

RSIS COMMENTARIES

RSIS Commentaries are intended to provide timely and, where appropriate, policy relevant background and analysis of contemporary developments. The views of the authors are their own and do not represent the official position of the S.Rajaratnam School of International Studies, NTU. These commentaries may be reproduced electronically or in print with prior permission from RSIS. Due recognition must be given to the author or authors and RSIS. Please email: RSISPublication@ntu.edu.sg or call (+65) 6790 6982 to speak to the Editor RSIS Commentaries, Yang Razali Kassim.

No. 43/2011 dated 17 March 2011

“Mercenaries” in Libya: Impact of Legal Impunity

By Manpavan Joth Kaur

Synopsis

Gaddafi's engagement of “mercenaries” to fight in his domestic civil war is problematic. The current hostilities between Libyan protesters and migrant Sub Saharan Africans manifest the weak international legislation regulating the use of “mercenaries” in conflicts.

Commentary

A ‘NO-FLY Zone’ over Libyan airspace may restrict bombing runs by Gaddafi’s jetfighters against civilian protesters. But it could also force the regime to resort to land offensives and therefore increase its ground forces. Where would this enhancement of troops come from? Arguably, it could come from the ranks of his “mercenaries”, many of whom are from Sub-Saharan Africa.

The threat of the use of “mercenaries” has begun to seriously harm migrant Sub-Saharan Africans in Libya although the exact use of “mercenaries” in Libya remains unsubstantiated. In fact, Sub-Saharans in Libya are becoming the most vulnerable foreign population caught in the crisis, ending in their victimisation. The significance of their victimisation is two-fold. Firstly, it highlights the prevalent reliance on “mercenaries” in African conflicts. Secondly, it reflects on how weak regulation of “mercenaries” can result in hostilities between presumed “mercenaries” and local populations.

“Mercenaries” in Libya?

“Mercenaries” are broadly defined in international law as persons recruited to fight in an armed conflict, motivated by private gain, money. These persons are not residents, nationals or members of the armed forces of a party to the conflict. They are also not members of the armed forces of any other state. In Africa, the precise quantification of “mercenary” activities is a difficult empirical task. It is widely presumed that Gaddafi would employ “mercenaries” following the resignations of top officials from the government, and the defiance of orders by members of the police and army.

Indeed, the African continent maintains a tradition of using “mercenaries” in handling internal political crises and there is a ready supply of personnel. For instance, they were used in the attempted coup d’état against the Equatorial Guinean government in 2004. In the Ivory Coast, electorally-defeated President Laurent Gbagbo hired “mercenaries” from Liberia in 2010 to fight the newly-elected President Alassane Ouattara.

Advertisements have been launched in Kenya and Guinea to recruit pro-Gaddafi fighters. The tendency is for “mercenaries” in Africa to be recruited through informal networks of ex-civil war combatants. Fighters are purportedly offered approximately US\$ 2,500 per day or could earn up to US\$ 20,000 a month.

In the Libyan context, a Malian government official revealed that 200-300 members of the Tuaregs community from its Kidal region had left for Libya to join pro-Gaddafi forces. Indeed, the Tuaregs share a longstanding relationship with the Gaddafi regime. This began with the formation of the “Islamic Pan African Legion” in the 1970s. Also, the Tuaregs were trained in Libya. Although the Legion was disbanded as an organisation in the 1980s, connections between pro-government Libyan officials and the Tuaregs have continued.

The Malian government has expressed its anxiety but finds difficulty in controlling this exchange. Indeed, the persisting conflicts in Africa and poor efforts in demobilising fighters have generated a steady supply of ex-combatants. In the absence of alternative employment opportunities, utilising their combat experiences in exchange for money is a lucrative venture.

‘Popular Anger’ Against Presumed “Mercenaries”

Accordingly, the use of “mercenaries” is a real threat to anti-government Libyan protesters, and their use is perceived as state-sponsored violence. However, defensive responses from anti-government protesters have led to indiscriminate violence against innocent Sub-Saharans in Libya.

Widespread and indiscriminate targeting of Sub-Saharans is based on their identification as “black” and “non-Arabic speaking”. These characteristics are derived from their close relation to persons from dominant source countries of “mercenaries” such as Chad, Niger, Liberia, Mali, Somalia and the Central African Republic. Presumed “mercenaries” have been forcibly detained and assaulted by armed mobs, with their homes and shelter camps targets of destruction. Predictably, choosing to secure their personal safety entails avoiding movement in public spaces.

Accordingly, they have been unable to progress towards a safe exit from Libya. The International Organisation for Migration reports that Sub-Saharans are scarce among the thousands pouring out of Libyan borders daily.

Nevertheless, the harsh reaction of anti-government protesters can be explained on two grounds. Firstly, the indiscriminate attacks against Sub-Saharan Africans are largely due to the unorganised way that “mercenaries” are incorporated into armed offensives by the state. Secondly, anti-government forces resent the intervention of pro Gaddafi “mercenaries” in a domestic conflict. The strategies and actions of “mercenaries” are considered dangerous and brutal because they are monetarily-motivated and lack personal or cultural ties with the local people. Their earnings are guaranteed on unconditional loyalty to their recruiters. Reciprocally, recruiters such as the Gaddafi regime are more comfortable using “mercenaries” as they reduce the threat of defection. As noted by Reed Brody of Human Rights Watch: “It’s easier to get foreigners to shoot at Libyans than to get Libyans to shoot Libyans.”

Causes of Hostile Relations

The controversial use of “mercenaries” is compounded by weak international regulations. This has trickled down into a weak culture of accountability for atrocities committed by “mercenaries”.

Primarily, the content of the UN Convention on Mercenaries, which serves as a benchmark for domestic legislation, is not effective. For example, the Tuaregs would be subject to anti-mercenary laws only if their sole motivation was private gain, money. The Tuaregs, however, may be motivated by their close links – political or ideological – with the Gaddafi regime which could easily distinguish them from the definition of “mercenaries”. This would make the legislation inapplicable. This situation arises particularly in the African context because the operation of “mercenaries” is plagued with complicity by governments. However, anti-mercenary laws are not designed to recognise state responsibility in mercenary activities.

This legal weakness in addressing the problem of accountability of “mercenaries” is causing immense insecurity amongst protesters, leading to their indiscriminate attacks on innocent Sub-Saharans presumed to be “mercenaries”. This dimension of the internal conflict in Libya needs to be considered even as options for intervention in the strife-torn country are being considered.

Manpavan Joth Kaur is a Research Analyst with the Internal and Cross-Border Conflicts Programme of the Centre for Non-Traditional Security (NTS) Studies, at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University.