



HAL
open science

The Wagner Group and the Question of the Legal Attribution of the Acts of Private Actors to a State

William Letrone, Tony Cabus

► **To cite this version:**

William Letrone, Tony Cabus. The Wagner Group and the Question of the Legal Attribution of the Acts of Private Actors to a State. 2023. hal-04885785

HAL Id: hal-04885785

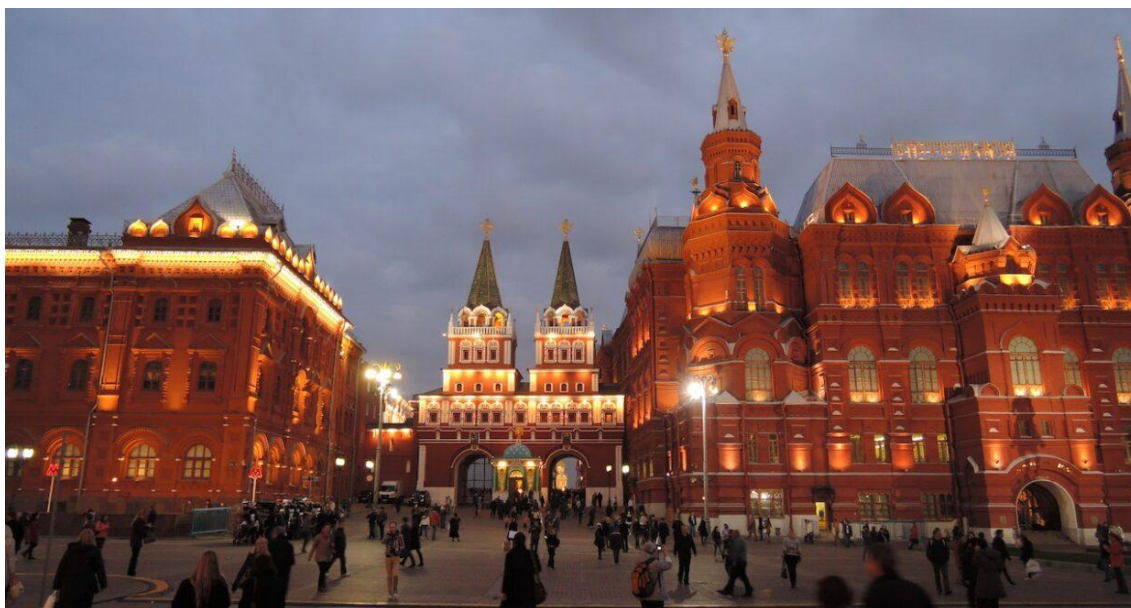
<https://hal.science/hal-04885785v1>

Submitted on 14 Jan 2025

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

The Wagner Group and the Question of the Legal Attribution of the Acts of Private Actors to a State



[William Letrone](#) and [Tony Cabus](#)

24 July 2023

Last update: 25/08/23 12:43

Recently President Putin officially revealed that the Wagner group had been financed by the Russian State. Specifically, he [declared](#) (see also [here](#)) having financed the group for around 1bln dollars between May 2022 and May 2023. With more and more details surfacing regarding the extent of the relationship between the Wagner group and the Russian Federation, the connivance between the two actors never looked so obvious. This is an opportunity to revisit the thorny problem of the attribution of private acts to a State under international law.

Wagner is a private military company composed of mercenaries and founded in 2014 by the business man and then close confidant of President Putin, Yevgeny Prigozhin. The exact size of the group is unknown, but it has been [reported](#) that at least 10k of its men, later joined by around 40k Russian convicts were active in Ukraine alongside the regular Russian forces. In parallel to its involvement in Ukraine, the group is conducting operations across Africa and the Middle-East in order to advance Russia's interests and tap resources from the territories where it is stationed. The Wagner group has drawn substantial attention for its reckless methods, many of which conflict with international norms.

The Violations in Question

In 2021, United Nations experts made [mention](#) of “systemic and grave human rights and

international humanitarian law violations, including arbitrary detention, torture, disappearances and summary execution” committed, among other, by personnel of the Wagner group in Central African Republic. The violences were particularly noticeable in Mali, where regular army forces and Wagner mercenaries were accused of having arbitrarily executed hundreds of detained civilians upon suspicion of being islamist fighters. Human Rights Watch denounced the “worst single atrocity reported in Mali’s decade-long armed conflict,” accusing the forces involved in the killings of war crime. Last March, experts of the UN *Working Group on the use of Mercenaries* also [reported](#) targeted attacks on civilian involving Wagner mercenaries in the context of the war in Ukraine. Extrajudicial executions of civilians constitute blatant violations of the right to life and the Geneva Convention if committed during wartime.

For the success of its missions, Wagner can count on the support of a vast disinformation [apparatus](#) tasked with manipulating the local populations into believing that the group’s presence is necessary and beneficial. Perhaps it is no coincidence that Prigozhin’s second private corporation happens to be the no-less infamous Internet Research Agency, (IRA), a troll farm located in St-Petersburg, which also came under the [spotlights](#) for its involvement in major transboundary disinformation campaigns. On this point, it is worth noting that disinformation campaigns may also constitute unlawful acts depending on the way the information is [framed](#), the [context](#) of the spread, and the [content](#) of the messages.

It transpires that Wagner, as a non-state actor, has violated several international law norms. Yet so far, the group has remained unchallenged by law. Although private actors can be prosecuted in their own capacity for violations of international criminal law, the recent declarations of the Russian President raise questions in terms of the responsibilities of the Russian Federation with respect to Wagner’s acts.

The Law of Attribution

Notwithstanding the question of the Russian Federation’s own negligence in preventing the actions of Wagner, a question worth asking is whether the Russian federation, as the group’s State of origin, main financer, and main provider of equipment, sees its international responsibility engaged for the unlawful activities committed by the later? In other words, can the violations committed by the Wagner mercenaries be attributed to the Russian Federation? Answers to this question are to be found in the law of attribution. Legal attribution requires that several preconditions are met before being effective. International law provides for various situations involving a State outsourcing dubious activities to private actors;

In principle, a State incurs responsibility for its wrongful conduct on the basis of direct responsibility when its organs have engaged in said unlawful conduct. It is specified in the influential Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)

that the status of organs of a State must have been given in accordance with the internal law of the State. In addition, the acts of persons or entities which are not organ of the State under ARSIWA Article 4 are still attributable to the State if they were formally empowered by it to exercise “elements of governmental authority.” While the concept of “governmental authority” remains broad, ARSIWA Article 5 requires a formal arrangement with respect to the exercise of specific governmental functions.

A case of direct attribution can also be made when the organs of a State or persons vested with governmental authority acknowledge *and* adopt the conduct of non-State actors as their own. This hypothesis may arise when a State endorses the misdeeds after the conduct is initiated by providing orders. A popular example can be found in the [US Diplomatic and Consular Staff in Tehran case](#), which involved decrees made the Ayatollah Khomeini through which he did not only approve reprehensible acts committed by militants, but also made them its own by providing orders about the continuation of operations.

Finally, a State may incur responsibility for the acts of private actors if it exercised sufficient control over the operations that led to the violations. Merely financing and equipping the private entity does not suffice. For indirect attribution to be possible, the support provided by a State to a private entity must have been instrumental in the commission of the violations. In other words, to trigger its responsibility for specific private acts, the State must have “[...] directed or enforced the perpetration of the acts contrary to human rights and humanitarian law alleged by the applicant State.” (Nicaragua case, 1986, para. 115)

Despite shy efforts from the ILC to soften the effective control test, and a jurisprudence of the ICTY leaning towards an “overall control test,” the regime of State responsibility for specific acts perpetrated by private actors has remained relatively [static](#) over the years.

Can Russia be Held Responsible for Wagner’s Actions?

Holding the Russian State responsible for Wagner’s actions would therefore necessitate one of the following three elements: an organic link, the adoption of Wagner’s conduct by Russia as its own, or proofs that the Russian Federation was exercising effective control over Wagner’s operations.

Regarding the first element, Wagner would have to be empowered by Russian law to exercise elements of governmental authority in order to be considered a State organ. Yet, despite being central to Russia’s power projection, and its participation in the Kremlin’s use of force, Wagner has not been empowered by law for its strategic function. On the contrary, Article 359 of the Russian criminal code prohibits recruiting, arming, financing mercenaries as well as using mercenaries in hostilities.

Still, with his recent [declarations](#), President Putin officially approved Wagner’s action in Ukraine. Following the mutiny, he acknowledged Wagner and thanked its members for

“defending” Donbass and Novorossiia while admitting that they were fighting together with the Russian armed forces to ensure the country’s future. Yet, approval alone fails to trigger Russia’s responsibility as long as Russia does not adopt Wagner’s conduct as its own, which arguably did not occur.

As for the effective control test, the degree of connivance between the two definitely became (legally) clearer when President Putin recently confessed having “fully financed” Wagner. These declarations, combined with [imagery](#) confirming the use by Wagner of equipment belonging to the Russian military throughout its missions might hold consequences for Russia’s indirect responsibility, even for actions anterior to the war in Ukraine. Despite this, attributing Wagner’s unlawful acts to Russia through effective control crucially remains a matter of evidence, as established by the ICJ:

“[The US] participation, even if preponderant or decisive, in the financing, organizing, training, supplying and equipping of the contras [...] is still insufficient in itself, on the basis of the evidence in the possession of the Court, for the purpose of attributing to the [US] the acts committed by the contras” (Nicaragua case, 1986, para. 115)

To conclude, more evidence on the timeline of the funding but especially on the degree of control exercised by Russia over Wagner would complete the legal picture. Unfortunately, the attribution of unlawful acts committed by a private actor is often hampered by the virtual impossibility to gather sufficient evidence of collusion going beyond the mere financing and equipping. This may appear frustrating when the collusion between the mercenaries and a State is obvious. With Belarus President Lukashenko now [eyeing](#) a collaboration with Wagner, it is time to call for the application of more flexible rules that could be less easily played around by States. This prospect could make use of due diligence since the negligence of States is often more easily provable than its active contribution. For example, Russia’s decision to integrate Wagner mercenaries into its regular armed forces without investigating or punishing the exactions could possibly constitute a failure of due diligence.

In the meantime, what is now made official with Putin’s declaration is that, by funding mercenaries, the Kremlin has violated its own law!



Dr. William Letrone is a research fellow at [Kobe University](#), Japan. He specializes in International Security, International Law and Human Rights law, and his doctoral thesis focussed on the law and ethics of psychological warfare.



Dr. Tony Cabus is a postdoctoral researcher at the [Walther Schücking Institute for international law](#) in Kiel, Germany.

Read more on this topic in the [Asian Journal of International Law](#).

Post Views: 2,470

Tags in this post

- [asian journal of international law](#)
- [AsianSIL Voices - Asian Journal of International Law](#)