



AP photo/Markus Schreiber

A man carries combat gear as he enters Ukraine at the border crossing in Medyka, Poland, Wednesday, 2 March 2022.

The Canadians Fighting in Ukraine

by Tyler Wentzell

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Canadians have a long history of engaging in foreign wars. Even when the state played no official role, Canadians fought in large numbers in the American Civil War, the Spanish Civil War, and the Vietnam War, with smaller numbers participating in many other conflicts.¹ These volunteers sometimes served in formal militaries, while others fought for non-state actors. These Canadians went to fight for their ideals or to seek adventure rather than because their home country demanded it. With such ostensibly romantic motivations, it is little wonder that foreign volunteerism is often a divisive topic. Some see these fighters as criminals—or liabilities who

risk pulling their country into a war—while others celebrate them as folk heroes.

This article, written in the early days of Russia's invasion of Ukraine, examines the Canadian volunteers serving in the Armed Forces of Ukraine. It begins by recounting the early recruiting process and Russian and Canadian official reactions to it. Then, it examines the concept of foreign fighters generally and related terms, highlighting key legal distinctions between foreign fighters, mercenaries, and foreign terrorist fighters. Finally, it highlights what this author perceives as some of the challenges posed by the participation of Canadian volunteers in this conflict. It dispels the notion that Canada is formally neutral and posits that the principal risk is that Russia will use the foreign fighters in support of their narrative of clandestine NATO involvement. This claim is only made worse by Russia's announced intention to treat foreign fighters as criminals and not extend to them the protections of the Geneva Conventions.

The International Legion of Territorial Defense of Ukraine

The first concrete indications of a move towards recruiting foreign volunteers came on 26 February 2022 through a Facebook post by Ukraine's embassy in Israel (Figure 1).

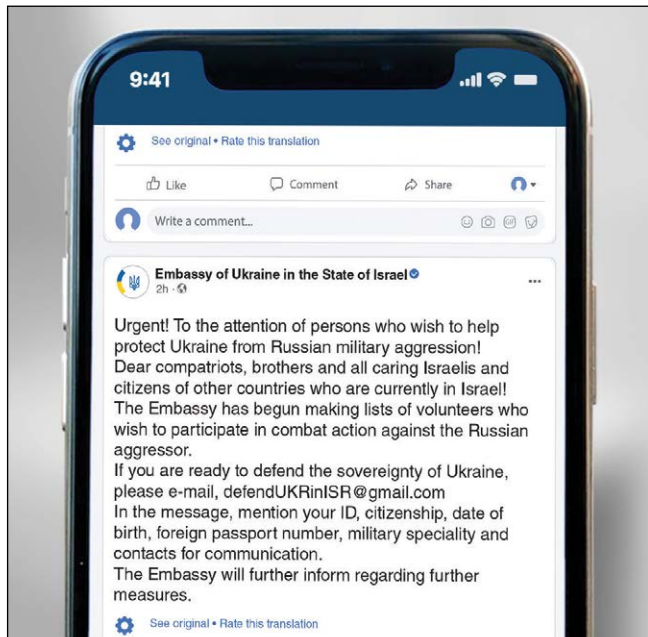


Figure 1: Adapted screenshot from the Ukrainian embassy to Israel's Facebook post, 26 February 2022, later deleted.²

The next day, Ukrainian president Volodymyr Zelensky announced that the Armed Forces of Ukraine would accept foreign volunteers and build the International Legion of Territorial Defense of Ukraine (ILDU), a unit within its armed forces. Ukraine has formally permitted foreign nationals and stateless persons who could legally work in Ukraine to join its military since 2016.³ Now it was recruiting foreigners and building a specific organization within its military to receive them. Within a week, Ukraine had waived all visa requirements and reportedly received 16,000 foreign volunteers.⁴

The ILDU has made joining its ranks extremely easy (Figure 2). A well-designed website with high search engine optimization greets a potential recruit with a live chat feature and two buttons to "Enlist Now." The website provides seven simple steps to enlist and all of the necessary contacts to complete the process. Additionally, the website amplifies key themes present in other state materials: that Ukraine needs help and that their fight is the fight of free people everywhere. The website's tagline is "Save the World, Stand with Ukraine," and one of the five criteria for volunteering is having "a strong will to defend world peace."⁵ The website designers have emphasized the moral standing of the endeavour rather than excitement, adventure, or material gain. The corresponding website for Canadians—with a .ca domain name—is less sophisticated but certainly direct. It includes a four-line application form.⁶



Figure 2: The landing page of the ILDU as of 12 March 2022.⁷

Canadian reaction to the recruiting drive came quickly. Mélanie Joly, Canada's Minister of Foreign Affairs, stated the same day as Zelensky's announcement: "We understand that people of Ukrainian descent want to support their fellow Ukrainians and also that there is a desire to defend the motherland and in that sense it is their own individual decision.... Let me be clear: we are all very supportive of any form of support to Ukrainians right now." Minister of National Defence Anita Anand similarly told "all foreigners willing to defend Ukraine and world order" to contact the foreign diplomatic missions of Ukraine.⁸ Subsequent statements warned Canadians not to join the Russian armed forces and encouraged them to join the Canadian Armed Forces instead of going abroad to enlist. Still, the official Canadian stance on Ukraine's recruiting drive has been uncritical.⁹

On 9 March, only ten days after Zelensky announced the creation of the ILDU, 550 Canadians were reportedly in Kyiv. The ILDU grouped them into their own battalion, with a further 1,000 applicants in the recruiting pipeline.¹⁰ Given that many more volunteers are simply boarding commercial flights to get to Ukraine as fast as possible, there are potentially many more volunteers, meaning that a Canadian brigade is not beyond the realm of possibility.¹¹ There are as yet no details as to the composition of the Canadian contingent or the experience of its members, and therefore nothing on how it might be employed. For instance, there is a significant difference between 550 enthusiastic and perhaps even highly trained infantry soldiers and an actual battalion with the necessary mix of command and technical skills to fight, move, and communicate as an organization. The former is a holding unit; the latter can conduct operations.

The difference between a holding unit from which to draw volunteers for other units and a formed organization of Canadian volunteers might not make a difference militarily. However, it may play a role in the Canadian public's perception of the volunteers. For instance, in the Spanish Civil War, nearly 1,700 Canadians volunteered to fight for the Second Spanish Republic. They are collectively remembered as the "Mac-Paps," short for the Mackenzie-Papineau Battalion. However, this nickname belies a sort of useful fiction: the Mackenzie-Papineau Battalion was an actual battalion named in honour of the Canadian volunteers' contribution to the war. In truth, Canadians never constituted its majority, certainly not among its leadership appointments. The International Brigades sprinkled Canadians throughout its battalions, but the more politically savvy Canadian volunteers understood that the idea of a Canadian unit was a

powerful way to connect the Canadian public to the war effort.¹² The announcement of a Canadian “battalion” in Ukraine and creating a “brigade” patch so early likely follows the same logic (Figure 3). In the Spanish Civil War, the announcement of a Canadian battalion also preceded the unit’s actual creation.



Badge/photo courtesy of Roman Chabursky and Professor Lubomyr Luciuk

Figure 3: The reported arm patch worn by Canadians fighters in Ukraine.¹³

Russian officials publicly commented on the foreign fighters shortly after Zelensky’s announcement. Alexander Bastrykin, head of Russia’s Investigative Committee, directed that the foreign fighters be identified and monitored for potential criminal proceedings. Russian domestic law prohibits the participation of mercenaries in armed conflict, punishable by up to seven years imprisonment.¹⁴ A Russian Ministry of Defence spokesperson then stated that the military’s position was that the foreign volunteers were mercenaries. As mercenaries, they were not entitled to prisoner of war status under the Geneva Conventions. He stated, “At best, they [the volunteers] can expect to be prosecuted as criminals.”¹⁵

What is a Foreign Fighter?

There is no universally accepted definition of foreign fighters or foreign volunteers. Moreover, challenges in assessing a volunteer’s motivations to fight and any measure of “foreignness” beyond strict citizenship often dilute the concept. The best definition comes from historian Nir Arielli’s *From Byron to bin Laden: A History of Foreign War Volunteers*: “Foreign volunteers leave their country of nationality or residence and take part in a conflict abroad on the basis of a personal decision, without being sent by their government and not primarily for material gain.”¹⁶ This definition usefully separates mercenaries from foreign volunteers, and includes volunteers for both state armed forces and armed non-state actors alike.

The history of Canadian foreign fighters is further complicated by the country’s heritage as a British colony, integration with

the United States, and multicultural population. Canadian citizenship was not distinct from British until 1946. Furthermore, Britons and many Canadians shared profound cultural connections. Consequently, Canadians could and often did serve with British or imperial forces with little perception of “foreignness.” Similarly, Canadians and Americans—sharing a North American identity that obscured foreignness—have routinely served in each other’s militaries. Finally, Canada’s multicultural society creates further complications. Many people simultaneously hold more than one identity and/or set of legal obligations. Canada permits dual citizenship, and a Canadian may be required to complete compulsory military service where required by their other state. Further, Canada is home to many diaspora populations who may feel compelled to serve in the militaries of their other home. Such connections are not strictly a matter of country of origin, such as the movement during the 1860s to have Catholic Canadians defend Pope Pius IX or the many Jewish Canadians who have served in the Israeli Defence Forces.¹⁷

While popular culture sometimes romanticizes mercenaries, their widespread use during the Cold War, particularly in Africa, led to significant human rights abuses and diminished exercise of national self-determination. Whoever could pay the bills could quickly acquire a body of often ruthless fighters. Consequently, the label is often used to diminish the moral standing of foreign volunteers. The “good guys” attract foreign volunteers because of the justness of their cause, while the “bad guys” use mercenaries who are motivated by nothing more than money.

The 1977 Additional Protocol I to the Geneva Conventions defines mercenaries and their legal protections. A mercenary is recruited to participate in an armed conflict and then actually engages in an armed conflict. A mercenary is neither a citizen of a state party to the conflict nor a resident of it. A mercenary is motivated by personal gain, and they are paid considerably more than those of equivalent rank or qualifications. The definition further excludes individuals who serve in either the armed forces of a party to the conflict or of a non-party who is present in an official capacity. This is a very restrictive definition and notably excludes foreign volunteers who serve in a state’s armed forces.¹⁸

The distinction between a mercenary and a foreign fighter is significant, as there are different legal protections for each category. A foreign volunteer in an armed force receives the protections of the Geneva Conventions, especially important if the individual is captured and becomes a prisoner of war. Although a mercenary does not receive the same protections, they are presumptively given them until a tribunal determines their status—a requirement ignored by Russian statements to date.¹⁹ A prisoner of war has immunity from prosecution for their mere participation in the conflict and lawful conduct. Mercenaries, however, may be tried by the detaining power for their conduct, which should be preceded “whenever possible” by the tribunal determining their status.²⁰ While Canada has no such offence in its legislation, some states—including Russia—have created specific offences for the crime of being a mercenary.

A related category of foreign fighter is the Foreign Terrorist Fighter (FTF). Following the attacks of 11 September 2001, Canada created new terrorism offences within the *Criminal Code*. In 2013, Canada added new provisions, including section 83.181: it is an offence to leave or attempt to leave Canada to commit an

offence that, if it were committed in Canada, would constitute participation in a terrorist group. This offence preceded United Nations Security Resolution (UNSCR) 2178 of 2014, which called upon states to establish laws for identifying, prosecuting, and reintegrating FTFs, and the similar UNSCR 2396 of 2017.²¹

UNSCR 2178 and 2396, and Canada's section 83.181 of the *Criminal Code*, were principally motivated by many foreigners fighting with the Islamic State of Iraq and Syria (ISIS), a listed terrorist group. Canadians also volunteered with Al-Shabab in Somalia; Al-Muwaqi'un Bil Dima, an Al Qaeda affiliate in Algeria; and the anti-ISIS Kurdistan Workers' Party (PKK). The PKK is especially notable because it was the only listed terrorist group within the anti-ISIS coalition. Canadians who volunteered with other Kurdish militias did not break any law in doing so. However Canadians joining the PKK would do so in contravention of section 83.181 if they acted to commit a terrorist offence or to assist the PKK in committing a terrorist offence. Nevertheless, no one has been charged for actions with the PKK to date. As of 2018, only 11 Canadians had been charged under this provision, and only three have been convicted.²²

Whether an individual is labelled a foreign fighter or volunteer, a mercenary, or a terrorist, their conduct is what ultimately matters. Canadian legal prohibitions on terrorist activity and the commission of war crimes or crimes against humanity apply extraterritorially, meaning it does not matter where the crimes are committed or for whom they are committed. Similarly, whether or not someone is rhetorically considered a terrorist, they nonetheless receive protections under the Geneva Conventions if their actual conduct follows the laws of armed conflict.

Potential Implications of the Canadian Foreign Fighters

The principal motivation behind early legal prohibitions on foreign military service is preserving a state's prerogative in the exercise of its foreign policy. The circumstances leading to the first British *Foreign Enlistment Act* provide an illustrative example. After the Napoleonic Wars, demobilized British soldiers travelled to Latin America to fight for Simon Bolivar against Spain. The individual decisions of these British subjects threatened the peace between Spain and Britain, so the British parliament passed a law prohibiting them from joining foreign militaries as may be "prejudicial to and tend to endanger the Peace and Welfare of this Kingdom."²³ The law was hardly enforced, but at least Britain could point to it as evidence that it was not surreptitiously fuelling an insurgency against Spain. In British North America, the law was used in a limited way to prosecute American recruiters during their civil war, but



Canada's Defence Minister Anita Anand speaks during a visit to highlight military aid for Ukraine at Canadian Forces Base Trenton in Trenton, Ontario, 14 April 2022.

REUTERS/Alamy Stock Photo

not against the volunteers themselves. The law was hastily updated again in 1870 to prevent Britons from fighting in the Franco-Prussian War—effectively, to preserve British neutrality in a war in which it played no part.²⁴

The law of neutrality was established in custom and codified in the 1907 Hague Conventions. These conventions included 13 treaties, two of which directly addressed the law of neutrality. One of these is pertinent to the present discussion: *Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land*.²⁵ The positive duties of a neutral state in land warfare were limited. While the neutral state could not itself contribute soldiers, weapons, or "in general, of anything which can be of use to any army or fleet," it did not have to actively prevent its nationals or resident corporations from volunteering for service, making donations, or trading with (and profiting from) a belligerent party.²⁶ The neutral state could restrict or otherwise regulate the activities of its nationals and corporations, but it had to do so in a manner that did not discriminate amongst belligerents. For example, a state could restrict volunteering in foreign militaries generally, or in the militaries of any belligerent state involved in a specific conflict, but it would lose the status of neutrality if it prohibited enlistment in one belligerent's military while permitting it in another.²⁷

The statuses of "neutral" and "belligerent" are not binary; there is space in between. In the present conflict, Canada is not a belligerent, but it cannot claim to be neutral either. Canada has contributed weapons to Ukraine and not to Russia. Canada has pursued sanctions against Russia and not against Ukraine. Canada is providing intelligence and cyber assistance to Ukraine and not to Russia. Canada's position on foreign volunteers is not entirely clear, but official statements so far have been permissive of volunteering for Ukraine and cautionary against volunteering for Russia. Canada is not—and should not—treat the parties the same and therefore cannot claim to be neutral.



AP Photo/Markus Schreiber

A Ukrainian refugee holds the hand of a child as she walks with others at the border crossing in Medyka, Poland, 8 March 2022.

The risk to Canada posed by the foreign volunteers is not the loss of neutrality but potential Russian claims that Canada or its allies are belligerents. Russian propaganda has repeated the claim that Russia had “no choice” but to invade Ukraine due to NATO expansion and the threat to Moscow posed by long-range weapons in Ukraine. At the time of writing, the performance of the Russian armed forces has been lacklustre and the Ukrainian resistance formidable. As Russian president Vladimir Putin attempts to construct a narrative to explain this poor performance, he may claim that these failures were due to significant clandestine NATO involvement. In addition to material support for Ukraine, including anti-tank weapons, the large numbers of foreign fighters from NATO states like Canada will support this narrative. These issues may manifest as rhetorical claims in state media as Putin tries to save face, but they may also manifest in acts of escalation.

Russia’s claim that the foreign volunteers are mercenaries and will not be extended the protections of the Geneva Conventions exacerbates this risk. For example, suppose the Russian armed forces capture a Canadian volunteer. In that case, that individual will not be afforded prisoner of war status and will instead face trial in a Russian court for the crime of being a mercenary engaged in an armed conflict. If Russia does not presumptively give these individuals the protections of the Geneva Conventions and make determinations of their status through a competent tribunal, as required by Additional Protocol I, this will constitute a disturbing violation of international law. Moreover, it seems unlikely that a Russian criminal proceeding of this nature would be apolitical. There is a significant risk of coerced false confessions and sham trials to provide the world with misleading evidence in support of the Russian narratives of significant NATO interference in the conflict.

A corollary to this issue is the risk of the volunteers being used more generally for disinformation. Simply by travelling abroad to isolated locations, these foreign volunteers are at an elevated risk of identity theft. Russian authorities could steal a Canadian volunteer’s identity and compromise their social media accounts

such that Russian disinformation could reach a Canadian audience with greater legitimacy than through state-run media. In the same way a volunteer’s social media account may do much to connect Canadians at home directly to the Ukrainian people, a compromised or entirely fabricated account could create opportunities for Russia to develop simulated, “false flag” war crimes to erode the legitimacy of the ILDU.

In the longer term, the eventual return of Canadian volunteers presents other complications. Even though Canadian policy is that going is a personal choice undertaken at one’s own risk, it seems unlikely that the government could invest zero political capital into securing the release of any detained Canadians. Similarly, while any returned Canadians would be eligible for general healthcare, they will require certain social and mental health services that are not provided to the general population. Ukraine’s veteran services and potentially even Ukrainian diaspora community groups may assist these returnees. Still, other aspects of their care and reintegration may require special services and the expenditure of taxpayer money.

Finally, some returning fighters will pose a potential security threat to Canada. Some elements of the Armed Forces of Ukraine are heavily influenced by right-wing ideology, to say nothing of the myriad paramilitary groups that have or will emerge. Similar-minded extremist foreigners are among those who have volunteered to defend Ukraine.²⁸ Such individuals may be simultaneously motivated to support Ukraine while also gaining training and combat experience for nefarious ends. Such individuals may present a future law enforcement challenge, and prosecution of such individuals for war crimes, crimes against humanity, or terrorism offences stands to be extremely difficult.

Conclusion

At the time of writing, Russia has abandoned its general offensive and focused instead on Ukraine’s south and east. The Ukrainian people continue to give example after

example of defiance in the face of terrible odds. Foreign volunteers continue to arrive by way of the Polish border, passing Ukrainian civilians driven from their homes by the fighting. The foreign volunteers may yet provide enough combat power to make a tactical difference in battles to come, but we can be certain that regardless of their military impact, they will alter the relationship their home countries have to the plight of the Ukrainian people. Canadians, already following the battle through traditional and social media, will soon hear stories from the front told by their fellow citizens. Should a formed unit of Canadians engage in combat against the Russian armed forces, it will likely become a powerful symbol that will motivate Canadians to do more for Ukraine.

Such a symbol is appealing, especially at a moment when so many Canadians feel helpless and frustrated as they watch this

human tragedy play out. But it will come with a cost. Canadians will be among the casualties, and captured Canadians will likely be exploited for propaganda purposes. This, too, will change Canada's relationship with this war, as leaders struggle to do what is possible for these Canadians while preventing Canada from becoming further embroiled in the conflict. At the end of the conflict, whatever its outcome, many of these fighters will come home bearing both visible and invisible scars from their experiences. This reintegration may fuel further debate as to what degree the state owes assistance to the Canadians who fought for this popular cause, knowing it was a personal decision undertaken at their own risk.



NOTES

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