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MERCENARIES IN WARFARE

Mercenaries are back in the news. Sir Mark Thatcher, son of former British Prime minister Margaret Thatcher, in January 2005 pleaded guilty in a South African court over his involvement in an alleged coup plot in the oil-rich west African country of Equatorial Guinea. He said that he was unaware of his equipment being used in an attempted coup. He was fined the equivalent of US\$500,000 and given a four-year suspended jail term for agreeing to finance a helicopter that was to be used by the coup plotters. A total of 15 other men have also been found guilty for involvement in the attempted coup.

Mercenaries generate more publicity than is perhaps justified by their actual military impact. Their deployments are not necessarily large enough to be key factors in winning wars but they certainly attract media attention to the conflicts in which they are involved.

For example, in 1997 mercenaries became a major political issue in the South Pacific. The then prime minister of Papua New Guinea (PNG), Sir Julius Chan, in a dramatic attempt to end the war of succession on the mineral rich island of Bougainville, secretly employed London-based Sandline International mercenaries to advise the PNG defence force on how to beat the island's guerrillas. Chan evidently thought that with an election due in June 1997, he needed a dramatic activity to demonstrate to the voters that even if the Bougainville crisis was not settled by the time that the election was held, at least it now appeared to be on the way to solution. But Chan miscalculated his own people. Mercenaries now have a public relations problem. In such an open society, PNG citizens would not tolerate a private deal involving a large sum of money to employ foreigners to kill their fellow citizens. On March 17 the PNG defence and police chiefs rebelled, calling on the Governor-General to sack Chan over hiring the mercenaries. The rebellion ended with Sandline's being expelled from the country. The election took place on schedule. Sir Julius not only lost the election but he even lost his seat.

A continuing problem with all debates over mercenaries is how they are to be defined and whether particular warriors are in fact mercenaries. The French Foreign Legion was created in 1831 and it recruits foreigners who serve for money. The Legion was created at a time when national armies were moving away from mercenaries and relying more on patriotism to attract their own citizens to the army. The Legion has the political advantage for French governments of being expendable – being composed of foreigners there are few French concerns about the Legion's combat losses. The Legion was often deployed in hopeless military situations.

A more recent example of the problem of defining “mercenaries” comes from the US’s operation in Iraq which uses “private military contractors” to do some of the work that would have previously been done by the US military. There is a controversy as to their legal status (see Peter W Singer “Corporate Warriors”, Cornell University Press, 2003). The international Red Cross movement estimated in 2004 that about 20,000 mercenaries were employed in Iraq (about 15 per cent of the then total of 130,000 US service personnel). As the US relies increasingly upon such contractors, so their firms become part of the “military-industrial complex” wielding power in the US Congress and becoming part of the defence exhibition and trade fairs business.

✓ Mercenaries in History

The traditional view of a “mercenary” was that the person fought for personal gain rather than loyalty, and was often not a subject of the ruler employing the warrior. The issue of financial gain has often been a determining factor in determining a “mercenary”.

Mercenaries used to be very important in warfare. They did not have the present public relations problem. Except for the legions of Rome, all the early troops in Europe were mercenaries because there were no standing armies. This continued well into the Middle Ages. At the Battle of Hastings in 1066, the invading Norman force was notable because it was virtually an international force of mercenaries from all over north-western Europe, with only a nucleus of Norman knights.

Mercenaries were useful partly because of the economics of war. There were few standing armies in those days. Instead, the mercenaries recruited and trained themselves – they were professional warriors. They were – to use a modern Japanese business term – to be employed “just in time”. Rulers were spared the expense of paying soldiers to sit around under-employed in barracks for most of their careers. They just hired them when they needed them and discharged them when the job was done.

The main exports of Switzerland for several centuries were young male mercenaries. To this day, the Pope’s Swiss Guards are a medieval army in a modern world. When Rome was sacked in 1527, the pope was defended by a group of Swiss mercenaries. They all died defending the pope. The new Swiss Guards are recruited from Swiss Catholics. Their colourful yellow, red and blue uniforms were originally designed by Michelangelo. They are sworn in at a special ceremony in the Vatican every year, on May 6, on the anniversary of the 1527 massacre.

Therefore, prior to about three centuries ago, most rulers did not have large standing armies: they were expensive to maintain and prone to the temptation to take over power themselves. It was more economically rational to employ forces as and when required on a contractual basis. The term “mercenary” in that era did not have the negative connotations that it now has. Like the word “mercy”, it had a Latin root derived from “reward”. Governments were not strong or well organized and so mercenaries provided a valuable service.

But the downside of contracting out was that mercenaries ran out when the money ran out. Additionally, assuming that there was money, the campaigns fought by mercenaries dragged on for a long time because the longer they fought the greater the amount of money they stood to receive. Also because the mercenaries had no home to go back to, they made the most of war. War was their core business.

About three centuries ago (international lawyers put the date precisely at 1648 at the end of the Thirty Years War in Europe), the modern nation-state system began with the rise of strong central governments. National anthems, national identities, national languages and national holidays were all invented to build up a national spirit of devotion and service to the ruler and country. These national governments recruited their own citizens, who were expected to fight for patriotic reasons rather than financial ones. Parents were expected to produce soldiers free of charge and their sons (and occasionally daughters) were recruited through the newly invented system of national patriotism. If there were really heavy demands for military personnel, then a system of national conscription could be introduced. The role of mercenaries therefore declined and became somewhat discredited.

But mercenaries have not disappeared because there has remained a market for them. As the PNG Sandline crisis showed, a foreign team of mercenaries may be employed because they have expertise lacking in a national force. In the post-World War II era, they have often been employed in African conflicts, such as Congo, Nigeria, Mozambique and Angola in the conflicts over the post-colonization process. The majority of those mercenaries have been white former soldiers of the former imperial powers.

The debate over “mercenaries” has been clouded by the rise of “private military companies”. The first British company was created in Britain in 1967 by World War II hero and founder of the Special Air Service (SAS) Colonel Sir David Stirling. His Watch Guard International employed former SAS personnel to train the military for Middle Eastern rulers. The high level of professionalism created an international benchmark. As noted above, the use of such companies is now common in the US operations in Iraq and Afghanistan. The US shows no signs of reducing its use of such forces.

✓ **Status under International Law**

The first international attempt to outlaw mercenaries was done by the Organization of African Unity (OAU). Africa has been the continent with the greatest deployment of mercenaries since World War II, such as the Congo in 1964 and Angola in 1975. Responding to the use of mercenaries on its continent, the OAU in 1977 adopted the Convention for the Elimination of Mercenarism in Africa. Article 1 defined a mercenary as “anyone who, not a national of the state against which his actions are directed, is employed, enrolls or links himself willingly to a person, group or organization whose aim” is to overthrow a government of an OAU member-state, to

undermine its independence, or territorial integrity, or to block the activities of any liberation movement recognized by the OAU. This approach was unusual because there was little attention to monetary gain.

Meanwhile, also in the early 1970s, work began on updating the four 1949 Geneva Conventions on armed conflict to make them more applicable to the new era of warfare, such as the use of guerrilla warfare. This resulted in the two 1977 Additional Protocols to the Geneva Conventions. I attended the Geneva Diplomatic Conference at which the two Protocols were written. African countries also used the Geneva Diplomatic Conference as an opportunity to restrict the use of mercenaries. Article 47 of Additional Protocol I (dealing with international conflict) states that a mercenary shall not have the right to be a combatant or to prisoner of war status; such a person is therefore just a common criminal under the national law of the country in which they are caught.

About two-thirds of the UN's membership have ratified Additional Protocol I and so have accepted the outlawing of the use of mercenaries. But there continued to be complaints about the use of mercenaries.

The UN decided to go further and so create a specific treaty on mercenaries: the 1989 Convention against the Recruitment, Use, Financing and Training of Mercenaries. This builds upon Additional Protocol I and contains an additional definition of a "mercenary": as a person using violence to try to overthrow a government or undermine the territorial integrity of a country, is motivated by private gain, is neither a national nor a resident of the state against which the act is directed, has not been sent by a state on official duty and is not a member of the armed forces of the state on whose territory the act is undertaken.

But UN member-nations have been slow to ratify it. Out of the UN's 191 member-nations, only about 10 per cent have ratified it (Britain and the United States are not among them). It entered into force in October 2001.

✓ **The Continuing Impact of Mercenaries**

Mercenaries may have only a small military impact but they can have considerable political and economic impact and so governments ought not to be so haphazard in their attitude towards the UN treaty.

First, as the PNG crisis showed, the problem of mercenary deployment can suddenly arise at any time, even in areas where there was no previous tradition of mercenary deployment. Bougainville is the South Pacific's longest-running war but no one predicted that a PNG government would try to use mercenaries to end it. The PNG Sandline crisis showed that mercenaries are not just an African problem.

Second, although the Cold War is over, peace has not broken out. There are as many conflicts underway today as at the height of the Cold War. War is not a dying business. Indeed, some disputes that were frozen by the Cold War have now been warmed up and so there is scope for mercenaries to be deployed. For example, some young Australians, whose forebears were from the Balkans, returned to former Yugoslavia in the 1990s to fight in the ethnic struggles then underway. They were fighting for traditional ethnic loyalty rather than financial motivation and so there was a continuing debate over whether they were “mercenaries” under international or Australian law.

A related problem is the breakup of nation-states. There are about 200 nation-states and the trend is towards fragmentation rather than the amalgamation of countries. This trend has two implications. Mercenaries may have more employment opportunities. A growth industry is the ethnic conflict in the former Soviet republics, where governments are recruiting former members of the Russian special forces (now made redundant by the cut back in Russian military expenditure). Additionally, very small countries (“micro-states”) are more vulnerable to possible take-overs and so mercenaries may be employed to operate a coup d'etat. For example, Mike Hoare (“Mad Mike”), a veteran of the Congo mercenary operation, in November 1981 arrived with 44 others in the Seychelles (population: 72,000) to attempt a coup d'etat, which was foiled by alert security staff.

The 2004-5 Equatorial Guinea mercenary scandal is itself an example of the new trend of previously obscure countries now getting on to the international stage because they are oil rich. With the increasing concern over the guarantee of safe supplies of oil in the Middle East, so developed countries have to find alternative sources of oil. The two emerging regions to note are the former Soviet Islamic republics in the south of the USSR and the coast off west Africa. (The US now gets as much oil from Africa as it does the Middle East). Small, resource-rich countries may become the targets of further mercenary operations.

Third, there is also a potential continuing supply of mercenaries as regular soldiers are demobilized. They can learn about the trade and employment opportunities in such magazines as “Soldier of Fortune” (published in the US). Mercenary activities are particularly appealing to people (usually young males) who have difficulty coping with demobilization and who still yearn for a life of excitement.

Fourth, mercenaries are not cheap. The PNG defence force rebelled against the use of Sandline partly because of the comparatively large sum of money that the Chan Government found for Sandline but which it could not find for its own defence force. The Chan Government could not find the money to provide welfare services (to win the hearts and minds of people) on Bougainville – but could find money for mercenaries.

Fifth, the use of mercenaries may provide scope for a government to intervene in the internal affairs of other countries. Some governments have found mercenaries (though they

would not use the term) useful as an arm of their foreign policy when they did not want themselves to be too closely identified with an operation (such as the US's use of Contras in Nicaragua). Their intervention is less visible and their political responsibility less direct. Additionally, the use of private contractors may enable a government to evade parliamentary or congressional scrutiny. A government could claim that the presence of its citizens in another country is simply a form of private enterprise, which has nothing to do with the government.

Sixth, mercenaries are more accountable to their shareholders than to international law. They have little interest in the international humanitarian law of armed conflict (the Geneva and Hague Conventions). Indeed, it is often their reputation for brutality that often attracts the adverse international publicity.

Seventh, the use of mercenaries may be more widespread than is commonly realized because some mercenaries are overlooked. There is considerable peace research interest in the transfer of weapons but the attention is focussed on the weapons themselves rather than the humans that are part of the package: the people who train personnel in the use and maintenance of the weapons.

Eighth, as in the PNG crisis, the knowledge that a government can resort to mercenaries relieves it of the problem of trying to find peaceful ways of settling disputes. Ironically, it was the Sandline crisis that eventually forced the PNG Government into mediation and so there is now a South Pacific peacekeeping operation underway on Bougainville.

Ninth, the international humanitarian law of armed conflict (the Geneva and Hague Conventions) restricts the level of violence. This helps build the post-conflict situation after a modern internal guerrilla struggle. If there were an even greater level of violence in the conflict – a real “eye for an eye” series of revenge attacks – then the conflict would become an endless series of localized feuds as revenge is sought for revenge. If there is to be an armed conflict, then it is best that its level of violence be kept as low as possible and be not allowed to get out of hand, so that there is greater scope for reconciliation for when peace eventually breaks out. The risk with mercenaries is that they will increase the level of violence.

Finally, in this “post-modern” world, with the blurring between boundaries between categories, there may be scope for transnational corporations to recruit their own military forces to safeguard their economic and trade interests. They may not be able to rely on some national governments in chaotic circumstances and so they need to take matters in to their own hands. Business has to go on despite the political and military turmoil. The Dutch East Indies Company did this three centuries ago and so there is nothing new under the sun.

Similarly, given the increasingly violent environment in which relief aid is provided – with some relief officials being deliberately targeted by warlords – will such agencies have to recruit their own private military companies to protect their workers and ensure that the aid gets through? How are we to sort out the legal status of all these humanitarian arrangements?



To conclude, mercenaries may not be a major military issue but they can still create political and legal problems. If all the world's governments agreed to the UN treaty, then it would help reduce the negative impact of mercenaries. For example, people would have some doubts about becoming mercenaries as per that treaty because they would have no assurance of a safe passage back home or to a third country of residence. Britain and the US can help this process of making the world a safer place by ratifying the 1989 UN treaty.

Meanwhile, we also need to clarify the status of private military contractors. The new era of warfare is not just a challenge for the military – it is also a challenge for international lawyers.

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