



**RIGA  
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**BACHELOR THESIS**

**Corporate beneficiaries during times of armed  
conflict**

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**DECLARATION OF HONOUR:**

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

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## **ABSTRACT**

This research examines the economic, legal, and ethical implications of corporate profiteering from the Russian-Ukrainian conflict, with a focus on the strategies used by private sector actors and their adherence to domestic and international legal frameworks. Through a doctrinal research approach, the study analyzes international and national legislation governing the behavior of private sector actors during armed conflicts. Key objectives include assessing the economic impact of sanctions against Russia, evaluating international legal frameworks, and examining challenges in enforcing national legislation relevant to the private sector during conflicts. The findings underscore the need for robust oversight and accountability measures to regulate the behavior of private contractors, particularly in conflict zones. The study contributes to understanding the complex interplay of economic sanctions, private military and security firms, and international legal frameworks in conflict scenarios.

**KEYWORDS:** Russian-Ukrainian conflict, economic sanctions, private sector actors, international law, private military and security firms, armed conflicts, legal frameworks, doctrinal research.

## SUMMARY

The Russian-Ukrainian conflict, triggered by Russia's invasion of Ukraine on February 24, 2022, has resulted in significant geopolitical disruption and profound economic consequences. This research examines the multifaceted dimensions of corporate profiteering from the conflict, with a focus on the strategies employed by private sector actors and their adherence to both domestic and international legal frameworks.

Using a doctrinal research approach, the study analyzes the international and national legislation governing the behavior of private sector actors during armed conflicts. International humanitarian law, as well as national laws, shape the conduct of private sector entities operating in conflict zones. The study aims to assess the economic impact of sanctions imposed on Russia, evaluate international legal frameworks such as the Geneva Conventions, and examine the challenges in enforcing national legislation relevant to the private sector during conflicts.

One of the central findings of the research is the substantial role played by private military and security firms (PMFS) in modern conflicts. Despite ethical and legal concerns, including allegations of human rights violations and issues with transparency and accountability, PMFS continue to provide essential services such as logistical support, training, and tactical military assistance.<sup>1</sup> To regulate and hold private sector actors accountable, the study emphasizes the importance of effectively utilizing international and national legal frameworks. This includes implementing robust oversight and enforcement mechanisms to address misconduct by private contractors.<sup>2</sup>

Furthermore, the research highlights the need for stronger international regulation and accountability systems concerning the participation of private military and security corporations (PMCs and PSCs) in conflict-affected areas like Ukraine. Combating corruption and regulating PMCs and PSCs are crucial steps toward fostering stability and accountability in conflict zones.<sup>3</sup> In addition to examining the legal aspects, the study explores the economic impact of the conflict, particularly focusing on global exports, economic sanctions, and trade diversion. It investigates the role of private sector actors such as arms corporations, financial institutions, and civilian companies in profiteering mechanisms within conflict zones.

While the research primarily focuses on the legal, economic, and geopolitical dimensions of the conflict, it acknowledges potential limitations. These include the ongoing nature of the conflict and the need for further research. Moreover, the study suggests that incorporating empirical research could enhance the robustness and applicability of the findings.

In conclusion, this research contributes to a better understanding of the complex interplay between economic sanctions, private military and security firms, and international legal frameworks in conflict scenarios. By shedding light on the financial motivations of companies operating in war zones, the study encourages accountability, transparency, and ethical business practices. Ultimately, addressing these issues is crucial for promoting stability, peace, and prosperity in conflict-affected regions like Ukraine.

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<sup>1</sup> P.W. Singer, *Corporate warriors: The rise of the privatized military industry* (New York: Cornell University Press, 2003), accessed May 5, 2024, <https://doi.org/10.7591/9780801459894>.

<sup>2</sup> Christopher Kinsey, *Corporate soldiers and international security: The rise of private military companies* (New York: Routledge, 2020), accessed May 5, 2024, <https://www.routledge.com/Corporate-Soldiers-and-International-Security-The-Rise-of-Private-Military-Companies/Kinsey/p/book/9780415457767>.

<sup>3</sup> Deborah D. Avant, *The market for force: The consequences of privatizing security* (Washington: Cambridge University Press, 2005), accessed May 5, 2024, <https://doi.org/10.1017/CBO9780511490866>.

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## INTRODUCTION

February 24, 2022 is the historical date of Russia's invasion of Ukraine, which caused significant stock market losses and supply chain disruptions, leading to a refugee crisis with millions fleeing Ukraine. Economic sanctions imposed on Russia suggest a significant contraction in its economy.<sup>4</sup> The global pull-out from Russia, despite rising energy revenues, is expected to have severe economic consequences, potentially exceeding the impact of the Global Financial Crisis (GFC) of 2008 and COVID-19. Russia and Ukraine play a critical role in global exports, particularly in wheat, seed oil, corn, natural gas, coal, crude oil, and fertilizers. The invasion's aftermath is expected to compound financial challenges, affecting GDP growth and inflation forecasts.<sup>5</sup> Previous to this, the wars in Iraq and Afghanistan have cost the US nearly \$1.6 trillion since 2001, with estimates of over \$3 trillion required to cover expenses.<sup>6</sup> The US military relies heavily on private contractors for various services, leading to significant expenditure. Defence contractors' stocks have risen substantially during wartime, indicating potential for profiteering. Lack of regulatory oversight contributes to fraud, waste, and overcharging.<sup>7</sup> While imports from Ukraine experienced a significant decline of 47.3% from February to August 2022, which can be attributed to adverse effects that accumulated until March 2022, leading to a persistent depression of imports from Ukraine at -55.5% of the counterfactual level from April to August 2022, Russia and other countries experienced positive post-event treatment effects. The average trade effect for Russia was 15.7%, while it was 11.2% for all other countries.<sup>8</sup> Imports from Russia experienced a notable increase of 20.8% above the counterfactual level from March to June 2022, although economic sanctions subsequently reduced these trade gains to statistically insignificant levels. Significant unit value effects were observed, with unit values for imports from Ukraine, Russia, and other countries being 12.8%, 18.8%, and 3.2% higher, respectively.<sup>9</sup> Asia and Europe increased their imports from Russia beyond the counterfactual level, experiencing substantial trade gains and considerable trade diversion benefited countries in North America and Europe, primarily driven by commodity price hikes.<sup>10</sup>

Understanding the corporate beneficiaries of the Russian-Ukrainian war is essential for a number of reasons. Investigating which companies likely profit from armed conflicts might point to possible instances of corruption, unethical conduct, and violations of human rights. By exposing the financial motivations of companies operating in war zones, it encourages accountability and transparency in business practices and raises moral concerns about the companies' involvement in sustaining violence. Furthermore, evaluating company compliance with international law, including human rights standards, sanctions, and arms trade laws, is made possible by examining their behavior during the Russian-Ukrainian War. The global

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<sup>4</sup> Marwan Izzeldin, Yaz Gulnur Muradoglu, Vasileios Pappas, Athina Petropoulou, Sheeja Sivaprasad, "The impact of the Russian-Ukrainian war on global financial markets," *International Review of Financial Analysis* 87 (May 2023): pp. 1-2, available on: Academic Search Complete (Science Direct). Accessed April 19, 2024. <https://doi.org/10.1016/j.irfa.2023.102598>

<sup>5</sup> *Ibid.*

<sup>6</sup> Wyatt Marritt, "The Use of War to Profit," *Justice Policy Journal* 9, no. 1 (Spring 2021): p. 4, accessed April 19, 2024. <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=a4a39bb42d94946934755fb0096cfd049047a9bc>

<sup>7</sup> *Ibid.*

<sup>8</sup> Sandro Steinbach, "The Russian-Ukraine war and global trade reallocations," *Economic Letters* 226 (2023): pp. 1-5, accessed April 24, 2024, <https://doi.org/10.1016/j.econlet.2023.111075>.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

economy and ongoing conflicts are impacted by the cross-over with corporate economic interests combined with broader geopolitical processes. By assessing the financial benefits and hazards of investments associated to conflicts, research on corporate beneficiaries guides decisions about risk management and economic policy. Legal institutions have the power to hold corporate beneficiaries responsible for acts that break international law or support violations of human rights. These institutions include local and international courts, regulatory enforcement, and public advocacy campaigns.

This study addresses legal problem of examining corporate beneficiaries in armed conflicts, with a particular emphasis on the profiting strategies used by private sector actors and their adherence to both domestic and international legal frameworks. Consequently, the research question is how do private sector actors benefit from armed conflicts, what are the legal and ethical implications of their actions, and how can international and national legal frameworks be utilized to regulate and hold them accountable.

The aim of the research is to analyse to what extent do international legal frameworks regulate and address the ethical and legal implications of private companies engaging and contributing to or profiting from armed conflicts. The following objectives are to, first of all, analyse the economic impact from the sanctions against aggressor state, in this case the aggressor state being Russia. Secondly, examine international legal frameworks governing the conduct of neutral parties and individuals during wartime and evaluate challenges in implementing and enforcing national legislation relevant to the private sector during armed conflicts. Thirdly, evaluate challenges in implementing and enforcing national legislation relevant to the private sector during armed conflicts, assess the regulatory frameworks governing the activities of private security contractors during armed conflicts and investigate the legal implications of corporate profits from logistics and reconstruction activities during armed conflicts. And, analyse legal perspectives on fraud and abuse of corporate position during armed conflicts, focusing on international and national legal frameworks.

In this research doctrinal research is the main research method applied, analysing and researching international and national level legislation for private sector actors during war time, with main international legislative acts regulating this topic being the Hague Convention on Neutral powers, 1949 Geneva Convention, Additional Protocols to the Geneva Conventions and Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States. Academic articles are assessed on topics of financial sanctions, weapons trade, private sector actors, outsourcing war, Ukrainian and Russian legislation during armed conflicts, applicable aspects of international law, corruption, prosecution of corporate criminals and monitoring off private military and security companies. In addition, scientific publications are supplemented by scientific literature on current sanctions and publications on the topics of frozen Russian assets, law of armed conflicts and Russian Martial law. To apply theory into action, case analysis of *United States of America v. Abul Huda Farouki, Mazen*

*Farouki and Salah Maarouf*<sup>11</sup> and *Fridman v. Council*<sup>12</sup> together with *Aven v. Council*<sup>13</sup> is utilized.

The findings of this study have to be seen in the light of some limitations. To start with, accessing reliable and comprehensive data for an ongoing armed conflict, particularly when one of the states involved has limited transparency and restricted access to information, is challenging. In addition, the Russian-Ukrainian war is a politically sensitive topic, which may also influence the availability of information. Following the topic of information availability, it is important to understand the bias present in available sources and the possibility of misinformation propagated by conflicting parties, which means applying critical analysis and verification of reliable sources to mitigate it. It should also be mentioned that the scope of researching the impacts on world economy by this war goes beyond just the economic aspects, including geopolitical and social dimensions, challenges, as well as understanding and navigating regulatory frameworks of different jurisdictions require a great in-depth understanding in international law. Lastly, the Russian-Ukrainian war is an ongoing conflict, which at this point has no end point, therefore the research is limited to a specific time period and limited information that has been made public up until this point. This paper mainly looks at the topics from a theoretical perspective and different perspectives on one particular instance, not taking the full advantage of information available on the broader interconnected world-wide situation.

This paper consists of four chapters. In the first chapter, the author explores the use of sanctions as an alternative to military action in international relations, focusing on the conflict between Russia and Ukraine. It examines the types and effectiveness of sanctions, particularly those imposed by the EU, and their impact on the global economy and various sectors. Starting with Chapter two, the role of Private Military and Security Firms (PMFS) in modern conflicts, their industries of operation, and the ethical, legal, and political challenges they pose is investigated. Additionally, it discusses the international law of neutrality and the national legislation challenges faced by Russia and Ukraine. Chapter three discusses profiteering mechanisms in conflict zones, involving private sector actors such as arms corporations, financial institutions, and civilian companies. It examines the legal implications of war profiteering, the role of European stakeholders in supporting Ukraine, and the applicable charges for breaching anti-counterfeit regulations. Lastly, Chapter 4 delves into the legal perspectives on fraud and abuse of corporate position during the Russia-Ukraine conflict, addressing corruption in Ukraine and proposing solutions. It also examines the legal frameworks and challenges related to litigating claims against private military and security companies for extraterritorial violations, with real-life examples provided.

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<sup>11</sup> *United States of America v. Abul Huda Farouki, Mazen Farouki and Salah Maarouf* (November 11, 2018) Available on <https://www.justice.gov/media/979706/dl> Accessed April 15, 2024.

<sup>12</sup> *Fridman v. Council* (24 May, 2022) Case T-304/22. Available on <https://curia.europa.eu/juris/document/document.jsf?text=&docid=262265&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=414771> Accessed April 18, 2024.

<sup>13</sup> *Aven v. Council* (23 May, 2022) Case T-301/22. Available on: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=262282&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=416242> Accessed April 18, 2024.

# 1. ECONOMIC IMPACT FROM THE SANCTIONS AGAINST AGGRESSOR STATE.

Russia initiated military aggression towards Ukraine on February 24, 2022, resulting in immediate international sanctions. The primary Western allies involved in sanctioning are the USA and the EU, with additional support from countries like Switzerland and South Korea.<sup>14</sup> Sanctions target individuals and entities through travel bans and asset freezes. Trade sanctions include prohibitions on the export and import of various goods, aimed at increasing Russian technological backwardness and reducing its ability to continue the war.<sup>15</sup> Within the domain of international relations, economic sanctions refer to deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade or financial relations. Economic sanctions are employed to achieve a variety of foreign policy goals, including punishing a country for aggressive behavior or violation of international norms, deterring a country from taking certain actions, compelling a country to change its behavior, and coercing a country to comply with international law or norms.<sup>16</sup> Economic sanctions can take various forms, starting from trade sanctions, financial sanctions, investment sanctions, technology sanctions, and ending with travel bans and arms embargoes. The effectiveness of economic sanctions varies depending on several factors, including the target country's economic resilience, political coherence, and the level of international support for the sanctions.<sup>17</sup> Economic sanctions face several challenges and limitations, such as the potential for unintended consequences, for example, humanitarian suffering, the possibility of sanctions being counterproductive or strengthening the target regime and the difficulty of achieving multilateral cooperation and maintaining sanctions over the long term.<sup>18</sup> A significant sanction is the ban on importing Russian oil to the EU, affecting around 90% of Russia's total oil exports. This ban includes an oil price cap to stabilize global energy prices and mitigate negative impacts on deals with third-party countries.<sup>19</sup> Sanctions also include bans on transportation of goods to and from Russia, a SWIFT ban on Russian banks, prohibitions on transactions with the Russian National Central Bank, and restrictions on the sale of EU-denominated banknotes to Russia.<sup>20</sup>

Main players in imposing sanctions include the UN, the USA, the EU, the UK, Australia, Canada, New Zealand, Japan and other states and organizations.<sup>21</sup> Sanctions can be categorized into economic, financial, or a combination of both. Financial sanctions restrict sanctioned entities' ability to engage in financial transactions or manage assets, while economic sanctions

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<sup>14</sup> Daria Moiseeva, "Sanctions as an elements of geopolitical blow against Russian capability in war with Ukraine," Charles University Faculty of Social Sciences, Institute of Political Studies, Department of Geopolitical Science (2023): pp. 12-16, accessed April 13, 2024, <https://dspace.cuni.cz/bitstream/handle/20.500.11956/186134/120457186.pdf?sequence=1&isAllowed=y>.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> Bruce W. Jentleson, "Economic Sanctions: What, Who, Why and How," in *Sanctions: What Everyone Needs to Know* (New York: Oxford University Press, 2022), pp. 9-14, accessed April 23, 2024, [https://books.google.lv/books?hl=en&lr=&id=xKB-EAAAQBAJ&oi=fnd&pg=PP1&dq=types+of+sanctions+in+case+of+war+russia+book+&ots=7TlO86nmp9&sig=VuBdmAMagzfb4EGoX\\_YAbPKSQXw&redir\\_esc=y#v=onepage&q&f=false](https://books.google.lv/books?hl=en&lr=&id=xKB-EAAAQBAJ&oi=fnd&pg=PP1&dq=types+of+sanctions+in+case+of+war+russia+book+&ots=7TlO86nmp9&sig=VuBdmAMagzfb4EGoX_YAbPKSQXw&redir_esc=y#v=onepage&q&f=false).

<sup>19</sup> Moiseeva, *supra* note 14.

<sup>20</sup> *Ibid.*

<sup>21</sup> Anna Menshenina, "Economic sanctions as a foreign policy tool in the light of Russia's war against Ukraine," *Political Sciences and Teaching Methods of Socio-Political Disciplines* 32, no. 22 (2022): pp. 56-61, accessed April 12, 2024, <https://enpuir.npu.edu.ua/bitstream/handle/123456789/41019/Menshenina-056-063.pdf?sequence=1&isAllowed=y>.



restrict the trade of goods.<sup>22</sup> The number of sanctions episodes has increased over time, with financial sanctions becoming more prevalent. In the 2010s, 42% of sanctions had both financial and economic components, compared to 12% in the 1950s.<sup>23</sup> Financial sanctions are more commonly used to promote democracy and human rights. Both financial and non-financial sanctions are imposed for shorter durations now compared to the past. Financial sanctions have increasingly targeted access to international payment infrastructures like SWIFT, affecting various cross-border economic activities such as tourism, remittances, foreign exchange trading, and international trade financing.<sup>24</sup>

Sanctions against Russia have raised rapidly, with numerous countries taking part. The European Union (EU) quickly reacted to Russia's hostility towards Ukraine by executing a arrangement of sanctions pointed at weakening Russia's economy and lessening its capacity to fund the war.<sup>25</sup> These sanctions, portrayed as "massive and targeted" by Ursula van der Leyen, incorporate money related measures focusing on key segments of the Russian economy and restriction on Russia's energy segment and access to technology innovations.<sup>26</sup> The EU harmonized the above mentioned sanctions with other Western states, including the UK and the US, with the objective of forcing extreme results on Russia for its activities and preventing further aggression.<sup>27</sup> A significant sanction is the ban on importing Russian oil to the EU, affecting around 90% of Russia's total oil exports. This ban includes an oil price cap to stabilize global energy prices and mitigate negative impacts on deals with third-party countries.<sup>28</sup> Sanctions also include bans on transportation of goods to and from Russia, a SWIFT ban on Russian banks, prohibitions on transactions with the Russian National Central Bank, and restrictions on the sale of EU-denominated banknotes to Russia.<sup>29</sup>

The EU's sanctions focusing on Russia in reaction to the conflict in Ukraine expand past influencing Russian domestic issues. The sanctions have been recognized to possibly exaggerate inflation around the world, especially defending powerless socio-economic groups.<sup>30</sup> Outstandingly, disturbances in agricultural trade are a reason for concern, possibly worsening food shortages and cost increases. Furthermore, the extraterritorial reach of these sanctions raises legitimate and discretionary questions, as they might accidentally influence third countries' trade relations with Russia.<sup>31</sup> In spite of endeavors to moderate unintended results, such as disturbances within the worldwide food supply chain, questions continue with respect to the proportionality of these measures, considering their broad-ranging impact.<sup>32</sup> Meanwhile, the UK has been forcing person and collective measures. More precisely, in spite of having faced complexities, the UK has issued various sanctions autonomously, simultaneously still aligning with the actions taken by the European Union. These sanctions

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<sup>22</sup> Marco Cipriani, Linda S. Goldberg, and Gabriele La Spada, "Financial Sanctions, SWIFT, and the Architecture of the International Payment System," *Journal of Economic Perspectives* 37, no. 1 (2023): pp. 31-52, accessed April 12, 2024, DOI: 10.1257/jep.37.1.31.

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

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

<sup>25</sup> Alexandra Hofer, "The EU's 'Massive and Targeted' Sanctions in Response to Russian Aggression, a Contradiction in Terms," *Cambridge Yearbook of European Legal Studies* vol. 24, (December 2023): pp. 1-21, accessed April 12, 2024, DOI: <https://doi.org/10.1017/cel.2023.9>.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> Moiseeva, *supra* note 14, p. 8.

<sup>29</sup> *Ibid.*

<sup>30</sup> Hofer, *supra* note 25.

<sup>31</sup> *Ibid.*

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

target people linked to the Russian aggression and limit imports of key commodities like oil, steel, and extravagance merchandise.<sup>33</sup> Cooperation with other countries is managed mostly through the G7, therefore helping grow the effectiveness of the measure taken. The UK's sanctions closely reflect EU activities, showing shared priorities and agreed upon efforts.<sup>34</sup> The impacts of these sanctions have shown to be outstanding and effective, with over 1000 businesses decreasing their exercises in Russia, a sharp decrease in car and weapon generation, and expected diminishes in Russia's GDP.<sup>35</sup>

Society for Worldwide Interbank Financial Telecommunication (SWIFT) is crucial for international payments, and limiting access to it through sanctions can be highly disruptive and costly for sanctioned entities. SWIFT facilitates information exchange among participants and sets messaging standards. International sanctions may restrict sanctioned entities' access to the SWIFT network.<sup>36</sup> SWIFT, governed by Belgian law, complies with Belgian and EU laws regarding sanctions. It generally aims to remain neutral and inclusive, resisting political pressure to disconnect countries from its network. SWIFT has complied with US and EU sanctions, such as disconnecting Iranian banks following US legislation and EU regulations.<sup>37</sup> SWIFT's decisions regarding sanctions have significant implications for the global economy due to its central role in the global payment system. SWIFT has resisted calls to exclude countries like Myanmar, Israel, and Russia from its network, asserting its commitment to neutrality.<sup>38</sup> In 2022, the European Union, along with other countries, agreed to remove Russian and Belarusian banks from SWIFT, leading to their disconnection from the network. Some countries have sought to reduce dependency on SWIFT by developing alternative payment systems, but these alternatives have not yet gained widespread use in cross-border transactions.<sup>39</sup>

The 2022 economic sanctions against Russia are not unprecedented, as similar measures were taken against Iraq in 1990 and Iran in 2012, which were more comprehensive. Previous sanctions against the Soviet Union/Russia, such as the US grain embargo in 1980 and export control during the Cold War, were ineffective.<sup>40</sup> Sanctions against Russia's annexation of Crimea in 2014 were also ineffective due to their smart and targeted nature, mainly symbolic and not threatening to President Putin.<sup>41</sup> Broad-based sanctions, affecting the larger population, are more likely to communicate the severity of the situation and strengthen opposition within Russia. The 2022 sanctions have not targeted Russia's major source of foreign currency income, its energy exports, or imposed an embargo on capital goods and transport equipment.<sup>42</sup> The Russian economy is better prepared and more resilient than during previous sanctions, reducing the effectiveness of Western sanctions. Russia has reduced its dependencies on the Western world, increasing its resilience over the last decade. The credibility of President Putin's tit-for-

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<sup>33</sup> Simon Ensing, "Weapons trade: Escalation or Preservation? The impact and sustainability of the western military supply programs with regards to the Russo-Ukrainian war," (June 2023): pp. 7-10, accessed April 12, 2024, [http://essay.utwente.nl/96170/1/Ensing\\_BA\\_BSC.pdf](http://essay.utwente.nl/96170/1/Ensing_BA_BSC.pdf).

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

<sup>35</sup> *Ibid.*, p. 10.

<sup>36</sup> Cipriani, *supra* note 22, p. 9.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> Peter A.G. van Bergeijk, "Sanctions Against the Russian War on Ukraine: Lessons from History and Current Prospects," *Journal of World Trade* 56, no. 4 (2022): pp. 583-586, available on: Academic Search Complete (Kluwer Law Online). Accessed April 11, 2024.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

tat strategy and the failure of European democracies to implement strong measures diminish the impact of smart and targeted sanctions. crisis, may be more effective in changing the cost-benefit evaluation of Russian authorities.<sup>43</sup>

EU plans to utilize frozen Russian central bank assets held at Euroclear Belgium to support Ukraine by allocating €3 billion per year to Ukraine from the interest generated by these assets, with the first funds possibly available as soon as July.<sup>44</sup> These assets, totaling around €210 billion, have been frozen since the outbreak of war in 2022. Officials propose using the interest from these assets to support Ukraine, fulfilling a delayed promise due to concerns about wider economic and political ramifications. This move is seen as holding Russia accountable for its aggression and supporting Ukraine in its reconstruction efforts. The move is coordinated with the US, UK, and other democracies and is expected to generate €2.5-€3 billion annually after tax.<sup>45</sup> While originally intended for reconstruction, 90% of the funds are directed towards supplying munitions through the European Peace Facility due to escalating battlefield conditions and potential loss in the war.<sup>46</sup> Ukrainian Prime Minister Denys Shmyhal welcomed the proposal but emphasized the need for full confiscation or alternative use of all frozen assets as a precedent for holding aggressors accountable. EU officials express confidence in the plan despite worries about its impact on the euro's credibility as a global reserve currency. The EU aims for first payments to occur in July, with the first payment backdated to February 2024 following a new law mandating the segregation of Russian assets at Euroclear.<sup>47</sup>

As of April 13th, the European Union has imposed individual sanctions on 1473 individuals and 207 entities, including members of the Russian parliament Duma, the Security Council, political figures like Vladimir Putin, members of the military sector, oligarchs, businessmen, and propagandists. Sanctions on individuals involve asset freezing and travel bans in the EU and US territories.<sup>48</sup> The purpose of individual sanctions in international politics is to punish those involved in crimes and to influence people in power to deviate from supporting a regime. However, some individuals closely associated with the regime, like Ramzan Kadyrov and Margarita Simonyan, may not be affected significantly by sanctions.<sup>49</sup> Sergei Shoigu, despite his background, rose to prominence through loyalty to Putin and now holds significant power in the Ministry of Defence.<sup>50</sup> The "Putin's consensus" relies on intralite crises and competitive rivalry among entities close to the Kremlin, with Putin as the main arbiter. Regional managers, like Rustam Minnikhanov of Tatarstan, may pursue semi-independent policies, leading to conflicts with the central administration. There was an attempted mutiny led by Yevgeny Prigozhin's PMC "Wagner" in June 2023, revealing internal conflicts and challenges to Putin's authority.<sup>51</sup> The effectiveness of individual sanctions is questioned, with criticisms of poor mechanism design and lack of a clear pathway for lifting sanctions. Some businessmen, like Alisher Usmonov and Roman Abramovich, managed to mitigate sanctions through lobbying or involvement in peace negotiations. Sanctions have led some businessmen to leave Russia and transfer assets abroad, but they have also strengthened

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<sup>43</sup> *Ibid.*, p. 10.

<sup>44</sup> Euro News. EU Policy. Brussels poised to send billions from frozen Russian assets to Ukraine, available on: <https://www.euronews.com/my-europe/2024/03/20/brussels-poised-to-send-billions-from-frozen-russian-assets-to-ukraine>. Accessed April 13, 2024.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

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

<sup>48</sup> Moiseeva, *supra* note 13, p. 8.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

the unity of elites around Putin.<sup>52</sup> The case of Oleg Tinkov, initially under UK sanctions despite condemning the invasion of Ukraine, highlights the complexity and challenges of sanction implementation. The lack of a clear roadmap for lifting sanctions may incentivize Russian elites to remain loyal to Putin despite external pressures.<sup>53</sup>

As an example of individual sanctions, in Cases T-301/22 and T-304/22, the General Court has annulled the inclusion of Petr Aven and Mikhail Fridman on the lists of persons subject to restrictive measures between February 2022 and March 2023.<sup>54</sup> The court found that the reasons provided by the Council for placing and maintaining the businessmen on the lists were insufficient. Petr Aven and Mikhail Fridman, major shareholders of Alfa Group, including Alfa Bank, were initially placed on these lists in response to the Russian invasion of Ukraine.<sup>55</sup> The Council argued that Aven and Fridman were associated with individuals subject to restrictive measures and with Vladimir Putin, providing support to Russian decision-makers and policies threatening Ukraine's sovereignty. However, Aven and Fridman contested this, claiming that the evidence provided by the Council was unreliable and incorrect.<sup>56</sup> The General Court upheld the businessmen's requests and annulled both the initial and maintaining acts, stating that the reasons provided by the Council were not sufficiently substantiated. Although the Council argued that Aven and Fridman were associated with Putin and his entourage, they failed to demonstrate that the businessmen supported actions threatening Ukraine's integrity or provided support to decision-makers responsible for the annexation of Crimea.<sup>57</sup> This decision was made in the context of an action for annulment, which seeks to annul acts of EU institutions contrary to EU law. Individuals and institutions may bring such actions before the Court of Justice or the General Court. If successful, the institution must address any legal vacuum created by the annulment. The decision can be appealed to the Court of Justice within 2 months and 10 days, but the appeal is limited to points of law only.<sup>58</sup>

The European Union emphasizes that the sanctions are not aimed at harming Russian consumers but rather at limiting certain sectors. Despite claims that sanctions do not target sensitive goods, they indirectly affect sectors like food and pharmaceuticals.<sup>59</sup> Companies in these sectors often leave the market voluntarily, leading to shortages of essential medicines and products. Official imports into Russia fell by 50% by the summer of 2022, but later recovered. However, the total consumption market, excluding food, heavily relies on imported goods.<sup>60</sup> Sanctions have led to a redistribution of trade, with a significant decline in exports to “unfriendly” countries and an increase in exports to “neutral” countries like China and Turkey. While trade with neutral countries has increased, they cannot fully replace Western supplies due to technological limitations and the risk of sanctions.<sup>61</sup> Transportation issues and reliance on hard currencies further complicate trade. Industries vary in their response to sanctions. Military-industrial production has increased under state control, but other sectors, such as

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<sup>52</sup> *Ibid.*, p. 11.

<sup>53</sup> *Ibid.*

<sup>54</sup> Court of Justice of the European Union. Judgments of the General Court in Cases T-301/22 | Aven v Council and T-304/22 | Fridman v Council, available on <https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-04/cp240061en.pdf>. Accessed April 18, 2024.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> Moiseeva, “Sanctions as an elements of geopolitical blow,” pp. 22-34.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

automobile manufacturing, have declined due to the departure of foreign companies.<sup>62</sup> Economic recovery varies across Russian regions. Areas specializing in industries limited by sanctions face challenges, while those benefiting from military-driven construction projects experience growth.<sup>63</sup> Retail trade and inbound food trade have declined, while catering turnover has increased due to a desire to cope with difficult realities. However, many companies have left Russia, impacting GDP and employment. The Russian Federation faces challenges in finding alternative trading partners and mitigating the impact of sanctions on its economy. The inability to produce sanctioned goods domestically affects product quality, availability, and cost.<sup>64</sup>

Before the war, Europe relied heavily on Russian gas, with Gazprom providing three-quarters of all gas consumed in Europe. Sanctions and geopolitical tensions led to disruptions in gas supplies, causing significant challenges for Russia. Sanctions and geopolitical tensions led to a decline in Russian gas exports to Europe.<sup>65</sup> Gazprom's refusal to invest in LNG production left it vulnerable, as LNG could be delivered via sea routes, bypassing pipelines. Despite efforts to expand LNG production, Gazprom faced difficulties in competing with other LNG suppliers. China, a key market, focused on diversifying its gas imports, reducing its reliance on Russian pipeline gas.<sup>66</sup> While the oil market was less affected by sanctions, there were still challenges. Russia faced pricing restrictions on crude oil and petroleum products, impacting profit margins. With European markets becoming less accessible due to sanctions, Russian oil companies shifted their focus to other markets like India and Turkey.<sup>67</sup> However, this required reorganizing export chains and finding alternative transportation and insurance options. Russian oil companies began investing in refining operations to diversify their product offerings and increase domestic demand for oil. The government aimed to increase refining capacity significantly. Sanctions also affected Russia's energy sector's technological modernization, particularly in hydraulic fracking technology for oil production. This lack of technology hindered the sector's ability to innovate and reduce production costs.<sup>68</sup>

In conclusion, there are still doubts regarding the effectiveness of sanctions on Russia and need for improvement in their implementation, even if they are seen as crucial parts of peacebuilding and conflict prevention strategies. Because economic penalties may inadvertently strengthen authoritarian regimes while damaging democratic institutions, they create ethical and legal concerns.<sup>69</sup> Even while it is impossible to determine the immediate effects of sanctions, they oppose Russian aggression and demonstrate support for international law and territorial integrity. However, additional investigation into their impacts is required, especially when combined with military measures, to ensure Ukraine's triumph and prevent such assaults. Although the goal of economic sanctions is to cause financial losses, they frequently have unforeseen effects. Even with the financial burden they place on different parties, armed conflicts continue to be profitable. In order to highlight the complex interplay between political, legal, and economic factors in modern wars, we will also look at the role played by the private sector in conflict zones and how they interact with economic penalties.

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<sup>62</sup> *Ibid.*, p.12.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> Moiseeva, "Sanctions as an elements of geopolitical blow," pp. 34-42.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> Menshenina, "Economic sanctions as a foreign policy tool in the light of Russia's war against Ukraine," pp. 56-61.

## 2. PRIVATE SECTOR ACTORS AND THE LAWS OF WAR

The legacies of war economies are most visible after conflicts end, shaping the dynamics of private sector development.<sup>70</sup> During wartime, businesses often adapt to survive, sometimes engaging in illicit activities like smuggling. The political economy of conflict, influenced by both national and international firms, can perpetuate conflict by funding military efforts.<sup>71</sup> After conflict ceases, reintegration programs for former combatants aim to provide alternative sources of income, but sustainable peace requires broader economic recovery, including a dynamic private sector. However, post-conflict environments are marked by security risks, poor regulation, corruption, and infrastructure deficiencies. Political frameworks often reflect ceasefire agreements, making it challenging for businesses to remain neutral. Despite these obstacles, opportunities arise for investors willing to navigate the risks and capitalize on reconstruction efforts.<sup>72</sup>

Due to their ability to provide a broad range of services that were formerly exclusive to state military forces, Private Military and Security Firms (PMFS) have emerged as significant players in contemporary conflict.<sup>73</sup> These companies developed out of the historical use of mercenaries; however, PMFS are corporate organizations with specific skills, as opposed to the individual mercenaries of the past. Several interrelated variables contributed to the formation of PMFS. First, the end of the Cold War resulted in a global reduction in the size of professional militaries, which left a glut of highly skilled military personnel.<sup>74</sup> Second, the character of warfare evolved, incorporating a combination of state and non-state actors and becoming increasingly decentralized and unpredictable. Due to this, there was a need for adaptive and flexible military support services. Thirdly, the conviction in the effectiveness of the private sector led to a global trend towards the privatization and outsourcing of government operations.<sup>75</sup>

PMFS are active in three primary industries. Military supplier companies provide clients with tactical military support, including combat services. They might send out troops to take part directly in hostilities, conduct security operations, or defend people and property. Military consulting firms hire former military officers and specialists to offer training, capacity building, and strategic advice to state and non-state entities.<sup>76</sup> They frequently have areas of expertise in counterinsurgency, intelligence, and military strategy. Military support companies give the armed forces administrative, technical, and logistical support so they may concentrate on fighting. This covers services including infrastructure construction, intelligence gathering, equipment maintenance, and supply chain management.<sup>77</sup> The use of PMFS in conflict areas has generated debate, nevertheless. Concerns about ethics and law have been raised by allegations of business malfeasance, human rights violations, and profiteering. Skepticism and criticism have been exacerbated by PMFS's operations' lack of accountability and openness.<sup>78</sup>

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<sup>70</sup> John Bray, "The role of private sector actors in post-conflict recovery," *Conflict, Security & Development* 9, no. 1 (April 2009): pp. 1-4, available on: Academic Search Complete (Taylor & Francis Online). Accessed April 11, 2024.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> P. W. Singer, "Outsourcing War," *Foreign Affairs* 84, no. 2 (2005): pp. 119–123, available on: Academic Search Complete (JSTOR). Accessed April 12, 2024. <https://doi.org/10.2307/20034280>

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*



Notwithstanding the issues, PMFS are still vital to modern combat, covering gaps in military capabilities and offering crucial support services. Their actions, however, bring up difficult ethical, legal, and political issues pertaining to the accountability of commercial actors in conflict areas and the privatization of security.<sup>79</sup>

In general, PMFS are able to fill significant gaps in support services and military capabilities. There is an inherent connection between private sector players and the laws of war and the international law that governs neutral parties and individuals during times of conflict. Private military and security businesses (PMFS) abide by the guidelines established by the international law of neutrality as significant players in contemporary combat. During armed conflicts, this body of law establishes the rights and responsibilities of neutral states and persons. It originated from international treaties such as the Hague Conventions of 1907 and the Paris Declaration of 1856, as well as customary international law. Understanding international law as it relates to neutral parties and individuals is necessary to regulate the activities of private sector actors operating in conflict situations. By adhering to these legal principles, private sector actors can effectively handle the intricacies of modern conflicts while upholding international norms and advancing peace and stability. However, violating the international neutrality principle by private sector actors can escalate conflicts and increase suffering for people, which highlights how important it is to uphold the law in conflict zones.

## **2.1. INTERNATIONAL LAW ON NEUTRAL PARTIES AND PERSONS IN CASE OF WAR**

The international law of neutrality is derived from customary international law and international treaties. Important treaties shaping the law of neutrality include the Paris Declaration of 1856, the 1907 Hague Convention No. V concerning the Rights and Duties of Neutral Powers and Persons in Case of War on Land, the 1907 Hague Convention No. XIII concerning the Rights and Duties of Neutral Powers in Naval War, the four 1949 Geneva Conventions, and Additional Protocol I of 1977.<sup>80</sup> The United Nations Charter of 1945 and Security Council decisions can modify the law of neutrality in certain circumstances. Article 2(5) of the UN Charter requires UN Member States to assist the UN in its actions, while Article 25 mandates UN members to accept and comply with Security Council decisions. Enforcement measures outlined in Chapter VII of the UN Charter can also affect the law of neutrality, as they are governed by specific rules that may differ from those of neutrality law.<sup>81</sup>

The United States' position on neutrality, Switzerland and Belgium's perpetual neutrality, the Armed Neutralities of 1780 and 1800, and the Declaration of Paris in 1856 all played important roles in the concept of neutrality's major development during the 19th century.<sup>82</sup> Attempts to codify this component of international law were under way by the time of the Second Hague Peace Conference. However, a number of powers, including Italy and Great Britain, chose not to ratify the two Hague Conventions on neutrality, despite the fact that they primarily reflected already-existing international conventions.<sup>83</sup> The law of neutrality was

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<sup>79</sup> *Ibid.*, p. 14.

<sup>80</sup> International Committee of the Red Cross, "The Law of Armed Conflicts – Neutrality," (June 2022), available on: [https://www.icrc.org/en/doc/assets/files/other/law8\\_final.pdf](https://www.icrc.org/en/doc/assets/files/other/law8_final.pdf). Accessed April 16, 2024.

<sup>81</sup> *Ibid.*

<sup>82</sup> Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The Hague, 18 October 1907, 26.01.1910. Available on: <https://ihl-databases.icrc.org/assets/treaties/200-IHL-20-EN.pdf>. Accessed April 13, 2024.

<sup>83</sup> *Ibid.*

further influenced by additional 1907 Convention accords, such as those pertaining to the conversion of commercial ships into warships and specific limitations on naval warfare.<sup>84</sup> Important clauses on neutrality in naval warfare were included in the 1909 Declaration of London, which was never approved. However, after the two World Wars, the imposition of arms control, and the creation of collective security measures by institutions such as the United Nations and the League of Nations, the relevance of conventional neutrality rules declined.<sup>85</sup>

The territory of a neutral state is inviolable, and it is prohibited to commit any act of hostility on such territory. Neutrality is the formal position taken by a state that is not participating in an armed conflict or does not wish to become involved. It entails specific rights and duties, including the right to remain apart from the conflict and the duty of non-participation and impartiality.<sup>86</sup> Neutral space includes the national territory of the neutral state, its territorial waters, and its national airspace. Neutral persons are nationals of neutral states. They lose their neutral status if they commit hostile acts against a belligerent or join the armed forces of a belligerent party.<sup>87</sup> However, they retain certain protections and entitlements, such as Prisoner of War (POW) status if captured. Neutral persons are to be treated in the same way as they would be in peacetime as long as their home state maintains normal diplomatic relations with the belligerent state they are in. If there are no such diplomatic relations, neutral persons are entitled to be treated as protected persons under the Fourth Geneva Convention.<sup>88</sup> Law does not differentiate between intentional and non-intentional acts regarding the treatment of neutral states and persons. Belligerent states and their armed forces must establish clear rules to avoid confusion and prevent minor or accidental incidents from escalating into major conflicts.<sup>89</sup>

As stated in the Preamble of Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, this Convention seeks to define the rights and responsibilities of neutral Powers during land combat and to control the situation of belligerents seeking refuge in neutral regions.<sup>90</sup> It also aims to address the relationship between neutral parties and belligerents and define the term "neutral" until a comprehensive settlement can be reached. The following provisions, which establish the Convention, have been agreed upon by the Appointed Plenipotentiaries, who have deposited all of their powers.<sup>91</sup> These key articles offer a foundation for comprehending the obligations, privileges, and safeguards that apply to neutral parties and individuals in times of conflict under international law. They are vital sources of information for your investigation on the legal standing and treatment of neutral parties in armed conflicts.<sup>92</sup>

The first six articles of this convention include the core notion. First of all, Article 1 defines neutrality as the state of not taking part in a fight between belligerent parties during times of war. It highlights the neutral parties' objectivity and non-alignment. The responsibilities and rights of neutral parties during a war are listed in Article 2.<sup>93</sup> It contains

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<sup>84</sup> *Ibid.*, p. 15.

<sup>85</sup> *Ibid.*

<sup>86</sup> The Law of Armed Conflicts – Neutrality, *supra* note 80, p.15.

<sup>87</sup> *Ibid.*

<sup>88</sup> Geneva Convention relative to the protection of Civilian Persons in Time of War, 21.10.1950. Available on: <https://www.refworld.org/legal/agreements/icrc/1949/en/32227>. Accessed on April 16, 2024.

<sup>89</sup> *Ibid.*

<sup>90</sup> Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, *supra* note 82, p. 15.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*



clauses pertaining to the freedom to trade with both sides in conflict, the need to maintain neutrality inside their borders, and the duty to abstain from giving military support to either side. Next, Article 3 deals with keeping hostile parties from encroaching on neutral territory. In order to protect neutral borders, airspace, and maritime areas, it lays out specific procedures that highlight the sovereignty and inviolability of neutral states. The treatment of neutral parties during a war, such as citizens, diplomats, and aid workers, is the subject of Article 4.<sup>94</sup> Article 5 describes the diplomatic and consular protection provided to neutral parties and individuals in crisis zones, whereas Article 5 highlights the concept of non-interference with the rights and freedoms of neutral individuals, guaranteeing their safety and security.<sup>95</sup> It covers topics like the founding of diplomatic missions, diplomatic staff immunity, and offering consular services to citizens of neutral states. Last but not least, Article 6 emphasizes the need for belligerent parties to permit the delivery of relief and humanitarian aid to needy civilians inside neutral territory. It emphasizes how crucial it is to make humanitarian operations easier and guarantee that people have access to necessities like supplies and services.<sup>96</sup>

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States was adopted by the General Assembly on October 24, 1970, during a commemorative session for the UN's twenty-fifth anniversary.<sup>97</sup> Mr. Edvard Hambro (Norway), President of the General Assembly, expressed satisfaction with the adoption, emphasizing its significance in codifying principles derived from the UN Charter. Despite initial doubts, the Declaration's acceptance signifies a milestone in international cooperation. Hambro stressed the need to translate these principles into practical action to promote peace, justice, and progress among nations.<sup>98</sup> This Declaration emphasizes several economic perspectives. States are encouraged to engage in economic cooperation based on mutual benefit, recognizing the importance of economic development for the well-being of all peoples. States should respect the economic sovereignty of other states, acknowledging their right to pursue their economic policies and development strategies without external interference.<sup>99</sup> Just as states are urged to refrain from interfering in the internal affairs of other states, they should also avoid interfering in their economic affairs. States should support the economic development efforts of other states, especially those facing challenges such as poverty, underdevelopment, and economic instability.<sup>100</sup> The principles encourage states to promote trade and investment as means of fostering economic growth and development, while also respecting the rights of states to regulate their own trade and investment policies. States are encouraged to establish fair and equitable economic relations, based on principles such as reciprocity, non-discrimination, and respect for international law.<sup>101</sup>

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<sup>94</sup> *Ibid.*, p. 16.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> Audiovisual Library of International Law. Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, available on: <https://legal.un.org/avl/ha/dpilfrscun/dpilfrscun.html#:~:text=The%20Declaration%20on%20Principles%20of,the%20twenty%2Dfifth%20anniversary%20of.> Accessed April 12, 2024.

<sup>98</sup> *Ibid.*

<sup>99</sup> United Nations. Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. UN General Assembly – Twenty Fifth session, Date of entry into force: 24 October 1970. Available on: [https://digitallibrary.un.org/record/202170?ln=en&v=pdf.](https://digitallibrary.un.org/record/202170?ln=en&v=pdf) Accessed April 12, 2024.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

The rights and responsibilities of neutral parties during armed wars are outlined in the international law of neutrality, which was formed by numerous treaties as well as customary international law. In times of conflict, national legislation must overcome obstacles to sustain these international legal norms. While neutral parties must be protected and neutral territory must be maintained in accordance with international law, national legislation must handle difficult political, economic, and security issues when a conflict is ongoing. National legislation in times of war must strike a balance between the necessity to protect national security and sovereignty and the imperative to preserve international legal principles. This delicate balancing act frequently calls for the suspension of some civil liberties and the adoption of emergency measures, undermining the supremacy of international law within the domestic legal system. Furthermore, the exigencies of conflict might make it more difficult to apply international legal principles inside national legislation. In certain instances, national laws may violate the rights of neutral parties and individuals by giving military goals precedence over adherence to international legal standards. National legislation can better uphold the principles of international law and promote peace, stability, and respect for human rights during times of conflict by comprehending and addressing these challenges of the international legal framework governing the rights and obligations of neutral parties and individuals.

## 2.2. NATIONAL LEGISLATION CHALLENGES DURING TIMES OF WAR

Both Russia and Ukraine have laws that specifically control several facets of their responses and activities during wartime. For Russia, the Constitution of the Russian Federation describes the basic principles and authority of the government in times of war.<sup>102</sup> It permits the imposition of martial law and gives the President specific emergency powers. More precisely, Article 56 states that in order to guarantee a coordinated national response during times of war or emergency, the federal government may exercise its jurisdiction over regional and local authorities. Articles 87 and 90 establish the authority of the Russian Federation President and the Federal Assembly, including the State Duma and the Federation Council.<sup>103</sup> The President is empowered to take extraordinary steps to protect the state's defense and security in times of war, and may be granted special powers by the Federal Assembly. Article 102 describes the authority of federal state entities and their roles in maintaining the security and defense of the Russian Federation. Additionally, it states that in times of emergency, federal laws supersede local laws.<sup>104</sup> On 20 October 2022 Russian Martial Law was declared by president Vladimir Putin, which gives the government broad authority, permitting the seizure of assets and private property as well as unfettered monitoring of private communications.<sup>105</sup> Martial law areas in Ukraine supported by the Kremlin have the authority to enforce curfews, limit admission and exit, and impose forced evacuations. Law enforcement may hold people for up to 30 days without charging them and may also hold nationals of nations that are considered Russia's foes.<sup>106</sup>

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<sup>102</sup> Food and Agriculture Organization of the United Nations. The Constitution of the Russian Federation, Date of entry into force: 25 December 1993. Available on: <https://faolex.fao.org/docs/pdf/rus127839E.pdf>. Accessed April 13, 2024.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> The Moscow Times. Explainer: What Does Russia's Imposition of Martial Law Mean?, available on: <https://www.themoscowtimes.com/2022/10/20/explainer-what-does-russias-imposition-of-martial-law-mean-a79142>. Accessed April 13, 2024.

<sup>106</sup> *Ibid.*

In Ukraine, following the President's Decree and the Resolution of the Cabinet of Ministers of Ukraine, effective from February 24, 2022, several measures have been authorized under martial law conditions, including forced expropriation of private property, adjustment of legal entity activities, utilization of enterprises for defense needs, document and cargo checks, special regulations for medicine manufacturing and sales, replacement of company management and engagement of business entities for military needs.<sup>107</sup> During martial law, authorities have the authority to compel the acquisition of private property for state purposes. Nonetheless, to guarantee openness and justice, the full value of the property must be paid, and pertinent paperwork must be issued. Organizations and businesses might need to modify their operations to accommodate the unique circumstances that existed during the martial law era.<sup>108</sup> If necessary for the country's defense, this may entail putting mobilization plans into action, releasing products from mobilization reserves, and changing working hours or other business-related operations. For defense needs, the military may take personnel and facilities from businesses.<sup>109</sup> This includes utilizing companies' personnel and infrastructure to support defense initiatives, which can require adjustments to how they conduct business as usual. To ensure adherence to martial law laws and preserve security, military and law enforcement officials are authorized to perform extensive inspections of documents, property, cars, luggage, and cargo. During martial law, there are certain rules that must be followed regarding the production and distribution of medications that contain pharmaceuticals, psychotropic substances, and precursors. The list of powerful drugs governed by these restrictions is determined by the Ukrainian Cabinet of Ministers.<sup>110</sup> The rule of Ukraine "On the Legal Regime of Martial Law" provides for the replacement of management people in situations when management is unable to carry out their responsibilities under martial rule. Businesses engaged in the manufacture, wholesale, and retail sale of pharmaceuticals, as well as the import of pharmaceuticals, may be mobilized as needed to ensure a sufficient supply of pharmaceuticals and medical devices to meet the medical needs of the Armed Forces and other military units.<sup>111</sup> The Law of Ukraine "On the Basic Principles of Forced Expropriation in Ukraine of Property of the Russian Federation and Its Residents" then gave Ukrainian authorities the authority to seize property that belonged to the Russian Federation or to entities with Russian ownership interests, and it went into effect on March 7, 2022.<sup>112</sup> This law was amended on April 1, 2022, the changes have not yet taken effect, but they greatly broaden the statute's application. Furthermore, on February 24, 2022, the National Bank of Ukraine published Resolution No. 18, which shortens the timeframe for export-import transactions when martial law is in effect. Nevertheless, transactions below a specific threshold are not subject to this reduction. The Cabinet of Ministers has implemented special procurement processes for defense and public procurement during martial law. The resolutions are from October 12, 2022, and November 11, 2022, respectively.<sup>113</sup>

Ukraine's constitutional framework is currently facing certain issues in the context of the conflict between Russia and Ukraine. The ongoing Russian invasion poses a direct threat to

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<sup>107</sup> Baler McKenzie, "Ukrainian laws in Wartime: Guide for International and Domestic Businesses," 14<sup>th</sup> edition (March 2024): pp. 4-8, accessed April 8, 2024, <https://www.bakermckenzie.com/en/insight/publications/guides/-/media/files/insight/guides/2024/guide-to-ukrainian-laws-in-wartime-v14.pdf>.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

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

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

Ukrainian statehood and constitutional identity and commends the Defense Forces of Ukraine for their successful counteroffensive.<sup>114</sup> There are significant political and legal obstacles to the declaration of martial law and the reforms in public governance present. These include limitations on the freedoms and liberties guaranteed by the constitution, which raises questions about how closely official activities adhere to these ideals.<sup>115</sup> The necessity for a thorough reevaluation and elaboration of the constitutional obligation to defend Ukraine to suit current wartime circumstances is one of the main issues. Furthermore, problems that could jeopardize constitutional legitimacy and the rule of law include the suspension of political parties and the firing of public servants.<sup>116</sup> The difficulties with the legal system, freedom of speech and religion, and local government policies can be solved by a reasonable strategy that respects constitutional principles and reacts to the demands of conflict in a way that is both practical and effective.<sup>117</sup>

It is crucial to protect Ukraine's constitutional character in the midst of the conflict. It demands that constitutional laws be better clarified in order to fill in any gaps and guarantee the protection of human rights, sovereignty, and efficient government in the event of martial law. In the end, winning the Russian-Ukrainian war requires Ukraine to maintain its constitutional norms and principles in addition to its military prowess.<sup>118</sup> Given recent geopolitical changes and the EU's determination to engage with Ukraine as a candidate state, Ukraine will likely be a central focus of EU foreign policy for some time to come.<sup>119</sup> It makes the case that EU-Ukraine relations and EU public diplomacy face both opportunities and challenges as a result of the seismic events that followed Russia's invasion in 2022.<sup>120</sup>

By focusing on listening and working together, a perceptual approach to EU public diplomacy can help close the current perception gaps between the EU and Ukraine, improving EU public diplomacy in the process. There are currently perception gaps between the EU and Ukraine, which allows for disparities in how one group perceives the other.<sup>121</sup> In the EU-Ukraine relationship, expectation-performance gaps are also a problem since Ukrainian actors' assessments of the EU's role performance were shown to be unfavorable. Ukrainians' expectations for favorable EU views towards eventual EU membership, in contrast to perceived reluctance and disinterest from the EU, serve as an example of the hope-performance gap.<sup>122</sup> A 'new' approach to public diplomacy that places an emphasis on forming connections, comprehending cultures, and swaying ideas in order to achieve goals and values might be beneficial. Although there are potential for perceptual shifts as a result of the fighting in Ukraine, achieving these calls for a dedication to cooperative public diplomacy as opposed to merely strategic communication.<sup>123</sup> Favorable changes in the political landscape and sentiments

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<sup>114</sup> Zozulia O. I., "Current challenges to the Constitutional system of Ukraine in the conditions of the Russian-Ukrainian war," *International Scientific Conference* (July 2022): pp. 26-30, accessed April 8, 2024, <https://doi.org/10.30525/978-9934-26-229-6-6>.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> Natalia Chaban, and Ole Elgström, "Russia's War in Ukraine and Transformation of EU Public Diplomacy: Challenges and Opportunities," *Journal of European Integration* 45, no. 3 (2023): pp. 521–523, available on: Academic Search Complete (Taylor & Francis Online). Accessed April 8, 2024. (doi:10.1080/07036337.2023.2190107; <https://www.tandfonline.com/doi/full/10.1080/07036337.2023.2190107>)

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

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> Natalia Chaban, "Russia's War in Ukraine and Transformation of EU Public Diplomacy," pp. 526-529.

between the EU and Ukraine, such as the rise in pro-EU sentiment among Ukrainians and the country's emergence as a proactive player. It does, however, raise concerns about how well Europe understands Ukraine and how to handle the protracted Ukrainian membership process.<sup>124</sup>

The following are the current issues that EU public diplomacy about the EU is confronting. As the battle rages on, there is less and less interest in the media and donations for Ukraine.<sup>125</sup> Unfavorable trends in the handling of Ukrainian refugees surface, suggesting a decline in EU support. Opinions among EU residents on ending the war and supporting Ukraine's admission are divided, according to polls.<sup>126</sup> Ukraine has been more widely known as a result of media coverage of Russia's actions against it, yet it is unclear how well European societies comprehend the nation. Think tank and academic narratives frequently present a skewed picture of the war, influencing opinions on both sides. Perception gaps are widened by psychological tricks, disinformation, and propaganda.<sup>127</sup> The EU must explain the drawn-out membership process to Ukrainian elites and the general population. Negotiations are slow and complicated, as seen by previous accession processes. The challenge is increased by the post-war reconstruction job in Ukraine. For EU public diplomacy, controlling expectations and outlining the rationale behind the drawn-out procedure will be essential.<sup>128</sup>

During times of conflict, state legislation must strike a balance between protecting human rights, international law, and the rule of law while also keeping national security imperatives in mind. This presents considerable obstacles. Governments frequently implement emergency measures and suspend certain civil liberties in the context of armed conflict in order to effectively address security risks. The emergence of profiteering mechanisms during times of war exacerbates these issues. Important roles are played by private sector players in war economies, such as military suppliers, consultancy businesses, and support corporations, who offer vital services to state and non-state entities engaged in conflict. Nevertheless, there are moral, legal, and political issues when private sector players operate in war areas. Weapons trafficking, war profiteering, and the exploitation of natural resources are examples of profiteering processes that can intensify hostilities, prolong violence, and thwart attempts to establish peace and stability. The oversight and regulation of private sector players operating in conflict areas is closely linked to the difficulties that national legislation faces during wartime. Strong enough national rules and regulations are needed to stop profiteering mechanisms and make private sector players answerable for their deeds. In addition, the international legal system that regulates hostilities, which includes humanitarian law and the laws of war, offers more rules for controlling private sector participation in conflict areas. National legislation can support peace, security, and respect for human rights during times of war by upholding these legal norms and lessening the detrimental effects of profiteering mechanisms.

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<sup>124</sup> *Ibid.*, p. 20.

<sup>125</sup> Natalia Chaban, "Russia's War in Ukraine and Transformation of EU Public Diplomacy," pp. 530–532.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*

### **3. PROFITEERING MECHANISMS: EXAMINING THREE SOURCES OF PRIVATE SECTOR GAIN**

The concept of war profiteering is complex and lacks a clear narrative, often viewed as making excessive profits from armed conflict situations, regardless of legality or ethics.<sup>129</sup> It involves not only arms corporations but also banks, financial institutions, and civilian companies benefiting from war and militarization. While war profiteering is not inherently illegal, the means by which profits are obtained can be. The distinction is made between active war profiteers, who influence conflict outcomes for profit, and passive profiteers, who benefit without influencing conflicts directly.<sup>130</sup> Historically, excess profits taxes were introduced during wars to regulate abnormal profits made by corporations. These taxes aimed to distribute gains from profiteering and establish a legal framework for addressing the issue. Recent conflicts, such as the US-led interventions in Iraq and Afghanistan, have seen significant profits for arms corporations through government contracts and emergency funding, leading to inflated executive salaries and bonuses.<sup>131</sup>

Current conflicts, like Russia's war in Ukraine, have also sparked accusations of war profiteering, with arms corporations benefiting from government contracts. Politicians have proposed windfall taxes on corporations profiting from conflicts, emphasizing the need for corporate accountability in war situations.<sup>132</sup> There's a need to examine relevant international legal frameworks, such as International Human Rights Law (IHRL) and International Humanitarian Law (IHL), to establish accountability for war profiteering. This includes determining the extent to which these laws apply and addressing shortcomings in existing frameworks.<sup>133</sup>

The idea of "war profiteering" raises a complicated and diverse range of issues, encompassing not only the armaments industry but also financial institutions, banks, and private businesses. Although the act of profiteering from war may not be criminal in and of itself, the methods used to do so may give rise to moral and legal issues. Excess profits taxes and other historical measures have attempted to control corporate gains during times of war, but large profits for arms companies have come from government contracts. Demands for windfall taxes on businesses that make money off of disputes draw attention to the necessity of corporate responsibility. Going forward, tackling war profiteering and encouraging moral behavior in times of conflict would require investigating global legal frameworks and putting accountability mechanisms in place for companies engaged in armed conflict zones.

#### **3.1. LEGAL IMPLICATIONS OF PROFITS FROM LOGISTICS AND RECONSTRUCTION ACTIVITIES**

Prior to the Russian invasion, Ukraine's financial sector faced challenges due to its small size, fragmentation, and heavy dependence on state-owned banks. Despite these hurdles, restructuring initiatives by the central bank over the past decade helped the sector, which helped

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<sup>129</sup> Olusola Babatunde Adegbite, "War Profiteering and Armed Conflicts: Examining Applicable Aspects of International Law," *Groningen Journal of International Law* 10, no. 1 (2023): pp. 22-30, accessed April 9, 2024, DOI: 10.21827/GroJIL.10.1.21-42.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*



throughout the initial impact of the invasion relatively well.<sup>134</sup> Amid the ongoing conflict, authorities should initiate preparations for post-war reconstruction and reshaping of the financial sector. These preparations entail conducting a thorough assessment of asset quality, implementing bank-specific recapitalizations, and devising mechanisms to tackle non-performing loans.<sup>135</sup> A key aspect of the suggested strategy involves guiding state-owned banks towards privatization while ensuring they take a proactive approach in addressing non-performing loans. Additionally, Ukraine's EU candidacy is a guiding principle for aligning regulations with European standards and attracting foreign investment.<sup>136</sup> It is of great importance to develop capital markets, prioritizing the development of capital market infrastructure, introducing legislation on financial collateral, and enhancing creditor protection. Looking ahead, Ukraine faces the possibility of ongoing elevated geopolitical risks even post-war. The process of financial deepening will depend on establishing risk-sharing agreements with the EU, bilateral donors, and multilateral development institutions.<sup>137</sup>

A comprehensive approach to Ukraine's financial reconstruction is needed, with emphasis put on to the urgency of swift action to ensure financial stability, attract investment, and facilitate economic recovery post-conflict.<sup>138</sup> Following the war, Ukraine aims to rejuvenate its financial sector by addressing issues such as politically influenced lending, enhancing corporate governance in banks, and privatizing state-owned lenders. To attract investment, Ukraine intends to enforce stricter due diligence for bank owners and potentially sell state banks to foreign investors. The alignment of regulations with EU standards is deemed critical for long-term stability and attracting foreign investment.<sup>139</sup> Priorities for economic recovery include developing domestic money and capital markets, as well as supporting housing finance and small businesses. External financing must be managed prudently to avoid macroeconomic instability, with a focus on sustainable investments. Strengthening supervisory authorities and fostering international cooperation will be essential for the sector's post-war development. Lastly, ongoing alignment with EU policies and collaboration with international financial institutions will be paramount for Ukraine's reconstruction and long-term financial stability.<sup>140</sup>

When at the impact of Russia's war on Ukraine's energy sector and the subsequent challenges and opportunities it presents, in the short term, priority is given to improving energy security through better integration with European Union energy infrastructure and enhancing energy efficiency.<sup>141</sup> After that, Ukraine aims to achieve self-sufficiency in natural gas and

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<sup>134</sup> Yuriy Gorodnichenko, Ilona Sologoub and Beatrice Weder di Mauro, "Introduction," in *Rebuilding Ukraine: principles and policies*, ed. by Yuriy Gorodnichenko et al. (London: CEPR PRESS, December 2022), pp. 1-15, accessed April 10, 2024, <https://cepr.org/system/files/publication-files/178114-paris-report-1-rebuilding-ukraine-principles-and-policies.pdf>.

<sup>135</sup> *Ibid.*

<sup>136</sup> Tymofiy Mylovanov and Gerard Roland, "Ukraine's post-war reconstruction and governance reforms," in *Rebuilding Ukraine: principles and policies*, ed. by Yuriy Gorodnichenko et al. (London: CEPR PRESS, December 2022), pp. 39-71, accessed April 10, 2024, <https://cepr.org/system/files/publication-files/178114-paris-report-1-rebuilding-ukraine-principles-and-policies.pdf>.

<sup>137</sup> *Ibid.*

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

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> Tatyana Deryugina, Oleksandr Kravchenko and Mar Reguant, "Rebuilding Ukraine's energy sector: Challenges and Opportunities," in *Rebuilding Ukraine: principles and policies*, ed. by Yuriy Gorodnichenko et al. (London: CEPR PRESS, December 2022), pp. 193-215, accessed April 10, 2024, <https://cepr.org/system/files/publication-files/178114-paris-report-1-rebuilding-ukraine-principles-and-policies.pdf>.

develop its renewable energy sector, including wind, solar, hydrogen, and biomass. In the long-term, closer integration with Europe is crucial for Ukraine's long-term energy future, which requires continued improvement in interconnection with European energy markets and private sector involvement. Financial support from European Union and other world players is necessary to facilitate Ukraine's effective rebuilding and participation in the green energy transition.<sup>142</sup>

The National Council for the Recovery of Ukraine estimates that a significant green transition could be achieved with approximately \$100–\$150 billion investment, which would primarily focus on developing new zero-carbon power generation, increasing hydrogen production, including exports to Europe, boosting gas production, including biomethane, and modernizing the energy infrastructure.<sup>143</sup> The implementation of Ukraine's green energy transition requires collaboration between the state, private businesses, state-owned enterprises, and national and international organizations. The state should establish a clear regulatory framework that is aligned with EU principles, while other entities develop schemes to fulfill the transition.<sup>144</sup> A solid basis for the green transition will be established by encouraging competition and empowering decentralized action. Reducing Ukraine's dependency on imported gas and oil, enhancing energy security, cutting CO2 emissions, and assisting the EU's green transition are all advantages of a successful implementation. Additionally, post-war economic growth in Ukraine can be fueled by enhancing energy efficiency, encouraging renewable energy, and fostering market competitiveness. So, it's imperative that you take advantage of this chance.<sup>145</sup>

Ukraine's transportation infrastructure, which includes its ports, railroads, motorways, and aviation facilities, will also require post-conflict rebuilding and institutional reform.<sup>146</sup> This includes the requirement for a sizable investment, the likelihood of private sector funding being involved, the promotion of public-private partnerships (PPPs), and the use of evidence to inform institutional framework decisions. Among the specific suggestions are modifying the track gauge to comply with European norms and enhancing east-west connectivity within Ukraine's rail system.<sup>147</sup> Through PPPs, the private sector must be involved in the highway network, which could result in the implementation of charges for road use. Significant damage was done to Ukrainian ports, and they might have operating limitations going forward, requiring private sector investment through PPPs. The airline industry has to invest heavily in infrastructure, and private money can be made available through concession or privatization agreements.<sup>148</sup>

The continuous threat of Russian aggression and Ukraine's journey towards European integration are also impacted by the rehabilitation and institutional reform of the country's transport infrastructure. Ukraine was already undergoing rail reform and looking into public-private partnerships for its ports and highways before the invasion.<sup>149</sup> There is some hope despite the continuous violence because important infrastructure, like as airports and railroads,

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<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*

<sup>146</sup> Volodymyr Bilotkach and Marc Ivaldi, "Rebuilding Ukrainian transport infrastructure,," in *Rebuilding Ukraine: principles and policies*, ed. by Yuriy Gorodnichenko et al. (London: CEPR PRESS, December 2022), pp. 215-241, accessed April 10, 2024, [https://cepr.org/system/files/publication-files/178114-paris\\_report\\_1\\_rebuilding\\_ukraine\\_principles\\_and\\_policies.pdf](https://cepr.org/system/files/publication-files/178114-paris_report_1_rebuilding_ukraine_principles_and_policies.pdf).

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*, p. 24.



is still largely in place. The rail industry has been designated as a priority for restoration due to its strategic importance, but port infrastructure has sustained the most damage and will need a substantial investment.<sup>150</sup> Infrastructure projects will require private funding, most likely through PPPs. Institutional changes are crucial, such as separating the provision of services from infrastructure and enacting economic regulation. The degree of influence will be impacted by the geopolitical move towards minimum relations with Russia.<sup>151</sup>

The reconstruction of Ukraine might help a lot of people and organizations overall, beginning with local companies and company owners. They would have more room to grow and thrive in a reformed Ukraine, especially in areas like technology, energy, agriculture, and infrastructure development.<sup>152</sup> Profits and market competitiveness would rise as a result of less corruption and better regulatory frameworks encouraging corporate innovation and investment. Next, businesses and foreign investors may benefit from making investments in Ukraine's developing market economy. Opportunities for foreign direct investment (FDI) in a number of sectors would arise from the reconstruction process, with the potential for large returns on investment.<sup>153</sup> Furthermore, stronger legal and governance frameworks would boost investor confidence and lessen the risks involved in doing business in Ukraine. Government service providers and contractors working on public works initiatives, policy execution, and infrastructure development would profit from possibilities and contracts created by Ukraine's reconstruction efforts.<sup>154</sup> These include, among others, consulting organizations, IT service providers, engineering firms, and construction enterprises. Financial organizations that finance and invest in capital projects and initiatives targeted at reconstructing Ukraine's infrastructure and economy stand to gain from doing so. These organizations include banks, investment corporations, and venture capital funds. This can entail managing investment portfolios with an emphasis on Ukrainian assets, underwriting bonds, and making loans.<sup>155</sup>

Furthermore, in a rebuilt Ukraine, civil society organizations (CSOs) dedicated to socioeconomic development, human rights advocacy, and governance change can gain more financing and support for their projects. Better civic participation and strengthened democratic institutions would provide CSOs more chances to influence constructive social change and policy reform.<sup>156</sup> Funding, collaboration possibilities, and a rise in the need for professionals with knowledge of economics, political science, public policy, and international relations would all be advantageous to academic institutions and research groups that are engaged in examining and tackling the difficulties encountered by Ukraine during its reconstruction.<sup>157</sup> A more peaceful and affluent Ukraine could benefit regional and international partners, such as donor agencies, international organizations, and neighboring nations. Mutual prosperity would result from improved regional collaboration, trade relations, and security cooperation. Mutual

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<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> Yegor Grygorenko and Monika Schnitzer, "Ukraine's Business Environment," in *Rebuilding Ukraine: principles and policies*, ed. by Yuriy Gorodnichenko et al. (London: CEPR PRESS, December 2022), pp. 97-119, accessed April 10, 2024, [https://cepr.org/system/files/publication-files/178114-paris\\_report\\_1\\_rebuilding\\_ukraine\\_principles\\_and\\_policies.pdf](https://cepr.org/system/files/publication-files/178114-paris_report_1_rebuilding_ukraine_principles_and_policies.pdf).

<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*

prosperity and stability in Eastern Europe and beyond would be facilitated by improved commerce, security, and regional collaboration.<sup>158</sup>

After the Russian invasion, reconstructing Ukraine's institutional, energy, financial, and transportation infrastructure is a challenging task. To ensure a successful restoration effort, Ukraine must prioritize swift action and cooperation with foreign partners. The success of programs like aligning laws with EU norms, attracting foreign investment, and fostering public-private partnerships will be critical to rebuilding efforts. Additionally, the reconstruction presents opportunities for local businesses, foreign investors, government agencies, financial institutions, academic institutions, civil society organizations, and regional and international partners to assist Ukraine's long-term recovery and prosperity. By participating and making contributions to the nation's rehabilitation, stakeholders can help restore Ukraine and promote stability and economic advancement in the surrounding area.

### **3.2. REGULATORY FRAMEWORKS GOVERNING PRIVATE SECURITY CONTRACTORS**

The 1990s saw a rapid evolution in the role of private security companies (PSCs) in post-Soviet nations, especially Russia, as a result of the fall of the Soviet Union and the rise of "wild" capitalism.<sup>159</sup> Weak state institutions were unable to keep a monopoly on security, therefore PSCs swiftly stepped in, hiring staff from state security agencies that had been reduced in size and providing security services to the public and private sectors. Laws in Russia and other former Soviet governments gave PSCs the authority to carry out a range of tasks, such as conducting private investigations, defending individuals, watching over cargo and vehicles, setting up security alarms, and upholding order at public gatherings.<sup>160</sup> PSCs work alongside government security organizations in nations like Georgia and Ukraine, occasionally going up against them for clients. Even if certain areas lack precise legal frameworks and data, oil pipelines and labor camps are examples of vital infrastructure that PSCs are recognized to play a vital role in safeguarding, despite the absence of precise legal frameworks and statistics in certain nations. Nevertheless, issues with policing and defining the functions of private security in certain areas continue, including corruption and competing interests between PSCs and government agencies.<sup>161</sup>

In Russia, the Ministry of the Interior and the Prosecutor General's Office are in charge of monitoring Private Security Companies (PSCs). The Ministry of the Interior in Ukraine is in charge of licensing and suspending licenses in order to regulate the private security industry. The Ministry of the Interior has several difficulties in its dual function as a private service provider and sector regulator. Georgia's private security industry is not well regulated because there is no particular law governing PSCs.<sup>162</sup> As a result, there is less guarantee that industry standards are continuously maintained in Georgia. PSCs responsible for protecting the oil pipeline project in Azerbaijan, Georgia, and Turkey, which is overseen by a consortium headed by British Petroleum, are presently undergoing assessments related to human rights and security

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<sup>158</sup> *Ibid.*, p. 25.

<sup>159</sup> Hans Born, Marina Caparini, and Eden Cole, "Regulating Private Security in Europe: Status and Prospects," Geneva Centre for the Democratic Control of Armed Forces (DCAF) *Policy Paper No. 20* (2007): pp. 17-28, accessed April 14, 2024, [https://www.b-e-o-w-u-l-f.com/texts/Regulating\\_Private\\_Security\\_in\\_Europe.pdf](https://www.b-e-o-w-u-l-f.com/texts/Regulating_Private_Security_in_Europe.pdf).

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*

<sup>162</sup> Hans Born, "Regulating Private Security in Europe," pp. 29-30.

surveillance. Third parties carry out these evaluations, which are commissioned by the oil sector as PSC clients and confirm compliance with the "voluntary principles of human rights and security," as described in Chapter Six on Self-Regulation.<sup>163</sup>

With the approval of their directors and regardless of the type of property, Russian legislation allows Federal Security Service (FSB) military members to work at private businesses and organizations even while they are still in active service. This clause made it possible for a large number of FSB officials to work for banks and private firms, frequently as "law consultants."<sup>164</sup> As late as the mid-1990s, Vadim Volkov claims that up to 20% of FSB employees were involved in both the commercial sector and the FSB. Laws governing private security companies have been changed in a way that makes it impossible for PSC managers to hold public office.<sup>165</sup> Banks and the Ukrainian Federation of Non-State Security Services have criticized the Department of State Protection's (DSO) monopoly on armed protection in Ukraine. Due to the monopoly, banks are unable to look for alternatives, which limits competition and results in overpriced services.<sup>166</sup>

In conclusion, the emergence of capitalism and the dissolution of the Soviet Union have influenced the growth of private security companies (PSCs) in the post-Soviet space, particularly in Russia. PSCs quickly filled the security void left by weak state institutions by providing a variety of services to both the public and private sectors. Issues like corruption and rivalry with government agencies persist even in countries with legal systems. PSC members who are former military personnel raise conflicts of interest. Regulatory oversight varies throughout nations - some lack PSC-specific legislation, which begs the question of what constitutes an industry standard. However, efforts such as impartial assessments in critical domains demonstrate a commitment to upholding security standards and human rights. All things considered, the role of PSCs in post-Soviet nations serves as an example of the complex interplay among business interests, legislative authority, and regulatory challenges.

### **3.3. LEGAL RESPONSIBILITIES AND CONSTRAINTS ON WEAPON SUPPLIERS**

Within the context of the continuing war in Ukraine, we will explore the position of four key European stakeholders: Germany, France, the UK, and The Netherlands. Each of these countries has a great deal of political sway in Europe and influences how decisions are made about the Ukrainian problem.<sup>167</sup> Starting with Germany, the nation stands out as the economic giant of Europe, possessing significant industrial might. After first showing some hesitancy to assist Ukraine, Germany has now reaffirmed its support, highlighting a determination to stick by Ukraine for "as long as it takes."<sup>168</sup> The German government, which aligns its assistance with the values of security, peace, and freedom, has emphasized Russia's attempt to deny Ukrainians of fundamental requirements. However, differences in policy approaches have resulted from internal conflicts within the German coalition government, indicating a relatively cautious tone in some places.<sup>169</sup> France, which has supported European defense and sovereignty under President Emmanuel Macron's leadership. France has expressed a strong defense of

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<sup>163</sup> *Ibid.*, p. 27.

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.*

<sup>167</sup> Simon Ensing, "Weapons trade," pp. 1-2.

<sup>168</sup> Simon Ensing, "Weapons trade," p. 7.

<sup>169</sup> *Ibid.*, p. 27.

sovereign nations, but its actual military contributions have come under examination, casting doubt on whether its declared goals and actual actions are in line with those intentions.<sup>170</sup> In spite of this, France has shown that it would always stand by Ukraine and its citizens, even though it has stressed how crucial it is to keep Russia from becoming "humiliated" by its invasion, which could make its position more difficult.<sup>171</sup>

On the other hand, among European countries, the UK has become one of the biggest donors of military support to Ukraine. The UK has taken a strong stand against Russia's aggression and has promised to defend Ukraine's sovereignty at all times during the conflict. This support goes back to 2015, when the UK started providing military training to Ukrainian soldiers, demonstrating a persistent dedication that continues even after changes in government leadership.<sup>172</sup> And lastly, The Netherlands is in a unique situation, sandwiched between the European superpowers stated before and serving as the home of international organizations such as the International Criminal Court.<sup>173</sup> Motivated in part by the downing of the MH-17 jet, which profoundly altered the Dutch public's image of Russian aggressiveness, the Dutch government has vehemently denounced Russia's actions and promised support for Ukraine.<sup>174</sup> The Netherlands, on the other hand, has opposed expediting Ukraine's EU membership, highlighting the need to combat Russia while upholding the EU's current structure. The position of each stakeholder influences the European approach to the Ukrainian crisis as a whole by reflecting its historical experiences, internal political dynamics, and geopolitical backdrop.<sup>175</sup>

To provide the Ukrainian military with MBTs manufactured in the West, a coalition of Germany, the Netherlands, the UK, and the USA established the MBT initiative, short for "Main Battle Tank," in January 2023.<sup>176</sup> This endeavor was the first large-scale multinational agreement to transfer a joint package of military equipment to Ukraine, which made it a substantial divergence from earlier military aid attempts. The MBT project signaled a united front in assisting Ukraine, unlike earlier individual nation-state attempts, by demonstrating a new degree of confidence and collaboration among participating nations.<sup>177</sup> While Ukraine had previously received Soviet-era tanks from European countries, this was the first time tanks manufactured in the West had been provided. Such commitments had first been restricted because to worries about intensifying the conflict and exposing Western technologies to Russia.<sup>178</sup> The MBT program was made possible, nevertheless, by professional evaluations and decreasing stocks of tank parts from the Soviet era that altered political perceptions. Due to its leadership in providing heavy military weapons and its sales of the Leopard 2 tank to various EU members, Germany played a crucial role in the coalition.<sup>179</sup> Germany had to provide its consent before other countries using Leopard 2 tanks could follow suit. As part of the plan, the UK and the Netherlands also decided to provide Ukraine with their respective MBTs, the Challenger 2 and Leopard 2.<sup>180</sup> The German government's commitment of resources and aid, after first being reluctant to back Ukraine, highlights the dramatic change in German foreign policy. While not providing MBTs, France consented to provide smaller armored anti-

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<sup>170</sup> Simon Ensing, "Weapons trade," p. 8.

<sup>171</sup> *Ibid.*

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

<sup>173</sup> Simon Ensing, "Weapons trade," p. 9.

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*

<sup>176</sup> Simon Ensing, "Weapons trade," pp. 22-25.

<sup>177</sup> *Ibid.*

<sup>178</sup> *Ibid.*

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

<sup>180</sup> *Ibid.*, p. 28.

tank vehicles, including the AMX-10. Overall, every country examined has pledged to support the MBT program, underscoring the significance of group efforts in aiding Ukraine.<sup>181</sup>

The F-16 effort, which involves sending F-16 fighter jets and training Ukrainian air force personnel, is another instance of international collaboration. This program, which is spearheaded by the USA and involves the UK and the Netherlands, intends to strengthen Ukraine's aviation capabilities.<sup>182</sup> As a symbol of confidence in Ukraine's eventual victory over Russia and its future alignment with NATO, sending F-16 jets and training Ukrainian pilots in NATO-standard procedures shows a long-term commitment to aiding Ukraine and integrating its military with NATO standards.<sup>183</sup>

Three key avenues for private sector profit-making during armed wars include the trafficking of weapons, war profiteering, and the exploitation of natural resources. These mechanisms frequently entail immoral and unlawful behavior, such as fraud, corruption, and the misuse of a company's position. Legal viewpoints on corporate position abuse and fraud during military conflicts emphasize the need to make private sector participants responsible for their deeds. Legal foundations for punishing individuals and corporations engaged in fraudulent and abusive actions during armed conflicts are provided by both national and international laws, such as anti-corruption statutes, anti-money laundering regulations, and international humanitarian law. The analysis of profiteering strategies in conflict areas emphasizes the necessity of strong legal frameworks to deter and prosecute private sector actors engaged in fraud and abuse. National and international legal systems can prevent unethical and illegal behavior and advance peace, security, and respect for human rights during times of war by upholding current laws and regulations and bolstering accountability mechanisms.

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<sup>181</sup> *Ibid.*

<sup>182</sup> Simon Ensing, "Weapons trade," p. 26.

<sup>183</sup> *Ibid.*

#### 4. LEGAL PERSPECTIVES ON FRAUD AND ABUSE OF CORPORATE POSITION DURING MILITARY CONFLICTS

Russia sees Ukraine as an essential part of its history and sees NATO expansion to be a danger to its sovereignty. Corruption in Ukraine has grown during the conflict, made worse by media reports of numerous instances of political corruption. Widespread corruption in Ukraine is highlighted by Transparency International's Corruption Perception Index, which is exacerbated by market monopolization and mistrust of the judiciary.<sup>184</sup>

Significant worldwide issues have resulted from the conflict between Russia and Ukraine, including logistical obstacles and disruptions in the fuel supply and price increases.<sup>185</sup> Ukraine has depended on financial, military, and humanitarian assistance from a number of nations and institutions, including the US, the UK, and agencies like the IMF and European Commission, to protect itself. But amid the fighting, widespread corruption in Ukraine has gotten worse. Political corruption in Ukraine includes high-ranking officials misappropriating aid and money, and bureaucratic corruption involves state servants accepting bribes in exchange for benefits like evading conscription.<sup>186</sup> During the conflict, instances of corruption included bribery, extortion, and misappropriation of state monies. Having been elected on an anti-corruption platform, President Zelenski has dismissed officials involved in unethical activities, adopting a harsh stance against corruption. Reports show that corrupt practices continue despite pledges to address them, with instances of bribery in conscription procedures and officials accepting money to evade serving in the armed forces. Despite efforts to address it, Ukraine's battle with corruption remains a major concern even after the war.<sup>187</sup>

Several crucial steps have been proposed to combat fraud and corruption in Ukraine, especially in light of the current conflict with Russia. To regulate the handling of relief supplies acquired during the conflict, impose a sanctions regime with precise rules and consequences. Encourage citizen participation and open government to improve public policy accountability and transparency.<sup>188</sup> Pass a comprehensive anti-corruption and whistleblower protection law to promote the disclosure of unethical behavior. To assess grants and activities, strengthen oversight organizations such as transparency commissions and anti-fraud bureaus. Acknowledge that in order to improve protection and openness, information access is a fundamental right.<sup>189</sup> To guarantee correct funding allocation and prevent unethical behavior, reform administration and step up public auditing. Increase information accessibility and transparency to encourage public scrutiny and lessen corruption. Strengthen global financial oversight to stop illicit money from finding its way into tax havens. To enhance the identification and prevention of corruption, leverage big data and artificial intelligence. Encourage public participation in anti-corruption initiatives by educating and empowering citizens on their rights, information access, and role in the fight against corruption.<sup>190</sup>

Corporate criminal liability has to be improved in Ukraine as it has a number of problems. One of the primary issues is the absence of a comprehensive legal framework for

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<sup>184</sup> Javier Cifuentes-Faura, "Corruption in Ukraine during the Ukrainian–Russian war: A decalogue of policies to combat it," *Journal of Public Affairs* 24, no. 1 (July 2023): pp. 1-4, available on: Academic Search Complete (Wiley Online Library). Accessed April 15, 2024. <https://doi.org/10.1002/pa.2905>

<sup>185</sup> *Ibid.*

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

corporate criminal liability in Ukraine. Legislation that defines corporate criminal crimes, establishes responsibility thresholds, and outlines enforcement procedures must be made clear and enforceable.<sup>191</sup> Currently, Ukraine lacks sufficient corporate criminal liability enforcement mechanisms. There are insufficient strategies for prosecution, efficient methods of investigation, and sanctions for disobedience. It is necessary to enhance enforcement practices in order to preserve accountability and deterrence. Both the scope of corporate criminal liability and the specific acts for which corporations ought to be held accountable. Corporate criminal responsibility needs to be characterized precisely and in accordance with consistent standards in order to avoid misconceptions and ensure impartiality in the judicial system.<sup>192</sup> Conflicts of interest within the legal system may jeopardize the impartiality and integrity of corporate criminal investigations and prosecutions. Maintaining credibility and public trust in the enforcement process requires resolving conflicts of interest and ensuring impartiality. It is necessary to protect the due process rights of companies accused of criminal wrongdoing, including the rights to a fair trial, access to legal representation, and protection from arbitrary enforcement actions.<sup>193</sup> Preserving procedural justice is essential to upholding the rule of law and protecting corporate interests. Enough funding must be provided in order to enable corporate criminal liability laws in Ukraine to be implemented effectively. This includes initiatives to strengthen enforcement capabilities through funding for law enforcement groups, legal professional training programs, and capacity-building. More cooperation and engagement with stakeholders, such as governmental and law enforcement organizations, businesses, civil society organizations, and attorneys, is required to handle the intricacies and challenges of corporate criminal liability. Legitimacy and effectiveness of legal reforms can be increased by including relevant parties in their development and implementation.<sup>194</sup>

Rebuilding Ukraine is expected to cost more than \$411 billion. Reallocating frozen Russian assets to these costs is one strategy for securing funding, as mentioned in the first chapter.<sup>195</sup> There are various steps in the proposed legislative framework. Finding the location and value of Russian corporate assets that have been frozen is the first step.<sup>196</sup> It is critical to differentiate between assets held by non-state-owned firms and those owned by the Russian Central Bank. Following the identification of the frozen assets, financial forensic examination is carried out to link these assets to certain Russian firms. The next stage entails proving a link between the war crimes committed in Ukraine and the named corporations. Accessing data or proof gathered by numerous international organizations, such as the EU, ICC, ICRC, Ukraine, and others, may be necessary for this.<sup>197</sup> There are two litigation pathways possible, depending on the specifics. Criminal Track, in which the company is the target of a criminal prosecution brought by the Ukrainian prosecutor, who hopes to find the company guilty and impose a fine. This option is better for financing reconstruction operations because the state of Ukraine receives these financial penalties directly. In the event that a criminal prosecution is not feasible

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<sup>191</sup> Dmitriy Kamensky, "Introducing Corporate Criminal Liability in Ukraine: Terra Incognita," *Stetson Law Review* 46, no. 1 (Fall 2016): pp. 89-92, available on: Academic Search Complete (HeinOnline). Accessed April 13, 2024.

<sup>192</sup> *Ibid.*

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

<sup>195</sup> Michael J. Kelly, Federica D'Alessandra, Milena Sterio, and Lydia Korostelova, "Prosecution of Russian Corporations for War Crimes in Ukraine," *Texas International Law Journal* (February 2024): pp. 3-8, available on: Academic Search Complete (Oxford University Research Achieve). Accessed April 11, 2024.

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

in a certain situation, a civil action may be brought.<sup>198</sup> Since the proceeds of civil litigation are awarded to specific parties, further legal action is necessary to guarantee that these monies support the state's reconstruction efforts. A judgement award against the Russian corporation is then brought before a court in the country where the assets that have been frozen are situated. In order to satisfy the judgement, the court is asked to attach the assets. Ultimately, the assets are given to Ukraine in order to aid in its reconstruction efforts, as mandated by the ruling of the domestic court that placed the funds under freeze.<sup>199</sup>

Litigation plays a crucial role in socializing private military companies (PMCs) by holding them accountable for their actions. The possibility of legal action encourages PMCs to establish internal mechanisms for corporate social responsibility and accountability.<sup>200</sup> While the goal is for PMCs to eventually self-regulate effectively, the current lack of regulation means that litigation remains a powerful means of enforcing accountability within the industry.<sup>201</sup>

The Alien Tort Claims Act (ATCA) allows victims to sue Private Military Companies (PMCs) for torts committed in violation of international law. PMCs, as non-state actors, traditionally aren't seen as duty-bearers under international law and thus can't directly violate it.<sup>202</sup> Recent ATCA cases, like those against PMC Titan, confirm that PMCs can't be held directly liable under international law even if hired by a government. However, violations of jus cogens (fundamental principles) or peremptory norms of international law (e.g., genocide, war crimes) may lead to direct responsibility for individuals or corporations, including PMCs.<sup>203</sup> In transnational litigation against PMCs, corporate structure can complicate legal responsibility. PMCs may use foreign subsidiaries to evade legal responsibility, as these are separate legal entities. Victims often target the parent corporation (incorporated in the forum) rather than foreign subsidiaries due to jurisdictional issues and asset location. The parent corporation could be held directly responsible for abuses by its foreign subsidiaries if negligence or agency can be proven.<sup>204</sup> Negligence claims offer advantages, such as being easier to prove and providing a direct territorial nexus for legal action. PMC's duty of care, as outlined in contracts or codes of conduct, can be used as a standard for negligence claims. PMC's clients, particularly states, can influence human rights commitments through contractual clauses. Upholding human rights can be seen as sound business strategy for PMCs to maintain reputation and future contract opportunities.<sup>205</sup>

Conceptual and practical challenges arise when litigating claims related to extraterritorial violations by PMCs in their home or hiring state. Sovereignty concerns arise when a state exercises jurisdiction over events in another state, potentially violating non-intervention principles.<sup>206</sup> International law may authorize or oblige states to exercise jurisdiction over certain offenses, such as grave breaches of the Geneva Conventions. Domestic law authorization is crucial for extraterritorial jurisdiction, but its scope varies among states.<sup>207</sup>

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<sup>198</sup> *Ibid.*, p. 31.

<sup>199</sup> *Ibid.*

<sup>200</sup> Cedric Ryngaert, "Litigating Abuses Committed by Private Military Companies," *European Journal of International Law* 19, no. 5 (November 2008): pp. 1035–1038, available on: Academic Search Complete (Oxford Academic). Accessed April 7, 2024. <https://doi.org/10.1093/ejil/chn056>

<sup>201</sup> *Ibid.*

<sup>202</sup> Cedric Ryngaert, "Litigating Abuses Committed by Private Military Companies," p. 1038.

<sup>203</sup> *Ibid.*

<sup>204</sup> Cedric Ryngaert, "Litigating Abuses Committed by Private Military Companies," p. 1038-1040.

<sup>205</sup> *Ibid.*

<sup>206</sup> Cedric Ryngaert, "Litigating Abuses Committed by Private Military Companies," p. 1040-1044.

<sup>207</sup> *Ibid.*, p. 32.



The United States has various statutes allowing prosecution of PMC abuses committed by US nationals, but challenges remain, including lack of implementation and prosecutorial passivity. Practical challenges include difficulty in obtaining evidence overseas and detecting PMC abuses, especially in conflict zones with weak governance. Cooperation between states and increased monitoring mechanisms are proposed solutions to overcome practical challenges and ensure accountability for PMC abuses.<sup>208</sup>

Meanwhile, the term "private security company" (PSC) lacks international convention but generally refers to registered civilian companies providing security services under domestic law.<sup>209</sup> The PSC market is larger and more competitive than that for military services, with the majority being smaller companies focused on crime prevention and domestic security. PSCs outnumber and outspend public law enforcement agencies in several countries like the US, the UK, Israel, Germany, Russia, South Africa, and the Philippines. PSC activities include guarding, electronic security and surveillance, investigation and risk management, and private intelligence.<sup>210</sup> PSC demand is rising due to economic, demographic, and political changes, leading to a greater reliance on private security for public safety. Despite the lack of regulation, PSCs are increasingly responsible for protecting public and private property in various high-risk locations and sectors. The domestic private security industry faces issues of poor regulation, inadequate training, and questionable practices, leading to concerns about public safety and effectiveness. Regulation of the private security industry varies globally, with some countries implementing stricter measures than others, but overall, lack of political will hinders effective regulation.<sup>211</sup>

For effective regulation of private military and security companies (PMCs and PSCs) governments should promote corresponding approaches at the international level through organizations like the UN, EU, NATO, or OSCE. Existing international conventions should be amended to include PMC and PSC activities, ensuring transparency and accountability.<sup>212</sup> The UN Special Rapporteur on mercenaries could play an expanded role in monitoring PMC and PSC activities and behavior.<sup>213</sup> The UN could establish a database of vetted firms available for hire, similar to the UN Register of Conventional Arms. Mechanisms for enforcing compliance and violations of international laws should be established.<sup>214</sup> On a national level governments that hire PMCs and PSCs are primarily responsible for their conduct, especially regarding international humanitarian and human rights law. Governments could implement a licensing regime for the provision of military and security services, similar to arms export controls. A ban on unlawful participation in armed conflict abroad could be enacted, although enforcement and definitions pose challenges.<sup>215</sup> Legislation could prohibit recruitment for military activity abroad, but enforcement and the impact on legitimate companies are concerns. A licensing system could be established, allowing governments to control the export of military and security services, although enforcement and administrative burdens are challenges.<sup>216</sup>

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<sup>208</sup> *Ibid.*

<sup>209</sup> Fred Schreier and Marina Caparini, "Privatizing Security: Law, Practice and Governance of Private Military and Security Companies," Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Occasional Paper No. 6* (March 2005): pp. 26-33, accessed April 14, 2024, [https://www.files.ethz.ch/isn/14077/occasional\\_6.pdf](https://www.files.ethz.ch/isn/14077/occasional_6.pdf).

<sup>210</sup> *Ibid.*

<sup>211</sup> *Ibid.*

<sup>212</sup> Fred Schreier, "Privatising Security," p. 103.

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

<sup>215</sup> Fred Schreier, "Privatising Security," p. 104.

<sup>216</sup> *Ibid.*, p. 33.

When referring to defining legitimate and illegitimate activities of private military and security companies (PMCs and PSCs), along with monitoring and evaluation, PMCs and PSCs often blur into each other, making consistent categorization challenging.<sup>217</sup> Instead of categorizing companies, it's more productive to distinguish between acceptable and unacceptable activities. Some proposed prohibited activities include direct participation in hostilities, use, recruitment, financing and training of mercenaries, acts with lethal outcomes, support for unrecognized governments or irregular forces, human rights violations, looting, and unauthorized arms procurement. Determining direct involvement in hostilities or training versus planning can be complicated, especially in scenarios like aiding governments during conflicts.<sup>218</sup> Core military and security functions should not be outsourced beyond a certain point, guided by mission-critical or emergency-essential criteria. Outsourcing decisions should consider national security, accountability, and adherence to legal provisions, with appropriate monitoring and enforcement mechanisms. Contract sanctions, license retrieval, or reputational costs can serve as self-correcting mechanisms in the marketplace. Effective monitoring and enforcement mechanisms are crucial for a credible regulatory regime.<sup>219</sup> There's a need for mechanisms to control PMCs and PSCs threatening state sovereignty and violating international laws, particularly in arms control. Establishing international registers for PMCs and PSCs, similar to the UN Register of Conventional Arms, could bring transparency and accountability to their activities. PMCs and PSCs should adhere to relevant human rights and Geneva Conventions, with violations leading to penalties and potential trial at the International Court of Justice.<sup>220</sup>

Even though not related to the Russian-Ukrainian war, here is a case, which portrays the abuse of corporate position during armed conflicts. Abul Huda Farouki, Mazen Farouki, and Salah Maarouf, were charged in an indictment for their involvement in defrauding U.S. military contracts in Afghanistan, engaging in illegal commerce with Iran, and laundering money internationally.<sup>221</sup> They were charged with two counts of major fraud, one count of conspiracy to violate restrictions on doing business with Iran, four counts of substantive violations of those restrictions, and one count of conspiracy to commit international money laundering.<sup>222</sup> Abul Huda Farouki was the CEO of Anham FZCO, a defense contractor based in the UAE, while Mazen Farouki was the President and Founder of Unitrans International Incorporated, a logistics company connected to Anham. Salah Maarouf operated a company that procured goods and services for Anham.<sup>223</sup> Anham was awarded an \$8 billion contract by the U.S. Department of Defense in 2012 to provide food and supplies to U.S. troops in Afghanistan (SPV-A contract). They were also involved in the National Afghan Trucking (NAT) contract worth \$984 million, which required supplying trucking services to the U.S. military in Afghanistan.<sup>224</sup> The indictment alleges that the defendants schemed to defraud the Department of Defense by providing false estimates of warehouse completion dates, misleading photographs, and shipping materials through Iran to increase profits. The defendants violated laws concerning fraud, commercial activity with Iran, and international money laundering.<sup>225</sup>

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<sup>217</sup> Fred Schreier, "Privatising Security," pp. 116-134.

<sup>218</sup> *Ibid.*

<sup>219</sup> *Ibid.*

<sup>220</sup> *Ibid.*

<sup>221</sup> *United States of America v. Abul Huda Farouki, Mazen Farouki and Salah Maarouf* (November 11, 2018) Available on <https://www.justice.gov/media/979706/dl> Accessed April 15, 2024.

<sup>222</sup> *Ibid.*

<sup>223</sup> *Ibid.*

<sup>224</sup> *Ibid.*

<sup>225</sup> *Ibid.*, p. 34.

The case was investigated by U.S. Immigration and Customs Enforcement's Homeland Security Investigations (HSI) Washington, D.C., and investigators at the Special Inspector General for Afghanistan Reconstruction (SIGAR).<sup>226</sup> The defendants made their initial appearance before a judge, pleaded not guilty, and the next hearing was scheduled for a later date. The charges in the indictment are allegations, and all defendants are presumed innocent until proven guilty in court.<sup>227</sup>

In conclusion, pervasive corruption has exacerbated Ukraine's problems as a result of the confrontation between Russia and Ukraine, which is a result of political disagreements and Russia's resistance to Ukraine joining NATO. Corruption endures in spite of foreign aid; even in the midst of the fighting, there have been claims of aid theft and bribes. Proposed legal measures to control relief handling and encourage transparency are part of the fight against corruption, but there are still a lot of obstacles to overcome. Furthermore, there have been requests for stronger international regulation and accountability systems regarding the participation of private military and security corporations (PMCs and PSCs). Robust oversight and enforcement are crucial in addressing misbehavior by private contractors, as seen by recent legal instances. In conflict-affected areas like Ukraine, combating corruption and regulating PMCs and PSCs are crucial first steps towards fostering stability and accountability.

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<sup>226</sup> *Ibid.*

<sup>227</sup> *Ibid.*

## CONCLUSION

To answer the research question and the legal problem established, private sector actors benefit from armed conflicts by providing essential services such as logistical support, training, and tactical military assistance through Private Military and Security Firms (PMFS). Despite ethical and legal concerns, including allegations of human rights violations and issues with transparency and accountability, PMFS continue to fill significant gaps in military capabilities and support services. To regulate and hold private sector actors accountable, international and national legal frameworks must be utilized effectively. This includes implementing robust oversight and enforcement mechanisms to address misconduct by private contractors. Recent legal cases, such as indictments related to fraudulent U.S. military contracts in Afghanistan, highlight the importance of such measures. Additionally, there have been calls for stronger international regulation and accountability systems concerning the participation of private military and security corporations (PMCs and PSCs) in conflict-affected areas like Ukraine. Combating corruption and regulating PMCs and PSCs are crucial steps toward fostering stability and accountability in conflict zones.

After having examined the complex interplay of international legal frameworks, economic sanctions, private military and security firms (PMFS), and the roles of key European stakeholders, the multifaceted nature of addressing conflicts like the one between Russia and Ukraine is underscored. While sanctions demonstrate global solidarity, questions remain about their effectiveness and unintended consequences. PMFS present both challenges and opportunities, necessitating ethical and legal scrutiny for responsible utilization. The evolving roles of Germany, France, the UK, and The Netherlands highlight the importance of collective action in addressing crises. Yet, corruption and regulatory gaps persist, emphasizing the ongoing need for robust oversight and accountability measures. Ultimately, addressing these issues is crucial for promoting stability, peace, and prosperity in conflict-affected regions like Ukraine.

The research primarily examines the legal, economic, and geopolitical dimensions of the conflict, but it may lack a comprehensive analysis of other crucial factors, such as cultural and historical contexts, which could impact the findings. The fact that this dispute is unsolved and has an unpredictable future emphasizes the need for ongoing research.

A lot of academic research has been done as a result of the protracted conflict between Russia and Ukraine and its effects on the international scene, especially in the legal and economic domains. The research focuses on a specific time period and the information publicly available up to that point. As the conflict evolves, new developments may arise, potentially affecting the conclusions drawn from the research. The research is primarily theoretical in nature and may not fully leverage empirical data or case studies to validate its findings. Incorporating empirical research could enhance the robustness and applicability of the study. There are still many unknown concerns, such as what the final legal and economic ramifications will be. While scholarly investigation into the conflict is vital for expanding our knowledge, in order to achieve a more nuanced perspective of the issue, it is critical to acknowledge the ongoing unsolved questions and probable gaps in research findings.

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