Office of the Special Representative and Co-ordinator
for Combating Trafficking in Human Beings



Trafficking in Human Beings for Exploitation in Armed Conflict

Analysis of Relevant Legal Regimes and Recommendations on Protecting Victims and Preventing this Form of Trafficking

Issue Brief

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Issue Brief: Trafficking in Human Beings for Exploitation in Armed Conflict. Analysis of Relevant Legal Regimes and Recommendations on Protecting Victims and Preventing this Form of Trafficking

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The Organization for Security and Co-operation in Europe (OSCE) is a pan-European security body whose 57 participating States span the geographical area from Vancouver to Vladivostok. Recognized as a regional arrangement under Chapter VIII of the United Nations Charter, the OSCE is a primary instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation in its area. Its approach to security is unique in being both comprehensive and co-operative: comprehensive in that it deals with three dimensions of security – the human, the politico-military and the economic/environmental. It therefore addresses a wide range of security-related concerns, including human rights, arms control, confidence- and security-building measures, national minorities, democratization, policing strategies, counter-terrorism and economic and environmental activities.

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Introduction

Contextual Framing

The presence of third-country nationals within international armed conflicts worldwide has long been documented, although their status varies. In recent years, reporting on such individuals participating in combat roles, both voluntarily and involuntarily, has increased. In some cases, States prohibit their citizens from enlisting and participating in combat actions abroad and impose sanctions, while in other States take legal and administrative measures to encourage enlistment of foreign nationals, offering incentives, including pathways to citizenship.

However, recruitment systems do not always use transparent methodologies. Organized recruitment networks may operate across borders, frequently targeting socio-economically and legally vulnerable populations. In some cases, enlistment is presented as an alternative to deportation, prosecution, or detention. In other cases, recruitment is based on fraudulent or misleading representations of employment or support roles, with many individuals unaware that they are joining military operations or serving in combat roles. Many have no prior military experience, receive inadequate training, may not possess basic knowledge of local languages, and are deployed to front-line missions that expose them to serious harm or death. These practices blur the line between voluntary participation and coercion, creating significant legal ambiguity about the status and treatment of third-country nationals in combat roles.

Purpose and Scope of Paper

This paper undertakes a legal analysis of relevant international frameworks to determine the status of adult third-country nationals in combat roles. It does not cover the issue of the recruitment and use of children in combat roles and other forms of human trafficking, including exploitation in non-combat roles, in the context of armed conflict, which are elaborated in a number of resources[1]. Due to the complex nature of the subject, the analysis will involve a review of three areas of international law that directly shape how such individuals are classified: international humanitarian law, international criminal law relating to mercenarism, and international law on trafficking in persons.[2] The paper will provide a summary of relevant aspects of these legal regimes and how they apply to third-country nationals in combat roles, followed by a brief comparative assessment of where they intersect and diverge, and how they collectively inform proper identification and the treatment of individuals. It will conclude with a series of recommendations for OSCE participating States and other stakeholders, aimed at enhancing national policies and practices on combating human trafficking in the context of conflict and post-conflict situations.

The paper and recommendations therein align with the OSCE commitments to combat trafficking in human beings:

> **"Recognizing that trafficking in human beings is an increasing problem and convinced of the necessity for the OSCE to enhance its efforts to combat trafficking in human beings throughout the OSCE region, including in conflict and post-conflict situations, and to contribute to national, regional and international anti-trafficking efforts in defence of human rights and the fight against transnational organized crime,**
>
> **"Further concerned that root causes of trafficking in human beings, occurring both in countries of origin and destination, remain insufficiently tackled, in particular causes such as poverty, weak social and economic structures, lack of employment opportunities and equal opportunities in general, violence against women and children, discrimination based on sex, race and ethnicity, corruption, unresolved conflicts, post-conflict situations, illegal migration and the demand for sexual exploitation and inexpensive, socially unprotected and often illegal labour."**[3]

1 When Adult Foreign Nationals Qualify as Combatants under International Humanitarian Law

International Humanitarian Law (IHL) is the body of international law that governs the conduct of Parties during an armed conflict. Its core purpose is to limit the effects of war by protecting persons who are not, or are no longer, participating in hostilities and by regulating permissible means and methods of warfare.[4] While IHL applies in both international and non-international armed conflicts, its rules differ depending on the classification of the conflict.

When a conflict involves hostilities between two sovereign States, the conflict is considered an international armed conflict and subject to a wide range of rules set forth within the four Geneva Conventions and Additional Protocol I.[5,6] These laws govern the legal categories of persons in the armed conflict and the protections afforded to them.

Combatant Designation

One of IHL's central functions is to determine who is considered a combatant within an armed conflict. Specifically, Article 43 of Additional Protocol I (AP I) states:

- The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, 'inter alia', shall enforce compliance with the rules of international law applicable in armed conflict.

- Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.

- Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.[7]

If an individual meets this definition, they are then afforded specific rights and protections.

Rights and Protections Afforded to Combatants

As noted under AP I Article 43(3), if an individual is designated as a combatant under IHL, that individual is entitled "to participate directly in hostilities." This means that such individuals are granted immunity from criminal prosecution for lawful acts of war. This is not blanket immunity, as combatants are still liable for violations of IHL.

Additionally, combatants are entitled to prisoner of war (POW) status upon capture, as established under AP I Article 44(1): "Any combatants, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war." Article 44(2)–(6) go on to establish requirements bestowed upon combatants to maintain their entitlement to such status.[8] Geneva Convention III specifically relates to the treatment of POWs, establishing a legal framework to ensure that such individuals are treated humanely and afforded specific rights.[9]

Application to Foreign Nationals

The designation of combatant established under AP I Article 43 is profoundly important when assessing the legal status and rights of foreign nationals recruited into a Party's armed forces. NGOs, international organizations, and governments have conducted extensive investigations and research into the manner in which foreign nationals are recruited to join the armed forces of Parties to various conflicts. While it is clear that some individuals join knowingly, others are recruited through fraudulent and coercive practices. Regardless of which category a foreign national falls into, if these individuals take steps to formally join a Party's armed forces, such as signing contracts of enlistment, even under coercive or deceptive circumstances, these individuals shall be treated as members of the armed forces and therefore as combatants under IHL. Furthermore, the International Committee of the Red Cross (ICRC) emphasizes that the definition of "armed forces" established under AP I Article 43(1) is functional rather than formal, meaning that there may be situations in which foreign nationals are not formally enlisted, but still meet the definition of combatant because they meet the structural requirements (subordination to a responsible command and integration into a Party's disciplinary system). As noted above, this affords them certain rights and protections, including immunity from prosecution for lawful acts of war and entitlement to POW status upon capture. However, as discussed in Section 3 below, these rights and protections can be insufficient or ill-adapted for foreign combatants who have been subjected to trafficking in human beings.

When foreign nationals do not meet AP I Article 43's structural requirements – in other words, when they fight for a Party without being formally or functionally incorporated into its armed forces – they are considered civilians under IHL. They lose protections for such time as they directly participate in hostilities and are not granted combatant or POW status. Furthermore, they may be considered mercenaries depending on additional legal considerations detailed in the following section.

2 When Adult Foreign Nationals Qualify as Mercenaries under International Humanitarian and Criminal Law

It is a common misconception that all foreign fighters who accept payment or promises of compensation to participate in another country's armed conflict are mercenaries. This misunderstanding arises because the term "mercenary" carries a broad colloquial meaning that diverges significantly from its narrow legal definition. In international law, the concept is addressed under both international humanitarian law and international criminal law, each providing distinct criteria for determining who qualifies as a mercenary. A brief analysis of both frameworks is therefore necessary to clarify how the term applies – or fails to apply – to foreign nationals.

Mercenarism under International Humanitarian Law

In addition to establishing who is entitled to combatant and POW status and related protections, IHL also establishes who is not. Specifically, AP I Article 47(1) expressly excludes mercenaries from combatant and POW protections.[11] AP I Article 47(2) defines mercenaries using a restrictive six-part test:

A mercenary is any person who:

- is specially recruited locally or abroad in order to fight in an armed conflict;
- does, in fact, take a direct part in the hostilities;
- 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;
- is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- is not a member of the armed forces of a Party to the conflict; and
- 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. [12]

The States that are Parties to the Geneva Conventions and Additional Protocol I are bound by the definition above. Additionally, the rule that mercenaries, as defined under AP I, do not have combatant or prisoner of war status is considered customary international law.[13]

Mercenarism under International Criminal Law

International criminal law also addresses the question of mercenaries, most notably through the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries (hereinafter "UN Mercenary Convention").[14] The Convention adopts a definition of "mercenary" that mirrors AP I Article 47, with two notable exceptions: (1) it does not require that the individual actually take a direct part in the hostilities and (2) it expands the definition to cover both traditional armed conflicts and situations aimed at overthrowing a government or undermining a State's constitutional order.[16]

Beyond defining mercenarism, the Convention imposes obligations on State Parties to criminalize mercenary activities, prevent recruitment and financing networks, and prosecute individuals and groups involved in such conduct. The Convention's focus is not merely definitional; it is regulatory and preventive, aimed at eliminating mercenarism as a destabilizing force in international relations.[17] However, while the treaty is significant, its practical utility is limited as global ratification remains extremely low, with only 38 Parties to date[18].

Prior to the adoption of the UN Mercenary Convention, the Organization of African Unity enacted the Convention for the Elimination of Mercenarism in Africa (hereinafter, the "OAU Mercenary Convention") in 1977.[19] While the UN Mercenary Convention ultimately provided a broader, globally applicable framework, the OAU Mercenary Convention is notable in that it provided an example of a regional instrument that places obligations on State Parties to prevent and prohibit mercenarism. For the purposes of this paper, it is important to note that the definition of mercenary under the OAU Mercenary Convention differs from that of both AP I and the UN Mercenary Convention in that it removes the requirement that the compensation promised is "substantially in excess of that promised or paid to combatants of similar rank and functions in the armed services of that party."[20]

Application to Foreign Nationals

Applying the international legal definition of "mercenary" to foreign nationals requires a close examination of the six cumulative criteria in AP I Article 47. As the ICRC Commentary on AP I stresses, these criteria must all be met in order for an individual to be considered a mercenary.[21] Below is a breakdown of each criterion:

Criterion 1

Specially Recruited Locally or Abroad in order to Fight in an Armed Conflict

This criterion includes two parts: that the individual was recruited and that they were recruited specifically to fight in an armed conflict. The ICRC further explains that this criterion does not include volunteers "who enter service on a permanent or long-lasting basis in a foreign army, whether as a result of a purely individual enlistment … or an arrangement concluded by their national authorities."[22]

Many foreign nationals are indeed recruited, both domestically and abroad, and ultimately deployed to the front lines. However, in some cases, these individuals join the armed forces of a Party, therefore failing this criterion. Furthermore, in some cases, recruited individuals might be unaware they would be actively participating in an armed conflict. Instead, they might believe they were being recruited for non-combat roles or were accepting civilian employment. For coerced or deceived recruits, the intent element is absent and therefore they were not recruited as fighters within the meaning of Article 47.[23]

Criterion 2

Actual Direct Participation in Hostilities

While this criterion is largely self-explanatory, it is notable that it does not include advisers and military technicians, insofar as they do not actually directly participate in combat.[24]

Foreign nationals are often systematically deployed to the front lines. Such individuals would meet this criterion. (Note: As explained above, the definition of mercenary under the UN Mercenary Convention does not include this requirement, meaning that even individuals who have not yet participated directly in hostilities could qualify as mercenaries if the other criteria are met.)

Criterion 3

Motivated to Take Part in Hostilities by Desire for Private Gain with Promised Compensation Substantially Exceeding that of Regular Combatants

This criterion includes two parts: that the individual was primarily motivated to take part in the hostilities by a desire for private gain and that the individual was promised compensation substantially exceeding that of regular combatants. The second element is determined by comparing the promised compensation with the compensation of members of the Party's armed forces who are of similar rank and function.[25]

The first criterion, while met by some recruits, is not met by recruits who were coerced or deceived. As noted above, some foreign fighters may be entirely unaware they will participate in hostilities at all. Additionally, even if foreign fighters meet the first criterion, they will need to be promised compensation "substantially in excess" of that of regular members of the Party's armed forces. (Note: As explained above, the definition of mercenary under the OAU Mercenary Convention removes this requirement, meaning that individuals who meet the first element of this criterion and who are promised material compensation by or on behalf of a Party, regardless of the amount, would meet this criterion).

Criterion 4

Not a National of a Party to the Conflict and Not a Resident of Territory Controlled by a Party to the Conflict

This criterion is self-explanatory. Foreign nationals will meet this criterion.

Criterion 5

Not a Member of the Armed Forces of a Party to the Conflict

This criterion, while seemingly obvious, is nonetheless important.

Foreign nationals sometimes sign contracts joining the armed forces of a Party under deceptive or coercive practices. Even in such cases, the legal effect is that these individuals are officially incorporated into the armed forces of a Party to the conflict.

Criterion 6

Not Sent by a State on Official Duty as a Member of its Armed Forces

A mercenary is someone who enlists on their own behalf and not on behalf of a third-party State.[26]

As demonstrated above, the legal definition of "mercenary" is far narrower than its colloquial use suggests and is often ill-suited to capture the circumstances of foreign national recruitment. The cumulative criteria in AP I Article 47, as reinforced by the ICRC Commentary and mirrored in international criminal instruments, establish a definition that excludes individuals who are coerced, deceived, or formally incorporated into the armed forces of a Party to the conflict. Even those who accept compensation rarely meet the stringent motivation and status requirements embedded in the legal test. As a result, foreign nationals – whether they enlisted voluntarily or were recruited through coercive or deceptive means – rarely qualify as mercenaries under IHL or international criminal law relating to mercenarism, underscoring the need to assess their situation through other legal frameworks.

3 When Adult Foreign Nationals Qualify as Trafficking Victims under International Law on Trafficking in Persons

While the previous two areas of law are helpful in determining the legal status of foreign nationals in combat roles, they are ill-suited to fully address the broader individual rights and state obligations relevant when individuals have been coercively or deceptively recruited into international armed conflict. The principal international instrument governing trafficking in human beings – the UN Protocol to Suppress, Prevent and Punish Trafficking in Persons, especially Women and Children (hereinafter "UN TIP Protocol") – as well as relevant regional and domestic laws, provides this broader and more victim-centred framework.

The following section examines whether foreign nationals – particularly those deceived, coerced, or otherwise compelled into service – meet the international legal definition of trafficking victims established by the UN TIP Protocol.

Definition of Trafficking in Persons under the UN TIP Protocol

Article 3 of the UN TIP Protocol provides the primary international legal definition of trafficking in persons, which is also endorsed by the OSCE participating States[27]:

For the purposes of this Protocol:

- "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 consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

- The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

- "Child" shall mean any person under eighteen years of age.

Under Article 3(a), trafficking in persons consists of three elements: an Act (recruitment, transportation, transfer, harbouring, or receipt of persons), conducted through one or more Means (threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability), for an exploitative Purpose (including, but not limited to, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs). All three elements of the crime must be present for cases involving adult victims, while Article 3(c) establishes that the means element is not required for cases involving child victims.

Application to Foreign Nationals in Combat Roles

Not all foreign nationals in combat roles are trafficking victims, as some knowingly and voluntarily enlist for financial gain and other benefits, including citizenship. However, some foreign nationals are deceived or coerced into service and therefore qualify as trafficking victims under international law. Below is a breakdown of each element of the definition of trafficking in persons and its relevance to such foreign fighters:

Element 1:

ACT

The act element encompasses any of the following: recruitment, transportation, transfer, harbouring, or receipt of a person or persons. These actions are interpreted broadly and do not require movement. The element focuses on the conduct used to bring a person into a situation of exploitation. The act element is intentionally expansive to capture the wide range of methods traffickers use to initiate exploitation. Only one of the aforementioned acts is required in order to constitute this element.

In the context of foreign nationals in combat roles, the act element is readily satisfied. Recruitment campaigns – whether conducted by State actors, private intermediaries, or transnational networks – constitute "recruitment" within the meaning of the Protocol. When individuals are transported to military bases, training facilities, or conflict zones, the "transportation" and "transfer" elements are met. Even where individuals are already present within a recruiting State, their placement into military units or reception at enlistment centres satisfies the "harbouring" or "receipt" components.

Element 2:

MEANS

The means element refers to the methods used to obtain or maintain control over a person for exploitative purposes. Under the UN TIP Protocol, these include threat or use of force, coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, and the giving or receiving of payments to achieve control over another person. The means element is also intentionally expansive to capture a wide range of methods used to obtain or maintain control over a person and is interpreted broadly. Only one of the aforementioned means is required in order to constitute this element.

The means element is met in a substantial number of cases involving foreign nationals recruited into armed conflict. The use of deception about the nature of the work, misleading promises of safe or non-combat roles, and fraudulent contracts signed in languages the recruits cannot read are all examples documented in this context. Coercion is utilized through threats of deportation, detention, or loss of legal status. Abuse of vulnerability is evident where recruiters target individuals facing poverty, unemployment, or irregular migration status, exploiting their limited options. In some cases, force or threats of force are used to compel enlistment or prevent withdrawal. As noted in Article 3(b), consent obtained through the use of any of these means is irrelevant when determining if a trafficking crime has occurred. This is particularly relevant in the case of foreign nationals who sign contracts in a language they do not understand and/or under other deceptive or coercive circumstances.

Element 3:

EXPLOITATIVE PURPOSE

The purpose element requires that the act and means be undertaken for the purpose of exploitation. Under the UN TIP Protocol, exploitation includes, 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. This is a non-exhaustive list and the purpose element does not require that exploitation be completed; it is sufficient that exploitation is intended.

While military service does not constitute an exploitative purpose on its own, the circumstances in which foreign nationals are recruited and used in combat roles may constitute forced labour or services. For example, foreign nationals – many of whom are recruited through deceptive or coercive means – could be compelled to serve on the front lines in highly dangerous combat roles without adequate preparation.

The legal definition of "forced or compulsory labour" established under ILO Convention No. 29 informs the meaning of "forced labour or services" under the UN TIP Protocol. Article 2 of ILO Convention No. 29 defines "forced or compulsory labour" as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[28] The Convention contains several narrow exceptions, including "any work or service exacted in virtue of compulsory military service laws for work of a purely military character."[29] This exception, however, does not extend to situations involving foreign nationals. ILO supervisory bodies have consistently emphasized that the exception is limited to legitimate national service obligations and cannot be invoked to justify forced labour imposed on non-nationals.[30]

Taking into consideration the analysis above and the extensive documentation surrounding the recruitment and deployment of foreign nationals in international armed conflicts, it is clear that there are circumstances in which this activity may meet the definition of trafficking in persons under international law. This conclusion has significant implications for State obligations relating to victim protection, prosecution, and prevention of human trafficking, which will be addressed below.

4 Comparative Analysis

International humanitarian law, international criminal law on mercenarism, and the international law on trafficking in persons each address different dimensions of foreign national recruitment and deployment into combat roles, and together they reveal both complementary and divergent legal frameworks. IHL provides the framework to determine the status and protections of individuals in armed conflict, distinguishing between combatants, civilians, and mercenaries, and delineating certain protections for each category. The stand-alone international law on mercenarism – the UN Convention on Mercenarism – centres on prohibiting a narrow category of fighters motivated by private gain and operating outside State military structures. Finally, human trafficking law, by contrast, offers a victim-centred framework that examines the recruitment and use of foreign nationals through the lens of exploitation. Despite these differences, these regimes all intersect, addressing the importance of the nuances involved in the recruitment and deployment of foreign nationals in armed conflicts.

Significant legal ambiguities arise at the boundaries of these regimes. IHL's definition of combatant, while encompassing foreign nationals and affording them certain basic protections, fails to acknowledge the unique and often exploitative circumstances in which they find themselves, which require additional consideration. IHL and the international criminal law on mercenarism establish a highly restrictive definition of mercenary that excludes most foreign nationals, even when they are colloquially misunderstood as such. Meanwhile, trafficking law captures coercive and deceptive recruitment into armed conflict, but States often fail to apply trafficking frameworks to military contexts, leaving victims misclassified as voluntary fighters or unlawful combatants. These gaps create uncertainty about how foreign nationals should be legally categorized, which identification mechanisms should be leveraged and what protections they are entitled to – uncertainty that becomes especially acute when individuals have been fraudulently recruited or coerced into hostilities.

Furthermore, in practice, these regimes may overlap in ways that complicate both legal classification and protection. The same individual may simultaneously fall within multiple legal categories: a foreign national formally incorporated into the armed forces of a Party to the conflict may qualify as a combatant under IHL and be entitled to POW status if captured, while also meeting the definition of a trafficking victim if their recruitment involved coercion, deception, or abuse of vulnerability. Likewise, a foreign trafficking victim who is misperceived as a mercenary may be denied POW protections despite never meeting the narrow legal definition of mercenarism. These intersections underscore that combatant status under IHL does not negate victim status under trafficking law, nor does trafficking victimhood preclude entitlement to IHL protections. The overlapping application of these regimes highlights the need for States to conduct nuanced, multi-framework assessments to ensure that individuals coerced or deceived into hostilities are not misclassified or deprived of the protections owed to them under international law.

5 Protection Concerns for Victims of Trafficking Exploited in Combat Roles

The protection concerns discussed below apply only to foreign nationals in combat roles who meet the international legal definition of trafficking victims. These individuals face distinct vulnerabilities that differ fundamentally from those who knowingly and voluntarily enlisted.

Victim Identification Challenges

Foreign trafficking victims are exceptionally difficult to identify in armed conflict settings. Their formal enlistment — through contracts signed under deceptive or coercive circumstances — creates a misleading appearance of voluntariness. Such contracts may lead authorities to treat trafficking victims as ordinary combatants. The absence of standardized screening procedures, combined with the stigma and fear of retaliation from traffickers or punishment from authorities, further inhibits disclosure and accurate information. Compounding these challenges is the limited awareness within defence institutions of trafficking indicators in military recruitment and deployment, as anti-trafficking expertise is not regularly integrated into armed forces structures or training. Anti-trafficking stakeholders typically lack access to POWs, detention facilities, and other military environments where such foreigners may be held, preventing independent assessments and victim identification.

Legal and Human Rights Risks

Misidentification exposes victims of trafficking to legal and human rights harms. If treated solely as combatants, they will be denied access to trafficking-specific protections, including non-punishment safeguards, appropriate assistance, and repatriation to their home countries. As foreign nationals also face heightened risks of serious harm due to their deployment in dangerous combat missions, they require tailored assistance to cope with the combined trauma of trafficking and war. They might also face the absence of a protection authority to contact, since either the country they fight for or their country of origin might deny involvement. Non-punishment safeguards are particularly critical in situations when victims are returned to their countries of origin and subsequently face prosecution for offences such as unlawful enlistment, immigration violations, or mercenarism.

Policy and Operational Gaps

Existing protection systems can prove ill-equipped to address trafficking within the context of military recruitment, whether organized by the State or conducted by non-State recruitment networks, including private intermediaries, criminal groups, and transnational brokers operating outside formal military structures. Anti-trafficking mechanisms rarely extend to armed conflict, mostly covering civilian populations, and military actors often lack training to identify trafficking indicators, including among individuals participating in hostilities. States of origin frequently lack procedures to screen returning individuals for trafficking, leading to punitive rather than protective responses. Additionally, States that engage in coercive or deceptive recruitment practices, fail to acknowledge such practices, and/or fail to participate in relevant international instruments create structural barriers to victim protection.

The Need for Specialized Assistance and Services

Victims of trafficking in this context often require specialized assistance that goes beyond the services provided to victims of trafficking in civilian contexts. Because these individuals have often participated directly in hostilities, they may suffer severe physical injuries, including combat-related trauma, complications from poor medical care, and long-term disabilities. Their psychological needs are likewise distinct: exposure to armed conflict, coercive military environments and life-threatening violence can result in complex trauma and conflict-specific mental health conditions. Effective protection therefore requires tailored medical, psychosocial, and reintegration support that accounts for the unique harms associated with wartime deployment.

6 Conclusion

The analysis above demonstrates that foreign nationals coerced or deceived into serving in hostilities occupy a complex legal space that cannot be understood through any single body of law. International humanitarian law clarifies their combatant status but cannot account for the coercive circumstances of their recruitment; mercenary law proves too narrow and under-ratified to meaningfully regulate their situation; and human trafficking law provides the most accurate framework for identifying victims and articulating State obligations, yet remains under-applied in conflict settings. These overlapping but imperfect regimes reveal significant gaps in victim identification, protection, and accountability – gaps that place foreign trafficking victims at heightened risk of misidentification and harm.

Given the vast number of countries from which foreign nationals have been recruited into combat roles in recent decades, the global community must treat this issue as a matter of urgent concern. Per the OSCE's commitment "to enhance efforts to combat trafficking in human beings throughout the OSCE region, including in conflict and post-conflict situations and to contribute to national, regional and international anti-trafficking efforts in defence of human rights and the fight against transnational organized crime,"[31] the paper offers the following targeted policy recommendations to address these deficiencies and strengthen protection for foreign trafficking victims across all relevant jurisdictions.

7 Recommendations

State Parties to a Conflict



- Integrate trafficking screening and training into conflict-related procedures, including within armed-forces recruitment systems, POW camps, and detention facilities, to ensure that foreign nationals recruited through deception or coercion are identified as trafficking victims and referred for protection.
- Recognize the dual status of foreign trafficking victims by ensuring that combatant or POW classification under IHL does not preclude parallel recognition as victims of trafficking, nor limit access to victim-centred assistance and remedies.
- Explicitly prohibit by law and investigate and prosecute coercive and deceptive military recruitment practices, including (but not limited to) recruitment based on fraudulent job offers, threats of detention or deportation, confiscation of documents, or forced contract signing, and hold recruiters criminally accountable, including if State-affiliated.
- Facilitate safe and voluntary repatriation of foreign trafficking victims, including those held as POWs.

States of Origin



- Prevent deceptive and coercive recruitment into foreign armed forces by targeted awareness-raising, regulating recruitment agencies, and intermediaries, monitoring online and transnational recruitment networks, and investigating and prosecuting such recruitment, and establishing safe reporting systems.
- Implement structured screening procedures for nationals returning from conflict areas to identify trafficking indicators, ensure victim recognition, and avoid misidentification as voluntary combatants or mercenaries.
- Operationalize non-punishment protections to ensure that nationals returning from conflict areas are not inappropriately punished for unlawful enlistment, immigration violations, or mercenarism where such conduct was a direct result of their trafficking situation.
- Provide tailored medical, psychosocial, social, and reintegration support that addresses both trafficking-related harms and conflict-specific physical and psychological trauma, including long-term rehabilitation and support to prevent re-trafficking.
- Engage diplomatically with conflict Party States and international organizations to secure access to nationals serving in foreign armed forces or held as POWs and facilitate repatriation.

International Organizations



- Promote shared recognition of trafficking for exploitation in armed conflict, including deceptive and coercive recruitment of foreign nationals, and integrate this phenomenon into anti-trafficking monitoring, reporting, and norm-setting processes.
- Develop dedicated guidance and good-practice tools for identifying, protecting, and assisting foreign nationals exploited in combat roles, including screening in detention and POW settings, application of non-punishment principles in this context, and modalities for repatriation.
- Offer technical assistance and capacity building to conflict Party States and States of origin on strengthening victim identification systems, designing specialized rehabilitation programmes, dismantling recruitment networks, and prosecuting perpetrators.
- Co-ordinate monitoring and data collection on recruitment patterns, trafficking modalities, and victim profiles – including online recruitment – to support evidence-based policy development and accountability.
- Support repatriation and protection efforts by assisting States in conducting individualized assessments, facilitating communication between conflict Party States and States of origin, and ensuring that foreign nationals exploited in combat roles have access to appropriate remedies.

Footnotes

1. For example, see UNODC, Global Report on Trafficking in Persons 2018, Booklet 2: Trafficking in persons in the context of armed conflict; United Nations Human Rights Council, Annual report of the Special Representative of the Secretary-General for Children and Armed Conflict, A/HRC/37/47; Report of the Secretary General on trafficking in persons in armed conflict pursuant to Security Council resolution 2388 (2017); and Global Estimates of Modern Slavery, Forced Labour and Forced Marriage, International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), Geneva, 2022.
2. The terms "trafficking in persons" and "trafficking in human beings" are used interchangeably for the purpose of this document based on their definitions in the UN Palermo Protocol and OSCE commitments.
3. See Ministerial Decision No. 1 Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings (2000) and Permanent Council Decision No. 557 OSCE Action Plan to Combat Trafficking in Human Beings (2003).
4. "What is International Humanitarian law" Advisory service on International Humanitarian law, International Committee of the Red Cross. 2004.
5. See Geneva Convention I: For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (12 August 1949); Geneva Convention II: For the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (12 August 1949); Geneva Convention III: Relative to the Treatment of Prisoners of War (12 August 1949); Geneva Convention IV: Relative to the Protection of Civilian Persons in Time of War (12 August 1949); and Additional Protocol I: Relating to the Protection of Victims of International Armed Conflict (9 June 1977). The four Geneva Conventions have been universally ratified by 196 States. However, Additional Protocol I currently has 175 State Parties. See IHL Treaties – Additional Protocol (I) to the Geneva Conventions, 1977 Ratification.
6. Note: Additional Protocol II of 1977 addresses protections afforded to victims in non-international armed conflicts. Given the purpose and scope of this paper, it is not included within the legal analysis here.
7. Geneva Convention Additional Protocol I, Article 43
8. Article 44 - Combatants and prisoners of war
   2. While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules shall not deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except as provided in paragraphs 3 and 4.

   3. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:
   (a) during each military engagement, and
   (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.
9. Acts which comply with the requirements of this paragraph shall not be considered as perfidious within the meaning of Article 37, paragraph 1 (c).

   4. A combatant who falls into the power of an adverse Party while failing to meet the requirements set forth in the second sentence of paragraph 3 shall forfeit his right to be a prisoner of war, but he shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war by the Third Convention and by this Protocol. This protection includes protections equivalent to those accorded to prisoners of war by the Third Convention in the case where such a person is tried and punished for any offences he has committed.

   5. Any combatant who falls into the power of an adverse Party while not engaged in an attack or in a military operation preparatory to an attack shall not forfeit his rights to be a combatant and a prisoner of war by virtue of his prior activities.

   6. This Article is without prejudice to the right of any person to be a prisoner of war pursuant to Article 4 of the Third Convention.

   7. This Article is not intended to change the generally accepted practice of States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict.

   8. In addition to the categories of persons mentioned in Article 13 [Link] of the First and Second Conventions, all members of the armed forces of a Party to the conflict, as defined in Article 43 of this Protocol, shall be entitled to protection under those Conventions if they are wounded or sick or, in the case of the Second Convention, shipwrecked at sea or in other waters.
10. IHL Treaties – Geneva Convention (III) on Prisoners of War, 1949. Note: Article 118 of the Convention mandates that POWs must be released and repatriated without delay after the cessation of active hostilities. This is of note in this context because many of these foreign fighters do not wish to be repatriated to Russia, but rather, to their home countries.
11. IHL Treaties – Additional Protocol (I) to the Geneva Conventions, 1977 – Commentary of 1987 Articl, Article 43 – Armed forces, Article 43
12. AP, Article 47(1): "A mercenary shall not have the right to be a combatant or a prisoner of war."
13. AP, Article 47
14. International Committee of the Red Cross, Customary International Humanitarian Law, Rule 108: Mercenaries
15. International Convention against the Recruitment, Use, Financing and Training of Mercenaries

16. Article 1
For the purposes of the present Convention,
1. A mercenary is any person who:
a. Is specially recruited locally or abroad in order to fight in an armed conflict;
b. 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 rank and functions in the armed forces of that party;
c. Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
d. Is not a member of the armed forces of a party to the conflict; and
e. 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.

2. 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.

17. Recruitment, including predatory recruitment, of mercenaries and mercenary-related actors, Report of the 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, 12 July 2023.

18. International Convention Against the Recruitment, Use, Financing and Training of Mercenaries

19. OAU Convention for the Elimination of Mercenarism in Africa.

20. OAU Convention for the Elimination of Mercenarism in Africa, Article 1: "A mercenary is any person who: … (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."

21. IHL Treaties – Additional Protocol (I) to the Geneva Conventions, 1977 - Commentary of 1987 Title, Title of the Protocol and Preamble, Title

22. IHL Treaties – Additional Protocol (I) to the Geneva Conventions, 1977 - Commentary of 1987 Article, Article 47 – Mercenaries, Article 47

23. Gillis, Matilda, Modern Slavery in Armed Conflict, International and Comparative Law Quarterly (2025)

24. IHL Treaties – Additional Protocol (I) to the Geneva Conventions, 1977 – Commentary of 1987 Article, Article 47 - Mercenaries, Article 47

25. IHL Treaties - Additional Protocol (I) to the Geneva Conventions, 1977 – Commentary of 1987 Article, Article 47 – Mercenaries, Article 47

26. IHL Treaties - Additional Protocol (I) to the Geneva Conventions, 1977 – Commentary of 1987 Article, Article 47 - Mercenaries, Article 47

27. See, for example, Ministerial Decision No. 1 Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings (2000), Ministerial Council Declaration on Trafficking in Human Beings (2002), and Permanent Council Decision No. 557 OSCE Action Plan to Combat Trafficking in Human Beings (2003)

28. Forced Labour Convention, 1930 (No. 29), (Article 2(1))

29. Forced Labour Convention, 1930 (No. 29), (Article 2(2)(a))

30. ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), General Survey on the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), Report III (Part 1B), International Labour Conference, 96th Session (2007), paras. 84–90; see also CEACR, General Survey on the Fundamental Conventions concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization, Report III (Part 1B), International Labour Conference, 101st Session (2012), paras. 272–279.

31. Ministerial Decision No. 1 Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings (November 2000).

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