

STUDY GUIDE

Letter from the Executive Board:

Greetings delegates,

This is to extend our warm regards to all of you who will be a part of the United Nations GA1: DISEC. Whichever procedure we follow as the EB, we shall not refrain from bending slightly beyond the conventional Rules of Procedure to facilitate debate and help the delegates interact. Hence, we request you all to not worry about the RoP but rather focus upon understanding your roles as countries in this committees and where the debate lies.

It is vital that you start visualizing yourself as diplomats representing your respective countries. The role of a diplomat is to create a likeable image of your country and justify that the way your country functions, operates and act is perfectly in accordance to the Principles of the UN Charter. Hence, actions that are controversial and have gained criticism need to be highlighted in a harmless manner. The primary role of diplomats is to negotiate, discuss and deliberate in committee. Hence, it is not solely about the core research on the agenda that shall make you a standout delegate in committee, but also the research that you use to the greatest effect complimented with your diplomatic courtesy that is defined as your ability to engage in deliberations, guide debate and negotiate in favour of your country.

Talking about research, it is in no way restricted to the Study Guide. The Study Guide is an attempt to give you an idea regarding the focus areas of the debate that you should not miss, around which the main crux of the debate shall revolve. It is to be noted that this Study Guide is not exhaustive. We strongly encourage delegates to delve deep into their research, using our guide as a starting point and for reference purposes. We recommend the delegates have a holistic understanding of the topic at hand and the past incidents that have occurred at the United Nations. It goes without mentioning that we do not expect the delegates to know everything about the agenda at hand nor the committee per se. A basic holistic ideation of the situation at hand is all you will need to further expand on during discussions. In committee, it is required that you know the mandate of the committee as well as the foreign policy of your allotted nation. The most important utility of the guide shall be in understanding how to approach the committee and the agenda and make best use of your research that make you stand out from the rest. Remember, diplomacy is also about walking together with everyone and hence you should not only help others in the process of the committee but also guide everyone to a desirable outcome that you visualize the committee to be directed to according to your Foreign Policy. You are expected to be in tandem with each other diplomatically that shall also include strong contradiction and counter-attack if there is an attack or a question on your sovereignty. Your country is your Best Friend for the three days of the MUN and hence the respect and integrity of your country is in your hands to be protected with utmost care and responsibility.

We hope the Study Guide will be of best possible use to you, and we are extremely excited for the committee on the prospect of being a part of the deliberations. As the Executive Board, we are here to facilitate and moderate debate and help you out in having a fruitful and worthwhile experience in the friendliest possible manner. All the very best with your endeavors and, happy researching!

Subandhu Agravanshi.

Parth Sarthi.

Understanding the mandate of the committee:

The First Committee deals with disarmament, global challenges and threats to peace that affect the international community and seeks out solutions to the challenges in the international security regime.

It considers all disarmament and international security matters within the scope of the Charter or relating to the powers and functions of any other organ of the United Nations; the general principles of cooperation in the maintenance of international peace and security, as well as principles governing disarmament and the regulation of armaments; promotion of cooperative arrangements and measures aimed at strengthening stability through lower levels of armaments.

The Committee works in close cooperation with the United Nations Disarmament Commission and the Geneva-based Conference on Disarmament. It is the only Main Committee of the General Assembly entitled to verbatim records coverage.

The First Committee sessions are structured into three distinctive stages:

1. General debate
2. Thematic discussions
3. Action on drafts

It is the only Main Committee of the General Assembly entitled to verbatim records coverage pursuant to Rule 58 (a) of the rules of procedure of the General Assembly.

Agenda 1: Analyzing the relevant human rights framework for ensuring accountability of PMSCs in regions of armed conflicts.

Introduction:

Looking at the agenda, the key terms that can be identified are- “human rights”, “accountability”, “PMSCs” and “armed conflicts”. Since this is the UNGA DISEC, we are focusing on the human rights aspect of the accountability of Private Military and Security Companies (PMSCs). As is pretty obvious from the agenda, there is no specific human rights instrument available currently, pertaining only to PMSCs. The closest that any term has gotten to PMSCs, is “mercenary”. (All these terms will be explained in detail in the document). Yes, there’s the Law of Armed Conflict (LOAC), which would be applicable here, since we are discussing regions of armed conflicts, but nothing specific about PMSCs is mentioned in any of the relevant documents. This is exactly where the deliberations will be focusing upon. What we expect from the committee, is, simply put, proper analysis of the present instruments, and how their application can be linked to accountability of PMSCs in respecting human rights. Emphasis on the term “human rights”. The debate can include previous reports from any relevant bodies as well, basically anything that will help in enhancing the understanding of the international community about how the gray-zones pertaining to PMSCs can be dealt with. The course of the debate shall be left to the delegates, but everything should have, at its core, analysis. Any sub-topics that are taken up under the agenda, will have to pertain to the human rights dimension mainly, and not on security, economic or any other paradigm. Since the discussion will involve analysis of human rights instruments, we expect a proper legal dimension in the debate as well, and not just a policy or moral dimension. Reading up on previous sessions pertaining to the given agenda, and following up on the given sub-topics is highly encouraged.

Relevant topics under the agenda-

Mercenaries and PMSCs:

As mentioned above, the term which is often raised in discussions concerning PMSCs, is mercenary, since it has been defined under the International Humanitarian Law. Mercenaries are defined in the humanitarian law of war as persons who fulfil *all* of the conditions listed below.

They must:

- Be specially recruited to fight in an armed conflict.
- Be motivated mainly by the desire for private gain and be paid substantially better than the soldiers of the armed forces which hire them.

-In fact, take a direct part in hostilities.

-Neither be a national of a party to the conflict nor a resident of territory controlled by a party to the conflict.

-Not be a member of the armed forces of a party to the conflict.

-Not be sent by a State which is not a party to the conflict on official duty.

Furthermore, mercenaries are not entitled to the combatant, or the Prisoner of War (PoW) status (which is looked into by the Third Geneva Convention of 1949).

Again, while there is no legally accepted definition of PMSCs, they can be defined as private business concerns that provide military and/or security services, irrespective of how they describe themselves. While they were practically non-existent before the Cold War era, the industry has expanded exponentially after that.

The questions that arise here just based on the definitions are- Are PMSCs and mercenaries the same thing then? If not, when does a PMSC become a mercenary? How far are the instruments concerning mercenaries applicable to PMSCs as well? These are the questions at which the research should start, but not end. Answering these preliminary questions might be difficult too, but they will highlight the direction in which the research should move forward for each delegate. In this guide, we will be providing you with the documents which are relevant to mercenaries mainly, to further your understanding of the correlation.

Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (Article 47):

This is one of the very first and most important documents required for the understanding of mercenaries. The definition provided by Article 47 of the document has been mentioned above in the definition of mercenaries. As mentioned, they cannot be provided the combatant or the PoW status. The effect of the denial of the status of combatant and prisoner of war in case of capture is to deprive the mercenary of the treatment of prisoner of war as laid down in the Third Convention, and to make him liable to criminal prosecution. Such prosecution can be instigated both for acts of violence which would be lawful if performed by a combatant, in the sense of the Protocol, and for the sole fact of having taken a direct part in hostilities (paragraph 2(b)). This is where the crucial question of guarantees arises.

What needs to be understood here is that the Article is very restrictive in nature, when defining mercenaries. Certain very specific requirements have been mentioned, which, if not fulfilled can never be used to classify any person as a mercenary. This can provide some direction to the question of similarity between PMSCs and mercenaries.

International Convention Against the Recruitment, Use, Financing and Training of Mercenaries:

By resolution 44/34 of 4 December 1989, the General Assembly adopted and opened for signature and ratification or for accession the International Convention against the Recruitment Use, Financing and Training of Mercenaries, which was annexed to the resolution. The Convention represents an endeavour by the international community to outlaw mercenarism in all its manifestations and consists of 21 articles. The definition of a mercenary is based on Article 47 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), but goes further than Article 47 of Protocol I by being applicable in “armed conflict” (Article 1, paragraph 1) and in “any other situation” (Article 1, paragraph 2). According to Article 5 of the Convention, States Parties are not to recruit, use, finance or train mercenaries and each State Party shall establish jurisdiction over any of the offences set forth in the Convention (Article 9). The convention was drafted to specifically combat the use of mercenaries as a whole, and not just in armed conflicts. But again, the document is not a widely accepted one, since there are barely 36 Parties to it, from the entire international community, thus pointing out certain newer factors which come into play. Further research on whether this document is really helpful, and why has it not been accepted widely, is very much needed, to understand why any such framework for PMSCs has not been drafted.

The Montreux Document:

The Montreux Document is the first international document to reaffirm the international legal obligations of States regarding the activities of private military and security companies. It also contains a series of best practices designed to help States take appropriate measures to comply with their obligations under international law. It is the result of an initiative launched by Switzerland and the ICRC in early 2006.

The first part of the Montreux Document distinguishes between Contracting States, territorial States and home States. It gives an overview of the pertinent international obligations arising from international humanitarian law and human rights law for each group. It also addresses a Contracting State's liability under customary international law for the conduct of private individuals. In this section, the pertinent international legal obligations of private military and security companies and their personnel, as well as the responsibility of their superiors, are also set out.

The second part of the Montreux Document highlights best practices for the regulation of private military and security companies, such as introducing transparent regulations, licensing, and measures to improve supervision and liability. The aim of this section is to, *inter alia*, support States in implementing their obligations under international humanitarian law.

In December 2014, the Montreux Document Forum was created as a venue platform for informal consultation exchange between the participants of the Montreux Document. The forum's objective is to

help implement the Montreux Document at the national level and to encourage other States and international organisations to support it. But again, this document represents one possible method of interpretation of the IHL and the responsibility of PMSCs. It is not a widely accepted document, since not even half the total member States of the UN are Parties to it. But the document did set out a certain path, which can be followed for future deliberations, which can lead to formulation of an easily acceptable document. Reading up on this document is highly encouraged.

The above documents were a few of the instruments which can help in enhancing the understanding of the agenda. Apart from this, knowledge of International Human Rights Law (UDHR, ICCPR and ICESCR) and International Humanitarian Law (Geneva Conventions of 1949 plus the Additional Protocols to it, Hague Conventions of 1899 and 1907) will also be required to understand the human rights dimension under normal circumstances, and in regions of armed conflict.

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:

The Working Group was established in July 2005 pursuant to Commission on Human Rights resolution 2005/2. Since 2005, the Human Rights Council renewed the mandate of the Working Group several times, most recently in 2016 for a period of three years through resolution 33/4. Through this resolution, the Human Rights Council:

- Requests the Working Group to continue the work already carried out by previous mandate holders on the strengthening of the international legal framework for the prevention and sanction of the recruitment, use, financing and training of mercenaries;
- Requests the Working Group to continue to monitor mercenaries and mercenary-related activities in all their forms and manifestations, and private military and security companies, in different parts of the world;
- Also requests the Working Group to continue to study and identify sources and causes, emerging issues, manifestations and trends with regard to mercenaries and mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination.

The Working Group undertakes country visits and provides annual reports based on its mandate, to the HRC. Reading up on the reports to gather some idea about the ongoing situations in different regions is advisable.

To facilitate the understanding of exactly why we have taken up this agenda, certain case studies have been provided. Again, these should not be the end of your research, but the beginning. In-depth reading of the cases highlighted is recommended.

Case Studies-

1) Blackwater in Iraq:

Blackwater was a private military company in the USA which was one of the many PMSCs employed by the US after the invasion of Iraq, and subsequent overthrow of Saddam Hussein. On Sept. 16, 2007, a convoy of Blackwater contractors guarding State Department employees entered a crowded square near the Mansour district in Baghdad, Iraq. But versions of what caused the ensuing bloodshed diverge. Employees from the firm claim they were attacked by gunmen and responded within the rules of engagement, fighting their way out of the square after one of their vehicles was disabled. Iraqi police and witnesses instead report that the contractors opened fire first, shooting at a small car driven by a couple with their child that did not get out of the convoy's way as traffic slowed. At some point in the 20-minute gunfight, Iraqi police and army forces stationed in watchtowers above the square also began firing. Other Iraqi security forces and Blackwater quick-reaction forces soon reportedly joined the battle. The end result was that around 20 Iraqi civilians were killed in the showdown there. Despite its mission of guarding U.S. officials in Iraq, Blackwater had no license with the Iraqi government. Secondly, the murky legal status of the contractors meant they might be considered exempt from Iraqi law because of a mandate left over from the Coalition Provisional Authority, the U.S. governing authority in Iraq that was dissolved more than two years prior. The US did charge the employees with manslaughter, but the case became really controversial, with repeated dismissals and convictions, because the evidence available did not seem enough at times. The fundamental problem here is that the employees couldn't be charged directly, and they had the right to, in their own opinion, even pre-emptively retaliate, if they felt that their lives were in danger, which is something that is not allowed in international law. The absence of a proper binding document thus being the root issue.

2) The Sandline Affair:

The Sandline Affair refers to the entire political scandal that occurred when the British private military company Sandline International got involved with the Government of Papua New Guinea in 1997, that led to massive uprisings all over the country, with the ultimate resignation of the then Prime Minister of Papua New Guinea. The Govt had covertly employed Sandline International, which outsourced its work to Executive Orders, another PMSC in South Africa, to suppress the Bougainville conflict. But the reaction of the people, when the news got out, took a completely unexpected turn. The people were completely against the employment of mercenaries, and came out in support of the Defence Forces, who had already been disarmed and arrested the PMSC personnel. The company was also involved in Sierra Leone, in overthrowing the rebels, as well as in Liberia. All these covert operations made it one of the most controversial PMSCs, and it was shut down back in 2004.

3) Dyncorp International:

Another American service provider, which did start off as an aviation company, but now provides operational support, training and so on. The company has been employed by the US Army in a number of operations, and is still a part of most. The company has been involved in many controversies as well, starting from employees engaging in sex trafficking, to acting independently of the employers and killing of Iraqi civilians, without any eminent threat. While the company is one of the biggest global service providers right now, its working methods are still called into question. Further reading up on the problems that have plagued it, and the controversies it has been involved in, is highly recommended, as it will provide an insight into the present-day problems with the PMSCs.

Understanding the Debate and the Way Forward:

In the introduction, we explained where exactly the debate comes in. Here we'll be explaining how you, as delegates, can move forward with the debate. As explained earlier, the main problem lies with the fact that there are no internationally accepted legal frameworks addressing the working methods of PMSCs. For example, if there are PMSCs employed in a peacekeeping mission, and the PMSC does respond to a threat pre-emptively, because it believed it had enough reason to do so, then there's no framework to reprimand them for that, because the doctrine of peacekeeping will only be applicable for the UN peacekeepers and not for whom they employ. Now this response might have involved certain human rights violations, which may or may not be enough reason for any Court to question them, just because there is no proper framework addressing the course of action for such an act. This is just one example of numerous accountability problems. To deal with issues of this kind, different countries come up with their own policies. For example, certain Western nations do believe in mass employment of PMSCs, even with the imminent risk, because it is much cheaper than employing one's own Army facilities. And when they are charged with crimes, as we have seen in the above cases, it takes up years of debate to decide on the proper way forward. On the other hand, certain countries are completely opposed to their employment, simply because of the obvious risk. The job of delegates, at the Human Rights Council, is to try and reach a possible middle-ground for this situation. That is, address concerns of both sides, by allowing employment of PMSCs but, addressing their accountability as well. Yes, there have been previous attempts as well, to interpret the IHL in ways that can address the concerns, like the Montreux document, but as is obvious from the low acceptance of the document, it did not please a majority of the States. So, in this session what we want the delegates to begin with, is an analysis of the present instruments, how they do/ do not address the issues that have been raised so far, then move on to discussing possible original frameworks that can be built up, from the same analysis. In this context, country policy will most certainly play a pivotal role, so as much as reading up on these

instruments is important, paying attention to how your country interprets these instruments is equally essential. The sub-topics for debate under the agenda, are completely up to the delegates. They can be thematic (that is discussing different areas of accountability) as well as instrument-specific (how a specific instrument can be applied in a particular case), whichever the delegates feel will be a better pathway to address the agenda. While referring to past cases is perfectly alright, what should be kept in mind is that they should be used to build your arguments for constructive debate, and not just play a blame game.

Things to think about:

- How effective our legal instruments are in addressing the agenda?
- The role of accountability in this debate that the agenda addresses.
- How the presence of Mercenaries and PMSCs alter the dynamics of a politically vulnerable region and in a region of armed conflict.
- If the burden to use PMSCs and the burden to ensure the Human Rights standards can ever meet or not.

Relevant Links:

<https://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/WGMercenariesIndex.aspx>

<https://www.icrc.org/en/document/ihl-and-private-military-security-companies-faq>

<https://www.mdforum.ch/>

<https://www.ohchr.org/EN/HRBodies/HRC/WGMilitary/Pages/OEIWGMilitaryIndex.aspx>

<https://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/StudyOnPMSC.aspx>

<https://www.globalpolicy.org/pmscs/50225-pmscs-a-the-un.html>

<https://www.business-humanrights.org/un-intl-orgs/un-intergovernmental-orgs/un/un-working-group-on-use-of-mercenaries>

<https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2302&context=ilj>

<https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/il220408.p>

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