



16 March, 2020

Submission in response to the call for submissions: The evolving forms, trends and manifestations of mercenaries and mercenary-related activities.

The Omega Research Foundation (Omega) is an independent UK-based research organisation. We are dedicated to providing rigorous, objective, evidence-based research on the manufacture, trade in, and use of military, security, and police technologies.

Omega welcomes the Working Group's interest in the ongoing evolution of trends, forms, and manifestations of mercenaries, and mercenary-related activities, and the upcoming 2020 thematic report. We recognise the challenges the Working Group will face in the preparation of this report due, in part, to the multifaceted nature of the practice. From Omega's perspective, it is crucial that the Working Group's thematic report includes avenues to explore mercenary use of and trade in law enforcement equipment, including that used for torture and other kinds of ill-treatment.

Although mercenarism is prohibited under the 1989 International Mercenary Convention, Article 47 of the Additional Protocol I to the Geneva Conventions, and the 1977 OAU Convention for the Elimination of Mercenarism in Africa, in new and complex forms, mercenarism continues to pose challenges for the international community. Different kinds of law enforcement equipment may be used (or mis-used) by mercenaries involved in a range of activities within armed conflict, as well as by foreign fighters, and employees of private military and security companies. Equipment may be used to perpetrate violations of both international human rights standards, including the right of peoples to self-determination, as well as violations of international humanitarian law.

Any use by mercenaries, or in mercenary-related activities, of law enforcement equipment that is inherently abusive or degrading, should be rigorously investigated and prohibited. Such equipment includes, inter alia, thumb cuffs, direct contact electric shock weapons (stun batons, stun guns, etc.), and body-worn electric shock equipment.¹ Use of other kinds of law enforcement equipment, which do have a legitimate law enforcement use but can be misused to commit torture and ill-treatment, must also be monitored and held accountable for any violations of human rights standards. These goods include certain restraints (leg cuffs and handcuffs, for instance), some less lethal weapons (kinetic impact weapons, projectile electric shock weapons, and chemical irritants), as well as firearms. Anyone who carries such equipment must be appropriately trained, and any use must be compliance with international human rights standards, including principles of proportionality, legality, accountability, and necessity.²

The use of various law enforcement equipment presents particular challenges, including with regards to the regulation of its use and trade. In the case of the European Union, for instance, Regulation (EU)

¹ For more information on equipment that is inherently abusive, as well as weapons and equipment that do have a legitimate law enforcement use, but that can be misused for torture or other forms of ill-treatment, please contact the Omega Research Foundation on info@omegaresearchfoundation.org.

² For further information, please see: Institute of International and Comparative Law in Africa and Centre for Human Rights. 2020. *The Law on Police Use of Force Worldwide*. Available at: <https://www.policinglaw.info/about>. Accessed 16 March 2020.



2019/125 concerning the trade in certain goods which could be used for capital punishment, torture and other cruel, inhuman or degrading treatment or punishment, prohibits the import and export of inherently abusive goods, and controls the trade in other kinds of law enforcement equipment.³ European mercenaries who engage in brokering activities, or provide training in the use of prohibited equipment, for instance, violate this EU Regulation. At present, however, there is no similar international-level regulation on the trade in law enforcement equipment, although the UN has committed to establishing a process to explore the feasibility of common international standards, and possible options for this.⁴ Nonetheless, the use of equipment by mercenaries, and in mercenary-related activities, should be monitored and investigated to ensure only appropriate equipment is carried and used. This particular form of oversight may also provide an avenue to further enhance accountability over these activities, and improve implementation of related regulatory frameworks.

Any regulatory regime should also address the provision of training, and other related services. Some private military and security companies, for example, are known to provide training courses instructing others, including state law enforcement personnel and other PMSCs, in the use of various types of weapons and equipment, as well as instructions on security provision and techniques (restraint techniques, interrogation, etc.). There needs to be appropriate oversight of any training provided by PMSCs to ensure that it is compliant with international human rights standards, including the principles of proportionality, legality, accountability, and necessity. This oversight should also refer to relevant documents including the UN Basic Principles on the Use of Force and Firearms, and the UN Code of Conduct for Law Enforcement Officials. Training should also be subject to international transfer controls, including requiring companies to apply for permission from the relevant national licencing body to provide training overseas or to foreign nationals. Oversight of training should extend to limiting the types of equipment addressed, to ensure that no inherently abusive weapons or techniques are involved. As an example, in a 2018 report, the Omega Research Foundation documented a company, based within the Czech Republic, providing training in potentially abusive techniques, including in potentially abusive uses for equipment.⁵ The company in question, Euro Security Products, features images on its website demonstrating its employees training law enforcement and correctional officials in techniques including the employment of restraints to place people in hyper-extended positions (hog-tying) as well as the use of batons in neck-holds.⁶ Although training provided by PMSCs would comprise merely one example of the broad and multifaceted scope of the Working Group's mandate, it nonetheless provides a useful case study highlighting some of the issues that need to be explored. While some such training could enhance human rights, it is also possible that training in potentially abusive techniques may undermine human rights.

³ See particularly Annex II and III. Regulation (EU). 2019/125 of the European Parliament and of the Council of 16 January concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

⁴ UN, General Assembly, Resolution Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards, 21 June 2019, Seventy-third session, A/73/L.94.

⁵ Omega Research Foundation. 2018. *Manufacture, trade and use of 'tools of torture' in the Council of Europe*. Available at: https://omegaresearchfoundation.org/sites/default/files/uploads/Publications/ORF%20CoE%20Tools%20of%20Torture%20Report%20Revised%20June%202018%20FINAL_1.pdf. Accessed 16 March 2020.

⁶ Omega Research Foundation. 2018. *Manufacture, trade and use of 'tools of torture' in the Council of Europe*. Available at: https://omegaresearchfoundation.org/sites/default/files/uploads/Publications/ORF%20CoE%20Tools%20of%20Torture%20Report%20Revised%20June%202018%20FINAL_1.pdf. Accessed 16 March 2020.



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Access of mercenaries and mercenary-related actors to various kinds of law enforcement equipment and weapons should also be explored. In a previous report, Omega, as part of The Remote Control Project, published research into issues raised by the existence of ‘floating armouries’,⁷ a phenomenon that continues to be of concern. Such armouries have been used by entities offering maritime security support to store weapons in international waters. As noted in the report, lack of comprehensive oversight of mercenary-related actors could lead to vessels being converted into armouries, and the equipment contained therein used to threaten peace and stability, violate human rights, and encroach upon the rights of peoples to self-determination. These concerns can also be applied to land-based armouries, operated by private companies or governments. The use, as well as the import and export, of a range of equipment and weaponry, by mercenary-related entities and individuals, requires thorough oversight and for accountability measures to be established.

We are encouraged by the Working Group’s engagement with civil society to ensure a comprehensive picture of issues and concerns raised by the ongoing evolution of forms, trends, and manifestations of mercenaries and mercenary-related activities, and we look forward to further participation in the activities of the Working Group.

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⁷ Link to report at: Omega Research Foundation. 2014. *Floating Armouries: Implications and Risks*. Available at: <https://omegaresearchfoundation.org/publications/floating-armouries-implications-and-risks-december-2014>. Accessed 11 March 2020.