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Legal Accountability for Torture as a War Crime: Prosecuting
Members of the Wagner Group for Crimes Committed in the
Ukraine Conflict under National and International Law

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List of Abbreviations

AfCHPR	African Court on Human and Peoples' Rights
API	Additional Protocol I to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (1977)
Art	Article
AU	African Union
CAR	Central African Republic
CCF	Continuous Combat Function
CCU	Criminal Code of Ukraine
ECtHR	European Court of Human Rights
GCIII	Third Geneva Convention of 1949 (Geneva Convention relative to the Treatment of Prisoners of War)
GRU	Main Directorate of the General Staff of the Armed Forces of the Russian Federation
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
OHCHR	Office of the United Nations High Commissioner for Human Rights
PMC	Private Military Company
POW	Prisoner of War
SSU	Ukrainian Security Services

Abstract

This thesis examines the legal accountability of members of the Wagner Group for torture committed as a war crime during the Ukraine conflict. It explores whether individuals can be prosecuted for such crimes independently of direct state attribution to Russia. Although significant evidence exists documenting Wagner Group's involvement in torture and other international crimes, most legal responses and literature have focused on state responsibility, leaving a gap concerning the individual criminal responsibility of private military contractors. This thesis analyzes the potential of national courts, particularly of those in Africa where Wagner has operated, to prosecute Wagner members under the principle of universal jurisdiction. By examining domestic legal frameworks in the Central African Republic, Sudan, Mali, Libya, Mozambique, and Niger, the thesis highlights the disparities in legal readiness across these jurisdictions. The thesis also evaluates the admissibility challenges faced by Ukrainian courts and the limitations of international tribunal jurisdiction. Ultimately, the thesis argues that universal jurisdiction remains a viable legal pathway to close accountability gaps, but that its effective use requires political will, legal harmonization, and strategic application, particularly by African states.

Abstrakt/ Zusammenfassung

Die vorliegende Masterarbeit untersucht die rechtliche Verantwortlichkeit von Mitgliedern der Wagner-Gruppe für die als Kriegsverbrechen begangene Folter während des Ukraineconfliktes. Es wird untersucht, ob Einzelpersonen unabhängig von einer direkten staatlichen Verbindung zu Russland für solche Verbrechen strafrechtlich verfolgt werden können. Obwohl es zahlreiche Belege für die Beteiligung der Wagner-Gruppe an Folter und anderen internationalen Verbrechen gibt, konzentrieren sich die meisten juristischen und wissenschaftlichen Beiträge auf die staatliche Verantwortung und lassen damit die individuelle strafrechtliche Verantwortlichkeit privater Militärunternehmer:innen weitgehend außer Acht. Diese Arbeit analysiert das Potenzial nationaler Gerichte, insbesondere derjenigen in Afrika, wo die Wagner-Gruppe tätig war, Wagner-Mitglieder nach dem Prinzip der universellen Gerichtsbarkeit strafrechtlich zu verfolgen. Durch die Betrachtung der nationalen rechtlichen Rahmenbedingungen in der Zentralafrikanischen Republik, im Sudan, in Mali, Libyen, Mosambik und Niger zeigt die Arbeit die Unterschiede in der rechtlichen Bereitschaft dieser Länder auf. Darüber hinaus werden die Zulässigkeitschürden vor ukrainischen Gerichten sowie die Einschränkungen der Zuständigkeit internationaler

Strafgerichtsbarkeit beleuchtet. Letztendlich kommt die vorliegende Arbeit zu dem Schluss, dass die universelle Gerichtsbarkeit nach wie vor ein gangbarer rechtlicher Weg ist, um Lücken in der Rechenschaftspflicht zu schließen, dass ihre wirksame Anwendung jedoch politischen Willen, rechtliche Harmonisierung und strategische Umsetzung erfordert, insbesondere seitens der afrikanischen Staaten.

Introduction

Since Russia launched its full-scale invasion of Ukraine in 2022, the conflict has attracted worldwide attention to widespread violations of international humanitarian law. Although numerous reports from international and human rights organizations have documented war crimes by Russian state forces, there is less focus on the role of private military companies, especially the Wagner Group. However, based on credible evidence, the Wagner Group has committed acts of torture and other serious international crimes in Ukraine. Despite this, there is an absence in the legal analysis of how members of the Wagner Group can be held individually accountable under international law for such violations, particularly independent of their connection to the Russian state.

Although members of the Wagner Group are accused of committing a wide spectrum of crimes in Ukraine and other countries, such as killings, enforced disappearances, indiscriminate attacks, and other violations of international humanitarian law, this thesis focuses specifically on torture as a war crime.¹ Torture was chosen as the main theme for three reasons. First, it is one of the clearest and most widely condemned violations of international law. It is prohibited in both international human rights law and international humanitarian law without exception². Second, there is strong and reliable evidence connecting Wagner Group members directly to acts of torture in Ukraine.³

¹ Human Rights Watch, *Mali: Army, Wagner Group Atrocities Against Civilians* (28 March 2024) <https://www.hrw.org/news/2024/03/28/mali-army-wagner-group-atrocities-against-civilians> accessed 20 August 2025; Amnesty International, *A Deafening Silence* (March 2025) <https://www.amnesty.org/en/wp-content/uploads/2025/03/EUR-50.9046.2025-A-deafening-silence-2.pdf> accessed 20 August 2025 [15]; United Nations Office of the High Commissioner for Human Rights, *UN Commission Concludes War Crimes Have Been Committed in Ukraine* (October 2022) <https://www.ohchr.org/en/press-releases/2022/10/un-commission-concludes-war-crimes-have-been-committed-ukraine-expresses> accessed 20 August 2025; The Guardian, 'Russian Mercenaries Behind Slaughter of 500 in Mali Village, UN Report Finds' (20 May 2023) <https://www.theguardian.com/world/2023/may/20/russian-mercenaries-behind-slaughter-in-mali-village-un-report-finds> accessed 20 August 2025; Center for Strategic and International Studies, *Massacres, Executions, and Falsified Graves: The Wagner Group's Mounting Humanitarian Cost in Mali* (25 March 2022) <https://www.csis.org/analysis/massacres-executions-and-falsified-graves-wagner-groups-mounting-humanitarian-cost-mali> accessed 20 August 2025; Time, 'The White Power Mercenaries Fighting For the Lost Cause Around the World' (12 October 2021) <https://time.com/6180611/white-power-mercenaries-fighting-the-lost-cause/> accessed 20 August 2025.

² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art 7; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, Art 2; Geneva Conventions (I-IV) (adopted 12 August 1949, entered into force 21 October 1950) Arts 3, 147, 148; Prosecutor v Furundžija (Judgment) ICTY-95-17/1-T (10 December 1998) [153–154].

³ Media Initiative for Human Rights, *Wagner Group: Beyond Accountability* (MIHR, 27 June 2023) <https://mipl.org.ua/en/wagner-group-beyond-accountability/>.

This provides a concrete basis for legal analysis. Third, by focusing on torture, this thesis can conduct a detailed examination of accountability mechanisms. This focus allows torture to serve as a clear lens for exploring the challenges and opportunities of prosecuting PMC members under international criminal law and universal jurisdiction.

With torture as the focal point, this thesis examines the legal possibilities and challenges in prosecuting Wagner Group members for this war crime. A key issue in this regard is whether the prosecution of individual Wagner members can be pursued even in the absence of state attribution to Russia. In parallel, this research assesses the potential of universal jurisdiction to serve as a basis for prosecution by third states, particularly African countries, where the Wagner Group has been active. Countries like the Central African Republic, Mali, Niger, Libya, Mozambique, and Sudan may be in a unique position to contribute to international accountability mechanisms, particularly given Wagner Group's transnational presence and the documented patterns of abuse in both Ukraine and several African contexts.⁴

The main research question of this thesis is *how national courts and international tribunals can hold the members of the Wagner Group accountable for torture as a war crime in the Ukraine conflict*.

To answer the main research questions, the following sub-questions will be explored:

1. What is the evidence for the involvement of Wagner Group in acts of torture in Ukraine?
2. What are the challenges of Ukrainian national courts when prosecuting the Wagner Group for acts of torture?
3. How did international tribunals approach these cases of torture, and is there a potential for prosecution?
4. What role does universal jurisdiction play, allowing other national courts to prosecute Wagner group members for torture in Ukraine?
5. How can direct accountability be attributed to Wagner members regardless of their link to Russia?

⁴ International Crisis Group, 'Russia's Wagner in Africa' (March 2023) <https://www.crisisgroup.org/africa/russias-wagner-africa> accessed 20 August 2025.

This thesis employs a qualitative legal research methodology. It will rely on primary sources of international law, including treaties, case law, and legal commentaries, to establish the applicable legal standards for the prosecution of torture as a war crime. A special focus will be placed on the national legal frameworks of selected African states where the Wagner Group has operated, assessing their ability to apply universal jurisdiction. Furthermore, relevant jurisprudence from international courts that share a similar factual basis or have set precedent on related legal questions will be examined.

I. Wagner Group's Role in the Ukraine conflict

A. Background information on the Wagner Group

The Wagner Group, officially known as PMC Wagner, was founded in 2014 by Yevgeny Prigozhin, a Russian businessman with close ties to President Vladimir Putin.⁵ Even though private military companies [hereinafter PMCs] are considered illegal under Russian national laws, in 2022, the Wagner Group was registered as a “private military company”. Its “members” initially consisted of former Russian special forces and other elite units, and after 2022, recruited Russian prisoners.⁶

According to Russian domestic law, the operation of PMCs is illegal, with the recruitment, training, financing, and use of mercenaries punishable by imprisonment.⁷ Despite the legal prohibition, the Wagner Group, a widely recognized PMC, has operated since 2014, originally serving Russian intelligence interests abroad and playing a central role in the separatist rebellion in Donbas.⁸ For years, the group remained unregistered, which allowed the Russian state to deny any formal connection and avoid any legal consequences. This informal status provided strategic deniability to Russia.⁹ Despite the unsuccessful previous effort to legalize PMCs due to competing factions within the Russian government, in 2021, Russian Foreign Minister Sergey Lavrov publicly acknowledged the existence of Wagner, claiming that Russian law did not explicitly ban PMCs and thus implied their legality.¹⁰ In January 2023, the group was formally

⁵ Harry McCallion, ‘Chapter Nine: The Wagner Group’ in *A History of Modern Mercenary Warfare* (Pen & Sword Books Limited 2024) [147].

⁶ Candace Rondeaux, ‘*Decoding the Wagner Group: Analyzing the Role of Private Military Security Contractors in Russian Proxy Warfare*’ (New America 2019) [32]; BBC News, ‘What is Russia’s Wagner Group of mercenaries in Ukraine?’ (BBC News, 6 September 2023) <https://www.bbc.com/news/world-60947877> accessed 9 June 2025; Karen Philippa Larsen, ‘*The rise and fall of the Wagner Group: Russia is seeking control over its ‘private’ military companies*’ (DIIS Policy Brief, Danish Institute for International Studies, 9 January 2025) <https://www.diis.dk/en/research/the-rise-and-fall-of-the-wagner-group> accessed 9 June 2025; Pjotr Sauer, ‘Putin Ally Yevgeny Prigozhin Admits Founding Wagner Mercenary Group’ (*The Guardian*, 26 September 2022) <https://www.theguardian.com/world/2022/sep/26/putin-ally-yevgeny-prigozhin-admits-founding-wagner-mercenary-group> accessed 4 August 2025.

⁷ Larsen (n 6); Filip Bryjka, *Wagner Group Transforms in the Wake of the War in Ukraine* (PISM Bulletin No 23, Polish Institute of International Affairs, 7 March 2023) <https://pism.pl/publications/wagner-group-transforms-in-the-wake-of-the-war-in-ukraine> accessed 9 June 2025.

⁸ Bryjka (n 7).

⁹ Larsen (n 6).

¹⁰ *ibid.*

registered as a company offering “consulting services”, marking a strategic shift toward limited legal recognition to legitimize its operations while avoiding the formal label of PMC.¹¹ This understanding of PMCs as “legitimate private companies” was promoted by Russian state officials and echoed in public discourse during the first year of Russia’s full-scale war in Ukraine.¹²

The elusiveness of Wagner Group’s early engagement has been traded for social media campaigns, public statues,¹³ open calls for recruits,¹⁴ identifiable offices in Saint Petersburg, and strong criticism from Prigozhin towards Russian military officials.¹⁵

Russian President Putin claimed that the Wagner Group and Prigozhin’s catering company, Concord, had received a total of nearly 2 billion US dollars from the Russian government.¹⁶ Yet, Wagner Group’s direct operations against Russia show evidence of a more ambivalent relationship with the Russian Ministry of Defense, particularly the military intelligence service [hereinafter GRU], a relationship that will be further examined in section 1.1 of Chapter II of this thesis.¹⁷

¹¹ *ibid.*

¹² *ibid.*

¹³ Elian Peltier, ‘Xi Condemns Killings in African Nation Where Russian and Chinese Interests Compete’ (*The New York Times*, 20 March 2023) <https://www.nytimes.com/2023/03/20/world/africa/central-african-republic-china-xi.html>; John Haines, ‘How, Why, and When Russia Will Deploy Little Green Men – and Why the US Cannot’ (*Foreign Policy Research Institute*, 9 March 2016) <https://www.fpri.org/article/2016/03/how-why-and-when-russia-will-deploy-little-green-men-and-why-the-us-cannot/>.

¹⁴ Ladd Serwat and Héni Nsaibia, ‘Moving Out of the Shadows: Shifts in Wagner Group Operations Around the World’ (ACLED, 2 August 2023) <https://acleddata.com/2023/08/02/moving-out-of-the-shadows-shifts-in-wagner-group-operations-around-the-world/>; accessed 9 June 2025; All Eyes On Wagner, ‘Recruitment Campaigns in Ukraine and Africa/Middle-East’ (17 March 2022) <https://alleyeonwagner.org/reports/recruitment-campaigns-in-ukraine-and-africa-middle-east/>; accessed 4 August 2025.

¹⁵ Shane Harris and Isabelle Khurshudyan, ‘Wagner chief offered to give Russian troop locations to Ukraine, leak says,’ *Washington Post*, 15 May 2023 <https://www.washingtonpost.com/national-security/2023/05/14/prigozhin-wagner-ukraine-leaked-documents/>; *The Economist*, ‘Why the boss of Wagner Group is feuding with Russia’s military leaders,’ 11 May 2023 <https://www.economist.com/the-economist-explains/2023/05/11/why-the-boss-of-wagner-group-is-feuding-with-russias-military-leaders>.

¹⁶ Reuters, ‘Wagner leader Prigozhin to be investigated for \$2 billion pay in a year, Putin says,’ 28 June 2023 <https://www.reuters.com/world/europe/prigozhin-be-investigated-after-being-paid-2-billion-year-putin-2023-06-27/>; TASS, ‘Putin says Wagner group fully financed by Russian government,’ 27 June 2023 <https://tass.com/defense/1639345>.

¹⁷ Serwat and Nsaibia (n 14); Kimberly Marten, ‘Where’s Wagner? The All-New Exploits of Russia’s “Private” Military Company,’ *Ponars Eurasia*, 15 September 2020 <https://www.ponarseurasia.org/where-s-wagner-the-all-new-exploits-of-russia-s-private-military-company/>; Alex Thurston, ‘Wagner Group accused of plotting a ‘confederation of states’ in Africa,’ *Responsible Statecraft*, 2 May 2023 <https://responsiblestatecraft.org/2023/05/02/should-we-worry-about-the-wagner-group-in-chad/>; See also United States State Department classification cited in Seth Jones

Despite the sizable media profile of its founder, Yevgeny Prigozhin, early Wagner Group operations are shrouded in mystery. The group is commonly believed to be the brainchild of the GRU, composed of former commando fighters and formed to ensure deniability of Russian covert operations in eastern Ukraine and beyond.¹⁸ The link to GRU is circumstantially confirmed by the fact that Wagner Group's operational leader, Dmitriy Valeryevich Utkin, is a Ukrainian-born retired member of the GRU special forces.¹⁹ Another theory suggests that the Wagner Group may have been created with the blessing of the Russian General Staff – a top operational body in Russia's armed forces.²⁰

Although Russia has provided significant support to the Wagner Group, this support has been inconsistent, as Russian authorities at times distance themselves from Wagner's activities. This dynamic contributes to the perception of the Wagner Group as a fragmented entity rather than a fully uniform organization.²¹

1. Continuous Combat Function and the determination of membership in the Wagner Group

Establishing the legal status of individuals within PMCs such as the Wagner Group is critical for determining their protection under international humanitarian law [hereinafter IHL] and their susceptibility to targeting or prosecution. In situations of international armed conflict like the one between Russia and Ukraine, IHL obliges parties to the conflict to distinguish at all times between civilians and combatants. However, the determination of “membership” in the armed forces or organized armed groups is less straightforward in the context of non-state actors, such as the Wagner Group.²²

et al, *Russia's Corporate Soldiers: The Global Expansion of Russia's Private Military Companies* (Center for Strategic and International Studies, July 2021) <https://www.csis.org/analysis/russias-corporate-soldiers-global-expansion-russias-private-military-companies> accessed 28 July 2025.

¹⁸ Andrei Soldatov and Irina Bologan, 'Why Putin Needs Wagner,' Foreign Affairs, 12 May 2023 <https://www.foreignaffairs.com/russian-federation/why-putin-needs-wagner>.

¹⁹ Mary Ilyushina, 'In Ukraine, a Russian Mercenary Group Steps out of the Shadow,' Washington Post, 18 August 2022 <https://www.foreignaffairs.com/russian-federation/why-putin-needs-wagner>.

²⁰ Serwat and Nsaibia (n 14); The Bell, 'Army for President. The Story of Yevgeny Prigozhin's Most Delicate Assignment, 29 January 2019 <https://www.foreignaffairs.com/russian-federation/why-putin-needs-wagner>.

²¹ Serwat and Nsaibia (n 14); Rondeaux (n 6) [147].

²² Sabrina Henry, 'Exploring the “continuous combat function” concept in armed conflicts: Time for an extended application?' (2018) 100 *International Review of the Red Cross* No 907/908/909 [273].

The International Committee on the Red Cross [hereinafter ICRC], through its Interpretive Guidance on the Notion of Direct Participation in Hostilities, introduced the concept of the Continuous Combat Function [hereinafter CCF] to help identify members of organized armed groups. According to the ICRC, an individual who assumes a lasting role that involves direct participation in hostilities is considered to have a continuous combat function. This individual, therefore, becomes targetable for the duration of their membership and loses civilian protection, regardless of whether they are directly engaged in combat at any given moment. This approach seeks to avoid the “revolving door” problems, where individuals alternate between civilian protection and targetability based on immediate conduct.²³

The relevance for the Wagner Group lies in the functional nature of its personnel. Many of Wagner Group’s members fulfill sustained roles that involve direct participation in hostilities. Under the CCF framework, this sustained participation may classify them as members of an organized armed group who directly participate in hostilities, making them potentially lawful targets under IHL. Furthermore, those who engage in such hostilities may bear individual criminal responsibility for war crimes. Mere membership without active participation, however, does not confer targetability.²⁴

B. Wagner Group's actions in Ukraine

Russian PMCs have evolved during the 21st century to become one of the most fundamental instruments of the Russian hybrid warfare strategy. Besides that, Russian PMCs have been known to operate in the grey zone of national and international law, technically lying outside the constitutional order of the Russian Federation, but with links to political elites and oligarchs.²⁵

Although there is not a lot of information about the presence of Wagner Group in Ukraine before the full-scale invasion by Russia, there are reports and evidence of Wagner Group being active in Ukraine during 2014. Therefore, two distinct timelines will be examined to establish Wagner

²³ *ibid* [272].

²⁴ *ibid* [282].

²⁵ Felip Daza Sierra, Carlos Díaz Bodoque, Anhelina Hrytsei and Mathilde Veronique Machteld Romeo, *Wagner Group Unchained in Ukraine: Military, Political and Human Rights Impact of the Wagner Group since the Large-Scale Invasion in 2022* (Novact/ICIP, 2023) https://www.icip.cat/wp-content/uploads/2023/10/Informe-Wagner_ENG.pdf accessed 9 June 2025 [9].

Group's involvement in human rights violations in Ukraine: first, the role in the 2014 conflict in the region of Donbas, and second, the involvement since February 2022.²⁶

1. The presence of the Wagner Group in the Donbas region conflict in 2014

The Wagner Group was first noticed globally during the Russian annexation of Crimea in February 2014 and the conflict in Donbas.²⁷ Wagner Group's early conduct in Ukraine reveals operational patterns and violent methods that raise serious concerns regarding adherence to international humanitarian law and human rights standards.²⁸

Although the Wagner Group did not yet exist as a consolidated PMC during the annexation of Crimea in early 2014, according to evidence, individuals who would later form the backbone of the Wagner Group were likely involved in the covert operations that facilitated the occupation. In May 2014, the first 2 "cells" of Wagner Group, called "Luna" and "Step", were formed in Rostov-Don-Russia, which were then deployed to Luhansk Oblast in eastern Ukraine. The composition of the Wagner Group's initial core consisted mainly of veterans of the Main Directorate of the General Staff (GU/GRU), indicating a high level of training and strategic capability.

The Ukrainian Security Services have publicly documented Wagner Group's role in escalating the conflict in Donbas from a political standoff to an active military confrontation. Deployed specifically to Luhansk, Wagner Group's activities included: diversionary and sabotage operations; direct assaults and counter-offensives. These actions reflect a deliberate military strategy consistent with hybrid warfare, further blurring the lines between state and non-state actors.²⁹

²⁶ Serwat and Nsaibia (n 14).

²⁷ Rondeaux (n 6) [151].

²⁸ Muhammad Rafif Nur Iman Rizulloh and M. Rizki Yudha Prawira, 'Accountability of Private Military Company in International Law Violations: A Case Study of the Wagner Group in the Ukraine–Russia Conflict' (2024) 8(3) *Syiah Kuala Law Journal* 508 https://www.researchgate.net/publication/387194165_Accountability_of_Private_Military_Company_in_International_Law_Violations_A_Case_Study_of_the_Wagner_Group_in_the_Ukraine_-_Russia_Conflict accessed 9 June 2025 [511]; Sergey Sukhankin, *Unleashing the PMCs and Irregulars in Ukraine, Crimea and Donbas* (Paper 4, *War by Other Means*, The Jamestown Foundation, 3 September 2019) <https://jamestown.org/program/unleashing-the-pmcs-and-irregulars-in-ukraine-crimea-and-donbas/> accessed 9 June 2025.

²⁹ Sukhankin, *Unleashing the PMCs and Irregulars in Ukraine, Crimea and Donbas* (n 28).

Between 2014-2015, there were some key operations that are attributed to Wagner Group. One of the earliest known engagements was the Battle of Luhansk Airport (April to September 2014), where approximately 72 Wagner Group fighters participated, resulting in 15 fatalities among their ranks.³⁰ It is alleged that in June 2014, Wagner Group operatives were responsible for shooting down a Ukrainian Il-76 military transport aircraft in Luhansk Oblast, killing 49 individuals, including 40 paratroopers; the attack reportedly involved a mobile and highly maneuverable strike team using a 9K38 Igla surface-to-air missile system. Such tactics suggest a level of operational sophistication often associated with regular armed forces rather than independent private contractors.³¹

In the Battle of Debaltseve (January to February 2015), Wagner Group's role intensified, where around 205 of its members took part in one of the most decisive confrontations of the conflict, contributing significantly to the defeat of Ukrainian forces and paving the way for the Minsk Agreement. Beyond the frontline combat, Wagner Group was also implicated in the targeted liquidation of opposition figures and rival separatist factions in Luhansk between late 2014 and early 2015, including the executions of well-known militant leaders such as "Batman", "Foma", and "Kosogor". These killings served not only military but also political objectives, reinforcing Wagner Group's dual role as both a combat force and a coercive tool of influence.³²

These purges served to consolidate power for pro-Russian actors like Igor Plotnitsky and were often accompanied by the disarmament of entire paramilitary units, such as the Odessa formation, which had held control over the strategic border settlement of Izvaryne. In tandem with these operations, Wagner Group's units engaged in continuous attacks on Ukrainian military outposts along the front line, reinforcing their role not only as frontline shock troops but also as enforcers of Russian strategic interests through hybrid warfare tactics.³³

³⁰ Kyivpost, 'Hrytsak: SBU uncovers the involvement of Russian 'Wagner PMC' in destroying Il-76 in Donbas, Debaltseve events; *Kyivpost*, October 7, 2017, <https://www.kyivpost.com/ukraine-politics/hrytsak-sbu-uncovers-involvement-russian-wagner-pmc-destroying-il-76-donbas-debaltseve-events.html>.

³¹ *ibid.*

³² Sukhankin, *Unleashing the PMCs and Irregulars in Ukraine, Crimea and Donbas* (n 28).

³³ *ibid.*

Wagner Group was not only involved in military operations but also operated as a political instrument by getting involved in the elimination of competing separatist factions, disarming irregular units, and enforcing pro-Russian loyalty through targeted violence. Thus, Wagner Group operated as both a combatant formation and as a counterintelligence force for the Russian-backed Luhansk People's Republic.³⁴

Wagner Group's return to Luhansk in 2017 to support Igor Korne's internal power struggle, and later its deployment in Donetsk by 2018, demonstrate its sustained involvement in shaping the military and political landscape of the Donbas region well beyond its formative period. These patterns of repeated engagement, targeted violence, and internal suppression highlight Wagner Group's operational culture, which appears to disregard fundamental principles of distinction, proportionality, and accountability under IHL.³⁵

2. The involvement of the Wagner Group in the Russian invasion of Ukraine in 2022

At the beginning of the Russian invasion of Ukraine, the Wagner Group was primarily responsible for reconnaissance, subversion, and special operations.³⁶ The use of the Wagner Group in Ukraine enabled Putin and his entourage to project their power, grow their geopolitical relationships, and obtain valuable assets such as Crimea.³⁷

In Ukraine, Wagner Group conducted combat operations, engaged in intelligence activities, and gave training and advisory support to Russian regular forces using highly advanced equipment and military machinery. Because of their cruel and aggressive tactics, Wagner Group showed more effectiveness on the battlefield than the Russian regular army, especially when using convicts as "cannon fodder".³⁸ Wagner Group contributed to the severity of the situation in Ukraine by increasing deadliness, escalating conflict, and causing a fragmentation of non-state armed actors.³⁹

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ Bryjka (n 7).

³⁷ Daza Sierra et al (n 25).

³⁸ *ibid.*

³⁹ *ibid.*

During this conflict, Wagner was spotlighted due to its increasing role in the war. Their engagement in combat operations began in March 2022, especially when the Russian army was unable to achieve its military objectives, and its casualties were increasing in the battles of Kyiv, Chernihiv, and Sumy. Key informants interviewed during field research affirmed that the Wagner Group was not a very important protagonist in the first phase of the war, and that they increased in their activities, military capacity, and perceived legitimacy once the Russian regular army had shown its ineffectiveness.⁴⁰

Wagner Group took part in combat operations alongside regular Russian forces. In April, they were involved in the battle for Popasna, which fell in May, helping Russia gain control over much of the Luhansk region. Although Wagner was active, key victories like Popasna, Rubizhne, and Severodonetsk were officially credited to regular forces.⁴¹

In late 2022, Wagner Group's role expanded as Russian military units suffered major setbacks, particularly in the Kharkiv region and the withdrawal from Kherson. Wagner Group's fighters increasingly took on frontline duties, especially in the Donetsk region. Their activity focused on a 50 km stretch of the frontline around Bakhmut- a strategically located town viewed as a getaway to larger cities like Sloviansk and Kramatorsk.⁴²

The Bakhmut battle is the Wagner Group's most high-profile operation. Their forces gradually gained ground from September 2022 to early 2023, capturing nearby settlements and eventually Soledar in January. Despite the heavy losses, Wagner continued the offensive, and by May 2023, they pushed Ukrainian defenders out of most of Bakhmut. Nevertheless, the Ukrainian army managed to slow Wagner Group's advance and regain small areas on the outskirts.⁴³

Wagner Group's leadership, in particular, Yevgeny Prigozhin, used the Bakhmut campaign to raise the group's profile, sometimes clashing with the Russian military command over supply shortages and strategy. This rivalry became public during the Bakhmut siege, with Prigozhin

⁴⁰ *ibid.*

⁴¹ Serwat and Nsaibia (n 14).

⁴² *ibid.*

⁴³ *ibid.*

accusing top defense officials of sabotage. After capturing Bakhmut in May 2023, Wagner fighters temporarily withdrew to rest and reorganize.⁴⁴

How the Wagner Group conducts its operations demonstrates a clear disregard for the laws of war. This is reflected in the accusations brought by Ukrainian prosecutors, who allege Wagner members committed war crimes, including the killing and torture of civilians near Kyiv in April 2022. Additionally, German intelligence has linked Wagner operatives to the civilian massacres in Bucha in March 2022, further underscoring the group's systematic non-compliance with international humanitarian law.⁴⁵

II. Legal qualification and application of the prohibition of torture to the Wager Group

A. Definition of torture under international law

Torture constitutes a *jus cogens* norm of *erga omnes* character, prohibiting the intentional infliction of severe physical or mental suffering for a specific purpose, irrespective of the perpetrator's status.⁴⁶ International criminal jurisprudence, notably the International Criminal Tribunal for the Former Yugoslavia [hereinafter ICTY] in *Furundžija* and *Kunarac*, has affirmed that such acts, when committed in the context of armed conflict, constitute war crimes and attract individual criminal responsibility even when committed by non-state actors.⁴⁷ This doctrinal development is directly applicable to the members of Wagner Group, as substantial evidence, including credible reports, audiovisual documentation, and witness testimony, indicates their involvement in systematic beatings, electric shocks, mock executions, and other forms of ill-

⁴⁴ Serwat and Nsaibia (n 14); Meduza, 'The Shape of Things to Come: The Imminent Ukrainian Counteroffensive in Four Scenarios (and Four Maps) from Meduza's Military Analysts' (18 May 2023) <https://meduza.io/en/feature/2023/05/18/the-shape-of-things-to-come> accessed 6 August 2025.

⁴⁵ BBC News, 'What is Russia's Wagner Group of mercenaries in Ukraine?' (n 2).

⁴⁶ Lutz Oette, *The Transformation of the Prohibition of Torture in International Law* (Oxford University Press 2024) [198]; ICRC, International Humanitarian Law Databases: Customary IHL: 'Rule 90. Torture and Cruel, Inhuman or Degrading Treatment' (2005) <https://ihl-databases.icrc.org/en/customary-ihl/v1>; William A. Schabas, *The Crime of Torture and the International Criminal Tribunals*, 37 Case W. Res. J. Int'l L. 349 (2006) Available at: <https://scholarlycommons.law.case.edu/jil/vol37/iss2/11> [356]; Public International Law & Policy Group, 'The Prohibition Against Torture and Its Pragmatic Effects' (Lawyering Justice Blog, 9 June 2023) <https://www.publicinternationallawandpolicygroup.org/lawyering-justice-blog/2023/6/9/the-prohibition-against-torture-and-its-pragmatic-effects> accessed 5 July 2025; *Furundžija* (n 2) [151-152]; Schabas (n 46) [359].

⁴⁷ *Furundžija* (n 2); CAT Art 1(1); ICTY, *Prosecutor v. Kunarac and ors*, Judgment (appeals chamber) [497]; *Prosecutor v. Brđanin* (Trial Judgment) IT-99-36-T (ICTY, 1 September 2004) [481-89]; Oette (n 46) [190].

treatment of detainees in Ukraine.⁴⁸ Consequently, Wagner Group members may be held individually accountable for torture as a war crime under customary international law and the Rome Statute, irrespective of their affiliation with the group or any state.

B. Criminal Responsibility of Wagner Group members for war crimes

1. Individual criminal responsibility of PMC members

To examine the individual responsibility of Wagner Group members for war crimes such as torture, it is necessary to consider their classification under international law, as this status determines of protections and obligations applicable to them.⁴⁹ Under IHL, the status of private military company personnel depends on their functions and the context of their involvement,⁵⁰ an approach supported by the non-binding Montreux Document, which emphasizes case-by-case assessment.⁵¹

The position of the Wagner Group under international law is unclear.⁵² They are not part of the official Russian army, but they are also not completely separate from the Russian state. This status of ‘in-between’ has led to debates among experts about their accountability for serious violations, especially during armed conflict.⁵³ Since the Wagner Group has been active in Ukraine, where many crimes are being investigated, including acts of torture, it becomes

⁴⁸ Daza Sierra et al (n 25) [61]; Frederik Pleitgen, ‘Just to Survive’: Wagner Fighters Recount the Horrors of Battle in Eastern Ukraine’ *CNN* (12 February 2023) <https://edition.cnn.com/2023/02/12/europe/wagner-convicts-eastern-ukraine-pleitgen-intl/index.html> accessed 12 June 2025; Rizqulloh and Prawira (n 24). T Katrychenko, M Klymyk and L T Klymi a, ‘Wagner Group: Beyond Accountability’ (Media Initiative for Human Rights, 31 October 2023) <<https://mipl.org.ua/en/wagner-group-beyond-accountability/>> accessed 4 August 2025; Oette (n 46) [199].

⁴⁹ Esti Tambay and Anna Khalfaoui, ‘Status of Private Military Companies’ Personnel Under IHL: Implications for Prosecuting Members of the Wagner Group in Ukraine’ (Opinio Juris, 14 November 2023) <https://opiniojuris.org/2023/11/14/status-of-private-military-companies-personnel-under-ihl-implications-for-prosecuting-members-of-the-wagner-group-in-ukraine/>.

⁵⁰ Open Society Justice Initiative, *Accountability for Crimes of Personnel of the Wagner Group in Ukraine* (Briefing Paper, 8 November 2023). <https://www.justiceinitiative.org/uploads/a8de622f-bfbf-4cf5-99ba-f5b98b34f4ad/accountability-for-crimes-of-personnel-of-the-wagner-group-in-ukraine-en-20231108.pdf> accessed 24 July 2025 [9].

⁵¹ The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict, September 17, 2008, Statement 24, <https://www.montreuxdocument.org/pdf/document/en.pdf> [14]; Open Society Justice Initiative (n 50).

⁵² Chia Lehnardt, ‘Private Military Companies and State Responsibility’ in Simon Chesterman and Chia Lehnardt (eds), *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (Oxford University Press 2007) [142].

⁵³ Tambay and Khalfaoui (n 49).

important to clarify how international law applies to them. Understanding their legal classification helps determine whether and how they can be prosecuted for these crimes.

1.1. Classification of PMCs and the legal status of the Wagner Group

Under IHL, there are two main categories of individuals in an international armed conflict: combatants and civilians.⁵⁴ Every person involved in such a conflict falls into one of these two legal categories, and this classification is essential for determining both their protection and responsibilities under international law. Furthermore, the individual status also determines the legal consequences of their action.⁵⁵ This distinction lies at the core of IHL and was reaffirmed by the International Court of Justice in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons.⁵⁶ The following analysis will assess the status of members of the Wagner group, first as combatants and then in turn as civilians.

a. Assessment of the Wagner Group as combatants and the legal implications

As noted by Crawford and Pert, the relevant treaty provisions regarding combatant status are contained in Art 13 (1)-(2) of the First Geneva Convention, Art 13 (1)-(2) of the Second Geneva Convention, Art 4A (1)-(3) and (6) of the Third Geneva Convention [hereinafter GCIII], and Art 43-44 of Additional Protocol I [hereinafter API].⁵⁷ According to Art 43(2) API, only members of a State's armed forces qualify as combatants and are permitted to engage directly in hostilities.⁵⁸ Armed forces are defined broadly as "all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates".⁵⁹ Based on this

⁵⁴ Dieter Fleck (ed), *The Handbook of International Humanitarian Law* (4th edn, OUP 2021) [93]; Open Society Justice Initiative (n 50) [9].

⁵⁵ *ibid.*

⁵⁶ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, 257 [78].

⁵⁷ E Crawford and A Pert, *International Humanitarian Law* (Cambridge University Press 2024) [99]; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 Art 13(1)-(2); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 Art 13(1)-(2); Geneva Convention relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (GCIII) Art 4A(1)-(3) and (6); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (API) Arts 43-44.

⁵⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, Art 43(2).

⁵⁹ *ibid* Art 43(1).

definition, entities like PMCs are considered as armed forces provided they are both (a) organized and (b) under responsible state command.⁶⁰ However, formal incorporation into a State's official military is not required; what is necessary is that the group is organized and under a command responsible to a state party to the conflict.⁶¹

i. The organization requirement

The ICRC Commentary to API notes that “[t]he term ‘organized’ ... is rather flexible, as there are a large number of degrees of organization.”⁶² The fighting must exhibit a ‘collective character, be conducted under proper control and according to rules, as opposed to individuals operating in isolation with no corresponding preparation or training’.⁶³ Therefore, individuals acting alone and waging a private war do not meet the “organized” requirement.⁶⁴ In this regard, the Trial Chamber II of the ICTY in Boškoski established several factors that can guide the assessment of whether an armed group meets the threshold of organization. Although these factors were originally developed to assess non-international armed conflict, they can also assist in determining whether a group qualifies as part of a State's armed forces under IHL. The five factors include: (a) the presence of a command structure; (b) the ability to carry out military operations in an organized manner; (c) the level of logistics; (d) the level of discipline; and (e) the ability to speak with one voice.

The application of these factors to the Wagner Group reveals that this PMC exhibits a high level of organization. As per the presence of a command structure, Yevgeny Prigozhin has publicly

⁶⁰ Open Society Justice Initiative (n 50) [10].

⁶¹ Michael Bothe, Karl Josef Partsch, and Waldemar A. Solf, *New Rules for Victims of Armed Conflict: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949* (Martinus Nijhoff Publishers, 2013) [267–8]; Knut Ipsen, “Combatants and Non-combatants” in D. Fleck (ed.) *The Handbook of International Humanitarian Law* (Oxford, 2013, 4th edition) [85]; Louise Doswald-Beck, “Private Military Companies Under International Humanitarian Law” in Simon Chesterman and Chia Lehnardt (eds.) *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (Oxford University Press, 2007) [6–7].

⁶² Open Society Justice Initiative (n 50) [12]; Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, Art. 43 ICRC Commentary of 1987 [1672].

⁶³ *ibid.*

⁶⁴ Open Society Justice Initiative (n 50) [12]; Michael Bothe, Karl Josef Partsch and Waldemar A Solf, *New Rules for Victims of Armed Conflict: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949* (Martinus Nijhoff Publishers 2013) [271].

admitted to having founded Wagner in 2014 and issued communications on its behalf.⁶⁵ Operational messaging was often shared via Telegram, and a leaked founding document outlined command responsibility shared between Prigozhin and Utkin.⁶⁶ The existence of a “council of commanders”, reports of internal planning meetings, and discussions with Russian leadership further demonstrate the group’s centralized coordination and chain of command.⁶⁷ Concerning conducting military operations in an organized manner, Wagner has played an important role in multiple offensives in Ukraine since 2014.⁶⁸ In battles like Debaltseve,⁶⁹ Popasna,⁷⁰ and Bakhmut⁷¹ Wagner was a vital instrument.⁷² The group used strategic, layered assault formations.⁷³ The Russian Ministry of Defense publicly acknowledged Wagner Group’s coordination in joint operations, including artillery and air support from state forces, highlighting a unified military strategy.⁷⁴

⁶⁵Sauer, ‘Putin Ally Yevgeny Prigozhin’ (n 6).

⁶⁶ Charlie Warzel, “The World’s Most Important App (For Now),” Atlantic, June 28, 2023, <https://www.theatlantic.com/technology/archive/2023/06/telegram-app-encrypted-messagingrussia/674558/>; Brendan Cole, “Putin in Awkward Position After Leak of Wagner Document,” Newsweek, July 10, 2023, <https://www.newsweek.com/putin-russia-ukraine-wagner-leak-document-1811833>; Institute for the Study of War, Ukraine Conflict Updates, “Russian Offensive Campaign Assessment,” July 9, 2023, <https://www.understandingwar.org/backgrounder/russian-offensivecampaign-assessment-july-9-2023>.

⁶⁷Open Society Justice Initiative (n 50) [31]; see also Ukrainska Pravda, “Kremlin’s efforts to disband Wagner Group partially succeed—ISW,” August 21, 2023, <https://www.pravda.com.ua/eng/news/2023/08/21/7416375> (referring to membership in the “Wagner Council of Commanders”).

⁶⁸ Open Society Justice Initiative (n 50) [33]; Jones et al (n 17).

⁶⁹ Marten, “Russia’s Use of Semi-State Security Forces: The Case of the Wagner Group,” 35 Post-Soviet Affairs (2019) [181-204]; Sukhankin, *Unleashing the PMCs and Irregulars in Ukraine, Crimea and Donbas* (n 28); Presentation by the Representative of the Ministry of Defense of Ukraine Major General Vadym Skibitskyi on “Private Military Companies and Their Role in Modern Regional Conflicts,” 949th Meeting of the OSCE Forum for Security Co-operation, June 17, 2020, <https://www.osce.org/files/f/documents/b/1/456016.pdf>.

⁷⁰ Jakub Ber, “From Popasna to Bakhmut. The Wagner Group in the Russia-Ukraine War,” OSW Commentary, Centre for Eastern Studies, April 28, 2023 [4] https://www.osw.waw.pl/sites/default/files/OSW_Commentary_511.pdf.

⁷¹ Kateryna Stepanenko, “The Kremlin’s Pyrrhic Victory in Bakhmut: A Retrospective on the Battle for Bakhmut,” Institute for the Study of War, May 24, 2023, <https://www.understandingwar.org/backgrounder/kremlin’s-pyrrhic-victory-bakhmutretrospective-battle-bakhmut>.

⁷²Open Society Justice Initiative (n 50) [33-34].

⁷³ *ibid* [34].

⁷⁴ Open Society Justice Initiative (n 50) [34-35]; TASS “Russian defense ministry clarifies tasks of Russian units during liberation of Soledar,” January 13, 2023, <https://tass.com/politics/1562113>.

Wagner Group has also demonstrated a robust logistical capability. Thousands of fighters were recruited through public campaigns and direct prison outreach⁷⁵, and trained at bases in Russia.⁷⁶ Various forms of heavy weaponry were deployed, including tanks, artillery, and MANPADs, and made use of transportation infrastructure across multiple countries.⁷⁷ Wagner has also created an image of itself through visual markers of identity such as uniforms and emblems.⁷⁸

Wagner enforces strict internal discipline through severe mechanisms. Recruits were reportedly subjected to strict control measures, including punishment for desertion or surrender, forced viewing of executions, and physical abuse.⁷⁹ Apart from the fact that these methods are unlawful, they reflect the existence of a code of conduct and a system for maintaining internal order and authority.

While assessing the ability to speak with one voice, Wagner Group's negotiations with foreign states and its funding relationship with the Russian government illustrate a degree of political engagement.⁸⁰ Public statements by Putin confirm state financing⁸¹, alongside intelligence reports indicating Wagner Group's outreach to countries like Belarus, Syria, and Turkey for supplies, reflecting its autonomous capacity to engage in international dealings.⁸² Therefore, the Wagner group exhibits a high level of internal structure and coordination across all five Boškoski indicators.

⁷⁵ Pjotr Sauer, "Russia's private military contractor Wagner comes out of the shadows in Ukraine war," Guardian, August 7, 2022, <https://www.theguardian.com/world/2022/aug/07/russiasprivate-military-contractor-wagner-comes-out-of-the-shadows-in-ukraine-war>; Christiaan Triebert, "Video Reveals How Russian Mercenaries Recruit Inmates for Ukraine War," New York Times, September 16, 2022, <https://www.nytimes.com/2022/09/16/world/europe/russia-wagner-ukraine-video.html>.

⁷⁶ Candace Rondeaux, "Building the Wagner Group Brand," New America, February 16, 2023, <https://www.newamerica.org/future-frontlines/reports/building-wagner-group-brand/>; Moscow Times, "Russia Spending \$150M Monthly on Syria Mercenaries—Report," August 25, 2016, <https://www.themoscowtimes.com/2016/08/25/russia-spending-150m-monthly-on-syriamercenaries-a5510>; Open Society Justice Initiative (n 50) [37].

⁷⁷ Alec Bertina, "The Wagner Group: The World's Most Infamous PMC," Grey Dynamics, June 26, 2023, <https://greydynamics.com/the-wagner-group-the-worlds-most-infamous-pmc>.

⁷⁸ Open Society Justice Initiative (n 50) [40].

⁷⁹ *ibid.*

⁸⁰ *ibid.*

⁸¹ TASS (n 16).

⁸² Open Society Justice Initiative (n 50) [40-41].

ii. The responsible command requirement

The requirement of responsible command is a little less straightforward than the organizational threshold. Based on the ICRC Commentary to API, all armed groups operating as armed forces must be subordinate to a command that is accountable to a party to the conflict.⁸³ This implies a degree of control and coordination by the State over the activity of the group.⁸⁴ One of the key conditions for lawful participation in hostilities is that a responsible common exercise effective control over its members.⁸⁵ However, the concept of “effective control” as developed by the International Court of Justice [hereinafter ICJ] in Nicaragua pertains to State responsibility and not directly to whether a group qualifies as part of a State’s armed forces under IHL.⁸⁶

Instead, international criminal jurisprudence has developed the alternative standard of “overall control”, particularly in Tadic, where the ICTY considered whether paramilitary forces were acting on behalf of a State.⁸⁷ According to this test, it is sufficient if the State is involved in organizing, coordinating, or planning the group’s military actions and providing support such as funding, training, or equipment.⁸⁸ Direct order or oversight of every operation is not required under this test.⁸⁹ It was later confirmed in the Genocide case that while effective control applies to state responsibility, the test of overall control may be more suitable for IHL purposes.⁹⁰ Therefore, determining whether a group like Wagner operates under a command responsible to a State party to the conflict is a factual inquiry requiring case-by-case assessment.⁹¹

Applying the overall control test to the Wagner Group, it shows that there are several indicators suggesting a relationship of control between the group and the Russian State. This includes forms of operational coordination, financial support, training, and the provision of military

⁸³ ICRC Commentary (n 62) [1672].

⁸⁴ Open Society Justice Initiative (n 50) [13].

⁸⁵ ICRC Commentary (n 62) [1681].

⁸⁶ *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v United States) [1986] ICJ Rep 14. [115]; Open Society Justice Initiative (n 50) [14].

⁸⁷ Tadić, ICTY Judgment of July 15, 1999 (IT-94-I-A) [131,137].

⁸⁸ *ibid* [137].

⁸⁹ *ibid*; Open Society Justice Initiative (n 50) [14].

⁹⁰ Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), ICJ Judgment of February 26, 2007 [404-405].

⁹¹ Open Society Justice Initiative (n 50) [16].

resources.⁹² Putin has publicly stated that the State fully financed Wagner Group's operations between May 2022 and May 2023.⁹³ There is also evidence of operational alignment during the 2014 and 2022 invasions of Ukraine.⁹⁴ However, the exact structure of command and the legal basis for control remain blurry. Until recently, Wagner was not registered as PMCs are unlawful under Russian law; however, there is a permissive legal environment in Russia that allows state-run enterprises to have private armed forces and security foundations.⁹⁵ Although the group has, at times, operated alongside Russian armed forces, and its members appear to perceive themselves as acting in the service of Russia, the full extent of State control remains uncertain.⁹⁶

Based on the applicable framework, members of the Wagner group could potentially qualify as combatants. As demonstrated through the Boškoski factors, the Wagner group does exhibit a high degree of organization; however, regarding the second requirement, the lack of transparency and formality in the relationship between Wagner and Russia complicates the assessment.⁹⁷ Thus, there is substantial evidence to support the classification of Wagner group members as combatants under IHL, in particular before the June 2023 mutiny, which further confirms their relationship with the Russian state.

If Wagner members are recognized as combatants under IHL, they acquire combatant-specific rights and obligations under the legal framework applicable to international armed conflicts. One such right, conditional compliance with visibility requirements under Art 44(3) of API, is prisoner of war [hereinafter POW] status upon capture.⁹⁸ This status, however, does not shield them from criminal responsibility for war crimes. While POWs are immune from prosecution for

⁹² *ibid* [42].

⁹³ TASS (n 16).

⁹⁴ Open Society Justice Initiative (n 50) [46].

⁹⁵ Open Society Justice Initiative (n 50) [42]; Moscow Times, "Wagner Group Becomes Legal Entity in Russia—BBC," January 17, 2023, <https://www.themoscowtimes.com/2023/01/17/wagner-group-becomes-legal-entity-in-russiabc-a79967> ; CSIS, "Band of Brothers: The Wagner Group and the Russian State," September 21, 2020, <https://www.csis.org/blogs/post-soviet-post/band-brothers-wagner-group-and-russian-state>; Candace Rondeaux, "Decoding the Wagner Group: Analyzing the Role of Private Military Security Contractors in Russian Proxy Warfare," New America, November 5, 2019, <https://www.newamerica.org/future-security/reports/decoding-wagner-group-analyzing-roleprivate-military-security-contractors-russian-proxy-warfare/executive-summary-key-findings>.

⁹⁶ Open Society Justice Initiative (n 50) [42-43].

⁹⁷ *ibid* [47].

⁹⁸ API Art 44(3).

lawful acts of war, such as participating in hostilities,⁹⁹ they remain fully accountable for serious violations of IHL, including torture, which is recognized as a grave breach under the Geneva Conventions.¹⁰⁰

Combatant immunity under IHL protects individuals only insofar as their conduct complies with the laws and customs of war. Thus, Wagner personnel captured in Ukraine who are found to have engaged in war crimes cannot invoke POW status to escape prosecution. Art 129 of GCIII imposes an obligation on all State Parties to search for and prosecute or extradite individuals alleged to have committed such grave breaches.¹⁰¹ These obligations extend to Ukraine as the territorial state, meaning Ukrainian authorities are legally empowered and, in some cases, even required to prosecute Wagner members for war crimes committed on its territory.

Along with direct criminal responsibility, legal accountability may also extend to Wagner Group superiors under the doctrine of command responsibility. According to this principle, commanders or superiors may be held criminally responsible if they knew or should have known that their subordinates were committing or about to commit war crimes and failed to take necessary and reasonable measures to prevent them or to punish the perpetrators. Having in consideration the hierarchical and coordinated structure of the Wagner Group, as previously demonstrated, senior figures within the organization could be held liable not only for ordering torture but also for failing to act upon knowledge of such crimes.¹⁰²

Additionally, questions may arise concerning the accountability of those who contract or deploy the Wagner Group. If such individuals or entities exercised effective command and control over Wagner personnel, they too could face criminal liability. However, this issue does not fall within the scope of this thesis and will not be elaborated further.¹⁰³

⁹⁹ API Art 43(2); Open Society Justice Initiative (n 50) [18].

¹⁰⁰ *ibid.*

¹⁰¹ Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (Third Geneva Convention) Art 129.

¹⁰² Louise Doswald-Beck, “Private Military Companies Under International Humanitarian Law” in Simon Chesterman and Chia Lehnardt (eds.) *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (Oxford University Press, 2007) [22-23].

¹⁰³ Open Society Justice Initiative (n 50) [19].

b. Assessment of the Wagner group as civilians who participate directly in hostilities

The term “civilian” under IHL is defined negatively. Civilians are those who are not members of a State’s armed forces, as established in Art 50(1) of API. If members of the Wagner group are not considered combatants, then their default legal status is that of civilians. This status carries both protection and restrictions: civilians must not be the object of direct attacks, under the principle of distinction codified in Art 48 of API.¹⁰⁴ However, civilians can lose this protection if and when they take direct part in hostilities.

The legal consequence of members of Wagner being civilians is that they are not entitled to POW status upon capture. They can therefore be prosecuted under domestic law simply for participating in hostilities, regardless of whether their conduct violates IHL. This makes their legal position fundamentally different from that of lawful combatants.

Moreover, when civilians do take direct part in hostilities, they lose their protection against being targeted, but only for the duration of each specific act that qualifies as direct participation. According to the ICRC, three conditions must be cumulatively fulfilled for an act to amount to “direct participation in hostilities”: (1) it must reach a threshold of harm, (2) there must be a direct causal link between the act and the expected harm, and (3) the act must have a belligerent nexus, meaning it must be specifically aimed at supporting one side in the conflict.

In the context of the Wagner Group, not all activities carried out by its personnel would qualify as direct participation. The ICRC has clarified that general logistical, technical, or supportive services (delivering supplies, repairing military infrastructure, or providing financial services) do not meet the direct causation requirement and thus fall outside the scope of direct participation. Therefore, unless Wagner operatives are shown to be involved in acts that directly cause harm in the context of a specific military operation with a clear belligerent nexus, their protection as civilians under IHL remains intact.¹

¹⁰⁴ Crawford and Pert (n 57) [97].

i. Assessment of Wagner fighters as mercenaries

The classification of mercenaries under IHL is narrow and strict. Art 47 (2) of API lays out six cumulative criteria that must all be met for an individual to be considered a mercenary. These criteria include (a) special recruitment to fight in an armed conflict; (b) actual participation in hostilities; (c) motivation based essentially on private gain, along with compensation substantially exceeding that paid to comparable combatants; (d) lack of nationality or residence in a party to the conflict; (e) not being a member of the armed forces of a party to the conflict; and (f) not having been sent on official duty by a State not party to the conflict.¹⁰⁵

This cumulative definition is so strict that most PMC personnel, including members of the Wagner group, are unlikely to meet all six conditions.¹⁰⁶ In particular, Art 47(2)(d) excludes individuals who are nationals of a party to the conflict. Since the core majority of Wagner Group members are Russian nationals and Russia is a party to the conflict in Ukraine, they fail to meet this criterion alone.¹⁰⁷ This position is also confirmed in Art (1) (c) of the 1989 UN Mercenary Convention, which mirrors this requirement.

As noted by Lindsey Cameron, owing to the highly restrictive definition it is unlikely for most private military companies to be legally regulated by existing international law on mercenaries.¹⁰⁸ The Wagner group, while frequently referred to as a mercenary entity in political and media discourse, does not fit the legal definition under IHL because its members typically fall short of satisfying all six cumulative conditions.¹⁰⁹

Another major challenge is that individuals were motivated by the promise of private gain and offered substantially greater compensation than regular soldiers. Establishing both subjective

¹⁰⁵ API Art 47 (2).

¹⁰⁶ Crawford and Pert (n 57) [110]; Open Society Justice Initiative (n 50) [22].

¹⁰⁷ Rondeaux (n 6) [148]; Tambay and Khalfaoui (n 49).

¹⁰⁸ Lindsey Cameron, 'Private military companies: their status under international humanitarian law and its impact on their regulation' (International Review of the Red Cross, September 2006) https://international-review.icrc.org/sites/default/files/irrc_863_5.pdf accessed 20 June 2025 [578].

¹⁰⁹ ENDEVR, *The Wagner Group – Inside Putin's Mercenary Army* (YouTube, 24 August 2023) https://www.youtube.com/watch?v=d3CLz7lJ_O4 accessed 27 July 2025.

intent and the existence of disproportionate remuneration is often difficult in practice, especially in contexts involving unclear pay structures and informal recruitment channels.¹¹⁰

Moreover, to qualify as a mercenary, individuals must have taken direct part in hostilities. Many members of Wagner actively participate in combat, but others may serve in advisory, logistical, or support roles, which would disqualify them. Under the interpretative framework of ICRC, only conduct that directly causes harm with a clear belligerent nexus would amount to direct participation in hostilities. Thus, even those hired to support military objectives may not meet this threshold.¹¹¹

Given these challenges, the legal classification of Wagner members as mercenaries under IHL is highly unlikely. Therefore, the legal focus must shift from their status to their conduct. Since Wagner members cannot be prosecuted solely for being mercenaries, legal accountability must be based on specific acts they have committed during the conflict. The conduct-based approach aligns with international criminal law principles and allows for the prosecution of individuals regardless of their formal classification, provided their actions violate IHL.¹¹²

In conclusion, while the Wagner group may function as a *de facto* mercenary force, its members do generally not satisfy the six cumulative legal requirements to be classified as mercenaries; however, there might be isolated exceptions involving non-Russian recruits motivated primarily by private gain.¹¹³

ii. Assessment of the Wagner Group as civilians accompanying the armed forces

Under IHL, certain civilians who accompany the armed forces in non-combat roles, such as supply contractors or technical staff, may be entitled to POW status if formally authorized and provided with identification.¹¹⁴ However, this category explicitly excludes individuals who directly participate in hostilities.¹¹⁵

¹¹⁰Open Society Justice Initiative (n 50) [24].

¹¹¹ ICRC Commentary (n 62) [1806]; Open Society Justice Initiative (n 50) [24].

¹¹² Malcolm N Shaw, *Individual Criminal Responsibility in International Law* (Cambridge University Press 2008) [401]; Tambay and Khalfaoui (n 49).

¹¹³ *ibid.*

¹¹⁴ Art 4(A)(4) GCIII.

¹¹⁵ Open Society Justice Initiative (n 50) [25-26].

While some Wagner members engaged in logistical or advisory functions could theoretically fall under this classification, the majority of Wagner members involved in combat operations in Ukraine would not. Those who participate directly in hostilities cannot be considered civilians accompanying the armed forces and are therefore not entitled to POW status. Given the Wagner Group's central role in offensive operations, this category is of limited relevance to the broader legal accountability issues addressed in this thesis and shall not be explored further.

1.2. Legal basis of individual criminal responsibility under international criminal law

Individual responsibility for crimes committed during armed conflicts is addressed by international criminal law, including responsibility for genocide, crimes against humanity, war crimes, and the crime of aggression.¹¹⁶ First established in the Nuremberg Judgement and then reaffirmed in Art 25(1) of the Rome Statute of the International Criminal Court, individuals bear criminal responsibility for international crimes and not abstract entities.¹¹⁷ This principle has been reinforced in the ICTY jurisprudence, where individuals were held accountable for systemic abuses committed during armed conflict.

Applying these principles, members of the Wagner Group can be held criminally responsible for acts of torture irrespective of their formal status. Whether individuals are classified as combatants, international law provides a well-established legal framework for holding them accountable for war crimes. Under the Rome Statute, torture constitutes a war crime when committed in the context of an armed conflict.¹¹⁸ Similarly, the Geneva Convention prohibits torture and inhumane treatment and imposes binding obligations on all parties to a conflict, including those engaged in hostilities. Combatant status does not shield individuals from criminal liability; on the contrary, the law imposes clear duties on those who take part in armed

¹¹⁶ A. Nollkaemper, 'Concurrence between Individual Responsibility and State Responsibility in International Law' (2003) 52 *ICLQ*, [616]; A. T. M. Dupuy, 'International Criminal Responsibility of the Individual and International Responsibility of the State' in A. Cassese, P. Gaeta, and J. R. W. D. Jones (eds), *The Rome Statute of the International Criminal Court: A Commentary* (Oxford: Oxford University Press, 2002) [1095]; A. Bianchi, 'State Responsibility and Criminal Liability of Individuals', in A. Cassese et al. (eds), *The Oxford Companion to International Criminal Justice* (Oxford: Oxford University Press, 2009) [20]; M. Milanovic, 'State Responsibility for Genocide: A Follow-Up' (2007) 18 *EJIL*, [670]; P. Gaeta, 'On what Conditions Can a State be Held Responsible for Genocide?' (2007) 18 *EJIL* [631].

¹¹⁷ Judgment of the International Military Tribunal, Trial of the Major War Criminals, 1947, *Official Documents*, Vol. 1 [223]; Shaw (n 112) [400].

¹¹⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 Art 8(2)(a)(ii).

conflict to refrain from grave breaches of humanitarian law.¹¹⁹ Additionally, superior combatant hierarchies may also incur responsibility under the doctrine of command responsibility if they knew or should have known of torture committed by a subordinate and failed to prevent or punish it.¹²⁰

In contrast, if Wagner members are classified as civilians, international criminal law still provides a robust legal basis for individual accountability. The jurisprudence of the ICTY, particularly the Kunarac and Furundžija cases, confirms that members of non-state armed groups can be held individually responsible for committing war crimes such as torture, even in the absence of formal state affiliation.¹²¹ Therefore, Wagner Group members, regardless of their status, fall within the scope of individual criminal responsibility under international criminal law for acts of torture committed in the context of the armed conflict in Ukraine.

1.4. Modes of individual criminal liability

Under Art 25 of the Rome Statute, individuals can be held responsible for committing, ordering, aiding and abetting, or otherwise facilitating war crimes. The ICC has developed doctrines such as indirect co-perpetration¹²² and command responsibility¹²³ to address complex structures like PMCs. In the case Prosecutor v. Bemba, the ICC held that military commanders may be liable if they knew or should have known of subordinates' crimes and failed to prevent or punish them.

¹²⁴ This doctrine may apply to Wagner commanders operating under a hierarchical structure.

The Commentary on Art 25 supports the expansion of liability modes, and it is emphasized that PMCs can be prosecuted when their conduct satisfies the mental and material elements of war

¹¹⁹ API Art 43(2); Open Society Justice Initiative (n 50) [18].

¹²⁰ Louise Doswald-Beck, "Private Military Companies Under International Humanitarian Law" in Simon Chesterman and Chia Lehnardt (eds.) *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (Oxford University Press, 2007) [22-23].

¹²¹ Kunarac (n 47).

¹²² Prosecutor v. Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, 14 March 2012 [332].

¹²³ Prosecutor v Jean-Pierre Bemba Gombo (Judgment) ICC-01/05-01/08-3343, Trial Chamber III, 21 March 2016 [171-219].

¹²⁴ *ibid* [202].

crimes.¹²⁵ The systemic torture of Wagner members against Ukrainian POWs and civilians presents a compelling basis for prosecution under these doctrines.¹²⁶

2. State vs. individual responsibility– parallel attribution

The double responsibility in international law recognizes that both states and individuals may incur responsibility for the same unlawful acts.¹²⁷ This distinction is essential in the legal evaluation of actors like the Wagner group, which straddles the boundaries between PMCs and *de facto* state proxies. While international criminal law focuses on individual accountability, the law of state responsibility operates independently, addressing violations committed by or attributable to state actors.¹²⁸ Yet, in practice, these two regimes often intersect, particularly where private actors function within or alongside state military structures.

According to statement 7 of the Montreux Document, the conduct of private military and security companies may be attributable to a state under certain conditions. These include incorporation into the armed forces, operation under governmental authority, or acting on the instructions or under the control of the state. The trajectory of Wagner in Ukraine reflects several of these thresholds. First, Wagner operated with material and logistical support from the Russian government, including access to military-grade weapons and aircraft.¹²⁹ Second, its personnel were recruited from Russian prisons and trained at Russian military facilities, reflecting coordination and sponsorship at the state level. Third, despite its formal refusal to sign integration contracts in June 2023, reports confirm that many Wagner members have later signed

¹²⁵ Kai Ambos, 'Article 25: Individual Criminal Responsibility' in Otto Triffterer (ed), *The Rome Statute of the International Criminal Court: A Commentary* (Nomos 2008) <https://www.legal-tools.org/doc/e8ad48/pdf/> [747].

¹²⁶ Media Initiative for Human Rights, *Wagner Group: Beyond Accountability* (MIHR, 27 June 2023) <https://mipl.org.ua/en/wagner-group-beyond-accountability/>; International Center for Transitional Justice, *Ukrainian POWs Say Wagner Group Violated Laws* (ICTJ, 31 October 2023) <https://www.ictj.org/latest-news/ukrainian-pows-say-wagner-group-violated-laws> apnews.com+14ictj.org+14wsj.com+14.

¹²⁷ Elies van Sliedregt, *Individual Criminal Responsibility in International Law* (Oxford University Press 2012) [6]; Dupuy, *International Criminal Responsibility* [1092].

¹²⁸ van Sliedregt (n 127); Nollkaemper (n 116) [616–40]; Dupuy (n 116) [1090]; Bianchi (n 116) [16–24]; Milanovic (n 116) [669]; Gaeta (n 116) [635–48].

¹²⁹ Jennifer Maddocks, 'Putin Admits to Funding the Wagner Group: Implications for Russia's State Responsibility' (Lieber Institute, 30 June 2023) <https://lieber.westpoint.edu/putin-admits-funding-wagner-group-implications-russias-state-responsibility/> accessed 10 June 2025; *Russia to supply Wagner group more weapons and ammunition after threat to withdraw* (Euronews with AFP, 7 May 2023) <https://www.euronews.com/2023/05/07/russia-to-supply-wagner-group-more-weapons-and-ammunition-after-threat-to-withdraw> accessed 10 June 2025.

contracts with the Russian Ministry of Defense, indicating partial incorporation into state command.¹³⁰

International criminal law places the responsibility on individual perpetrators of international crimes, regardless of whether they act as private persons or state agents.¹³¹ In the Furundžija case, the ICTY held that “under *current international humanitarian law, in addition to individual criminal liability, State responsibility may ensue as a result of State officials engaging in torture or failing to prevent torture or to punish torturers*”.¹³² Therefore, the legal framework provides for the coexistence of both individual and state responsibility, without conflicting or substituting one or the other.

This dual attribution model is of relevance when it comes to the Wagner Group’s violations of international law in Ukraine. Regardless of the fact whether these acts were carried out independently or under the command of Russia, the person's criminal liability of Wagner members under Art 25 of the Rome Statute remains intact.

The command responsibility doctrine further links individuals to organizational structures. As established in the case of Prosecutor v. Bemba at the ICC, and Prosecutor v. Delalic et.al. At the ICTY, this doctrine establishes liability for a superior who knew or should have known that crimes were being committed by subordinates under their control, and who failed to take necessary and reasonable measures to prevent or punish the acts.¹³³ This applies to the Wagner chain of command, particularly in light of confessions by commanders like Alexey Savichev and Azmat Uldarov, who admitted to acts amounting to war crimes during operations in Ukraine.¹³⁴

¹³⁰ *ibid.*

¹³¹ United Nations Secretary-General, ‘Report pursuant to paragraph 2 of Security Council resolution 808 (1993)’ (3 May 1993) UN Doc S/25704 [54].

¹³² Furundžija (n 2) [142].

¹³³ Bemba (n 123) [202]; Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, and Esad Landžo (Trial Judgment) IT-96-21-T, ICTY Trial Chamber, 16 November 1998 [346]; API Art 86; Statute of the International Criminal Tribunal for Rwanda (UNSC Res 955, 8 November 1994) Art 6(3); Statute of the International Criminal Tribunal for the Former Yugoslavia (UNSC Res 827, 25 May 1993) Art 7(3); Rome Statute Art 28.

¹³⁴ The New Voice of Ukraine, ‘Former Wagner commanders confess to massive war crimes, including killing children’ (17 April 2023) <https://english.nv.ua/nation/former-wagner-commanders-confess-to-massive-war-crimes-including-killing-children-50318398.html>.

Due to the lack of clear boundaries between state conduct and private action in the case of Wagner, Russia might face state responsibility for violations committed by Wagner under the Articles on State Responsibility, in particular if it can be shown that Wagner acted on Russia's instructions or under its effective control.¹³⁵

Nonetheless, this thesis does not focus on establishing state responsibility. Instead, it prioritizes the legal accountability of individuals of the Wagner Group under Art 25(4) of the Rome Statute. Therefore, the existence of structural ties between Wagner and the Russian state does not shield individuals from prosecution.

III. International and national prosecution of Wagner Group members

A. International and hybrid tribunals in PMC prosecution

The ICC has jurisdiction over war crimes committed in Ukraine according to the Rome Statute.¹³⁶ The Court has subject matter jurisdiction over “core” international crimes, including war crimes.¹³⁷ While Russia signed the Rome Statute in 2000, but never ratified it and subsequently withdrew from the accession process in 2016¹³⁸, Ukraine became a State Party to the Rome Statute in January 2025.¹³⁹ Under Art 11 (1) of the Rome Statute, the ICC's jurisdiction generally applies only to crimes committed after the Statute enters into force for that State. However, Ukraine fulfilled the conditions under Article 12(3) by submitting declarations accepting the Court's jurisdiction over

¹³⁵ van Sliedregt (n 127) [6]; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro), Judgment of 26 February 2007, ICJ Reports 2007 [43]; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, UNGA Res 56/83 (2001), UN Doc A/RES/56/83 Art 8.

¹³⁶ Rome Statute Art 126, July 17, 1998, 2187 U.N.T.S. 3; Graham M Glusman, ‘Justice from the General Assembly: An International Tribunal for the Crime of Aggression in Ukraine’ (Winter 2024) CJIL Online 3.1 <[https://cjil.uchicago.edu/sites/default/files/2024-](https://cjil.uchicago.edu/sites/default/files/2024-02/Glusman_Justice%20from%20the%20General%20Assembly.pdf)

[02/Glusman_Justice%20from%20the%20General%20Assembly.pdf](https://cjil.uchicago.edu/sites/default/files/2024-02/Glusman_Justice%20from%20the%20General%20Assembly.pdf)> accessed 23 July 2025 [3].

¹³⁷ Christine Schwöbel-Patel, ‘The Core Crimes of International Criminal Law’ in Kevin Jon Heller, Markus D. Dubber and Julian V. Roberts (eds), *The Oxford Handbook of International Criminal Law* (Oxford University Press 2020) [768]; Milena Sterio, ‘The Ukraine Crisis and the Future of International Courts and Tribunals’ (2023) 55 Case W Res J Int'l L 479 <<https://scholarlycommons.law.case.edu/jil/vol55/iss1/17>> accessed 23 July 2025 [490].

¹³⁸ BBC News, ‘Russia Withdraws from International Criminal Court Treaty’ (BBC News, 16 November 2016) <<https://www.bbc.com/news/world-europe-38005282>> accessed 21 July 2025; Sergey Sayapin, ‘Russia's Withdrawal of Signature from the Rome Statute Would Not Shield Its Nationals from Potential Prosecution at the ICC’ EJIL: Talk! (21 November 2016) <<https://www.ejiltalk.org/russias-withdrawal-of-signature-from-the-rome-statute-would-not-shield-its-nationals-from-potential-prosecution-at-the-icc/>> accessed 22 July 2025.

¹³⁹ International Criminal Court, ‘ICC Welcomes Ukraine as a New State Party’ (17 July 2025) <<https://www.icc-cpi.int/news/icc-welcomes-ukraine-new-state-party>> accessed 22 July 2025.

alleged crimes committed on its territory from 20 February 2014 onwards.¹⁴⁰ This jurisdictional basis allows the ICC to investigate and prosecute individuals, including members of the Wagner Group, for war crimes under the Rome Statute committed in Ukraine since the war's escalation in 2022, even before Ukraine's formal accession.

As long as the crimes fall within the Court's subject matter jurisdiction and the complementary principle is satisfied, the members of Wagner Group are prosecutable under ICC's jurisdiction. Under Art 17, the ICC is only allowed to act when national jurisdictions are unwilling or unable to genuinely prosecute such crimes. Having in mind the inability and unwillingness of Russia to independently investigate Wagner members due to their institutional ties, the door remains open for ICC proceedings or an alternative accountability mechanism.¹⁴¹

The ICC has been active and has taken many concrete steps to address atrocities committed during the conflict in Ukraine in 2019. A preliminary examination was concluded by the Court, which established a reasonable basis to believe that international crimes had been committed on Ukrainian territory.¹⁴² In March 2022, more than 40 State Parties referred the situation in Ukraine to the ICC, prompting the Prosecutor to formally open an investigation, although the Prosecutor could have initiated proceedings *proprio motu* without such referrals.¹⁴³ This commitment was further deepened in March 2023, when the ICC launched a dedicated investigation into the situation in Ukraine, tasked with probing alleged crimes dating back to the onset of the Maidan protests on 21 November 2013.¹⁴⁴ To support its efforts, several states provided additional financial and human resources, reinforcing the ICC's operational capacity. These efforts

¹⁴⁰ International Criminal Court, 'Ukraine' (ICC-CPI) <https://www.icc-cpi.int/situations/ukraine> accessed 22 July 2025; Ukraine, Letter Dated 8 September 2015 from the Minister of Foreign Affairs of Ukraine to the Registrar of the International Criminal Court, 8 September 2015; Patrick Butchard, 'Conflict in Ukraine: A Special Tribunal on the Crime of Aggression' (House of Commons Library Research Briefing, 27 August 2024) <<https://researchbriefings.files.parliament.uk/documents/CBP-9968/CBP-9968.pdf>> accessed 23 July 2025; Glusman (n 136) [4].

¹⁴¹ Chhime Namdol Sherpa and Robin van der Lugt, 'Navigating Pathways Toward Transitional Justice in Ukraine' (Geneva Academy of International Humanitarian Law and Human Rights, May 2023) <https://www.geneva-academy.ch/joomlatools-files/docman-files/Navigating%20Pathways%20Toward%20Transitional%20Justice%20in%20Ukraine.pdf> accessed 18 July 2025 [9].

¹⁴² Sterio (n 137) [491]; Statement of the Prosecutor, Fatou Bensouda, on the Conclusion of the Preliminary Examination in the Situation in Ukraine, INT'L CRIM. CT. (Dec. 11, 2020) www.icc-cpi.int/news/statementprosecutor-fatou-bensouda-conclusion-preliminary-examinationsituation-ukraine.

¹⁴³ Sterio (n 137) [491]; Glusman (n 136) [4]; Rome Statute Art 15.

¹⁴⁴ International Criminal Court 'Ukraine'; Sherpa and van der Lugt (n 141) [8].

demonstrate the Court's institutional engagement and its role as a cornerstone of international criminal justice. However, enforcement challenges remain, especially in regards to securing arrests and ensuing prosecutions due to the necessity of collaboration with states.¹⁴⁵ Indeed, these steps address atrocities in Ukraine broadly; they do not single out the Wagner Group. Nevertheless, given the scale and nature of the ICC's investigations, it is likely that atrocities committed by Wagner operatives fall within the scope of the evidence currently being collected and analyzed.

According to Art 17 of the Rome Statute, the jurisdiction of the ICC is based on the principle of complementarity, meaning that it may only intervene when states with jurisdiction are unwilling or unable to genuinely carry out investigations or prosecutions.¹⁴⁶ In the context of war crimes committed by Wagner members in Ukrainian territory, Ukraine has primary jurisdiction.¹⁴⁷ However, many of the alleged perpetrators of Wagner are Russian nationals.¹⁴⁸ Due to institutional ties, Russia may be unwilling to investigate or prosecute these individuals. The ICC may therefore exercise jurisdiction over Wagner-related war crimes committed in Ukraine, even without Russia's cooperation. This underscores the Court's role in addressing impunity where both the territorial state's and the perpetrator's home state's efforts are insufficient.

B. National laws that enable the prosecution of war crimes by foreign nationals

A range of States' national laws provide for some form such domestic legislation that empowers national courts to investigate and prosecute persons suspected of crimes potentially amounting to violations of international law, regardless of where the crime was committed, the nationality of the suspect, or the nationality of the victim.¹⁴⁹

National prosecution within the territorial state where the crimes occurred, in this case, in Ukraine, domestic proceedings offer several significant advantages.¹⁵⁰ These include the

¹⁴⁵ *ibid.*

¹⁴⁶ Rome Statute Art 17.

¹⁴⁷ Rollin M. Perkins, *The Territorial Principle in Criminal Law*, 22 HASTINGS L.J. 1155 (1971) [1155].

¹⁴⁸ Robert Weeks, Jason Cowan, and Kyle Duehring, "Wagner and Its Convolved Legal Status," Santa Clara Business Law Chronicle, April 27, 2023, <https://www.scbc-law.org/post/wagnerand-its-convoluted-legal-status>.

¹⁴⁹ Centre for Global Law & Justice, *Domestic Exercise of Universal Jurisdiction* (CGLJ) <https://cglj.org/human-rights-oversight/national-systems/domestic-exercise-of-universal-jurisdiction/> accessed 15 June 2025; Perkins (n 157).

¹⁵⁰ Carsten Stahn, *The Future of International Criminal Justice*, 4 HAGUE JUST. J. 257, 264-66 (2009) [3].

geographic closeness to victims, witnesses, and physical evidence, which facilitates fact-finding and testimony collection. Local proceedings also enhance public access and visibility, allowing affected communities to engage with and observe the justice process directly.¹⁵¹ Additionally, domestic trials tend to be more cost-effective, logistically manageable, and capable of proceeding with greater expediency compared to international or hybrid models.¹⁵²

1. Ukraine's domestic legal reforms and implementation

Under treaty and customary international humanitarian law, states must investigate and prosecute war crimes, including crimes committed by foreign nationals, including members of PMCs. In the case at hand, Ukraine, as the primary territorial state that is affected by Wagner Group operations, provides a compelling example of how national laws can be mobilized to hold such actors accountable.¹⁵³

After Ukraine ratified the Rome Statute, it undertook significant domestic legal reforms to align its criminal code with international humanitarian law. In May 2021, the Ukrainian parliament passed a law (Bill 2689), specifically designed to incorporate war crimes, crimes against humanity, and genocide into national law. This legislative development addressed legal gaps and created a strong legal framework for prosecuting foreign individuals, including Wagner members, accused of serious international crimes in Ukraine.¹⁵⁴

Members of the Wagner group have been involved in numerous violations of IHL during their involvement in Ukraine. Ukraine's revised legal framework enables its authorities to investigate and prosecute these individuals under domestic jurisdiction, regardless of their nationality. This includes provisions criminalizing torture as a war crime, reportedly committed by Wagner members.

¹⁵¹ Seeking the Best Forum to Prosecute International War Crimes: Proposed Paradigms and Solutions (2006) 18 Fla J Int'l L 887 <<https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1500&context=fjil>> accessed 23 July 2025 [904].

¹⁵² Sterio (n 137) [484].

¹⁵³ Ann Neville, *Russia's War on Ukraine: Investigating and Prosecuting International Crimes* (European Parliamentary Research Service, June 2022) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733525/EPRS_BRI\(2022\)733525_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733525/EPRS_BRI(2022)733525_EN.pdf) accessed 25 June 2025 [3].

¹⁵⁴ *ibid* [3].

To support these efforts, Ukrainian authorities have launched an online portal and mobile applications to collect civilian-submitted evidence of war crimes. This data collection infrastructure is specifically aimed at ensuring accountability for crimes committed by Russian forces and affiliated private military actors like Wagner. As of October 2024, Ukraine's Prosecutor General had registered over 138,000 investigations into potential war crimes, identifying more than 600 suspects.¹⁵⁵ While some prosecutions have already resulted in convictions of regular Russian military personnel, the legal apparatus is equally applicable to Wagner fighters, who often act under similar command structures and operational patterns.¹⁵⁶

Importantly, Ukraine's legislative and institutional framework reflects a broader legal readiness to prosecute foreign nationals, including those affiliated with the Wagner Group, for international crimes. By grounding these proceedings in both international and domestic law, Ukraine offers a model of how national jurisdiction can be used effectively to hold members of PMC's accountable for war crimes. This model can guide other states, including those in Africa with Wagner activity on their territory, in developing similar prosecutorial strategies.¹⁵⁷

Taking into consideration the structural and systemic nature of the alleged violations committed by Wagner operatives in Ukraine, states must be equipped with comprehensive national legal frameworks to ensure the prosecution of such crimes. These frameworks must go beyond replicating international definitions of war crimes; they must incorporate doctrines such as command responsibility and allow for structural investigations, which focus not only on individual incidents but on patterns of conduct and organizational roles, which is exactly the kind of inquiry needed to understand Wagner Group's command structure and operational planning.¹⁵⁸

¹⁵⁵ *eyeWitness to Atrocities*, 'Ukraine's Prosecutor General discusses unprecedented war crimes investigations amidst ongoing conflict at IBA's Annual Conference in Mexico' (4 October 2024) <https://www.eyewitness.global/Ukraine-PG-discusses-war-crimes-investigations-at-IBA-conference-Mexico> accessed 4 July 2025.

¹⁵⁶ Sterio (n 137) [485]; Neville (n 153) [3].

¹⁵⁷ *ibid* [3,4].

¹⁵⁸ *ibid* [7].

The legal framework must also define extraterritorial and universal jurisdiction clearly to allow the prosecution of crimes committed outside the forum state's territory, by or against foreign nationals. Without such provisions, states risk being limited to prosecuting lesser offences, e.g, terrorism or arms violations, rather than the full scope of international crimes.¹⁵⁹

The effective implementation of these duties also requires institutional capacity. Dedicated war crimes units with multidisciplinary expertise, including forensic analysts and military experts, are necessary to handle the complexity and scale of investigations involving PMC entities like Wagner. In the context of ongoing conflict, cooperation with immigration and asylum authorities becomes essential, particularly as victims, witnesses, or even perpetrators may cross borders and present themselves to these agencies. Several European Union member states, in response to the influx of Ukrainian refugees, have already adopted measures to collect early information on potential international crimes through immigration procedures, potentially including crimes committed by Wagner forces.¹⁶⁰

Cooperation mechanisms such as the EU Genocide Network and the Atrocity Crimes Advisory Group further reinforce this framework by enabling coordination, information-sharing, and technical support across jurisdictions. These mechanisms are crucial for ensuring that prosecutions of Wagner members are pursued effectively, consistently, and without jurisdictional duplication.¹⁶¹

2. Challenges with in absentia trials and retroactivity

A majority of proceedings against the perpetrators by Ukrainian authorities are tried in absentia.¹⁶² Although trials in absentia are not prohibited under international law and have been incorporated into the domestic criminal procedure of Ukraine since 2014, they must be held

¹⁵⁹ *ibid* [7].

¹⁶⁰ *ibid* [8].

¹⁶¹ Sherpa and van der Lugt (n 141) [7]; Neville (n 153) [8].

¹⁶² Sherpa and van der Lugt (n 141) [6]; Justice Info, 'Map of War Crimes Trials in Ukraine' (JusticeInfo.net, 6 December 2022) <<https://www.justiceinfo.net/en/109654-map-of-war-crimes-trials-in-ukraine.html>> accessed 23 July 2025.

under specific circumstances.¹⁶³ However, Ukrainian standards for in absentia proceedings currently do not align with the requirements of the European Convention on Human Rights.¹⁶⁴

Following the jurisprudence of the European Court of Human Rights [hereinafter ECtHR], in absentia proceedings must meet strict criteria: they are permissible only under specific circumstances, such as when the defendant is removed due to disruptive behavior or has knowingly and intelligently waived their right to be present.¹⁶⁵ Furthermore, if there is any reasonable doubt about the accused's awareness of the proceedings, the right to a retrial must be guaranteed upon apprehension. However, Ukrainian law does not currently allow for a retrial once a verdict in absentia is rendered; only an appeal is permitted, unless the accused is located before the decision is issued.¹⁶⁶ This procedural limitation, combined with the practical difficulties of notifying individuals in Russian-controlled territories due to the severance of official communication channels between Ukraine and Russia, undermines the legitimacy of such proceedings.¹⁶⁷ As indicated by the Office of the High Commissioner for Human Rights [hereinafter OHCHR], these shortcomings could lead to verdicts being challenged before the ECtHR and may also discourage third-party states from executing extradition requests, thereby weakening the enforceability of justice in cases involving absent defendants.¹⁶⁸

¹⁶³ Sherpa and van der Lugt (n 141) [7].

¹⁶⁴ Ukrainian Legal Advisory Group, *Needs Assessment of Ukraine's Justice System* (ULAG, September 2024) <https://ulag.org.ua/wp-content/uploads/2024/09/na-web.pdf> accessed 3 July 2025, [70-73].

¹⁶⁵ Sherpa and van der Lugt (n 141) [7]; *Dvorski v. Croatia* (2015) 25703/11 [101]; *Pishchalnikov v. Russia* (2009) 7025/04 [77-79].

¹⁶⁶ Sherpa and van der Lugt (n 141) [7].

¹⁶⁷ Al Jazeera, 'Ukraine Cuts Diplomatic Ties with Russia after Invasion' (24 February 2022); Covert informal communication appears to persist, though it is vulnerable to misinformation and lacks transparency. Stanislav Pohorilov, 'The Washington Post Explores Channels of Communication between Ukraine and Russia' (Ukrainska Pravda, 25 October 2023).

¹⁶⁸ 'Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine from April 2014 - April 2020' (OHCHR, 1 August 2020) <<https://www.ohchr.org/en/documents/country-reports/human-rights-administration-justice-conflict-related-criminal-cases>>; Arne Bardelle and Arie Mora, 'No safe haven' is not enough – universal jurisdiction and Russia's war of aggression' (EJIL: Talk! 26 February 2025) <https://www.ejiltalk.org/no-safe-haven-is-not-enough-universal-jurisdiction-and-russias-war-of-aggression/> accessed 22 June 2025; Vlasta Kovbasa, 'A Pursuit of Justice: Applying Universal Jurisdiction to Hold Russian War Criminals Accountable' (Terrorism & Defense Center, 25 July 2024) <https://tdcenter.org/2024/07/25/a-pursuit-of-justice-applying-universal-jurisdiction-to-hold-russian-war-criminals-accountable/> accessed 22 June 2025; Iryna Marchuk, 'Domestic Accountability Efforts in Response to the Russia–Ukraine War' (2022) 20 *Journal of International Criminal Justice* 787,[793].

The Ukrainian Legal Advisory Group's report established that the Ukrainian legislation does not provide the necessary toolkit for the effective investigation and prosecution of international crimes in accordance with the victim's interest. This flaw is particularly consequential in the context of atrocities attributed to Wagner members.¹⁶⁹

Although Ukraine has become a full state party to the Rome Statute and has introduced previously missing provisions on command responsibility as part of the implementation process, it is debated whether these provisions can and should be applied retroactively. Consequently, there is uncertainty about whether Ukrainian courts can apply these new legal tools to war crimes committed by members of Wagner before these reforms came into effect.

Both the constitution and the criminal code [hereinafter CCU] explicitly prohibit retroactive application of criminal law, meaning that a person cannot be held criminally liable for an act that was not clearly defined as a crime under national law at the time it was committed.¹⁷⁰ Unless there is a clear constitution or legislative interpretation that allows retroactive application, Ukrainian courts are bound by national rules.

Since neither the constitutional court of Ukraine nor the Verkhovna Rada (Parliament) has yet clarified how these provisions should be interpreted, it remains unresolved whether prosecutors can apply these new legal tools to act on previously committed crimes; thus, there is a legal gap that may undermine accountability for serious international crimes.¹⁷¹

For this reason, numerous acts that are attributed to members of Wagner, especially those committed during the initial phases of the full-scale invasion, may remain improperly classified and therefore beyond the reach of international criminal law as codified in Ukraine. Even though Ukraine can still prosecute some of these acts under existing provisions like Art 438 CCU (violations of the laws of war), or even ordinary criminal law, these frameworks do not always

¹⁶⁹ Ukrainian Legal Advisory Group (n 164) [19].

¹⁷⁰ *ibid* [43]; Criminal Code of Ukraine, No. 2341-III, 05.04.2001: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>; Constitutional Court of Ukraine, Decision No 6-пн/2000 in the case on the retroactive application of criminal law (19 April 2000) <https://zakon.rada.gov.ua/laws/show/v006p710-00#Text>.

¹⁷¹ Bardelle and Mora (n 168).

adequately reflect the structural nature and gravity of these crimes committed by PMCs like Wagner.¹⁷²

If Ukrainian authorities continue to rely on broad domestic laws like Art 258 of the CCU (acts of terrorism) when prosecuting crimes of Wagner members, there is a danger that the specific nature of those crimes, particularly as war crimes, will not be properly addressed. This overreliance on generic legal categories can blur the legal distinctions that are crucial in international criminal law. For example, classifying acts of torture by Wagner forces as “terrorism” rather than violations of the laws of war can lead to misrepresentation of both the context (i.e., armed conflict) and the nature of the crimes (i.e., organized patterns of abuse, command responsibility, etc.).¹⁷³

An additional weakness is the absence of an effective program for the protection of victims and witnesses. This exposes those involved in proceedings to significant personal risk, thereby discouraging their participation and impeding the collection of critical testimonial evidence.¹⁷⁴

3. Systemic obstacles and case-overload

The effective administration of justice in Ukraine is further hampered by a significant shortage of qualified professionals, acute security risks, and a lack of operational resources on top of the heavy workload.¹⁷⁵

The process of investigating war crimes in Ukraine becomes complicated with the legal requirement that every reported crime, no matter how serious or minor, must be officially registered under Art 214 of the criminal procedure code. This explains the number of opened cases since the full-scale invasion. Although this might suggest that all international crimes, including those committed by members of the Wagner group, will eventually be investigated, unfortunately, the reality is more difficult. Currently, the Ukrainian justice system is

¹⁷² Ukrainian Legal Advisory Group (n 164) [16].

¹⁷³ *ibid* [15].

¹⁷⁴ *ibid* [33].

¹⁷⁵ *ibid* [11].

overwhelmed and does not have enough people, resources, or legal tools to properly handle such a large number of complex cases.¹⁷⁶

Until February 2025, more than 155,000 criminal proceedings have been opened for possible war crimes committed since February 2022.¹⁷⁷ However, this number likely underrepresents the true scale of serious violations, especially since Ukraine does not have access to many areas under Russian control where Wagner forces were active. Many crimes involving torture reportedly committed by Wagner may still be unknown or uninvestigated due to a lack of evidence or access to victims or witnesses. Nevertheless, there are investigations by Ukraine's Prosecutor General's Office against members of the Wagner Group.¹⁷⁸

The lack of expertise of prosecutors, forensic experts, and investigators with international crimes makes it difficult for them to prosecute crimes committed by groups like Wagner that operate in secret and follow different chains of command. This makes it harder to link individuals to larger patterns of crimes or to hold commanders accountable.¹⁷⁹

An additional obstacle the national authorities face is the sheer volume and complexity of evidence generated during the war in Ukraine. The conflict in Ukraine is one of the most digitally documented in modern history, with thousands of hours of footage, satellite imagery, drone captures, intercepted communications, and social media posts capturing alleged war crimes.¹⁸⁰ A lot of this digital evidence is available to the public through open sources and user-generated content; for example, videos are posted on Telegram or TikTok, meaning they are often recorded spontaneously with smartphones.¹⁸¹ Although this offers unique opportunities to establish

¹⁷⁶ Bardelle and Mora (n 168).

¹⁷⁷ *ibid.*

¹⁷⁸ Daza Sierra et al (n 25) [61]; Lorenzo Tondo and Isobel Koshiw, 'Evidence Some Ukrainian Women Raped Before Being Killed, Say Doctors' *The Guardian* (25 April 2022) <https://www.theguardian.com/world/2022/apr/25/evidence-ukraine-women-raped-before-being-killed-say-doctors-russia-war> accessed 12 June 2025.

¹⁷⁹ Monica Ellena 'Universal Jurisdiction: a Key Tool for Accountability' (Institute for War & Peace Reporting, [publication date not specified]) <https://iwpr.net/global-voices/universal-jurisdiction-key-tool-accountability> accessed 22 June 2025.

¹⁸⁰ Hanna Kuczyńska, 'Digital Evidence in Investigations Concerning Russian Crimes in Ukraine' in Patrycja Grzebyk and Dominika Uczkiewicz (eds), *The Russian-Ukrainian Conflict and War Crimes: Challenges for Documentation and International Prosecution* (Intersentia 2025) [115].

¹⁸¹ *ibid* [130].

widespread patterns of abuse and hierarchical responsibility, it also creates a major evidentiary burden on national legal systems not designed to process such vast and decentralized data flows.¹⁸²

The large amount of evidence paradoxically becomes a challenge for national authorities, who must decide what is legally admissible, reliable, and relevant for prosecution in court.¹⁸³ Digital records must be verified through techniques such as geolocation, chronolocation, metadata extraction, and source authentication before they can be admitted as evidence.¹⁸⁴ Organizations like Mnemonic, Bellingcat, and the eyeWitness to Atrocities app have developed tools and methods to support this process, but such expertise is not uniformly available to national prosecutors.¹⁸⁵ However, ensuring chain of custody, protecting witness identity, and separating manipulated or unverifiable content from authentic evidence present ongoing procedural and legal challenges.¹⁸⁶

Without specialized training and digital forensic capacity, national authorities may struggle to transform this raw data into prosecutable cases.¹⁸⁷ In particular, the complexity of linking individual Wagner members to command responsibility, especially across borders or within the context of joint operations with Russian forces, demands systemic improvements in evidence handling and international cooperation. The threat is not a lack of evidence, but rather the overwhelming volume and unstructured format. In this regard, it should be noted that it remains unclear how much of it specifically pertains to Wagner group members, which could stall prosecutions or result in fragmented justice. For national courts to meaningfully hold Wagner members accountable, mechanisms need to be developed to manage, verify, and litigate digital evidence at scale.

IV. Universal jurisdiction and national prosecution

Taking into consideration the overwhelming volume of cases of violations of IHL since the start of Russia's full-scale invasion, Ukraine's legal system is under immense strain. Although there is

¹⁸² *ibid* [129,137].

¹⁸³ *ibid* [137].

¹⁸⁴ *ibid* [137,138].

¹⁸⁵ *ibid* [135,133].

¹⁸⁶ *ibid* [138].

¹⁸⁷ *ibid*.

a strong commitment to accountability from Ukraine's institutions, the scale of atrocities and resource constraints significantly hinder Ukraine's ability to investigate and prosecute all perpetrators. In this regard, universal jurisdiction is an important legal tool for supporting justice efforts beyond Ukraine's borders. It allows third-party states to investigate and prosecute individuals, including members of PMCs like Wagner, for serious international crimes regardless of where they were committed. This chapter examines the legal foundations of universal jurisdiction under international law and its practical application, particularly concerning holding Wagner members accountable for crimes committed in Ukraine, with a focus on the role and opportunity of African states to engage in these efforts.

A. Legal foundation of universal jurisdiction under international law

Universal jurisdiction is the principle in international law that permits states to claim criminal jurisdiction over individuals accused of serious crimes, such as war crimes, torture, genocide, and crimes against humanity, regardless of where the crime was committed and despite the nationality of the perpetrators or victims.¹⁸⁸ The concept of universal jurisdiction arose from the recognition that these crimes are so heinous that they affect the international community as a whole.¹⁸⁹ They are violations of jus cogens, and on that basis, arguably subject to universal jurisdiction.¹⁹⁰ Contrary to the traditional territorial or nationality-based jurisdiction, universal jurisdiction removes the requirement for a direct connection to the prosecuting state, as a result enabling global accountability for the most serious violations of international law based on the nature of the crimes.¹⁹¹

¹⁸⁸ Anthony J. Colangelo, 'Constitutional Limits on Extraterritorial Jurisdiction: Terrorism and the Intersection of National and International Law' (2007) 48 Harv Int'l LJ 121, [130]; Kenneth C Randall, 'Universal Jurisdiction under International Law' (1988) 66 *Texas Law Review* [785]; Sterio (n 137) [488]; Gabriel Chigozie Ezech, 'A Case for Universal Jurisdiction in the Face of Resistance from Africa: A Critical Overview of the United Nations General Assembly Sixth Committee Debate on Universal Jurisdiction Principle' (2022) 20(2) *International Journal on Minority and Group Rights* [41].

¹⁸⁹ Colangelo, (n 188) [130]; Kovbasa, (n 168); International Committee of the Red Cross, *Universal Jurisdiction over War Crimes: ICRC Study* (ICRC, 2014) https://www.icrc.org/sites/default/files/document/file_list/universal-jurisdiction-icrc-eng.pdf accessed 15 June 2025.

¹⁹⁰ Cedric Ryngaert, *Jurisdiction in International Law* (2nd edn, Oxford University Press 2015) [112,115]; JJ Paust, *International Law as Law of the United States* (1996) [300]; MC Bassiouni, 'Universal jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice', (2001) 42 Va J Int'l L 81 [148]; MC Bassiouni and EM Wise, *Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law* (1995) [20-25].

¹⁹¹ Ryngaert, (n 190) [101]; *Princeton Principles on Universal Jurisdiction* (2001) https://www.researchgate.net/publication/270173075_Universal_Jurisdiction_National_Courts_and_the_Prosecution_of_Serious_Crimes_Under_International_Law accessed 25 June 2025.

The legal basis for universal jurisdiction is derived from a complex interplay of customary international law, treaty law, and fundamental principles such as *aut dedere au judicare* (the obligation to prosecute or extradite).¹⁹² Treaties like the Genocide Convention, the Geneva Conventions, and the UN Convention Against Torture impose positive duties on states to either prosecute offenders found within their territory or surrender them to a competent jurisdiction.¹⁹³ This principle strengthens universal jurisdiction by ensuring that impunity does not thrive due to jurisdictional gaps. However, universal jurisdiction is not unlimited; it must comply with established procedural guarantees and respect sovereign equality among states, striking a balance between international justice and state sovereignty.

The *Lotus* case, decided by the Permanent Court of International Justice in 1927, serves as a foundational precedent underpinning the possibility of universal jurisdiction.¹⁹⁴ The *Lotus* principle establishes that states possess broad discretion to exercise jurisdiction over acts committed beyond their territory unless explicitly prohibited by international law.¹⁹⁵ This principle essentially endorses the notion that what is not forbidden is allowed in the realm of state jurisdiction, thereby providing legal legitimacy for states to prosecute international crimes committed abroad.¹⁹⁶ Applying this to the prosecution of Wagner group members, the absence of any international legal prohibition against exercising universal jurisdiction over war crimes committed in Ukraine affirmed the legality of such actions under international law.

A significant practical challenge arises when alleged perpetrators, such as Wagner members, remain outside the reach of national authorities. These individuals often benefit from the protection or tactical support of states unwilling to cooperate with international investigations, rendering physical apprehension and extradition difficult or impossible. In this context, trials in absentia may become a necessary procedural tool.

¹⁹² Ryngaert, (n 190) [111]; Colangelo, (n 188) [130]; Luc Reydam, *Universal Jurisdiction: International and Municipal Legal Perspectives* (Oxford University Press 2003) [19].

¹⁹³ Ryngaert, (n 190) [111]; Kovbasa, (n 168).

¹⁹⁴ Reydam (n 192) [12].

¹⁹⁵ Ryngaert (n 190) [116].

¹⁹⁶ *ibid* [111].

Trials in absentia are a controversial topic. Although until now no treaty has prohibited exercising universal jurisdiction in absentia, at the same time, no treaty permits it either.¹⁹⁷ Most states require the presence of the presumed offender to provide universal jurisdiction; however, this does not imply that a norm of customary international law has emerged that prohibits the exercise of such jurisdiction.¹⁹⁸ The only way to exercise universal jurisdiction in absentia would be under strict measures and safeguards. Such measures are crucial for ensuring that the absence of defendants does not preclude judicial scrutiny or delay justice indefinitely, especially in cases involving non-state armed groups like Wagner, whose members are often elusive. However, according to state practice, no formal proceedings will be initiated against specific suspects unless they travel within their territory.¹⁹⁹

Applying this principle to the Wagner Group, which is accused of committing acts of torture in the context of the Ukrainian conflict, universal jurisdiction offers a pathway for third-party states to investigate and prosecute its members. This is especially significant given Russia's denial of official ties to Wagner and its obstruction of accountability mechanisms.

The enforcement of universal jurisdiction depends heavily on the domestic legal frameworks of individual states. Some states have adopted legislation explicitly enabling such prosecutions; others rely more cautiously on treaty obligations. For Wagner members, prosecution under universal jurisdiction would require national courts to assert either legislative or adjudicative universal jurisdiction, ideally supported by domestic laws criminalizing war crimes and torture. Given the gravity of the alleged acts, and the difficulty of achieving justice through Ukraine's courts or international tribunals alone, universal jurisdiction may be the only effective legal avenue to combat impunity and hold Wagner members accountable for torture in Ukraine.²⁰⁰

¹⁹⁷ Ryngaert, (n 190) [119].

¹⁹⁸ *ibid.*

¹⁹⁹ Máximo Langer, 'Universal Jurisdiction Is Not Disappearing: The Shift from "Global Enforcer" to "No Safe Haven" Universal Jurisdiction' (2015) 13 *Journal of International Criminal Justice* 245, 245–56 [251] <https://promiseinstitute.law.ucla.edu/wp-content/uploads/2022/06/Universal-Jurisdiction-is-Not-Disappearing.pdf>; Bardelle and Mora (n 168).

²⁰⁰ *ICRC Study* (n 189).

Nevertheless, limitations remain. In theory, universal jurisdiction allows any state to investigate and prosecute the most serious international crimes regardless of nationality or location; yet, only a few countries apply it fully. In practice, many require additional conditions, such as the suspect's presence in the territory. This fragmented application of universal jurisdiction creates challenges in securing consistent accountability for crimes, especially when dealing with transnational actors like Wagner.²⁰¹

B. Obligations, Challenges, and opportunities for third-party states

Third States have a clear obligation to exercise universal jurisdiction in the fight against core international crimes such as torture, genocide, war crimes, and crimes against humanity. These obligations derive from treaty law, most notably the grave breaches of the 1949 Geneva Conventions and API. Comparable obligations are also found in the Convention against Torture.²⁰² As affirmed by the ICJ, States must adopt legislative and procedural measures necessary to prosecute or extradite alleged perpetrators of crimes, irrespective of any territorial or nationality link.²⁰³ The ICRC has likewise underscored that States' compliance with the universal jurisdiction provisions of the Geneva Conventions remains central to limiting suffering in armed conflicts and ensuring accountability.²⁰⁴ By exercising universal jurisdiction, third States play a critical role in closing impunity gaps and upholding international legal norms by preventing perpetrators from finding “safe haven” in jurisdictions unwilling or unable to prosecute them.²⁰⁵

1. Legal and practical challenges

Several legal and practical challenges remain when investigating and prosecuting crimes committed during the invasion of Ukraine. These include the lack of access to perpetrators, difficulties in collecting evidence, and political considerations that inhibit cooperation. The

²⁰¹ Ellena, (n 179).

²⁰² Delegation of the International Committee of the Red Cross (ICRC) to the United Nations, ‘Information and Observations on the Scope and Application of the Principle of Universal Jurisdiction’ (Letter ref. LA/COD/59/2, 23 December 2023), https://www.un.org/en/ga/sixth/79/universal_jurisdiction/icrc_e.pdf accessed 24 August 2025.

²⁰³ *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Judgment) [2012] ICJ Rep 422 [120].

²⁰⁴ ICRC, ‘Information and Observations on the Scope and Application of the Principle of Universal Jurisdiction’ (n 202).

²⁰⁵ Anne Lagerwall and Marie-Laurence Hébert-Dolbec, ‘Universal Jurisdiction’ (MPEiPro, July 2022) Max Planck Encyclopedia of International Procedural Law <https://opil.ouplaw.com>.

suspension of the EU-Russia visa facilitation agreement, alongside the travel bans by the United States and other states, has significantly reduced the likelihood that suspects will enter jurisdictions willing to prosecute them. Although some individuals may travel to countries like Serbia, Turkey, or the United Arab Emirates, it remains politically unlikely that these states would comply with their international legal obligations to extradite or prosecute such individuals. Therefore, it is not surprising that no suspects of international crimes committed by Wagner members during the full-scale invasion have been brought to justice outside of Ukraine.²⁰⁶

2. Expansion of extraterritorial investigations

A large number of states have launched extraterritorial criminal investigations into crimes committed in Ukraine since the launch of the full-scale invasion, including several EU member states, Canada, and the United States. Unlike earlier uses of universal jurisdiction, which were often seen as a last resort in the absence of alternative legal avenues, the current context demonstrates its parallel use alongside ongoing investigations by the ICC and domestic proceedings in Ukraine.²⁰⁷ This multi-layered approach reflects the scale and complexity of the crimes, many of which are attributed to the Wagner group.

3. Legal opportunities in practice: the case of Germany

Germany has a notable history of utilizing universal jurisdiction through its implementation of the code of crimes against international law (Völkerstrafgesetzbuch, VStGB) in 2002. This legislation incorporates international crimes directly into German domestic laws and allows German courts to prosecute serious offenses such as war crimes and torture regardless of any direct connection to Germany. German prosecutors have actively used this legal framework to investigate and prosecute crimes committed abroad, including atrocities in Syria.²⁰⁸

Several important developments illustrate the growing engagement with universal jurisdiction mechanisms in Europe. In October 2023, the Clooney Foundation for Justice submitted three cases involving war crimes by Russian soldiers in Germany. If the German authorities consider

²⁰⁶ *ibid.*

²⁰⁷ *ibid.*

²⁰⁸ Sterio (n 137) [488]; Bardelle and Mora (n 168); Ellena (n 179); Kovbasa (n 168).

the evidence credible, they may open formal criminal investigations and issue arrest warrants, enforceable via Europol and Interpol systems.²⁰⁹ This process is particularly relevant for members of Wagner, whose involvement in serious violations of international humanitarian law has been documented, and whose decentralized structure and extraterritorial presence make accountability through traditional avenues more difficult.

4. Jurisdictional strategies by other states

Similar investigations have been initiated by France and Lithuania for the death of their nationals in Ukraine.²¹⁰ These proceedings, although based on the passive personality principle, demonstrate how states are leveraging various forms of jurisdiction to investigate crimes committed in Ukraine.²¹¹ Taking into consideration the prominent role of Wagner in frontline operations and civilian-targeted violence, these investigations may indirectly or directly implicate its members.

Two main strategies have emerged among states exercising universal jurisdiction: first, collecting testimonies from Ukrainian refugees now residing in their territory; and second, initiating investigations into crimes committed against their own nationals.²¹² Countries like Germany, Lithuania, Sweden, and Poland have gathered significant columns of victim and witness testimonies, some of which may concern violations by members of Wagner.²¹³ While Germany and Sweden maintain long-standing war crimes units and broad universal jurisdiction frameworks, other states, including Switzerland and France, have limited their investigations only to cases that involve national victims or suspects physically present on their territory.²¹⁴ Regardless of these efforts, many states remain cautious and pursue person-specific investigations only when their nationals are directly affected. For example, France, Germany, and the United States have initiated investigations against Russian-affiliated soldiers for murder and torture of their citizens in Ukraine. In each of these cases, Wagner members could

²⁰⁹ Kovbasa (n 168).

²¹⁰ Sterio (n 137) [488].

²¹¹ Kovbasa (n 168).

²¹² Bardelle and Mora (n 168).

²¹³ Kovbasa (n 168).

²¹⁴ Bardelle and Mora (n 168).

potentially fall within the investigative scope, particularly where their presence in operations has been substantiated.²¹⁵

5. Policy-level opportunities and coordination

At the policy level, on December 9, 2022, the Council of the European Union adopted conclusions urging member states to fully implement the Rome Statute's definitions of core international crimes and to make full use of universal jurisdiction. The council also emphasized the importance of coordination with the ICC and the Ukrainian Prosecutor General's Office, especially in supporting investigations into atrocities such as those allegedly committed by Wagner forces. The council further recommended the collection and sharing of evidence, support for witness testimony from Ukrainian refugees, and the provision of financial and technical assistance to national authorities.²¹⁶

C. Role of African states

This subsection focuses on the role of African states in exercising universal jurisdiction over war crimes, in particular torture, committed by Wagner Group members. The emphasis is not on crimes committed by Wagner on the African continent, but rather the potential of African courts to prosecute Wagner members for atrocities committed in Ukraine.

Reports show that Wagner Group's organized and systematic abuse towards civilians is not limited to its operations in Ukraine. According to evidence from West Africa, there are similar patterns of international crimes. In particular, their weaponization of social media to humiliate and degrade victims through circulating torture videos and other humiliating content may in itself constitute an international crime, as argued by Zarnsky in the context of Wagner Group's activities in Mali and the Central African Republic.²¹⁷ In this regard, African states have both the

²¹⁵ *ibid.*

²¹⁶ Anna Pinggen, 'Council: Strengthening Fight against War Crimes in Ukraine' (EUCRIM, 8 February 2023, updated) <https://eucrim.eu/news/council-strengthening-fight-against-war-crimes-in-ukraine/> accessed 22 June 2025.

²¹⁷ Sarah Zarnsky, 'The Wagner Group's Alleged Weaponization of Social Media in West Africa: How Sharing Degrading Content May Constitute an International Crime' (Opinio Juris, 23 June 2025) <https://opiniojuris.org/2025/06/23/the-wagner-groups-alleged-weaponization-of-social-media-in-west-africa-how-sharing-degrading-content-may-constitute-an-international-crime/>.

right and the obligation to invoke universal jurisdiction to investigate and prosecute Wagner members and uphold international justice and prevent further violations.

Despite earlier concerns about the issue of universal jurisdiction by external actors, particularly in cases perceived as targeting African leaders, the African Union [hereinafter AU] and several African states have increasingly affirmed the principle's importance, as long as it is applied fairly, within a framework grounded in international law, and with respect for African sovereignty.²¹⁸

Historically, the opposition of Africa to Universal Jurisdiction was not a rejection of the principle itself but of how it was applied. Nonetheless, Universal Jurisdiction was not dismissed. The AU emphasized that the principle was enshrined in Art 4(h) of the AU Constitutive Act, which empowers the Union to intervene in member states in cases of grave crimes such as genocide, war crimes, and crimes against humanity.²¹⁹

The Princeton Principles on Universal Jurisdiction serve as a primary normative framework for understanding and applying universal jurisdiction. Although non-binding, these principles establish the scope and practical implementation of universal jurisdiction for serious international crimes. These principles provide a normative framework for African states to initiate proceedings against members of the Wagner Group for their crimes committed in Ukraine. Wagner Group's excessive footprint in countries such as the Central African Republic, Sudan, Libya, Mali, Niger, and Mozambique creates the legal justification and moral inducement for African states to invoke universal jurisdiction under international law.²²⁰

Under Principle 1, universal jurisdiction permits prosecution based solely on the gravity and the nature of the crime, not based on where the crime occurred or the nationalities of the parties. This is important for addressing the war crimes (torture) committed by Wagner members in

²¹⁸ Dapo Akande, 'The African Union, the ICC and Universal Jurisdiction: Some Recent Developments' (EJIL: Talk! 29 August 2012) <https://www.ejiltalk.org/the-african-union-the-icc-and-universal-jurisdiction-some-recent-developments/> accessed 2 August 2025; Buhle Angelo Dube, *Universal Jurisdiction in Respect of International Crimes: Theory and Practice in Africa* (LLD thesis, University of the Western Cape 2015) [59].

²¹⁹ *ibid.*

²²⁰ *ibid.*

Ukraine, which are enumerated as “serious crimes under international law”. Therefore, there is no need for African states to prove any territorial or personal jurisdictional link to Ukraine in order to assert authority to prosecute. The only requirement is that the crimes fall within the *jus cogens* category, which these offenses do.²²¹

Even though these crimes were committed in Ukraine, Wagner Group’s violent presence in multiple African countries provides an additional layer of legitimacy and urgency. This operational activity means that members of Wagner may be present in, or transit through, African territories, hence fulfilling the presence requirement under principle 1. Moreover, their involvement in similar conduct and presence in African states extends the responsibility of African states both legally and policy-based to initiate prosecutions under universal jurisdiction.²²²

As established in Principle 3, African states may rely on universal jurisdiction even in the absence of domestic laws explicitly authorizing it. This provision empowers the courts to interpret international crime provisions broadly and act where legislation is silent.²²³

Since principle 5 categorically rejects the notion that official status shields individuals from responsibility for international crimes, regardless of whether Wager members claim ties to the Russian state or official functions, they will have no criminal immunity. This principle aligns with the precedents such as Hissene Habre and Pinochet cases, where sovereign immunity was dismissed in favor of justice for atrocity crimes.²²⁴

African states are obliged to support accountability by prosecuting or extraditing individuals accused of serious international crimes, and by assisting other states in pursuing justice. This would include examples such as: extraditing Wagner members to Ukraine or other states able to

²²¹ *ibid* principle 2.

²²² *ibid* principle 1.

²²³ *ibid* principle 3.

²²⁴ *ibid* principle 5; Sofie A. E. Høgestøl (2016) The Habré Judgment at the Extraordinary African Chambers: A Singular Victory in the Fight Against Impunity, *Nordic Journal of Human Rights*, 34:3, 147-156 [149].

prosecute them fairly, sharing evidence obtained from Wagner Group's activities in Africa, and cooperating with international mechanisms or third states pursuing accountability.²²⁵

Should Ukraine or any other state also seek to prosecute Wagner members, principle 8 sets out the balancing test for determining the most appropriate forum. African states may weigh: their physical custody of suspects; their interest in broader accountability for Wagner Group's regional activities; the feasibility and fairness of a domestic trial versus extradition; and the interest of justice, particularly where Ukraine faces obstacles to prosecution.²²⁶

In cases where domestic laws would be sufficient, states are urged to adopt legislation that facilitates universal jurisdiction.²²⁷ States such as Senegal,²²⁸ South Africa,²²⁹ and Uganda²³⁰ have already enacted such laws and could take the lead in setting a regional standard.

Additionally, courts and legislatures are encouraged to interpret or evolve national laws in a way that strengthens accountability and reflects emerging international norms.²³¹

Regardless of the theoretical and normative embrace of universal jurisdiction, the African states have historically been reluctant to exercise it. Except for the landmark case of Hissene Habre, there has been a notable lack of practice among African states in prosecuting international crimes under universal jurisdiction. An important factor in this gap is the lack of a coherent regional legislative framework. Although African states have extradition laws, which are an important mechanism in supporting the enforcement of universal jurisdiction, they often lack domestic

²²⁵ Princeton Principles (n 191).

²²⁶ *ibid* principle 8.

²²⁷ *ibid* principle 11.

²²⁸ Senegal, Act No. 2007-05 of 22 February 2007 Relating to the Implementation of the Rome Statute of the International Criminal Court.

²²⁹ South Africa, Statement by the delegation of South Africa on universal jurisdiction (UN Sixth Committee, 14th meeting, 76th Session, 26 October 2021) https://www.un.org/en/ga/sixth/76/pdfs/statements/universal_jurisdiction/14mtg_southafrica.pdf accessed 10 July 2025.

²³⁰ Uganda, Statement by the delegation of Uganda on universal jurisdiction (UN Sixth Committee, 12th meeting, 78th Session, 14 October 2023) https://www.un.org/en/ga/sixth/78/pdfs/statements/universal_jurisdiction/12mtg_uganda.pdf accessed 10 July 2025.

²³¹ Princeton Principles (n 191).

legislation that explicitly authorizes courts to prosecute international crimes committed extraterritorially by foreign nationals.²³²

However, there have been developments recently that indicate a shift in this trajectory. With the implementation of the Rome Statute, many African states have enacted domestic laws that incorporate (conditional) universal jurisdiction for international crimes, including war crimes.²³³

The South African case of National Commissioner of the *South African Police Service v Southern African Human Rights Litigation Centre and Another* affirmed the applicability of universal jurisdiction under the Implementation of the Rome Statute Criminal Court Act, signaling a judicial willingness to engage with this principle. This shows the growing African capacity to prosecute serious international crimes committed abroad, even by non-nationals, if the accused is present within the territory.²³⁴

Hence, African states are legally and practically positioned to address the accountability gap surrounding members of the Wagner Group. Wagner has not only operated in Ukraine, but also in several African states, including the Central African Republic, Sudan, Libya, Mali, Niger, and Mozambique. Wagner Group's operation in African territories gives legitimacy to states to prosecute their members. Taking into consideration the transnational nature of Wagner Group's conduct, African states could, under their Rome Statute implementation laws or the AU's Model Law on Universal Jurisdiction, initiate prosecutions against members of Wagner for crimes committed in Ukraine.²³⁵

The African Union's Model Law on Universal Jurisdiction, adopted by the AU assembly, provides a detailed and continent-specific framework for national implementation. Although the Model Law is a non-binding document, it serves as a legislative blueprint for African states seeking to strengthen accountability mechanisms. The Model Law advocates for the exercise of

²³² Hermanus Jacobus van der Merwe and Gerhard Kemp, *International Criminal Justice in Africa 2017* (2018) https://www.researchgate.net/publication/327436616_International_Criminal_Justice_in_Africa_2017 accessed 25 June 2025 [43].

²³³ *ibid* [44].

²³⁴ *ibid*.

²³⁵ *ibid* [45].

conditional universal jurisdiction by national courts and addresses key procedural elements such as extradition, judicial cooperation, immunity, victim reparations, and witness protection. Most importantly, this law recognises immunity only to the extent that no applicable treaty has waived it, aligning with Art 27 of the Rome Statute.²³⁶

In addition to these legal reforms, the Malabo Protocol, a binding instrument adopted by the AU Assembly, grants the African Court on Human and Peoples' Rights [hereinafter AfCHPR] international criminal jurisdiction. This includes corporate criminal liability, which is an innovative provision not found in other international legal instruments. This is particularly significant in the context of the Wagner Group, which has operated as both a paramilitary network and a corporate entity. African states could invoke the Malabo protocol's provisions to pursue accountability for these violations. Taking into consideration the extensive presence of Wagner across multiple African jurisdictions and its legal structure as a transnational enterprise, the AfCHPR could, in theory, provide a venue to hold Wagner and its members accountable, especially if its members or assets are located within African territories. This would demonstrate a regional commitment to global justice and reinforce the applicability of African legal instruments to crimes committed beyond the continent.²³⁷

1. Central African Republic: Absence of Universal Jurisdiction Framework

The Central African Republic [hereinafter CAR], despite being one of the countries most deeply affected by the operations of Wagner Group,²³⁸ lacks a specific domestic legal framework enabling the exercise of universal jurisdiction over international crimes.²³⁹ CAR is a State Party to the Rome Statute and has cooperated with the ICC concerning crimes committed in its

²³⁶ *ibid* [46].

²³⁷ *ibid* [47].

²³⁸ Office of the United Nations High Commissioner for Human Rights (UN OHCHR), *Central African Republic: Russian Wagner Group harassing and intimidating civilians – UN experts*, 28 October 2021 (archived 13 October 2023)

<https://web.archive.org/web/20231013145824/https://www.ohchr.org/en/press-releases/2021/11/car-russian-wagner-group-harassing-and-intimidating-civilians-un-experts> accessed 3 August 2025; Rondeaux (n 6) [160].

²³⁹ Amnesty International, *Universal Jurisdiction: A Preliminary Survey of Legislation Around the World* (5 October 2011) IOR 53/004/2011 <https://www.amnesty.org/en/documents/ior53/004/2011/en/> accessed 3 August 2025; Justice Beyond Borders, *Central African Republic Country Profile* (Justice Beyond Borders, n.d.) <...> accessed 3 August 2025 [19].

territory.²⁴⁰ however, it has not incorporated provisions into its national law allowing for the prosecution of international crimes committed abroad by foreign nationals²⁴¹.

Due to this legislative gap, CAR's capacity to prosecute members of the Wagner Group for war crimes committed in Ukraine is significantly limited. In the absence of domestic legislation authorizing universal jurisdiction, CAR's courts have no legal basis to assert jurisdiction over crimes that occurred outside its territory, and in which neither the victims nor the perpetrators are CAR nationals. As such, even if Wagner operatives present in CAR were credibly accused of war crimes in Ukraine, CAR's legal system would not be empowered to initiate criminal proceedings based on universal jurisdiction.²⁴²

2. Sudan: Legal Gaps and Challenges to Exercising Universal Jurisdiction

Despite the presence of the Wagner Group in Sudan,²⁴³ the country lacks a domestic legal framework that would enable the exercise of universal jurisdiction over international crimes such as war crimes committed in Ukraine.²⁴⁴ While Sudan is a State Party to the Rome Statute, its national legislation does not explicitly criminalize genocide, war crimes, or crimes against humanity²⁴⁵.

Crucially, Sudanese law does not recognize key doctrines such as command responsibility, nor does it exclude statutes of limitations for serious crimes, two essential doctrines for holding perpetrators accountable for violations of international law. Procedural barriers, including immunities for security personnel unless waived by superiors, further obstruct prosecution efforts.²⁴⁶

²⁴⁰ International Criminal Court, *Situation in the Central African Republic* (ICC-01/05, investigation concluded 16 December 2022) (ICC Outreach page) <https://www.icc-cpi.int/car> accessed 3 August 2025.

²⁴¹ Amnesty International (n 239) [19].

²⁴² *ibid.*

²⁴³ Rondeaux (n 6); Jeremy Howell, Peter Mwai and Grigor Atanesian, 'Wagner in Sudan: What Have Russian Mercenaries Been Up To?' (BBC News, 24 April 2023) <https://www.bbc.com/news/world-africa-65328165> accessed 3 August 2025.

²⁴⁴ Wayamo Foundation, *Domestication of International Crimes in Sudan* (Sudan Justice Hub information sheet <https://sudan-justice-hub.wayamo.com/information-sheet/domestication-of-international-crimes-in-sudan/> accessed 3 August 2025.

²⁴⁵ *ibid.*

²⁴⁶ *ibid.*

These legislative gaps, combined with weakened judicial institutions due to ongoing conflict, significantly limit Sudan's ability to initiate or sustain universal jurisdiction proceedings against Wagner members. Under these conditions, Sudan is currently not in a legal position to prosecute Wagner members for such crimes using universal jurisdiction.²⁴⁷

3. Mali: Limited Application of Universal Jurisdiction

Mali has taken a supportive stance toward the principle of universal jurisdiction in international fora. In its 2021 statement before the UN Sixth Committee, Mali described universal jurisdiction as a valuable tool for addressing serious violations of international law.²⁴⁸

Domestically, Mali has incorporated aspects of universal jurisdiction into its legal systems, in regards to crimes against humanity, offenses committed abroad by foreigners against the Malian state, human trafficking, and migrant smuggling. However, despite this affirmative legislative framework, Mali's application of universal jurisdiction remains selective and limited in scope. The relevant domestic provisions do not expressly confer jurisdiction over war crimes committed outside Mali's territory, nor do they create a broad legal basis for the prosecution of foreign nationals for such crimes under universal jurisdiction.²⁴⁹

This limitation poses challenges for any effort by Mali to prosecute members of Wagner for war crimes committed in Ukraine. While Wagner has operated within Malian territory, and Mali has expressed concern about cross-border violations of international law, the absence of a specific legal basis for universal jurisdiction over war crimes in Malian legislation restricts its ability to pursue accountability in such cases.²⁵⁰

²⁴⁷ *ibid.*

²⁴⁸ Government of the Republic of Mali, *Statement on the Scope and Application of the Principle of Universal Jurisdiction* (General Assembly Sixth Committee, 74th session, October 2021, unofficial translation) https://www.un.org/en/ga/sixth/74/pdfs/statements/universal_jurisdiction/mali.pdf accessed 3 August 2025.

²⁴⁹ Justice Beyond Borders, Mali Country Profile (Justice Beyond Borders), <<https://justicebeyondborders.com/country/mali/>> accessed 3 August 2025.

²⁵⁰ Rondeaux (n 6) [163].

4. Libya: Political Rejection and Legal Ambiguity Regarding Universal Jurisdiction

Although Libya has experienced Wagner Group activity,²⁵¹ it has not embraced universal jurisdiction as a basis for accountability. In official statements, Libya has affirmed the objective of combating impunity but maintains that it is premature to adopt universal jurisdiction as a legal principle. Libya has expressed concerns over the lack of clear judicial standards, rules, and mechanisms necessary to implement such a principle effectively. It also warned that applying universal jurisdiction without consensus and legal clarity risks politicizing the judiciary and undermining national sovereignty. As such, Libya currently lacks both the legal framework and political support necessary to prosecute members of Wagner for international crimes committed outside its territory, such as war crimes in Ukraine.²⁵²

5. Niger: A Clear Legal Basis for Universal Jurisdiction

Niger possesses one of the clearest statutory foundations for the exercise of universal jurisdiction among African states where Wagner has reportedly operated. According to Art 208 (8) of the Criminal Code of Niger, national courts have jurisdiction over genocide, crimes against humanity, and war crimes, regardless of where they were committed. This provision, notably, does not require a territorial, nationality-based, or protective link, aligning closely with the core rationale of universal jurisdiction.

These provisions allow Niger to prosecute members of the Wagner Group for war crimes committed in Ukraine, if such individuals are present in Niger. Unlike other states in the region, Niger's legislation explicitly includes the core international crimes and affirms their extraterritorial justiciability.

Having in consideration the presence of Wagner in Niger, Niger is legally positioned to initiate proceedings under universal jurisdiction. This makes it a potential jurisdictional forum for addressing the accountability gap for Wagner-related atrocities committed outside of Africa.

²⁵¹ Barabanov I and Ibrahim N, 'Wagner: Scale of Russian Mercenary Mission in Libya Exposed' (BBC News, 11 August 2021) <https://www.bbc.com/news/world-africa-58009514>.

²⁵² Ministry of Foreign Affairs of the State of Libya, *Statement on the Scope and Application of the Principle of Universal Jurisdiction* (UN GA Sixth Committee, 73rd session, 2018) https://www.un.org/en/ga/sixth/73/pdfs/statements/universal_jurisdiction/libya.pdf accessed 3 August 2025.

6. Mozambique: A Cautious Endorsement of Universal Jurisdiction

Mozambique supports the principle of universal jurisdiction in addressing impunity for serious international crimes but advocates for its application in a fair, non-selective, and depoliticized manner. In its UN General Assembly statement, Mozambique aligned with the African Group, emphasizing respect for state sovereignty and the need for a consensual framework developed through continued dialogue within the Sixth Committee.²⁵³

Mozambique's domestic legislation permits the prosecution of serious crimes by or against nationals and foreigners, provided the accused is present in Mozambique and has not been tried elsewhere. While its legal framework allows for limited application of universal jurisdiction, further legislative development would be needed to fully support prosecutions like those involving Wagner group members for war crimes committed outside Mozambique.²⁵⁴

²⁵³ Government of the Republic of Mozambique, *Statement on the Scope and Application of the Principle of Universal Jurisdiction* (General Assembly Sixth Committee, 79th session, October 2024 https://www.un.org/en/ga/sixth/79/pdfs/statements/universal_jurisdiction/15mtg_mozambique.pdf accessed 3 August 2025).

²⁵⁴ *ibid.*

V. Conclusion

This thesis explored the legal accountability of Wagner Group members for the war crime of torture in the Ukrainian conflict, with a potential for prosecution through national courts and international tribunals. While Wagner members are alleged to have committed a wide range of violations, this study focused specifically on torture due to its peremptory status under international law, the strong evidence directly linking Wagner members to committing acts of torture in Ukraine, and its significance for assessing accountability mechanisms for PMC members. The main objective was to determine whether Wagner members can be prosecuted based on individual criminal responsibility, irrespective of direct attribution to the Russian state. Even though state attribution remains a relevant consideration in international criminal law, this thesis has revealed that such attribution is not a prerequisite for holding accountable individuals for international crimes. Nevertheless, an examination of the relationship between Wagner and the Russian state has been conducted to clarify its potential legal implications.

The findings demonstrate that actions of individual Wagner members, including those directly involved in acts of torture or commanding, may fall under the doctrines of direct perpetration, aiding and abetting, and command responsibility. These frameworks allow for accountability based on individual actions and roles, rather than just their affiliation with a state.

Ukrainian courts have limited ability, and they face challenges in prosecuting Wagner members, even though they have extensive evidence of Wagner Group's involvement in torture, and the ICC has not yet taken specific action against members of PMCs. In this context, the exercise of universal jurisdiction by third states becomes increasingly important.

This principle is especially relevant for African states where Wagner has been active, including the Central African Republic, Sudan, Libya, Mali, Niger, and Mozambique. Wagner Group's presence and actions in these jurisdictions highlight the need for action. These activities also create a legal and factual connection that strengthens the prosecution's case.

A review of the relevant legal frameworks shows significant gaps. The Central African Republic and Sudan lack domestic laws that allow for universal jurisdiction, including key doctrines like command responsibility. Mali's jurisdiction does not include war crimes by foreign nationals

abroad, which limits its effectiveness. Libya recognizes the principle but opposes its application politically and legally, while Mozambique supports it in principle but urges caution and respect for sovereignty. Only Niger has a clear and functional legal foundation for universal jurisdiction. This makes it the only country among those reviewed that can currently prosecute Wagner members for torture committed in Ukraine.

In conclusion, this shows that there are legal ways to hold Wagner members accountable for torture. These mechanisms are available to competent national courts and international tribunals and are necessary to ensure accountability. While many jurisdictions face structural and political challenges, legal reforms and political commitment can create an effective means for prosecuting war crimes committed by private military actors. African states, particularly those with existing legal frameworks like Niger, have a special chance to address the accountability gap and contribute to global justice. By doing this, they would not only affirm that no one is above the law but also reinforce their role in shaping a rules-based international order where PMCs are held responsible for serious violations of international humanitarian law.

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