



## **REFLECTIONS ON THE ACTIVITY OF MERCENARIES IN THE CONTEXT OF WORLD SECURITY**

**Vera MACOVEI**

Doctor of law, Criminal investigation officer National Anticorruption Center,  
Chisinau Republic of Moldova

### **ABSTRACT**

The activity of mercenaries is a negative practice, which lately has experienced a worryingly high rise worldwide. The crime of mercenary activity is part of the category of war crimes. The doctrine states that all war crimes are committed intentionally, are part of a plan or policy or are part of a series of similar crimes committed on a large scale. For most acts that constitute war crimes, the intention is clear and can be proven, their prohibition being an absolute one.

In the present investigation, we emphasize the importance of investigating the crime of mercenary activity and highlighting the ultra negative aspect of this practice on world security.

On the one hand, worldwide, the outbreak of outbreaks of fighting and civil wars in more and more states is generating situations of massive non-compliance in the armed conflicts of the Laws of War. On the other hand, these conflicts often result in the intervention of human forces for the stated purpose of fighting for one or another ideal. The situations in question require the international community to make sustained efforts to annihilate the mentioned factors, potential generators of humanitarian crises.

**KEYWORDS:** mercenary, crime, armed conflict, war crimes.

### **INTRODUCTION:**

The crime of the mercenaries' activity provided in art. 141 of the Criminal Code of the Republic of Moldova, is part of Chapter I of the Criminal Code entitled „Crimes against the peace and security of mankind, war crimes”. The provisions of the International Convention for the Suppression of the Recruitment, Use, Financing and Training of Mercenaries, adopted in New York on 04.12.1989, to which the Republic of Moldova acceded by Law no 223 of 13-10-2005 for the accession of the Republic of Moldova to the International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, published on: 04-11-2005 in the Official Monitor no. 145 art. 693. In force for the Republic of Moldova of 28.02.2006 and Additional Protocol I adopted to the Geneva Conventions of 12.08.1949 on the protection of victims of international armed conflicts of 08.06.1977. In the context of the

latest international events, which attest to the increasingly active involvement of third parties in armed conflicts which take place in other states, the negative impact of mercenary activity on compliance with international law and international treaties is evident. Or, the activity of the mercenaries in principle is an international crime, in the conditions in which for the qualification the primary condition is that the perpetrator is not a citizen and/or not to be enlisted in the army of the states involved in the armed conflict.

Chapter I, Article 1 of the UN Charter enshrines the purposes of the United Nations, the primary and fundamental being international peace and security. According to point 1 of art. I of the UN charter, one of the purposes of the UN is: „1. To maintain international peace and security and, to this end, to take effective collective measures to prevent and eliminate threats to the peace and to repress any acts of aggression or other violations of the peace, and to carry them out by peaceful means and in accordance with the principles of justice; international law, settling or resolving international disputes or situations that could lead to a violation of the peace. In order to achieve the goals set out in the UN Charter, the Organization and its members shall act on the basis of the principles set out in Art. 2 of the UN Charter - The principle of sovereign equality of all its members; Fulfilling in good faith the obligations according to the Charter; Resolving international disputes by peaceful means (emphasis added) in such a way that international peace and security, as well as justice, are not endangered; Refraining, in international relations, from resorting to the threat or use of force, either against the territorial integrity or political independence of a State, or in any other manner incompatible with the purpose of the United Nations; Refraining from aiding a State against which the organization is taking preventive or coercive action; Ensuring that non-UN member states act in accordance with these principles, to the extent necessary to maintain international peace and security; Failure to act in matters essential to the internal competence of States.

## **RESEARCH AND FINDINGS**

In the context of the latest international events, which attest to the increasingly active involvement of third parties in armed conflicts which take place in other states, the negative impact of mercenary activity on compliance with international law and international treaties is evident. Or, the activity of the mercenaries in principle is an international crime, in the conditions in which for the qualification the primary condition is that the perpetrator is not a citizen and/or not to be enlisted in the army of the states involved in the armed conflict.

Chapter I, Article 1 of the UN Charter enshrines the purposes of the United Nations, the primary and fundamental being international peace and security. (The Charter of the United Nations / 1945).

According to point 1 of art. I of the UN charter, one of the purposes of the UN is: „ 1. To maintain international peace and security and, to this end, to take effective collective measures to prevent and eliminate threats to the peace and to repress any acts of aggression or

other violations of the peace, and to carry them out by peaceful means and in accordance with the principles of justice; international law, settling or resolving international disputes or situations that could lead to a violation of the peace. (The Charter of the United Nations / 1945).

In order to achieve the goals set out in the UN Charter, the Organization and its members shall act on the basis of the principles set out in Art. 2 of the UN Charter - The principle of sovereign equality of all its members; Fulfilling in good faith the obligations according to the Charter; Resolving international disputes by peaceful means (emphasis added) in such a way that international peace and security, as well as justice, are not endangered; Refraining, in international relations, from resorting to the threat or use of force, either against the territorial integrity or political independence of a State, or in any other manner incompatible with the purpose of the United Nations; Refraining from aiding a State against which the organization is taking preventive or coercive action; Ensuring that non-UN member states act in accordance with these principles, to the extent necessary to maintain international peace and security; Failure to act in matters essential to the internal competence of States. (Negru B., 2012., p.29).

The activity of mercenaries is a harmful practice, which lately is experiencing a worrying rise worldwide. The military conflicts that have taken place in recent years in various regions of the world (Ukraine, Nagorno-Karabakh, Syria, Libya and others) and in which the clear trend of involving mercenaries is proliferating are causing worldwide concern.

Moreover, the activity of mercenaries through the forms of manifestation and the consequences it produces, far exceeds the limit of the internal law of a state and is an attack on global values related to the general interest of states, including the stability of international relations. However, the activity of mercenaries violates all the norms of peaceful cooperation between nations and thus presents a high degree of danger for the entire international community. (CAUIA A. 2008. p.100.).

Globally, the outbreak of fighting and civil wars in various geopolitical regions may lead to an acute crisis of compliance with the rules of the Laws of War in such dramatic events. This fact requires the entire international community to make great concerted efforts to overcome this situation.

In the specialized literature it is mentioned that: „...overcoming a crisis, regardless of its kind, it is a complex general-social task. The accomplishment of such a task requires the conjugation of all the moral-intellectual and sometimes also physical forces of the members of the society ...” (Avornic Gh., Grecu R., 2015 p. 6)

Throughout the world, throughout history, there is a practice of using the services of mercenaries regardless of the religion they share, the socio-economic situation in the states from which they come or the form of government of the states to which they are going to activate. Mercenaries become people of any religious denomination and they come from the most diverse states. We do not consider the hypothesis that there is a correlation between the

use of mercenary services and the form of government of the states that do so to be valid. The adoption of one or another form of government does not yet prove that it is mainly leading to the training of mercenaries in situations of armed conflict, military action or other violent actions. We fully agree with the opinion of local doctrinaires that "there is no ideal, good, perfect form of government for all countries and for all times." It all depends on the traditions, the culture, the special circumstances that distinguish the life of one people from the others." (Grecu R., Coptileț V., 2015 p. 19)

We note, however, the opinion formulated in one of the Russian sources, (Kudelko K., 2017) according to which with the beginning of the modern era, which manifested itself, among others, in the form of nation-states, there was a direct link between the concept of state sovereignty and the definition of war. This connection found its classical form in Karl Clausewitz's definition, according to which "war is a continuation of politics." War was a monopoly of the state. Only the state had the right to declare war and save it from the forces of the regular army. Moreover, his rival could only be another state and his army. In the modern world, mercenaries are increasingly becoming a component part of aggressive politics. (Korotky F., 2006 p. 132-135)

Throughout human history, the training, development and use of mercenaries is inextricably linked to the general development of society, culture, science and technology. For this reason, the type of mercenary changes, and it begins to adapt to the existing current reality.

The problems of combating mercenarism are associated with a series of political, socio-economic and legal circumstances, the existence of which complicates the unequivocal understanding and uniform application of the legal framework to combat the phenomenon at international level, as well as the development of new theoretical and practical recommendations, aimed at further improving the legislative regulations on criminal liability for mercenary activity.

This fact, however, does not exempt each state from the need to make joint efforts to combat mercenary and, first and foremost, in legal and criminal ways, the phenomenon presenting a real and serious threat to the constitutional order and territorial integrity of a particular state. Public security and the public order of the states of origin of the mercenaries are also endangered, and they often transpose the unacceptably violent standards of behavior into the peaceful daily life of society.

In this context, the opinion invoked by the doctrine R. Grecu is noteworthy, according to which: of the national states at the present stage. Unfortunately, the states that have achieved remarkable successes in preventing and combating crime today cannot say loud and clear that they have won in the fight against crime. (Grecu R., 2019 p. 30)

The internationalization of crime increasingly requires a re-evaluation of the strategy, methods and means of combating it both at the level of nation states and globally. The attention of criminal scientists in recent years has focused on the criminal policy of states, including criminal law policy as an indispensable part of it. (Grecu R., 2019 p. 30)



**INTERNATIONAL SYMPOSIUM ON WAR STUDIES**  
29-30 October 2021 / Ankara, TURKEY / Institute of Strategic Thinking

---

Analyzing the crime of mercenary activity, most of the time we find an interdependence of the phenomenon of mercenary with the policy of the states involved in armed conflict, military actions or other violent actions. "Dealing with the correlation between politics and law, scientists mention the mutual and often contradictory influence of these two social phenomena. It is noted that politics accompanies law throughout its evolution, possibly preceding it. In terms of direct criminal law, politics is one of the most important factors in its programming, as it is interested in the integral mechanism of regulation and defense of criminal law." (Grecu R., 2018 p. 7-9)

On the other hand, the issue of criminal sanctions for mass violations of human rights and in particular for war crimes and crimes against humanity is unacceptable within the limits of national law. Therefore, all these crimes, regardless of the country in which they were committed, must be brought to justice only by an institution of international justice. (Nainer A., Kovalev S., 2000)

It is important to note that the rules of international law highlight clear criteria for mercenarism. The main feature of mercenarism is the material criterion. The form of remuneration is not specified in the rules of law, but the remuneration is much higher than that paid to combatants of the same rank who are members of the armed forces of that party. The second distinctive feature of a mercenary is his special recruitment to participate in a specific armed conflict. (Korotky F., 2006 p. 173)

In the case of the person participating in an armed conflict, the social danger consists in the fact that the person has access to firearms, which facilitates the cultivation of their abilities to use them, and from here to the desire to use these weapons in real life, either in the activity of mercenaries or in terrorist actions it is only a step.

According to Professor M. Gheorghiuță: "So far, the Republic of Moldova has not been affected by terrorism, but it should not inspire confidence in the invincibility of society or the state against this extremely negative phenomenon." (Gheorghiuță M., 2015 p 411) Unfortunately, these statements can also be attributed to the phenomenon of mercenary activity. However, recent events in conjunction with judicial practice demonstrate that more and more citizens of the Republic of Moldova are interested in participating in the military conflict in eastern Ukraine. This phenomenon certainly represents a serious threat to the security of the Republic of Moldova. Referring to the assurance of state security, Professor V. Cușnir considers that this notion: "... is susceptible of interpretation in a broad sense including the system and principles of organization and functioning of the entire system of national security and state security bodies; the objectives of the national security system and the ways to ensure national security; state security presupposes the security of the society and the citizens of the Republic of Moldova, both on the territory of the Republic of Moldova and abroad; threats, risks and vulnerabilities to state security and measures aimed at detecting, preventing and counteracting their time." (Cușnir V., 2020 p. 19) Security is the defense and assurance, guaranteed by constitutional, legislative and practical means, of the vital interests

of the person, society and the state against internal and external threats. (Cuşnir V., 2017 p. 40)

The previously invoked, conjugated with the phenomenon of increasing in the last period of mercenary cases involving citizens of the Republic of Moldova, fact confirmed by the increase in the number of convictions by courts in our country for the crime of mercenary activity and existence in society and to this day of some dissensions generated by the conflict on the Dniester, currently frozen, denotes the topicality and the special importance of the topic under investigation.

Internationally, the activity of mercenaries is mainly found in two most important international acts: the International Convention for the Suppression of the Recruitment, Use, Financing and Training of Mercenaries adopted in New York on 04.12.1989,<sup>1</sup> to which the Republic of Moldova acceded by Law no. 223 of 13-10-2005 for the accession of the Republic of Moldova to the International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, Published on: 04-11-2005 in the Official Monitor no. 145 art. 693. In force for the Republic of Moldova of 28.02.2006 and the Additional Protocol I adopted to the Geneva Conventions of 12.08.1949 on the protection of victims of international armed conflicts of 08.06.1977.

Carrying out an analysis of criminal law regulations in various countries of the general and continental law system, some authors conclude that mercenarism is recognized as a separate crime in several countries. However, the criminal law of those States contains differences both in the definition of the mercenary and in the regulation of the composition of the crime of mercenary and, last but not least, in the understanding of the legal object of this crime. (Bobotov S., Vasiliev D., 1990 p. 105)

The analysis of those rules in the criminal law of some European countries and in the United States legislation governing the criminal liability of mercenaries shows that, at present, with the exception of the Republic of Poland, they do not stipulate, in most cases, the rules of national law to the responsibility for the mercenary activity in strict accordance with the wording of international law. International law provides for liability for the crime of illegal military service in a foreign country, recruitment and entry into this service under certain conditions, depending on the national norm, usually characterized by the specifics of its regulation.

International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, adopted in New York on 4 December 1989, in force for the Republic of Moldova of 28 February 2006 and the Additional Protocol to the Geneva Conventions of 12 August 1949 on the Protection of Victims of Conflict international armies, of 8 June 1977,

---

<sup>1</sup> The Republic of Moldova acceded by Law no. 223 of 13-10-2005 for the accession of the Republic of Moldova to the International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries, Published on: 04-11-2005 in the Official Gazette no. 145 art. 693. In force for the Republic of Moldova since 28.02.2006

which provides in Article 47 that: “The term mercenary means any person: (a) who is specially recruited in the country or abroad to fight in an armed conflict; (b) who is in fact taking part in hostilities; (c) who takes part in hostilities in particular in order to obtain a personal advantage and who is actually promised, by or in the name of the party to the conflict, a remuneration higher than that promised or paid to combatants having a similar rank and function in the armed forces of this party; (d) who is neither a national of a party to the conflict nor a resident of the territory controlled by a party to the conflict; (e) who is not a member of the armed forces of a party to the conflict; and (f) who has not been sent by a State other than a party to the conflict on an official mission as a member of the armed forces of that State.”

As we see, the wording does not exclude, but on the contrary - provides for the possibility of prosecuting mercenaries and persons who have organized mercenary actions under the rules of national law.

Respectively, persons are held criminally liable under existing legislation in several states, primarily for their participation as mercenaries in armed conflict, in military actions or for the recruitment of mercenaries. On the other hand, the criminalization of such acts as training, financing of mercenaries and their use in armed conflicts or hostilities is not very common. The plausible explanation probably lies in the difficulty of proving the purpose pursued by mercenaries by participating in hostilities. As mentioned, it is, as a rule, legally stipulated and consists in undermining the constitutional order or territorial integrity of the state. In reality, practice indicates that perpetrators often refer to their guidance in such activities of religious and ideological principles. In the absence of evidence to the contrary, criminal liability for the activity of mercenaries becomes impossible due to the absence of purpose, as it is usually formulated in the criminal law of several states.

The law enforcement institutions of several CIS Member States have at their disposal quite complex regulations on the crime of working as mercenaries, which allows them to bring perpetrators to justice, in accordance with the provisions of national criminal law.

The analysis of the legal-criminal regulations of the mercenary activity in the criminal legislation of the CIS states motivates the conclusion that, in the criminal law of the Republic of Moldova, such regulations may be taken over, such as criminalizing the activity of mercenaries in aggravated forms as stipulated in the legislation. Of the Russian Federation - the commission of a person in a position of responsibility or use of employment, the recruitment of minors and in the criminal law of the Kyrgyz Republic - the commission of offenses by two or more persons with prior consent, in the interest of an organized criminal group or criminal organizations.

We agree with the opinion of the scientist T. Popovici who thinks that: “The Republic of Moldova, being a relatively young state, operates quite modern laws, still remaining in some places to harmonize them with some rigors of treaties, conventions and other international acts. The Republic of Moldova is a party.” (Popovici T., 2011 p. 8)



In the conditions of those mentioned above, we also reiterate the need to take some examples of effective regulation regarding mercenaries from the legislation of other states, which would allow the improvement of the national legal framework for criminalizing the activity of mercenaries.

## **CONCLUSIONS**

In principle, although we recognize that any legal system has its own characteristics that sometimes do not allow the full adoption of the provisions of international law, we consider necessary the joint effort of states to bring as close as possible the rules of criminal law providing for liability for mercenaries. This need is dictated by the conditions of globalization of crime in general, the transnational nature of the crime analyzed in particular and the increased social danger it poses for each state and for the community of civilized states, which aspires to peace and an international system of interstate relations based on solidarity and mutual assistance.

## **BIBLIOGRAPHY**

1. AVORNIC GH., GRECU R. The legal work of Constantin Stere-untapped scientific treasure. In: National Law Review no. 6, 2015, pp. 5-10. pp. 6
2. BOBOTOV ST., VASILIEV D. I. French model of the rule of law // Soviet state and law. 1990. No. 11. S. 105-112.
3. CAUIA A. Legal regulation of the status of mercenary in the armed conflict. In: Building the rule of law and highlighting the cultural and historical heritage of Moldova in the context of European integration. Materials of the annual International Scientific Conference of Young Researchers. Second Edition, March 28, 2008. Chisinau: Institute of History, State and Law of the ASM, 2009, p.100.
4. CUȘNIR V. Reflections on the legal regime of special investigative measures for the collection of information on possible events and / or actions that could endanger state security. In: Materials of the National Scientific-Practical Conference "Security Mandate: Current Issues of Interpretation, Legislation and Practice", 2020, Chisinau. ISBN 978-9975-56-783-1. pp. 19
5. CUȘNIR V. Sanctioning terrorist financing: the international and national legal framework. In the Materials of the Conference "Strategic Security Environment: Trends and Challenges" Chisinau, Moldova, May 18, 2017 P.40
6. GHEORGHITĂ, M. Treatise on forensic methodology. Chisinau, CEP USM 2015-532 pp. ISBN 978-9975-71-606-2;
7. GRECU R. The historical evolution of the notion and definition of criminal policy. In the National Law Review no. 7-9 of 2018.
8. GRECU R. Protection of fundamental human rights and freedoms - vector of criminal policy in the era of globalization. In: The state and the law between tradition and



- modernity. Materials of the national conference with international participation. P. 30-37. ISBN 978-9975-108-77-5.
9. GRECU R. COPTILEȚ V. The contribution of Constantin Stere to the modernization of the National Institutions. Draft Constitution. In: National Law Review no. 6, 2015. pp. 19.
  10. NEGRU B., OSCMOCHESCU N, SMOCHINĂ A and others. Constitution of the Republic of Moldova, Commentary. Article 3. Arc Publishing House 2012, page 29 ISBN 978-9975-61-700-0  
[http://www.constcourt.md/public/files/file/informatie\\_utila/Comentariu\\_Constitutie.pdf](http://www.constcourt.md/public/files/file/informatie_utila/Comentariu_Constitutie.pdf)
  11. POPOVICI T. Decent traditions for young lawyers at the age of 65 of the State University. In the National Law Review no. 6-7, 2011.pg 8-9.  
[https://ibn.idsi.md/sites/default/files/imag\\_file/Traditii%20decente%20126\\_127.pdf](https://ibn.idsi.md/sites/default/files/imag_file/Traditii%20decente%20126_127.pdf)
  12. The Charter of the United Nations was signed in San Francisco on June 26, 1945, at the conclusion of the United Nations Conference on International Organization, and entered into force on October 24, 1945.  
UN Charter.  
[http://www.anr.gov.ro/docs/legislatie/internationala/Carta\\_Organizatiei\\_Natiunilor\\_Unite\\_ONU\\_.pdf](http://www.anr.gov.ro/docs/legislatie/internationala/Carta_Organizatiei_Natiunilor_Unite_ONU_.pdf)
  13. FV KOROTKY Mercenary and peculiarities of the influence of criminal migration on it // Economic, legal and spiritual problems of the present. Pyatigorsk, 2006.S. 132-135 (0.2 sq.).
  14. FV KOTOTKY Some questions of regulation of responsibility for mercenary activity in international legal acts // Actual problems of law: theory and practice: Sat. scientific. works of the Faculty of Law. Issue 5. Krasnodar, 2006.S. 173-180 (0.3 pp.).
  15. KUDELKO K. Modern mercenarism: the letter of the law. Mai 2017 disponibile <https://warspot.ru/7256-sovremennoe-naemnichestvo-bukva-zakona>
  16. NAINER A. KOVALEV SA. War Crimes: Genocide. Terror. Struggle for justice. per. from English. Bogdanosvsky AS. M. Juurists, 2000 -368 p. from. Nineteen.