

ORGANIZATIONAL AND LEGAL MECHANISM OF FUNCTIONING OF PRIVATE MILITARY COMPANIES: IMPLEMENTATION OF INTERNATIONAL EXPERIENCE

ОРГАНІЗАЦІЙНО-ПРАВОВИЙ МЕХАНІЗМ ФУНКЦІОНУВАННЯ ПРИВАТНИХ ВІЙСЬКОВИХ КОМПАНІЙ: ВПРОВАДЖЕННЯ МІЖНАРОДНОГО ДОСВІДУ

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A comprehensive study of international experience and the peculiarities of the functioning of private military companies based on a historical approach. The essential-substantive characteristics of a private military company and the specifics of functioning in conditions of war are carried out and the main functional tasks are singled out. The identification of the impact of the main threats and the tools of the mechanism of providing a private military company in modern transformational conditions are studied. The estimation of volumes of the world market of private military services is established. The experience of the American security company Blackwater and the British G4S has been studied. As a result, the effectiveness of private military companies in two main vectors is proven. It is substantiated that the creation of private military companies requires a legal framework that would clearly regulate their possible use in Ukraine and other countries, and would clearly define the boundaries of what is allowed and what is not allowed.

It is substantiated that direct participation in hostilities, private military companies can be an effective solution in other areas, namely: training of the armed forces and police of Ukraine and friendly foreign countries; protection of Ukrainian diplomats; protection of embassies and consulates of Ukraine abroad; representation of the interests of the Ukrainian Military-Industrial Complex abroad; with sufficient attention from the state, the activities of private military companies have every chance to become one of the most profitable and highly effective areas. It is described that the functioning of private military companies is a powerful leader of foreign policy and a reliable defender of national interests. Based on these two most important vectors of development for any state, even such important issues as providing jobs for discharged servicemen, improving the image of the military and increasing the combat effectiveness of the state are secondary.

Key words: private military company, Wagner private military company, private military business, military sector, Montreux Document, Blackwater Security Company, militarymen, defense, national interest.

Проведено комплексне дослідження міжнародного досвіду та особливостей функціонування приватних військових компаній на основі історичного підходу. Проведено сутнісно-змістовну характеристику приватної військової компанії та специфіку функціонування в умовах війни та виокремлено основні функціональні задачі. Досліджено ідентифікацію впливу основних загроз та інструментарій механізму забезпечення приватної військової компанії в сучасних трансформаційних умовах. Встановлено оцінку обсягів світового ринку приватних військових послуг. Досліджено досвід роботи американської охоронної компанії Blackwater та британської G4S. В результаті чого доведено, ефективність приватних військових компаній у двох основних векторах. Обґрунтовано, що для створення приватних військових компаній, потрібна правова база, яка б чітко регламентувала їхнє можливе використання в Україні та в інших країнах, та чітко визначала би кордони дозволеного і недозволеного.

Обґрунтовано, що безпосередньої участі в бойових діях, приватні військові компанії можуть бути ефективним рішенням і в інших напрямках, а саме: підготовка збройних сил і поліції України та дружніх зарубіжних держав: охорона українських дипломатів; охорона посольств і консульств України за кордоном; представлення інтересів Українського Військово-Промислового Комплексу за кордоном; при достатній увазі держави, діяльність приватних військових компаній має всі шанси на те, щоб стати однією з прибуткових і високоефективних сфер. Охарактеризовано, що функціонування приватних військових компаній це потужний провідник зовнішньої політики держави і надійний захисник національних інтересів. На основі цих найважливіших двох векторів розвитку для будь-якої держави, навіть такі важливі питання як забезпечення робочих місць для звільнених в запас військовослужбовців, поліпшення іміджу військових і підвищення боєздатності держави відходять на другий план.

Ключові слова: приватна військова компанія, приватна військова компанія Вагнера, приватний військовий бізнес, військовий сектор, «Документ Монтре», охоронна компанія Blackwater, військовослужбовці, захист, національний інтерес.

Introduction. International experience shows that the range of uses of private military companies in different regions is quite wide. After all, they are entrusted with the construction of military infrastructure, protection of cargo and diplomatic missions, training and education of military personnel, introduction of military technology and weapons production, intelligence or counterintelligence activities, as well as participation in hostilities and counterterrorism operations which the state cannot officially involve representatives of law enforcement agencies and the armed forces.

It should be noted that private military companies are an effective tool both in the realities of the war in southeastern Ukraine and in future foreign policy, where Ukraine's interests may not always coincide with the letter of international law. The only question is what Ukraine is ready to do to defend its national interests.

The aim of the study is to substantiate the theoretical and historical aspects of international experience and the peculiarities of the functioning of private military companies in modern transformational conditions.

Analysis of recent research and publications. Modern domestic scientists such as B. Andrushkiv, O. Vivchar, L. Holovkova, H. Dmitrenko, H. Kolodko, V. Kirichenko, R. Rivkina, Z. Shershneva, V. Usacheva, Y. Krakosa, Yu. Lavrova, V. Franchuk study the current problems of the functioning of private military companies and others. At the same time, among Ukrainian scientists this issue is insufficiently studied, so it needs research to form a national strategy for the operation of private military companies in modern transformational conditions.

Results of the research. In the context of the hybrid war, the conflict in eastern Ukraine has shown that in addition

to regular and irregular armed groups, private military companies are taking part in it. One of them is Wagner's private military company (PMC), which took part in the armed conflict in Ukraine in the Syrian Arab Republic [3]. Today, about 2,000 mercenaries of this company are in Libya. Turkish President Recep Tayyip Erdogan was outraged by the presence in Russia of Russian mercenaries from the private military company Wagner. He allowed the Ureq troops to be sent to Libya. Erdogan said this at a press conference with Tunisian President Kais Said, reports "Anadolu".

In today's transformational environment, private military companies, often described as modern-day mercenaries, are commercial firms offering military services ranging from combat and military training and consulting to technical support. They are playing an increasing role in armed conflict, UN peacekeeping operations and security in fragile states. The idea of using private military companies in military conflicts is not new. From time immemorial, countries have used mercenaries in their wars. Thus, the involvement of military professional resources (MPRI) helped change the balance of power in the Balkans, which enabled the Croatian military to defeat Serbian forces and pave the way for negotiations in Dayton; in Iraq, the number of private contractors in the field is in the tens of thousands. As they take on more responsibility in conflict and post-conflict situations, their growing importance raises key questions about their nature, their role in different regions and contexts, and their regulation.

Based on research, it has been established that a private military company (PMC) is a commercial enterprise that offers specialized services related to the protection, defense (defense) of someone and something, often with the participation of in military conflicts, as well as intelligence gathering, strategic planning, logistics and consulting [6]. The services and expertise offered by a private military company are usually similar to those of government security services, the military or the police, often on a smaller scale. Although private military companies often provide services to train or supplement official forces in the service of governments, private companies to provide security for key personnel or to protect company premises, especially in hostile territories, may also employ them.

It is impossible to ignore the fact that the existence of private military companies has put on the agenda in many countries many new legal issues, namely: whether the state's monopoly on the legal use of force, measures of state coercion should be limited; how the activities of private military companies differ from mercenaries; under what conditions the employees of these companies can purchase, use, transport weapons and other special equipment; both at the international level and at the national level, the import-export of military services should be regulated; what should be the organizational, financial, legal conditions in order for a private military company not to turn into a gangster group; what professional and intellectual criteria should be applied to employees of private military companies; how the state should control the activities of private military companies, in which cases it should bear material or other legal responsibility for their activities. Experts in the field of private military business emphasize that the key difference between private military companies and mercenary units is that such companies are controlled by the state and work in its interests. Today, the global market for private military services is about 100 billion dollars [4, p. 213–214].

Thus, from a practical point of view, it should be noted that the proper balance between private and public interests is a key issue when the public interest depends on private actors. Achieving this balance is extremely necessary in situations where these private interests affect the basic functions of the state, such as national defense, war and permission for legitimate violence [1, p. 24–25; 2, p. 253]. There is a transition of commercial military forces from mercenaries

to market ones, a private military company tests traditional legal systems based on the assumption that states are the only legitimate participants in military affairs, a key understanding of this is that the existing legal framework already exists. Despite the fact that this structure is uneven, insufficient and insufficiently implemented, it shows progress [7]. We see the need to note the advantages and disadvantages, opportunities and threats of the regulatory environment that affect the activities of a private military company. It should be noted that the governance of the commercial military sector will depend on the interaction between these market regulators and market forces.

It is impossible to ignore the fact that the services of private contractors are used all over the world. PW Singer, author of *Corporate Warriors: The Privatization of the Privatized Military Industry*, says: "...geographically he works in more than 50 different countries. It works on every continent except Antarctica." Singer says there were 50 military personnel for every 1 contractor in the 1990s, and now it's 10 to 1. He also points out that these contractors have a number of responsibilities depending on who they hire. In developing countries that have natural resources, such as oil refineries in Iraq, they are hired to protect the territory. They are also hired to protect service and refurbishment companies such as General Electric. In addition to providing companies, they provide officials and government affiliates. Private military companies perform many different missions and tasks. Some examples include the careful defense of Afghan President Hamid Karzai and the piloting of reconnaissance planes and helicopters in the Colombian Forces. According to a 2003 study, the private military industry was worth more than \$100 billion a year at the time.

According to a 2008 study by the Office of the Director of National Intelligence, private contractors make up 29 % of the workforce in the US intelligence community and cost the equivalent of 49 % of their staffing budgets. According to Brazilian geostrategist De Leon Pett, this does not mean a possible weakening of national government and its monopoly on violence, these private military companies are in fact alternative forms of exercising power abroad by irregular means, without violating international law, causing trouble in domestic or public policy, or causing too many international consequences. The American scientist Phelps makes a similar statement, finding that a private military company is becoming a "cloak of legitimacy" for the governments of the United States. The most famous private military company is the American security company Blackwater. It was founded in 1997. Blackwater took an active part not only in hostilities but also in rescue operations, such as the aftermath of the largest hurricane in US history, Catherine. In 2009 the organization was renamed Xe Services LLC, in 2010 – Academi. Today the company specializes in orders for military operations and cargo escort. Its Blackwater Maritime Solutions unit trains Special Forces of the navies of many countries. The second largest private military company in the world is the British G4S. Its staff is 600 thousand people. Representatives of this company are in 125 countries around the world, including Ukraine. In 2008, G4S began providing security at major music festivals and sporting events. The current practice of legalizing PMCs (their billion-dollar budget) has made them legal in France, Israel, Germany, Indonesia and other countries. Therefore, it was decided to recognize their legislative field on the world stage. Thus, in 2008, 17 states signed the Montreux Document, which defines not only the activities of private military companies, but also the states in which they are registered and the states that use the services of private military companies. It is not legally binding, but has a clear definition of the rules of the game in this market, taking into account international legal obligations and best practices; the number of participants is increasing.

Ukraine has also talked about legalizing private military companies. This is a consequence of the large number of paramilitary formations formed because of the war in Donbass. Nevertheless, it can be a threat to national security. Only clear rules in this area and state control can bring order. In world practice, there is no other way to control the situation than to legislate rules in this area. The problem is growing rapidly. According to the Security Service of Ukraine, the population of Ukraine has about 5 million small arms. Thousands of men and women who were at war and saw death with their own eyes suffered post-traumatic shock. It is difficult for them to return to society, to a peaceful life. Therefore, the news of TV channels is more in the format of a criminal chronicle in which former soldiers often appear. They take part in raids, criminal skirmishes or throw grenades at the feet of their opponents. Experts say that the way out of this situation could be to legalize the activities of private military companies, which will be under the control of the state, where "soldiers of character" will be able to find legal application for themselves [5].

Conclusions. Summarizing the above, it should be noted that private military companies based on international experience could play a positive role. After all, in today's transformational environment, it would be worthwhile to create a network of training centers, and the Ukrainian experience could be important for various foreign armies. And our soldiers who went through the war could find

employment and be very useful in terms of training structures and transferring their experience. And in this way they could use their energy and their militarized spirit for positive purposes, not for war. In our opinion, this is a very important vector of development that needs to be developed. It is impossible to ignore the fact that in order to create your own private military companies, you need a legal framework that would clearly regulate their possible use in Ukraine and other countries, and would clearly define the boundaries of what is allowed and what is not allowed.

Thus, in addition to direct participation in hostilities, private military companies can be an effective solution in other areas, namely: training of the armed forces and police of Ukraine and friendly foreign countries: protection of Ukrainian diplomats; protection of embassies and consulates of Ukraine abroad; representation of the interests of the Ukrainian Military-Industrial Complex abroad; with sufficient attention from the state, the activities of private military companies have every chance to become one of the most profitable and highly effective areas.

The operation of private military companies is a powerful leader in foreign policy and a reliable defender of national interests. Based on these two most important vectors of development for any state, even such important issues as providing jobs for discharged militarymen, improving the image of the military and increasing the combat effectiveness of the state are secondary.

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