

WAGNER VERSUS MOZART IN THE UKRAINIAN THEATRE

Vanja Rokvić¹

Faculty of Security Studies, University of Belgrade

Abstract: Privatisation and outsourcing of war have become a feature of contemporary armed conflicts. It is also true for the conflict in Ukraine; the participation of many private military actors has been recorded, of which Mozart and Wagner groups - often called 'orchestra' as well as International Legion of Defence of Ukraine stand out in the Ukraine theatre. On the one hand, private military actors taking part in the conflict on the Ukrainian side are called volunteers, while private military actors participating on the Russian side are designated as mercenaries. Therefore, the question can be asked: 'What is the difference between private military actors participating in the Ukrainian battlefield and how are they treated legally?' In order to answer the asked question, the paper started from the basic definitions of private military actors and relevant legal regulations, and then the most important actors participating in the Ukrainian battlefield were presented, as well as their legal treatment. It is concluded that due to the lack of a binding international regulation in this area, lots of private actors operate in a legal vacuum and that their determination is rather a matter of politics than of law. Therefore, the difference between these actors is the narrative and sentiment that describes them and justifies their engagement.

Key words: private military companies, mercenaries, volunteers, Wagner Group, Mozart Group, International Legion of Defence of Ukraine

Introduction

The participation of private actors (private armies, mercenaries, soldiers of fortune, volunteers, etc.) in armed conflicts is not a legacy of modern times. As Shearer states (1998, p. 69), „private military forces are as old as warfare itself“, or even better illustrates Percy (2007, p. 367) by saying that „mercenaries are referred to as the world's second-oldest profession“. However, with changes in the international and strategic environment at the end of the Cold War, they were given a 'new look' in the form of private business entities.

According to the research of Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (hereinafter referred to as the Working Group)² (United Nations General Assembly, 2022), there has recently been a growing use of private military companies and mercenaries in armed conflicts around the world, as well as increasing indications of human rights violations and provisions of international humanitarian law (such as attacks on civilians and murder of civilians, intimidation, torture, sexual and gender-based violence, forced migration...). Thus,

¹ Contact address: vanjarokvic@fb.bg.ac.rs

² The Working Group was established in 2005 in accordance with UN Human Rights Commission Resolution 2005/2

the use of private actors, as well as numerous allegations of violations of human rights and international humanitarian law, have become a hallmark of the Ukrainian conflict.

Back in 2014, a large number of actors was present in Ukraine, such as the Georgian National Legion, the Right Sector (Pravyi Sektor), the Azov Battalion, Swedish Volunteers for Ukraine (Svenska Ukraina frivillige), French Groupe Union Défense, on the Ukrainian side. Also, there was present a large number of actors on the pro-Russian side, such as Continental Unity (Unité Continentale), Prizrak Brigade, Serbia-Hussar Regiment, 1st Slavic Unit, Batman Unit, Rusich Unit, Ryazan Unit, Wagner Group, etc. (Zivanović, 2018; Murauskaite, 2020; Rękawek, 2022). With the signing of the Minsk Agreement and the adoption of a package of measures for its implementation in 2015, it is predicted that all foreign fighters and formations, as well as mercenaries and illegal armed groups, will be withdrawn from the territory of Ukraine. But, according to Rękawek (2022, p. 45), this provision did not mark the end of foreign fighters, but accelerated their integration into the military and other security forces, since Ukraine adopted legislation that allowed it. Thus, today, the International Legion of Defence of Ukraine is active on the side of Ukraine, composed exclusively of foreigners, and until February 2023, the private military company Mozart Group, founded as an antithesis of the Wagner Group, operated.

On the side of Russia, a large number of private actors participate today, such as numerous volunteer units associated with the armed forces of Russia, as well as 'separate actors', such as Task Force Rusich, Patriot, and from the point of view of this work today the most important private actor – Wagner Group. Originally acting out from the side, as a group of 'little green men' in 2014, Wagner grew into a 'private military company' by the time of the 2022 conflict, or rather an 'army' of 50,000 people participating in the Ukrainian battlefield.

A large number of actors also caused a large number of issues, since private military actors participating on the side of Ukraine are called volunteers, while those who participate on Russia's side are called mercenaries. Therefore, a series of questions arise: how are these actors defined, what is the difference between the actors participating in the Ukrainian battlefield and how are they legally treated? Also, one of the important issues is the responsibility of these actors in terms of violations of human rights and international humanitarian law, which is extremely important if we take into account the data of the UN High Commissioner for Human Rights that 8,400 civilians have been killed and 14,000 wounded in Ukraine so far, and that 621 cases of enforced disappearances and arbitrary detention have been documented. In addition to the above numerical indicators, it is highlighted deliberate targeting of civilians, deprivation, displacement, destructions, torture, sexual violence, as well as violations of the rules of international humanitarian law when it comes to fighters (United Nations Human Rights Office of the High Commissioner, 2023).

In this paper I will try to answer the abovementioned questions, with the focus of the work being on the Wagner Group, the Mozart Group, and the International Legion of Defence of Ukraine, as well as on the difference between mercenaries and volunteers. But first of all, it is necessary to indicate in general the phenomenon of privatisation or self-sourcing of war, basic definitions and legal regulations in this area.

Outsourcing war

Although the first private military company, WatchGuard International, was founded in 1967, their real heyday was in the 1990s. Singer (2005) states that three factors influenced their development in a given period: the end of the Cold War, the changed nature of wars and the general trend of privatisation and outsourcing of responsibilities from the domain of governments around the world. Avant (2005) explains the trend of privatisation of war with the basic principles of the market: supply and demand. This author states that after the Cold War there was a mass demobilisation, which left a large number of people with specific skills and expertise on the market. On the other hand, there was also a demand for such people, since the end of the 90s of the 20th centuries was marked by a large number of armed conflicts, but many countries, due to reform processes, were looking for experts for the training of their armed forces. In addition to demobilisation and increased demand for services, the fact that necessary resources have become available on the market should not be neglected. As an illustration, Singer (2003, p. 54) cites the public auction of Soviet weapons conducted by Germany after reunification, when almost the entire arsenal was sold to private bidders at discounted prices. Today, these resources are available through both the legal and illegal arms trade.

On the one hand, due to the increase in the number of private military companies, and on the other hand, due to their participation in armed conflicts around the world (from the participation of Executive Outcomes in the conflict in Sierra Leone, Sandline Internationals in Papua New Guinea, MPRI in Operation 'Storm' in Croatia, to Blackwaters scandal in Iraq), an academic interest in this topic has also grown. A great number of works are devoted to the general research of the phenomenon of privatisation of war, but also to the research of individual case studies. Since 2014, and especially since 2022, the focus of both researchers and the media has turned to private military actors on the Ukrainian battlefield. In order to adequately analyse them in an academic sense, it is necessary to start from the basic definitions and legal regulation of various private military actors.

According to the definition of the Working Group (United Nations Human Rights Special Procedures, 2018, p. 17) private military company „refers to a corporate entity which provides on a compensatory basis military and / or security services by physical persons and / or legal entities “. In his work, Singer (2003, p. 45) defines these companies as registered, hierarchically organised, and commercial companies that openly offer their specific services on the market. This author classifies private military companies as companies that provide military services (direct participation in military operations), companies that provide consulting services, and companies whose services are limited to providing support for the implementation of military operations.

Today, the largest number of companies can be classified in the second and third category, with the exception of the Wagner Group, which is the subject of this work, and which, in accordance with the activities on the Ukrainian battlefield, is classified as combatant companies. And this on the condition that we can even call Wagner a private military company, since according to Article 13 of the Constitution and Article 208 of the Criminal Code of Russia, military formations that are not defined by federal laws are prohibited: „creation of an armed formation (unit, squad, or any other group) that is not envisaged by a federal law, and likewise operating of such a formation, or the financing thereof - shall be punishable by

deprivation of liberty for a term of two to seven years; participation in an armed formation that is not provided for by a federal law shall be punishable by restraint of liberty for a term of up to three years, or by arrest for a term of up to six months, or by deprivation of liberty for a term of up to five years" (The Criminal Code of the Russian Federation, 1996, art. 208). In other words, private military companies are not legal in Russia.

On the other hand, since 2014, there has been significant pressure in Ukraine to legally regulate this sphere, which led to the submission of the draft Law on Military Consulting Activities to the Parliament of Ukraine (Verkhovna Rada) on 4th February 2020, which represents basis for the legalisation of national private military companies (Sukhankin, 2020). Until the end of writing this paper, I was not able to find information on whether the proposed law was adopted.

Although Russia and Ukraine still do not have legal regulations regarding private military companies, there is a number of countries that do. However, by analysing the national legislations, the Working Group (United Nations General Assembly, 2017) observed numerous shortcomings related to the issue of licensing, company registration, employee verification, use of force and firearms, permitted and prohibited services and activities of companies, obligation to report in case of violation of national and international regulations, as well as shortcomings regarding the responsibility of employees in case of violation of rights, sanctions for perpetrators of criminal acts, as well as access to justice and legal assistance for victims of violence committed by private actors.

In addition to national legislation in individual countries, at the international level there is also the Montreux Document from 2008 and the International Code of Conduct for Private Security Services Providers (ICoC) from 2010. According to the Montreux Document States have a duty to take proper measures designed to prevent misconduct by PMCs and guarantee responsibility for criminal behaviour (Bouchet-Saulnier, 2013). Also, the Montreux Document recalls that PMCs and their personnel must respect international humanitarian law during armed conflicts, regardless of their status (Bouchet-Saulnier, 2013; ICRC & FDFA, 2009). As of April 2023, 58 states and 3 international organisations supported the Document.³ On the other hand, the ICoC refers to private military (and security) companies and obligates the signatory members (companies) to respect the rule of law, humanitarian law, and human rights, especially when they provide their services in a complex environment (International Code of Conduct for Private Security Services Providers, 2021). Unfortunately, these documents are not legally binding. Considering the absence or weak national legislation, as well as the absence of a legally binding international document, experts in the field of international humanitarian law believe that private military companies „operate in a legal vacuum" (Faite, 2004, p. 179).

In public and academic discourse, private military companies, i.e., their employees, are often identified and called mercenaries. Unlike private military companies that are not regulated by the rules of international humanitarian law, the category of mercenaries is defined by Article 47 of the Protocol Additional to the Geneva Conventions - Protocol I (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977, art. 47). In accordance with the aforementioned article, in order for someone to be treated as a mercenary, six criteria

³ See more on: <https://www.montreuxdocument.org/about/participants.html>

must be met: special recruitment of persons locally or abroad to fight in armed conflicts; direct participation in hostilities; the person is motivated to participate in hostilities solely for material gain; the person is not a citizen of a party to the conflict; the person is not a member of the armed forces of a party to the conflict; and he is not sent by another country as a member of its armed forces. According to Protocol I (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977, part 1 article 47) mercenaries cannot be considered combatants or prisoners of war, but that does not mean, as states Fallah (2006), that they are not protected by international humanitarian law. Mercenaries in accordance with Article 75 of Protocol I enjoy fundamental guarantees (Protocol Additional to the Geneva Conventions of 12th August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977, art. 75).

In addition to the criteria prescribed by Protocol I, the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries (United Nation General Assembly, 1989, part 2 article 1), it also adds criteria for the recruitment of persons with the aim of participating „ in a concerted act of violence aimed at: overthrowing a government or otherwise undermining the constitutional order of a State; or undermining the territorial integrity of a State “. What is important to state is that Protocol I only identify the criteria by which someone is considered a mercenary, while the International Convention (United Nation General Assembly, 1989, preamble) also criminalises mercenary activity: „the recruitment, use, financing and training of mercenaries should be considered as offenses of grave concern to all States and any person committing any of these offenses should be either prosecuted or extradited “.

It comes from all the mentioned criteria that a person who participates in an armed conflict and does not fulfil any of them, does not belong to the mercenary category. Percy (2007, p. 369) believes that with this definition of mercenaries, their legal regulation is very weak, which he illustrates with the often-used quote „any mercenary who cannot exclude himself from this definition deserves to be shot-and his lawyer with him “. At the same time, according to Percy (2007, p. 376) defining mercenaries in this way gives states the opportunity to avoid labelling, by integrating foreign fighters into their armed forces, thereby avoiding possible legal consequences. This interpretation of Article 47 is very important to understand issues of volunteers on the Ukrainian side of the battlefield. However, the question of legal treatment of mercenaries in an armed conflict is certainly raised, which largely depends on the type of conflict, the legislation of the countries involved in the conflict, as well as the ratification of relevant documents from this area.

In the case of Russia and Ukraine, both countries have ratified Protocol I and their criminal codes regulate the participation of mercenaries in armed conflicts. According to Article 359 of the Criminal Code of Russia, the hiring and financing of mercenaries, as well as their participation in armed conflicts, is prohibited (The Criminal Code of Russian Federation, 1996, art. 359). According to the definition of this article of the Criminal Code, in order for someone to be called a mercenary, the following conditions must be met: „a person who acts for the purpose of getting a material reward, and who is not a citizen of the state in whose armed conflict or hostilities he participates, who does not reside on a permanent basis on its territory, and also who is not a person fulfilling official duties “. However, Russia has not ratified the 1989 International Convention against the Recruitment, Use, Financing

and Training of Mercenaries.⁴ Therefore, Lawless (2022) states that she is not obliged to criminalise mercenary offenses, cooperate in prevention of such offenses, and notify the UN Secretary-General of potential violations.

Mercenaries are also sanctioned by the Criminal Code of Ukraine. According to Article 447 of the Criminal Code (The Law of Ukraine 2015, art. 447) recruiting, financing, supplying, and training of mercenaries for the purpose of using them in armed conflicts of other states or violent actions aimed at overthrowing of government or violation of territorial integrity, and also the use of mercenaries in war conflicts or operations - shall be punishable by imprisonment for a term of five to ten years. Also, according to the amendments to Article 447 in 2015 (The Law of Ukraine, 2015, art. 447), a mercenary will be released from criminal responsibility for participating in an armed conflict or an act of violence if he voluntarily joins the armed forces. Amendments to the law also established 5 criteria according to which a mercenary is considered to be someone who is specially recruited in Ukraine or abroad; who participates in military or violent acts for the purpose of obtaining a material reward; who is neither a citizen (subject) of the party to the conflict, nor a person who permanently legally resides in the territory controlled by the party in conflict; is not a member of the armed forces of the state on the territory of which such actions are conducted; is not sent by a state that is not a party to the conflict to perform official duties as a member of its armed forces. Ukraine has also adopted legislation enabling the integration of foreigners into the ranks of the armed forces and security forces, which will be presented in the second part of this paper.

The term foreign fighter is often used as a synonym for mercenaries. However, the concept of foreign fighters is not defined by international law, nor there is a generally accepted definition of them. Working Group (United Nations General Assembly, 2015, p. 5) defines foreign fighters as "individuals who leave their country of origin or habitual residence and become involved in violence as part of an insurgency or non-state armed group in an armed conflict." If we look at this definition and the criteria for determining mercenaries, it can be seen that there is not much difference between these two actors. Working Group (United Nations General Assembly, 2015, p. 6) states as a possible difference that foreign fighters can actually be citizens of one of the parties to the conflict, and in those cases when members of the diaspora return to their home country to participate in an armed conflict. Habtom confirmed this in his work (2022, p. 80) with the statement that "wars have the tendency to attract diasporic populations". Some authors (Mehra, Thorley, 2022) believe that the difference between foreign fighters and mercenaries is reflected in the fact that foreign fighters participate in armed conflict for ideological reasons, while mercenaries do so mainly for financial reasons. Researches by the Working Group (United Nations General Assembly, 2015, p. 5-6) showed that such a distinction is not adequate, because the reasons for the participation in the conflict of both mercenaries and foreign fighters are diverse, and often identical. However, a certain difference can be made in the legal sense in the context of the status of a combatant and a prisoner of war, and in those cases where foreigners are integrated into the armed forces of countries participating in an armed conflict. How private actors will be integrated into the armed forces depends solely on the host country, since international humanitarian law does not define the conditions and procedure of integration

⁴ Status as at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-6&chapter=18&clang=en

(Cameron, 2006). At the same time, by the very integration of foreigners into the state armed forces, they no longer fit into the definition of foreign fighters, whose basic determinant is that they are part of an insurgency or non-state armed group in an armed conflict.

After defining private military companies, mercenaries, foreign fighters and presenting the relevant regulations, I return to the issue of private actors participating in the conflict on the Ukrainian battlefield. Who are these actors, how are they defined and legally treated? An analysis of the relevant literature established a large number of actors, such as the Wagner Group, Task Force Rusich, Patriot and numerous volunteer units on the Russian side, as well as the Mozart Group and the International Legion of Defence of Ukraine, on the Ukrainian side. In this paper, attention will be paid to Wagner Group, Mozart Group, and International Legion of Defence of Ukraine.

The Rise of Wagner and the Fall of Mozart

Based on the analysis of works published on the subject of the Wagner Group, Rokvić (2023) states that this actor has its roots in the Slavic Corps (Slavyanskii Korpus) formed in 2013 by the Moran Security Group with the aim of protecting production, transport and processing facilities in Syria oil. The members of the Slovenian Corps were commanded by Dmitry Utkin (Dmitrii Utkin), a former Russian intelligence officer who is believed to have operated under the code name Wagner, after the famous composer Richard Wagner. The first mission of the Slovenian Corps was also his last, but a new organisation was born out of it, which Utkin named the Wagner Group. It is believed that it was formed in 2014 during the annexation of Crimea, but as Rokvić states, it came into the focus of media attention and researchers only in 2017 after an open firefight between the Wagnerites and members of the American armed forces in Deir ez-Zor in Syria. Since 2018, the activities of the Wagner Group as well as the violence against the civilian population perpetrated by the Wagnerites have been recorded in Libya, the Central African Republic and Mali, as well as in other countries where the main financier and leader of the Wagner Group - Prigozhin, exploits natural resources through his companies. Although the role that the Wagner Group plays on the African continent is very significant, a more detailed discussion of this issue goes beyond the scope of this paper. Therefore, I will focus on Ukraine below.

According to Krotkov (2015), the first presence of the Wagner Group in Ukraine was recorded in 2014 during the annexation of Crimea and the conflict in Donbas. Shevchenko (2014) states that the Wagnerites were the part of a group called little green men, which occupied the airport and other important strategic facilities in Crimea. Sukhankin (2019) believes that the engagement of Wagner soldiers in Ukraine in 2014 was only a preparation for researching their capabilities in real conditions and a training ground for strengthening the ability to carry out military operations. In the next few years, as stated in the previous part, the Wagnerites have been engaged in numerous, mostly African countries, so that in August 2022, the massacre of civilians in the Ukrainian city of Bucha would indicate their presence on the Ukrainian battlefield. There are still unconfirmed allegations that exactly the Wagnerites participated in the massacre of more than 300 civilians in Bucha, while, according to Tovar et al. (no date), they led the military operations in Soledar, which led to its conquest. Currently, Wagner conducts most of the military operations in Bakhmut, which

are also linked to allegations of numerous crimes against the civilian population, as well as Ukrainian fighters.

One of the basic questions asked by the Wagner Group is how to define this actor. Bearing in mind that according to Russian legislation, private military companies are prohibited, it does not formally belong to them, nor does it fit into the mentioned definitions of private military companies. It should certainly be noted that in November 2022, the joint stock company 'PMC Wagner Centre' was registered, which according to Tovar et. al (no date) describes its operations as „businesses, management, consulting, publishing, media, and others. “On the other hand, as stated by Miroshnychenko (2023), Prigozhin states the strengthening of Russia's defence capabilities as the basic mission of the Centre. Such a statement by Prigozhin points to the connection between the Wagner Group and the government, as evidenced by numerous literature and research on this topic. It is believed that there is a strong connection between the Wagner Group, the Russian Ministry of Defence and the Russian intelligence community (Rondeaux, 2019; Tovar et. al, no date), which is why some authors believe that Wagner is nothing more than a proxy tool of the Russian government to pursue its interests (Rondeaux, 2019).

Kunkel and Kyle Ellis (2023), on the other hand, believe that Wagner is a quasi-PMC, which these authors define as companies that have strong ties to the host state (the one in which they are based and which supplies them with the necessary resources), that do not have formal registration, and whose members also act as semi-independent actors in other countries. What these authors emphasise as a characteristic of quasi-PMC is that they are significantly more violent than regular PMC. When determining the Wagner Group, one must take into account the fact that, according to estimates, there are around 50,000 Wagnerians operating on the Ukrainian battlefield, of which around 10,000 are professionals, while 40,000 were recruited from Russian prisons (Tovar et. al, no date). Taking into account the number of Wagnerians and the military operations they carry out; it could rather be said that it is a private or mercenary army. But this opens up a new question. According to Protocol I and the national legislation of Ukraine and Russia, can the Wagnerites be classified as mercenaries? The answer to the question will be presented in the second part of the paper.

In response to Wagner, 'a new composer' appeared on the Ukrainian side - Mozart. The Mozart Group was founded in March 2022 as a limited liability company by Andy Milburn and Andrew Bain, former US marines. De facto it was a private military company registered in Wyoming, the USA with the goal „to build sustainable capacity in the Ukrainian military and territorial defence units so that Ukraine can defend itself from Russia's invasion “(Isenberg, 2023). The main role of the Mozart Group was military training and equipping the forces of the Ukrainian territorial defence, as well as collecting financial aid for Ukraine. According to Isenberg (2023), the Mozart Group was not directly involved in combat operations, in order to act in accordance with the U.S. Neutrality Acts by which it was forbidden American citizens to join the armed forces of other countries and to participate in hostilities with countries with which the USA is not at war.

However, very quickly there was a split between the founders, which resulted in the lawsuit Bain vs. Milburn, in the Third Judicial District Court of Wyoming, on 10th January 2023. Isenberg cites several reasons for the lawsuit, including preparations for conducting combat operations, financial fraud, sexual misconduct, avoidance of U.S. regulations, etc. (Isenberg, 2023). Due to numerous problems and reminders of the Blackwaters scandals, the Mozart

Group ceased to exist in February 2023 (Gettleman, 2023). However, with the termination of the Mozart Group, not all private actors on the Ukrainian side disappeared. On the contrary, it is estimated that more than 20,000 foreigners are fighting on the Ukrainian side.

Mercenaries versus Volunteers

The conflict between Russia and Ukraine is characterised by an interstate armed conflict, therefore the relevant Geneva Conventions and Protocol I, ratified by both Russia and Ukraine, apply to it. As the Wagnerians are called mercenaries in academic literature, as well as in media reports, one of the questions that was considered is whether they fall into that category in a legal sense?

Bearing in mind all the mentioned criteria for mercenaries, it can be concluded that the Wagnerites do not meet all the criteria because they are mostly Russian citizens, that is, members of the side in the conflict. Also, it is considered that in the case of Ukraine, earnings are not the only motive for participation in the conflict, but that patriotic motives also dominate (Marten, 2022, p. 4). Therefore, in accordance with Protocol I, as well as the criteria defined by the Criminal Code of Ukraine and Russia, the Wagnerians do not belong to the category of mercenaries. In their analysis of the Wagner Group, Williams and Maddocks (2023) question whether the Wagnerians can be considered combatants and prisoners of war under Articles 43 and 44 of Protocol I. According to Article 43, members of the armed groups of one side in the conflict must be under the command responsibility of that side and are the subject to an internal system of discipline. These authors believe that, regardless of the existing allegations about the connection between the Wagner Group and the Russian government, there are not enough data on the basis of which it could be concluded that the Wagner group is under the command responsibility of Russia. At the same time, it is considered that based on the existing data, it cannot be concluded that there is an internal system of discipline, which also implies respect for the rules of international law in armed conflicts (Williams and Maddocks, 2023).

Bearing in mind the allegations of crimes committed by the Wagnerites, the question of a responsibility and prosecution of these crimes arises. Williams and Maddocks (2023), as well as other authors, such as Miroshnychenko (2023), believe that both individual responsibility and Russia's responsibility for these crimes must be considered. Charamba and Mégret (2023) believe that there is actually no single solution to the Wagner Group issue. The activities of the Wagnerites on the African continent belong to the domain of mercenaries, while these authors believe that in the case of Ukraine, the Wagnerites are no different from regular Russian soldiers. They conclude that in both cases there is an individual and command responsibility for the crimes committed, while in the case of Ukraine this responsibility can also be transferred to Russia. While an individual responsibility for crimes committed in armed conflict applies to everyone regardless of their status, some authors believe that in the case of such crimes, a state responsibility is difficult to prove (Faite, 2004; Fallah, 2006; Cameron, 2006; and others). Williams and Maddocks (2023) state that based on an individual and command responsibility for committed crimes, individuals can be judged in Ukraine, in front of the International Criminal Court or in another state in accordance with the principle of universal jurisdiction. Although neither Russia nor Ukraine is a state party to the Rome Statute of the International Criminal Court, in 2015, by adopting the Resolution 'On the

Declaration of the Verkhovna Rada of Ukraine' - 'On the recognition of the jurisdiction of the International Criminal Court', Ukraine accepted jurisdiction of the court for crimes committed on the territory of Ukraine (Human Rights Watch, 2021). On 20th May 2021, the Parliament of Ukraine adopted the law on amendments to certain legislative acts on the Enforcement of International Criminal and Humanitarian Law, which gave the opportunity to Ukrainian judges and prosecutors to investigate, prosecute and pass verdicts on crimes committed in the context of armed conflict (Human Rights Watch, 2021). In February 2023, the Ukrainian prosecutor initiated a criminal case against Prigozhin (Al Jazeera, 2023).⁵ On the other hand, according to Bouchet-Saulnier (2013, p. 505) „the possibility of triggering responsibility of a State with respect to the conduct of contractors it hires is today very complex in theory and almost impossible in practice “.

An additional problem in defining the Wagnerites and their possible responsibility is the fact that the USA has designated the Wagner Group as a terrorist organisation by law from December 2022 (Congressional Bills S. 5164, 2022). The same decision was made by the Parliament of Lithuania in March 2023 (Radio Free Europe, 2023). Marten (2022) believes that labelling the Wagner Group a terrorist organisation is wrong for several reasons. Namely, if it is considered that the Wagner Group is a tool of the Russian government, then Russia is labelled as a terrorist state, which can have serious implications in the field of diplomacy and international cooperation. This act also blurs the distinction between terrorist acts and war crimes, which are clearly defined by international humanitarian law.

While private actors who participate on the side of Russia are labelled mercenaries in the academic and media discourse, those who participate on the side of Ukraine are called volunteers. Are there double standards or are there valid reasons for this? As I stated, the integration of foreigners into their own armed forces gives countries the opportunity to avoid the label of using mercenaries. After the conflict in Donbas and the signing of the Minsk Agreement, in 2015 the Package of measures for the Implementation of the Minsk agreements (2015, article 10) was adopted, which, by the way, provided for the withdrawal of all foreign formations, military equipment, mercenaries and disarmament of all illegal groups from the territory of Ukraine. Therefore, in 2015, Ukraine adopted Law on Amending Certain Legislative Acts of Ukraine regarding Foreigners and Stateless Persons Serving in the Armed Forces of Ukraine, because of the protection of territorial integrity and inviolability of Ukraine (Verkhovna Rada, 2015). According to the law “foreigners and stateless persons who have entered into a contract for military service in the Armed Forces of Ukraine are considered to be legally temporarily residing on the territory of Ukraine for the duration of the contract”. In accordance with this law, the existing military laws were amended, and according to Nuzov (2022), in 2016, Presidential Decree No. 248 (Decree of the President of Ukraine, 2016) was adopted by which it was confirmed that “foreigners, legally present on the territory of Ukraine, can be accepted for military service on contract with the Armed Forces of Ukraine on a voluntary basis.” According to the data of the Working Group (United Nations General Assembly, 2016), by the end of 2015, all volunteer battalions were incorporated into the armed forces or the National Police and National Guard, which are under the command of the Ministry of the Interior.

⁵ Ukrainian Office of the Prosecutor General also opened a web platform for application and documentation of war crimes and crimes against humanity committed by Russian military in Ukraine. More on: <https://warcrimes.gov.ua/en/>

Shortly after the start of the conflict in 2022, the President of Ukraine formed the International Legion of Defence of Ukraine, as the part of the Territorial Defense Forces of Ukraine, and provided a visa-free regime for foreigners wishing to join the newly formed the Legion. This Legion is composed exclusively of foreigners, estimated to number more than 20,000. On the 'Fight for Ukraine' website created for the recruitment of foreign fighters into the Legion, all relevant information for application as well as contact centres are listed.⁶ If we take into account the Working Group's definition of foreign fighters who join non-state actors in a conflict and the practice of Ukraine, we can conclude that foreigners who fight in regular armed forces do not belong to the category of foreign fighters. In accordance with Protocol, I and other legal regulations, volunteers are not considered mercenaries and have the status of combatants, and therefore, in the case of capture, the status of prisoners of war. Ditrichová and Bílková (2022) confirm this point of view in their analysis.

However, on 3rd May 2022, Russia announced that foreigners fighting on the side of Ukraine in case of capture will not have the status of prisoners of war, but they will be prosecuted as criminals and terrorists (Novoderezhkin, 2022).⁷ The problems of volunteers do not end here, because as stated by Murauskaitė (2020), a lot of countries consider the return of fighters from foreign battlefields, regardless of whether they are called volunteers or foreign fighters, a security risk. Therefore, participation in foreign battlefields is punishable by law in many countries (even prohibited in Great Britain), it is treated as mercenary, and in some countries as an act of terrorism.

Instead of a conclusion

Summarising the above, it can be concluded that in the formal-legal sense there is a certain difference between private military actors. However, as a basic difference between private military actors in the context of armed conflict, and especially on the Ukrainian battlefield, regardless of the existence of weak legal regulation, I can point out the narrative and sentiment that describe them and justifies their engagement (Spencer, 2016). A good illustration of the above is given by Tang (2022) in his work, where he says that in the current conflict, Russia is presented as a world villain - the aggressor, while „the Ukrainians are seen internationally as standing on moral high ground, and, thus, anyone volunteering to support their cause is doing an honourable deed.“

In other words, as Kinsey (2003) writes, distinguishing between private military actors is more of a political than a legal issue. This is evidenced, by the way, by America's decision to declare the Wagner Group a terrorist organisation or Russia's decision that the captured Ukrainian volunteers do not have the status of prisoners of war, but that they will be prosecuted as criminals and terrorists.

What is undeniable when it comes to the privatisation of war is that there is a major failure of the international community since there is no binding international agreement in the field of private military actors, which would be accompanied by appropriate national regulations. Therefore, I conclude the paper with the words of Percy (2007, p. 368) if private

⁶ Data on their number and country of origin can also be found on the website of the Ministry of Defense of Russia See more on: <https://fightforua.org/>

⁷ See more on: <https://eng.mil.ru/files/Number%20of%20foreign%20mercenaries%20in%20Ukraine.pdf>

actors „were deemed to be problematic or unacceptable, states would have responded with effective law designed to control them. “Until the adoption of such a regulation, we remain in a legal vacuum and a grey zone in which the greatest burden is paid by civilians.

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