is a legally binding treaty; however, its failure to secure ratification by major military powers, including the United States, China, and Russia, reveals a fundamental weakness in consensual international efforts to regulate private violence. Viewed through the lens of this paper's central thesis, the non-binding character of the Montreux Document is not merely a procedural weakness – it is in itself a constitutive element of the compliance vacuum. States that endorsed the Document, including Russia, expressed formal political recognition of its principles while simultaneously preserving the right to disregard them through the deliberate absence of treaty-level enforcement mechanisms. The gap between the norms that states publicly affirm and the obligations they are legally compelled to honor is, in essence, the compliance vacuum rendered in institutional form. Where a state departs from the Document's good practices, that departure does not merely evidence a political failure; it transmutes into legally cognizable evidence of a breach of pre-existing IHL and human rights due diligence obligations. The Montreux Document thus functions as a diagnostic instrument for the compliance vacuum: it reveals not an absence of law, but a deliberate architecture of non-enforcement.

3. A CRITICAL ANALYSIS OF ARSIWA AND THE ATTRIBUTION OF PMC CONDUCT TO THE STATE

3.1. ARSIWA and the doctrine of state responsibility for internationally wrongful acts

The essence of any legal case concerning state responsibility related to the misconduct of PMCs lies in the principle of attribution: one of the cardinal institutions of international law. The International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), which was adopted in 2001, provides both the intellectual and the operational framework, and relevant provisions from ARSIWA will be analyzed. The principle is simple: A state is responsible for any internationally wrongful act attributable to it under international law (Bodansky, Crook 2002, 774).

The conduct of a PMC can be attributed to a state under different provisions of the ARSIWA, particularly with respect to the conduct of non-state actors. This analysis will focus on two key attribution provisions from ARSIWA. The first, Article 5, deals with the conduct of a person or group of persons who is in fact exercising elements of the governmental authority (Boutin 2023, 138). This provision will be of particular relevance to PMCs, because they are often contracted to perform an activity that has traditionally been a governmental function, such as engaging in direct combat, providing security for state officials, or detaining prisoners. The commentary to Article 5 makes clear that a determination of whether an entity is exercising governmental authority is a factual issue; it depends on the activity being performed, not whether the activity has been formally designated or labeled as governmental authority according to domestic law. A state cannot purport to absolve itself of ultimate responsibility for an activity simply because it has contracted that activity. The ILC's official Commentary to Article 5 reinforces this conclusion, clarifying that the critical criterion is whether the entity is "empowered by the law of that State to exercise elements of the governmental authority" and whether it "is acting in that capacity in the particular instance" – thus making the functional nature of the activity, rather than its formal domestic designation, the operative legal question. A state may not restructure governmental functions through private contract and then invoke the private character of the contractor to escape responsibility for the exercise of those very functions.

However, perhaps the most direct legal mechanism to pierce the veil of plausible deniability is found in Article 8 of ARSIWA. Article 8 covers the conduct of a person or group of persons in fact acting on the instructions of, or under the direction or control of, that state in connection with carrying out the conduct (Ryngaert 2021, 173). This provision will require a factual link to be established between the state and the particular wrongful act, and the factual link has been the subject of significant jurisprudential debate and conflicting legal standards. The ILC Commentary to Article 8 further clarifies that mere financial support, training, or general assistance, standing alone, is insufficient to establish the requisite degree of control; rather, the instructions or direction must specifically relate to the conduct alleged to constitute an internationally wrongful act. This interpretive guidance from the ILC is central to understanding why the effective control standard – as applied by the ICJ – sets so demanding a threshold, and why its application to PMC conduct produces such acute accountability gaps.

3.2. Reconciling the jurisprudential divide in the factual thresholds of control

The invocation of ARSIWA Article 8 to assess the actions of non-state actors illustrates an important jurisprudential gap between the two primary international courts, the International Court of Justice (ICJ) and the International Criminal Tribunal for the former Yugoslavia (ICTY). The standard of legal cause used to attribute a state's activities can determine the failure and success of a case, and is an inherent tension in international law between holding states fully accountable or only for actions that are direct and clear causes of the states' conduct (Rinasti et al. 2022, 109).

In its seminal 1986 decision, *Nicaragua v. United States*, the ICJ established a prescriptive and high bar for key elements of attribution, namely a standard which requires proof of effective control over the specific military and paramilitaries activities where an abuse took place (Damrosch 2012, 139). The ICJ concluded that although the United States supplied funding, training, and supplies to the Contra rebels, some of which were decisive, it nonetheless could not make a finding of attribution solely due to the Contra's potential actions. The ICJ concluded that the U.S. would have had to exercise effective control over the relevant human rights violations for the conduct to be attributable to the State, a threshold that is notoriously difficult to establish. The rationale was that the rebels were accountable for their own actions, while the United States was only accountable for its own conduct (e.g. laying mines in Nicaraguan ports or publishing a manual that endorsed abuses of IHL). That precedent therefore imposed a stringent effective-control standard for attributing the conduct of non-state armed groups to states.

In contrast to the ICJ's standard, in Tadić, the ICTY adopted a less demanding overall control test for attributing the conduct of an organized armed group to a state. The Appeals Chamber reiterated that it was unnecessary for one to show that the state instructed the group to carry out each particular unlawful act. It sufficed to establish that the state had some role – financial, training, and logistical – in organizing, coordinating, or planning the group's military activities (Gaggioli, Kilibarda 2021, 205). The test was considered a more realistic standard by which to hold a state liable for actions by a proxy army, in that it did not require an impossible burden of proof of direct command over each individual act of misconduct (Gunawan et al. 2022, 3). The Tadić test recognizes that a state's strategic control over conduct of a group engaged in military operations is a more appropriate and logical basis for attributing the state's liability; that is, there is no need to show a particular order to carry out an atrocity.

3.3. The chasm of legal standards and the reality of modern warfare

The debate over the conflicts between these two standards is more than academic; it matters greatly and has real world consequences for a plaintiff seeking a remedy against a state for the conduct of a PMC. The ICJ, in a recent case concerning genocide, categorically rejected the overall control test and has left a substantial jurisprudential gap (Jorritsma 2018, 405). The Court noted that the Tadić test was devised for another purpose and only to determine whether an armed conflict was international in character, not one designed to analyze states' responsibility. This presents a really difficult problem for any lawyer: There is no effective control of the state, and the ICTY's overall control standard is not accepted by the ICJ (Nnawulezi et al. 2024, 320), the world's most senior court for any state accountability. This tension reflects a longstanding philosophical debate in international law concerning the prevention of states acting through non-official agents, vs. the principle that a state can only be liable for actions of agents exercised due to clear state authority (Lubin 2020, 187). The question presented by PMCs renders this historical tension salient and ripe for law reform.

Strictly separate from questions of control, a state can be responsible for its own internationally wrongful acts, even if the conduct of the PMC is not attributed to the state. This is a kind of secondary responsibility of the state, arising from its failure of due diligence to safeguard and properly regulate and control the activities of a PMC. A state that licenses, hires or permits a PMC to conduct activities, that the state was aware had committed transgressions in the past, may be – strictly speaking – breaching its own obligations for not preventing or punishing the international crime (Khan et al. 2022, 249). Some, but not all of the scholarly commentary has noted while the claim of a legal vacuum is exaggerated, the reality is that the Janus-faced nature of international law is challenged and not rendered irrelevant as the role of PMCs has increased its importance (Mikołajczyk 2023, 11). However, the reliance on states' responsibility arising out of a state's obligation to regulate a PMC, as a standalone basis for accountability does not get at problems related to PMCs and is inadequate to address them.

3.4. Applying attribution tests to the Wagner group in an empirical analysis of state-PMC links

A preliminary methodological note is warranted regarding the evidentiary basis of this section. The empirical observations draw primarily on open-source materials: public statements by state officials, investigative journalism, reports by human rights organizations, and UN Panel of Experts documentation. While such materials are broadly accepted for academic doctrinal analysis, their admissibility and probative weight before an international tribunal – such as the ICJ – would be subject to far more exacting standards of proof. In particular, statements made by political actors such as President Putin's 2023 admission of full state financing of Wagner carry inherent strategic dimensions and cannot be treated as conclusive legal evidence before an adjudicatory body. Statements attributed to Yevgeny Prigozhin present analogous difficulties: as a figure whose public communications were frequently calibrated for strategic posturing vis-à-vis the Kremlin, his admissions must be treated as corroborative rather than primary evidence, to be read alongside more rigorously documented sources. Accordingly, the analysis below constitutes a doctrinal application of attribution standards to the available factual record, rather than a forensic reconstruction meeting the evidentiary demands of international adjudication. This limitation does not undermine the paper's core argument: the pattern of conduct documented across these sources is precisely the kind of systematic state engagement that the overall control test – and, arguably, the effective control test – is designed to capture.

The Wagner Group serves as an exemplification for examining the competing attribution tests outlined. The Russian state has provided plausible deniability for years, but the overwhelming evidence demonstrates an extreme relationship of dependence and control consistently beyond anything resembling mere funding.

In 2023 Russian President Vladimir Putin stated that the Russian state completely financed the ongoing maintenance of the entire Wagner Group from May 2022 to May 2023. This was contrary to previous denials and certainly advances the evidence to substantiate the high degree of dependence required by the ICJ, *de facto* state organ test, which asserts an entity is a state organ if it operates in complete dependence on the state and acts as the state's instrument; in this case, the Wagner Group, could potentially fit these criteria. Although Wagner enjoyed some degree of autonomy on the African continent, their utilization of the infrastructure of the Russian Armed Forces, their operational dependence on the Russian state, and their ties to the GRU, Russia's military intelligence organization, all confer a high degree of integration into Russian state function and defense. The group's unofficial subordination was largely premised on the constant threat of the arbitrary Russian legal system and the fact that many of their fighters were simply retired Russian soldiers (Patricheev 2024, 327).

First, although the ICJ's Nicaragua test for attributing specific acts to a state establishes a particularly demanding effective-control standard, the cumulative evidence of Russia's organization, coordination, and planning of Wagner's activities may nevertheless present a compelling case under the broader overall-control approach. This argument becomes especially persuasive in relation to high-level operational directives, such as Wagner's reported "no quarter" order during the conflict in Ukraine. Wagner commanders reportedly instructed fighters to kill all opposing combatants and to take no prisoners, conduct manifestly contrary to international humanitarian law (IHL). Because these directives were issued by an organization financed, supported, and operationally integrated with the Russian state, they may provide evidence not merely of indirect association, but of Russian participation in, acquiescence to, or overall control over unlawful conduct. In this respect, the Wagner case demonstrates how the lower threshold established by the overall-control test may permit attribution in circumstances where the ICJ's stricter effective-control standard would prove difficult to satisfy. A factual analysis of Wagner's documented atrocities therefore illustrates how these competing theories of attribution may be operationalized in practice (Table 1) (Schmitt, Tramazzo 2023).

Table 1. Comparative Attribution of Wagner Group Conduct: Nicaragua vs. Tadić Standards

Alleged Crime	Location	IHL/HR Law Violation(s)	Attribution Analysis	
			Nicaragua Test	**Tadic Test**
Unlawful executions, rape, and abduction of civilians	Mali, CAR, Sudan	War Crimes, Crimes Against Humanity, Violations of the right to life	Difficult to prove. Requires specific evidence that the Russian state directed or enforced the perpetration of each unlawful act. The high degree of autonomy in Africa makes this a major evidentiary challenge.	More viable. The documented pattern of systematic violence to advance economic interests, coupled with the group's unofficial subordination to the Russian state and close GRU ties, could be used to argue that the group as a whole was under the overall control of Russia, which had a role in planning its operations.
Placement of landmines and booby traps in civilian homes	Libya	War Crimes, Indiscriminate Attacks	Challenging. Would require evidence that the Russian state gave specific instructions to lay booby traps.	More plausible. The action was part of the group's overall military strategy during withdrawal from Tripoli, which was coordinated with a Russian-backed proxy. This could be seen as part of the "organizing, coordinating, or planning" of military actions.
No quarter order to kill all prisoners (Schmitt, Tramazzo 2023)	Ukraine	War Crime (Refusing Quarter)	Extremely difficult. Requires evidence of a specific directive from the Kremlin for this order.	Highly viable. The order was a public, high-level directive from the group's leader, Yevgeny Prigozhin, who had publicly acknowledged his role as founder and the group's integral role in the war. Given the group's full state funding and use as the "main assault force" in the Battle of Bakhmut, the "overall control" test could be met, attributing the act as a policy of the group under Russia's control.
Looting of gold mines and exploitation of natural resources (Firmian 2025, 787)	Sudan, CAR	Violations of International Human Rights Law	Difficult. Requires proof of a specific order from the Russian state to loot a particular mine.	Stronger case. The exploitation of natural resources is directly tied to the group's business model and the payment of services, which was sanctioned by the state. This could be seen as an integral part of the overall mission planning under state control.

4. CORPORATE CRIMINAL RESPONSIBILITY AND JURISDICTIONAL CHALLENGES

4.1. Doctrinal foundations of corporate criminal liability: A comparative study of common law and continental approaches

Insofar as holding the PMC entity vicariously responsible as a corporate body rather than its individual employees would present a new layer of complexity for legal rationale, it is important to note that international criminal law historically focuses on individual culpability (Hawkins 2022, 12). The liability of a corporate body, on the other hand, has long been debated and developed primarily at the domestic level (Galai 2017, 11). Jurisdictions vary significantly in their approach to liability applicability; generally, there are four approaches under international and domestic law: responsibility because they commit the same crimes as individual persons, responsibility due to existing law authorized criminal conduct, administrative punishments, and special legislation relating to corporate culpability (Rabkin, Lerner 2022, 375).

Traditionally, two principles of law have developed in common law jurisdictions as to whether a corporation can be held responsible for criminal acts. The first doctrine is known as *Respondeat Superior* or vicarious liability. Vicarious liability was pioneered in tort law, extending the responsibility of the person committing harmful acts in the course of their employment to the corporation (Swain 2019, 645). Thus, in the United States, corporations are vicariously responsible for the criminal acts of their employees when the acts were committed in the scope of employment and with the intent to benefit the corporation (Tuttle 2021, 121). Vicarious liability does not require the knowledge or approval of the corporation and can exist even if the acts were also against company policy or doctrine. The second theory of liability is known as Identification Theory where regardless of a corporation's knowledge or approval, a corporation can be held liable for the actions of its directing minds (Dsouza 2020, 96). This approach, mostly utilized in the United Kingdom and Canada, holds the corporation directly responsible for the acts and intentions of their directing mind and the definitions of directing mind and the identification defense vary (Beebeejaun, Mandarun 2024, 575). This theory requires a higher degree of proof for the prosecution in that they must demonstrate that the illegal act must have been committed by an individual who was so high in the hierarchy of the corporate structure that their act can be deemed the act of the corporation itself. Compounding the doctrines applicable to PMCs, corporate structures are often quite complex often involving a foreign subsidiary and/or shell companies.

4.2. Challenges to imposing corporate liability for international crimes under the international law framework

While the preceding case study focused on Russia's instrumentalization of the Wagner Group, any comprehensive analysis of corporate accountability for PMC misconduct must engage the United States' legal context. The United States is home to a disproportionate share of the world's registered PMC entities and presents the most extensively litigated domestic framework for civil accountability for human rights violations committed in armed conflict. Critically, the doctrinal barriers exposed by ATCA litigation – the political question doctrine, government contractor immunity, and the limitation of international law norms to state actors – are not uniquely American pathologies but structural features of corporate accountability law that manifest across virtually all major jurisdictions. The US experience thus functions as a broadly representative case study of the compliance vacuum at the domestic enforcement level, complementing the state attribution analysis above.

The international legal framework's emphasis on individual responsibility for acts such as genocide, war crimes, and crimes against humanity poses a significant obstacle for seeking corporate liability. In general, these crimes can only be prosecuted when a state agent has committed them or during armed conflict. This creates a tension in law and a legal predicament for international humanitarian law (Gunawan et al. 2023, 108).

In the United States, where many PMCs are headquartered, the Alien Tort Claims Act (ATCA) has served as one attempted avenue for civil litigation concerning human rights violations committed abroad (Choukroune 2016, 179). The ATCA permits foreign plaintiffs to bring claims for torts committed in violation of the law of nations. In practice, however, such litigation faces substantial procedural and doctrinal barriers. Plaintiffs frequently encounter a Catch-22. If they argue that a PMC acted pursuant to state authorization or direction, courts may dismiss the case under the political question doctrine, reasoning that adjudication would require judicial review of sensitive military or foreign-policy decisions constitutionally committed to the executive branch. Relatedly, PMCs may invoke government contractor immunity, arguing that liability should not attach where contractors acted within the scope of governmental authorization. Conversely, if plaintiffs argue that the PMC acted independently of state authority, defendants may contend that certain international law norms apply only to states or state-linked actors, thereby excluding purely private conduct from the scope of the law of nations (Ryngaert 2008, 1035). This procedural and doctrinal dilemma illustrates the broader difficulty of adapting traditional international legal frameworks to modern forms of privatized violence and helps explain the limited success of ATCA litigation against PMCs.

5. CONCLUSION

The emergence of Private Military Companies (PMCs) as a vital paradigm of modern warfare creates a serious challenge to the existing state-centric international system. This paper has demonstrated that there is not a legal vacuum regarding PMCs, but rather a complex mosaic of jurisdictional and doctrinal complications that states intentionally exploit to create plausible deniability of their actions. The compliance vacuum provides states the ability to enjoy the benefits of privatized violence whilst avoiding the legal or moral repercussions for the conduct of their proxies.

As this paper has analyzed, pathways for accountability exist – state attribution through ARSIWA and corporate criminal liability at the entity level – yet each is beset by structural obstacles. The jurisprudential chasm between the ICJ's restrictive effective control test and the ICTY's more pragmatic overall control standard leaves a significant zone of impunity for states operating through proxy forces. Equally, as the Wagner case study demonstrates, accountability at the PMC entity level founders at the intersection of procedural barriers, government contractor immunity defenses, and the legal fiction of separate corporate personality.

Confronting the compliance vacuum requires engagement not only with legal doctrine, but with the political architecture that sustains it. International law differs fundamentally from domestic criminal law in one critical respect: it lacks a centralized enforcement authority with the capacity to compel compliance independent of state consent. State responsibility, therefore, operates not through the vertical authority of a sovereign over subjects, but through the horizontal pressure of states on one another – a system structurally vulnerable to the exercise of geopolitical power. The realpolitik character of contemporary international relations means that powerful states, and their proxies, are best positioned to exploit the compliance vacuum precisely because the enforcement mechanisms of international law are themselves mediated by state political will. No doctrinal refinement can substitute for the political will to enforce.

Nevertheless, a number of *de lege ferenda* proposals merit serious consideration. First, the international community should pursue a binding treaty on PMCs and private security companies, analogous to the Ottawa Convention on landmines, that imposes affirmative due diligence obligations on home states and contracting states, with meaningful supervisory mechanisms. Second, the jurisprudential divide between the ICJ and ICTY on attribution standards urgently requires resolution, ideally through a clarifying instrument or authoritative ILC guidance that bridges the effective and overall control tests for the specific context of organized non-state armed groups acting in structural dependence on a state. Third, the Rome Statute could be amended to expressly confer jurisdiction over legal persons for war crimes and crimes against humanity, closing the corporate impunity gap that domestic law has failed to fill. Finally, the Montreux Document, while valuable, should be upgraded into a treaty framework with monitoring and reporting obligations, transforming its good practices from aspirational standards into legally enforceable benchmarks.

None of these proposals are politically straightforward, and their realization depends on precisely the kind of political will that the compliance vacuum is designed to circumvent. This is not cause for resignation. It is, rather, the clearest possible articulation of where the challenge lies: not in the absence of law, but in the deliberate choices of powerful actors to remain outside its reach. Closing the compliance vacuum demands not only better law, but a sustained international commitment to treat the privatization of force as the accountability crisis it plainly is.

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