

Chains of Modern Slavery: Exploring International Trafficking Networks and Foreign Fighters in the Russia-Ukraine War

ABSTRACT

In light of the death of Nepali foreign fighters in Ukraine, this essay addresses the legal status of foreigners participating in an International Armed Conflict (IAC) and the legal repercussions arising from this situation. In keeping with this, it provides an overview of elaborate human trafficking networks and nuanced narratives of modern slavery that facilitate the forced recruitment of soldiers across the Global South. Next, it explores salient features of international humanitarian law, offering distinctions between the term ‘mercenary’ and ‘combatant,’ and elaborating why these differences matter. Finally, it looks at what rights and protections could be afforded to foreign soldiers, embedded within the International Humanitarian Law (IHL) framework as victims of human trafficking, should they face trial or be captured.

In the early hours of February 24, 2022, President Vladimir Putin addressed his nation, announcing a “special military operation” in Ukraine. Soon, as dawn broke, the drumbeat of distant artillery pierced through the skies of Kyiv, Kharkiv, and Odessa. In the two years since this brutal act of aggression and use of force, the world has witnessed a war that has devastated millions of lives and reduced entire cities and towns to rubble. In the barrage and crossfire of this war however, a surprising and unsuspecting actor is increasingly finding itself in the frontlines—a tiny Himalayan nation, almost 3,000 miles away.

“Are you a soldier?”

Nepal is far removed from geopolitics and the raging war in Ukraine, but early reports and satellite imagery have revealed scores of Nepali speaking soldiers in the Avangard training center, a military academy about 50 kilometres away from Moscow. The academy is described as a “patriotic education” center and has been conceptualised as a training academy for fighters

entering the ranks of the Russian army. Evidence suggests, however, that the facility houses foreign recruits, with limited or no military training, being taught how to use rocket launchers, bombs and machine guns before being sent to the frontlines in as little as two weeks time.

Testimonies from recruits that have escaped suggest that foreign fighters are afterwards used as "cannon fodder" in the front, with the Russians positioning themselves a few hundred meters back and forcing foreign units to assault Ukrainian targets.¹ Accounts reported by the New York Times similarly detail a culture of impunity from Nepali recruits constantly abused, slapped in the helmet, jabbed with gunbutts and screamed at in Russian.²

This formidable language barrier also played a large part in the deaths of many Nepalis serving in the front lines. Former soldiers have described only knowing a few words, including right and left, and in the chaos of combat, sometimes getting the two mixed up. Others recount having to resort to communicating with Russian commanding officers by using a voice translating app – and oftentimes, just having to use hand signals.³

Likewise, deserters in Russia are punished by military courts and can spend up to ten years in prison.⁴ Despite this, for some who braved an attempt to flee, Russian soldiers reportedly caught them and hauled them back to frontline positions in Donetsk and forced them inside bunkers filled with snow. Those captured while attempting to flee were given almost no food or water and survived on ice with cans of stringy, frozen beef.

¹ Mockapetris, W., Roberto, P., and Seredyuk, O. (2024) 'Give Me Your Poor — Russia's Mercenary Foot Soldiers', Center for European Policy Analysis Available at <https://www.nytimes.com/2024/06/27/world/asia/escape-from-russian-army.html> (Accessed: 10 December 2024)

² *The New York Times*, 'Escape from Russian Army' (27 June 2024) Available at: <https://cepa.org/article/give-me-your-poor-russias-mercenary-foot-soldiers/> (Accessed: 10 December 2024).

³ CNN (2024) 'Nepal fighters in Russia-Ukraine: Families caught in the middle', *CNN*, 10 February. Available at: <https://edition.cnn.com/2024/02/10/asia/nepal-fighters-russia-ukraine-families-intl-cmd/index.html> (Accessed: 10 December 2024).

⁴ The Barents Observer (2022) 'Military courts in Russia prosecute a record number of frontline deserters', *The Barents Observer*, 11 September. Available at: <https://www.thebarentsobserver.com/security/military-courts-in-russia-prosecute-a-record-number-of-frontline-deserters/110922> (Accessed: 10 December 2024).

“But what was I supposed to do?” one of the recruits questioned as he was interviewed by journalists. “I was a slave,” he said.

Foreign fighters, in this regard, do not have the freedom to leave, retreat or do anything but stay in their bunker and continue to fight.

a. Circles of human trafficking

In Nepal, the 2015 earthquake and the remnants of a decade long civil war, has left thousands of communities homeless and without livelihood, making them particularly vulnerable to traffickers and forced labour as a means of survival.⁵ This has created fertile ground for an exploitative and established network of human traffickers that arrange for thousands of Nepalis citizens to work abroad in wealthier countries as maids, prostitutes, nannies, cooks and guards each year.

Investigative journalism, in this respect, attributes the growing number of Nepali fighters to this well established ring of human traffickers. Traffickers, throughout the country, recruit vulnerable young people in poverty and mislead them about the nature of the work that they will be doing as well as the salaries that they will be provided. These illegitimate networks falsify certificates to obtain travel visas by running a wide syndicate of accomplices that stretch from rural mountain villages to police offices in the capital and the rarefied hallways of the federal government.

b. Heightened vulnerability and emerging trends

Young people, in this regard, are increasingly ensnared by this shadowy, predatory underworld of human traffickers who supply foreign fighters to the Russian army for its war in Ukraine. This has been bolstered even further by President Vladimir Putin’s announcement where he publicly promised citizenship and a high salary to those who sign up to fight for Russia. This has led to a massive recruitment campaign, deemed illegal by other sovereign governments. The Nepali government has been trying to halt this recruitment process, but the Russian military continues to

⁵ Human Trafficking Search (2015.) ‘Conflict and Humanitarian Settings’, *Human Trafficking Search*. Available at: <https://humantraffickingsearch.org/conflict-and-humanitarian-settings/> (Accessed: 10 December 2024).

encourage and facilitate this operation. This is done, in part, to boost combat power and make up for low recruitment numbers in Moscow, even though many being recruited are impoverished young foreigners, who often do not know what they are signing up for.

b. i. Recruitment through social media

In this context, recruiters are now employing a new strategy to ensnare recruits: Tiktok. In fact, for a wide number of foreign soldiers in Russia, as they were trained to use weapons and drones, they were ordered to upload their videos in combat dress on social media, including TikTok.⁶ Many young people, with rising unemployment and a flailing economy in their home countries, were watching. It was then the trafficking agents started conceptualising sending migrant workers to Moscow on visit visas to then recruit them in the Russian army.

b. ii. Extortion and exorbitant processing fees

Soon enough, these networks began extorting large sums of money from vulnerable youths, with the promise of a travel visa. However, upon arrival, the recruits were coerced into an illegal recruitment into the Russian army. Traffickers reportedly charged each person up to \$9,000 and sent them to Russia on “tourist visas,” mainly through the United Arab Emirates. They were then recruited into the Russian army.⁷ When they arrived there, workers were then coerced through various ways, such as threats of violence, withholding of documents, false pretense of employment, and economic manipulation.

c. Illegal trafficking rackets widespread across the Global South

⁶ CIJ Nepal (2023) ‘How Nepali youths are being trafficked to serve in the Russian army’, *Center for Investigative Journalism Nepal*. Available at: <https://cijnepal.org.np/how-nepali-youths-are-being-trafficked-to-serve-in-the-russian-army/> (Accessed: 10 December 2024).

⁷ Al Jazeera (2023) ‘Nepal detains 10 over allegations they sent citizens to Russian army’, *Al Jazeera*, 6 December. Available at: <https://www.aljazeera.com/news/2023/12/6/nepal-detains-10-over-allegations-they-sent-citizens-to-russian-army> (Accessed: 10 December January 2024).

Although jarring, these accounts of Nepali fighters being trafficked into the frontlines of battle aren't an aberration. Indeed, this is a recurring narrative across countries in addition to Nepal, as men from other low income nations like Afghanistan, Cuba, India, Sri Lanka, Somalia, Sierra Leone, Syria and Yemen⁸ among others have been similarly recruited into the Russian army for its war against Ukraine, lured by promises of high salaries, Russian citizenship and other benefits.

The Cuban Ministry of Interior in particular, uncovered a human trafficking ring aimed at recruiting Cubans to fight as Russian mercenaries in the Ukraine war.⁹ Efforts are also underway to dismantle a human trafficking network that operates from Russia to incorporate Cuban citizens into the military forces participating in war operations in Ukraine.

Likewise, India's Central Bureau of Investigation (CBI) has also busted a multi-state network trafficking Indians to the war. Authorities have seized cash, incriminating documents, electronic records and CCTV footage revealing a coordinated and "organized network" of agents bringing people to fight for Russia under the pretext of giving them a job in Europe.¹⁰

d. *Departure from previous practices*

The mobilisation of foreign fighters in international conflicts is not a new phenomena, dating back to 1816.¹¹ More recently, foreign fighters joined the Mujahideen in Afghanistan¹² during the

⁸ AP News (2024) 'Afghanistan's Taliban displays Russian equipment as proof of ties to Moscow', *AP News*. Available at: <https://apnews.com/article/afghanistan-russia-ukraine-iran-europe-taliban-30e2b1ffc7c5ecf2847b654f862723b8> (Accessed: 10 December 2024).

⁹ The Guardian (2023) 'Cuba uncovers human trafficking ring recruiting for Russia's war in Ukraine', *The Guardian*, 5 September. Available at: <https://www.theguardian.com/world/2023/sep/05/cuba-uncovers-human-trafficking-ring-recruiting-for-russias-war-in-ukraine> (Accessed: 15 December 2024).

¹⁰ BBC News (2022) 'India detains 2 men for allegedly recruiting nationals to fight for Russian army', *BBC News*, 22 November. Available at: <https://www.bbc.com/news/world-asia-india-68499211> (Accessed: 10 December 2024).

¹¹ Human Trafficking Search (2015.) 'Conflict and Humanitarian Settings', *Human Trafficking Search*. Available at: <https://humantraffickingsearch.org/conflict-and-humanitarian-settings/> (Accessed: 10 December 2024).

¹² De Roy van Zuijdewijn, M. and Bakker, E. (2014) *Returning Western Foreign Fighters: The Impact of the Syrian Conflict on Western Foreign Fighter Flows*, International Centre for Counter-Terrorism. Available at:

eighties after the Russian invasion. The international community, however, only paid concerted attention to the issue of foreign fighters when 40,000 individuals from more than 110 countries travelled to join the Islamic State in Syria and Iraq from 2014 onwards.¹³ This drew the attention of the international community, and in 2014 the UN Security Council (UNSC) adopted the landmark resolution 2178 imposing binding obligations on states to stem the flow of foreign ‘terrorist’ fighters.¹⁴

The current crisis, however, marks a distinct departure from these trends. Critically, foreign fighters are now being misguided and lured by active trafficking networks. These accounts portray a worrying trend of foreign fighters being illegally trafficked and treated as dispensable by Russian commanders. It also outlines an emerging form of modern slavery that is earmarked by transnational trafficking operations, social media and dire economic conditions in some of the poorest parts of the world. In light of this, it is increasingly important for countries to outline and enforce applicable international law to ensure the protection of their citizens taking part in hostilities in an international armed conflict (IAC).

I. Applicability of International Law

International Law and International Humanitarian Law (IHL), in particular, aims to protect civilians and regulate conduct during an armed conflict. The classification of an armed conflict under IHL thereby determines which legal rules are applicable. With respect to the Russia-Ukraine war, legal scholars widely agree that this current conflict is classified as an international armed conflict (IAC) and is governed by the four Geneva Conventions (GCs) which reflect customary international law, and the Additional Protocol I (AP I), that both Ukraine and

<https://www.icct.nl/app/uploads/download/file/ICCT-De-Roy-van-Zuijdewijn-Bakker-Returning-Western-Foreign-Fighters-June-2014.pdf> (Accessed: 15 December 2024).

¹³ Bakker, E., Gils, A. and Soudijn, M. (2017) *Beyond the Caliphate: Foreign Fighters and the Threat of Returnees*, The International Centre for Counter-Terrorism. Available at: <https://icct.nl/sites/default/files/import/publication/Beyond-the-Caliphate-Foreign-Fighters-and-the-Threat-of-Returnees-TSC-Report-October-2017-v3.pdf> (Accessed: 15 December 2024).

¹⁴ United Nations Security Council (2014) *Resolution 2178 (2014)*, S/RES/2178 (2014). Available at: [https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F2178\(2014\)&Language=E&DeviceType=Desktop&LangRequested=False](https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F2178(2014)&Language=E&DeviceType=Desktop&LangRequested=False) (Accessed: 15 December 2024).

Russia have ratified. IACs are armed conflicts typically between two or more states and in this regard, an IAC began with the Russian military occupation of Ukraine's Crimea in 2014.

Parallel to this, a non-international armed conflict (NIAC)¹⁵ began in the separatist provinces of Donetsk and Luhansk in eastern Ukraine, which purported to be independent republics. In this regard, the existence of a NIAC means that common article 3¹⁶ of the GCs and Additional Protocol II (APII), to which both Ukraine and Russia are parties, is also applicable.¹⁷

II. Classification of combatant status

In keeping with this, should fighters fall into enemy hands, classification of active participants in active conflict zones, in their role as combatants or mercenaries, significantly influences their legal protections under IHL.¹⁸ Combatants that are conscripted by nation states to directly participate in hostilities, enjoy immunity from prosecution for military acts. In this respect, provided that fighters adhere to international humanitarian law standards, they are entitled to Prisoner of War (POW) protections upon capture. In this respect, combatant status brings with it the right to engage in hostilities with immunity from possible prosecution, provided the combatant has not violated international humanitarian law. By this metric, their international humanitarian law status determines what they are permitted to do in the conflict zone once they enlist in a war zone

¹⁵ Geneva Academy (2022) *Non-International Armed Conflicts in Ukraine*. Available at: <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-ukraine#collapse2accord> (Accessed: 15 December 2024).

¹⁶ International Committee of the Red Cross (n.d.) *Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949*. Available at: <https://ihl-databases.icrc.org/ihl/WebART/375-590006> (Accessed: 15 December 2024).

¹⁷ De Roy van Zuijdewijn, M. and Bakker, E. (2014) *Returning Western Foreign Fighters: The Impact of the Syrian Conflict on Western Foreign Fighter Flows*, International Centre for Counter-Terrorism. Available at: <https://www.icct.nl/app/uploads/download/file/ICCT-De-Roy-van-Zuijdewijn-Bakker-Returning-Western-Foreign-Fighters-June-2014.pdf> (Accessed: 15 December 2024).

¹⁸ Lowy Institute (2023) 'Deadly consequences of misclassifying foreign fighters in Ukraine', *The Interpreter*, 6 December. Available at: <https://www.lowyinstitute.org/the-interpreter/deadly-consequences-misclassifying-foreign-fighters-ukraine> (Accessed: 15 December 2024).

In stark contrast, mercenaries, who are thought to be primarily motivated by private gain and not officially affiliated to the state's armed forces, are subject to prosecution by domestic or military courts in the respective jurisdiction of capture for their mere participation in the hostilities, being denied their POW privileges.¹⁹

Their classification, thereby, determines what rights and protections captured fighters could be afforded, in the event that they are captured. For foreign members of the Russian forces therefore, their life and legal status upon capture hinges entirely on their classification under international humanitarian law.

II. A. Combatants vs. civilians?

The distinction between a civilian and combatant is the cornerstone upon which the foundation of international humanitarian law is built.²⁰ In this regard, it constitutes a *jus cogens* norm.²¹ A combatant thereby is statutorily defined as a member of the armed forces which is a party to the conflict. This prescriptive status of a combatant grants immunity from criminal prosecution for acts that do not violate the laws and customs of war but which might otherwise be common crimes under international law,²² thus allowing combatants to directly participate in hostilities. Furthermore, in the event of an international armed conflict, any individual directly participating in hostilities—including civilians, who otherwise constitute a protected class—are vulnerable to direct attack. Therefore, for foreign fighters to qualify as combatants and enjoy the combatant or prisoner of war (POW) status, they need to be members of the armed forces of a party to the conflict.

¹⁹ Ibid.

²⁰ Nils Melzer, "Chapter 12-The Principle of Distinction Between Civilians and Combatants," in *The Oxford Handbook of International Law in Armed Conflict*, ed. Andrew Clapham, and Paola Gaeta, Oxford University Press, 2015, 296–331

²¹ International Law Commission, "Report on State Responsibility," *Yearbook of the International Law Commission*, 2001, vol II, part 2, Draft Article 40, Commentary, 112.

²² American University Law Review, 'The status of Combatants in Non-International Armed Conflicts under Domestic Law and Transnational Practice', W.A. Solf, 1983.

II. B. Establishing foreign members of the Russian army are not ‘mercenaries,’ by definition

The definition of mercenaries as set out in Additional Protocol I Article 47, is reiterated with some subtle changes in the two treaties that currently criminalise mercenarism (i.e., the United Nations Mercenary Convention and the Organisation of African Unity Mercenary Convention) and is held by the International Committee for the Red Cross to have attained customary international law status.²³

The definition particularly sets out six specific conditions which have to be met concurrently and those conditions require that the individual:²⁴

- (a) be specially recruited locally or abroad in order to fight in an armed conflict;
- (b) in fact, take a direct part in the hostilities;
- (c) be 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 ranks and functions in the armed forces of that party;
- (d) be neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict
- (e) be not a member of the armed forces of a party to the conflict; and
- (f) not have been sent by a State which is not a party to the conflict on
- (g) official duty as a member of its armed forces.

For Nepali and foreign fighters, their mercenary status hinges primarily on satisfying condition (e), which addresses any link they can show to the Russian armed forces. In this regard, evidence suggests that foreign recruitment schemes targeting young people were funded and operated by

²³ Henckaerts and Doswald-Beck Customary International Humanitarian Law Rule 108.

²⁴ Article 47(2), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

Russia's provincial governments.²⁵ This is principally supported by evidence which suggests that the online recruitment campaign in Kazakhstan could be directly linked back to a website owned by the government of the Sakhalin Republic, a sparsely populated province with staggering soldier recruitment in Far Eastern Russia.²⁶ Furthermore, several Indian families whose sons perished in the frontlines allegedly also received payment from the Russian state— demonstrating that this operation was orchestrated by and with the knowledge of Russian authorities. Thus, having been enlisted as members of the Russian army with salaries and benefits paid for by the Kremlin, these foreign members of the Russian army are incorporated members of the Russian armed forces.

Likewise, ICRC commentary on Article 47 provides that members of the armed forces of a party to the conflict who are not nationals of that party and who do not meet all the six necessary conditions of the definition of a mercenary are entitled to POW status. According to this, it is sufficient for States which employ foreign fighters to make them members of their armed forces for them to no longer qualify as mercenaries.²⁷

II. C Juristic interpretation and ways forward

Adding to this interpretation, while Article 47(2) of Additional Protocol I states that mercenaries cannot be part of the armed forces of the party to the conflict and concurrently, Article 43(1) of the Additional Protocol I stipulates that armed forces include all organised groups, and units which are under a command responsible to that party. Thereby, a joint reading of Article 43(1) and Article 47(2), in effect, exempts individuals and groups from being categorised as mercenaries.

²⁵ Wright, A. (2024) 'Strangers in the motherland: The dynamics of Russia's foreign recruitment', *War on the Rocks*, 12 September. Available at: <https://warontherocks.com/2024/09/strangers-in-the-motherland-the-dynamics-of-russias-foreign-recruitment/> (Accessed: 15 December 2024).

²⁶ Ibid.

²⁷ International Committee of the Red Cross, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, 3rd edition. Available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=FFC84B7639B26F93C12563CD00434156> (Accessed: 15 December 2024).

In this manner, it is highly unlikely, if not entirely impossible, for foreign nationals enlisted in the Russian army to concurrently fulfil all six requirements of the international humanitarian law definition of a mercenary set out in the Additional Protocol. In many instances, as is the case here, the use of the term ‘mercenary’ would be misplaced. Thereby, read together, where there are instances of slavery and trafficking, upon capture, this interpretation could help vulnerable victims attain Prisoner of War (POW) status and concurrent legal protections.

Moreover, under IHL, should there be any doubt about a participants' status, they are to be presumed civilians until they have their combatant status determined by an independent tribunal established by the detaining power.²⁸ For foreign fighters who are victims of trafficking rings and slavery, this too would provide temporary reprieve and protection from summary executions.

III. Additional Protections

Article 44(4) of Additional Protocol I further guarantees that even should one's prisoner of war status be forfeited, the fair trial rights and due protections afforded to prisoners of war under the Geneva Conventions III common Article 3 and Additional Protocol I Article 75 still apply, underscoring that all detainees, irrespective of their war status, cannot be subject to murder, torture, corporal punishment, mutilation, and outrages against personal dignity.

Taken together, this provides a safety net of fair trial guarantees and additional protections to ensure the humane treatment of all detainees.²⁹ Included in these guarantees are the rights of due process and fair trial by "an impartial and regularly constituted court respecting the generally recognised principles of regular judicial procedure."³⁰

²⁸ Article 50(1), Additional Protocol 1.

²⁹ Aldrich G "New Life for the Laws of War" 1981 AJIL 764-783

³⁰ Ditrichová and Bílková 2022 <https://lieber.westpoint.edu/status-foreign-fighters-ukrainian-legion/>.

IV. Conclusion

Widespread international legal and moral outrage has rightfully been expressed in the aftermath of Russia's invasion of Ukraine. In its awakening, legal scholarship must also effectively deal with the nuanced narratives of modern slavery and transnational human trafficking that is inherent in modern warfare. Countries in the global south, in this respect, must actively work together to crack down on human trafficking networks and increase efforts to depict accurate portrayals of the realities of war in Ukraine. Diplomatic efforts must be streamlined with Russia and Ukraine to facilitate the return of captured citizens, halt recruitment and ensure that captured victims of slavery are subject to fair trial rights and legal counsel.