

Opinion - The Rise of Mercenarism: Avoiding International Accountability

Written by Oana-Cosmina Mihalache

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<https://www.e-ir.info/2020/05/01/the-fall-and-rise-of-mercenarism-avoiding-international-accountability/>

OANA-COSMINA MIHALACHE, MAY 1 2020

Libya can be considered the battleground of a Janus-faced perspective on outside intervention. After the NATO-led intervention in 2011, that took place in the broader regional context of the Arab Spring uprisings, the 42-year ruler of Colonel Qaddafi was brought to an end and the first test for the doctrine of the Responsibility to Protect (R2P) turned this intervention into a poster child of the doctrine; and, for a short time, into the UN darling. However, in a fairytale go bad twist of events, the country turned into a battlefield for a civil war with no (close) end in sight. Further adding to the imbroglio of local and foreign actors, as Turkey and Russia revive a practice that can be considered a relic of the past – mercenarism.

The seeds of the civil conflict in Libya lay in the aftermath of the 2011 intervention. As the United Nations (UN) Security Council adopted Resolution 1970 on 26 February 2011, to impose an arms embargo over Libya, a formal opposition group had already formed – the Libyan National Transitional Council (NTC). Since then this is the formally recognized government of the country and its representative in the UN. Before the intervenors could declare ‘mission accomplished’ and amid diagnoses establishing that NATO exceeded the mandate accorded by Security Council Resolution 1973 – erroneously taking the protection of civilians to mean regime change – news began to emerge with regard to the chaos taking reign in the country, signaling a growing presence of armed militias posed to contest the newly established power.

Almost a decade later, the conflict rages on. General Khalifa Haftar, now the leading contender for power against the internationally recognized Tripoli government, began to attack Islamist militias in the country since 2014. He now rules over the Libyan National Army (LNA) and benefits from outside support that bolsters the strength of his armed forces in his bid for Tripoli: Russian mercenaries. The presence of foreign fighters in the country was first and foremost embedded in the LNA, which was characterized, echoing Voltaire’s famous description of the Holy Roman Empire, in the following way:

The Libyan National Army is neither entirely Libyan (it occasionally relies on foreign mercenaries), nor is it national (initially the majority of its top brass hailed almost exclusively from certain Eastern and Central tribes), nor is it a regular army (it does not answer to a national sovereign authority nor are its rank and file drawn by national conscription or volunteerism).

Haftar leads a battle he commenced in April 2019 aimed to put an end to the country’s fragmentation and establish what Thomas Hobbes and Jean Bodin have visioned as the supreme authority and what is known as absolute sovereignty. Haftar’s ends may be Weberian in character, wishing to obtain a legitimate monopoly over violence, but his means are not. However, there is one practice that might prolong the conflict for yet many years to come: again, the use of mercenaries by foreign states.

As world leaders were preparing at the beginning of the year to meet in Berlin for a conference aiming to obtain a ceasefire in Libya, a surge of a different kind was taking place: Turkey and Russia were injecting mercenaries into the country, to back the side they each support. Turkey was enlisting additional fighter from Syria to fight on the side of the internationally recognized government and to counterbalance mercenary troops that had already been brought

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by Russia since 2019. The practice is neither new nor specific to the Libyan case. Russia has also used contracted fighters under the Wagner Group private enterprise in places like Nigeria, Crimea and Eastern Ukraine, Syria, Sudan and the Central African Republic, since 2012. Turkey has also used mercenaries in its offensive in northern Syria since 2016, and the list of countries employing them can go on to include the US Blackwater contractors in Iraq in 2007. The practice is presently considered both illegal and illegitimate.

The roots of the mercenarism can be traced back to the sixteenth century, argues Janice Thomson in one of the most comprehensive studies dedicated to this issue, in her book entitled "Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe". Countries like Switzerland were the main suppliers and France, one of the main beneficiaries of mercenary troops in the 16th and 17th century. By the 18th century, armies could be considered truly multinational. "Frederick the Great recruited all over the Holy Roman Empire (...) At the onset of the Seven Years War he attempted to incorporate the entire Saxon army into his own", argues Thomson. Large scale mercenarism began to fade in the 19th century, and by the 20th century the citizen-army became the norm with the employment of foreign fighters beginning to be regarded as an anomaly, representing either the remnants of imperialism or an ad-hoc response to a shortage in fighting forces. Janice Thomson argues, and her view is consistent with Barry Posen's, the fading of this practice can be seen as a corollary of the evolution of state authority claims.

The practice of mercenarism is sanctioned under Humanitarian and Public International Law, under Article 47 of Additional Protocol I to the Geneva Conventions, the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries and under a regional convention sponsored by the African Union. The 1989 Convention describes a mercenary as "any person who is especially recruited locally or abroad in order to fight an armed conflict" who is "motivated to take part in the hostilities essentially by the desire for private gain". The convention entered into force in 2001 and was signed only by 36 countries – with notable absentees like the US, Russia, Turkey or the UK. Arguably, these states have not ratified it because they use Private Military Contractors (PMC), who are of a different kind from mercenaries. However, the distinctions are more often hard to make – it is hard to find out whether foreign fighters are hired in a registered organization – which is what defines a PMC.

While diplomatic attempts at solving the crisis like the 19 January Berlin conference are crucial and important steps towards political dialogue, turbulent waters underneath may unearth this kind of processes. Especially as the conference did not specifically set a path for addressing the use of mercenaries in this conflict. The only phrase referring specifically to the use of mercenaries in this conflict is the following, according to the published conclusions of the conference: "We call on all actors to refrain from any activities exacerbating the conflict or inconsistent with the UNSC arms embargo or the ceasefire, including the financing of military capabilities or the recruitment of mercenaries". This is certainly not enough for international accountability.

Mercenaries provide a semi-permanent stronghold in Libya for countries like Russia and Turkey and allow them to continue the fight while eschewing international accountability. In other words, these soldiers of fortune may act as substitutes for those times when these two powers and others will not be able to rely on their national armies. Ultimately, this could be placed under the conceptual umbrella of "contracting states" – borrowing a term used by Alexander Cooley and Hendrik Spruyt in their book. Contracting states offer outside parties an informal yet significant stake in the hybrid sovereignty that Libya displays – these are nothing but mixed sovereignty arrangements.

About the author:

Oana-Cosmina Mihalache is a current Fulbright researcher at Columbia University, affiliated at the Saltzman Institute of War and Peace Studies. She is a PhD candidate at the National University of Political Studies and Public Administration in Bucharest. Her research focuses on military interventions and state sovereignty.

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