

SHORTER ARTICLE

Modern Slavery in Armed Conflict: Foreign ‘Forced Fighters’ in Ukraine

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Abstract

Since Russian President Vladimir Putin announced his support for a plan to recruit fighters from abroad to join the Russian army in early 2022, foreigners have fought in Ukraine as part of Russian forces. Many of these fighters are mercenaries in the commonly understood sense of that term. That is, they are fighters who have gone, intentionally, to fight for Russia in return for significant payment. Although these fighters have often found themselves in Ukraine with little to no training and without their promised salaries, this article is not primarily concerned with them. Instead, it is interested in those fighters who arrived in Russia without knowing that they would be sent to the conflict, or who did not know that they were going to Russia at all. The article argues that such ‘forced fighters’ who are misled or tricked into taking part in an armed conflict should be given protection beyond that given to other combatants, specifically that they should be offered repatriation to their countries of origin. It argues that international humanitarian law is unable to effectively capture the position of these fighters or provide adequate protection to them. It suggests, rather, that the law on modern slavery can provide a way to understand and reconceptualise the position of these fighters—as victims of servitude and human trafficking—and that this body of law can deliver the remedy of repatriation to them.

Keywords: public international law; international human rights law; international humanitarian law; modern slavery; human trafficking; servitude; Russia; Ukraine

1. Introduction

On 11 March 2022, Russian President Vladimir Putin announced his support for a plan to recruit foreigners to join the Russian Army in its invasion of Ukraine.¹ Since that announcement, fighters from abroad, predominantly from Nepal, India, Sri Lanka,²

¹ ‘Russia-Ukraine War: Putin Greenlights Letting Volunteers Fight’ *Al Jazeera* (11 March 2022) <<https://www.aljazeera.com/news/2022/3/11/putin-green-lights-plan-to-let-volunteers-fight-in-ukraine>>.

² S Shamim, ‘Why Are South Asians Going to Fight in the Russia-Ukraine War?’ *Al Jazeera* (1 April 2024) <<https://www.aljazeera.com/news/2024/4/1/why-are-south-asians-going-to-fight-in-ukraine>>; S Pokharel and M Melwani, ‘Russia Has Recruited as Many as 15,000 Nepalis to Fight Its War. Many Returned

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and, increasingly, from Ghana and Sierra Leone and other African States,³ have fought in Ukraine as part of the Russian forces. Many of these fighters are mercenaries in the commonly understood sense of that term. That is, they are nationals of States not party to a conflict who take part in hostilities primarily for significant payment.⁴ These fighters have encountered significant obstacles in Ukraine: some have not earned as much money as they were initially promised, others have been deprived of their salaries altogether and many have been thrown into the conflict with little to no support or training, despite having been promised an intensive, three-month training programme.⁵

However, this article is not concerned with these fighters. Rather, it is interested in those fighters who arrived in Russia without knowing that they would be sent to the conflict, or who did not know that they were going to Russia at all: for example, those who thought that they were going to Russia for jobs as security guards;⁶ who were lured there by the promise of admission to a private university;⁷ who thought they were going to Dubai, Germany or Poland for jobs only to be sent on to Russia by agents;⁸ and those who travelled to Russia as tourists, before being taken to Belarus by agents, detained and subsequently handed over to Russian authorities.⁹ These fighters recount having their passports taken away, and being

Traumatized. Some Never Came Back' *CNN* (11 February 2024) <<https://www.cnn.com/2024/02/10/asia/nepal-fighters-russia-ukraine-families-intl-cmd/index.html>>.

³ M Kalinin, 'Lost in Translation: How African Migrants Are Tricked and Threatened into Russian Military Service' *The Insider* (7 November 2024) <<https://theins.ru/en/politics/276018>>; Radio France Internationale (RFI), 'African Troops "Forced to Ukraine Frontlines" while Russians Stay in Camp' *RFI* (17 January 2025) <<https://www.rfi.fr/en/africa/20250117-african-troops-forced-to-ukraine-frontlines-while-russians-stay-in-camp>>.

⁴ See Section 2.

⁵ Shamim (n 2); S Kharel, "Want to Go Home": Nepalis Fighting for Russia in Ukraine Describe Horrors' *Al Jazeera* (10 February 2024) <<https://www.aljazeera.com/features/2024/2/10/want-to-go-home-nepalis-fighting-for-russia-in-ukraine-describe-horrors>>; S Dayal, 'How Were Indians Duped into Fighting for Russia in the Ukraine War?' *Reuters* (9 July 2024) <<https://www.reuters.com/world/how-were-indians-duped-into-fighting-russia-ukraine-war-2024-07-09/>>.

⁶ See, e.g. B Stewart, 'From the Himalayas to the Front Line in Ukraine' *CBC* (12 October 2024) <<https://www.cbc.ca/newsinteractives/features/nepalese-prisoners-of-war>>; A Padanna, 'Ukraine War: The Indian Men Traumatized by Fighting for Russia' *BBC News* (10 April 2024) <<https://www.bbc.com/news/world-asia-india-68767470>>.

⁷ See, e.g. A Rajvanshi, 'How Russia Lured Indian Men to Fight in Ukraine' *Time* (9 August 2024) <<https://time.com/7009413/india-russia-ukraine-war-mercenaries/>>; 'Russia-Based Agents Trafficked Indians for Ukraine War Using Jobs, University Admissions: CBI' *The New Indian Express* (8 March 2024) <<https://www.newindianexpress.com/nation/2024/Mar/08/russia-based-agents-trafficked-indians-for-ukraine-war-using-jobs-university-admissions-cbi>>.

⁸ See, e.g. H Gardner, 'Indians Tricked into Fighting for Putin in Ukraine' *The Times* (10 February 2025) <<https://www.thetimes.com/world/russia-ukraine-war/article/india-ukraine-trafficked-putin-russia-s38rw5zlx>>; 'Indians Tricked by Promise of Work in Russia Instead Die Fighting in Ukraine, Investigators Say' *Sky News* (8 March 2024) <<https://news.sky.com/story/indians-tricked-by-promise-of-work-in-russia-instead-die-fighting-in-ukraine-investigators-say-13089857>>; R Fareed, 'Indians Die Fighting for Russia in Ukraine, Leaving a Trail of Helplessness' *Al Jazeera* (14 March 2024) <<https://www.aljazeera.com/news/2024/3/14/as-indians-die-fighting-for-russia-families-recount-their-pleas-for-help>>; Rajvanshi (n 7).

⁹ See, e.g. H Ellis-Petersen and A Hassan, "He Had No Idea He Was Being Sent to a War Zone": The Indian and Nepali Men on Frontlines in Ukraine' *The Guardian* (7 March 2024) <<https://www.theguardian.com/world/2024/mar/07/he-had-no-idea-he-was-being-sent-to-a-war-zone-the-indian-and-nepalese-men-on-frontlines-in-ukraine>>.

made to sign documents in Russian, only to later learn that they had committed themselves to fighting in the Russian forces ‘with no way out except years in jail’.¹⁰ After two weeks of weapons and combat training, they reported being sent to the front lines of the ongoing armed conflict in Ukraine.¹¹

This article calls these fighters, who are misled or tricked into participating in an armed conflict, ‘forced fighters’ and it argues that they should be given protection beyond that given to other combatants. Specifically, it argues that forced fighters should be offered repatriation to their countries of origin by the Russian authorities, or where they are taken into Ukrainian captivity, by the Ukrainian authorities. Repatriation has been sought by the fighters themselves,¹² and would not burden States engaged in armed conflict. The article’s position is that international humanitarian law (IHL) is unable to effectively capture the position of these fighters or, in turn, to provide protection to them. It suggests, rather, that the law on modern slavery provides a way to understand and reconceptualise the position of these fighters and that this body of law can, importantly, deliver the remedy of repatriation to them. While the focus of this article is on the Russia-Ukraine conflict and the position of specific fighters in that conflict, it is expected that the argument could be applied to other conflicts to provide protection to fighters misled or duped into being combatants. It might also help to stop such recruitment in the first place.

The argument is made in three parts. Section 2 briefly examines the status of these fighters under IHL. It argues that despite the media’s broad characterisation of all foreigners fighting in Ukraine as ‘mercenaries’, fighters misled or forced into participating in the conflict do not fit within that definition. These fighters should instead be classified as ‘privileged combatants’ and be entitled to the protections that come with that status. Classification of these fighters as combatants, however, fails to acknowledge the fact that they have been misled and forced into combat, and in consequence does not provide these fighters with adequate or effective protections before the end of hostilities. Section 3 explains that international human rights law (IHRL) provides a framework to better understand the situation of these fighters and their status (properly understood) as victims of slavery-like practices, such as servitude and human trafficking. Section 4 examines the consequences of this finding for forced fighters, as well as for Russia and Ukraine. It establishes that Russian State responsibility arises with respect to all such fighters, and Ukrainian State responsibility arises where these fighters are in Ukrainian captivity and, accordingly, both States are under a legal obligation to provide an effective remedy to forced fighters. The article makes the case that the law of modern slavery provides for a remedy of restitution in these circumstances, and that restitution by way of repatriation is the most effective and appropriate remedy available.

¹⁰ *ibid*; Gardner (n 8); Dayal (n 5).

¹¹ Ellis-Petersen and Hassan (n 9); Rajvanshi (n 7).

¹² C Lynch, “‘Treated like Dogs’: Russia Recruiting Thousands of Nepali Men to Fight in War on Ukraine” *Sky News* (16 April 2024) <<https://news.sky.com/story/treated-like-dogs-russia-recruiting-thousands-of-nepali-men-to-fight-in-war-on-ukraine-13095184>>; Kharel (n 5); ‘Indian Men “Tricked” Into Fighting in Ukraine Appeal for Help’ *The Moscow Times* (6 March 2024) <<https://www.themoscowtimes.com/2024/03/06/indian-men-tricked-into-fighting-in-ukraine-appeal-for-help-a84355>>.

2. International humanitarian law

The label ‘mercenary’ is often given by the media to all foreigners fighting in Ukraine,¹³ and the Russian Government has stated that it regards any non-nationals fighting for Ukraine as mercenaries.¹⁴ Article 47(2) of Protocol Additional to the Geneva Convention of 19 August 1949, and relating to the Protection of Victims of International Armed Conflicts (API), to which both Russia and Ukraine are parties, provides that a person is a ‘mercenary’ where that person:

- i. is specially recruited locally or abroad, in order to fight in an armed conflict and in order to take a direct part in the hostilities;
- ii. does, in fact, participate directly in the hostilities;
- iii. 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;
- iv. is neither a national of a party to the conflict nor a resident of a territory controlled by a party to the conflict;
- v. is not a member of the armed forces of a party to the conflict; and
- vi. has not been sent by a State that is not a party to the conflict on official duty as a member of its armed forces.¹⁵

Article 47(1) API provides that mercenaries are not entitled to combatant status, which means that mercenaries are not protected from prosecution and remain liable for conviction and imprisonment, nor are they entitled to prisoner of war (POW) status on capture. This position is reflected in customary international law.¹⁶

Forced fighters clearly do meet some of the criteria under Article 47(2) API. First, while these fighters did not know that they were being recruited in order to fight in an armed conflict, they were nevertheless typically recruited abroad, by agents, in order to fight in a conflict and in order to take a direct part in hostilities, thereby arguably satisfying criterion (i). Azad Yousuf Kumar, for example, was recruited by an agent who he had met through YouTube to whom he paid 300,000 rupees (£3,000) for what he thought was a job as a domestic worker in Dubai,¹⁷ and Nandaram Pun, from Rolpa in

¹³ See, e.g. Lynch (n 12); E Court, ‘Over 3,000 Nepalis Joined Russian Army, Captured POW Estimates’ *The Kyiv Independent* (25 June 2024) <<https://kyivindependent.com/nepalis-fighting-in-russian-army-captured-pow-estimates/>>; N Shrestha, ‘Nepali Mercenaries Lured to Fight for Russia in Ukraine’ *The Independent* (10 March 2024) <<https://www.independent.co.uk/arts-entertainment/photography/nepali-mercenaries-lured-fight-russia-ukraine-b2503358.html>>; *Sky News* (n 8).

¹⁴ J Lemon, ‘Russia Vows Prosecution of Foreign Fighters after 16K Join Ukraine’ *Newsweek* (3 March 2022) <<https://www.newsweek.com/russia-vows-prosecution-foreign-fighters-after-16k-join-ukraine-1684671>>.

¹⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (API) art 47(2). On the regulation of mercenaries, and the reasons for that regulation, see MF Major, ‘Mercenaries and International Law’ (2014) 22 *GaJICL* 103.

¹⁶ API (n 15) art 47(1). See International Committee of the Red Cross, ‘Rule 108. Mercenaries’ *International Humanitarian Law Databases: Customary IHL* <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule108>>.

¹⁷ See Rajvanshi (n 7).

Nepal, was recruited by an agent who he met on social media for what he thought was a job in Germany.¹⁸ These are just two examples among many others.¹⁹ Second, the fighters do actively take part in hostilities (criterion (ii)): as Hemil Mangukiya told his family, he was ‘taken to the frontlines, where he was made to dig trenches, carry ammunition and operate rifles and machine guns’.²⁰ Third, the fighters are not nationals of either Ukraine or Russia—i.e. the parties to the conflict—nor have they been sent by States that are not parties to the conflict on official duties as members of that State’s armed forces (criteria (iv) and (vi)).²¹

It is more difficult to demonstrate that the other criteria under Article 47(2) API are satisfied. The fighters under consideration here are undoubtedly driven by a desire for private gain (criterion (iii))—they leave their countries of origin on the promise of jobs, salaries and sometimes residency permits and/or citizenship.²² However, the fact that they are misled into fighting in the ongoing armed conflict between Russia and Ukraine means that their desire for private gain cannot be said to be what motivated them to take part in hostilities (as required by criterion (iii) in Article 47(2) API set out above). These fighters have no such motivation to take part in hostilities given their lack of awareness that they were going to Russia, or their understanding that they were going for a particular job.²³ It is also unclear whether the compensation given to these fighters—or promised in the documents which they sign (albeit without understanding what they say)—is in excess of what is promised or paid to combatants of similar ranks and functions in the Russian armed forces. There are frequently practical difficulties in finding out whether a person is being paid, and even more so whether they are being paid more than other, similarly positioned combatants.²⁴ Given that there are reports that even those fighters from abroad who knowingly go to Russia to fight in the war are being deprived of their promised salaries,²⁵ it seems unlikely that that forced fighters are being paid in excess of other combatants of a similar rank.

Forced fighters are also unlikely to meet the definition of mercenary on the basis that they likely are, technically, members of the armed forces of a party to the conflict

¹⁸ Ellis-Petersen and Hassan (n 9).

¹⁹ Y Sharma, ‘Families of Indians Duped into Russia’s War Hope Modi Will Bring Them Home’ *Al Jazeera* (9 September 2024) <<https://www.aljazeera.com/news/2024/7/9/families-of-indians-duped-into-russias-war-hope-modi-will-bring-them-home>>; Sky News (n 8); K Francis, ‘Sri Lanka Reports 455 Men Duped into Fighting for Russia as 16 Go Missing’ *The Independent* (31 May 2024) <<https://www.independent.co.uk/asia/south-asia/sri-lanka-russia-army-ukraine-war-b2554439.html>>; Gardner (n 8).

²⁰ Ellis-Petersen and Hassan (n 9).

²¹ Cf the North Korean soldiers fighting for Russia in Ukraine: see, e.g. J McCurry, ‘North Korea Preparing to Send More Troops to Ukraine War, Says South Korea’ *The Guardian* (24 January 2025) <<https://www.theguardian.com/world/2025/jan/24/north-korea-preparing-to-send-more-troops-to-ukraine-war-says-south-korea>>.

²² See, e.g. Ellis-Petersen and Hassan (n 9); Reuters (n 5); Rajvanshi (n 7).

²³ See nn 6–9.

²⁴ T Mehra and A Thorley, ‘Foreign Fighters, Foreign Volunteers and Mercenaries in the Ukrainian Armed Conflict’ (International Centre for Counter-Terrorism, 11 July 2022) <<https://icct.nl/publication/foreign-fighters-foreign-volunteers-and-mercenaries-ukrainian-armed-conflict>>.

²⁵ Shamim (n 2).

(as required by the criterion (v) in Article 47(2)). The fighters are reportedly forced to sign documents, in Russian, which commit them to the Russian armed forces for a period of time. Mohammad Yousuf Kumar, whose son ‘was happy to have found a job in Dubai’, said: ‘[t]hey were asked to sign documents written in Russian. The Russians threatened to kill them if they didn’t sign. My son doesn’t understand Russian. How could he know what was written on the paper?’²⁶ The practice of compelling foreign fighters to sign up to the armed forces of a party to the conflict is well known as a tactic deliberately employed by some States to avoid their fighters being labelled as mercenaries.²⁷

On balance, it seems that forced fighters are not mercenaries. If the fighters have not joined the Russian armed forces, then they are likely civilians;²⁸ though any protection that comes from that status (such as not being legitimate targets) is lost while they take direct part in hostilities.²⁹ Given that these fighters are directly engaged in the armed conflict on the front lines, they are unlikely to be considered civilians.

If these fighters have joined the Russian armed forces (albeit unknowingly or under threat or coercion) as reports seem to indicate, then they will be privileged combatants. Privileged combatants have the right to participate directly in hostilities.³⁰ This means that they are legitimate targets in conflict, but that they are free from prosecution for their mere participation in hostilities. Other protections flow from the status of combatant—the most significant being their entitlement to POW status if they fall into the hands of the enemy.³¹ Article 45(1) API provides that should there be any doubt as to whether a person is entitled to POW status, that person shall have the status and be protected by Geneva Convention (III) relative to the Treatment of Prisoners of War (Third Geneva Convention) and API until the status is determined by a competent tribunal. That forced fighters are being treated as privileged combatants seems to be reflected on the ground in some cases, with the Nepalese Foreign Ministry confirming in early 2024 that four Nepali fighters were, at that time, being held as POWs by Ukraine.³²

These protections, and particularly that of POW status, are undoubtedly important for forced fighters, but they apply to all combatants regardless of their individual

²⁶ S Landrin and J Ali, ‘Indians Are Unwittingly Recruited into the Russian Army’ *Le Monde* (29 February 2024) <https://www.lemonde.fr/en/international/article/2024/02/29/indians-are-unwittingly-recruited-into-the-russian-army_6573586_4.html>. See also Gardner (n 8).

²⁷ E Kwakwa, ‘The Current Status of Mercenaries in the Law of Armed Conflict’ (1990) 14 *Hastings Int’l & Comp L Rev* 67, 73.

²⁸ There is a possibility that the fighters might be irregular combatants and therefore entitled to combatant protection and prisoner of war (POW) status upon capture under the Third Geneva Convention art 4A(2). This classification is, however, unlikely. While the fighters may belong to a party to the conflict, they do not seem to be ‘[m]embers of other militias and members of other volunteer corps’. Their recruitment appears to be disparate, and their participation seems to be part of the Russian forces, even if they are not officially part of those forces: see Geneva Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (Third Geneva Convention) art 4A(2).

²⁹ See API (n 15) arts 50(1), 51(3).

³⁰ *ibid* art 43(2).

³¹ Third Geneva Convention (n 28) art 4A(1).

³² Pokharel and Melwani (n 2). See also Stewart (n 6); Court (n 13).

circumstances—they do not acknowledge the specific vulnerability of these fighters or the fact that they were misled into being combatants. It is of course significant that forced fighters would enjoy POW status if captured, and the status removes them from further participation in the conflict and ensures their humane treatment while in captivity. However, this protection, by definition, only applies in the very specific circumstance of capture by enemy forces. Many of these fighters will be (and have been) killed in the conflict rather than being captured,³³ a likelihood which seems to increase given the reports that forced fighters are sometimes given only two weeks of military training and are pushed to the front line as ‘cannon fodder’.³⁴ As one Nepali soldier, Ratna Karki, described it, ‘[t]he Russians just commanded us from behind. We were like their shield’.³⁵ Those who are neither captured nor killed will continue to be forced to fight.

The status of privileged combatant provides more protections for forced fighters than the status of mercenary, but neither status adequately captures the fact that these fighters have been misled into combat nor does it provide them with sufficient or effective protection. Section 3 suggests that IHRL might instead facilitate this.

3. International human rights law

The International Court of Justice has held on several occasions that IHRL continues to apply alongside and in a supplementary manner to IHL,³⁶ and the International Criminal Tribunal for the Former Yugoslavia described in *Prosecutor v Kunarac* how the two bodies of law are complementary, noting that ‘in terms of goals, values and terminology’, IHRL ‘is generally a welcome and needed assistance to determine the content of customary international law in the field of humanitarian law’.³⁷ This article now examines whether IHRL can assist in providing greater protection in armed conflict to forced fighters than IHL alone can provide. Specifically, it analyses whether these fighters could potentially be classified as victims of modern slavery. ‘Modern slavery’ is a policy term used ‘to refer to contemporary forms of slavery, including slavery, servitude, human trafficking, forced labour and child labour’.³⁸

³³ AFP, ‘Sri Lanka Says 16 Citizens Killed Fighting in Ukraine’ *The Moscow Times* <<https://www.themoscowtimes.com/2024/05/15/sri-lanka-says-16-citizens-killed-fighting-in-ukraine-a85129>>; I Qureshi and N Farooquee, ‘Ukraine War: Indians “Duped” by Agents into Fighting for Russia’ *BBC News* (26 February 2024) <<https://www.bbc.com/news/world-asia-india-68366861>>; E Anbarasan, ‘War in Ukraine: Two Indian Nationals Recruited by Russia Killed’ *BBC News* (11 June 2024) <<https://www.bbc.com/news/articles/cv225e8dpdgo>>; Fareed (n 8).

³⁴ See, e.g. Kalinin (n 3); Lynch (n 12); Ellis-Petersen and Hassan (n 9); N Bentrad et al, ‘“They Put Us All in Front”: Nepalese Men Recruited by Russia to Fight in Ukraine’ *France 24* (3 April 2024) <<https://www.france24.com/en/tv-shows/focus/20240403-they-put-us-all-in-front-nepalese-men-recruited-by-russia-to-fight-in-ukraine>>.

³⁵ Kharel (n 5).

³⁶ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, para 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, para 106; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Merits) [2005] ICJ Rep 168, para 243.

³⁷ *Prosecutor v Kunarac et al* (Judgment) IT-96-23-T (22 February 2001) paras 467, 471.

³⁸ P Webb and R Garcandia, ‘State Responsibility for Modern Slavery: Uncovering and Bridging the Gap’ (2019) 68 ICLQ 539, 540.

Protection against these practices is contained in international human rights treaties to which Russia and/or Ukraine are party.³⁹

Russia and Ukraine have both ratified the International Covenant on Civil and Political Rights (ICCPR), Article 8(1)–(3)(a) of which provides, in relevant part, that: (1) '[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited'; (2) '[n]o one shall be held in servitude'; and that (3) '[n]o one shall be required to perform forced or compulsory labour'.⁴⁰ Article 4(2) ICCPR further provides that no derogation from Article 8(1)–(2) is permitted. Article 4(1) of the European Convention of Human Rights (ECHR), to which Ukraine is a State Party, provides in near identical terms to Article 8 ICCPR that '[n]o one shall be held in slavery or servitude'.⁴¹ Article 4(2) ECHR provides that '[n]o one shall be required to perform forced or compulsory labour'. Similarly, Article 15(2) ECHR provides that States cannot derogate from Article 4(1).

The argument of this article is not that forced fighters are 'slaves' nor is it that forced fighters are victims of forced or compulsory labour. Slavery is 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.⁴² There is no evidence that rights of legal ownership are being exercised over forced fighters. With respect to forced or compulsory labour, both the ICCPR and the ECHR further specify in the abovementioned articles that the phrase 'forced or compulsory labour' does not include service of a military character.⁴³ This exception is directed at compulsory military service (i.e. conscription)⁴⁴ so it would be unlikely to capture the situation of fighters who are misled into military service. Nevertheless, given that military service is an exception, the right to be free from forced or compulsory labour is unlikely to apply in this context and thus is not considered in this article. No such military exception applies to the right to be free from slavery or servitude.⁴⁵

The argument of this article is that forced fighters might be classified as victims of servitude and/or human trafficking. According to Allain, servitude should be understood as 'such exploitation which does not manifest powers which would normally be associated with ownership, whether de jure or de facto'.⁴⁶ Nowak's

³⁹ The focus here is on human rights treaties, but the prohibition of slavery is contained in several treaties: see, e.g. the Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253 (1926 Slavery Convention); Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 226 UNTS 3. The prohibition is recognised as a peremptory norm: see, e.g. *Barcelona Traction, Light and Power Co Ltd (Belgium v Spain)* (Merits) [1970] ICJ Rep 3, 32.

⁴⁰ International Covenant on Civil and Political Rights (adopted 15 December 1966, entered into force 23 March 1976) 999 UNTS 3 (ICCPR).

⁴¹ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221 (ECHR).

⁴² 1926 Slavery Convention (n 39) art 4; *Siliadin v France* App No 73316/01 (ECtHR, 26 July 2005) para 122.

⁴³ ICCPR (n 40) art 8(3)(c)(ii); ECHR (n 41) art 4(3)(b).

⁴⁴ *Chitos v Greece* App No 51637/12 (ECtHR, 4 June 2015) paras 83–89. See also Convention (No 29) concerning Forced or Compulsory Labour, as modified by the Final Articles Revision Convention, 1946 (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55, art 2(a).

⁴⁵ *Chitos* (n 44) paras 83–89.

⁴⁶ J Allain, 'On the Curious Disappearance of Human Servitude from General International Law' (2009) 11 *Journal of the History of International Law* 303, 304. See also PM Taylor, *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights* (CUP 2020) 226.

commentary describes the travaux préparatoires to the ICCPR as indicating that while there was an effort to limit the term ‘slavery’ in the article, the term ‘servitude’ was to apply ‘to all conceivable forms of dominance and degradation of human beings by human beings’.⁴⁷ The European Court of Human Rights (ECtHR) held in *Siliadin v France* that servitude means ‘an obligation to provide one’s services that is imposed by the use of coercion’.⁴⁸ In that case, in finding that the applicant was a victim of servitude, the ECtHR pointed to the fact that she was vulnerable and isolated, with no means of escape from her situation, and that she was entirely dependent on those keeping her as a domestic servant.⁴⁹ In *CN & V v France*, the ECtHR held that the difference between forced or compulsory labour and servitude is, at least in part, that servitude ‘consists in the feeling of the victims that their condition is unchangeable and that the situation is not likely to improve’.⁵⁰

Forced fighters are vulnerable and isolated, without the capacity to escape the situation which they are in. Numerous fighters have reported having their passports taken away from them on signing up to the Russian forces, and many have also reported having their phones taken away, leaving them without any capacity to contact their families.⁵¹ Binil Babu and his travel companion, Jain Kurian, for example, thought that they were going to Poland for new jobs. They noticed that their passports were only issued with Russian visas, not Polish ones, and were told by an agent that they would need to transit through Moscow on their way to Poland. When the men arrived in Moscow, they were told that the jobs in Poland had fallen through and that ‘non-combat’ roles in the Russian army were the best option for them. As Babu’s family describe it, Babu and Kurian were then ‘driven to a military base in Tula, three hours south of Moscow, and stripped of their phones and passports ... [and] were made to sign contracts ... that were clearly for military service, but which they did not understand’.⁵²

The removal of passports and phones is likely to contribute to these fighters’ impression that their condition is unchangeable, which is confirmed by the fact that soldiers have reported being unable to leave and others who have tried to escape have not been able to. One soldier reported that when he and six other Nepali men tried to escape, they were ‘caught and badly beaten by Russian soldiers’.⁵³ Others reported that they were jailed when caught trying to leave the army.⁵⁴

⁴⁷ W Schabas, *UN International Covenant on Civil and Political Rights: Nowak’s CCPR Commentary* (NP Engel 2019) 227.

⁴⁸ *Siliadin v France* (n 42) paras 123–124.

⁴⁹ *ibid* paras 126–127.

⁵⁰ *CN & V v France* App No 67724/09 (ECtHR, 11 October 2012) para 91.

⁵¹ Dayal (n 5); Pokharel and Melwani (n 2); M Krishnan, ‘Russia-Ukraine: Indian Recruits Share “Frightening” Ordeal’ *DW* <<https://www.dw.com/en/russia-ukraine-indian-recruits-share-frightening-ordeal/a-71562381>>; Landrin and Ali (n 28); Ellis-Petersen and Hassan (n 9); Padanna (n 6); Rajvanshi (n 7); V Kumar and N Madhav, ‘Dead, Trapped and Waiting to Escape: Meet the Indians Forced to Fight Russia’s War against Ukraine’ *The Wire* (26 August 2024) <<https://thewire.in/rights/dead-trapped-and-waiting-to-escape-meet-the-indians-forced-to-fight-russias-war-against-ukraine>>.

⁵² Gardner (n 8).

⁵³ Lynch (n 12).

⁵⁴ Kharel (n 5).

Coercion is demonstrated by the fact that these fighters are met with violence if they do not sign the documents to commit them to the army. Raja Bano, whose son had thought he was going to Dubai for work, describes how he had been 'locked in a room by Russian military for several days after he refused to join the army' and that '[t]he Russians threatened to kill them if they didn't sign' documents committing them to the army.⁵⁵ Domination is demonstrated by the conditions that these fighters are held in. As noted in Section 2, forced fighters are used as cannon fodder and, as one soldier reported, once sent to the front lines in Ukraine 'we didn't have enough food and were beaten by the Russians'.⁵⁶

The right to be free from slavery, servitude and forced or compulsory labour in the ICCPR and the ECHR has been interpreted to also contain a right to be free from human trafficking.⁵⁷ The definition of human trafficking that both instruments have drawn upon is that of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).⁵⁸ Both Russia and Ukraine have ratified the United Nations Convention against Transnational Organized Crime as well as the Palermo Protocol. Article 3(a) Palermo Protocol states:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The ECtHR in *J v Austria* identified human trafficking as commonly including 'the treatment of human beings as commodities, close surveillance, the circumscription of movement, the use of violence and threats, poor living and working conditions, and little or no payment'.⁵⁹

Forced fighters may be classified as victims of human trafficking. There is 'recruitment' of persons: numerous accounts describe how agents recruited the fighters in their countries of origin, often via social media.⁶⁰ Some also report that

⁵⁵ Landrin and Ali (n 26).

⁵⁶ Lynch (n 12).

⁵⁷ With respect to the ECHR, see, e.g. *Rantsev v Cyprus and Russia* App No 25965/04 (ECtHR, 7 January 2010) para 282; *J v Austria* App No 58216/12 (ECtHR, 17 January 2017) paras 103–106. With respect to the ICCPR, see, e.g. Taylor (n 49); V Stoyanova, 'United Nations Against Slavery: Unravelling Concepts, Institutions and Obligations' (2017) 38 MichJIL 359; United Nations (UN) Human Rights Committee (HRC), 'Concluding Observations on Slovakia' (22 August 2003) UN Doc CCPR/CO/78/SVK, para 10; HRC, 'Concluding Observations on Hungary' (16 November 2010) UN Doc CCPR/C/HUN/CO/5, para 12; HRC, 'Concluding Observations on Mongolia' (2 May 2011) UN Doc CCPR/C/MNG/CO/5, para 21.

⁵⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 (Palermo Protocol).

⁵⁹ *J v Austria* (n 57) para 104.

⁶⁰ See, e.g. Sharma (n 19); Francis (n 19).

these agents provided transportation to Russia or the conflict zone. The families of Azard Yousuf Kumar and Zahoor Ahmad Sheikh describe how ‘... they had been lured to Dubai on the promise of jobs before being transported to Russia by fraudulent recruitment agencies ... [where] they were ordered to fight as mercenaries for Russia on the border with Ukraine’.⁶¹ This recruitment is achieved by deception—namely, the promise of a different type of work or benefit (such as a university place)⁶² and the agents often receive large payments for such recruitment. Babu, for example, reported paying £1,700 in fees to an agent for his promised job in Poland,⁶³ while Kumar paid £3,000 to an agent for his promised job in Dubai.⁶⁴ The recruitment (and, where relevant, transportation), by deception, are undertaken for the purpose of exploitation. Agents provide the services of soldiers in the Russian armed forces, building up those armed forces fighting in Ukraine, without risking Russian lives.⁶⁵

The actions of the Russian forces in receiving these fighters also amount to human trafficking under the above definition. The receipt of forced fighters is achieved by the threat or use of violence, abduction and deception, such as making the fighters sign documents in Russian and keeping them in poor conditions. Again, it is done for the purpose of exploitation, as it involves the provision of labour or services (by way of soldiers).

Forced fighters are therefore capable of classification—not just as combatants—but also as victims of modern slavery and, specifically, of slavery-like practices such as servitude and human trafficking. Section 4 argues that this classification can lead to further, more effective, protections for these fighters, in addition to those that flow from combatant status.

4. State responsibility and remedy

Having established that the situation of forced fighters falls within the protective scope of IHRL, discussion now turns to how this responsibility arises in relation to Russia and Ukraine, and what further protections might be owed to these fighters as a result.

The ICCPR and customary international law impose two kinds of obligations with respect to modern slavery: first, to not commit modern slavery; and, second, to prevent, protect and punish modern slavery offences.⁶⁶

Russia has arguably breached the obligation not to commit modern slavery. State involvement in modern slavery usually occurs through State policy or through the acts or omissions of State organs or officials or of non-State actors exercising public functions.⁶⁷ Such involvement can be attributed to the State by way of Article 4 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA).⁶⁸ Article 4 ARSIWA provides that ‘the conduct of any State organ shall be considered an

⁶¹ *Sky News* (n 8).

⁶² See nn 6–8 and accompanying text.

⁶³ Gardner (n 8).

⁶⁴ See Rajvanshi (n 7).

⁶⁵ TO Falk, ‘Ukraine War: Why Is Russia Encouraging Foreign Fighters to Join?’ *Al Jazeera* (23 March 2022) <<https://www.aljazeera.com/news/2022/3/23/russias-foreign-fighters>>.

⁶⁶ ICCPR (n 40) art 2(1); HRC, ‘General Comment No 31’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, paras 5–8.

⁶⁷ Webb and Garciandia (n 38) 541.

⁶⁸ International Law Commission, ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries’, UNYBILC, vol II (2001) UN Doc A/CN.4/SER.A/2001/Add.1 (ARSIWA) art 4.

act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State'. Russian State organs or officials of the State have directly committed or at least facilitated the commission of modern slavery. It is the Russian armed forces that receive these fighters, and that coerce them into signing documents committing them to serve in the armed forces. By receiving and using forced fighters, the Russian forces also drive the recruitment of the fighters through agencies, thus facilitating the agents in the commission of modern slavery. Webb and Garciandia observe that the confiscation of passports and the use of threats and violence are common indicators of a State policy of modern slavery,⁶⁹ both of which, as indicated in Section 3, have occurred in this context.

It is also clear that Russia is in breach of its positive obligations under the ICCPR to prevent, protect and punish the subjection to servitude and human trafficking. The Human Rights Committee's General Comment No 31 provides that a violation of the ICCPR may arise 'as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities'.⁷⁰ Russia has actively permitted agents to funnel these fighters into its territory by, for instance, issuing visas to them,⁷¹ and has, at a minimum, failed to exercise due diligence in the recruitment process or to take appropriate steps to prevent that recruitment. The Russian Government is aware that these fighters are being misled into fighting in its armed forces given that the Governments of Sri Lanka, India and Nepal have made representations to it on the issue.⁷²

Ukraine is also subject to these two obligations under the ICCPR and customary international law and, additionally, under the obligations arising under the ECHR with respect to modern slavery. Most relevantly, the ECtHR has found that there is an obligation on States under the ECHR to protect victims or potential victims from modern slavery where State authorities 'were aware or ought to have been aware' of an arguable or prima facie claim that that an identified individual had been or was at real and immediate risk of being subjected to treatment in breach of Article 4 ECHR.⁷³ With respect to human trafficking specifically, the ECtHR has held that States Parties are under a duty 'to identify and provide substantive assistance and support to [potential] victims of human trafficking',⁷⁴ even where the trafficking occurs in a different State.

⁶⁹ Webb and Garciandia (n 38) 542.

⁷⁰ HRC (n 66) para 8.

⁷¹ See, e.g. the story of Babu and Kurian in Gardner (n 8).

⁷² See, e.g. AFP, 'Sri Lanka Seeks Release of Ex-Soldiers in Russia and Ukraine' *The Moscow Times* (30 May 2024) <<https://www.themoscowtimes.com/2024/05/30/sri-lanka-seeks-release-of-ex-soldiers-in-russia-and-ukraine-a85270>>; Shamim (n 2); Anbarasan (n 33); 'India Demands Moscow to Release Citizens Duped into Fighting in Russian Army after Another Death' *The New Indian Express* (14 January 2025) <<https://www.newindianexpress.com/nation/2025/Jan/14/india-demands-moscow-to-release-citizens-duped-into-fighting-in-russian-army-after-another-death>>.

⁷³ *Rantsev v Cyprus and Russia* (n 57) para 286; *SM v Croatia* [GC] App No 60561/14 (ECtHR, 25 June 2020).

⁷⁴ *J v Austria* (n 57) paras 109–111. The ECtHR held that this positive obligation is different from the positive obligation on States to investigate allegations of human trafficking: *J v Austria* (n 57) paras 112–113.

Accordingly, if forced fighters fall into Ukrainian captivity as POWs, an obligation will arise on Ukraine under the ECHR to identify the fighters as potential victims of human trafficking and to protect them.

The value of showing that Russia and Ukraine have breached their obligations with respect to modern slavery under international human rights treaties is that under those treaties, duties of continued performance, cessation and non-repetition arise for States and do so before the end of hostilities.⁷⁵ This means that Russia is under an obligation to cease receiving and using forced fighters into its armed forces, as well as an obligation to continue in the performance of its obligations under the ICCPR, requiring Russia to undertake appropriate measures to prevent the recruitment of forced fighters by agents. As a practical matter, one such measure might involve immigration restrictions to non-nationals whose visas have been organised by recruitment agencies. These duties mean that Ukraine must identify POWs who are potentially forced fighters and provide protection and support to those fighters.

Significantly, for the fighters already in Russia, and in Ukrainian captivity, State responsibility also entails duties to provide effective remedies.

Article 2(3)(a) ICCPR provides that each State Party to the Covenant undertakes '[t]o ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy'.⁷⁶ Article 13 ECHR similarly provides that '[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy'.⁷⁷ The HRC in its General Comment No 31 provides that '[s]uch remedies should be appropriately adapted so as to take account of special vulnerability of certain categories of person' and that, 'appropriate reparation can involve restitution, rehabilitation and measures of satisfaction'.⁷⁸

In the context of modern slavery and, in particular, of human trafficking, restitution is emphasised as a key component of an effective remedy. In her August 2014 report to the UN General Assembly, the Special Rapporteur on Trafficking in Persons, especially Women and Children, set out basic principles on the right to an effective remedy for victims of trafficking in persons, one of which was that 'States shall provide restitution that, whenever possible, restores the victim to the original situation before the trafficking', including by way of the 'safe and voluntary repatriation to one's place of residence'.⁷⁹ Article 8 Palermo Protocol (as well as Article 16(1) of the Council of Europe Convention on Action against Trafficking in Persons,⁸⁰ to which Ukraine is a party) also recognises an obligation on States to safely repatriate victims 'without undue and unreasonable delay'.⁸¹

⁷⁵ ARSIWA (n 68) arts 29–30.

⁷⁶ ICCPR (n 40) art 2(3)(a).

⁷⁷ ECHR (n 41) art 13.

⁷⁸ HRC (n 66) paras 15–16.

⁷⁹ UNGA, 'Report of the Special Rapporteur on Trafficking in Persons, especially Women and Children' (6 August 2014) UN Doc A/69/269, annex, paras 8–9(c).

⁸⁰ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 16 May 2005, entered into force 1 February 2008) ETS No 197, art 16(1).

⁸¹ Palermo Protocol (n 58) art 8.

Forced fighters want to be removed from the ongoing armed conflict. They want to ‘go home’.⁸² IHRL can, in capturing the status (and vulnerability) of these fighters as victims of modern slavery, thus provide the remedy of repatriation.

This remedy does not unreasonably burden States, and any concern on the part of Ukraine, as the detaining power, that repatriated fighters could return to fighting can be addressed by receiving States undertaking that repatriated fighters will not be returned to Russia.⁸³ There is already precedent for these kinds of agreements in IHL, specifically with respect to the repatriation of seriously wounded and sick POWs.⁸⁴ Importantly, IHRL can provide this remedy of repatriation before the end of hostilities, in contrast to Article 118 Third Geneva Convention. Article 118 Third Geneva Convention provides that ‘[p]risoners of war shall be released and repatriated without delay after the cessation of active hostilities’.⁸⁵ Following the end of the Korean War, there were two main interpretations of Article 118 put forward by States: either as a right held by a State to have its combatants repatriated; or as a right held on the part of POWs to be repatriated.⁸⁶ Practice has reflected the second interpretation, with the right being interpreted as a ‘right not to be repatriated by force’ in the Korean War and, subsequently, as a ‘right of free choice’ held by POWs.⁸⁷ As Meron has argued, the interpretation of Article 118 Third Geneva Convention ‘has drastically modified its categorial language, steering it to respect for individual autonomy’.⁸⁸

Article 118 Third Geneva Convention means that once hostilities have ended in the armed conflict between Russia and Ukraine, POWs who have been detained in Ukraine will not be automatically repatriated to Russia and will have a choice as to whether they are repatriated to their countries of origin. Article 118, therefore, undoubtedly provides an important protection for forced fighters, but it only does so in circumstances where the fighters have become POWs and where hostilities have ended.

5. Conclusion

With a focus on the conflict in Ukraine, this article has suggested a pathway for the repatriation of fighters who have been misled or forced into participating in a conflict. It has argued that while IHL can provide some protection to forced fighters, it fails to effectively focus on the fact that they have been deceived into fighting and therefore fails to provide adequate and effective protection to them.

The article suggested that IHRL can complement IHL to better understand and conceptualise the situation of these fighters. Specifically, it showed how the application of the law of modern slavery demonstrates that forced fighters are victims of servitude

⁸² Lynch (n 12); Kharel (n 5); *Moscow Times* (n 12); A Saikia, ‘The Indians Hired for Russia’s War in Ukraine’ *The Moscow Times* (27 February 2024) <<https://www.themoscowtimes.com/2024/02/27/the-indians-hired-for-russias-war-in-ukraine-a84258>>.

⁸³ The author is grateful to one of the anonymous reviewers for this point.

⁸⁴ Third Geneva Convention (n 28) art 109.

⁸⁵ *ibid* art 118.

⁸⁶ J Mayda, ‘The Korean Repatriation Problem and International Law’ (1953) 47 AJIL 414, 435 cited in T Meron, ‘The Humanization of Humanitarian Law’ (2000) 94 AJIL 239, 255.

⁸⁷ Meron (n 86) 255–56. See generally Mayda (n 86).

⁸⁸ Meron (n 86) 256.

and/or human trafficking, who are owed further protections to those offered by IHL, such as repatriation to their countries of origin, prior to the end of hostilities.

Of course, practical challenges with this argument remain: what is the likelihood that an invading State, such as Russia, will comply with its IHRL obligations with respect to forced fighters? Will a State defending its territory, such as Ukraine, spend time and resources repatriating foreign forced fighters it has already removed from the conflict?

Importantly, what the argument set out in this article can do immediately is to provide a persuasive legal argument for the governments of forced fighters to call for their repatriation; calls which, in the context of the war in Ukraine, have thus far been responded to by way of ad-hoc diplomatic efforts and discussion.

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