

BRINGING MERCENARIES TO JUSTICE: LEGAL FRAMEWORKS, CHALLENGES, AND CASE STUDIES IN ADDRESSING MERCENARISM IN FOREIGN ARMED CONFLICTS

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Abstract. Mercenarism, the act of engaging in armed conflict for private gain, presents unique legal challenges in the pursuit of justice. This article explores the international and national legal frameworks governing mercenarism, the specific obstacles to prosecuting mercenaries for actions in foreign conflicts, and real-world cases that illustrate accountability efforts. Drawing on treaties, conventions, national laws, and documented prosecutions, it highlights the complexities of jurisdiction, evidence collection, and political dynamics. Case studies, including the Luanda Trial of 1976, the 2004 Equatorial Guinea coup attempt, and the Wagner Group's contemporary operations, underscore both progress and persistent gaps. The analysis concludes with recommendations to strengthen enforcement mechanisms.

Key words: mercenarism, PMSC, International armed conflict, trial, International Humanitarian Law, The Wagner Group.

ПРИВЛЕЧЕНИЕ НАЕМНИКОВ К ОТВЕТСТВЕННОСТИ: ПРАВОВЫЕ ОСНОВЫ, ПРОБЛЕМЫ И ПРИМЕРЫ БОРЬБЫ С НАЕМНИЧЕСТВОМ В ВООРУЖЕННЫХ КОНФЛИКТАХ ЗА РУБЕЖОМ

Аннотация. Наемничество, акт участия в вооруженном конфликте ради личной выгоды, представляет собой уникальные правовые проблемы в стремлении к правосудию. В этой статье рассматриваются международные и национальные правовые рамки, регулирующие наемничество, конкретные препятствия для судебного преследования наемников за действия в иностранных конфликтах и реальные случаи, которые иллюстрируют усилия по привлечению к ответственности. Опираясь на договоры, конвенции, национальные законы и задокументированные судебные преследования, она подчеркивает сложность юрисдикции, сбора доказательств и политической динамики. Исследования случаев, включая Луандийский процесс 1976 года, попытку переворота в Экваториальной Гвинее 2004 года и современные операции группы Вагнера, подчеркивают как прогресс, так и сохраняющиеся пробелы. Анализ завершается рекомендациями по укреплению механизмов обеспечения соблюдения.

Ключевые слова: наемничество, ЧВК, международный вооруженный конфликт, судебный процесс, международное гуманитарное право, группа Вагнера.

Introduction. Mercenarism has a long history, evolving from medieval hired soldiers to modern private military entities operating across borders. International law defines a mercenary as an individual recruited specifically to fight in an armed conflict, motivated primarily by private gain, and unaffiliated with the official armed forces of a state involved in the conflict.¹

The resurgence of mercenary activities in conflicts such as those in Ukraine, Syria, and Libya has amplified the urgency of addressing their legal accountability.² This article examines the legal frameworks that regulate mercenarism, the challenges in prosecuting mercenaries for participation in foreign armed conflicts, and notable cases that demonstrate the application of these laws. It aims to provide a rigorous analysis grounded in reliable sources, balancing theoretical frameworks with practical examples.

Legal Frameworks Governing Mercenarism

The prosecution of mercenaries relies on a patchwork of international, regional, and national legal instruments. These frameworks define mercenarism, establish obligations for states, and outline accountability mechanisms.

International Humanitarian Law (IHL)

International humanitarian law provides the foundational legal definition of mercenarism through *Article 47 of Protocol I Additional to the Geneva Conventions of 1949*, adopted in 1977. This article identifies a mercenary based on six cumulative conditions:

1. Recruitment specifically for participation in a particular armed conflict.
2. Direct engagement in hostilities.
3. Primary motivation of private gain, with compensation substantially higher than that paid to regular combatants.
4. Neither a national of a party to the conflict nor a resident of its territory.
5. Not a member of the armed forces of a party to the conflict.
6. Not deployed by a state on official military duties.³

Individuals meeting these criteria are excluded from combatant or prisoner-of-war status, rendering them liable to prosecution as civilians involved in hostilities.⁴ However, Protocol I does not explicitly criminalize mercenarism, leaving enforcement to other legal regimes.

International Conventions

The *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*, adopted by the United Nations in 1989 and entering into force in 2001, offers a

¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art. 47.

² United Nations Security Council, *Report of the Panel of Experts on Libya*, UN Doc. S/2020/832 (2020).

³ Protocol I, Art. 47(2).

⁴ Henckaerts, J.-M., & Doswald-Beck, L., *Customary International Humanitarian Law* (Cambridge University Press, 2005).

broader framework. It criminalizes mercenary participation, as well as recruitment, financing, and training activities, and requires states to prosecute or extradite offenders.⁵ Despite its comprehensive scope, only 37 states have ratified the convention as of 2023, undermining its global impact.⁶

Regionally, the *Organisation of African Unity (OAU) Convention for the Elimination of Mercenarism in Africa*, enacted in 1977, addresses mercenarism as a threat to stability. It imposes liability on individuals, organizations, and states involved in mercenary activities and mandates criminal penalties.⁷ Ratified by 33 African states, it reflects a regional commitment to enforcement.⁸

National Legislation

Domestic laws vary widely in their approach to mercenarism:

- Russia: Article 359 of the Russian Criminal Code prohibits mercenary activities, with penalties ranging from 7 to 15 years' imprisonment.⁹
- South Africa: The Regulation of Foreign Military Assistance Act of 1998 bans citizens from engaging in mercenary activities abroad, imposing fines and imprisonment.¹⁰
- United Kingdom: The Foreign Enlistment Act of 1870 prohibits enlisting in foreign conflicts without government approval, though prosecutions are rare.¹¹

These national laws demonstrate diverse legislative responses, often shaped by historical and political contexts.

Challenges in Prosecuting Mercenaries

Bringing mercenaries to justice for participation in foreign armed conflicts involves significant legal, practical, and political hurdles. These challenges impede effective accountability and highlight gaps in the current legal landscape.

1. Jurisdictional Complexity

Mercenary operations frequently span multiple countries, creating jurisdictional disputes.¹² International law permits prosecution based on territoriality (where the act occurred), nationality (of the offender), or universality (for certain international crimes), but many states lack the domestic legal tools to assert extraterritorial jurisdiction over mercenarism.¹³

⁵ International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 4 December 1989, Arts. 2-5.

⁶ United Nations Treaty Collection, Status as of 2023.

⁷ OAU Convention for the Elimination of Mercenarism in Africa, 3 July 1977, Art. 1.

⁸ African Union, Status of Ratification, 2023.

⁹ Criminal Code of the Russian Federation, Art. 359.

¹⁰ Regulation of Foreign Military Assistance Act, No. 15 of 1998 (South Africa), s. 3.

¹¹ Foreign Enlistment Act 1870 (UK), s. 4.

¹² Singer, P. W., *Corporate Warriors: The Rise of the Privatized Military Industry* (Cornell University Press, 2003).

¹³ Cassese, A., *International Criminal Law* (Oxford University Press, 2008).

For example, a mercenary operating in Syria but recruited in Europe may evade prosecution if neither state claims authority.

2. Evidentiary Difficulties

Proving the elements of mercenarism, particularly the motive of private gain, requires robust evidence. Article 47 of Protocol I demands that a mercenary's compensation exceeds that of comparable soldiers, a criterion difficult to substantiate in chaotic conflict zones.¹⁴ Witness testimonies, financial records, and recruitment documents are often inaccessible or destroyed, weakening prosecutorial cases.

3. Political Will and State Complicity

States may tacitly or explicitly support mercenary groups to advance foreign policy objectives, reducing their incentive to prosecute.¹⁵ The Wagner Group's operations in Syria, allegedly backed by the Russian government, illustrate how state involvement can shield mercenaries from accountability.¹⁶ Political reluctance further complicates extradition and international cooperation.

4. Legal Ambiguities

The strict definition of a mercenary under international law excludes many modern actors. Employees of private military companies (PMCs) who provide logistical support rather than direct combat often fall outside the mercenary classification.¹⁷ Similarly, distinctions between mercenaries and ideologically motivated foreign fighters create enforcement inconsistencies.¹⁸

5. Lack of International Cooperation

Effective prosecution across borders requires extradition treaties and mutual legal assistance. Political tensions, such as those between Russia and Ukraine over Wagner Group activities, frequently obstruct such collaboration.¹⁹ Without coordinated efforts, mercenaries can exploit jurisdictional gaps to avoid justice.

Real-World Cases of Accountability

Real cases of mercenary prosecutions provide insight into the application of legal frameworks and the challenges encountered. The following examples, drawn from reliable sources, span different regions and eras.

¹⁴ Protocol I, Art. 47(2)(c).

¹⁵ Kinsey, C., *Private Contractors and the Reconstruction of Iraq* (Routledge, 2006).

¹⁶ Marten, K., "Russia's Use of Semi-State Security Forces: The Case of the Wagner Group," *Post-Soviet Affairs*, 35(3) (2019).

¹⁷ Liu, H.-Y., *Law's Impunity: Responsibility and the Modern Private Military Company* (Hart Publishing, 2015).

¹⁸ United Nations Working Group on the Use of Mercenaries, *Report*, UN Doc. A/HRC/39/49 (2018).

¹⁹ Cryer, R., et al., *An Introduction to International Criminal Law and Procedure* (Cambridge University Press, 2010).

1. The Luanda Trial (1976)

In June 1976, Angola prosecuted 13 British and American mercenaries captured during the Angolan Civil War. Recruited to fight for the National Liberation Front of Angola (FNLA), they were charged with mercenarism and war crimes. The trial, held in Luanda, resulted in death sentences for four defendants—Costas Georgiou, Andrew McKenzie, Daniel Gearhart, and John Barker—while others received prison terms ranging from 16 to 30 years.²⁰ Angola asserted jurisdiction based on territoriality, and the OAU Convention bolstered its legal stance. However, critics, including Western observers, questioned the trial's fairness, citing limited defense rights and political motivations.²¹ This case demonstrates a state's ability to prosecute foreign mercenaries but underscores concerns about judicial impartiality in politically charged contexts.

2. The Equatorial Guinea Coup Attempt (2004)

In March 2004, a group of mercenaries led by British former SAS officer Simon Mann was arrested in Zimbabwe while preparing to overthrow the government of Equatorial Guinea.

The plot, funded by private investors including Mark Thatcher, aimed to install an opposition leader and secure oil interests. Zimbabwe convicted Mann of weapons violations, sentencing him to seven years, later reduced to four.²² Following his release in 2007, he was extradited to Equatorial Guinea, where he received a 34-year sentence in 2008 for conspiracy and attempted coup. He was pardoned in 2009 after serving less than two years. The case showcased international cooperation between Zimbabwe and Equatorial Guinea but highlighted limited accountability for financial backers, who faced minimal consequences. It also exposed the difficulty of prosecuting organizers beyond the operatives themselves.

3. The Wagner Group in Ukraine and Syria (2014–Present)

The Wagner Group, a Russian private military company, has been active in conflicts in Ukraine since 2014 and Syria since 2015, allegedly with Kremlin support. In Ukraine, Wagner fighters supported separatist forces in Donbas, while in Syria, they bolstered the Assad regime and secured oil fields. Evidence of war crimes, including executions and torture, has emerged from both theaters.²³ Ukraine has prosecuted captured Wagner mercenaries as illegal combatants, with sentences ranging from 10 to 15 years, relying on its criminal code and territorial jurisdiction.

²⁰ Burchett, W., & Roebuck, D., *The Whores of War: Mercenaries Today* (Pelican Books, 1977).

²¹ Stockwell, J., *In Search of Enemies: A CIA Story* (W.W. Norton, 1978).

²² Roberts, A., *The Wonga Coup: Guns, Thugs, and a Ruthless Determination to Create Mayhem in an Oil-Rich Corner of Africa* (PublicAffairs, 2006).

²³ Marten, K., *supra* note 17.

In contrast, Russia has not pursued legal action against Wagner members, despite Article 359 of its Criminal Code, reflecting state complicity.²⁴ This disparity illustrates how political dynamics and jurisdictional limits hinder consistent accountability.

Conclusion. The prosecution of mercenaries for participation in foreign armed conflicts remains fraught with challenges. International humanitarian law and conventions provide a foundation, but their effectiveness is curtailed by narrow definitions, limited ratification, and enforcement gaps. National laws offer additional tools, yet their application varies widely. Real cases, such as the Luanda Trial, the Equatorial Guinea coup attempt, and the Wagner Group's operations, reveal both the potential for accountability and the persistent obstacles of jurisdiction, evidence, and politics. To enhance justice, states must broaden legal definitions to encompass modern mercenary entities, strengthen extraterritorial jurisdiction, and foster international cooperation. Only through such reforms can the destabilizing impact of mercenarism be effectively addressed.

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