

BRITISH VOLUNTEERS FIGHTING IN UKRAINE – A CONTRIBUTION TO THE DISCUSSION IN THE CONTEXT OF INTERNATIONAL HUMANITARIAN LAW

This article examines the involvement of British volunteers in the war in Ukraine through the lens of International Humanitarian Law (IHL). It explores their motivations, legal status, and the implications of their participation in armed hostilities. Key legal aspects are analyzed, including combatant status, Prisoner of War (POW) protections, and liability for potential violations of the laws of armed conflict. The article also discusses the responses of the UK government and the international community to British citizens' engagement in the conflict. By addressing these issues, the study contributes to a broader discussion on the role of foreign volunteers in armed conflicts and the legal ramifications of their actions under contemporary international law.

Keywords: British volunteers, International Humanitarian Law, legal aspects, russian-Ukrainian war.

Since the beginning of the Russian invasion of Ukraine in February 2022, the international community has watched with trepidation yet admiration the commitment of volunteers from around the world who have flocked to Ukraine to support its fight against aggression. Among those who responded to President Volodymyr Zelensky's call for the creation of an International Legion for the Defence of Ukraine were the British.

Their motivations, their actions on the frontline and the political and social repercussions of their decision is a topic of interest and controversy.

Since the Russian invasion of Ukraine began in February 2022, several UK citizens have chosen to fight on the Ukrainian side. Like many other foreign volunteers, British nationals have joined both the International Defence Legion of Ukraine and various other military and volunteer formations. However, their participation in the conflict raises significant questions under IHL.

According to the Geneva Conventions and their Additional Protocols, volunteers fighting within a state's armed forces may be considered

Мрочковські Криштоф, габлітований доктор гуманітарних наук, професор Інституту історії, Жешувський університет, м. Жешув, Польща.

© Mroczkowski K., 2025.

combatants, provided they meet certain conditions, such as wearing a recognizable insignia, operating under a military command structure, and adhering to the laws of war. In the case of British volunteers who have formally enlisted in the Ukrainian army, they are entitled to PoW status if captured. However, the legal status of foreign volunteers remains complex. Some British fighters may not be fully protected under IHL. Russia has repeatedly accused foreign combatants of being mercenaries – a designation that, under Russian law, carries severe penalties, including the death sentence.

Motivations

The British volunteers who have chosen to fight in Ukraine have a variety of motivations. They include former soldiers with a high level of experience gained from service in Iraq, Afghanistan or Syria, as well as those with no military training but a strong sense of solidarity with the Ukrainian people. For many, the decision to leave was the result of a deep outrage against Russian aggression and a desire to confront authoritarianism.

Shortly after Russia launched its full-scale invasion of Ukraine on 24 February 2022, President Volodymyr Zelensky established the International Legion of Territorial Defence of Ukraine and called for foreign volunteers to join the fight. To facilitate their recruitment, a dedicated English-language website was created to assist those willing to support Ukraine. Since the outbreak of the war, Ukrainian authorities have claimed that approximately 20,000 foreign volunteers have enlisted in the country's armed forces.

From the perspective of UK law, the involvement of British citizens in the war on Ukraine's side remains controversial. While the UK government has advised against participation in hostilities, it has not imposed a formal ban, unlike in the cases of conflicts in Syria or Iraq.

Even before the full-scale invasion, following the self-proclaimed independence of Donetsk and Luhansk in 2014, large numbers of foreign fighters traveled to Ukraine to join either non-state armed groups or state forces. While many volunteers enlisted in the Ukrainian military, others formed independent volunteer battalions. By 2015, Ukraine had integrated most of these battalions—and the foreign fighters within them—into its regular armed forces.

Additionally, Ukraine passed the Law on Amending Certain Legal Acts of Ukraine on Foreigners and Stateless Persons Serving in the Armed Forces of Ukraine, which allows legally residing foreigners and stateless persons to voluntarily enlist. As a result, any foreign

individuals currently integrated into the Ukrainian military are considered combatants and, if captured, are entitled to Prisoner of War status under international law.

BBC News, in its online edition of 9 March 2022, reported that: “A small number of British soldiers were disobeying orders and may have travelled to Ukraine to fight”, which was confirmed by British Army information bodies. The article went on to stress that “the soldiers were absent, without leave and may have gone to Ukraine in a personal capacity”. The matter received wider publicity as the UK Ministry of Defence issued a statement saying that “we actively and strongly encourage them to return to the UK.” Relevant regulations have also been put in place at service level, such that personnel remaining on active duty have been explicitly banned from travelling to Ukraine until further notice, although Foreign Secretary Liz Truss has previously stated that she supports British civilians who may wish to go to Ukraine to help in the fight, and that it is up to people to make their own decisions. But the government later clarified that the UK Foreign Office advises against all travel to Ukraine (<https://www.bbc.com/news/uk-60684749>).

This issue warrants further clarification. Under the Foreign Enlistment Act of 1870, it is illegal for UK citizens to join the International Legion of Territorial Defence of Ukraine or any other foreign military force without explicit government approval. However, the law has rarely been enforced in modern times, and the UK government has taken no legal action against British volunteers fighting for Ukraine. This legal ambiguity leaves British fighters in a grey area – while their participation is technically unlawful, it remains largely unpunished in practice (<https://www.theguardian.com/world/2022/feb/27/liz-truss-says-she-would-back-britons-going-to-ukraine-to-fight-russia>). However, the last prosecution under this law occurred in 1896, and His Majesty’s Government has not threatened to enforce it since the Spanish Civil War. In an effort to ease tensions, then-Foreign Secretary Liz Truss initially stated that Britain would support its citizens who chose to enlist in the International Legion, though this statement was later retracted. The government subsequently clarified that support would be extended only to those with prior combat experience and not to active-duty British service members.

In this legally ambiguous situation, British volunteers frequently emphasized that their motivation was not solely to support Ukraine

against Russian aggression but also to defend democratic principles and freedom. Many saw the war in Ukraine as an opportunity to uphold their personal ideals and fulfill a sense of duty toward values they considered fundamental. Others – particularly former soldiers – viewed their participation as an extension of their military service, feeling compelled to apply their combat skills in a real battlefield setting. Additionally, some individuals may have perceived the war as a test of endurance and courage or even as a means to rediscover purpose in their lives.

To a certain extent, the dualistic approach taken by the UK can be understood, as the presence of British nationals on the battlefield carries significant diplomatic implications. Russia has sought to exploit the involvement of foreign fighters in its war propaganda, often highlighting alleged violations of International Humanitarian Law by Ukraine. By emphasizing these violations, Russia aims to discredit Ukraine's efforts and undermine international support. In this context, the UK must balance its stance on the legality of British participation with the broader political and diplomatic consequences, particularly in light of the potential exploitation of such involvement by Russia for propaganda purposes.

Legal status of volunteers under International Humanitarian Law

International Humanitarian Law (IHL), also known as the law of armed conflict or the law of war, is primarily focused on protecting civilians and regulating the conduct of belligerents during armed conflicts. The classification of a conflict plays a crucial role in determining which rules apply. The ongoing conflict in Ukraine is classified as an international armed conflict, and as such, it is governed by the four Geneva Conventions, which reflect customary international law, as well as Additional Protocol I, to which both Ukraine and Russia are parties. These legal frameworks aim to ensure that humanitarian protections are upheld during the conflict, including the treatment of civilians, prisoners of war, and wounded combatants (*Basic rules of the Geneva Conventions...*).

As a reminder, it is important to note that the conflict in Ukraine began with the Russian military occupation of Crimea in 2014, which remains ongoing. Simultaneously, a non-international armed conflict erupted in the separatist provinces of Donetsk and Luhansk in eastern Ukraine, where self-declared independent republics have been engaged in conflict with the Ukrainian government. Under International

Humanitarian Law, a non-international armed conflict is defined by sufficiently intense military violence between, for example, a state and an organized non-state armed group.

Before Russia's further military intervention in 2022, approximately 17,000 fighters from 55 countries – predominantly from Russia – had joined the conflict in Ukraine since 2014. These foreign fighters supported either the pro-Russian separatists or the Ukrainian side, contributing to the complexity and international dimension of the ongoing war.

At the outset, it is important to emphasize that the issue of British volunteers participating in operations in Ukraine is not limited to the period starting in 2022. According to an analysis by Arkadiusz Legieć, senior analyst at the Polish Institute of International Affairs, between 2014 and 2019, at least ten British nationals were among the approximately 17,241 foreign fighters who fought in Ukraine.

While Russia formally denounced the Geneva Conventions in 2006, the ongoing hostilities mean that Common Article 3 of the Geneva Conventions and Additional Protocol II remain applicable in this context. Both documents have been ratified by Ukraine and Russia. However, there is a debate among experts as to whether the conflict should be considered internationalized. Some argue that, given Russia's recognition of the separatist regions, its invasion of Ukraine, and its overall control over the separatist forces, the conflict should be classified as international. On the other hand, some maintain that the armed groups in eastern Ukraine are sufficiently independent to retain the classification of a non-international armed conflict.

During armed conflict, not all acts of violence are prohibited, as International Humanitarian Law allows for certain acts of violence that are deemed necessary in the conduct of hostilities. In contrast, under the law of terrorism, all acts of violence are generally prohibited. One of the core principles of IHL is the principle of distinction, which requires that combatants and military targets may be lawfully targeted, while civilians and civilian objects are to be protected from attack.

This principle is enshrined in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, which was signed in Geneva on 12 August 1949. The Convention specifically aims to ensure the humane treatment of civilians in times of armed conflict, prohibiting direct attacks on civilians and emphasizing the protection of civilian property (*IV Konwencja Genewska...*). However, it is important to emphasize that the armed forces of both parties to a conflict are

authorized to use force during an armed conflict and cannot be prosecuted for participation in hostilities, provided that their actions are in accordance with International Humanitarian Law. This immunity from prosecution is contingent on the proper conduct of warfare, which includes adherence to the principles of distinction, proportionality, and necessity.

In contrast, and crucially for the current discussion, civilians—such as those Russia considers to be British volunteers fighting in Ukraine—can be prosecuted for direct participation in hostilities during the conflict. This is a key distinction in IHL, as civilians are generally afforded protection from being targeted in armed conflict unless they take part in hostilities themselves. If civilians engage directly in combat, they lose this protection and may be treated as combatants, subject to legal consequences, including prosecution by the opposing party. This is an area where Russia has been particularly active in its propaganda, often labeling foreign volunteers as mercenaries or unlawful combatants.

However, the Ukrainian side takes the position that in accordance with the Regulations on Military Service in the Ukrainian Armed Forces for Foreigners and Stateless Persons, approved by Decree of the President of Ukraine of 10 June 2016 No. 248, foreigners have the right to enlist in the Armed Forces on a voluntary basis, including in the Territorial Defence Forces of the Armed Forces of Ukraine (<https://poland.mfa.gov.ua/pl/news/miedzynarodowy-legion-sil-zbrojnych-ukrainy>). These are references in principle.

It is important to note that Russia's argument includes the assertion that several international conventions on terrorism contain clauses excluding their application to certain acts that occur during armed conflicts. These acts are instead regulated by International Humanitarian Law and other applicable international legal frameworks. The standard exclusion clause found in the six conventions on terrorism – covering areas such as terrorist attacks, nuclear terrorism, radioactive materials, and air and maritime security – explicitly excludes acts carried out by armed forces during an armed conflict. This exclusion is understood to extend to non-state armed groups during a non-international armed conflict, which is why such groups are not subject to the same legal standards as state military forces under IHL.

However, this raises a crucial question: How can the participation of North Korean soldiers or Wagner Group mercenaries in combat be justified in this context? The involvement of non-state actors or foreign

military personnel in conflicts like the one in Ukraine challenges traditional interpretations of IHL. While these forces may not be bound by the same conventions as regular state military forces, their participation still raises important legal and moral questions, particularly regarding their status as combatants or mercenaries, and whether they are entitled to the protections granted to regular combatants under IHL. The Wagner Group, for instance, is often labeled as a mercenary group, which complicates its legal standing, especially when it operates outside the boundaries of recognized state forces and engages in unlawful activities that may violate international law.

However, it is crucial to emphasize that the way in which states implement the exclusion clause in their national legislation varies significantly. Some countries exclude specific offenses related to terrorism, while others only exclude activities that align with International Humanitarian Law from their anti-terrorism laws. Additionally, there are states that do not implement the exclusion clause at all, resulting in the simultaneous application of both IHL and anti-terrorism legislation.

This variation is key in understanding the potential legal consequences for individuals who join foreign armed forces. For instance, in the UK, it is generally illegal to enlist in a foreign army. Even in cases where individuals are legally permitted to serve in foreign armed forces (subject to administrative approval), those who join the Ukrainian military may still face prosecution for terrorism-related offenses if their home country has not implemented an exemption clause. In such cases, both IHL and terrorism laws may apply simultaneously, leading to potential legal conflicts.

This situation does not apply to UK law, but in countries like Australia or the Netherlands, where individuals can legally enlist in foreign armed forces with proper approval, volunteers could still be prosecuted for terrorism-related offenses. The lack of an exemption clause in their national legislation means that these individuals might be exposed to legal repercussions despite the legality of their actions under IHL. This complex legal landscape highlights the challenges faced by foreign volunteers and underscores the importance of national legislation in determining the legal consequences of their participation in foreign conflicts.

Status of combatants and PoW

In the context of an international armed conflict, combatants are broadly defined as those who are lawfully serving in the armed forces of

a party to the conflict. Specifically, armed forces are understood as “all organised armed forces, groups, or individuals who are under a command responsible to that party for the conduct of its subordinates, even if that party is represented by a government or authority not recognised by the opposing party”. This definition allows for a broad interpretation of who may be considered a combatant, even extending to entities not officially recognized by the opposing party.

As combatants, these individuals have the right to participate directly in hostilities and, in accordance with the combatant's privilege, are granted Prisoner of War status if captured during hostilities in an armed conflict. This status ensures that combatants are treated in accordance with the Geneva Conventions, which provide protections for POWs, including humane treatment and the right to certain legal protections.

However, it is important to note that in the case of a non-international armed conflict, the legal situation is different. Members of non-state armed groups – such as those fighting for the separatist regions or other insurgent forces – do not receive the same protections as combatants. They are not granted veteran or POW status under IHL. While their participation in hostilities is not prohibited by IHL itself, it may be criminalized under national law as a political offense, such as rebellion or armed insurrection. This distinction highlights the difference in legal treatment between combatants in international conflicts and those involved in non-international armed conflicts, reflecting the complex interplay between international law and national legal frameworks.

Particularly relevant here are the provisions of the Third Geneva Convention governing the rights of prisoners of war and stipulating, according to Article 4, that “the status of prisoners of war shall be accorded to members of: the armed forces, other militias, other voluntary corps, and to civilians engaged en masse in hostilities” (*III Konwencja Genewska...*). Thus, the provisions of Geneva Convention III establish fundamental principles and obligations for the parties involved in armed conflict, with the goal of preventing further participation in hostilities and ensuring the humane treatment of all Prisoners of War, including British volunteers. According to Article 3 of the Third Geneva Convention, POWs must be treated with dignity and respect, and they are entitled to protections against violence, intimidation, and degrading treatment. These provisions are designed to safeguard the rights of combatants who have been captured and ensure that they are not subjected to inhumane conditions or treatment.

The UN Human Rights Monitoring Mission in Ukraine has reported allegations that both sides in the ongoing conflict have used prisoners of war for intelligence purposes, including through interrogation and intimidation. Such actions, if proven, may constitute violations of the Third Geneva Convention III, specifically those provisions that prohibit the use of prisoners for such purposes, as well as the infliction of physical or mental harm. War crimes under IHL include the mistreatment of POWs, and these reports raise serious concerns about the adherence to international law during the conflict.

The duality of perception

In the context of the Third Geneva Convention, the participation of foreign fighters, particularly British volunteers in the conflict in Ukraine, presents several legal challenges. The issue of foreign fighters is not new, and its historical roots go back to the beginning of the modern era. Foreign fighters have joined conflicts throughout history, including the Mujahideen during the Soviet invasion of Afghanistan in the 1980s, and more recently in conflicts such as those in Bosnia, Chechnya, and, to a lesser extent, Somalia.

A significant turning point in the modern era occurred when approximately 40,000 individuals from over 110 countries joined the Islamic State (ISIS) in Syria and Iraq from 2014 onward. This mass influx of foreign fighters, many of whom were drawn by extremist ideologies, raised significant concerns within the international community. The involvement of foreign fighters in the ranks of ISIS, a non-state armed group designated as a terrorist organization, prompted global discussions about the legal implications of foreign participation in such groups.

In response to this growing phenomenon, the United Nations Security Council (UNSC) adopted Resolution 2178 in 2014, which imposed binding obligations on states to prevent the recruitment, travel, and financing of foreign fighters joining terrorist groups like ISIS. This resolution sought to curb the influx of “foreign terrorist fighters” and reinforced the notion that foreign participation in conflicts, particularly in terrorist activities, could lead to legal and security challenges for states around the world. The resolution emphasizes the need for states to adopt national measures, including counter-terrorism laws and border controls, to combat the flow of foreign fighters and prevent their involvement in armed conflicts that may violate international law.

The adoption of UNSC Resolution 2178 in 2014, aimed at addressing the phenomenon of “foreign terrorist fighters”, has been widely

criticized for a number of reasons. One of the primary concerns is the “alleged lack of legislative authority” by the United Nations Security Council (UNSC) to impose binding obligations on member states, particularly in requiring them to criminalize a broad range of activities associated with foreign fighters. These activities include providing or receiving training, membership in a terrorist organization, or simply travelling to a conflict zone. Critics argue that this resolution oversteps the UNSC's mandate by compelling states to adopt extensive legal measures that may infringe upon state sovereignty and individual freedoms.

Another major issue is the “lack of a clear definition” of the term “foreign terrorist fighter”. The ambiguity surrounding this term has led to confusion about who qualifies as a foreign fighter and whether participation in certain armed conflicts should be categorized as terrorist activity. The resolution itself “blurs the line” between “terrorism” and “participation in armed conflict”, which, under IHL, can be lawful if conducted within the parameters of the law, such as when combatants join the armed forces of a state or engage in self-defense against an aggressor.

This distinction is particularly relevant in the context of the conflict in Ukraine. While foreign volunteers, including “British citizens”, may join the Ukrainian armed forces legally under Ukrainian law and in accordance with IHL, their participation may still be criminalized under national anti-terrorism legislation if their home country adopts measures aligned with UNSC Resolution 2178. This creates a tension between the “lawful conduct of armed forces” and the potential designation of foreign fighters as “terrorists”. As a result, the resolution raises complex legal questions about the balance between IHL protections for combatants and the broader “counter-terrorism” measures that might criminalize actions such as foreign volunteerism, even when it occurs in the context of a lawful conflict like Ukraine's.

Are they therefore, as Russia claims, mercenaries?

It is generally accepted in military science that, according to the provisions of the 1949 Additional Protocol, a mercenary is defined as someone who cumulatively meets six criteria, namely: (1) is recruited locally or from abroad to fight in an armed conflict; (2) directly participates in hostilities; (3) is motivated by a desire for private gain in which a party to the conflict promises material compensation in excess of that paid to combatants or armed forces of similar ranks; (4) is neither a national of a party to the conflict nor a resident of territory

controlled by it; (5) is not a member of the armed forces of a party to the conflict; and (6) has not been sent to serve by another State that is not a party to the conflict (<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-47>).

It is important to emphasize that the use of “mercenaries” by parties to a conflict is not outright prohibited under the 1949 Additional Protocols to the Geneva Conventions. However, the status of being a mercenary carries significant legal implications. A mercenary, as defined by international law, is someone who participates in hostilities for personal gain, rather than out of allegiance to a party or state involved in the conflict. As a result, mercenaries are not granted the same protections as regular combatants under IHL. Specifically, they are deprived of veteran status and, consequently, do not enjoy the rights associated with POW status if captured. Instead, mercenaries are treated as civilians for the purposes of IHL. This classification means that mercenaries can only be targeted during their direct participation in hostilities, and they do not have the immunity from attack that regular combatants have when not actively engaged in fighting. This distinction raises the question of how to accurately identify mercenaries in practice.

One of the challenges is that proving someone is a mercenary, particularly in terms of financial compensation, can be extremely difficult. International law requires that a mercenary be paid specifically for their role in the conflict, and the payment must exceed the standard compensation for regular combatants. However, demonstrating that a person is receiving monetary compensation above and beyond that of regular forces—especially in the chaotic and decentralized nature of some conflicts—can be a significant legal hurdle.

In practice, this difficulty in proving the mercenary status means that even if a foreign fighter is suspected of acting as a mercenary, it may be hard to substantiate the claim legally. Therefore, while mercenaries are not entitled to the protections of POW status, the evidence required to categorize them as such is often elusive, complicating the application of international law in conflicts involving foreign fighters.

What needs to be emphasised: mercenaries and foreign volunteers have semantically many similarities: they often have foreign nationality and can prolong and/or complicate conflict. In addition, they may be involved in terrorism-related activities, organised crime and, in particular, have been involved in serious human rights violations. As is

well known, mercenaries are not entitled to prisoner of war status, as confirmed by Article 47 of Additional Protocol I, but in principle a key element of the definition of mercenary is the issue of material remuneration 'clearly superior to that promised or paid to combatants of similar rank and function in the armed forces of that Party' (*Protokoły dodatkowe...*). This distinction highlights the critical difference between mercenaries and foreign fighters. The definition of a mercenary, as per International Humanitarian Law, excludes individuals whose motivation for fighting in a conflict is ideological, religious, or otherwise non-financial. This is significant because volunteers, such as the British nationals fighting in Ukraine, often join the conflict for reasons that are tied to personal beliefs, political ideologies, or a sense of duty to defend democratic values. These motivations are fundamentally different from those of mercenaries, whose primary incentive is financial gain.

As noted earlier in the article, the British volunteers in Ukraine typically see their involvement as part of a broader moral or ideological commitment rather than a business transaction. This means that they would not be classified as mercenaries under international law, as they do not fulfill the mercenary criterion of fighting for personal profit.

In conclusion, while it is clear that mercenaries typically join conflicts for financial reasons, foreign fighters often enlist due to a combination of personal convictions, ideological beliefs, or a desire to defend a cause they perceive as just. The motives for participating in armed conflict are often multifaceted, making it difficult to draw a clear line between mercenaries and foreign fighters based on motives alone. This complexity is further compounded by the fact that many individuals' reasons for fighting may involve a mix of ideological, financial, and other personal factors, blurring the lines between these two categories under international law. Therefore, distinguishing between mercenaries and foreign fighters is not always straightforward and depends on the individual context of each participant's motivations.

During its 2016 visit to Ukraine, the UN Working Group on Mercenaries acknowledged the likely presence of mercenaries in the eastern Ukraine conflict, but also pointed out the difficulty in distinguishing between mercenaries and foreign fighters. This challenge arises because both groups can be involved in similar activities, and their motivations may overlap, particularly in cases where individuals join for ideological reasons, personal beliefs, or for a sense of duty,

rather than purely for financial gain. As a result, classifying individuals in conflict zones becomes more complex, particularly when there is no clear evidence of financial compensation exceeding that of regular combatants, which is a key criterion for identifying mercenaries. The issue of mercenaries in Ukraine gained more international attention due to the involvement of the Wagner Group, a notorious Russian private military company (PMC), which has been accused of committing numerous violations of IHL. The Wagner Group's actions, including targeted killings, extrajudicial executions, and abuses of prisoners of war, prompted an international response and raised serious concerns about the involvement of such mercenary groups in the conflict.

In response to these concerns, the European Parliament adopted a resolution in 2021 emphasizing the detrimental role of mercenaries in Ukraine. The resolution highlighted several key points, including the possibility that the use of mercenaries in the Ukrainian conflict may serve strategic objectives for Russia, such as concealing military interference in foreign states or minimizing casualties among Russian regular armed forces. By employing mercenaries instead of official soldiers, Russia may aim to reduce the visibility of its direct involvement, deflect international scrutiny, and avoid the political and diplomatic repercussions of high Russian military casualties.

Thus, the use of mercenaries – especially by powerful states like Russia – poses significant legal and ethical questions, particularly when it comes to compliance with IHL and the accountability of private military companies like the Wagner Group. The distinction between mercenaries and foreign fighters becomes even more critical in this context, as it impacts how international law is applied and how these combatants are treated under the Geneva Conventions and other legal frameworks. The growing recognition of mercenary activity as a form of military interference underscores the need for a clearer legal definition and more effective international mechanisms to address the militarization of conflicts through non-state actors.

Policy and legal implications – case study

The participation of British volunteers in the Ukrainian conflict, and their subsequent capture, brings to light a number of legal issues that raise serious concerns under IHL. One of the main risks associated with joining a foreign army, particularly in a conflict such as Ukraine's, is the potential mistreatment of captured individuals, including the denial of their POW status. This has significant implications for their legal

protection, as captured soldiers who are not granted POW status may be subject to torture, ill-treatment, or extrajudicial punishment, as opposed to those who are afforded full legal rights under the Geneva Conventions.

The case of Aiden Aslin and Shaun Pinner, two British nationals who volunteered to serve in the Ukrainian armed forces, serves as a poignant example of the risks faced by foreign fighters. In April 2022, Aslin, Pinner, and Saoudun Brahim (a Moroccan national) were captured after they surrendered with their unit, the 36th Ukrainian Marine Brigade, to Russian forces in Mariupol. Following their capture, images of Aslin surfaced on pro-Russian social media, notably “Telegram” channels, showing visible signs of abuse, including beating. These images suggested that Aslin had suffered injuries likely inflicted during his detention, which raises significant concerns about violations of Article 13 III of the Third Geneva Convention. This article mandates that prisoners of war must be treated humanely, without any form of violence or intimidation.

The Russian authorities, as the party holding Aslin and the others in captivity, are legally bound by the Geneva Conventions to treat them according to international standards. Russia has not denounced the Third Geneva Convention, and as such, it has obligations to ensure the humane treatment of prisoners of war. This includes the requirement to transfer captured combatants to a state party to the Geneva Conventions – in this case, the United Kingdom. However, rather than adhering to these obligations, the captured soldiers were transferred to Donetsk, a region recognized only by Russia as an independent state. This transfer to a region not recognized under international law raises further legal questions about Russia’s compliance with IHL and the rights of prisoners of war in situations involving non-recognized territories.

The political and propaganda implications of these actions are significant. Russia’s use of such captives for political leverage in negotiations, and the mishandling of their cases, contributes to a narrative that plays into Russian propaganda. By framing the capture and treatment of foreign volunteers in a way that violates IHL, Russia not only strengthens its position in the international negotiation process but also adds a layer of legal ambiguity that complicates efforts to secure their release. The mistreatment of prisoners of war is not only a violation of international law but also creates a favorable propaganda situation for Russia, which can use the case to further its political and

military agenda while denying the captured individuals their legal rights under the Geneva Conventions.

Ultimately, the involvement of foreign volunteers in conflicts such as Ukraine's is fraught with significant legal and personal risks, and their capture exposes the difficult realities of International Humanitarian Law enforcement in situations where political and military interests intersect with the legal protections afforded to prisoners of war.

The sentencing of the three foreign volunteers – Aiden Aslin, Shaun Pinner, and Saaudun Brahim – to death by the Supreme Court of the self-proclaimed Donetsk People's Republic (DPR) for their participation in hostilities raises serious legal and human rights concerns. The charges brought against them, including mercenary service under Article 430 of the Donetsk Criminal Code, have been widely viewed as politically motivated, aiming to use the three individuals as propaganda tools rather than for legitimate criminal proceedings.

This show trial approach has been condemned by many as a violation of both International Humanitarian Law and International Human Rights Law (IHRL). Under IHL, combatants are entitled to certain protections, including the right to POW status if captured while fighting in an international armed conflict. In the case of foreign fighters, such as Aslin and Pinner, their participation in the Ukrainian armed forces should entitle them to the same rights as any other POW, including protection from death sentences or unlawful trial proceedings. The use of the death penalty in this context, particularly without proper legal procedures or recognition under international law, constitutes a serious breach of the Geneva Conventions and Additional Protocols.

Moreover, the trial is inconsistent with International Human Rights Law, particularly the International Covenant on Civil and Political Rights (ICCPR), which prohibits the arbitrary deprivation of life and guarantees the right to a fair trial. The DPR's decision to sentence these individuals to death without adherence to established international norms of justice undermines the fundamental principles of fairness and due process. This illegal trial procedure and subsequent death sentence have raised alarm in the international community, with widespread condemnation from governments, human rights organizations, and legal experts.

The actions of the DPR authorities further exacerbate the legal complexities surrounding the treatment of foreign volunteers and combatants. It also brings to the forefront the ongoing struggles related

to non-recognized territories, where international law faces significant challenges in ensuring accountability and protecting the fundamental rights of individuals caught in such conflicts. The case of Aslin, Pinner, and Brahim serves as a stark reminder of the importance of upholding international legal norms and the human rights of foreign combatants, especially in situations where they are subjected to unlawful trials and potentially disproportionate punishment (*Bouvier, 2012:13*). The case of Aiden Aslin and Shaun Pinner, both of whom were (POWs), underscores significant violations of international humanitarian law (IHL) and human rights law. Under IHL, POWs are entitled to fair trials before independent and impartial courts, following due process. However, the legal status of Aslin and Pinner was disputed by both Russia and the self-proclaimed Donetsk People's Republic, which posed major challenges regarding the protection of their rights under international law.

International humanitarian law does not explicitly prohibit non-state armed groups, like the Russian-backed separatists in Donetsk, from establishing courts. However, it sets out certain minimum judicial guarantees that must be adhered to in the context of criminal trials. These include the right to a fair trial, the right to an independent and impartial tribunal, and the right to due process. The fact that the trial of Aslin and Pinner took place in a court within the self-proclaimed Donetsk republic—a non-recognized entity—raises serious questions about the legitimacy and compliance with these essential principles. It is clear that the trial proceedings in Donetsk were anything but independent and impartial, with widespread concerns over the politicization of the process and lack of legal safeguards.

Even though non-state actors like the DPR may not be bound by the international human rights conventions to the same extent as recognized sovereign states, they are still obliged to respect human rights within the territories they control. This obligation extends to ensuring the right to a fair trial and other fundamental protections, such as freedom from torture, the right to legal counsel, and the right not to be forced to testify against oneself. The UN Office for Human Rights (UNOHR) had already raised concerns about the administration of justice in the self-proclaimed Donetsk republic prior to the full-scale Russian invasion of Ukraine in 2022. They noted that the judicial system in Donetsk was deeply flawed, with citizens routinely denied a fair trial, as well as

access to basic legal protections such as public hearings, the right to counsel, and sufficient time to prepare a defense.

In this context, the trial and death sentence imposed on Aslin and Pinner by the DPR can be seen as a clear violation of the most fundamental human rights standards. Not only was there a lack of impartiality in the judicial process, but also a flagrant disregard for the protections afforded to prisoners of war under international law. By failing to meet the minimum guarantees under both IHL and IHRL, the authorities in Donetsk not only undermined the legitimacy of their own proceedings but also violated the principles of justice and fairness that are foundational to international law.

Thus, these actions not only call into question the legality of the death sentence imposed on these foreign volunteers, but they also shed light on the broader challenges surrounding justice and accountability in regions under the control of non-recognized entities.

The situation involving the captured British nationals in the Donetsk People's Republic in August 2022 underscores the significant legal and humanitarian issues surrounding the treatment of foreign volunteers in the context of the Ukraine conflict. The three British nationals, who were members of the International Legion and a humanitarian aid worker, faced charges of fighting as mercenaries in a court in the self-proclaimed Donetsk republic. This is particularly troubling given the lack of due process, independent courts, and fair trials in this context.

The charges of mercenary activity levied against these individuals are part of a broader pattern of legal issues raised in the conflict, where the distinction between foreign fighters and mercenaries becomes increasingly blurred. Under international law, particularly the Geneva Conventions, mercenaries are defined as individuals who take part in an armed conflict for financial gain and are not entitled to POW status. However, the British nationals in this case, like many other foreign volunteers, likely joined the conflict for ideological or humanitarian reasons, not for financial gain, meaning they would not meet the typical criteria for mercenary status under international law.

Furthermore, the court's ruling in Donetsk, where death sentences were previously handed down to Andrew Hill and Dylan Healy, reflects the politicized nature of the judicial process within the self-proclaimed republic. These proceedings clearly violate the international humanitarian law principles of due process and fair trial, which require that all individuals, including POWs and foreign fighters, be treated in

accordance with international legal standards, particularly in international armed conflicts.

In this case, the Donetsk court and its decision-making process raise profound concerns regarding its legitimacy, especially given that Donetsk is not a recognized state under international law. The death sentences imposed on the two British nationals, as well as the ongoing trials of other foreign volunteers, highlight the precarious legal situation for foreign fighters and humanitarian workers who find themselves detained by Russian-backed separatists in regions under their control. These individuals are vulnerable to arbitrary legal processes, torture, and potential execution without the protections typically afforded to prisoners of war under the Geneva Conventions.

The overall implications of these proceedings are significant in terms of international law, human rights, and diplomatic relations, especially in terms of how states such as the UK and Ukraine respond to the legal status and treatment of foreign nationals involved in the conflict. The treatment of foreign volunteers, like the British nationals, underscores the complexities of applying international humanitarian law in areas controlled by non-recognized entities and where international norms may not be fully upheld (<https://www.bbc.com/news/uk-62557923>).

The Russian authorities also confirmed the capture and detention of James Scott Rhys Anderson, a British citizen fighting for Ukraine. The Russian Investigative Committee accused Anderson of „terrorism” and “being a mercenary”. A video circulated in the media allegedly showing the captured volunteer also appeared on “Telegram” channels. Speaking with an English accent, the man identified himself as Anderson, a 22-year-old former British army soldier who, he said, had arrived in Ukraine and joined the International Legion.

Luz Truss, quoted earlier, wrote on her Twitter profile: “I strongly condemn the sentences of Aiden Aslin and Shaun Pinner by Russian proxies in eastern Ukraine. They are prisoners of war. This is an apparent sentence with absolutely no legitimacy.” In September 2022, five British citizens, two of whom were sentenced to death, were released from Russian captivity in exchange for prisoners with Ukrainian forces. Aiden Aslin, John Harding, Dylan Healy, Andrew Hill and Shaun Pinner returned home to the UK. Prime Minister Boris Johnson's spokesman Jamie Davies said that under the provisions of Geneva Convention III, prisoners of war are entitled to combat

immunity and “should not be used for political purposes.” He also stated: “We will continue to work with the Ukrainian authorities to secure the release of all British citizens who have served in the Ukrainian armed forces and are being held as prisoners of war.”

Nevertheless, three foreign volunteers – including Aiden Aslin and Shaun Pinner – were judged in a summary proceeding, which cannot in any way be considered a fair trial according to international standards of the rule of law. In reality, by deliberately denying Aiden Aslin and Shaun Pinner the status of prisoners of war and their right to a fair or regular trial, Russia itself is committing a war crime. In response to such actions, the European Court of Human Rights granted interim measures and called on Russia to ensure that the death penalty would not be carried out and to respect the human rights of the foreign volunteers. These rights include the right to life, freedom from torture, and appropriate conditions of detention.

Considering the previously mentioned death sentence imposed on two British citizens by a pro-Russian court in eastern Ukraine, as well as the capture of two American fighters in Donetsk, the perspective on the legal status of foreign individuals joining the conflict in Ukraine, along with the legal and political consequences of this situation, remains uncertain (<https://icct.nl/publication/foreign-fighters-foreign-volunteers-and-mercenaries-ukrainian-armed-conflict>).

These cases illustrate why volunteers traveling to Ukraine pose diplomatic challenges for foreign governments, particularly when their citizens are captured by Russian forces. The Russian Ministry of Defense has stated that those traveling to fight in Ukraine will be considered mercenaries, denying foreign volunteers the status of combatants and prisoners of war, thus increasing the risk of mistreatment. Two British prisoners were also used as political hostages, with Russian state television airing clips showing the beaten men pleading for a swap for the pro-Putin Ukrainian politician Viktor Medvedchuk.

Casualties

The number of British citizens serving in Ukraine is not known for fairly obvious reasons. However, Ukrainian sources have reported that 6,000 Britons have registered or expressed interest in joining the Legion (<https://www.ft.com/content/2a877400-50df-4878-8815-605405e92c68>).

The editorial staff of *The Times* reported that more than 150 former paratroopers, who served in the war in Afghanistan, have joined the Ukrainian forces and traveled to the front lines (<https://www.thetimes.com/>

world/russia-ukraine-war/article/britons-heed-zelenskys-call-to-arms-and-head-to-ukraine-5vrgzmww3?region=global).

The editorial staff of *BBC News* extensively commented on the fact that British military officials have advised their active personnel and reservists not to travel to Ukraine. In an interview with *BBC News*, Admiral Tony Radakin also rejected Ukraine's call for the creation of a no-fly zone, stating that it would not be tactically beneficial and could lead to an escalation of fighting. Regarding the desire of Britons to join the fight in Ukraine, Admiral Radakin remarked that the “sound of gunfire” is “not something to rush toward” and urged UK citizens to support Ukraine in a responsible manner. When asked whether Foreign Secretary Liz Truss was right in saying that she would support any Briton wishing to fight, he said, “We can all understand the sentiment, but it should be translated into support for Ukraine” (<https://www.bbc.com/news/uk-60637185>).

It quickly became clear that Admiral Radakin's words held a great deal of truth – by January 2023, it was already known that eight British volunteers and humanitarian workers had been killed during operations in Ukraine. According to British media sources, the following can be noted:

- 36-year-old Scott Sibley was killed on April 22, 2022, during fighting in Mykolaiv as a result of mortar shelling. As reported by the coroner from the Oxfordshire court, Scott Sibley died from "penetrating shrapnel" to the chest and abdomen. It was also noted that Sibley, the first Briton to die in Ukraine since the invasion began, had traveled to the region on March 13 to join Ukrainian soldiers on the front lines (<https://www.bbc.com/news/uk-61788456>);

- 19-year-old Jordan Gatley – the second Briton to be killed in Ukraine – died while fighting Russian forces in Sievierodonetsk, alongside Ukrainian soldiers (<https://www.bbc.com/news/uk-61777224>). In this case, the Russian side did not violate the law, as international humanitarian law consistently recognizes two categories of individuals affected by armed conflict: civilians and combatants. Consequently, the killing of a combatant in a military operation does not constitute a violation of the laws of war. The same applies to the course of an armed conflict of a non-international nature.

- 48-year-old Craig Mackintosh was killed on August 24, 2022, while working as a volunteer doctor (<https://www.bbc.com/news/uk-62747817>). In this case, the Russian side did not violate the law;

- Former British Army reservist and dual Ukrainian-British citizen Viktor Yatsunyk was killed by a landmine near Izium. In this case, the Russian side did not violate the law;

- Simon Lingard, a former British paratrooper, died from shrapnel wounds after his unit came under attack by Russian forces (<https://www.bbc.com/news/uk-england-lancashire-63574461>). In this case, the Russian side did not violate the law;

- 28-year-old Chris Parry and 47-year-old Andrew Bagshaw were killed while attempting a humanitarian evacuation of civilians in eastern Ukraine (<https://www.reuters.com/world/uk/two-britons-killed-while-trying-evacuate-ukraine-statement-2023-01-24/>). The legality of this situation is highly questionable;

- Jonathan Shenkin died while working as a paramedic. In this case, the Russian side violated Articles 24 and 26 of the First Geneva Convention;

- Another British humanitarian worker, 45-year-old Paul Urey, died in detention with signs of "possible unspoken torture" after being captured by pro-Russian separatist forces. In this case, international humanitarian law was clearly violated, as medical personnel are not subject to capture like prisoners of war. Such personnel are only subject to "detention" until repatriation, which must happen immediately once the detaining side provides the prisoners with proper medical care. In this case, none of these provisions were followed, and his mutilated body was returned to the Ukrainian side, while the Russian side claimed he "died from acute coronary failure, exacerbated by pulmonary and cerebral edema" (<https://www.bbc.com/news/world-europe-62828238>).

Conclusions

Many British volunteers emphasized that their actions were a response to the brutal human rights violations that occurred in Bucha, Irpin, and other towns in Ukraine. Some admitted that personal reasons, such as seeking a new purpose in life or attempting to cope with mental health issues after military service, also motivated their decision to go. The majority of British volunteers in Ukraine joined the International Legion of Defense of Ukraine, established in March 2022. This Legion became a platform for foreigners who wanted to fight on Ukraine's side, offering basic military training and logistical support. The Legion consisted of both experienced veterans and individuals with no prior military experience.

The British played a particularly significant role in operations on the eastern front, where the war took on the nature of devastating positional warfare. Their experience in special operations, reconnaissance, and urban combat was heavily utilized. Some also worked as instructors, training Ukrainian soldiers on the operation of Western military equipment, such as NLAW anti-tank systems and M777 howitzers.

The involvement of Britons in Ukraine has not been without casualties. Several volunteers died during combat, and others were taken prisoner by Russian forces, which became the subject of international negotiations and diplomatic pressure. Notably, the cases of Aiden Aslin and Shaun Pinner, who were captured by pro-Russian forces in Mariupol and sentenced to death by the self-proclaimed Donetsk People's Republic, attracted significant attention. Thanks to diplomatic intervention, they were released in a prisoner swap in September 2022.

As the author's findings show, many volunteers also struggle with mental health issues stemming from the intensity of the fighting and the harsh conditions on the front lines. Trauma, combat stress, and the sense of isolation upon returning home after completing the mission present serious challenges for those who chose to take this step.

The presence of Britons in Ukraine has been met with mixed reactions in the UK. The British government officially advised citizens against traveling to Ukraine for combat purposes, emphasizing the risks associated with such actions. Despite this, many volunteers ignored the warnings, which, in some cases, led to tensions between the volunteers and the authorities.

British society largely expressed solidarity with Ukraine, but there were also critical voices highlighting the risk of escalating the conflict and the potential danger to the safety of volunteers. Some political circles pointed out the need for better coordination of aid efforts and the necessity of providing psychological support for those returning from Ukraine.

The involvement of Britons in the fighting in Ukraine is not only symbolic but also practical. Their presence boosts the morale of Ukrainian soldiers, and their combat experience contributes to enhancing the effectiveness of the Ukrainian army. At the same time, the participation of Britons in the conflict underscores the importance of international solidarity in the face of Russian aggression.

In conclusion, the participation of British volunteers in the war in Ukraine falls within the broader context of international humanitarian law, subject to various interpretations depending on the circumstances of their service. While many of them may benefit from combatant status, their legal situation remains complicated, especially if they are captured or return to the UK. The story of British volunteers in Ukraine is a testament to courage, sacrifice, and solidarity, but also a warning about the consequences of engaging in armed conflict. Their fates serve as a reminder of the human dimension of war, where every decision has far-reaching consequences.

References

Published Documents

III Konwencja Genewska o traktowaniu jeńców wojennych, podpisana w Genewie dnia 12 sierpnia 1949 r. (Dz. U. z 1956 r. Nr 38, poz. 171).

IV Konwencja Genewska o ochronie osób cywilnych podczas wojny, podpisana w Genewie dnia 12 sierpnia 1949 r. (Dz. U. z 1956 r. Nr 38, poz. 171).

Protokoły dodatkowe do Konwencji genewskich z 12 sierpnia 1949 r. Genewa, 8 czerwca 1977 r. (Dz.U. z 1992 r., Nr 41, poz. 175).

Basic rules of the Geneva Conventions and their Additional Protocols, ICRC publication ref. 0365, 1988.

Human rights and the ICRC, International Committee of the Red Cross, Geneva 1993.

Studies

A. A. Bouvier (2012). International Humanitarian Law and the Law of Armed Conflict (2nd ed.). Peace Operations Training Institute.

K. Lankosz (2006). Podstawowe zagadnienia prawa międzynarodowego publicznego [w:] K. Lankosz (red.), Międzynarodowe prawo humanitarne konfliktów zbrojnych.

Internet sources

<https://www.bbc.com/news/world-europe-62828238>

<https://www.reuters.com/world/uk/two-britons-killed-while-trying-evacuate-ukraine-statement-2023-01-24/>

<https://www.bbc.com/news/uk-england-lancashire-63574461>

<https://www.bbc.com/news/uk-62747817>

<https://www.bbc.com/news/uk-61777224>

<https://www.bbc.com/news/uk-60637185>

<https://www.thetimes.com/world/russia-ukraine-war/article/britons-heed-zelenskys-call-to-arms-and-head-to-ukraine-5vrgzmww3?region=global>

<https://www.ft.com/content/2a877400-50df-4878-8815-605405e92c68>

<https://icct.nl/publication/foreign-fighters-foreign-volunteers-and-mercenaries-ukrainian-armed-conflict>

<https://www.bbc.com/news/uk-62557923>

<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-47>

<https://poland.mfa.gov.ua/pl/news/miedzynarodowy-legion-sil-zbrojnych-ukrainy>
<https://www.theguardian.com/world/2022/feb/27/liz-truss-says-she-would-back-britons-going-to-ukraine-to-fight-russia>
<https://www.bbc.com/news/uk-60684749>

Мрочковскі К.

**БРИТАНСЬКІ ДОБРОВОЛЬЦІ, ЩО ВОЮЮТЬ В УКРАЇНІ, –
ВНЕСОК У ДИСКУСІЮ В КОНТЕКСТІ МІЖНАРОДНОГО
ГУМАНІТАРНОГО ПРАВА**

У статті аналізується участь британських добровольців у конфлікті в Україні в контексті міжнародного гуманітарного права. Розглядаються мотиви добровольців, їхній правовий статус та наслідки їхньої участі у збройних діях. Обговорюються ключові правові аспекти, зокрема статус комбатанта, захист військовополонених та відповідальність за можливі порушення законів ведення війни. Також розглядається реакція уряду Великої Британії та міжнародної спільноти на участь британських громадян у війні в Україні. Ця стаття є внеском у ширшу дискусію щодо ролі іноземних добровольців у збройних конфліктах та наслідків їхніх дій у світлі сучасних норм міжнародного права.

Ключові слова: британські добровольці, міжнародне гуманітарне право, правові аспекти, російсько-Українська війна.