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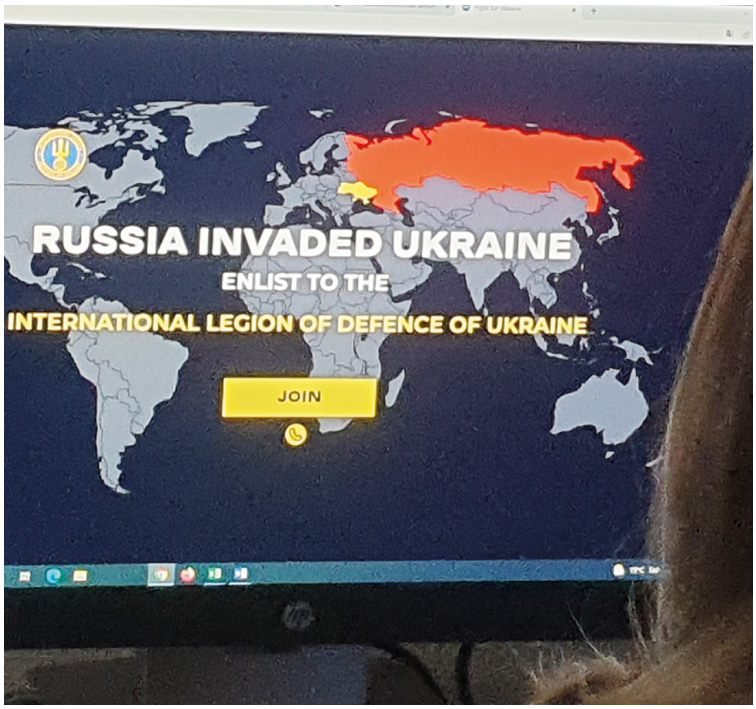
"ENLIST NOW!" — OR DON'T?

// Why we should be concerned about foreign fighting in Ukraine

With the recent escalation of Russia's war on Ukraine, tens of thousands of foreign fighters have flocked to the region. While the widespread praise for individuals supporting the Ukrainian defense effort is understandable, governments should take measures to prevent their citizens from joining the war. Foreign fighters epitomize the privatization of wars, and the multiplicity of individual motives and aims contributes to the conflict's complexity. The involvement of third-country nationals also has the potential to escalate the conflict further. Lastly, Western countries will have to deal with returnees who are better trained, traumatized, and potentially radicalized.



Enlistment in seven steps: International Legion of Defence of Ukraine's website https://fightforua.org/. Screenshot 13 May 2022.

by Hanna Pfeifer, Houssein Al Malla, and David Weiß

According to the Ministry of Foreign Affairs of Ukraine, only seven steps are necessary to become a fighter in the so-called Ukrainian Foreign Legion. "Freedom is a choice. Join the brave!" the online platform of the "International Legion of Territorial Defense of Ukraine" advertises.[1] Encouraged by President Volodymyr Zelensky's call on February 27, 2022,[2] some 20,000 volunteers from more than 50 countries, mainly in Europe and North America and for the most part male, have, the Ukrainian government claims, signed up or at least declared their desire to join.[3] How many of these individuals are actually on the ground, undergoing training or already involved in combat missions, remains unclear. What is certain, however, is that there are already a number of multinational units of various sizes—some of them under the command of Ukrainian officers, others led by foreign soldiers from the Foreign Legion. In fact, the Ukrainian Armed Forces are already well experienced in commanding foreign soldiers. Following the 2014 Russian aggression in Eastern Ukraine, they established over 30 volunteer battalions with more than 1,000 foreign nationals and stateless persons.[4]

The phenomenon of foreign fighting has existed for a long time and in several different contexts: Individuals from third countries join an armed conflict from outside, sometimes in an organized fashion, for example as contractors who are hired by a private security and military company (PSMC), sometimes as private individuals who become part of regular or irregular forces in a war zone. In academic research only the latter are defined as foreign fighters in the narrow sense: These individuals travel to war zones, do not bear the nationality of one of the parties to the conflict, do not work for a PSMC or an official military organization, and join irregular forces, particularly insurgent groups, for ideological or political reasons rather than economic gain.[5] This makes them distinct from both contractors working for a PSMC and foreign legionnaires.

These three forms of foreign fighting follow different logics with regard to motivation, legal and ethical

problems, and consequences for the further development of a conflict. And yet, there are some concerns that apply to all of them. Western governments should therefore take measures and develop policies to prevent their citizens from joining either of the warring parties in Ukraine and wars abroad in general.

Public, legal, and academic concepts of foreign fighting

The public debate in the West does not address foreign fighting as an overarching problem but rather concentrates on individual phenomena. Even though there are critical voices, a heroic image of the "volunteer fighters" who set out for the "defense of Ukraine" is still widespread and resonates well with the moral sentiments of Western populations toward the war.[6] In line with this heroization, memories of the Spanish Civil War and the foreign recruits who joined the anti-fascist struggle in the 1930s are frequently invoked by the media[7] and some of those interviewed when leaving their countries for Ukraine.[8] This comparison may obscure more than it explains,[9] but this does not diminish its power to legitimize a defensive and solidarity-driven use of violence against the Russian invasion.

The Russian side, too, seeks support from abroad and is joined by what are often (wrongly) called "mercenaries". On the one hand, Putin continues to rely on PSMCs. One infamous example is the Wagner Group, a Russian PSMC with close ties to the far right. It gained notoriety primarily for its operations in Syria, Libya, and Mali, and has been accused of war crimes, among others by the United Nations and France.[10] While it is largely composed of former Russian soldiers, other nationalities are represented among the contractors and the group has recently stepped up its recruitment game. On the other hand, Russia claims to have successfully recruited several thousand of Syrians, which has been confirmed by both Western intelligence and news reports,[11] as well as local media sources in the Middle East.[12]

In contrast to the foreign volunteers who have joined the Ukrainian side, forces supporting Russia are labelled "mercenaries" and thereby delegitimized as profit-oriented actors prone to committing crimes. After all, anyone who sides with Putin today is on the wrong side of history. These attributions of legitimacy are understandable, stemming as they do from the fact that the Russian "operation", as the Kremlin calls it, is in fact a war of aggression and thus a clear violation of the prohibition of the use of force according to international law. Furthermore, an abundance of evidence suggests that the Russian side has systematically committed war crimes and severe breaches of international humanitarian law (IHL).[13]

There is an obvious impulse to use the (il-)legitimacy and (il-)legality of war and the conduct of hostilities as a starting point when it comes to the normative assessment of the foreign fighters joining the war. But the ethical, legal, and political situation is more complex. In legal terms, the situation is quite clear with regard to mercenaries (see info boxes on this page). But PSMCs are a distinct phenomenon, given their repertoire of tasks and the scale of their engagement, and they have been operating in a legal grey zone.[14] The situation is even more complicated when it comes to foreign fighters, not least because there is no agreed definition in international law, but also because they are treated under both IHL and counterterrorism legislation.[15]

The Ukrainian government does not tire of emphasizing that foreigners are defending "Europe and our common civilizational values,"[16] will be integrated into the regular armed forces, and are consequently to be treated as combatants. The Russian side, on the oth-

The United Nations Mercenary Convention

Mercenaries are banned by several treaties, including the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries which was adopted by General Assembly resolution 44/34 on 4 December 1989, entered into force on 20 October 2001, and has 37 state parties plus 17 state signatories. It prohibits the state from recruiting, using, funding, and training mercenaries and mandates domestic mercenary activities to be a crime. Both Russia and Ukraine have ratified the convention and made acting as a mercenary a criminal offense.

The 1949 Geneva Conventions and its 1977 Additional Protocols

Additional Protocol I of 1977 regulates the status of mercenaries, but does not prohibit mercenaries. It explicitly states that mercenaries do not have a right to the status of combatants or prisoners of war. Therefore, they may be prosecuted by the detaining country for mere participation in hostilities. It is stipulated, however, that it is permissible for the country employing foreign fighters to make them members of the army so that they are no longer mercenaries (a strategy that Ukraine is currently using).

er hand, tries to attach the label of "mercenaries" to Western "volunteers." Consequently, the defense ministry in Moscow has already announced that none of them will be considered combatants in accordance with IHL, or be attributed the status of prisoners of war (POW), and has threatened to have them prosecuted as criminals for any subversive acts against the Russian army.[17] Lastly, Western politicians oscillate between encouraging people to actively join the Ukrainian forces (while maintaining plausible deniability of involvement), and tacit acceptance with partial control of citizens leaving their country for the war zone.

Learning from the history of foreign fighting

Foreign legionnaires are thus distinct from both contractors and foreign fighters, and the discursive struggles over how to label these individuals demonstrate the political and legal relevance of these distinctions. However, there are some general caveats that we can draw from the history of foreign fighting,[18] which apply to individuals traveling into war zones in general — regardless of whether they join the attacking or the defending side, and regardless of whether a party to the conflict, its behavior, and goals are considered to be good or bad.

Having first emerged on a large scale in the Afghan war following the Soviet invasion in 1979, jihadist foreign fighters are probably the most well-known in Western societies. At that time, the "Arab Afghans" were supported by the United States and Pakistan in the context of the Cold War. They evolved into the cross-border Al-Qaeda network, parts of which eventually formed — with the addition of local insurgents in Syria and Iraq — the core of the so-called ISIS organization. Jihadist Afghanistan veterans also gained combat experience in Bosnia-Herzegovina and Chechnya in the 1990s. While, so far, there have been only isolated references to the presence of fighters from these groups in Ukraine, this historical development points to several potential problems that are also likely to arise with respect to "foreign legionnaires" and "mercenaries" in the war on Ukraine.

First, both groups are an expression of an increasing privatization of war and security. In the case of the mercenaries, this is obvious. But foreign legionnaires, too, undermine the state monopoly on the legitimate use of force. They make individual decisions to intervene in an armed conflict without this being part of their respective state's strategy, let alone democratically legitimized. In Germany, for instance, fighting in foreign conflicts is not punishable—unless significant actions are planned abroad that could harm the foreign relations of Germany. On this basis, citizens who are classified as right-wing extremists, for example, are denied permission to leave the country.

Foreign Fighters cross the border to fight for Ukraine as Russia's attacks on Ukraine continue, in Przemysl, Poland on 05 March 2022 (Photo: © picture alliance / AA | Abdulhamid Hoşbaş).

This already highlights another difficulty that goes beyond the disturbing idea of German neo-Nazis fighting under the Ukrainian or any other flag: An individual's motive for leaving their country and joining foreign troops (or some irregular force, for that matter) can neither be systematically identified nor controlled. There is a whole potpourri of economic, political, moral, religious, and other motives, as well as psychological inclinations, among the fighters on the Ukrainian battlefield.

This gives rise to a principal-agent problem, as fighters can develop their own agenda, which then no longer corresponds to that of the principal or may even run counter to it. Such a problem is not untypical. For instance, a significant number of foreign fighters stayed in Afghanistan even after the departure of the Soviet Troops in 1989, and went on to follow Abdullah Azzam's vision of a force that would "continue the jihad no matter how long the path, until the last breath and the last beat of the pulse."[19] The involvement of foreigners with their own agendas entails the risk of fragmentation and, in the worst case, a multiplication of warring parties. Complicating the conflict constellation in Ukraine in this way would also make conflict management and resolution more difficult, as there would be more, diverging interests to be satisfied — and might actually even prolong the conflict. This is exacerbated by the fact that those joining the war

About the Authors
Prof. Dr Hanna Pfeifer is Professor of Political Science with a special focus on radicalisation and violence research at PRIF and Goethe University Frankfurt. Houssein Al Malla is a Helmut Schmidt Scholar for Public Policy and Good Governance at the Willy Brandt School of Public Policy. David Weiß studies Political Theory at Goethe University Frankfurt and TU Darmstadt.
Contact pfeifer@hsfk.de

Leibniz-Institut Hessische Stiftung Friedens- und Konfliktforschung
Baseler Str. 27–31, 60329 Frankfurt am Main
Postvertriebsstück D 43853, Entgelt bezahlt, ISSN-2512-627X

from outside are not embedded in Ukrainian society and do not envisage their own future in the country. As a result, when considering their actions, they lack an important factor that may inhibit violence and have a de-escalating effect: Escalation of violence appears less risky when it does not jeopardize one's own family, social environment, or social tissue—after all, with a foreign passport, it is possible to simply leave the conflict.

The uncertain future of former fighters in Ukraine

This is related to a third fundamental concern regarding the uncontrolled flow of individual, voluntary fighters into a war zone: It changes both the stakes of third countries and the strategic calculus of the parties to the conflict. For example, how would Western states react to high casualty rates among foreign fighters with European or North American citizenship? The first Western volunteers have died in combat,[20] and with the war dragging on, third states may lose more of their nationals fighting in the International Legion. Thus, the involvement of foreigners in the war may create new causes of conflict between these third states and Russia, and has the potential to escalate the conflict. Allowing such potential to grow outside direct state control and failing to actively prevent the departure of fighters would thus be ill-advised for the governments in question.

Lastly, governments will also ultimately have to deal with returnees. In Ukraine, former special forces and professionals from PSMCs, representatives of non-state groups from other conflicts, for example Kurds from Iraq, and NATO-trained Ukrainian armed forces fight alongside vigilante groups and militias, as well as the popular resistance—and now they have been joined by what is probably thousands of more or less well-trained individuals of different origins and sometimes with questionable motives. These groups will begin to learn from one another, especially in terms of military and tactical skills, but also in terms of ideological and affective attitudes. An open yet highly relevant question is which conflict these fighters will or will not choose to join next—and which side they will fight for. But one thing we can be sure of is that, next time, they will be better prepared and more experienced in combat, they will be part of a bigger network—and they will already carry with them the physical and psychological scars of war.

References and further reading:
hsfk.de/spotlight0522-ref

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The Peace Research Institute Frankfurt (PRIF) is the largest institute for peace research in Germany. PRIF sets out to analyze the causes of violent international and internal conflicts, carrying out research into the conditions necessary for peace and working to spread the concept of peace.

V.i.S.d.P.: Karin Hammer, Öffentlichkeitsarbeit (HSFK), Baseler Straße 27–31, 60329 Frankfurt am Main, Telefon (069) 959104-0, info@hsfk.de, www.hsfk.de.
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