

Pedigree dogs of war

Some people who engage in foreign conflicts are called terrorists. Others are about to be government-licensed

What is the legal difference between hiring a helicopter for use in a coup against a west African government and sending supplies to the Chechen rebels? If there isn't one, why isn't Mark Thatcher in Belmarsh? Conversely, why aren't the "foreign terrorist suspects" in Belmarsh prison free and, like Thatcher, at large in London? Why is an alleged engagement in foreign military operations called terrorism one moment and business the next?

The question is an important one, for mercenaries are becoming respectable again. On Thursday Tim Spicer, Britain's most notorious soldier of fortune, will speak at the School of Oriental and African Studies. Last month he addressed a conference at the Royal United Services Institute. Last year one of the companies he runs won a \$300m contract from the US government for security work in Iraq. He moves through the establishment like the boss of any other corporation.

Spicer is the mercenary who, in two years, caused two international incidents. The first was in 1997 in Papua New Guinea, where he was hired by the government to recapture the island of Bougainville from separatists. Spicer was seized by resentful army officers, and the subsequent row brought down the Papuan government. The second was in 1998 in Sierra Leone where, with the covert blessing of British diplomats, he imported weapons for troops trying to restore an ousted government. The ensuing scandal almost forced the resignation of the British foreign secretary.

Spicer says his companies "operate strictly within the law". And it is true that, while

he has faced criminal proceedings in Papua New Guinea, he has never been charged with an offence in the UK. But let us imagine he had been gunrunning and trying to regain territory on behalf of fundamentalist Muslim leaders, and that, instead of being a blue-blooded alumnus of Sherborne School and the Scots Guards, he had a foreign accent and a bushy beard, and quoted the Qur'an in his public speeches. Would he now be rubbing shoulders with government ministers, or would his companies be on their list of proscribed organisations? In the UK, the application of the law against involvement in foreign conflicts is discriminatory. It is not the activity that is proscribed, but the person who carries it out.

In principle, mercenaries are regulated by the 1870 Foreign Enlistment Act. It's an offence to assist the armed forces "of a foreign state at war with any foreign state at peace with Her Majesty". But no one has ever been prosecuted for it, and the act is widely regarded as useless. The government has avoided the need to test it by deciding that some people are terrorists, and therefore contravene a different set of laws, while others are businessmen, and therefore contravene no laws. Their classification depends on their nationality (British subjects, for example, cannot be detained without charge or trial in Belmarsh); the identity of the government they intend to fight or support; and their ideology (if they believe in what they are doing they are terrorists, if they do not they are businessmen).

The distinction has nothing to do with the morality of their cause. The people of Bougainville, brutally treated by the government of Papua New Guinea, had a powerful moral case for self-determination, and the government a weak moral case for using armed force to seize their land for a giant copper mine, yet this does not appear to have affected our government's decision to treat Spicer's operation as business. The moral case for a Kurdish insurrection against the government of Turkey is as strong as the moral case for a Kurdish insurrection against the former government of Iraq, yet this hasn't stopped the British government from classifying its supporters and former supporters as terrorists.

And now the government seems to be about to make one set of foreign adventurers even more respectable. Most companies do all they can to avoid regulation, but not Britain's mercenaries. As Spicer said last month, "we should welcome oversight and regulation, not shy away from it. It helps further legitimise the industry." The government agrees. The consultation paper the Foreign Office published in 2002 argued that a licensing system would allow the government to "distinguish between reputable and disreputable private-sector operators" and to "encourage and support the former". A blanket ban, on the other hand, "would deprive British defence exporters of legitimate business". Jack Straw, the Foreign Office says, is likely to

propose a licensing scheme for mercenaries within months.

At first sight, a licensing system looks better than no system at all. The problem is that it institutionalises the discriminatory application of the law. Just as the government does when it licenses the export of weapons, it will decide that some foreign conflicts are good and others are bad.

And this, in turn, allows it to support military actions without declaring war or seeking prior parliamentary approval. By deciding that British mercenaries can engage only in the conflicts of which it approves, the government will in effect be deploying them as proxy militias.

Perhaps with this end in mind, it has been assisting Mr Spicer in his campaign to improve the mercenary's image. When he rebranded the members of his trade as "private military companies", the Foreign Office immediately followed suit. Now he's trying to make them sound even more respectable – "private security companies" – and the government has again fallen into line. When I asked an official at the Foreign Office a question about mercenaries last week, he replied "they're not mercenaries, they're private security companies". "What's the difference?" "The difference is that a private security company is a properly registered company, not an individual getting a few friends together." In other words, you cease to be a mercenary by sending £20 to Companies House.

The government's consultation paper reads like a PR brochure for the dogs of war. "There is nothing wrong with governments employing private-sector agents abroad in support of their interests"; hiring mercenaries is "a cost-effective way of procuring services which would once have been the exclusive preserve of the military" and "a strong and reputable private military sector might have a role in enabling the UN to respond more rapidly and more effectively in crises".

None of this is to suggest that the problem is easy to resolve. If the government banned British subjects and residents from engaging in any foreign conflict, no one would be able to assist the armed opposition to the Burmese junta, or enlist to fight in another Spanish civil war. If it permitted us to engage in any foreign conflict, the UK would become the launch pad for numberless attempts to overthrow democratic governments. So there needs to be some means of choosing. But not, surely, the one the Foreign Office has in mind. It seems to be preparing to license only operations that make money and assist western strategic interests. And it seems to want to turn men like Tim Spicer and Mark Thatcher from pariahs into ambassadors.