

EGMONT PAPER 101

**RETURNEES: WHO ARE THEY, WHY  
ARE THEY (NOT) COMING BACK AND  
HOW SHOULD WE DEAL WITH THEM?**

**Assessing Policies on Returning Foreign  
Terrorist Fighters in Belgium, Germany  
and the Netherlands**

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## OVERVIEW AND KEY FINDINGS

Some 5000 men, women and children have travelled from Europe to Syria and Iraq since 2012. An estimated 1500 of these foreign terrorist fighters (FTF) have returned so far. Some came back disillusioned, or traumatised by their war experiences, but others returned with malicious intentions.

The first successful attack by a returnee in Europe occurred in 2014, with Mehdi Nemmouche's shooting at Brussels' Jewish Museum. Several other attacks followed, culminating with the coordinated attacks in Paris in November 2015 and Brussels in March 2016. Since then, no new attack by returnees has occurred but that does not mean the threat is over. Plots continue to be set up, mostly by so-called homegrown terrorist fighters with limited means and skills, but with potentially dramatic results should they succeed. They could pose a serious security challenge.

Studies of past jihadi waves show that veteran fighters can play a crucial role in perpetuating the jihadi movement from one generation to another, often starting from their prison cells, where many returnees from Syria and Iraq now serve their sentences.

The idea for this project goes back almost two years ago, at a time when concerns were increasingly raised about the lack of a comprehensive approach on returning FTF. Practitioners were attempting to cope with this issue within the specific context of their own agencies, but were barely aware of what colleagues were doing in other departments, let alone other countries. Although many measures were being implemented in the aftermath of the Paris and Brussels attacks, national responses were by and large compartmentalised and uncoordinated.

As we started our research in early 2017, we were still hearing many criticisms from various agencies and administrations. One year later, however, things have changed for the better. Not everything is perfect, as outlined in this report, but responses in Belgium, Germany and the Netherlands have overall become more comprehensive and coordinated.

This report looks into policies on returning foreign fighters in these three countries. It is the very first systematic and in-depth study into national approaches and policies vis-à-vis returnees. Its added value lies in the wealth of data, including data that has not been published before, and, of course, in the comparative angle. The authors hope to offer a reference point for future studies, for both practitioners and researchers.

Belgium, Germany and the Netherlands have different histories of terrorism, different institutional systems and different approaches to terrorism and radicalisation. But all three are affected by the issue and, together, represent a third of European FTF and returnees.

Interestingly, in spite of some significant differences, the three countries' responses have slowly converged over the past couple of years. Generally speaking, each government would prefer that foreign fighters do not come back, while not formally preventing them from doing so. Once back in their homelands, returnees generally go to provisional detention, awaiting trial. Until recently, women were treated with more clemency, but this has now come to an end (most recently in Germany).

In prison, different detention regimes are applied, from isolation to dispersal among other detainees, but overall the approach is a tailored one with mechanisms to monitor detainees and constantly adjust their conditions. Once out of prison, returnees fall back on mechanisms that were established to deal with FTF, although the Netherlands employs more intrusive measures than Belgium or Germany.

Each of the three country chapters in this report start with an overview of the scope of the FTF challenge, and a profile of the returnees. We also seek to compare current figures with those from previous jihadi conflicts, which is difficult given the paucity of data. Each chapter then looks at the evolution of the perception of this issue among authorities since the beginning of the Syrian conflict in 2012, and at the development of more coherent policies. Next comes a sequential description of the policies in place to deal with returnees: how to deal with fighters still in the conflict zone, with those that have come back, those in prison and those who have been released. Finally, the sensitive question of what to do about children in the jihadi war zone or recently returned from there is also assessed in some depth.

Transcending the national perspectives, David Malet offers a historical perspective on foreign fighters in Europe, explaining that the issue is nothing new – not even in scope. The involvement of European citizens in foreign fighter movements appears to be a continuous phenomenon and it would be well to absorb the lessons of history not only for the challenges of today but to prepare for the future as well.

Among the key findings of this assessment, the following are worth highlighting:

- Exactly as was the case with departures, FTF have returned in waves, mostly in two waves in 2013-2014 and early 2015. It is now assumed that, contrary to earlier assessments, the most seasoned fighters will no longer return en masse. Recent returns are mostly women and children.
- Early returnees were not systematically prosecuted, let alone convicted. This was based on an evaluation of their intentions and the presumption they posed a lesser threat, but also because the criminal code made it relatively difficult to prosecute these individuals. Women in particular were as a general rule not prosecuted.
- The situation changed radically in the aftermath of the 2014 attack by a returnee on the Jewish Museum in Brussels and, particularly, with the Paris attacks in 2015 involving Islamic State-linked returnees. The perception of the potential threat

increased exponentially. Across Europe, the criminal code with regard to terrorist crimes was broadened. Returnees, including women, started being systematically prosecuted.

- Beyond the judicial response, all three countries developed a vast range of measures and mechanisms, leading to a more systematic and multi-agency approach, involving a wide range of actors from local prevention officers to police and intelligence services.
- Prisons have long been considered a particularly challenging dimension in the response to returnees. The early policy hesitations and varying arrangements (even within a country) have now mostly been replaced by tailored detention regimes and disengagement trajectories and the training of penitentiary staff. There is increased awareness of the need to enhance authorities' information position within prisons, with the aim of preventing the radicalisation of other inmates but also of devising more suitable and adapted reintegration plans.
- Regarding those fighters still in the area, all three governments share a somewhat ambiguous position. It is probably fair to say that off the record all governments undeniably prefer their (adult) citizens not to come back.

A last word of caution: In certain aspects, today's situation resembles the situation at the end of the first decade of 2000. Europe felt a sense of relief as a result of decreasing terrorist activity, a drop in the numbers of individuals leaving for jihadi theatres, and the successful dismantlement of terrorist cells. Some member states lowered their threat levels, a sense of "counterterrorism fatigue" set in, the need for continued investment in counterterrorism arrangements and prevention policies lost their sense of urgency and polarisation around Islamic symbols went unchecked. The outbreak of the Syrian war and the speed and scope of foreign fighters flocking to the Levant took everybody by surprise.

Today's renewed window of opportunity offered by the collapse of ISIS should thus be used to consolidate existing arrangements and, most crucially, to enhance efforts to address the structural drivers of radicalisation and extremism, including social isolation, marginalisation, and polarisation, that allowed ISIS – and jihadism in general – to mobilise in the first place. If we again fail to uphold these endeavours, at some point in the future the re-emergence of a fresh wave of eager fighters cannot be excluded, if and when a new opportunity for jihadi mobilisation arises.

# THE EUROPEAN EXPERIENCE WITH FOREIGN FIGHTERS AND RETURNEES

DAVID MALET

The Syrian civil war has been the cause of significant concern in the European Union for numerous reasons over its course of more than five years. The most immediate security threat stems from the fact that this is the first conflict in a Muslim country in which European nationals have made up a significant proportion of the foreign volunteers, both as combatants and supporters who provide material assistance to terrorist groups, including a notable number of women and religious converts. Many Westerners have been featured in propaganda in which they publicly commit war crimes, and the potential for domestic terrorism upon the return of these thousands of travelers is expected to be a long-term challenge to European security and cohesion.

In the face of these new threats, this chapter examines what we know about Europe's experience with foreign fighters prior to the recent wave of those who traveled to Syria. The Islamic State of Iraq and Syria (ISIS) has been successful in making itself the center of the Syrian uprising in Western eyes by adroitly manipulating the media and inspiring attacks in its name in Western countries. But by many estimates, ISIS has held the allegiance of only half of Sunni jihadi foreign fighters in Syria, to say nothing of thousands of other transnational irregular participants from Shiite militias to EU citizens fighting with Christian, Kurdish and other minority armed groups in the region. Far more data is available by including the legacies of thousands of other jihadi foreign fighters since the early 1980s in Afghanistan, not to mention the tens of thousands of Europeans in modern history who became foreign fighters for other causes.

The questions of which individuals count as foreign fighters and what are the most appropriate terms for them are the fodder of academic debates despite only minor differences in criteria. These definitions are also quite close to international law that since 2014 has required all countries to work against 'foreign terrorist fighters' (FTF). United Nations Security Council Resolution 2178 identifies as FTFs anyone who travels or attempts to travel across international borders to become a non-state combatant or engages in terrorist activity or provides material assistance to terror groups. That scope is wide enough to cover all foreign travelers to Syria today, and this chapter does not attempt to subdivide foreign fighters by what role they may have played in the field.



## European foreign fighters in historical context

It is not a novel observation that foreign fighters have participated in numerous other conflicts before the ISIS era, but it is worth noting how prevalent they have been and how similarly to their contemporaries they have acted. At least 90 conflicts since the 1814 Congress of Vienna have involved foreign fighters, more than 25 percent of all modern civil wars, and hallmarks of the jihadi movement can also be observed in the actions of European foreign fighters of the past.<sup>1</sup> In 1789, two hundred years before the formation of Al Qaeda and its transnational plots, American Revolution veterans John Paul Jones of Scotland and Tadeusz Kościuszko of Poland were networking to facilitate the continuation of military exploits in other European countries.<sup>2</sup> Several thousand Britons participated in Simon Bolivar's wars of liberation across South America during the 1810s. Political philosopher Jeremy Bentham advocated for them and then continued his support for armed uprisings, becoming a facilitator for Philhellene foreign fighters in the Greek War of Independence in the 1820s. In 1860, Giuseppe Garibaldi, who had honed his skills in wars in Brazil and Uruguay, fought in the Italian Risorgimento, commanding more than 2,500 pan-European volunteers in the International Legion, a number of whom "bled out" into nationalist uprisings elsewhere on the continent.<sup>3</sup>

The involvement of Communist foreign fighters in the major civil wars of the first half of the twentieth century dwarfed that of the jihadis. It is well known that roughly 50,000 irregular foreign volunteers, mostly from Western Europe, descended upon Spain in less than three years in the 1930s. Comparable numbers also participated in the Russian and Chinese civil wars. Some of these ideologues and rootless belligerents moved on to fight in other conflicts, while others brought family members to the new Communist states to try to build ideological utopias.<sup>4</sup>

In the post-Cold War world, EU citizens have voluntarily participated in foreign wars for a number of causes other than jihad. In fact, Sunni Islamists constitute only about half of modern foreign fighters worldwide. Dozens of Western Europeans of various nationalities fought on the Croat side during the Yugoslav wars of the 1990s, and somewhat higher numbers have done so on both sides of the ongoing conflict in Ukraine. Several hundred Albanians living in the diaspora in Western Europe and the United States fought alongside the Kosovo Liberation Army in 1999 and these Muslim insurgents received praise – rather than legal investigations – from various

<sup>1</sup> D. Malet, *Foreign Fighters: Transnational Identity in Civil Conflicts*, 2nd edition. New York: Oxford University press, 2017.

<sup>2</sup> Storozynski, A. *Kosciuszko Ksiaze chlopow*. Warsaw, Poland: W.A.B., 2011, pp. 189-191.

<sup>3</sup> Flores, M. "Foreign Fighters Involvement in National and International Wars: A Historical Survey" in A. de Guttry, F. Capone, C. Paulussen, eds. *Foreign Fighters under International Law and Beyond*. The Hague, Netherlands: Asser Press, 2016, pp. 31-36; D. Malet, 2017: 223.

<sup>4</sup> A. Gillespie, *A History of the Laws of War: Volume 1: The Customs and Laws of War with Regards to Combatants and Captives*. United Kingdom: Hart Publishing, 2011, p. 81; B. Hooper, *Foreigners under mao: Western Lives in China, 1949-1976*, Hong Kong: Hong Kong University Press, 2016; D. Malet, 2017.

elected officials for aiding the interests of their home countries. In all of these modern conflicts, as well as the historic cases, recruitment propaganda offered foreign fighters a picture of an existential threat to a transnational group with which they closely identified and led them to believe that their contributions could make a difference in the outcome. Records from these conflicts indicate that foreign and local fighters ostensibly on the same side consistently end up in inter-group conflict, and that, even when victorious, few foreign fighters pass up the opportunity to go home.<sup>5</sup>

## Jihadis without borders

Despite these tens of thousands of radicalised recruits, clear instances of blowback by trained militants and challenges to national sovereignty and international security, it was the transnational expansion of the jihadi movement by Sunni Arab militants that made foreign fighters a preeminent security threat. Despite the high profile of European jihadi terror cases in the 1990s, and the fear of foreign fighters in the post-9/11 era, prior to Resolution 2178 there was no requirement for nations to document the travel of their citizens to become foreign fighters, so estimates of how many Europeans did so before 2014 are far from definitive.

As jihadi radicalisation expert Mohamed Hafez has noted, prior to the ISIS era, there were only a few thousand individuals involved in Islamist terror networks out of a European Muslim population of 15-20 million, a number that has been equaled by those who have traveled to Syria and Iraq. The initial population of European foreign fighters and terror networks in the 1980s and 1990s were all of North African origin and virtually all first-generation immigrants. Few of these individuals engaged in terrorist plots in their states of residence for fear of losing their safe havens, but they used EU nations as hubs for logistical networks extending into Africa, Asia, and North America, and staging grounds for operations elsewhere. Within the supranational borders of the EU, transnational networks, such as the Moroccan Islamic Combatant Group which extended into Spain, Italy, France, Belgium, and the Netherlands, provided material assistance to terrorist organisations in the Maghreb and recruited foreign fighters to the Balkans and trainees for terrorist camps in South Asia.<sup>6</sup>

Among the 'first generation' of foreign fighters which included the 'Arab Afghans,' nearly all were from Muslim countries. Most had not been active in dissident or

<sup>5</sup> P. Hockenros, *Homeland Calling: Exile Patriotism and the Balkan Wars*. Ithaca: Cornell University Press, 2013; D. Malet, "Foreign Fighter Mobilization and Persistence in a Global Context", *Terrorism and Political Violence* 27(3); 2015; K. Rękawek, "Neither 'NATO's Foreign Legion' Nor the 'Donbass International Brigades': (Where Are All the) Foreign Fighters in Ukraine?" *PISM Policy Paper*, 2015

<sup>6</sup> O. Roy, *Globalized Islam: The Search for a New Umma*, New York: Columbia University Press, 2004, pp. 301-302; M. Hafez, *Suicide Bombers in Iraq*. Washington DC: United States Institute of Peace Press, 2007, pp. 190-196. O. Hennessy, *The Phenomenon of Foreign Fighters in Europe*, ICCT Background Note, The Hague, Netherlands, July 2012, p. 12.

**TABLE 1: (European) Foreign Fighters in History**

Conflict	Foreign Fighters	Approx. Total	Approx. Europeans
American Revolution (1770s-1780s)	Various Private Volunteers	500	400
Bolivarian Revolutions (1810-1820s)	Albion Legion, Irish Legion	7,000	7,000
Greek War of Independence (1820s)	Filiki Eteria	1,500	1,200
Italian Risorgimento (1860s)	International Legion	2,500	2,500
Russian Revolution and Civil War (1910s-1920s)	International Brigades	50,000	30,000
Spanish Civil War (1930s)	International Brigades, Leftists, Fascists	60,000	55,000
Afghanistan (1970s-2000s)	Jihadis	25,000	1,500
Bosnian War (1990s)	Jihadis	5,000	500
Chechnya (1990s-2010s)	Jihadis	700	20
Somalia (1990s-2010s)	Jihadis, Al Shabaab	2,000	200
Iraqi Occupation (2000s)	AQI	5,000	100
Yemen (2010s)	AQAP	4,000	200
Ukraine (2010s)	Azov Battalion, Donbass International Brigade	3,000	3,000
Syria-Iraq (2010s)	ISIS, Jihadis, Peshmerga	40,000	5,000

*Note:* Figures provided in this table are estimates, with a high degree of imprecision, based on the best information available. While interesting for comparative purposes, figures should be regarded and used with extreme caution.

extremist groups; foreign fighter groups traditionally preferred to involve new recruits rather than sacrifice their members on the field. Some returned to their home countries to found hardline Salafist factions such as the Armed Islamic Group (GIA) in Algeria. Other Arab Afghans settled in Europe and built radicalisation networks in their host countries, including Syrian Abu Messab who established *Al-Ansar* in London, Egyptian Sheikh Anwar Shaaban who established the Islamic Cultural Institute in Milan which sent European Arabs to Afghanistan via Pakistan and later recruited them to Bosnia, and Ali Touchent, whose network in Brussels dispatched Tunisian suicide bombers masquerading as journalists to Afghanistan to assassinate the leader of the anti-Taliban Northern Alliance. Dutch and German networks also sent foreign fighters abroad in the era before 9/11.<sup>7</sup>

<sup>7</sup> O. Roy, 2004, pp. 298-301; O. Nasiri, *Inside the Jihad*, United States: Basic Books, 2006, pp. 92; M. Hafez, "Jihad after Iraq: Lessons from the Arab Afghans", *Studies in Conflict & Terrorism*, 32(2), 2009, p. 84; F. Eggerton, *Jihad in the West*, New York: Cambridge University Press, 2011, pp. 7, 90.

## The growth of Al Qaeda

Among the few Westerners who joined the Arab Afghans were American citizens who returned to the United States and became involved with domestic plots such as the 1993 World Trade Center bombing, but Europe was largely spared from the growing jihad blowback movement in the 1990s except for GIA attacks in France. Jihadi networks in the EU in the 1990s were largely composed of dual nationals. Those involved in domestic terror plots and in sending material assistance to Al Qaeda affiliates engaged in financial crimes and other illicit activities to finance their operations, but the networks to facilitate foreign fighting did not, using savings to fund their travel. This abundance of caution in protecting foreign fighter mobilisation networks may have been due to direction from Al Qaeda International or other leadership abroad.<sup>8</sup>

European citizens did not have a notable presence among either the fewer than 2,000 foreign fighters who participated in formative jihad against the Soviet Union in Afghanistan or the more than 20,000 others who operated subsequently in South Asia. Of 413 foreign nationals captured in Afghanistan after November 2001 by the international coalition, just 10, or two percent of the total, were European citizens, all of North African origins, from Britain, France and Belgium. Other foreigners had resided in Europe, such as one Algerian who had been imprisoned in both Germany and Italy for drug dealing before eventually being detained at Guantanamo Bay as an enemy combatant. The bleedout spread to other militant groups in the region, with possibly hundreds of German nationals, most of them ethnic Turks, traveling to join the Islamic Movement of Uzbekistan and the Islamic Jihad Union in Pakistan. And at least two British Pakistanis and two Dutch Moroccans were among Westerners killed in Kashmir.<sup>9</sup>

However, more European citizens traveled to Al Qaeda-affiliated terrorist training camps in South Asia during the 1990s and early 2000s, technically becoming foreign-trained terrorists rather than foreign fighters because they were not in a war zone and because their primary objective was preparation for attacks at home rather than combat abroad. The United States National Commission on Terrorist Attacks established to investigate 9/11 reported that 10,000-20,000 individuals received some level of training at Al Qaeda camps during 1996-2001 alone. Ninety percent of these trainees were allegedly Saudi or Yemeni, so the potential number of Europeans remained a small percentage of transnational militants during the so-called second generation of jihadis.<sup>10</sup>

<sup>8</sup> M. Hafez, 2007, p. 194; T. Holman, "Belgian and French Foreign Fighters in Iraq 2003-2005: A Comparative Case Study," *Studies in Conflict & Terrorism* 2015, 38(8), 2015, p. 607.

<sup>9</sup> Roy, 2004: 305; Hafez, 2007: p. 189; A. Worthington, *The Guantanamo Files*, London: Pluto Press 2007, p. 154; O. Hennessy, *The Phenomenon of Foreign Fighters in Europe*, ICCT Background Note, July 2012, p. 5.

<sup>10</sup> United States National Commission on Terrorist Attacks, *The 9/11 Commission Report*, Washington DC: United States Government Printing Office, 2004, pp. 67, 232.

The actual number of Europeans who traveled to camps is unknown. One detainee at Guantanamo claimed that “more than a thousand of us” from France had gone to the camps. Considering that France arrested over 400 terror suspects connected to just four major operations in the 1990s, and detained 900 others the following decade, then the claim seems plausible and suggests robust radicalisation networks – if a high rate of foreign training is assumed. As with all foreign fighter groups through history, individuals required references from known members of their networks to gain admission, and in the early 1990s, as with ISIS 20 years later, recruiters told young Muslims living in Europe that they could only purify themselves and redeem past transgressions by traveling to somewhere they could devote themselves to the cause. Unlike ISIS, which encouraged its adherents to remain in its area of operations and augment its ranks, Al Qaeda for the most part did not keep trainees on hand or enlist them systematically to fight with local groups, but encouraged them to return to their home country networks.<sup>11</sup> Some, such as 7/7 bombing leader Mohammad Sidique Khan, clearly implemented their training.

### Foreign fighters become familiar players

Meanwhile, the recruitment and facilitation networks operating within the EU enjoyed some degree of success in steering volunteers to a variety of different battlefields. The total number of European citizens who became foreign fighters during the third wave of jihad during the decade of 9/11 and the Iraq War is also unknown but clearly remained a small fraction of Islamist militants worldwide.

The first major case of bleedout from Afghanistan was to Bosnia, a migration that began early during the course of that civil war as conditions in Afghanistan and Pakistan became unfavourable to the Afghan Arabs but before the mass atrocities against Sunni civilians that were used as the rallying cry of the jihadi recruiters. Part of the rationale for the transition to other conflicts such as the one in the Balkans was that, while many casual volunteers returned to the Middle East unremarked, those with records of participation in militant groups knew that no warm welcome awaited their return.

Estimates place the total number of foreign fighters in Bosnia during the war at approximately 5,000. As many as 3,000 of the 20,000 mujahidin in Afghanistan in the post-soviet period arrived, and the remainder were new recruits from MENA and from the West. France estimated 1,000 North Africans travelled to Bosnia for training during the war. Unlike in Afghanistan, the foreign fighters did gain significant paramilitary experience as well as a reputation for brutal treatment of Christian civilians. However, they also had poor relations with Bosniaks who they viewed as bad

<sup>11</sup> Worthington, 2007, p. 62; Nasiri, 2006, p. 21, 98, 195; F. Foley, *Countering Terrorism in Britain and France: Institutions, Norms and the Shadow of the Past*, Cambridge, Cambridge University Press, 2013, p. 293.

Muslims and treacherous against them, both at the individual level and collectively for acceding to the Dayton Peace Accords that required mujahidin to depart. An indeterminate number had been from Western countries and their access to the Schengen Zone and proficiency in English had raised hopes for significant expansion of recruitment operations. There was some blowback against Western Europe by Bosnia veterans, including Europe's first jihadi suicide bombing, conducted in Croatia by a Canadian, an attempt in France by a British citizen to blow up the Channel Tunnel, and the establishment of the Roubaix Gang by Christophe Caze. Caze had gone to Bosnia to perform humanitarian work but instead became radicalised and converted to Islam before returning to France where he engaged in robbery and weapons trafficking.<sup>12</sup>

Nonetheless, as the third-generation jihadis evolved they were guided by second-generation Al Qaeda leadership to focus on conflict outside the West. After Afghanistan/Pakistan and Bosnia, the number of European jihadis who became foreign fighters remained small, with no evident presence among those who travelled to Southeast Asia or Northern Africa. The supply of material, although not volunteers, to Algeria was evident in the aftermath of the 2012 In Amenas refinery siege, when two Canadians were among the attackers killed, but no citizens of the EU. Dutch nationals were among the small number of Westerners who joined Arab jihadis in Chechnya, but the total number of foreign fighters in that conflict remained in the hundreds and Westerners did not play a significant role.<sup>13</sup>

The same held true of the most prominent conflict involving third-generation jihadis, the sectarian insurgency in Iraq that followed the 2003 invasion. In this civil war, transnational volunteers committed more than three-quarters of suicide attacks, many in the service of the Al Qaeda in Iraq affiliate which would evolve into the Islamic State of Iraq. Out of an estimated 5,000 foreign fighters, only about 100 were Europeans. The largest number, 30, travelled from France, and, as noted in Renard and Coolsaet's chapter in this volume, another 10 to 15 came from Belgium. In the 2000s, as in the following decade, most arrived by traveling through Turkey and stayed in safe houses in Syria. None of the French or Belgian contingents were recently arrived immigrants; indeed most had only lived in Europe, marking their radicalisation as a failure of assimilation rather than one of border security failing to keep out dangerous elements. All travelled before 2007, indicating either that law enforcement was successful in disrupting mobilisation networks in Europe or that

<sup>12</sup> E. Kohlmann, *Al-Qaida's Jihad in Europe: The Afghan-Bosnian Network*, New York, Berg 2004, p. 126; Nasiri, 2006, pp. 37, 176; J. de Roy van Zuijdewijn and E. Bakker, *Returning Western foreign fighters: The case of Afghanistan, Bosnia and Somalia*, ICCT Background Note, June 2014, p. 6; A. Reed, J. de Roy van Zuijdewijn, E. Bakker, *Pathways of Foreign Fighters: Policy Options and Their (Un)Intended Consequences*, ICCT Policy Brief, April 2015, p. 4; T. Holman, "'Gonna Get Myself Connected': The Role of Facilitation in Foreign Fighter Mobilizations", *Perspectives on Terrorism* 10(2) 2016; Malet, 2017.

<sup>13</sup> J. L. de Bie, C. J. de Poot, J. P. van der Leun, "Shifting Modus Operandi of Jihadist Foreign Fighters From the Netherlands Between 2000 and 2013: A Crime Script Analysis" *Terrorism and Political Violence* 27(3), 2015, p. 421.

the appeal of this particular conflict waned as the insurgency peaked and declined. A number of other European nationals did attempt to travel to Iraq but were arrested en route. Among the 102 mostly foreign suicide bombers who had struck in Iraq by 2007, 15 came from Europe, including Belgian convert Muriel Degauque.<sup>14</sup>

The final significant destination for third-generation jihadis was the decades-long conflict in Somalia, where al Shabaab originated the strategies to draw in Western youth whom ISIS would, within a few years' time, exploit even more effectively. By the time of the Arab Spring there had been roughly 1,500-2,000 foreign fighters in Somalia, and perhaps 10 percent were EU citizens. The Islamic Courts Union, of which Al Shabaab was a hard-line breakaway faction much like ISIS splintered from Al Qaeda, recruited in London's Finsbury Park Mosque and elsewhere in the United Kingdom. As many as 100 Britons travelled to the Horn of Africa to join them. Al Shabaab successfully recruited dozens of volunteers from Somali refugee communities in Scandinavia. After at least 20 youths left Stockholm, Somali parents in Sweden began to restrict their children from attending prayer services out of fear they would be radicalised. A Somali with Danish residency with ties to Al Shabaab suicide bombers attempted to murder a cartoonist who had drawn cartoons of the Prophet; and returnees from Somalia were arrested while plotting a suicide attack on an Australian army barracks. Perhaps key to Al Shabaab's success was its novel strategy of spotlighting Western youth in recruitment propaganda on social media. Syrian-American Omar Hammami became the innovator of posting music videos of battle footage featuring Westerners on YouTube and reached out directly to vulnerable populations via Facebook and Twitter with messages of redemption from fallen lives in the West as holy warriors.<sup>15</sup>

European foreign fighters participated in other conflicts in which they were small in relative numbers but that are notable because they resulted in blowback within the EU. For example, the foreign fighters among Al Qaeda in the Arabian Peninsula (AQAP) in the conflict in Yemen were primarily Saudi, Pakistani and Egyptian, but there were also Westerners from Europe, Oceania and North America, including infamous American recruiter Anwar al-Awlaki. *Charlie Hebdo* attacker Said Kouachi had lived in Yemen and consorted with AQAP members, including al-Awlaki, whereas his brother and co-assailant Cherif had been imprisoned after an unsuccessful attempt to travel to Iraq.<sup>16</sup>

Another French citizen who engaged in domestic attacks after dalliances with jihadis abroad was Mohammed Merah, who committed three murderous shooting attacks

<sup>14</sup> Hafez, 2007, pp. 189; Holman, 2015, p. 2, 12; Malet, 2017, 196-197, pp. 33.

<sup>15</sup> D. Malet, B. Priest and S. Staggs, "Involving Foreign Fighters in Somalia," in *Globalizing Somalia: Multilateral, International, and Transnational Repercussions of Conflict*, E. Leonard and G. Ramsay, eds., London: Bloomsbury Academic, 2013.

<sup>16</sup> M. Noonan, ed. *The Foreign Fighters Problem: Recent Trends and Case Studies*. Philadelphia, Foreign Policy Research Institute, 2011, p. 7.

against military personnel and a Jewish school. Merah had travelled to Egypt, Afghanistan and Pakistan and was evidently a foreign-trained terrorist rather than a returned foreign fighter, because he did not join a South Asian combatant group, such as Lashkar e Taiba in Kashmir, a destination for other Western jihadis during this period.<sup>17</sup> The Merah case highlighted the threat of returnees but it is crucial to distinguish between the motivations of European citizens who travel for training with the intent to return home, such as 7/7 London bomber Mohammad Siddique Khan, and those who travel to fight on the front lines in insurgencies in foreign lands.

## The threat from returnees

Foreign fighters developed a reputation for being exceedingly dangerous, in part because of their presumed association with Al Qaeda and their roles as suicide bombers in Iraq in the wake of 9/11, but also because in conflicts from Afghanistan to Bosnia they shocked local populations with cruel and unusual violence such as beheadings that were out of step even with other jihadis. Security officials in Western countries had generally paid little heed to returnees during the 1980s and 1990s, but this changed after 2001 when they were designated as unlawful enemy combatants in the “War on Terror”. Coalition forces in Afghanistan, primarily from NATO countries, distinguished local fighters for the Taliban from non-Afghans, offering amnesty to the former but presuming the latter to be part of the Al Qaeda network. Presumed Al Qaeda operatives found themselves in extra-legal detention because their home states were unprepared to prosecute transnational actors for crimes committed abroad under domestic terror laws. Western governments also assumed foreign fighters to be unique security threats, believing that they were likely to hold vital information about future plots and that they would not respond to the threat of normal punishments because they sought martyrdom.<sup>18</sup>

The precise number of plots and returnees is contested among researchers using different data. The broadest studies have placed the number of veteran foreign fighters who have planned or attempted terrorist attacks in Western countries at more than 100, with the vast majority of them occurring in Europe. The most cited of these is Thomas Hegghammer’s *Jihadi Plots in the West* (JPIW), which is frequently mentioned by policymakers calling for higher levels of security because it ostensibly indicates that 11 percent of all returned foreign fighters become domestic terrorists. However, Hegghammer’s finding was a maximum likelihood that would be accurate only if all returnees had been identified in his data, and he clarifies that the actual percentage is likely significantly lower. While the study further indicates that foreign fighting is preferred to domestic terrorism because it is viewed as more heroic,

<sup>17</sup> E. Cody, “Mohammed Merah, Face of the New Terrorism,” *The Washington Post*, March 22, 2012

<sup>18</sup> Hafez, 2009, p. 79; E. Bakker and J. de Roy van Zijdewijn, 2014, p. 4; G. de Kerchove, ‘Preface’ in A. de Guttry, F. Capone, C. Paulussen, eds., 2016, p. v; Malet, 2017, pp. 33.



returnees make particularly effective domestic terrorists, with veteran jihadis participating in half of all Western plots. In the original published JPIW data, returnees participated in 14 of 24 executed plots, and 8 out of 12 that produced fatalities.<sup>19</sup> In a more recent, ISIS-era study, Hegghammer and Nesser found that “the blowback rate...from Syria is thus far very low indeed” – just 11 plotting returnees out of an estimated 4,000 by 2015, “a blowback rate in the order of one in 360.”<sup>20</sup>

Other studies have also indicated that returned European jihadi foreign fighters have not been as consequential to domestic terrorism as is often feared. Jeanine de Roy van Zuijdewijn argued that many returnees convicted of terrorism offenses were not involved in developed plots but were caught in “chatter” or in possession of terrorist propaganda material. According to her data, of the 10 lethal attacks in Europe during 1994-2007 by 61 terrorists, only seven involved returned jihadis, all of whom had gone abroad for terrorist training but none had served as foreign fighters. Aseem Qureshi identified 66 individuals in the United Kingdom who had engaged in domestic terror plots during 2001-2014, of whom just two had been foreign fighters while six others had gone for training. Daniel Byman and Jeremy Shapiro note that the returned jihadis who did commit domestic attacks used unsophisticated methods and did not display great prowess so the “value added” of their field training and foreign fighter experience is questionable.<sup>21</sup>

Domestic security – and political – concerns aside, while some returnees have and will continue to engage in domestic plots, it does not appear that returned foreign fighters represent the large-scale threat to Europe that was envisioned. There have always been a handful of foreign fighters in every conflict who engage in militant activity when they return, and events in Paris, Brussels and elsewhere demonstrate that some of these will certainly be mass casualty attacks. But there are unlikely to be mass numbers of foreign fighters who launch major attacks. If there were, hundreds or thousands of returnees from Syria would have already made the attempts. If returned foreign fighters delayed their attacks for years, we should be witnessing large numbers of plots by veterans of prior conflicts like Somalia, Yemen, or Bosnia. Fortunately, this has not transpired.

How long returned foreign fighters will present an increased risk remains unclear. Some veterans of other causes like the Communist International Brigades remained loyal and provided material support to their networks for several decades. On the

<sup>19</sup> T. Hegghammer, “Should I Stay or Should I Go? Explaining Variation in Western Jihadists’ Choice between Domestic and Foreign Fighting,” *American Political Science Review* 107(1), pp. 1-15.

<sup>20</sup> T. Hegghammer and P. Nesser, “Assessing the Islamic State’s Commitment to Attacking the West,” *Perspectives on Terrorism* 9(4) 2015, p. 20.

<sup>21</sup> J. de Roy van Zuijdewijn, *Fearing the Western Muslim Foreign Fighter: The Connection between Fighting the Defensive Jihad and Terrorist Activity in the West*, MA Thesis, Utrecht University, January 2014, pp. 40-49; A. Qureshi, *Blowback – Foreign Fighters and the Threat They Pose*. London: CAGE, 2014, p. 12; D. Byman and J. Shapiro, *Be Afraid, Be a Little Afraid: The Threat of Terrorism from Western Foreign Fighters in Iraq and Syria*, Washington DC, Brookings, 2015.

other hand, there is little evidence of “sleepers cells” remaining dormant for long periods. The Kouachi brothers, who both trained in Yemen in 2011 and committed the *Charlie Hebdo* attack in Paris in 2015, appear to be an outlier. And while some returnees are directed in their attacks by network members in other countries, Olivier Roy has observed that some jihadis further radicalise upon their return to the West, and this may prompt some to eventually launch their own domestic attacks organically rather than lying in wait.<sup>22</sup> Peter Nesser notes that British jihadis were sent home from Pakistan and Syria to be “sleeper agents” or engage in directed plots, although the main influence of returnees seems to be their credibility and connections in recruiting new foreign fighters.<sup>23</sup>

## How is today different?

Rik Coolsaet has described the rise of a fourth generation of jihadis this decade as result of the Syrian conflict: a fourth generation of social-media fuelled volunteers acting out anti-social frustrations while seeking a post-national caliphate in which to build new lives or a theological Armageddon – or both. Peter R. Neumann notes that the growing legion of not only several thousand Western European foreign fighters in Syria and Iraq but also of ISIS supporters, who are prepared to skip foreign fighting and move directly to attacks against the West, are finally a significant proportion of the jihad movement and threaten to overwhelm national safety and justice resources. With estimates of several thousand Western European travellers in Syria and Iraq, Europeans are no longer a footnote among foreign fighters. When added to the totals of other Westerners and Russian volunteers, perhaps half of the membership of ISIS were foreign fighters. Europeans also had a significant presence in other Sunni factions, as well as among the hundreds of foreign volunteers opposing them alongside Kurdish and Christian fighting groups.<sup>24</sup>

What is different about these new foreign fighters and sympathisers that distinguishes them from past waves of European jihadis or recruits to other militant groups? In many ways the evidence demonstrates that there is little that is different between contemporary and historical foreign fighters in their recruitment, motivation or conduct. They are so numerous and inspire emulators in the West because ISIS made two strategic choices that expanded its pool of volunteers. The first was to

<sup>22</sup> O. Roy, 2004, pp. 304, 308; D. Byman and J. Shapiro, 2015, p. 6; R. Pantucci, “Foreign Fighters in Syria: A Threat at Home and Abroad?” London: Chatham House, April 10, 2014; D. Malet, “Sleeper Agents or Big Yawn? Waiting for Returned Foreign Fighters,” *Political Violence at a Glance*, January 18, 2016.

<sup>23</sup> P. Nesser, *Islamist Terrorism in Europe: A History*, London, C. Hurst & Co. Publishers, 2015, pp. 175, 260, 288; C. Watts, “Directing vs. Inspiring: ISIS’ Evolving Tactics and the Orlando Terrorist Attack,” Statement Prepared for the United State House Of Representatives Committee On Foreign Affairs, Subcommittee on Terrorism, Nonproliferation and Trade, June 23, 2016.

<sup>24</sup> R. Coolsaet, *Facing the Fourth Foreign Fighters Wave: What Drives Europeans to Syria and to the Islamic State? Insights from the Belgian Case*, Egmont Paper 81, Brussels, 2016; P.R. Neumann, *Radicalized: New Jihadists and the Threat to the West*, London: IB Tauris, 2016, p. 173

capitalise on the new means of communications offered by social media and pioneered by Al Shabaab. Individuals do not go join ISIS because of Twitter, but social media enabled peer-to-peer recruitment with a self-perpetuating expansion through networks that removed prior constraints of geography on recruitment through institutions and physical spaces. ISIS deliberately showcased Western volunteers for propaganda purposes in a way that few foreign fighter groups had before, and that had previously probably only been implemented successfully by the Comintern with the International Brigades in Spain. The second is that it further expanded the range of potential supporters by accepting and then promoting non-combatants as contributors to a nation-building project. One surprising result was that one of the most anti-feminist militant organisations in recent world history drew unprecedented numbers of women from Western countries to join it. Nearly one in five Western European ISIS volunteers were women. Those who travelled for the promise of spiritual fulfilment and domestic bliss, and in some cases their children, bolstered the numbers of Europeans by nearly 20 percent.<sup>25</sup> The same approach of at least appearing to value any contribution to the caliphate project also inspired the unique wave of domestic attacks, whereas Al Qaeda and affiliates had emphasised the importance of joining a professional cadre and the need for formal training at camps overseas. It is possible the ISIS “laissez-faire doctrine” therefore actually reduced the number of travel attempts among its core supporters.

There are other new developments in the ISIS era that bear further examination for purposes of countering violent extremism (CVE). The first is that the increasing attention to the threat of foreign fighters has led states to impede their travel in a way that historical groups had faced previously but jihadis had not. It is important to collect data on thwarted travellers who were blocked from becoming foreign fighters by their countries of residence. Two Canadians who were prevented from joining ISIS instead launched the first domestic attacks in their country’s history, and Cherif Kouachi was prevented from joining the Islamic State of Iraq only to fall in with Al Qaeda in the Arabian Peninsula upon his release from prison. There may be more danger to Europe from those who failed to become foreign fighters than those who returned successfully.

Another is the recognition that among those who have already returned to Europe, as well as to Asia, from Syria, rates of post-traumatic stress disorder (PTSD) are acute. PTSD was never documented among populations of foreign fighters in the past so this is the first opportunity to study it among them. It is worth considering how to integrate empathy for PTSD-affected returnees and their families into emotional appeals that could be used in counter-radicalisation messaging. Other disaffected

<sup>25</sup> B. van Ginkel, E. Entenmann, *The Foreign Fighters Phenomenon in the European Union: Profiles, Threats & Policies*. ICCT Research Paper, The Hague, April 2016, p. 4.

foreign fighters might be employed in providing intelligence for direct operations against ISIS by making use of their experience under the caliphate.

The sheer number of European volunteers who have gone to Syria, are attempting to go or have already returned, is not unprecedented among foreign fighter movements, but it will have long-term impacts because of its scale and cultural dimensions. In the 1930s, the League of Nations assisted with the reintegration of thousands of returnees from Spain, whereas today Europe must worry about monitoring threats from thousands of potential terror suspects. The record indicates that few will ever be complicit in plots, but the fears of terrorism will continue to roil immigration politics, potentially complicating integration efforts and providing fodder for radicalisation.

It is reassuring to consider that past waves of jihadis and larger cohorts of other transnational insurgents, including tens of thousands of mostly European Marxist foreign fighters who fought in both the Russian and Spanish Civil Wars of the last century, ultimately passed from history without producing waves of violence at home. But the involvement of European citizens in foreign fighter movements appears to be a continuous phenomenon and it would be well to absorb the lessons of history not only for the challenges of today but to prepare for the future as well.

# FROM THE KINGDOM TO THE CALIPHATE AND BACK: RETURNEES IN BELGIUM

THOMAS RENARD AND RIK COOLSAET<sup>1</sup>

Belgium reportedly has the highest ratio of foreign terrorist fighters (FTF) per capita in Europe.<sup>2</sup> The federal counterterrorism fusion centre, the Coordination Unit for Threat Analysis (CUTA)<sup>3</sup>, currently lists 498 people as FTF, in addition to 113 “potential candidates” for jihad.<sup>4</sup> Of these, 413 actually reached Syria and Iraq, while the remaining individuals were arrested en route, either in Belgium or Turkey, or never left. The vast majority of these FTF, 80%, are young men with a typical age range between 20 and 30. Three quarters of them joined the Islamic State (ISIS).

Intelligence services further estimate that there has been at least 137 Belgian children in Syria, mostly born there (about 75%), but who are not listed as FTF because they are under 12 years old (the FTF list mentioned above includes 11 teenagers between 12 and 18 years old). Furthermore, around 20 Belgian residents, and possibly more, have joined Kurdish and other groups in the region, but are not listed as FTF as the list only includes individuals who joined jihadi groups. In total, the Belgian presence in Syria and Iraq since 2012 thus comprises 550 to 600 individuals.

With a return rate of 30%, more or less similar to the EU average,<sup>5</sup> Belgium logically has one of the highest ratios of returning FTF (or “returnees”) per capita in Europe, with one returnee per 100,000 inhabitants.<sup>6</sup> By November 2017, 125 Belgian FTF had

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<sup>2</sup> According to Belgian authorities, a FTF is a Belgian resident (but not necessarily of Belgian nationality), aged 12 or more, that has joined or attempted to join a terrorist organisation abroad (thus individuals that joined Kurdish militias that are not listed as terrorist groups, for instance, would not be included in the FTF list). A “returnee” is an individual on the FTF list who went to Iraq/Syria and has left the fighting area. By including all residents, but also accounting for underage fighters, Belgium has rather inclusive criteria compared to some other countries. It also started compiling data on FTF in a systematic manner, earlier than any other European country.

<sup>3</sup> Also known by its French acronym OCAM or Dutch acronym OCAD.

<sup>4</sup> CUTA’s FTF list includes five categories: presumed in Syria (cat 1); presumed en route (cat 2); presumed returned (cat 3); presumed failed attempt to enter Syria or Iraq (cat 4); and potential candidates to travel (cat 5), which is the most debatable category, due to the difficulty of defining and identifying such candidates.

<sup>5</sup> The return rate is in fact 43% among those FTF who actually reached Syria or Iraq (categories 1-3), but we use here the return rate calculated with the inclusion of “failed attempts” (cat. 4), in order to be able to compare with data from other countries. For comparable data across Europe, see B. van Ginkel and E. Entenmann (eds), *The Foreign Fighters Phenomenon in the European Union: Profiles, Threats & Policies*, The Hague: International Centre for Counter-Terrorism (ICCT), April 2016.

returned, while 146 individuals are still thought to be active in combat zones in Syria and Iraq. The official figure is 288, but at least half of those are presumed to have been killed, according to intelligence sources. Among returnees, nine are known to have died during the terrorist attacks in Paris (2015) and Brussels (2016), and one died in a car accident. There are thus 115 returnees alive in Belgium.

The magnitude of the current foreign fighter phenomenon is without precedent, in Belgium and elsewhere in Europe. Belgian citizens have joined jihadi organisations in the past, but in more manageable numbers.<sup>7</sup> A dozen left for Bosnia in the 1990s; 10-15 individuals journeyed to Iraq in the 2000s, and 5-10 persons joined Al-Shebaab in Somalia. Throughout the 1990s-2000s, the Afghan-Pakistan region attracted similar numbers of Belgian residents, around 20, although security services initially thought that number was higher.

How many of them returned from previous jihadi theatres? No official figures exist, but the number is estimated to be very low. Neither is there a systematic study of their activities upon return and how they were treated by the authorities. We only have anecdotal evidence that some of these veterans remained engaged in jihadi movements.<sup>8</sup>

Most returns from the Levant occurred at a relatively steady pace in 2013-15, with peaks in April-July 2013, April-June 2014, and June 2015. In contrast, only a few returns were recorded in 2016/17. We can arguably distinguish between three waves of returns, which we link to the evolution of ISIS, since most Belgian fighters joined this group.

The first returnee wave, by far the most significant one, took place in 2012/14, prior to the establishment of the caliphate. It peaked a first time in the spring of 2013 when internal disputes erupted among jihadi groups, in particular between the al-Nusra Front and ISIS, and a second time around the proclamation of the ISIS caliphate in June 2014. Many returnees were by then disillusioned or traumatised by their experience, though they'd actually stayed for only a relatively short period of time in the conflict zone. However, this wave also comprised the first fighters returning to Europe with the intention to recruit more members, thus travelling back and forth between Belgium and Syria, but also a few volunteers to conduct attacks.<sup>9</sup> Mehdi Nemmouche, the first known returnee to perpetrate an attack in Europe – against the Jewish Museum in Brussels in May 2014 – belonged to this wave.

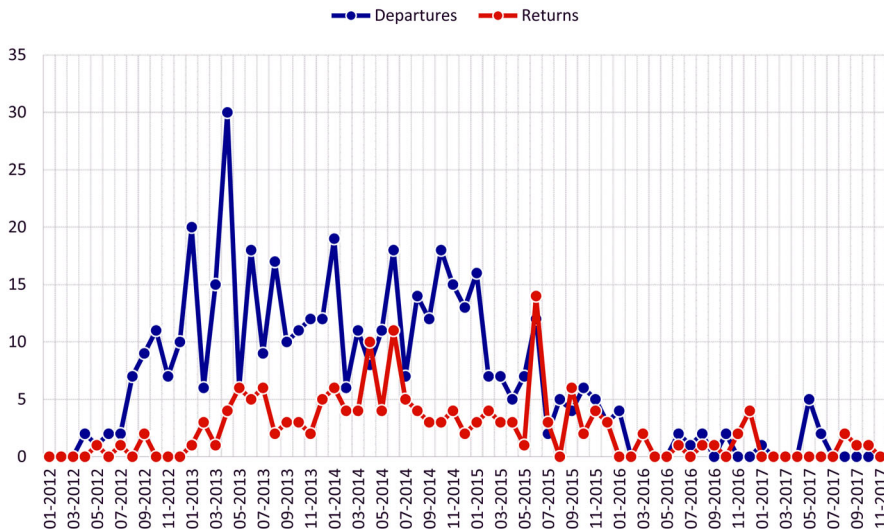
<sup>6</sup> Austria, Denmark and Sweden have witnessed fewer returns, but with smaller populations they actually have all very similar ratios of returnees per capita. Figures are based on R. Barrett, *Beyond the Caliphate: Foreign Fighters and the Threat of Returnees*, NYC: The Soufan Group, October 2017.

<sup>7</sup> As there previously was no FTF list similar to the current one, these figures are estimates based on various sources.

<sup>8</sup> The only systematic academic study of the genealogy of Belgian jihadi networks is: P. Ponsaers, *Jihadi's in België. De route naar Zaventem en Maelbeek*. Antwerp: Maklu, 2017.

<sup>9</sup> R. Callimachi, "How ISIS Built the Machinery of Terror Under Europe's Gaze", *The New York Times*, 29 March 2016.

**GRAPH 1: Departees vs Returnees, by date**



Source: CUTA, November 2017. Departures and returns include failed attempts (cat. 4), as well as multiple travels (some individuals travelled back and forth to Syria/Iraq, and are therefore recorded several times). Total figures in this graph are therefore superior to the number provided elsewhere in this chapter.

The second wave of returnees started in parallel with the establishment of the caliphate in June 2014 and peaked in June 2015. It is marked by the deterioration of living conditions in the caliphate, notably following the beginning of the military strikes by the international coalition as well as the intensification of fighting in Syria, making a high number of victims among jihadis. It is also marked by a number of attacks conducted by returning fighters, notably in Paris and Brussels.

The third wave covers essentially the decline of the caliphate and the post-caliphate period. Throughout 2016, there was a good deal of speculation about whether foreign fighters would return en masse to their home countries as a result of the increasing misfortunes of ISIS on the battlefield. It was anticipated that, once back, these veterans would start plotting against their respective homelands or constitute sleeper cells. As far as Belgium is concerned, this outpouring has not materialised. Only a few families with children returned to Belgium in 2016-2017. A group of about 30 FTF (of which a majority are women) and 22 children is known to Belgian authorities as having announced their intention to return, although it is not clear how many would actually succeed. It is furthermore suspected that a few more FTF are attempting or will attempt to come home unannounced and unnoticed.

It looks as if many of those still in Syria and Iraq will not return, however. Some will die fighting, some will be killed in anti-ISIS aerial attacks and some will be captured and possibly summarily executed by local forces. Others might seek to remain with a

downsized ISIS contingent in Syria, join other jihadi organisations, or possibly move to other jihadi theatres (in e.g. Libya or Afghanistan). This scenario is also yet to materialise. It is thus still unclear how important the third wave will be, and even if there will be a third wave of returnees at all. A decision by local forces to suddenly release all captive foreign fighters would of course change this assessment.

The remaining Belgian presence in Syria is now estimated at 269 individuals, principally composed of men and children. About half of the women on the FTF list have now either returned, or expressed their intention to return, which also means in contrast that there is still a significant number of women who have no intention to return. A group of 16 came back during the first waves (2012-15), to total 26 by early 2018. Although return rates are similar between men and women at this stage, this could change with the group of about 20 women that is expected to attempt a homecoming. As a result, this could affect the gender balance among returnees compared to the overall FTF gender balance. Women could therefore play an important role in the future developments of jihadi activities in Belgium.

Approximately 45 children also travelled to Syria since the beginning of the conflict, including 15 unaccompanied teenagers, while approximately 105 children were born of a Belgian parent in the caliphate. So far, four teenagers and 14 children below 12 years old have returned, which means that there are still around 123 children over there.

**TABLE 1: FTF returns by year and sex**

Year	Men	Women	Total
2013	30	1	31
2014	34	8	42
2015	24	7	31
2016	2	5	7
2017	1	3	4
Sub-total	91	24	115
Unknown date	6	2	8
<b>TOTAL</b>	<b>97</b>	<b>26</b>	<b>123</b>

Source: Proteus results (January 2018), CUTA

In geographical terms, the bulk of the FTF (categories 1 to 4) originated from Brussels (223) and Antwerp (119). Whereas the return dynamic in Brussels is slightly above the national average, with 67 returnees (34%), the rate of returns in Antwerp is below it, with only 18 effective returns (19%)<sup>10</sup>. There seems to be a similar group dynamic for returns as that which led to their recruitment and travel to Syria. Young

<sup>10</sup> A couple would-be returnees from Antwerp are still detained abroad.



individuals from these districts form a cohesive group, a “bunch of guys” in “jihad together”, often with kin or friendship bonds predating their journey to the region.<sup>11</sup>

**TABLE 2: Belgian FTFs per region and category**

Region	Category 1 (in Syria/Iraq)	Category 2 (en route)	Category 3 (returnees)	Category 4 (failed attempts)	Category 5 (candidates to travel)	Total
Brussels	128	0	67	28	44	267
Flanders	133	0	41	36	48	258
Wallonia	21	0	17	21	20	79
Unknown	6	0	0	0	1	7
<b>Total</b>	<b>288</b>	<b>0</b>	<b>125</b>	<b>85</b>	<b>113</b>	<b>611</b>

Source: CUTA (November 2017)

Among those who have already returned, 44 individuals (males only) are currently in jail, in provisional detention or sentenced following a conviction, while 80 are free under condition, having been released from jail or awaiting their trial. Within a couple of years, most of these imprisoned returnees will begin to be released. That progressive release of veteran fighters can also be seen as a sort of fourth wave of returnees, as it will create new challenges for security and social services.

## Perception of the returnees challenge

As early as 2012, Belgium was the first country in Europe to notice an alarming trend of outward travels to Iraq and Syria and to alert their European counterparts. At first, local authorities were relatively pleased to see young troublemakers and petty criminals leaving, since their departure led to a significant decrease in local crime rates. Some services also took this opportunity to improve their information gathering on extremist hubs and networks, instead of seeking to stem the flow. Within the intelligence services, however, many anticipated the future threat. Already in April 2013, André Vandooren, then head of CUTA, warned: “This is absolutely the most difficult case we ever worked on.... If some of these individuals come back [to Belgium] with training and know-how, they can present a threat to our society.”<sup>12</sup>

<sup>11</sup> R. Coolsaet, *Facing the fourth foreign fighters wave. What drives Europeans to Syria, and to Islamic State? Insights from the Belgian case*, Brussels: Egmont – Royal Institute for International Relations, March 2016.

<sup>12</sup> C. De Stoop, “Des enfants-soldats belges combattent en Syrie”, *Le Vif*, 10 April 2013.

In the recent past, Belgium indeed has had some adverse experience with veterans from previous jihadi mobilisations. In 1998, Belgian police discovered the first indications of a Moroccan network, composed of Afghan veterans, the *Groupe islamique combattant marocain* (GICM). This network had multiple activities. After having, in a first stage, helped with the repatriation of Afghan veterans, they provided them with temporary shelter in Belgium and other European countries (France, Spain and others). They also facilitated the return of some individuals to Morocco, with the objective of pursuing armed jihad there. The different hubs established across the entire European continent also functioned as sleeper cells, assisting if and when needed by other cells, as was the case for the cell in Brussels that sheltered some of the perpetrators of the 2004 Madrid bombing. Finally, these structures were also able to transfer some volunteers to new jihadi theatres. Investigators later found links with networks in Iraq, Saudi Arabia and the Dutch Hofstad group.<sup>13</sup>

Mehdi Nemmouche's attack on the Jewish Museum in Brussels in May 2014, followed by a foiled terrorist plot in Verviers in January 2015, and the attacks in Paris and Brussels, in which Belgian returnees were involved, were catalytic events whose cumulative effect raised awareness of the potential dangers of returnees. As a result, the perception of the challenge posed by returnees evolved over the past few years. This does not imply that Belgian authorities remained idle between 2012 and 2015. Indeed, an increasing number of measures were adopted in 2013-14 to monitor FTF and returnees.<sup>14</sup> However, as the former and current heads of the State Security (civilian intelligence) concurred at the parliamentary commission investigating the March 2016 Brussels attacks, more could have been done at an earlier stage.<sup>15</sup>

The terrorist attacks in Europe during 2015 and 2016, and the evolution of the situation in Syria, have fundamentally changed the context in which returnees operate. Many returnees from the first waves only remained for a very short time in the conflict zone, and many came back disillusioned or with post-traumatic stress disorder (PTSD). In contrast, individuals that remained in the combat zone in 2017 have been there for longer periods of time – several years in some cases – and are therefore more likely to have committed atrocities and to be irremediably socialised into extreme violence. In short, they are considered to be die-hards. Their possible motives for coming back are perceived as less genuine. In contrast to those who left behind a “winning” and “relatively safe” caliphate, there is no more caliphate to live in today and nowhere to hide from bombs and guns. The decision to return today is

<sup>13</sup> A. Grignard, “The Islamist networks in Belgium: Between nationalism and globalisation”, in R. Coolsaet (ed), *Jihadi terrorism and the radicalisation challenge in Europe*, Aldershot: Ashgate, 2008, pp. 90-91.

<sup>14</sup> *Stratégie fédérale belge contre la radicalisation violente*, June 2014, retrieved from: <http://www.joelle-milquet.be/wp-content/uploads/2014/06/1406-annexes.pdf>

<sup>15</sup> Chambre des représentants de Belgique, “Enquête parlementaire chargée d'examiner les circonstances qui ont conduit aux attentats terroristes du 22 mars 2016 dans l'aéroport de Bruxelles-National et dans la station de métro Maelbeek à Bruxelles, y compris l'évolution et la gestion de la lutte contre le radicalisme et la menace terroriste”, *Troisième rapport intermédiaire sur le volet « architecture de la sécurité »*, 15 June 2017, pp. 274-5.

less likely to be the result of a change in ideology or behaviour, but rather a survival reflex following the deteriorating situation in Syria. Nothing suggests that these individuals will leave their ideology behind or, more importantly, disengage from terrorist violence.

The perception of the involvement of women in jihad has evolved considerably as well. During the first waves of returns, women were perceived as “victims” or as playing a limited logistical role and being overall harmless. As a result, they were never prosecuted. This has now changed entirely, following a more accurate, but also enlarged, understanding of the role played by women in conflict, as well as the broadening of the terrorist law to cover support activities. Since 2016, women are as likely to be prosecuted as men.

The revision of the Belgian penal code in 2015 expanded the definition of what constitutes a terrorist offence and lowered the threshold for conviction, in line with the 2014 UNSC Resolution 2178 and the 2016 European Union Directive on terrorism. Travelling to join a terrorist organisation abroad, providing or receiving terrorist training or funding a terrorist organisation are now considered terrorist offences. As a result, returnees are now more likely to be prosecuted and condemned for terrorism than they were before. Whereas not all returnees from the first wave went to jail, they now all very likely will. In a 2017 trial, a woman was sentenced to prison on the motive that her help, as a housewife, constituted a support and encouragement to the activities of a terrorist group (ISIS).<sup>16</sup>

## Evolution of the Belgian response

The overall approach to returning foreign fighters can be categorised as a “criminal justice” one, in the sense that the judicial authorities are in the driving seat. Indeed, in Belgium, it is the federal prosecutor’s office that is in the lead for instructing terrorist and returnee investigations, in contrast with several neighbouring countries where the intelligence services play a much more central role.

Compared with the policies in place during previous jihadi conflicts, the paradigm of the Belgian response to returnees has not changed fundamentally. What has essentially evolved is the penal code, on one hand, with the aforementioned broadening of the scope of terrorist activities to include preparatory acts as well as logistical support. On the other hand, we have also seen the development of a much more systematic approach to dealing with FTF and returnees. As we will develop further in the next section, new forums have been created to exchange relevant information between various services on a regular basis. Efforts have also been made to improve the monitoring of FTF/returnees, and to ensure that these individuals are monitored

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<sup>16</sup> Criminal Court Liège, 16 June 2017.

and accompanied properly throughout their judiciary and post-judiciary processes. Relevant authorities are also better trained and equipped than before. This certainly contrasts with past experience in which returnees were less systematically monitored, let alone prosecuted.

Another major evolution is the development of a more disruptive approach to terrorist organisations and individuals active in Belgium. In the past, there was little room for action for the security services once a judicial investigation was started, in order not to interfere with it. In other words, the “judicialisation” of a file prevented other types of measures and hampered information sharing among security agencies or with local authorities. In practice, this meant that individuals or groups under investigation could continue their activities largely unhindered, as was the case for the infamous Sharia4Belgium, which pursued its propaganda and recruitment activities while it was under investigation. Although the intelligence services were monitoring these activities closely, priority was given to the judicial investigation. That approach was revised progressively in 2015, to allow for disruptive measures to be applied in similar situations, such as, for instance, obtaining an individual’s passport and ID card, and enhanced information sharing between the judiciary, security services and local authorities.

According to Paul Van Tigchelt, head of CUTA, the Belgian response to returnees is structured around three core principles: a multi-agency approach, subsidiarity, and information sharing.<sup>17</sup> These principles have been developed over the years, but they have been recently consolidated in a more coherent and systematic approach, as efforts have multiplied and intensified to cope with the unprecedented jihadi threat.

A multi-agency approach means that even though Belgium’s response is led by criminal law, a broader range of actors are being involved throughout the process of dealing with FTF and returnees, including intelligence services, police, penitentiary services, education institutions, and social services. The cooperation between these various administrations and services is not new, but it was clarified and consolidated in a series of documents, notably the 2016 Framework-Note on Integral Security (which establishes a list of objectives and who should deal with them), and the 2015 revision of the so-called “Plan Radicalism” (“Plan R”), which clarified the mechanisms of coordination, notably via the Local Task Forces (LTF) or the Local Integrated Security Cells (LISC).<sup>18</sup>

Subsidiarity, in turn, means that, depending on the task at hand, the most relevant level of agency should be in the lead. The criminal investigation will occur at the federal level, for instance, but the socio-preventive monitoring of individuals will be performed by local authorities. Again, the idea driving the establishment of the LTF

<sup>17</sup> Interview with Paul Van Tigchelt, Brussels, 27 April 2017.

<sup>18</sup> See the next section for more on LTF and LISC.

and LISC was precisely to bring the decision-making on the monitoring of FTF/returnees as close as possible to the local level. This principle is essential in a multi-layered federal state like Belgium, even though overlaps, duplication or tensions have inevitably occurred and still do.

The importance of the third principle, information sharing, flows from the two previous ones. For the principles of multi-agency involvement and subsidiarity to function properly, information needs to be shared effectively. In the past, local authorities complained that they did not receive any information with regard to dangerous individuals living on their territory, and that they could therefore not take appropriate measures. With the establishment of LISCs in 2015, but also with the creation of a new joint (also called “dynamic”) database on FTF,<sup>19</sup> shared to different degrees by all relevant services, that concern has been partly addressed, although some improvements remain necessary.<sup>20</sup>

## The Belgian response: how it works

In this section, we aim to describe how returnees are being handled by the Belgian authorities. We distinguish four key phases: the position and strategy with regard to fighters that are still in the combat zone; the “criminal justice approach” or what happens until trial; the “penitentiary approach” or what happens in prison; and finally the possible measures that are taken upon release.

### *Prior to return: extradition or execution?*

A first concern for authorities is to actually identify returnees. A potential threat is indeed that some FTF may seek to re-enter Belgian territory undetected, for instance to prepare an attack, using fake IDs or hiding among refugees flows. The intelligence services therefore follow closely the evolution of the FTF still in Syria, within the limits of their means and legal mandate, in order to anticipate possible returns. Given that Belgium has no physical presence in Syria, that information is essentially collected through social-media analysis, local information gathering in Belgium

<sup>19</sup> In the past, most services had their own databases on FTF, while CUTA was centralising information on FTF in a single database, which was shared only with a limited number of partners. The new database, established in 2016, is different in the sense that more services have access to it, to either consult it (read-only), but also to add, update or edit information on a continuous basis, making it more dynamic in that sense. Furthermore, in addition to FTF, data on Homegrown Terrorist Fighters (HTF) and hate propagandists are now also included in the database, therefore offering more comprehensive and in real-time individualised (non-classified) data on extremist movements in Belgium.

<sup>20</sup> The improvement of information-sharing arrangements had already been identified as a necessity following the Madrid and London attacks of 2004-2005. The main value added of the original 2005 “Plan Radicalism” was precisely the enhanced information sharing between the different security agencies, through Local Task Forces (LTF) created to that effect throughout the entire territory, as well as through a task force at the national level. The establishment of a fusion centre in 2006, CUTA, was also designed to specifically address the need for better information flows among all relevant services.

(including via friends and families), complemented by reports from foreign intelligence services. Recent movements of fighters following the military retreat of ISIS, combined with the migration from “open” channels of communications (e.g. Facebook or Twitter) to encrypted message services (such as Telegram or WhatsApp), have significantly complicated the gathering of information on the whereabouts and intentions of Belgian fighters. It has been reported, however, that Belgian intelligence officers have also been dispatched to the region, in order to quiz fighters captured by local forces about their intentions and the whereabouts of their companions.<sup>21</sup>

Recently, with the collapse of ISIS’s state project and the succession of military defeats, a number of Belgian fighters have been made prisoners. It is not clear yet at the time of writing how the authorities will handle this situation. Prisoners will likely be exposed to torture and possibly to death penalties. However, in the absence of extradition conventions with Iraq or Syria (let alone with the YPG militia in Syria), it is not clear whether they will come back to Belgium or not, and whether authorities will proactively seek to facilitate their return.<sup>22</sup>

Beyond the conflict zone proper, cooperation with transit countries, mainly Turkey, is essential with a view to identifying and arresting returning fighters. In this regard, cooperation with Turkish authorities has been complicated by difficult political relations, and Turkey’s refusal to execute European arrest warrants and properly extradite Belgian jihadis. What they have done until recently was to use a “refoulement” procedure, which consists of a unilateral decision to send back the person, sometimes without warning the Belgian authorities in a proper and timely way, and therefore risking that the individual disappears once landed. That unpredictable process was illustrated by the infamous case of one of the Bakraoui brothers, who disappeared after his “refoulement” from Turkey to the Netherlands, and was later involved in the Paris and Brussels attacks.

After the Brussels attacks, Belgium has sought to agree on a new mechanism with Turkish authorities, short of formal extradition. According to this mechanism, whose implementation remains conditioned on Ankara’s goodwill, the Turkish police would immediately warn Belgian authorities following the arrest of a FTF from Belgium. After being taken to the airport by the Turkish police, the FTF would receive new travel documents from the Belgian consulate (since their passports were usually confiscated by ISIS) and Turkish police officers would escort the individual(s) aboard a commercial flight to Brussels, at the expense of Belgium. For the most dangerous FTF, a military plane can be chartered, but that option has not been used yet. Furthermore, the creation of a “hotspot” in Turkey was also envisaged in 2017,

<sup>21</sup> M. Prothero, “The Good News: ISIS Is Failing. The Bad News: Its Fighters Want To Go Home”, *BuzzFeed*, 13 September 2017.

<sup>22</sup> L. Ponciau, “Irak: le sort incertain des détenus belges”, *Le Soir*, 29 September 2017.

composed of representatives from the federal police, the military intelligence service and consular services, with the aim of collecting useful information on (and possibly from) returnees.<sup>23</sup> This arrangement never really got off the ground, but a better information-sharing mechanism was nevertheless created.

Once landed in Belgium, the fighter(s) are arrested and taken into custody by the Belgian police. A coordination agreement was set up for this specific purpose between the Belgian Ministry of Justice (which will execute the arrest warrant, once warned of a return), the Ministry of Foreign affairs (which prepares the travel documents) and the Ministry of Interior (which coordinates the police operation). Immediately after landing, FTF will be taken for interrogation by the intelligence services.

### *The criminal justice approach*

Once a returnee is identified in Belgium, whichever way he or she came back, they are now systematically arrested and presented to an investigating judge. With the support of the police and the intelligence services, this judge will make a risk assessment about that individual and decide whether pre-trial detention is necessary.<sup>24</sup> The criteria for preventive detention have been widened, as to make the magistrate's decision easier, particularly for cases where the FTF faces a sentence of five years of imprisonment or more.<sup>25</sup> Pre-trial detention is justified for individuals who pose a security threat or who risk disappearing before their trial, which now concerns virtually every returnee.

The length of pre-trial detention is variable and, technically, can last a substantial amount of time in Belgium depending on the length of the investigation. To maintain that detention, the magistrate must, however, demonstrate on a monthly basis that detention remains justified, and that the investigation is still ongoing – and thus not stalling. All returnees' investigations are now considered a priority, to ensure a "reasonable" timespan between the arrest and the trial, with the aim to proceed in less than a year.<sup>26</sup> As to returnees of the third wave, it is expected that most will remain in provisional detention until their trial, or be released under specific (and strict) conditions (and supervision).

The investigation on each returnee is led by the federal prosecutor's office, supported mainly by the judiciary police. Cases are built through traditional techniques, including cross examination of the returnee himself, of his family and friends, through house searches or the exploitation of phone and internet data. The

<sup>23</sup> Question et réponse écrite 2302 (législature 54), question de Katrin Jadin au Ministre Jambon, Chambre des Représentants, Belgique, réponse publiée le 14/7/2017.

<sup>24</sup> Interview with a federal magistrate in the Public Prosecutor's Office, Brussels, 9 May 2017.

<sup>25</sup> Interview with a senior official, Ministry of Justice, Brussels, 24 April 2017.

<sup>26</sup> Interview with a federal magistrate, op cit.

judge can also be supported by the two Belgian intelligence services, and by its fusion centre, CUTA. As mentioned above, Belgium has long distinguished itself by its judicialised approach to terrorism, in which the prosecutor's office is in the driving seat, relegating the intelligence services to a supporting role. Since 2015, twice a month the prosecutor's office meets with the five counterterrorism units of the federal judiciary police services, CUTA, the two intelligence services and the Financial Intelligence Processing Unit (CTIF) to discuss ongoing terrorist investigations, establish priorities and, if necessary (when the Brussels police is overloaded, for instance), discuss possible support in investigations from other federal units (with the federal police of Antwerp or Liège, for instance). In these discussions, returnees are always priority files.<sup>27</sup>

As of lately, the investigations on FTF have become more complex than before. Fighters have become less loquacious on social media than during the first two years of the Syrian war and have moved to encrypted communication services, such as Telegram. It is therefore more complicated for the judicial authorities to collect information that connects an individual to a terrorist organisation or activities. While this should make these investigations lengthier, prosecution actually appears to have become slightly swifter than before, due to the prioritisation of FTF files and the increased numbers of federal magistrates specialised in terrorism, from five in 2012 to 12 in 2017. This has eased the "bottleneck effect" that had appeared in previous years.<sup>28</sup> Terrorism investigations have indeed increased considerably, from 60 in 2012 to 313 in 2015, before decreasing to 280 in 2016 and 250 in 2017.

### *The penitentiary approach*

In January 2018, there were 100 FTF in jail, including approximately 10 abroad, of which 44 were returnees. Although some returnees are still awaiting trial, this suggests that two thirds of the returnees are not in jail. As indicated above, this concerns most of the 26 women having returned, but also a number of men who could not be prosecuted for lack of evidence, particularly for those who returned before the modification of the penal code in 2015. Furthermore, some returnees have already served their time in prison or are out on probation.

As in many other countries, there has been debate about which penitentiary regime should be applied to so-called radicalised detainees. Options include regimes of isolation (solitary confinement), separation (grouping in dedicated units), or dispersal among the general prison population ("ordinary" regime). In Belgium, the preferred option for the detention of FTF and returnees remains the "ordinary" regime in one of the country's 32 prisons, although such a regime is often comple-

<sup>27</sup> Interview with federal magistrate, op cit.

<sup>28</sup> Interview with federal magistrate, op cit.



mented with individual security measures. Such measures can include more stringent searches of the detainee's cell, more limitations in the detainee's activities, visits and communications, as well as measures of confinement. It is, however, acknowledged that such measures, especially regarding inmates with minor sentences, carry the inherent risk of producing the opposite effect of that desired. The detention regime of returnees is decided by the penitentiary authorities based on a generic law of 2005 concerning the rights and duties of prisoners. The individual situation of radicalised detainees is evaluated at regular intervals, possibly leading to adjustments in the detention regime.

Returnees and other detainees subject to radicalisation are mostly directed to the so-called "satellite prisons", which offer better observation and monitoring capacity due to the training of their staff (there are five of them: Andenne, Lantin, Saint-Gilles, Bruges and Ghent). For the most challenging individuals, two additional options exist. If the FTF engages actively in proselytising or recruitment activities, and based on an individual screening performed by the federal penitentiary administration's Cell Extremism (CelEx) jointly with the central psychosocial service (CPSDEx), he can be sent to one of the two so-called "D-Rad:Ex" units, separated from other inmates (in a regime of separation rather than isolation). The prisons of Hasselt and Ittre have 20 places available each in these specialised units. In spite of some political pressures to fill these units, only 22 places were used in January 2018. Finally, if an individual is considered a security threat to himself or for others, he can be detained at the high-security facility in Bruges (where Salah Abdeslam, Mohamed Abrini and Mehdi Nemmouche were or still are detained), possibly in solitary confinement.

The imprisonment of returnees and other jihadi sympathisers raises major concerns. Charismatic detainees, and particularly jihadi veterans, are known to act as agents of radicalisation and recruiters for jihadi networks in prison. Many terrorist investigations in Europe over the past few years led back to prisons as the hub for networking and radicalisation. Belgian authorities are indeed familiar with this old phenomenon. Detainees like Nizar Trabelsi (sentenced to 10 years of prison in 2003) have proved extremely influential in a penitentiary environment. Concern about that is growing in view of the unprecedented number of returnees entering prison, while increasing ties are being observed between "radicalised" detainees and "criminal" ones.<sup>29</sup>

CelEx was established in January 2015 precisely to address this phenomenon. Other measures adopted in this aspect include the intensification of the exchange of information between the penitentiary services and other relevant services, such as the intelligence services or the police. The penitentiary administration is indeed actively and extensively feeding information into the dynamic database on FTF.

<sup>29</sup> Interview with officials from the penitentiary administration, Brussels, 20 December 2017.

The tasks of CelEx and CPSDEx are quickly expanding. From the monitoring of 40 individuals during their first year, they are now monitoring 230 cases of “radicalisation” across the entire ideological spectrum, thus also including left-wing and right-wing extremists, albeit with a combined staff of only nine people.<sup>30</sup> This monitoring includes, notably, regular meetings with prison directors and psychosocial services to discuss the situation of these individuals, every three months. According to the State Security Service, however, there are up to 450 detainees showing signs of (Islamist) radicalisation, totalling 5% of the jail population.<sup>31</sup> The differences in figures between CelEx and State Security serve as an illustration of the difficulty in defining and operationalising “radicalisation”. It might indeed be a relatively self-evident task for individuals convicted for terrorism, or listed as FTF, but it is much less evident for “radicalised” individuals who were convicted for criminal offences, or for individuals undergoing a radicalisation process in prison. The State Security Service’s mission to monitor FTF and radicalisation in prison was reinforced with the updated “Plan R” in 2015, in order to strengthen its knowledge base and to facilitate the exchange of information with other services.<sup>32</sup> Although State Security has now strongly prioritised its role in the prisons system, the aforementioned parliamentary commission considered this involvement to be too little, too late.<sup>33</sup>

Training penitentiary staff is essential to dealing properly with returnees and other terrorist convicts. Specialised training started only in 2015, thus after the first waves of returns, but at a moment when the issue became more salient politically, following the January events in Paris and Verviers. It first focussed on staff members of the “D-Rad:Ex” units, as well as the staff of the psychosocial units and directions of all satellite prisons (5 to 9 days programme, including a tutorial on risk assessment and recognition of signs of radicalisation), before progressively expanding to more personnel and institutions. In January 2017, 169 members of the penitentiary institutions (directors and staff) had undergone training.<sup>34</sup> Moreover, a training module on Islam and radicalisation has been added to the basic formation of all newly hired penitentiary staff since 2017. In the future, all penitentiary staff across the country should receive at least one training session on these topics, thus eventually blurring the lines between ordinary and satellite prisons. However, it may still not be sufficient given the magnitude of the problem.<sup>35</sup> A long-term commitment is needed here, not least because the threat itself continues evolving. Current overall budgets are today judged insufficient to effectively implement all policies put in place.

<sup>30</sup> Interview with officials from the penitentiary administration, op cit.

<sup>31</sup> “Il y a 450 radicalisés en prison: le problème se pose surtout du côté francophone”, *La Libre Belgique*, 26 January 2017.

<sup>32</sup> *Plan d’action contre la radicalisation dans les prisons*, Brussels: Ministry of Justice, 11 March 2015.

<sup>33</sup> Chambre des représentants, op. cit., p. 228.

<sup>34</sup> Question et réponse écrite 1563 (législature 54), de Kristien Van Vaerenbergh au Ministre Koen Geens, Chambre des représentants, 28 November 2016.

<sup>35</sup> “Des milliers d’agents pénitentiaires formés contre la radicalisation”, *Belga*, 25 April 2017.

When it comes to the disengagement trajectories for returnees and radicalised detainees, Belgian authorities have formally announced their intention to work on disengagement (focussing on changing the behaviour) and deradicalisation (focussing on changing the mindset) programmes in prison.<sup>36</sup> For some time, it looked as if the authorities had not yet made up their minds on these different approaches. But now, the federal government appears to privilege disengagement over deradicalisation. But given the fact that social support for detainees is a federalised competence in Belgium (and thus devolved to the regional authorities), the federated entities ('Communautés') are now starting, if only belatedly and modestly, to play their part. Flanders has appointed two mobile counsellors to offer tailored counselling to radicalised detainees, including possibly returnees. On the Francophone side, this task is taken up by the CAPREV, equally a very young initiative (established in early 2017). Notwithstanding the different institutional settings, the preferred approach in both the Flemish and Francophone arrangements are aimed at individualised disengagement trajectories, with social reintegration as an objective and involving a multi-faceted endeavour with interlinking dimensions of one's life situation. Only time will tell, however, whether such interventions lead to positive results in terms of rehabilitation and reintegration.

Overall, it should be noted that reintegration is traditionally a weak spot in the Belgian penitentiary system, as the relatively high rate of recidivism seems to indicate. According to one rare study on the issue in Belgium, 44% of the inmates released between 2003-05 returned to prison few years later.<sup>37</sup> Furthermore, prisons in Belgium suffer from a number of structural conditions that have been identified in academic literature as conducive to further radicalisation and violence in prison.<sup>38</sup> Such factors, essentially linked to the quality of management and infrastructures, include a chronic prison overpopulation (by an average 16.4%) and poor working conditions leading to repeated strikes by penitentiary staff, resulting in very chaotic situations in recent years, where police and military had to step in. This situation raises yet further alarm about the potential for radicalisation in Belgian prisons.

### ***The post-penitentiary dimension***

A significant part of the Belgian response to returning fighters is predicated on a criminal-based approach, whereby imprisonment is perceived as the end of the judicial process. However, every returnee will leave jail one day – most will in fact be released by 2020, since returnees are typically sentenced to 5 years in jail. To some

<sup>36</sup> Interview Ministry of Justice, op cit.; *Plan d'action contre la radicalisation dans les prisons*, op. cit.

<sup>37</sup> Robert L. and E. Maes, "Retour en prison. Les premiers chiffres nationaux sur la réincarcération après libération", *Journal de la Police*, April 2012, pp. 21-27.

<sup>38</sup> Neumann, P. "Prisons and terrorism: Radicalisation and de-radicalisation in 15 countries", London: ICSR, 2010; Zahn, M., "Prisons: their role in creating and containing terrorists", in G. LaFree and J. Freilich (eds), *The Handbook of the Criminology of Terrorism*, London: John Wiley & Sons, 2017, pp. 508-19.

extent, as argued above, this could be described as a fourth wave of returns – into society, in this case. To be sure, their release will create significant challenges for local authorities, probation and security services. No hard guarantee can be given as to the degree to which they have left their extremist ideology behind or, above all, have disengaged from terrorist violence. According to CUTA, 30% of the Brussels returnees show signs of deradicalisation after having left jail, while 40% stuck to their radical ideas.

How, then, should we handle these individuals upon their release from jail?

First and foremost, the post-penitentiary transition should start in prison itself, as described above. Just like for any other inmate, it is crucial to engage with returnees in prison, with a view to facilitating their reinsertion into society, and lowering the chances of recidivism (in this case defined as re-engaging in terrorist-related activities). Going back to civil life after several years in a conflict zone, followed by several years in a penitentiary environment, is neither a natural nor an easy transition. Returnees need to be prepared socially, psychologically, as well as practically (in terms of professional skills for instance) for their reinsertion. They need to be able to see their release as an opportunity for a fresh new start, rather than the mere end of punishment. This implies that efforts from the support services to detainees are crucial, but not sufficient.

Secondly, reinsertion can be prepared through early release or partial release under probation, including by local agencies called Justice Houses. Probation will be granted to returnees based on the integrated assessment of the penitentiary administration and of CUTA. For inmates with a sentence of less than three years, the Ministry of Justice itself decides on the specific conditions under which an individual must abide. When the sentence is beyond three years, these conditions are decided by a special court (Tribunal for the execution of the sentences, TAP), and monitored by assistants from the Justice Houses (who now have all appointed two referents specialised in cases of radicalisation). Often, the latter is more comprehensive in its approach than the former. Such conditions may include regular meetings with police and psychosocial officers, discussions with an appointed imam, interdiction from leaving the national territory or going to certain places, or from meeting certain persons. In view of the sensitivity of this topic, and given the multiplication of initiatives linked to rehabilitation and reinsertion over the past years, it could be desirable to design training programmes (or at least information platforms) for the TAP judges, so that they can take well-informed decisions. At a minimum, CUTA is working on a quality certification for disengagement and deradicalisation programmes, which could become a useful resource in this regard.

Some returnees may not be granted probation, or they may consciously refuse it. In such cases, they will come out of prison at the very end of their sentence, absolutely free to walk away with no strings attached. This is not an ideal scenario, as it prevents

proper monitoring and contact with the returnee during the first and most critical phase of their reinsertion. Some in the intelligence community also suspect this to be a calculated strategy by some ISIS members to maximize their time in prison for recruitment activities, and then to disappear more easily upon release.

Thirdly, the transmission of adequate and timely information between the penitentiary services and the local authorities is crucial. It is indeed important for local authorities to be informed of the upcoming release of a returnee, so that they can prepare for it. It is local authorities, through their prevention services, together with the psychosocial service of the prison and counsellors from the federated entities, that can prepare and devise tailored counselling programmes as well as support for reinsertion, such as finding a job or a home. When they are aware of the presence of a returnee on their territory, local prevention officers will seek to establish contact to help with reinsertion, which can in some (but not all) cases be part of probation conditions.<sup>39</sup>

Information collection in prison is essential to guiding the post-penitentiary approach. A better knowledge of what happens in prison (from a surveillance of radical activities, to a monitoring of social networks, and an assessment of the effect of the intervention programmes), is essential to guide the work of local prevention officers, as well as security services afterwards. As opposed to France and some other countries, Belgium does not have a specific intelligence service or unit within prisons. Although it is now being considered,<sup>40</sup> it is the State Security that is responsible for monitoring FTF in prison and for sharing that information with CUTA and the federal police. That information can also be fed into the dynamic database on FTF, thus making it virtually available to all services involved in the monitoring of Belgian FTF. CelEx has also played an important role in this regard, and has developed intelligence functions, without having the status of an intelligence agency.

Early on, information about the release of returnees didn't easily trickle down to the relevant level. Some municipalities complained they discovered that returnees were back to their hometown only after their release, and thus without being able to properly anticipate their reinsertion. Since 2017, this information flow has clearly improved. Penitentiary authorities now proactively inform the relevant police force whenever an inmate is released (at the end of his sentence, probation, temporary release, ...). The penitentiary history of the individual too is communicated through the judicial police and State Security, in order for the LTF to be able to secure any necessary follow-up.

Returnees are indeed not deleted from the FTF database once free. As a result, they continue to be subject to the standard evaluation and threat assessment of the

<sup>39</sup> Interview with a local prevention officer of the Brussels Region, Brussels, 2 May 2017.

<sup>40</sup> "Bientôt des espions pour infiltrer nos radicalisés en prison", *La Dernière Heure*, 9 January 2018.

services, similarly to any (candidate) FTF. Two major mechanisms are available here to the authorities: the Local Task Forces (LTF) and the Local Integrated Security Cells (LISC). The LTF were established by the original 2005 “Plan R”. They bring together at the (supra-)local level representatives from the intelligence services, CUTA, the judiciary, and the federal and local police. The objective of the LTF is to share information between law enforcement services, to identify the priority entities/individuals that require attention, and to decide on the relevant measures that could be applied. In principle, the LTF must immediately be warned of the presence of a FTF or returnee in their jurisdiction, although the parliamentary commission on the Brussels attacks claimed that it is not always the case.<sup>41</sup>

Given its composition, the nature of the discussions within the LTF is security-oriented. This is why a second platform, the LISC, was established in 2015.<sup>42</sup> A LISC brings together prevention officers and other relevant social services and the local police, usually under the chairmanship of the mayor. A LISC can discuss cases referred to it by the LTF, but it can also bring forward cases of radicalised individuals that are not FTF, but still necessitate some kind of monitoring or mentoring. In contrast with the LTF, the LISC is focussed on a socio-preventive approach. They also have a different status, since they are not part of the 2015 “Plan Radicalsism”, but were established voluntarily at the initiative of the mayor. As a result, whereas the LTF cover the entire territory, there were only about 205 LISCs covering 306 of Belgium’s 589 municipalities in late 2017, a significant number of which were established only recently and are either still paper constructs or only in their learning phase.<sup>43</sup>

In early 2018, the Belgian government invited all municipalities to create a LISC, so that they would from now on cover the entire Belgian territory, reaffirming that, while the LTFs’ role was reactive and repressive, the LISCs had to concentrate on the socio-preventive dimension. Since both would have work in close cooperation, creating confidence was identified as a crucial prerequisite. For this to happen, the mayor (or the prevention official in charge of deradicalisation) was to be the central axis of the LISC, with the presence of law enforcement in the LISC limited to only one representative of the LTF (called an “information officer”) as the necessary link between the two platforms.

The LISC is charged with the early detection of deviant behaviour, which potentially could result in violent radicalism, and with case management (or tailor-made trajectories) of the individuals on its territory. In doing so, the LISC was instructed to avoid

<sup>41</sup> Chambre des représentants, op. cit., p. 164.

<sup>42</sup> In a small number of municipalities, some pioneer cells dealing with radicalisation were established already in 2013, either at the initiative of the mayor or local officials. It is due to the action of some mayors that the very idea of the LISC emerged as a bottom-up practice, before their institutionalisation in 2015.

<sup>43</sup> Chambre des représentants, op. cit., p. 167; Interview with officials from the Ministry of Interior, Brussels, 5 October 2017.

labelling an individual as radicalised without serious indications, since early stigmatisation might be counterproductive. Therefore, when simultaneously confronted with problematic family or personal situations, the follow-up by the LISC should concentrate on these dimensions rather than on the radicalisation dimension. The LISCs' aim was indeed to approach each individual from an inclusive angle. Depending on the characteristics of the individual in question, the LISC could reach out to a wide range of local civil society actors, but always with the mayor (or his prevention official) in the lead.

### *The case of children*

Since 2012, about 45 Belgian children have travelled to Syria; 32 of them with a parent and 15 unaccompanied teenagers. It is further estimated that about 105 children were born there, from a Belgian parent, although gathering such figures is a challenging task. Most "children of the caliphate" are therefore very young. The majority of those still there are under the age of four. Most of these children have been confronted with extreme violence and hardship and will remain psychologically affected for many years. Six-year-old children and beyond will have been exposed to jihadi ideology, education and even violence, while about 20% of these children have received military training.<sup>44</sup>

The return of these children will present a number of serious challenges – social, psychological, and educational. While they are essentially perceived and treated as victims, a small minority of them could develop into a security threat. In Brussels, for instance, a number of youth gang leaders are indeed former child soldiers (from Africa). There is thus a precedent that should both serve as a warning and encourage authorities to multiply efforts in this field, but it also suggests that there are existing experiences and practices that could offer instructive guidance about which approaches may work and which won't.

As opposed to adults, children will not be treated as criminals, but according to a "welfare" or "childcare" approach. They will be considered as "children in danger" or in a "situation of concern", and a tailored approach will be devised by a specialised youth judge reflecting the singularity of every individual case. Concretely, young children will generally remain with their parents, unless it is considered that parents or next of kin are not able to take proper care of them, in which case child protection measures can be taken.

Two cases illustrate this. In one case, a young mother returned to Belgium and was sentenced to jail, but her child was placed under protection of his grandmother. In another case, four children were taken away from the custody of their parents –

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<sup>44</sup> J. Balboni, "Une centaine d'enfants belges toujours en Irak et en Syrie", op. cit.

returning fighters – and entrusted to childcare institutions due to signs of continued radicalisation.<sup>45</sup>

For teenagers, there is the possibility to send them to juvenile detention within the child protection institutions, if there are indications of a security risk. In this regard, the staff of these facilities has been trained and officers for radicalism appointed (“référénts radicalisme”).<sup>46</sup>

A last issue concerns the legal recognition of the children born in the caliphate. According to Belgian law, blood determines nationality. Hence, if a Belgian parent can be proven, then the child will be considered to have Belgian nationality. It is likely that the authorities will demand DNA samples. If the Belgian parent is deceased, however, authorities are unlikely to grant Belgian nationality to the child, which could lead to problematic situations for a number of orphans. Furthermore, DNA by itself does not automatically result in recognition of Belgian filiation. In this, Belgium is being more restrictive than other European member states.

However, reacting to news stories about the tragic fate of lost Belgian children in the region, the Belgian government decided at the end of 2017 that children under 10 with proven Belgian filiation would automatically be allowed to return. In practical terms however, it is up to the families to pick up their children in detention camps in Iraq or Syria, and to bring them to the nearest Belgian embassy or consulate. This journey is evidently not without danger. The situation of children between 10 and 18 will be decided case by case.

## Conclusions

When the first Belgian fighters started to return from the Levant in late 2012 and early 2013, little structure of any kind was in place to deal with them. The monitoring was minimal and the overall approach patchy and reactive. After all, Belgian authorities had seen this before. As the phenomenon started to expand to an unprecedented scope, eventually new measures were adopted and mechanisms established. Most of these responses remained limited to a few proactive administrations, however, and lacked overall coordination.

But following the attack on Brussels’ Jewish Museum in 2014 and, above all, the January 2015 attacks in Paris and the failed plot of Verviers, as the threat from returnees suddenly materialised, the Belgian response to the FTF phenomenon was significantly boosted. The year 2015 was clearly a milestone, with the modification of the penal code, the update of a new plan against radicalism (“Plan R”), the establishment of LISC at the local level, the creation of CelEx in the penitentiary adminis-

<sup>45</sup> “Quatre mineurs d’âge pris en charge en raison de leurs parents radicalisés et «returnees””, *Belga*, 21 September 2017.

<sup>46</sup> “Des formations spécifiques pour les IPPJ afin de combattre le radicalisme”, *RTBF*, 8 January 2016.



tration and the beginning of training for prison staff, to name just a few improvements.

Since 2015, the Belgian response has been continuously developed and consolidated. Good practices that had emerged through a bottom-up approach were progressively identified and encouraged through top-down mechanisms.

This still remains a work in progress. Some weaknesses, imperfections and vulnerabilities persist. The final recommendations by the Parliamentary Commission on the 22/3 attacks contain hundreds of suggestions that serve as a guide to governmental action. The transition to life after prison remains one of the most challenging dimensions of the Belgian response to returnees.

But it is also important to look back and acknowledge what has been achieved. When this project on returnees was launched in early 2017, we were still hearing many criticisms and complaints from a range of actors involved in the fight against terrorism and radicalisation. A year later, things have clearly improved. Horizontal information-sharing and cooperation among services have advanced tremendously. Professionalism in assessment and management has undoubtedly improved. Unbeknownst to the general public, discussions within security agencies and public administrations are moreover often much more nuanced and multifaceted than the political discourse and media reporting.

On 22 January 2018, the Belgian authorities announced the lowering of the threat level from 3 (serious and credible threat) to 2 (average and unlikely), although hinting that the threat remained higher than prior to the Paris attacks, when the threat level was also at 2. This by itself should come as no surprise. The history of jihadism shows a dynamic succession of subwaves, with phases of expansion and increased threats alternating with phases of contraction and reduced terrorist danger. The fall of the caliphate will most likely result in lower threat levels across Europe. This is not to say that the terrorist threat will entirely disappear, or even become negligible, but it will evolve towards a less intensive and more manageable phenomenon. So far, indeed, the worst-case scenarios for the post-ISIS period have not materialised.

This new reality entails danger that a certain sense of urgency might wane too. This would be a major mistake. A lower threat level should not automatically lead to fewer investments in countering terrorism and radicalisation. The newly created arrangements have to be consolidated and improved where needed – which can call for more efforts and resources in some cases – and not allowed to atrophy. The conducive environments, or preconditions, that permitted ISIS' success, and the constant re-invention of jihadism in widely different locations around the world, including Europe, remain very much in place.

The efforts to reduce this conducive environment need to be upheld. Financing is one area of potential concern. It is striking in Belgium that in spite of the political

discourse which sets terrorism as a top priority, a significant chunk of the projects (and indeed staff) working on these issues are funded by the European Union, including in very strategic positions (within the Ministry of Interior, CUTA, or the training of penitentiary administration, for instance). The continuation of a number of these flagship initiatives is essential, but will have to be ensured by Belgian authorities once the EU funding runs out.

Continued investment in the prison environment too is crucial. The endeavours in the field of rehabilitation and reinsertion of FTFs in prison remain as crucial as when they were launched, if not more so. Many of them are still at a very early stage, while most returnees will be out of prison in the next couple of years, thus possibly having only a very limited effect. More broadly speaking, more investments in the penitentiary system are long overdue. The poor conditions and overpopulation in some prisons, and the lack of investment in personnel are all factors that undermine the government's stated policies to address terrorism and radicalisation.

The reinsertion of returnees into the society and their monitoring over the long term is another area for improvement. Many veteran fighters will continue to be monitored by the intelligence services, but it is unclear yet how resilient and effective the multi-agency approach that was developed over the past few years will be, moving forward. One could also wonder whether more should not be done *with* returnees, with a view to consolidate their reinsertion over the long term.

Avoiding the risk for prisons to become "jihadi universities", where future terrorists are recruited and terrorist networks established, also necessitates the pursuit of preventive actions that address the structural drivers of radicalisation and extremism, including social isolation, marginalisation, polarisation, and the stigmatisation of Islam.

If we fail to uphold these endeavours, at some point in the future the re-emergence of a fresh jihadi wave cannot be excluded, if and when a new opportunity for jihadi mobilisation arises.

# GERMANY'S RETURNING FOREIGN FIGHTERS AND WHAT TO DO ABOUT THEM

DANIEL H. HEINKE AND JAN RAUDSZUS

Germany is one of the countries in Europe with the highest numbers – in absolute terms – of persons who travelled to Syria or Iraq out of Islamist motivation. The potential security challenge emerging from so-called returnees is serious. This chapter will briefly present the composition of the German contingent and its social demographic attributes.

Police and security services have dealt with returnees for years now. However, the flight of Islamic State supporters – and their families – is posing new questions that need to be confronted head-on. Hence, our chapter will also discuss the diverse measures that government and civil society actors in Germany have taken to cope with issues arising from the return of these individuals.

Ex ante it has to be stated, though, that compared to other countries such as the Netherlands, Belgium, or France there are significantly less publicly available data on Foreign Terrorist Fighters (FTF) from Germany and thus information is scant on returnees as well. The main reasons are quite narrow regulation on data protection and privacy rights, and the reluctance to disclose information that may reveal methods of intelligence collection by security agencies. Thus unfortunately there is only a somewhat limited possibility to directly compare data with neighbouring countries.

## Scope and contours of the challenge

Supporters of different jihadi (and anti-jihadi) groups have left Germany for the Middle East in large numbers. According to findings of the German security authorities, more than 960 individuals have left the country to travel to Syria or Iraq out of Islamist motivation,<sup>1</sup> although the actual number could be higher. The number of departures per quarter has fallen since the third quarter of 2015, and has generally been dropping since late 2014 (see graph). The peak was in mid-2014 with almost 100 departures a month.<sup>2</sup>

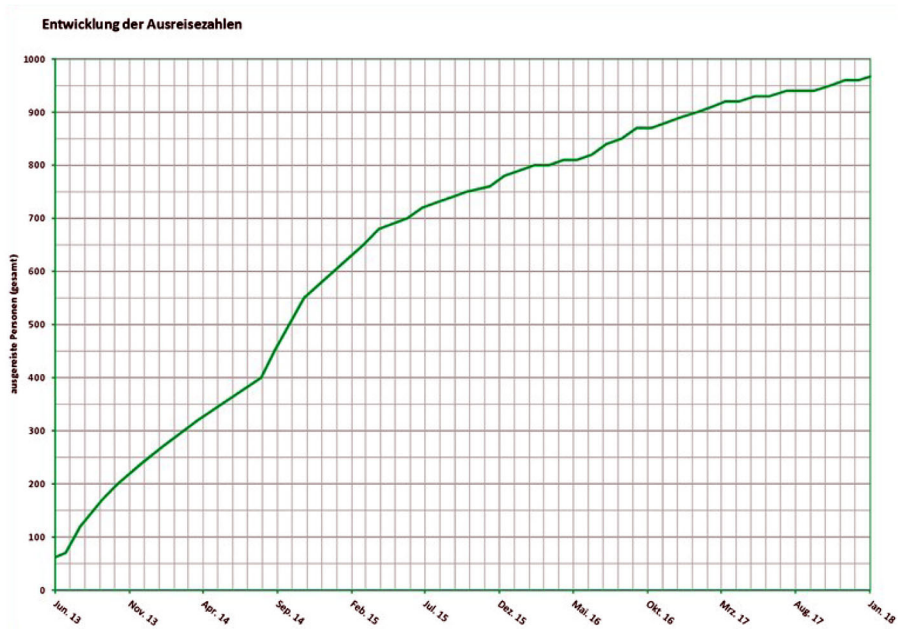
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<sup>1</sup> Number according to the state ministry of the interior of Bremen, Germany.

<sup>2</sup> Federal Criminal Police, Federal Office for the Protection of the Constitution and the Hesse Information and Competence Centre Against Extremism (2016): *Analysis of the background and process of radicalisation among persons who left Germany to travel to Syria or Iraq based on Islamist motivations*: p. 26.

The numbers are not entirely comparable to other countries due to a different classification system. German security agencies do not count FTF (or foreign fighters in general, that is), but rather register individuals regardless of nationality who left Germany for Syria or Iraq out of Islamist motivation.<sup>3</sup> There is no fixed age limit, but young children who have been taken to the war zone in significant numbers by their parents are not included in the overall numbers. The general category (without children) henceforth will be referred to as departees. Individuals who travelled to the conflict zone with the intent to support another faction – e.g. the Kurdish YPG militia – are not included in these numbers (but will be briefly depicted in this chapter). “Returnees”, consequently, are those departees who return to Germany or try to do so.

**GRAPH 1: Numbers of departures as provided by the Federal Domestic Intelligence Agency (BfV)**



Source: Federal Domestic Intelligence Agency (BfV), as of 19 January 2018. The graph displays the cumulative growth of the number of departees. Available online: [www.verfassungsschutz.de/de/arbeitsfelder/af-islamismus-und-islamistischer-terrorismus/zahlen-und-fakten-islamismus/zuf-is-reisebewegungen-in-richtung-syrien-irak](http://www.verfassungsschutz.de/de/arbeitsfelder/af-islamismus-und-islamistischer-terrorismus/zahlen-und-fakten-islamismus/zuf-is-reisebewegungen-in-richtung-syrien-irak)

<sup>3</sup> To clarify, the few individuals who stated explicitly that they did not want to join a terrorist organisation, but to deliver humanitarian aid to members of their faith are included in these numbers as well.

German security agencies collected and analysed the available information on German departees.<sup>4</sup> The study provides a fine-grained picture of a considerable portion of the German contingent (784 individuals). According to this data the clear majority of departees is male (79%), though the female share rose for a time after the declaration of the “Caliphate”.

These departures to Syria mostly are conducted by the young. The age range of the departees is 13 to 62 years, with an arithmetic mean age of 25.8 years. The age bracket 22-25 years provides for the largest group (322 individuals), with another 164 departees between 18 and 21 years, and 143 in the 26-29 years bracket. Gender is a factor here: Women departees tend to be younger than their male counterparts, with an average of 23.5 years as opposed to men with an average age of 26.6 years. Accordingly, the share of minors among female departees is considerably higher (13% versus 6% among the males, i.e. nearly four out of 10 departed minors are female).<sup>5</sup>

Most departees had been investigated for criminal offenses prior to their departure. Many changed their pattern of behaviour from petty crime and drug-dealing to more politically oriented crimes during their radicalisation process. These findings correlate with recent studies highlighting the so-called “crime-terror nexus”<sup>6</sup>—in other words, the apparently growing number of jihadis who originate from petty criminal backgrounds.<sup>7</sup>

The diversity across these categories confirms the findings already established in previous studies: that existing intelligence is not able to provide a reliable socio-demographic profile of foreign terrorist fighters.<sup>8</sup> This is consistent with the general feeling among many terrorism researchers that there is no single profile of people that engage in political violence and related activities.

However, Thomas Hegghammer recently noted this might be “at worst a lazy excuse for not doing statistical work”. While there is certainly not a single profile, statistical description is possible. Hegghammer notes that for every given variable there is median terrorist<sup>9</sup> (probabilistic analysis could be an interesting venue of research).

<sup>4</sup> Heinke, Daniel H (2017): ‘German Foreign Fighters in Syria and Iraq: The Updated Data and its Implications’, *CTC Sentinel* 10(3): pp. 17-22. For discussion of earlier results see Heinke, Daniel H., Raudszus, Jan (2015): ‘German Foreign Fighters in Syria and Iraq’, *CTC Sentinel* 8(1): p. 18-21.

<sup>5</sup> Heinke (2017): p. 17-18.

<sup>6</sup> Basra, Rajan/Neumann, Peter R/Brunner, Claudia (2016): ‘*Criminal Pasts, Terrorist Futures: European Jihadists and the New Crime-Terror Nexus*’ (London: The International Centre for the Study of Radicalisation and Political Violence); Basra, Rajan/Neumann, Peter R (2016): ‘Criminal Pasts, Terrorist Futures: European Jihadists and the New Crime-Terror Nexus’, *Perspectives on Terrorism* 10:5: pp. 25-40; Gallagher, Martin (2016): ‘“Criminalised” Islamic State Veterans – A Future Major Threat in Organised Crime Development?’, *Perspectives on Terrorism* 10:5: pp. 51-67.

<sup>7</sup> Heinke (2017): p.19.

<sup>8</sup> See Heinke, Daniel H/Persson, Mareike (2016): ‘Youth Specific Factors in Radicalization’, *Defense Against Terrorism Review* 8: p. 54.

<sup>9</sup> Thomas Hegghammer (2016): ‘Revisiting the poverty-terrorism link in European jihadism’, *Society for Terrorism Research Annual Conference*: p. 12.

Nevertheless, since the German government study unfortunately does not provide data sets but mostly aggregated data, such analysis is difficult to provide.

The best indicator of participation in the FTF movement is previous membership in Germany's Salafist movement, to which the overwhelming majority belonged.<sup>10</sup> Additionally, departees have been mostly male, from an urban area. The majority has a "migration background" but significantly, most were born or at least socialised in Germany.<sup>11</sup>

The so-called Islamic State is now on the retreat. Since 2016 it has been losing territory in Iraq and Syria; by spring 2017 it had lost most of Mosul. This has led to many supporters turning their backs on the organisation and returning home. German security agencies estimate that about one third of all departees (thus about 300 individuals) have already returned to Germany, although exact numbers are not disclosed by the agencies. Of these, in more than 80 cases there is sufficient intelligence (if not evidence) to assume they participated in armed conflict or at least received some sort of combat training. However, the working assumption is that the correct numbers are significantly higher.

The ratio of returnees to departees has stayed relatively stable over an extended period.<sup>12</sup> Exact numbers for returns by month or quarter are not currently available but anecdotal evidence suggests the number has risen recently, though not sharply.

It is difficult to predict how many more FTF will eventually return to Germany. As has been mentioned before, so far the number of returnees has stayed relatively constant; i.e. the collapse of the IS protostate has not yet translated into a wave of returns. The exact number of FTF remaining in the Levant is equally unknown, but about 150 German residents involved with jihadi groups are believed to have been killed in Syria and Iraq, according to recent findings.<sup>13</sup>

The data collected by security authorities on the motivation for returning to Germany sheds some light on this situation. About 10% came back because they grew disillusioned and frustrated with their situation; another 10% followed calls by family and friends to return home. It is believed that 8% travelled back to Germany for logistical reasons such as to procure supplies, raise funds or rest. Another 6% returned due to health issues.<sup>14</sup> As Hegghammer has pointed out, that should make us nervous since it suggests that merely 10% return because they wished to abandon the Islamic State.<sup>15</sup> It is difficult to judge how many returned with the intention to

<sup>10</sup> Heinke (2017): p.18.

<sup>11</sup> Heinke (2017): p.19.

<sup>12</sup> Federal Criminal Police, Federal Office for the Protection of the Constitution and the Hesse Information and Competence Centre Against Extremism (2016): p.39

<sup>13</sup> Number according to the state ministry of the interior of Bremen, Germany.

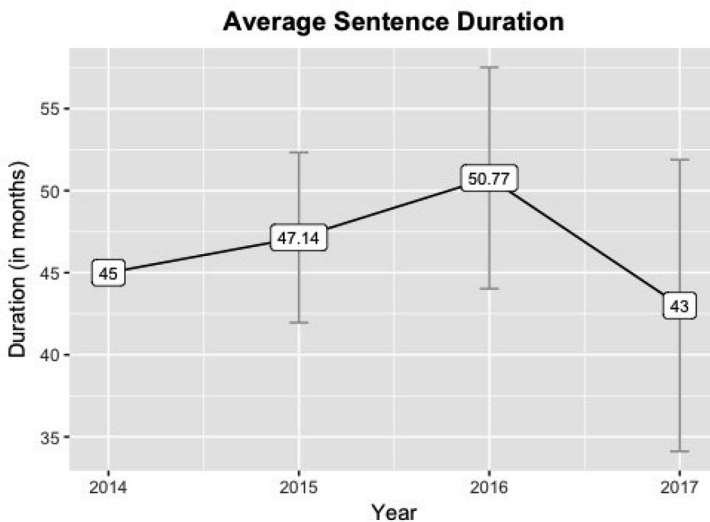
<sup>14</sup> Federal Criminal Police, Federal Office for the Protection of the Constitution and the Hesse Information and Competence Centre Against Extremism (2016): p.30

<sup>15</sup> Hegghammer, Thomas (2016): 'The Future of Jihadism in Europe: A Pessimistic View', *Perspectives on Terrorism* 10(6): p.160.

launch attacks. Hence, it is likely that at least some of the returning FTF will be involved in future terrorist activities, some even in attacks, a threat that is taken seriously by German security services.<sup>16</sup>

With regard to their affiliation with jihadi movements in the conflict zone, German jihadis joined several different organisations in Syria and Iraq. According to data on foreign fighter trials in Germany,<sup>17</sup> jihadi defendants had joined Ahrar al-Sham, Junud al-Sham, Jabath al-Nusra/AQ and Jaish al-Muhajireen wal-Ansar (JAMWA). However, the overwhelming majority had joined the Islamic State.<sup>18</sup> According to our data, the length of sentences handed down to these individuals has risen since 2014 (see Graph 2).<sup>19</sup>

**GRAPH 2: Average sentence duration for defendants sentenced by a regional court for the support of a foreign terrorist organisation (Art. 129a penal code) as of June 2017.<sup>20</sup>**



<sup>16</sup> Röhm, Joseph (2016): 'Die Stille Gefahr', *BR24*, 23 January; *Frankfurter Allgemeine Zeitung* (2014): 'Syrien-Rückkehrer eine 'erhebliche Gefahr'', *Frankfurter Allgemeine Zeitung*, 11 June.

<sup>17</sup> Open source data collection. The data is based primarily based on press releases from regional penal courts (Oberlandesgerichte) that are responsible for trying foreign fighters in Germany. However, not all trials are publicised by the courts, hence there are still gaps in the data that is publicly available – the collection is ongoing. The authors express their appreciation to Annika Grop and Alexander Wilson for the collection of data.

<sup>18</sup> We also find this mirrored in our own data which indicates that more than 20 individuals out of 35 returnees that ended up in court had joined the Islamic State while abroad. This confirms the results presented by the Federal Criminal Police, the Federal Office for the Protection of the Constitution and the Hesse Information and Competence Centre Against Extremism (2016): p.28

<sup>19</sup> We have not yet done any detailed analysis of these results. For a good starting point for a discussion see: Amirault, Joanna/Bouchard, Martin (2015): "Timing is everything: The role of contextual and terrorism-specific factors in the sentencing outcomes of terrorist offenders", *European Journal of Criminology* 14(3): 269-289.

<sup>20</sup> Several trials will conclude in 2017 and will drive up the average for 2017. The whiskers indicate the standard range of sentences.

As mentioned before, in addition to the number of Islamist departees there is also a group of anti-ISIS fighters<sup>21</sup> – and their numbers are surprisingly high considering they receive much less public interest. We know of 204 residents that have left Germany to fight against the Islamic State in Iraq and Syria, 69 of whom are German citizens. There exists limited but quality research into departees that have joined the fight against ISIS. Previous research has indicated the number is in the “hundreds” and noted that, unlike in the case of Islamist foreign fighters, there are few estimates available. According to that study, the total must be higher than 300 (the study was published in 2016 and notes that the data is only a sample).<sup>22</sup> Kyle Orton has suggested the number could be as high as 800 to 900.<sup>23</sup> While the German numbers appear to be quite high, one needs to take into consideration that the large ethnic Kurdish community living in Germany forms a significant potential for recruitment. That was particularly true during and after the battle of Kobane that served as an important rallying cry. Not surprisingly, the departees on whom authorities have collected data have joined either the Kurdistan Workers’ Party (PKK),<sup>24</sup> which is listed as a terrorist organisation in Germany, or the Democratic Union Party (PYD)/YPG, which is considered an ally in the coalition against IS. At least three German citizens who left after 2013 have been killed, at least two of them in the fight against IS.<sup>25</sup> Some are German left-wing activists who have occasionally provided deep insight into their experience fighting against the Islamic State.<sup>26</sup>

Of those who left to join Kurdish militias in Syria or Iraq, approximately half (102) have returned. This is a relatively significantly higher ratio than with the jihadi departees. This is likely due to lower pressure exerted by German security authorities and to the near absence of prosecution for these fighters. In addition, the Kurdish side of the frontline is clearly more accessible compared to the Islamic State’s, and allows for easier travel back and forth. Finally, the millenarian dimension of ISIS’ caliphate project may perhaps serve as a stronger retaining factor than the Kurdish narrative (although it also has an anarchist utopian dimension). Hence, the general incentive to stay in Syria could be higher for jihadi fighters.

Of those other foreign fighters who returned to Germany, 43 are German citizens and 12 are Turkish citizens permanently residing in Germany. In addition, one Iraqi, one Belgian and one Polish national have returned. The government’s records do not

<sup>21</sup> See this impressive study by the Institute for Strategic Dialogue for a more general discussion of the phenomenon: Tuck, Henry/Silverman, Tanya/Smalley, Candace (2016): “Shooting in the right direction”: Anti-ISIS Foreign Fighters in Syria & Iraq’, *Institute for Strategic Dialogue*.

<sup>22</sup> Tuck, Henry/Silverman, Tanya/Smalley, Candace (2016): “Shooting in the right direction”: Anti-ISIS Foreign Fighters in Syria & Iraq’, *Horizons Series*, No. 1. Institute for Strategic Dialogue: p. i, 5.

<sup>23</sup> Orton, Kyle (2017): *The Forgotten Foreign Fighters: The PKK in Syria*. Henry Jackson Society: London: p. 6-7.

<sup>24</sup> Likely due to the ongoing conflict in Turkey between the government and the PKK that was reignited in summer 2015.

<sup>25</sup> Bundesregierung (2017): Antwort ‘Freiwillige Kämpferinnen und Kämpfer aus Deutschland gegen den IS’, *Drucksache 18/11912*: p.2.

<sup>26</sup> Huesmann, Felix (2015): “Ich war bereit, dort zu sterben” – Ein deutscher Linker im Kampf gegen den Islamischen Staat’, *Vice*, 26 August.



provide information on the nationalities of the other returnees.<sup>27</sup> Authorities have recorded the group affiliation for some of the returnees: 16 were members of the People's Protection Union (YPG), one of the Women's Protection Units (YPJ), one of the Sinjar Resistance Units (YBS) and three were members of the International Freedom Battalion (IFB).<sup>28</sup>

Unfortunately there are no publicly available structured data for the number of departees to previous jihadi conflicts, e.g. Bosnia, Chechnya, Afghanistan, Somalia, or Yemen to draw a comparison with the current situation. In-depth research on the participation of German foreign fighters in these conflicts still is an academic desideratum. However, according to anecdotal evidence there has been German participation in all of these conflicts involving travel to these countries. We know that a support network for foreign fighters leaving to Bosnia existed in southern Germany in the 1990s<sup>29</sup>. In Chechnya, several German nationals/residents were killed.<sup>30</sup> Afghanistan and Pakistan were the destination of several Islamist-inspired departees during the 2000s, including a group from Hamburg with ties to the same mosque that had been frequented by the 9/11 attackers.<sup>31</sup> Several German nationals and residents joined al-Shabaab in Somalia or at least tried to. According to media reports, Germany's federal prosecutor general estimated that between 2008 and 2014 about 30 people tried to travel to Somalia<sup>32</sup>, though is not clear how many actually reached their intended destination. In general, it is fair to say that the number of pre-Syria departees was on a much smaller scale. Between 2001 and 2011 about 220 individuals from Germany reportedly went through terrorist training abroad, mostly in Afghanistan and later in Pakistan. About half of them had returned by 2011.<sup>33</sup> According to a contemporary media report, German authorities estimated that 30 to 40 Germans were still living in Waziristan.

## What is the challenge? How is it perceived and conceived?

The original perception of foreign fighters – especially if these individuals did not hold German citizenship – was somewhat blurred. The debate on what to do about returnees from Syria first arose in mid-2014. While Ralf Jäger, minister of the interior of the state of North Rhine-Westphalia, demanded support with regard to reintegration efforts of former fighters, his Bavarian colleague Joachim Herrmann suggested allowing departures but blocking departees from re-entering the

<sup>27</sup> Bundesregierung (2017): p.6-7.

<sup>28</sup> Bundesregierung (2017): p.7.

<sup>29</sup> Steinberg, Guido (2014): Al-Qaidas deutsche Kämpfer. Die Globalisierung des islamistischer Terrorismus. Hamburg: Edition Körberstiftung: p.20-54

<sup>30</sup> Schirra, Bruno (2002), 'Erlösender Tod am Kaukasus', *Zeit Online*, 7 November; Cziesche, Dominik (2004), 'Der schwäbische Krieger', *Spiegel Online*, 4 October.

<sup>31</sup> Steinberg (2014): p. 55-87.

<sup>32</sup> Zeit online, (2015): '15 deutsche Dschihadisten kämpfen in Somalia', *Zeit Online*, 16 May.

<sup>33</sup> Rosenbach, Marcel/Stark, Holger (2011): 'Eine Bombe für Deutschland', *Der Spiegel*.

country.<sup>34</sup> According to media reports the latter position had been the approach in at least some German states. The idea was that the exodus of extremists would result in a reduced domestic threat.<sup>35</sup> But ultimately the general idea prevailed that every nation is responsible for not spreading international terrorism, leading to the duty to criminalise support of terrorist organisations (where criminal legislation to this regard was not already in place) and to take any necessary steps to provide for administrative capabilities to block potential foreign fighters from leaving Germany in order to join IS or other jihadi groups. This was additionally compelled by UN Security Council Resolution 2178 that requires member states to prevent the departure of terrorists. This was affirmed by a unanimous decision of Germany's states' ministers of the interior in December 2014. Under German law there is no provision to prevent German citizens from re-entering the country.<sup>36</sup>

Although the Syrian civil war has been covered extensively in German media since its inception, initially many in Germany did not really perceive this as something having direct implications for society. Nevertheless, the domestic intelligence service has been warning of the threat from returnees since at least mid-2014. The attack against the Jewish Museum in Brussels in May 2014 was perceived as an early warning of things to come.<sup>37</sup> This warning was repeated several times by the German federal domestic intelligence chief in interviews and statements.<sup>38</sup> Meanwhile, a 2015 poll suggested that about 82% of people in Germany found the perspective of jihadis returning worrying.<sup>39</sup> According to an ongoing annual study, the German population's fear of terrorism rose rapidly after 2014 when authorities began warning of returnees.<sup>40</sup> All of this underscores the point that the issue of returnees is predominantly discussed as a security issue in public and by national authorities. Alternative perspectives have barely gained traction, although the stories of some returnees have been utilised in attempts of preventing further people from leaving. In 2015 the returnee Ebrahim B. gave an interview to German television in which he described his experiences in Syria.<sup>41</sup>

## How does Germany address the challenge?

In responding to the challenge posed by Islamist-motivated terrorism over the last couple of years, especially with regard to the rise of the Islamic State and the growing

<sup>34</sup> Fouad, Hazim (2017): 'Jihad-Rückkehrer: Chancen und Gefahren', *Reader Sicherheitspolitik*, Ausgabe 1/2017: p. 2.

<sup>35</sup> Zeit online (2014), 'Sicherheitsbehörden billigen Ausreise von Islamisten', *Zeit Online*, 2 October.

<sup>36</sup> FOUAD (2017): p. 2.

<sup>37</sup> Frankfurter Allgemeine Zeitung (2014): 'Syrien-Rückkehrer eine 'erhebliche Gefahr'', 11. June.

<sup>38</sup> Frankfurter Allgemeine Zeitung (2016): 'Syrien-Rückkehrer 'eine tickende Zeitbombe'', 18. December; tagesschau.de (2015): '200 Dschihad-Rückkehrer', 25 February.

<sup>39</sup> Die Welt (2015): '82 Prozent sehen Dschihad-Rückkehrer als Gefahr', 23 April.

<sup>40</sup> R+V (2017): 'Die Ängste der Deutschen 2017': Grafiken.

<sup>41</sup> Von der heide, Britta/Baars, Christian (2015): 'Ein Sommer im Jihad', Panorama.

phenomenon of foreign fighters, several counter-measures have either been newly developed or readjusted to meet the new challenges.

This section starts with a description of the overall approach vis-à-vis returnees, depending on their situation (still in the conflict zone, back to Germany, or in prison), before discussing in more general terms the key dimensions of Germany's response to terrorism, radicalisation and returning fighters.

### *Approaches while departees are still in theater*

Unlike other countries, Germany does not pursue a strategy to carry out targeted killings of German jihadis in Syria or Iraq, despite being part of the global coalition against IS and militarily contributing to the overall efforts to defeat the Islamic State.

With the military decline of the Islamic State, more and more former IS fighters and their families have been arrested by authorities in Iraq. This includes at least five women and their children from Germany. While other nations have decided to “wash their hands” of their (former) nationals, German authorities have indicated that they would offer consular aid to them.<sup>42</sup> German diplomats are involved in their cases and authorities have commenced investigations against them for the support of a terrorist organisation.<sup>43</sup> Officers from Germany's federal criminal police and foreign intelligence service have interviewed several of the women. Nevertheless, German authorities reportedly had expected a much larger number of returnees by now. This has so far (early 2018) not yet materialised.<sup>44</sup>

Another issue is departed Islamists arrested in Turkey (mostly upon re-entry traveling back from Syria). The approach towards these individuals depends on their citizenship. While German nationals may claim consular support, foreign nationals who previously legally resided in Germany may face a revocation of their residence permit and a ban of re-entry into Germany. Due to both the state's responsibility and the restricted information policy by security agencies with regard to this topic, there are no exact data available to assess the quantitative impact these measures have.

### *Approaches to dealing with returnees in Germany*

Involvement in terrorist activities, even when not directly related to acts of violence, has long been a criminal offense in Germany. The new phenomenon of large numbers of persons from Western Europe, however, has highlighted certain loopholes in this legislation. Hence, following the United Nations Security Council

<sup>42</sup> Tagesschau.de (2017): ‘Deutsche IS-Anhängerinnen festgenommen’, 18 July.

<sup>43</sup> Gebauer, Matthias/Lehberger, Roman (2017): ‘Deutsche IS-Anhängerinnen kommen in Baghdad vor Gericht’, Spiegelonline, 04 September; Von hein (2017): ‘Deutsche IS-Kämpfer in kurdischer Haft’, DW, 29 August.

<sup>44</sup> Mascolo, Georg (2017): ‘Wo sind die deutschen IS-Kämpfer’, Sueddeutsche.de, 13 October.

Resolution 2178 (2014),<sup>45</sup> Germany adopted key changes in its criminal code, including planning and preparatory stages in terrorist crimes.<sup>46</sup> This new legislation enables law enforcement agencies both at the state and federal levels to launch criminal investigations into individuals or groups perceived to have links to terrorist organisations or to be plotting a terrorist attack individually.

Therefore the criminal law approach towards combating terrorism has become more wide-ranging. In addition to “regular” criminal acts as part of terrorist activities, it includes membership in a terrorist organisation, conspiracy to commit criminal acts with terrorist intent, the execution, facilitation, or distribution of terrorist propaganda, the recruitment for terrorist organisations, providing training possibilities for terrorist organizations, the incitement of any of the aforementioned offenses, or the financing or other means of facilitating any of the aforementioned offenses.

In every case of a returning FTF (in most cases already when they are still in theatre) the prosecuting authority does open a criminal investigation. However, due to evidence rules under German criminal law, not all returnees are necessarily convicted of a criminal offense.<sup>47</sup> It has to be noted that until recently there were gender-based differences in this regard. While male returnees almost always were subject to criminal investigations with regard to possible links to the Islamic State or other terrorist organisations, many prosecutors tended to search for additional evidence (adding to the fact of their departure) before opening a criminal investigation against women. However, in December 2017 the federal prosecutor general announced that henceforth no differences between men and women will be applied, thus accepting that the services provided by female members of the Islamic State, even when not combat-related, played a significant role in upholding the system.

### *The challenge of imprisoned (and released) returnees*

Prisons obviously play an important role after a possible conviction. However, in comparison to other Western European countries the threshold for incarceration seems to be considerably higher in Germany. Returning from even a known stint in Syria or Iraq does not necessarily lead to the individual being detained.

Over the last couple of years the German *Länder* adopted several different programmes to work with imprisoned Islamists. As jail terms in Germany typically are not very long (at least in comparison to many other Western countries) and the legally defined main aim of the corrections system is to “re-socialise” the offender, deradicalisation programmes play an important role in these efforts. It has to be

<sup>45</sup> S/RES/2178 (2014), ([http://www.un.org/en/sc/ctc/docs/2015/SCR%202178\\_2014\\_EN.pdf](http://www.un.org/en/sc/ctc/docs/2015/SCR%202178_2014_EN.pdf)).

<sup>46</sup> Gesetz zur Änderung der Verfolgung der Vorbereitung von schweren staatsgefährdenden Gewalttaten, June 12, 2015, BGBl. I 2015, 929.

<sup>47</sup> Moldenhauer, Gerwin (2017), ‘Rückkehrerinnen und Rückkehrer aus der Perspektive der Strafjustiz’, in: Kärgel, Jana (Ed.), ‘Sie haben keinen Plan B’ (Bonn: Bundeszentrale für politische Bildung).

stated, though, that these programmes are not standardised, and in many cases not yet validated.

Germany has a well-established system of social workers within the justice system to assist convicts in the reintegration process, i.e. the transition from prison to life after prison. That said, due to the relatively new phenomenon of – especially homegrown – jihadism these programmes still have to adopt deradicalisation measures that augment the regular socio-preventive efforts.

## *General approach to jihadis*

### *Security architecture*

There is a broad range of agencies to be coordinated in counter-terrorism efforts. In addition to the police forces of the 16 *Länder* (states) and of the federal government (*Bundeskriminalamt* [Federal Criminal Police Office] and *Bundespolizei* [Federal Police])<sup>48</sup>, the domestic intelligence services on the federal level (civilian *Bundesamt für Verfassungsschutz* and military *Militärischer Abschirmdienst*) and in each of the *Länder* play a significant role, totalling 36 federal and state agencies with direct counter-terrorism jurisdiction – not counting the federal and state prosecution authorities, the Federal Intelligence Service, the customs authorities, and others.

To coordinate the efforts of these agencies and other counter-terrorism actors, and to provide a platform with which to share intelligence, Germany established the Joint Counter-Terrorism Centre (*Gemeinsames Terrorismusabwehrzentrum* – GTAZ) in 2004 – effectively Germany's sole fusion centre for jihadi terrorism. Situated in Berlin and accommodating liaison officers of all agencies represented, the GTAZ hosts working groups on a broad range of topics, the most important being the “operational information sharing”, i.e. the exchange of intelligence on individual cases.<sup>49</sup> The GTAZ deals exclusively with jihadi terrorism and foreign fighters.

### *Risk assessment*

There is no strict protocol for responsible authorities to assess the intentions of – and ultimately the threat posed by – a returnee. Though the *Länder* agreed on the need to take action in these cases, Germany still lacks a holistic (joint and combined) counter-terrorism strategy. However, to achieve a certain level of comparability, a newly formed unit within the GTAZ assists the *Länder* in assessing the threat posed by an individual and identifying possible counter-measures. In this context, the police

<sup>48</sup> For the purpose of this chapter, we left out the *Polizei des Deutschen Bundestages* (Federal Parliamentary Police) and the *Ortspolizeibehörde* (municipal police) Bremerhaven, the sole municipal police in Germany.

<sup>49</sup> See also: Raudszus, Jan (2017), ‘The Jihadist terrorist threat and German Counter-Terrorism’, *Capesic*, 25 May.

agencies use a tool developed by the federal police (BKA) to rate a suspected jihadist's dangerousness.<sup>50</sup>

### *Security law / Administrative law*

The main responsibility for averting threats (as opposed to prosecuting criminal offenses) lies with the police agencies of the Länder, cooperating with administrative government branches.

Apart from countering Islamist-motivated departures from Germany, an administrative instrument that already has proven its effectiveness is the proscription of organisations which support an extremist ideology. The proscription of identified radicalisation hubs (e.g. banning a mosque that served as a catalyser for jihadist ideology) may effectively hamper efforts to indoctrinate and ultimately radicalise individuals vulnerable to this kind of ideology.<sup>51</sup> This instrument is often accompanied, but not necessarily combined with criminal investigations.

### *Immigration law*

The terrorist attack at Breitscheidplatz in Berlin on December 19, 2016 clearly marked a turning point. It displayed a rapid shift in acceptance towards stricter immigration laws when applied to individuals considered to be linked to violence promoting extremism. A long inactive specific provision to deport foreign nationals considered to be a threat to national security (§ 58a Aufenthaltsgesetz) has been invoked in a number of cases this year,<sup>52</sup> the provision in question challenged by one of the aggrieved individuals, but approved by both the German Federal Constitutional Court<sup>53</sup> and the European Court of Human Rights<sup>54</sup>. Leading politicians across the political spectrum voiced their intent to deport foreign nationals considered to be a threat.

### *Socio-preventive approach*

Though many agencies have responsibilities with regard to returning foreign fighters, the key agencies tasked with monitoring these returnees are both the police and the

<sup>50</sup> This tool, the 'Regelbasierte Analyse potentiel destruktiver Täter zur Einschätzung des akuten Risikos – islamistischer Terrorismus (RADAR-ITE)' has been developed by the BKA in cooperation with the University of Konstanz. See [https://www.bka.de/DE/Presse/Listenseite\\_Pressemitteilungen/2017/Presse2017/170202\\_Radar.html](https://www.bka.de/DE/Presse/Listenseite_Pressemitteilungen/2017/Presse2017/170202_Radar.html).

<sup>51</sup> For a detailed description see Heinke, Daniel (2016), 'Countering Radicalisation and Recruitment of so-called Jihadists – Proscription of Radicalisation Hubs', *Defense Against Terrorism Review* 8: pp. 89-97.

<sup>52</sup> Including two cases from Bremen, with one deportation to Russia.

<sup>53</sup> See: [http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/07/rk20170724\\_2bvr148717.html](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/07/rk20170724_2bvr148717.html)

<sup>54</sup> See: <http://hudoc.echr.coe.int/eng-press?i=003-5821419-7412799>

domestic intelligence agencies of the *Länder*. Each operates within their respective jurisdiction, but are closely cooperating to establish enough intelligence to conduct a risk assessment of every returnee – more often than not in joint meetings (or case conferences, as they are often called).

However, many possible measures to be employed in a specific case fall under the jurisdiction of other governmental branches, e.g. immigration authorities, social welfare agencies, city or county administration, and others. In these situations the security agencies have to prepare a case and demonstrate it to the office in question (preferably in another joint case conference). Neither intelligence services nor police have a supervisory or directive role in this context. The underlying idea is that, as a radicalisation process typically exploits a previous personal vulnerability or individual grievances, measures such as social assistance in finding training or work, or to return into “healthy” (non-radical) social surroundings, may contribute to the de-radicalization of the individuals.

### *Disengagement and deradicalisation*

The *Länder* developed different disengagement and deradicalization programmes. However, as Germany lacks a holistic counter-terrorism strategy, there is no established or agreed standard for these concepts, thus forcing the *Länder* to develop solutions individually. Given the short time span these various systems have been in place, it is too early to draw conclusions from actual or perceived results in this context.

Though Germany has vast experience with well-established disengagement programmes for right-wing extremists, most experts agree that these experiences – though providing certain value in addressing the jihadi threat – cannot be duplicated without restrictions.

It remains a challenge, though, to compare the different approaches to identify best (or at least: good) practices – again placing the Joint Counter-Terrorism Centre GTAZ (which includes a dedicated working group on deradicalisation) at the centre of coordination efforts.

### *Child welfare*

A field of growing relevance is the development of educational (and perhaps de-radicalising) programmes designed to address the children of foreign fighters.<sup>55</sup> A substantial number of very young children have been taken to the co-called caliphate and have experienced the inhumane ideology of the Islamic State – in many cases

<sup>55</sup> Van der Heide, Liesbeth/Geenen, Jip (2017), ‘Children of the Caliphate: Young IS Returnees and the Reintegration Challenge’, *The International Centre for Counter-Terrorism – The Hague*.

probably witnessing atrocities against dissenters and opponents of the jihadi dictatorship. There are already various accounts of children who were coerced into participation in murders. Once these children come back to their countries of origin, it will be a serious challenge to re-integrate them into our societies.<sup>56</sup>

So far there is no established standard approach, and there is not even a consensus that children of jihadis should be placed in custody. So for the time being all youth services have to try to develop a tailored approach on an individual basis.

## Way ahead

The threat posed by jihadi radicalisation and terrorism in general, and by returning foreign terrorist fighters in particular, obviously defies a single solution. Security agencies and other societal stakeholders have already addressed key areas and developed effective counter-measures. However, as these challenges are constantly evolving, they require fast and decisive adaptation and to devise new approaches.

The foreign fighter phenomenon already has a societal impact reaching far beyond the scope of law enforcement and public security.<sup>57</sup> This impact (or “fallout”, as Jeanine de Roy van Zuijdewijn coined it) stretches from possible polarisation between political, ethnic, or religious groups to a rising anxiety within the population leading to a “securitization of society,”<sup>58</sup> thus requiring countermeasures on a political level within a comprehensive strategic approach.

For now, the jihadi terrorist threat in Western Europe remains at an all-time high. Law enforcement agencies as well as domestic intelligence agencies at both the federal and state level will have to remain vigilant, and returning foreign fighters will be among the top of their list of persons of interest.

To address these challenges in all their dimensions, from security to societal aspects, to streamline the efforts taken by the various security agencies, and to tackle ideological factors of radicalisation, Germany should consider establishing a coherent national counter-terrorism (CT) strategy, including a comprehensive countering violent extremism (CVE) strategy.

<sup>56</sup> Heinke, Daniel H (2016), ‘Foreign Terrorist Fighters: German Islamists in Syria and Iraq and What Can be Done about Them’, *Marshall Center Security Insight* 15.

<sup>57</sup> Heinke, Daniel H (2017): ‘German Foreign Fighters in Syria and Iraq: The Updated Data and its Implications’, *CTC Sentinel* 10(3): p. 21.

<sup>58</sup> De Roy van Zuijdewijn, Jeanine (2016): ‘Terrorism and Beyond: Exploring the Fallout of the European Foreign Fighter Phenomenon in Syria and Iraq’, *Perspectives on Terrorism* 10(5): pp. 82-96.



# ADDRESSING THE CHALLENGE OF RETURNEES: THREAT PERCEPTIONS, POLICIES AND PRACTICES IN THE NETHERLANDS

BIBI VAN GINKEL AND SIMON MINKS<sup>1</sup>

## Introduction

The challenge of dealing with returning foreign fighters is intrinsically related to the phenomenon of foreign (terrorist) fighters (FTFs) in the Netherlands. The Netherlands ranks seventh in both absolute and per capita numbers among EU member states as a source of FTFs.<sup>2</sup> This is unprecedented, since in recent history only a few dozen individuals are known to have travelled or made an attempt to do so to Chechnya, Somalia, and Afghanistan/Pakistan.<sup>3</sup> Currently the official number is 285 persons with Dutch nationality or citizenship believed to have travelled to mostly Syria and Iraq.<sup>4</sup> According to the Dutch Intelligence and Security Service (AIVD), there are also more than 80 children of Dutch nationality or citizenship in the conflict area.<sup>5</sup> As of November 2017, the number of returnees stood at 50.<sup>6</sup>

<sup>1</sup> Simon Minks contributed to this chapter in his personal capacity. Nothing in this chapter can be attributed to the Dutch Prosecutor's Office.

<sup>2</sup> Van Ginkel, B., and E. Entenmann (Eds.), "The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies", The International Centre for Counter-Terrorism – The Hague 7, no. 2 (2016), pp. 50-51.

<sup>3</sup> In a report of 2002, the AIVD signalled the recruiting attempts of a few dozen Muslims for the struggle in Chechnya and Afghanistan/Pakistan. The report also pointed to the trend of a few dozen former Mujahedeen that decided to travel again to become a foreign fighter in conflicts such as Chechnya and Afghanistan/Pakistan. The report does not give exact numbers, and does not report on the risk of returning foreign fighters. AIVD, 'Rekrutering in Nederland voor de jihad; van incident naar trend' (Recruiting for the jihad; from incident to trend), 2002. In a report of July 2010, the AIVD flagged the increasing interest in international jihad among local networks. In particular the struggle in the Afghan-Pakistani border region and the struggle in Somalia were appealing to radicalised Muslims in the Netherlands. A few people (no exact numbers are given) attempted to travel to the Afghan-Pakistani region. No attempts have been made to join the struggle in Iraq. AIVD, 'Lokale jihadistische netwerken in Nederland', July 2010.

<sup>4</sup> Cumulative numbers until November 2017. Currently, 185 are residing in ISIS controlled territory. National Coordinator Security and Counterterrorism (NCTV), 'Dreigingsbeeld Terrorism Nederland (DTN) 46' (Terrorist Threat assessment for The Netherlands), November 2017, see <https://english.nctv.nl/organisatie/counterterrorism/TerroristThreatAssessmentNetherlands/attacks-confirm-threat-assessment-findings.aspx>. Latest update on the numbers as mentioned on the website of the General Intelligence and Security Service on 22 November 2017, <https://www.aivd.nl/onderwerpen/terrorisme/nieuws/2017/02/15/aivd-publicatie-terugkeerders-in-beeld>

<sup>5</sup> National Coordinator of Security and Counterterrorism and the Netherlands/General Intelligence and Security Service, 'The Children of ISIS. The indoctrination of minors in ISIS-held territory', 26 April 2017, <https://english.aivd.nl/latest/news/2017/04/26/publication-the-children-of-isis-the-indoctrination-of-minors-in-isis-held-territory>.

<sup>6</sup> DTN 46, op cit.; General Intelligence and Security Service, 'Focus on Returnees', 15 February 2017, <https://english.aivd.nl/publications/publications/2017/02/15/publication-focus-on-returnees>. Latest update on the numbers as mentioned on the website of the General Intelligence and Security Service on 26 October 2017, <https://www.aivd.nl/onderwerpen/terrorisme/nieuws/2017/02/15/aivd-publicatie-terugkeerders-in-beeld>

In general, when considering the numbers and the policies that have been adopted to address the challenges stemming from this phenomenon, it is important to realise that over time there have been several waves of people leaving as well as coming back. Each individual has its own unique story to tell.

The first wave of people travelling to Syria and Iraq started in approximately 2012. Many of them claimed to travel for humanitarian reasons and not because they wanted to join a terrorist organisation. When the conflict changed, however, so did the motivation of the people travelling to Syria/Iraq, a key factor being the public announcement of the establishment of the “caliphate” in June 2014. There was a steep increase in the number of FTFs after this announcement, which slowed down slightly after the January 2015 call by ISIS on those that did not travel to Syria/Iraq to instead commit attacks in the West.

Certainly 2014/2015 is considered a turning point by security and judicial authorities, as they viewed everyone travelling to the conflict zone as fulfilling a role in the “governance” structure of the terrorist organisations.

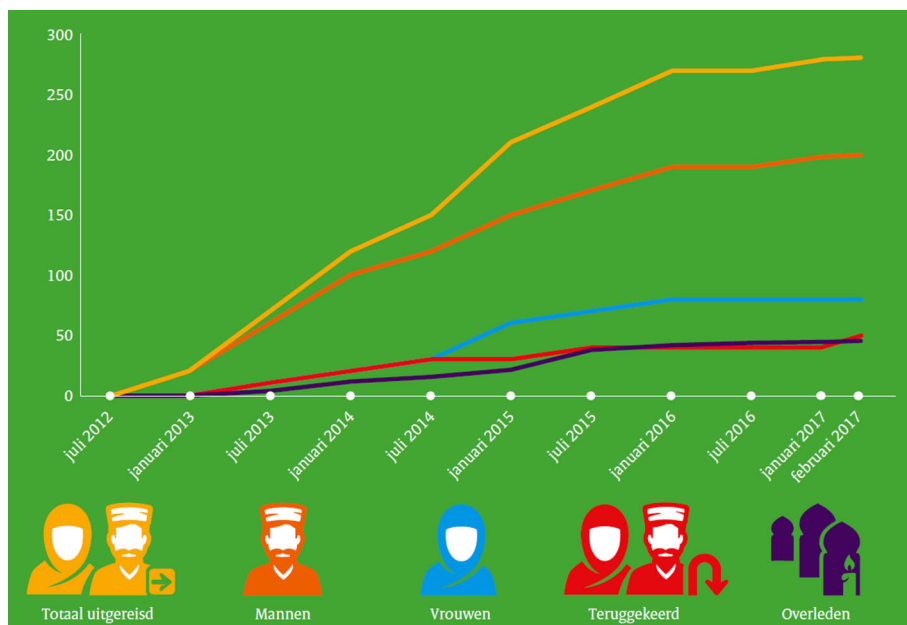
Since the beginning of 2016, the number of travellers stabilised. Mirroring this development, we see a first wave of returnees that started in early 2013 and showed an increase in numbers until July 2014. The numbers stabilised until January 2015 then showed a slight increase until July 2015 after which they stabilised again.

Policies have also evolved since the first wave of travellers, due to drastic changes in the threat assessment. The same can be said for policies targeting the waves of returnees. The philosophy behind the policy approach in the Netherlands, however, has always remained the same: a comprehensive and multistakeholder approach that has been translated into policy strategies. The balance has nonetheless shifted a bit more towards a security approach.

In this chapter, we will address the threat perception (section 2) in the Netherlands at the moment and how that is related to the issue of returnees. Next (section 3), we will zoom in on the number of 50 returnees that have been identified, to elaborate on the background and general profile of this group, as well as to clarify what has happened to them upon their return. In section 4 the focus will be on the policies applicable to the foreign fighter phenomenon in general, and the group of returnees in particular. We will focus on the policies relevant during the period of travel and upon return, and the period of detention and rehabilitation. Finally in section 5, we will assess a number of legal challenges that have emerged since the introduction of new criminal charges and elaborate on some proposals for new policies and their overall effectiveness.

No official legal definitions exist for the terms foreign (terrorist) fighters and returnees; we therefore use the following definition for the term “foreign (terrorist) fighter”: Someone who travels to an armed conflict to join a terrorist organisation. A

**GRAPH 1: Number of Dutch foreign fighters (male and female), returnees and deceased.**



Source: Netherlands General Intelligence and Security Service, 2017.

“returnee” is, according to the definition of the AIVD, someone who initially “travelled to the conflict zone of Syria/Iraq with jihadist intentions region and for whom it has been ascertained that they have reached the conflict zone and are now returning to the Netherlands”.<sup>7</sup> This category also includes people who did not originally travel from the Netherlands. Excluded from this scope are people joining other (non-jihadist) militias since they instead fulfil the criteria for prosecution under the realm of another criminal charge. The numbers mentioned in this chapter include both Dutch nationals as well as residents of the Netherlands. Since one of the criteria is the “jihadist intent” of the traveller and returnee, those joining Kurdish militias are excluded from these numbers.

## Threat perception

The current terrorist threat level in the Netherlands is set at level four (substantial) on a scale of five, with five being the highest threat.<sup>8</sup> The chance that a terrorist attack will occur in the Netherlands is considered real; however, no concrete intelligence on specific preparation of such an attack is known. Still, calls for attacks in and

<sup>7</sup> General Intelligence and Security Service, ‘Focus on Returnees’, 15 February 2017, <https://english.aivd.nl/publications/publications/2017/02/15/publication-focus-on-returnees>.

<sup>8</sup> DTN 46, op cit. Status at November 2017.

against the Netherlands are appearing more frequently in the (online) chatter of the jihadist networks. This high threat level is mostly due to the jihadist terrorist threat, particularly the perceived risk posed by returnees. People travelling back especially in the last few years (since 2014/2015) are considered to pose a higher risk (as compared to the earlier cohort that returned) due to the longer amount of time they spent in the conflict area, the arms training they probably received and the experience they have had with violent acts, the level of radicalisation and commitment to the violent cause, the network of worldwide jihadist extremists they have at their disposal and the frustration they might have experienced about the failure of the caliphate project and/or the traumas they suffer.<sup>9</sup>

The debate in the Netherlands concerning FTFs and returnees is highly politicised. The mayor of Rotterdam, Achmed Aboutaleb, said in an interview after the January 2015 attacks on Charlie Hebdo that if Muslims didn't want to integrate and participate in Dutch democratic society, they should "piss off."<sup>10</sup> Prime Minister Mark Rutte also stated that he would rather see the FTFs killed in the conflict than to have them come back to the Netherlands.<sup>11</sup> Despite these strong opinions, the security services make a risk assessment for each individual case. In addition to the factors mentioned above, they also consider the person's reason for return and the circumstances to which they return including their social circle. Assessment of the threat is done by the AIVD, the National Coordinator for Security and Counterterrorism (NCTV), police, public prosecution and some other stakeholders; considering their behaviour before, during and after travel, length of stay and reason for return. Current knowledge of the behaviour and intentions of the person is also critical. In addition to its importance to the threat assessment, finding out the "reason for return" also poses a legal challenge. In a few cases this is obvious, but in many other cases suspects provided false answers or simply refused to answer that question.

The intelligence and security services in the Netherlands conclude that some returnees may still be part of transnational networks with terrorist plans to be carried out in Western Europe, belong to small cells or operate as lone actors (with or without a mental illness) and to still possibly be inspired or coached by, for instance, ISIS.<sup>12</sup> There have been a few cases of individuals who have travelled to the conflict zones, who have been trained in terrorist camps and/or have taken part in armed conflict, and who upon return were not willing to share any details about their stay or give full disclosure regarding contacts.<sup>13</sup>

<sup>9</sup> DTN 46, op cit.; General Intelligence and Security Service, 'Focus on Returnees', 15 February 2017, <https://english.aivd.nl/publications/publications/2017/02/15/publication-focus-on-returnees>.

<sup>10</sup> Remark made during an interview in January 2015 for tv-show Nieuwsuur, <https://nos.nl/artikel/2012214-aboutaleb-tegen-jihadisten-rot-toch-op.html>

<sup>11</sup> Remark made during an election debate for RTL, 5 March 2015, <https://www.rtlnieuws.nl/nieuws/politiek/rutte-ziet-nederlandse-jihadisten-liever-sneuelen-dan-terugkeren>

<sup>12</sup> For example the case against Anil W., 13-11-2017, not published.

<sup>13</sup> Inter alia the case against Maher H., 7-7-2016, ECLI:GHDHA:2016:1978.

As a result of the increased military pressure on terrorist organisations such as ISIS or Hay'at Tahrir al-Sham (HTS, formerly better known as Jabhat Fatah al Sham and Jabhat al-Nusra) – the groups most Dutch FTFs have joined<sup>14</sup> – security forces expect an increase in the number of returnees, especially women and children, although not in high numbers.

In addition to the risk posed by returnees, the security and intelligence services also worry about the potentially high number of children that may come back from the battlefields. It is estimated that approximately 80 children with a Dutch connection are currently in the conflict zones of Syria and Iraq.<sup>15</sup> The real number is probably higher as many women who travelled to those areas have become pregnant while residing in Syria/Iraq. Approximately 40 children have travelled with their parents to the region. Fewer than 20% of them are older than nine, the age at which they are included in the total number of foreign fighters, since children in that region can receive arms training then, and are in any case subject to indoctrination programmes.

According to the AIVD, a small number of the returnees is classified as extremely dangerous. Another group does not pose an immediate threat, but is nevertheless considered a risk due to individuals' involvement in non-violent support such as recruitment, facilitating and incitement or may possibly attempt to travel again. A few seem to have disengaged completely from jihadism. This, however, is difficult to prove.

Concern is warranted regarding the potential for built-up frustration among individuals who were prevented from travelling to Syria and Iraq to join the terrorist organisations operating there. This frustration might spur their desire to commit a terrorist attack in Western Europe instead of travelling to the conflict area. Alliances between this group and returnees still considered dangerous clearly pose an extra concern for security agencies.

Finally, when assessing the risks these individuals can pose, security and intelligence services take into consideration that the level of organisation might differ. Some individuals might operate solo, but are still inspired or even coached by, for instance, ISIS. Others may be part of a transnational network or a smaller cell.

<sup>14</sup> There is only one case known of travellers joining the Peshmerga forces in Iraq. However, this case was dismissed due a lack of evidence.

<sup>15</sup> Latest update on the numbers as mentioned on the website of the General Intelligence and Security Service on 26 October 2017, <https://www.aivd.nl/onderwerpen/terrorisme/nieuws/2017/02/15/aivd-publicatie-terugkeerders-in-beeld>

## Returnees in the Netherlands

According to the latest numbers an estimated 50 persons have come back to the Netherlands.<sup>16</sup> As mentioned earlier, we can distinguish two waves. The first wave of returnees started approximately in the beginning of 2013. By July 2014, approximately 30 people had returned. The increase of returnees in the second wave slowed down until January 2015, and from January 2015 until late 2017 the number has slowly grown from 40 to 50. We are now entering a new phase, which might spur a third wave, but no clear signs of it have yet been identified.

Approximately a third of the returnees are female.<sup>17</sup> In a few cases, individuals came back as a family (or at least the mothers with their children). The largest group came back in 2013 and 2014, before the caliphate was established in June 2014. Some of them claimed to have had other intentions than to fight in the armed conflict. In their testimonies to police they argued that they wanted to join humanitarian organisations to help people targeted by the Syrian government army and its allies. However, when they were asked to deliver proof of joining a humanitarian organisation, they remained silent in most cases. In a few other cases it was obvious that the person involved was not aware of the reality on the ground and was shocked with finding themselves “suddenly” in the middle of the cruelty of an armed conflict.

So far it is impossible to speak of just one profile of an FTF or a returnee. Some of them are well educated while others had difficulties at school. A number of them have a criminal background but certainly not all. Most FTFs and returnees come from The Hague and the conglomeration of the city. There are indications that a certain group has mental health problems that might have made them more susceptible to recruitment and vulnerable to radicalisation.<sup>18</sup> A problem for the prosecutor is, however, that in the Netherlands a suspect cannot be subject to investigation in that respect.<sup>19</sup> There are some cases<sup>20</sup> in which lawyers advised their clients not to

<sup>16</sup> DTN 46, op cit.

<sup>17</sup> General Intelligence and Security Service, ‘Jihadistische vrouwen: een niet te onderschatten dreiging’, 17 November 2017, <https://www.aivd.nl/onderwerpen/terrorisme/documenten/publicaties/2017/11/17/jihadistische-vrouwen>; In a study of the ICCT an average of 17% of female FTFs were measured based on data of 11 EU Member States. Van Ginkel, B., and E. Entenmann (Eds.), “The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies”, The International Centre for Counter-Terrorism – The Hague 7, no. 2 (2016), p. 51. Latest update on the percentage of female FTFs as mentioned on the website of the General Intelligence and Security Service on 26 October 2017, <https://www.aivd.nl/onderwerpen/terrorisme/nieuws/2017/02/15/aivd-publicatie-terugkeerders-in-beeld>

<sup>18</sup> Of the ten suspects on trial in the so-called Context case (The Hague District Court 10 December 2015, ECLI:NL: RBDHA:2015:14365 possibly a few of them seem to have mental health issues.). See also the International Crimes Database: Prosecutor v. Imane B. et al., <http://www.internationalcrimesdatabase.org/Case/3270>. Research of the Netherlands Policy Academy, however, suggests that this problem is possibly bigger: A.W. Weenink, “Behavioral Problems and Disorders Among Radicals in Police Files”, Perspectives on Terrorism 9 no. 2 (April 2015). See also C. Paulussen, J. Nijman and K. Lismont. “Mental Health and the Foreign Fighter Phenomenon: A Case Study from the Netherlands”, The International Centre for Counter-Terrorism – The Hague (2017).

<sup>19</sup> An example in this regard is the case district court The Hague Prosecution versus N 22 February 2017 (at the time of writing the appeal is still pending) ECLI: NL:RBDHA:2017:1598.

<sup>20</sup> An example in this regard can be found in the so-called Context case, Prosecution versus L (District court The Hague 10 December 2015; at the time of writing the appeal is still pending), ECLI:NL: RBDHA:2015:14365.

cooperate with a psychologist because they are not confident that these experts have the right skills or they think it is not in the interest of their client. This leaves the court, in general,<sup>21</sup> with no other option than a conviction without treatment if a criminal act has been proven. The consequence is that a serious risk might emerge (once again) upon release, especially if the individual is still suffering from the same mental problems.

The current policy is that every (known) returnee will be arrested upon his/her return and questioned, and will go into pre-trial detention after having been heard by an investigative judge within 90 hours after the arrest. If there is at that stage some evidence that the person had likely been involved in terrorist acts or war crimes, the criminal investigation will be continued. Alternatively, he/she will be monitored and the topic of the case deliberations in the multistakeholder platform (see also below: the so-called “veiligheidsoverleg”). After an arrest, there will be a periodic review by the court to see whether the pre-trial detention needs to be extended or not. The court might also suspend the detention under certain conditions, for instance by ordering electronic surveillance, a location/ area ban, a contact ban (with other suspects) or mental treatment of the suspect. Only in situations where there is not enough evidence, and the prosecutor also does not expect that more will be found within a reasonable time, or in case of serious personal issues like a grave illness, would the returnee not be placed in pre-trial detention.

At the time of writing, 386 jihadism-related criminal investigations are currently being conducted in the Netherlands with approximately 471 suspects, including those who are currently residing in Syria/Iraq.<sup>22</sup>

Of the total number of 50 returnees, so far seven have been convicted for criminal charges and another eight are being prosecuted.<sup>23</sup> Those who already faced trial have been convicted for terrorist training, conspiracy with terrorist intent and/or membership of a terrorist organisation. The remaining number of returnees (most of them travelled to Syria/Iraq in the beginning of the conflict and returned before 2015) have been investigated, but no criminal charges have been pressed, due to lack of evidence of involvement in terrorist activities (not all current criminal charges were already applicable at the time these individuals made their travel) or war crimes. They are being monitored if necessary and can be prosecuted later in the case of new information or evidence.

<sup>21</sup> Nevertheless there are a few cases in which the court sentenced the suspect to an forced treatment: Hoge Raad (Dutch Supreme Court), 22 January 2008 (Kraggenburg case) ECLI:NL:2008:BC1311; see also European Court of Human Rights, *Constancia vs. the Netherlands*, 3 March 2015, EHRM, 03-03-2015, nr 73560/12.

<sup>22</sup> Status update of the implementation of the Netherlands Comprehensive Action Program to Counter Jihadism, ‘Voortgangsrapportage’, April 2017 (in Dutch), [https://www.nctv.nl/binaries/Bijlage%201%20voortgangsrapportage%20integrale%20aanpak%20jihadisme\\_tcm31-254170.pdf](https://www.nctv.nl/binaries/Bijlage%201%20voortgangsrapportage%20integrale%20aanpak%20jihadisme_tcm31-254170.pdf)

<sup>23</sup> Letter from the Minister of Security and Justice to the Chair of the Dutch Parliament, answering questions from Members of Parliament, 23 January 2017, Reference number: 2030628.

## Policies

In general, the policies for returnees are part and parcel of the overall policy approach. The current National Counterterrorism Strategy has been adopted for the period 2016-2020.<sup>24</sup> In revising its strategy, the government has taken on board the recommendations made in the evaluation report of the 2011-2015 strategy.<sup>25</sup> In addition to the National CT Strategy, it is important to mention the Netherlands Comprehensive Action Program to Counter Jihadism,<sup>26</sup> which was adopted in 2014. The latter had been adopted especially to provide a comprehensive response to the foreign fighter phenomenon and the overall increase in jihadism in the Netherlands. The measures and policies listed in this action plan cover a wide range of measures, including preventive and repressive measures, and security, administrative and legal measures that target both individuals and social issues to improve engagement and inclusion in a more general approach. The programme also includes steps to set up national hotlines on radicalisation, family support systems and engagement with the Muslim community. Although most of these measures have been adopted to address the issues of foreign fighters and jihadism in general, they are also relevant with regard to the issue of returnees and have been adopted especially to deal with the issue of returnees.

Below, we elaborate on a selection of measures (administrative, security related, preventive and penal) that target the periods of departure and after return. Some of the measures applied to individuals after their return might, however, also be used in periods before travel.

### *During stay in the conflict area and upon return*

Since 2015/16, the policy of the National Prosecutor's Office has changed in the sense that authorities no longer wait for foreign fighters to return before starting an investigation and prosecution, but rather they start the investigation and building the criminal file while the individual is still residing in the conflict area.<sup>27</sup> This category includes all known FTFs, both male and female, still residing in Syria/Iraq. The aim of prosecuting terrorists in absentia is to ensure they can be jailed as soon as they return to the Netherlands.

<sup>24</sup> [https://english.nctv.nl/binaries/LR\\_100495\\_rapportage\\_EN\\_V3\\_tcm32-251878.pdf](https://english.nctv.nl/binaries/LR_100495_rapportage_EN_V3_tcm32-251878.pdf)

<sup>25</sup> Summary of the WODC Evaluation of the National Counterterrorism Strategy 2011-2015 in English, [https://english.wodc.nl/binaries/2608-summary\\_tcm29-74118.pdf](https://english.wodc.nl/binaries/2608-summary_tcm29-74118.pdf); 'Gericht, gedragen en geborgd interventievermogen?', Evaluatie nationale contraterrorisme strategie 2011-2015, full report in Dutch, [https://www.wodc.nl/binaries/2608-volledige-tekst\\_tcm28-74117.pdf](https://www.wodc.nl/binaries/2608-volledige-tekst_tcm28-74117.pdf)

<sup>26</sup> [https://english.nctv.nl/binaries/def-a5-nctvjihadismuk-03-lr\\_tcm32-83910.pdf](https://english.nctv.nl/binaries/def-a5-nctvjihadismuk-03-lr_tcm32-83910.pdf).

<sup>27</sup> The investigation takes place in the Netherlands. If needed, other countries (including Turkey) are approached for mutual legal assistance (Turkey included). The prosecution will assess all available evidence in accordance with international human rights standards. So far, no extradition cases have occurred, but clearly that could change in the future.



The criminal charges for which the individuals can be prosecuted vary. Criminal acts that can be charged include: recruitment, facilitation, financing of terrorism, (attempt to) conspiracy of a terrorist act, preparation of a terrorist act, membership of a terrorist organisation (including the attempt to join a terrorist organisation), incitement to terrorism and training for terrorism. These criminal acts were already in place before the adoption of UN Security Council Resolution 2178. In the court cases so far, the suspects involved have been charged with membership of a terrorist organisation (including attempt to join a terrorist organisation), (attempt to) conspiracy with a terrorist intent, training for terrorism, recruiting for terrorism, inciting to terrorism, facilitating/ financing terrorism. In the past, members of terrorist groups have also been charged with a combination of war crimes and terrorism charges.<sup>28</sup>

As mentioned above, the current policy is not to await return of the foreign fighters before starting an investigation and initiating the prosecution. Since those suspects are still residing in the conflict area, a “normal” petition of the indictment is not possible, and starting the court procedures will take place while the suspect is absent. According to the Dutch Criminal Code of Procedure, trials in absentia are allowed, also in terrorism cases, when certain formalities have been observed. Importantly, the accused must be notified on the date and place of the trial, as made clear in the provisions of the Code of Criminal Procedure.<sup>29</sup>

At the beginning of the trial, the court – instead of the defence – must satisfy itself that the prosecution has followed the provisions of the Code of Procedure. The court will verify whether the prosecution has made a serious effort to deliver the message to the defendant, by leaving the message at the registered address or other known residence. When it is clear that the defendant has failed to notify the authorities of his/her address, a notification can also be considered to be valid “without any actual prospect of result.”<sup>30</sup> A novum, practiced in cases against foreign fighters since 2015/ 2016, is the notification delivered via social media, such as Facebook or Twitter. These cases are still pending but one of the challenges that might occur could be that a suspect who reads that there is a case against him while staying in the conflict zone might demand to be present during the trial in accordance with the jurisprudence of the European Court on Human Rights. This argument is to be discussed. It is impossible to know whether these notifications are always received by the defendants, although, at the start of the so-called “context-case”, one of the suspects who was in Syria at the time sent a message via Twitter with a picture of him eating chips, letting the court know what his thoughts were in relation to the case.

<sup>28</sup> This was, for instance, the case in the LTTE case, Court of appeal The Hague 30 April 2015/ Dutch Supreme Court 4 April 2017: ECLI: NL: HR:2017:574 (and others).

<sup>29</sup> Anne Klerks, *Trials in absentia in international (criminal) law*, Master thesis, Tilburg University, June 2008.

<sup>30</sup> Evert F. Stamhuis, ‘In Absentia Trials and the Right to Defend: The Incorporation of a European Human Rights Principle into the Dutch Criminal Justice System’, in: 32 *Victoria University of Wellington Law Review* (2001), pp. 715-728, at 717.

On occasion, foreign fighters under criminal investigation are claimed to have died. However, in the past such claims have also proved to be false and were being used as a way to disappear from the radar. The prosecution has therefore – and irrespective of these claims – started cases against the alleged deceased, just in case information of the fact they are still alive turns up at a later moment. This was for instance the case with “A.Z.”. ISIS showed a video, in which it was claimed he had died and he was hailed as a martyr, while later evidence showed he was still alive.

A sentence after a trial in absentia becomes enforceable after 14 days for those cases in which the defendant was aware of the trial day; otherwise sentences become enforceable after a period of 14 days from the moment the defendant became aware of being sentenced. Within this 14-day period the suspect can appeal the verdict.

Depending on the seriousness of the suspicion, and after a criminal conviction, the Minister of Security and Justice can also decide to revoke citizenship or even nationality (when someone possesses two or more nationalities) or to withdraw the residence permits of non-EU citizens. It should be pointed out that the application of this administrative measure is not discussed during the trial of the criminal case. The legal question that could be raised is whether or not such a measure qualifies as a “criminal charge” in the meaning of the right to a fair trial as laid down in Article 6 of the European Convention on Human Rights and Fundamental Freedoms (ECHR).<sup>31</sup>

In the case of criminal proceedings, specific guarantees are applicable to protect the rights of the accused. One of these rights is the presumption of innocence until proven guilty, meaning an administrative measure applied by the executive power would be in violation of this right. But this could also raise issues with the “*ne bis in idem*” principle (no punishment for an act for which one has already been punished). If the person still resides in the Netherlands after this measure is implemented, he or she would be declared an unwanted foreigner in the Schengen area and eventually be deported. Finally, an international alert or even a European Arrest Warrant can be issued if necessary.

The names and details of those who successfully travelled to Syria and Iraq and who are suspected of joining a terrorist organisation will be reported to the relevant European investigation authorities. Since their travel documents will likely have been revoked, they will be stopped at European borders and if a European Arrest Warrant has been issued as well, they would be arrested. Their names are also added to the Netherlands terrorist sanction list. Pursuant to Security Council Resolution 1373 (2001), every member state has the obligation to fight financing of terrorism. This resolution has been implemented in Dutch law (‘Sanctieregeling terrorisme 2007’). After an investigation by the public prosecution office or the AIVD or after a convic-

<sup>31</sup> See on this issue Bibi van Ginkel, *The Practice of the United Nations in Combating Terrorism from 1946 to 2008: Questions of Legality and Legitimacy*, Antwerp/Oxford/Portland: Intersentia, 2010, p.119.

tion for terrorism has been delivered, the Ministers of Foreign Affairs, Finance, and Security and Justice can decide to place that person on the national terrorist list. As a consequence, his/her financial assets will be frozen and other persons will no longer be allowed to transfer or give money to that individual. The person has the right to challenge the decision and appeal.

Since December 2013, 97 individuals and three organisations have been placed on the list. Two individuals have so far been delisted as a result of the consultations that took place in the multistakeholder case deliberation platform. In April 2017, the list held a total of 105 individuals and three organisations.<sup>32</sup>

Overall the policies and the approach do not differ between male and female suspects. Whereas the thinking in the beginning might have been that women were travelling as jihadi brides, that they were misled, kidnapped, victims of the situation or only fulfilling humanitarian work, the insights into their role in recruitment and in the caliphate have changed significantly.<sup>33</sup> However, the application of the policies vis-à-vis children is more complicated. According to Dutch criminal law, only minors of 12 years and older can be held liable for their behaviour under juvenile justice. However, children are receiving weapons training from the age of nine and are part of brainwashing operations. Security services are conscious of the fact that youngsters, while victims, can still present a danger to society upon their return.<sup>34</sup> At that point, an assessment will take place in the setting of a multidisciplinary case consultation to determine the tailor-made care package needed. Both care and security actors are involved, and the Council for Child Protection oversees that proper care is taken vis-à-vis the special needs of the child. No cases are known so far of very young children being the subject of a criminal investigation.

## ***Detention and rehabilitation***

Suspects of terrorism crimes as well as convicted terrorists, including women and minors, are placed in the Terrorist Ward (TA), a high-security (supermax) detention centre. The Ministry of Justice has issued this policy, which is not without criticism, so the court, the prosecutor or the defence lawyer do not have a say in this decision. The main objective of this regime is to isolate these individuals from other inmates in order to prevent influencing and recruiting. The regime is very tough and very strict. The rights of the inmates are very limited; they spend 20 hours a day in their

<sup>32</sup> Status update of the implementation of the Netherlands Comprehensive Action Program to Counter Jihadism, 'Voortgangsrapportage', April 2017 (in Dutch), [https://www.nctv.nl/binaries/Bijlage%201%20voortgangsrapportage%20integrale%20aanpak%20jihadisme\\_tcm31-254170.pdf](https://www.nctv.nl/binaries/Bijlage%201%20voortgangsrapportage%20integrale%20aanpak%20jihadisme_tcm31-254170.pdf)

<sup>33</sup> General Intelligence and Security Service, 'Life with ISIS: the Myth Unraveled', January 2016, <https://english.aivd.nl/publications/publications/2016/01/15/publication-life-with-isis-the-myth-unravelled>.

<sup>34</sup> National Coordinator for Security and Counterterrorism (NCTV) and General Intelligence and Security Service (AIVD), 'The Children of ISIS: The indoctrination of minors in ISIS-held territory', April 2017, <https://english.aivd.nl/publications/publications/2017/04/26/the-children-of-isis.-the-indoctrination-of-minors-in-isis-held-territory>

cell alone (in an ordinary prison this is 17,5 hours a day); they are physically searched after each visit; and visitors need to be screened.

Defence councils in most cases argue their clients need to be released or otherwise transferred to a regular detention regime. However, the courts have so far upheld the policy of the Ministry of Justice, while deciding that the fact that the regime is very tough should be taken into consideration when they have to decide on a possible release (under conditions) of the suspect during the pre-trial detention. Meanwhile, the Terrorist Ward is introducing a diversification policy, allowing differentiation between, for instance, “leaders”, “followers” and “troublemakers” in order to place them under a more or less strict regime. Irrespective of the background of the individual (returnee or right-wing extremist) the strictness of the regime might be adjusted.

While incarcerated, a team of caretakers has regular interaction with the inmates. This team includes spiritual leaders/scholars, psychologists and medical specialists. The imams working with the prisoners are civil servants. The objective is to disengage them from the violent aspect of their extremist ideology. So focus is on changing behaviour instead of thoughts, which would be the objective of deradicalisation programmes, as the latter is very difficult and hard to measure.

After completing their sentence and upon release, the individual is handed over to the Probation Service. The Probation Service, however, might also fall back on the multistakeholder/multidisciplinary case deliberations system (‘veiligheidshuis-overleg’) that also plays a crucial role in the prevention policies implemented at the local level. This multistakeholder/multidisciplinary case deliberation, chaired by the mayor, has the objective of sharing as much information as possible within the limits of the mandates and confidentiality rules that apply, with the purpose of obtaining the most complete information possible regarding the state of mind of the individual, and the best assessment on what the possible impact of the variety of intervention measures available might be on them. The goal is to come to the most effective tailor-made approach for that individual.

In addition to the stakeholders already mentioned, representatives of the municipality, the school, the probation services, the youth care, a representative of the mosque and mental health caretakers could also take part in this case deliberation. Another important actor is the Exit Facility, which was established in October 2015, and which has the objective to reintegrate the individual into society. The Exit Facility offers individuals that want to reject the jihadist ideology a voluntary programme based on a buddy system that offers coaching through intensive conversations.

The focus of the reintegration programme is to assist in finding a house, work, and “healthy” social network. Mentoring programmes and psychological assistance remain available in this period. The Family Support network Radicalisation furthermore offers assistance to the family of radicalised individuals to help them cope with

the situation and to offer guidance on the interaction the family has with the radicalised individual. This Family Support network Radicalisation also plays an important role in facilitating the reintegration into society of the radicalised individual.

## Assessing effectiveness of the policies

In assessing the effectiveness of policies, there are a number of practical and ethical challenges worth considering. In addition, it is worth mentioning several new proposals that have been tabled by some political parties.

Because many of the terrorism provisions in the Dutch Criminal Code are still relatively new, jurisprudence is henceforth still developing, which causes all kinds of legal challenges. It falls outside the scope of this chapter to list them all, but we will elaborate on seven challenges.

The first one concerns the charge of “training for terrorism” (article 134a Dutch Criminal Code). The scope of the definition of “training” is very broad. It covers not only physical training, but under some circumstances it could also include learning how to make a bomb or even learning a language via the Internet. The Dutch Supreme Court recently handled one case<sup>35</sup> in which they made clear that the act must have a clear nexus with a terrorist objective. The burden of proof for claiming that learning a language, for instance, is not merely done out of curiosity or for academic reasons lies with the prosecutor.

The second challenge concerns the criminal charge of “recruiting for terrorism” (article 205 Dutch Criminal Code). According to the Dutch legal definition, the purpose of the recruitment should be for someone to take part in the armed conflict. This can cause problems if someone recruits persons allegedly merely to marry a foreign fighter. A case in which this question emerged ended in acquittal both in the district court as well as in the court of appeal because both courts concluded that merely marrying a foreign fighter does not qualify as a person having “been recruited to take part in the armed conflict.”<sup>36</sup> This case is now pending at the Dutch Supreme Court and still raises (legal) questions as to whether the marriage is just the pre-stage of the woman taking part in ISIS activities, such as joining the Quansa Brigade, a female virtue police or serving as a guard.

The third challenge relates to the criminal charge of “inciting to terrorism” (article 131, paragraph 2 Dutch Criminal Code), and has to do with the question of where the threshold lies, particularly because this behaviour might fall within the realm of the rights to freedom of speech or religion. In that regard, one of the questions is whether the act of incitement must be considered an isolated act or within a certain

<sup>35</sup> Dutch Supreme Court in the case of Prosecutor v. H, 31 May 2016, ECLI: NL:HR: 2016: 1011.

<sup>36</sup> Court of Appeal The Hague, Prosecutor v.SF 7 July 2016, ECLI:NL:GHDHA:2016:1979. (cassation pending)

context. It would, for instance, be relevant to provide information on the recipients of the information and the circumstances under which the message is sent out. Another relevant legal issue concerns the question of whether under certain circumstances repeated incitement passes the threshold of qualifying as recruitment.

The fourth challenge is almost of an ethical nature. This concerns the criminal charge of “financing of terrorism.” The prosecution may have to face a dilemma such as how to respond to parents who hire an organisation to help their son or daughter come back from Syria, which strictly speaking would qualify as a criminal act.

The fifth (relatively new) challenge concerns the collection of evidence through Internet or social media. According to the Dutch Code of Criminal Procedure, only a limited list of evidence is allowed.<sup>37</sup> Evidence in terrorism cases can be the result of wire taps but could also be derived from sources on the Internet like Facebook, Twitter and Instagram. The legal challenge in particular concerns the legal mandate of the police to collect sources through these channels, as jurisprudence on this issue is still rare.<sup>38</sup> The Dutch Police Law (in article 3) allows the police to browse the Internet to look for trends and general threat developments. However, a targeted investigation of the personal profile of one individual cannot be done without the authorisation of the public prosecutor. Since there has been a steep learning curve among terrorist suspects when it concerns shielding their communication, another interesting legal challenge emerges when, in order to circumvent technological barriers, the police want to pose as a “friend” under a fake name on, for instance, Facebook. There is not much European case law in this regard either but depending on the circumstances, it is most likely that permission of a magistrate would be needed.

The sixth challenge relates to the threshold of evidence needed to prove the “intent to join a terrorist organisation” of a suspect who attempted to travel to the conflict zone but was prevented from doing so. In most cases the suspect remains silent about his/her intentions and there is not a lot of evidence on which to base the criminal charge. Recent jurisprudence of the Supreme Court has clarified the threshold of proof. In March 2017,<sup>39</sup> the Dutch Supreme Court ruled that the prosecutor does not have to prove in detail what the intention is, such as, for example, linking the time and place of the intended murder with a terrorist intent.

Finally, a practical dilemma arising more recently with the possibility to revoke the citizenship/nationality of individuals suspected of being a member of a terrorist organisation. This authority is autonomously exercised by the Immigration and

<sup>37</sup> Article 339 (and further) Code of Criminal Procedure: the courts’ own observations, statements of the defendant, statements of a witness, statement of an expert witness, written materials. In addition to the need to pass the threshold of evidence, the court must also be convinced that the suspect is guilty.

<sup>38</sup> The Context case 10 December 2015, *op cit*.

<sup>39</sup> The Dutch Supreme Court in the case of Prosecutor v M. el A., 14 March 2017, ECLI: NL:HR:2017:416

Naturalisation Service (IND). The process of revoking an individual's right to remain in the Netherlands and subsequently evicting them can coincide with an investigation and prosecution initiated by the National Prosecutor's Office. Clearly a deportation order that follows from a revocation of citizenship or nationality undermines prosecutorial objectives. Furthermore, we have no knowledge of the IND getting in contact with the prosecutor's office of the country to which the individual is deported to "hand over" the criminal investigation. The result of these contradictory policies might henceforth lead to impunity.

Although quite a comprehensive approach already exists, both in terms of preventive and repressive measures, several political parties have tabled some additional proposals for yet more repressive security measures.

The Christian Democrats party in parliament has tabled a proposal for criminalising the glorification of terrorism. The proposal was first submitted to parliament as Proposal CDA 'Glorification of jihad' in May 2016.<sup>40</sup> The Council of State, in its advice, however, concluded that the proposal lacked a clear formulation of the necessity, subsidiarity and legality with respect to, for instance, the term "disturbing the public order."

Other proposals under consideration include prolonging the period of detention in case of suspicion of a terrorist crime, criminalisation of staying in an area controlled by a terrorist organisation, revoking the right to vote, and making it an obligation to report a suspicion of a terrorist crime.

The proposals tabled at the moment do not necessarily follow from a thorough evaluation of the effectiveness of the current policies and a threat analysis that would identify additional policy needs. Also (legal) practitioners have so far expressed no need for additional criminal or repressive measures.

The challenges that have been identified by legal practitioners, in addition to the ones mentioned above, rather concern the lengthiness of the legal proceedings in the appeals stage and the severity and strictness of the detention regime, especially when it concerns minors.

The main accomplishment, though, in the Dutch policy approach is the multistakeholder platform case deliberation system, which brings together the relevant actors who in these meetings decide on a personalised approach for the radicalised individual. Through the years, the various actors that participate in these meetings have become more and more familiar with each other's work and overcome the dilemmas of, for instance, confidentiality of information. The key role in all of this lies with the important role played by the community police, who function as the eyes

<sup>40</sup> Tweede Kamer, Kamerstuk 34466, no.3, 2 May 2016, <https://zoek.officielebekendmakingen.nl/dossier/34466/kst-34466-3?resultIndex=5&sorttype=1&sortorder=4>

and the ears of society, and who will be the first point of contact for people in the near vicinity of an individual that is radicalising. His/her position is crucial, as this allows the earliest possible detection of radicalisation. In the words of Achmed Baadoudh, the chairman of the borough of New West Amsterdam and a former firefighter, “You can fight every fire with just one cup of water, as long as you detect it early enough.”



## CONCLUSION: CONVERGING POLICIES ON RETURNEES AND KEY CHALLENGES AHEAD

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Europeans have gone abroad to join foreign armies for many centuries. Records from past conflicts seem to indicate that in most instances either they didn't come back in great numbers or that their returns to their home countries hardly made any impact. Circumstances were not fundamentally different among contemporary jihadi volunteers from the Afghan jihad in the 1980s to Iraq, Somalia or Yemen in the 2000s. A number of returnees clearly remained involved in terrorist networks across successive jihadi waves, while others engaged in criminal activities, but they were essentially viewed as just a group of misguided individuals. Authorities dealt with them case by case when they appeared on the radar screen, but never devised comprehensive policies to deal with the issue.

This case-by-case approach can now be recognised as a policy of benign neglect. This changed dramatically in the course of the Syrian civil war. For the first time since the emergence of global jihadism in the late 1980s, European nationals constituted a significant proportion of the foreign volunteers contingent. Departures were noticed from early 2012 onward, eventually attracting more than 5000 European men and women. Adding to this number are about 1000 European children, as well as the often-forgotten hundreds of Europeans who joined non-jihadi militias (e.g. Kurdish groups). Meanwhile, around 1500 of the so-called foreign terrorist fighters (FTF) have returned to Europe (EU), a third of them to the three countries covered in this study.

The return of FTF occurred in successive waves. By the spring of 2013, the first wave was noticeable. It unfolded against the background of the intra-jihadi fighting that characterised the early years of the Syrian war. A number of the returnees came back disillusioned by the reality of war and bewildered by the political complexity they'd found on the ground. The reaction of their home country authorities was at first lenient in essence, as they were struggling to distinguish the various motivations behind the journey of their citizens, and intelligence services had only an incomplete vision of the situation on the ground. After all, authorities had seen this before.

The grounds on which to prosecute these individuals was not crystal clear anyway, as the penal code had not yet been broadened to criminalise such travels. Moreover, many of these "Syria travellers" could still reasonably argue that they had not known exactly what they were getting involved in, particularly at the very beginning of the conflict. In the Netherlands, authorities attempted to devise a strategy that balanced

between re-integration and repression. In Belgium, even though detention upon return was standard policy, a number of returnees remained out of prison, either due to a lack of hard evidence, or because they truly seemed to have turned their back on terrorism (and some even on jihadism). Women were virtually automatically treated with leniency. In Germany, authorities routinely opened criminal investigations against male departees, but even at this stage mostly not yet against female departees.

Starting during the summer of 2014, but particularly in the course of 2015, policies rapidly hardened. A second wave of returnees created a new sense of urgency as a result of growing indications that returnees started to be involved in terrorist plots on European soil. Mehdi Nemmouche's attack on the Jewish Museum in Brussels in June 2014 was the first successful attack (although not the first attempt) by an individual specifically returning from the Syrian-Iraqi war zone with the intention to perpetrate an attack in Europe. Other plots followed; some failed and some succeeded. Plots involving returnees culminated in the Paris and Brussels attacks in 2015-2016. "Security-first" became the leitmotif in every European Union member state as policies gradually stiffened.

Systematic investigation at the first signals of a departure and systematic arrest upon return became standard procedure. In all countries the penal code was revised in line with the 2014 UNSC Resolution 2178 and the 2016 European Union directive on terrorism, resulting in a broadening of the definition of terrorist activities and thus lowering the threshold for conviction. While women were treated more lightly or solely considered as victims in the beginning, they became progressively seen as a threat as well. Resolution 2178 also required nations for the first time to record the travel of their citizens joining terrorist groups, thus improving the overall picture of the phenomenon across Europe.

In the Levant however, the tide was rapidly turning against Islamic State (ISIS), as military defeats accumulated. Throughout 2016, as prospects of the "ideal" life under the caliphate darkened, many predicted a largescale return of foreign fighters to their home countries. This third, post-caliphate, wave still remains hypothetical. No massive exodus of seasoned fighters has occurred (yet). The sporadic returns essentially concerned women and children. Moreover, the March 2016 attacks in Brussels were actually the last successful plot that involved returnees. While political discourse and media reports about the threat from returnees went unabated, the attention of authorities shifted progressively to more immediate and tangible concerns: the phenomenon of homegrown terrorist fighters (HTF), who were responsible in Europe for no fewer than 20 attacks and at least double that number of failed plots in 2017; the challenge of handling children coming back from the war zone; and issues related to radicalisation and recruitment in prison. Authorities must now cope with a complex constellation of inter-linked threats, where returnees remain a potentially high concern, notably for their potential role in establishing new

jihadi cells, but they are not the only concern anymore, perhaps not even the main one.

As of early 2018, the policies in place in the three EU member states reviewed in this paper have become more systematic and comprehensive, while remaining works in progress. In the beginning, significant differences existed amongst them, but they have now largely converged.

Individuals that still leave for a jihadi war zone, are now subject to judicial investigation as soon as indications of their departure emerge. Returnees in turn are arrested and put on trial, although this appears to happen more systematically in the Netherlands and Belgium than in Germany. No distinction is made between men and women in Belgium and the Netherlands, while the distinction is rapidly waning in Germany.

The discussion on what constitutes the most adequate detention regime is ongoing in all three countries. Formally, different approaches exist between Belgium, which prefers a regime of dispersal among the general prison population, and the Netherlands, which has opted for a policy of placing suspects of terrorism crimes as well as convicted terrorists in a high-security detention centre. In practical terms, however, a number of inmates for terrorist offences are being kept in solitary conditions, even within ordinary prisons, including for inmates with minor sentences, because of an excessive fear they will influence other inmates. But authorities are aware that solitary confinement for inmates, in particular those with lesser sentences, risks producing the opposite effect and increasing their frustration and resentment. In Germany, with its de-centralised prison system, there is not yet a defined regime for returnees. Some jihadis are placed in maximum security blocks, whereas others are incarcerated in the general prison system. It should of course be acknowledged that differences in numbers of returnees set different contexts for policy-making. Compared to Germany and Belgium, the absolute number of returnees in the Netherlands is much more modest, rendering the problem somewhat more manageable in practical terms.

In prison, the authorities of the three countries favour tailor-made disengagement trajectories (from the violent aspect of their extremist ideology) rather than deradicalisation programmes (changing their thinking and ideology). This means that inmates are regularly approached by caretakers with a wide variety of expertise. But the reality of this stated policy varies between the three countries. The Netherlands clearly is ahead of Belgium, which only invested very recently in such programmes, both as a result of the former's efforts that started more than a decade ago and of the availability of its superior budgetary means. The German *Länder* (states) have developed several ideas for this approach, but no overall strategy has emerged so far. Overall, everyone is still learning by doing, including in France for instance, where a new pilot project on disengagement was launched in 2017 (called RIVE), as an alternative to prison for convicted terrorists.

Upon release, however, some striking differences appear between the three countries covered in this report. In the Netherlands, former convicts are not left to their own devices. Tailor-made accompaniment is available to help their re-insertion. Decisions are made by local authorities with a key role for the community police officer. In comparison, Belgian post-detention arrangements remain rather tentative, but are rapidly being professionalised. In Germany, re-integration efforts are supported by the regular probationary system, and decided upon on a case-by-case basis.

As far as children are concerned, similarities and differences are perceptible between the three countries. All start from the same premise, that children are victims and not criminals. Tailor-made accompaniment is standard practice, whereby priority is given to the protection of the child. However, since six-year-olds will have been exposed to jihadi indoctrination and nine-years-old will have received military training, a security dimension is often present in those programmes, especially in the case of teenagers. As for now, however, only a very small number of these children are considered to represent a potential security threat. As a result of media reports on the fate of European children in the Levant, the Belgian government has taken the explicit decision that children under 10 years old should be repatriated if feasible and put under childcare provisions once back in their home country. The inherent danger for the families to travel to the region in order to pick up their children represent a serious limitation to this principled stance, however. Germany seems to be leaning in the same direction, although not yet an official policy, whereas this is not yet a topic of debate in the Netherlands. In contrast, France is growing very cautious with regard to returning children, on the assumption that they have taken part in the last battles. French authorities have now decided to treat every child above 13 years old through a judiciary approach, rather than a childcare one.

Regarding the FTF still in the area, all three governments share a somewhat ambiguous position. It is probably fair to say that off the record all governments prefer their (adult) citizens not to come back, in particular the seasoned fighters. Dutch Prime Minister Mark Rutte once bluntly stated that he rather would see the FTFs being killed in the conflict than to have them come back to the Netherlands. But his remark provoked a lot of criticism, and he later argued that he made this point as the leader of the liberal party, not as head of government. In Belgium no official declaration has been released, but officials have suggested on several occasions that FTFs are ultimately responsible for their decisions and should therefore be ready to assume the consequences. German government officials have restrained themselves from publicly commenting on this topic. None of these three, however, have gone as far as France and the UK, which ordered targeted executions of their national terrorists abroad at a time when the fighting with ISIS was still raging.

European policies are still somewhat in flux as to their citizens that are detained by local militias or governments. In Iraq several hundred foreign nationals are said to be

detained by Iraqi forces. Iraqi members of parliament have voiced their opposition to extradition, since the captured fighters are suspected of crimes against Iraqis. Since no extradition treaties have been concluded with either Iraq or Syria, no formal mechanisms exist to govern the fate of those imprisoned. Clearly, all governments are interested in extracting as much information as possible from their detained citizens, but none will undertake exhaustive efforts to rescue or repatriate them. This position is probably in line with public opinion. Nevertheless, the United Nations and the Red Cross are concerned about this public discourse “on the desirability of annihilating those enemies still standing.” They have warned against treating the fighters as “if they were outside our shared humanity.” Yet this position will probably fall on deaf ears in the countries concerned.

Finally, one last observation about the post-caliphate era. The collapse of ISIS’s state project closes another chapter in the history of jihadism, but not of jihadism itself. Many of the conducive environments, or preconditions, that have permitted the continual re-invention of jihadism in the past decades and, more pertinently, that explain ISIS’s success in widely different locations around the world, are still very much in place, including in Europe. It is realistic to assume that, given the number of individuals having been involved in the ISIS wave of jihadism, plots will continue to be envisaged for some time to come. But it is also realistic to assume that the ISIS trademark will gradually fade in time as the group becomes history, and that the jihadi threat will lower as a result. Some respite thus lies ahead, which is an opportune moment to evaluate what has been achieved and what remains to be done.

This observation has several policy implications. While worst-case scenarios are popular when dealing with terrorism and radicalisation, they tend to overshadow the opportunities the current situation presents. Firstly, the threat of homegrown terrorism that has now superseded the returnee issue is extremely difficult to quantify. It is therefore easy to exaggerate its significance and thus to overblow the overall terrorism threat. While we acknowledge that the terrorist threat will not disappear any time soon, we argue that it is (once again) evolving and so must our response be adjusted. Unfit responses would be counterproductive.

Secondly, preparation for social reintegration of radicalised prisoners needs to be taken seriously and must start in prison. Often first-line practitioners are much more nuanced than public opinion and political discourse in this respect. Inmates who are convicted for terrorist crimes will one day be set free, but if the conducive environment has not changed, the danger for relapse into jihadi violence is real. Continued investment in tailor-made disengagement trajectories, starting in prison but pursued long afterwards, notably at the local level, is thus warranted.

Thirdly, the same remark also applies to law enforcement and intelligence endeavours. They too need sustained investment, since they constitute the last barrier to

terrorist attacks. Counter-terrorism policies centred exclusively or mainly on security and repression will always prove ineffective, as its practitioners clearly realise. Yet, it is important to recognize that security services play a major role in a comprehensive approach to terrorism and radicalisation.

Fourthly, the international nature of jihadism and its transnational networks will remain with us for the time being. Human connections that were established in Syria and Iraq will define jihadi networks for the coming decades, while European intelligence services will have to sustain their surveillance of those FTF remaining abroad (in the Middle East, Africa or Asia). Long-term international cooperation is thus as crucial as ever – without falling into the trap of overselling the threat of terrorism in order to justify these efforts.

Lastly, the respite offered by the impending collapse of ISIS should be used to enhance efforts to address the conducive environment that allowed ISIS (and jihadism) to mobilise in the first place. As in the past, “counter-terrorism fatigue” is looming. It risks undercutting the development and adoption of policies in the field of prevention that are crucially needed in order to prevent new generations from falling under the spell of a fresh jihadi wave, if and when a new opportunity for jihadi mobilisation arises. Over the past few years, a lot of good initiatives have been developed. Now is the time to generalise all these good practices and to sustain them over the long term. If we stop our efforts abruptly and start divesting resources opportunistically to other issues, we will lose all the gains and we will have to start it all again when the next jihadi mobilisation begins.

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