

Mercenaries as a Means of Violating Human Rights: The “Syrian National Army” as a Model

Introduction:

In addition to the up-to-date technologies produced by the various sides to the conflicts that the world is bearing witness to, ones that can bring to an end the lives of countless humans, risk nature and threaten the destruction of infrastructure by a thing as simple as a press of a button, resting somewhere overseas, these sides seek the deployment of intercontinental militias, which fight, kill and commit acts of pillage for no reason other than private gains, showing no regard to whether the war they are participating in is legal or not. The deployment of such militias skyrocketed in the past a few years. Worse yet, private military and security companies were founded for this end only, which are registered in the county of foundation and are contracting with the conflicting groups to supply them with these militias, which to attempt containing and restraining the international community has put in force a number of international conventions and instruments.

This is not to mention that many of the military forces—supposedly built up for the noble goals of protecting civilians from the tyranny of regimes in power and liberating them from their oppressive rules—have wavered from these goals and turned into means used for the execution of other agendas that do not belong to the mentioned noble ends. They opted for intervening in the armed conflicts of other States, boosting the acuteness of the dispute, violating human rights

in these States and depriving their peoples from their natural right to self-determination without outside interference. It is that what makes the Turkey-backed “Syrian National Army”, which militants head to fight in Libya besides the Government of National Accord, the best example to explore.

In this research paper, therefore, we will attempt to frame a definition of mercenaries in accordance with international treaties and conventions and to find out how fit are these definitions and qualifications when it comes to the Syrian militants who went to fight in Libya, as well as to indicate the legal obligations that encompass the practice of mercenarism and similarly the legal obligations involving the parties baking these militants. We will also seek to recognize the legislative aspect of the invested international efforts, which aim to eliminate or at least impose restrictions on this phenomenon and whether the efforts made are up to the risks posed by this phenomenon and the role it plays in undermining international peace and security.

The Definition of Mercenaries and the Legal Qualifications of Mercenarism:

Until recently, international conventions lacked an indication to or a definition of mercenaries, for the first mention of the word mercenary is to be found in the Hague Convention of 1907, where the effect of Article 17 is that “an individual who acts in favour of a belligerent by taking up arms as a mercenary or private military contractor cannot avail himself of his neutrality.” Nonetheless, we believe that the reported article did not come up with a novel addition to the practice of mercenarism, given that the person participating in hostilities is naturally not neutral, whether a national of any of the Parties to the conflict or not. Though many in number, the international treaties and conventions, addressing war and armed conflict, have

dodged investigating into the matter, since the four Geneva Conventions of 1949, which are the backbone of the international humanitarian law, have approached in detail the legal situation of fighters, prisoners, civilians, as well as the dead and civilian objects but neglected the issue of mercenaries despite its importance.

The matter remained thus until the first Protocol Additional to the four 1949 Geneva Conventions (Protocol I) was adopted, the Article 47 of which defined a mercenary as “any person who: is specially recruited locally or abroad in order to fight in an armed conflict; does, in fact, take a direct part in the hostilities; 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; is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; is not a member of the armed forces of a Party to the conflict; and has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.” While the article denies a mercenary the right to be a combatant or a prisoner of war, Protocol I applies only to international armed conflicts and no articles on mercenaries are included in the second Protocol Additional to the four 1949 Geneva Conventions (Protocol II), which was adopted in 1977 and dedicated to armed conflicts not of an international character. Accordingly, mercenaries taking part in such conflicts are ruled out of the conventions and do not fit into the mentioned definition.

This issue, namely mercenaries involved in armed conflicts not of an international character, was resolved when in 1989 the United Nations managed to adopt the International

Convention Against the Recruitment, Use, Financing and Training of Mercenaries which entered into force on 29 October 2001, after the twenty-second State signed it.¹ Despite the similarity between the definition proposed by the Convention and that in Article 47 of Protocol I, the Convention of 1989 mentions armed conflicts without any specific reference to their character, meaning that they incorporate both international armed conflicts and armed conflicts not of an international character. The Convention's text was, thus, absolute, and an absolute text implies absolute definitions, while Protocol I was international armed conflicts-specific. Paragraph 2 of Article 1 of the Convention of 1989 states that taking part in acts of violence aimed at overthrowing a Government or otherwise undermining the constitutional order of a State,² when the above-mentioned conditions are met, is a practice of mercenarism. This Convention did not only address persons practicing mercenarism, but it also involves those who recruit, use, finance or train mercenaries, considering committing any of these acts **an offence**. The Convention also considers the attempt at committing any of these acts an offence, under the effect of Article 4, which indicates the seriousness of these activities that the Convention's Preamble describes as nefarious activities that must be of grave concern to all States.

It is important to mention that this Convention did not address individuals (natural persons) exclusively, but it also addressed States Parties and obliged them to refrain from recruiting, using or financing mercenaries and taking all practicable measures to prevent

¹ This Convention was adopted on 4 December 1989 by Resolution 44/34 of the General Assembly of the United Nations.

² This is useful as it will end the controversy that is to arise sometimes when acts of violence amount to an international armed conflict or an armed conflict not of an international character. That is the perpetrators of the offences listed by the Convention must be held accountable regardless of the character of the conflict or the violence under which these offences are claimed to have been committed.

preparations in their respective territories for the commission of those offences within or outside their territories (Article 6). The Convention, under Article 9, also necessitates that States Parties establish their jurisdiction over any of the offences it lists and the need to develop and enhance international co-operation among States for the prevention, prosecution and punishment of such offences (Preamble), which requires that States Parties make legislative amendments that achieve the desired purposes of the Convention, including the ones relating to extending their judicial powers to cover this type of offences or the ones relating to determining the penalties that fit those offences since the Convention did not stipulate penalties, in keeping with the criminal and penal policy of each of the States Parties, which take into account the grave nature of those offences (Article 5).

One of the claims against the present Convention is that it did not observe the issue of private military and security companies, which recruit, finance and use mercenaries in different parts of the world. It seems that the political agendas and the powers of the States hosting these military and security companies have impeded including the acts committed by these companies in the articles of the Convention, for we have come to know that over 80% of these companies are registered in the United States of America and Britain.³ Worse still is that numerous violations of human rights are being committed by members of these companies, who are actually escaping accountability for several reasons, including that some Governments have sealed private contracts with these companies, which grant them immunity from prosecutions.⁴ It is well known

³ A note submitted by the Secretary-General to the 64th session of the General Assembly of the United Nations on 20 August 2009, under the title: "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination".

⁴ Under order 17 issued by the Coalition Provisional Authority, private security contractors are not to be prosecuted by Iraqi courts for the violations they might commit during their military and security operations in

that when armed individuals are not subject to the control or the laws of the State, dramatic events take place and are unacceptable, for no one can be immune from prosecution for criminal offences and human rights violations.⁵

Legal Consequences of the Crime of Mercenarism:

The Preamble of the Convention, the subject matter of this paper, stresses that this activity—mercenarism—violates the principles of international law, such as those of sovereign equality, political independence, territorial integrity of States and self-determination of peoples. The Secretary-General of the United Nations, in his note submitted to the General Assembly on 20 August 2009, reported that the use of mercenaries is a means of violating human rights and impeding the exercise of the right of peoples to self-determination. There is no doubt that those who place their bodies and military resources in the service of who pays more, without looking into the reasons of the war or its repercussions, and whose essential and primary goal is money and gains would not express concern for the issue of human rights and would seek obtaining money regardless of the means, even if it meant killing civilians, children and elderly who are not taking active part in the hostilities, seizing or destroying properties and civilian objects, kidnapping civilians and demanding ransoms from their relatives, torturing detainees and forcibly disappeared and other heinous acts, as long as they would function to provide them with

Iraq. 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 people to self-determination to the 18th session of the Human Rights Council on 4 July 2011.

⁵ Ibid. A note submitted by the Secretary-General to the 64th session of the General Assembly of the United Nations on 20 August 2009.

an extra income, additional to the compelling revenues and salaries paid by the Party or Parties they are to work for.

There is no doubt that these activities and breaches are a blatant violation of the human right to life, liberty and security of person, the right to own and use property, the right to learn, to freedom of movement and to enjoy healthcare, and other basic human rights enshrined in international covenants and instruments, especially the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. 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 has prepared a number of reports which claim that human rights violations have been committed by mercenaries and private military and security companies, some of which have addressed grave human rights violations including unlawful killing of civilians, alleged threats and violence against human rights defenders, and carrying out deportations. The phenomenon of using mercenaries has witnessed a tendency, where mercenaries are not only recruited to overthrow and undermine regimes, but are also used by Governments to suppress and silence opposition movements.⁶

There is no doubt that the practice of mercenarism violates the purposes of the United Nations, affirming the need to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to peace, as well as bring about

⁶ Report submitted by 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 to the 18th session of the Human Rights Council on 4 June 2011.

peaceful means to resolve international disputes which might lead to a breach of peace,⁷ for resorting to mercenaries who take part in hostilities with the aim of earning money, without looking at the eligibility of this or that Party, as long as material gain is their primary trigger, will destabilize international peace and security, will complicate the intensity of the ongoing conflict, and will constitute a major obstacle to the endeavors aimed at resolving the conflict, given that their gains will stop when the fighting stops. The use of mercenaries in conflicts undermines the principle of the sovereign equality of States and their political independence, since such use is a use of force by a Party against the integrity of territory and political independence of the other Party, which stands in direct opposition to the principles of the United Nations.⁸

The gravest danger posed by this phenomenon, in addition to the risks and challenges that we mentioned earlier, is perhaps manifested in the issue of preventing or impeding the exercise of the right of peoples to self-determination— a right considered one of the basic human rights and one of the basic principles of international law, which was affirmed in several international conventions⁹ and the resolutions of the General Assembly of the United Nations.¹⁰ Peoples should be given the opportunity to exercise this right, both the internal aspect of it, namely to pursue freely their economic, social and cultural development and the right of every citizen to take part in the conduct of public affairs at any level without discrimination, and the

⁷ See Article 1 of the Charter of the United Nations of 1945.

⁸ See Article 2 of the Charter of the United Nations of 1945.

⁹ See Article 1 of the Charter of the United Nations of 1945 and Article 1 of the International Covenant on Civil and Political Rights, as well as Article 1 of The International Covenant on Economic, Social and Cultural Rights.

¹⁰ Of which we list: Resolution 1514 (XV) on 14 December 1960, resolution 626 on 12 December 1952, resolution 1803 (XVII) on 15 December 1962, resolution 2625 on 24 October 1970 and resolution 2955 on 12 December 1970.

external one, that is all peoples have the right to determine freely their political status and their place in the international community without outside interference.¹¹ There is no doubt that the participation of mercenaries in the conflict, who are not affiliated to any of the Parties to the conflict as mentioned earlier in the paragraph where a definition of a mercenary is given, is considered an outside interference that will impede the exercise of the right of peoples to self-determination.

The Legal Qualification of the Militants of the “Syrian National Army” Present in Libya:

That we have discussed the definition of mercenaries in accordance with international conventions and treaties, especially the United Nations Convention of 1989, to which Syria has been a State Party since 2008,¹² we note, with certainty, that this definition and the conditions that need to be met as to apply the label mercenary to any unit or military body, as stated in the above-mentioned conventions which garble with mercenarism, are fully applicable to the individuals operating under the banner of the so-called “Syrian National Army”— which the Turkish State backs and who are mobilized to Libya to fight alongside the Government of National Accord, headed by Fayez al-Sarraj, against the forces of General Khalifa Hufter,¹³ for these

¹¹ General Recommendation 21, the right to self-determination, the 48th session of the General Assembly of the United Nations in 1996.

¹² See the Annex to note submitted by the Secretary-General to the 64th session of the United Nations General Assembly on 20 August 2009, under the title: “Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination”.

¹³ According to a report published by the Syrian Observatory for Human Rights on 2 February 2020, the number of Syrian mercenaries sent to Tripoli has amounted to 4700 fighters, who operate under the following factions: Mu'tasim Division, Sultan Murad Division, Hawks of the North Brigade, al-Hamzat, al-Sham Legion, Suleyman-Shah Brigade and Samarkand Brigade. The number of deaths among their ranks, however, is 80 fighters. The website of the Syrian Observatory for Human Rights, last visited on 6 March 2020.

http://www.syriahr.com/?p=360367&_cf_chl_jschl_tk=__8e13448804fd1c3b859235f87bdc85b675b95603-1583498748-0-Ac5WWp-ck5PsgixUXMDmFXj1y7DqKGMGwussLYEarzjrGtdbchXSLDUSQdArpYVcCackvtDpNDPgakfKkipBqqIIAycA9dL_hG5g5MeQwOVRm821yGu-hc3BSTigXeZhJMjyaGrijPtFnsq0-

Syrians, currently present in Libya, are not nationals of any of the Parties to the conflict and are neither citizens of the Libyan State nor individuals who have settled down there. Additionally, none of these individuals seeks any political objective by taking part in the conflict other than obtaining the moral and financial gains that Turkey pays them in exchange for enabling it to implement its agendas contained in the agreements it concluded with the Government of al-Sarraj, with which Syrians have no interest whatsoever.¹⁴

What we mentioned applies, of course, to pro-Assad regime fighters whom Russia has also moved to Libya to fight within the ranks of General Khalifa Hufter against the forces of al-Sarraj, which include Syrians for their part as we indicated above, in addition to the forces coming from Afghanistan, Chechnya, Iran, Iraq, Lebanon and other countries with support from and coordination between the Syrian regime, Russia, and Iran, an act with which the Syrian regime aims to kill and displace Syrians. However, we will investigate into this issue further on another occasion since this paper's focus is the mercenaries of the "National Army". The reader can approach the various groups of mercenaries indicated in this paragraph using the definitions and qualifications applied to the fighters of the "National Army", which he/she is to find as almost identical on the legal level.¹⁵

[WR1V7IjLcqG01rleHKAtdTqhILOMrDdj3ujondepPphyjFeNCdy1rNT9Z-G-Zbbso48XsNjiuOrdjh-Uu2jLxNVdJITKdy7i9Gg1TTQTqY4dVShPEIYJdMam-3yxXZqNHnkB1Oo9z9rIdi6kOcZ6z167B.](https://www.theguardian.com/world/2020/jan/15/exclusive-2000-syrian-troops-deployed-to-libya-to-support-regime)

¹⁴ According to a report published by *The Guardian* on 15 January 2020, the fighters sent to Libya have signed six-month contracts with the Government of National Accord and the Turkish Government to fight in Libya in return for \$2,000 a month, in addition to which they have been promised Turkish nationality. The report is available on the following link: <https://www.theguardian.com/world/2020/jan/15/exclusive-2000-syrian-troops-deployed-to-libya-to-support-regime>.

¹⁵ A news article by the *Le Monde* published in Arabic on the website of *Syria TV* on 6 March 2020. The link to the article: <https://www.syria.tv/اللومند-مرتزقة-تابعين-للأسد-يصلون-ليبيا-للقتال-إلى-جانب-حفتر>.

The mobilization of Syrian fighters to Libya, where they fight alongside one of the Parties to the conflict, is in itself an offence according to the United Nations Convention of 1989, the subject matter of this research paper. Accordingly, these persons must be held accountable for this offence, whether by the Libyan national courts (the place where the offence is perpetrated) or the Syrian courts (the State of the perpetrator's nationality and place of residence), bearing in mind that the judicial systems in the two States cannot hold such trials at the present time, since the Government of al-Sarraj is the one who is bringing in the mercenaries and the fact that the Government of the Syrian regime itself is bringing in mercenaries from different nationalities to Syria while sending Syrian mercenaries to the other Party to the conflict in Libya in cooperation with Russia. It is also known that the judiciary system in the two States is neither impartial nor independent from the executive authority. Nonetheless, trials could be held before special international tribunals that are established for this purpose. We did not mention the role of the International Criminal Court in this regard because the subject-matter jurisdiction of this court does not extend to this type of offences.¹⁶

It is also necessary to hold accountable all those who are proven involved in recruiting those mercenaries, such as the leaders of the factions, operating under the "National Army" and the Prime Minister and the Minister of Defense of the Syrian Interim Government who adopted the formation of the "National Army" in 2017,¹⁷ which in 2019 declared the merger of the factions of the "National Army", active in the "Euphrates Shield" and the "Olive Branch" areas,

¹⁶ See Article 5 of the Rome Statute of the International Criminal Court of 1998.

¹⁷ A news article published in Arabic by *Enab Baladi* on 30 December 2017, titled: "Interim Government Announces Foundation of Syrian National Army". The article is on the following link: <https://www.enabbaladi.net/archives/194981>.

rural Aleppo, with the factions of the “National Front for Liberation”, active in Idlib, Hama, Aleppo and rural Latakia under the unified military umbrella of the Ministry of Defense of the Syrian Interim Government.¹⁸ The Parties to hold accountable also include all who prove to have been engaged in the process, such as decision-makers under the National Coalition for Syrian Revolutionary and Opposition Forces, which functions as the political façade of the Syrian Interim Government and the one granting it confidence and Turkish officials who directed the recruitment of mercenaries and paid them with money from the Turkish State’s treasury, as implied by the terms of the Convention of 1989.

It is necessary to hold those mentioned above accountable for the offence of mercenarism or the recruitment, financing and training of mercenaries as appropriate, in addition to other offences that might have allegedly taken place in Libya, especially since they are already accused of committing many war crimes and offences against humanity, such as extrajudicial killing, arbitrary detention, forced disappearance, keeping hostages, torture, destruction, robbery and confiscation of property without legal justification and other offences in the areas where they fought or they militarily controlled before going to Libya in former years, including the areas of the "Euphrates Shield", the "Olive Branch" and "Peace Spring".¹⁹

¹⁸ A report published in Arabic by *Zaman Alwasl* on 4 October 2019, titled: “Interim Government Announces Integration of Factions in Liberated Areas under National Army”. The link to the article: <https://www.zamanalwsl.net/news/article/113887/>.

¹⁹ See, for instance, Paragraph 7 of the report by the Independent International Commission of Inquiry on the Syrian Arab Republic, issued on 31 January 2019, and presented before the United Nations Human Rights Council at its 40th session, Paragraph 26 et seq. of the report by the Independent International Commission of Inquiry on the Syrian Arab Republic, issued on 9 August 2018, and presented before the United Nations Human Rights Council at its 39th session, a report by Amnesty International on 27 November 2019, titled: “Civilians Abused in ‘Safe Zones’”, and reports by Syrians for Truth on the violations committed by the “National Army” in the two

According to the United Nations Convention against the Recruitment, Use, Financing, and Training of Mercenaries, the Turkish State, with its legal personality, bears legal responsibility for the recruitment and dispatch of these mercenaries, and therefore the Syrian Government, as well as the Libyan Government, are entitled, in the event that these two States become States governed by laws and institutions elected at genuine elections, to address the International Court of Justice to prosecute the Turkish State in accordance with the rules of international responsibility and regulations, rules and procedures prescribed in the Statute of the Permanent International Court of Justice, which is an integral part of the Charter of the United Nations.²⁰

Conclusion and Recommendations:

That we have read the international treaties and reports related to mercenarism and the recruitment, financing and training of mercenaries, we came to notice that this offence is no less dangerous than other offences that have been considered the subject of international concern, such as war crimes, crimes against humanity, genocide and aggression, for the offence of mercenarism, similar to these, undermines international peace and security and poses a threat to global stability and constitutes a serious violation of human rights and fundamental freedoms, especially the right of peoples to self-determination. Additionally, mercenarism violates the principles and purposes included in Articles 1 and 2 of the Charter of the United Nations, such as maintaining peace and security of nations, developing friendly relations between States,

areas of Tal Abiad and Ras al-Ayn after the Operation "Peace Spring" kicked off, available on the following link: <https://stj-sy.org/ar/?s=%D9%86%D8%A8%D8%B9+%D8%A7%D9%84%D8%B3%D9%84%D8%A7%D9%85>.

²⁰ See Article 92 of the Charter of the United Nations and Article 34 et seq. of the Statute of the Permanent International Court of Justice.

preserving sovereign equality among member States and refraining from the use or threat of force against the territorial integrity or political independence of any State.

What affirms the gravity of this offence and its repercussions, in addition to covenants that we alluded to in this research paper, is that the Commission on Human Rights decided at its sixty-first session in 2005 to establish a Working Group on the issue of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. With all this seriousness, we found that international efforts, on a legislative level, which seek to confront this phenomenon are still timid and have not reached the extent required to eliminate or limit merceneraism, nor even to regulate it, as private military and security companies are still immune from prosecution and are lacking any legal framework that would regulate their action.

We have also noted that the mobilization of Syrian fighters to Libya to fight within the ranks of one of the two Parties to conflict constitutes a violation of the United Nations Convention of 1989 and other international charters and reports. These mercenaries must be held accountable, accompanied by those who participated or guided their recruitment, training, financing and transferring, by bringing them before impartial and fair courts, especially since they claim belonging to the Syrian Revolution— the revolution of freedom and dignity.

Now that these offences have been presented and their gravity studied, it is possible to suggest some recommendations that we hope will be useful in the quest of a solution for this problem, spreading in several of the conflict hotspots around the world, including Syria and Libya. The proposed recommendations are the following:

- The necessity to amend the Syrian Code of Criminal Procedures in line with the United Nations Convention of 1989 on mercenaries, so that the offences of mercenarism and the recruitment, financing and training of mercenaries are included in its legislation, and to determine the appropriate penalty for these offences, especially since the international treaty did not address penal matters, taking into consideration that the Syrian government is currently ineligible to conduct such amendments, for the reasons mentioned above.

- The need to expand the subject-matter jurisdiction of the International Criminal Court, contained in the Rome Statute of 1998, to include this type of offences because of its threat to international peace and security and so that these offences do not remain immune to accountability and punishment, when the national judiciary is unable or unwilling to address them.

- The necessity for concerted efforts by the international community to develop a convention that allows for holding accountable the members of private military and security companies and not to recognize the immunity they sometimes might be granted by the governments of some States, as well as considering the contracts they have sealed invalid. It is also possible to adopt an independent convention in this regard, or through adopting a protocol additional to the United Nations Convention of 1989, which to achieve the Montreux document can be consulted, which was finalized by consensus on 17 September 2008 by 17 States, that met in Switzerland, as result of an international process launched by the Government of Switzerland and the ICRC.

- The need for the Syrian revolutionary forces, Syrian civil society organizations, and governmental organizations to join efforts to condemn the phenomenon of recruiting Syrians as mercenaries to fight in Libya or any other places in the future, and to impose pressure on official opposition institutions such as the National Coalition for Syrian Revolutionary and Opposition Forces and the Syrian Interim Government to prevent this phenomenon or at least to disavow it and everyone who commits this offense.

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