

ODUMUNC 2010
Issue Brief for the
GA Third Committee Social, Cultural and Humanitarian (SOCHUM)



Preventing use of mercenaries for violating human rights and self-determination

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Introduction

Mercenaries are not a recent invention. Soldiers ready to offer their services for money to governments or groups is an ancient theme, dating back at least to the ancient Greeks. *Soldiers of fortune* were used in many conflicts, and often presented as heroes. The perception of this phenomenon changed in 20th century with the growth of the United Nations system. The inglorious image of mercenaries was created in the context of Africa's decolonization. In the 1960's they were used against national liberation movements and hampered national self-determination. They became the destabilization factor in newly born states by fuelling local conflicts.

In the Twentieth Century, the issue was approached through the title *mercenaries*, typically meaning privately organized soldiers, often without any connection to any government, who threatened to overthrow legitimate governments, especially in Africa. Most international law and agreements on the issue deal with the mercenary phenomenon. More recently mercenaries have declined. Trials have dealt with some of the remaining cases. Instead, the dominant aspect of the issue is *Private Military Companies* (PMCs) hired by sovereign states to perform military roles they are not capable of themselves. PMCs stress they are not mercenaries; they serve states as clients. Sometimes this means assuring the security of legitimate governments. More often PMCs perform guard duties or supply and maintenance services. Because international law does not always cover such actors, their status is highly controversial.

International Standards

The International community is consequently trying to regulate the phenomena of mercenaries. The 1949 *Third Geneva Convention* does not distinguish between defense contractors and PMCs. Contractors need to possess valid identity issued by armed force which they accompany. Under this condition upon capture, a contractor will be treated as prisoner of war. *Protocol I* of the *Additional to the Geneva Conventions* from 1977 envisages that the contractor will be treated as a mercenary if engaged in combat. In such condition they are unlawful combatants and lose the right of war prisoner. Prior to the Protocol, mercenaries were formally distinguished from other fighters.

Important regional step to regulate the issue is The Organization of African Unity *Convention for the Elimination of Mercenarism in Africa* and prohibits both mercenaries and mercenarism.

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The document was created in 1977 and came into force in 1985. This regional convention is valid only for African states that ratified document.

In 1989, the U.N. General Assembly adopted the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*. The same year the Commission on Human Rights decided to appoint a Special Rapporteur on use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. One of his tasks was promoting the ratification of the Convention. The Convention entered into force in 2001. The United States did not ratify the Convention. Additionally in 2005 the Commission on Human Rights established the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination.

Mercenaries and the right to self-determination

The United Nations High Commissioner Office identify that mercenaries can operate in three different types of situations. The first is international armed conflict where mercenaries support one side. The second involves internal conflicts where third states use mercenaries to achieve their goals. Involvements of mercenaries in both situations can cause disintegration of states and thus result in denying the right to self-determination. The third type concerns the non-conflict situation when mercenaries are employed to execute changing of government by violent means. Such activities can be damaging to the state. It causes special threats to small countries with valuable natural resources because their small military capabilities make them vulnerable to mercenary activities.

Special concern is caused by PMCs. Their activities can influence internal affairs in the same way as ordinary mercenaries. Additionally, the government that hires such services has to consider financial expenses that in other ways would be spent for development.

Controversy

There are several legal issues concerning mercenaries that have not been resolved. The first issue is legal definition that would allow for easier identification of such persons or groups. The second issue is the question if the mercenaries' activities should be fully prohibited or regulated. The third issue is connected to its potential unlawful character. Should it implicate specific or

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ordinary existing offences like murder, assault etc. The fourth issue is responsibility for the activities of mercenaries. To what extent are mercenaries responsible for themselves, and the same for those who recruit and use them? What is the responsibility of states using mercenaries?

The involvement of PMCs in Iraq and Afghanistan put the topic on the global agenda and caused much controversy. In 2004, Paul H. Bremer, then head of Coalition Provisional Authority (CPA) in Iraq signed an order that gave legal immunity to American citizens associated with CPA and the U.S. government from Iraqi law. This rule became widely criticized after the shooting at *Nisur Square* in 2007 by employees of the American PMC Blackwater, when its guards killed 17 Iraqi civilians and injured about 30 more while securing State Department officials. The Iraqi government has accused Blackwater of unprovoked fire against civilians. After the incident the United States made all private contractors working in Iraq and other combat zones subject to prosecution by American courts. Blackwater, since renamed Xe, now faces investigation and prosecution. The problem is made especially difficult because some countries are dependent on PMCs, while others feel fundamentally threatened by such legally unrestrained operators.

Conclusion

In 1989, the General Assembly passed a resolution on The Use of Mercenaries as a Means to Violate Human Rights and to Impede the Exercise of the Right of Peoples to Self-Determination. Since then the resolution is continuously recalled by the GA, sponsored by members of the Non-Aligned Movement (NAM), as a sign of commitment to the issue.

In 2008, two important steps were made towards regulating the complex phenomena on mercenaries. In September 2008 in Geneva, 17 states agreed on the *Montreux Document*, a “Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict”. The document is not legally binding. Instead it established common standards for each signatory to implement themselves. It stresses that international law has application toward *Private Military and Security Companies* (PMSCs) and lists recommendations for states to regulate the issue. Finally, in October in Moscow the group of experts elaborated the draft of “the International Convention on Private Military and Security Companies.”

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The general consensus is that mercenaries need to be regulated. The problem is creating clear distinctions between mercenaries and PMCs, and the sense of what is acceptable among countries using such services.

Recommended Resources

Websites:

The Office of the United Nations High Commissioner for Human Rights - Working Group on the use of mercenaries as means of violating human rights and impeding the exercise of the right of people to self-determination. <http://www2.ohchr.org/english/issues/mercenaries/index.htm>

The independent website of the UN Working Group on the use of mercenaries as means of violating human rights and impeding the exercise of the right of people to self-determination <http://www.unwg.rapn.ru/>

The International Committee of the Red Cross Website - Section: Privatization of war: the growing use of private military and security companies. <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/privatisation-war?OpenDocument>

The Swiss Federal Department for Foreign Affairs - Section: Private military and security companies. <http://www.eda.admin.ch/eda/en/home/topics/intla/humlaw/pse.html>

PrivateMilitary.org – the website dedicated to PMSCs. <http://www.privatemilitary.org/>

Documents:

International Convention against the Recruitment, Use, Financing and Training of Mercenaries. <http://www2.ohchr.org/english/law/mercenaries.htm>

The Impact of Mercenaries on the Right of Peoples to Self-Determination. Fact Sheet No. 28. <http://www.ohchr.org/Documents/Publications/FactSheet28en.pdf>

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Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (Resolution from 2009).

<http://unispal.un.org/UNISPAL.NSF/0/OE1651D6B9CFBCB008525766900575990>

“The Montreux Document”. *Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict.*

<http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/intla/humlaw.Par.0057.File.tmp/Montreux%20Document%20%28e%29.pdf>

DRAFT. International Convention on Private Military and Security Companies.

http://www.unwg.rapn.ru/en/conventions/DRAFT_Convention_on_PMSCs_engl.doc

OAU Convention for the Elimination of Mercenaries in Africa.

<http://www1.umn.edu/humanrts/instree/mercenaryconvention.html>

General Articles/Reports:

Isenberg D. (2004) A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq, British American Security Information Council.

<http://www.basicint.org/pubs/Research/2004PMC.pdf>

Blackwater incident: What happened (2008, December 8). Retrieved on 1st October 2009 from BBC website: http://news.bbc.co.uk/2/hi/middle_east/4031603.stm

Iraqis speak of random killings committed by private Blackwater guards (2009, August 7).

Retrieved on 1st October 2009 from *The Times* website:

http://www.timesonline.co.uk/tol/news/world/middle_east/article6742135.ece

Musgrove M. (2009, September 12) *Court Rejects Suit Against CACI Over Abu Ghraib Torture. Contractor Granted Wartime Immunity.* Retrieved on 1st October 2009 from *The Washington Post* website:

<http://www.washingtonpost.com/wp-dyn/content/article/2009/09/11/AR2009091103285.html>

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Singer, P. (2005). Outsourcing War. *Foreign Affairs*, 84(2), 119-132.

<http://www.foreignaffairs.com/>

Video:

A Controversial Player in Iraq Retrieved. Retrieved on 1st October 2009 from *New York Times* website: <http://video.nytimes.com/video/2007/09/26/world/1194817098173/a-controversial-player-in-iraq.html>