



## Introduction

It must be remembered, too, that the belief in spirits and ghosts, and the return of the dead is far from having disappeared among educated people, and that many who are sensible in other respects find it possible to combine spiritualism with reason. A man who has grown rational and sceptical, even, may be ashamed to discover how easily he may for a moment return to a belief in spirits under the combined impact of strong emotion and perplexity.

Sigmund Freud (1907)<sup>1</sup>

### I.1 The *Revenants* of International Law

It was telling to see how the individuals coming back to Europe from the Syrian battlefield were called returnees, or *revenants*. The term *revenant* in fact indicates someone who has supposedly come back from the afterlife.<sup>2</sup> Since the outbreak of the Syrian Civil War, a plethora of debates has surrounded this non-state actor, debates that have amplified following the Paris and Brussels attacks.<sup>3</sup> The topic had gained world-wide attention when the United Nations Security Council (UNSC) openly criminalized those joining the Al-Nusra Front and the Islamic

<sup>1</sup> Sigmund Freud, 'Delusion and Dream in Jensen's *Gradiva*', in J. Strachey, A. Freud, A. Strachey and A. Tyson (eds.), *The Standard Edition of the Complete Psychological Works of Sigmund Freud. Vol. IX* (London: Hogarth Press 1959) 7–93, p. 71.

<sup>2</sup> The *Oxford English Dictionary* defines *revenant* as 'a person who has returned, especially one who is thought to have come back from the dead'. The *Larousse Dictionary* defines the term as the following: 'Âme d'un mort qui se manifesterait à un vivant sous une forme physique (apparition, esprit, fantôme).'

<sup>3</sup> On the security threat posed by returning foreign terrorist fighters in their home states see Phil Gurski, *Western Foreign Fighters: The Threat to Homeland and International Security* (Lanham, MD: Rowman & Littlefield 2017) and Elena Pokalova, *Returning Islamist Foreign Fighters: Threats and Challenges to the West* (London: Palgrave Macmillan 2020).

State. Conflating the problem with jihadi-led terrorism, the UNSC also offered a definition for ‘foreign terrorist fighters’ (FTF).<sup>4</sup>

As many at the time noted, no real status existed for such an actor in international law.<sup>5</sup> And yet foreign fighters have long been around the international scene. Historians have generally referred to the broader phenomenon of foreign volunteering, and scholarship has today recognized the involvement of volunteers in many conflicts over the last two centuries.<sup>6</sup> Some famous examples include the nineteenth-century wars of independence in Latin America, where Britons fought under various guises;<sup>7</sup> or the Greek War of Independence (1821–1832), which saw many volunteers driven by philhellenic sentiments joining the ranks of the Greek insurgents against the Ottoman empire.<sup>8</sup> The list continues with the American Civil War (1861–1865), the Second Boer War (1899–1902) and the Spanish Civil War (1936–1939). Recent examples include the Yugoslav Wars and the conflicts in Iraq, Somalia and Libya, where the presence of third-country nationals on the battlefield has been extensively documented.<sup>9</sup> To be precise, the very term ‘foreign fighter’ is

<sup>4</sup> Specifically resolution 2178 defined foreign terrorist fighters as ‘individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict’. Addressing the Growing Issue of Foreign Terrorist Fighters, S/RES/2178, 24 September 2014, preamble.

<sup>5</sup> See generally Andrea de Guttry, Francesca Capone and Christopher Paulussen (eds.), *Foreign Fighters under International Law and Beyond* (The Hague: Asser Press 2016).

<sup>6</sup> See Steven O’Connor and Guillaume Piketty (eds.), *Foreign Fighters and Multinational Armies: From Civil Conflicts to Coalition Wars, 1848–2015* (Abingdon: Routledge 2022); Christine G. Kruger and Sonja Levesen (eds.), *War Volunteering in Modern Times: From the French Revolution to the Second World War* (London: Palgrave Macmillan 2013); and Nir Arielli and Bruce Collins (eds.), *Transnational Soldiers: Foreign Military Enlistment in the Modern Era* (London: Palgrave Macmillan 2013).

<sup>7</sup> See Moises Enriquez Rodriguez, *Freedom’s Mercenaries: British Volunteers in the Wars of Independence of Latin America. Vol. I: Northern South America and Vol. II: Southern South America* (Lanham, MD: Hamilton Books 2006).

<sup>8</sup> See William St. Clair, *That Greece Might Still Be Free: The Philhellenes in the War of Independence* (Oxford: Oxford University Press 1972); Hervé Mazurel, *Vertiges De La Guerre: Byron, Les Philhellènes et Le Mirage Grec* (Paris: Les Belles Lettres 2013); and Moises Enriquez Rodriguez, *Under the Flags of Freedom: British Mercenaries in the War of the Two Brothers, the First Carlist War, and the Greek War of Independence (1821–1840)* (Lanham, MD: Hamilton Books 2009).

<sup>9</sup> On the Yugoslav case: Jennifer Mustapha, ‘The Mujahideen in Bosnia: The Foreign Fighter as Cosmopolitan Citizen and/or Terrorist’ (2013) 17 *Citizenship Studies* 742–755. For the Iraq War: Christopher Hewitt and Jessica Kelley-Moore, ‘Foreign Fighters in Iraq: A Cross-National Analysis of Jihadism’ (2009) 21 *Terrorism and Political Violence* 211–220. For the Somali case: Lorenzo Vidino, Raffaello Pantucci and

rather a recent invention, appearing in the academic literature and in international forums with the involvement of the Arab Mujahideen during the Soviet–Afghan War (1979–1989).<sup>10</sup>

One can thus suggest that the so-called foreign fighter is but a non-state actor coming back in different historical moments to fight in conflicts abroad.<sup>11</sup> As such, they can be added to the longer list of ‘irregulars’, a category already explored by legal scholars.<sup>12</sup> If the phenomenon of foreign volunteering is usually read in relation to the rise of modern nation-state armies, this remains but one aspect of a more

Evan Kohlmann, ‘Bringing Global Jihad to the Horn of Africa: Al Shabaab, Western Fighters, and the Sacralization of the Somali Conflict’ (2010) 3 *African Security* 216–238. For Libya: Aaron Y. Zelin, ‘The Others: Foreign Fighters in Libya’ (2018) 44/45 *Washington Institute for Near East Policy: Policy Notes* (2018) 1–27.

<sup>10</sup> See Daniel Byman, *Road Warriors: Foreign Fighters in the Armies of Jihad* (New York: Oxford University Press 2019) and Roger Warren, *Terrorist Movements and the Recruitment of Arab Foreign Fighters. A History from 1980s Afghanistan to ISIS* (Oxford: Bloomsbury 2021). For the term ‘Muslim foreign fighter’ see Thomas Hegghammer, ‘The Rise of the Muslim Foreign Fighters: Islam and the Globalization of Jihad’ (2011) 35 *International Security* 53–94. The Italian historian Marcello Flores d’Arcais retraced several instances in which the presence of foreign individuals in war was documented. Recognizing that it is difficult to give an accurate definition, d’Arcais proposes describing this actor by employing the term volunteer rather than fighter. He writes: ‘The meaning and definition of “foreign fighter” has constantly evolved in light of the historical events of the past few decades, particularly because of the lack of a clear meaning and definition in the international legal framework . . . Instead, the term “volunteer” was used both for nationals and foreigners, putting an emphasis on the individual – civilian and/or former (or foreign) soldier – as a participant in war (or conflict, uprising, civil war, revolution); they joined a threatened government, a non-state actor, a minority group seeking to come to power or national or diverse ethnic groups seeking their independence.’ Marcello Flores, ‘Foreign Fighters’ Involvement in National and International Wars: A Historical Survey’, in de Guttry et al. (eds.), *Foreign Fighters under International Law* 27–47, p. 28.

<sup>11</sup> For the purpose of this study, the terms foreign fighter/volunteer/combatant will be used interchangeably.

<sup>12</sup> See specifically Sibylle Scheipers, *Unlawful Combatants: A Genealogy of the Irregular Fighter* (Oxford: Oxford University Press 2015). Although Scheipers shows that various types of ‘irregular fighters’ (e.g., guerrillas, terrorists, etc.) have been marginalized throughout the modern codification of humanitarian law, foreign fighters are absent from her study. Emily Crawford and Helen Kinsella both contributed to problematize the division between combatants and civilians, highlighting different biases beneath the principle of distinction. See Helen M. Kinsella, *The Image before the Weapon: A Critical History of the Distinction between Combatant and Civilian* (Ithaca, NY: Cornell University Press 2011) and Emily Crawford, ‘Regulating the Irregular: International Humanitarian Law and the Question of Civilian Participation in Armed Conflicts’ (2011) 18 *UC Davis Journal of International Law and Policy* 163–190.

complex story.<sup>13</sup> Travelling for the love of adventure, for idealism, faith, or for pecuniary reasons, there is usually a mix of causes pushing these individuals to join armed conflicts and groups abroad. One common trait points to their vision of an-other place, together with a moral urge to intervene in the world.<sup>14</sup> ‘I dream’d that Greece might still be free’, writes Byron in one of his most famous poems, whereas André Malraux in *L’Espoir* describes the different motivations pushing leftist volunteers to join the ranks of the Republicans during the Spanish Civil War.<sup>15</sup> The desire to seek a deeper meaning is often translated into action, but this impetus is always ambivalent, fractured, a harbinger of ideals and contradictions: ‘I had had one craving all my life – for the power of self-expression in some imaginative form . . . At last accident, with perverted humour, in casting me as a man of action had given me place in the Arab Revolt’, T. E. Lawrence affirms, not without a hint of cynicism.<sup>16</sup>

To be clear, this book is not concerned with the motivations of different foreign fighters across time and space. Other scholars have successfully proposed this type of analysis.<sup>17</sup> Rather, what is interesting

<sup>13</sup> This point is analysed extensively by Janice Thomson, as she explains the decrease in the utilization of mercenaries compared to the rise of the nation-state army. See Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton, NJ: Princeton University Press 1994).

<sup>14</sup> Roger Stéphane, *Portrait de l’Aventurier: T. E. Lawrence, Malraux, Von Solomon* (Paris: Points Editeur 2014). Based on the original text published by Éditions Grasset & Fasquelle (1965).

<sup>15</sup> André Malraux, *L’Espoir* (Paris: Gallimard 1937).

<sup>16</sup> T. E. Lawrence, *The Seven Pillars of Wisdom* (London: Penguin Classics 2000) pp. 640–641. In the case of white mercenaries, a mix of heroic ambitions and self-perception as noble condottieri is reflected in the way they understood their political mission on the African continent. The biographies of some well-known European mercenaries bear witness to this. See specifically Jean Schramme, *Le Bataillon Leopard: Souvenirs d’un African Blanc* (Paris: Laffont 1969); Mike Hoare, *The Road to Kalamata: A Congo Mercenary’s Memoir* (Lexington, KY: Lexington Books 1989); and Rolf Steiner, *Carré Rouge: du Biafra au Soudan, le Dernier Condottiere* (Paris: Laffont 1976).

<sup>17</sup> See Nir Arieli, *From Byron to Bin Laden. A History of Foreign War Volunteers* (Cambridge, MA: Harvard University Press 2018); David Malet, *Foreign Fighters: Transnational Identity in Civil Conflicts* (Oxford: Oxford University Press 2013); and Darryl Li, *The Universal Enemy: Jihad, Empire, and the Challenge of Solidarity* (Stanford, CA: Stanford University Press 2019). For Malet, there is always a transnational identity reconnecting these individuals to certain groups and struggles abroad. In other words, there seem to be different reasons which, at different times, attract different ‘types’ of foreign fighters abroad. Or, as he puts it: ‘in the first half of the twentieth century, most foreign fighters were members of Communist groups. In the late nineteenth century, the feared perpetrators of transnational violence were anarchists. In both these waves, the militants and insurgents shared a key common trait with mujahidin today: transnational

is the diverse range of characters one can find when looking at the recent history of this phenomenon – for example, romantic adventurers (Byron), mercenaries (Lord Cochrane), political advisers (Lafayette), revolutionaries (Garibaldi), secret agents (T. E. Lawrence) or intellectuals (Hemingway, Orwell and Malraux).

That the most diverse and renowned personalities appear on this list is not irrelevant, or just an extravagant cultural detail. Quite the contrary. Throughout this book, it will be shown how past figures of the foreign fighter are directly evoked by national and international lawmakers. The images of these and other fighters will then reappear from the past – as *revenants* – when state representatives and politicians cast decisions upon the legal status of this actor. Here is the first reason why it is crucial to go back to history: there is a whole repertoire of figures evoked in the legislative arena. Secondly, this move helps characterizing law as a social artefact, embedded within a web of cultural references. Most importantly, as a human product, moulded by the fears, desires and fantasies that traverse legal actors and their imaginary. This is the aspect that is studied in more depth in this book.

By connecting three significant moments in the recent history of civil war (Spain, Angola and Syria), the book shows how different cultural figures of the foreign fighter have informed and keep informing the legal

ideological affiliation'. Malet acknowledges that since the Soviet invasion of Afghanistan a new transnational identity has formed and has attracted individuals during the Bosnian wars (1992–1995), the civil war in Algeria (1991–2002), the first Chechen war (1994–1996), the Kosovo war (1998–1999) and later in Afghanistan, Iraq and Syria: the one of the Ummah, or the community of Muslim believers. According to his view, most foreign fighters are neither mercenaries nor fanatics, given that: 'rather than for greed, most mobilize in response to perceived threat . . . or the need to protect a certain group or cause' (the quotes from Malet are at pp. 207–213). Similar to Malet, Arielli argues that the decision to fight abroad is linked with forms of ideologies. These determine the volunteers' choice to leave, defining their historical contingencies. Arielli divides those ideological motivations in three grand moments, or 'waves': (1) the liberty vs. tyranny wave (nineteenth century); (2) the left-wing vs. right-wing wave (1917–1980); (3) and the so-called clashes of civilizations wave (1980–present). Arielli defines four typologies of volunteers: self-appointed ambassadors, diaspora volunteers, cross-border volunteers and substitute-conflict volunteers. Like Malet, he also distinguishes volunteers from both mercenaries and state-sponsored troops (e.g., the French foreign legion or the British colonial troops). Finally, Li's monograph focuses on one particular type of foreign fighter – the Arab Mujahedeen in the context of the Bosnian wars. By employing a mix of anthropological, historical and ethnographic methods, Li advances a fascinating argument in favour of an Islamic form of universalism. Once again, my book is not concerned with foreign fighters' motivations or ideological commitments, but rather with the figures populating the imaginary of legal actors.

conversations of state representatives, policymakers, international lawyers and national courts at different times and places. These figures, it is argued, linger at the back of various decisionmakers' positions and arguments, informing the way in which they understand the rightness or the wrongness of the foreign fighters' causes and, most importantly, the legal responses to the problem posed by Western citizens going to fight in wars abroad. Epitomizing different conceptions of freedom, these figures have an impact on the way foreign fighters are understood and judged in each historical period.

On this note, it must be added that such figures are not fixed. On the one side, they mirror the historical-political context in which the lawmakers make use of them. On the other, they move across time and space, reappearing in different settings, contexts, moments. Besides, a distinction is operated each time between the 'good' and the 'bad' foreign fighter: idealists and fascists, mercenaries and military advisers, enemies of humanity and freedom fighters, and so on. The status of foreign fighters is always played out through a lawful/unlawful dichotomy, which links to the passions, the desires and the fantasies that lawmakers project to them.

Nathaniel Berman has showed in his seminal work how rules remain essentially a human product, and likewise how human beings tend to put their 'passions and ambivalences' into the categories of law.<sup>18</sup> Following the same methodological path, foreign fighter status is taken here as an example to show how such status cannot explain the whole story of this non-state actor. Different lawmakers will engage in passionate fights to define who counts as a legitimate foreign combatant, as some wish to prosecute the 'bad' foreign fighters under the law, while others argue that they should not be criminalized for their actions. What is at stake is the most classical of the struggles at the core of the legislative process, which reveals how law is not a neutral tool, nor can it soften the conflicts at the root of society.<sup>19</sup> On the contrary, law understood as a *social and cultural construct* is embedded within the passions, the desires and the fantasies of its creators, fantasies which, every time there are attempts to expel

<sup>18</sup> Nathaniel Berman, *Passion and Ambivalence: Colonialism, Nationalism, and International Law* (Leiden: Brill 2011).

<sup>19</sup> Similar to the famous expression 'one man's freedom fighter is another man's terrorist', one side's lawful foreign fighter is always going to be the other side's enemy. This kind of Schmittian formula will nevertheless be problematized throughout the book. See Carl Schmitt, *The Concept of the Political. Expanded Edition* (Chicago: University of Chicago Press 2007).

them from the law, keep coming back, as *revenants*, here in the form of figures/images of the ‘good’ and the ‘bad’ foreign combatant.

The noble adventurer, the racist mercenary and the religious fanatic are part of a *cultural repertoire* informing the lawmaking process and related criminalization or acquittal of foreign fighters. Hence, the argument made in this book should not be misunderstood as an aesthetic or visual claim about law. Nor is the accent put on the actual roles played by Byron, Orwell, Malraux and suchlike on the battlefield. Along with De Saussure, the term ‘foreign fighter’ is seen as a floating signifier, with a contextual meaning. It does not matter whether they are volunteers, mercenaries or terrorists. Or rather, it matters to the extent to which the lawmakers will legitimize some and delegitimize others: idealists and fascists; soldiers of fortune and foreign advisers; fanatics and freedom fighters.<sup>20</sup> The interest lies in the cultural figures which haunt legal actors when they produce these kinds of binary oppositions. As much as the lawmakers would like to rationalize their passions through the law, they fail to do so. Their conscience is split, and so are the images they resort to. Yet these figures populate their imaginary and will come back to inform subsequent debates, establishing the precedents upon which the foreign fighters’ status will be moulded and framed.

## I.2 Setting the Frame

The present study ranges from the codification of the 1907 Hague Conventions to the Syrian Civil War, with the criminalization of foreign terrorist fighters (September 2014).<sup>21</sup> By following the developments on the legal status of the foreign combatant, the story highlights those moments where cultural figures enter the debate and influence lawmaking or adjudicating processes. The book should thus be read as an intervention in the legal history of the Western foreign volunteer, with the intent to analyse this non-state actor from a cultural standpoint.<sup>22</sup>

<sup>20</sup> Similarly see Aaron Ettinger, ‘The Mercenary Moniker: Condemnations, Contradictions and the Politics of Definition’ (2014) 45 *Security Dialogue* 174–191. See also Stéphane Baudens, Marc Dupré and Hélène Terrom (eds.), *Les Combattants Étrangers: Approches Culturelles et Juridiques* (Paris: Mare et Martin 2021).

<sup>21</sup> It also includes an excursus on the 1874 Brussels conference, as an important node to understand how the figure of the foreign combatant shifts from the nineteenth to the twentieth century.

<sup>22</sup> See specifically Robert W. Gordon, ‘Critical Legal Histories’ (1984) 36 *Stanford Law Review* 56–125. See also Hayden White, *Metahistory: The Historical Imagination in*



To this end, the book is built upon three civil conflicts, which mirror three historical moments and their different conceptualizations of law and of warfare.<sup>23</sup> These are:

- (1) The Spanish Civil War (interwar period);
- (2) The Angolan Civil War (decolonization);
- (3) The Syrian Civil War (War on Terror).

The three civil wars are placed within ideological struggles that provide the setting from which the various figures of the foreign fighter emerge. These struggles can be summarized as follows:

- (1) The fight of communism versus fascism (Spanish Civil War);
- (2) The anti-colonial uprisings (Angolan Civil War);
- (3) Religious fundamentalism (Syrian Civil War).

Other periods (and other wars) could have been considered, notably during the long nineteenth century. However, had the book jumped from the Greek War of Independence to the American Civil War, to Spain, the narrative would have become too episodic, losing acuity and historical accuracy. The references to Byron, Garibaldi or Lafayette that appear in the first chapter do indeed come from the nineteenth century, but when their images enter the debates of the interwar period, the legal and political landscape is naturally very different from that of previous centuries.

The three periods are thus chosen to reflect contemporary developments within international law, and specifically within international

*Nineteenth-Century Europe* (Baltimore, MD: Johns Hopkins University Press 1973); Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore, MD: Johns Hopkins University Press 1987); Keith Jenkins, *Re-thinking History* (New York: Routledge 2003); and Joan Scott, *Théorie Critique de l'Histoire. Identités, Expériences, Politiques* (Paris: Fayard 2009).

<sup>23</sup> The figures analysed in the chapters emerge from precise contexts. Another way of approaching the material would have been the one used by Eric Hobsbawm in his fascinating monograph on banditry. There, Hobsbawm retraces three figures of the bandit in the longue durée: the noble robbers, the avengers and the haiduks. Hobsbawm's approach has certainly influenced the present work, which however remains solidly anchored in a more traditional historical timeline. Where Hobsbawm starts his analysis from the figures (only later placed within different historical backgrounds), here the opposite process was adopted: different figures of the foreign combatant emerge each time from precise historical, political and legal contexts. See Eric Hobsbawm, *Bandits. Revised Edition* (New York: Pantheon Books 1981).



humanitarian law (IHL). The Spanish, Angolan and Syrian Civil Wars in fact represent three vantage points to explore how legal doctrines, the practice of states and the codification of the laws of war concerning foreign fighters have all been advanced in the twentieth century.<sup>24</sup> This is not done to retrace a history of humanitarian law, however.<sup>25</sup> Explaining how these individuals were taken into consideration in the codification of IHL principles, or why they have remained rather marginal figures, is not the primary intent of this book.<sup>26</sup>

<sup>24</sup> For some classic studies on the legal aspects of civil war: John Norton Moore and Joseph Perkovich (eds.), *Law and Civil War in the Modern World* (Baltimore, MD: Johns Hopkins University Press 1974); Stephen C. Neff, *The Rights and Duties of Neutrals: A General History* (Manchester: Manchester University Press 2000); and Eliav Liebllich, *International Law and Civil War* (New York: Routledge 2013). For a compelling historical study on the notion of civil war: David Armitage, *Civil Wars: A History in Ideas* (New York: Alfred A. Knopf 2017). This remains a non-exhaustive list, of course.

<sup>25</sup> The aim of this study is to show how the present foreign fighters' categorizations are linked to previous cultural archetypes. And, consequently, how the figures evoked in earlier epochs still affect and inform the imaginaries of legal actors in the present. For important critical work on the laws of war see David Kennedy, *Of War and Law* (Princeton, NJ: Princeton University Press 2006); Chris Jochnick and Roger Normand, 'The Legitimation of Violence: A Critical History of the Laws of War' (1994) 35 *Harvard International Law Journal* 49–95; Frédéric Mégret, 'The Laws of War and the Structure of Masculine Power' (2008) 19 *Melbourne Journal of International Law* 200–226; and Nathaniel Berman, 'Privileging Combat? Contemporary Conflict and the Legal Construction of War' (2004) 43 *Columbia Journal of Transnational Law* 1–71. On the colonial origin of the laws of war see Frédéric Mégret, 'From "Savages" to "Unlawful Combatants": A Postcolonial Look at International Humanitarian Law's "Other"', in Anne Orford (ed.), *International Law and Its Others* (Cambridge: Cambridge University Press 2006) 265–317.

<sup>26</sup> The examination of how foreign fighters were understood under the modern laws of war certainly points to the state-centric bias at the core of IHL. Foreign fighters as actors in warfare are only conceivable in relation to state armies, or groups resembling fully organized armed contingents. As we will see throughout the chapters, they will mostly be protected under the regime dealing with international armed conflicts. In a situation of civil strife; however, they tend to benefit from less protection. This bias is not exclusively targeting foreign fighters though, as they suffer from the same prejudice as other non-state armed actors. Mégret notes: 'Although the laws of war claim to have nothing to do with the *jus ad bellum*, they are at least the repositories of a notion of who is more fundamentally allowed to participate in war, with states at the apex, state-mimicking non-state actors a relatively close second, and pure non-state actors that do not inscribe their action within a sovereign register as distant thirds.' Frédéric Mégret, 'Theorizing the Laws of War', in Florian Hoffmann and Anne Orford (eds.), *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press 2016) 762–778, p. 17. For some relevant literature on non-state actors, please refer to: Andrea Bianchi (ed.), *Non-state Actors and International Law* (Aldershot: Ashgate 2009); Math Noortmann and Cedric Ryngaert (eds.), *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers* (London: Routledge 2016); Jean d'Aspremont (ed.), *Participants*

Here, another clarification is needed. The discussion is on two levels: the national and the international. It is particularly interesting to follow the discourse of legal actors, as it shifts from the domestic to the international plane and back. Lawmakers in the domestic context refer to the international sphere to solve the issue of foreign fighters; conversely, international actors point to the domestic level to pass and enforce legislation against them. This is not only indicative of the interconnections between the two frameworks, but it also reinforces the argument about the difficulty of producing any clear-cut categorization for this non-state actor.<sup>27</sup>

Related to this is the choice of the material. French and British sources have been privileged. Focusing on the case studies of France and United Kingdom was not only due to the possibilities of conducting research, but above all for the richness of the material and for the cultural figures which keep recurring in the debates on foreign volunteers. One of the apparent shortcomings of this work might be that this material remains strictly legal: for example, doctrines, parliamentary debates, preparatory works. While the genealogical method envisages finding the hidden ways in which the legal material is moulded, here the reverse approach was adopted. Within the discourse of legal actors, I deliberately chose to trace those figures that bring a focus *from law elsewhere*. The objective is to bring out an alterity from the legal material itself, by showing how law is embedded within a web of cultural references in the imaginary of its creators. This is also the reason why the text makes extensive use of direct quotes – attempting to offer a sense of the fantasies, fears and related cultural images that actors use when speaking about foreign fighters.<sup>28</sup>

*in the International Legal System: Multiple Perspectives on Non-State Actors in International Law* (London: Routledge 2011); and Ezequiel Heffes, Marcos D. Kotlik and Manuel J. Ventura (eds.), *International Humanitarian Law and Non-State Actors: Debates, Law and Practice* (The Hague: Asser Press 2020).

<sup>27</sup> It must also be emphasized that legal actors themselves move from the national to the international context and vice versa. State representatives and policymakers often sit in parliamentary debates and in UN venues. Or they are briefed by international experts, before drafting legislation at the national level. This should be taken as a further confirmation of the strong interrelations between the two stages. I am aware that there are fundamental differences between the domestic and international spheres in how norms are produced and enforced. But this book does not deal with the function and nature of legal systems. The story unfolds through sites where the issue of foreign fighters is dealt with from a legal point of view.

<sup>28</sup> On this point see Marianne Constable, *Our Word Is Our Bond: How Legal Speech Acts* (Stanford, CA: Stanford University Press 2014).