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## The New Battlegrounds: A Reexamination of the Geneva Conventions in the Age of Private Militias and Proxy Wars

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### ABSTRACT

In a time of state-based and traditional warfare, the 1949 Geneva Conventions constituted the cornerstone for the post-World War II international legal order. However, non-state actors, Proxy wars and expansion of private military and security companies (PMSCs) are increasingly becoming norms in today's security environment. The development is a serious challenge to the application, enforcement and interpretation of international humanitarian law (IHL). The Geneva Conventions and the conduct of armed conflict. The value of the Geneva Conventions to regulate state-sponsored proxies and private militias is scrutinised here. The article analyses questions of combatant status, responsibility for violations and the principle of distinction through case studies in Ukraine, Syria and sub-Saharan Africa. It also considers state transfer of the use violence and erosion of governmental accountability through the planned, as opposed to collateral, breaches of international law. To maintain underlying humanitarian protections in a context of decentralized conflict and hybrid war, then, is the core argument ultimately made by this analysis for a contextual revelation or adjustment of IHL paradigms.

**Keywords:** Geneva Conventions, international humanitarian law, private militias, proxy wars, non-state actors, PMSCs, combatant status, hybrid warfare, state responsibility, law of armed conflict.

### I. Introduction

The bedrock of modern international humanitarian law (IHL) is formed by the four Geneva Conventions of 1949, which were adopted as a multilateral response to the mass atrocities and genocides committed during the Second World War (ICRC, 2010; Meron, 2000). Building upon earlier humanitarian initiatives, the 1949 Conventions reinforced the obligation of belligerents to distinguish between combatants and non-combatants and established legal protections for persons not directly participating in hostilities, including civilians, the wounded and sick, and prisoners of war (Geneva Convention I-IV, 1949; Sassòli, 2019). The post-war judicial and legal framework was constructed on the assumption that armed conflict would primarily occur between sovereign states possessing organized armed forces and centralized command structures (Crawford, 2012).

This post-war legal architecture was therefore designed for a world characterized by traditional battlefield conflicts and Westphalian state actors. Consequently, the Geneva Conventions adopt a predominantly state-centred approach premised on centralized military command, relative homogeneity of armed groups, and symmetrical legal obligations between belligerent states (Kaldor, 2012). However, the twenty-first century battlefield is no longer clearly demarcated and bears little resemblance to the conventional warfare paradigm upon which these foundational norms were built (Schmitt, 2013).

Contemporary armed conflict is increasingly decentralized and asymmetric in nature. Non-state armed groups, including terrorist organizations and insurgent forces, have emerged as significant actors in modern warfare, alongside private military and security companies (PMSCs), which play an increasingly prominent operational role (Percy, 2007; Singer, 2003). Moreover, the growing prevalence of proxy wars whereby states conduct hostilities indirectly through third-party armed groups has blurred the Geneva Conventions' application and weakened clear lines of legal accountability (Mumford, 2013). These transformations raise serious challenges regarding the application, interpretation, and enforcement of IHL in contemporary conflicts.

PMSCs frequently operate within legal and regulatory grey zones, creating persistent uncertainty regarding their legal status, jurisdictional reach, and accountability under IHL (ICRC, 2009; DeWinter-Schmitt, 2011). Similarly, non-state armed actors often function outside formal juridical regimes, further complicating the enforcement of humanitarian norms. In addition, states may deliberately outsource the use of force through proxy warfare to evade direct responsibility under the Geneva Conventions, thereby undermining the principles of international accountability and state responsibility that lie at the heart of the IHL framework (Clapham, 2012; Mumford, 2013).

## **II. The Geneva Conventions: Origins, Objectives, and Core Principles**

### **2.1 Synopsis of the 1949 Geneva Conventions: Evolution and Essential Elements**

Modern international humanitarian law (IHL) finds its normative foundation in the four Geneva Conventions of 1949, adopted in the immediate aftermath of the unparalleled humanitarian devastation of the Second World War (ICRC, 2010; Meron, 2000). The catastrophic failure of pre-existing legal frameworks to prevent large-scale atrocities against civilian populations and prisoners of war most notably evidenced by the Holocaust and the atomic bombings of Hiroshima and Nagasaki created an urgent demand for a comprehensive and universally binding humanitarian regime (Best, 1994; Sassòli, 2019). Although earlier humanitarian initiatives, particularly the First Geneva Convention of 1864, had sought to alleviate the suffering of wounded soldiers on the battlefield, the post-war international community recognized the necessity of a far more robust, enforceable, and systematic legal architecture for the protection of war victims (ICRC, 2010).

The 1949 Geneva Conventions comprise four distinct treaties, each addressing the protection of a specific category of persons affected by armed conflict. Geneva Convention I provides safeguards for wounded and sick members of armed forces in the field, while Geneva Convention II extends these protections to wounded, sick, and shipwrecked members of armed forces at sea (Geneva Convention I, 1949; Geneva Convention II, 1949). Geneva Convention III regulates the humane treatment, rights, and legal status of prisoners of war, and Geneva Convention IV establishes comprehensive protections for civilian persons, including those living under occupation (Geneva Convention III, 1949; Geneva Convention IV, 1949). Together, these instruments constitute an integrated humanitarian framework governing both the conduct of hostilities and the treatment of individuals who are hors de combat or otherwise not directly participating in hostilities (Sassòli, 2019).

A particularly transformative feature of the 1949 regime is Common Article 3, which for the first time extended the application of fundamental humanitarian standards to non-international armed conflicts. By prescribing minimum guarantees of humane treatment applicable in conflicts “not of an international character,” Common Article 3 filled a critical

normative gap in earlier humanitarian law and laid the groundwork for the progressive internationalization of internal armed conflicts (Crawford, 2012; ICRC, 2016). Often described as a “Convention in miniature,” Common Article 3 reflects the core humanitarian ethos of IHL by ensuring baseline protections even in the absence of interstate warfare (Meron, 2000).

In recognition of the evolving nature of warfare and the increasing participation of non-state armed actors, the Additional Protocols to the Geneva Conventions, adopted in 1977 and supplemented in 2005, sought to refine and expand the original treaty framework. Additional Protocol I strengthened protections in international armed conflicts and elaborated the principles of distinction, proportionality, and precaution in attack, while Additional Protocol II developed the legal protections applicable in non-international armed conflicts. The adoption of Additional Protocol III, introducing the Red Crystal as an additional protective emblem, further reflects the adaptive capacity of IHL to accommodate changing political, operational, and cultural realities (Henckaerts & Doswald-Beck, 2005; ICRC, 2010).

## **2.2 Important IHL Principles: Humane Treatment, Military Necessity, Proportionality, and Distinction:**

**Four guiding principles of international humanitarian law are expressed both explicitly and implicitly in the Geneva Conventions and their Additional Protocols:**

Parties to a conflict must always make a distinction between military targets and civilian items, as well as between combatants and civilians. Attacks are only allowed against legitimate targets.

**Proportionality:** The predicted incidental loss of civilian life or damage must not be disproportionate to the expected direct and tangible military advantage, even in cases when strikes are intended at authorized military targets.

**Military Necessity:** Only the amount of force required to accomplish a justifiable military goal may be used. It forbids needless pain and devastation that cannot be justified by military superiority.

**Humane Treatment:** In all situations and without discrimination, everyone who is not actively involved in fighting, including injured soldiers and civilians, must be treated with compassion.

These values form the moral and legal cornerstone of international humanitarian law. In addition to being based on treaties, they have also achieved the status of customary international law, which means that all states and even non-state actors involved in armed conflict must abide by them.

**2.3 Initial Presumptions:** Contemporary Fighters for Inter-State War and Stealthiness. The jurisprudential infrastructure of the Geneva Conventions was premised on a set of assumptions that accurately mirrored the international political context of the mid-20th century. Among these is the idea that what we had were states things with organized armies, borders, a functioning political system that would still fight each other violently. In those scenarios, it was a relatively uncomplicated matter to distinguish between combatants and civilians, with the responsibilities of states able to be preserved by way of international pressure and reciprocal practice.

Reciprocity, indeed, the reciprocity principle that states would comply with the Conventions wishing their enemy to do so, was why we had rules of war in the first place. The concept is most clearly expressed in the Third Geneva Convention's provisions regarding prisoners of war and its reliance on the mutual acknowledgment that combatants are defined by uniformed service.

The current security context, however, places these presumptions in doubt. Out of the formal military chain of command, and often not abiding by the laws of armed conflict: non-state armed groups, rebels and PMSCs often act in a legal vacuum. It is also harder to pinpoint combatant status and apply traditional IHL protections in the absence of uniforms, clear hierarchy or declared loyalties.

Furthermore, the legal environment has become even more complex due to the growing occurrence of proxy and asymmetric warfare. In order to evade direct accountability and obscure attribution, states now use third-party players in armed conflicts, so undermining the fundamental framework that underpinned the Geneva Conventions.

### **III. Contemporary Security Landscape: A Shift from Conventional to Hybrid Warfare**

#### **3.1 The Emergence of PMSCs and Non-State Armed Groups:**

The character of armed conflict has undergone profound transformation in recent decades, fundamentally altering the landscape within which international humanitarian law (IHL) operates. Warfare is no longer the exclusive domain of sovereign states; rather, contemporary conflicts increasingly involve private military and security companies (PMSCs) and a diverse array of non-state armed groups (NSAGs) (Kaldor, 2012; Singer, 2003). These actors, often situated within legally ambiguous and weakly regulated spaces, now participate actively in civil wars, insurgencies, counterinsurgency operations, and, at times, even in international armed conflicts (Clapham, 2012). Their growing prominence reflects the erosion of the traditional state monopoly over the legitimate use of force and signals a paradigmatic shift in the conduct of modern warfare.

Non-state armed groups may be understood as organized entities capable of conducting sustained and coordinated military operations independently of governmental authority. This category encompasses militias, terrorist organizations, rebel movements, and insurgent factions (ICRC, 2016). While many NSAGs pursue localized political objectives, others operate across borders with transnational reach and, in certain contexts, exercise de facto territorial control and perform quasi-governmental functions, including taxation, policing, and the administration of justice (Clapham, 2012; Kaldor, 2012). The entrenchment of such actors has profoundly reshaped the traditional battlefield, as evidenced in contemporary conflicts in Syria, Yemen, and the Democratic Republic of the Congo, where fragmented authority structures and hybrid forms of warfare have become the norm (Mumford, 2013).

Parallel to the rise of NSAGs has been the rapid expansion of private military and security companies as corporate providers of armed protection, combat support, logistics, training, and intelligence services (Singer, 2003; Percy, 2007). The extensive reliance on contractors by the United States and its allies during military operations in Iraq and Afghanistan illustrates the degree to which PMSCs have become embedded within modern military operations (Singer, 2003). Notwithstanding claims by PMSCs that they operate in compliance with domestic and host-state legal regimes, the absence of a comprehensive and binding international regulatory framework raises persistent concerns regarding oversight,

transparency, accountability, and remedies for violations of international humanitarian and human rights law (ICRC, 2009; DeWinter-Schmitt, 2011).

Within contemporary legal and scholarly debates, PMSCs occupy a particularly contested position under IHL. Although they differ from NSAGs in their commercial orientation and frequent contractual relationships with state clients, PMSCs may perform operational functions that are functionally comparable to those of combatants, including armed convoy protection and participation in hostilities (Percy, 2007; Singer, 2003). This functional convergence blurs traditional legal categories of “combatant” and “civilian,” thereby complicating the determination of legal status, attribution of conduct, and the allocation of responsibility for violations of IHL in modern armed conflicts (Sassòli, 2019).

### **3.2 States Using Non-State Actors as a Strategic Tool to Avoid Legal Responsibilities:**

#### **Proxy Warfare:**

Proxy warfare has emerged as an increasingly prevalent feature of contemporary armed conflicts, particularly in geopolitical contexts where direct interstate confrontation would entail significant political, strategic, and legal costs. Proxy warfare refers to situations in which a state pursues its strategic objectives by acting through third parties, including armed groups or non-state actors, in order to weaken, destabilize, or harm an adversary while avoiding direct engagement (Mumford, 2013). By outsourcing the use of force to proxies, states may seek to minimize the risks of attribution under international law and preserve plausible deniability, thereby complicating the assignment of legal responsibility for violations of international humanitarian law (IHL) (Byman, 2018).

Contemporary conflicts provide numerous illustrations of this phenomenon. The rivalry between Saudi Arabia and Iran in Yemen, conducted largely through support for local armed factions, exemplifies how regional powers engage in indirect confrontation through proxy dynamics (Mumford, 2013; Byman, 2018). Similarly, Iran’s support for Hezbollah in Lebanon and Syria, as well as Russia’s backing of separatist forces in eastern Ukraine, demonstrate the strategic utility of proxy relationships in extending influence and shaping conflict outcomes without formally assuming the status and obligations of a belligerent state (Clapham, 2012; Mumford, 2013). These cases illustrate how state actors may effectively coordinate, finance, arm, and guide organized armed groups while attempting to remain legally insulated from the direct consequences of armed conflict.

Under international law, a state may incur responsibility for the conduct of non-state actors where it exercises “effective control” over their operations, as articulated by the International Court of Justice and codified in the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) (International Law Commission [ILC], 2001; ICJ, 1986). However, the evidentiary and political complexities inherent in establishing such control in practice often shield sponsoring states from accountability for violations committed by their proxies. The threshold for demonstrating effective control is high, and the covert nature of proxy relationships further frustrates efforts to attribute wrongful acts to the sponsoring state (Crawford, 2013).

The increasing reliance on proxy forces has consequently undermined the effectiveness of the Geneva Conventions, which are premised upon the clear identification of parties to a conflict and the primary allocation of legal obligations to states as belligerents. Where violence is mediated through third parties and deliberately obscured through indirect engagement, the enforcement of IHL is significantly weakened, and accountability mechanisms are rendered

less effective (Sassòli, 2019). This diffusion of responsibility challenges the foundational assumptions of the post-1949 humanitarian legal order and exposes critical gaps in the capacity of existing legal frameworks to regulate contemporary modes of warfare.

### **3.3 Eroding the distinction between lawful and unlawful actors, combatant and civilian:**

One of the most profound implications of contemporary modes of warfare is the progressive erosion of the formal legal distinctions that lie at the very heart of international humanitarian law (IHL). Among these, the principle of distinction occupies a central position, requiring parties to an armed conflict at all times to distinguish between combatants and civilians, as well as between military objectives and civilian objects (Additional Protocol I, 1977, art. 48; Sassòli, 2019). This foundational principle, which underpins the protective logic of the Geneva Conventions, is increasingly strained by the operational realities of hybrid and decentralized conflicts involving non-state armed groups (NSAGs) and private military and security companies (PMSCs). The growing prevalence of NSAGs and PMSCs has generated considerable uncertainty regarding core legal categories under IHL, including who qualifies as a lawful combatant, who is entitled to prisoner-of-war (POW) status, and who may lawfully be targeted during hostilities (ICRC, 2009; Sassòli, 2019). Members of armed groups often do not wear distinctive uniforms, operate within densely populated civilian environments, and may alternate between civilian life and participation in hostilities the so called “revolving door” phenomenon thereby blurring the line between combatant and civilian status (ICRC, 2009). These operational patterns undermine the practical application of the principle of distinction and significantly increase the risk of misidentification and unlawful targeting and a comparable ambiguity arises in relation to PMSC personnel. Although such employees may carry arms and operate in close proximity to hostilities, they are not formally integrated into the armed forces of a state and thus do not enjoy combatant immunity or automatic entitlement to POW status under the Geneva Conventions (Percy, 2007; Singer, 2003). Depending on the circumstances, they may be classified either as civilians accompanying the armed forces or, in exceptional cases, as mercenaries neither category conferring the full rights and protections accorded to lawful combatants (Geneva Convention III, 1949; Sassòli, 2019). This legal indeterminacy exposes PMSC personnel to heightened legal vulnerability while simultaneously enabling states to deploy them in quasi-military roles without assuming the full spectrum of legal obligations associated with regular armed forces.

The resulting “category fuzziness” significantly heightens the risk of violations of IHL and complicates the attribution of legal responsibility. Civilians may be unlawfully targeted on the mere suspicion of militant affiliation, while PMSC personnel may effectively participate in hostilities without being subject to the disciplinary frameworks and accountability mechanisms applicable to state armed forces (Clapham, 2012; ICRC, 2009). In response to these regulatory gaps, soft-law initiatives such as the Montreux Document and the International Code of Conduct for Private Security Service Providers (ICoC) have sought to articulate standards of conduct and clarify the legal responsibilities of states and PMSCs. However, the non-binding nature of these instruments limits their enforceability and practical impact (DeWinter-Schmitt, 2011; ICRC, 2009).

Taken together, the transition from traditional, state-centric warfare to hybrid conflicts characterized by decentralized and privatized actors compromises both the moral clarity of IHL’s protective regime and the classical legal architecture of the Geneva Conventions. Addressing these challenges requires a careful re-examination of existing legal categories and the progressive development of normative frameworks capable of accommodating the

realities of contemporary armed conflict while preserving the core humanitarian principles of distinction, proportionality, and accountability (Sassòli, 2019).

#### **IV. Legal Challenges to IHL in the Age of Proxies and PMSCs**

**4.1 Legal Protection and Combatant Status:** An important aspect of applying international humanitarian law (IHL) is classifying those involved in armed conflict, especially figuring out who is a legitimate fighter. For legitimate actions of war, lawful combatants are entitled to combatant immunity and prisoner of war (POW) status under the Third Geneva Convention (GC III). A fixed distinctive symbol, open carrying of arms, adherence to the laws and customs of war, and membership in a hierarchical command structure are among the requirements they must fulfill.

These standards are challenged by contemporary conflict situations, which are characterized by the involvement of insurgents and private military and security firms (PMSCs). Since insurgent groups usually operate clandestinely among civilian populations and lack official uniforms or command structures, it is difficult to categorize them under GC III. Similarly, under Article 4A(4) of GC III, PMSC personnel although occasionally armed and carrying out duties akin to those of state soldiers are frequently seen as civilians accompanying the armed forces or maybe mercenaries under Article 47 of Additional Protocol I, which deprives them of POW rights.

As a result, there is a legal limbo in which neither PMSC workers nor insurgents are fully protected or granted status under IHL. Due to the lack of a structured international framework for PMSCs, their employees' legal status is dispersed and reliant on restricted soft law tools like the Montreux Document as well as the national laws of contracting states.

**4.2 Responsibility for Violations of IHL:** Ensuring accountability for IHL violations is another urgent issue in hybrid warfare, particularly when proxies or non-state actors are engaged. Minimum requirements for non-international armed conflicts are outlined in Common Article 3 of the Geneva Conventions, which forbids crimes like murder, torture, and degrading treatment of those who are not actively engaged in hostilities. These safeguards in civil wars and domestic unrest are further explained in Additional Protocol II.

Determining who is legally liable for transgressions by PMSCs or non-state actors is still difficult, though. A state may be held accountable for the actions of a non-state actor if it has "effective control" over the actor, according to international law on state liability, particularly Article 8 of the Articles on the Liability of States for Internationally Wrongful Acts (ARSIWA). However, in the cases of *Nicaragua v. United States* and *Bosnian Genocide*, the International Court of Justice (ICJ) upheld the high bar for demonstrating such control, giving sponsoring nations considerable discretion to reject accountability.

Some accountability for war crimes and serious violations of international humanitarian law has been granted by the International Criminal Court (ICC) and ad hoc courts like the International Criminal Tribunal for the former Yugoslavia (ICTY). The "overall control" requirement for organized armed groups, which is less strict than the ICJ's, significantly loosened the attribution test in the *Tadić* case. However, enforcement is still uneven, and it is challenging for the ICC and domestic courts to bring charges against PMSC personnel or rebel leaders who frequently operate under political protection and across countries.

**4.3 The Distinction under Pressure Principle:** The fundamental tenet of international humanitarian law, the principle of distinction, mandates that parties always make a distinction between civilians and combatants as well as between civilian objects and military objectives. This principle is under tremendous pressure in hybrid warfare because of the intentional deployment of civilian shields by non-state actors and the blending of civilian and military forces.

Since insurgents frequently don't wear uniforms, it's difficult to tell them apart from civilians. For example, armed rebels were integrated in residential neighborhoods in Syria's urban combat setting, increasing civilian losses from artillery and aerial strikes. Serious questions concerning the proportionality and legality of strikes have also been raised by claims that state and non-state forces in eastern Ukraine utilized civilian infrastructure for military objectives.

This situation could be made more complex by PMSCs that operate in conflict areas. Contractors are vulnerable to direct attack when they engage in conflicts with weapons, but their status is unclear when they play an ambiguous function, such as escorting convoys or providing intelligence. Blackwater personnel killed 17 civilians in the infamous Nisour Square massacre in Baghdad in 2007, demonstrating how contractor involvement can result in serious violations with little accountability.

This blurring of the lines puts civilians at higher danger and damages IHL's legitimacy. It demands more precise standards, either in the form of an updated legal code or a global pact outlining the responsibilities and position of PMSCs and proxy combatants under modern IHL.

## **V: Case Studies Hybrid Conflict and the Erosion of IHL**

### **5.1 Ukraine: Russian-Backed Separatists, Wagner Group, and Issues of Attribution:**

The conflict in Ukraine since 2014 offers a compelling illustration of how proxy warfare and the growing involvement of private military actors complicate lawful attribution and accountability under international humanitarian law (IHL). Russia's alleged reliance on the Wagner Group and its support for separatist forces in the Donetsk and Luhansk regions have raised acute concerns regarding state responsibility, combatant classification, and the circumvention of the Geneva Conventions' state-centric regulatory framework (Mumford, 2013; Crawford, 2013). These dynamics exemplify how contemporary conflicts exploit legal grey zones to obscure lines of responsibility and undermine the effective application of IHL.

The Wagner Group, widely characterized as a private military entity with opaque institutional ties to the Russian state, has reportedly played an operationally significant role in hostilities in Ukraine, often performing functions indistinguishable from those carried out by regular armed forces. Despite its formal designation as a non-state actor, evidence of close operational alignment manifested through parallel training practices, logistical support, and coordination of operations which has fuelled claims that Wagner functions, in effect, as an informal extension of state military power (Singer, 2003; Percy, 2007). This deliberate blurring of public and private force allows states to project military influence while maintaining a veneer of legal distance from direct participation in hostilities.

Under Article 8 of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), the conduct of a private actor may be attributed to a state where the actor operates on the instructions of, or under the direction or control of, that state (International

Law Commission [ILC], 2001). The International Court of Justice (ICJ), in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, articulated the stringent “effective control” test for attribution, requiring proof that the state exercised control over the specific operations in which the wrongful acts occurred (ICJ, 1986). In practice, the high evidentiary threshold associated with this standard enables sponsoring states to preserve plausible deniability, thereby insulating themselves from legal responsibility for violations committed by proxy forces.

As a consequence of this attributional ambiguity, the legal status of Wagner operatives under IHL remains highly contested. In the absence of formal incorporation into the armed forces of a state or compliance with the criteria for lawful combatancy, such personnel do not qualify for combatant immunity or automatic entitlement to prisoner-of-war status under Geneva Convention III (Geneva Convention III, 1949; Sassòli, 2019). The deployment of unmarked personnel during the annexation of Crimea which popularly referred to as the “little green men” further exemplifies the strategic obfuscation of combatant identity. This practice undermines the principle of distinction and severely hampers the enforcement of IHL by obscuring the identification of parties to the conflict and the allocation of legal obligations (ICRC, 2009; Sassòli, 2019).

## **5.2 Syria: PMSCs, Proxies, and Multilateral Conflict**

The protracted civil war in Syria constitutes a paradigmatic example of a multilateral proxy conflict in which a complex constellation of state and non-state actors, including private military and security companies (PMSCs), operate concurrently. External state involvement most notably the support extended by Russia and Iran to the Assad government has been counterbalanced by the participation of foreign fighters, Islamist groups, and opposition forces backed by various Western and regional actors (Kaldor, 2012; Mumford, 2013). The multiplicity of intervening actors and the pervasive reliance on local militias and contracted forces have profoundly obscured direct lines of accountability, thereby complicating the attribution of conduct under international humanitarian law (IHL) and diluting the traditional state-centric framework of responsibility (Crawford, 2013; Clapham, 2012).

Reports of Wagner Group operatives engaging in hostilities in Syria, including the protection of strategic energy infrastructure and participation in combat operations alongside Syrian government forces, further exemplify the privatization of force within proxy conflict environments (Singer, 2003; Percy, 2007). The involvement of such private actors reproduces many of the legal challenges observed in the Ukrainian context, including ambiguous command structures, uncertainty regarding combatant status, and persistent allegations of violations of IHL (Sassòli, 2019). The 2018 incident near Deir ez-Zor, in which Wagner-linked contractors reportedly engaged U.S.-backed forces, vividly illustrates the blurring of boundaries between official state military action and ostensibly private participation in hostilities, thereby complicating attribution and accountability mechanisms (Mumford, 2013).

The extensive participation of foreign-supported militias, including Hezbollah and other armed groups aligned with regional powers such as Turkey, further underscores the instrumentalization of proxy warfare to circumvent direct international legal obligations. Such groups have been implicated in practices that contravene core tenets of IHL, including attacks on civilian populations, the occupation and militarization of hospitals and schools, and the entrenchment of armed presence within civilian infrastructure (ICRC, 2016; Sassòli, 2019). These patterns of conduct highlight how proxy dynamics facilitate systematic violations of humanitarian norms by diffusing responsibility across a fragmented array of actors.

Efforts to ensure accountability for violations committed in the Syrian conflict are further hampered by significant jurisdictional and political constraints. Syria's non-ratification of the Rome Statute of the International Criminal Court (ICC) precludes the Court's exercise of territorial jurisdiction in the absence of a referral by the United Nations Security Council. Persistent geopolitical deadlock within the Security Council has, in turn, obstructed meaningful pathways to international criminal accountability, thereby entrenching a climate of impunity (Crawford, 2013; Meron, 2000). This confluence of legal fragmentation and political paralysis exemplifies the structural limits of contemporary enforcement mechanisms and underscores the urgent need for innovative approaches to attribution and accountability in multilateral proxy conflicts.

### **5.3 PMSCs and the Decline of IHL Protections in Sub-Saharan Africa**

The growing participation of PMSCs and the outsourcing of violence has had a disastrous impact on civilian protections and the application of IHL in places like Mali, the Central African Republic (CAR), and Sudan.

In Mali, Wagner operatives sent by the Malian government, supposedly for counterinsurgency operations, coexist uncomfortably with foreign peacekeeping forces. Wagner, however, has been linked to indiscriminate attacks, torture, and killings of civilians, such as the Moura massacre in 2022, which is said to have claimed hundreds of lives. Due to a lack of official protection, jurisdiction, and intentional legal uncertainty, these acts frequently go unpunished.

Similarly, in the Central African Republic, Wagner contractors have conducted military operations alongside national forces and have allegedly exploited natural resources, leading to economic crimes, forced displacement, and ethnic violence. These operations take place under informal arrangements, lacking transparency, oversight, or accountability mechanisms. The absence of robust domestic legal systems, combined with weak international enforcement, has created zones of impunity in these regions. As PMSCs operate in grey zones outside conventional military frameworks, they undermine the Geneva Conventions' aims of ensuring humane treatment and limiting warfare's effects on civilians.

### **5.4 Comparative Analysis: Patterns of Legal Ambiguity and Enforcement Gaps**

Across Ukraine, Syria, and sub-Saharan Africa, several patterns emerge:

1. **Legal Ambiguity:** In all cases, actors operate in legal grey zones where combatant status is unclear, attribution is contested, and accountability is elusive.
2. **Outsourcing of Force:** States increasingly rely on non-state proxies or PMSCs to achieve strategic goals while evading legal responsibility.
3. **Weak Enforcement:** Despite the clear violations of IHL, existing mechanisms such as the ICC, domestic courts, or international tribunals often lack the jurisdiction, evidence, or political backing to act effectively.

This comparative analysis underscores the urgent need for a reinterpretation or expansion of the Geneva framework, with clearer norms addressing the roles of non-state actors and contracted military forces.

## **VI. The Erosion of State Responsibility and the Outsourcing of Violence**

**6.1 Intentional Utilization of Legal Grey Areas:** State Techniques to Avoid IHL Requirements States purposefully act inside legal uncertainties to get around their commitments under IHL, as shown in contemporary wars. States avoid direct attribution of war crimes and preserve a certain amount of plausible deniability by contracting out combat tasks to proxy militias or private military and security firms (PMSCs).

For example, Russia has used the Wagner Group in Syria and Ukraine without formally assuming command responsibilities. This strategy absolves nations of responsibility for IHL violations while enabling them to profit from military outcomes. States frequently remain below this threshold to escape legal repercussions, despite the International Law Commission's Articles on State Responsibility's attempt to bridge this gap through the concept of "effective control."

Asymmetries in treaty ratification and selective application of international law further facilitate this exploitation. As demonstrated in the Syrian crisis, some governments have obstructed accountability mechanisms by using power dynamics at the UN Security Council, while others have failed to ratify or implement pertinent IHL accords.

### **6.2 Command Responsibility Fragmentation: Decentralized Control as a Legal Defense**

Conventional frameworks of international humanitarian law (IHL) presuppose the existence of centralized, hierarchical command structures capable of exercising effective control, discipline, and accountability over armed forces. This assumption is embedded, *inter alia*, in Article 4 of Geneva Convention III, which defines lawful combatants by reference to organized armed forces operating under responsible command and subject to an internal disciplinary system that ensures compliance with the laws and customs of war (Geneva Convention III, 1949; Sassòli, 2019). In contemporary hybrid conflicts, however, these structural premises are increasingly undermined by the fragmentation of command chains and the proliferation of contracted operators, local warlords, and loosely organized militias operating alongside or in lieu of regular armed forces (Kaldor, 2012; Mumford, 2013).

The erosion of centralized command further complicates the application of the doctrine of command responsibility under Article 28 of the Rome Statute of the International Criminal Court (ICC), which imposes individual criminal liability on military commanders and civilian superiors who knew or should have known of crimes committed by subordinates and failed to prevent or punish such conduct (Rome Statute of the ICC, 1998, art. 28). The practical effectiveness of this regime is contingent upon the existence of identifiable chains of command and demonstrable knowledge or control over subordinate forces. Where militias operate in a semi-autonomous fashion or maintain only tenuous and deniable links with governmental authorities, establishing the requisite elements of effective control and *mens rea* becomes evidentially and legally challenging (Crawford, 2013; Clapham, 2012).

States may further exploit these fragmented command arrangements by deliberately externalizing violence to proxy militias and characterizing local fighters as "rogue elements" or "volunteers" acting independently of state direction. The initial denial of Russian involvement in Crimea and the portrayal of Wagner Group operatives as private or non-state actors exemplify how legal ambiguity may be strategically deployed to evade responsibility under IHL (Mumford, 2013; ICJ, 1986). This decentralization and diffusion of control corrodes the concept of "responsible command," a cornerstone of IHL compliance, and

systematically weakens accountability mechanisms designed to deter and punish violations of humanitarian norms (Sassòli, 2019).

### **6.3 Legal and Moral Consequences: Undermining International Law's Legitimacy**

The systematic exploitation of the structural and attributional limitations of IHL carries profound legal and ethical consequences. Persistent non-compliance and the normalization of impunity erode the deterrent effect of the Geneva Conventions, undermining their authority and perceived universality as binding legal instruments (Meron, 2000; Sassòli, 2019). In such an environment, states may come to regard adherence to IHL not as a normative obligation rooted in the protection of human dignity, but rather as a strategic choice contingent upon reciprocity and political expediency. This instrumentalization of humanitarian norms risks fostering cycles of retaliatory violence and reciprocal violations, thereby hollowing out the protective core of the IHL regime.

At a moral level, these dynamics directly compromise the foundational humanitarian principles of civilian protection, humane treatment of detainees, and respect for human dignity. Atrocities committed by proxy militias in contexts such as Mali, as well as the recurrent targeting of civilian infrastructure in conflicts such as Syria, illustrate a marked departure from the ethical commitments that underpinned the post-Second World War humanitarian legal order (Kaldor, 2012; ICRC, 2016). The increasing involvement of PMSCs and proxy forces has, in certain contexts, contributed to what scholars describe as the “normalization of lawless violence,” signalling a regression from the normative advances achieved through the codification of IHL in 1949 and its subsequent development (Meron, 2000).

Moreover, the strategic manipulation of legal ambiguity corrodes trust in international legal institutions and weakens the perceived impartiality and moral authority of IHL. Where legal norms are selectively invoked or circumvented for political ends, particularly in conflicts affecting the Global South, international law risks being perceived as an instrument of power rather than a universal framework of protection (Clapham, 2012). To arrest the further degradation of IHL, the international community must strengthen enforcement mechanisms, close attributional gaps, and clarify the legal obligations of states in relation to proxies, PMSCs, and fragmented armed groups. Absent such reforms, there is a real danger that IHL will become progressively detached from the realities of contemporary conflict and increasingly ineffective in fulfilling its core humanitarian mission (Sassòli, 2019).

## **VII: Reimagining IHL Pathways to Reform and Reinforcement**

### **7.1 Proposals for Reform or Supplementation**

#### **7.1.1 Making Non-State Actors' Combatant Status Clear**

The status of non-state players, such as insurgents and members of private military and security firms (PMSCs), is one of the most important legal issues in contemporary armed conflicts. According to the 1949 Geneva Conventions, only members of state armed forces or organized armed organizations under responsible command who meet specific requirements are granted legitimate combatant status and, consequently, safeguards for prisoners of war (POW).

Actors frequently defy these criteria in modern crisis zones like Syria or Ukraine. In order to specifically address the combatant status and responsibilities of organized non-state armed groups (NSAGs), including requirements for legal recognition, duties of distinction, and

accountability frameworks, scholars and practitioners have suggested either revising Additional Protocol I (1977) or creating a new optional protocol.

A balance between expanding humanitarian rights and not condoning unlawful violence must be struck by such measures. As has been seen in proxy-based conflicts, more precise status designations will lessen the possibility of arbitrary detention, extrajudicial executions, and denial of POW rights.

### **7.1.2 Regulation of PMSCs through New Treaties or Protocols**

The use of PMSCs has outpaced the regulatory reach of existing IHL instruments. While the Montreux Document (2008) offers non-binding guidance on state responsibilities related to PMSCs, it lacks the force of treaty law. Therefore, there is a growing consensus among legal scholars and human rights organisations for the development of a new international treaty or binding protocol regulating the operations, conduct, and accountability of PMSCs.

Such an instrument could:

- Mandate licensing, registration, and oversight by both home and host states;
- Define jurisdictional responsibilities for violations;
- Require transparency in contracting, especially for services related to combat, detention, or interrogation.

The ongoing UN Intergovernmental Working Group on Mercenaries has taken steps in this direction, but political resistance from major powers with vested interests in PMSCs has hampered progress.

### **7.2 The Function of Soft Law and Customary IHL**

Treaty reform is delayed by nature and frequently limited by state sovereignty. In order to close normative gaps and improve compliance, soft law tools like customary international humanitarian law (CIHL) are becoming more and more important.

161 rules that represent widely recognized IHL norms have been identified by the ICRC's Study on Customary IHL; many of these rules can bind non-state actors and are applicable in non-international armed conflicts (NIACs). Regardless of formal treaty ratification, these encompass fundamental principles like differentiation, proportionality, and humane treatment.

Simultaneously, voluntary industry standards, such as the International Code of Conduct for Private Security Service Providers (ICoC), codes of conduct and resolutions from the UN General Assembly add to the expanding body of soft law that influences behavior, fosters accountability, and encourages the internalization of norms.

Despite their lack of coercive authority, these instruments help to establish norms, particularly where treaty legislation is inadequate, disputed, or unenforceable.

### **7.3 Improving Mechanisms for Monitoring and Accountability**

Strong oversight, inquiry, and accountability systems are necessary to implement IHL in contemporary wars. Enhancing the function of international investigative organizations, like the UN Fact-Finding Missions or the Independent International Commission of Inquiry on Syria, by giving them standing mandates and guaranteeing collaboration through Security Council resolutions is a key suggestion.

The International Criminal Court (ICC) must also be empowered through greater political support and cooperation, especially regarding state parties who host PMSCs or benefit from proxy warfare. Complementary approaches include:

- Expanding the use of universal jurisdiction by domestic courts;
- Strengthening the UN Working Group on the Use of Mercenaries;
- Supporting the creation of regional accountability bodies in Africa, Latin America, and Asia.

Digital technologies may also provide new tools for real-time IHL monitoring and evidence gathering, including as block chain-based chain-of-command records, open-source intelligence, and satellite images.

Legal reforms run the risk of being merely symbolic in the absence of meaningful accountability. Therefore, in order to prevent future violations and safeguard victims of contemporary conflicts, every normative progress must be backed with institutional reinforcement.

### **8.1 Synopsis of Findings**

A post-World War II environment marked by conventional, state-based combat was the setting for the 1949 Geneva Conventions and its Additional Protocols. Although these tools have held up well, there has been growing pressure on them to control hybrid conflicts, which are characterized by the growth of proxy forces, private military and security firms (PMSCs), and non-state armed organizations.

This article has shown how the efficacy of International Humanitarian Law (IHL) in contemporary warfare has been severely undermined by legal uncertainties surrounding combatant status, disjointed chains of command, and the breakdown of state accountability. A recurrent pattern of intentional exploitation of legal gray areas, which allows states and non-state actors to avoid accountability for violations of IHL, is highlighted by case studies from Ukraine, Syria, and sub-Saharan Africa.

Furthermore, uncontrolled military outsourcing and civilian-military intermixing are systematically undermining the principle of distinction, one of the fundamental principles of international humanitarian law, resulting in widespread impunity and harm to civilians.

### **8.2 Legal and Policy Suggestions**

A number of focused institutional and normative adjustments are necessary to address these issues:

First, in order to provide consistent protection standards and liability frameworks, it is essential to define the legal position of non-state combatants and PMSC personnel through a new treaty or an optional addendum to the Geneva Conventions.

Second, it is necessary to fortify international regulation of PMSCs by transforming the ICoC and Montreux Document into legally binding agreements with explicit enforcement procedures.

Third, in order to bridge enforcement gaps, accountability institutions like the International Criminal Court (ICC), UN commissions, and national jurisdictions need to be strengthened and better coordinated.

Lastly, in order to close gaps in treaty law and standardize best practices for both state and non-state actors, the role of soft law and customary IHL must be increased. Such reforms are essential to maintaining the legitimacy and moral authority of the international humanitarian system; they are not only legal improvements.

### 8.3 Future Research Directions

The continued outsourcing of armed violence through PMSCs and proxies raises profound questions about the future trajectory of international law. Further research is needed on:

- The long-term implications of privatized conflict for sovereignty, neutrality, and state monopoly over violence;
- The intersection of IHL with emerging technologies such as AI-driven combat systems and cyber warfare tools used by non-state actors;
- Regional responses to hybrid threats, especially from the African Union and other regional bodies, which may offer context-specific innovations in humanitarian regulation.

All things considered, international humanitarian law must change to be applicable in the twenty-first century not by abandoning its fundamental ideas, but by modifying its frameworks to take into account the realities of modern conflict. Maintaining the humanitarian protections that the Geneva Conventions were intended to guarantee will require a renewed dedication to reform, accountability, and ethical clarity.

### Conclusion

Though the Geneva Conventions constitute the very basis of IHL, they are becoming less and less adapted to today's conflicts, particularly those of a proxy nature with PMSCs (Private Military Security Contractors) and non-state actors. PMCs and PMFs are increasingly present taking part and playing a role on modern decentralized battles fields. These developments violate fundamental principles of the Geneva Conventions, including the difference between combatants and non-combatants. 9 Private entities generally do not have the power to issue a uniform, and operate among civilian populations without uniforms, while PMSCs often function in zones of active armed conflict where their combatant status is ambiguous, posing legal difficulties for accountability. This has undermined the basic IHL principle of distinction as states transfer violence to proxies, with corresponding lack of accountability and protection for civilians. Further still, by not having a status that is known, it becomes ever more difficult to apply obligations and privileges of IHL. These are problems that cannot be solved very well without the greater reforms to international law. It is essential on one hand to clarify juridically the status of non-State war actors and on the other to regulate PMSCs under binding treaties. We also need stronger enforcement mechanisms, including an expanded role for international courts and enhanced accountability frameworks." These reforms are necessary to ensure the Geneva Conventions remain relevant in today's age while preserving the humanitarian protections they seek to establish. Without these changes the fundamental humanitarian provisions of the Geneva Conventions are in danger of being outpaced by modern warfare.

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