

INDEX

- Abu Ghraib prisoner abuse scandal (Iraq)
 - PMSC involvement in 24, 193, 220
 - US investigations and prosecutions 139–40, 223
- access to justice requirement 165–6, 226–7
- accountability
 - of mercenaries 23
 - of PMSCs 2, 103
- ‘acting in that capacity’ criterion
 - in exercise of governmental authority 112–13
- Afghanistan
 - PMSC activities in 1–2
 - ArmorGroup 24–5, 51
 - criticism of 89–90
 - deficient training of personnel 193
 - licensing procedures 135–6
- Africa
 - mercenary activities in 12–13
 - PMSC activities in 233–4
- African Charter on Human Rights and Peoples’ Rights
 - on obligation to provide remedy for human rights violations 160
 - on right to life 150–1
- Ago, Robert 65, 96
- AirScan 233–4
- Al Qaeda
 - Blackwater hired to locate and assassinate operatives of 41, 115–16
- American Convention on Human Rights (1969) 143
- derogation clauses in 146
- extraterritorial application
 - of 207–10, 227
- on obligation to provide remedy for human rights violations 159
- on right to life 150
- Angola
 - PMSCs hired by 186
- Annan, Kofi 14
- anti-mercenary norm 16, 17
- appropriateness notion
 - and *lex specialis* principle 151
- arbitrary deprivation of life 215
- armed activities
 - obligation of PMSC home states to prohibit 239
- armed conflicts
 - human rights law applicable to 141–5
 - derogable rights 144, 145–7, 202
 - international 95–7, 137–9
 - neutrality law applied in 247
 - see also* international humanitarian law
- non-international
 - international humanitarian law applicable to 92–3
 - protection of civilians 139
- PMSC activities in
 - and attribution of conduct 97–8
 - and membership of armed forces 92–5
- respect for international humanitarian law norm in 136

- obligation to repress
 - breaches/violations of 140–1, 195–6
- PMSC activities in 1, 39–40, 92–5
 - armed security services 49–51, 107–8, 179–80
 - military and security expertise provision 45–9, 178–9, 195
 - military support services 51–2, 180–1
 - offensive combat 40–5, 178
 - protection of civilians in 137–9
 - obligatory knowledge of
 - international humanitarian law for those in charge of 199
 - and state responsibility for PMSC conduct 200
 - right to life in 149, 150–1
- armed security services of
 - PMSCs 49–51, 107–8, 179–80
- armies/armed forces
 - definitions of
 - in customary international law 90–2
 - in international humanitarian law 81–4
 - of national citizens 10–11, 16, 32–3
 - foreign soldiers/forces in 9–10, 19–20, 22, 32
- PMSC incorporation into 81, 84, 183–4
 - de facto* membership 86–7
 - de jure* membership 85–6
 - in international armed conflicts 95–7
 - in non-international armed conflicts 92–5, 97–8
- training of
 - in international humanitarian law 197–9
 - by PMSCs 47–9, 195
- ArmorGroup
 - activities in Afghanistan 24–5, 51
 - criticism of 89–90
 - deficient training of personnel 193
 - activities in Iraq 24–5
 - vetting procedures 194
- Articles on Responsibility of States for Internationally Wrongful Acts (ILC) 55–6
 - on attribution of conduct 97–8, 99, 100, 121
 - acting on state instructions 114, 116
 - on causation 73–4
 - on state organs 93
 - on state responsibility for PMSC misconduct 57–8
 - on wrongfulness
 - circumstances excluding 76
 - legal consequences of 76
- attribution of PMSC conduct to hiring
 - states 4, 57–9, 61–2, 80–1, 121–2
- acting under state instructions,
 - direction or control 113–21
- in exercise of governmental authority by
 - PMSCs 99–100, 111–13
- in international armed conflicts 95–7
- in non-international armed conflicts 97–8
 - see also* misconduct
- Avant, D. 10, 22–3, 27
- Balkan wars (1990s)
 - PMSC activities in 47–9, 176–7
- Barlow, Eben 41–2
- Barnidge, R. 69
- Bearpark, Andrew 34
- Blackwater
 - activities in Iraq 50, 108, 155, 168–9
 - hired to locate and assassinate
 - operatives of Al Qaeda 41, 115–16
 - security guards involved in shooting incidents 116, 168–9, 220–1
 - US investigations and prosecutions 222–3
 - see also* Xe Services LLC
- border controls by PMSCs 49

- Bosnia and Herzegovina
 sexual misconduct by DynCorp
 personnel in 138, 200
- Brownlie, I. 231, 247
- CACI (security firm) 24, 46
 involvement in Abu Ghraib prisoner
 abuse scandal 139–40
 deficient training of personnel 24,
 193, 220
- Cassese, A. 185
- causation element of due diligence
 obligations 73–5
- CEDAW (Convention on the
 Elimination of All Forms
 of Discrimination Against
 Women)
 on prohibition of gender-based
 violence 157–8
- children
 special obligations of states for
 protection of 157–8, 218
- citizen armies
 emergence of 10–11, 16, 32–3
 foreign soldiers/forces in 9–10,
 19–20, 22, 32
- citizen–state relationship
 mercenaries fighting outside of
 21–3
- civilians
 protection obligation in armed
 conflicts 137–9
 obligatory knowledge of
 international
 humanitarian law rules of
 those responsible for 199
 and state responsibility for PMSC
 conduct 200
 training in international
 humanitarian law
 of 197–8
- Clapham, A. 163
- Cockayne, J. 145
- coercive powers, state monopoly of 7
 and control over mercenaries 9,
 15–16, 23
 and privatisation of military 2
- combatant status
 for PMSC personnel 82, 251–2
- commanders
 duties of 86–7
- compensation
 for human rights violations 165–6,
 226–7
- condottieri* 8–9
- Congo
 PMSC activities in 233
- contracting states *see* hiring states
- contracts for hiring PMSCs 120–1
 monitoring of 194–5
 ‘recruitment in order to fight
 in’ 176–81
- contras* (rebels fighting Nicaraguan
 government)
 ICJ attribution to US of conduct
 of 117
- Convention Against Torture
 (UNCAT) 146
 application to PMSC conduct
 257–8
 on obligations of states
 to prevent violations of 219–20
 to provide remedy for violations
 of 160–1, 257–8
- Convention for the Elimination of
 Mercenarism in Africa
 (OAU, 1977) 184–6
- Convention on the Rights of the Child
 on protection of children against
 sexual exploitation 157
- Corfu Channel* case
 obligation to prevent damage caused
 by mines 66, 67–8, 230
- corporations
 human rights abuses by, and
 international obligations
 of states 152–3, 214,
 256–7
- counterterrorism instruments 237–8
- crimes
 of mercenarism 185
- criminal investigations of human rights
 violations
 obligation to 164–5, 221–6
- Croatia
 PMSC activities in 47–9, 176–7
- customary international law
 on definition of armed forces 90–2

- on neutrality 244
 - on non-intervention norm 235–6
- damage element of due diligence obligations 75
- danger
 - special measures targeting known sources of 154–5, 215–16
- demining
 - PMSCs involved in 47
- democracy
 - undermined by PMSCs 22–3
- Dennis, Michael 206
- derogation of human rights in armed conflicts/emergency 144, 145–7, 202
- detainees
 - obligations of states to protect the physical integrity of 217–18
 - Standard Minimum Rules for the Treatment of (1955, UN) 219
 - see also* prisoners of war
- Diplock Report (UK) 181
- direct participation in hostilities by PMSC personnel 176–81, 251–2
- dispute resolution processes 262
- due diligence obligations 59–60, 64
 - causation element 73–5
 - damage element 75
 - discharge of 69–70
 - in international humanitarian law 132, 136
 - mental element of 67–9
 - of states to control PMSC/private actor conduct 63–7, 71, 123–4, 132–6, 232–3
 - capacity to influence private actors 71
 - resources available for 71–2
 - and risk of violation 72–3
- due process *see* fair trial rights
- DynCorp 49
 - sexual misconduct in Bosnia and Herzegovina by personnel of 138, 200
- ECtHR (European Court of Human Rights)
 - on due diligence obligations 68–9, 72
 - to protect right to life 74–5
 - on extraterritorial application of European Convention on Human Rights 210–13
 - on fair trial rights 62, 226
 - on human rights protection in armed conflict 146–7, 154, 156
 - on planning and controlling security operations to minimise the risk to life
 - on provision of remedy for human rights violations 161
 - effective investigations 164, 165
 - by private actors 162–3
- effective control test
 - ECtHR jurisprudence on 210–13
 - ICJ jurisprudence on 58, 118–19, 196–7
 - UK jurisprudence on 132
- effective remedy notion 161
 - assessment of 164
- emergency
 - human rights derogable in time of 144, 145–7, 202
- empowerment by law criterion
 - in exercise of governmental authority 111–12
- European Commission of Human Rights
 - on due diligence obligations 72–3
- European Convention on Human Rights (1950) 143
 - derogation clauses 146
 - extraterritorial application of 210–13
 - on fair trial rights 62
 - on individual liberty 151
 - on obligation of states to provide remedy for human rights violations 160
 - on right to life 150
- Executive Outcomes (EO) 14, 17
 - offensive combat activities of 41
 - in Sierra Leone 41–3

- extraterritorial application of
 - international human rights law 203, 227
 - American Convention on Human Rights 207–10, 227
 - European Convention on Human Rights 210–13
 - ICCPR 204–7
 - Israeli opposition to 206
 - US opposition to 206
- fair trial rights 62, 226
- financially motivated fighters
 - rejection of 18–21
- force *see* coercive powers; violence
- Foreign Legion (France) 19–20, 22
- Fowler, K. A. 8
- France
 - Foreign Legion in 19–20, 22
- free companies 8
- gender-based violence
 - prohibition of 157–8
- Geneva Conventions on the Laws of War (1949) and Additional Protocols (1977)
 - on attribution of conduct of state organs 95–6
 - on constraints on states to hire PMSCs 187
 - on definition of armed forces 81–4
 - on mercenaries 29–30, 174, 175–6, 181–2, 183
 - on neutrality 249
 - on obligations of states
 - obligations of result 60–2
 - to protect civilians in armed conflicts 137–9
 - to repress breaches of the Conventions 139, 140
 - to respect international humanitarian law 124–9
- genocide
 - obligation to prevent causation notion in 74
 - discharge of 71, 131
 - ICJ jurisprudence on 59–60, 63–4, 71, 130, 189
 - governmental authority 100–1
 - exercised by PMSCs 101–10
 - and attribution of conduct 99–100, 111–13
 - governments/regimes of states 240–1
 - relationship with citizens, mercenaries fighting outside of 21–3
 - Great Britain *see* United Kingdom
 - Great Britain–US Arbitral Tribunal
 - on attribution of conduct 113–14
 - Greenwood, C. 248–9
 - Gurkhas 19–20, 22
 - Hague Conventions Respecting the Law and Customs of War on Land (1907) 201
 - on neutrality 244, 247, 251–3
 - Higgins, R. 237
 - hiring states
 - attribution of PMSC conduct to 4, 57–9, 61–2, 80–1, 121–2
 - acting under state instructions, direction or control 113–21
 - in exercise of governmental authority by PMSCs 99–100, 111–13
 - in international armed conflicts 95–7
 - in non-international armed conflicts 97–8
 - constraints on ability to hire PMSCs 173
 - in international humanitarian law 186–7
 - in international mercenary law 173–6, 184–6
 - international obligations of 23–5, 57–9, 172–3, 227, 228
 - in international human rights law 202–3, 227–8, 261
 - to investigate, punish and redress violations of 221
 - access to justice and compensation 226–7
 - criminal investigations and prosecutions 221–6

- to plan and control security operations to minimise the risk to life 216–17
- to prevent violations of 214–18
- discharge of 218–21
- to protect the physical integrity of detainees 217–18
- to protect women and children 218
- to take special measures to target known sources of danger 215–16
- in international humanitarian law 187, 227
- discharge of 192–6
- hiring state not party to the conflict 190–2
- occupying power obligations 201–2
- overseas PMSC activities 188–9
- to protect civilians in armed conflict 200
- to repress/suppress violations of 200–1
- to train armed forces in knowledge of 197–9
- in UN Convention on Mercenaries (1989) 175–84
- responsibilities of
 - for breaches of international humanitarian law 196–7
 - for PMSC misconduct 57–9, 61–2, 80–1, 196–7, 228
- Hoffmann, Lord 106
- home states
 - international obligations of 25–7, 229–30, 258–9, 261–2
 - in international human rights law 256–8
 - in international humanitarian law 254–5
 - in neutrality law 243–4, 251–3, 259
 - discharge of 253–4
 - non-intervention norm 233–4, 259
 - discharge of 241–3
- to prevent activities directed towards violent overthrow of regime of another state 239–40
- to prohibit armed activities 239
- to prohibit subversive activities 236
- to prohibit terrorist activities 236–9
- responsibilities for PMSC misconduct 232, 259
- Hope, Lord 107
- Hoppe, C. 94–5, 115
- host states
 - international obligations of 123–4, 170
 - fulfilment of 171
 - in international human rights law 141, 147, 152–4, 170–1, 261
 - discharge of 158, 261
 - to protect individuals whose lives are at risk 156–7
 - to provide remedy for violations of 161–6
 - special obligations towards women and children 157–8
 - to take special measures to target known sources of danger 154–5
- in international humanitarian law 124–8, 129–32, 138, 170
- undermined by immunity agreements 166–9
- responsibilities for PMSC misconduct 123–4, 136–7
- hostilities
 - direct participation in, by PMSC personnel 176–81, 251–2
- HRL *see* international human rights law
- human rights
 - derogable in time of emergency/armed conflict 144, 145–7, 202

- human rights (*cont.*)
 right to life 149
 violations of
 obligations to investigate,
 prosecute and
 redress 158–61, 164–5
 PMSC hiring state
 obligations 221–7
 PMSC host state
 obligations 161–6
 obligations to prevent 152–4,
 214–15, 218
 discharge of 218–21
see also international human rights
 law
 Huntington, Samuel 7
- IACoMHR (Inter-American
 Commission on Human
 Rights)
 on extraterritorial application of
 American Convention on
 Human Rights 208,
 209–10, 227
- IACtHR (Inter-American Court of
 Human Rights)
 on human rights obligations of
 states 152, 157, 159
 to plan and control security
 operations to minimise
 the risk to life 216
 to prevent human rights
 violations 214–15
 to provide remedy for violations
 criminal investigations 165
 by private actors 162
- ICCPR (International Covenant on
 Civil and Political
 Rights) 144
 derogation clause in 146
 extraterritorial application of 204–7
 Israeli opposition to 206
 US opposition to 206
 on obligation of states to provide
 remedy for human rights
 violations 159
 on right to life 149
- ICJ (International Court of Justice)
 on attribution of conduct 96, 117
 on derogation of human rights in
 armed conflict 144, 146
 on effective control test 58, 118–19,
 196–7
 on extraterritorial application of
 international human
 rights instruments 206–7
 on international humanitarian law
 and human rights
 law 147–8
 on non-intervention norm 235–6
 on obligations 126
 of due diligence 65–6, 67–8, 69,
 71
 of occupying powers 201–2
 to prevent genocide 59–60, 63–4,
 71, 74, 130, 131, 189
 to prevent private acts harmful to
 other states 230–3
 to respect international
 humanitarian law 125,
 128, 192, 195
 on right to life in armed conflict 150
 on state instructions 114–15
 on state organs 86, 93–5
 on state responsibility for violations
 of international
 humanitarian law by
 private actors 130
- ICRC (International Committee of the
 Red Cross)
 on definition of armed forces 91
 on direct participation in
 hostilities 177–8, 179, 181
 on due diligence obligations 132–3
 on mercenaries 183
 on obligations of international
 humanitarian law
 to ensure respect for 126–7, 190
 to repress breaches of 140
 on PMSCs 34–5
- ICTY (International Criminal Tribunal
 for the former Yugoslavia)
 on attribution of conduct 96–7
 overall control test/standard
 developed by 58–9, 87,
 118–19

- IHL *see* international humanitarian law
- ILC (International Law Commission)
 Articles on Responsibility of States for Internationally Wrongful Acts 55–6
 on attribution of conduct 97–8, 99, 100, 121
 acting on state instructions 114, 116
 on causation 73–4
 on state organs 93
 on state responsibility for PMSC misconduct 57–8
 on wrongfulness
 circumstances precluding 76
 legal consequences of 76
 on due diligence obligations 69
 guidelines on exercise of governmental authority 102–8
 on *lex specialis* principle 148
 immigration controls
 by PMSCs 49
 immunity
 of PMSC personnel from local laws 139–40, 165
 undermining control by host states 166–9
 of states
 jurisprudence on 105–6, 107
 law of 103–5
 individuals
 application of neutrality law to 250–1
 extraterritorial application of human rights law relating to 213
 liberty of 151
 risk to life of, host state obligations to provide protection for 156–7
 Inter-American Commission on Human Rights *see* IACoMHR
 Inter-American Court of Human Rights *see* IACtHR
- international armed conflicts 95–7, 137–9
 neutrality law applied in 247
see also international humanitarian law; non-international armed conflicts
- International Convention Against the Recruitment, Use, Financing and Training of Mercenaries (UN, 1989) 175–84
- International Defence and Security (company) 233
- international human rights law
 application of
 in armed conflicts 141–5
 derogable rights 144, 145–7, 202
 extraterritorial 203, 227
 American Convention on Human Rights 207–10, 227
 European Convention on Human Rights 210–13
 ICCPR 204–7
 and international humanitarian law 147–52, 203
 and arbitrary deprivation of life notion 215
 obligations of PMSC hiring states in 202–3, 227–8, 261
 to investigate, punish and redress violations of human rights 221
 access to justice and compensation 226–7
 criminal investigations and prosecutions 221–6
 to plan and control security operations to minimise the risk to life 216–17
 to prevent violations of human rights 214–18
 discharge of 218–21
 to protect the physical integrity of detainees 217–18
 to protect women and children 218

- international human rights (*cont.*)
 - to take special measures to target known sources of danger 215–16
- obligations of PMSC home states
 - in 256–8
- obligations of PMSC host states
 - in 141, 147, 152–4, 170–1, 261
- discharge of 158
- to protect individuals whose lives are at risk 156–7
- to provide remedy for human rights violations 161–6
- special measures to target known sources of danger 154–5
- special obligations towards women and children 157–8
- obligations to provide remedy for violations of 158–61
- obligations of result in 62
- right to life in 150–1
- international humanitarian law 141–2
 - application of 4
 - in non-international armed conflicts 92–3
 - protection of civilians 139
- constraints on hiring of PMSCs
 - in 186–7
- definitions of armed forces in 81–4
- and human rights law 147–52, 203
- and arbitrary deprivation of life notion 215
- on mercenaries 12–13
- obligations
 - to control PMSCs 124–8, 170, 187, 254–5
 - of due diligence 132, 136
 - of occupying powers 201–2
 - to protect civilians in armed conflicts 137–9, 200
 - to repress/suppress violations of 139–41, 195–6, 200–1, 255
 - to respect international humanitarian law 124–9, 188, 227, 254–5, 259, 261
 - discharge of 132–6, 192–6
 - ensuring respect by private actors 129–32
 - hiring state not party to the conflict 190–2
 - overseas PMSC activities 188–9
 - state responsibility for breach of 136–7, 196–7
 - of result 60–2
 - to train armed forces in international humanitarian law 197–9
- right to life in 149, 150–1
- state responsibility for PMSC violations of 196–7
- international law
 - customary
 - on definition of armed forces 90–2
 - on neutrality 244
 - on non-intervention norm 235–6
 - on mercenaries 12–13, 173–4
 - constraints on hiring of PMSCs in 173–6
 - in OAU Convention 184–6
 - in UN Convention 175–84
 - neutrality law 244–6, 249–51
 - application of 246–9
 - obligations of PMSC home states in 243–4, 251–3, 259
 - discharge of 253–4
 - non-intervention norm in 233
 - sources of 234–6
 - obligations and responsibilities of states in 3
 - due diligence obligations 64–7
 - primary and secondary rules of 55
 - promotion of PMSC compliance with
 - on state immunity 103–5
 - state organs in 86, 93
 - see also* international human rights law; international humanitarian law
- international obligations of states 3, 59–60

- to control PMSC/private actor
 - conduct 4, 5, 260
 - capacity to influence private actors 71
 - due diligence obligations 63–7, 71, 123–4, 132–6, 232–3
 - to prevent private acts harmful to other states 230–3
 - resources available for 71–2
 - and risk of violation 72–3
- due diligence obligations 59–60, 64
 - causation element 73–5
 - damage element 75
 - discharge of 69–70
 - mental element of 67–9
- in international human rights law, to
 - provide remedy for violations 158–61
- in international humanitarian law 124–8
 - to protect civilians in armed conflicts 137–9
 - see also* respect for international humanitarian law norm
- obligations of result 60–2
- violations of 55
 - see also* responsibilities of states; wrongful acts
 - see also* hiring states; home states; host states
- intervention
 - prohibition of *see* non-intervention norm in international law
- Iran–US Claims Tribunal
 - on attribution of conduct 99–100
- Iraq
 - British troops in, and UK jurisprudence on effective control 132
- PMSC activities in 1, 178, 201
 - armed security services 49
 - ArmorGroup 24–5
 - Blackwater 50, 108, 168–9, 220–1
 - US investigations and prosecution of misconduct by 222–3
 - CPA (Coalition Provisional Authority) legislation on
 - (Order 17) 134–5, 139–40, 167–9
 - involvement in Abu Ghraib prisoner abuse scandal 24, 193, 220
 - US investigations and prosecutions 139–40, 223
 - vetting procedures 194
 - SOFA with US 169–70
- Israel
 - derogation of human rights by 146
 - extraterritorial application of ICCPR opposed by 206
 - PMSCs based in 36
 - PMSCs hired by 49
- jurisdiction, territorial
 - in international human rights law 203
 - see also* extraterritorial application
- justice
 - access to 165–6, 226–7
- Kabila, Laurent 233
- Kalshoven, F. 190–1
- KNIL (*Koninklijk Nederlandsch-Indisch Leger*, Royal Netherlands-Indian Army) 22
- knowledge
 - as necessary mental element of due diligence obligations 67–9
 - obligatory, of international humanitarian law rules 199
- Koskenniemi, M. 148
- Krasner, S. D. 16
- Kufuor, K. O. 186
- Leander, A. 38–9
- legal immunity *see* immunity
- legal space notion 211
- legitimacy
 - of private military actors/mercenaries 8, 173–4

- lex specialis* principle 148–9
 - applied to attribution of conduct
 - rules for soldiers 96–7
 - as exception or limitation to a
 - general rule 149–52
 - as specific interpretation of a general
 - rule 149
- liberty
 - individual, European Convention on
 - Human Rights on 151
- licensing schemes for PMSCs 242–3
 - in Afghanistan 135–6
- life
 - arbitrary deprivation of 215
 - obligation of states to minimise risk
 - to, in planning and
 - controlling security
 - operations 216–17
 - right to protection of 156
 - in armed conflict 149, 150–1
 - due diligence obligations to 74–5
- MAAVERIM 47
- mental element of due diligence
 - obligations 67–9
- mercenaries 8, 29–30
 - activities in Africa 12–13
 - disappearance of 9–11, 15–16
 - international law on 12–13, 173–4
 - constraints on hiring of PMSCs
 - in 173–6
 - in OAU Convention 184–6
 - in UN Convention 175–84
 - legitimacy of 8, 173–4
 - rejection of 12, 17–18, 52
 - anti-mercenary norm 16, 17
 - fighting outside citizen–state
 - relationship 21–3
 - lack of accountability for
 - misconduct of 23
 - lack of attachment to a
 - cause 18–21
 - state control over 9, 15–16, 23
 - UN Working Group on use of 173,
 - 194
- Mexico–US General Claims
 - Commission
 - on attribution of conduct 114
- military *see* armies/armed forces
- military expertise
 - provided by PMSCs 45–9, 178–9,
 - 195
- military support services
 - provided by PMSCs 51–2, 180–1
- Milsearch 47
- mines
 - Albania’s obligation to prevent
 - damage caused by 66,
 - 67–8, 230
 - PMSCs involved in clearing of 47
 - as direct participation in
 - hostilities 179
- misconduct
 - by mercenaries, lack of
 - accountability for 23
 - by PMSCs
 - sexual 138, 200
 - state responsibility for 2–3, 4,
 - 78–9, 260–1, 262–3
 - hiring states 57–9, 61–2, 80–1,
 - 196–7, 228
 - home states 232, 259
 - host states 123–4, 136–7
 - by private actors
 - due diligence obligations of states
 - for 64–7, 232–3
 - capacities to influence private
 - actors 71
 - resources available for 71–2
 - and risk of violation 72–3
 - state responsibility for 56–7,
 - 130–1
 - see also* attribution of conduct
- Montreux Document on international
 - legal obligations and good
 - practices related to PMSCs
 - (2008) 35, 129–30
 - on international human rights
 - law 145, 153
 - on licensing schemes 243
 - on obligations of hiring
 - states 192–3, 214, 219
 - on obligations of home states
 - 254–5
 - on obligations of host states 131–2,
 - 133–4

- on PMSC personnel incorporated in armed forces 84
 - United States acceptance of 145
- MPRI (Military Professional Resources Inc.)
 - activities in Croatia 47–9, 176–7
- national armies
 - emergence of 10–11, 16, 32–3
 - foreign soldiers/forces in 9–10, 19–20, 22, 32
- nationality criterion for mercenary status 182–3
- Netherlands
 - Royal Netherlands-Indian Army (KNIL) 22
- neutrality law 244–6, 249–51
 - application of 246–9
 - obligations of PMSC home states in 243–4, 251–3, 259
 - discharge of 253–4
- NGOs
 - PMSCs contracted by 38
- Nicaragua
 - contras* fighting in, attribution of conduct to US 117
- non-international armed conflicts
 - international humanitarian law applicable to 92–3
 - protection of civilians 139
- PMSCs activities in
 - and attribution of conduct 97–8
 - and membership of armed forces 92–5
- respect for international humanitarian law norm in 136
 - obligation to repress breaches of 140–1, 195–6
- see also* international armed conflicts
- non-intervention norm in international law 233
 - and obligations of PMSC home states 233–4, 259
 - discharge of 241–3
- to prevent activities directed to violent overthrow of another regime 239–40
- to prohibit armed activities 239
 - to prohibit subversive activities 236
 - to prohibit terrorist activities 236–9
- sources 234–6
- non-state violence 7
- norms of international law
 - anti-mercenary 16, 17
 - of non-intervention 233, 234–6
 - to respect international humanitarian law 124–9, 188, 227, 254–5, 259, 261
 - discharge of 132–6, 192–6
 - ensuring respect by private actors 129–32
 - state responsibility for breaches of 136–7, 196–7
- Norton, P. M. 248
- OAU (Organisation of African Unity)
 - Convention for the Elimination of Mercenarism in Africa (1977) 184–6
- O'Brien, K. 186, 233–4
- occupation
 - international humanitarian law obligations of occupying powers 201–2
 - loss of host state control through 131–2
- offensive combat activities of PMSCs 40–5, 178
- Omega Support Ltd 233
- operations notion 119–20
- Oppenheim, L. 248
- organs of state
 - attribution of conduct to 95–6
 - ICJ on 86, 93–5
 - ILC Articles on 93
 - in international law 86, 93
 - PMSCs as 94–5
- overall control test/standard 58–9, 87, 118–19

- Papua New Guinea
 - activities of Sandline International
 - in 44–5
- PCIJ (Permanent Court of International Justice)
 - on reparations for wrongful acts 76–7
- Percy, S. 9, 17
- personnel of PMSCs 37
 - combatant/prisoner of war status
 - for 82, 251–2
 - deficient training of 193
 - immunity from local laws 139–40, 165, 166–9
 - involved in shooting incidents 116, 155, 168–9, 220–1
 - as mercenaries 173–4, 176–81
 - recruitment/vetting of 194, 252
 - sexual misconduct by 200
- Pisillo-Mazzeschi, R. 69
- PMSCs (private military and security companies) 6, 28, 30–1, 33–9
 - accountability of 2, 103
 - activities in armed conflicts 1, 39–40, 92–5
 - armed security services 49–51, 107–8, 179–80
 - military and security expertise provision 45–9, 178–9, 195
 - military support services 51–2, 180–1
 - offensive combat 40–5, 178
 - attribution of conduct to hiring
 - states 4, 57–9, 61–2, 80–1, 121–2
 - acting under state instructions, direction or control 113–21
 - in exercise of governmental authority 99–100, 111–13
 - in international armed conflicts 95–7
 - in non-international armed conflicts 97–8
 - clients of 37–9
 - constraints on hiring of 173
 - in international humanitarian law 186–7
 - in international mercenary law 173–6, 184–6
 - contracts of hire 120–1
 - monitoring of 194–5
 - ‘recruitment in order to fight’
 - in 176–81
 - criticism of 15, 18, 45, 52
 - anti-mercenary norm 17
 - democracy undermined by 22–3
 - lack of attachment to a cause 21
 - lack of transparency 27–8
 - emergence and development of 1, 2, 3, 13–15, 52
 - governmental authority exercised
 - by 101–10
 - and attribution of
 - conduct 99–100, 111–13
 - incorporation into armed forces 81, 84, 183–4
 - de facto* membership 86–7
 - de jure* membership 85–6
 - in international armed conflicts 95–7
 - in non-international armed conflicts 92–5, 97–8
 - international obligations of states to control conduct of 4, 5, 260
 - of due diligence 63–4, 71, 232–3
 - ensuring respect for international humanitarian law 129–32, 188, 259, 261
 - of result 60–2
 - see also* hiring states; home states; host states
 - licensing schemes for 242–3
 - personnel of 37
 - combatant/prisoner of war status
 - for 82, 251–2
 - deficient training of 193
 - immunity from local laws 139–40, 165, 166–9
 - involved in shooting incidents 116, 155, 168–9, 220–1
 - as mercenaries 173–4, 176–81

- recruitment/vetting of 194, 252
- sexual misconduct by 200
- promotion of international law
 - compliance by
 - as state organs 94–5
 - state responsibility for misconduct
 - by 2–3, 4, 78–9, 260–1, 262–3
 - hiring states 57–9, 61–2, 80–1, 196–7, 228
 - home states 232, 259
 - host states 123–4, 136–7
 - police services by PMSCs 49
- prisoners of war
 - entitlement to status of 81–2
 - obligatory knowledge of
 - international
 - humanitarian law rules on
 - treatment of 198–9
 - see also* detainees
- private actors
 - due diligence obligations of states to
 - control misconduct by 64–7, 232–3
 - capacity to influence private actors 71
 - resources available 71–2
 - and risk of violation 72–3
 - obligation to ensure respect for
 - international
 - humanitarian law by 129–32
 - state responsibilities for misconduct by 56–7, 130–1
 - see also* individuals
- private acts
 - harmful to other states, international obligation to prevent 230–3
- private gain motivation of
 - mercenaries 181–2
- private military actors *see* mercenaries
- private military contractors *see* PMSCs
- private person test for exercise of
 - governmental authority 101–2
- privatisation of military
 - and coercive powers of states 2
- proportionality principle
 - and right to life 149
- prosecutions
 - of human rights violations, obligation to 164–5, 221–6
 - of PMSC misconduct, by United States 139–40, 223
- prostitution
 - forced and/or underage *see* sexual exploitation/abuse
- protection
 - of civilians in armed conflicts 137–9, 199, 200
 - against corporate-related human rights abuse 152–3, 214, 256–7
 - special obligations towards women and children 157–8, 218
- recruitment/vetting of PMSC
 - personnel 194, 252
- Reed, Jack 50
- regimes/governments of states 240–1
 - relationship with citizens, mercenaries fighting outside of 21–3
- remedy for human rights violations, obligation to provide 158–61
 - in Convention Against Torture 160–1, 257–8
- criminal investigations and prosecutions 164–5
- for PMSC/private actor violations 161–6
- reparations for wrongful acts 76–8
 - see also* compensation
- respect for international humanitarian law norm 124–9, 188, 227, 254–5, 259, 261
 - discharge of 132–6, 192–6
 - ensure respect by private actors 129–32
 - and overseas PMSC activities 188–9
 - repress or suppress
 - breaches/violations of 139–41, 195–6, 255

- respect for international
 - humanitarian (*cont.*)
 - state responsibility for breaches
 - of 136–7, 196–7
- responsibility of states 3, 55
 - for breach of respect for
 - international
 - humanitarian law
 - norm 136–7, 196–7
 - for human rights violations 214–15
 - ILC Articles on 55–6
 - for PMSC misconduct 2–3, 4, 78–9, 260–1, 262–3
 - hiring states 57–9, 61–2, 80–1, 196–7, 228
 - home states 232, 259
 - host states 123–4, 136–7
 - for private actor misconduct 56–7, 130–1
- responsible command criterion for
 - membership of armed forces 87–8
- result, obligations of 59–60
 - for states to control PMSC conduct 60–2
- Reuter, P. 96
- risks
 - to life, obligations to
 - minimise 216–17
 - of violation, and due diligence obligations 72–3
- Ronco Consulting Group 47
- Ruggie, John 152–3, 214, 256–7
- SafeNet 233
- Sandline International 14, 17
 - offensive combat activities by 41
 - in Papua New Guinea 44–5
 - in Sierra Leone 43–4
- security
 - armed, services provided by
 - PMSCs 49–51, 107–8, 179–80
 - companies *see* PMSCs
 - expertise, provided by PMSCs 45–9, 178–9, 195
- self-determination 185–6
- sexual exploitation/abuse
 - of children, protection against 157
 - by PMSC personnel 138, 200
- Shahabuddeen, Judge 118
- shooting incidents
 - PMSC personnel involved in 116, 155
 - Blackwater 168–9, 220–1
- Sierra Leone
 - army of 20–1
 - PMSC activities in
 - Executive Outcomes 41–3
 - Sandline International 43–4
- Sigelman, L. 22–3, 27
- Singer, P. 13–14, 22–3, 39, 177, 178
- SOFAs (Status of Forces Agreements) 166–7
- Iraq–US 169–70
- soldiers
 - foreign, in national armies 9–10, 19–20, 22, 32
 - national 32–3
- Spain
 - Civil War (1936–9), volunteer fighters in 12, 19
- Standard Minimum Rules for the Treatment of Prisoners (1955, UN) 219
- states
 - armies of
 - foreign soldiers/troops in 9–10, 19–20, 22, 32
 - of national citizens only 10–11, 16, 32–3
 - coercive power monopoly by 7
 - and control over mercenaries 9, 15–16, 23
 - and privatisation of military 2
 - immunity of
 - jurisprudence on 105–6, 107
 - law of 103–5
 - international obligations of 3, 59–60
 - to control PMSC/private actor
 - conduct 4, 5, 260
 - capacity to influence private actors 71
 - due diligence obligations 63–7, 71, 123–4, 132–6, 232–3
 - causation element 73–5

- damage element 75
 - discharge of 69–70
 - mental element of 67–9
 - obligations of result 60–2
 - to prevent private acts harmful
 - to other states 230–3
 - resources available for 71–2
 - and risk of violation 72–3
 - in international humanitarian
 - law 124–8, 137–9
 - see also* respect for international
 - humanitarian law norm
 - to provide remedy for human
 - rights violations 158–61
 - of result 60–2
 - violations of 55
 - see also* wrongful acts
 - see also* hiring states; home states;
 - host states
- organs of
 - attribution of conduct to 95–6
 - ICJ on 86, 93–5
 - ILC Articles on 93
 - in international law 86, 93
 - PMSCs as 94–5
- PMSC compliance with international
 - law promoted by
- regimes/governments of 240–1
- relationship with citizens,
 - mercenaries fighting
 - outside of 21–3
- responsibility of 3, 55
 - for breach of respect for
 - international
 - humanitarian law
 - norm 136–7, 196–7
 - for human rights violations 214–15
 - ILC Articles on 55–6
 - for PMSC misconduct 2–3, 4, 78–9,
 - 260–1, 262–3
 - hiring states 57–9, 61–2, 80–1,
 - 196–7, 228
 - home states 232, 259
 - hosting states 123–4, 136–7
 - for private actor misconduct 56–7,
 - 130–1
- wrongful acts by 55
 - circumstances precluding 75–6
 - legal consequences of 76–8
 - see also* Articles on Responsibility of
 - States for Internationally
 - Wrongful Acts (ILC)
- Stone, J. 248
- subcontracting practices 102–3
 - in United States 87–90, 120–1
- subversive activities by PMSCs
 - obligation of home states to
 - prohibit 236
- territorial states *see* home states
- terrorist activities by PMSCs
 - obligation of home states to
 - prohibit 236–9
- Thomson, J. E. 7, 9
- Titan (security firm) 24
 - involvement in Abu Ghraib prisoner
 - abuse 24, 139–40
- tolerance 241
- Uganda
 - occupying power in Congo 201–2
- UNCAT *see* Convention Against
 - Torture
- United Kingdom
 - army of, Gurkhas in 19–20, 22
 - jurisprudence in
 - on effective control by British
 - troops in Iraq 132
 - on state immunity 105–7
 - PMSCs based in/hired by 36
 - policies and legislation on 22,
 - 226, 241–2
- United Nations
 - Charter
 - collective security system
 - established by 244–5
 - on non-intervention norm
 - 234–5
 - General Assembly, on human rights
 - law applicable in armed
 - conflicts 143
 - Human Rights Committee
 - on extraterritorial application of
 - ICCPR 205
 - Israeli opposition to 206
 - US opposition to 206

- United Nations (*cont.*)
 - on jurisdiction notion 204–5
 - on obligation to provide remedy for violations 162, 164
 - on protection against corporate-related human rights abuse 152–3, 214, 256–7
 - on right to life 156, 216
- PMSCs contracted by 38
- Security Council, on obligation to ensure respect for international humanitarian law 127–8
- Working Group on the Use of Mercenaries 173, 194
- United States
 - Montreux Document accepted by 145
 - opposition to extraterritorial application of ICCPR 206
 - PMSCs based in 26–7, 36
 - PMSCs hired by
 - Central Intelligence Agency (CIA) 41, 46, 115–16, 221
 - Department of Defense (DOD) 37–8
 - investigations and prosecutions of misconduct by 222–3, 224
 - in Iraq 2003 invasion 178
 - laws and policies on 108–10, 224–5
 - practices 87–90, 120–1, 193
 - State Department 49, 220–1
 - SOFA with Iraq 169–70
 - support of *contras* in Nicaragua, and attribution of conduct 117
 - Universal Declaration of Human Rights (1948) 142–3
- violence
 - gender-based, prohibition of 157–8
 - non-state 7
 - state monopoly over 7
 - and control over mercenaries 9, 15–16, 23
 - and privatisation of military 2
 - volunteer fighters 12, 19, 31–2
- Wilberforce, Lord 105–6
- women
 - special obligations of states for protection of 157–8, 218
- wrongful acts of states 55
 - circumstances precluding 75–6
 - legal consequences of 76–8
 - see also* Articles on Responsibility of States for Internationally Wrongful Acts (ILC)
- Xe Services LLC 221
 - see also* Blackwater
- Zarate, J. C. 31