

THE WAGNER GROUP: OPTIONS FOR JUSTICE

Geneva Academy: IHL Talks

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1. The work and mandate of the WG on the use of mercenaries

Under the resolutions that establish our mandate (UN Human Rights Council Resolutions 42/9 and 7/21) the WG is requested to monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world; their impact on human rights, particularly on the right of peoples to self-determination. We are also **explicitly mandated to study Private Military and Security Companies (PMSCs)**.

Therefore, the mandate is to monitor mercenaries and PMSCs and to act when they commit HR and IHL abuses.

The WG acts either through the system of communications by sending the allegation letters to concerned parties, and by monitoring trends and manifestations and analysing them in our annual reports presented to the Human Rights Council (HRC) and to the General Assembly (GA).

2. The work of the WG conducted in relation to Wagner

The Wagner Group appears to be a “catch-all” term for an entity that provides military and security services in support of Russian foreign policy, or in support of Russian military operations. They also engage in commercial exploitation of natural resources. We have started to address the role of Wagner Group in May 2018, originally led by the former SR on extrajudicial killings Ms. Agnes Callamard and the former WG member Mr. Gabor Rona.

a. The communication on killing of investigative journalist Mr. Maxim Borodin in relation to Wagner presence in Syria, May 2018 (AL RUS 10/2018, 28 May 2018)

The Communication was sent to the Russian Federation requesting clarification regarding the death of Mr. Maxim Borodin a journalist, who had been writing exclusively about the deaths of Russian nationals who were involved in military operations in Syria involving Wagner Group (The clash occurred in the vicinity of Deir al-Zour, a strategic, oil-rich territory). On 13 April 2018, Mr. Maxim Borodin fell out of the window of his fifth floor apartment and sustained serious injuries. He was then brought to a local hospital where he died from his injuries on 15 April 2018.

The press secretary of the Sverdlovsk Region Interior Ministry stated that it was unlikely that his death was of a criminal nature. The experts requested clarification about Mr. Borodin’s death.

b. The communication on killing of 3 journalists (CAR and Russian Federation, AL CAF 1/2018 and AL RUS 23/2018, 23 January 2019)

This letter was in relation to the killings of the three Russian journalists M. Orkhan Djemal, M. Alexandre Rastorguev, et M. Kirill Radchenko, killed in a suspect circumstances while they were investigating the role of Wagner in CAR. According to the information received the letter stated “On 30 July 2018, the journalists were reportedly ambushed and killed near the village of Sibut. Their bodies were found with multiple gunshot wounds, alongside their abandoned vehicle.

Both the Russian Investigative Committee and the Central African authorities have concluded that the journalists died following an armed robbery. However, the experts concluded that the “that the killings may have been pre-planned. They also noted that this [was] the second incident of suspicious deaths of journalists who are engaged in investigative journalism focused on the operations of the Wagner Group.”

c. Communication regarding operations in Libya, 10 June 2020 (sent to the GNA and LNA)

Russian PMSCs and in particular Wagner Group supported the Libyan National Army (LNA). They were deployed on several occasions and on conflict frontlines in Tripoli as snipers contributing to the military capacity of the LNA. The letter addressed the issue of 5 civilian men taken from their houses in the village of Al Sbeaa, near Tripoli, and moved by Russian contractors to several locations in the area with their eyes blindfolded and their hands tied.

We requested among other things, information about abduction, detention and killing of five civilians and we asked for information regarding the state of investigation and the outcomes of these investigations, in particular on remedies to victims.

Press release on peaceful election 30 July 2021

Following continuous evidence of the presence of mercenaries and PMSC in Libya, including the Wagner Group, we issued a press release raising concerns that nine months after the ceasefire agreement, mercenaries and related actors were still operating in the country, and we called for withdrawal of foreign forces and mercenaries from Libya as a vital precondition to peaceful elections.

The peak of our work was reached by the communication sent again in relation to the situation in Central African Republic

d. The Communication from March 2021

In our allegation letter addressed to the CAR government, Russian Federation and Lobaye Invest in March 2021, we identified the following issues:

- Interconnected roles of Sewa Security Services, Russian-owned Lobaye Invest SARLU, and a Russian-based organisation Wagner Group, and their connections to a series of violent attacks that have occurred since the presidential elections on 27 December 2020.
- Proximity and interoperability between Russian contractors and MINUSCA. The blurring of lines between civil, military and peacekeeping operations during the hostilities creates confusion about the legitimate targets and increases the risks for widespread human rights and humanitarian law abuses.
- Specific allegations: mass summary executions, arbitrary detentions, torture during interrogations, forced disappearances, forced displacement of the civilian population, indiscriminate targeting of civilian facilities, violations of the right to health, and increasing attacks on humanitarian actors.

The allegation letters that were sent in relation to this situation triggered a worldwide interest in the Wagner Group, and motivated states and regional organisation to adopt measures regarding this entity. This also paved the way for public reports referring to the role of Wagner. We have received responses from both States denying the role of Wagner Group in the conflict and referring only to “Russian instructors” creating a confusion as to their legal status.

e. The communication from September 2021

We were extremely concerned about intimidation and reports of violent harassment by private military and security contractors against individuals and communities. The “Russian instructors” operating as military and security personnel work closely with the CAR army (FACA) and police, and engage in the arrest and detention of individuals. That means victims often have no access to justice.. Special Commission of Inquiry set up by the CAR government to shed light on violence in the country determined that human rights and international humanitarian law violations have been committed, including by "Russian instructors." However, CAR officials clarified that no foreign military will be subject to investigations and prosecutions, this will for their home states to conduct.

f. The last communication was sent on 13 December 2021 in relation to inaction and failure of Russian authorities to investigate and prosecute alleged torture and forced disappearance of a Syrian national by individuals allegedly affiliated with the so/called Wagner Group (AL RUS14/2021, 13 Dec 2021).

In 2017 and 2019 a video circulated showing the beating, torture and burning of an individual by a man wearing a military uniform and speaking Russian. One of the suspects is allegedly recognized to be affiliated with the Wagner Group which is affiliated with the Russian registered company EvroPolis. On 11 March 2021 a criminal complaint was filed on behalf of the victim’s brother with Russia’s Investigative Committee based on the Russian criminal code (murder, war crimes and mercenarism). Plaintiff’s lawyers faced many challenges. Subsequently, the plaintiff submitted an allegation letter to the WG raising the failure of the Russian Federation to comply with their obligation to investigate and prosecute alleged perpetrators of human rights abuses of a Syrian citizen. The experts expressed grave concern about the initial failure of the Russian Government to investigate the alleged violations and in particular the role of the Wagner Group in this case.

3. The legal elements of the status of Wagner

The Working Group on the use of mercenaries struggled to identify the exact status of the Wagner Group namely for two reasons:

- There is a total lack of transparency regarding the structure, organization and operations of the so-called Wagner Group, reportedly led by former personnel of the Russian armed forces. Difficulties arise in defining this entity, which has been variously described as a private military company, a paramilitary group or semi-State security forces, highlighting the legal ambiguity regarding its formal registration.
- The Russian Government has continually denied the Wagner Group’s existence, thereby creating even more challenges to determining its clients and contracts.
- Under the Russian law the PMSC as well as mercenaries are forbidden.

What have we been able to establish?

- We have been able to establish in some cases that **Wagner Group needs legal structures** in order to enable their financial transactions
- These legal structures are often companies **registred locally**, such as the Lobaye Invest (financing and training of FACA while pursuing the control of mineral resources) registered in CAR but owned by Russian legal entity, M Finance, and Sewa Security (owned by a Russian citizen and registered in Central African Republic), or EvroPolis LLC, a **Russian registered**

company which was contracted by the Syrian government to provide security services, namely guarding of oil and gas facilities in Northern Syria.

- Wagner Group has **strong links with the Russian Federation**. For instance, all entities that we identified in the CAR are **reportedly linked to the Russian citizen**, whose identity is known to the Working Group.
- Wagner Group is **composed mostly of Russian citizens** but regularly recruits from Syria, Libya and other places (CAR AL March 2021).

4. Legal qualification and framework applicable to Wagner

a. Is Wagner a PMSC?

In order to execute its mandate, and in the absence of any international legal definition, the Working Group has its own working definition of what is a PMSC. **The Working Group understands a private military or security company to be “a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities”**. The Working Group then **defines military services** as “specialized services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities”, **and security services** as “armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities”.

Regardless of a “military or security” nature of services, the first criterion is that the entity has a corporate or company structure, which means that it has a transparent legal status under domestic law. According to the Russian Federation¹ the State register of legal entities maintained by the Federal Tax Services of the Russian Federation does not and cannot list such entities [PMSCs] because they are forbidden by the Russian criminal code.

We have not found any legal or formal commercial register regarding Wagner Group. **Therefore, under our qualification, it would seem unlikely that the Wagner Group can be qualified as “company” and cannot be classified as PMSC.**

In the absence of any legal structure, Wagner Group is often linked to other corporate entities such as Lobaye Invest, Sewa Security, EvroPolis LLC or M-Finance.

b. Is Wagner a paramilitary integrated into armed forces under the definition of the art. 4-A-2 GCIII?

Article 4(A)(2) of the Third Geneva Convention of 1949 defines who can be qualified, and be entitled to protection as, a “prisoner of war”:

“Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

- (a) that of being commanded by a person responsible for his subordinates;

¹ Official response in relation to the AL on CAR in March 2021, HRC/NONE/2021/SP/40, p. 2.

- (b) that of having a fixed distinctive sign recognizable at a distance;
- (c) that of carrying arms openly;
- (d) that of conducting their operations in accordance with the laws and customs of war.”

The Wagner Group has been reportedly fighting on behalf of the Russian Federation. In some instances where the Russian Federation is not considered a party to the conflict, the Wagner Group has been fighting in support of national authorities but with the connection to Russia. For instance, according to the Central African Republic official response to the WG: The participation of the Russian instructors [Wagner personnel] in the fighting is justified by their training and operational support missions in the field and in the framework of self-defense.”²

According to the ICRC Commentary of the Third Geneva Convention “for a group to belong to a Party to a conflict for the purpose of Article 4A(2), two things are required. First, the group must in fact fight on behalf of that Party. Second, that Party must accept both the fighting role of the group and the fact that the fighting is done on its behalf.”³

The Russian Federation has been systematically denying the existence of Wagner and its link to the Russian State. Providing support through an intermediary creates distance between the intervening State and the supported party, and may therefore obscure the actual role and responsibilities of the former. In a case of Wagner Group, they are being used precisely with the objective of providing “plausible deniability” of direct involvement in a conflict.

Russian denials of Wagner’s existence and more importantly, denial that Wagner operates at the direction of and under the command of the Russian State is a relevant factor. However, in a same way as a classification of the conflict, we try to determine the status of members of the Wagner Group by examining the facts on the ground and not by referring to declarations of the parties to the conflict.

In application of the art. 4(A)(2), a person belonging to certain **categories of militias or volunteer corps** could be considered belonging to a Party to the conflict and benefit the POW status if they fall into the power of enemy. This category concerns groups that are not incorporated into the armed forces but otherwise belong to the Party. **In some contexts (like CAR or Libya) it appears unlikely that Wagner Group personnel could be considered combatants eligible for POW statutes under the Geneva Conventions because they are classified as NIAC and the PoW does not apply in this type of conflicts. Also Russia is not the Party to those conflicts.**

However, whether in IAC or NIAC, if they “belong to the armed forces” of the State, they are entitled to “combat immunity/privilege of belligerency,” which makes them NOT mercenaries and NOT PMSCs. In such case, they would fall out of the scope of our mandate.

c. Are Wagner personnel mercenaries?

In order to qualify a person as a mercenary, the WG can refer to 3 international legal definitions, namely from the art. 47 AP I, UN Convention and AU Convention. Regretfully, in most cases none of these 3 instruments apply. We tend to refer to the criteria of the art. 47 AP I in order to qualify the

² No o030./MAECE.21, 3 June 2021, p. 4.

³ See para 1005 of the GC III updated commentary <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=1796813618ABDA06C12585850057AB95>

actor for the purposes of our mandate. If the qualification process shows that a person or an entity does not fall within our mandate, the Working Group does not have sufficient link to the mandate (similar to the lack of jurisdiction in the context of courts) and we cannot act on the situation.

The difficulty arises in trying to identify and prove 6 cumulative criteria of art. 47:

- (a) is specially recruited locally or abroad in order **to fight** in an armed conflict;
- (b) does, in fact, take a **direct part in the hostilities**;
- (c) is **motivated** to take part in the hostilities essentially by the desire for **private gain** and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
- (d) **is neither a national of a Party to the conflict** nor a resident of territory controlled by a Party to the conflict;
- (e) **is not a member of the armed forces of a Party to the conflict**; and
- (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

While the law, art. 47, excludes the Wagner group personnel from the mercenary definition in NIAC, we have decided to consider these criteria for the purposes of defining their status in the cases where the Russian Federation is not a party to the armed conflict.

5. Conclusion

In conclusion, States circumvent their humanitarian law obligations by outsourcing core military operations to the private sector. Furthermore, states undermine the humanitarian law and human rights by permitting them to operate with impunity.

Opaque contracting arrangements, sometimes through companies registered in offshore corporate havens that have loose regulatory frameworks enable companies and their clients, including States, to generate profits from private combat activities while evading regulation and legal accountability. Such arrangements also obscure ownership structures, particularly if State officials have stakes in these companies.

In itself, ambiguity over the registration and regulation of private actors that offer combat and combat support services internationally could amount to violations of the positive obligations of States to protect against reasonably foreseen threats to human rights, including the right to life.

An assessment of self-regulatory and voluntary initiatives, shows that they cannot in themselves ensure comprehensive accountability for human rights violations and provide effective remedies for victims. It is necessary to adopt legally binding framework at the international level to regulate PMSCs.

Thank you.