

DOI: <https://doi.org/10.32353/acfs.4.2021.02>
UDK 343.85

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Historical Characteristic of Mercenary Activities as Form of Private Military Companies Activity

The prohibition of mercenary activities at the international legal level makes the activities of private military companies the object of meticulous attention by the international community. Existing trends in the widespread involvement of private military and security enterprises (PMSE) in military and security functions both in the context of armed conflict (AR) and outside of it determine the need for legal regulation of their activities at the national and international levels, creation of legal mechanisms aimed at ensuring the protection of human rights and victims of AR.

The indicated problems are also due to the fact that existing gaps in international law facilitate the use of mercenaries, increase their number, contribute to the emergence of new ways of recruiting them, and states must not only ratify or join the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, but also adhere to its provisions.

Keywords: recruitment, armed conflict, mercenaries, security organizations.

Introduction. At the international and national level, the issue of legalization and legal regulation of private military companies activity becomes relevant in conditions of constant armed conflicts. According to the International Crisis Group, the top ten armed conflicts in 2020 include the following conflicts: Table 1.

Let's note that in the majority of these conflicts participation of mercenaries from different parts of the world, including members of private military companies is recorded. Thus, as of August 2020, according to the information of the Office of the Prosecutor General, more than 100 criminal cases were brought in Ukraine against foreign mercenaries (citizens of Bulgaria, Armenia, Georgia, Italy, Spain, Kazakhstan, Lithuania, Moldova, the Netherlands, Germany) participating in a military conflict on the side of



Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Disclaimer

The funder had no role in the study design, data collection and analysis, decision to publish, or preparation of the manuscript.

Contributors

The author contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.

Declaration of Competing Interest

The author declare that they have no conflict of interest.

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Russian-oriented LPR and DRN armed groups with the support of the Russian Federation.

Tabl. 1

Country	Nature of conflict and confrontation participants	Duration	Number of dead
Afghanistan	Military operation Participants: NATO, the Taliban and the Islamic State	< 18 yrs.	>100 K
Libya	Civil war Participants: A national unity government, the Libyan National Army (including Islamists, militant nationalists, representatives of Libyan tribes, the Tuareg nomads and others involved in the conflict)	< 9 yrs.	Exact number of dead is unknown
Ukraine	Military conflict Participants: government of Ukraine, pro-Russian armed groups LPR and DPR with the support of the Russian Federation	< 6 yrs.	>14 K
Yemen	Rebellion Participants: the Yemeni government and Shiite militias - the Houthis	< 5 yrs.	>100 K
Burkina Faso	Counteraction to terrorist groups activity Participants: Burkina Faso Government, Al-Qaida, Islamic Armed Forces	< 4 yrs.	>700 K
USA-DPRK	Cold War Participants: The USA and the DPRK	< 2 yrs.	-
Venezuela	Presidential crisis Participants: supporters of Nicolas Maduro and Juan Guaido	< 2 yrs.	< 2 K
Kashmir	Confrontation at the border Participants: India and Pakistan	< 1 yr.	< 50
Persian gulf	Cold War Participants:	< 1 yr.	-
Ethiopia	Ethical conflict Participants: the Amhara and the Gumuz	<1 yr.	< 90

In ancient times, legal regulation of mercenary activities had an international legal nature, as it required a tripartite settlement of relations: between the state-mercenary, the state that provided its troops and military mercenaries themselves under the leadership of mercenary companies¹. In particular, the issue of payment for services of military mercenaries, inheritance and

¹ Апухтин Ю. С. Частные военные компании: глобальная деятельность и проблемы международной правовой ответственности. Жизнь и безопасность. 2007. № 1/2. С. 81-84.



protection of their property, etc. necessitated legal settlement. Participants of mercenary relations belonged to different types of legal systems and legislation systems.

The Research Purpose is to study international and legal regulation of mercenary activities and prototypes of private military enterprises in historical perspective.

Research Methods. The methodological basis of the research was a set of general scientific and specific scientific methods, in particular: The historical-legal method enabled to determine historical prototypes of private military enterprises, genesis of international and legal regulation of mercenary activities; the method of systematic analysis allowed to study peculiarities of international and legal regulation of the activities of private military and security military establishments as a component of international law system; the formal legal method was used for the analysis of international and domestic legal regulations in the field of regulation of the indicated military formations.

General philosophical methods (formal logic laws, analysis, synthesis, deduction and induction, abstraction), general scientific methods of inquiry (system-structural, statistical, complex and functional method) and special methods of legal science (formal-dogmatic, comparative-legal).

Main Content Presentation.

In the ancient world, one of the first written records of mercenary activities dates back to 392 in works of ancient historians Thucydides, Xenophon and Diodorus.

Thus, in his works Yu. S. Apukhtyn notes that “only in the IV century BC Greek states reached such a level of economic development to be able to withhold mercenary army”². Greek states (Sparta, Athens, Corinth) used services of hired troops. Certain regions of Greece are “specialized” in provision of mercenaries of a particular vocational orientation (For example, Rhodes prepared slingers, Crete: archers, etc.).

The chart of creation and functioning of mercenaries detachment was as follows: the state (government) detachment commander military mercenaries.

However, such a scheme had certain disadvantages, in particular the government had issues with control over mercenary detachment commanders who could influence the nature and content of relations with mercenaries (including issues of conducting a military campaign with mercenaries participation, payment for their services, interaction between mercenary detachments from different countries, transition of mercenary detachment to the enemy in case of offering mercenaries better conditions, preventing cases of robbery by mercenaries among population of mercenary state, etc.)³.

X-XII centuries were marked by a rapid development of mercenary activities, in particular, in the majority of European countries, security of a monarch was implemented by the king's men. In his research papers, O. Luhovyi considers the following forms of mercenary activities of this period “employment under international agreements, hiring, involvement of crusaders and hiring through the emissary”⁴.

A specific nature of mercenary development was the result of complex socio-economic processes in Scandinavia, since in search of a better fate

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ІСТОРИЧНА ХАРАКТЕРИСТИКА НАЙМАНСТВА ЯК ФОРМИ ДІЯЛЬНОСТІ ПРИВАТНИХ ВОЄНІЗОВАНИХ КОМПАНІЙ

Заборона найманства на міжнародно-правовому рівні робить діяльність приватних військових компаній об'єктом прискіпливої уваги з боку міжнародної спільноти.

Наявні тенденції широкого поширення залучення приватних військових та охоронних підприємств (ПВООП) до військових та охоронних функцій як в умовах збройного конфлікту (ЗК), так і поза ним зумовлюють необхідність правового регулювання їхньої діяльності на національному та міжнародному рівнях, створення правових механізмів, спрямованих на забезпечення захисту прав людини й жертв ЗК. Причому треба чітко відокремлювати цю діяльність від забороненого сучасним міжнародним правом найманства, встановлювати правомірні підстави, порядок діяльності ПВООП і відповідальність за порушення національного та міжнародного права в процесі її здійснення.

Зазначені проблеми зумовлені ще й тим, що наявні прогалини в міжнародному праві полегшують використання найманців, збільшують їх кількість, сприяють виникненню нових способів їхнього вербування, і держави мусять не лише ратифікувати або приєднатися до Міжнародної конвенції про вербування, використання, фінансування й навчання найманців, а й дотримуватися її положень.

На сьогодні найбільш результативним шляхом припинення вербування найманців є створення суворих та ефективних національно-правових норм, що забороняють службу найманця, вербування, направлення і транспортування найманців у різні райони земної кулі, а також укладення міжнародних угод, що передбачають переслідування й покарання найманства в межах кримінальної відповідальності. Тому для вирішення зазначених проблем проводимо історичний ретроспективний аналіз використання найманства в різні історичні періоди, відслідковуємо процеси їхнього розвитку, реформування, існування та функціонування в сучасний період. Обґрунтовуються пропозиції щодо необхідності встановлення

² Апухтин Ю. С. Преступность частных военных компаний: понятие и противодействие : автореф. дис. ... канд. юрид. наук: 12.00.08 - уголовное право и криминология; уголовно-исполнительное право. РГПУ им. А.И. Герцена (юридический факультет). СПб., 2008. 41 с.

³ Апухтин Ю. С. Исторические, политико-правовые, экономические и социальные предпосылки негосударственной защиты безопасности граждан и организаций. Жизнь и безопасность. 2004. № 2 /3. С. 8-17.

⁴ Калугин В.Ю. Курс международного гуманитарного права. Минск : ТЕСЕЙ, 2006. 496 с.



відмінності діяльності приватних військових і охоронюваних компаній від забороненого сучасним міжнародним правом наймництва, встановлення правомірних підстав, порядку такої діяльності та відповідальності за порушення національного та міжнародного права в процесі її здійснення.

Ключові слова: вербування, збройний конфлікт, найманці, охоронні організації.

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**ИСТОРИЧЕСКАЯ
ХАРАКТЕРИСТИКА
НАЕМНИЧЕСТВА
КАК ФОРМЫ
ДЕЯТЕЛЬНОСТИ ЧАСТНЫХ
ВОЕНИЗИРОВАННЫХ
КОМПАНИЙ**

Запрет использования наемников в существующих международных нормах делает деятельность частных военных компаний объектом пристального внимания со стороны международного сообщества.

Существующие тенденции требуют широкого распространения и привлечения частных военных или охранных предприятий к военным и охранным функциям как в условиях вооруженного конфликта (ВК), так и вне его, обуславливают необходимость правового регулирования их деятельности как на национальном, так и международном уровнях.

Возникает необходимость создания правовых механизмов, направленных на обеспечение защиты прав человека, в том числе и жертв ВК. Причем следует четко отделять эту деятельность от запрещенного современным международным правом наемничества, устанавливать правомерные основания, порядок деятельности частных военных или охранных предприятий и ответственность за нарушение национального и международного права в процессе ее осуществления.

Указанные проблемы обусловлены еще и тем, что имеющиеся пробелы в международном праве облегчают использование наемников, увеличивают их количество, способствуют возникновению новых способов их привлечения, в том числе в районах вооруженных конфликтов. Поэтому государства должны не только ратифицировать или присоединиться к Международной конвенции о вербовке, использо-

the Vikings were forced to join the army of the Byzantine Empire and Kievan Rus'. To support this fact, we can illustrate it by the content of the Tale of Bygone Years (1015-1024), which states that Prince Yaroslav sent emissaries to Scandinavia to hire soldiers, as well as by the Scandinavian saga Eymundar þáttur hrings, outlining which award was given to the emissary Eimund for hiring Scandinavian troops ("received feeding in the city of Polotsk").

The saga also contains conditions for hiring Normans for service:

1) the treaty between mercenaries and a prince was concluded every year;
2) mercenaries get paid in the form of money (Scandinavian silver ounces), fur, cattle;

3) the Normans received food, housing, equipment and clothing" ⁵.

When hiring Normans, Kyiv princes faced a number of problems, in particular, to reconcile mercenaries, they were forced to increase payment for their services, Varangian emissaries had the right to marry aristocrats and take control over the city, etc. ⁶.

Kievan Rus also acted as a mediator in the process of hiring Scandinavian soldiers by the Byzantine Empire. In particular, the agreement between Kievan Rus' and the Byzantine Empire (911, 944) stipulated principles of mutual assistance between the Kiev Prince Vladimir Sviatoslavich and the Byzantine Emperor Basil II ⁷.

The advantages of concluding a treaty with the Byzantine Empire for Scandinavian mercenaries in comparison with Kievan Rus' were the following circumstances:

the agreement with the Byzantine Empire was more long-term (up to 29 years), with Kievan Rus': 1 year;

payment under the agreement with the Byzantine Empire was up to 20 times higher than under the agreement with Kievan Rus';

had an opportunity to obtain an additional share of military trophies in the Byzantine Empire.

However, after the Varangians accepted the Rhos detachment (formed through Kievan Rus') to participate in the revolts in the Byzantine Empire (after 1043), the level of cooperation between the two states in the field of mercenary activities declined.

In the XV century, in Italy and Germany, control over mercenaries was implemented by condottieri in compliance with corresponding agreements. Although, condottieri often pursued their own political goals, in particular, taking power in a state hiring troops. For example, the condottiere Muzio Attendolo (Sforza) became the founder of the Sforza dynasty which ruled Milan since the XV century.

In Poland (XII-XV centuries), the king gave permission to hire soldiers provided that the rittmeister received "reporting letters" and the hetman possessed certain powers as the king deputy in directing army. The mercenary army underwent lustration procedure: inspection by relevant royal officials, the commander took a corresponding oath after such inspection (the first documentary evidence of such an oath which have survived and dates back to 1525) ⁸. Furthermore, a Polish king had the right to forbid hiring troops in Poland. For example, in the XV century, it was strictly forbidden for

⁵ Кашников Б. Н. Частные военные компании и теория справедливых войн (Работа выполнена при поддержке индивидуального исследовательского гранта 2009 года Научного Фонда ГУ-ВШЭ (№гранта 09-01-0049). URL: <http://cat.convdocs.org/docs/index-35807.html>

⁶ Бернадський Б. В. Міжнародні конфлікти: курс лекцій. К.: ДП «Вид. дім «Персонал», 2012. 366 с.

⁷ Жийар Э. К. Бизнес идет на войну: частные военные и охранные компании и международное гуманитарное право. Международный журнал Красного Креста. 2006. Том 88. № 863. С. 18-23.

⁸ Жийар Э. К. Бизнес идет на войну: частные военные и охранные компании и международное гуманитарное право. Международный журнал Красного Креста. 2006. Том 88. № 863. С. 18-23.



the German Order to hire troops in the territory of not only Polish but also Pomeranian and Lithuanian rulers.

Since the XIV century, Swiss mercenaries were extensively used in Europe. For instance, Louis XI signed a treaty with Swiss cities on "constant provision of military force" (1474), Charles VII created the Swiss permanent active army (1495). It was in the XV century when a new stage in the formation of mercenary activities started to develop: transfer of troops to other states by states that hired mercenaries in their own territory.

In the Ukrainian territory, in the period of Cossacks development, such a phenomenon as mercenary activities was conditioned by the following factors: border territorial location of Cossack troops enabling to maintain constant military and political contact with other states. In particular, at the end of the XVI century, the Polish government decided on creating a registered Cossack army, as opposed to which, in connection with the socio-economic crisis, Free Cossacks developed which acted as a civilian military social strata.

Examples of hiring Ukrainian Cossacks by foreign countries:

A. Komulović, papal envoy, Ambassador of Emperor Rudolf II Erich Lyasota hired a detachment of 12 thousand Cossack volunteers (1593-1594);

The Zaporozhian Cossacks took part in campaigns of False Dmitry I and False Dmitry II to Muscovy in 1607-1612;

The Cossacks were involved in the Thirty Years' War (1618-1648) alongside a party that hired them;

Count de Brezhi with the assistance of B. Khmelnytsky hired a detachment of Cossacks to participate in the military confrontation between France and Spain (1645), etc.

An essential component of hiring Cossacks for military service in a foreign country was conclusion of an agreement that determined conditions of such military service, including terms for services payment, distribution of military trophies, procedure of transfer-acceptance of a flag of the owner-hirer, which is aligned with an international legal act recognizing authority of the hirer over the army⁹. In case of agreement non-fulfillment, the Cossacks could rebel and terminate the agreement with the hirer.

Participation of the Cossacks in various army conflicts contributed to the enrichment of their military experience, enhanced the formation of a special martial art, combining tactical principles of various military systems, which in turn contributed to effective combat against the Polish-Lithuanian Commonwealth during the National Liberation Battle (end of the XVI - middle of the XVII century).

Decline of mercenary activities took place in the XVIII-XIX centuries. In particular, it was forbidden to hire military during the French Revolution. At the beginning of XIX century, in the German states, there was an active struggle against the hiring of soldiers, but the hiring of the Swiss for the symbolic guard of the Vatican City still exists today¹⁰.

In the modern period, mercenary activities began to blossom in the 60-90's of the XX century, during the period of Africa decolonization. In particular, mercenaries were used in certain African countries while civil war. For example, Moïse Kapend Tshombe (Congo Prime Minister) hired mercenaries from European countries in 1964, and the Sierra Leone government hired a private military company: Executive Outcomes from the Republic of South

ваний, финансировании и обучении наемников, а и придерживаться ее положений.

На данном этапе наиболее результативным путем прекращения вербовки наемников является создание строгих и эффективных национально-правовых норм, запрещающих службу наемника, вербовку, направление и транспортировку наемников в разные районы земного шара, а также заключение соглашений, предусматривающих преследование и наказание наемничества путем привлечения к уголовной ответственности. Поэтому для решения указанных проблем проводим исторический ретроспективный анализ использования наемничества в разные исторические периоды, отслеживаем процессы их развития, реформирования, существования и функционирования в современный период. В работе указывается необходимость установления различия деятельности частных военных и охраняемых компаний от запрещенного современным международным правом наемничества, установления правомерных оснований, порядка такой деятельности и ответственности за нарушение национального и международного права в процессе ее осуществления.

Ключевые слова: вербовка, вооруженный конфликт, наемники, охранные организации.

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HISTORICAL CHARACTERISTIC OF MERCENARY ACTIVITIES AS FORM OF PRIVATE MILITARY COMPANIES ACTIVITY

The prohibition of mercenary activities at the international legal level makes the activities of private military companies the object of meticulous attention by the international community.

Existing trends in the widespread involvement of private military and security enterprises (PMSE) in military and security functions both in the context of armed conflict (AR) and outside of it determine the need for legal regulation of their activities at the national and international levels, creation of legal mechanisms aimed at ensuring the protection of human rights and victims of AR. At the same time, this activity should be clearly separated from mercenary activities prohibited by current in-

⁹ Алухтин Ю. С. Исторические, политико-правовые, экономические и социальные предпосылки негосударственной защиты безопасности граждан и организаций. Жизнь и безопасность. 2004. № 2 / 3. С. 9.

¹⁰ Жийар Э. К. Бизнес идет на войну: частные военные и охранные компании и международное гуманитарное право. Международный журнал Красного Креста. 2006. Том 88. № 863. С. 18.

ternational law, establishment of legitimate grounds, operation procedure for PMSEs and liability for violation of national and international law in the process of its implementation.

The indicated problems are also due to the fact that existing gaps in international law facilitate the use of mercenaries, increase their number, contribute to the emergence of new ways of recruiting them, and states must not only ratify or join the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, but also adhere to its provisions.

Currently, the most effective way to stop recruiting mercenaries is creation of strict and effective national legal norms prohibiting the service of mercenaries, recruitment, sending and transportation of mercenaries to different parts of the globe, as well as conclusion of international agreements stipulating prosecution and punishment of mercenaries within the limits of criminal liability. Therefore, to solve these issues, we conduct a historical retrospective analysis of the use of mercenary activities in different historical periods; monitor the processes of their development, reforming and existence, functioning in the modern period. The proposals on the need to distinguish the activities of private military and security companies from the mercenary activities prohibited by current international law, the establishment of legitimate grounds, a procedure for such activities and liability for violation of national and international law in the process of its implementation are substantiated.

Keywords: recruitment, armed conflict, mercenaries, security organizations.

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CARACTÉRISTIQUE HISTORIQUE DU MERCENARIAT FORME D'ACTIVITÉ DES ENTREPRISES MILITAIRES PRIVÉES

Interdiction des mercenaires au niveau juridique international fait des activités des sociétés militaires privées l'objet d'une attention méticuleuse de la communauté internationale.

Les tendances actuelles de l'implication généralisée des entre-

Africa in 1995. Later, private military companies were extensively used by the United States during The Iraq War and the Afghanistan War.

In the 1960s and 1970s, when detachments of soldiers of fortune were in high demand for the governments of Belgium, France, Britain, and the United States in solving various delicate political matters, classic mercenaries were finally marginalized, though not completely destroyed. They were replaced by officially registered (licensed) private military companies (hereinafter: PMCs).

The first PMC was established in the UK in 1967. The surge in the number of private military companies was traced after the end of the Cold War. The reason was that the European neoliberal scheme of total privatization, in accordance with which many areas of former state responsibility in the field of defense and security came under the control of private companies. Additionally, reduction of armies in countries of NATO and the former Warsaw Pact alliance has shaped the market of military experts¹¹.

But in fact, the military category includes those PMCs that operate in combat zones. It is fairly difficult to make a clear distinction between a private military and a private security company. It is believed that a PMC is a company providing offensive services, that is directly or indirectly aimed at resolving a situation through military means. In turn, PMCs provides defense services to protect a customer's life and property. However, it is clear that everything depends on the situation in combat zones: for example, when protecting an oil pipeline, the security company can perform military operations against local partisans or bandits. The use of "private military force" in current armed conflicts is becoming increasingly widespread. Law-enforcement organizations believe that military and security companies operating in Iraq, Afghanistan, Colombia, in countries of Africa and Southwest Asia were aimed at gaining profit. In particular, to make profit, military private detachments carried out activities under the leadership of M. Khor, Zh. Shramm, R. Shtainer, B. Denar, which actively operated in Africa between 1960-1970¹².

In 1967, David Stirling organized the first private military company Watchguard International (WI), which priority was the work on allied to London government or international organizations. A crucial point in a biography of many SAS officers was participation in Oman operations as instructors of the Sultan Qaboos troops against rebels operated in the region of Dhofar. Another company Стирлинга Kilo Alpha Service fought with poachers in South Africa according to the contract with the International Wildlife Federation in the 1980s. The operation was called Lock. Another aspect of this operation was the secret training of the Commando detachments simultaneously for the Zulu Movement Inkatha and for African National Congress. During the War between Inkatha and ANC (1990-1995), the company continued to train fighters of both belligerent parties. In the mid-1990s, KAS folded its activities.

Security Advisory Service Ltd, established in 1975, was a classic recruiting office for mercenaries hiring to participate in the Angola war actually just anybody. The most famous episode of combat activities in the company was the defeat by the Angolan government troops of its mercenaries detachment led by "Colonel Kahlan" who fought against government troops in the north of the country on the side of the FNLA opposition movement.

In the United States, private military business began to take shape on some other basis. The CIA and the Pentagon required services of not classic mercenary soldiers, but primarily technician experts. It has become a

¹¹ Апухтин Ю. С. Международная правовая ответственность частных военных компаний. Инновации в государстве и праве России: материалы Всероссийской научно-практической конференции (Нижний Новгород, 19-20 апреля 2007 г.): В 2 частях. Нижний Новгород : Изд-во Нижегородского государственного университета, 2007. Ч. II. 642 с. С. 140.

¹² Астаф'єв Ю. Н. Найманство – злочинне знаряддя колоністської політики. Радянська держава і право. 1978. № 11. С. 15-21.



prototype of today's private military outsourcing. New enterprises were not traditionally PMCs, but civilian firms hired for specific purposes.

One of the first was Air America organized under the CIA, which from 1959 to 1975 fulfilled a variety of Langley errands in Southeast Asia. Initially, the construction companies Vinnell and Pacific Architects & Engineers built bases and military prisons in Vietnam, participated in "delicate operations". In 1975, Vinnell received a contract for the preparation of National Guard military units of Saudi Arabia. It is indicative that in 1979, when rebels had captured the Great Mosque in Mecca, Vinnell employees planned an assault, and when it failed, they themselves took part in the second, already successful assault ¹³.

In the course of the Gulf War in 1991, the ratio of US civilian contractors to military personnel was already 1:50, however the majority of them were not military but ordinary private companies. Commercial airlines such as Evergreen and Southern Air Transport accounted for 65% of all troop and cargo transportation. All logistic support of the Saudi army was ensured by private contractors from the United States. On the front line, instructors from the private military company Vinnell accompanied units of the Saudi National Guard in battles with Iraq's troops near the city of Ras al-Khaffi. DynCorp specialists maintained most helicopter units in the front-line area. After the war, American private companies started working in almost all security forces in Saudi Arabia: BDM International – an air force and land forces, Booz Allen Hamilton – marines and military colleges, Science Applications International Corporation – navy and counter-air defense, O'Gara Protections Services – security agencies ¹⁴.

An essential area of PSC activities in Africa in recent years has been fight against piracy. The activity of Somali pirates in the Gulf of Aden and the Indian Ocean has long remained outside the interests of private military companies, although the first seizure of a ship by pirates took place in 1991. The situation changed with the beginning of the operation of the Atalanta international community in December 2008.

To combat piracy, the Naval Task Force: CTF-150 (Combined Task Force 150) was established with headquarters in Djibouti and includes warships from the United States, Canada, France, Denmark, Germany, Italy, the Netherlands, Portugal and Spain, Turkey, as well as the navies from Australia and New Zealand.

In January 2009, the Naval Task Force: CTF-151 was created to suppress piracy and prevent arms trafficking, and includes warships from the naval forces of the United States, Denmark, Britain and Turkey. In addition, the United States is using the forces of its 5th Fleet to combat pirates. Warships of Russia, India and China operate independently in the anti-piracy front ¹⁵.

With the advent of navies of the world states, freight companies started actively investing in ensuring security of their ships. Well-known private military companies Blackwater and Aegis, as well as companies that traditionally specialize in maritime security: Drum Cussac, Unity Resources Group, Trojan Securities International, Securewest International and Blue Mountain, which not only secured ships but also provided other security services ¹⁶, have entered this market.

prises militaires et de sécurité privée dans les fonctions militaires et de sécurité, à la fois dans les conflits militaires et dans les conflits armés, nécessitent une réglementation juridique de leurs activités aux niveaux national et international, la création de mécanismes juridiques visant à assurer la protection des droits de l'homme et des victimes du conflit militaire. De plus, cette activité doit être clairement séparée du mercenaire interdit par le droit international moderne, l'établissement de motifs légitimes, l'ordre du des entreprises militaires et de sécurité privée et la responsabilité des violations du droit national et international dans le processus de sa mise en œuvre.

Ces problèmes sont également dus au fait que les lacunes existantes dans le droit international facilitent l'utilisation de mercenaires, augmentent leur nombre, favorisent de nouvelles façons de les recruter, et les États doivent non seulement ratifier ou adhérer à la Convention internationale sur le recrutement, l'utilisation, le financement et formation de mercenaires, mais et adhérer à ses dispositions.

À ce jour, le moyen le plus efficace d'arrêter le recrutement de mercenaires est d'établir une loi nationale stricte et efficace interdisant le service de mercenaires, le recrutement, l'envoi et le transport de mercenaires dans différentes parties du monde, ainsi que la conclusion d'accords internationaux pour poursuivre et punir mercenaires relevant de la responsabilité pénale. Par conséquent, pour résoudre ces problèmes, nous effectuons une analyse rétrospective historique de l'utilisation de mercenaires à différentes périodes historiques, suivons les processus de leur développement, de leur réforme et de leur existence, fonctionnant à l'époque moderne. Les propositions sur la nécessité de distinguer les activités des entreprises militaires et de sécurité privée du mercenaire interdit par le droit international moderne, l'établissement de motifs légitimes, l'ordre de ces activités et la responsabilité des violations du droit national et international dans la procédure de sa mise en œuvre sont justifiées.

Mots-clés : recrutement, conflit militaire, mercenaires, organisations de sécurité.

¹³ Мартыненко Е. В. Проблемы привлечения к ответственности частных военных и охранных компаний за нарушение норм международного гуманитарного права на основании законодательства США. Научное приложение журнала «Мир и политика». The Scientist. 2013. № 11 (84). С. 101-109.

¹⁴ Апухтин Ю. С. Международная правовая ответственность частных военных компаний. Инновации в государстве и праве России: материалы Всероссийской научно-практической конференции (Нижегород, 19-20 апреля 2007 г.): в 2 частях. Нижний Новгород: Изд-во Нижегородского госуниверситета, 2007. Ч. II. 642 с. С. 140-147.

¹⁵ Неелов В. М. Приватні військові компанії. Термінологія, правовий статус і класифікація діяльності. Культура народів Причорномор'я. 2014. № 278, Т. 2. С. 156.

¹⁶ Неелов В. М. Приватизация войны: Передача военных функций частным компаниям. Сайт Международного Комитета Красного Креста: информационные ресурсы. URL:<http://www.icrc.org/rus/resources/documents/misc/privatisationwar-230506.htm>



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HISTORISCHE CHARAKTERISIERUNG DES SÖLDNERTUMS ALS AKTIVITÄTSFORM PRIVATER MILITÄRISCHER UNTERNEHMEN

Das Verbot vom Söldnertum auf völkerrechtlicher Ebene macht die Aktivitäten privater Militärunternehmen zum Gegenstand skrupulöser Aufmerksamkeit der internationalen Gemeinschaft.

Die aktuellen Trends der weit verbreiteten Beteiligung privater Militär- und Sicherheitsunternehmen an Militär- und Sicherheitsfunktionen sowohl innerhalb als auch außerhalb bewaffneter Konflikte erfordern die rechtliche Regulierung ihrer Aktivitäten auf nationaler und internationaler Ebene, die Schaffung rechtlicher Mechanismen zum Schutz der Menschenrechte und der Opfer bewaffneter Konflikte. Darüber hinaus ist es erforderlich, diese Aktivität genau vom durch das moderne Völkerrecht verbotenen Söldnertum zu trennen, legitime Gründe, die Reihenfolge der Aktivitäten privater Militär- und Sicherheitsunternehmen und die Verantwortung für Verstöße gegen nationales und internationales Recht bei ihrer Umsetzung zu bestimmen.

Diese Probleme sind darauf zurückzuführen, dass bestehende Lücken im Völkerrecht den Einsatz von Söldnern erleichtern, ihre Zahl erhöhen und dazu beitragen, dass neue Wege der Anwerbung von Söldnern entstehen. Die Staaten müssen die Internationale Konvention über die Werbung, den Einsatz, die Finanzierung und die Ausbildung von Söldnern nicht nur ratifizieren oder sie beitreten, sondern auch ihre Bestimmungen einhalten.

Heutzutage besteht der wirksamste Weg, um die Werbung von Söldnern zu stoppen, darin, strenge und wirksame nationale Rechtsnormen zu machen, die den Söldnerdienst, die Werbung, Entsendung und Beförderung von Söldnern in verschiedene Teile der Welt verbieten, und internationale Abkommen abzuschließen, die die strafrechtliche Verfolgung und Bestrafung von Söldnern vorsehen. Um diese Probleme zu lösen, führen wir eine historische retrospektive Analyse des Einsatzes von Söldnern in verschiedenen historischen Epochen durch, verfolgen die Prozesse ihrer

New companies have been created specifically for this segment of the security market: SeaMarshall, Solace Global Maritime, Naval Guards Ltd, Nautilus International, Shield consulting, Asgard Defense, Aspida Maritime Security, Trident Group, Shield Risk Consulting, ESPADA Marine Services, Neptune Maritime Security, Inc., Zebra Tactical Solutions, Erus Maritime, Halliday Fine, Security Services Ltd.

Later, there were organizations uniting these companies, such as SAMI (Security Association for the Maritime Industry).

Some companies started buying gunboats to perform tasks. Thus, the British company Convoy Escort Programme Ltd with the support of Jardine Lloyd Thompson Group bought seven patrol boats of ship convoys intended for ship conveying and protection from pirates. Work of the US PSCs was not limited to piracy counteraction, but also included provision of combat and logistics support for the US Navy, as in the case of PARATUSEC, or security of facilities in the ocean, as, for example, the contract of security of the US Navy facilities at Kwajalein Atoll which was executed by the Alutiiq LLC company.

Currently, a substantial number of researches is dedicated to the issues of mercenary activities and international legal status of private military companies, since they have a significant impact on military conflict resolution and post-conflict regulation, especially while respecting human rights and norms of international humanitarian law.

Ukraine takes part in corresponding initiatives regarding creation of international legal regulation (for example, Ukraine has joined the Montreux Document), which in turn helps to defend national interests of the state and enhance its international prestige.

Conclusions. At different historical stages there were mercenary activities as a form of organization and fulfillment of security and other military functions. Over the years, forms of using military mercenary activities, legal documents governing their relations have changed, but the essence and their purpose have not changed. At the same time, since the 60's of the twentieth century, forms of existence and functioning of mercenary activities were changing and as a result, the first private military company Watchguard International was established, which was aimed at working for alliance or international organizations. Already in the 21st century, joint military alliances have been combating piracy and arms trafficking. Despite such positive consequences, having studied history it may be concluded that mercenaries are not bound by oath with the state, therefore they can turn a gun on both one direction and the other. Existing gaps in international law facilitate the use of mercenaries, increase their number, and contribute to the emergence of new ways for their recruitment.

Given the above, we emphasize that states must not only ratify or join the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, but also adhere to its provisions. At present, the most effective way to suppress mercenaries recruitment is to establish strict and efficient national legal framework prohibiting mercenary service, recruitment, sending and transportation of mercenaries to various parts of the world, as well as conclusion of international agreements that stipulate prosecution and punishment over mercenary activities within the limits of criminal liability.

Reference

- Apukhtin, Yu. S. 2007. Chastnyye voyennyye kompanii: global'naya deyatel'nost' i problemy mezhdunarodnoy pravovoy otvetstvennosti [Private military companies: global activity and problems of international legal responsibility]. Zhizn' i bezopasnost'. № 1/2. S. 81-84. [in Russian].
- Apukhtin, Yu. S. 2008. Prestupnost' chastnykh voyennykh kompaniy: ponyatiye i protivodeystviye [Crime of private military companies: concept and

- counteraction]: avtoref. dis. ... kand. yurid. nauk: 12.00.08 - ugodovnoye pravo i kriminologiya; ugodovno-ispolnitel'noye pravo. RGPU im. A. I. Gertsena (yuridicheskiy fakul'tet). SPb. 41 s. [in Russian].
- Apukhtin, Yu. S. 2004. Istoricheskiye, politiko-pravovyye, ekonomicheskiye i sotsial'nyye predposylki negosudarstvennoy zashchity bezopasnosti grazhdan i organizatsiy [Historical, political, legal, economic and social preconditions for non-state protection of the security of citizens and organizations]. Zhizn' i bezopasnost'. № 2 /3. S. 8-17. [in Russian].
- Apukhtin, Yu. S. 2007. Mezhdunarodnaya pravovaya otvetstvennost' chastnykh voyennykh kompaniy [International legal responsibility of private military companies]. Innovatsii v gosudarstve i prave Rossii: materialy Vserossiyskoy nauchno-prakticheskoy konferentsii (Nizhniy Novgorod, 19-20 aprelya 2007 g.): V 2 chastyakh. Nizhniy Novgorod: Izd-vo Nizhegorodskogo gosuniversiteta. CH. II. 642 s. S. 140-147. [in Russian].
- Astaf'yev, Yu. N. 1978. Naymanstvo – zlochynne znaryaddya kolonistkoyi polityky [Mercenary - a criminal tool of colonial policy]. Radyanska derzhava i pravo. № 11. S. 15-21.
- Bernadskyy, B. V. 2012. Mizhnarodni konflikty [International conflicts]: kurs lektsiy. K.: DP «Vyd. dim «Personal». 366 s.
- Kalugin, V. Yu. 2006. Kurs mezhdunarodnogo gumanitarnogo prava [International Humanitarian Law Course]. Minsk: TESEY. 496 s. [in Russian].
- Kashnikov, B. N. 2009. Chastnyye voyennyye kompanii i teoriya spravedlivikh voyn [Private military companies and the theory of just wars] (Rabota vypolnena pri podderzhke individual'nogo issledovatel'skogo granta 2009 goda Nauchnogo Fonda GU-VSHE (№ granta 09-01-0049)). URL: <http://cat.convdocs.org/docs/index-35807.html> [in Russian].
- Neyelov, V. M. 2014. Pryvatni viyskovi kompaniyi. Terminolohiya, pravovyy status i klasyfikatsiya diyalnosti [Private military companies. Terminology, legal status and classification of activities]. Kultura narodiv Prychornomor'ya. № 278, T. 2. S. 154-159.
- Martynenko, Ye. V. 2013. Problemy privilecheniya k otvetstvennosti chastnykh voyennykh i okhrannykh kompaniy za narusheniye norm mezhdunarodnogo gumanitarnogo prava na osnovanii zakonodatel'stva SSHA [Problems of prosecution of private military and security companies for violation of international humanitarian law on the basis of US legislation]. Nauchnoye prilozheniye zhurnala «Mir i politika». The Scientist. № 11 (84). S. 101-109 [in Russian].
- Privatizatsiya voyny: Peredacha voyennykh funktsiy chastnym kompaniyam [Privatization of war: Transfer of military functions to private companies.]. Sayt Mezhdunarodnogo Komiteta Krasnogo Kresta: informatsionnyye resursy. URL:<http://www.icrc.org/rus/resources/documents/misc/privatisationwar-230506.htm> [in Russian].
- Zhiyar, E. K. 2006. Biznes idet na voynu: chastnyye voyennyye i okhrannyye kompanii i mezhdunarodnoye gumanitarnoye pravo [Business goes to war: private military and security companies and international humanitarian law]. Mezhdunarodnyy zhurnal Krasnogo Kresta. Tom 88. № 863. S. 18-23 [in Russian].

Received by Editorial Board: 16.09.2021

Suggested Citation:

Stratonov, V., Pavlish, P., , Havlovska, A. (2021). Historical Characteristic of Mercenary Activities as Form of Private Military Companies Activity. Archives of Criminology and Forensic Sciences. 2(4). 35-43. DOI: <https://doi.org/10.32353/acfs.4.2021.02>

Entwicklung, Reform, Existenz und Funktionsweise in der Neuzeit.

Die Vorschläge zur Notwendigkeit der Abgrenzung der Aktivität privater Militär- und Sicherheitsunternehmen vom durch das moderne Völkerrecht verbotenen Söldnertum, der Begründung legitimer Gründe, der Reihenfolge dieser Aktivität, der Verantwortlichkeit für Verstöße gegen nationales und internationales Recht werden begründet.

Schlüsselwörter: Werbung, bewaffneter Konflikt, Söldner, Sicherheitsorganisationen.