

A Normative Framing of the 'Foreign Fighter' in Contemporary Armed Conflicts

Yunusa Usman

Doctoral Researcher, Faculty of Law
Europa-Universität Viadrina, Frankfurt (Oder), Germany

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Abstract: *With its unsettled conceptualisation, the notion of a foreign fighter has garnered renewed attention this Century due to the large numbers of non-nationals involved in hostilities in places such as Syria and Ukraine. Unsurprisingly, the use of foreign fighters has often drawn strong reactions from adversaries on the receiving end who often term them 'mercenaries' or 'foreign terrorists' and usually assert a right to subject captured foreign fighters to unilateral treatment standards. Some States of origin have also rushed to strip their nationals participating in armed conflicts abroad of their citizenship. In light of this tendency to resort to extra normative approaches, the Paper uses doctrinal research methods to explore the position of foreign fighters under international humanitarian law, as the *lex specialis* for armed conflicts and human rights law, as appropriate. It advocates that policymakers and legal commentators always view foreign fighters through the prism of relevant legal norms.*

Keywords: Foreign fighter, armed conflict, international humanitarian law, human rights law, Syria, Ukraine

INTRODUCTION

Due to various factors, such as accessible air travel¹ and a wealth of information on the Internet,² the international migration rate is presently the highest in decades.³ Consequently, in several countries in the Arabian Gulf region, migrants comprise most of their national populations.⁴ Similarly, many contemporary armed conflicts are notable partly because of the significant influx of so-called 'foreign fighters'.⁵

The 'foreign fighter' notion has no basis in international humanitarian law (IHL). Hence, its conceptualisation for academic discourse remains unsettled. For instance, should the status be confined to those fighting for non-state armed groups (NSAGs), or should it be extended to those engaged in hostilities on behalf of state parties or NSAGs not also designated as terrorist entities in armed conflicts?⁶ Likewise, should the motivations of a 'foreign fighter' be confined to ideology and religion, or should they be extended to ethnic or kinship linkages?⁷ Exploring these questions is beyond this Paper's remit.

Notwithstanding, generally speaking, foreign fighters are 'non-nationals [of conflict parties] involved in armed violence outside their habitual country of residence, including in armed conflict as defined under [IHL]'.⁸ The act of Individuals participating in hostilities for various reasons while not owing allegiance to any of the conflict parties is probably as old as human warfare itself.⁹

¹ Opeskin, et al. (eds.), 2012, p. 25.

² McAuliffe and Oucho (eds.), 2024, p. 22.

³ McAuliffe and Oucho (eds.), 2024, p. 22.

⁴ McAuliffe and Oucho (eds.), 2024, p. 76.

⁵ Kraehenmann, 2014, p. 5.

⁶ Kraehenmann, 2014, pp. 5-7; Cuyckens, 2021, pp. 591-592.

⁷ Kraehenmann, 2014, pp. 5-7.

⁸ Kraehenmann, 2014, p. 3.

⁹ Kraehenmann, 2014, p. 3.

Alexander the Great was reportedly not particularly pleased with his fellow Greeks who fought against him on the side of Darius III of Persia.¹⁰ Similarly, French and German fighters featured prominently in the American War of Independence in the 18th Century.¹¹ In the 20th Century, the combat footprint of non-nationals in armed conflicts such as the Spanish Civil War, the various armed agitations for independence in the different Colonies and the Soviet-Afghan War were remarkable.¹²

However, the foreign fighter phenomenon has attained greater visibility in contemporary armed conflicts and consequently generated legal controversies due to the convergence of several factors. First, as mentioned earlier, many individuals have leveraged the modern ease of cross-border movement to travel to foreign lands to participate in hostilities, calling into question the scope of the relationship between an individual and their State of origin. Indeed, several States have stripped their nationals who travelled abroad to participate in armed conflicts of their citizenship,¹³ albeit selectively¹⁴ and sometimes arguably rendering such individuals stateless.¹⁵

Secondly, extra-normative considerations seemingly shape the treatment of foreign fighters in several contemporary armed conflicts. For instance, in the context of the ongoing international armed conflict (IAC) between Russia and Ukraine, the presence of foreign fighters on the battlefield has generated much controversy. While a presidential decree formally established an international legion comprised of foreign fighters as part of the Ukrainian armed forces,¹⁶ the Russian Government has unequivocally stated that it would regard non-nationals fighting for Ukraine as mercenaries who are not entitled to combatant status, including their possible treatment as prisoners of war.¹⁷

Without the benefit of any status analogous to the combatant status in IACs, the fate of foreign fighters in non-international armed conflicts (NIACs) is even more precarious.¹⁸ Many armed groups in contemporary NIACs that typically attract foreign fighters have dual designations as conflict parties and terrorist organisations.¹⁹ Accordingly, in a post-11 September 2001 world, references to 'foreign terrorist fighters'²⁰ in State practice represent a conflation of IHL and counterterrorism laws²¹ and have a particularly denunciatory impact on non-nationals who take direct part in hostilities in such armed conflicts even where there is no proof of war crimes commission on their part.²²

In this regard, thousands of foreign fighters for the Islamic State in Iraq and Syria are in legal limbo,²³ whereby they remain detained, mostly in controversial camps operated by Syrian NSAGs,²⁴ without any real prospect of prosecution on the horizon.²⁵ At the same time, their States of origin have been reluctant to repatriate them on the grounds of domestic politics and national security.²⁶

Foreign Fighters as Combatants

IHL considers armed forces members involved in an IAC, except medical and religious personnel, as 'combatants'.²⁷ A 'combatant' status carries with it immunity from prosecution for merely

¹⁰ Walbank, 2024.

¹¹ Bradsher, 2021.

¹² Kraehenmann, 2014, p. 3; Malet, 2022.

¹³ Siddique, 2024.

¹⁴ Cuyckens, 2021, pp. 591-592.

¹⁵ Goodwin-Gill, 2014.

¹⁶ Anglesey, 2022; Ditrichová and Bílková, 2022.

¹⁷ Lemon, 2022.

¹⁸ Kraehenmann, 2014, p. 15; Malet, 2022.

¹⁹ Kraehenmann, 2014, pp. 8-12 and pp. 15-16; Cuyckens, 2021, pp. 590-592.

²⁰ See, for instance, UN Security Council, S/RES/2178, 2014.

²¹ Kraehenmann, 2014, p. 4; Cuyckens, 2021, pp. 582-588.

²² Zwanenburg, 2016, pp. 206-207; Malet, 2022.

²³ Cuyckens, 2021, p. 582.

²⁴ Gardner, 2020.

²⁵ Cuyckens, 2021, pp. 592-598.

²⁶ Gardner, 2020; Thakkar and Speckhard, 2023.

²⁷ Additional Protocol I, 17512 UNTS 1125 (p. 3), 1977, Art. 43(2); Henckaerts and Doswald-Beck, 2005, Rule 3, pp. 11-14 and Rule 106, pp. 384-389.

participating in hostilities²⁸ and a right to be treated as a prisoner of war if captured by an adversary.²⁹ The flip side of this legal status is that every combatant is also a lawful target based solely on their status as long as the relevant armed conflict exists. Consequently, there is no need for an adversary to see evidence of a hostile act or demonstrate hostile intent before attacking a combatant who has not explicitly surrendered.³⁰

Although no treaty definition of a 'combatant' exists,³¹ there is consensus in State practice³² that the categories of persons stipulated under Article 4(A)(1), (2) and (6) of the Third Geneva Convention of 1949 are entitled to combatant status. These are members of State armed forces, members of militias/volunteer groups integrated with such armed forces, members of militias/volunteer corps under the control of a conflict party and that meet specific criteria to ensure the implementability of IHL and participants in a levée en masse.³³

From the above-cited legal provisions, nationality is not one of the criteria for enjoying combatant status, nor is it a basis for losing its entitlements. In other words, as an illustration, an individual, even though not a citizen of Country X, could nevertheless be a combatant in armed conflict having Country X as a conflict party if he is a member of the Country's armed forces or is a member of a militia or a volunteer corps forming part of its armed forces or belonging to Country X. Consequently, contrary to Russia's assertion, members of the International Legion for the Defense of Ukraine arguably qualify as combatants since the Legion form part of the Ukrainian Armed Forces.

However, a scenario could arise where a captured foreign fighter in an IAC is a national of the detaining State. For instance, Russia could capture one of its nationals while fighting as a member of the International Legion for the Defense of Ukraine. Treaty law is silent on such a scenario. Notwithstanding that nationality does not determine entitlement of combatant status, States customarily do not accord their nationals prisoner of war status when captured as combatants in enemy armed forces.³⁴ This stance would seem logical because nationality comes with rights and obligations. Nationals of a State are generally required not to act against the national security interest of that State.³⁵

Several cases arose during the first phase of the Afghan armed conflict when it was still an IAC involving foreign nationals fighting on the side of the Taliban as the then-defacto national Government and detained by armed forces of their States of origin. A notable example is *Yaser Hamdi v. Rumsfeld*.³⁶ A United States national, Yaser Hamdi, was captured while fighting for the Taliban in 2001. He was, afterwards, declared an 'illegal enemy combatant' and detained indefinitely, without trial. Hamdi challenged his detention because it violated his rights under the Fifth and Fourteenth Amendments to the United States Constitution. While the Supreme Court did not specifically address the legality of the designation of an 'illegal enemy combatant' under the law of armed conflict, it held that, no matter the designation, the Government could not indefinitely detain a United States national without their constitutionally guaranteed rights. These include the right to challenge the basis for his detention in Court.³⁷ Therefore, the domestic laws of a detaining State, subject to its obligations under human rights law, would usually determine the scope of treatment of a national captured while engaging in hostilities for an enemy State. Interestingly, Hamdi's c

ase highlights the tendency of States to create ad-hoc statuses such as 'unlawful combatants', 'unprivileged belligerents' or 'illegal enemy combatants' as helpful domestic policy covers for the preferred treatment of captured foreign fighters in IACs. Such terms are not known to IHL. The

²⁸ Additional Protocol I, 17512 UNTS 1125 (p. 3), 1977, Art. 43(2).

²⁹ Third Geneva Convention, 972 UNTS 75 (p.135), 1949, Art. 4; Additional Protocol I, 17512 UNTS 1125 (p. 3), 1977, Art. 44(1).

³⁰ Schmitt, 2009, p. 317.

³¹ Kraehenmann, 2014, p. 17.

³² Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 205 CTS 277, 1907, Arts. 1 and 2; Henckaerts and Doswald-Beck, 2005, Rule 3, pp. 11-14 and Rule 4, pp. 14-17.

³³ Tsagourias and Morrison, 2018, p. 106.

³⁴ United States Supreme Court, *Ex Parte Quirin*, 317 U.S. 1, 30-31, 1942, p. 20 and pp. 37-38.

³⁵ International Committee of the Red Cross (ICRC), 2019.

³⁶ 542 U.S. 507 (2004).

³⁷ *Yaser Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), pp. 529-539.

law for IACs recognises only two statuses: a combatant entitled to combat immunity and treatment as a prisoner of war but targetable at all times and a civilian who enjoys legal protection from attacks unless they directly participate in hostilities.³⁸

As mentioned in the introduction, Russia considers all non-nationals fighting for Ukraine in the ongoing IAC as mercenaries. Hence, it is also essential to attempt to distinguish between foreign fighters and mercenaries. Universal³⁹ and regional⁴⁰ treaties prohibit conflict parties from relying on mercenaries for hostilities. Historically, there was no focus on the motivations of non-nationals participating in combat distant from their home countries.⁴¹ However, over time, States began to be concerned that individuals motivated solely by financial gains to participate in hostilities thereby possessed the incentive to perpetuate conflicts no matter the humanitarian consequence and had no scruples acting as proxies to commit war crimes.⁴² Indeed, the groundswell of international opposition to the activities of mercenaries peaked immediately after the Second World War when colonial powers extensively used them to suppress agitations for self-determination within the colonies violently.⁴³

Consequently, aside from not being nationals of conflict parties, a critical qualification of mercenaries, as contained in the restrictive and cumulative formulations of the relevant treaties,⁴⁴ is that they are primarily motivated by financial gains to participate in hostilities directly.⁴⁵ While foreign fighters could receive payouts for their combat actions on behalf of conflict parties, they are usually compelled more by ideological or kinship considerations to get involved in hostilities than the prospect of material rewards.⁴⁶ Admittedly, proof of an overarching financial motivation for non-national participation in the hostilities of an IAC is not always easy to establish since any utilising conflict party would naturally deny hiring foreign fighters for pay to avoid the charge of using mercenaries.⁴⁷

Under the prevailing international legal framework, captured mercenaries cannot claim combatant immunity or treatment as prisoners of war.⁴⁸ Conversely, as already discussed, foreign fighters who do not qualify as mercenaries could enjoy combatant status because nationality is not a bar to such entitlement in an IAC. Notwithstanding, States can extend combatant status to detained mercenaries in IACs.⁴⁹ In NIACs, where there are no special statuses to enjoy, any question of discretionary grant of combatant status on a captured mercenary becomes a moot point, and captured individuals who qualify as mercenaries are liable to domestic prosecution.⁵⁰

It is essential to note that even when States treat individuals as mercenaries, they remain entitled to minimum standards of humane treatment under the relevant treaty provisions for both IACs⁵¹ and NIACs.⁵² In sum, facts on the ground rather than generalised political statements would help determine whether non-nationals engaged in IACs abroad should enjoy IHL protection granted to combatants.⁵³ Where doubt exists regarding entitlement to combatant status, an individual, even

³⁸ Tsagourias and Morrison, 2018, p. 108.

³⁹ Additional Protocol I, 17512 UNTS 1125 (p. 3), 1977, Art. 47; International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 2163 UNTS 37789 (p. 75), 1989, Art. 1.

⁴⁰ Organisation of African Unity (OAU), OAU Convention for the Elimination of Mercenarism in Africa, CM/817 (XXIX) Annex II Rev.1, 1977, Arts. 1-3.

⁴¹ Riordan, 2021, p. 1.

⁴² Riordan, 2021, pp. 1-2.

⁴³ Riordan, 2021, pp. 1-2.

⁴⁴ Henckaerts and Doswald-Beck, 2005, Rule 108, pp. 392-393.

⁴⁵ Riordan, 2021, p. 4.

⁴⁶ Kraehenmann, 2014, p. 7.

⁴⁷ Malet, 2022.

⁴⁸ Additional Protocol I, 17512 UNTS 1125 (p. 3), 1977, Art. 47(1); International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 37789 UNTS 2163 (p. 75), 1989, Art. 16; Organisation of African Unity (OAU), OAU Convention for the Elimination of Mercenarism in Africa, CM/817 (XXIX) Annex II Rev.1, 1977, Art 3; Henckaerts and Doswald-Beck, 2005, Rule 108, p. 319ff.

⁴⁹ Henckaerts and Doswald-Beck, 2005, Rule 108, pp. 394-395.

⁵⁰ Henckaerts and Doswald-Beck, 2005, Rule 108, p. 395.

⁵¹ Additional Protocol I, 17512 UNTS 1125 (p. 3), 1977, Art. 75; Henckaerts and Doswald-Beck, 2005, Rule 108, pp. 393-394.

⁵² See, for instance, Third Geneva Convention, 972 UNTS 75 (p.135), 1949, Art. 3; Additional Protocol II, 17513 UNTS 1125 (p.609), 1977, Arts. 5 and 6.

⁵³ Kraehenmann, 2014, pp. 16-17.

a foreign fighter, shall continue to enjoy such status until a duly constituted military tribunal or civilian Court resolves the doubt.⁵⁴

Foreign Fighters as Civilians Directly Participating in Hostilities

In an IAC, foreign fighters who do not benefit from combatant status are, in essence, civilians directly participating in hostilities.⁵⁵ Civilians are protected from attack 'unless and for such a time as they take a direct part in hostilities'.⁵⁶ While there is some controversy about the scope of this direct participation exception at the granular level,⁵⁷ the consensus is that IHL does not explicitly prohibit civilians from taking direct part in hostilities in an armed conflict.⁵⁸

Nevertheless, a civilian who chooses to be a direct participant in the hostilities of an IAC becomes a lawful target, has no combatant immunity, and therefore becomes prosecutable if captured by the adversary, even for taking combat actions against lawful targets.⁵⁹ Furthermore, such a civilian does not enjoy the status of a prisoner of war in detention even though they are entitled to minimum humane treatment guarantees without adverse distinction based on nationality or similar criteria.⁶⁰

Additionally, civilians in an IAC, whether or not directly participating in hostilities, who are within enemy or occupied territory,⁶¹ continue to enjoy certain entitlements under the Fourth Geneva Convention because they, 'in any manner whatsoever', are 'in the hands' of the adversary.⁶² These entitlements include protection from coercion,⁶³ corporal punishment or torture,⁶⁴ collective punishment,⁶⁵ unlawful deportations or transfers,⁶⁶ and forced labour.⁶⁷ Violating specific protections granted to protected persons would constitute grave breaches of IHL.⁶⁸ However, unlike the protection conferred under Article 75 of Additional Protocol I, nationality determines whether an individual enjoys the entitlements under the Fourth Geneva Convention as a protected person.⁶⁹

Accordingly, individuals who are citizens of the detaining State but captured while engaged in combat abroad as civilians cannot rely on the provisions of the Fourth Geneva Convention.⁷⁰ This position aligns with the customary practice of each State exercising the right to determine the rights and obligations attached to individuals holding its nationality. However, individuals who, though are nationals of a detaining State, have become refugees without the benefit of diplomatic protection of their State of origin cum detaining Power remain protected under the Fourth Geneva Convention.⁷¹

Further excluded from the scope of 'protected persons' under the Fourth Geneva Convention based on nationality are nationals of neutral states captured within the territory of a belligerent State and nationals of co-belligerent States whereby the State of origin has good diplomatic relations with the detaining State.⁷² The essence of these exceptions is that a detained individual's State of origin can make diplomatic representations on their behalf to the detaining State for satisfactory custodial conditions or even release. If a person could not benefit from the diplomatic protection of their

⁵⁴ Third Geneva Convention, 972 UNTS 75 (p.135), 1949, Art. 5; Additional Protocol I, 17512 UNTS 1125 (p. 3), 1977, Art. 45(1); ICRC, 2020, paras. 1123-1129.

⁵⁵ Tsagourias and Morrison, 2018, p. 108.

⁵⁶ Additional Protocol I, 17512 UNTS 1125 (p. 3), 1977, Art. 51(3); Additional Protocol II, 17513 UNTS 1125 (p.609), 1977, Art. 13(3).

⁵⁷ Schmitt, 2012, pp. 136-137.

⁵⁸ Schmitt, 2009, p. 320; Kraehenmann, 2014, p. 18.

⁵⁹ Melzer, 2009, pp. 83-84.

⁶⁰ Additional Protocol I, 17512 UNTS 1125 (p. 3), 1977, Arts. 45(3) and 75; Mahnad, 2022, p. 2.

⁶¹ Prosecutor v. Dusko Tadic, Appeal Judgement, Case No. IT-94-1-A, 1999, para. 164.

⁶² Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 4.

⁶³ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 31.

⁶⁴ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 32.

⁶⁵ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 33.

⁶⁶ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 49.

⁶⁷ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 51.

⁶⁸ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 147.

⁶⁹ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 4.

⁷⁰ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 4.

⁷¹ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 44; Prosecutor v. Dusko Tadic, Appeal Judgement, Case No. IT-94-1-A, 1999, para. 164.

⁷² Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 4.

State of origin or any other State, the protections under the Fourth Geneva Convention would apply to them.⁷³

Concerning a foreign fighter, as earlier mentioned, absent any entitlement to combatant status if captured in an IAC, such an individual would be treated as a civilian directly participating in hostilities.⁷⁴ However, there has been debate whether such an individual engaged in combat under an IAC abroad without entitlement to combatant status would yet be entitled to the status of a protected civilian under the Fourth Geneva Convention if they find themselves in the hands of an adversary. The United Kingdom Supreme Court had the opportunity to weigh in on this debate in *Secretary of State for Foreign and Commonwealth Affairs and Another v. Yunus Rahmatullah*.⁷⁵

In 2004, Mr Rahmatullah, a Pakistani, was detained by British Forces in Iraq at the time when the Country was under the military occupation of the United States and its allies. Britain then handed him over to the United States Military.⁷⁶ The United States eventually transferred Mr Rahmatullah to a detention facility in Afghanistan based on the allegation that he was an affiliate of Al-Qaeda in Iraq.⁷⁷ Subsequently, in 2012, the United Kingdom Supreme Court heard Mr Rahmatullah's legal action challenging his detention and forcible transfer. One of the critical points of contention was whether he was entitled to the protections under the Fourth Geneva Convention, given the provisions of Article 4 of the Treaty.

The Supreme Court held that the correct interpretation of Mr Rahmatullah, being a citizen of a neutral State (Pakistan) 'in the territory of a belligerent State'⁷⁸ is that he could only be excluded from the protective scope of the Fourth Geneva Convention if he was in the home territory of either the United States or the United Kingdom at the time of his detention and not while he was in occupied territory as Iraq was as of 2004.⁷⁹

Furthermore, the Supreme Court rejected the British Government's argument that the requirement of an individual finding themselves in the hands of an Occupying Power⁸⁰ does not cover an individual like Mr Rahmatullah, who deliberately travelled from his home country to Iraq, then a combat zone. The Court held that to confine the acceptable reason for entitlement to a protected person status in an occupied territory to 'happenstance or coincidence'⁸¹ was to 'introduce a wholly artificial and unwarranted restriction on its availability under the [Fourth Geneva] Convention'.⁸² The Supreme Court's reasoning in Yunus Rahmatullah's case arguably accords with the IHL's overarching objective of balancing military necessity and humanitarian considerations.

Foreign Fighters In Non-International Armed Conflict

Thanks mainly to the states' historical unwillingness to allow any international regulation of interstate hostilities,⁸³ there is no status in NIACs comparable to that of a combatant in IACs.⁸⁴ Instead, Article 3, common to the four 1949 Geneva Conventions ('Common Article 3'), provides 'minimum' standards in any NIAC for treating civilians and those no longer participating in hostilities due to detention or other incapacitating circumstances.⁸⁵ These standards are now considered part of customary IHL.⁸⁶ Additional Protocol II to the Geneva Conventions elaborates further on these standards.⁸⁷ Therefore, Common Article 3 and Additional Protocol II are vital to

⁷³ Prosecutor v. Dusko Tadic, Appeal Judgement, Case No. IT-94-1-A, 1999, paras. 165-166.

⁷⁴ Tsagourias and Morrison, 2018, p. 108.

⁷⁵ United Kingdom Supreme Court, [2012] UKSC 48.

⁷⁶ United Kingdom Supreme Court, [2012] UKSC 48, paras. 3-4.

⁷⁷ United Kingdom Supreme Court, [2012] UKSC 48, para. 38.

⁷⁸ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 4.

⁷⁹ United Kingdom Supreme Court, [2012] UKSC 48, paras. 29-32.

⁸⁰ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 4.

⁸¹ United Kingdom Supreme Court, [2012] UKSC 48, para. 33.

⁸² United Kingdom Supreme Court, [2012] UKSC 48, para. 34.

⁸³ Bartels, 2009, pp. 44-48.

⁸⁴ Kraehenmann, 2014, p. 19.

⁸⁵ See, for instance, Third Geneva Convention, 972 UNTS 75 (p.135), 1949, Art. 3(1).

⁸⁶ Henckaerts and Doswald-Beck, 2005, p. xxxvi.

⁸⁷ Additional Protocol II, 17513 UNTS 1125 (p.609), 1977, Arts. 4-18.

understanding the legal implication of nationality on the treatment of foreign fighters in NIACs. Thus, an analysis of their relevant provisions follows.

Analysis of Article 3 Common to the Geneva Conventions

Under Common Article 3, the required standard of humane treatment of persons in the hands of a conflict party shall be 'without any adverse distinction founded on race, colour, religion, faith, sex, birth or wealth, or any other similar criteria'.⁸⁸ There is no specific reference to 'nationality' as a prohibited ground of adverse distinction. Hence, one may conclude that the drafters of the Geneva Conventions intended 'nationality' to fit into the omnibus phrase of 'any other similar criteria'. However, in analogous provisions of the Geneva Conventions regulating IACs, 'nationality' is expressly made a prohibited ground. Examples are Article 12 of the First⁸⁹ and Second⁹⁰ Geneva Conventions, which forbids the ill-treatment of persons hors de combat on grounds that specifically include 'nationality'.

The obvious question, therefore, is whether the exclusion of 'nationality' as part of the prohibited grounds for adverse distinction under Common Article 3 was deliberate on the part of the drafters. The proceedings of the Diplomatic Conference held for adopting the four 1949 Geneva Conventions hold some clues. During the Conference, the United Kingdom proposed the inclusion in the draft of what was to become Common Article 3, stipulating that the required standards of humane treatment shall apply 'without any discrimination based on race, colour, religion or faith, sex, birth or wealth'.⁹¹ The ICRC supported this proposal subject to the explicit mention of 'nationality' as a prohibited ground.⁹²

However, other states, like France and the United States, opposed the ICRC's position.⁹³ Specifically, the French representative stated that his Country objected so that 'it might be perfectly legal for a government to treat insurgents who were its nationals differently from foreigners taking part in a civil war'.⁹⁴ This absence of consensus resulted in the omission of nationality as an explicit ground on which the prohibition of adverse distinction operates.

While there remains an inclination amongst States to treat foreign fighters captured in a NIAC less favourably than citizen insurgents,⁹⁵ there is also a consensus that the overarching principle of humane treatment under Common Article 3 customarily applies in NIACs irrespective of an individual's nationality.⁹⁶ Moreover, using a minimum legal standard of treatment across the board in a NIAC is without prejudice to the status of conflict parties under the relevant domestic laws.⁹⁷ Consequently, beyond the fundamental obligation to ensure humane treatment, the domestic laws of concerned States dictate the scope of treatment of foreign fighters in NIACs.⁹⁸ Domestic courts within the conflict territory could prosecute them separately or jointly with their local counterparts, or captured foreign fighters may be extradited to be penalised by their home countries for merely participating in hostilities or for committing war crimes abroad.⁹⁹

Furthermore, other norms outside of IHL could fetter a State's discretion on how it treats foreign fighters detained in an armed conflict within its territory. For instance, the principle of nonrefoulement under human rights law would apply to prohibit the transfer of such foreign fighters from a conflict zone to their home countries or any other jurisdiction where the significant risk of violating their human rights exists in the form of arbitrary deprivation of life, torture, degrading

⁸⁸ See, for instance, Third Geneva Convention, 972 UNTS 75 (p.135), 1949, Art. 3(1).

⁸⁹ First Geneva Convention, 970 UNTS 75 (p.31), 1949.

⁹⁰ Second Geneva Convention, 971 UNTS 75 (p. 85), 1949.

⁹¹ Switzerland, Federal Political Department, Final Record of the Diplomatic Conference of Geneva, Vol. II-B, 1949, p. 94.

⁹² Switzerland, Federal Political Department, Final Record of the Diplomatic Conference of Geneva, Vol. II-B, 1949, p. 94.

⁹³ Switzerland, Federal Political Department, Final Record of the Diplomatic Conference of Geneva, Vol. II-B, 1949, p. 94.

⁹⁴ Switzerland, Federal Political Department, Final Record of the Diplomatic Conference of Geneva, Vol. II-B, 1949, p. 94.

⁹⁵ Malet, 2022.

⁹⁶ Henckaerts and Doswald-Beck, 2005, Rule 87, pp. 306-308.

⁹⁷ See, for instance, Third Geneva Convention, 972 UNTS 75 (p.135), 1949, Art. 3(2), fourth paragraph.

⁹⁸ Kraehenmann, 2014, p. 20.

⁹⁹ Kraehenmann, 2014, pp. 51-53.

treatment and such other grievous violations.¹⁰⁰ The operation of nonrefoulement in NIACs arguably protects captured foreign fighters, similar to that found under the Fourth Geneva Conventions for those detained in enemy or occupied territory in an IAC.¹⁰¹

Similarly, captured foreign fighters' States of origin are customarily entitled to exercise diplomatic protection on behalf of their nationals by canvassing humane detention conditions, fair trial or expeditious repatriation to the detaining conflict parties.¹⁰² Finally, a contemporary punitive measure by States of origin against returning foreign fighters, which involves stripping them of their citizenship, could be problematic under human rights law, especially if the loss of citizenship would result in such individuals being stateless.¹⁰³

Analysis of Additional Protocol II

The number of NIACs worldwide increased significantly after the adoption of the 1949 Geneva Conventions.¹⁰⁴ This development was the background to the Additional Protocol II to the Conventions.¹⁰⁵ By Article 4 of this Protocol, States seek to elaborate on the minimum standards in Common Article 3. Additionally, persons in detention,¹⁰⁶ individuals undergoing prosecution for taking up arms against the State,¹⁰⁷ medical and religious personnel,¹⁰⁸ and civilian populations¹⁰⁹ enjoy various legal protections in the context of NIACs.

Per Article 2(1), the provisions of Additional Protocol II apply without adverse distinction founded on grounds itemised therein. In addition to copying the prohibited grounds listed under Common Article 3, Article 2(1) of Additional Protocol II adds other criteria, including 'national or social origin'. The obvious question is whether the reference to 'national origin' equates to 'nationality'.

As rightly observed in the Sanremo Manual on the Law of Non-International Armed Conflict, these additional criteria in Additional Protocol II draw inspiration from human rights law¹¹⁰ For instance, Article 26 of the International Covenant on Civil and Political Rights¹¹¹ (ICCPR) stipulates 'national origin' as one of the prohibited grounds for discrimination in the enjoyment of the rights enshrined therein. Article 2(2) of the International Covenant of Economic, Social and Cultural Rights¹¹² uses the exact phrase. However, in its decision in *Gueye et al. v. France*,¹¹³ the Human Rights Committee, which monitors the implementation of the ICCPR, does not consider 'national origin' to mean 'nationality'.

'National origin' could be regarded as a person's ancestral link with a State, which is different from having a legal link with that same State through 'nationality'. An example will be an individual who considers himself a 'Mexican-American' because he has family roots in Mexico and US nationality.¹¹⁴ Given the preceding, Additional Protocol II, like Common Article 3, has not explicitly included 'nationality' as a prohibited ground for adverse distinction between belligerents in NIACs. It is, however, arguable that 'nationality' falls under the omnibus clause - 'or on any other similar criteria' - used in Article 2(1) of the Protocol. Moreover, as stated earlier, the humane treatment of all civilians and persons hors de combat in NIACs, irrespective of nationality, is now considered part of customary IHL.¹¹⁵

¹⁰⁰ Kraehenmann, 2014, pp. 20-21.

¹⁰¹ Fourth Geneva Convention, 973 UNTS 75 (p. 287), 1949, Art. 45; Gillard, 2008, pp. 710-711.

¹⁰² Nottebohm, *Liechtenstein v Guatemala*, ICJ Rep 4, 1955, p. 24; International Law Commission, Draft Articles on Diplomatic Protection, Supplement No. 10 (A/61/10), 2006, Arts. 2 and 19; Kraehenmann, 2014, pp. 53-54.

¹⁰³ Goodwin-Gill, 2014; Kraehenmann, 2014, pp. 55-58.

¹⁰⁴ ICRC 1962, pp. 79-80.

¹⁰⁵ ICRC, 1973, 513-515.

¹⁰⁶ Additional Protocol II, 17513 UNTS 1125 (p.609), 1977, Art. 5.

¹⁰⁷ Additional Protocol II, 17513 UNTS 1125 (p.609), 1977, Art. 6.

¹⁰⁸ Additional Protocol II, 17513 UNTS 1125 (p.609), 1977, Arts. 9-11.

¹⁰⁹ Additional Protocol II, 17513 UNTS 1125 (p.609), 1977, Arts. 13-17.

¹¹⁰ Schmitt, et al., 2006, p.15.

¹¹¹ 14668 UNTS 999 (p.171), 1966.

¹¹² 14531 UNTS 993 (p.3), 1966.

¹¹³ Communication No. 196/1985, U.N. Doc. CCPR/C/35/D/196/1985, para. 9.4.

¹¹⁴ Shiyan, 2006, pp.193-194.

¹¹⁵ Henckaerts and Doswald-Beck, 2005, p. xxxvi.

Additional Protocol II is also innovative in another way; it prescribes general amnesty for all 'persons who have participated in [an] armed conflict' where no indications point to war crimes.¹¹⁶ This prescriptive provision, in theory, covers foreign fighters detained in a NIAC. Still, policy imperatives may impose more onerous legal jeopardy on foreign fighters to deter more of them from travelling to join intra-state hostilities. Finally, as discussed while treating foreign fighters under Common Article 3, several norms outside of IHL could circumscribe a State's discretionary treatment of foreign fighters in a NIAC, to which Additional Protocol II also applies.

CONCLUSION

Arguably, State delegates at the Diplomatic Conference that adopted the Geneva Conventions in 1949 perhaps could not have envisaged the phenomenon that the involvement of foreign nationals in armed conflicts has become. Accessibility of air travel and the evolution of the Internet as an effective means of propaganda and recruitment have made this possible. Furthermore, the sweeping use of terminologies such as 'foreign terrorist fighters' in situations of armed conflict to characterise non-nationals involved in hostilities is indicative of the often emotive context in which States view and treat individuals who travel abroad to engage in combat. Rash policies regarding foreign fighters, even where politically valuable, divert attention from the clarity IHL could provide as the *Lex specialis* for armed conflicts.

Under IACs, nationality is not a criterion for determining who is a 'combatant' and could, therefore, enjoy combat immunity and treatment as a prisoner of war if captured by the adversary. States, however, do not generally accord such status to any of their nationals found in the armed forces of enemy States. This discretion is without prejudice to the States' obligations to observe domestic and international human rights norms relating to the treatment of such captured nationals. Conversely, nationality is essential in determining whether a foreign fighter, as a civilian directly participating in hostilities in an IAC, could be entitled to the benefits of a 'protected person' under the Fourth Geneva Convention. Perhaps the most contentious aspect of foreign fighters' involvement in contemporary IACs is whether they breach the prohibition of using mercenaries. Only the facts on the ground, in alignment with the relevant legal formulations for their ban, could make a definitive determination.

Treaty-based IHL rules for NIACs are not as elaborate as those which apply to IACs. The historical aversion of States to allow international law to govern armed conflicts within their borders is mainly to blame. This aversion extends to any IHL prescription for the treatment of foreigners caught fighting in NIACs. Hence, although Common Article 3, supplemented by AP II, establishes a minimum standard of treatment for individuals no longer taking part in hostilities without adverse distinction, 'nationality' is omitted from the expressly stated prohibited grounds for adverse distinction. Nevertheless, as this Paper has highlighted, this omission does not mean that states can lawfully treat captured fighters of foreign nationalities any less than they are obliged to treat their nationals in the same situation. Overall, political and military policymakers and legal commentators will do well to ensure the normative framing of individuals of foreign nationalities directly participating in any armed conflict.

References

- Anglesey, A. (2022), *'Ukraine creates foreign legion as volunteers from abroad join the fight'*, in: Newsweek Magazine [internet article], 27 February 2022 (Available at: <https://www.newsweek.com/ukraine-creates-foreign-legion-volunteers-abroad-join-fight-russia-1683024> [Accessed on 29 May 2024])
- Bartels, R. (2009), *Timelines, borderlines and conflicts: The historical evolution of the legal divide between international and non-international armed conflicts'*, in: International Review of the Red Cross, Volume 91, Number 873, March 2009, pp. 35-67 [PDF] (Available at: <https://www.icrc.org/eng/assets/files/other/irrc-873-bartels.pdf> [Accessed on 6 February 2022])

¹¹⁶ Additional Protocol II, 17513 UNTS 1125 (p.609), 1977, Art. 6(5).

- Bradsher, G. (2021), '*Outsiders in the United States Army during the American War of Independence*', in: The Text Message, Blog of the Textual Records Division at the United States National Archives [internet article], 8 November 2021 (Available at: <https://text-message.blogs.archives.gov/2021/11/08/outside-in-the-united-states-army-during-the-american-war-for-independence/> [Accessed on 30 May 2024])
- Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 205 CTS 277, adopted 18 October 1907, entered into force 26 January 1910 (The Hague)
- Cuyckens, H. (2021), '*Foreign fighters and the tension between counterterrorism and international humanitarian law: A case for cumulative prosecution where possible*', in: International Review of the Red Cross, Volume 103, Number 916-917, February 2022, pp. 581-603 [PDF] (Available at: <https://international-review.icrc.org/articles/foreign-fighters-and-the-tension-between-counterterrorism-and-ihl-916> [Accessed on 13 June 2022])
- Ditrichová, P. and Bílková, V. (2022), '*Status of foreign fighters in the Ukrainian Legion*', in: Articles of War, Lieber Institute, United States Military Academy, West Point [internet article], 15 March 2022 (Available at: <https://lieber.westpoint.edu/status-foreign-fighters-ukrainian-legion/> [Accessed on 25 April 2024])
- Doswald-Beck, L. and Henckaerts, J. (2005), *Customary international humanitarian law. volume I: rules*. [e-book] (Cambridge: Cambridge University Press) (Available at: <https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf> [Accessed 20 December 2019])
- Ex Parte Quirin, 317 U.S. 1, 30-31, 1942, United States Supreme Court
- Gardner, F. (2020), '*IS prisoner issue a ticking timebomb for the West*', in: BBC News [internet article], 24 July 2024 (Available at: <https://www.bbc.com/news/world-middle-east-53428928> [Accessed on 14 April 2024])
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 August 1949, 970 UNTS 75 (p.31), Vol-75-I-970-English.pdf
- Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Second Geneva Convention), 12 Aug 1949, 971 UNTS 75 (p.85), Vol-75-I-971-English.pdf (Geneva)
- Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 972 UNTS 75 (p. 135), Vol-75-I-972-English.pdf.
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 973 UNTS 75 (p. 287), Vol-75-I-973-English.pdf.
- Gillard, E. (2008), '*There is no place like home: States' obligations in relation to transfers of persons*', in: International Review of the Red Cross, Volume 90, Number 871, September 2008 [PDF] (Available at: <https://international-review.icrc.org/articles/theres-no-place-home-states-obligations-relation-transfers-persons> [Accessed on 19 April 2024])
- Goodwin-Gill, G. S. (2014), '*Mr Al-Jedda, deprivation of citizenship and international law*', in: Paper presented at a Seminar at Middlesex University, 14 February 2014 [PDF] (Available at: <https://www.parliament.uk/globalassets/documents/joint-committees/human-rights/GSGG-DeprivationCitizenshipRevDft.pdf> [Accessed on 28 April 2024])
- Ibrahima Gueye et al. v. France, Communication No. 196/1985, Human Rights Committee, U.N. Doc. CCPR/C/35/D/196/1985 (1989)
- International Covenant on Civil and Political Rights*, 16 Dec 1966, 14668 UNTS 999 (p.171), Vol-999-I-14668-English.pdf (New York)
- International Covenant on Economic, Social and Cultural Rights*, 16 Dec 1966, 14531 UNTS 993 (p.3), Vol-993-I-14531-English.pdf (New York)
- International Committee of the Red Cross (1962), '*Humanitarian aid to victims of internal conflicts*'. Report of Meeting of a Commission of Experts. Geneva, 25-30 October 1962, in: International Review of the Red Cross, Vol. 2, No. 23, March 1963, pp. 79-91. [PDF] (Available at: <https://international-review.icrc.org/reviews/irrc-no-23-international-review-red-cross-02-1963> [Accessed on 2 December 2020])

- International Committee of the Red Cross (1973), '*Draft Additional Protocols to the Geneva Conventions of 12 August 1949 – Brief Summary and Convocation of the Diplomatic Conference*', in: International Review of the Red Cross, Number 151, October 1973, pp. 507-518 [PDF] (Available at: https://www.loc.gov/item/65002328_RC_Oct-1973/ [Accessed on 7 July 2024])
- International Committee of the Red Cross (2018), '*ICRC: study shows more the conflicts, greater the danger for people*', [online news article] 19 Jun. (Available at: <https://www.icrc.org/en/document/icrc-more-conflicts-more-sides-conflict-equal-greater-danger-study> [Accessed 12 January 2020])
- International Committee of the Red Cross (2019), '*How does law protect in war: combatants and pows*'. [online casebook], (Geneva: ICRC), (Available at: <https://casebook.icrc.org/law/combatants-and-pows> [Accessed 20 December 2019])
- International Committee of the Red Cross (2020), Commentary on the Third Geneva Convention: Convention (III) relative to the treatment of prisoners of war of 12 August 1949. (Geneva: ICRC) [internet format] (Available at: <https://ihl-databases.icrc.org/ihl/full/GCIII-commentary> [Accessed on 9 December 2021])
- International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 2163 UNTS 37789 (p. 75), 4 December 1989 (New York)
- International Law Commission, *Draft Articles on Diplomatic Protection*, Supplement No. 10 (A/61/10), adopted by the International Law Commission at its Fifty-eighth session in 2006 [PDF] (Available at: <https://www.refworld.org/reference/research/un/2006/en/94332> [Accessed on 23 May 2024])
- Kraehenmann, S. (2014), '*Foreign fighters under international law*', Academy briefing No. 7 (Geneva: Geneva Academy of International Humanitarian Law and Human Rights), [pdf] (Available at: https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Foreign%20Fighters_2015_WEB.pdf [Accessed on 9 December 2019])
- Lemon, J. (2022), '*Russia vows prosecution of foreign fighters after 16k join Ukraine*', in: Newsweek Magazine [internet article], 3 March 2022 (Available at: <https://www.newsweek.com/russia-vows-prosecution-foreign-fighters-after-16k-join-ukraine-1684671> [Accessed on 29 May 2024])
- Mahnad, R. (2022), '*The status and protection of third country nationals in international armed conflict*', in: Humanitarian Law and Policy Blog, International Committee of the Red Cross [PDF] (Available at: <https://blogs.icrc.org/law-and-policy/2022/10/06/third-country-nationals-international-armed-conflict/> [Accessed on 3 June 2024])
- Malet, D. (2022), '*The risky status of Ukraine's foreign fighters*', in: Foreign Policy Magazine [internet article], 15 March 2022 (Available at: <https://foreignpolicy.com/2022/03/15/ukraine-war-foreign-fighters-legion-volunteers-legal-status/> [Accessed on 25 April 2024])
- McAuliffe, M. and Ochoa, L. A. (eds.) (2024), *World Migration Report 2024* (Geneva: International Organization for Migration) [PDF] (Available at: <https://publications.iom.int/books/world-migration-report-2024> [Accessed on 28 May 2024])
- Melzer, N. (2009), *Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law*. (Geneva: International Committee of the Red Cross) [PDF] (Available at: <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0990.pdf> [Accessed on 9 October 2021])
- Nottebohm, Liechtenstein v Guatemala, Preliminary Objection (Second phase), International Court of Justice Judgment, 6 April 1955, ICJ Rep 4 1955, p. 4 [PDF] (Available at: <https://www.icj-cij.org/case/18> [Accessed on 28 April 2024])
- Opeskin, B., Perruchoud, R. and Redpath-Cross, J. (eds.) (2012), *Foundations of International Migration Law* (Cambridge: Cambridge University Press)
- Organisation of African Unity (OAU), OAU Convention for the Elimination of Mercenarism in Africa, CM/817 (XXIX) Annex II Rev.1, 3 July 1977 (Libreville)
- Prosecutor v. Dusko Tadic*, Appeal Judgement, Case No. IT-94-1-A, International Criminal Tribunal for the former Yugoslavia (Appeals Chamber), 15 July 1999. [PDF] (Available at: <https://www.icty.org/en/case/tadic> [Accessed on 4 December 2020])
- Riordan, K. (2021), '*International Convention Against the Recruitment, Use, Financing and Training of Mercenaries*', in: United Nations Audiovisual Library of International Law [PDF] (Available at: <https://legal.un.org/avl/ha/icruftm/icruftm.html> [Accessed on 8 May 2024])

- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts (Additional Protocol I), 8 June 1977, 17512 UNTS 1125 (p. 3), Vol-1125-I-17512-English.pdf (Geneva).
- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Additional Protocol II), 8 June 1977, 17513 UNTS 1125 (p. 609), Vol-1125-I-17513-English.pdf (Geneva).
- Schmitt, M.N./Garraway, H.B./Dinstein, Y. (2006), *The Manual on the law of non-international armed conflict with commentary*. [e-book] (Sanremo: International Institute of Humanitarian Law) (Available at: https://www.fd.unl.pt/docentes_docs/ma/jc_MA_26125.pdf [Accessed 31 December 2019])
- Schmitt, M.N. (2009), '*Human shields in international humanitarian law*', in: Columbia Journal of Transnational Law, Volume 47 (2008-2009), pp. 292-338 [PDF] (Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1600258 [Accessed on 11 September 2023])
- Schmitt, M.N. (2012), '*The status of opposition fighters in a non-international armed conflict*,' in: Watkin, K. and Norris, A.J. (eds.) (2012), *Non-international armed conflict in the twenty-first Century*, International Law Studies, Stockton Center for International Law, Volume 88 (2012), pp. 119-144 [PDF] (Available at: <https://digital-commons.usnwc.edu/ils/vol88/iss1/> [Accessed on 4 April 2023])
- Secretary of State for Foreign and Commonwealth Affairs and another (Respondents) v Yunus Rahmatullah (Appellant), United Kingdom Supreme Court, [2012] UKSC 48, 31 October 2012 [PDF] (Available at: <https://www.supremecourt.uk/cases/uksc-2012-0142.html> [Accessed on 16 May 2024])
- Shiyan, S. (2006), '*The international covenant on civil and political rights: one covenant, two Chinese texts?*', in: Nordic Journal of International Law, 75, pp. 187-209 [pdf] (Available at: https://brill.com/downloadpdf/journals/nord/75/2/article-p187_2.pdf [Accessed 4 January 2020])
- Siddique, H. (2024), '*What happens to Shamima Begum now and what are her legal options*', in: The Guardian [internet article], 23 February 2024 (Available at: <https://www.theguardian.com/uk-news/2024/feb/23/what-happens-to-shamima-begum-now-and-what-are-her-legal-options> [Accessed on 14 April 2024])
- Switzerland, Federal Political Department (1949), *Final Record of the Diplomatic Conference of Geneva of 1949, Vol. II-B*, (Berne: Swiss Federal Political Department) [PDF] (Available at: https://www.loc.gov/rr/frd/Military_Law/pdf/Dipl-Conf-1949-Final_Vol-2-B.pdf [Accessed on 15 March 2023])
- Thakkar, M. and Speckhard, A. (2023), '*Perspective: The future fighters of ISIS are adolescents being smuggled out of Al-Hol by their mothers and financial networks*', in: Homeland Security Today [internet article], 21 August 2023 (Available at: <https://www.hstoday.us/featured/perspective-the-future-fighters-of-isis-are-adolescents-being-smuggled-out-of-al-hol-by-their-mothers-and-financial-networks/> [Accessed on 14 April 2024])
- Tsagouras, N. and Morrison, A. (2018), *International humanitarian law: Cases, materials and commentary* (Cambridge: Cambridge University Press)
- United Nations Security Council, *Resolution 2178 (2014) [concerning foreign terrorist fighters]*, S/RES/2178, adopted on 24 September 2014 at the 7272nd Meeting of the Security Council [PDF] (Available at: <https://www.unodc.org/unodc/en/terrorism/expertise/foreign-terrorist-fighters.html> [Accessed on 15 April 2024])
- Walbank, F. W. (2024), '*Alexander the Great*', in: Encyclopaedia Britannica [internet article], Update as of 10 July 2024 (Available at: <https://www.britannica.com/biography/Alexander-the-Great> [Accessed on 18 July 2024])
- Yaser Esam Hamdi and Esam Fouad Hamdi as next friend of Yaser Esam Hamdi, Petitioners v. Donald H. Rumsfeld, Secretary of Defense, et al.* 542 US 507 (2004)
- Zwanenburg, M. (2016), '*Foreign terrorist fighters in Syria: Challenges of the 'Sending' State*', in: International Law Studies, United States Naval War College, Volume 92, Number 204 (2016), pp. 203-234 [PDF] (Available at: <https://digital-commons.usnwc.edu/ils/vol92/iss1/6/> [Accessed on 7 May 2023])