

*Presentation held at the governmental experts' workshop,
16 January 2006, Küsnacht, Switzerland*

**Private Military/Security Companies:
the Status of their Staff and their Obligations under International Humanitarian Law
and the Responsibilities of States in Relation to their Operations**

**Emanuela-Chiara Gillard
Legal Adviser, International Committee of the Red Cross**

Over the last decade and a half, functions traditionally performed by states' security or military apparatuses have increasingly been contracted out to private military/security companies ("PMCs/PSCs"). Whereas the bulk – in dollar-terms at least – of these contracts initially related to logistical or administrative support tasks, the past years have witnessed a significant growth in the PMCs/PSCs' involvement in security and military functions in situations of armed conflict. This involvement goes from the protection of personnel, to that of military assets, the manning of check-posts, the training and advising of armed and security forces, the maintenance of weapons systems, the interrogation of suspects or prisoners, the collection of intelligence and even participation in combat operations. States are not PMCs/PSCs' only clients; these companies also provide a variety of services to private corporations, often in situations of armed conflict.

In view of the increased presence of these relatively new actors, carrying out a range of tasks that is getting increasingly closer to the heart of military operations in situations of armed conflict, including military occupation, and which often puts them in direct contact with persons protected by international humanitarian law ("IHL"), it is natural for the International Committee of the Red Cross ("ICRC") to have commenced a dialogue with these actors and with the states with responsibilities for their operations. The aim of the dialogue is twofold: first, to promote compliance with IHL by ensuring that PMCs/PSCs and the relevant states are aware of their obligations under IHL; and, secondly, to ensure PMCs/PSCs are aware of and understand the ICRC's mandate and its activities for persons affected by armed conflict.

PMCs/PSCs have featured widely in the media in recent months and it is often asserted, both in the popular press and in expert publications, that there is a vacuum in the law when it comes to their operations. In view of this, the ICRC considers it important to emphasise that in situations of armed conflict there is a body of law that regulates both the activities of PMC/PSC staff and the responsibilities of the states that hire them. The states that hire PMCs/PSCs and the staff of PMCs/PSCs them have concurrent responsibilities under IHL. Moreover, states in whose territories such companies are registered/incorporated or operate have a responsibility to ensure respect for IHL by the PMCs/PSCs.

In case of violations of IHL the responsibilities of PMC/PSC staff and of the states that hire them are well-established as a matter of law. Admittedly, difficulties have arisen in bringing proceedings in respect of violations as a matter of practice.

Where it is true that there is very limited law in the field of national or international control of the services PMCs/PSCs may provide and the administrative processes, if any, with which they must comply in order to be allowed to operate. Only a handful of states have adopted legislation laying down procedures that PMCs/PSCs based in their territory must comply with in order to be allowed to operate abroad (eg South Africa and the US) and equally few regulate the companies operating in their own territory (eg. Iraq and Sierra Leone)

The aim of the present note is to briefly outline the ICRC's position on certain key legal issues raised by PMCs/PSCs operating in situations of armed conflict namely: the status of the staff of these companies; their responsibilities under IHL; the responsibilities of the states that hire them; and the responsibilities of the states in whose territory PMCs/PSCs are registered/incorporated or operate.

It should be noted at the outset that IHL does not address the lawfulness or legitimacy of PMCs/PSCs or of states' outsourcing to them of certain activities. Rather, its aim is to regulate the activities of these actors if they are operating in situations of armed conflict. This is consistent with the approach adopted by IHL more generally. For example, it does not address the lawfulness of resort to armed force, but regulates how hostilities are conducted; it does not address the legitimacy of organised armed groups, but regulates how they should fight.

1. THE STATUS OF THE STAFF OF PMCs/PSCs UNDER IHL

It is often stated that PMCs/PSCs do not have a status under international law. From an IHL point of view this is misleading. The companies themselves do not have a status under IHL but their staff does. Admittedly, there is no single simple answer applicable to all PMCs/PSCs staff as their status depends on the nature of their relationship with the state that hires them and on the nature of the activities that they carry out. It is therefore something that must be determined on a case-by-case basis. IHL contains criteria for determining this status as well as the clear consequent rights and obligations.

Before addressing the status of PMCs/PSCs staff under IHL a few words should be said on the question of mercenaries, which although not central to IHL, has focalised much of the debate.

a. Mercenaries?

Discussions of PMCs/PSCs often focus on or at least commence with the politically fraught question of whether the staff of PMCs/PSCs are mercenaries.

Mercenaries are the subject of two specific conventions: the 1977 Organisation of African Unity Convention for the Elimination of Mercenarism in Africa and the 1989 United Nations International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The aim of these instruments is to prohibit the use of mercenaries and to criminalise both resort to mercenaries and participation in hostilities as a mercenary.

IHL tackles the issue of mercenaries from a rather different angle. It does not prohibit the use of mercenaries or criminalise their activities. Instead, it focuses on the *status* to be granted to them if captured. Article 47 of Additional Protocol I lays down a definition of mercenaries – in fact the one subsequently adopted by the two specialised conventions, subject to some

minor changes - and provides that persons falling within this definition are not entitled to prisoner-of-war status if captured.¹

Mercenaries, unlike members of states' armed forces, are thus "unprivileged combatants" and have the same position, rights and obligations as any civilian who directly participates in hostilities.

What does this mean in practice? Members of the armed forces of a state party to an armed conflict have a right to participate in hostilities. If captured, they are entitled to be treated as prisoners of war and are protected by the Third Geneva Convention of 1949. Moreover, they cannot be tried merely for having participated in hostilities.

Mercenaries, on the other hand, are treated in the same way as civilians: they do not have a right to participate directly in hostilities. Should they do so and be captured, they are not entitled to prisoner-of-war status or to the protection of the Third Geneva Convention and can be tried under national law for the mere fact of having participated in hostilities, even though in so doing they did not violate any rules of IHL.

This does not mean, however, that once captured, mercenaries have no protection under IHL. Like all civilians who participate in hostilities, they are protected by the Fourth Geneva Convention, which lays down minimum standards to regulate their deprivation of liberty, as well as minimum judicial guarantees to be respected in any criminal proceedings. Moreover, should the person concerned fall within the exceptions to the Fourth Geneva Convention,² s/he will nonetheless still be entitled to the fundamental guarantees laid down in Article 75 of Additional Protocol I as well as the customary law rules of IHL applicable in international armed conflicts.³

¹ Article 47 of Additional Protocol I provides as follows:

1. A mercenary shall not have the right to be a combatant or a prisoner of war.
2. A mercenary is any person who:
 - (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.

² According to Article 4(1) of the Fourth Geneva Convention, all persons who, in situations of international armed conflict or occupation, at a given moment and in any manner whatsoever find themselves in the hands of a party to the conflict or occupying power *of which they are not nationals* are protected by the Convention. Persons captured by their own state of nationality are thus not protected by the Convention. Article 4(2) also excludes from the protection of the Convention nationals of a state which is not bound by the Convention are not protected by it; and nationals of a neutral state who find themselves in the territory of a belligerent state, and nationals of a co-belligerent state, so long as their state of nationality has normal diplomatic representation in the State in whose hands they are.

³ Article 75 of Additional Protocol I lays down some fundamental guarantees for persons in situations of international armed conflict or occupation who do not benefit from more favourable protection under the four Geneva Conventions or Additional Protocol I. These rights include prohibitions on murder, torture and other forms of ill-treatment as well as minimum due process guarantees.

This being said, it should be noted that Article 47 of Additional Protocol I does not prohibit states from giving mercenaries prisoner-of-war status. It merely provides that mercenaries, unlike members of states' armed forces, are not entitled to it as a matter of right.

Article 47 only applies in international armed conflicts, including during military occupation. IHL is silent as to the position of mercenaries in non-international armed conflicts. As, by definition, mercenaries are not incorporated into the armed forces of a state, in non-international armed conflicts their position will be the same as that of all other persons taking a direct part in such hostilities.

Thus, although entitled to the minimum protections laid down in common Article 3 of the Geneva Conventions, Additional Protocol II and the customary rules of IHL applicable in non-international armed conflict, persons falling within the definition of mercenaries, like anyone other than members of a state's armed forces may be tried under national law for merely taking part in hostilities even though in so doing they did not violate any rules of IHL.

b. Combatants or civilians?

i. Members of a state's armed forces?

A more central question for the purposes of IHL, with very immediate practical consequences for the persons involved, is the status of the staff of PMCs/PSCs: are they combatants or are they civilians? If they are combatants, they can be targeted but, if captured, are entitled to prisoner-of-war status. If they are civilians, on the other hand, they may not be attacked. However, if they take a direct part in hostilities they will lose this immunity from attack and, as already noted, if captured, are not entitled to prisoner-of-war status.

Only members of a state's armed forces are combatants. Therefore, at risk of stating the obvious, as a preliminary point it should be noted that the question of whether they are combatants only arises in respect of the staff of PMCs/PSCs hired by states.

PMC/PSC staff can only be considered members of a state's armed forces if they "form part" of these forces. IHL does not lay down criteria to be met for someone to "form part" of the armed forces of a state. The mere fact that they have been hired to provide assistance to a state's armed forces is not relevant *per se*. Similarly, the nature of their activities, although determinative of whether they are taking a direct part in hostilities for targeting purposes, is also not a key element for determining whether they "form part" of the armed forces.

Instead, possible indicators might include:

For the sake of completeness, reference should also be made to Article 5 of the Fourth Geneva Convention, a provision often referred to in relation to persons accused of being mercenaries, which provides that:

[w]here in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Article 5 goes on to provide that such persons must nevertheless be treated with humanity and, in case of trial, must not be deprived of the rights of fair and regular trial prescribed by the Convention. Moreover, they must also be granted the full rights and privileges of a protected person under the Convention at the earliest date consistent with the security of the state.

- any stipulations of national law on the question;
- whether they are employees of the department of defence – even though in certain cases police regiments, ie employees of the ministry of interior, are considered members of the armed forces under national law;
- whether they are subject to military discipline and justice;
- whether they form part of and are subject to the military chain of command and control;
- whether they are part of the military hierarchy;
- whether they have been provided with the identity cards foreseen by the Third Geneva Convention or other forms of identification similar to those of "ordinary" members of the armed forces; and
- whether they wear uniforms.

The position is unclear. This is unfortunate from both a legal and practical point of view. Whether a person is a member of a state's armed forces or not should be a straightforward determination that can easily be made upon capture so that the person concerned can immediately be granted prisoner-of-war status if s/he is entitled to it.

In any event, as the policy underlying much of the outsourcing of the activities formerly carried out by the armed forces is to reduce numbers of the armed forces and related costs, there are likely to be very few instances in which PMCs/PSCs staff are incorporated into the armed forces to the extent necessary for them to be considered as forming part thereof for the purposes of determination of status under IHL.

For the sake of completeness, a further question that can be raised is whether the staff of PMCs/PSCs could be considered members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party foreseen by Article 4(A)(2) of the Third Geneva Convention. These militia must comply with the following conditions:

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

In terms of legal position, those PMCs/PSCs staff who can be considered as forming part of the armed forces of a state or of militia "belonging" to a party to a conflict can be considered combatants with the consequence that:

- they are legitimate military targets;
- they have a right to take direct part in hostilities;
- if captured, they are entitled to protection as prisoners of war.

ii. Civilians accompanying the armed forces

The Third Geneva Convention establishes a narrow exception to the principle that it is only members of a state's armed forces who are entitled to prisoner-of-war status if captured. In addition to the abovementioned members of the armed forces, Article 4(4) includes among persons entitled to prisoner-of-war status if captured:

[p]ersons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization, from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

Once again, the legal position of persons falling within this category is clear, they are not members of the armed forces and are not combatants but are entitled to prisoner-of-war status if captured.⁴

What is not clear is precisely who falls within this exception. The list of possible activities ("civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces") is indicative, not exhaustive. What other activities could fall within it? The non-combatant status of civilians accompanying the armed forces and the nature of the activities listed by way of example in Article 4(4) would indicate that the drafters had intended that this category of people would not include those carrying out activities that amount to taking a direct part in hostilities.

In view of this, it is unlikely that *all* PMC/PSC staff hired by states would fall within this category. The matter must be determined on a case-by-case basis depending on the nature of the activities carried out. While many of the support functions carried out by contractors for the armed forces doubtlessly do fall within Article 4(4) there are also many others, notably those closer to the heart of military operations, which probably do not.

iii. Civilians

In view of the above, it seems safe to conclude that the majority of PMCs/PSCs staff hired by states can be considered "ordinary" civilians. This is also the status of all PMC/PSC staff present in situations of armed conflict hired by entities other than states party to a conflict, such as companies operating in the state in question, third states, inter-governmental organisations, non-governmental organisations and, as this is not an impossibility, organised armed groups participating in a non-international conflict.

As civilians, the staff of PMCs/PSCs must not be the object of attack. However, if they engaged in activities that amounted to taking a direct part in hostilities, they would lose immunity for the duration of participation. Moreover, as has already been stated, if captured having taken direct part in hostilities, they are not entitled to prisoner-of-war status and could be tried under the national law of the state that is holding them for their participation in hostilities. As already explained in relation to mercenaries, although not protected by the Third Geneva Convention, if they participated in an international armed conflict, such persons would benefit from the protection of the Fourth Geneva Convention, Article 75 of Additional Protocol I and the customary law rules applicable in international conflicts. If they participated in a non-international conflict they would benefit from the protections of

⁴ The one possible legal question that could arise relates to the status of these civilians accompanying the armed forces if they take a direct part in hostilities. On the basis of Article 50 of Additional Protocol I it would seem safe to conclude that if they engage in activities that amount to taking a direct part in hostilities, like any other civilian, they can be targeted during such participation and can be tried for mere participation. ie they forfeit their entitlement to prisoner-of-war status.

common Article 3 of the Geneva Conventions, Additional Protocol II and the rules of customary law applicable in non-international conflicts.

The question of what activities amount to "taking a direct part in hostilities" is obviously crucial to determining the protections to which the staff of PMCs/PSCs are entitled. While this is a question central to the whole of IHL, treaties provide neither a definition nor precise guidance as to the nature of the activities covered. It is generally understood that the commission of acts which, by their nature or purpose may cause actual harm to enemy personnel and *matériel*, amounts to a direct participation in hostilities, while the supply of food and shelter to combatants or generally "sympathising" with them does not. A considerable grey zone exists between these two ends of the spectrum.

The answer is the same as for any other civilian and not just one pertinent to PMC/PSC staff. The conclusions of the series of expert meetings on direct participation in hostilities co-hosted by the ICRC should provide useful guidance.

A detailed analysis of the different activities carried out by PMCs/PSCs in recent years to determine whether they amount to direct participation in hostilities is beyond the scope of the present note. Two points nonetheless deserve to be highlighted.

First, in response to the argument often made that PMCs/PSCs are only providing *defensive* services, it should be noted that IHL does not draw a distinction between offensive or defensive operations. In Iraq PMCs/PSCs have often been retained to protect military installations, such as barracks and military hardware. These are military objectives and defending them amounts to taking direct part in hostilities.

Secondly, even though the staff of PMCs/PSCs may not in fact be taking a direct part in hostilities, they often work in close proximity to members of the armed forces and other military objectives. This puts them at risk of being permissible "collateral damage" in case of attacks.

2. THE RESPONSIBILITIES UNDER IHL OF PMC/PSC STAFF

Regardless of their status – ie combatants, civilians accompanying the armed forces or civilians - like all actors in a country experiencing armed conflict, the staff of PMCs/PSCs are bound by IHL and face individual criminal responsibility for any war crimes they may commit.

What steps can be taken by PMCs/PSCs to ensure their staff respect IHL? This is not addressed expressly in any treaty but, as a minimum, the following elements would seem necessary:

- vetting of staff to ensure they have not committed violations of IHL or relevant criminal offences in the past;
- awareness of IHL: PMCs/PSCs should provide all their staff with general and situation- and task- specific training in IHL. It is not sufficient to rely on training they may have received in their previous careers with the armed forces;
- PMCs/PSCs staff should be issued with standard operating procedures and rules of engagement that comply with the relevant rules of IHL; and

- mechanisms should be established for investigating any alleged violations and ensuring accountability for any violations, including by communicating the results of such investigations to the relevant state authority for prosecution.

3. THE RESPONSIBILITIES UNDER IHL OF STATES THAT HIRE PMCS/PSCS

As stated at the outset, the responsibility under IHL of the staff of PMCs/PSCs exists alongside that of the states that hire them. While some aspects and/or consequences of this parallel responsibility are expressly addressed in IHL treaties, the provisions doing so are just a specific expression of the general rules relating to the responsibility of states for the acts of their agents under general public international law. Moreover, while the present note focuses on IHL, the same principles are also applicable by analogy in respect of human rights law.

a. States cannot absolve themselves of their obligations under IHL by hiring PMCs/PSCs

While IHL does not preclude states from hiring PMCs/PSCs to carry out certain activities, they remain responsible for meeting their obligations under IHL. A failure by the PMC/PSC to comply with the states' obligations will not absolve the latter of their responsibility.

So, for example, if it hires a PMC/PSC to operate a prisoner-of-war camp, a detaining state must still ensure the standards of internment and of treatment laid down in the Third Geneva Convention are met, and cannot avoid responsibility by claiming it has hired a PMC/PSC to do it.⁵

b. States are under an obligation to ensure respect for IHL by the PMCs/PSCs they hire

As is the case for their armed forces, as well as anyone acting on their behalf, states must ensure they respect IHL. As discussed below, states in whose territory PMCs/PSCs operate or are registered/incorporated have a similar responsibility.

What steps can a state take to meet this obligation? Possible measures could include:

- requiring that the staff of PMCs/PSCs they hire are properly trained in IHL. Indeed this is expressly foreseen for persons who assume responsibilities in respect of prisoners of war and protected persons during occupation in Articles 39 and 127 of the Third Geneva Convention and Articles 99 and 143 of the Fourth Geneva Convention respectively; and
- requiring that PMCs/PSCs' standard operating procedures/rules of engagement comply with IHL.

c. States may be responsible for violations of IHL committed by the PMCs/PSCs they hire

States are responsible for violations of IHL that can be attributed to them. These include those committed by:

- their agents, including members of their armed forces,
- persons or entities empowered to exercise elements of governmental authority - even if they act contrary to instructions
- persons acting on the instructions of a state or under its direction or control.

⁵ See, for example, Article 12(1) of the Third Geneva Convention which provides that:

[p]risoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

This is a generally accepted principle of international law, recently re-stated in the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts of 2001.⁶

This responsibility of the state exists alongside the responsibility of the PMCs/PSCs staff and that of the PMCs/PSCs themselves.

While this responsibility of states is well-established as a matter of law, it is often difficult to enforce as a matter of practice both before international tribunals, because of the absence of a body with compulsory jurisdiction and the unlikelihood that another state would commence proceedings and before national courts, where proceedings may be thwarted by the non-self executing nature of IHL in certain states or assertions of sovereign immunity.

d. States must investigate and, if warranted, prosecute violations of IHL alleged to have been committed by the staff of PMCs/PSCs they hire

The Geneva Conventions require states to take measures necessary for the suppression of all acts contrary to the Conventions as well as to search for and bring before their courts persons alleged to have committed grave breaches.⁷ Effectively it requires states to grant their courts universal jurisdiction over grave breaches. This obligation exists for *all* persons and applies *a fortiori* in respect of persons hired by a state. Accordingly, states must establish mechanisms for holding PMCs/PSCs and their staff accountable should they commit violations of IHL.

Various possible parallel avenues for doing so exist, including by means of the civil responsibility of PMCs/PSCs and criminal responsibility of staff members. While the criminal responsibility of individuals is well-established its enforcement in practice has proved problematic for the following reasons:

- PMCs/PSCs and their staff are often given immunity in country where they operate (this was the case in Iraq by means of CPA Order 17);
- courts in countries where the PMCs/PSCs are operating may not be functioning because of the conflict;
- the state hiring the PMCs/PSCs – or indeed any third state, including that where the PMCs/PSCs are registered/incorporated - may be unable/unwilling to exercise extraterritorial jurisdiction over the PMCs/PSCs in civil matters or criminally over their staff;

⁶ See, in particular, Articles 8 and 7 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts

Article 8 - Conduct directed or controlled by a State

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

Article 7 - Excess of authority or contravention of instructions

The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.

⁷ See Article 49 of the First Geneva Convention, Article 50 of the Second Geneva Convention, Article 129 of the Third Geneva Convention, Article 146 of the Fourth Geneva Convention and Article 85 of Additional Protocol I.

- even where the courts of the state hiring the PMC/PSC – or, indeed, any third state on the basis of universal jurisdiction - can and will exercise jurisdiction, much of the evidence and witnesses are in the country where the violations took place, making prosecutions and proceedings complicated.

Problems also arise with regard to the responsibilities of the PMCs/PSCs themselves, as opposed to their staff. First, it is questionable whether PMCs/PSCs are directly bound by IHL, in the same way as states and individuals. Secondly, apart from this question, few states recognise the criminal responsibility of companies. In practice this means that the most likely form of proceedings against PMCs/PSCs are civil rather than criminal actions, which raises a third problem: the fact that while many national courts have extraterritorial criminal jurisdiction, extra-territorial *civil* jurisdiction is very rare.

4. The responsibilities under IHL of the states in whose territory PMCs/PSCs are registered/incorporated or operate

The previous section addressed the obligations of states engaged in armed conflict that hire PMCs/PSCs. Those states have direct obligations and responsibilities. While their responsibilities are evident and clear cut, other states also have a role to play in ensuring compliance with IHL by the staff of PMCs/PSCs operating in situations of armed conflict.

Common Article 1 of the Geneva Conventions requires *all* states to take steps to ensure respect for IHL. States in whose territory PMCs/ PSCs are registered/incorporated or operate are in a particularly favourable position to affect their behaviour.

One way for the state of registration/incorporation to exercise some control and oversight could be by establishing a licensing/regulatory system. A review of existing regulatory systems and of possible elements are beyond the scope of the present paper, which will limit itself to outline possible key elements of a regulatory system. These basic elements could include:

- a prohibition of certain activities (eg direct participation in hostilities unless incorporated in the armed forces of the hiring state);
- a requirement that PMCs/PSCs obtain operating licences based on meeting certain criteria, including for the purpose of ensuring compliance with IHL, requirements that the PMCs/PSCs
 - train their staff in IHL
 - adopt standard operating procedures/rules of engagement that respect IHL
 - adopt appropriate disciplinary measures
- a requirement for authorisation for every contract depending on the nature of the proposed activities and the situation in country where will operate ...
- sanctions for operating without having obtained the necessary authorisations or in violation thereof (eg withdrawal of operating licence, loss of bond, criminal sanction...)

Such a regulatory system should be complemented by a functioning system for bringing to justice persons accused of having committed violations of IHL, including the staff of PMCs/PSCs and, possibly, the PMCs/PSCs themselves in civil proceedings.

Similarly, states in whose territory PMCs/PSCs operate may not only have hired them themselves but may also be “hosting” the PMCs/PSCs hired by others – for example, in Iraq

today there are PMCs/PSCs hired by the US, ie a party to the conflict, by third states not involved in the hostilities, by private companies and by inter-governmental organisations. The points made above with regard to the responsibility of the states of registration/incorporation of PMCs/PSCs are applicable to the "host" state: it too has a responsibility to ensure the respect of IHL and accountability for violations.

Accordingly, such states could also establish a mechanism for registration/licensing of PMCs/PSCs operating on their territory setting out similar requirements with possibly certain more specific ones, for example relating to the type of weapons that can be employed, and also take measures to punish violations of IHL that may be committed.

Obviously, the obligation to comply with the local regulatory framework would not apply to PMCs/PSCs "brought in" by a state fighting against the host state in an international armed conflict.