

SCHOLARLY ARTICLE

## Private Military and Security Companies as a Legacy of War: Lessons Learned From the Former Yugoslavia

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### Abstract

The war in the former Yugoslavia produced many highly trained and experienced combatants, some of whom engaged not only in a variety of organized criminal activities such as the illicit trade of natural resources, trafficking and corruption, but also war crimes. In the post-war environment various criminal groups took advantage of post-conflict transition conditions which enabled them to be transformed into legitimate legal entities. The failure to investigate and hold to account those involved in criminal activity meant that demobilized soldiers turned to highly profitable, legally constituted private military and security companies (PMSCs). This is coupled with poorly designed security sector reforms that often fail to enhance effective and accountable security that is respectful of human rights. In recent years, similar transformations of many former combatants and criminal groups into legitimate PMSCs around the globe have raised new concerns about their growing activities across different sectors. This article uses the former Yugoslavia as an example from which to highlight some of the increasingly common problems posed by the creation of private military and security providers globally, as a result of the current uncoordinated processes to prevent armed conflicts. The article reflects on the need to avoid smart sanctions and use other foreign policy tools, while calling for an integrated approach to security sector reform and transitional justice that is necessary for sustainable peace.

**Keywords:** Combatants; Economic crime; ICTY; International sanctions; Organized crime; Private military and security companies; PMSC; Security sector reform; Yugoslavia

### 1. Introduction

War and the economy are historically intertwined. Wars can stimulate different economic activities, both legitimate and illicit. Illicit business activities or organized criminal groups exploit the weak governance, violence and corruption of war to profit financially. Frequently, criminal groups emerge in the context of armed conflicts, committing both common crimes (smuggling, corruption, and extraction of valuable resources) and war-related criminality or state criminality (war crimes, crimes against humanity and genocide).<sup>1</sup> War also creates the opportunity for legitimate private military and security

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<sup>1</sup> Jelena Aparac, 'Business and Armed Non-State Groups: Challenging the Landscape of Corporate (Un) accountability in Armed Conflicts' (2020) 5:2 *Business and Human Rights Journal* 270–275. Samuel Tanner and

companies ('PMSCs') to earn massive profits – and sometimes, enter into criminal operations themselves. PMSCs exploit conflict zones around the world for recruitment, offering former combatants the opportunity to become 'soldiers of fortune' or 'mercenaries' both in their home conflict and abroad.<sup>2</sup> PMSCs also come to conflict zones to 'market' their services to warring factions.

This phenomenon is not new, but the international community has neither learned from former conflicts, nor adequately dealt with the past to prevent future conflicts, or similar conduct during conflict. Although PMSCs initially appeared alongside the African independence movements of the 1960s,<sup>3</sup> during the war in the former Yugoslavia, they explored the 'market' and proved valuable in providing various military and security services.<sup>4</sup> By the time PMSCs engaged in wars in Iraq and Afghanistan, it became obvious that their presence would be long-term and that regulation was required.<sup>5</sup> PMSCs have since expanded in terms of the nature of their activities, the contexts of their operations, and their clientele.<sup>6</sup>

The legacy of the war was common to all three countries of the former Yugoslavia (Croatia, Serbia and Bosnia): many former combatants who engaged in criminal activities (organized crimes or crime committed during hostilities), transformed their illegal activities into legitimate private security companies after the war, as the article will demonstrate. Domestic PMSCs filled a security gap that was created by (a) years of fighting and insecurity coupled with (b) weak post-conflict institutions. At the same time, PMSCs provided jobs for former combatants. The United Nations ('UN') Working Group on the Use of Mercenaries ('WGM') noted in 2020 that '[...] armed non-State actors may seek to establish legal entities, for example in the form of private security providers, in an effort to legitimize some of their activities and conceal the involvement of warlords and militia leaders'.<sup>7</sup>

Recent reports on the recruitment of Syrian,<sup>8</sup> Ukrainian,<sup>9</sup> Chadian<sup>10</sup> and Sudanese<sup>11</sup> combatants demonstrate that armed conflicts continue to produce trained combatants who

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Massimiliano Mulone, 'Private Security and Armed Conflict: A Case Study of the Scorpions during the Mass Killings in Former Yugoslavia' (2013) 53 *British Journal of Criminology* 1, 41.

<sup>2</sup> This denomination is not automatic, requiring analysis on a case-by-case basis.

<sup>3</sup> See Sarah Percy, 'Regulating the Private Security Industry: A Story of Regulating the Last War' (2012) 94:887 *International Review of the Red Cross* 941–960; Corinne Bara and Joakim Kreutz, 'To Buy a War but Sell the Peace? Mercenaries and Post-Civil War Stability' (2022) 31:3 *Security Studies* 417–445.

<sup>4</sup> Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Cambridge: Polity Press, 1999). See also Marcus Mohlin, 'Commercialisation of Warfare and Shadow Wars: Private Military Companies as Strategic Tools' (2014) 2:9 *St Antony's International Review* 24–38; Daria Davitti, 'The Rise of Private Military and Security Companies in European Union Migration Policies: Implications under the UNGPs' (2019) 4 *Business and Human Rights Journal* 33–53.

<sup>5</sup> Ori Swed, 'The Global Expansion of PMSCs: Trends, Opportunities and Risks', Inputs for the Call for Submission for the Working Group on the Use of Mercenaries, August 2020, available at <https://www.ohchr.org/en/calls-for-input/report-evolving-forms-trends-and-manifestations-mercenaries-and-mercenary-related> (accessed 4 December 2022).

<sup>6</sup> Sarah Percy, note 3. The only UN entity with the specific mandate on mercenaries and private military and security companies ('PMSC') is the UN Working Group on the Use of Mercenaries. See their reports page: Human Rights Council, 'Annual Thematic Reports: Working Group on the Use of Mercenaries', <https://www.ohchr.org/en/special-procedures/wg-mercenaries/annual-thematic-reports> (accessed 3 April 2023).

<sup>7</sup> *Ibid.*, para 61.

<sup>8</sup> Syria Justice and Accountability Centre and Syrians for Truth and Justice, 'Mercenarism in Syria: Predatory Recruitment and the Enrichment of Criminal Militias' (May 2021), <https://syriaaccountability.org/mercenarism-in-syria-predatory-recruitment-and-the-enrichment-of-criminal-militiasenrichment-militias/> (accessed 17 November 2022).

<sup>9</sup> See Tanya Mehra and Abigail Thorley, 'Foreign Fighters, Foreign Volunteers and Mercenaries in the Ukrainian Armed Conflict', *ICCT* (11 July 2022), <https://www.icct.nl/publication/foreign-fighters-foreign-volunteers-and-mercenaries-ukrainian-armed-conflict>; Robert Lawless, 'Are Mercenaries in Ukraine', *Lieber Institute Westpoint* (21 March 2022), <https://lieber.westpoint.edu/are-mercenaries-in-ukraine/> (accessed 4 December 2022).

<sup>10</sup> Alexandre Bish, *Soldiers of Fortune, the Future of Chadian Fighters After the Libyan Ceasefire* (Geneva: Global Initiative Against Transnational Organized Crime, 2021).

<sup>11</sup> Working Group on the Use of Mercenaries, Communication AL LBY 1/2020 (10 June 2020).

can be hired across conflicts and regions. This also demonstrates considerable changes and trends in the nature of the conduct of war, such as the increasing demand for mercenary-related actors in contemporary conflict, and the proliferation of armed non-state actors such as PMSCs.<sup>12</sup> Concurrently, the patterns of recruitment of actual or former combatants have not significantly changed since the war in the former Yugoslavia, and since the adoption of the Montreux Document and the Code of Conduct. If, post-conflict, combatants are not properly reintegrated into civil life, it is very likely that some of them will seek to profit from lucrative opportunities offering military and security services in their country or abroad.

Post-conflict processes that reintegrate former combatants into civil life through a set of inter-related measures around security sector reform and transitional justice, are critical to the consolidation of sustainable peace.<sup>13</sup> Stable institutions and democratic governance post-conflict societies require disarming former combatants, then establishing and maintaining security.<sup>14</sup> The process for building sustainable peace and stability in post-conflict Croatia, Serbia and Bosnia and Herzegovina, took place through different approaches and with varying levels of involvement by external actors.

The field of private military and security companies is a special branch of the more general field of business and human rights.<sup>15</sup> At the international level, there are no legally binding instruments regulating PMSCs. The two main multi-stakeholder voluntary initiatives that address this gap in international law are the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict* ('the Montreux Document') (2008)<sup>16</sup> and *International Code of Conduct for Private Security Service Providers* ('the Code of Conduct') (2010).<sup>17</sup> The Montreux Document contains a compilation of international humanitarian law provisions pertaining to PMSC activities. It is primarily addressed to States, not to PMSCs themselves. Its effect is limited, because it only applies in armed conflict situations, despite the widespread use of PMSCs in non-conflict contexts.<sup>18</sup> The Code of

<sup>12</sup> General Assembly, 'Report of the 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, The Evolving Forms, Trends and Manifestations of Mercenaries and Mercenary-related Activities', A/75/259 (28 July 2020).

<sup>13</sup> Office of the High Commissioner for Human Rights, *Thematic paper: Peacebuilding, Sustaining Peace and Transitional Justice* (Geneva: OHCHR, 2020).

<sup>14</sup> Working Group on the Use of Mercenaries, note 12, paras 48, 55–57.

<sup>15</sup> There are currently two ongoing processes concerning the draft treaty. See Human Rights Council, 'Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights', A/HRC/26/9 (26 June 2014). See also, Human Rights Council, 'Mandate of the open-ended intergovernmental working group to elaborate the content of an international regulatory framework on the regulatory, monitoring and oversight of the activities of private military and security companies', A/HRC/36/11 (28 September 2017). See Human Rights Council, 'Third session of the Open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies', Office of the High Commissioner <https://www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index/3rd-session-IGWG-military> (accessed 5 July 2022).

<sup>16</sup> See The Federal Department of Foreign Affairs (FDFA) and the International Committee of the Red Cross, *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict* (hereafter the Montreux Document) (Bern and Geneva: FDFA and ICRC, 2008).

<sup>17</sup> See International Code of Conduct for Private Security Service Providers (hereafter the Code of Conduct) (adopted in 2010).

<sup>18</sup> The good practices section of the Montreux Document is a good reference for clients and PMSC that can also be applicable in peace time. See also The Montreux Document Forum, 'The Montreux Document on Private Military and Security Companies: About the Document', <https://www.montreuxdocument.org/about/montreux-document.html> (accessed 15 February 2022).

Conduct sets responsibilities and standards relating to human rights and good governance principles. The Code of Conduct directly addresses member companies, regardless of the identity of their clients.<sup>19</sup> However, the Code of Conduct only refers to private *security* providers and excludes private *military* companies from its scope.<sup>20</sup>

The UN Working Group on the use of Mercenaries is the only UN entity specifically tasked to monitor PMSCs and their human rights abuses globally.<sup>21</sup> The WGM defines a PMSC as ‘a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities’.<sup>22</sup> It 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’.<sup>23</sup>

Following the adoption of the Montreux Document and the Code of Conduct, the global consensus was that the industry was sufficiently regulated. However, the absence of any oversight mechanisms accompanying those initiatives meant that the PMSC industry continued to develop, enlarging their sectors of activities ranging from migration and border management to protection of extractive sites, and diversifying their clients among state and non-state actors. Although client needs and international security concerns transformed the PMSCs’ operations, some elements remain consistent across the industry; PMSCs regularly draw their work force from former combatants, who are experienced in armed conflict. In some instances, criminal groups can be contracted by parties to armed conflict or be transformed into paramilitary units. Increasingly, crime becomes interwoven with war economies in contemporary conflicts.

What lessons can we learn from the Yugoslav conflict in terms of preventing the former combatants from engaging with private military and security companies and how can we avoid the transformation of illegal economic activities into legitimate commercial PMSCs? What is required to effectively regulate PMSCs in future conflicts? This article uses the ‘Yugoslav example’ to highlight increasingly common problems posed by PMSCs in conflict environments, namely the predatory recruitment of combatants and the growth of PMSCs around the world. This article further emphasizes the need to adopt a comprehensive approach to security in post-conflict societies and calls for a multi-faceted approach to the transition process.

Four points are of note. First, the involvement of the international community has been impressive, ranging from military, diplomatic, economic and peacekeeping interventions, and yet, none of these interventions addressed the recruitment of active and past combatants, or their transformation into PMSCs. Second, it was during the Yugoslav conflicts that PMSCs inaugurated their first real transnational business activities and ‘tested’ the commercial opportunities that arose out of the conflict and war economy. Third, the UN Security Council established the first international criminal tribunal since the

<sup>19</sup> Code of Conduct, note 17, Preamble, paras 3 and 6.

<sup>20</sup> Code of Conduct, note 17, Preamble, para 1.

<sup>21</sup> Human Rights Council, ‘The Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination’, A/HRC/RES/42/9 (26 September 2019).

<sup>22</sup> Human Rights Council, ‘Report of the 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’, A/HRC/15/25 (5 July 2010), annex, art 2.

<sup>23</sup> *Ibid.*

Nuremberg Tribunal, the International Criminal Tribunal for the former Yugoslavia (ICTY), and considerable efforts were invested in addressing the past and transitional justice. Yet, this was done without analysing the link between the combatants, organized armed groups and the war economy. Last, the context in the former Yugoslavia is often cited as the *naissance* of a new form of wars, where transnational and international crimes are inter-related. The lack of study and, consequently, the lack of a deeper understanding of the transformations of ex-combatants, mercenaries and criminal groups into ‘corporate warriors’ and legitimate PMSCs, allows for similar patterns to be repeated in other conflict and post-conflict contexts, such as Syria, Libya, Central African Republic, Nagorno Karabagh or Ukraine. While PMSCs have adapted to different crises and continuously expand their field of activities, doctrine and policy have not followed their rapid evolution.

Drawing on the Yugoslav example, the article argues that in order to address and prevent the growth and use of PMSCs in conflict and post-conflict societies, there is a need to adopt a set of measures across inter-related pillars of justice, rule of law and security sector reform. In Part II, the article provides a general overview of conflict dynamics. In Part III, the article studies the limits of international sanction regimes and their negative impacts, which stimulate the criminal networks among combatants and PMSCs around the world. Part IV explores the limits of international criminal prosecutions in addressing organized crime and private military and security contractors, in particular when transnational crimes and international crimes are intertwined. In Part V the article demonstrates that in order to avoid the transformation of criminal organizations and informal economies into legitimate for-profit companies, there is a need for a broader approach to security sector reform (‘SSR’). This should include the disarmament, demobilization and reintegration (‘DDR’) of all sorts of combatants, private or public, state or non-state and PMSC personnel. The article suggests that relevant and timely lessons can be learned to avoid further privatization of wars and to achieve longer-term peace and security. These lessons should be reflected by the broader doctrine around Business and Human Rights in Armed Conflicts and should be considered for discussion by the UN Open-ended Intergovernmental Working Group on PMSCs, which is currently developing a regulatory instrument for PMSCs.<sup>24</sup>

## II. The Yugoslav Conflict: The Context for Production of Combatants

The Yugoslav wars were among the bloodiest wars in Europe since World War II<sup>25</sup> and a turning point in the transformation of modern conflicts globally.<sup>26</sup> As such, they provide important lessons for future regulation of PMSCs. The Yugoslav Federation embarked on a series of secessions of its former republics that declared independence and were subsequently recognized as sovereign States.<sup>27</sup> This process of dismemberment of the federal state was accompanied by the violent conflict that took place between 1991 and

<sup>24</sup> See the Revised Zero Draft Instrument on an international regulatory framework on the regulation, monitoring of and oversight over the activities of private military and security companies, available at <https://www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index/3rd-session-IGWG-military> (accessed 3 January 2024).

<sup>25</sup> See Security Council, ‘Letter Dated 24 May 1994 from the Secretary-General to the President of the Security Council’, S/1994/674 (27 May 1994), [https://law.depaul.edu/academics/centers-institutes-initiatives/international-human-rights-law-institute/publications/Documents/europe/Secretary\\_General\\_letter.pdf](https://law.depaul.edu/academics/centers-institutes-initiatives/international-human-rights-law-institute/publications/Documents/europe/Secretary_General_letter.pdf).

<sup>26</sup> Kaldor, note 4.

<sup>27</sup> International Court of Justice, ‘Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)’, Judgment of 26 February 2007, paras 88–99; Theodor Meron, ‘Breaking Developments in International Law: A Conversation on the ICJ’s Opinion in Bosnia and Herzegovina v Serbia and Montenegro’ (2007) 101 *Proceedings of the Annual Meeting (American Society of International Law)* 215–228.

1995 involving Croatia, Bosnia and Serbia, and again in 1999 involving Serbia and Kosovo.<sup>28</sup> The international engagement in the war was considerable, ranging from diplomatic initiatives, a full-scale embargo imposed by the EU and the UN, the implementation of a peacekeeping mission with a large mandate, the establishment of an international criminal tribunal through the Security Council resolution and lastly, the use of force by NATO in 1999 that is still debated today, making the Yugoslav wars an important case to study. Despite wide-ranging legal, military and diplomatic tools at their disposal, States have not managed to adequately address security sector governance because they have failed to successfully manage the post-conflict reintegration of former combatants into civilian life. Additionally, the conflict provided opportunity for international PMSCs to directly intervene, create partnerships with local PMSCs, recruit new employees and build new business activities.<sup>29</sup> This led to an increase in PMSCs in the region and worldwide.<sup>30</sup>

It can be said that conflicts stimulate the ‘production of combatants’. In the Yugoslav example, the United Nations Commission of Experts’ final report identified various arrangements including ‘at least 83 identified paramilitary groups operating in the territories of the former Yugoslavia’, of which some 56 were working in support of the Federal Republic of Yugoslavia and the self-declared Serbian Republics; 13 were supporting the Republic of Croatia; and 14 were supporting Bosnia and Herzegovina (‘BiH’).<sup>31</sup> According to the Commission, the number of paramilitary groups and their size varied throughout the course of the conflict; in particular, the number grew when the conflict intensified. However, these were only ‘a rough approximation of paramilitary troop strength’.<sup>32</sup> The estimated number of people fighting in paramilitary groups ranged from 4,000 to 6,000 in support of BiH; between 12,000 and 20,000 supporting Croatia; and between 20,000 and 40,000 paramilitaries fighting on behalf of the self-declared Serb Republics.<sup>33</sup> In addition, there were groups consisting of people who had been drawn from outside the former Yugoslavia. According to the same report, ‘there were the Mujahedin groups (operating with the Bosnian Army), the Garibaldi Unit (an Italian unit operating alongside the Croats) and Russian Mercenaries (operating in conjunction with the Serbs).<sup>34</sup> There are also general reports of the presence of mercenaries from Denmark, Finland, Sweden, the United Kingdom, and the United States’.<sup>35</sup> There are no exact numbers of actively engaged combatants throughout the war years, only some scattered statistics from various sources.<sup>36</sup> No complete study has ever been conducted to understand the exact type of

<sup>28</sup> Given the intensity of those conflicts, it was challenging to settle on the legal qualifications of the conflict. ICTY, *The Prosecutor v Duško Tadić Tadić*, Trial Chamber I, Judgement, IT-94-1-T (7 May 1997), paras 561–571. See also ICTY, *The Prosecutor v Zejnib Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo*, Celebici case: the Judgement of the Trial Chamber, Judgement, IT-96-21-T (16 November 1998), para 234; ICTY, *The Prosecutor v Zlatko Aleksovski*, Trial Chamber I, Judgement, IT-95-14/1 (25 June 1999), para 46; and the Joint Opinion of the Majority, Judge Vohrah and Judge Nieto-Navia, on the Applicability of Article 2 of the Statute.

<sup>29</sup> See also Mohlin, note 4.

<sup>30</sup> *Ibid.*

<sup>31</sup> Security Council, ‘Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992): Annex III.A Special Forces’, S/1994/674/Add.2 (vol I) (28 December 1994).

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.* See also Iva Vukusic, *Serbian Paramilitaries and the Breakup of Yugoslavia State Connections and Patterns of Violence* (London: Routledge, 2022).

<sup>36</sup> There are no exact figures on how many combatants engaged with different parties and armed groups in the conflict. Some estimations are that at least to 425,000 combatants were active in Bosnia and Herzegovina during the active conflict, see Tobias Pietz, ‘Demobilization and Reintegration of Former Soldiers in Post-war Bosnia and Herzegovina, An Assessment of External Assistance’, Institut für Friedensforschung und Sicherheitspolitik (2004), <https://www.files.ethz.ch/isn/15911/hb135.pdf> (accessed 25 January 2024).



combatants, their subsequent dealings and their post-conflict reintegration outcomes.<sup>37</sup> Many of the former soldiers transformed into private 'for-hire' individuals and can still be found in the domestic and international markets.<sup>38</sup>

The Yugoslav wars also created further opportunities for armed groups to expand their capacities into criminal enterprises. The embargo imposed by the European Union ('EU') and the UN from 1991 to 1995 in Croatia, Serbia and Bosnia created a space for various illegal economies and organized crime, allowing parties to sustain their military capacities.<sup>39</sup> These criminal groups operated through various factions such as paramilitary groups, formal combatants integrated into the armed forces of States involved in the hostilities, and underground criminal networks. Their networks were active across the region and across economic sectors, e.g., trafficking of oil, people, cigarettes, oak, and vehicles.<sup>40</sup>

Establishing truth and addressing conflict-related criminal conduct is a fundamental aspect of the transition to peace and dealing with the past.<sup>41</sup> Demobilization can often be hindered by fear of prosecution and, conversely, a lack of prosecution and amnesty laws can facilitate the transformation of formerly illegal economic/criminal actors into powerful legitimate companies. Furthermore, both international and domestic justice proceedings have primarily focused on individual criminal responsibility and the role of the individuals in international crimes, rather than corporate or economic crimes. Even in cases where funding and other financial aspects were examined during trial (including examination of economic dynamics in the commission of mass crimes), neither domestic courts nor the International Criminal Tribunal for the former Yugoslavia ('ICTY') prosecuted economic crimes (ICTY had very limited jurisdiction over those crimes). It is a disturbing reality that criminal groups profit economically from armed conflicts around the world. Their financial interests can prompt direct engagement in combat activities to preserve illicit business activities or interests, thus creating inter-relations between organized crime and international crime.<sup>42</sup>

<sup>37</sup> See the efforts of the researcher Iva Vukusic, The Center Dokumenta-Dealing with the Past in Zagreb, 'Home', <https://documenta.hr/en/> (accessed 25 January 2024); Humanitarian Law Centre, 'About us', [http://www.hlc-rdc.org/?page\\_id=14390&lang=de#:~:text=Humanitarian%20Law%20Center%20\(HLC\)%20was,Bosnia%2C%20and%20later%20in%20Kosovo](http://www.hlc-rdc.org/?page_id=14390&lang=de#:~:text=Humanitarian%20Law%20Center%20(HLC)%20was,Bosnia%2C%20and%20later%20in%20Kosovo) (accessed 24 January 2024).

<sup>38</sup> See for instance: Mladen Obrenovic, 'As Ukraine Conflict Intensifies, Serb Volunteers Prepare for Battle', *Balkan Insight* (16 April 2021), <https://balkaninsight.com/2021/04/16/as-ukraine-conflict-intensifies-serb-volunteers-prepare-for-battle/> (accessed 24 January 2024); Asya Metodjeva, 'Balkan Fighters in Eastern Ukraine: Why Are They There?', *Riddle* (29 April 2019), <https://ridl.io/en/balkan-fighters-in-eastern-ukraine-why-are-they-there/> (accessed 24 January 2024); Catherine Bond, 'Zairian Recounts Torture by Serb Mercenaries', *CNN* (19 March 1997), <http://edition.cnn.com/WORLD/9703/19/zaire.mercenary/index.html> (accessed 4 December 2022).

<sup>39</sup> Kaldor, note 4.

<sup>40</sup> Robert Muggah and Chris O'Donnell, 'Next Generation Disarmament, Demobilization and Reintegration' (2015) 4:1 *Stability: International Journal of Security & Development* 3.

<sup>41</sup> Reto Rufer, 'Disarmament, Demobilisation and Reintegration (DDR): Conceptual Approaches, Specific Settings, Practical Experiences', DCAF Working Paper (2005), [https://www.dcaf.ch/sites/default/files/publications/documents/RUFER\\_final.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/RUFER_final.pdf) (accessed 24 January 2024).

<sup>42</sup> Working Group on the Use of Mercenaries, Communication AL RUS 5/2021 (24 March 2021); Organized Crime and Corruption Reporting Project (OCCRP), 'Documents Reveal Wagner's Golden Ties to Sudanese Military Companies', *OCCRP* (6 November 2022), <https://www.occrp.org/en/investigations/documents-reveal-wagners-golden-ties-to-sudanese-military-companies> (accessed 17 November 2022). In this regard, it can be noted that the origins of PMSCs can vary in democratic societies where their creation is based on the increased need to support state functions and the privatization of public services; whereas in conflict and post-conflict societies, PMSCs can be created for mix of reasons, including lack of legislation, the increased need for private security by foreign companies, often banks, and finally the sudden demobilization of former combatants and the security vacuum where state security is failing, see Jelena Unijat, Predrag Petrovic, Marko Milosevic and Sonja Stojanovic, 'Kljucni nalazi istrazivanja i preporuke', in *Privatne bezbednosne kompanije u Srbiji – prijatelj ili pretnja?* (Belgrade: Beogradski centar za bezbednosnu politiku, 2012), 23.

### III. The International Sanctions Regime as a Catalyst for Organized and Economic Crime and the Expansion of Private Military and Security Companies

From the outset of the ‘Yugoslav crisis’, blocked by various alliances,<sup>43</sup> States failed to implement effective military, economic and diplomatic policies to support a sustainable peacebuilding process. Instead, the international community began by imposing a sanctions regime, which stimulated organized crime, rooted in political and (para) military and (para)police networks, which would subsequently flourish during the war years. This not only generated all sorts of war-related business, but also helped underground business networks to grow into legitimate economic actors post-conflict, as will be demonstrated further on.

Since the end of the Cold War, the UN Security Council and General Assembly have made increasing use of economic sanctions to protect international peace and security.<sup>44</sup> These sanctions are collective enforcement measures and one tool under international law for the resolution of non-judicial disputes. Once the Security Council determines that there is a threat to international peace and security in accordance with article 39<sup>45</sup> of the UN Charter,<sup>46</sup> it may declare an embargo as a retaliatory measure against one or more States.<sup>47</sup> These measures may be broad in scope or more targeted. The purpose of an embargo is to restrict, or even completely interrupt, trade on the territory of a State.<sup>48</sup> While mainly directed against States,<sup>49</sup> the Security Council resolution can also affect non-state actors directly, including criminal and/or paramilitary groups, or companies.<sup>50</sup>

<sup>43</sup> CVCE, ‘The Vain Mediation Attempts of the European Community and the United Nations’, <https://www.cvce.eu/en/collections/unit-content/-/unit/df06517b-babc-451d-baf6-a2d4b19c1c88/d4fd90c9-36d1-4130-8bc7-b36771dd0e43> (accessed 5 July 2022).

<sup>44</sup> Articles 11, 25, 39 and 41 of the *Carte de l’ONU*. See Jean-Pierre Cot, Alain Pellet and Mathias Forteau, *La Charte des Nations Unies: Commentaire Article par Article*, 3rd edn (Paris: Economica, 2005). Security Council resolutions adopted under chapter VII are legally binding on States. See articles 25 and 103 of the UN Charter. See also Bruno Simma, Daniel-Erasmus Khan, Georg Nolte and Andreas Paulus, *The Charter of the United Nations: A Commentary*, Volume 1, 3rd edn (Oxford: Oxford University Press, 2013).

<sup>45</sup> Michael S Wood, ‘The Interpretation of Security Council Resolutions, Revisited’ (2017) 20:1 *Max Planck Yearbook of United Nations Law Online* 135.

<sup>46</sup> In case there is a veto by one of the permanent members, other options may be possible. For instance, on 27 February 2022 the Security Council adopted a resolution called Resolution Acheson 377(V) ‘United for Peace’ regarding the Russian aggression in Ukraine and deferred the situation to the UN General Assembly, see United Nations, ‘Security Council Calls Emergency Special Session of General Assembly on Ukraine Crisis, Adopting Resolution 2623 (2022) by 11 Votes in Favour, 1 Against, 2 Abstentions’, <https://www.un.org/press/en/2022/sc14809.doc.htm>. This resolution has not been activated often in the past, and does not allow the General Assembly to adopt legally binding resolution, see Christian Toumschat, ‘Uniting for Peace: General Assembly Resolution 377 (V)’, *Audiovisual Library of International Law* (October 2008), <https://legal.un.org/avl/ha/ufp/ufp.html> (accessed 5 July 2023).

<sup>47</sup> Aurore Marchand, *L’embargo en droit du commerce international* (Brussels: Larcier, 2012), 46–47. According to the author, ‘[l]’embargo est à la frontière du droit, de la politique et de l’économie’, p 52. See also article 41 of the Charter.

<sup>48</sup> *Ibid.*

<sup>49</sup> Steve S Ratner, ‘Corporations and Human Rights: A Theory of Legal Responsibility’ (2001) 1113 *Yale Law Journal* 483. It should be noted that when the Security Council takes sanctions measures, such as arms embargos, travel bans or financial restrictions, it is asking States to take measures to sanction companies, not directly addressing companies. Notwithstanding the obligations of States to implement a sanctions regime decreed by the Council, the Council can investigate the activities of companies that, through their actions, contribute to violations of international humanitarian law and thus to threats to international peace.

<sup>50</sup> Sandra C Wisner, ‘Criminalizing Corporate Actors for Exploitation of Natural Resources in Armed Conflict: UN Natural Resources Sanctions Committees and the International Criminal Court’ (2018) 16:5 *Journal of International Criminal Justice* 971: ‘sanction measures must be transposed into national legislation before being applied to companies’. See also Paul Szasz, ‘The Law of Economic Sanctions’ (1998) 71 *International Law Studies* 459. Ole K



During the 1990s, the Security Council adopted an unprecedented set of measures<sup>51</sup> that completely disrupted the legal economic relations with and within Yugoslavia. Sanctions were accompanied by the establishment of sanctions committee to monitor compliance.<sup>52</sup> In this case, on 25 September 1991, the UN Security Council Resolution 713 established an arms embargo on all the territory of the former Yugoslavia after declaring the situation as a threat to peace and security.<sup>53</sup> The Security Council also established a sanctions committee for the resolution 724.<sup>54</sup>

Following the recognition of Bosnia and Herzegovina in April 1992, the conflict intensified significantly. This prompted the Security Council to adopt Resolution 752 (15 May 1992) demanding that all military interferences stop immediately and that all irregular military forces in Bosnia and Herzegovina be disbanded and disarmed.<sup>55</sup> Subsequently, the Security Council adopted Resolution 757 (30 May 1992) which expanded sanctions by banning all international trade, scientific and technical cooperation, sports and cultural exchanges, air travel, and the travel of government officials from the Federal Republic of Yugoslavia.<sup>56</sup> On 16 November 1992, the Security Council continued the extension of the embargo by adopting Resolution 787, imposing a widespread ban on shipments to and from Yugoslavia (at this time, consisting of the current territories of Serbia and Montenegro), followed by a series of naval blockades. In the final sequence of embargo enlargement, the Security Council reaffirmed all previous sanctions in its Resolution 820 (17 April 1993) and introduced a whole list of new sanctions to be implemented within nine days.<sup>57</sup>

The embargo provoked economic disruption and hyperinflation that triggered the eruption of civil conflict.<sup>58</sup> According to Pavle Petrovic and Zorica Vujosevic '[t]he Yugoslav hyperinflation of 1991–1993 is one of the highest and longest episodes ever recorded'.<sup>59</sup> As a result of the embargo, a 'black market' was effectively established,

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Fauchald and Jo Stigen, 'Corporate Responsibility before International Institutions' (2009) 40 *George Washington International Law Review* 1025–1100, 1046–1048.

<sup>51</sup> See Alain Pellet, 'La formation du droit international dans le cadre des Nations Unies' (1995) 6 *EJIL* 401–425.

<sup>52</sup> In carrying out its mandate, the Committee is supported by Panels of Experts who conduct investigations on the ground. In some cases, the Security Council may establish both a Commission of Inquiry and a Sanctions Committee, supported by Panels of Experts. Security Council, Resolution 2127, S/RES/2127 (5 December 2013).

<sup>53</sup> Security Council, Resolution 713, S/RES/713 (25 September 1991), Preamble paragraphs and para 1.

<sup>54</sup> Security Council, Resolution 724, S/RES/724 (15 December 1991). In its paragraph 5-b, the Council requested the sanction committee to monitor and to report on violations of embargo imposed on all weapons and military equipment arriving to Yugoslavia. The Committee's mandate was subsequently expanded to include all other embargoes imposed on Yugoslavia.

<sup>55</sup> Security Council, Resolution 752, S/RES/752 (15 May 1992), para 4.

<sup>56</sup> Security Council, Resolution 757, S/RES/757 (30 May 1992), paras 4–5. According to some analysis, the Security Council's goal was not merely to stop the violation of IHL but also to change Milosevic's policy or oust him from the power, see Milica Delevic, 'Economic Sanctions as a Foreign Policy Tool: The Case of Yugoslavia' (1998) 3:1 *International Journal of Peace Studies*.

<sup>57</sup> Robert A Pape, 'Why Economic Sanctions Do Not Work' (1997) 22:2 *International Security* 93–94: 'There are two main categories of international economic weapons-trade restrictions and financial restrictions – each of which can be employed with varying intensity and scope. [...] There are three main strategies of international economic pressure: economic sanctions, trade wars, and economic warfare. Economic sanctions seek to lower the aggregate economic welfare of a target state by reducing international trade in order to coerce the target government to change political behaviour. [...] A trade war is when a state threatens to inflict economic harm or actually inflicts it in order to persuade the target state to agree to terms of trade more favourable to the coercing state. Economic warfare seeks to weaken an adversary's aggregate economic potential in order to weaken its military capabilities, either in a peacetime arms race or in an ongoing war'.

<sup>58</sup> IMF, *World Economic Outlook* (Washington: IMF, 1993).

<sup>59</sup> Pavle Petrovic and Zorica Vujosevic, 'The Monetary Dynamics in the Yugoslav Hyperinflation of 1991–1993: The Cagan Money Demand' (1996) 12:3 *European Journal of Political Economy* 467–483. See also Thayer Watkins, 'The

including for essential supplies and vital resources. In this context, the sanctions targeting Yugoslavia triggered an extremely well-organized underground economy that was subsequently normalized and legalised post-conflict.<sup>60</sup> In practice, sanctions have the unintended consequence of facilitating the expansion of PMSCs – many criminal groups transformed into legally registered private security companies.

It is worth noting that there were multiple peacekeeping missions accompanying the sanctions regimes in the early 1990s. Some of the peacekeeping missions,<sup>61</sup> as well as the ICTY<sup>62</sup> acknowledged the problematic relationship between the armed conflict, organized crime, and the role of private security personnel. This relationship has been stimulated by international sanctions, in turn, sustaining and even reinforcing organized crime. While this has been identified as a concern, it has only been marginally addressed by the United Nations.<sup>63</sup>

In evaluating the effectiveness of the sanctions regime in the former Yugoslavia, the members of the Copenhagen Round Table noted that:

[t]he economic sanctions in particular were considered to be remarkably effective. They had clearly modified the behaviour of the Serbian party to the conflict in the former Yugoslavia and may have been the single most important reason for the Government in Belgrade accepting a negotiated peace agreement in Dayton, ending more than four years of terrible war in the former Yugoslavia.<sup>64</sup>

While recognizing the role of a neighbouring country, in particular, in economic trade, and its impact on sanctions, the members of the Copenhagen Round Table continued:

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Worst Episode of Hyperinflation in History: Yugoslavia 1993–94', <http://www.rogershermansociety.org/yugoslavia.htm> (accessed 25 February 2022). According to Watkins: 'Between October 1, 1993 and January 24, 1995 prices increased by 5 quadrillion percent. That's a 5 with 15 zeroes after it'.

<sup>60</sup> See also Security Council, Resolution 820, S/RES/820 (17 April 1993), Security Council, Resolution 942, S/RES/942 (23 September 1994), reinforcement and extension of measures imposed by the Security Council resolutions (prohibited import–export exchanges and assets freeze) with regard to those areas of Bosnia and Herzegovina under the control of Bosnian Serb forces.

<sup>61</sup> The United Nations peacekeeping mission UNTAES faced the challenges of economic illegal trade and emphasized the importance of economic rehabilitation as a basis for peace. In particular, UNTAES initiated and facilitated initiatives towards economic development in the region in 1996, such as the turnover to UNTAES of the Djelatovci Oil fields by the Scorpion paramilitary unit, the reconnection of the Adriatic Oil Pipeline between Croatia and the Federal Republic of Yugoslavia, as well as providing support in preventing the illegal removal of resources from the region, including the interdiction of the transport of illegally cut timber by train. See Department of Public Information, United Nations, 'Croatia – UNTAES', [https://peacekeeping.un.org/en/mission/past/untaes\\_b.htm#DEMILITARIZATION](https://peacekeeping.un.org/en/mission/past/untaes_b.htm#DEMILITARIZATION); see also United Nations, 'Brief Chronology', [https://peacekeeping.un.org/en/mission/past/untaes\\_e.htm](https://peacekeeping.un.org/en/mission/past/untaes_e.htm) (accessed 3 January 2024).

<sup>62</sup> ICTY, *The Prosecutor v Jovica Stanisic, Franko Simatovic*, Trial Chamber I, Judgement, IT-03-69-T (30 May 2013), paras 183 and following; ICTY, *The Prosecutor v Slobodan Milosevic*, Trial Chamber, Transcript, IT-02-54 (14 October 2003), 27493–27494.

<sup>63</sup> See United Nations Convention against Transnational Organized Crime and the Protocols Thereto (adopted by the UN General Assembly Resolution 55/25 on 15 November 2000, entered into force 29 September 2003). For more information see: United Nations Office on Drugs and Crime, 'Global Programme on Implementing the Organized Crime Convention: From Theory to Practice', <https://www.unodc.org/unodc/en/organized-crime/intro/implementing-untoc/intro-programme.html> (accessed 3 April 2023).

<sup>64</sup> Security Council, Letter Dated 24 September 1996 From the Chairman of the Security Council Committee Established Pursuant to Resolution 724 (1991) Concerning Yugoslavia Addressed to the President of the Security Council, annex Report of the Copenhagen Round Table on United Nations Sanctions in the Case of the Former Yugoslavia, held at Copenhagen on 24 and 25 June 1996, S/1996/776 (24 September 1996) (hereafter Copenhagen Round Table), para 67.

This unique and unprecedented formula of coordinated inter-institutional, international cooperation at the regional level in support of national Governments in their endeavour to observe the mandatory measures taken by the Security Council was identified as the main reason for the effectiveness of sanctions in the case of the former Yugoslavia.<sup>65</sup>

However, according to Paul Szasz, neither the infrastructure of the UN Secretariat nor that of the Security Council was sufficiently equipped for the tremendous expansion of its sanctions-peacekeeping approach.<sup>66</sup> According to Szasz, ‘peacekeeping operations were launched and economic sanctions imposed without any significant studies of their objectives, means for accomplishing them, collateral harms that might result, or exit strategies. By the mid-1990s these flaws became evident’.<sup>67</sup> The literature on sanctions generally agrees that sanctions regimes lack efficiency. While the sanctions mainly target regimes and often one side to a conflict,<sup>68</sup> they have devastating consequences on civilian populations. The examples of Iraq,<sup>69</sup> Iran<sup>70</sup> and Russia for the invasion of Ukraine further illustrate this.<sup>71</sup>

Some studies have demonstrated a relationship between conflict activities, organized crime and the role of for-profit combatants, mercenaries, in some cases even PMSCs. For example, examining the situation in the former Yugoslavia, Mary Kaldor introduced the idea of ‘new wars’, noting that armed conflicts increasingly show an absence of clear boundaries between war (considered as violence between States or organized groups for political reasons), organized crime (private organizations using violence for personal profits) and large-scale human rights violations (the use of violence against civilian populations by state or politically organized groups).<sup>72</sup> According to Kaldor, the motivation of paramilitary groups became largely economic, notwithstanding the presence of nationalist fanatics within these groups.<sup>73</sup> Finding that ‘fanatic nationalism is not good for business’, Kaldor notes that only 20 per cent of

<sup>65</sup> Copenhagen Round Table, para 78. In the para 80, the members concluded as a main lesson regarding the sanctions established as early as 1991, ‘that swift implementation and strict enforcement of the mandatory measures taken by the Security Council are essential in achieving the objectives of the Council and that adequate arrangements for international cooperation and assistance to States in their endeavour to do so can make a considerable contribution to that effect’. See also para 81 recommendations. It is worth noting that the first sanctions took place in 1991 and the ethnic cleansing, fall of Vukovar, Siege of Sarajevo and the genocide of Srebrenica took place in the following years.

<sup>66</sup> Szasz), note 50, 463–464.

<sup>67</sup> Ibid.

<sup>68</sup> Clara Portela, ‘National Implementation of United Nations Sanctions: Towards Fragmentation’ (2009) 65:1 *International Journal: Canada’s Journal of Global Policy Analysis* 1, 15.

<sup>69</sup> Denis J Halliday, ‘The Impact of the UN Sanctions on the People of Iraq’ (1999) 28:2 *Journal of Palestine Studies* 29–37. See also Peter Boone, Haris Gazdar and Athar Hussain, *Sanctions Against Iraq, Costs of Failure*, Centre for Economic and Social Rights on the impact of United Nations-imposed economic sanctions on the economic well-being of the civilian population of Iraq (London, 1997), available at: [chrome-extension://efaidnbmnnnibpcajpcglclefndmkaj/https://cesr.org/sites/default/files/Sanctions\\_Against\\_Iraq\\_Costs\\_of\\_Failure\\_1997.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefndmkaj/https://cesr.org/sites/default/files/Sanctions_Against_Iraq_Costs_of_Failure_1997.pdf) (accessed 24 January 2024).

<sup>70</sup> See Human Rights Council, ‘Iran: Unilateral Sanctions and Over Compliance Constitute Serious Threat to Human Rights and Dignity – UN Expert’, *OHCHR* (19 May 2022), <https://www.ohchr.org/en/press-releases/2022/05/iran-unilateral-sanctions-and-overcompliance-constitute-serious-threat-human> (accessed 30 November 2022).

<sup>71</sup> Andrew Mack and Asif Khan, ‘The Efficacy of UN Sanctions’ (2000) 31:3 *Security Dialogue* 280. For Ukraine, see Nicholas Mulder, ‘Don’t Expect Sanctions to Win the Ukraine War’, *WSJ* (21 April 2022), <https://www.wsj.com/articles/dont-expect-sanctions-to-win-the-ukraine-war-11650550229>; also Erica Moret, ‘Sanctions and the Costs of Russia’s War in Ukraine’, *ReliefWeb* (12 May 2022), <https://reliefweb.int/report/ukraine/sanctions-and-costs-russia-s-war-ukraine> (accessed 7 July 2022).

<sup>72</sup> Kaldor, note 4. See also Mary Kaldor, ‘Peacemaking in an Era of New Wars’, *Carnegie Europe* (14 October 2019), <https://carnegieeurope.eu/2019/10/14/peacemaking-in-era-of-new-wars-pub-80033> (accessed 6 July 2022).

<sup>73</sup> Kaldor, note 4, p 53.

paramilitary personnel in the Balkans were motivated by nationalist ideologies, while 80 per cent were ‘common criminals’ involved in systematic looting, racketeering, black markets, and trafficking of goods. Criminal groups cooperated with each other across the territories and confrontation lines to profit from the conflict.<sup>74</sup> In such contexts, companies such as PMSCs can serve as a backbone to illegal activities in a wide range of organized transnational crimes<sup>75</sup> – this was often the case in the former Yugoslavia. Indeed, in the absence of a legally organized economy during wartime, the parties often use illegal means to sustain their war capabilities.<sup>76</sup> Organized criminal groups may use legal entities such as corporations or government agencies to commit crime.<sup>77</sup> This disguises individual involvement in criminal offences through complex corporate structures where transactions and clients can be hidden, and the individuals involved are shielded from liability.<sup>78</sup>

The ‘dual-purpose violence’ between organized crime and international crimes is considered to be the dominant element in contemporary armed conflicts.<sup>79</sup> One author recently wrote ‘[t]he more that sanctions bite, the more willingly their targets will turn to other means, including military aggression, to retaliate’.<sup>80</sup> War and the economy have always been closely inter-related, as parties to the conflict need economic support to sustain the capacity to maintain operations.<sup>81</sup> The relationship between ‘[m]oney, power and political influence are opening the door for crime bosses and making security firms more powerful’<sup>82</sup> in the post-conflict period. According to the Global Initiative Against Transnational Organised Crime:

<sup>74</sup> Ibid.

<sup>75</sup> See The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000 (adopted on 15 November 2000, entered into force on 29 September 2003), art 10. For commentary, see Mohamed Mattar, ‘Corporate Criminal Liability: Article 10 of the Convention Against Transnational Organized Crime’ (2012) 66:1 *Journal of International Affairs* 107–122.

<sup>76</sup> Security Council, Letter Dated 24 May 2022 from the Panel of Experts on Libya Established Pursuant to Resolution 1973 (2011) Addressed to the President of the Security Council, S/2022/427 (27 May 2022) (hereafter Panel on Libya 2022 Report); Security Council, Letter Dated 25 June 2021 from the Panel of Experts on the Central African Republic Extended Pursuant to Resolution 2536 (2020) Addressed to the President of the Security Council, S/2021/569 (25 June 2021) (hereafter Panel on CAR 2021 Report).

<sup>77</sup> Working Group on the Use of Mercenaries, Communication AL RUS 5/2021, 24 March 2021. See also Working Group on the Use of Mercenaries, note 12, paras 60, 61.

<sup>78</sup> One such example was the impact of embargo on the Yugoslav banking system which caused the widespread closure of companies and opened opportunities for criminal schemes to take place. For instance, set by criminal networks, banks such as Jugoskandik and the infamous Darfiment Bank were set up with extraordinary interest rates. However, they misappropriated the money from people, leaving many of them homeless.

<sup>79</sup> Tanner and Mulone, note 1, 42. See also Human Rights Council, ‘Report of the 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, Relationship Between Private Military and Security Companies and the Extractive Industry from a Human Rights Perspective’, A/HRC/42/42 (29 July 2019); Security Council, Letter Dated 24 May 2022 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council, S/2022/427 (27 May 2022); Security Council, Letter Dated 25 June 2021 from the Panel of Experts on the Central African Republic extended pursuant to resolution 2536 (2020) addressed to the President of the Security Council, S/2021/569 (25 June 2021). See also Jason K Stearns, ‘Rebels Without a Cause, The New Face of African Warfare’, *Foreign Affairs* (9 April 2022), <https://www.foreignaffairs.com/articles/africa/2022-04-19/rebels-without-cause> (accessed 6 July 2022).

<sup>80</sup> Henry Farrell, ‘The Modern History of Economic Sanctions’, *Lawfare* (1 March 2022), <https://www.lawfareblog.com/modern-history-economic-sanctions> (accessed 6 July 2022).

<sup>81</sup> See for instance the West Indies company created in 1602; Security Council, ‘Report of the Secretary-General, The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa’, A/52/871 – S/1998/318 (13 April 1998); Jelena Aparac, *Business et droits de l’homme dans les conflits armés* (Brussels: Larcier, 2021); Working Group on the use of Mercenaries, note 79.

<sup>82</sup> OCCRP, ‘Crime and Politics Mix in Security Industry’, OCCRP (1 January 2010), <https://www.occrp.org/en/security-chaos/crime-and-politics-mix-in-security-industry> (accessed 6 July 2022). See also OCCRP, ‘Serbia:

Leftover armaments and the associations formed during the Yugoslav Wars have contributed to the Western Balkans' prominence in arms trafficking, and firearm murder rates in the region are among the highest in Europe. [...] All of these crimes and networks are facilitated by the region's endemic corruption, and serve to further underscore the ways in which corruption and state penetration by organized crime produce detrimental effects for institutions and citizens alike.<sup>83</sup>

The operations of the accused war criminal Zeljko Raznatovic, otherwise known as 'Arkan', provide an important example of the correlation between the implementation of sanctions and organized crime. As a result of the oil and gas restrictions imposed by sanctions, there was a shortage of those commodities in the country. The smuggling and underground economy quickly developed,<sup>84</sup> in particular when the State began selling public companies in an attempt to circumvent the sanctions on fuel.<sup>85</sup> Several gas stations were sold to Arkan, who, during the war, became the notorious leader of one of the biggest paramilitary units, named Serbian Volunteers Guard (SVG) or 'Arkanovci' (Arkan's men).<sup>86</sup> Arkan's 'security company [was] used to run drugs, gambling houses and kill rivals in the 1990s. [...] The government routinely gives gun permits to security companies run by mobsters [...]. Money, power and political influence are opening the door for crime bosses and making security firms more powerful.'<sup>87</sup>

By the time the conflict in Croatia and Bosnia and Herzegovina ended in 1995, the networks between paramilitary units, criminal organizations and the state security apparatus were well established.<sup>88</sup> This allowed for private security companies to flourish in a context where the need for security was high and where the State was too weak to respond to the demand. Similar patterns can be observed in other contexts where international sanctions were imposed. For instance, several UN organs expressed concerns about the relationship between PMSCs, extractive industries and organized crime in the Central African Republic<sup>89</sup> and Libya.<sup>90</sup> In both contexts, where the state authority has collapsed or is considered a 'failed State', conflict activities are stimulating the proliferation of mercenaries, PMSCs and organized crime. These relationships further create factual and legal complexity in determining whether there is an intervening State behind

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Nobody's Policing the Security Guards', *OCCRP* (1 January 2010), <https://www.occrp.org/en/security-chaos/serbia-nobodys-policing-the-security-guards> (accessed 6 July 2022).

<sup>83</sup> Global Initiative Against Transnational Organized Crime, 'Bribery and Corruption in the Western Balkans', <https://globalinitiative.net/analysis/bribery-and-corruption-in-the-western-balkans/> (accessed 6 July 2022).

<sup>84</sup> See Watkins, note 59, 'thieves robbed hospitals and clinics of scarce pharmaceuticals and then sold them in front of the same places they robbed. The railway workers went on strike and closed down Yugoslavia's rail system'.

<sup>85</sup> Pavlusko Imsirovic, 'Poreklo organizovanog kriminala na Balkanu', [https://pavlusko.wordpress.com/2009/08/10/poreklo-organizovanog-kriminala-na-balkanu/#\\_ftn1](https://pavlusko.wordpress.com/2009/08/10/poreklo-organizovanog-kriminala-na-balkanu/#_ftn1) (accessed 6 July 2022).

<sup>86</sup> All paramilitary organizations, which, along with the police forces, were the main bearers of the war in the former Yugoslavia, were formed primarily by criminals who were literally brought from prison as volunteers of those units. The two largest such organizations were the Serbian Volunteer Guard of Zeljko Raznjatovic Arkan and the Red Beret of Frenki Simatovic. After the Dayton Agreement, they were transformed into the JSO (Special Operations Unit) at the Security Service of Serbia (Secret police service), see Imsirovic, note 85.

<sup>87</sup> OCCRP Crime and Politics Mix in Security Industry (2010), note 82.

<sup>88</sup> Vukusic (2022), note 35. According to Vukusic, it is almost a merger – they almost become one, *Jedinica za Specijalne Operacije* (JSO, 'Unit for Special Operations') is a good example of this.

<sup>89</sup> Panel on CAR 2021 Report, note 76; Working Group on the Use of Mercenaries, Communication AL CAF 1/2021, 26 March 2021.

<sup>90</sup> Security Council, Letter Dated 8 March 2021 from the Panel of Experts on Libya Established Pursuant to Resolution 1973 (2011) Addressed to the President of the Security Council, S/2021/229 (8 March 2021); Working Group on the Use of Mercenaries, Communication AL LBY 1/2020, 10 June 2020.

those actors, whether it can be classified as a party to the conflict and who can be responsible for crimes.<sup>91</sup>

#### IV. From Illegal to Legal Activities: The Limits of Transitional Justice in Addressing Organized and Economic Crimes

Processes associated with traditional justice have historical roots, but transitional justice emerged as an autonomous concept following the end of the Cold War.<sup>92</sup> There is no legal definition of transitional justice, but some characteristics can be identified such as a 'legalistic outlook, a state-centric approach, a preference for gradual change, support for liberal capitalism and a reliance on international governance institutions'.<sup>93</sup> Within the UN, the notion of transitional justice:

Comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.<sup>94</sup>

Illegal economic activity taking place during armed conflict may violate (and be prosecuted through) domestic or international criminal law, but a notable gap appears with regard to transnational conduct. International crimes – such as war crimes, crimes against humanity or genocide – are serious violations of international law by state and non-state actors involved in armed conflict. They must be distinguished from transnational crimes,<sup>95</sup> the latter of which are cross-border conduct prohibited by domestic criminal laws. Transnational crime violates the domestic laws in at least two distinct internal legal orders. Notable examples include corruption,<sup>96</sup> money laundering, production and transportation of dangerous products, human trafficking and piracy. They require sophisticated and systematic forms of illicit organization, distinct from conventional criminality, and sometimes qualified as organized or economic crime. States internationalize organized crimes through the multiplication of international instruments on transnational economic crimes.<sup>97</sup> Although less high-profile than international crimes, transnational crimes often continue to thrive in local markets in post-conflict contexts.<sup>98</sup>

<sup>91</sup> For Yugoslavia context, see Mohlin, *note 4*. See also Working Group on the Use of Mercenaries, *note 12*.

<sup>92</sup> Marcos Zunino, 'Subversive Justice: The Russell Vietnam War Crimes Tribunal and Transitional Justice' (2016) 10:2 *International Journal of Transitional Justice* 211–229. Paige Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of transitional Justice' (2009) 31:2 *Human Rights Quarterly* 321–367.

<sup>93</sup> Zunino, *note 92*, 212.

<sup>94</sup> Security Council, 'Report of the Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies', S/2004/616 (23 August 2004), para 8.

<sup>95</sup> For a detailed analysis of transnational crime, see Isabelle Fouchard, *Crimes internationaux, entre internationalisation du droit pénal et pénalisation du droit international* (Brussels: Bruylant, 2014) 70. The author defines a transnational crime as a 'crime with regard to provisions of domestic law intended to give effect to an international rule aimed at strengthening the legal conditions for inter-state cooperation in the prevention and repression of conduct with a foreign or international element' [free translation].

<sup>96</sup> Fauchald and Stigen, *note 50*, 1044.

<sup>97</sup> *Ibid.* See also Nathalie Brahier, 'Les principes de territorialité et de personnalité et leurs effets en droit pénal international' in Laurent Moreillon, Aude Bichovsky and Maryam Massrouri (eds), *Droit pénal humanitaire*, II vol 4 (Bruxelles, Genève, Bâle, Munich: Helbing & Lichtenhahn, 2009) 10–11.

<sup>98</sup> United Nations Office on Drugs and Crime, *Crime and its Impact on the Balkans and Affected Countries* (Vienna: UNODC, 2008).



Although legal definitions distinguish between international crime and transnational crime, in practice, there is often overlap between these two categories of crimes. According to Robert Kolb, there is a distinction between private and public crime: a company can support the war effort (public aspect) and simultaneously benefit from the crime in a private capacity,<sup>99</sup> by obtaining concession contracts and/or security contracts through criminal means. Some authors suggest that ‘the destruction of a population results from a dynamic of mutual benefit between players in both the central and the peripheral powers’.<sup>100</sup> Contemporary conflict dynamics increasingly lead to the conflation of transnational and international crimes. However, only the latter can ordinarily be prosecuted by international courts, thus leaving acts that fall under transnational or organized crime (but which do not meet the relevant elements of an international crime) unpunished at the international levels. This is particularly the case for the *ad hoc* courts that have context specific mandates and narrower jurisdiction.<sup>101</sup> The Security Council established the ICTY through resolution 827 of 25 March 1993, the first international criminal tribunal since the Nuremberg trials.<sup>102</sup> The ICTY had jurisdiction over traditional international crimes, excluding transnational crimes, based on the reports of the Commission of Experts for the former Yugoslavia, which provided evidence of mass atrocities, including rape, torture, mass displacement and ethnic cleansings, forced disappearances.<sup>103</sup>

Very few cases at the ICTY considered organized crime and the role of private military and security companies. In the *Prosecutor v Slobodan Milosevic*, the prosecutor raised the role of the accused in relation to organized crime and the role of private security actors.<sup>104</sup> In the 2002 Amended Indictment ‘Bosnia and Herzegovina’,<sup>105</sup> the Office of the Prosecutor (OTP) found that the accused Slobodan Milosevic ‘worked in concert with or through other individuals in a joint criminal enterprise. Each participant or co-perpetrator [...] played his or her own role or roles that significantly contributed to achieving the objective of the enterprise’.<sup>106</sup> Among others, Milosevic co-perpetrated crimes against humanity, genocide and war crimes<sup>107</sup> with Zeljko Raznatovic (‘Arkan’).<sup>108</sup> The OTP also identified that Milosevic<sup>109</sup> and Arkan committed similar crimes within the territory of Croatia.<sup>110</sup> At trial, testimony showed direct links between the war, organized crime and private security. In addition to Arkan’s men, a group named the Skorpions operated as military unit and as private security company during the

<sup>99</sup> Robert Kolb (ed.), *Droit international pénal*, 2nd edn (Basel: Helbing & Lichtenhahn, 2008) 69.

<sup>100</sup> Tanner and Mulone, *note 1*, 43.

<sup>101</sup> Depending on the competences that can be attributed to international tribunals, other crimes can be added to tailor the justice approach to the context. See also Sarah Williams, *Hybrid and Internationalised Criminal Tribunals – Selected Jurisdictional Issues* (Oxford: Hart Publishing, 2012).

<sup>102</sup> Security Council, Resolution 827, S/RES/827 (25 March 1993). See James Meernik, ‘Victor’s Justice or the Law?: Judging and Punishing at the International Criminal Tribunal for the Former Yugoslavia’ (2003) 47:2 *Journal of Conflict Resolution* 140–162.

<sup>103</sup> Security Council, Letter Dated 24 May 1994 from the Secretary-General to the President of the Security Council, Annex, Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), S/1994/674 (27 May 1994).

<sup>104</sup> See ICTY, *The Prosecutor v Slobodan Milosevic*, OTP, Amended Indictment ‘Bosnia and Herzegovina’ IT-02-54-T (22 Nov 2002), paras 14 and 15.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*, para 9.

<sup>107</sup> *Ibid.*, para 5.

<sup>108</sup> *Ibid.*, para 21.

<sup>109</sup> ICTY, *The Prosecutor v Slobodan Milosevic*, OTP, Second Amended Indictment IT-02-54-T (23 Oct 2002).

<sup>110</sup> *Ibid.*

Milosevic regime.<sup>111</sup> In his testimony from October 2003, Milan Milanovic, chief of the branch of Serbian State Security in Novi Sad, testified that he ‘proposed to the director of the oil company [Naftna Industrija Republike Srpske Krajina] that they secure the oil fields that were on the separation lines’.<sup>112</sup> The oil company was guarded by Skorpions acting on orders from the Serbian military as well as from the director of the oil company, creating confusion between their paramilitary role and private security role.<sup>113</sup> Their services were compensated by material and financial resources from the company:

Having toured the area, I realized that the oil fields were in jeopardy as they were along the very confrontation line. And it is common knowledge that if a shell were to fall, this would cause an ecological disaster. I toured the area. I met this young man [Slobodan Medic] for the first time. He was proposed to me by several people. And I even remember that I asked Badza [head of the Serbian police] even whether he had anything against this, and he said he didn’t ...<sup>114</sup>

From this and other testimony, the court found that ‘Skorpions’, headquartered in Đeletovci, were part of ‘[...] a special unit of the SDB, formed as a satellite unit of the Red Berets to secure the oil fields of the Serbian national oil company, and to guard the RSK border with Croatia’.<sup>115</sup>

In a different case, *Prosecutor v Jovica Stanisic and Franko Simatovic*,<sup>116</sup> which is currently waiting for an appeal judgment to be rendered, contains detailed findings on the role of Arkan’s unit, as well as their funding and training in Croatia and Bosnia. Witnesses testified that it was a subsidiary of the military, not the police,<sup>117</sup> but after the fall of Vukovar, Croatia, it became a ‘regular military force of the “SAO Krajina” in charge of security for the area’.<sup>118</sup> This shows how the political and economic reality of war contexts allow these groups to sit at the intersection of private security, armed conflict, and crime.<sup>119</sup>

According to some authors, ‘everyone involved got a share and, once the central players – the Serbian state and local businessmen – were “rewarded”, the profit was sufficiently high that Medic and his men became wealthy. [...] In fact, Milan Milanovic, who in the meantime had become deputy minister of defence of the Serbian Republic of Croatia [Republika Srpska Krajina] guaranteed the “legality” of such operations, thereby facilitating the transit of

<sup>111</sup> Some witnesses testified that the ‘badges worn by Arkan’s men were similar to those worn by the Scorpions, except that Arkan’s men had “Serbian Volunteer Guard” written under the sword’. *The Prosecutor v Jovica Stanisic, Franko Simatovic*, Judgement, para 1927. See also Tanner and Mulone, note 1, 45: ‘In looking at the chronological development of the Scorpions’ involvement in mass violence, two distinct periods can be observed. The first runs from their creation in 1992 as a private security company responsible for the protection of an oil company operating in Croatia to 1994 when the unit was transformed into an army of mass destruction and became actively involved in the killing of civilians. It was at this point that the group became known as the Scorpions’. See also Iva Vukusic, ‘Nineteen Minutes of Horror: Insights from the Scorpions Execution Video’ (2018) 12:2 *Genocide Studies and Prevention: An International Journal* 35–53.

<sup>112</sup> ICTY, *The Prosecutor v Slobodan Milosevic*, IT-02-54, Transcripts, 14 October 2003, 27493. See also *The Prosecutor v Jovica Stanisic, Franko Simatovic*, Trial Chamber I, Judgement, IT-03-69-T (30 May 2013), paras 1920, 1935.

<sup>113</sup> ICTY, *The Prosecutor v Jovica Stanisic, Franko Simatovic*, Judgement, para 1943; Working Group on the Use of Mercenaries, note 79.

<sup>114</sup> ICTY, *The Prosecutor v Slobodan Milosevic*, IT-02-54, Transcripts, 14 October 2003, 27493–27494.

<sup>115</sup> ICTY, *The Prosecutor v Jovica Stanisic, Franko Simatovic*, Judgement, para 1920.

<sup>116</sup> ICTY, *The Prosecutor v Jovica Stanisic, Franko Simatovic*, Judgement. The Mechanism Appeals Chamber delivered its judgement on the 31 May 2023, reversing their acquittals for joint criminal enterprise liability, and increasing their sentence to 15 years of imprisonment each (MICT-15-96-A), 31 May 2023.

<sup>117</sup> *Ibid*, para 1779.

<sup>118</sup> *Ibid*, para 1781.

<sup>119</sup> Tanner and Mulone, note 1, 45.

goods across the Bosnian and Croatian borders'.<sup>120</sup> The group had strong connections with people from political parties.<sup>121</sup> Similar patterns continue to be observed across some of the conflicts today where the roles and legal status of combatants can be qualified between paramilitary units, private security or mercenaries, as the case of the Wagner Group demonstrates.<sup>122</sup>

In establishing international courts and tribunals, States establish limitations to jurisdiction to keep certain acts and crimes that are more domestic in nature within the jurisdiction of national courts. This, combined with an apparent lack of interest by both national and international courts in the interplay between international and transnational crimes, has paved the way for the transformation of criminal actors into legitimate private security companies. This is demonstrated through the indictment (by the ICTY) and criminal conviction by a Croatian court of former Croatian general Mirko Norac. Norac was indicted by the ICTY in 2004 for crimes against humanity (article 5 of the ICTY Statute) and violations of laws and customs of wars (article 3 of the ICTY Statute).<sup>123</sup> The same year, his conviction for war crimes and violations of wars and customs of wars was confirmed by the Croatian Supreme Court with the sentence for imprisonment of 12 years.<sup>124</sup> His ICTY case was subsequently transferred to a domestic prosecutor<sup>125</sup> who led the case against Norac for war crimes, leading to an additional sentence of 6 years.<sup>126</sup> After serving 10 years of this sentence, he was released on probation in 2011. In December 2015, Norac founded a private security company Noky Security.<sup>127</sup> During this time he was '*prokurist*' with the power to represent the company from 1 January 2016 until 20 May 2020, according to the official court register of the Republic of Croatia.<sup>128</sup> His company was considered among one of the most profitable companies in Croatia,<sup>129</sup> mostly because it obtained many lucrative contracts with the State of Croatia.<sup>130</sup> This is not unique to Norac: Josip Klemm, former president of

<sup>120</sup> *Ibid.*, 47.

<sup>121</sup> See Centre for Euro-Atlantic Studies, '*Keeping up with the Private Security Sector, Regulated Private Security Sector: Safer Life of Citizens*' (Belgrade: Centre for Euro-Atlantic Studies, 2013) 48.

<sup>122</sup> See The Geneva Academy, '*The Wagner Group, Options for Justice*', <https://www.geneva-academy.ch/event/ihl-talks/detail/334-the-wagner-group-options-for-justice> (accessed 30 November 2022).

<sup>123</sup> ICTY, *The Prosecutor v Mirko Norac*, OTP, Indictment, IT-04-76 (29 April 2004), paras 21, 22, 24, 26.

<sup>124</sup> Supreme Court of the Republic of Croatia, Presuda i rješenje br. I Kž 985/03-9 (2 June 2004), <http://www.vsrh.hr/EasyWeb.asp?pcpid=463> (accessed 6 July 2022).

<sup>125</sup> ICTY, *The Prosecutor v Rahim Ademi and Mirko Norac*, Trial Chamber, the referral branch, Decision for referral to the authorities of the Republic of Croatia pursuant to rule 11bis, IT-04-78-PT (14 September 2005).

<sup>126</sup> Supreme Court of the Republic of Croatia, Presuda, br. I Kž 1008/08-13 (18 November 2009).

<sup>127</sup> Under the company number 081005115, official register see, Republic of Croatia Judicial Register, '*Podaci o poslovnom subjektu*', [https://sudreg.pravosudje.hr/registar/?p=150:28:0::NO:28:P28\\_SBT\\_MBS:081005115](https://sudreg.pravosudje.hr/registar/?p=150:28:0::NO:28:P28_SBT_MBS:081005115) (accessed 25 January 2024).

<sup>128</sup> On the official document of the history of the company, Mirko Norac was registered as '*prokurist*' (persons having power of attorney and representatives authorized to carry out general business operations on behalf of the company) with the power to represent the company from 1 January 2016 until 20 May 2020. See the official history of the company: [https://sudreg.pravosudje.hr/registar/?p=150:28:0::NO::P28\\_SBT\\_MBS:081005115#a\\_tekst\\_objave](https://sudreg.pravosudje.hr/registar/?p=150:28:0::NO::P28_SBT_MBS:081005115#a_tekst_objave) (accessed 25 January 2024).

<sup>129</sup> See A&S Adria, '*Objavljena lista najuspješnijih zaštitarskih firmi u Hrvatskoj*', A&S Adria (18 July 2019), <https://www.asadria.com/objavljena-lista-najuspjesnijih-zastitarskih-firmi-u-hrvatskoj/>; see also Luka Filipovic, '*Gotovini biznis i dalje cvijeta, Cermak benzinske pumpe prodao Slovencima, a Norac je, čini se, izišao iz priče sa zaštitarima*', *Tportal* (4 August 2021), <https://www.tportal.hr/biznis/clanak/gotovini-biznis-i-dalje-cvijeta-cermak-benzinske-pumpe-prodao-slovincima-a-norac-je-cini-izisao-iz-price-sa-zastitarima-foto-20210804/print> (accessed 6 July 2022).

<sup>130</sup> See Tomislav Mamic, '*Mirko Norac: zivot poslje zlocina, nestao je iz javnosti, pokrenuo biznis u kojem vrti milijune i odbija ponude ekstremno desnih stranaka da ih podrži*' (17 September 2018), <https://www.jutarnji.hr/naslovnica/mirko-norac-zivot-poslije-zlocina-nestao-je-iz-javnosti-pokrenuo-biznis-u-kojem-vrti-milijune-i-odbija-ponude-ekstremno-desnih-stranaka-da-ih-podrzy-7832352> (accessed 6 July 2022).

Special Police Forces during the war, founded Klemm Security Company in 2003, which employs many former combatants and provides private security services. He was later convicted for money laundering through his company between 2005 and 2007. However, his company remains registered as one of the most successful in private security in Croatia.

An additional barrier to prosecution, is the status of PMSCs as corporate actors. International criminal tribunals may be restricted to the prosecution of those with individual criminal responsibility, rather than corporate entities perpetrating criminal conduct. It must be underscored that a lack of criminal prosecution does not mean that an international crime did not occur. The exclusion of corporate criminal conduct from the jurisdiction of international criminal tribunals is an additional obstacle for the Business and Human Rights doctrine.<sup>131</sup>

In relation to corporate liability, conventional and customary international humanitarian laws may be of particular relevance for international prosecutions, as the role of the state or state actors has no bearing on criminal responsibility – individual criminal responsibility for violations of international humanitarian law does not depend on the participation of the state and, conversely, the state's participation in a crime does not excuse the perpetrator.<sup>132</sup> Moreover, international humanitarian law claims to apply equally to all parties to armed conflict and to bind them all expressly, whereas human rights law generally applies to only one party, namely the State concerned and its agents.<sup>133</sup> Thus, a corporate director can be prosecuted for the crimes that their company has contributed to, regardless of the nature of the business activities.

Nevertheless, international humanitarian law has limits in the context of organized, transnational crime. It is only relevant insofar as to identify if and to what extent a criminal group could qualify as a party to the conflict, and whether their members could be considered as directly participating in hostilities. It is now commonly accepted that providing financial support to parties to an armed conflict through criminal activities does not constitute direct participation in hostilities and does not call for the application of the relevant paradigm.<sup>134</sup> The contemporary challenge lies with cases such as Arkan's men and the Skorpions, where separate units can be attached to a party to the conflict by participating in the hostilities, while also supporting the war efforts through criminal organization and corporate entities.<sup>135</sup> This raises the question of whether a new legal category of crimes is needed to better reflect contemporary challenges. Doctrine often

<sup>131</sup> Desislava Stoitckova, *Towards Corporate Liability in International Criminal Law* (Utrecht: Intersentia, 2010); Wisner, note 50; Aparac, note 81.

<sup>132</sup> André Nollkaemper and Ilias Plakokefalos (eds), *The Practice of Shared Responsibility in International Law* (Cambridge: Cambridge University Press, 2017).

<sup>133</sup> ICTY, *The Prosecutor v Dragoljub Kunarac*, Trial Chamber II, Judgement, IT-96-23-T & IT-96-23/1-T (22 February 2001), para 470-I. In addition, the Chamber continues: 'Secondly, that part of international criminal law applied by the Tribunal is a penal law regime. It sets one party, the prosecutor, against another, the defendant. In the field of international human rights, the respondent is the state. Structurally, this has been expressed by the fact that human rights law establishes lists of protected rights whereas international criminal law establishes lists of offences', para 470-II.

<sup>134</sup> International Committee of the Red Cross, Expert Meeting: *The use of force in armed conflicts interplay between the conduct of hostilities and law enforcement paradigms* (Geneva: ICRC, 2013) 31.

<sup>135</sup> See Report of the Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2011/634 (12 October 2011), para 4: 'The Organization is increasingly focused on emerging threats to the rule of law, such as organized crime and illicit trafficking, and the root causes of conflict, including economic and social justice issues. These efforts are proving to be indispensable to a wider peace and security agenda. Still, Member States and national stakeholders rightfully demand more predictability, accountability and effectiveness in the Organization's activities'. Working Group on the use of Mercenaries, Communication AL CAR 1/2021 (26 March 2021).

refers to economic crimes, but these are not legally defined<sup>136</sup> and can contain an array of transnational crimes (trafficking of people, corruption) and international crimes (pillage), which can lead to confusion and impunity.

Securing accountability of these criminal actors is vital. Transitional justice is based on inter-related pillars of truth, justice, reparation and guarantees of non-recurrence. It can empower and transform societies,<sup>137</sup> so long as it has a tailored approach to each situation and addresses key concerns. In addition to reducing the justice gap and addressing the needs of victims, transitional justice is also composed of a set of measures to prevent the recurrence of conflict and human rights violations. According to the UN Office of the High Commissioner for Human Rights, some of the traditional measures include *inter alia* DDR as well as reinforcing internal accountability,<sup>138</sup> all of which are critical to the consolidation of sustainable peace, and to control the expansion and use of PMSCs locally or worldwide.

## V. Combatants for Hire: Limits of Peacebuilding and Security Sector Reforms in Preventing the Expansion of Private Military and Security Companies

In the contemporary international order, the UN is responsible for maintaining international peace and security.<sup>139</sup> International security is based on the idea of collective security, which must be sought through peaceful means by settling disputes.<sup>140</sup> This concept of collective security, based on the victors of the Second World War,<sup>141</sup> proved inefficient during the whole period of the Cold War, but was convenient in the context of peacekeeping operations.<sup>142</sup> However, protection of international peace and security is an enduring challenge for the UN as well as for States. Indeed, evolving trends of conflict and violence continue to pose threat to the security of people around the globe.

As part of the peacebuilding process, the United Nations deploys a strategy of disarmament, demilitarization and reintegration, the so-called DDR process, which ordinarily allows the former combatants to successfully reintegrate into the society as civilian actors.

There is no unanimously accepted definition on what DDR constitutes. In its report to the Security Council, the UN Secretary General provided the following definitions for the activities of DDR:

- (a) *Disarmament* is the collection of small arms and light and heavy weapons within a conflict zone. [...] (b) *Demobilization* refers to the process by which parties to a conflict begin to disband their military structures and combatants begin the transformation

<sup>136</sup> Andrejs Vilks and Aldona Kipane, 'Economic Crime as a Category of Criminal Research' (2018) 9:8 *Journal of Advanced Research in Law and Economics* 2860–2867. Similarly, the United Nations Convention Against Transnational Organized Crime does not contain a definition of transnational organized crime or organized crime, it only defines an 'organized criminal group' (article 2a).

<sup>137</sup> Office of the High Commissioner for Human Rights, note 13, 2.

<sup>138</sup> *Ibid.*, 3.

<sup>139</sup> Art 1-1 UN Charter.

<sup>140</sup> Art 2 UN Charter.

<sup>141</sup> The UN was established to 'save succeeding generations from the scourge of war'; UN Charter.

<sup>142</sup> These trends are changing and the distinctions between peacekeeping forces and the military operations envisaged by Chapter VII of the Charter are tending to blur. Alan Pellet and P Daillier, *Droit international public*, 7th edn (Paris: LGDJ, 1994), 941, 928. According to the authors, without any trace in the Charter, the objective and the mode of functioning of these operations are found in the idea of judicious interposition between the forces present, to create a kind of 'moratorium' to leave room for negotiations.

into civilian life. [...] (c) *Reintegration* refers to the process which allows ex-combatants and their families to adapt, economically and socially, to productive civilian life. [...].<sup>143</sup>

The mission of DDR is, thus, to contribute to creating a space for long-term peace and security.<sup>144</sup> Demobilizing former combatants is one of the components of larger security sector reform ('SSR') and it can be initiated in different periods.

SSR is the political and technical process of improving State and human security and it can be initiated once former combatants have been fully demobilized, otherwise, security reform policies can eventually prepare the process of demobilization. The UN has progressively integrated SSR into sustainable peace building, where SSR is also understood as a preventive measure and long-term development goal. Indeed, the *nexus* between security sector governance and the socio-economic well-being of groups in the society is key for sustainable development. In 2007, the Security Council noted 'that reforming the security sector in post-conflict environments is critical to the consolidation of peace and stability (...) and preventing countries from relapsing into conflict'.<sup>145</sup>

Whichever way security reform is designed, it should be complementary to DDR.<sup>146</sup> This is fundamental because critical factors, such as the size of armed forces or police, the stockpiling and destruction of small and light weapons and oversight mechanisms can embolden former combatants to move into the private security sector. Given the centrality of disarmament to peace and stability, related efforts to this end have progressively been included in peacekeeping missions.<sup>147</sup> Additionally, establishing and advancing effective security reform must be combined with socio-economic factors to be long-lasting, sustainable and effective.

In the context of the former Yugoslavia, DDR was deployed in a limited way or with no regard to the SSR efforts that started to develop in the early 2000s. The DDR processes in Croatia, Bosnia and Herzegovina and Serbia were poorly designed and implemented, leaving many former combatants deficiently integrated into civilian life. These combatants were not disarmed and, because of the lack of economic reform, were driven to do the only thing familiar to them to earn a living: war.

Lessons from past DDR processes indicate that governments and other key players are not prepared for sudden or rapid demobilization and reintegration activities.<sup>148</sup> In the countries of the former Yugoslavia, DDR was limited, not least because the mission was established immediately in the post-Cold War era. Additionally, DDR reforms were expected to reduce multiple forms of violence.<sup>149</sup> The reforms took place in two phases: first, during the active hostilities of the war in Croatia and Bosnia and Herzegovina, and second, in the post-conflict

<sup>143</sup> United Nations Security Council, 'The Role of the United Nations Peacekeeping in Disarmament, Demobilization and Reintegration', S/2000/101 (11 February 2000), para 6.

<sup>144</sup> According to DCAF, 'intention of DDR program is to create peace and security', see Rufer, *note 41*, 29. However, I respectfully disagree, because DDR alone does not and cannot achieve this. It is only one of the parameters to be taken into account when considering the long-term process for sustainable peace and stability.

<sup>145</sup> Security Council, 'Statement by the President of the Security Council', S/PRST/2007/3 (21 February 2007).

<sup>146</sup> United Nations Development Programme, *Practice Note, Disarmament, Demobilization and Reintegration of Ex-Combatants* (New York: UNDP, 2012) 58 [hereafter UNDP Practice Note]. See also DCAF – Geneva Centre for Security Sector Governance, 'SSG/R Series', <https://www.dcaf.ch/ssgr-series> (accessed 25 January 2024).

<sup>147</sup> See the history of the United Nation Peacekeeping: United Nations Peacekeeping, 'Our History', <https://peacekeeping.un.org/en/our-history> (last accessed 7 March 2022). See also Paul Francis Diehl, *International Peacekeeping* (Baltimore and London: The Johns Hopkins University Press, 1993).

<sup>148</sup> Pietz, *note 36*, 19.

<sup>149</sup> Muggah and O'Donnell, *note 40*, 3.



transition in the latter. The integration of DDR into the peacekeeping mandate further led to a gap in its application in Serbia.

The UN peacekeeping mission for the former Yugoslavia was mandated to create suitable conditions to negotiate peace and security in the region.<sup>150</sup> The UN Peace Plan<sup>151</sup> contained several key provisions, including the demilitarization of the UN Protected Areas in Croatian territory and the withdrawal of the Yugoslav army from the Croatian territory.<sup>152</sup> The demilitarization process in Croatia was not defined as either complete<sup>153</sup> or partial.<sup>154</sup> However, by design, it gave the appearance that it was only partial.<sup>155</sup> Furthermore, the UN adopted a selective approach to demilitarization as only the Serbian population, but not the Croatian military, was part of the demilitarization process.<sup>156</sup> On 31 March 1995, the Security Council decided to restructure the UN Protection Force ('UNPROFOR'), replacing it with three separate but interlinked peacekeeping operations. Subsequent missions such as the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium ('UNTAES'), had an explicit mandate to initiate a 30-day demilitarization from 21 May 1996 to 20 June 1996.<sup>157</sup> As a key requirement under the Basic Agreement from

<sup>150</sup> Security Council, Resolution 743, S/RES/743 (21 February 1992) concerning the establishment of a protection force for UN (UNPROFOR) in Yugoslavia. Originally the first mission started as Yugoslavia – UN Protection Force (UNPROFOR), which was then transformed into the UN Mission in Bosnia and Herzegovina (UNMIBH) on 13 March 1992. By resolution 743 (1992), the Security Council decided to create the UN Protection Force called UNPROFOR with its headquarters in Sarajevo to implement the Vance peace project. By resolution 758 of 8 June 1992, the mandate of UNPROFOR formally begins in BiH. Croatia – UN Confidence Restoration Operation in Croatia (UNCRO), UN Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) and UN Civilian Police Support Group (UNPSG). No specific mission for Serbia.

<sup>151</sup> Security Council, 'Further Report of the Secretary-General Pursuant to Security Council Resolution 721 (1991)', S/25392 (15 February 1992).

<sup>152</sup> See Sinisa Tatalovic, 'Military Aspects of the Peacekeeping Operation in Croatia' (1993) 30:2 *Politička misao* 55–63.

<sup>153</sup> 'Complete demilitarization calls for the complete destruction of existing military facilities and no new military construction as long as the area is considered demilitarized', *ibid*, 57, footnote 5.

<sup>154</sup> Partial demobilization prohibits new military construction and armed forces are limited.

<sup>155</sup> In Croatia it focused on integration of the Serbs into society and had limited focus on the integration of former combatants. This is particular because the Croatian government had a focus on their national security and borders, see Report of the Secretary-General on the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium, S/1997/953 (4 December 1997); see also Security Council, 'Report of the Secretary-General on the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium', S/1997/148 (24 February 1997) (the weapons program).

<sup>156</sup> 'All heavy weapons belonging to the local Serbs are removed from the region or handed over to UNTAES for disposal': United Nations, note 61. On 22 January 1993, the Croatian Army launched an offensive attack in a number of locations in the southern part of UNPROFOR's Sector South and the adjacent 'pink zones'. The Croatian Government stated that it took this action out of impatience with the slow progress of negotiations in respect of various economic facilities in and adjacent to the UNPAs and 'pink zones'. On 27 January, the Croatian Army attacked and captured the Peruca dam. The Serbs responded to the Croatian offensive by breaking into a number of storage areas, which were under joint control under a double-lock system in the UNPAs, and by removing their weapons, including heavy weapons. See Department of Public Information, United Nations, 'United Nations Protection Force: Background', [https://peacekeeping.un.org/en/mission/past/unprof\\_b.htm](https://peacekeeping.un.org/en/mission/past/unprof_b.htm) (accessed 6 July 2022).

<sup>157</sup> Security Council, Resolution 1037, S/RES/1037 (15 January 1996); UNTAES established its headquarters in Croatia (Vukovar). On 12 November 1995, the Republic of Croatia and the local Croatian Serb authorities in Eastern Slavonia signed the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, providing for a peaceful reintegration into Croatia of this region. However, when the Basic Agreement was signed, Sector East remained under Serb control. The United Nations Security Council was requested to establish a Transitional Administration to govern and to maintain peace and security in the region during the transitional period. The transitional period of 12 months could be extended by the same duration at the request of either of the parties. The Basic Agreement commits the parties to the demilitarization of the region within 30 days after full deployment of

12 November 1995 signed by the government of Croatia and local Serb authorities in Eastern Slavonia, the demilitarization process required local Serbs to either remove all heavy weapons within the region or to hand them over to UNTAES for disposal. Demilitarization included the disarmament and demobilization of all military, paramilitary and police forces, units and personnel, and the breakdown of the command and control structures<sup>158</sup> of any Serb units.<sup>159</sup>

A similar approach was adopted in Bosnia and Herzegovina, where in reaction to the clashes, the Secretary General accelerated the presence of the UNPROFOR starting 30 April 1992. The UN Security Council deployed considerable efforts to appeal to all parties for a ceasefire, and through a series of resolutions demanded *inter alia* that all local *irregular* forces be disbanded and disarmed. Following the adoption of the resolution 819, UNPROFOR's Force Commander, the Commander of the Serb forces and the Commander of the 'Bosnian Muslim forces'<sup>160</sup> signed the Agreement for the demilitarization of Srebrenica on 18 April 1993, while active hostilities were still ongoing. Civil society was not consulted throughout the negotiation of this agreement, which set forth provisions on the disarmament of Bosnian forces only in exchange of their protection by the UNPROFOR.<sup>161</sup> On 21 April 1995, UNPROFOR's Force Commander reported that 170 UNPROFOR troops, civilian police and military observers had been deployed in Srebrenica to collect weapons, ammunition, mines, explosives and combat supplies and that by noon that day they had 'successfully demilitarized the town'<sup>162</sup> which ultimately led to the genocide of the Bosnian Muslims three months later.<sup>163</sup>

The DDR program in Bosnia and Herzegovina was established in three phases during the post-conflict period:<sup>164</sup> emergency demobilization following the Dayton Peace Agreement (1995–1996), intermediate professionalization of services (1997–1998), and the continuing professionalization process (1999–2000). In this context, many former combatants became involved in organized crime, black markets and human trafficking, motivating the World Bank to establish an Emergency Demobilization and Reintegration Project.<sup>165</sup> In Bosnia, the

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UNTAES and would include all military forces, weapons and police, except for UNTAES forces and for police operating under the supervision of, or with the consent of the Transitional Administration. As a key requirement under the Basic Agreement from 12 November 1995 signed by the government of Croatia and local Serb authorities in Eastern Slavonia, the demilitarization process removed all heavy weapons belonging to the local Serbs from the region or handed over to UNTAES for disposal.

<sup>158</sup> The Secretary-General noted on 26 June 1996 that demilitarization had proceeded smoothly and was completed on 20 June (93 tanks, 11 armoured personnel carriers, anti-tank systems, 107 artillery pieces, 123 mortars and 42 anti-aircraft guns were removed from Serbs). See Department of Public Information, United Nations, *note 61*.

<sup>159</sup> According to the Secretary-General Report to the Security Council dated 24 February 1997 (S/1997/148), the Secretary-General stated that since its inception on 2 October 1996, the weapons buy-back programme, which was financed by the Government of Croatia and organized by the UNTAES military component, had collected over 15,000 weapons and 435,000 rounds of ammunition (*ibid*).

<sup>160</sup> This notion is used in some UN documents and mostly by Ratko Mladic in his anti-Muslim propaganda where he tried to portray the Muslim population as extremists. The official name of this army is the Army of Bosnia and Herzegovina.

<sup>161</sup> United Nations General Assembly, 'Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica', A/54/549 (15 November 1999), para 59 and following.

<sup>162</sup> See Department of Public Information, United Nations, 'Former Yugoslavia – UNPROFOR', [https://peacekeeping.un.org/sites/default/files/past/unprof\\_b.htm](https://peacekeeping.un.org/sites/default/files/past/unprof_b.htm) (accessed 4 December 2022).

<sup>163</sup> ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Serbia and Montenegro*), *note 24*. See also Human Rights Watch, *The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina* (New York: Human Rights Watch, 1995).

<sup>164</sup> Pietz, *note 36*, 24.

<sup>165</sup> Massimo Moratti and Amra Sabic-El-Rayess, *Transitional Justice and DDR: The Case of Bosnia and Herzegovina* (New York: ICTJ, 2009) 2 (hereafter ICTJ Research Brief). See also Muggah and O'Donnell, *note 40*, 1–12.

Dayton Agreement did not establish relevant leadership for DDR, which led to a chaotic disintegration of armed forces. The World Bank estimated that ‘almost 300,000 soldiers or combatants had left the armed forces: 100,000 from Bosnian units, 45,000 from the Croat Defence Council (HVO) and 150,000 from the army of the Republika Srpska’.<sup>166</sup> These forces should have been reintegrated into society.

In Serbia, there was no UN presence during the conflict or post-conflict eras. The combination of mass privatization, foreign investment, and transfer of armed forces and police agents into the private sector, stimulated the unregulated rapid growth of private security companies in Serbia.<sup>167</sup> After years of resistance by the military, the first reform of the Armed Forces of Serbia and Montenegro (‘AFSM’) finally took place in 2003. This reform focused on restructuring and reducing the AFSM through the Resettlement and Retraining Project (PRISMA), which addressed social issues in relation to war veterans and military pensioners but also other categories of former military personnel.<sup>168</sup>

It is necessary to integrate DDR into the political process while at the same time providing technical solutions to integrate former combatants into a civilian life.<sup>169</sup> Failure to do so leads to gaps, which can lead to criminality, as evidenced by the oil field example cited above. In his 1996 report, the Secretary-General identified the link between the poor economic conditions of the local administration (i.e., authorities) since the closure of Djeletovci oil field and the presence of significant numbers of demobilized and unemployed ex-combatants undermining the public confidence in UNTAES.<sup>170</sup>

If we consider that the objective of SSR should be to create conditions for a safe society<sup>171</sup> then a few considerations should guide the approach. First, enhanced accountability of security institutions should be guaranteed by placing them under civilian control within a framework of the rule of law and human rights.<sup>172</sup> Civil society and local NGOs should play a fundamental role in SSR and DDR and the peace-building process. Their roles should include the planning and implementation of DDR and the inclusion of ex-combatants into civilian life, something that has not been applied in the context of the former Yugoslavia.<sup>173</sup> Secondly, DDR should be applied through regional operations.<sup>174</sup> Armed conflicts are

<sup>166</sup> Pietz, note 36, 24, quotes The World Bank, ‘Technical Annex Emergency Demobilization Reintegration Project, T6947 (28 June 1996) 1.

<sup>167</sup> Unijat et al, note 42, 24.

<sup>168</sup> Bonn International Centre for Conversion and UN Peacekeeping, *The Evolving Nature of DDR: Engaging Armed Groups Across the Peace Continuum: Experiences, Challenges, Policy Options* (Bonn: DDR, Bonn International Centre for Conversion and UN Peacekeeping, 2021) (hereafter *The Evolving Nature of DDR*). See also Bonn International Centre for Conversion and DCAF, Brief 31, *Demobilizing and Retraining for the Future the Armed Forces in Serbia and Montenegro* (Bonn: BICC, 2005) 23.

<sup>169</sup> *The Evolving Nature of DDR*, note 168.

<sup>170</sup> The Secretary-General stated on 5 August 1996 that the revenue base of the local administration has been deteriorating steadily since the closure of the Djeletovci oil field in April. The local administration has been unable to pay the salaries of some 3,600 civil servants, including teachers, health workers and police, as well as general operational costs. This precarious financial base for administering the region, together with the presence of significant numbers of demobilized and unemployed ex-combatants, was undercutting the public confidence in UNTAES that had been created in the early months of the Mission’, see Department of Public Information, United Nations, note 61.

<sup>171</sup> Security Council, ‘Report of the Secretary-General, Securing States and Societies: Strengthening the United Nations Comprehensive Support to Security Sector Reform’, A/67/970-S/2013/480 (13 August 2013), para 8.

<sup>172</sup> *Ibid.*

<sup>173</sup> Rufer, note 41, footnote 119; UNDP Practice Note, note 146, 5–8.

<sup>174</sup> Rufer, note 41, 27. See also for the context of Libya where there is no DDR applied to external actors, Working Group on the Use of Mercenaries, ‘Mercenaries and related private contractors must leave Libya to pave way for peace, elections – UN experts’, *OHCHR* 30 July 2021, <https://www.ohchr.org/en/press-releases/2021/07/mercenaries-and-related-private-contractors-must-leave-libya-pave-way-peace> (accessed 5 December 2022).

increasingly transnational. The Yugoslav example demonstrated the extent and size of criminal networks where the transfer of weapons and other products defied national borders. These risk multipliers can be observed in many modern conflicts.<sup>175</sup> In responding to this, DDR should consider a cross-border approach. Third, from a Business and Human Rights standpoint, it was observed that ‘cooperation with small private companies was more efficient than with large state-owned companies. Those companies trained a smaller number of demobilized soldiers and employed only half of the trained individuals, but these employments were sustainable’.<sup>176</sup>

In Croatia as well as Bosnia and Herzegovina, the DDR program adopted during the hostilities proved unable to prevent future violence, including crimes such as genocide. In the post-conflict phase, DDR implementation in Bosnia suffered from an unfortunate combination of lack of political will<sup>177</sup> and a lack of a strategic, holistic vision for the demobilization and reintegration of former combatants, which undermined the process.<sup>178</sup> These inadequate approaches to DDR and SSR in the former Yugoslavia<sup>179</sup> shaped a space in which PMSCs mushroomed as many former combatants became private security contractors for local and foreign companies.

The social and economic consequences of armed conflict are dramatic and leave all groups of society in different forms and degrees of trauma. In a war-torn country, many former combatants find it difficult to find a job and successfully integrate into peaceful society. This creates risks of returning to violence ‘[w]ith weapons still at hand and no economic or social perspective for the future, ex-soldiers can go back to the only “job” they know’.<sup>180</sup> Furthermore, in modern conflicts where organized crime nourishes dangerous links to corrupt political actors (in some cases, elites), poorly designed DDR and SSR can create a space for powerful security companies to serve as a shield for ‘crime bosses’ and those who have perpetrated war crimes newly operating under the impression of ‘legal corporate structures’.<sup>181</sup> While the UN Secretary General recognized the general trend of growing PMSCs, he also noted that the ‘UN does not know how best to engage them’.<sup>182</sup>

As SSR is directly linked to international peace and security, it may come as a surprise that the UN has adopted a much-delayed strategy of pursuing a coordinated and comprehensive approach to SSR assistance<sup>183</sup> across the spectrum of peacekeeping, peacebuilding and development settings. It should be further noted that the Security Council, the body explicitly tasked with maintaining international peace and security, adopted its first resolution specifically referring to SSR as late as 2012, followed by

<sup>175</sup> DDR, Bonn International Centre for Conversion and UN Peacekeeping, [note 168](#), 8.

<sup>176</sup> Pietz, [note 36](#), 44.

<sup>177</sup> Rufer, [note 41](#), 29.

<sup>178</sup> Pietz, [note 36](#), 32.

<sup>179</sup> *Ibid.*, 24.

<sup>180</sup> This was stated by G Day in an interview published in Pietz, [note 36](#), 19. See also Moratti and Sabic-El-Rayess, [note 165](#), 2: ‘Many [former combatants] lacked education and employable skills, and most suffered from post-traumatic stress disorder’; Working Group on the Use of Mercenaries, ‘Recruitment, including predatory recruitment, of mercenaries and mercenary-related actors’, A/HRC/54/29 (12 July 2023), paras 29, 35.

<sup>181</sup> According to the Secretary-General Report to the Security Council Dated 24 February 1997 (S/1997/148), it is believed that considerable quantities of small arms and ammunition remain in private hands. See also OCCR (2010), *Crime and Politics Mix in Security Industry*, [note 82](#). See also OCCR (2010), *Serbia: Nobody’s Policing the Security Guards*, [note 82](#).

<sup>182</sup> Security Council (2013), A/67/970-S/2013/480, [note 171](#), para 11: ‘The emerging trend towards the outsourcing to private companies of support to security sector reform introduces a new set of dynamics and challenges, including an increased need to ensure national ownership and democratic control and oversight’.

<sup>183</sup> In March 2005, the Executive Committee on Peace and Security approved the establishment of a UN DDR Working Group made up of 14 departments, agencies and funds working to enhance cooperation and effectiveness on DDR issues, see Security Council (2013), A/67/970-S/2013/480, [note 171](#), para 4.

resolution 2151 (2014) which was the first ever stand-alone resolution on SSR, and by resolution 2553 (2020) as a second thematic resolution on SSR.<sup>184</sup>

The next generation of DDR must be more inclusive, encapsulating entities that are not traditionally included in peace agreements, such as PMSCs.<sup>185</sup> States should reinvigorate discussions on the systematic inclusion of the SSR in their conflict prevention agenda and should consider SSR as one tool for curtailing the expansion of PMSCs through the recruitment of current or former combatants, as documented in Syria and Libya.<sup>186</sup> Moreover, future DDR should take place prior to reaching a peace agreement. Finally, according to the World Bank, 'economy, security and justice institutions should operate conjointly to prevent violence and sustaining peace'.<sup>187</sup> Adopting the relevant legal frameworks enables States to complete SSR and DDR.<sup>188</sup>

## VI. Conclusion

The doctrine on Business and Human Rights in Armed Conflicts is in its inception stage and many aspects necessary to understand the root causes of conflicts remain under-analysed. The situation in the former Yugoslavia exhibits patterns that continue to this day, including the creation of PMSCs by former combatants and the recruitment of current and former combatants. Such patterns contribute to the intensity and length of armed conflicts and crimes perpetrated therein. Three decades later, similar trends can be observed in Libya, the Central African Republic, Syria, Mozambique, Ukraine and in other conflict and post-conflict societies.

States have the obligation to uphold the fundamental principles contained in the UN Charter, notably, 'to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace'.<sup>189</sup> To achieve this, it is critical to adopt integrated and interdisciplinary approaches that facilitate a sustainable peace process by addressing the socio-economic aspects of contemporary asymmetric armed conflicts and preventing the multiplication of PMSCs, which contribute

<sup>184</sup> In 2008, there was a total of 14 references to security sector reform in Security Council resolutions; in 2012, this number had risen to 37, see Secretary-General report A/67/970-S/2013/480, note 171, para 16. In 2008, the Secretary-General identified 10 basic principles that should guide the United Nations' engagement in security sector reform, see Security Council, 'Report of the Secretary-General Securing peace and development: the role of the United Nations in supporting security sector reform', A/62/659-S/2008/39 (23 January 2008), para 45, 'On the basis of those principles, I recognized that the United Nations would rarely be an exclusive actor in a security sector reform process, noting that bilateral and multilateral partners would continue to play a major role in supporting national authorities in many contexts'. See also United Nations Peacekeeping, 'Security Sector Reform', <https://peacekeeping.un.org/en/security-sector-reform> (accessed 4 December 2022).

<sup>185</sup> Muggah and O'Donnell, note 40, 418.

<sup>186</sup> The Syria Justice and Accountability Centre (2021), note 8; Syrians for Truth and Justice, *Hundreds of Syrians Deployed to Libya Despite the Ceasefire Agreement* (Paris: Syrians for Truth and Justice, 2021). See also Working Group on the Use of Mercenaries (2021), note 174.

<sup>187</sup> United Nations-World Bank, 'Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict' (Washington, DC: World Bank, 2018).

<sup>188</sup> In Croatia, the first piece of legislation concerning private security was adopted as early as 1996, immediately after the end of armed conflict on its territory. The law was subsequently modified on several occasions, with the latest version of this Law on Private Protection dating from 2020. See Zakon o privatnoj zaštiti, NN 16/20 in force since 22 February 2020 (Croatia). This law is now harmonized with the EU Law 2008/C 115/1 (9 May 2008). In Bosnia, it was not until 2002 that the Federal Government tried to respond to the growing trend of the private security companies by adopting the Law on agencies for protection of people and property. Zakon o vanrednim situacijama RS. Službeni glasnik Republike Srbije, br. 111/2009, 92/1011, 93/2012 (Bosnia). The law was amended in 2011 and 2012. See also Almir Pustahija, *Privatna sigurnost zemalja zapadnog Balkana* (Sarajevo: Perfecta, 2019).

<sup>189</sup> Article 1, UN Charter.

to conflicts and human rights abuses. It is therefore urgent to address the root causes of the privatization of wars and adopt relevant measures, starting by questioning the efficiency of the international sanction regime. Indeed, as the Secretary General noted in 2000, ‘the existence of a sanctions regime almost inevitably transforms an entire society for the worse’;<sup>190</sup> and yet, in recent years the use of all types of international sanctions have proliferated, often reportedly leading to high-levels of corruption<sup>191</sup> and producing the perverse effect that those targeted by the sanctions often profit from them through black market activities. Therefore, sanctions regimes must be re-defined to better target those who have power and those who rise to the top of the socio-economic ladder as a result of sanctions.

Furthermore, neither domestic nor international law has been able to adequately address the exploitation or monopolization of resources by non-State and/or corporate actors operating in armed conflict. These (frequently transnational) crimes can generate considerable negative impacts on democratic institutions and the financial resources of affected States and their societies. It is therefore necessary to reflect upon whether (international) law needs to adapt to address the new forms of criminal activities and actors, and whether a clear legal definition of economic crimes would be timely.

Additionally, in securing peace or transitioning from conflict, there is often a perceived tension between justice and security on the one hand, and measures (such as amnesties) that facilitate DDR and SSR and arguably strengthen or secure peace itself, on the other. While this is a political dilemma,<sup>192</sup> the role and negative impacts of external actors such as foreign or newly legitimized PMSCs must be considered and addressed as part of peace negotiations and, ultimately, of transitional justice processes.<sup>193</sup>

The UN Open-ended Intergovernmental Working Group on PMSCs must consider these factors in developing its regulatory instrument for PMSCs. If the IGWG is to produce an international legal framework, it must address the root causes of the privatization of conflicts and the patterns of ‘producing and recruiting’ former combatants as PMSC employees. It must also address the transformation of criminal actors operating in armed conflict into legitimate private military and security companies – the legal vacuum that perpetuates armed conflict cannot continue.

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<sup>190</sup> United Nations, ‘Secretary-General, In Address to International Rescue Committee, Reflects on Humanitarian Impact of Economic Sanctions: Press Release SG/SM/7625’, *United Nations* (15 November 2000), [www.un.org/press/en/2000/20001115.sgsm7625.doc.html](http://www.un.org/press/en/2000/20001115.sgsm7625.doc.html) (accessed 7 November 2023).

<sup>191</sup> Human Rights Council, ‘Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights: negative impact of unilateral coercive measures: priorities and road map’, A/HRC/45/7 (21 July 2020).

<sup>192</sup> Rufer, note 41, 59.

<sup>193</sup> UNDP Practice Note, note 146, 60.