

CONFIDENTIAL

See also 18 USC 5919
MAR 30 1994
FE

MEMORANDUM FOR THE OPERATIONS COORDINATING BOARD

SUBJECT: Effects of Enlistment in Non-Governmental Forces
on the Citizenship of U. S. Nationals

In response to discussion at the OCB meeting of 24 March, the following legal considerations concerning enlistment of U. S. personnel in foreign military organizations is presented for the information of the Board:

1. In the matter of enlistment of U. S. nationals in foreign military forces: Title 8, U.S. Code 1481 (a) (3) states that a U. S. national will lose his nationality by serving in the armed forces of a foreign state unless such service received specific prior authorization from the Secretaries of State and Defense.

a. This provision is, however, further affected by Title 8 USC 1481 (a) (2) which states that a loss of citizenship results for a U. S. national who swears allegiance to a foreign government.

b. Further, 8 USC 1481 (a) (5) states that a U. S. national loses his citizenship for voting in a political election.

c. Therefore, it is concluded that if a U. S. national is authorized by the Secretaries of State and Defense to serve in a foreign military force, and if such national does not swear allegiance to the foreign government, and does not vote in any political election involving that foreign government, his citizenship is protected and there is no real legal obstacle to prevent such enlistment.

2. In the matter of service in a "foreign legion" sponsored by a foreign government, it would appear that such foreign legion were legitimately part of the sponsoring country's military forces and that service in such a legion would come under the same rules as in 1. above.

3. In the matter of service by a U. S. national in an American-sponsored foreign legion, no legal obstacle is apparent in view of the fact that such a legion would, like the French Foreign Legion, constitute part of the recognized military force of the United States. There are, however, obvious drawbacks to such an American foreign legion which could not be resolved legally since the matter of "intervention" or "belligerency" would be determined by the enemy.

OSD Declassification/Release Instructions on File

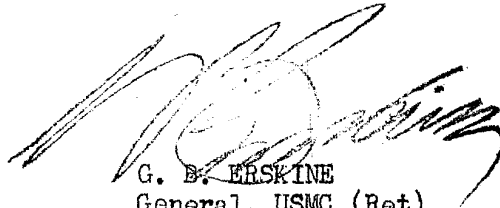
CONFIDENTIAL

CONFIDENTIAL

4. Another possibility to be considered is service by a U. S. national in a commercial or mercenary type non-governmental force. For example, a "soldier of fortune" of U. S. or any other nationality could, without any legal complications, it would appear, raise his own force of volunteers who would sign contracts rather than swear allegiance and who then would be under contract to fight for any government which the soldier of fortune chose to deal with. It would appear that this alternative has many possibilities in that it seems to be the most completely divorced from governmental sponsorship and from the problems involved in entering the service of a foreign state.

5. In the matter of recruitment, it would appear that no problem is involved in recruitment other than those touched upon above. Should a foreign government desire to recruit U. S. nationals directly, all of the foregoing legal bars would need to be considered. If a commercial or private or U. S. Government-sponsored recruitment program took place, there would appear to be no legal bar.

6. Legality is not the main issue in most instances; rather, a balance between legality and desirability from a political and psychological point of view is the criterion; however, it is recommended that the Attorney General examine any selected course prior to implementation.



G. B. ERSKINE
General, USMC (Ret)
Assistant to the
Secretary of Defense
(Special Operations)

No oath of allegiance in French F. L.