

## **i Information**

In the spring semester 2022, the exam will be a 48 hour home exam, maximum 3000 words on master's level.

Footnotes should be included in the word count of the main text. Not included in this count: front page (title etc.), summary, table of contents and references (bibliography). (If relevant for the paper).

Assignments/papers with text exceeding the word limit will not be accepted.

# 1 JUS5530 Exam S22

Marc (18), a citizen of France, was gaming (Total War) in his room when he saw a message in a chat offering the chance to earn 3000 British pounds per month to work guarding a gold mine in the Central African Republic for a private company named the Wagner Group. After sending a reply indicating his interest to join the group for three months, he was sent an airline ticket to the Central African Republic where he was sent to a training base in the ruins of former-emperor Jean-Bedel Bokassa's palace at Berengo, southwest of Bangui to learn the skills of reconnaissance from experts with experience from the Russian Main Intelligence Directorate (GRU).

After completing his two month training he was sent to the guard a gold mine pursuant to a request to the Wagner Group for support by President Faustin-Archange Touadéra. As part of his guard duties, he was ordered to map the movements of the Muslim Séléka rebel group which was trying to take over control of the gold mine.

One night Marc received information that the Séléka group was planning a military operation against the mine and informed his superiors. The next day the Wagner Group set up checkpoints in the village near the mine. A truck failed to stop at the checkpoint and the Wagner group guards fired on the driver and three passengers, killing all of them. Marc was part of the guard group and he claims that he had asked his superiors whether they should check the documentation of the driver, but since the driver did not stop, the superiors ordered the guards to fire. Marc claims that although he shot, his bullets did not hit the driver or the passengers as he fired at the tires of the truck. The United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) arrived at the scene and spoke to Marc's superiors. They removed the bodies of the victims and told Marc's superiors that they would take care of the situation. Some of the villagers protested that the driver and passengers were not members of the Séléka group, but rather ordinary civilians fleeing violence in the region at the time, and they demanded that there be an investigation and trial. Marc was ordered back to the base.

Marc was shaken by the event and spoke to another member of the Wagner group who told him that if he wasn't man enough to deal with collateral damage, he should leave the Wagner Group since he had only been at the mine base one month.

Marc decided to leave the Wagner Group. He lied and told his superiors that he was going to join other Wagner groups in the Ukraine, but instead he fled to Azerbaijan. In Azerbaijan, Marc had continual nightmares about the shooting. He started drinking heavily. One night, he argued with another man in the bar who called him "A deserter who deserved to be shot". Marc was afraid that the man was connected to the GRU and the Wagner Group. He got into a physical fight and the police arrested him for assault.

The police did not arrest or question the other man. Marc was put into deportation proceedings. When he was interviewed by the police he stated that he wanted to claim asylum saying "If you send me back to France then I will have to go to jail and pay a huge fine! If you send me to the Central African Republic, I may be arrested by the President's security service that collaborates with the Wagner Group. Because I was a witness to the shooting, I may be targeted by my superiors who may fear me giving testimony in the event of a prosecution! Or they may torture and shoot me for my desertion!" The Azerbaijani authorities received a warrant for Marc to be extradited to the Central African Republic to be processed before a military tribunal on account of his involvement with the shooting of the civilians in the truck.

## Question for both BA and MA students:

You are a legal advisor for the UNHCR. The Azerbaijani authorities have asked UNHCR to provide advice. You have been asked to write a memo for the High Commissioner addressing whether Marc may be considered a refugee under the 1951 Convention on the Status of Refugees

and Azerbaijani's national refugee law (contained in the Annex) and whether he may be sent to the Central African Republic.

**Additional Question *only* for MA Students:**

The High Commissioner would like you to address whether Marc can be sent to France.

This is an open book exam, so you are free to refer to additional sources (including case law, literature, and other instruments or reports) as long as you cite them. In the Annex you will find 10 items: a press release from the UN Office of the High Commissioner for Human Rights, a report from Amnesty International, and links to the 1951 Convention on the Status of Refugees, the European Convention on Human Rights, the UN Convention against Torture, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' s Rights, a section of the Azerbaijani refugee law, the International Convention on Mercenaries, and a section of the French Penal Code. Good Luck!

**Annex:**

**1. Press release from the UN Office of the High Commissioner for Human Rights:**

<https://www.ohchr.org/en/press-releases/2021/03/car-experts-alarmed-governments-use-russian-trainers-close-contacts-un?LangID=E&NewsID=26961>

**2. Amnesty International Report:**

<https://www.amnesty.org/en/wp-content/uploads/2021/12/AFR1950382021ENGLISH.pdf>

**3. Azerbaijan and France have ratified the 1951 Convention on the Status of Refugees:**

[Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954. \(umn.edu\)](#)

**4. Azerbaijan and France have also ratified the European Convention on Human Rights and has accepted the jurisdiction of the European Court of Human Rights:**

[University of Minnesota Human Rights Library \(umn.edu\)](#)

**5. France, Azerbaijan, and the Central African Republic have ratified the UN Convention Against Torture**

[Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. \(No. 51\) at 197, U.N. Doc. A/39/51 \(1984\), entered into force June 26, 1987. \(umn.edu\)](#)

**6. France, Azerbaijan, and the Central African Republic have ratified the International Covenant on Civil and Political Rights**

[International Covenant on Civil and Political Rights, G.A. res. 2200A \(XXI\), 21 U.N. GAOR Supp. \(No. 16\) at 52, U.N. Doc. A/6316 \(1966\), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. \(umn.edu\)](#)

**7. The Central African Republic has ratified the African Charter on Human and Peoples' Rights**

[African \[Banjul\] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 \(1982\), entered into force Oct. 21, 1986: \[excerpts\] . . .](#)

([umn.edu](http://umn.edu))

## 8. LAW OF THE REPUBLIC OF AZERBAIJAN “ON STATUS OF REFUGEES AND FORCIBLY DISPLACED (PERSONS DISPLACED WITHIN THE COUNTRY) PERSONS” CHAPTER I GENERAL PRINCIPLES

Article 1. Basic concepts used in this Law.

The basic concepts used in this Law have the following meanings: The term “Refugee” shall apply to person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Article 2. Conditions when status of refugee is not granted. The status of refugee is not granted to the following persons: • If the person committed a crime against peace, a war crime, or a crime against humanity and mankind as defined in the international law; • If the person committed a serious non-political crime outside of the Republic of Azerbaijan prior to his/her arrival in the territory of Azerbaijan; • If the person is considered guilty in making the actions, which contradict to the purposes and principles of United Nation

## 9. Azerbaijan ratified the [International Convention against the Recruitment, Use, Financing and Training of Mercenaries](#) (1989)

It expands the concept of mercenaries to cover situations involving armed conflict and other situations, in which persons are recruited for the purpose of participating in a concerted act of violence aimed at overthrowing a Government or otherwise undermining the constitutional order of a State, or undermining the territorial integrity of a State.

### Article 1

For the purposes of the present Convention,

1. A mercenary is any person who:

(a) Is specially recruited locally or abroad in order to fight in an armed conflict;

(b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;

(c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

(d) Is not a member of the armed forces of a party to the conflict; and

(e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

2. A mercenary is also any person who, in any other situation:

(a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:

(b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;

(c) Is neither a national nor a resident of the State against which such an act is directed;

(d) Has not been sent by a State on official duty; and

(e) Is not a member of the armed forces of the State on whose territory the act is undertaken.

To commit an offence under the Convention, a mercenary must not only fall within the definition contained in article 1 but also participate directly in hostilities or in a concerted act of violence, or have attempted to do so.

An offence is also committed by any person who recruits, uses, finances or trains mercenaries, attempts to do so, or is the accomplice of a person who commits or attempts to commit an offence set forth in the Convention. This indirect offence is deemed to have been committed even where the mercenaries in question have not yet taken part in hostilities. The purpose of the direct combat requirement is to distinguish a mercenary from a military adviser.

The Convention also sets out a framework to facilitate the prosecution of offenders at the national level. It requires States to ensure that their legislation makes prosecution possible. Any alleged offender present on their territory should be taken into custody and a preliminary inquiry opened. If the person concerned is not extradited to another State for trial, the case should be submitted to the competent national authorities. Throughout the proceedings, the alleged offender should benefit from fair treatment and judicial guarantees. States should cooperate with one another in both the prevention and prosecution of offences, including through the exchange of information. Lastly, the Convention establishes a procedure for the settlement of disputes between States parties concerning the interpretation or application of the instrument.

#### **10. France's Penal Code (1992), as amended in 2003:**

##### *Chapter VI*

##### *Participation in mercenary action*

Article 436-1. – Punished with five years of imprisonment and a fine of 75 000 EUR is the act:

1° by any person, specially recruited in order to fight in an armed conflict, who is neither a national of a State party to that conflict, nor a member of the armed forces of that State, nor has been sent on official duty as a member of its armed forces by a State which is not one of the parties to the conflict, of taking, or trying to take, a direct part in the hostilities, motivated by the desire for private gain or for a compensation substantially in excess of that paid or promised to combatants of similar ranks and functions in the armed forces of the party for which the person is to fight;

2° by any person, specially recruited for the purpose of participating in a concerted act of violence aimed at overthrowing the institutions or undermining the territorial integrity of a State, who is neither a national of the State against which that act is directed, nor a member of the armed forces of that State, nor has been sent on official duty by a State, of taking, or trying to take, part in such an act, motivated by the desire for a significant private gain or compensation



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