

Legal Status in the Donbas Conflicts: Foreign Fighters, Mercenaries, Far-Right Radicals(*)

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Abstract

On January 6, 2021, an armed group of about two thousand people, who could not accept the loss of the election of former President Donald Trump, stormed the US Capitol. David C. Rapoport, who received many references to the wave theory of his in terrorism studies, penned an article on the Capitol Attack and said that he wondered what could happen when far-right actions coalesce into big movements. February 23, 2022, as the United Nations Security Council convened to resolve the ongoing tension between Russia and Ukraine, Russian President Vladimir Putin authorized the entry of the Russian Army into Ukraine on television screens. He said the 'special operation' was carried out under Article 51 of the United Nations Charter.

The Donbas Conflict, which has been going on since 2014, seems to have presented a historic opportunity to the far-right radicals. Special military forces, foreign fighters, far-right radicals, terrorist organizations, states used force/violence. The conflicts attracted the attention of far-right radicals, and radicals found ample scope for legitimate use and access to the means of violence. The aim of the study is to present the legal framework of the space created by the *Donbas Conflicts* for far-right radicals. For this purpose, the legal framework applicable to the conflict will be drawn, the rights and authorities granted to the actors within this legal framework will be determined, and it will be investigated what kind of freedom the far-right radicals have achieved within this legal framework.

Keywords

Far-Right Radicalism, Terrorism, Donbas, Ukraine, Legal Framework.

(*) [Yayın Kuruluna Ulaştığı Tarih: 19.10.2023](#) - [Kabul Edildiği Tarih: 30.11.2023](#).

[Atıf Şekli:](#) Ömer Faruk Gök, 'Legal Status in the Donbas Conflicts: Foreign Fighters, Mercenaries, Far-Right Radicals' (2023) 13(2) Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi 1353, 1393.

[DOI:](#) 10.52273/sduhfd..1378211.

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Donbas Çatışmalarında Hukuki Durum: Yabancı Savaşçılar, Paralı Askerler, Aşırı Sağ Radikaller

Öz

6 Ocak 2021, eski Başkan Donald Trump'ın seçimi kaybetmesini kabullenemeyen yaklaşık iki bin kişilik silahlı bir grup ABD Kongre Binasını bastı. Kongre Baskını üzerine yeni bir makale kaleme alan ve terörizm çalışmalarında dalga teorisi pek çok atıf alan David C. Rapoport aşırı-sağ eylemlerin birleşerek büyük hareketlere dönüştüğünde neler olabileceğini merak ettiğini söylemekteydi. 23 Şubat 2022, Birleşmiş Milletler Güvenlik Konseyi Rusya ve Ukrayna arasında süregiden gerilimin çözümü için toplanmışken, Rusya Devlet Başkanı Vladimir Putin televizyon ekranlarından Rus Ordusu'nun Ukrayna'ya girişi için yetki vermiş. 'özel operasyonun' Birleşmiş Milletler Antlaşmasınının 51. maddesi uyarınca yapıldığını söylemiştir.

2014'ten beri süren *Donbas Çatışmaları* aşırı sağ radikallere tarihi bir fırsat sunmuş gibi gözükmektedir. Özel askeri kuvvetler, yabancı savaşçılar, aşırı sağ radikaller, terör örgütleri, devletler kuvvet/şiddet kullandılar. *Çatışmalar*, aşırı sağ radikallerin ilgisine mazhar oldu ve radikaller şiddet araçlarına erişim ve meşru kullanım için büyük bir alan buldular. Çalışmanın amacı *Donbas Çatışmalarının* aşırı sağ radikaller için yarattığı alanın hukuki çerçevesini sunmaktır. Bu amaçla öncelikle *Çatışmalara* uygulanabilir hukuki çerçeve çizilecek, bu hukuki çerçevede aktörlere tanınan hak ve yetkiler belirlenecek ve aşırı sağ radikallerin bu hukuki çerçeve içinde nasıl bir serbesti elde ettiği araştırılacaktır.

Anahtar Kelimeler

Aşırı Sağ Radikalizm, Terörizm, Donbas, Ukrayna, Hukuki Çerçeve.

I. INTRODUCTION

On January 6, 2021, nearly two thousand armed individuals who could not accept former President Donald Trump's loss in the 2020 Presidential Election stormed the U.S. Capitol to prevent the certification of election results. David C. Rapoport, known for his wave theory that distinguishes terror activities across generations, published an article in July 2021 titled "The Capitol Attack and the 5th Terrorism Wave."¹ Despite the title, the author did not claim that far-right radicalism constitutes the fifth wave of terrorism but expressed curiosity about what could happen when far-right actions coalesce into large movements. Although it's debatable whether far-right radicalism will form a new wave², it can be said that far-right activities are on the rise³.

On February 23, 2022, while the United Nations Security Council was convening to resolve the ongoing tension between Russia and Ukraine⁴, Russian President Vladimir Putin authorized the entry of Russian military forces into Ukraine via a televised address⁵. He stated that the 'special operation' was conducted under Article 51 of the United Nations Charter⁶. Putin described the

¹ David C Rapoport, 'The Capitol Attack and the 5th Terrorism Wave' (2021) 33 *Terrorism and Political Violence* 912, 912-916 <<https://www.tandfonline.com/doi/full/10.1080/09546553.2021.1932338>> accessed 6 February 2022.

² Vincent A Auger, 'Right-Wing Terror: A Fifth Global Wave?' (2020) 14 *Perspectives on Terrorism* 88; Amber Hart, 'Right-Wing Waves: Applying the Four Waves Theory to Transnational and Transhistorical Right-Wing Threat Trends' [2021] *Terrorism and Political Violence* 1 <<https://www.tandfonline.com/doi/full/10.1080/09546553.2020.1856818>> accessed 9 August 2022.

³ Auger (n 3) 93.

⁴ 'Russian Federation Announces "Special Military Operation" in Ukraine as Security Council Meets in Eleventh-Hour Effort to Avoid Full-Scale Conflict' <<https://press.un.org/en/2022/sc14803.doc.htm>> accessed 6 August 2022.

⁵ Vladimir Putin, "'No Other Option": Excerpts of Putin's Speech Declaring War' (*Al Jazeera*, 24 February 2022) <<https://www.aljazeera.com/news/2022/2/24/putins-speech-declaring-war-on-ukraine-translated-excerpts>> accessed 7 August 2022 Two days prior to the Operation, Russia recognized two opponents of Ukraine as states. Namely, Donetsk People's Republic ('DPR') and Luhansk People's Republic ('LPR').

⁶ The article has previously been cited as a justification for many military interventions of questionable legality. Nesrin Singil, 'Uluslararası Hukukta Meşru Müdafaa Hakkında Yeni bir Yaklaşım: İsteksiz veya Aciz Devlet Doktrini' (2021) 29 *Selçuk Üniversitesi Hukuk Fakültesi Dergisi* 2837 <<https://dergipark.org.tr/tr/doi/10.15337/suhfd.937045>> accessed 7 August 2022; William N Lobel, 'The Legality of the United States' Involvement in Vietnam -- A Pragmatic Approach' (1969) 23 *University of Miami Law Review* 792 <<https://repository>.

operation's objectives as disarmament and de-Nazification; Russia's UN representative also said that Ukraine had violated the ceasefire agreement 2,000 times, detonated 1,500 bombs, and the requests for assistance from Donetsk and Luhansk People's Republics provided a legitimate cause for the operation⁷. Russia had first annexed Crimea in 2014 and then organized and supported separatist forces in the Donbas region. In 2022, Russia deployed its military into Ukraine, citing the ongoing eight-year conflict in Donbas as justification. The study examines which legal norms could be applied to the Donbas Conflict prior to Russia's intervention.

It's worth recalling that fundamentalist terrorist organizations learned a lot from camps in Afghanistan and Bosnia, and new-left terrorist organizations from the Bekaa Valley. The U.S. is well-known for providing the freedom of thought that leads to organized capability. It is also a fertile ground for far-right radicals. The Southern Poverty Law Center, which has published annual reports on hate groups since the 1990s, identified 733 hate groups in 11 specific categories, including 92 militant and 488 anti-government organizations, in the U.S. in 2021⁸. The phenomenon of far-right radicalism is not unique to the U.S. Similar and related organizations exist in Europe and Australia, where far-right radical views are gaining ground.

It seems that the Donbas Conflicts have offered a historic opportunity for far-right radicals. The Donbas Conflicts, which began in 2014, have seen a diversification of weapon use between state and non-state actors. Private military forces, foreign fighters, far-right radicals, terrorist organizations, and states have

law.miami.edu/umlr/vol23/iss4/7> accessed 7 August 2022; Wiwilliem Rizki Limboto and Teddy Nurcahyawan, 'Pre-Emptive Self-Defence on Israel Hezbollah Armed Conflict Under International Law' (2018) 1 Jurnal Hukum Adigama 686 <<https://journal.untar.ac.id/index.php/adigama/article/view/2163>> accessed 7 August 2022; Jordan J Paust, 'Use of Military Force in Syria by Turkey, NATO, and the United State' (2012) 34 University of Pennsylvania Journal of International Law 431 <<https://heinonline.org/HOL/Page?handle=hein.journals/upjil34&id=455&div=&collection=>>>; For a summary of the German Federal Court's discussion on whether the article could form the legal basis for the military intervention against ISIS in Syria, see. Stefan AG Talmon, 'German Constitutional Court Considers Self-Defence Against Non-State Actors a Tenable Interpretation of Article 51 of the Un Charter' [2019] SSRN Electronic Journal <<https://www.ssrn.com/abstract=3473211>> accessed 7 August 2022.

⁷ 'Russian Federation Announces "Special Military Operation" in Ukraine as Security Council Meets in Eleventh-Hour Effort to Avoid Full-Scale Conflict' (n 5).

⁸ Cassie Miller and Rachel Carroll Rivas, 'The Year in Hate and Extremism 2021' (Southern Poverty Law Center 2022) Annual 40ff.

all used force/violence. The conflicts attracted the attention of far-right radicals, who found ample space for access to and legitimate use of violent means.

The aim of the study is to present the legal framework within which the Donbas Conflicts have created space for far-right radicals. To achieve this, the applicable legal framework for the Donbas Conflicts will first be outlined. Within this legal framework, the rights and powers granted to the actors will be determined, and the degree of latitude that far-right radicals have gained within this legal framework will be investigated.

II. THE DONBAS CONFLICTS

A. Material Situation

In 2014, in an environment where cooperation agreements aimed at political and economic integration between Ukraine and the European Union were being discussed, despite the parliamentary resolution supporting the agreements, Ukrainian President Viktor Yanukovich's presidential decree indicating that the country's political and economic course could turn towards Russia led to the EuroMaidan Protests. These protests evolved and strengthened into the Revolution of Dignity, which was militarized by Ukraine's far-right⁹. Yanukovich fled the country on February 24, and Crimea was annexed by Russia on March 16. The Donbas Conflicts began with the occupation of Donetsk and Kharkiv governorate buildings on April 6-7 and the capture of the Ukrainian Secret Service building in Luhansk¹⁰.

In the cities, airports, and border regions of the Donbas area, fighting intensified from June and continued into the autumn with the active participation of Russian forces¹¹. The parties signed the Minsk Protocol in September 2014, which included a ceasefire, withdrawal of heavy weapons from the front, and constitutional reforms. When the conflict did not completely subside within the framework of this protocol, the parties signed the Second Minsk Protocol in

⁹ Alex MacKenzie and Christian Kaunert, 'Radicalisation, Foreign Fighters and the Ukraine Conflict: A Playground for the Far-Right?' (2021) 10 *Social Sciences* 116, 4ff <<https://www.mdpi.com/2076-0760/10/4/116>> accessed 1 August 2022.

¹⁰ Ibrahim Muradov, 'The Donbas Conflict as a Form of Hybrid Warfare: A Neoclassical Realist Analysis' (PhD, Middle East Technical University 2019) 150.

¹¹ Oleksander Melnyk, 'War Dead and (Inter)-Communal Ethics in the Russian-Ukrainian Borderlands: 2014-2018' in David R Marples (ed), *The war in Ukraine's Donbas: origins, contexts, and the future* (Central European University 2022) 127.

February 2015 and eventually managed to halt high-intensity fighting. However, the disagreement has not been resolved, and hostilities continue; ceasefires have been violated thousands of times. Ultimately, Russia recognized the Donetsk and Luhansk People's Republics as separate states and intervened in Ukraine on February 24, 2022. Due to the Donbas Conflicts, over fourteen thousand people have lost their lives, and two million have been forcibly displaced¹².

The Donbas Conflicts have had an international character from the outset. This evaluation is less a legal determination of the conflict involving interstate use of force, and more about the political ground that led to the conflict and the direct or indirect use of states' power to benefit one side or the other, along with the involvement of various national and international actors. Four days before the conflicts began, the U.S. Congress enacted the Support for the Independence, Integrity, Democracy, and Economic Balance of Ukraine Act on April 3¹³. The U.S. motivation was likely to counterbalance, if not eliminate, the threat Russia posed to Ukraine and the expansion of the North Atlantic Bloc after the annexation of Crimea.

Although Russia continuously denies Ukrainian claims that it is involved in the Donbas Conflicts, its interest in Ukraine's internal politics and the country's political and economic course is a historical fact¹⁴. Furthermore, Ukraine is not the first country where Russia has employed similar foreign policy techniques¹⁵, utilizing various hybrid warfare methods¹⁶. Russia has supported the Ukrainian forces by facilitating the passage of foreign fighters, allowing weapons to be smuggled into the region, providing training and armaments¹⁷, repelling

¹² Şennur Özdemir and Ayça Eminoğlu, 'Yeni Nesil Savaş: Rusya'nın Donbas'ta Uyguladığı Hibrit Savaş Yöntemi' (2022) 15 *Hitit Sosyal Bilimler Dergisi* 67, 75 <<https://dergipark.org.tr/tr/doi/10.17218/hititsbd.1066684>> accessed 25 September 2022.

¹³ Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 2014 1088.

¹⁴ For a detailed reading, see. Halit Burak Uyaniker, 'Kırım Sorunundan Donbas Savaşına Rusya Ukrayna Uzlaşmazlığı' (2018) 15 *Karadeniz Araştırmaları* 137.

¹⁵ see Göktürk Tüysüzoğlu, 'Rusya Dış Politikası'nın Etkin Silahı: Donmuş Çatışma Bölgeleri' (2017) 13 *Güvenlik Stratejileri Dergisi* 185 <<https://dergipark.org.tr/tr/doi/10.17752/guvenlikstrj.356957>> accessed 25 September 2022.

¹⁶ Muradov (n 11) ch 6.

¹⁷ Ivan Katchanovski, 'The Separatist War in Donbas: A Violent Break-up of Ukraine?' (2016) 17 *European Politics and Society* 473, 8 <<https://www.tandfonline.com/doi/full/10.1080/23745118.2016.1154131>> accessed 22 August 2022; Yevhenii Tsymbaliuk, 'On Russia's Ongoing Aggression against Ukraine and Illegal Occupation of Crimea' <<https://www.osce.org/files/f/documents/b/a/511390.pdf>> accessed 30 October 2022

Ukrainian forces with artillery fire from the border, breaking sieges in encircled cities through special operations, and assisting with cyberattacks, intelligence, and information¹⁸. Russian special forces units (commonly known in Ukraine as ‘little green men’, wearing Russian uniforms without Russian insignias and using Russian-made weapons) have organized and directed the resistance¹⁹. Russian special military forces known to be deployed later in Mozambique, Libya, Central African Republic, and Syria²⁰ are also known to have fought in the Donbas Conflicts for various operational objectives²¹.

In his 2016 article, Katchanovski states that the Donbas Conflicts have become the largest conflict between Russia and the Western Bloc since the Cold War²². Despite the Russian intervention in 2022, NATO’s or other European powers’ reluctance to intervene directly, fearing it could lead to a third world war, also indicates the scale of the conflict.

B. Normative Assessment

The modes in which states use force, whether in armed conflicts characterized as wars or in limited armed conflicts that do not escalate to war²³, are being replaced by proxy wars and hybrid techniques²⁴. The efficacy of hybrid warfare techniques, economic advantages of using militia forces against armies, easier access to mercenaries, and above all, the legal responsibility associated with violations in conflicts have led to the abandonment of classical forms of force

¹⁸ Melnyk (n 12) 132.

¹⁹ Tor Bukkvoll, ‘Russian Special Operations Forces in Crimea and Donbas’ (2016) 46 *The US Army War College Quarterly: Parameters* 17ff <<https://press.armywarcollege.edu/parameters/vol46/iss2/4/>> accessed 19 August 2022.

²⁰ Steve Balestrieri, ‘Wagner Group: Russian Mercenaries Still Floundering in Africa’ (*SOFREP*, 19 April 2020) <<https://sofrep.com/news/wagner-group-russian-mercenaries-still-floundering-in-africa/>> accessed 30 August 2022; Sergey Sukhankin, ‘Russian Private Military Contractors in the Donbas: Rehearsing Future Voyages’ in David R Marples (ed), *The War in Ukraine’s Donbas: Origins, Context, and Future* (Central European University 2022) 197; Maria Tsvetkova, ‘Military Veterans to Kremlin: Come Clean about Syria Mission’ *Reuters* (5 July 2018) <<https://www.reuters.com/article/us-mideast-crisis-syria-russia-contracto-idUSKBN1J V2QL>> accessed 30 October 2022.

²¹ Sukhankin (n 21).

²² Katchanovski (n 18) 2.

²³ Hüseyin Pazarıcı, *Uluslararası Hukuk* (8th edn, Turhan 2009) 533.

²⁴ Jakob Hauter, ‘Delegated Interstate War: Introducing an Addition to Armed Conflict Typologies’ (2019) 12 *Journal of Strategic Security* 90, 90-103 <<https://www.jstor.org/stable/26851262>> accessed 29 September 2022

utilization. The abandonment of classical forms necessitates evaluating the normative contexts of hybrid models within the framework of judicial decisions.

Pazarıcı, citing the judgments of the International Criminal Tribunal for the Former Yugoslavia in the Tadic Case and the International Court of Justice ('ICJ') in the Nicaragua Case, states that in internal armed conflicts where foreign state combatants join forces with anti-government forces and directly clash with the legal government, the conflict will acquire an international character. If foreign state combatants are not directly in conflict with government forces but are indirectly using force to provide aid and support, this use of force can be evaluated based on its intensity. He notes that if the foreign state engages in "indirect use of force that can be described as an armed attack," the conflict will also acquire international characteristics, although the conflict between the government and opposing forces will not²⁵.

Regarding the characterization of the Donbas Conflicts, we should start by noting that there is no court decision defining whether the conflicts in that region are considered international. Ukraine has presented allegations against Russia related to violations of international treaties in Crimea and Donbas and claims of genocide before the ICJ²⁶. Whether a discussion regarding the nature of the conflict will occur is uncertain. Nevertheless, it can be said that determining the extent of Russia's control over Russian separatists could contribute, directly or indirectly, to the characterization of the conflict.

The Office of the Prosecutor of the International Criminal Court stated in its 2016 preliminary examination report that evidence of Russian soldiers captured by Ukrainian armed forces indicates that the conflict has both internal and international characteristics. The investigation concerning Russia's command and control influence is crucial in determining whether the conflict is entirely international in nature²⁷. If the Office proves that Russia has control over the separatists in the court, the entire conflict might be considered with its international character.

²⁵ Pazarıcı (n 24) 533-535.

²⁶ Statements are still being collected for the investigations. 'Ukraine Institutes Proceedings against the Russian Federation and Requests the Court to Indicate Provisional Measures' <<https://www.icj-cij.org/public/files/case-related/182/182-20220227-PRE-01-00-EN.pdf>> accessed 13 October 2023.

²⁷ The Office of Prosecutor, 'Report on Preliminary Examination Activities' [2016] International Criminal Court paras 169, 170 <https://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE_ENG.pdf> accessed 13 October 2023

After Russia's intervention in 2022, it's evident that the conflict predominantly acquired international features. However, we can say that without the ICJ and International Criminal Court's capacity of investigation and legal assessments, a definite judgment on its nature is not possible. Hybrid methods like bombardments in border areas and attacks on telecommunication systems make a clear and distinct characterization challenging²⁸. This characterization has importance in determining the legal status of foreign fighters and mercenaries and in investigating the legal immunity of their hostile acts.

III. FOREIGN FIGHTERS

A. Material Situation

On April 12, 2014, Igor Girkin (Strelkov), who had played a significant role in Russia's annexation of Crimea²⁹, took control of police stations and security departments in the cities of Slavyansk and Kramatorsk in the Donbas region³⁰. Girkin is the commander of the separatist forces in the region. In a video interview, he states that half or two-thirds of the fighters are Ukrainian citizens, while the rest are foreigners. According to him, some of these volunteers have experience from Crimea, some from the Yugoslav Wars, and some from the Syrian Civil War. Girkin later became the military leader of separatist groups in the Donetsk conflict as well. Ukraine claims that Girkin is a former member of the Russian secret service.

Protestors and militant separatist organizations are two distinct things. A military organization requires military tactics, concrete objectives, experienced fighters, and heavy weapons. Following the Euromaidan protests, not just in Donbas but in many parts of the country, there have been protests and occupations of public buildings. However, actions in Donbas have differentiated from these protests and turned into a separatist movement³¹. Aleksandr

²⁸ Robert Heinsch, 'Conflict Classification in Ukraine: The Return of the "Proxy War"?' (2015) 91 *International Law Studies* 323, 354ff <<https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1264&context=ils>> accessed 30 October 2022.

²⁹ Paul Sonne and Philip Shishkin, 'Pro-Russian Commander in Eastern Ukraine Sheds Light on Origin of Militants' *Wall Street Journal* (Online, 26 April 2014) <<https://online.wsj.com/article/SB10001424052702304788404579526160643349256.html>> accessed 25 August 2022.

³⁰ Muradov (n 11) 151.

³¹ *ibid* 149ff.

Zakharchenko, the late leader of the Donetsk People's Republic, states that how their loosely organized partisan forces have evolved into a potent military force is questioned, however they never denied the presence of Russians among them³². In this context, we can say that foreign fighters are one of the significant powers of the separatist forces.

Ukraine, considering the memory of Crimea, political and cultural statistics of regional voters, and the role of Russia's 'secret service' agents in the coup, launched a military anti-terror operation in the region on April 13, 2014, with a brigade of approximately 5,000 people. However, due to the weakness and reluctance of its army, the government, with the support of oligarchs³³, has established over thirty volunteer teams or battalions³⁴. Some of these volunteer units consist of radical nationalists, neo-Nazis, and far-right groups, i.e., native volunteers who have also played a significant role in the Euromaidan Protests and the Revolution of Dignity³⁵. The other part consists of Ukrainians from the diaspora and other foreign elements³⁶.

According to research by the Soufan Center, as of June 2019, there are over 17,000 foreign fighters in Donbas from 55 countries such as Russia (12,000 on the separatist side, 15,000 people), Belarus (500 on the separatist side, 800 people), Germany (150 on the separatist side, 165 people), Georgia (120 on the Ukrainian side, 150 people), and Serbia (100 on the separatist side, 106 people)³⁷. Considering that the Arab Afghans during the Soviet Occupation in

³² Sukhankin (n 21) 192.

³³ Katchanovski (n 18) 8.

³⁴ Natalia Stepaniuk, 'Limited Statehood, Collective Action, and Reconfiguration of Citizenship in Wartime: Volunteer Engagement Amidst the Donbas War' in David R Marples (ed), *The war in Ukraine's Donbas: origins, contexts, and the future* (Central European University 2022) 90 It is said that only four percent of the Ukrainian army has access to materials like helmets and bulletproof vests.

³⁵ Katchanovski (n 18) 8.

³⁶ Kacper Rekawek, 'Neither "NATO's Foreign Legion" Nor the "Donbass International Brigades"' (2015) 6 *The Polish Institute of International Affairs* 12, 6-7.

³⁷ Information on the number of foreign fighters was compiled from open sources, propaganda pages, interviews with humanitarian organizations and journalists with direct contact in the region. 'White Supremacy Extremism: The Transnational Rise of the Violent White Supremacist Movement' (The Soufan Center 2019) <<https://thesoufancenter.org/wp-content/uploads/2019/09/Report-by-The-Soufan-Center-White-Supremacy-Extremism-The-Transnational-Rise-of-The-Violent-White-Supremacist-Movement.pdf>> accessed 31 August 2022.

Afghanistan numbered between 500-2000³⁸ (according to Schmidt 5,000-10,000³⁹) and those who went to Syria and Iraq between 2011-2015 were 15,000-25,000⁴⁰, it is understood that foreign fighters participating in the Donbas conflicts form a strong reserve.

B. Normative Framework

The first modern example was foreigners fighting on both fascist and anti-fascist fronts in the Spanish Civil War. Despite its long history, the concept of foreign fighters lacks a universally accepted definition in international law. Academic interest in the subject intensified following the phenomenon of jihadists migrating to Iraq and Syria, and various definitions have been proposed⁴¹.

Malet argues that defining a foreign fighter can be both difficult and unnecessary. However, he provides a classification in four categories for the appearance of foreign elements in conflicts. He defines a foreign fighter as “an individual who goes from a third country to a state experiencing internal conflict to join a resistance movement, and who is not a citizen of that state.”⁴² In the context of the Donbas Conflicts, this definition is partially inclusive due to reasons such as the conflicts not being purely internal, and foreigners joining not only resistance movements but also Kiev forces. Therefore, in this study, the term foreign fighter will be used for individuals who reside in a region not controlled by one of the conflict parties and are not citizens of them. This definition is adapted from the term ‘mercenary.’ However, the definition itself is still problematic as Ukraine rooted diaspora and Donbas Russians residing outside Russia who participate in these conflicts are considered foreign fighters according to this definition.

In our study, foreign terrorist fighters are considered a special category. Although assessments will be made under the heading related to extreme right-

³⁸ David Malet, ‘Foreign Fighter Mobilization and Persistence in a Global Context’ (2015) 27 *Terrorism and Political Violence* 1, 10 <<http://www.tandfonline.com/doi/full/10.1080/09546553.2015.1032151>> accessed 6 November 2022.

³⁹ Alex P Schmid, ‘Foreign (Terrorist) Fighter Estimates: Conceptual and Data Issues’ (International Centre for Counter-Terrorism 2015) 3 <<https://www.jstor.org/stable/resrep17478>> accessed 10 August 2022

⁴⁰ *ibid* 8; Malet (n 39) 10.

⁴¹ Malet (n 39) 3.

⁴² *ibid* 6.

wing radicalism and the UN Security Council Resolution 2178, the special category of foreign terrorist fighters is excluded in determining the statuses of foreign fighters below.

1. In International Conflicts

The fundamental sources of international humanitarian law, the 1949 Geneva Conventions and their 1977 Additional Protocols⁴³ (*'Protocol'*), regulate conflicts under two different procedures based on the distinction between combatants and civilians, for international and non-international conflicts. Both Ukraine and Russia are parties to the Geneva Conventions and *Protocols*⁴⁴. First, let's identify the applicable status rules for foreign fighters in international conflicts, and then examine their legal status in non-international conflicts.

Although there is no direct definition of a combatant in the Geneva Conventions, the Third Geneva Convention concerning the Treatment of Prisoners of War lists various categories, and individuals falling under one of these categories are considered **combatants**⁴⁵. Generally, combatants

⁴³ "Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005", is about the use of the Red Crescent, Red Lion and Red Sun emblems in addition to the Red Cross emblem and is not referenced within the scope of our article.

⁴⁴ Russia made a declaration of withdrawal from Protocol I (1977) on October 23, 2019, but according to the ninety-ninth article of the protocol, the declaration will not have any effect for Russia until the ongoing conflicts are finally ended.

⁴⁵ 'Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy: 1] Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces. 2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: a] that of being commanded by a person responsible for his subordinates; b) that of having a fixed distinctive sign recognizable at a distance; c] that of carrying arms openly; d) that of conducting their operations in accordance with the laws and customs of war. 3] Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power. Prisoners of war. 4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model. 5] Members of crews, including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the

participating in international conflicts, except for actions that could be considered crimes against humanity or war crimes, cannot be prosecuted for hostilities. These combatants will also be eligible for prisoner-of-war status, rights, and privileges under the *Third Convention*. Since no nationality-based distinction is made in the *Third Convention*, **foreign fighters in international conflicts** will be evaluated in the same status as other combatants⁴⁶.

Some foreign fighters may not qualify for combatant status. In treaties, non-combatants are considered civilians and various mechanisms are created for civilian protection status⁴⁷. However, in mechanisms for civilian protection, a criterion not applied to combatants is invoked: the criterion of nationality. Article 4.B-2 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (the '*Fourth Convention*') states,

*"Persons protected by the Convention are those who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of persons a Party to the conflict or Occupying Power of which they are not nationals. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are."*⁴⁸

According to this, states are not obligated to provide the protection granted to civilians by the *Fourth Convention* **to their own citizens** according to the first

Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law. 6) Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.' International Red Cross, Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 <https://ihl-databases.icrc.org/assets/treaties/375-GC-III-EN.002.pdf> art 4/A.

⁴⁶ Emanuele Sommario, 'The Status of Foreign Fighters under International Humanitarian Law' in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (TMC Asser 2016) 147-153 <https://link.springer.com/chapter/10.1007/978-94-6265-099-2_9>.

⁴⁷ Sandra Kraehenmann, *Foreign Fighters Under International Law* (Geneva Academy of International Humanitarian Law and Human Rights 2014) 18.

⁴⁸ International Red Cross, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. art 4.

paragraph; **to the citizens of states not party to the treaty** according to the first sentence of the second paragraph; and **to the citizens of states not party to the conflict or of allied belligerent states, conditional on these states having diplomatic representation in their own country**, according to the second sentence of the second paragraph. **In summary**, in international conflicts, foreign fighters with combatant status benefit from all status rights granted to combatants, whereas foreign fighters without combatant status may benefit from the status of protection directed towards civilians only if they meet specific nationality conditions and/or lack diplomatic representation. However, these conditions are quite restrictive, so they will mostly not be able to benefit from the status of protection directed towards civilians.

2. In Non-International Conflicts

The normative order presents a quite different appearance in internal conflicts. In internal conflicts, the combatant status, rights of prisoners of war, and immunity from prosecution for hostile acts provided by humanitarian law do not exist⁴⁹. However, Common Article 3 of the Geneva Conventions regulates the minimum level of protection that the conflicting parties must adhere to in non-international conflicts. *Protocol II* contains measures for the protection of civilians and victims in non-international armed conflicts. Yet, no special status has been defined for non-state combatants⁵⁰. This means that combatant insurgents in internal conflicts can be judged and penalized according to the discretion of the state they resist⁵¹. At the discretion of the state, foreign fighters can also be tried like local fighters or under more or less severe conditions and

⁴⁹ According to Article 1(4) of the 1977 Additional Protocol I to the 1949 Geneva Conventions, an authority representing a people engaged in armed conflict against colonial domination, foreign occupation, and racist regimes under the right to self-determination might be accept the application of the Geneva Conventions and Additional Protocol I by notifying the depository, Switzerland (Article 96/3). In this case, the Convention and Additional Protocol I also come into effect for that authority, and the rights and obligations undertaken by the contracting parties also become binding for them. However, even in the Algerian War of Independence, the protocols could not be applied despite the declarations and compliant behavior of the National Liberation Front of Algeria. The International Red Cross, citing the refusal of one party to recognize the other as the reason, has characterized the conflict between France and the National Liberation Front of Algeria as an internal conflict. Arnold Fraleigh, 'The Algerian Revolution as a Case Study in International Law', *The International Law of Civil War* (The Johns Hopkins 1971) 194ff.

⁵⁰ Sommaro (n 47) 153.

⁵¹ Kraehenmann (n 48) 20.

charges. In short, only a very limited part of humanitarian law applies to insurgent combatants and, consequently, foreign fighters in non-international conflicts; status rights are not recognized. But still the source country of these foreign fighters may recall a protection level.

Certainly, it can be said that these fighters still have various rights within the framework of human rights law and international agreements. However, in practice, following the interventions in Afghanistan and Iraq, which turned international humanitarian law's distance from the context of war (*jus in bello*) into a scandal by a myopic misreading in pursuit of legitimate aims (*jus ad bellum*), it has been observed in the Syrian Civil War as well that both combatants and civilians could be excluded from all legal statuses and protection mechanisms. The concept of **foreign terrorist fighters** will be discussed below in this context. But first, let's identify **the status of mercenaries**, considered illegitimate means of conflict.

IV. MERCENARIES

A. Normative Framework

The Friendly Relations Declaration, adopted by the UN General Assembly in 1970, imposes an obligation on all states to refrain from using irregular forces like mercenaries to attack another country⁵². The first written agreement regarding mercenaries at the UN level was made in 1989. Before that, there is also a regional arrangement named the African Convention on the Elimination of Mercenarism, dated July 3, 1977. Parties in the Donbas Conflict will be subject, within the scope of our topic, to the *Geneva Conventions, Additional Protocol I*, and the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries ('*UN Convention*')⁵³.

According to *Additional Protocol I* art. 47, mercenaries have a special status in conflicts. This status is an exception to the rights provided by international humanitarian law to combatants. The first paragraph of Article 47 of *Convention I* states that mercenaries will not be considered combatants or prisoners of war, while the second paragraph defines a mercenary as follows,

⁵² Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970 123.

⁵³ Only Ukraine is subject to the UN Convention among the parties to the conflict.

*“A mercenary is any person who: a) is specially recruited locally or abroad in order to fight in an armed conflict; b) does, in fact, take a direct part in the hostilities; c) is motivated to take part in the hostilities **essentially by the desire for private gain** and, in fact, is promised, by or on behalf of a Party to the conflict, **material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party**; d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; e) is not a member of the armed forces of a Party to the conflict; and f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.”⁵⁴*

For a person to be considered a mercenary and therefore to be excluded from combatant status, they must meet these criteria collectively⁵⁵.

The *UN Convention* dated December 4, 1989, is another significant international treaty concerning mercenaries. As of September 2022, the *UN Convention* has been bindingly accepted by 37 states, with 17 signatories, including Ukraine. Russia is not a party to the *UN Convention*.

The definition of a mercenary in the first paragraph of the first article of the **UN Convention** is identical to the one in *Protocol I*. The second paragraph, however, expands this definition. It states,

“A mercenary is also any person who, in any other situation: (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at: (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or (ii) Undermining the territorial integrity of a State (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation; (c) Is neither a national nor a resident of the State against which such an act is directed; (d) Has not been sent by a State on official duty; and (e) Is not a member of the armed forces of the State on whose territory the act is undertaken.”

⁵⁴ Emphasis by me. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. 1977 art 47.

⁵⁵ IHL, ‘Customary Rules: 108. Mercenaries’, *Customary Rules* (ICRC 2023) <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule108>> accessed 15 October 2023.

In our opinion, this second paragraph aims to cover actions by mercenaries when hired, used, financed, and trained by non-state actors under the *UN Convention*. Another modification concerns remuneration. The condition of receiving equal or greater pay compared to military personnel performing similar duties as stated in *Protocol I* and the first paragraph of the *UN Convention* has been relaxed. Another difference is the limitation of general objectives under two headings for specific objectives.

The *UN Convention* imposes on state parties various responsibilities apart from international humanitarian law (Article 16), criminalizing mercenary activities (Articles 2, 3, 4), providing the right and obligation to prosecute mercenaries (Article 5), and guaranteeing basic judicial protections during prosecution or deportation (Article 11).

Both Ukraine (Criminal Code Article 447) and Russia (Criminal Code Article 359) criminalize mercenary activities. However, these countries use these laws to penalize actions of individuals contrary to their interests⁵⁶.

Another important document in the normative framework is the non-binding Montreux Document, created on September 17, 2008, by the consensus of seventeen states, including Ukraine, and later joined by forty-one states, the European Union, OSCE, and NATO. The Montreux Document, initiated by the Swiss Government and the International Red Cross, outlines measures that states can take concerning mercenaries, governance, oversight, and reporting⁵⁷.

The Montreux Document is limited to state and intergovernmental organizations, while the International Code of Conduct Association, founded in Switzerland in 2013, admits private companies, NGOs, observers, and states as

⁵⁶ Halya Coynash, 'Russian Sentenced to 5 Years' Imprisonment for Defending Ukraine' (*Kharkiv Human Rights Protection Group*, 16 June 2017) <<https://khpg.org/en/1497057361>> accessed 30 October 2022; UN Human Rights Council Working Group, 'On the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination on Its Mission to Ukraine' (UN General Assembly 2016) A/HRC/33/43/Add.3 12-13 <<https://undocs.org/A/HRC/33/43/Add.3>> accessed 30 October 2022.

⁵⁷ In the introduction of the document, the responsibilities of States arising from international law are reminded; It is stated that there is no legal binding; and "although it does not mean to approve any specific use of private military and security companies, it aims to remind the legal guarantees that should be sought if an agreement is made with these companies and to encourage good practices. 'The Montreux Document: On Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict' <https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/voelkerrecht/20192511-montreux-document_EN.pdf> accessed 20 September 2022.

members. Although efforts are made to prohibit mercenary activities under UN auspices, one could argue that private military and security companies are being legalized under non-binding rules⁵⁸. Both the Montreux Document and the International Code of Conduct Association aim to bind their members to humanitarian law and human rights through the threat of loss of reputation and credibility. The higher number of Montreux Document members compared to states parties to the above-mentioned *UN Convention* indicates that the prohibition, prosecution, and imprisonment envisioned by the *UN Convention* have not been particularly deterring for mercenaries.

B. Material Evaluation

It is claimed that mercenaries have been involved in the *Donbas Conflicts* since the beginning. Major General Vadym Skibitskyi stated in his presentation to the Organization for Security and Co-operation in Europe (OSCE) that the number of Wagner Group's special military forces in Donbas reached from 250 to 1,500 in the months following May 2014⁵⁹. Wagner Group⁶⁰ is not the only Kremlin-affiliated⁶¹ private military company participating in the Donbas Conflicts⁶². Companies and personnel with different functions, such as MAR, E.N.O.T., have also been involved. Sukhankin indicates that Russia's new war tactics and private military forces faced their first serious test in Ukraine after the intervention in Chechnya⁶³.

On the Ukrainian side, foreign fighters involved in the *Donbas Conflicts* have been integrated into the army, receiving rank, share, and salary. Thus, they

⁵⁸ Matthew Leriche, 'Mercenaries Gone Legit: Private Security Professionals and Private Military Security Companies as Transnational Actors' in David Malet and Miriam J Anderson (eds), *Transnational actors in war and peace: militants, activists, and corporations in world politics* (Georgetown University 2017) 146.

⁵⁹ Vadym Skibitskyion, 'Private Military Companies and Their Role in Modern Regional Conflicts' (OSCE Forum 949, FSC.DEL/140/20, 17 June 2020) <<https://www.osce.org/files/f/documents/b/1/456016.pdf>> accessed 1 November 2022.

⁶⁰ According to the news of New Lines magazine, based on the Ukrainian Security Service, as of 2021, 4184 mercenaries belonging to Wagner units have been identified worldwide. For details, see Michael Weiss and others, 'The Fallen Mercenaries in Russia's Dark Army' [2021] *New Lines Magazine* <<https://newlinesmag.com/reportage/the-fallen-mercenaries-in-russias-dark-army/>> accessed 30 October 2022.

⁶¹ The Wagner Group is not an official organization in Russia and has no official ties to the Russian Federation or Putin. However, the Group was founded and managed by Russian oligarchs close to Putin. Sukhankin (n 21) 197-202.

⁶² Skibitskyion (n 60).

⁶³ Sukhankin (n 21) 189.

cannot be defined as mercenaries by definition. However, according to Russia's claim, 400 private military forces from the American company Academi (formerly Blackwater) have participated in the conflicts on the Ukrainian side⁶⁴. Since they are not enlisted in the Ukrainian army, they can be considered mercenaries. This issue will be touched upon below.

1. Motivational Element

Mercenaries are similar to foreign fighters in many ways⁶⁵. By definition, mercenaries cannot be citizens of the country they fight for, whereas foreign fighters can include citizens living in the diaspora. The main difference arises in their motivations. According to regulations, foreign fighters participate in conflicts mainly for ideological or kinship reasons, whereas mercenaries aim for financial gain. However, this normative classification is not very distinctive in reality⁶⁶. The United Nations Human Rights Council's Working Group on the Use of Mercenaries stated in their 2015 report that financial gain is among the motivations for both mercenaries and foreign fighters⁶⁷. Malet states that various financial benefits have been promised to many foreign fighters as well⁶⁸. The Working Group stated in their 2016 report that proving mercenary status through income assessments is extremely difficult⁶⁹.

Field studies by Oksana Mikheieva on volunteer fighters show that the motivations of fighters, regardless of which side they are on, are multi-layered and can change over time, consisting of both rational and irrational elements⁷⁰.

⁶⁴ Anadolu Agency, 'Around 400 US-Led Mercenaries Deployed to Ukraine' *Daily Sabah* (12 May 2014) <<https://www.dailysabah.com/economy/2014/05/12/around-400-us-led-mercenaries-deployed-to-ukraine>> accessed 1 November 2022.

⁶⁵ UN Human Rights Council Working Group, 'Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination' (s 2015) I A/70/330 24 <<https://undocs.org/A/70/330>> accessed 20 October 2022; Tanya Mehra and Abigail Thorley, 'Foreign Fighters, Foreign Volunteers and Mercenaries in the Ukrainian Armed Conflict' (*International Center for Counter-Terrorism*, 11 July 2022) <<https://icct.nl/publication/foreign-fighters-volunteers-mercenaries-in-ukraine/>> accessed 30 July 2022.

⁶⁶ Mehra and Thorley (n 66).

⁶⁷ UN Human Rights Council Working Group (n 66) 9.

⁶⁸ Malet (n 39) 8-9.

⁶⁹ UN Human Rights Council Working Group (n 57) 12.

⁷⁰ Oksana Mikheieva, 'Motivations of Pro-Russian and Pro-Ukrainian Combatants in the Context of the Russian Military Intervention in the Donbas' in David R Marples (ed), *The war in Ukraine's Donbas: origins, contexts, and the future* (Central European University 2022).

Likewise, Kragiannis concludes that fighters' motivations are variable, and rational choice or social constraint approaches alone are insufficient to explain their motivations⁷¹.

Another field study conducted by Kacper Rekawek categorizes fighters as restarters, ghosts, and adventurers⁷². According to this classification, restarters are those who do not return to their country and start a new life and career, ghosts are those who participate in conflicts as long as their visas allow and hide their faces and identities to return to their countries, and adventurers are those who are not afraid to reveal their identities and want to go to other conflicts for similar causes. One interesting result of the study is that the choice of front is random⁷³. According to the study, a caricatured situation exists where individuals who share the same ideology, nationality, and ideals are fighting against each other. Privileges in visa entries and ease of transportation are decisive factors in choosing a front.

In conclusion, it's not possible to distinguish between the intent for financial gain and other motivations. Field research shows that fighters' motivations are multi-layered, transitional, and variable. It should also be noted that even trained fighters, as recommended by the Montreux Document, may provide misleading statements about their motivations and alter their stories for minimal responsibility. For example, Igor Girkin, the commander of the Russian-separatist forces originally from Crimea, stated that the soldiers in his unit were not paid and were primarily motivated by ideology⁷⁴.

According to Kimberly Marten, whose expertise was sought in the U.S. House of Representatives, even the Wagner Group does not count as real

⁷¹ Emmanuel Karagiannis, 'Ukrainian Volunteer Fighters in the Eastern Front: Ideas, Political-Social Norms and Emotions as Mobilization Mechanisms' (2016) 16 *Southeast European and Black Sea Studies* 139, 149 <<https://www.tandfonline.com/doi/full/10.1080/14683857.2016.1148413>> accessed 30 November 2022.

⁷² Kacper Rekawek, 'Career Break or a New Career? Extremist Foreign Fighters in Ukraine' (Counter Extremism Project (CEP) 2020) Research Report 18ff <https://www.counterextremism.com/sites/default/files/CEP%20Report_Career%20Break%20or%20a%20New%20Career_Extremist%20Foreign%20Fighters%20in%20Ukraine_April%202020.pdf> accessed 2 August 2022.

⁷³ *ibid* 15.

⁷⁴ Sonne and Shishkin (n 30); Kots Aleksandr and Steşin Dimitri, 'Командующий самообороной Славянска Игорь Стрелков: Задержанные наблюдатели - кадровые разведчики' *Komsomolskaya Pravda* (Online, 26 April 2014) <<https://www.kp.ru/daily/26225.7/3107725/>> accessed 25 August 2022.

mercenaries. “Although they may be fighting for money according to their contracts, the group is extremely nationalist. They only participate in conflicts that are in the interests of the Russian state.”⁷⁵ This also means that the ideological intent precedes the financial intent, and therefore, they can even argue that they are not mercenaries. It should also be noted that if the salaries paid to the group members are compared with those paid to those in similar positions in the Russian army and found to be lower, there will be no need to even investigate where the special intent is concentrated, provided that if somehow it can be determined how much salary is paid to them.

2. Nationality Factor

In defining warriors as mercenaries (in the context of international law), another distinguishing criterion is their nationality. First, let’s remember that there were approximately 20,000 foreign fighters and around 1,000 mercenaries. The Soufan Report stated that there were fighters from 55 countries in the region⁷⁶. The majority (12,000) are Russian citizens. According to *New Lines’* news compiled from data kept by Ukraine’s Security Service on Wagner, more than half (2,708) of the 4,184 Wagner members are Russian citizens, 222 are Ukrainian citizens, and people from over ten nationalities are fighting in Donbas⁷⁷. These numbers refer to fighters employed worldwide by the Wagner Group, and a subset of these are involved in the Donbas Conflicts. No more detailed information has yet been made public. However, it is understood that foreign fighters and mercenaries of multiple nationalities are participating in the conflicts. The first and second paragraphs of Article 1 of the *Protocol I* and *UN Convention* differ in terms of nationality criteria. Let’s examine how fighters of different nationalities can be characterized under these different norms.

Protocol I applies only to international conflicts. Therefore, **combatants participating in conflicts in Donbas that could be internationally characterized,**

⁷⁵ Kimberly Marten, ‘The GRU, Yevgeny Prigozhin, and Russia’s Wagner Group: Malign Russian Actors and Possible U.S. Responses’ (Hearing on Exposing and Demanding Accountability for Kremlin Crimes Abroad, Washington D.C., 20 July 2020) 7 <<https://www.congress.gov/116/meeting/house/110854/witnesses/HHRG-116-FA14-Wstate-MartenK-20200707.pdf>> accessed 30 October 2022.

⁷⁶ ‘White Supremacy Extremism: The Transnational Rise of the Violent White Supremacist Movement’ (n 38) 30.

⁷⁷ The reliability of the data in the source of the news or the connections between the Wagner Group and Russia are open to debate. Weiss and others (n 61).

even if they meet other conditions, will not be considered mercenaries if they are **Russian** or **Ukrainian**, or residents of Crimea (in territories controlled by one of the conflicting parties). Accordingly, Russia could claim that, despite having stated the opposite since the beginning of the conflict, their combatant citizens are within the framework of *Protocol I*: a) should not be considered as mercenaries, b) thus fall under the combatant status, c) which in turn provides immunity from prosecution for hostile acts. On the other hand, Ukraine could argue that, despite having stated the opposite since the beginning of the conflict, the conflicts these combatants are involved in do not have an international character.

We should note that it is a war crime under the sixth clause of the second paragraph of Article 8 of the Rome Statute to deprive prisoners of war of fair and regular trial, and under Article 45 of the *Protocol I*, they will be considered prisoners of war until a judicial decision is made about them, and they still have minimum humanitarian guarantees (Article 75). We should also add as a note that Russia reported to distributed passports both in the Annexation of Crimea and in the *Donbas Conflicts*⁷⁸.

We had stated that foreign fighters fighting on the Kiev side, as they are registered in the Ukrainian army, will not be considered mercenaries. Those who are not registered in the army, if they meet other conditions, can be considered mercenaries under the definitions of the *Protocol I* and *UN Convention* (Article 1/1). For example, if Academi personnel, as Russia claims, participated in the conflicts on the Kiev side as combatants, they will be considered mercenaries. *Protocol I* creates discretion in the treatment and prosecution of mercenaries. We can also assume that Ukraine will not use this discretion in criminal prosecution.

Considering Ukraine's obligations under the *UN Convention*, they should not employ, use, finance, or train them (Article 5)⁷⁹, and should expel mercenaries in

⁷⁸ 'Putin Expands Fast-Track Russian Citizenship to All of Ukraine' *Al Jazeera* (Web Page, 11 July 2022) <<https://www.aljazeera.com/news/2022/7/11/putin-expands-fast-track-russian-citizenship-to-all-of-ukraine>> accessed 4 December 2022.

⁷⁹ In the first regulations regarding mercenaries, their use to prevent the right to self-determination was particularly criticized. Without going into arguments if the path to self-determination is sealed, it might also be claimed that this right is used by Russian-separatists. For a discussion on this topic, see Elise Giuliano, 'The Social Bases of Support for Self-Determination in East Ukraine' (2015) 14 *Ethnopolitics* 513 <<https://doi.org/10.1080/17449057.2015.1051813>> accessed 17 November 2022.

any case (Article 12) or prosecute them “like international criminals”⁸⁰ (Article 5/3). According to Article 447 of the Ukrainian Criminal Code, amended in October 2015, mercenaries are defined as those employed for “military or violent actions aimed at overthrowing or changing the constitutional order, seizing the government, or disrupting its functioning.”⁸¹ The specific intent required for the criminal act in the article will not have been realized for mercenaries fighting on the Kiev side. **Ukraine will have to expel them under the UN Convention if national law does not require criminal prosecution.**

In conclusion, Ukraine is obliged to exempt from prosecution those fighters who participate in international conflicts in Donbas as combatants and are Russian citizens or residents of Crimea, even if they meet other conditions for being mercenaries (except for war crimes), under *Protocol I*; and prosecute or expel others under *UN Convention* Article 1/1, if they meet the conditions. If the conflict a fighter is involved in is of an internal nature, *Protocol I* will not apply. In this case, considering the framework in the second paragraph of the definition of mercenaries in the *UN Convention*, Ukraine is obliged to prosecute everyone, except its own citizens and residents, who meet the other conditions for being mercenaries. Russian citizens participating in the internal conflict led by Donetsk and Luhansk forces will not be exempt from prosecution, unlike Russian citizens joining Moscow forces. Kiev can legitimize its use of fighters by registering them in the army⁸² to prevent self-determination; Moscow can legitimize its (its citizens/companies) arms usage to overthrow the government or separate the region by claiming the *Donbas Conflict*.

V. EXTREME RIGHT RADICALS

A. Material Situation

The tension between Ukraine, Russia, and the EU axis had transformed into the Maidan Protests, and subsequent events escalated into conflicts. Far-right

⁸⁰ Chile Eboe-Osuji and Adama Dieng, ‘International Law, Mercenary Activities and Conflict Prevention in Africa’ in Emmanuel Decaux, Adama Dieng and Malick Sow (eds), *From Human Rights to International Criminal Law / Des droits de l’homme au droit international pénal* (Brill | Nijhoff 2007) 623 <https://brill.com/view/book/edcoll/9789047420446/Bej.9789004160552.i-776_025.xml> accessed 3 November 2022.

⁸¹ ‘The Criminal Code of Ukraine’ (*Official web-portal of the Parliament of Ukraine*) art 447 <<https://zakon.rada.gov.ua/go/2341-14>> accessed 27 October 2022.

⁸² The fact that no time period was stipulated for enlisting in the army has been a subject of criticism. Marie-France Major, ‘Mercenaries and International Law’ (1992) 22 *Georgia Journal of International & Comparative Law* 103, 113.

organizations in the country carried the process, which began with protests supported by the sniper massacre of pro-Russian Yanukovych, to the Dignity Revolution⁸³. Organizations known for their far-right views, such as Svoboda, Batkivshina (Fatherland), and Right Sector, played a significant role in the Dignity Revolution and established a national defense line to support the weak national army against Russian forces after the annexation of Crimea⁸⁴.

Sich (Svoboda), Batkivshina, and Ukraine Volunteer Units (Right Sector) participated in the Donbas Conflicts with their armed forces. Alongside these, many other semi-civil, semi-radical units have also been formed. However, it would be incorrect to collectively label these units with far-right ideology. Umland argues that even the most well-known example among semi-civil organizations, the Azov Battalions, should not be hastily labeled as far-right radicals⁸⁵. The author also says that most of the volunteers who acted in response to the Russian intervention and the inadequacy of the national army should be considered militant nationalists rather than far-right radicals⁸⁶.

The issue of far-right radicalism in the Donbas Conflicts goes beyond the discussion of how locals in Ukraine might be characterized. Far-right radicals have not only joined Kiev forces but also Moscow forces⁸⁷. The Russian Imperial Movement is noted for training far-right radicals to fight in Ukraine and carry out actions in their home countries⁸⁸. The study's problem is not far-

⁸³ Katchanovski (n 18) 6-7.

⁸⁴ Andreas Umland, 'Irregular Militias and Radical Nationalism in Post-Euromaidan Ukraine: The Prehistory and Emergence of the "Azov" Battalion in 2014' (2019) 31 *Terrorism and Political Violence* 105, 106 <<https://www.tandfonline.com/doi/full/10.1080/09546553.2018.1555974>> accessed 6 November 2022.

⁸⁵ Umland (n 85).

⁸⁶ *ibid* 109.

⁸⁷ Sergey Sukhankin, 'Foreign Mercenaries, Irregulars and "Volunteers": Non- Russians in Russia's Wars' (Jamestown Foundation 2019) 3 <<https://jamestown.org/program/foreign-mercenaries-irregulars-and-volunteers-non-russians-in-russias-wars/>>; Michael Colborne, *From the Fires of War: Ukraine's Azov Movement and the Global Far Right* (Bethan Johnson and John Richardson eds, *ibidem* 2022) 122.

⁸⁸ Michael Carpenter, 'The Russian Federation's Ongoing Aggression Against Ukraine' (Organization for Security and Co-operation in Europe, Vienna, 23 June 2022) <<https://www.osce.org/files/f/documents/7/c/521323.pdf>> accessed 28 November 2022; Dmitry Kozhurin, 'Who Are The Neo-Nazis Fighting For Russia In Ukraine?' *Radio Free Europe/Radio Liberty* (Web Sayfası, 27 May 2022) <<https://www.rferl.org/a/russian-neo-nazis-fighting-ukraine/31871760.html>> accessed 28 November 2022; 'European Union

right radicals among locals in Ukraine or Russia but rather radicals who equip their far-right views with military training in Donbas and transfer these skills to their home countries. Ukraine has thus become a significant attraction for far-right radicals, especially with the annexation of Crimea and the *Donbas Conflicts*.

In his study examining instances of far-right radicalism in Central Eastern Europe, Rekawek states that Polish far-right radicals consider themselves pacifists compared to those in Ukraine⁸⁹. They can access paramilitary training camps in Ukraine⁹⁰, and although the region will not be considered a Shangri-La for far-right radicalism, the accessibility to paramilitary training is concerning⁹¹. Liedekerke shows that paramilitary movements are on the rise in Central and Eastern Europe due to the impact of the Ukraine conflicts⁹². Donbas Conflicts have attracted radicals not only from nearby countries but also from distant ones like Germany⁹³, the USA⁹⁴, the UK⁹⁵, Sweden, France, Italy, and Spain⁹⁶. According to Rapoport, the California-based alternative right movement Rise

Terrorism Situation and Trend Report' (EUROPOL 2022) 52 <https://www.europol.europa.eu/cms/sites/default/files/documents/Tesat_Report_2022_0.pdf> accessed 28 November 2022.

⁸⁹ Kacper Rekawek, 'Looks Can Be Deceiving: Extremism Meets Paramilitarism in Central and Eastern Europe' (Counter Extremism Project 2021) Research Report 13 <https://www.counterextremism.com/sites/default/files/2021-06/CEP%20Report_Looks%20Can%20Be%20Deceiving_Extremism%20Meets%20Paramilitarism%20in%20CEE_June%202021_1.pdf> accessed 6 December 2022.

⁹⁰ *ibid* 16.

⁹¹ *ibid* 19.

⁹² Arthur De Liedekerke, 'The Paramilitary Phenomenon in Central and Eastern Europe' (2016) 25 *The Polish Quarterly of International Affairs* 26.

⁹³ von Thilo Manemann, 'Far-Right Terrorism: Attempt to Re-Form Atomwaffen Division in Europe' (*Belltower.News*, 19 April 2021) <<https://www.belltower.news/far-right-terrorism-attempt-to-re-form-atomwaffen-division-in-europe-114253/>> accessed 16 August 2022.

⁹⁴ Oleksiy Kuzmenko, "'Defend the White Race": American Extremists Being Co-Opted by Ukraine's Far-Right' (*bellingcat*, 15 February 2019) <<https://www.bellingcat.com/news/uk-and-europe/2019/02/15/defend-the-white-race-american-extremists-being-co-opted-by-ukraines-far-right/>> accessed 5 August 2022.

⁹⁵ Kevin Rawlinson, 'Neo-Nazi Groups Recruit Britons to Fight in Ukraine' *The Guardian* (2 March 2018) <<https://www.theguardian.com/world/2018/mar/02/neo-nazi-groups-recruit-britons-to-fight-in-ukraine>> accessed 22 November 2022.

⁹⁶ Rekawek, 'Career Break or a New Career? Extremist Foreign Fighters in Ukraine' (n 73) 6; Fausto Biloslavo, 'Far-Right Fighters from Europe Fight for Ukraine' (*Eurasianet*, 8 June 2014) <<https://eurasianet.org/ukraine-far-right-fighters-from-europe-fight-for-ukraine>> accessed 23 November 2022.

Above Movement traveled to Ukraine to celebrate Hitler's birthday in the spring of 2018, meeting and training with the Azov Battalions⁹⁷.

Let's note that the number of foreign fighters participating in the conflicts is close to seventeen thousand. If Russian citizens are excluded, this number drops to two thousand⁹⁸. MacKenzie and Kraunert state that about eight hundred people from North America, European Union members and candidates, the United Kingdom, Australia, and New Zealand have participated but only one to two hundred of them hold far-right views⁹⁹. Rekawek indicates that this number is a few hundred¹⁰⁰. So to say, the number of far right radicals who participated in *Donbas Conflicts* is relatively low.

B. Normative Situation

The normative framework related to foreign fighters and mercenaries and how it can be applied in the Donbas Conflicts has been summarized above. It's evident that the normative framework can't always be applied definitively and sharply; different norms can be applied based on the assessment of specific events and individuals. Beyond the basic interpretive capacity of law, it's inevitable to touch on a subject that cannot escape political assessments: associating conflict actors with terrorism, for presenting the normative evaluation of far-right radicals in conflicts.

As a result of interpreting terrorism offenses as an exception to humanitarian law, actions permitted by humanitarian law can also be qualified as crimes. However, humanitarian law (*Fourth Convention* (Art.33), *First Protocol* (Art.51/2), *Second Protocol* (Art. 4/2, 13/2)) already prohibits terrorist actions. Paulussen and others argue that it would be more appropriate to recognize an exception to humanitarian law for terrorist crimes¹⁰¹. The authors

⁹⁷ David C Rapoport, *Waves of Global Terrorism: From 1880 to the Present* (Columbia University Press 2022) 330.

⁹⁸ 'White Supremacy Extremism: The Transnational Rise of the Violent White Supremacist Movement' (n 38).

⁹⁹ MacKenzie and Kaunert (n 10) 6.

¹⁰⁰ Rekawek, 'Career Break or a New Career? Extremist Foreign Fighters in Ukraine' (n 73) 3.

¹⁰¹ Christophe Paulussen, Hanne Cuyckens and Katharine Fortin, 'The Prosecution of Foreign Fighters under International Humanitarian Law: Misconceptions and Opportunities' (*International Centre for Counter-Terrorism*, 13 December 2019) <<https://icct.nl/publication/the-prosecution-of-foreign-fighters-under-international-humanitarian-law-misconceptions-and-opportunities/>> accessed 4 December 2022.

argue that terror crimes are already not protected under humanitarian law, so there is no need to remove individuals from the scope of humanitarian law by associating them with terrorist organizations. They suggest that prosecuting terror crimes and crimes against humanity within the framework of humanitarian law could lead to more severe punishments. If individuals are judged solely on membership, no distinction is made between criminal acts, resulting in a reductive and inconsistent legal process. This is not restorative justice, either for the victims or the community. They also note that in a system where actions in compliance with humanitarian law are prosecuted, the motivation for combatants to act in accordance with humanitarian law would diminish¹⁰².

In a normative framework where no exception to humanitarian law is recognized, the designation of terrorism can obstruct all rights, statuses, and authorities that may arise from humanitarian law and even human rights law¹⁰³. From this standpoint, the International Red Cross Committee states that not being able to distinguish between terrorism and armed conflict and labeling non-state armed groups as terrorists could have adverse effects¹⁰⁴. Criticisms go in this direction, stating that states are becoming free to use the void in the definition of terrorism for arbitrary and unequal applications¹⁰⁵. Tayler, in this vein, draws attention to foreign fighters who join the YPG, which is linked to the PKK, which many states define as a terrorist organization, to fight against ISIS¹⁰⁶. The Sixth Chamber of the European Union General Court, in its decision related to individuals allegedly affiliated with the Tamil Tigers and included in sanction lists, has developed jurisprudence suggesting that the political void in the definition of terrorism can be filled with facts and individual investigations, not generalizations¹⁰⁷.

¹⁰² *ibid.*

¹⁰³ Letta Tayler, 'Foreign Terrorist Fighter Laws: Human Rights Rollbacks Under UN Security Council Resolution 2178' (2016) 18 *International Community Law Review* 455, 462-463 <https://brill.com/view/journals/iclr/18/5/article-p455_6.xml> accessed 23 November 2022.

¹⁰⁴ *Foreign Terrorist Fighters: Manual for Judicial Training Institutes - South-Eastern Europe* (United Nations 2019) 4.

¹⁰⁵ Tayler (n 104) 459.

¹⁰⁶ *ibid.*

¹⁰⁷ 'Liberation Tigers of Tamil Eelam (LTTE) v Council of the European Union' (European Union General Court Sixth Chamber 2014) Case Report T 208/11, T 508/11 <<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:62011TJ0208>> accessed 27 November 2022.

A complicating factor for further normative differentiation is the term “foreign terrorist fighters,” introduced into the literature by UNSC Resolution 2170 of 2014 and defined by Resolution 2178¹⁰⁸. The Council defines foreign terrorist fighters as “individuals who travel from their country of nationality or residence to another state to participate in, execute, plan, prepare terrorist acts, including those related to armed conflicts.”¹⁰⁹. These resolutions call on UN member states to take measures against individuals joining organizations affiliated with ISIS, al-Nusra, and al-Qaeda and establish a sanctions framework¹¹⁰. While foreign fighters and mercenaries are subject to content-independent evaluations under humanitarian law, UNSC decisions on foreign terrorist fighters bring content back into focus when determining applicable norms. Considering that the content (terrorism) is undefined in international law, it’s evident that a significant gap has been created for interpretation.

The definition of the Security Council is broad, yet its application is limited to the individuals on its sanction lists. In both academic and legal studies, the distinction between foreign fighters and foreign terrorist fighters is often overlooked, and the terms are used interchangeably¹¹¹. It should be added that the UN’s definitions through its sanction lists are binding for al-Qaeda, ISIS, and al-Nusra, and that measures against foreign terrorist fighters have found resonance in many member states, where their actions are considered crimes¹¹².

When a group is defined as a terrorist organization, participating in their actions, traveling to join them, supporting them, or even conducting their propaganda and many other actions can be criminalized¹¹³. When each state fills this definitional gap with its political approaches, activities of organizations

¹⁰⁸ The term was previously used in Security Council Resolution 2170 dated 2014. However, detailed regulations including the definition are available in decision no. 2178.

¹⁰⁹ Resolution 2178 2014.

¹¹⁰ *Foreign Terrorist Fighters: Manual for Judicial Training Institutes - South-Eastern Europe* (n 105) 32.

¹¹¹ Malet (n 39) 5; Christopher Baker-Beall, ‘The Concept of the Foreign Terrorist Fighter: An Immanent Critique’ [2022] *European Journal of International Security* 1, 9 <https://www.cambridge.org/core/product/identifier/S205756372200030X/type/journal_article> accessed 25 November 2022.

¹¹² Talyer (n 104) 462.

¹¹³ John Ip, ‘Reconceptualising the Legal Response to Foreign Fighters’ (2020) 69 *International and Comparative Law Quarterly* 103, 122 <https://www.cambridge.org/core/product/identifier/S0020589319000447/type/journal_article> accessed 27 November 2022.

labeled as terrorist organizations for supported political objectives can also be left outside the normative framework intended for foreign terrorist fighters. Political evaluations related to the organizations affect the determination of the criminal nature of actions, leading to contradictory court decisions. Van Poecke and others show how the opinions of Belgian courts on organizations differed in determining the crimes of the accused in the cases al-Nusra affiliated *Sharia4Belgium* and *PKK*¹¹⁴.

In defining far-right radicals participating in the Donbas Conflicts within the normative framework, the issue of filling the gap arising from the lack of a terrorism definition with potentially unequal applications comes up, as Tayler pointed out¹¹⁵. Countries do set national lists concerning terrorist organizations, including some while excluding others. For example, EUROPOL's 2022 report highlights the threat of far-right radicalism in EU member states¹¹⁶ but addresses the phenomena of foreign terrorist fighters and returning foreign terrorist fighters only in connection with organizations listed by the UNSC¹¹⁷. There is no international sanction either by the UN or the EU for far-right radicals participating in the Donbas Conflicts. Countries turn a blind eye to radicals joining the sides they support¹¹⁸, while labeling those on the opposing side as terrorists¹¹⁹. This confirms the point mentioned above that the rising radical threat for specific political objectives can be ignored. Finally, it can be said that

¹¹⁴ Thomas Van Poecke, Frank Verbruggen and Ward Yperman, 'Terrorist Offences and International Humanitarian Law: The Armed Conflict Exclusion Clause' (2021) 103 *International Review of the Red Cross* 295, 311-315 <https://www.cambridge.org/core/product/identifier/S1816383121000321/type/journal_article> accessed 30 July 2022.

¹¹⁵ Tayler (n 104) 459.

¹¹⁶ 'European Union Terrorism Situation and Trend Report' (n 89) 45ff.

¹¹⁷ *ibid* 35-36.

¹¹⁸ Ben Cousins, 'Legal Questions Abound for Canadians Volunteering to Fight in Ukraine' *CTVNews* (Online, 24 March 2022) <<https://www.ctvnews.ca/canada/legal-questions-abound-for-canadians-volunteering-to-fight-in-ukraine-1.5833817>> accessed 30 November 2022.

¹¹⁹ 'United States Designates Russian Imperial Movement and Leaders as Global Terrorists' (*United States Department of State*) <<https://2017-2021.state.gov/united-states-designates-russian-imperial-movement-and-leaders-as-global-terrorists/>> accessed 30 November 2022; Vassily Nebenzia, 'Statement by Permanent Representative Vassily Nebenzia at UN Security Council Briefing' (Web Page, 23 October 2022) <<https://russiaun.ru/en/news/09082022n>> accessed 30 November 2022; Public Safety Canada, 'Listed Terrorist Entities: Currently Listed Entities' (*Public Safety Canada*) <<https://www.publicsafety.gc.ca/cnt/ntnl-scrnt/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx>> accessed 30 November 2022.

there is no special regime concerning far-right radicals joining either the Kiev or Moscow side. Depending on their home country's political stance, those who choose the correct front will not be evaluated as foreign terrorist fighters and can thus claim judicial immunity arising from international humanitarian law (to the extent allowed by local laws).

VI. CONCLUSION AND EVALUATION

Our study examined the legal status of foreign far-right radicals participating in the Donbas Conflicts. Initially, we looked at what legal regime could apply to these conflicts, what legal statuses could be attributed to foreign participants, the conditions for qualification under the mercenary status, which is an exception under international humanitarian law, and whether far-right radicalism creates any special exceptions for determining the status of foreign fighters. The question of the study was whether the legal framework applicable to the Donbas Conflicts provides a space for far-right radicals to freely participate in conflicts, receive weapons, and ammunition training. The results can be summarized as follows:

- a. The Donbas Conflicts exhibit both international and non-international conflict characteristics.
- b. Regardless of how the conflicts are classified, **individuals not qualifying for combatant status** will be under a protection status.
 - i. Citizens of states not party to the conflicts will not benefit from the protection status if their home country has representation in the country where they are captured. This exception will be limited because most states have representation in Ukraine and Russia.
 - ii. Foreign individuals going to Donbas solely for training and/or logistical and support activities will not benefit from protection status unless they are citizens of an exceptional state.
- c. **Combatants involved in conflicts** between Kiev and Moscow forces are immune from prosecution for hostile acts under the norms of international humanitarian law applicable to international conflicts. So if a far right extremist combatant claims that they joined the conflict with Kiev side or Moscow fronts shall defend their acts within international law.

- d. Conflicts between Russian-separatist organizations and Kiev forces can be classified as non-international conflicts, provided the separatist organizations are not under Moscow's command. Hostile acts in these conflicts fall outside the protective mechanisms of humanitarian law, and only a limited portion of humanitarian law is applicable to combatants in internal conflicts.
- e. Mercenaries cannot benefit from protection statuses in humanitarian law. However, qualifying as a mercenary is challenging. So very few may qualify as mercenary as follows,
 - i. For a person to be considered a mercenary, there must be a specific intent to gain materially. Research shows that foreign fighters can also have financial expectations, and proving this intent is challenging. According to *Protocol I* and the *UN Convention* (Article 1/1), the financial gain must be significantly higher than what a member of the military of similar rank and function would receive.
 - ii. In conflicts of international nature, citizens of Russia and Ukraine, or those residing in areas under their control, are not considered mercenaries.
 - iii. In internal conflicts, Ukrainian citizens are not considered mercenaries regardless of which side they fight for. (UN Convention Article 1/2)
 - iv. According to the *UN Convention*, Ukraine should prosecute or deport mercenaries. Ukraine should thus prosecute or deport private military forces like Academi fighting on its own side. Given the situation and ranks of these, tactic/strategic help might not be qualified as 'combatants'.
- f. According to UN Security Council Resolution 2178, **the term 'foreign terrorist fighter'** has entered the literature, calling on member states to legislate for the punishment of individuals joining ISIS, al-Nusra, and al-Qaeda. From the beginning it was implemented with limited scope and cannot be extended to the *Donbas Conflict*.
 - i. There is no universally accepted definition of terrorism, and as the lists of terrorist organizations are not common, states have moved to punish individuals going to conflict zones based on national and regional terror lists.
 - ii. The UN Security Council's decision has further blurred the distinction expected to be observed between actions permitted in humanitarian law and acts of terrorism with respect to these organizations.

- g. There is no international consensus against far-right radical organizations, and they will not be considered foreign terrorist fighters under UN law. However, each country has the discretion to prosecute individuals it has placed on its own terror lists.
- i. The normative situation in the source countries creates freedom for foreign far-right radicals in the *Donbas Conflicts* to receive arms and ammunition training and to participate in the conflicts, according to the political preferences of the source countries.
 - i. These combatants may pursue the international right of immunity from hostile acts for their case/cause and benefit from it in their homelands.
 - ii. Far-right radicals can benefit from the protective status granted by humanitarian law to combatants when they participate in conflicts with Kiev or Moscow forces, and thus can claim judicial immunity in their source countries.
 - iii. Foreign far-right radicals joining Russian-separatist organizations can be tried by Ukraine due to the conflicts being characterized as internal conflicts and due to the absence of protective status. If they are not caught by Ukraine, they can return to their source countries without fear of prosecution.
 - iv. If far-right radicals are classified as mercenaries, Ukraine is obliged to prosecute them within the framework of the *UN Convention* and the Ukrainian Criminal Code Article 447, while Russia is obliged within the framework of Criminal Code Article 357.

In conclusion, our study shows that far-right radicals can participate in the Donbas Conflicts within legal protection and limited freedom if their fight is not an exceptional case. And this exception seems to be discussed even more.

Attention is drawn to the possibility that foreign terrorist fighters returning to their countries may carry threats such as 'local terrorist attacks,' 'new terror cells,' 'operational expertise,' 'resource gathering for terror acts,' 'creating human resources,' and 'being an inspiration for ideological neighbors/peers.'¹²⁰. Although reports have been prepared considering terrorists who have joined jihadist organizations like ISIS, al-Qaeda, and al-Nusra, the same threats need to

¹²⁰ Baker-Beall (n 112) 9.

be evaluated for far-right radicals participating in the *Donbas Conflicts* as well. Mackenzie and Kanuert's study shows that far-right radical networks are created in Ukraine, and some actors involved create security threats and even attempt coups in their source countries (Montenegro 2016)¹²¹.

Both the UN and regional and local legal normative frameworks have created security, precaution, and rehabilitation mechanisms focused on the threats posed by jihadist terrorist organizations. The need to expand these mechanisms for other foreign fighters going to conflict zones is evident, at least in the case of far-right radicals, who better be assessed within the scope of these institutions and measures. Otherwise, far-right radicals will continue to operate with relative freedom to expand their networks, freely receive arms and ammunition training, participate and gain experience in conflicts, create their 'heroes,' and accelerate the breakdown of order.

¹²¹ MacKenzie and Kaunert (n 10).

BIBLIOGRAPHY

- Aleksandr K and Dimitri S, 'Командующий самообороной Славянска Игорь Стрелков: Задержанные наблюдатели - кадровые разведчики' *Komsomolskaya Pravda* (Online, 26 April 2014) <<https://www.kp.ru/daily/26225.7/3107725/>> accessed 25 August 2022
- Anadolu Agency, 'Around 400 US-Led Mercenaries Deployed to Ukraine' *Daily Sabah* (12 May 2014) <<https://www.dailysabah.com/economy/2014/05/12/around-400-usled-mercenaries-deployed-to-ukraine>> accessed 1 November 2022
- Auger VA, 'Right-Wing Terror: A Fifth Global Wave?' (2020) 14 *Perspectives on Terrorism* 87-97
- Baker-Beall C, 'The Concept of the Foreign Terrorist Fighter: An Immanent Critique' [2022] *European Journal of International Security* 1 <https://www.cambridge.org/core/product/identifier/S205756372200030X/type/journal_article> accessed 25 November 2022
- Balestrieri S, 'Wagner Group: Russian Mercenaries Still Floundering in Africa' (*SOFREP*, 19 April 2020) <<https://sofrep.com/news/wagner-group-russian-mercenaries-still-floundering-in-africa/>> accessed 30 August 2022
- Biloslavo F, 'Far-Right Fighters from Europe Fight for Ukraine' (*Eurasianet*, 8 June 2014) <<https://eurasianet.org/ukraine-far-right-fighters-from-europe-fight-for-ukraine>> accessed 23 November 2022
- Bukkvoll T, 'Russian Special Operations Forces in Crimea and Donbas' (2016) 46 *The US Army War College Quarterly: Parameters* <<https://press.armywarcollege.edu/parameters/vol46/iss2/4>> accessed 19 August 2022
- Canada PS, 'Listed Terrorist Entities: Currently Listed Entities' (*Public Safety Canada*) <<https://www.publicsafety.gc.ca/cnt/ntnl-scr/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx>> accessed 30 November 2022
- Carpenter M, 'The Russian Federation's Ongoing Aggression Against Ukraine' (Organization for Security and Co-operation in Europe, Vienna, 23 June 2022) <<https://www.osce.org/files/f/documents/7/c/521323.pdf>> accessed 28 November 2022
- Colborne M, *From the Fires of War: Ukraine's Azov Movement and the Global Far Right* (Bethan Johnson and John Richardson eds, ibidem 2022)
- Cousins B, 'Legal Questions Abound for Canadians Volunteering to Fight in Ukraine' *CTVNews* (Online, 24 March 2022) <<https://www.ctvnews.ca/canada/legal-questions-abound-for-canadians-volunteering-to-fight-in-ukraine-1.5833817>> accessed 30 November 2022

- Coydash H, 'Russian Sentenced to 5 Years' Imprisonment for Defending Ukraine' (*Kharkiv Human Rights Protection Group*, 16 June 2017) <<https://khp.org/en/1497057361>> accessed 30 October 2022
- Eboe-Osuji C and Dieng A, 'International Law, Mercenary Activities and Conflict Prevention in Africa' in Emmanuel Decaux, Adama Dieng and Malick Sow (eds), *From Human Rights to International Criminal Law / Des droits de l'homme au droit international pénal* (Brill | Nijhoff 2007) <https://brill.com/view/book/edcoll/9789047420446/Bej.9789004160552.i-776_025.xml> accessed 3 November 2022
- 'European Union Terrorism Situation and Trend Report' (EUROPOL 2022) <https://www.europol.europa.eu/cms/sites/default/files/documents/Tesat_Report_2022_0.pdf> accessed 28 November 2022
- Foreign Terrorist Fighters: Manual for Judicial Training Institutes - South-Eastern Europe* (United Nations 2019)
- Fraleigh A, 'The Algerian Revolution as a Case Study in International Law', *The International Law of Civil War* (The Johns Hopkins 1971)
- Giuliano E, 'The Social Bases of Support for Self-Determination in East Ukraine' (2015) 14 *Ethnopolitics* 513 <<https://doi.org/10.1080/17449057.2015.1051813>> accessed 17 November 2022
- Hart A, 'Right-Wing Waves: Applying the Four Waves Theory to Transnational and Transhistorical Right-Wing Threat Trends' [2021] *Terrorism and Political Violence* 1 <<https://www.tandfonline.com/doi/full/10.1080/09546553.2020.1856818>> accessed 9 August 2022
- Hauter J, 'Delegated Interstate War: Introducing an Addition to Armed Conflict Typologies' (2019) 12 *Journal of Strategic Security* 90 <<https://www.jstor.org/stable/26851262>> accessed 29 September 2022
- Heinsch R, 'Conflict Classification in Ukraine: The Return of the "Proxy War"?' (2015) 91 *International Law Studies* 323 <<https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1264&context=ils>> accessed 30 October 2022
- IHL, 'Customary Rules: 108. Mercenaries', *Customary Rules* (ICRC 2023) <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule108>> accessed 15 October 2023
- Ip J, 'Reconceptualising the Legal Response to Foreign Fighters' (2020) 69 *International and Comparative Law Quarterly* 103 <https://www.cambridge.org/core/product/identifier/S0020589319000447/type/journal_article> accessed 27 November 2022
- Karagiannis E, 'Ukrainian Volunteer Fighters in the Eastern Front: Ideas, Political-Social Norms and Emotions as Mobilization Mechanisms' (2016) 16 *Southeast European and Black Sea Studies* 139 <<https://www.tandfonline.com/doi/full/10.1080/14683857.2016.1148413>> accessed 30 November 2022

- Katchanovski I, 'The Separatist War in Donbas: A Violent Break-up of Ukraine?' (2016) 17 *European Politics and Society* 473 <<https://www.tandfonline.com/doi/full/10.1080/23745118.2016.1154131>> accessed 22 August 2022
- Kozhurin D, 'Who Are The Neo-Nazis Fighting For Russia In Ukraine?' *Radio Free Europe/Radio Liberty* (Web Sayfası, 27 May 2022) <<https://www.rferl.org/a/russian-neo-nazis-fighting-ukraine/31871760.html>> accessed 28 November 2022
- Kraehenmann S, *Foreign Fighters Under International Law* (Geneva Academy of International Humanitarian Law and Human Rights 2014)
- Kuzmenko O, "'Defend the White Race": American Extremists Being Co-Opted by Ukraine's Far-Right' (*bellingcat*, 15 February 2019) <<https://www.bellingcat.com/news/uk-and-europe/2019/02/15/defend-the-white-race-american-extremists-being-co-opted-by-ukraines-far-right/>> accessed 5 August 2022
- Leriche M, 'Mercenaries Gone Legit: Private Security Professionals and Private Military Security Companies as Transnational Actors' in David Malet and Miriam J Anderson (eds), *Transnational actors in war and peace: militants, activists, and corporations in world politics* (Georgetown University 2017)
- 'Liberation Tigers of Tamil Eelam (LTTE) v Council of the European Union' (European Union General Court Sixth Chamber 2014) Case Report T 208/11, T 508/11 <<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:62011TJ0208>> accessed 27 November 2022
- Liedekerke AD, 'The Paramilitary Phenomenon in Central and Eastern Europe' (2016) 25 *The Polish Quarterly of International Affairs* 25-34
- Limbotto WR and Nurcahyawan T, 'Pre-Emptive Self-Defence on Israel Hezbollah Armed Conflict Under International Law' (2018) 1 *Jurnal Hukum Adigama* 686 <<https://journal.untar.ac.id/index.php/adigama/article/view/2163>> accessed 7 August 2022
- Lobel WN, 'The Legality of the United States' Involvement in Vietnam -- A Pragmatic Approach' (1969) 23 *University of Miami Law Review* 792 <<https://repository.law.miami.edu/umlr/vol23/iss4/7>> accessed 7 August 2022
- Mackenzie A and Kaunert C, 'Radicalisation, Foreign Fighters and the Ukraine Conflict: A Playground for the Far-Right?' (2021) 10 *Social Sciences* 116 <<https://www.mdpi.com/2076-0760/10/4/116>> accessed 1 August 2022
- Major M-F, 'Mercenaries and International Law' (1992) 22 *Georgia Journal of International & Comparative Law* 103-150
- Malet D, 'Foreign Fighter Mobilization and Persistence in a Global Context' (2015) 27 *Terrorism and Political Violence* 1 <<http://www.tandfonline.com/doi/full/10.1080/09546553.2015.1032151>> accessed 6 November 2022

- Manemann von T, 'Far-Right Terrorism: Attempt to Re-Form Atomwaffen Division in Europe' (*Belltower.News*, 19 April 2021) <<https://www.belltower.news/far-right-terrorism-attempt-to-re-form-atomwaffen-division-in-europe-114253/>> accessed 16 August 2022
- Marten K, 'The GRU, Yevgeny Prigozhin, and Russia's Wagner Group: Malign Russian Actors and Possible U.S. Responses' (Hearing on Exposing and Demanding Accountability for Kremlin Crimes Abroad, Washington D.C., 20 July 2020) <<https://www.congress.gov/116/meeting/house/110854/witnesses/HHRG-116-FA14-Wstate-MartenK-20200707.pdf>> accessed 30 October 2022
- Mehra T and Thorley A, 'Foreign Fighters, Foreign Volunteers and Mercenaries in the Ukrainian Armed Conflict' (*International Center for Counter-Terrorism*, 11 July 2022) <<https://icct.nl/publication/foreign-fighters-volunteers-mercenaries-in-ukraine/>> accessed 30 July 2022
- Melnyk O, 'War Dead and (Inter)-Communal Ethics in the Russian-Ukrainian Borderlands: 2014-2018' in David R Marples (ed), *The war in Ukraine's Donbas: origins, contexts, and the future* (Central European University 2022)
- Mikheieva O, 'Motivations of Pro-Russian and Pro-Ukrainian Combatants in the Context of the Russian Military Intervention in the Donbas' in David R Marples (ed), *The war in Ukraine's Donbas: origins, contexts, and the future* (Central European University 2022)
- Miller C and Rivas RC, 'The Year in Hate and Extremism 2021' (Southern Poverty Law Center 2022) Annual
- Muradov I, 'The Donbas Conflict as a Form of Hybrid Warfare: A Neoclassical Realist Analysis' (PhD, Middle East Technical University 2019)
- Nebenzia V, 'Statement by Permanent Representative Vassily Nebenzia at UN Security Council Briefing' (Web Page, 23 October 2022) <<https://russiaun.ru/en/news/09082022n>> accessed 30 November 2022
- Özdemir Ş and Eminoğlu A, 'Yeni Nesil Savaş: Rusya'nın Donbas'ta Uyguladığı Hibrit Savaş Yöntemi' (2022) 15 *Hitit Sosyal Bilimler Dergisi* 67 <<https://dergipark.org.tr/tr/doi/10.17218/hititsbd.1066684>> accessed 25 September 2022
- Paulussen C, Cuyckens H and Fortin K, 'The Prosecution of Foreign Fighters under International Humanitarian Law: Misconceptions and Opportunities' (*International Centre for Counter-Terrorism*, 13 December 2019) <<https://icct.nl/publication/the-prosecution-of-foreign-fighters-under-international-humanitarian-law-misconceptions-and-opportunities/>> accessed 4 December 2022
- Paust JJ, 'Use of Military Force in Syria by Turkey, NATO, and the United State' (2012) 34 *University of Pennsylvania Journal of International Law* 431-446 <<https://heinonline.org/HOL/Page?handle=hein.journals/upjil34&id=455&div=&collection=>>
- Pazarıcı H, *Uluslararası Hukuk* (8th edn, Turhan 2009)

- 'Putin Expands Fast-Track Russian Citizenship to All of Ukraine' *Al Jazeera* (Web Sayfası, 11 July 2022) <<https://www.aljazeera.com/news/2022/7/11/putin-expands-fast-track-russian-citizenship-to-all-of-ukraine>> accessed 4 December 2022
- Putin V, "'No Other Option": Excerpts of Putin's Speech Declaring War' (*Al Jazeera*, 24 February 2022) <<https://www.aljazeera.com/news/2022/2/24/putins-speech-declaring-war-on-ukraine-translated-excerpts>> accessed 7 August 2022
- Rapoport DC, 'The Capitol Attack and the 5th Terrorism Wave' (2021) 33 *Terrorism and Political Violence* 912 <<https://www.tandfonline.com/doi/full/10.1080/09546553.2021.1932338>> accessed 6 February 2022
- ---, *Waves of Global Terrorism: From 1880 to the Present* (Columbia University Press 2022)
- Rawlinson K, 'Neo-Nazi Groups Recruit Britons to Fight in Ukraine' *The Guardian* (2 March 2018) <<https://www.theguardian.com/world/2018/mar/02/neo-nazi-groups-recruit-britons-to-fight-in-ukraine>> accessed 22 November 2022
- Rekawek K, 'Neither "NATO's Foreign Legion" Nor the "Donbass International Brigades"' (2015) 6 *The Polish Institute of International Affairs* 1-12
- ---, 'Career Break or a New Career? Extremist Foreign Fighters in Ukraine' (Counter Extremism Project (CEP) 2020) Research Report <https://www.counterextremism.com/sites/default/files/CEP%20Report_Career%20Break%20or%20a%20New%20Career_Extremist%20Foreign%20Fighters%20in%20Ukraine_April%202020.pdf> accessed 2 August 2022
- -, 'Looks Can Be Deceiving: Extremism Meets Paramilitarism in Central and Eastern Europe' (Counter Extremism Project 2021) Research Report <https://www.counterextremism.com/sites/default/files/2021-06/CEP%20Report_Looks%20Can%20Be%20Deceiving_Extremism%20Meets%20Paramilitarism%20in%20CEE_June%202021_1.pdf> accessed 6 December 2022
- 'Russian Federation Announces "Special Military Operation" in Ukraine as Security Council Meets in Eleventh-Hour Effort to Avoid Full-Scale Conflict' <<https://press.un.org/en/2022/sc14803.doc.htm>> accessed 6 August 2022
- Schmid AP, 'Foreign (Terrorist) Fighter Estimates: Conceptual and Data Issues' (International Centre for Counter-Terrorism 2015) <<https://www.jstor.org/stable/resrep17478>> accessed 10 August 2022
- Singil N, 'Uluslararası Hukukta Meşru Müdafaa Hakkına Yeni bir Yaklaşım: İsteksiz veya Aciz Devlet Doktrini' (2021) 29 *Selcuk Üniversitesi Hukuk Fakültesi Dergisi* 2837 <<https://dergipark.org.tr/doi/10.15337/suhfd.937045>> accessed 7 August 2022
- Skibitskyion V, 'Private Military Companies and Their Role in Modern Regional Conflicts' (OSCE Forum 949, FSC.DEL/140/20, 17 June 2020) <<https://www.osce.org/files/f/documents/b/1/456016.pdf>> accessed 1 November 2022

- Sommario E, 'The Status of Foreign Fighters under International Humanitarian Law' in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (TMC Asser 2016) <https://link.springer.com/chapter/10.1007/978-94-6265-099-2_9>
- Sonne P and Shishkin P, 'Pro-Russian Commander in Eastern Ukraine Sheds Light on Origin of Militants' *Wall Street Journal* (Online, 26 April 2014) <<https://online.wsj.com/article/SB10001424052702304788404579526160643349256.html>> accessed 25 August 2022
- Stepaniuk N, 'Limited Statehood, Collective Action, and Reconfiguration of Citizenship in Wartime: Volunteer Engagement Amidst the Donbas War' in David R Marples (ed), *The war in Ukraine's Donbas: origins, contexts, and the future* (Central European University 2022)
- Sukhankin S, 'Foreign Mercenaries, Irregulars and "Volunteers": Non-Russians in Russia's Wars' (Jamestown Foundation 2019) <<https://jamestown.org/program/foreign-mercenaries-irregulars-and-volunteers-non-russians-in-russias-wars/>>
- , 'Russian Private Military Contractors in the Donbas: Rehearsing Future Voyages' in David R Marples (ed), *The War in Ukraine's Donbas: Origins, Context, and Future* (Central European University 2022)
- Talmon SAG, 'German Constitutional Court Considers Self-Defence Against Non-State Actors a Tenable Interpretation of Article 51 of the Un Charter' [2019] SSRN Electronic Journal <<https://www.ssrn.com/abstract=3473211>> accessed 7 August 2022
- Taylor L, 'Foreign Terrorist Fighter Laws: Human Rights Rollbacks Under UN Security Council Resolution 2178' (2016) 18 *International Community Law Review* 455 <https://brill.com/view/journals/iclr/18/5/article-p455_6.xml> accessed 23 November 2022
- 'The Criminal Code of Ukraine' (*Official web-portal of the Parliament of Ukraine*) <<https://zakon.rada.gov.ua/go/2341-14>> accessed 27 October 2022
- 'The Montreux Document: On Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict' <https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/voelkerrecht/20192511-montreux-document_EN.pdf> accessed 20 September 2022
- The Office of Prosecutor, 'Report on Preliminary Examination Activities' [2016] International Criminal Court <https://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE_ENG.pdf>
- Tsvetkova M, 'Military Veterans to Kremlin: Come Clean about Syria Mission' *Reuters* (5 July 2018) <<https://www.reuters.com/article/us-mideast-crisis-syria-russia-contr-acto-idUSKBN1JV2QL>> accessed 30 October 2022

- Tsybaliuk Y, 'On Russia's Ongoing Aggression against Ukraine and Illegal Occupation of Crimea' <<https://www.osce.org/files/f/documents/b/a/511390.pdf>> accessed 30 October 2022
- Tüysüzoğlu G, 'Rusya Dış Politikası'nın Etkin Silahı: Donmuş Çatışma Bölgeleri' (2017) 13 Güvenlik Stratejileri Dergisi 185 <<https://dergipark.org.tr/tr/doi/10.17752/guvenlikstrj.356957>> accessed 25 September 2022
- 'Ukraine Institutes Proceedings against the Russian Federation and Requests the Court to Indicate Provisional Measures' <<https://www.icj-cij.org/public/files/case-related/182/182-20220227-PRE-01-00-EN.pdf>> accessed 13 October 2023
- Umland A, 'Irregular Militias and Radical Nationalism in Post-Euromaydan Ukraine: The Prehistory and Emergence of the "Azov" Battalion in 2014' (2019) 31 Terrorism and Political Violence 105-131 <<https://www.tandfonline.com/doi/full/10.1080/09546553.2018.1555974>> accessed 6 November 2022
- UN Human Rights Council Working Group, 'Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination' (s 2015) I A/70/330 <<https://undocs.org/A/70/330>> accessed 20 October 2022
- UN Human Rights Council Working Group, 'On the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination on Its Mission to Ukraine' (UN General Assembly 2016) A/HRC/33/43/Add.3 <<https://undocs.org/A/HRC/33/43/Add.3>> accessed 30 October 2022
- 'United States Designates Russian Imperial Movement and Leaders as Global Terrorists' (*United States Department of State*) <<https://2017-2021.state.gov/united-states-designates-russian-imperial-movement-and-leaders-as-global-terrorists/>> accessed 30 November 2022
- Uyaniker HB, 'Kırım Sorunundan Donbas Savaşına Rusya Ukrayna Uzlaşmazlığı' (2018) 15 Karadeniz Araştırmaları
- Van Poecke T, Verbruggen F and Yperman W, 'Terrorist Offences and International Humanitarian Law: The Armed Conflict Exclusion Clause' (2021) 103 International Review of the Red Cross 295 <https://www.cambridge.org/core/product/identifier/S1816383121000321/type/journal_article> accessed 30 July 2022
- Weiss M and others, 'The Fallen Mercenaries in Russia's Dark Army' [2021] *New Lines Magazine* <<https://newlinesmag.com/reportage/the-fallen-mercenaries-in-russias-dark-army/>> accessed 30 October 2022
- 'White Supremacy Extremism: The Transnational Rise of the Violent White Supremacist Movement' (The Soufan Center 2019) <<https://thesoufancenter.org/wp-content/uploads/2019/09/Report-by-The-Soufan-Center-White-Supremacy-Extremism-The-Transnational-Rise-of-The-Violent-White-Supremacist-Movement.pdf>> accessed 31 August 2022

International Red Cross, Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 <https://ihl-databases.icrc.org/assets/treaties/375-GC-III-EN.002.pdf>

--, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

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

Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations 1970

Resolution 2178 2014

Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 2014 1088