

## BOOK REVIEW

*FOREIGN FIGHTERS UNDER INTERNATIONAL LAW AND BEYOND* EDITED BY ANDREA DE GUTTRY, FRANCESCA CAPONE, CHRISTOPHE PAULUSSEN (SPRINGER, 2016) 533 PAGES. PRICE €199.99 (HARDCOVER) ISBN 9789462650985

In 2015, the United Nations estimated the presence of more than 25 000 ‘foreign terrorist fighters’, primarily in Syria and Iraq, originating from over 100 countries.<sup>1</sup> The significant numbers of such fighters, and the international dimension of their activities and travel patterns, are considered to have created an ‘acute’ situation and a ‘growing threat to international security’.<sup>2</sup> States of the fighters’ nationality or residence, but also transit, destination and return are all having to grapple with this phenomenon;<sup>3</sup> so much so that the foreword to the volume by the European Union Counter-Terrorism Coordinator, Gilles de Kerchove, describes the foreign terrorist fighter problem as a ‘generational challenge’.<sup>4</sup> As well as being a challenge that states are dealing with under their domestic criminal law, the phenomenon of individuals choosing to leave their country of origin or residence in order to fight in armed conflicts in another state clearly raises multiple considerations under international law.

*Foreign Fighters under International Law and Beyond*, edited by Professor Andrea de Guttry and Research Fellow Francesca Capone, both of the School of Public International Law at the Scuola Superiore Sant’Anna in Pisa, and Christophe Paulussen, Senior Researcher and Coordinator at the TMC Asser Instituut and the International Centre for Counter-Terrorism in The Hague, is therefore an extremely timely and relevant work, addressing an international issue with a rapidly-developing legal architecture. This edited volume of over 500 pages brings together 23 high-quality contributions from multiple disciplines: law, history, terrorism and security studies, political science and international relations, media and communications. Authors include scholars and

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<sup>1</sup> President of the Security Council, *Statement by the President of the Security Council*, UN SCOR, 7453<sup>rd</sup> mtg, UN Doc S/PRST/2015/11 (29 May 2015). For further statistics of foreign fighter estimates, see also Edwin Bakker and Mark Singleton, ‘Foreign Fighters in the Syria and Iraq Conflict: Statistics and Characteristics of a Rapidly Growing Phenomenon’ in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 9, 10, 23.

<sup>2</sup> *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, UN GAOR, UN Doc A/71/384 (13 September 2016) [42]; see also SC Res 2178, UN SCOR, 7272<sup>nd</sup> mtg, UN Doc S/RES/2178 (24 September 2014) 2.

<sup>3</sup> ‘Introduction’ in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 1, 1–3; Bakker and Singleton, above n 1, 21–4; Sandra Krähenmann, ‘The Obligations under International Law of the Foreign Fighter’s State of Nationality or Habitual Residence, State of Transit and State of Destination’ in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 229 (‘The Obligations under International Law’).

<sup>4</sup> Gilles de Kerchove, ‘Foreword’ in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) v, vi.

practitioners, including contributors from civil society, European Union and UN bodies.

The term ‘foreign fighter’ is not defined in international law but the term is used today primarily to refer to jihadist fighters. This volume underscores that the scope of the phenomenon, particularly in relation to the conflicts in Syria and Iraq, has undergone an important transformation, making legal debates within the sphere of counterterrorism of crucial relevance.<sup>5</sup> In response to this transformation, and with heightened attention following the several terrible attacks in European countries and elsewhere claimed by the Islamic State group, the UN and other supranational bodies have rapidly called upon states to address the foreign fighter issue, not only through enhanced cooperation such as information-sharing, but also by enacting new domestic criminal justice and administrative measures to suppress the phenomenon.<sup>6</sup> As discussed in chapters 13 and 14 of the volume, *Resolution 2178*, in particular, expresses grave concern about individuals who attempt to travel to become foreign terrorist fighters.<sup>7</sup> In the aim of preventing the movement of fighters across borders, it specifically requires states to ensure suitable law and policy so as to be able to prosecute those who travel or attempt to travel from their territory to another state for the purposes of terrorism.<sup>8</sup>

Reflecting the international emphasis on counterterrorism, *Foreign Fighters under International Law and Beyond* provides a strong overall focus on security issues, analysing the phenomenon of foreign fighting primarily through the prism of the contemporary situation in the Middle East and recruitment into the Islamic State group. Although the volume includes authors based in the United States, Israel and Ghana, and discusses the African Union (‘AU’) and the Middle East and North Africa (‘MENA’) regions, the predominant sense of place the volume projects is one from European eyes, spurred to some extent by a concern about national security threats at home. States are ‘frantically looking for effective responses to counter this phenomenon’ because of the ‘growing risk that either returnees or copy cats at home will create havoc in countries other than Syria and Iraq, the countries that are presently suffering most’.<sup>9</sup> The editors wish to

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<sup>5</sup> Ibid; de Guttry, Capone and Paulussen, ‘Introduction’, above n 3, 3; Bakker and Singleton, above n 1, 12; Marcello Flores, ‘Foreign Fighters Involvement in National and International Wars: A Historical Survey’ in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 27; Francesco Strazzari, ‘Foreign Fighters as a Challenge for International Relations Theory’ in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 49, 52–3.

<sup>6</sup> See, eg, *The United Nations Global Counter-Terrorism Strategy Review*, GA Res 68/276, UN GAOR, 68<sup>th</sup> sess, Agenda Item 119, UN Doc A/RES/68/276 (24 June 2014); SC Res 2170, UN SCOR, 7242<sup>nd</sup> mtg, UN Doc S/RES/2170 (15 August 2014); European Union Counter-Terrorism Coordinator, ‘Foreign Fighters and Returnees: Discussion Paper’ (Discussion Paper, No 15715/2/14 REV 2, Council of the European Union, Counter-Terrorism Coordinator, 2 December 2014) <<http://data.consilium.europa.eu/doc/document/ST-15715-2014-REV-2/en/pdf>> archived at <<https://perma.cc/2GUB-7KCL>>.

<sup>7</sup> SC Res 2178, UN SCOR, 7272<sup>nd</sup> mtg, UN Doc S/RES/2178 (24 September 2014) 2–10.

<sup>8</sup> Ibid 4.

<sup>9</sup> de Guttry, Capone and Paulussen, ‘Introduction’, above n 3, 2.

consider how the phenomenon can be ‘somewhat contained ... in an effective and long term way’.<sup>10</sup>

The book is divided into four Parts. Part I provides a statistical and historical overview and description of the contemporary phenomenon of foreign fighting. This includes a discussion of recruitment practices and the use of social media, fighters’ motivations for travel to foreign conflicts based on interviews conducted with fighters and their families, as well as the question of the military impact of foreign fighters. Part II of the volume addresses the legal status of foreign fighters under existing international humanitarian, criminal and human rights law frameworks. Part III covers supranational approaches to foreign fighters and Part IV examines national legislative and administrative responses. These two Parts provide a detailed snapshot of the current domestic, regional and international legal and political responses to foreign terrorist fighters, covering the contemporary responses of the UN, EU, AU and Organization for Security and Co-operation in Europe, and on the national level, select Western European and non-European countries and select countries of the MENA region.

Of particular interest to international lawyers, the contributions highlight the potential risks of this rapid development of new aspects of anti-terrorism law. This includes, for example, challenges in collecting evidence of extraterritorial activities, dilemmas when criminalising preparatory acts before departure and questions about criminalising actions which would not be prohibited under international humanitarian law (‘IHL’), such as ‘mere’ participation in an armed group. The editors acknowledge that the terrorism label imports a risk of broad government actions against any political opposition.<sup>11</sup> Sandra Krähenmann’s contribution is also revealing in this regard. Her close reading of *Resolution 2178* points out dilemmas caused by the lack of clear conceptual definitions of its terms. Are you still ‘foreign’ if you are a dual national of the state suffering armed conflict?<sup>12</sup> Can you be a ‘terrorist’ simply by attempting to join a particular group? If so, which groups qualify as ‘terrorist groups’? Can you be a ‘fighter’ if you join a terrorist organisation not involved in armed conflict?<sup>13</sup> Alex Conte examines more generally the respect of human rights obligations while countering terrorism. Several rights may be impacted by domestic actions taken to comply with the Security Council’s requirements including freedom of movement, right to return to one’s country, right to family and private life, *non-refoulement* and the principle of legality.<sup>14</sup> In a similar vein, Laura van Waas

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<sup>10</sup> Ibid 3.

<sup>11</sup> de Guttry, Capone and Paulussen, ‘Introduction’, above n 3, 3.

<sup>12</sup> See also within the book under review: Linda Darkwa, ‘The African Union and the Phenomenon of Foreign Fighters in Africa’ in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 373, 376–7; Laura van Waas, ‘Foreign Fighters and the Deprivation of Nationality: National Practices and International Law Implications’ in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 485.

<sup>13</sup> Krähenmann, ‘The Obligations under International Law’, above n 3, 234–41.

<sup>14</sup> Alex Conte, ‘States’ Prevention and Responses to the Phenomenon of Foreign Fighters Against the Backdrop of International Human Rights Obligations’ in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 283, 286.

discusses certain states' policies of stripping foreign terrorist fighters of their nationality and the risks of such national practices violating international law in terms of the prohibition of arbitrary deprivation of liberty, avoiding statelessness and ensuring non-discrimination.<sup>15</sup> The stated aim of the editors is to offer observations for academics, policymakers and the public regarding foreign fighters, emphasising approaches that remain respectful of international law and 'the values and norms for which our societies stand'.<sup>16</sup>

The International Committee of the Red Cross has previously commented that little attention had been paid to how IHL deals with the phenomenon of foreign fighters.<sup>17</sup> The set of legal issues discussed in Part II of the volume, related to the question of the status and treatment of foreign fighters under international criminal law, IHL and human rights, is therefore particularly welcome. At the same time, since there are no specific international instruments governing 'foreign fighting' as such, we are left for the most part with an application of the standard frameworks. When looking at the conditions under which human rights violations committed by foreign fighters might be attributable to an armed opposition group,<sup>18</sup> the scenario of a group claiming responsibility for a particular attack is explored.<sup>19</sup> Here, and throughout this Part, there may have been scope for exploring contemporary factual scenarios and dilemmas in greater detail, such as regarding the potentially different types of links (and/or challenges in identifying links) between foreign fighters and an armed group's structure and hierarchy compared, for example, with local recruits, or regarding attacks conducted in countries away from the area of hostilities, 'lone wolf' attacks or other specific issues regarding transnational groups or networks. Similarly, except in detention during international armed conflict, nationality makes very little difference to the application of IHL on the battlefield and foreign fighters are bound by the same IHL rules in the conduct of hostilities as any other belligerent.<sup>20</sup> Once the status of foreign fighters under IHL has been set out, then, one could consider what impact the counterterrorism approach has on the application of IHL in practice. What dilemmas does the interplay of the

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<sup>15</sup> van Waas, above n 12, 469.

<sup>16</sup> de Guttry, Capone and Paulussen, 'Introduction', above n 3, 3.

<sup>17</sup> International Committee of the Red Cross ('ICRC'), 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts' (Report No 32IC/15/11, ICRC, October 2015) 19 <<https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf>> archived at <<https://perma.cc/4G44-PHC2>>.

<sup>18</sup> The chapter assumes, through a functional approach, application of international human rights law to armed groups with a variable content depending on the authority they exercise. See Daniele Amoroso, 'Armed Opposition Groups' (and Foreign Fighters') Abidance by International Human Rights Law: The Issues of Compliance in Syria and Iraq' in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 205, 211–14.

<sup>19</sup> *Ibid* 205, 215–16.

<sup>20</sup> Although in practice, as the contributor in the book under review points out, nationality may be an aggravating or mitigating circumstance depending on the view of the detaining authority during non-international armed conflict: see Emanuele Sommaro, 'The Status of Foreign Fighters under International Humanitarian Law' in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 141, 141, 154.

different frameworks create?<sup>21</sup> For example, while IHL encourages amnesties at the end of hostilities in non-international armed conflict,<sup>22</sup> how could or should these be made available to foreigners involved with a listed terrorist organisation who did not actually commit a terrorist act or other serious violation of IHL? What practical challenges might arise with fighters being foreign, such as greater vulnerability in detention, ensuring access to disarmament, demobilisation and reintegration ('DDR') programs, or the principle of *non-refoulement* preventing repatriation?

The volume is also revealing and a great springboard for further reflection, because of what it does not discuss. Precisely because the risk of misuse of a counterterrorism approach is important, we could also consider the reasons behind choosing or emphasising that approach in the first place, its interplay with other relevant frameworks and the effect of various categorisations and definitions. The editors initially describe an intention to consider a wider phenomenon of 'foreign fighters' — a formidable undertaking. Thus, while there is no agreed meaning of 'foreign fighter' in international law and indeed no specific international instrument dealing with them, the definition used in the work is 'individuals, driven mainly by ideology, religion and/or kinship, who leave their country of origin or their country of habitual residence to join a party engaged in an armed conflict' ie the chosen definition for the volume is not limited to those suspected of terrorist activities or of links to a listed terrorist organisation, nor even to those who join a non-state armed group, but potentially includes also foreigners fighting on the side of a government.

The rationale behind this choice lies in the fact that the phenomenon of foreign fighters does not have an ascertained legal meaning under the existing international legal framework and the present book, in light of recent events and situations, strives to provide the reader with the most comprehensive overview of the issues at stake.<sup>23</sup>

This can be contrasted with other definitions in scholarship and practice which limit the concept to individuals fighting in a non-state armed group only;

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<sup>21</sup> See, eg, Krähenmann, 'The Obligations under International Law', above n 3, 243–4; Christophe Paulussen and Eva Entenmann, 'National Responses in Select Western European Countries to the Foreign Fighter Phenomenon' in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 391, 391, 420.

<sup>22</sup> With the exception of persons suspected of, accused of or sentenced for war crimes. *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts 1977*, opened for signature 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978) art 6(5). This rule is considered customary in non-international armed conflict: Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge University Press, 2005) vol 1, 611, r 159. For mention of amnesty, see also Sommaro, above n 20, n 52.

<sup>23</sup> de Guttry, Capone and Paulussen, 'Introduction', above n 3, 2. See also Bakker and Singleton, above n 1, ch 2.

or some might say which expand the definition to those fighting with *any* non-state armed group.<sup>24</sup>

The examples of supranational and national practice analysed in Parts III and IV of the book clearly illustrate the dilemmas that arise with the lack of agreed definitions. Like other states, Australia and New Zealand share these national dilemmas and their respective legislation is discussed in chapters 21 and 23. As one example, when Australian Jamie Bright was killed in Syria in 2016 while fighting with a Kurdish group against the Islamic State group, his actions were both honoured and cautioned against. ‘Tributes flow[ed]’, while at the same time, the Prime Minister referred to Australia’s foreign incursion law as ‘absolutely critical’.<sup>25</sup> The Attorney-General explained the law for the public: ‘It is illegal under Australian law to fight for any side in the conflict in Syria’.<sup>26</sup> In practice, however, such fighters returning to Australia have been released without charge after interviews with police, or had foreign incursion charges dropped.<sup>27</sup> There is a ‘moral difference’, former Prime Minister Tony Abbott has said, ‘between fighting for ISIS and battling against the extremist group’.<sup>28</sup> Indeed, who exactly are we talking about when we talk about ‘foreign fighters’? One striking aspect of the various countries’ debates around foreign fighters is

<sup>24</sup> See, eg, ICRC, above n 17, 19; David Malet, *Foreign Fighters: Transnational Identity in Civil Conflicts* (Oxford University Press, 2013) 9; Thomas Hegghammer, ‘The Rise of Muslim Foreign Fighters: Islam and the Globalization of Jihad’ (2010) 35(3) *International Security* 53, 53; Sandra Kraehenmann, ‘Foreign Fighters under International Law’ (Academy Briefing No 7, Geneva Academy of International Humanitarian Law and Human Rights, October 2014) 5–6 <[https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Foreign%20Fighters\\_2015\\_WEB.pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Foreign%20Fighters_2015_WEB.pdf)> archived at <<https://perma.cc/7BEV-F3DC>>. See also Annalisa Creta, ‘Towards Effective Regional Responses to the Phenomenon of Foreign Fighters: The OSCE Toolbox’ in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 355, 357–8.

<sup>25</sup> David Wroe, ‘Tributes Flow after Australian Man Jamie Bright Killed Fighting with Kurds against Islamic State’ *Sydney Morning Herald* (online), 30 May 2016 <<http://www.smh.com.au/federal-politics/political-news/australian-man-jamie-bright-reportedly-killed-fighting-with-kurds-against-islamic-state-20160530-gp6x19.html>> archived at <<https://perma.cc/4U89-32BD>>.

<sup>26</sup> Chip Le Grand, ‘Fighting for Kurds against Islamic State “May Be Legal”’ *The Australian* (online), 2 June 2016 <<http://at.theaustralian.com.au/link/b4f14f73ea714e6038361a218bd7fb64?domain=theaustralian.com.au>> archived at <<https://perma.cc/2V6K-L9JD>>.

<sup>27</sup> Australian Associated Press, ‘Ashley Dyball, Australian Who Fought against Isis in Syria, Released after Return’ *The Guardian* (online), 7 December 2015 <<https://www.theguardian.com/australia-news/2015/dec/07/ashley-dyball-australian-fought-against-isis-syria-released-after-return>> archived at <<https://perma.cc/2SUC-8B8Z>>; Adam Cooper, ‘Prosecutors Drop Case against Jamie Williams Who Was Accused of Trying to Fight Islamic State’ *The Age* (online), 9 February 2016 <<http://www.theage.com.au/victoria/prosecutors-drop-case-against-jamie-williams-who-was-accused-of-trying-to-fight-islamic-state-20160208-gmp26b.html>> archived at <<https://perma.cc/ZLM7-ANLC>>. Countries have responded differently depending on their domestic legislation and practice. Regarding Denmark, see, eg, Lara Whyte, *The Girl Who Ran Away to Fight ISIS* (25 May 2016) Vice Broadly <[https://broadly.vice.com/en\\_us/article/joanna-palani-syria-iraq-ran-away-fight-isis](https://broadly.vice.com/en_us/article/joanna-palani-syria-iraq-ran-away-fight-isis)> archived at <<https://perma.cc/YNH8-FPKP>>.

<sup>28</sup> Australian Associated Press, ‘Reece Harding’s Mother Says Locking up Fighters Battling Isis Is “Farcical”’ *The Guardian* (online), 6 July 2015 <<https://www.theguardian.com/australia-news/2015/jul/06/reece-hardings-mother-says-locking-up-fighters-battling-isis-is-farcical>> archived at <<https://perma.cc/8J3K-HRKG>>.

the lack of consensus about whether states need to control all such private volunteering and if regulation is required, how to define the problematic cases and the scope of the duty.<sup>29</sup> Given that the phenomenon of foreign fighters is not new, as the editors also make clear, depending on the definitions we choose, we can think of international volunteers in the Spanish Civil War, mercenaries' involvement in certain post-colonial struggles of the 1960s and 1970s, or foreign fighters who joined the mujahidin in Afghanistan in the 1980s — what sense should we make of the modern transformation of foreign fighting that is described? While '[w]ithin the "UN system" foreign fighters are only addressed when linked to terrorist groups or liable to commit terrorist acts, ie when they are "foreign terrorist fighters"',<sup>30</sup> and while, legally speaking, differentiating mercenaries from foreign fighters based on their different motivations is straightforward,<sup>31</sup> the picture is not so clear in practice. The UN Working Group on the Use of Mercenaries, for example, has asserted that foreign fighters are a possible contemporary form of 'mercenarism' or mercenary-related activities.<sup>32</sup> One example given in the volume relates to recent legislative debates in Belgium regarding whether its law implementing the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* should be extended so as to criminalise leaving for Syria to fight there (which was rejected, the contributors explain); as well as whether any such decision should be specific to Syria or apply to fighting in any foreign state, and whether the law should include a blanket ban on any fighting, or only for siding with listed terrorist groups.<sup>33</sup>

Other types of fighters *are* mentioned within the contributions, such as foreign volunteers fighting with Kurdish groups, or forces aligned with the Syrian or Iraqi government side. The overview of contemporary statistics and characteristics of foreign fighters in chapter 2 and historical overview in chapter 3 in particular discuss typologies of broader categories of foreigners involved in

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<sup>29</sup> See, eg, comments by the UK Independent Reviewer of the *Terrorism Act 2000*: David Anderson, 'The Terrorism Acts in 2013: Report of the Independent Reviewer on the Operation of the *Terrorism Act 2000* and Part 1 of the *Terrorism Act 2006*' (July 2014), 97–8, [10.69], cited in Krähenmann, 'The Obligations under International Law', above n 3, 244–5. It cautions that:

"a legally informed policy debate" is needed to decide "how the law should treat foreign fighters", including where there should be a principled prohibition of fighting in non-international armed conflicts abroad; whether such a prohibition should be based on terrorism laws, and if so, on what basis, ie whether participation in an armed conflict is inherently "terrorist" or because of the blowback risk.

<sup>30</sup> Andrea de Guttry, Francesca Capone and Christophe Paulussen, 'Concluding Remarks' in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 517, 520; see also Andrea de Guttry, 'The Role Played by the UN in Countering the Phenomenon of Foreign Terrorist Fighters' in Andrea de Guttry, Francesca Capone and Christophe Paulussen (eds), *Foreign Fighters under International Law and Beyond* (Springer, 2016) 259, 277.

<sup>31</sup> Sommario, above n 20, 156–7.

<sup>32</sup> Working Group, *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*, 71<sup>st</sup> sess, Provisional Agenda Item 68, UN Doc A/71/318 (9 August 2016) 23 [77].

<sup>33</sup> Paulussen and Entenmann, above n 21, 394–5. Regarding debates about Norwegian law, see also, Helene Højfeldt, 'Prohibiting Participation in Armed Conflict' (2015) 54 *Military Law and the Law of War Review* 13, 18–22, 30–1.

both government and non-government forces. For the most part, however, such references are made only in passing or in the initial paragraphs of chapters. An exception is Linda Darkwa's contribution discussing the response to foreign fighters in select African countries and by the AU.<sup>34</sup> She highlights the traditional focus in the region on mercenaries and the more recent focus on terrorism, despite the many non-nationals reportedly fighting for a range of reasons and motivations in conflicts in Somalia, Mali, Libya, the Democratic Republic of Congo and the Central African Republic amongst others. Darkwa explains:

As a result, there are no dedicated instruments or actions to address the broader phenomenon of foreign fighters. ... [T]hey are reluctant to disaggregate the typology of foreign fighters, choosing instead to classify them either as mercenaries or foreigners potentially engaged in terrorist acts or linked to terrorist groups. This reluctance to unpack the term to deal with the category, foreign fighters, that is the interest of this volume, creates a binary categorisation that is inaccurate because it fails to acknowledge and account for those whose involvement in foreign armed conflicts is inspired by other reasons.<sup>35</sup>

Certainly, as set out above, the overall thrust and coverage of the book is a discussion of contemporary foreign terrorist fighters, with a focus on Syria and Iraq, and specifically the Islamic State group. This allows us to reflect upon the impact on our understanding and articulation of international law if we focus on terrorism and consider foreign-fighting as one aspect of it; alternatively if we focus on foreign-fighting and consider terrorism as one aspect of it. As Daphne Richmond-Barak and Victoria Barber have argued, '[t]he emerging legal framework governing foreign fighters, whose importance is set to grow, epitomizes assumptions we've made about the good, the bad and the ugly in Syria'.<sup>36</sup> The editors argue that 'there is no gap in international law when it comes to regulating foreign fighters, meaning that the norms enshrined in treaty as well as customary law provide, in principle, an effective and sound framework to deal even with an undefined and multifaceted phenomenon'.<sup>37</sup> Yet, this seems to depend on which definitions and assumptions one is working with. Along these lines, the editors also note:

a danger is looming, similar to what occurred in the post 9/11 period, of governments trying to fight this problem with everything at their disposal, without really knowing first what the problem is and how it can be tackled in the most effective and durable way. Indeed, there is a perceptible trend of adopting many measures to address the problem.<sup>38</sup>

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<sup>34</sup> Darkwa, above n 12.

<sup>35</sup> *Ibid* 375.

<sup>36</sup> Daphne Richmond-Barak and Victoria Barber, 'Foreign Volunteers or Foreign Fighters? The Emerging Legal Framework Governing Foreign Fighters' on Chris Borgen et al, *Opinio Juris* (6 May 2016) <<http://opiniojuris.org/2016/05/06/foreign-volunteers-or-foreign-fighters-the-emerging-legal-framework-governing-foreign-fighters/>> archived at <<https://perma.cc/G4H2-NU5A>>.

<sup>37</sup> de Guttry, Capone and Paulussen, 'Concluding Remarks', above n 30, 520.

<sup>38</sup> de Guttry, Capone and Paulussen, 'Introduction', above n 3, 3.



The volume offers a broad palette without ever being broadbrush. The contributions aim primarily to provide comprehensive applications of existing frameworks, predominantly counterterrorism frameworks, rather than attempt to investigate broader and contested underlying norms, concepts, values and assumptions about the foreign and private use of force by individuals. On the topic of foreign terrorist fighters, the contributions are not only timely and detailed, but provide a range of perspectives and approaches, which pragmatically analyse the application of law and policy, its limits and challenges. In this sense, this book offers an invaluable and comprehensive starting place — probably essential reading — for students, researchers and practitioners from all disciplines wishing to become familiar with the relevant legal and political frameworks, contemporary questions and practical challenges. The current heightened attention given to counterterrorism frameworks as a response to the modern transformation of a phenomenon that everyone agrees is not new may have stories of its own to be explored elsewhere regarding other constellations or categorisations of foreign volunteers fighting in civil wars and the effect on our approaches under international law to certain legal definitions such as ‘mercenary’, ‘volunteer’ or ‘terrorist’. As a starting point, we might wish to continue to explore the question of who is ‘foreign’ and the relativity of being ‘foreign’ when we talk of a state’s primary concern being the risk of returning citizen foreign fighters, as well as also to consider those who may not be ‘terrorists’ and those who may not even be ‘fighters’.

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