



Sydney University United Nations Society

Week 12 MiniMUN The use of Mercenaries and associated violations of Human Rights Briefing Paper

Committee Mandate

The Third Committee of the General Assembly is chaired by H.E. Mr. Michel Tommo Monthe the member from Cameroon and deals with a range of agenda items relating to social, humanitarian affairs and human rights issues that affect people all over the world. The Third Committee, as part of the General Assembly, constitutes one of the chief deliberative and policymaking bodies dealing with human rights affairs, and pays close attention to information supplied by working groups of the Human Rights Council.

Background

The Additional Protocol to the Geneva Convention (1949) defines a mercenary as a person who takes part in an armed conflict, who is not a national or party to that conflict, but whose involvement is motivated by private gain; that is, compensation that generally exceeds that promised or paid to combatants of similar ranks and functions in the armed forces of that party. In recent decades Private Military and Security Companies (PMSCs) have emerged as a new method for outsourcing private combatants. These combatants have both participated in the violation of fundamental human rights and have been victims of human rights violations themselves, suffering appalling working conditions, contractual irregularities and inadequate remuneration. PMSCs have increasingly threatened the principles of sovereign equality, political independence, the territorial integrity of states and the self-determination of people to freely determine their political status and to pursue their economic, social and cultural development. Participating in executions, disappearances torture, arbitrary detention, human trafficking, forced displacement, and the confiscation and destruction of private property, PMSCs are notoriously used for committing politically motivated abuses of human rights that state forces would never be allowed to participate in. Whilst PMSCs are commonly associated with human rights atrocities committed in African nations, there have also been reports of mercenary activity in Chile, Ecuador, Columbia, and Haiti. PMSCs have also been involved in the operations of rebel groups in Somalia and the Taliban.

Additionally, in recent years, the United Nations has contracted PMSC to compliment their forces dispersed around the world. The notorious PMSC Blackwater has been contracted to assist in Afghanistan and Pakistan, illustrating that despite the increased use of PMSCs, there is little vetting and oversight of their activities. Blackwater guards have been responsible for approximately 200 shootings in Iraq since 2005, with 80% of these shootings being instigated by the combatants despite the specificities of their contracts which prohibit this behavior. It has also been discovered that some PMSCs among those operating in Iraq and Afghanistan are South African companies which committed crimes against humanity through their support of apartheid regime. The increased instance of PMSCs has led to an erosion of the state monopoly on the use of force. Not only does this contradict the fundamental principles of state sovereignty, but private companies remain largely

unregulated, inefficiently monitored and rarely held accountable for the international crimes and human rights abuses they have committed, posing a major governance problem for the UN.

Response and Reaction

The International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989 has provided a legal framework for the protection of human rights against abuses by mercenaries. However, with the increasing prevalence of PMSCs, the effectiveness and relevance of this covenant has been called into question. The Special Rapporteur to the commission on Human Rights proposed that a new legal definition of a mercenary be drafted to correspond with the changing nature of mercenary activity. It was also recommended that concrete proposals for protecting human rights against violations by mercenaries be elaborated. In response to his concerns, a working group was established in 2005 to investigate the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, with its findings recommending greater regulation and oversight of mercenary activities. Attention to this issue is of particular importance given the upcoming discussions regarding the implementation of an international regulatory framework for PMSCs due to take place later this month.

Issues to Consider

This issue must be adequately addressed if global peace and stability is to be maintained, the sovereignty of National Governments is to be preserved and in order to adequately protect fundamental human rights, particularly the self-determination of the politically vulnerable. Issues to be considered are:

- The traditional role of the state in perpetuating a monopoly of armed forces, and how, if at all, this element of state sovereignty is threatened by PMSCs.
- Regulatory and oversight mechanisms which would be effective to prevent Human Rights abuses by mercenaries as well as vetting systems to ensure PMSCs may be effectively utilised in humanitarian operations without fear of perpetuating rights abuses.
- The threat to the perceived neutrality of humanitarian programs caused by the use of PMSCs in humanitarian operations.
- The effectiveness of existing human rights and international law for dealing with the use of mercenaries, particularly the inadequacy of the definition of a mercenary which makes it almost impossible to apply to 'private contactors' or 'security guards'.
- The inherent link between human trafficking and private military and security companies and how the International Convention against Transnational Organised Crime, specifically the protocol to suppress trafficking in persons, could be drawn upon to prevent this practice.
- Collaboration with other UN bodies such as the United Nations Security Council to stem the proliferation of small arms and light weaponry that is associated with mercenary activity.



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The Third General Assembly,

Recalling its previous resolutions including resolutions 64/151 of 18 December 2009 and 65/203 of 16 March 2011 and Human Rights Council resolutions 15/12 of 30 September 2010 and 15/26 of 1 October 2010, as well as all resolutions adopted by the Commission on Human Rights;

Recalling further, the relevant resolutions and international instruments adopted by the General Assembly, the Security Council, the Economic and Social Council and the Organization of African Unity, *noting* in particular, the *Organization of African Unity Convention for the elimination of mercenarism* and the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*;

Reaffirming the purposes and principles enshrined in the Charter of the United Nations including those of sovereign equality, territorial integrity, political independence and the self-determination of peoples;

Reaffirming also that, by virtue of the principle of self-determination, all peoples have the right freely to determine their political status and to pursue their economic, social and cultural development;

Deeply conscious at the increased use of Private Military and Security Companies;

Deeply disturbed that the privatisation of warfare hinders the aims of the Geneva Conventions in regulating conflict;

Alarmed at the danger that the activities of mercenaries constitute to peace and security in developing countries;

Extremely concerned about recent mercenary activities in areas of armed conflict and the associated violations of human rights;

Convinced that, notwithstanding the way these groups are use of the definition given to them argues for their legitimacy, mercenaries or mercenary-related activities are a threat to peace, security and the self-determination of peoples and an obstacle to the enjoyment of all human rights by peoples;

1. *Condemns* any state permitting or tolerating the recruitment, financing, training, assembly, transit or use of mercenaries with the objective of overthrowing the Governments of States Members of the United Nations, especially those of developing countries, or of fighting against national liberation movements;

2. *Appreciates* the work already carried out by the Working Group of the Human Rights Council in developing an international regulating framework , including the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of private military and security companies;
3. *Noting with appreciation* the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination;
4. *Reaffirms* that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations;
5. *Urges* all States to take the necessary steps within the domestic jurisdiction to take legislative measures and ensure their territory or nationals are not used for the assembly, recruitment, financing, training, protection and transit of mercenaries;
6. *Requests* all States be cautious of the recruitment, training, hiring or financing of mercenaries by private companies offering international military consultancy and security services and impose a ban on such companies intervening in situations of armed conflict;
7. *Calls upon* States who utilise the assistance, consultancy and services of such military or security companies to establish national regulatory schemes to ensure their services do not impede the enjoyment of, or violate, human rights;
8. *Also calls upon*, all States to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries;
9. *Emphasises* its concern over the impact of the activities of these private companies in areas of armed conflict and *notes* that these companies and their personnel are rarely held accountable for violations of human rights and are not regulated to the same extent as combatants under the Geneva conventions;
10. *Appeals* to States to cooperate with and assist the judicial prosecution of those accused of mercenary activities in transparent, open and fair trials; and *urges* States to consider the trial or extradition individual mercenary involvement when it comes to their attention;
11. *Strongly condemns* any form of impunity granted to perpetrators of mercenary activities and to those responsible for the use, recruitment, financing and training of mercenaries;
12. *Decides* to remain actively seized of the matter.