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## Foreign Fighters in the Ukrainian Armed Conflict: An International Humanitarian Law Perspective

### Article

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### Abstract

This study discusses foreign fighters who take part in the Ukrainian armed conflict. The aim of this study is to know about the history of the armed conflict of Ukraine, study the relevance of International Humanitarian Law to foreign fighters, and study the implementation of Human Rights obtained by foreign fighters based on International Humanitarian Law. The used is juridical-normative legal research or also called document research with secondary data as the main source. Researchers conduct legislative studies to see synchronization between legislation. Data were collected using literature review techniques, such as perusing, analyzing, and drawing conclusions from relevant documents. The results of this study conclude, first, the history of the Ukrainian armed conflict starting from the independence of Ukraine and culminating in the Russian special military operation that occurred on February 24, 2022. Second, the relevance of international humanitarian law to foreign fighters has no specific definition describing foreign fighters and only foreign terrorist fighters. Third, the implementation of human rights against foreign fighters is an inviolable or inalienable human right. However, in its implementation there are still many violations that occur in the armed conflict of Ukraine. Several methods are needed to overcome this problem, namely, the need to increase understanding and awareness regarding IHL and human rights, especially for foreign fighters, to all parties and, make policy recommendations regarding clarity of understanding for foreign fighters, which can then be used as a guide for policymakers and practitioners to increase the certainty of humanitarian protection for foreign fighters.

**Keywords:** *Foreign Fighters; Ukraine Armed Conflict; International Humanitarian Law.*

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## INTRODUCTION

Russia launched its invasion of Ukraine on February 24, 2022, after President Vladimir Putin proclaimed war on the neighboring nation.<sup>1</sup> The invasion involved the deployment of Russian forces into Ukraine and the launching of Russian missiles at several strategic locations near the

<sup>1</sup> The Lancet Regional Health – Europe, “The Regional and Global Impact of the Russian Invasion of Ukraine,” *The Lancet Regional Health - Europe* 15, (2022), <https://doi.org/10.1016/j.lanep.2022.100379>.

capital of Ukraine. The conflict between Russia and Ukraine is not new. It began in 2014 when Russia acquired and annexed Crimean Peninsula territory that was formerly part of Ukraine.<sup>2</sup>

In November 2021, Russia began to build up military forces along the border between Russia and Ukraine, escalating tensions between the two nations. This action increases the tension between the two parties. Later, one of the intelligence agencies of the United States issued a statement indicating that Russia most likely intended to invade Ukraine in early 2022. Russia categorically disputed the accusation and viewed the NATO action as provocative. Regarding the non-acceptance of Ukraine as a member of NATO and the prohibition on the construction of NATO's military infrastructure in Ukraine, Russia genuinely questions the long-term security guarantees. This appeal was made after Ukrainian President Volodymyr Zelensky stated his intention to join NATO.<sup>3</sup> The United States, NATO, the European Organization for Security and Cooperation (OSCE), and Russia met in the middle of January 2022 as part of diplomatic efforts. Russia submitted a security guarantee proposal to prevent Ukraine from joining NATO, but NATO and US President Joe Biden rejected this proposal.

Russia has shown no intention to withdraw its forces from the Ukrainian frontier, and the meeting did not result in an agreement. NATO reports that there has been no indication that Russia has actually begun withdrawing its personnel from the border region, despite Russia's assertions to the contrary. In the meantime, NATO allies began deploying additional ships and aircraft to Eastern Europe to bolster defense and security. Russia's invasion of Ukraine under the guise of a 'special military operation' violated the legal order established by the United Nations (UN) following World War II.<sup>4</sup> This Russian action constitutes aggression in violation of Article 2(4) of the United Nations Charter, which prohibits the unilateral and arbitrary use of force. The 'United for Peace' resolution adopted by the UN General Assembly condemned the invasion, marking a rare instance in which the UN was able to surmount a potential veto by Russia and other permanent Security Council members.

Since the invasion began on February 24, 2022, the conflict between Russia and Ukraine has escalated, resulting in a massive exodus of Ukrainian citizens. Foreign nationals expressed their support for Ukraine through the International Territorial Defense Legion as part of the international response to the invasion. This legion was established by Ukrainian President Volodymyr Zelensky, who invited foreign fighters to join the struggle against Russia. Since the beginning of the conflict an estimated 20,000 individuals, including foreign fighters have joined the Ukrainian armed forces. Besides the Russian position, President Putin has announced that 16,000 volunteers from the Middle East are prepared to assist Russia. Foreigners from Chechnya and mercenaries from Syria and Libya who have joined the Wagner Group are also included.<sup>5</sup> The participation of foreign fighters

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<sup>2</sup> Ruth Endam Mbah and Divine Forcha Wasum, "Russian-Ukraine 2022 War: A Review of the Economic Impact of the Russian-Ukraine Crisis on the USA, UK, Canada, and Europe," *Advances in Social Sciences Research Journal* 9, no. 3 (2022): 144–53, <https://doi.org/10.14738/assrj.93.12005>.

<sup>3</sup> Aleksander OLECH, "Determinants for the International Security: Membership of Ukraine in NATO," *International Relations Review* 6, (2019).

<sup>4</sup> Imran Yousaf, Ritesh Patel, and Larisa Yarovaya, "The Reaction of G20 Stock Markets to the Russia–Ukraine Conflict *Black-Swan* Event: Evidence from Event Study Approach," *Journal of Behavioral and Experimental Finance* 35, (2022).

<sup>5</sup> Tanya Mehra and Abigail Thorley, "Foreign Fighters, Foreign Volunteers and Mercenaries in the Ukrainian Armed Conflict", International Centre for Counter-Terrorism, accessed June 24, 2023, <https://www.icct.nl/publication/foreign-fighters-foreign-volunteers-and-mercenaries-ukrainian-armed-conflict>.

in these conflicts raises concerns regarding their legal status and the political ramifications of their presence. Authorities have detained and prosecuted a number of foreign participants in the conflict, while others remain active on the battlefield. Foreign fighters' participation in the conflict between Russia and Ukraine has heightened concerns and complicated the situation. While some foreign nationals have joined the Ukrainian armed forces to support Ukraine's defense against Russia, others, including a significant number of Middle Eastern foreign fighters, have sided with Russia. The presence of foreign fighters in the conflict zone has legal and political implications. In addition, the presence of foreign fighters further complicates an already volatile situation. Their participation may escalate the conflict and burden international relations further. Foreign fighters' support may have political repercussions, as it may attract the interest and participation of other nations. This may prolong the conflict and complicate diplomatic efforts to reach a settlement. This research differs from others because it focuses on foreign fighters, especially the armed conflict in Ukraine, which is based on theories of foreign fighters in international humanitarian law. The utilization of international regulations, particularly International Humanitarian Law, holds significant importance. The legal framework governing the protection of foreign fighters in International Humanitarian Law includes the Geneva Conventions of 1949 and their accompanying Protocols. This is crucial to understand and scrutinize because the legal regulations within International Humanitarian Law serve as the basis for safeguarding the human rights of foreign fighters.

## **RESEARCH METHODS**

This juridical-normative analysis employs a legal approach and analyzes the legal situation in the Ukraine-Russia conflict through the lens of International Humanitarian Law. Research closure consists of introductory materials addressing issues and studies in research. This study previously attempted to provide a comprehensive explanation for the origins of the Ukraine-Russia military conflict. In addition, this legal investigation utilizes qualitative normative research, also known as document research, with secondary data as its primary source. These resources consist of judicial decisions, doctrines, regulations, legal theory or official correspondence, as well as books, reports, and journals. Secondary data includes primary legal documents such as laws and regulations and all official documents containing legal provisions, secondary legal documents such as articles and journals, and tertiary legal documents such as dictionaries and encyclopedias. Data was collected using literature review techniques, such as perusing, analyzing, and drawing conclusions from relevant documents. These documents including treaties, legal books, legal journals, and other sources that are associated with the central issue of this research. The qualitative technique of data analysis was utilized in this study. The approach to data acquisition and analysis is methodical and consistent. Therefore, information can be obtained from the data. The technique comprises predominantly of a step-by-step data collection and analysis procedure.

## **ANALYSIS AND DISCUSSION**

### **The History of the Ukraine-Russia Conflict**

History Since 1991, when Ukraine gained independence from the Soviet Union, the conflict between Ukraine and Russia has been ongoing.<sup>6</sup> Tensions between Ukraine and Russia persisted,

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<sup>6</sup> Galina Kopachinska, "Geopolitical View of Ukraine: History of Development and Specifics of Its Current

culminating in the Russian military invasion of Ukraine on February 24, 2022, as a result of divergent political views, issues of separatism, and competition for power. This conflict has complex and varied historical origins, and it affects the region's stability and international relations.

A. The Declaration of Independence of Ukraine (1991)

As Soviet President of Ukraine, Leonid Kravchuk proclaimed Ukraine's independence in 1991, following the dissolution of the Soviet Union. However, problems have existed between Ukraine and Russia since then in 1991 recognized the emergence of separatist organizations in the Luhansk and Donetsk regions due to divergent political views regarding the Ukrainian presidential election. This escalated tensions between Ukraine and Russia and complicated Ukraine's political situation. In 1992, NATO began to contemplate the addition of Central and Eastern European members. Ukraine maintains relations with NATO despite not being a member. This choice heightened tensions with Russia.

B. Political Transition and Presidential Election (1994-2010)

From 1994 to 2010, Ukraine experienced a political transition and a change of president. In 1994-1999, Leonid Kuchma was elected president, then Viktor Yanukovich in 2004 and Viktor Yushchenko in 2005. This power transition mirrored a change in Ukraine's relations with Russia, NATO, and the European Union. Viktor Yanukovich's controversial election in 2004 prompted the Orange Revolution, in which protesters demanded a re-vote.<sup>7</sup> In 2005, Viktor Yushchenko was elected president of Ukraine, promising independence from Russian interference and strengthening Ukraine's ties with NATO and the European Union.

C. Annexation of Crimea and the Conflict in Donbass (2014-2016)

The controversial annexation of Crimea by Russia in 2014 was preceded by a recognized referendum by Russia.<sup>8</sup> In the eastern regions of Ukraine, such as Donbas, Luhansk, and Donetsk, separatist groups declared independence and complicated relations between Ukraine and Russia. In order to resolve the conflict in Donbass, Russia, Ukraine, Germany, and France negotiated the Minsk Agreement, which addressed a ceasefire and a political settlement. However, the conflict persisted in 2016-2017, indicating that tensions between the two nations continued.

D. Conflict Escalation (2021-2022)

In 2020, Ukraine expressed an interest in joining NATO, drawing a negative response from Russia. Russia demanded assurances that Ukraine would not join NATO and condemned NATO's expansion in Eastern Europe, which it viewed as a threat to its national security. Russia amassed personnel and armaments on the Ukrainian border at the beginning of spring 2021. The United States responded to this threat by threatening economic sanctions against Russia.<sup>9</sup> Diplomatic efforts between the United States and Russia have failed, and tensions have increased further as a result of Russian military exercises in Belarus and NATO troop deployments in Eastern Europe.

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Transformation," *Quaestiones Geographicae* 40, No.4, (2021): 47–62, <https://doi.org/10.2478/quageo-2021-0037>.

<sup>7</sup> Efe SIVIŞ, "Ukraine's Orange Revolution and Foreign Policy of US," *Anemon Muş Alparslan Üniversitesi Sosyal Bilimler Dergisi* 8, No.2, (2020): 513–21.

<sup>8</sup> Stephen Tierney, "Sovereignty and Crimea: How Referendum Democracy Complicates Constituent Power in Multinational Societies," *German Law Journal* 16, No.3, (2015): 523–41.

<sup>9</sup> CFR, "War in Ukraine" Council on Foreign Relations, accessed July 11, 2023, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine>.

On February 24, 2022, Russia launched an all-out assault against Ukraine. This attack included land, air, and sea forces, in addition to bombardment and invasion of Ukrainian territory, including its borders and a number of cities in eastern Ukraine. This assault precipitated a significant escalation in the conflict and drew the attention of the international community.

### Relevance of International Humanitarian Law to Foreign Fighters

The main goal of International Humanitarian Law (IHL) is to protect civilians and regulate actions during armed conflict.<sup>10</sup> The relevant IHL principles are determined by conflict classification criteria. Conflict in Ukraine is governed by the four Geneva Conventions (GC), which define conventional International Law, and the First Additional Protocol (API), which both Ukraine and Russia ratified. This conflict is categorized as an international armed conflict (IAC).<sup>11</sup>

IAC is typically a war between two or more countries. Since the 2014 Russian military occupation of Crimea, the Ukrainian armed conflict has been classified as IAC. Furthermore, a non-international armed conflict (NIAC) took place in Donetsk and Luhansk, separatist provinces in eastern Ukraine, where they announced their independence as republics.<sup>12</sup> According to IHL, NIAC occurs when the state and organized non-state armed groups engage in intensive military violence.<sup>13</sup> As part of the international response to the invasion, foreign nationals expressed their support for the Ukraine via the International Territorial Defense Legion. This legion was established by Ukrainian President Volodymyr Zelensky, who encouraged soldiers from other countries to join the fight against Russia. Around 20,000 people, including foreign fighters, have joined the Ukrainian army since the conflict began.<sup>14</sup> Since 2014, approximately 17,000 combatants from 55 countries, primarily Russia, had entered the conflict in Ukraine prior to Russia's next intervention in 2022.<sup>15</sup> They supported pro-Russian separatists and Ukrainian factions. On General Article 3 of Geneva, the conflict between Russia and Ukraine is classified as NIAC, and the Second Additional Protocol (APII) is a significant development in this conflict.<sup>16</sup> NIAC is a non-international armed conflict involving either government forces and non-government armed organisations, or only such groups. Nonetheless, some experts argue that the conflict will be regarded as if Russia concedes to conducting the invasion and has complete control over the separatist forces Russia.

<sup>10</sup> Laurent Gisel, Tilman Rodenhäuser, and Knut Dörmann, "Twenty Years on: International Humanitarian Law and the Protection of Civilians against the Effects of Cyber Operations during Armed Conflicts," *International Review of the Red Cross* 102, No.913, (2020): 287–334.

<sup>11</sup> Alexander Wentker, "At War? Party Status and the War in Ukraine," *Leiden Journal of International Law*, (2023): 1–14.

<sup>12</sup> Cindy Wittke, "The Minsk Agreements—More than *Scraps of Paper*?" *East European Politics* 35, No.3, (2019): 264–90.

<sup>13</sup> Tilman Rodenhäuser, "Organizing Rebellion: Non-State Armed Groups under International Humanitarian Law, Human Rights Law, and International Criminal Law," *Oxford University Press*, (2018).

<sup>14</sup> Egle E. Murauskaitė, "Foreign Fighters in Ukraine: What Concerns Should Really Be on the Agenda?," *Russia Matters*, accessed June 24, 2023, <https://www.russiamatters.org/analysis/foreign-fighters-ukraine-what-concerns-shouldreally-be-agenda>.

<sup>15</sup> Gijs Weijenberg and Jeanine de Roy van Zuijdewijn, "The Forgotten Front: Dutch Fighters in Ukraine," *International Centre for Counter-Terrorism*, accessed on June 24, 2021, <https://icct.nl/publication/the-forgotten-front-dutch-fighters-in-ukraine>.

<sup>16</sup> Pieter Brits, "When History No Longer Suffice: Towards Uniform Rules for Armed Conflicts," *Scientia Militaria: South African Journal of Military Studies* 45, No.2, (2017): 64–80.

Under IHL, the principle of distinction allows the targeting of military personnel and military objectives while protecting civilians and civilian targets, but not all forms of violence are prohibited during an armed conflict. In accordance with IHL, both parties to the IAC's armed forces have the right to use violence during armed conflict. However, civilians who are directly involved in the conflict are subject to criminal prosecution. Certain anti-terrorism conventions contain exception clauses that prohibit certain actions taken during armed conflict; these actions are then governed by IHL and other applicable international law. This is the clause that appears most frequently in the six conventions concerning terrorist explosives, nuclear terrorism, radioactive materials, aviation and maritime safety. This provision prohibits military operations during a state of war. This incorporates activities conducted by non-state military organizations during the NIAC. However, the manner in which these exclusion clauses are implemented in national laws varies considerably. Some nations exempt certain offenses from their anti-terrorism laws, while others exempt only activities compatible with IHL. However, there are also nations that do not apply the exclusion clause, allowing the entire application of IHL and terrorism law.

In international law, there is no uniform definition of Foreign Fighters. The most authoritative definition comes from Resolution 2178 of the United Nations Security Council, which does not use the term "Foreign Fighters" but rather "foreign terrorist fighters. Foreign terrorist fighters are "individuals who travel to a country other than their country of residence or nationality with the intention of committing, planning or preparing for a terrorist act, participating in a terrorist act, or providing or receiving training in terrorism, including in relation to armed conflict". This definition demonstrates that the UN Security Council views the issue of Foreign Fighters from a counterterrorism (CT) standpoint. Nonetheless, since all UN Member States are required to implement this legally binding resolution, this limited perspective on the issue of Foreign Fighters has reached the national level.

There are numerous definitions of foreign combatants in the literature. One definition defines "individuals primarily motivated by ideology, religion, and/or kinship, who leave their country of origin or country of residence in order to join an armed conflict".<sup>17</sup> Whether Foreign fighters join armed non-state groups (NSAGs) or non-government forces, this expansive definition permits a comprehensive discussion of all aspects of the phenomenon. Foreign Fighters are defined more narrowly by Sandra Krahenmann as "individuals who leave their country of origin or permanent residence to join armed non-state groups in armed conflicts abroad, and who are primarily motivated by ideology, religion, or kinship". Their participation in non-state armed groups engaged in armed conflict renders IHL applicable when evaluating their conduct. The current discourse on foreign fighters focuses primarily on national security concerns and counterterrorism terminology. However, designating these foreign fighters as (potential) terrorists does not render the laws of armed conflict ineffective in their case. In fact, in the context of a proven connection to an ongoing armed conflict, their conduct must be evaluated in accordance with the relevant norms of IHL, which apply to them in the same manner as to any other belligerent party.<sup>18</sup>

<sup>17</sup> Hanne Cuyckens and Christophe Paulussen, "The Prosecution of Foreign Fighters in Western Europe: The Difficult Relationship between Counter-Terrorism and International Humanitarian Law," *Journal of Conflict and Security Law* 24, No.3, (2019): 537–65.

<sup>18</sup> Gloria Gaggioli, "International Humanitarian Law: The Legal Framework for Humanitarian Forensic Action," *Forensic Science International* 282, (2018): 184–94.

Foreign Fighters have a connection to armed conflicts if they are viewed as individuals who join armed non-state groups in armed conflicts overseas. Therefore, it is essential to evaluate their status in light of IHL. Although “Foreign Fighters” is not a legal concept within International Humanitarian Law, their judgment should be founded on the general principles of IHL that apply to combatants. Many modern Foreign Fighters join dual-natured groups, such as non-state armed groups engaged in non-international armed conflicts and terrorist organizations. Foreign Fighters conduct falls between counterterrorism and International Humanitarian Law. Even though its significance in coping with Foreign Fighters is becoming increasingly recognized, counterterrorism remains the predominant perspective. This dual nature is frequently obscured by the use of the term “foreign terrorist fighter” because it promotes a counterterrorism approach that can influence prosecution proceedings.<sup>19</sup> Foreign Fighters have primarily been prosecuted on the basis of actions related to counterterrorism up until this point. In extreme circumstances, a counterterrorism-dominated strategy could label all Foreign Fighters as terrorists. However, not all Foreign Fighters should be designated foreign terrorist fighters inherently. Foreign Fighters affiliated with non-state armed groups must be distinguished from the broader counterterrorism framework.

Foreign Fighters exist within the context of the Ukrainian conflict, which includes non-state actors such as private military contractors, foreign fighters, volunteers, mercenaries, extremists, and terrorist organizations. The official armed forces and members of self-proclaimed “People’s Republics” in Donetsk and Luhansk are engaged in a non-international armed conflict on Ukrainian territory.<sup>20</sup> To evaluate the status of expatriates who joined Ukraine in its struggle against Russia, it is essential to comprehend the nature of the group to which they belong. The terms “foreign fighter” and “mercenary” are typically used to designate these immigrants.<sup>21</sup> Russia prefers the term “mercenary” because, according to Article 47(1) of the First Additional Protocol (API) 1977 to the Geneva Conventions, it is exempt from granting captured foreigners the status of captives of war. However, neither term adequately describes the character of these fighters.

Foreign fighters are individuals who abandon their native countries to join non-state armed groups in international armed conflicts. Since the International Legion for the Defense of Ukraine is formally affiliated with the Ukrainian military, the expression “foreign fighters” is inadequate to define its members. Article 47(2) of First Additional Protocol API, on the other hand, defines a mercenary as a person who:

- a) Is recruited locally or internationally to engage in armed conflict;
- b) Plays an essential function in the hospitality;
- c) Is primarily motivated to participate in hostilities by the desire for private gain and is guaranteed, by or on behalf of a Party to the conflict, material compensation significantly greater than that promised or paid to combatants of similar ranks and functions in that Party’s armed forces;
- d) Not a national or resident of territory under the control of a Party to the conflict;

<sup>19</sup> Elżbieta Karska and Karol Karski, “Introduction: The Phenomenon of Foreign Fighters and Foreign Terrorist Fighters: An International Law and Human Rights Perspective,” *International Community Law Review* 18, No.5, (2016): 377–87.

<sup>20</sup> Olena Nihreieva, “2022 Russian Invasion of Ukraine through the Prism of International Law: A Critical Overview”, *Paix & Sec.* 10, (2022): 1.

<sup>21</sup> Marcello Flores, “Foreign Fighters Involvement in National and International Wars: A Historical Survey”, *Foreign Fighters under International Law and Beyond*, (2016): 27–47.

- e) Is not a member of an opposing Party's armed forces; and
- f) Has not been dispatched on official duty by a state that is not a party to the conflict as a member of its armed forces.

The cumulative nature of Article 47(2)'s six conditions makes the definition more restrictive and difficult to satisfy. The motivation for personal gain, which is typical of mercenaries, may not apply to members of the Ukrainian International Legion, and it will be difficult to prove this motivation. Foreign Fighters' status in the context of international law, particularly in terms of the use of force and the protection afforded by IHL, requires a comprehensive comprehension of their definitions and defining characteristics. Foreign fighters under IHL still lack specific rules governing and regulating only foreign terrorist fighters. This is what leads to misunderstandings and equivalences between foreign fighters and foreign terrorist fighters, resulting in the denial of foreign fighters' rights, even unto death. Meanwhile, regarding the definition of foreign fighters, David Malet argues that by adopting the most widely used definition, "non-citizens of the conflict country who joined the insurgency during the civil war."<sup>22</sup> Insurgencies strengthen their power by recruiting transnational identity groups associated with the insurgents and their goals through community institutions, including houses of worship, ethnic schools, and ideological clubs, which offer a narrative of existential threat to the shared community that gives rise to an obligation to self-liberal defense and reassess the perceived impact of collective action.<sup>23</sup> This model of foreign fighter engagement only predicts what conflict conditions or pull factors, other than effective outreach by insurgents, are likely to attract foreign fighters. This entails the general strategy of insurgents highlighting state repression, so we expect that foreign fighters will correlate with the emergence of repressive regimes and punitive counterinsurgency strategies. So, there is a clear difference here between foreign fighters and mercenaries, namely in the motivation for joining the war, where foreign fighters are motivated by their desires.<sup>24</sup> In contrast, mercenaries are motivated by the desire for personal gain.

### **The Implementation of Human Rights obtained by Foreign Fighters under International Humanitarian Law**

The Ukrainian conflict drew a large number of foreign fighters from various nations. These foreign fighters are only aggravating and prolonging the Ukrainian conflict. This conflict has also become a topic of international discourse because it effects the world's stability and climate. The conflict between Ukraine and Russia began on February 24, 2022, and has caused numerous material and psychological casualties. Foreign fighters in conflict zones are unclear on their human rights, particularly under the International Humanitarian Law.

In International Humanitarian Law (IHL) specifically the Geneva Convention (III), members of the armed forces, other militias, other volunteer organizations, and civilians implicated in a

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<sup>22</sup> David Malet and Rachel Hayes, "Foreign Fighter Returnees: An Indefinite Threat?," *Terrorism and Political Violence* 32, no. 8 (2020): 1617–35, <https://doi.org/10.1080/09546553.2018.1497987>.

<sup>23</sup> Raphaël Leduc, "The Ontological Threat of Foreign Fighters," *European Journal of International Relations* 27, no. 1 (2020): 127–49, <https://doi.org/10.1177/1354066120948122>.

<sup>24</sup> Randy Borum and Robert Fein, "The Psychology of Foreign Fighters," *Studies in Conflict and Terrorism* 40, no. 3, (2017): 248–66, <https://doi.org/10.1080/1057610X.2016.1188535>.



mass embarkment are accorded the status of prisoners of war.<sup>25</sup> The provisions of the Geneva Convention (III) establish fundamental rules and obligations for Detaining Powers with the purpose of preventing further participation in hostilities and ensuring that all captives of war are treated humanely. According to the UN Human Rights Monitoring Mission in Ukraine, both parties of the conflict are suspected of committing war crimes by interrogating and intimidating captives of war.

As the Detaining Power, Russia is obligated to transfer POW (Prisoner of War) to a country that is a signatory to the GV. Nonetheless, these soldiers were transferred to Donetsk, which is only recognized as an independent state by Russia. The Supreme Court of the self-proclaimed republic of Donetsk has sentenced three foreign volunteers or foreign combatants to death for participating in hostilities, including the offense of mercenary under article 430 of the Donetsk Penal Code. POWs are entitled to a fair prosecution by a court that is independent, impartial, and applies due process. These trials have been widely regarded to be a violation of several rights under IHL and international human rights law, including the right to a trial by an independent, impartial court. As other perspectives have explained, it does not appear that IHL prohibits armed non-state organizations such as the separatists supported by Russia from holding trials. However, it does appear to regulate and provide certain minimum judicial guarantees that must be met. Therefore, the tribunals in the self-proclaimed republic of Donetsk must be capable of independently and impartially administering justice. Despite the fact that non-state armed groups cannot comply with international human rights conventions, they must still respect human rights on the territory they control. Before the war in Ukraine in 2022, the United Nations Human Rights Office (UHCHR) found that the administration of justice of the self-proclaimed republic of Donetsk violated the rights to a fair trial, including the right to a public trial, defense counsel, time to prepare a defense, and the right not to be forced to testify. Three foreign fighters were without a doubt prosecuted in summary proceedings. The European Court of Human Rights took a temporary action and asked Russia to stop using the death penalty and respect the human rights of foreign fighters, including the right to life, the right not to be imprisoned, and appropriate detention conditions.<sup>26</sup>

Foreign fighters in conflict zones are frequently associated with citizenship revocation in human rights issues. The deprivation or loss of nationality is an act that cannot be found within the conventional and customary frameworks of IHL. Nonetheless, there are certain circumstances in which citizenship is regarded pertinent, whereas in others, citizenship is deemed irrelevant. Article 12 of the First and Second Geneva Conventions, for instance, states that Convention-protected persons must be treated humanely without regard to their gender, ethnicity, nationality, religion, or political opinion. Nonetheless, there are instances in which nationality plays a significant role, such as in the context of regulations regarding fatalities, detention, and the protection of civilians in adversary hands.

Importantly, nationality is not a basis for differentiating the treatment of protected persons under International Humanitarian Law. For instance, in paragraph 1 of Article 3, which applies to all four Geneva Conventions, nationality is not mentioned as a justification for showing concern for

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<sup>25</sup> Priscilla Denisse Coria Palomino, "A New Understanding of Disability in International Humanitarian Law: Reinterpretation of Article 30 of Geneva Convention III," *International Review of the Red Cross* 104, No.919, (2022): 429–54.

<sup>26</sup> Tanya Mehra and Abigail Thorley, "Foreign Fighters, Foreign Volunteers and Mercenaries in the Ukrainian Armed Conflict", International Centre for Counter-Terrorism, accessed June 24, 2023, <https://www.icct.nl/publication/foreign-fighters-foreign-volunteers-and-mercenaries-ukrainian-armed-conflict>.

noncombatant civilians. In the 2016 commentary to Article 3, it was stated, however, that nationality could be considered an impermissible such criterion. Although states may treat their own dissidents differently than foreigners involved in civil conflicts, this does not affect the obligation to treat humanity in the absence of treatment under IHL.

In the context of human rights, specifically the revocation of citizenship, there are International Humanitarian Law consequences that must be considered. For instance, the Study of Customary IHL by the ICRC states that states are required to investigate alleged war crimes committed by their nationals and, if necessary, prosecute suspects. Instead of investigating alleged war crimes committed by their own citizens, it is a violation of IHL for nations to revoke their citizenship and make them the responsibility of other nations.<sup>27</sup> By revoking citizenship, a state eliminates the jurisdictional ties necessary to investigate and prosecute perpetrators of war crimes, thereby undermining efforts to combat impunity.

In addition, revocation of citizenship can have severe consequences for those affected.<sup>28</sup> The Principles on Deprivation of Nationality as a Measure of National Security make it clear that deprivation of citizenship has the potential to constitute inhumane or dehumanizing treatment, particularly if it renders an individual stateless. Deprivation of citizenship, for instance can result in severe mental suffering and identity confusion for those affected. In some cases, the actions that follow the revocation of citizenship, such as statelessness may be viewed as inhumane. In this case, the revocation of citizenship violates international human rights law as well IHL specifically Article 3 of the Geneva Convention<sup>29</sup>. Several Western countries engaged in armed conflicts against ISIS in Iraq and Syria have revoked the citizenship of their citizens. However, such actions can undermine efforts to ensure accountability, both in the context of terrorism crimes and international crimes such as war crimes. If a country does not prosecute its foreign combatants (either in its own courts or in the courts of another country), it will not only undermine efforts to combat impunity for crimes committed, but it may also prolong conflicts and lead to new conflicts that violate IHL.

Article 12 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 guarantees foreign human rights defenders the right to freedom of movement, including the right to access their own country.<sup>30</sup> This right extends beyond the right to access one's country of nationality to include those with special ties or claims to a country who cannot be considered aliens. A citizen who has been unlawfully deprived of his citizenship is an example of such a person. Long-term residents may also be covered under this entitlement. Human rights law permits the return of foreign combatants whose citizenship or permanent residency is revoked while they are abroad, according to the Human Rights Committee. However, any restrictions on this right must be lawful, necessary for a legitimate purpose, and proportionate to the interest being protected. The Human

<sup>27</sup> Christophe Paulussen, "Stripping Foreign Fighters of Their Citizenship: International Human Rights and Humanitarian Law Considerations," *International Review of the Red Cross* 103, No.916–917, (2021): 605–18.

<sup>28</sup> Tricia Bacon, Grace Ellis, and Daniel Milton, "Helping or Hurting? The Impact of Foreign Fighters on Militant Group Behavior," *Journal of Strategic Studies* 46, no. 3 (2023): 624–56, <https://doi.org/10.1080/01402390.2021.1982702>.

<sup>29</sup> Arumbinang, M.H., Gunawan, Y., Salim, A.A. "Prohibition of Child Recruitment as Soldiers: An International Regulatory Discourse", *Jurnal Media Hukum*, 30 no. 1 (2023): 21-32. <https://doi.org/10.18196/jmh.v30i1.19322>

<sup>30</sup> Nastassja White, Nicolas Agostini, Memory Bandera, Joseph Bikanda, Francesca Grandolfo, Janvier Hakizimana, Estella Kabachwezi, Tabitha Netuwa, Leon Nsiku, and Hassan Shire, "Open the Doors: Towards Complete Freedom of Movement for Human Rights Defenders in Exile in Uganda", *Journal of Human Rights Practice* 14, No.3, (2022): 1104–28.

Rights Committee emphasizes that, barring exceptional circumstances, the denial of the right to access one's own country cannot be justified. This highlights the importance of upholding this right in accordance with international human rights norms.

Based on the explanation of the application of human rights above, several legal challenges arise in the application of human rights for foreign fighters, including unclear legal status, state policies related to the revocation of citizenship for foreign fighters, uncertainty in legal protection, and involvement in legal processes that Unfair. So, it is necessary to make a clear law for foreign fighters because there are no international rules that regulate specifically regarding foreign fighters themselves. Furthermore, there is a need for joint commitment from various parties, including countries, international institutions, and global legal communities, to ensure fair protection by international human rights standards. Another step that can be taken is that a policy is needed to prevent citizens from joining foreign fighters. State and international laws have not stopped them, and norms of national citizenship grow weaker as the number and proportion of insurgencies that go transnational rise.

## CONCLUSION

The Russian invasion of Ukraine was the culmination of the conflict between Russia and Ukraine which occurred on February 24 2022. Numerous parties, including foreign combatants, were involved in the conflict, which engaged numerous diverse interests. Approximately 40,000 foreign personnel participated in this Russian and Ukrainian conflict to support both parties, namely the Ukrainian and Russian sides. Foreign combatants do not yet have a specific definition in international law, particularly International Humanitarian Law, the authors conclude. Humanitarian law has no specific definition for foreign terrorist combatants, only definitions and regulations. Foreign combatants are frequently classified as foreign terrorist fighters in this situation. Due to the actions of foreign combatants as mercenaries, foreign volunteers, or foreign terrorist fighters, individuals are denied the legal rights and protections to which they are entitled. As seen in the Ukrainian conflict, the misuse or misinterpretation of terrorism laws and the failure to differentiate between foreign volunteers, foreign combatants, and mercenaries undermine the purpose of IHL, which is to regulate armed conflict and protect civilians, and risk subjecting individuals to cruel or inhumane treatment despite their right to POW status. In this regard, international law has established laws that specifically regulate war, including war procedures, weapons, and objects that may not be attacked during conflict. This law is humanitarian international law. As a subset of international law, IHL is one of the instruments and methods that every country, including peaceful or neutral nations, can use to contribute to the reduction of human suffering caused by conflicts in various countries. Humanitarian law is not intended to prohibit conflict because, from its perspective, war is an unavoidable fact. Humanitarian law therefore seeks to ensure that conflicts continue to take into account the human element. In other words, IHL is intended to humanize warfare. In this instance, foreign combatants have the same human rights as citizens. Numerous injustices and violations of the rights of foreign combatants, such as the revocation of citizenship rights, the annulment of the right to life or death, and other violations, must be investigated. Special regulations, namely rules that explicitly regulate foreign fighters, are required to ensure that foreign combatants receive justice for their human rights violations. To prevent the addition of foreign fighters, further research needs to be carried out regarding the causes and flow of recruitment of

foreign fighters and the implications of why foreign fighters appear in some conflicts but not in others, which is an important theoretical and policy question. Furthermore, what concrete steps are needed by international institutions and countries to prevent the addition of foreign fighters?

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