



FORUM: First Committee (DISEC)

QUESTION OF: Implementing regulations regarding the deployment, recruiting, financing and training of mercenaries

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BACKGROUND OF THE TOPIC

"Private Military Companies" (PMCs) or "Armed Non-State Actor" (ANSAs) are commonly referred as Mercenaries. The primary services of such organizations include additional security, representing an independent actor in a conflict zone, intelligence operations and other military purposes. Mercenaries are profit-oriented and aim to supplement existing military forces with their advantages.

The advantages of mercenaries are manifold but the most important ones are ruthless efficiency and independence from political matters, which in turn is very convincing for possible, independent contractors. Member states tend to utilize mercenaries to maintain their political and security influence within a warzone and to stronghold their military strategies in conflicted areas. Governments tend to use mercenaries to execute military interventions that would otherwise cause political infringement that would lead to sanctions.

However, the use of mercenaries (PMCs) in the contemporary era has brought up ethical issues of their operations. One of the main problems concerning the deployment of mercenaries is the inability of a contractor to distinguish between "real" or ideologically driven mercenaries. If ideology was the reason for the mercenaries to take up the contract, they would be classified with the term of "foreign terrorist fighter". (Gaultier, Hovsepian, Hovsepian, Wadley, & Zerhdoud, 2001) This could spark the problem that in certain cases or violations conducted by mercenaries, the inability to determine their real motivation would hinder the trial and prosecution. The regulations of PMCs need to be upheld in order to pave way for the rule of law and enforcing governance to their regulations, financing, deployment, and their whole operations.

The contraction of mercenaries is not limited to governments, but also extends towards IDOs and NGOs which contract them mainly for additional security when operating in dangerous areas. The usage of mercenaries under these circumstances sparks a debate, whether mercenaries are operating as a Private Military Company (PMC) or as a Private Security Company (PSC). While the difference might seem trivial as both PMCs and PSCs have the goal to secure stability, assist armed operations and support other armed entities, but they operate under vastly different policies. These kinds of differences are often not adequately defined by the international convention. If this prolonged status quo is kept sustained, the financing, training and deployment of mercenaries will only proliferate crises and will not be of help when solving critical issues. Nevertheless, we can't disregard the fact, that the deployment of mercenaries is not limited to governments, but also various UN agencies, such as UNDP, UNHCR and UNICEF.

KEY DEFINITIONS

1. **Mercenaries:** According to the Article 47 of the Additional Protocol I to the Geneva Convention, mercenary is defined as (adopted from the convention):
 - a. is specially recruited locally or abroad,
 - b. does, in fact, participate directly in the hostilities,
 - c. is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party
 - d. is neither a national of a party to the conflict nor a resident of a territory controlled by a party to the conflict;
 - e. is not a member of the armed forces of a party to the conflict; and
 - f. has not been sent by a State that is not a party to the conflict on official duty as a member of its armed forces.
2. **War crime:** an act seriously violating the Geneva Convention committed by a group or an individual; although PMCs are exempt from the Geneva Convention, they have in the past committed actions which, if perpetrated by national soldiers, would be classed as war crimes.
3. **Private Military Company (PMC):** Is a company that provides armed combat or security services for financial benefits and not for politics. This term is also referred as the 'security contractors'.

CURRENT SITUATION AND KEY PROBLEMS

1. Violation of Human Rights from Their Unethical Conduct.

Violation of human rights became the key concern when addressing the unethical conduct of mercenaries. The UN working group has concluded in 2011 that mercenaries which mainly operate in African areas have committed severe human rights violations. The UN working group noted that they had violated basic human rights and the right of self-determination, in this case the former Ivory Coast president appointed 4.500 Liberian mercenaries, in order to keep his position of power, despite losing the 2010 election. (Kim, 2011) The United States are also being noted for using large numbers of mercenaries which totalled 260.000 contractors, being hired by the US Department of Defense, to support their military operations in the Middle East. The UN Commission on Human Rights stated in 1998 in document E/CN.4/RES/1998/6 "The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination" and called upon member states to take legislative actions to safeguard human rights and obliging mercenaries to comply with the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries in order to refrain from overthrowing and undermining an established government integrity or sovereignty. (RefWorld, 1998)

Human rights violations do not originate in individual crimes, but in an overwhelming amount of crimes that violate the human rights legislation. This has been seen involving a faulty implementation of the RoE, which lead to excessive use of force, unnecessary destruction, mutilation and execution by the mercenaries. Sierra Leone and Angola for example have witnessed the worst form of violations by the mercenaries. Unreliable sources of information and a lack of transparency by the member nations have worsened the situation as they are using mercenaries to hide their involvement with the warring parties. These kind of event also tend to happen predominantly in areas where there is inadequate monitoring of human rights as the prevalent conditions of war restrict observer access. (Gaultier, Hovsepian, Hovsepian, Wadley, & Zerhdoud, 2001)

2. Rule of Law Towards the Mercenaries

On the context of international law and its governance, the international community has tried to bring the mercenaries into compliance by citing to the Third 1949 Geneva Convention. However the convention doesn't stipulate the valid legal distinguishment between contractors and PMCs which brought up the issues when mercenary entities are operating in a war: (1) there will be an ambiguous perception in which the mercenaries will be treated just like a PoW as the convention forced the mercenaries to be affiliated with the official armed forces they are in service with; (2) this will pose a problem with the human rights perspective where such matters will cost the mercenaries to lose their rights as war prisoners. ((Isenberg, 2004) Another

consideration is how international regulations would be applicable to mercenaries regarding war crimes, unauthorised actions and complicate legal proceedings in order to bring offending mercenaries to justice. (Gaultier, Hovsepian, Hovsepian, Wadley, & Zerhdoud, 2001)

There is small evidence that depicts mercenary's legality in the scope of a customary international law, for example, under the article 4 of the Hague convention allows neutral countries to not allow the mercenaries to act as belligerents in neutral areas whilst article 6 absolves those neutral countries from obligations if the mercenaries cross the border to offer their service. Although article 17 codified that loss of neutrality's provisions could be applied on that matter. The principle of non interference, aggression, and perception on how to define the act that tangibly violates sovereignty is being debated.

3. Financing Issues for the Mercenaries

When it comes to the financing of mercenaries, countries with exceptional resources and "rich" in materials could obtain the PMCs services to be deployed in a conflict they are involved in. However, this will become a problem when they are in disregarding of international law on their field operations. The International Convention against Mercenaries itself completely prohibited its state parties to finance and contract mercenaries in their operations. The convention also totally bans the recruitment of mercenaries. However, there is a lack of an adequate legal instrument to serve as the alternative to this convention. The financing of the mercenaries itself is ranging from methods where the sender pays for the wages of the mercenaries to, the parties that are receiving the service are going to pay for the mercenaries, both of these ideas have the same intention where peacebuilding and the spirit of disarmament will be disregarded and prolonged conflicts will keep proliferating. (News 218, 2020)

4. Mercenaries Accountability to their Recruitment, Training, and Deployment

The recruitment of the mercenaries itself should suffice the terms stipulated by international instrument and any necessary domestic's legislations. The prolonged criticism against the mercenaries has been brought up because of the flawed legal instruments that prevent the mercenaries from being held accountable in accordance to the IHL and customary law. The position of PMCs on their deployment and their operations is in a "gray area" where no legal framework could persecute them in the case, that they are committing war crimes and similar. This violates the human rights and law of war alongside with its international norms. For instance, the deployment of a US PMC named Blackwater has brought up a scandal where the PMCs tortured its prisoners in Iraq and was involved in 200 incidents on the field in which their rules of engagement and procedural matters were disregarded. This issue has been heavily criticized by the UN Human Rights chief in Iraq that time in 2005.

MAJOR STAKEHOLDERS

1. United States = as a major power it has been involved in many armed conflicts and wars and small skirmishes around the globe. To secure their interests over large areas the US does not solely rely only to their expeditionary forces but also contracted PMCs to assist “wet-work operations”
2. Equitorial Guinea = During the 2004 Coup mercenaries were used to keep the president in office and to protect the oil’s interest in the country, with the involvement of several external parties.
3. Yemen & Saudi-led Coallition = The Houthis have imposed a large threat over the legitimate government of Al-Hadi, therefore Saudi-led coallition has endorsed “Popular Committees” to fight as mercenaries to support Al-Hadi’s forces. PMCs named Academi are also being used by the UAE armed forces to assist Saudi over the conflict in Yemen.
4. Syria = Bashar Al-Assad has reportedly using mercenaries from Iran and Hezbollah to suppress the Free Syrian Army rebels.
5. Switzerland: in 2006, Switzerland launched the Swiss Initiative to promote discussion between stakeholder countries, PMCs and civil society, aiming to set high welfare and human rights standards for PMCs; the Initiative is supported by both the UK and the USA.

QUESTIONS FOR DELEGATES

1. What are the solutions to resolve the flawed legal framework in order to provide a clear standing to prevent brute forces by mercenaries?
2. What are the recommended operating procedures and forms of weapons that could be use by the mercenaries to prevent excessive use of forces whilst still obliging to their mission in order to refrain from IHL violations?
3. What are the limits that should be decided to stand as provisions to enforce compliance from member states when standardizing the recruitment, training, financing, and its deployment to the mission?
4. What are the best practices to keep mercenaries accountable and abiding the laws while they are also being accomodated with their rights as fair employment?
5. Should the mercenaries be permitted at all, and if so, in what circumstances? Will some countries be given priority in terms of using them?

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