

**Preventing the movement of foreign terrorist fighters from a human rights perspective:**

*A policy comparison between the United Kingdom and France*

Master Thesis, 7 August 2019



Leiden University: The Netherlands  
Faculty of governance and Global Affairs  
Crisis and Security Management

Author: Larissa Verkaik

Student number: 1115901

Supervisor: Joachim Koops

Second Reader: Eamon Aloyo

Word count: 22.476

## **Abstract**

Recent terrorist attacks like the November 2015 Paris attacks, the Brussels bombings (2016) or the wave of terrorist attacks in 2017 in the UK (London and Manchester), show that the jihadist terrorist threat posed by (returning) foreign terrorist fighters is currently perceived as the main security threat in Western European countries. With the fall of the Caliphate, the threat is expected to increase even more. Citizens of these countries therefore expect their governments to take enhanced security measures in order to prevent future attacks. This illustrates the problem of modern terrorism. Instead of limiting freedoms and fundamental rights in cases of proven terrorist activities, governments are currently under pressure to limit these rights on the suspicion that a terrorist-related act might be committed. However, it is argued that many counterterrorism policies which infringe human rights seem to be counterproductive and are conducive to the terrorist threat. Therefore, this thesis stresses the importance of upholding human rights as an essential component of an effective counterterrorism strategy.

# Table of content

- Chapter 1: Introduction**..... 5
  - 1.1 Problem definition..... 6
  - 1.2 Focus of the study..... 7
  - 1.3 Relevance of the study ..... 10
  - 1.4 Thesis structure..... 12
- Chapter 2: Theoretical framework**..... 13
  - 2.1 Human rights obligations ..... 13
  - 2.2 Human rights violations while countering terrorism..... 17
  - 2.3 Foreign terrorist fighter phenomenon..... 19
  - 2.4 Foreign terrorist fighter measures ..... 24
  - 2.5 Sub questions..... 28
- Chapter 3: Research design**..... 30
  - 3.1 Conceptualization..... 30
  - 3.2 Operationalization ..... 32
  - 3.3 Case selection..... 33
  - 3.4 Limitations of the research ..... 35
- Chapter 4: International context** ..... 36
  - 4.1 United Nations framework ..... 36
  - 4.2 European Union framework ..... 40
- Chapter 5: United Kingdom**..... 46
  - 5.1 Threat assessment..... 47
  - 5.2 Foreign terrorist fighter threat ..... 48
  - 5.3 Counterterrorism and foreign terrorist fighter approaches ..... 50
  - 5.4 Preventing the movement of foreign terrorist fighters ..... 54
- Chapter 6: France** ..... 58
  - 6.1 Threat assessment..... 58
  - 6.2 Foreign terrorist fighter threat ..... 60
  - 6.3 Counterterrorism and foreign terrorist fighter approaches ..... 61
  - 6.4 Preventing the movement of foreign terrorist fighters ..... 66
- Chapter 7: Analysis**..... 69
  - 7.1 Answering sub questions..... 69
  - 7.2 Discussion ..... 73
- Chapter 8: Conclusion** ..... 74

<b>Bibliography</b> .....	77
<b>Appendices</b> .....	85
Appendix 1: Overview jihadist terrorist attacks in Western European countries 2004-2018 .....	85
Appendix 2: Statistical overview jihadist attacks in Western European countries 2004-2018 .....	88
Appendix 3: Overview of TPIM orders.....	89

## Chapter 1: Introduction

In the aftermath of the attacks of September 11 2001, former President of the United States George Bush declared the ‘war on terror’.<sup>1</sup> Given the renewed threat and nature of terrorism presented by these attacks, there was a growing need for stronger measures which could not be accommodated by the existing legal and international framework at that time.<sup>2</sup> Because of this growing need for new and stronger security measures, a shift in the global discourse on human rights protection in counterterrorism policies has been observed.<sup>3</sup> In order to respond to the new threat of terrorism, many states implemented security laws and policies, or found new validation for already existing legislation, in which the human rights perspective was often overlooked. A possible reason for this is that the definition of terrorism employed by these laws is vague and sweeping which tends to the undermining of human rights protections by these laws.<sup>4</sup>

The increased fear of new terrorist attacks led to a perspective in which it is believed that a choice must be made between guaranteeing national security and preserving individual freedoms and liberty. Therefore, questions of human rights protection and of national and global security seem to have become disconnected and independent from one another.<sup>5</sup> It is even argued that the protection of citizens’ security and protecting human rights pull in opposite directions.<sup>6</sup> These beliefs should prevent the full application of the human rights framework in current counterterrorism approaches, while paradoxically, it is often argued that the fight against terrorism is in essence itself a fight for the values of human rights and fundamental freedoms.<sup>7</sup>

The tensions between complying with human rights obligations and countering the threat of terrorism are not as black and white as is often argued. This thesis therefore argues that compliance with international human rights obligations should be an essential component of effective counterterrorism approaches.

---

<sup>1</sup> ABC News, “Bush Declares War on terror,” filmed September 20 2001 at ABC News, <https://abcnews.go.com/search?searchtext=bush%20declares%20war%20on%20terror>

<sup>2</sup> Manfred Nowak and Anne Charbord, *Using Human Rights to Counter Terrorism* (Cheltenham: Edward Elgar Publishing, 2018), 25

<sup>3</sup> Neil Hicks, “The impact of counter terror on the promotion and protection of human rights: a global perspective,” in *Human rights in the ‘war on terror’*, ed. Richard Ashbly Wilson (Cambridge: Cambridge University Press, 2005), 217

<sup>4</sup> *Ibid.*, 216

<sup>5</sup> Richard Ashbly Wilson, *Human rights in the ‘war on terror’* (Cambridge: Cambridge University Press, 2005), 2

<sup>6</sup> Nowak and Charbord, *Using human rights*, 3

<sup>7</sup> *Ibid.*, 3

## 1.1 Problem definition

Designating conflicts as a fight in the ‘war on terror’ appears to make governments believe they are granted with greater latitude to disregard international human rights obligations.<sup>8</sup> Hence, it is argued that governments use counterterrorism measures as a justification for non-compliance with international standards on human rights protection.<sup>9</sup> The negative impact counterterrorism measures have on human rights could thus be the result of deliberate government policy (as policies aim to counter terrorism mostly in name, but in fact pursue a political agenda), but the negative impact could also be the unintentional consequence of poorly conceived counter terrorism measures. Nevertheless, the post 9/11 counter terrorism measures have resulted in a drawback for human rights.<sup>10</sup>

One of the conflicts designated as a war on terror, is the fight against Islamic State.<sup>11</sup> Since the Syrian conflict in 2011, thousands EU nationals have travelled (or attempted to travel) to the conflict zones in Syria and Iraq to join insurgent terrorist groups like IS. The issue of (returning) foreign terrorist fighters has therefore been high on the political agenda of Western European countries.<sup>12</sup> The major concern for these governments is that these foreign terrorist fighters will return from the conflict zones and stage violent attacks in their home countries.<sup>13</sup> Recent attacks in Paris (2015) and Brussels (2016) in which foreign terrorist fighters were involved, show the perceived threat is real.<sup>14</sup> The various foreign terrorist fighter measures adopted or proposed by several Western European states, directly or indirectly infringe on human rights, which has engendered human rights criticism.<sup>15</sup> Like most counterterrorism measures, these measures are adopted or proposed out of an urgent feeling that states should respond to the increasing threat posed by foreign fighters, and those

---

<sup>8</sup> Hicks, “impact of counter terror,” 209

<sup>9</sup> Ibid., 216

<sup>10</sup> Martin Scheinin, “Impacts of post 9/11 counter-terrorism measures on all human rights,” in *Using Human Rights to Counter Terrorism*, edited by Manfred Nowak and Anne Charbord (Cheltenham: Edward Elgar Publishing, 2018), 92

<sup>11</sup> Al Jazeera, “US: we are at war with Islamic State group” Al Jazeera, September 13, 2014, <https://www.aljazeera.com/news/middleeast/2014/09/us-are-at-war-with-islamic-state-group-201491323051540963.html>

<sup>12</sup> European Parliamentary Research Service, *The return of foreign fighters to EU soil: ex-post evaluation* (Brussels, European Union, 2018), 5-6, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_STU\(2018\)621811](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2018)621811)

<sup>13</sup> Ibid., 26

<sup>14</sup> Edwin Bakker, Christoph Paulussen and Eva Entenmann, “Returning jihadist foreign fighters: challengers pertaining to threat assessment and governance of this pan-European problem,” *Security and human rights* 25, no. 1 (2014), 18

<sup>15</sup> Christophe Paulussen, “Repressing the foreign fighters phenomenon in Western Europe: Towards an effective response based on human rights,” *ICCT Research Paper* 7, no. 10 (2016), 23

who return to European soil. This results in tension between securing human rights on the one hand, while also encountering the threat posed by foreign fighters on the other hand.

Therefore, this study examines the following research question:

*What are the human rights issues in the approaches aimed at preventing the movement of (returning) foreign terrorist fighters in the UK and France since 2011?*

## 1.2 Focus of the study

The research question will be answered through a comparative case study of the approaches aimed at preventing the movement of foreign terrorist fighters in the United Kingdom and France. The foreign fighter phenomenon in itself is not new. Several conflicts in the past attracted foreign fighters worldwide. This thesis focuses however specifically on those foreign fighters joining IS in the Iraqi and Syrian battle zones to fight in the name of Jihadist-Salafism, against the regime of President Bashar al-Assad.<sup>16</sup> In the light of the threat posed by these specific fighters, the United Nations defined a foreign terrorist fighter in the UN Security Council Resolution 2178 as the following:

Individuals who travel to a state other than their states of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict.<sup>17</sup>

As the UN General Assembly never reached an universally accepted agreement on the definition of terrorism, there is also some ambiguity of the ‘terrorist’ element in the concept of foreign terrorist fighters. It could therefore be argued that a distinction should be made between a legitimate foreign fighter (as certain types of violence by non-state actors are legal in certain conflicts as long as this is in accordance with international humanitarian law) and illegitimate foreign terrorist fighters. However, the UN Security Council chose not to do so,<sup>18</sup> and for that reason, the foreign fighter phenomenon outlined in this thesis uses the definition as provided by the UN Security Council, but with one exception: not only individuals who actually travel to another state are included, but also those who aim to travel to the conflict

---

<sup>16</sup> Edwin Bakker and Jeanine de Roy van Zijdewijn, “Jihadist foreign fighter phenomenon in Western Europe: a low-probability, high-impact threat,” *ICCT Research Paper* 6, no. 9 (2015), 2

<sup>17</sup> Security Council Resolution 2178, U.N. Doc. S/RES/2178 (Sep. 24, 2014)

<sup>18</sup> Alex P. Schmid and Judith Tinnes, “Foreign (terrorist) fighters with IS: A European Perspective,” *ICCT Research Papers* 6, no. 8 (2015), 13

zones in Syria and Iraq are included. The reason for this is that foreign terrorist fighters pose a threat upon their return, but also while being in the conflict zones (this will be further outlined in chapter 2.3). Therefore, states are highly motivated to, on the one hand prevent people from travelling to the conflict zones, and on the other hand, prevent them from returning once they have left.

Several approaches to this foreign terrorist phenomenon have been implemented or proposed by international organizations and national governments. However, examining all these different approaches which address the various facets of the foreign fighter phenomenon is beyond the scope of thesis. Therefore, this thesis focuses specifically on the approaches aimed at preventing the physical movement of foreign terrorist fighters. These include foreign terrorist fighters who want to travel to the conflict zones in Syria and Iraq as well as those fighters who try to return to their home countries. Examples of these kind of approaches are restrictions like control orders, to revoking someone's nationality in order to prevent them from returning to their home country. This automatically implies that this thesis will not examine all human rights infringements or violations by foreign terrorist fighter approaches. This is mainly justified by the fact that this cannot be adequately dealt under the scope of this thesis.

As this thesis focuses specifically on the IS foreign fighter phenomenon, the time frame for this research will be from 2011 until 2019. The year 2011 has been chosen as this foreign terrorist fighter phenomenon emerged shortly after the outbreak of the Syrian civil war in March 2011.<sup>19</sup> After this outbreak, IS became more prominent and attracted increasing numbers of foreign terrorist fighters. Therefore, policies aimed at preventing the movement of foreign terrorist fighters from 2011 onwards are examined in this thesis. However, short overviews of counterterrorism policies implemented prior to 2011 may be provided in order to understand the general counterterrorism framework in which the foreign terrorist fighter approaches emerged.

The aim of this study is to research in what way these specific foreign terrorist fighter approaches violate or infringe human rights. In this thesis, "human rights" are understood as the human rights outlined by the Universal Declaration of Human rights (UNDHR, adopted

---

<sup>19</sup> Bakker, Paulussen and Entenmann, "returning jihadist foreign fighters," 12

by the United Nations General Assembly in 1948).<sup>20</sup> This document sets out for the first time all fundamental human rights (a total of 30) which should be universally protected and apply on all peoples and all nations. This thesis examines however not all human rights violations in foreign terrorist fighter approaches. As this thesis specifically focuses on the approaches aimed at preventing the physical movement of (returning) foreign terrorist fighters, the two human rights which are most infringed upon by these type of measures are outlined in depth in this thesis. If other human rights appear to be violated by the researched policies, these violations will also be outlined in the analysis chapter.

The right to freedom of movement is often violated by foreign terrorist fighter approaches. This right (Article 13 of the UNDHR) entails both the right to leave any country (including the home country of the individual) and the return to any country.<sup>21</sup> The right to freedom of movement (not an absolute right) is violated by administrative measures like travel bans, entry bans, house arrests and area restrictions. Other measures aimed at preventing foreign terrorist fighters from travelling abroad are preventive detention or so-called control measures which restrict the movement of terrorist suspects at home. These type of measures limit the liberty of individuals on the suspicion that they may intent to commit criminal or terrorist acts in the future. This is not the same as pre-charge or pre-trial detentions: these measures apply to persons who are suspected or found guilty for criminal offences in the past.<sup>22</sup>

The second human right this thesis will focus on is the right to nationality or citizenship. The UN affirms that no one should be arbitrarily deprived of a nationality.<sup>23</sup> To ensure that persons are not left stateless after their citizenship is deprived, most countries therefore only revoke citizenship from foreign fighters with dual citizenship. A troubling exception to this is the UK, as will be further discussed in chapter 5. However, even stripping the citizenship of dual nationals may result in statelessness for some persons. If the second home-country of dual nationals cannot confirm their citizenship or refuse to accept them, these persons might still be indefinitely detained in immigration centers.<sup>24</sup>

---

<sup>20</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948)

<sup>21</sup> Universal Declaration of Human rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948), article 13

<sup>22</sup> Letta Tayler, "Foreign terrorist fighter laws: human rights rollbacks under the UN security Council Resolution 2178," *International Community Law Review* 18, no. 5 (2016): 472

<sup>23</sup> Universal Declaration of Human rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948), article 15

<sup>24</sup> Tayler, "human rights rollbacks," 472

Finally, this study focuses specifically on the returning foreign terrorist fighter approaches in two selected countries. The foreign fighter phenomenon is a transnational issue in nature, but national governments are still primarily responsible for the security of their citizens. Hence, the problem of returning foreign terrorist fighters to their home countries primarily needs to be dealt with on local and national levels, also within the European Union.<sup>25</sup> Therefore, this thesis focuses on measures taken by national governments. More specifically, the returning foreign terrorist fighter policies of the French and British governments will be analyzed. In chapter 3, a justification for selecting these two countries is provided.

### 1.3 Relevance of the study

Conducting this research is relevant for several reasons. Tensions between providing security and upholding fundamental rights within the counterterrorism framework are not new. After the declaration of the ‘war on terror’, human rights activists express growing concerns about the challenges in protection and promoting human rights while countering terrorism.<sup>26</sup>

Governments argue that the suspension of human rights is exceptional in times of heightened security threats and that emergency measures are needed to deal with the unprecedented threat of terrorism.<sup>27</sup> However, whereas most literature on this discussion focuses on counterterrorism policies in general, this thesis focuses specifically at the policies aimed at returning foreign terrorist fighters from the conflict zones in Syria and Iraq. Therefore, this thesis attempts to examine whether the current situation in which the security threat is posed by IS returning foreign fighters is fundamentally different from the situation in the ‘war on terror’ starting in 2001.

The main reason to focus on the returning foreign fighter phenomenon is the fact that this issue has become more severe recently. As mentioned, the phenomenon itself is not new, but the magnitude of this threat has increased majorly. The numbers of foreign fighters in Syrian and Iraqi battle zones were relatively small, until the outbreak of the civil war in Syria, the Arab spring and the rise of Islamic State in Iraq. Since then, the conflict attracted fighters worldwide including thousands European nationals.<sup>28</sup> Several European countries have been

---

<sup>25</sup> Oldrich Bures, “EU’s responses to foreign fighters: New threat, old challenges?” *Terrorism and political violence* (2018), 3

<sup>26</sup> Hicks, “ impact of counter terror,” 218

<sup>27</sup> David Luban, “The war on terrorism and the end of human rights,” in *War after September 11*, ed. Verna Gehring (Lanham, MD: Rowman & Littlefield Publishers, 2003), 59

<sup>28</sup> European Parliamentary Research Service, “ex-post evaluation,” 5

confronted with the foreign fighter phenomenon before, but never in the high numbers as in the Syrian conflict. After IS proclaimed the Caliphate and IS had unexpected success in the battlefield, the number of foreign terrorist fighters increased even more.<sup>29</sup>

However, with IS suffering great losses and territory, including the fall of the Caliphate<sup>30</sup>, the threat of terrorist attacks posed by returned foreign fighters and the question of what to do with them and their families, has become more pertinent. The Caliphate might have been defeated, but IS remains a threat, both as a group as well as an inspiration.<sup>31</sup> This is for a large part because IS has been so successful in recruiting foreign fighters worldwide.<sup>32</sup> Policymakers throughout Europe fear that the collapse of the organization will lead to rising numbers of foreign fighters that will return to their home countries.<sup>33</sup> According to the 2017 annual report of Europol, the number of returnees was indeed expected to increase because of the collapse of IS.<sup>34</sup> In addition, the 2018 annual report of Europol warned that as IS gets weaker, it has been urging lone actors to stage attacks in their home countries.<sup>35</sup> These warnings combined with recent revelations about (returned) jihadist foreign fighters being involved in the attacks in Brussels (2014 and 2016) and Paris (2015),<sup>36</sup> prompted a heightened sense of alarm on the foreign fighter issue and show that the potential threat these fighters pose should not be underestimated. The involvement of the foreign terrorist fighters in these attacks underlines the potential threat these fighters pose, either upon their return or while still being in the conflict zones, to their European home countries. Therefore, the issue of returning foreign terrorist fighter has been high on the political agenda of both member states examined in this study and the EU.<sup>37</sup>

---

<sup>29</sup> Bakker and de Roy van Zuijdewijn, "low-probability, high-impact," 2

<sup>30</sup> BBC, "IS 'caliphate' defeated but jihadist group remains a threat" BBC, March 23, 2019, <https://www.bbc.com/news/world-middle-east-45547595>

<sup>31</sup> Ibid.

<sup>32</sup> Richard Barret, *Beyond the Caliphate: foreign fighters and the threat of returnees*, (The Soufan Center, 2017), 6

<sup>33</sup> Alastair Reed and Johanna Pohl, "Disentangling the EU foreign fighter threat: the case for a comprehensive approach," *Rusi Newsbrief* 37, no. 1 (2017), 1

<sup>34</sup> Europol, *European Union Terrorism Situation and Trend Report (TE-SAT 2017)* (The Hague, Europol, 2017), 7, <https://www.europol.europa.eu/activities-services/main-reports/eu-terrorism-situation-and-trend-report-te-sat-2017>

<sup>35</sup> Europol, *European Union Terrorism situation and Trend Report 2018 (TE-SAT 2018)* (The Hague, Europol, 2018), 27, <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-2018-tesat-2018>

<sup>36</sup> R. Kim Cragin, "The November 2015 Paris attacks: the impact of foreign fighter returnees," *Orbis* 61, no. 2 (2017): 212; Anne Penketh, "French suspect in Brussels Jewish museum attack spent year in Syria," *The Guardian*, June 1, 2014

<sup>37</sup> European Parliamentary Research Service, *The return of foreign fighters to EU soil: ex-post evaluation* (Brussels, European Union, 2018), 6, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_STU\(2018\)621811](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2018)621811)

Finally, several authors argue that counterterrorism measures which infringe human rights are counterproductive,<sup>38</sup> as mentioned earlier. The infringements on human rights and/or undermining of fundamental freedoms might result in the fact that some individuals are willing to exercise unacceptable use of terrorist violence, which only increases the terrorist threat.<sup>39</sup> While examining the national approaches to the (returning) foreign terrorist fighter phenomenon more in detail, this notion can be tested in this specific case. This might add a more detailed view and understanding of the broader discussion on the relationship between security and human rights.

#### 1.4 Thesis structure

This thesis is designed in a series of chapters. The following chapter presents the theoretical framework of this thesis, in which relevant literature, theories and the sub questions are outlined. Chapter 3 covers the research design chapter. The operationalization and case selection will be presented here. The fourth chapter presents the international framework of counterterrorism polices, and more specifically the foreign fighter policies, after which chapter 5 and 6 provide the case descriptions. In chapter 7 both cases are analyzed, the sub questions are answered and a discussion is included, followed by the conclusion in chapter 8. The bibliography and appendices finalize the thesis.

---

<sup>38</sup> Bures, "EU's responses," 11

<sup>39</sup> Nowak and Charbord, *using human rights*, 4 and 79

## Chapter 2: Theoretical framework

### 2.1 Human rights obligations

This thesis argues that states should counter terrorism and the threat posed by returning foreign terrorist fighters while complying with international law and human rights obligations for several reasons. States have a legal (and binding) obligation to comply with international human rights law. International human rights law refers to the whole body of international law aimed at promoting and protecting human rights. Various international and regional declarations, treaties and agreements created the legal foundation for protecting fundamental human rights. If states become parties to international treaties, states assume certain obligations and duties to respect under international law. Therefore, states always have the obligation to comply with the international human rights agreements, also while countering terrorism. This position is also addressed in the General Assembly, the UN Security Council and the Human Rights Council.<sup>40</sup> Following the jurisprudence discussed here, wherever states have a choice, it must adopt measures that are most consistent with its international human rights obligations.<sup>41</sup>

As mentioned, this thesis focuses specifically at the human rights obligations as outlined in the Universal Declaration of Human Rights. These rights are considered to be universally to all people worldwide. Human rights are understood in this thesis differently from civil liberties. These are understood as those rights and freedoms which protect an individual from the state and are recognized by a particular country. The focus of this study is therefore specifically on international human rights obligations and not civil liberties. More specifically, this thesis focuses on the right to freedom of movement (Article 13 of the UNDHR) and the right to a nationality (Article 15 of the UNDHR).

An individual's right to freedom of movement is also ratified in the International Covenant on Civil and Political Rights (ICCPR).<sup>42</sup> Member States of the European Union additionally signed the European Convention for the Protection of Human Rights and Fundamental Freedoms, which covers human rights protection.<sup>43</sup> Both the United Kingdom

---

<sup>40</sup> Alex Conte, "States' prevention and responses to the phenomenon of foreign fighters against the backdrop of international human rights obligations," in *Foreign fighters under international law and beyond*, ed. Andrea de Guttry, Francesca Capone and Christophe Paulussen (The Hague: TMC Asser Press, 2016), 291

<sup>41</sup> *Ibid.*, 296

<sup>42</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1991, Article 12(2)

<sup>43</sup> Cory Kopitzke, "Security Council Resolution 2178 (2014): An Ineffective Response to the Foreign Terrorist Fighter Phenomenon," *Indiana Journal of Global Legal Studies* 24, no. 1 (2017): 325

and France are signatories to this convention. However, the UK signed, but not ratified the fourth protocol of this convention.<sup>44</sup> Article 2 of the fourth protocol of the European convention on Human rights, provides the right to free movement within a country and the right to leave any country. Article 3 of this protocol prohibits the expulsion of national citizens and provides the right of individuals to enter the country of their nationality.<sup>45</sup>

States also have obligations towards the right to a nationality. A nationality cannot be deprived arbitrarily. Nationality deprivation is in the current state of development of international law not per se arbitrarily, as states are entitled to deprive nationality against the wishes of an individual, as long as certain legal safeguards are respected.<sup>46</sup> To the UN bodies, this means that a state can only deprive a citizenship if the standards of necessity, proportionality and reasonableness are met.<sup>47</sup> More specifically, the report of the UN Secretary-General on Human rights and arbitrary deprivation of nationality of 2013<sup>48</sup>, stated that five checks must be satisfied by national governments. The first condition is that nationality deprivation is clearly regulated in domestic law. The second condition to be met is that the deprivation of a nationality must be taken in accordance with standards of due process. For example, a person must have the opportunity to appeal the decision. Even if these requirements are met, a nationality can still be deprived arbitrarily if it does not serve legitimate aim. The aim of preventing terrorism and protecting national security can be viewed as a legitimate aim. A fourth requirement is that nationality deprivation is considered to be ‘the least intrusive means of those that might achieve the desired result’.<sup>49</sup> Finally, a national government must ensure that the measure of nationality deprivation is proportionate in the specific circumstances in this case. The interests and rights of the individual must be weighted to the interests of the state.

The foremost restriction placed by international human rights law on depriving citizenship, is set out in the UN Convention on the Reduction of Statelessness of 1961. Article 8 (3) of this convention sets out that no state shall ‘deprive a person of his nationality

---

<sup>44</sup> “Chart of signatures and ratifications of Treaty 046,” Council of Europe, accessed on 31 July 2019.

[https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/046/signatures?p\\_auth=sPVGQQe3](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/046/signatures?p_auth=sPVGQQe3)

<sup>45</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, Article 2 and 3

<sup>46</sup> Sandra Mantu, “‘Terrorist’ citizens and the human right to nationality,” *Journal of contemporary European Studies* 26, no. 1 (2018): 29

<sup>47</sup> *Ibid.*, 30

<sup>48</sup> UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 19 December 2013, A/HRC/25/28

<sup>49</sup> Laura van Waas, “Foreign fighters and the deprivation of nationality: national practices and international law implications,” in *Foreign fighters under international law and beyond*, ed. Andrea de Guttry, Francesca Capone and Christophe Paulussen (The Hague: TMC Asser Press, 2016), 478

if such deprivation would render him stateless' unless, for example, the individual's conduct is 'seriously prejudicial to the vital interests of the state'.<sup>50</sup>

In addition to the UN standards, obligations concerning nationality are also imposed on the UK and France by regional treaties like the European Convention on Human Rights (ECHR) and the European Convention on Nationality (ECN, 1997).<sup>51</sup> Both France and the UK are parties to the ECHR. However, only France has signed the ECN, while this convention goes further in limiting a state's power to deprive a nationality.<sup>52</sup>

Western liberal democracies have besides a legal obligation also a moral obligation to comply with international human rights obligations. Upholding and respecting human rights and international law is an essential component for Western liberal democracies. Not complying with these standards would make them morally similar to terrorist states.<sup>53</sup> Even if it may seem necessary to defeat terrorism, the use of brutal (military) means run contrary to the very essential principles liberal democracies represent.<sup>54</sup> In order for democracies to counteract the threat of terrorism without losing their democratic souls, these democracies should therefore uphold their international human rights obligations. Moreover, even if states would turn into a police state, terrorist attacks like stabbings, shooting random people or run people over by a car, may still not be prevented. Actions like these are out of control, even for a police state, meaning that full safety cannot be guaranteed completely. Hence, a state can comply with international law and international human rights principles while accepting that sometimes a terrorist attack might occur or move gradually in the direction of a police state while still be confronted with the chance of the occurrence of an attack. The latter might harm more in the end as measures aimed at certain groups within society might lead to discrimination, radicalization and further polarization. It must be noted that this thesis does not argue that counterterrorism policies should not be implemented, because terrorist attacks might occur anyway, but stresses the importance of implementing counterterrorism policies with respect to human rights obligations.

---

<sup>50</sup> Van Waas, "deprivation of nationality," 481

<sup>51</sup> Mantu, "human right to nationality," 30

<sup>52</sup> Ibid., 31

<sup>53</sup> Paul Wilkinson, *Terrorism versus democracy* (London: Routledge, 2011), 87

<sup>54</sup> Michael Ignatieff, *The Lesser evil: political ethics in an age of terror: the Gifford lectures* (Princeton: Princeton University Press, 2004), 133-136.

Currently, human rights protection while countering terrorism is often debated. However, throughout past decades, the prominence of human rights protection and promotion in international counterterrorism varied. During the Cold War, ambitions on promoting human rights were obstructed by a deadlocked UN Security Council.<sup>55</sup> However in the post-Cold War period in the 1990s, human rights values occupied a more prominent position in the international order. There are two main explanations for this more prominent position. Firstly, after the end of the Cold War, there was more scope and focus for the prevention of further mass human rights abuses through international responses. Secondly, in the context of globalization and the rapid economic growth, a perception emerged on the role human rights could play in promoting international stability.<sup>56</sup> Prior to the attacks of 9/11, human rights activists thus observed increased attention for international human rights standards.

After 9/11 however, there were obstacles for promoting and protecting human rights while countering terrorism. The international justice system of the 1990s was not constructed with the threat of international terrorism like that of 9/11 in mind. The UN and other intergovernmental agencies were therefore not fully adequate to deal with the new threats and security challenges posed by global Islamist terrorism.<sup>57</sup> For this reason, governments implemented in the post 9-11 period new legislation, laws and practices to counter this renewed threat of terrorism. Many scholars, lawyers and activists perceive the ‘war on terror’ as damaging international human rights.<sup>58</sup> The United States was one of the states that violated human rights in the name of the ‘war on terror’. The new formulation of international security that detached rights from security concerns was formulated by the Bush administration. Securing the world against the threat of terrorism soon became viewed as contradictory to strong international human rights institutions.<sup>59</sup> As the US carry great influence in the world, many other states followed this negative pattern of disregarding international human rights principles.<sup>60</sup> This does not imply that the US is the sole state responsible for human rights violations while countering terrorism, but it did set a negative example for other states, while paradoxically, the US is viewed as one of the leading voices for international human rights protection.<sup>61</sup>

---

<sup>55</sup> Wilson, *rights in the war*, 3

<sup>56</sup> *Ibid.*, 4

<sup>57</sup> Nowak and Charbourd, *using human rights*, 25; Wilson, *rights in the war*, 8

<sup>58</sup> Hicks, *impact on counter terror*, 217; Scheinin, “Impacts of post 9/11”, 92; Wilson, *rights in the war*, 14

<sup>59</sup> Wilson, *rights in the war*, 6

<sup>60</sup> Hicks, “*impact on counter terror*,” 217-18

<sup>61</sup> *Ibid.*, 218

As a result, some argue that governments have seized upon the war on terrorism to neglect international standards regarding human rights protection, leading to a setback in the human rights developments.<sup>62</sup>

## 2.2 Human rights violations while countering terrorism

Historically, tensions between upholding human rights and providing security have been observed several times. In times of heightened security threats, discussions arise about whether and to what extent human rights (as outlined in the UNDHR) can be (temporarily) superseded.<sup>63</sup> At some stage, most democratic states introduced counterterrorism measures within their borders aimed at strengthening the normal law in order to counter a terrorist emergency.<sup>64</sup> These measures are also referred to as “emergency powers” which Freeman describes as “a compromise that allows the government to ensure the security of the state while limiting the damage to liberty and democracy”.<sup>65</sup> These powers provide governments with extra sources and powers when the standard abilities of states are allegedly inadequate to cope with a crisis or threat. The use of these emergency powers allows states only to suspend some rights and liberties *temporarily*, until the government believes there is no longer a need to make use of the emergency powers.<sup>66</sup> The fact that these powers can be only be used temporarily is what makes them *emergency* powers. If a state would permanently suspend some rights and liberties to fight terrorism, it would no longer be an example of emergency powers, but of turning into a police state. The emergency measures differ in time, but also in scope; some will be able to suspend many liberties for all people, while other emergency measures may only suspend the liberties of a particular group within society, like suspected terrorists.<sup>67</sup> Wilkinson however argues that regardless how serious the threat may be, liberal democracies should never be tempted into using methods which conflict with essential values of liberal states like humanity, liberty and justice.<sup>68</sup>

The use of emergency measures therefore raises fundamental questions of what will become of human rights in times of emergency.

---

<sup>62</sup> Ibid., 210

<sup>63</sup> Zubeda Limbada and Lynn Davies, “Addressing the foreign fighters terrorist phenomenon from a human rights perspective,” *International Community Law Review* 18, no. 5 (2016): 484

<sup>64</sup> Wilkinson, *terrorism versus democracy*, 94

<sup>65</sup> Michael Freeman, *Freedom or security: the consequences for democracies using emergency powers to fight terror* (Westport, CT: Preager, 2003), 2

<sup>66</sup> Ibid., 2

<sup>67</sup> Ibid., 6

<sup>68</sup> Wilkinson, *Terrorism versus democracy*, 94

The literature discusses various ways in which human rights are violated by counterterrorism policies. It is important to differentiate between violating human rights and overriding human rights. McMahan describes that if we assume that rights are not absolute, it may be permitted to attack someone if this is necessary to prevent greater attacks, which would cause significantly greater harm, or to avoid violating other stronger rights. McMahan argues therefore that in cases like these, “one may permissibly do to another what she has a rights that one not to do”.<sup>69</sup> So if someone permissibly acts against a certain right, McMahan argues that someone infringes upon that rights. When a person impermissibly acts against a certain right, a right is violated. If the human harm is excessive in relation to the goals or if attacking that individual was not necessary for the prevention of a wrong for which he is responsible, then this person is not liable to attack.<sup>70</sup> The difference between violating and overriding human rights thus concerns proportionality.

Proportionality in the just war tradition concerns the problem of means and ends. As mentioned, while responding to terrorism, states make use of exceptional measures which seem to be justified by a particular result in a specific case, but they may in the long term create a precedent with damaging effect. For causing harm to be proportional, the harm caused for the achievement of a certain goal much be weighed and assessed. Only if the assessment is favorable, the harm caused by exceptional measure is proportionate. If not, the harm is disproportionate.<sup>71</sup> It may seem like that if stakes are high enough, any means can be justified. Nevertheless, the use of the earlier described emergency powers would only be just if rights are suspended in order to protect other equally important rights. If the suspensions do not enhance the right to security of the majority, the use of emergency powers would have no justification. Emergency measures should not only be used in order to provide the public with a feeling they are safer; states should be able to proof (to a legislature, a judiciary and public opinion) that the use of emergency powers will indeed enhance security.<sup>72</sup>

In the case of human rights, many rights may therefore be temporarily suspended in cases of emergency in which the security of a state is threatened, as long as states comply with international obligations and the measures are proportional.<sup>73</sup> Therefore, international and regional human rights instruments may allow for specific limitations. These limitations may

---

<sup>69</sup> Jeff McMahan, *Killing in war* (Oxford: Clarendon Express, 2009), 9-10

<sup>70</sup> *Ibid.*, 10

<sup>71</sup> *Ibid.*, 19

<sup>72</sup> Ignatieff, *Lesser evil*, 49

<sup>73</sup> Conte, “states’ prevention and responses,” 291

be the result of different interpretations of certain terms provided in treaties. For example, terms like ‘fair’ and ‘arbitrary’ can be understood differently by states.<sup>74</sup>

Limitations may also be permissible in cases of ‘limited’ or ‘qualified’ rights.<sup>75</sup> Not all human rights might have the same status in times of heightened security threats. Broadly seen, human rights can be divided into absolute, limited and qualified rights.<sup>76</sup> Absolute rights are those rights which no one can interfere with and the state cannot take these rights away. In the case of limited rights, it is precisely explained to what extent a right may be limited.<sup>77</sup> For example, the right to liberty is waived for criminals who pose a security threat. Qualified rights are those rights where there is a balance between an individual’s right and the interest of the wider society.<sup>78</sup> In times of heightened threats from terrorism, several human rights would constitute as qualified rights and hence, present conflicting aims. An example is the right to freedom of expression which is no longer upheld if this becomes a hate speech or racial hatred.<sup>79</sup>

### 2.3 Foreign terrorist fighter phenomenon

As mentioned, the foreign fighter phenomenon is not new. There have been several conflicts in history in which foreign fighters were present like the conflicts in Pakistan and Afghanistan.<sup>80</sup> David Malet describes these foreign fighters as “noncitizens of conflict states who join insurgencies during civil conflicts”.<sup>81</sup> Malet argues that these foreign fighters share the idea of being connected by a transnational identity that connects individuals and groups to foreign communities. Foreign fighters therefore feel the need to support fellow members of this community if they are under threat.<sup>82</sup> The ideological background of this shared transnational identity varies in different conflicts. Christophe Paulussen therefore defines a foreign fighter as an individual, who is driven by a religion, kinship or an ideology to leave his or her home country to join a foreign party in an armed conflict abroad.<sup>83</sup>

In the specific case of foreign terrorist fighters joining IS, this definition would not always apply. The personal motives of individuals to travel to the conflict zones are very

---

<sup>74</sup> Ibid., 292

<sup>75</sup> Conte, “states’ prevention and responses,” 292

<sup>76</sup> Limbada and Davies, “addressing the foreign,” 484

<sup>77</sup> Conte, “state’s prevention and responses,” 292

<sup>78</sup> Limbada and Davies, “addressing the foreign,” 484

<sup>79</sup> Ibid., 485

<sup>80</sup> Bakker, Paulussen and Entenmann, “Returning jihadist foreign fighters,” 12

<sup>81</sup> David Malet, *Foreign fighters: transnational identity in civil conflict*, (Oxford: Oxford University Press, 2013), 9

<sup>82</sup> Ibid., 4

<sup>83</sup> Paulussen, “repressing the foreign,” 3

diverse. Some of these individuals are status-seekers, others are zealots and yet others are identity seekers.<sup>84</sup> It is difficult to assess what exactly motives individuals to join the conflict in Syria and Iraq as there is not a clear profile of the individual foreign terrorist fighter.<sup>85</sup> Some commonalities have however been observed. The majority of those leaving to the conflict zones are single males, most often between the ages of 16 and 29. Woman and children form a minority. At the time these persons leave, they usually have no military or combat experience. Most of those who travel to the Syrian and Iraqi conflict zones have in common that they are either a second generation of Muslim immigrants or they recently converted to Salafist Islam.<sup>86</sup> Those who come from Europe often have an immigration background with at least one of the parents being Muslim. Most of the foreign fighters who left to the conflict zones, come from lower-class or middle-class families.<sup>87</sup> Some youngsters live in difficult circumstances: they struggle to come by, cannot find a decent job, come from broken families have problematic and/or deviant behavior.<sup>88</sup> For some youngsters, this perceived lack of prospects in their home country can be seen as a reason to be tempted to escape to the conflict zones.<sup>89</sup> They wish to leave behind a certain life, hoping to have a new start in the Caliphate.<sup>90</sup> However, socio-economic profiles are not always sufficient as an explanation for joining IS in the conflict zones. Not all foreign terrorist fighters come from deprived neighborhoods. Some European foreign terrorist fighters have college degrees, even though this does not apply for the majority of the cases.<sup>91</sup> There are also youngsters who travel to the conflict zones to live in a “true Islamic society” and want to be part of what they believe is a great Islamic revival. Yet others simply seek excitement and adventure and are thrill-seekers. Yet again another group of foreign terrorist fighters wants to impress their friends and family back home, as they were outfits there.<sup>92</sup> Coolsaet describes the conflict in Syria and Iraq as an instant opportunity for these people to go from ‘zero to hero’.<sup>93</sup>

---

<sup>84</sup> Schmid and Tinnes, “A European Perspective,” 35

<sup>85</sup> Bibi van Ginkel et al., “The foreign fighters phenomenon in the European Union: profiles, threats & policies,” *ICCT Research papers* 7, no. 2 (2016): 4

<sup>86</sup> Schmid and Tinnes, “A European Perspective,” 34

<sup>87</sup> *Ibid.*, 35

<sup>88</sup> Rik Coolsaet, *Facing the fourth foreign fighters wave: what drives Europeans to Syria, and to IS? Insights from the Belgian case* (Brussels: Egmont, The Royal Institute for International Relations, 2016): 35-36

<sup>89</sup> *Ibid.*, 36

<sup>90</sup> Schmid and Tinnes, “A European Perspective,” 36

<sup>91</sup> Coolsaet, *what drives Europeans*, 35

<sup>92</sup> Schmid and Tinnes, “A European Perspective,” 36

<sup>93</sup> Coolsaet, *what drives Europeans*, 39

As mentioned in chapter 1, the numbers of (European) foreign terrorist fighters increased majorly after the outbreak of the Syrian war and the rise of Islamic State in Iraq. Providing exact numbers of foreign terrorist fighters seems difficult, as governments and intelligence agencies face difficulties in assessing who has travelled to Syria. The main reason for this lies in the ease with which European fighters can travel through the Schengen area, and travel to Turkey to enter the border with Syria.<sup>94</sup> As time has passed, states are better able to provide more accurate estimates of the numbers of foreign fighters originating from their countries, but at the same time, they have become more cautious about revealing information like this.<sup>95</sup> Estimates show that about 40.000 foreigners in total have travelled to Syria and Iraq to fight in conflict zones.<sup>96</sup> About 5.000 of these originated from the EU. An average of 30 percent of these foreign fighters have already returned to their home countries.<sup>97</sup> Broadly seen, European foreign fighters returned in two waves. The first wave was in 2013-2014, prior to the declaration of the Caliphate by IS in June 2014. The second wave was in early 2015. Since 2015, a decrease in the number of foreign fighters travelling to Syria has been observed. Several reasons would have contributed to this trend, ranging from a loss in revenue making it more difficult to finance the fighters, to the loss of territory and military defeats, which decreased the attractiveness of the jihadist group.<sup>98</sup> This would have resulted in a drop of foreign fighters travelling to Syria and Iraq up to 90 percent in 2015/2016.<sup>99</sup> This decline in number of returnees did however not prevent an increased fear that European departees will come back after the military rollback of IS. The importance of the total number returnees seems relative, as only a few foreign fighters (or even individuals at home who are inspired by the jihad abroad) are able to stage successful attacks in Western democracies.<sup>100</sup> The terrorist attacks in Madrid (2004), London (2005) and more recently Paris (2015) and Brussels (2016) show that terrorist networks are capable of mass killings against Western homeland countries.<sup>101</sup>

---

<sup>94</sup> Bakker, Paulussen and Entenmann, "Returning jihadist foreign fighter," 19

<sup>95</sup> Barret, *Beyond the caliphate*, 9

<sup>96</sup> BBC, "IS Caliphate."

<sup>97</sup> Bures, "EU's responses," 1

<sup>98</sup> Kerstin Braun, "Home sweet home: managing returning foreign terrorist fighters in Germany, the United Kingdom and Australia," *International Community Law Review* 20, no. 3-4 (2018): 318; Thomas Gibbons-Neff, "Number of foreign fighters entering Iraq and Syria drops by 90 percent," *The Guardian*, April 26, 2016, [https://www.washingtonpost.com/news/checkpoint/wp/2016/04/26/number-of-foreign-fighters-entering-iraq-and-syria-drops-by-90-percent-pentagon-says/?noredirect=on&utm\\_term=.5b01636290c0](https://www.washingtonpost.com/news/checkpoint/wp/2016/04/26/number-of-foreign-fighters-entering-iraq-and-syria-drops-by-90-percent-pentagon-says/?noredirect=on&utm_term=.5b01636290c0)

<sup>99</sup> Gibbons-Neff, "Number of foreign fighters."

<sup>100</sup> Paulussen, "repressing the foreign," 4

<sup>101</sup> Wilkinson, *terrorism versus democracy*, 209

The threat of the foreign terrorist fighters of this particular conflict is therefore different compared to the threat posed by previous foreign fighters.<sup>102</sup> Currently, the return of these foreign fighters to their home countries is often viewed as the greatest terrorism and security threat.<sup>103</sup> During their stay in conflict zones, they acquire combat experience. They have been trained and hardened in war and possibly became more radicalized. This prompts the fear that these returnees might perpetuate the terrorist threat back in their home country through radicalization activities or by staging terrorist attacks.<sup>104</sup> The fear that foreign fighters might stage violent attacks upon their return is not universally shared. It must be noted that most returnees are unlikely to indeed engage in terrorist violence on their return.<sup>105</sup> Empirical evidence shows that only a minority of the returning foreign fighters plan or stage acts of terror in their home countries. For instance, Hegghammer's analysis shows that between 1990 and 2010, merely one in nine returnees perpetrated attacks in Western democracies.<sup>106</sup>

Bakker and de Roy van Zuijdewijn describe this notion as a low-probability, high-impact threat.<sup>107</sup> They describe how the physical threat and the number of casualties in violent attacks is relatively low. Therefore, they argue that the impact of the foreign fighter phenomenon is not proportional to the physical threat it poses to western democracies.<sup>108</sup> Nonetheless, it must be noted that the analysis of Hegghammer was conducted before the outbreak of the Syrian conflict. Therefore, it is questionable if this analysis would still hold in 2019. Nevertheless, recent attacks show that the threat is real. Within Europe, several terrorism-related incidents occurred in recent years, which have been linked to foreign fighters. In the attacks in Paris (2015) and Brussels (2016) for instance, foreign fighters had an important role as they represented over half of the perpetrators in Paris and half of the ones responsible for the Belgium attacks.<sup>109</sup> A survey of the Pew Research Center of 2017 therefore found that the fear for IS attacks ranked first in global concerns.<sup>110</sup>

---

<sup>102</sup> Kopitzke, "an ineffective response," 313

<sup>103</sup> Ibid., 313; Bakker and de Roy van Zuijdewijn, "low-probability, high-impact threat," 1

<sup>104</sup> European Parliamentary Research Service, "ex post evaluation," 5; Schmid and Tinnes, "A European perspective," 30

<sup>105</sup> Thomas Hegghammer, "Should I stay or should I go? Explaining variation in Western Jihadist' choice between domestic and foreign fighting," *The American Political Science Review* 107, no. 1 (2013), 1

<sup>106</sup> Ibid., 7

<sup>107</sup> Bakker and de Roy van Zuijdewijn, "low-probability, high-impact," 16

<sup>108</sup> Ibid., 17

<sup>109</sup> Cragin, "November 2015," 220

<sup>110</sup> "Globally, People Point to ISIS and Climate Change as Leading Security Threats," Pew Research Center, accessed on 22 July, 2019. [https://www.pewresearch.org/global/2017/08/01/globally-people-point-to-isis-and-climate-change-as-leading-security-threats/?utm\\_content=buffer5b9c6&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://www.pewresearch.org/global/2017/08/01/globally-people-point-to-isis-and-climate-change-as-leading-security-threats/?utm_content=buffer5b9c6&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

Therefore, even though there is no universal agreement on how serious the security threat posed by returning foreign terrorist fighters is, it is known that returned foreign terrorist fighters have been linked to recent violent terrorist attacks. Hence, this thesis argues that their return to their home countries could potentially be a security threat.

Nevertheless, the fact that not all fighters return to their home countries to stage attacks, poses difficulties for national governments to deal with these fighters. Some foreign terrorist fighters return from the conflict zones, because they were disappointed by what they found there<sup>111</sup> or left because they seek to leave behind a life of extremist violence.<sup>112</sup> If these persons return without any intention to be of any kind of threat to their home country, these people should not be convicted or punished just because they travelled to the conflict zones, as that would violate their human rights.

However, many of those who travel to Syria might not return, because many will die there. Either because they are killed by the Assad regime, by inter-jihadi fighting, or because IS knew they wanted to escape and therefore killed them.<sup>113</sup> Those foreign terrorist fighters who did not die in combat or returned to their home countries, might choose to stay in the conflict zones. Even though this seems convenient for Western democracies, this does not mean that foreign terrorist fighters no longer pose a threat to their home countries. While still being in the conflict zones, foreign terrorist fighters can help terrorist groups to develop and carry out attacks in European by linking with extremist networks and share valuable information about potential targets with them.<sup>114</sup> Another way in which fighters still in the conflict zones pose a threat to Western countries, is by making persistent threats directed at their home countries. They would for instance ask their “brothers” to rise up to a particular government.<sup>115</sup> Lone actors, those who attempted to travel to the Caliphate but failed and homegrown terrorists were in this way encouraged by IS to stage attacks in their home countries.<sup>116</sup> European and US intelligence services detected in 2013 signs that the two largest jihadist groups (Jabhat al-Nusra and Islamic State), recruited and trained Western military with the purpose to make

---

<sup>111</sup> Bakker, Paulussen and Entenmann, “returning jihadist foreign fighters,” 21

<sup>112</sup> Reed and Pohl, “Disentangling the EU,” 3

<sup>113</sup> Schmid and Tinnes, “A European perspective,” 28

<sup>114</sup> Reed, de Roy van Zuijdewijn and Bakker, “pathways of foreign fighters,” 3

<sup>115</sup> For example: HLN, “Jihadist roept Nederlandse en Belgische ‘broeders’ op tot actie,” filmed September 23 2014 at HLN, <https://www.hln.be/nieuws/buitenland/jihadist-roept-nederlandse-en-belgische-broeders-op-tot-actie~a459cdab/>

<sup>116</sup> Bures, “EU’s responses,” 1; HLN, “jihadist roept Nederlandse”; Reed and Pohl, “Disentangling the EU,” 3; Schmid and Tinnes, “A European Perspective,” 33

them carry out attacks in their home countries.<sup>117</sup> Therefore, attacks in recent years in Paris, Nice, Brussels, Manchester, Berlin and London are all viewed through the lens of the foreign fighter phenomenon.<sup>118</sup> The EU perceives an increase in threats posed by these lone actors and sleeper networks.<sup>119</sup>

The threat posed by foreign fighters is formed by several distinct threats. Besides a physical threat, foreign fighters also pose a societal impact on societies. The foreign fighter phenomenon generates fear which negatively affects social cohesion across Europe. This resulted throughout Europe in increased polarization. This thesis focuses however mainly on the physical security threat posed by foreign fighters, which is why the societal impact will not be further outlined here.

#### 2.4 Foreign terrorist fighter measures

This thesis argues that the most important reason for human rights compliance is the notion that failure to comply with international human rights obligations in counterterrorism policies may result in counterproductive policies, threatening the security of states even more.<sup>120</sup> Hence, human rights violations in counterterrorism policies is not only illegal, it may even be conducive to terrorism.<sup>121</sup> This part of the theoretical framework therefore focuses on (counterproductive) counterterrorism policies, foreign fighter approaches specifically and human rights violations and obligations in these approaches.

In response to the attacks staged by terrorist foreign fighter and the foreign fighter phenomenon in general, politicians have adopted, implemented or announced various legislations and measures. Broadly seen, these measures are divided in two categories: soft, preventive approaches and hard, repressive (or restrictive) approaches.<sup>122</sup>

At the heart of the ‘soft approach’, are reintegration programs. These programs aim at the peaceful reintegration of foreign fighters who have returned to their home countries. The Aarhus model in Denmark is the best-known example of such a program.<sup>123</sup> Foreign fighters, who do decide to return to their home countries, could have returned because out of disappointment with the groups they fought with. These individuals might be willing to share

---

<sup>117</sup> Lorenzo Vidino, “European foreign fighters in Syria: dynamics and responses,” *European View* 13, no. 2 (2014): 219

<sup>118</sup> European Parliamentary Research Service, “ex-post evaluation,” 26

<sup>119</sup> Van Ginkel et al., “profiles, threats & policies,” 15

<sup>120</sup> Bures, “EU’s responses,” 11

<sup>121</sup> Nowak and Charbord, *Using human rights*, 79

<sup>122</sup> Paulussen, “repressing the foreign,” 4

<sup>123</sup> Alastair Reed, Jeanine de Roy van Zuijdewijn and Edwin Bakker, “Pathways of foreign fighters: policy options and their (un)intended consequences,” *ICCT Research Papers* 6, no. 1 (2015), 8

information about other groups or individuals still present in Syria and Iraq.<sup>124</sup> Returnees who have become disillusioned with the jihadist views could potentially be a crucial resource in countering radicalization, as these fighters have a great deal of credibility in radical circles at home.<sup>125</sup> If successful, these programs could be seen as the “best case scenario” for western democracies. The approach received criticism as some argue that it would be dangerously naïve to believe this would be effective and the potential threat posed by foreign fighters upon return is underestimated.<sup>126</sup> Additionally, these programs could have the unwanted effect that it stimulates fighters still in conflict zones in Syria and Iraq to return home, while otherwise they maybe would have remained in the conflict zones. Whereas prosecution upon return could lower numbers of returnees, the existence of these reintegration programs (and the benefit form all the services offered) could actually serve as a stimulus to return.<sup>127</sup>

One of the most used hard approaches is the one of prosecution. In most countries, joining a fighting party is not a criminal offense, on the condition that that party is not in a direct conflict with the country. Hence, if countries want to prosecute foreign fighters for terrorist motives, they can charge them for planning or executing terrorist actions while they are still in the conflict zones in Syria or Iraq, or they criminalize the act of joining a designated terrorist organization.<sup>128</sup>

A measure even more repressive than prosecution is the act of depriving someone’s nationality. This measure is widely used by states to counter the foreign terrorist fighter phenomenon and is gaining momentum among policymakers.<sup>129</sup> Revoking someone’s nationality is not the same as confiscating a passport. The latter measure is often used in order to prevent people from travelling to Syria. Revoking a nationality could be done before departure, during fighting and upon return.<sup>130</sup> Revoking travel documents is increasing in cases when authorities suspect a serious intent to become a foreign fighter and travel to conflict zones. Depriving an individuals’ nationality is more likely to be pursued when someone is already fighting or has returned. As discussed previously, depriving nationalities could leave certain people stateless. Additionally, it is not clear what impact this act could have on the wider communities of which the individual is a member.<sup>131</sup> The most dangerous

---

<sup>124</sup> Bakker, Paulussen and Entenmann, “Returning jihadist foreign fighter’s,” 20

<sup>125</sup> Reed, de Roy van Zuijdewijn and Bakker, “Pathways of foreign fighters,” 4

<sup>126</sup> Bakker, Paulussen and Entenmann, “returning jihadist foreign fighters,” 21-22

<sup>127</sup> Reed, de Roy van Zuijdewijn and Bakker, “Pathways of foreign fighters”, 11

<sup>128</sup> Ibid., 9

<sup>129</sup> Mantu, “human right to nationality,” 28

<sup>130</sup> Reed, de Roy van Zuijdewijn and Bakker,” 12

<sup>131</sup> Limbada and Davies, “Addressing the foreign,” 489

unintended consequence of revoking someone's nationality is that it could result in serious grudges against the country responsible for this decision (either by the person whose nationality is revoked or by his or her friends/family/community). Additionally, the revoking of nationalities could also have a deterrent effect on prospective foreign fighters. It shows that there is no way back once a person has left to join the fight in Syria and Iraq.

Besides the unintended consequences this measure can have, the effectiveness of the measure is also questioned. Criticism on revoking citizenship aims at the argument that this measure does not address the problem, but simply shifts it to another location.<sup>132</sup> A possible risk might be that control of terrorist suspects transfers to governments that may not prosecute them. Furthermore, once terrorist know they are *persona non grata* they may commit attacks elsewhere, for instance on foreign-based facilities of the country that revoked their citizenship.<sup>133</sup>

One of the relatively new types of measures in specifically the foreign terrorist fighter approach are so-called administrative measures. The use of administrative measures in counterterrorism is not new, but in the post 9/11 era, the use of this type of measures became more significant.<sup>134</sup>

Even though administrative measures are used more often in the counterterrorism context, there is no explicit definition defined at the international level.<sup>135</sup> The lack of definition of the concept could possibly originate from the different practices and purposes the measures have. Some administrative measures aim at the prevention of individuals travelling to Syria and Iraq (like travel bans) while other measures aim to prevent their return (like entry bans or revoking citizenship) and yet other measures address the threat in the territory state itself.<sup>136</sup> Using administrative measures as preventive tools allows governments agencies to intervene at an earlier stage. This fits in the more general shift towards preemptive approaches to counter terrorism rather than prosecuting after the damage has already been caused.<sup>137</sup> Other measures are more restrictive and repressive and allow for bypassing of

---

<sup>132</sup> Reed, de Roy van Zuijdewijn and Bakker, "pathways of foreign fighters," 13

<sup>133</sup> Tayler, "human rights rollbacks," 471

<sup>134</sup> Tuomas Ojanen, "administrative counter-terrorism measures- a strategy to circumvent human rights in the fight against terrorism?" in *Secrecy, national security and the vindication of constitutional law*, edited by David Cola, Federico Fabbrini and Arianna Vidaschi (Cheltenham: Edward Elgar Publishing): 250

<sup>135</sup> Bérénice Boutin, "Administrative measures against the foreign fighters: in search of limits and safeguards," *ICCT Research Paper 7*, no. 12 (2016): 4

<sup>136</sup> *Ibid.*, 3

<sup>137</sup> *Ibid.*, 19

constraints of criminal procedures, because these measures are usually justified by the need to prevent terrorist violence. The fact that administrative measures are thus predominantly proactive and preventive, but also have a repressive aspect, might explain the increased use of these measures.<sup>138</sup>

In short, administrative measures are territorially focused (they can address foreign fighter within a state's own territory) mainly preventive in nature (they apply before a terrorist act has occurred) and can be rather restrictive (for the persons the measures apply to). Finally, the measures all have different procedures depending on the country, with varying degrees of involvement of the executive and judiciary.<sup>139</sup> Boutin therefore proposes the following working definition on administrative measures: "restrictive measures aimed at preventing terrorism within the territory of a state, decided upon and ordered by the executive (or with its close involvement), and subject to limited judicial review".<sup>140</sup>

Several states increasingly rely upon these type of measures in their approaches towards foreign terrorist fighters. However, the fact that these measures address a broader scope of behaviors raised concerns about shortcomings in the protection of human rights.<sup>141</sup> As described before, in times of heightened security threats, several rights may be superseded. Some human rights are more at play in state's responses to the foreign fighter phenomenon than others. The right to freedom of movement and the right to a nationality or citizenship have already been mentioned before. Another right that is often violated is the right to a fair and free trial.<sup>142</sup> Criticism on administrative measures therefore also revolve around the limited procedural guarantees available which can result in violations of the right to have a fair trial.<sup>143</sup> Additionally, due to the lower standards of review, these measures can also be imposed on secret information collected by intelligence services which have not been disclosed with the suspect, and makes it therefore even more difficult to challenge the measures against the suspect.<sup>144</sup>

Finally, many countries also expanded police and intelligence powers to counter the threat posed by terrorists and foreign terrorist fighters. Several of the provisions of the police

---

<sup>138</sup> Ojanen, "administrative counter-terrorism," 251

<sup>139</sup> Boutin, "administrative measures against," 4

<sup>140</sup> *Ibid.*, 5

<sup>141</sup> *Ibid.*, 3

<sup>142</sup> Universal Declaration of Human rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948), article 6

<sup>143</sup> Boutin, "administrative measures against," 22

<sup>144</sup> *Ibid.*, 22

and intelligence agencies could for example violate the rights to privacy<sup>145</sup> and right to freedom of expression,<sup>146</sup> without effective oversight.<sup>147</sup> An examples of this is the state of emergency in France (as outlined in chapter 6) which allowed to police to seize personal data from phones or computers, without approval from a judge.<sup>148</sup>

### 2.5 Sub questions

In order to answer the research question, several sub questions are presented here. These sub questions will be answered in chapter 7, after which the research question is answered in the conclusion chapter.

Within the United Nations and the European Union, attention for ensuring fundamental and human rights while countering terrorism has increased. However, as outlined previously in this chapter, states may (temporarily) suspend certain rights in times of heightened security threats.<sup>149</sup> Several European countries, including France and the UK, have suffered violent jihadist terrorist attacks recently. As national governments are pressured to prevent similar future attacks from occurring, it is expected that these governments have introduced new legislation. However, the question is whether in this case it could also be argued that governments seize upon the war on terror (and the war against IS foreign terrorist fighters more specifically), to neglect international human rights obligations.<sup>150</sup> This leads to the first sub question: *Are recent IS related terrorist attacks (from 2011 onwards) connected with the implementation of new approaches aimed at preventing the movement from foreign terrorists fighters in the UK and France?*

In addition to examining the importance of heightened security times in human rights violations in foreign terrorist fighter approaches, this thesis also focuses on what human rights are actually violated. At a first glance, as this thesis focuses primarily on those approaches which aim to prevent the movement of foreign terrorist fighters, it is expected that the rights to freedom of movement and to nationality are violated. However, other human rights violations might also be observed. Therefore, the second sub question is the following: *What*

---

<sup>145</sup> Universal Declaration of Human rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948), article 12

<sup>146</sup> *Ibid.*, article 19

<sup>147</sup> Tayler, "human rights rollbacks," 471

<sup>148</sup> *Ibid.*, 472

<sup>149</sup> Conte, "States' prevention and responses," 291

<sup>150</sup> Hicks, "impact on counter terror," 210

*specific human rights obligations are violated in the UK and France in their approaches aimed at preventing the movement of foreign terrorist fighters?*

The final sub question focuses on improvements for counterterrorism policies. In order to limit human rights violations in counterterrorism approaches, several authors make suggestions. As the foreign fighter threat has multiple dimensions, a comprehensive approach is needed to counter the totality of the threat.<sup>151</sup> This entails that all aspects of the foreign fighter phenomenon (political, sociological, etc.) should be addressed. Tackling only one aspect of the foreign fighter threat will necessarily influence other aspects leading to unintended consequences. It is therefore mainly argued that governments should seek to find the right balance between hard, repressive approaches and soft, preventive approaches.<sup>152</sup> The use of administrative measures should be limited to situations in which they are both effectively protective and not excessively restrictive.<sup>153</sup> In order to ensure full compliance with human rights obligations, the literature provides many more suggestions,<sup>154</sup> like implementing safeguards when administrative measures are used,<sup>155</sup> setting up monitoring oversight mechanisms,<sup>156</sup> and developing a common understanding of the foreign terrorist fighter phenomenon.<sup>157</sup> However, these suggestions focus on all kinds of human rights violations by foreign terrorist fighter approaches. This thesis focuses specifically on those approaches aimed at preventing the movement of foreign terrorist fighters. Therefore, the final sub question is the following: *How could the approaches aimed at restricting the movement of foreign terrorist foreign fighters in the UK and France be improved?*

---

<sup>151</sup> Bakker, Paulussen and Entenmann, "Returning jihadist foreign fighters," 22; Reed and Pohl, "Disentangling the EU," 3

<sup>152</sup> Bakker, Paulussen and Entenmann, "Returning jihadist foreign fighter," 21

<sup>153</sup> Boutin, "administrative measures against," 24-25

<sup>154</sup> Not all suggestions are outlined here. For more suggestions see Boutin and Bakker, Paulussen and Entenmann.

<sup>155</sup> Boutin, "administrative measures against," 3-4

<sup>156</sup> Ibid, 24-25

<sup>157</sup> Bakker, Paulussen and Entenmann, "Returning jihadist foreign fighter," 31

## Chapter 3: Research design

This chapter outlines the research design of this study. The chapter starts with conceptualizing one of the main concepts in this study, followed by a description of the research design type used in this study. Afterwards, the case selection is explained and justified, and this chapter finalizes by describing the limitation of this research.

### 3.1 Conceptualization

This thesis focuses on a specific form of counterterrorism policies. Therefore, the concepts of terrorism and counterterrorism policies will be outlined here. Defining the concept of ‘terrorism’ has been a struggle for decades for many international organizations and states. Hence, there is no universal agreement on the definition of the concept. Most authors do agree however on several characteristics of terrorism. The purpose of terrorism is to destroy a nation’s morale and undercut the solidarity of the nation.<sup>158</sup> The method used by terrorists is the deliberate killings of innocent people, or non-combatants.<sup>159</sup> This violence is used to spread fear amongst the population of the terrorized nation. A crucial feature in these deliberate killings, is that these terrorist activities are random.<sup>160</sup> In order to increase feelings of fear, terrorist should not kill specific persons affiliated with certain regimes, or parties. Terrorists will try to increase fear amongst certain groups up to a point where these groups feel themselves fatally exposed to the terrorist threat and demand their own governments to negotiate for their safety.<sup>161</sup> Some argue that terrorism is a kind of activity which is usually employed by weaker polities to attack much stronger polities.<sup>162</sup> In the case of Islamic terrorism this is indeed true.

The lack of a universally accepted and comprehensive definition of terrorism remains an obstacle in constructing a worldwide approach in combating terrorism. The United Nations attempted to establish a widely accepted definition of terrorism for decades. The United Nations Security Council defined in the unanimously adopted Resolution 1566 the concept of terrorism as:

---

<sup>158</sup> Michael Walzer, *Just and unjust wars: a moral argument with historical illustrations* (New York: Basic Books, 1977), 197

<sup>159</sup> Walzer, *Just and unjust wars*, 197; Jeffrey Whitman, “Just war theory and the war on terrorism: a utilitarian perspective,” *Public Integrity* 9, no. 1 (2007): 24

<sup>160</sup> Michael Walzer, *Arguing about war* (New Haven: Yale University Press, 2004), 130; Whitman, “just war theory,” 24

<sup>161</sup> Walzer, *Just and unjust war*, 197

<sup>162</sup> Whitman, “just war theory,” 24

Criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the merely international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.<sup>163</sup>

For this thesis specifically, the definition of terrorism as provided by Wilson will be used; “deliberate and systematic attacks by state or non-state actors upon civilian non-combatants with the intent to create a generalized state of terror in order to further an ideological cause”.<sup>164</sup> The only adjustment is that this thesis focuses specifically on terrorist attacks and threats posed by non-state actors. State terrorism, is a form of terrorism which is commonly used by authoritarian and totalitarian governments against their own citizens, in order to make political opposition impossible by spreading fear.<sup>165</sup> The type of terrorism on which this thesis focuses is war terrorism which is characterized by the effort to kill civilians in large numbers in order to force their governments to surrender. As mentioned earlier, a universal element in this type of terrorism is the targeting of people which are so-called non-combatants. These people are not killed as a result of collateral damage but are killed intentionally. The specific kind of war terrorism this thesis focuses on is Islamic terrorism. The enemy in Islamic terrorism is the infidel, and the US is viewed as the world leader of the infidel.<sup>166</sup> The Islamic State specifically can be described as an extremist jihadist movement which has declared the war on the non-Muslim world (and also some parts of the Muslim world, like the Shiites).<sup>167</sup> It seeks to unite the *ummah* which is the community of Muslims.<sup>168</sup> The main goal of IS is to overthrow the existing world order.<sup>169</sup>

Besides a lack of agreement on a definition of terrorism, there is also no consensus on the best response to the threat of (Islamic) terrorism. The world has been dealing with terrorism as a

---

<sup>163</sup> Security Council Resolution 1566, ¶13, U.N. Doc. S/RES/1566 (Oct. 8, 2004)

<sup>164</sup> Wilson, *Rights in war*, 2

<sup>165</sup> Walzer, *Arguing about war*, 130

<sup>166</sup> *Ibid.*, 133

<sup>167</sup> Schmid and Tinnes, “A European perspective,” 8

<sup>168</sup> *Ibid.*, 8; Bakker and de Roy van Zuijdewijn, “low-probability, high-impact”, 2

<sup>169</sup> Schmid and Tinnes, “A European perspective,” 8

strategy or tactic for a long time.<sup>170</sup> The nature of terrorist attacks has however changed over the years. Terrorism is no longer defined by solely large-scale planning, leading to major attacks like suicide bombings. Currently, small-scale attacks, like stabbings, are also used in the name of terrorism.<sup>171</sup> A purely defensive resistance might therefore not be the best response to terrorism, as it is almost impossible to protect citizens from these random small-scale attacks. However, implementing more repressive and punitive measures could be a dangerous business as this type of measures are often viewed as taking terrorist forms and therefore show similar excuses as the ones used by terrorists themselves. These forms of counterterrorism cannot be excused only because it is reactive to terrorism.<sup>172</sup> The only and best way to break this terrorist circle where all actors claim to responding to someone else, is to refuse to play the terrorist game.<sup>173</sup> The use of repression and retaliation are in this case only legitimate responses in countering terrorism if these measures are constrained by the very same moral principles that reject terrorism itself.<sup>174</sup>

### 3.2 Operationalization

The research design used in this study is a comparative case analysis. The number of researched cases in this study is two: The United Kingdom and France. The goal of comparative case study is to discover in rich detail similarities, differences or patterns between cases. Increased knowledge of similarities or differences between cases can contribute to developing or confirming theories and provide explanations.<sup>175</sup> Comparative case studies can be either qualitative or quantitative,<sup>176</sup> but is important for two cases to have some commonality in order to allow for comparisons.

The comparison of the cases is structured as a within-case study. A within-case analysis, as the name already suggests, analyses within a case, instead of across cases.<sup>177</sup> Several observations are made for a single case instead of measuring few variables for many cases. Therefore, this type of research design provides possibilities for a research of much greater depth, resulting in a better understanding and description of the phenomenon under

---

<sup>170</sup> Whitman, "just war theory," 24

<sup>171</sup> Nowak and Charbord, *Using human rights*, 2

<sup>172</sup> Walzer, *Arguing about war*, 60

<sup>173</sup> *Ibid.*, 65

<sup>174</sup> *Ibid.*, 61

<sup>175</sup> Robert K. Yin, *Case study research: design and methods* (Thousand Oaks, CA; SAGE publications Inc., 1994), 15

<sup>176</sup> *Ibid.*, 14

<sup>177</sup> Dimitar Toshkov, *Research design in political science*, (New York: Palgrave, 2016), 285

study. The within-case analysis is used to develop a stand-alone description of each case, after which the two cases are compared to identify similarities and differences. The results of the within case analysis are used to test the notion that human rights violations keep occur while countering terrorism.

This study makes use of publicly available information on a variety of measures aimed at preventing the movement of foreign terrorist fighters. In doing so, the thesis focuses specifically on measures implemented within the borders of the researched countries. This means that measures aimed at preventing the movement of foreign terrorist fighters in the Iraqi and Syrian conflict zones, or at other borders besides national borders, fall outside the scope of this research.

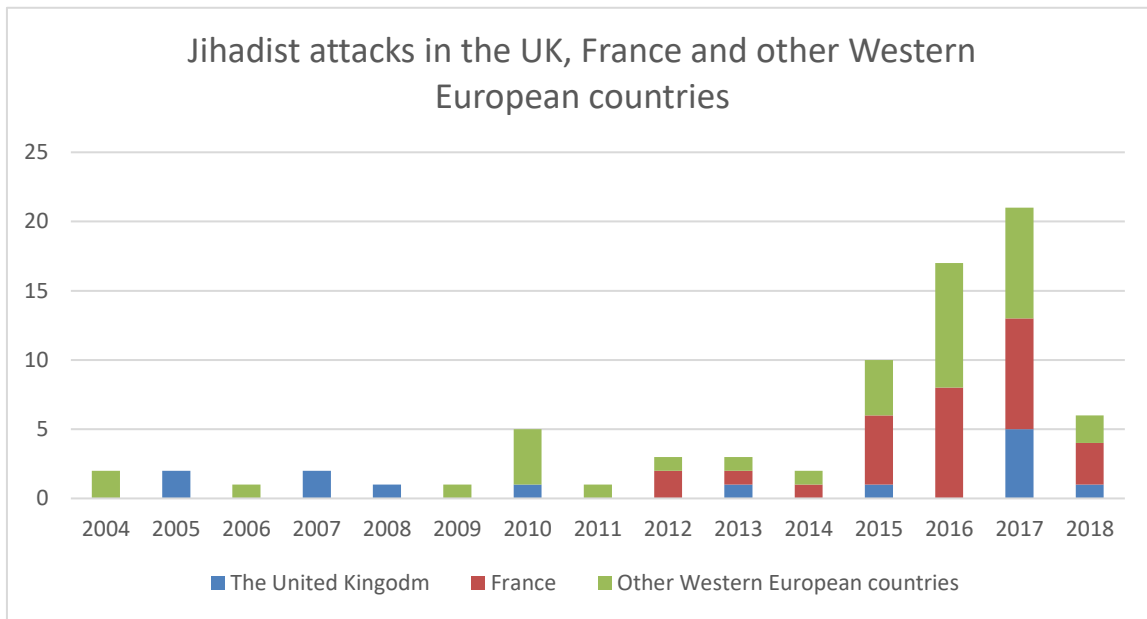
### 3.3 Case selection

For this study, the domestic approaches for this international threat of two selected countries are examined: The United Kingdom and France. These countries have been chosen for several reasons. Both countries suffered terrorist (jihadist) attacks. France suffered the most jihadist terrorist acts in the past 15 years. A total of 27 percent of all jihadist terrorist attacks (a total of 112) in these years in Western countries (this includes the United States, Canada and Australia) have been conducted in France. The second Western country most often hit by jihadist terrorist attacks is the US with a percentage of 20 percent of all the attacks, followed by the UK with a percentage of 13 percent of all jihadist attacks in Western countries.<sup>178</sup> France and the UK thus suffered the highest number of jihadist attacks in Europe and are therefore more likely to have implemented foreign terrorist fighter specific measures in order to prevent new jihadist terror attacks.

---

<sup>178</sup> Algemene Inlichtingen- en Veiligheidsdienst, *Doelwitten in beeld: vijftien jaar jihadistische aanslagen in het Westen* (Den Haag: AIVD, 2019), 19

Figure 1: Overview jihadist attacks in Western Europe in the last 15 years<sup>179</sup>



As figure 1 shows, some variation in the location of jihadist terrorist attacks in Western Europe can be observed. In the first years, the UK was the country in Western Europe which suffered a significant part of the total jihadist attacks, while in the last six years, France suffered a great share of all jihadist attacks in Western Europe. Hence, both countries share the similarity of having witnessed several jihadist attacks in their own countries, but the time period differs between the two.

Additionally, even though the two countries both witnessed the most jihadist terror attacks in Western Europe, there is an interesting difference observed between the two countries in the numbers of departees and returnees to and from the conflict zones in Syria and Iraq. Estimates show an average return rate of EU departees of 22 to 24 percent.<sup>180</sup> The return rates vary across the EU member states. As table 1 shows below, France has a much lower return rate of 16 percent while the UK has a return rate as high as 50 percent.<sup>181</sup>

<sup>179</sup> Absolute numbers and a list of attacks included in this graph are provided in appendix 1 and retrieved from AIVD, "Tijdslijn van aanslagen in het Westen," Algemene Inlichtingen- en Veiligheidsdienst, accessed 25 May 2019, <https://www.aivd.nl/onderwerpen/terrorisme/tijdslijn-van-aanslagen-in-het-westen>

<sup>180</sup> Barret, *Beyond the Caliphate*, 12

<sup>181</sup> *Ibid.*, 12-13

Table 1: Foreign terrorist fighter return rates from Syria and Iraq

	<b>Departees</b>	<b>Returnees</b>	<b>Return Rate</b>	<b>Date</b>
<b>France</b>	1.910	302	16%	08/2017
<b>United Kingdom</b>	850	425	50%	02/2017
<b>EU total</b>	~5.000	~1.200	24%	04/2016

Both countries also differ in their counterterrorism approaches. France is known for its preemptive counterterrorism approach. After the 7 July attacks in 2005 in London, several European countries including the UK, attempted to borrow policies from the French counterterrorism approach. British (and American) officials both recognized that France was the first country to recognize the radical Islamic terrorist threat.<sup>182</sup>

### 3.4 Limitations of the research

The comparative case analysis conducted in this research has some weaknesses. The foremost weakness is the lack of possibility of generalization beyond the two cases researched here.<sup>183</sup> This thesis focuses only on two specific countries and a specific set of policies. This entails that the findings of this study do not necessarily have to apply on other Western European countries or other sets of foreign fighter policies. Therefore, the external validity of this research remains low.

Secondly, the source of evidence for this study is based on documentation of publicly available information. The strengths of this type of evidence is that it is stable and can be reviewed anytime. Especially the primary sources used in this study are precise and use exact names, details and references. Finally, the data is available for a long span of time. However, not all foreign terrorist fighter policies implemented by the UK and France might be made public in detail. This could nonetheless result in biased selectivity of the information.<sup>184</sup>

<sup>182</sup> Calliope Makedon Sudborough, "The war against fundamental rights: French counterterrorism policy and the need to integrate international security and human rights agreements," *Suffolk Transnational Law Review* 18, no. 5 (2016): 459

<sup>183</sup> Toshkov, *research design*, 282

<sup>184</sup> Yin, *Caste study research*, 80

## Chapter 4: International context

Responses to the foreign terrorist fighter phenomenon involves a multitude of potential initiatives at the international, national and regional level. In order to fully understand and research the specific foreign terrorist fighters approaches in the UK and France, the international framework in which these approaches are embedded. are outlined in this chapter. UN conventions and resolutions form the pillars of the international legal tools for responding to the threat of terrorism and EU legislation can serve as guidelines for its member states. Describing all UN and EU legislation aimed at counterterrorism is beyond the scope of this research. Hence, the most relevant legislations regarding countering the foreign terrorist fighter phenomenon are outlined here. Additionally, counterterrorism policies which have been implemented before the Syrian conflict are also presented if they serve as a basis or the framework for later legislation on the foreign terrorist fighter phenomenon discussed in this thesis or shed light on the human rights violations within counterterrorism policies.

### 4.1 United Nations framework

The attacks on September 11 2001, have changed the context of UN activities. After these, the United Nations provided a broader approach towards terrorism and it stepped forward to assume bigger responsibilities in the fight against terrorism. The fact that the attacks had been the result of international terrorism required a multilateral and transnational response.<sup>185</sup>

Before 9/11, the subject of terrorism was treated by the UN as a General Assembly issue. After September 11, the Security Council became the main actor on terrorism within the UN.<sup>186</sup> The UN Security Council adopted on 28 September 2001 Resolution 1373, which serves as the basis for the UNSCR counterterrorism framework.<sup>187</sup> It was the first time the Security Council imposed general and permanent obligations, not connected to a specific conflicts situation, on all Member States.<sup>188</sup> Resolution 1373 incorporated provisions from existing UN counterterrorism conventions, which had not been universally adopted until then. By integrating these into Resolution 1373, it made all these previous provisions binding on all UN member states.<sup>189</sup> The Resolution mandates all member states to take a proactive

---

<sup>185</sup> Bruno Oliveira Martins, "The political-legal nexus in EU counter-terrorism: an assessment of the two-track influences between the EU and the UN," *European Politics and Society* 17, no. 2 (2015): 185

<sup>186</sup> Nicholas Rostow, "Before and after; the changed UN response to terrorism since September 11<sup>th</sup>," *Cornell International Law Journal* 35, no. 3 (2002): 481

<sup>187</sup> Nowak and Charbord, *Using human rights*, 17

<sup>188</sup> Security Council Resolution 1373, U.N. Doc, S/RES/1373 (Sep. 28, 2001)

<sup>189</sup> Sudborough, "war against fundamental rights", 486

approach to combat terrorism. These approaches include increasing criminalization, implementing harsher sentencing for terrorist acts, increase sharing intelligence information with other member states, tightening border controls in order to prevent migration of terrorists and freezing funds of financing terrorist groups and acts.<sup>190</sup>

Additionally, Resolution 1373 established the Counter-Terrorism Committee (CTC), a subsidiary body of the United Nations Security Council. The committee was established to monitor the implementation of the resolution by the member states. Resolution 1373 included a 90-day deadline for member states to report to the CTC on their implementation to adopt legislation.<sup>191</sup> As a result of this imposed deadline, it is argued that states have adopted legislation in a rushed manner. In order to adopt the legislation on such short notice, member states often used exceptional powers or procedures, often without sufficient consultation.<sup>192</sup>

One generally agreed upon critique on this resolution, is the lack of a clear definition of terrorism.<sup>193</sup> It leaves member states to define terrorism under their own domestic laws.<sup>194</sup> In this way, it is argued that the Resolution can focus instead on raising the capacity and capabilities for countering terrorism, leaving arguing about what entails terrorism to other UN bodies and organizations.<sup>195</sup> Additionally, resolution 1373 failed to mention human rights compliance. A former CTC chairman addressed this as following:

The Counterterrorism Committee is mandated to monitor the implementation of resolution 1373 []. Monitoring performance against other international conventions, including human rights law, is outside the scope of the Counterterrorism Committee's mandate. But we will remain aware of the interaction with human rights concerns, and we will keep ourselves briefed as appropriate.<sup>196</sup>

This shortcoming was corrected in resolution 1456 (2003). This resolution stated that: "states must ensure that any measures taken to combat terrorism comply with international law, in

---

<sup>190</sup> Security Council Resolution 1373, U.N. Doc, S/RES/1373 (Sep. 28, 2001)

<sup>191</sup> Ibid.

<sup>192</sup> Scheinin, "Impact of post 9/11", 106

<sup>193</sup> Nowak and Charbord, *Using human rights*, 18; Rostow, "before and after," 484; Scheinin, "Impact of post 9/11," 96

<sup>194</sup> Sudborough, "war against fundamental rights," 469

<sup>195</sup> Rostow, "Before and After", 484

<sup>196</sup> Sudborough, "war against fundamental rights", 469-470

particular international human rights, refugee, and humanitarian law”.<sup>197</sup> In following resolutions of the Security Council, similar language was included. This could however not reverse the negative impact resolution 1373 already caused on human rights protection.

In 2003, the General Assembly of the United Nations also started with focusing on the matter of ‘protecting human rights while countering terrorism’. It did so by addressing human rights concerns posed by states’ counterterrorism measures in a series of resolutions.<sup>198</sup> The 2006 *Uniting against Terrorism* report of former Secretary General Kofi Annan specifically stated that the goals of counterterrorism and protecting human rights are not conflicting goals, but are complementary and mutually reinforcing. The protection of human rights is crucial to the fulfillment of an effective counterterrorism strategy.<sup>199</sup>

The UN General Assembly adopted the UN Global Counterterrorism Strategy in September 2006, as was urged in the *Uniting against terrorism* report. It was adopted unanimously and could be considered as the answer of the General Assembly to the Security Council’s approach on countering terrorism. It stated that human rights are the fundamental basis to fight terrorism.<sup>200</sup>

The Global counterterrorism Strategy is reaffirmed every two years, making it a living document accommodated to the current counterterrorism priorities of member states. The notion of providing security and human rights protection being mutually reinforcing is outlined in the Strategy in several ways. First, the fourth pillar of the counterterrorism strategy addresses the ensuring of human rights and the rule of law. Second, the notion is identified as the fundamental basis of the fight against terrorism, making it applicable to all four pillars. And finally, the Strategy stresses that a lack of the rule of law and violations of human rights amount to the conditions conducive to the threat of terrorism.<sup>201</sup> Following the new approach of the General Assembly, the Security Council requested the CTC to take on a more proactive approach on human rights. From here onwards, the Security Council slowly moved away from a strict security and law-enforcement approach to counterterrorism, which was confirmed in resolution 2178 (2014).

---

<sup>197</sup> Security Council Resolution 1456 ¶6, U.N. Doc. S/RES/1456 (Jan. 20, 2003)

<sup>198</sup> Nowak and Charbord, *Using human rights*, 22

<sup>199</sup> United Nations General Assembly, *Uniting against terrorism: recommendations for a global counter terrorism strategy*. 27 April 2006, A/60/825. Accessed 18 May, 2019, <https://undocs.org/A/60/825>

<sup>200</sup> Global Counterterrorism Strategy, G.A. Res., U.N. Doc. A/RES/60/288 (Sep. 20, 2006)

<sup>201</sup> Conte, “States’ prevention and responses”, 289

Resolution 2178 also stated that promoting and protecting human rights while simultaneously providing security are not two conflicting aims, but two complementary and mutually reinforcing aims. The resolution underlines (in line with pillar one of the UN Global Counterterrorism Strategy) the need to address those conditions conducive of terrorism.<sup>202</sup> Several objectives pursued in resolution 2178 are preventing radicalization, countering incitement to terrorism, stemming the recruitment to terrorism, disrupting financial support to or by foreign fighters and facilitating reintegration and rehabilitation programs.<sup>203</sup> A principal objective of resolution 2178, and most relevant for this research, is the objective to prevent foreign terrorist fighters from travelling to conflict zones:

The Security Council [] reaffirms that all States shall prevent the movement of terrorist or terrorist groups by effective border controls and controls on the issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents, *underscores*, in this regard, the importance of addressing, in accordance with their relevant international obligations, the threat posed by foreign terrorist fighters, and *encourages* Member States to employ evidence-based traveler risk assessment and screening procedures including the collection and analysis of travel data, without resorting to profiling based on stereotypes founded in grounds of discrimination prohibited by international law.

It is a notable feature that this resolution repeatedly references to the need for human rights compliance, also while countering the foreign terrorist fighter phenomenon. However, this notion is vague and sweeping, leaving states with a lot of room for own interpretation. The resolution contains a wide range of recommendations for states, which triggers the state's potential for engagement of a broad range of human rights while countering the threat of foreign terrorist fighters.<sup>204</sup> Additionally, the absence of a concise and comprehensive definition of terrorism in the resolution received much criticism. Therefore, the actions member states may designate as "terrorism" are not limited, leaving governments to craft open-ended definitions which could cover a range of activities which are not generally

---

<sup>202</sup> Security Council Resolution 2178 ¶2, U.N. Doc. S/RES/2178 (Sep. 24, 2014)

<sup>203</sup> *Ibid.*

<sup>204</sup> Conte, "states' prevention and responses", 283

considered as acts of terrorism.<sup>205</sup> Some scholars even worried that it would allow states to define terrorism as “whatever that does not like”.<sup>206</sup>

This interest in human rights protection in the post resolution 1373 period was therefore insufficient to prevent states from adopting new legislations and counterterrorism policies with human rights shortcomings.<sup>207</sup>

Considering issues regarding human rights compliance while countering terrorism must take into account the recurring problem of a lack of definition of terrorism. The problem should also be taken into account by States when implementing foreign terrorist fighter measures against the backdrop of their international human rights obligations.<sup>208</sup> The Security Council should therefore adopt a resolution requiring that all definitions of “terrorist acts”, “terrorist” and “terrorism” of member states mandate such as Resolution 2178 are all consistent with human rights obligations and international law.<sup>209</sup>

However, some authors, like Kopitzke, argue that the criticism on Resolution 2178 with regard to human rights, are unfounded. Indeed, the resolution has the potential for several human rights violations as it addresses a wide range of recommendations for states and uses vague language, but the potential is not more present than any previous resolution.<sup>210</sup> It is therefore argued that the true issue of this resolution is its ineffectiveness at stopping foreign terrorist fighters from travelling and not the exacerbation of human rights concerns.<sup>211</sup>

#### 4.2 European Union framework

UN instruments and principles pave the way for further developments in the construction of the counterterrorism legal system of the European Union. This is both due to its legal force, as well as to the role of the United Nations as the agent of socialization of security norms.<sup>212</sup>

Both researched countries are (currently) European Union members, and EU law is binding for its member states and takes precedence over national laws. Because of the importance of EU law on national counterterrorism approaches, EU counterterrorism and

---

<sup>205</sup> Tayler, “Foreign terrorist fighter laws”, 456

<sup>206</sup> Kopitzke, “an ineffective response,” 321

<sup>207</sup> Nowak and Charbord, *Using Human Rights*, 24-25.

<sup>208</sup> Conte, “States’ prevention and responses,” 285

<sup>209</sup> Tayler, “Foreign terrorist fighter laws,” 456

<sup>210</sup> Koptizke, “an ineffective response,” 322

<sup>211</sup> *Ibid.*, 323

<sup>212</sup> Martins, “political-legal nexus,” 181

foreign fighter approaches are outlined here.

After the attacks in 2001, the intense legislative and policy production of the EU resulted in many separate counterterrorism measures adopted by the EU (239 separate measures in 2015).<sup>213</sup> The UNSCR 1373 also affected EU's counterterrorism approaches. The resolution widened the scope of counterterrorism measures to areas like migration, travel documents and financial transactions. The resolution was mandatory for all member states, including all 28 members of the EU. The UNSCR 1373 had an important role in EU policymaking, as the EU used this resolution to develop its own counterterrorism policies.<sup>214</sup>

In 2002, the council Framework Decision on Combating Terrorism was issued. It created a common definition of terrorism and additionally mandated member states to adopt legislation aimed at terrorism prevention and penalization.<sup>215</sup>

Following the attacks in Madrid on 11 March 2004, the Council of the European Union adopted a Declaration on Combating Terrorism. One of the measures foreseen in this declaration was the agreement to create an EU Counter-Terrorism Coordinator.<sup>216</sup> Shortly hereafter in 2005, the EU Counter-Terrorism Strategy (drafted by the CTC), was adopted by the Council. The Strategy highlighted fighting terrorism a top priority for the European Union. It focuses on four priorities (divided in four so-called pillars, similar to the UN Counterterrorism strategy) in order to combat terrorism. These four pillars are prevention, protection, pursuit and response.<sup>217</sup> The EU's definition of terrorism preceded the UN notion on terrorism as was adopted by the General Assembly Counter-Terrorism Strategy in 2005.<sup>218</sup>

Since the conflicts in Syria and Iraq escalated, member states of the EU have been increasingly confronted with the foreign terrorist fighter problem. In 2012 and 2013, the first public warnings by representatives from intelligence and police organizations on the possible threat posed by foreign terrorist fighters were expressed. In its 2013 Terrorism and Situation Trend Report (TE-SAT), Europol warned that returning foreign fighters "have the potential to utilize their training, combat experience, knowledge and contacts for terrorist activities inside

---

<sup>213</sup> Martins, "political-legal nexus," 182

<sup>214</sup> Ibid.

<sup>215</sup> Sudborough, "war against fundamental rights," 470-471

<sup>216</sup> Council Declaration on combating Terrorism 10586-04

<sup>217</sup> Council of the European Union, *The European Union counter-terrorism Strategy* (Brussels, Council of the European Union, November 30 2005), 3

<https://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014469%202005%20REV%204>

<sup>218</sup> Martins, "political-legal nexus," 183

the EU”.<sup>219</sup> Several European countries raised their threat levels in the years that followed, but the new measures could not prevent new violent terrorist incidents.<sup>220</sup>

The EU Counterterrorism coordinator played a major role in the development of EU-wide policies and strategies for the phenomenon of foreign terrorist fighters. In 2013, the Council agreed on several EU measures in order to support the member states in their efforts to deal with the issue of foreign terrorist fighters. These measures were based on a report that was prepared by the EU Counterterrorism Coordinator and aimed at several priority areas:<sup>221</sup>

- Having a better understanding of the foreign fighter phenomenon
- Preventing radicalization
- Detecting of suspicious travels
- Investigating and prosecuting returnees
- Cooperating with third countries.

In February 2015, after the Charlie Hebdo attacks, the European Council agreed on a new statement on the fight against terrorism and set out a broad vision based on three pillars on which the EU would focus: ensuring the security of citizens by emphasizing the need to detect and disrupt suspicious travel, focusing on preventing radicalization and the statement called for better cooperation. In June 2015, the new EU international Security Strategy 2015-2020 was adopted and highlighted the foreign terrorist fighter phenomenon as a priority issue.<sup>222</sup>

In order to support the de-radicalization approaches of its member states, the EU Commission therefore established back in 2011 the Radicalisation Awareness Network (RAN) which promotes and shares best practices aimed at counter-radicalization of foreign fighters. The network connects first-line practitioners who work daily with individuals vulnerable to radicalization.<sup>223</sup> The RAN offers a directory of several de-radicalization initiatives in different European Member States. Many of the schemes listed there focus on the prevention of radicalization in order to deter people from becoming foreign terrorist fighters.<sup>224</sup>

---

<sup>219</sup> Europol, *European Union Terrorism Situation and Trend Report (TE-SAT 2013)* (The Hague, Europol, 2013), 22, <https://www.europol.europa.eu/activities-services/main-reports/te-sat-2013-eu-terrorism-situation-and-trend-report>

<sup>220</sup> Bakker and de Roy van Zuijdewijn, “low-probability, high-impact,” 8

<sup>221</sup> Bures, “EU’s responses,” 3; European Parliamentary Research Service, “ex-post evaluation, 61”

<sup>222</sup> Van Ginkel et al., “Profiles, threats & policies,” 16

<sup>223</sup> Ibid., 18-19; Bures, “EU’s responses,” 10

<sup>224</sup> Limbada and Davies, “Addressing the foreign,” 490

The EU also aims at the detection and disruption of suspicious travel. In April 2013, the second generation of the Schengen Information System (SIS II) went live. This allows for an easier exchange of information between member states on persons who are suspected to be involved in terrorism.<sup>225</sup> Another important instrument aimed at disrupting suspicious travel, was the creation of the Focal Point Travellers by Europol in 2013. This system contributes to information sharing among both EU member states as well as third countries with regards to information on suspected individuals.<sup>226</sup>

European policymakers face several challenges in addressing the (returning) foreign terrorist fighter phenomenon. Firstly, the EU has not been able to agree on a common definition of a foreign terrorist fighter due to a lack of understanding of criminal offences of a foreign terrorist fighter. Hence, member states had their own definition, which varied among them.<sup>227</sup> For instance, receiving terrorist training was as of March 2016 in 14 member states a criminal offence, while only 9 states criminalized travelling for the purpose of travelling.<sup>228</sup> As a solution to this problem the Commission updated the 2002 Council Framework Decision on Combating Terrorism.<sup>229</sup> This proposed update sets out a legal framework for EU member states on the approximation of criminal legislations on terrorist acts and offences, or offences which are related to terrorist groups and implements new international standards and obligations.<sup>230</sup> In February 2017, Directive 2017/541/JHA was approved by the European Parliament.<sup>231</sup> This Directive required all member states to criminalize a list of acts within 12 months. These acts are: providing funds to commit terrorist offences, offences related to terrorist groups or terrorist activities, receiving training for terrorist purposes and, most relevant for this thesis, the Directive criminalized the act of travelling for terrorist purposes and funding, organizing and facilitating such travel. Interestingly for this study is the fact that the UK could opt-out of this Directive.

Another challenge for European policymakers in countering the threat posed by foreign terrorist fighters is the lack of a shared perception of the actual threat and scope of the

---

<sup>225</sup> Van Ginkel et al., "profiles, threats & policies," 20

<sup>226</sup> *Ibid.*, 20

<sup>227</sup> Reed and Pohl, "disentangling the EU," 1

<sup>228</sup> Bures, "EU's responses," 6

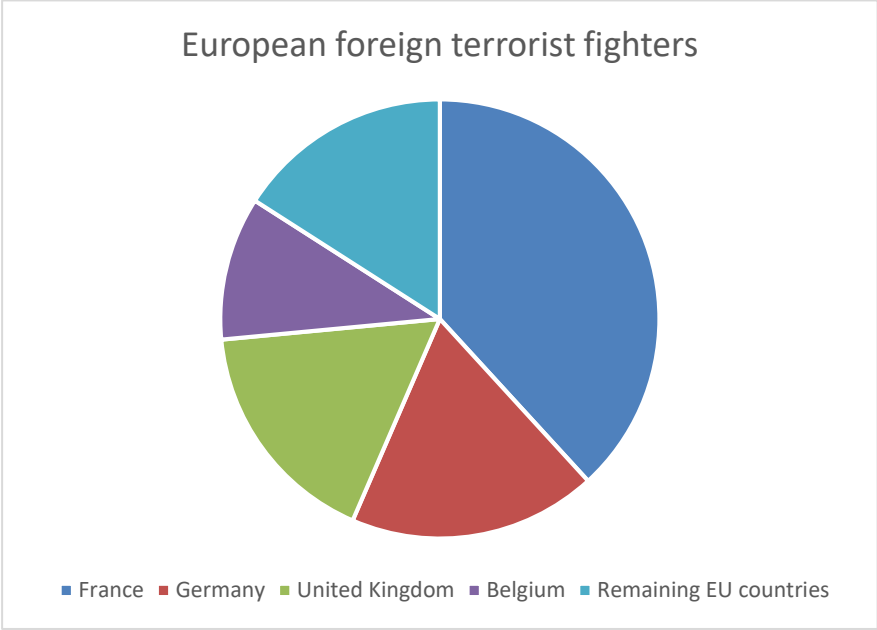
<sup>229</sup> European Council Framework Decision 2002/475/JHA

<sup>230</sup> Proposal for a Directive of the European Parliament and of the Council of 2 December 2015 on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism

<sup>231</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA and Amending Council Decision 2005/671/JHA (2017)

threat posed by foreign terrorist fighters to individual member states.<sup>232</sup> Not every EU member state experiences the same magnitude of foreign terrorist fighter related problems. If focusing on absolute numbers, France, Germany, Belgium and the UK account for the majority of European foreign terrorist fighters.

Figure 2: European foreign terrorist fighters who have gone to Syria or Iraq<sup>233</sup>



In contrast, in Eastern Europe, there is no country with more than 50 foreign fighters. A total of four member states (Lithuania, Malta, Czech Republic and Romania) did not have any individual departing to Syria or Iraq.<sup>234</sup> If focusing on numbers of foreign terrorist fighters in relation to the population of countries, Austria, Belgium, Denmark and Sweden are the most affected countries. However, broadly seen are the regional differences in relative numbers similar to those in absolute numbers, meaning that southern and eastern EU member states have comparatively lower numbers of foreign terrorist fighters compared to Western and Scandinavian EU member states.<sup>235</sup> Consequently, many member states have different perceptions on the threat posed by these foreign fighters.

<sup>232</sup> Reed and Pohl, "Disentangling the EU," 1  
<sup>233</sup> Data retrieved from Soufan Center: Barret, *Beyond the Caliphate*. Number of foreign fighters: France: 1910 (date 08/2017), Germany >915 (date 03/2017), Belgium ~528 (date 10/2017), UK ~850 (date 02/2017), EU ~5.000 in total (date 04/2016).  
<sup>234</sup> Bures, "EU's responses," 7  
<sup>235</sup> Ibid., 7

Thirdly, as there is not a clear understanding of the motives of foreign terrorist fighters that travel to the Syrian and Iraqi conflict zones, there is also not an European wide agreement on the root causes of terrorism and radicalization. Arguments about the root causes of radicalization range from personal factors like perceptions of grievance and threat, or a search of identity to societal factors like a lack of democracy or the role of poverty.<sup>236</sup> As there is no agreement on the root causes of terrorism at the macro level, attention has swift to root causes of terrorism on micro level. This entails an increased focus on the question of how an individual becomes radicalized. The previous mentioned RAN was introduced to support member states with this.

Finally, EU member states show major differences in addressing the difficulties of criminal prosecution of foreign fighters. States face difficulties in finding and obtaining reliable evidence from the battlefield in Syria and Iraq,<sup>237</sup> if they need to prove, through evidence admissible in court, that the given individual is guilty of committing specific crimes.<sup>238</sup> Due to the increasingly widespread use of photo's, video footage and other digital sources which are posted by terrorist groups or individual foreign fighters on social media, additional paths for gathering evidence are created. However, national laws regarding the use and collection of internet-based evidence differ significantly amongst member states, causing difficulties concerning questions of what would fall under which jurisdiction.<sup>239</sup> This shows the need for increasing international judicial cooperation.

---

<sup>236</sup> Ibid., 9

<sup>237</sup> Braun, "home sweet home", 329

<sup>238</sup> Vidino, "European foreign fighters," 222

<sup>239</sup> Bures, "EU's responses," 11

## Chapter 5: United Kingdom

The UK counterterrorism approach is for a great part influenced by its colonial past and the country's history of counter insurgency. The heightened use of the military in Northern Ireland demonstrates this. Before 2001, charges and convictions in respect of UK terrorism were therefore usually related to Irish Nationalist actors. After 2001 however, second-generation Muslims feature in almost all large-scale counterterrorism investigations. The anti-terrorism laws enacted after the Good Friday Agreement in 1999 were therefore no longer suitable to counter the threat posed by terrorism, as it defined terrorism too broadly.<sup>240</sup>

Nonetheless, the UK has a strong legal tradition which led to limit the counterterrorism approach within the rule of law, despite the persistently high level of terrorism in the country. This resulted in the introduction of special legal procedures and special laws which seem to undermine the legal tradition.<sup>241</sup>

The UK was one of the first states to enact administrative measures in their counterterrorism approach. For example, in the context of the troubles in Northern Ireland, the UK enacted exclusion orders as counterterrorism measures. The major concerns of the use of administrative measures like these exclusion orders, is that evidence on which allegations of involvement in terrorism are kept secret to matters of national security.<sup>242</sup> The information is also not disclosed to the suspected individual which prohibits them from sufficient opportunities to challenge the orders.

Erosion of human rights in UK counterterrorism approaches is not new. Amnesty International has stressed its concerns on this issue for decades. In the context of the conflict in Northern Ireland, UK authorities introduced since the early 1970s emergency measures, which sacrificed human rights in the name of security.<sup>243</sup> The human rights violations included torture, ill-treatment and unfair trials. The security policies and legislative measures implemented after the attacks of 9/11 again raised shared concerns of human rights deficits. The deficits included detention without charge or trial, or convictions based on secret intelligence which has not been disclosed to the suspected individuals.<sup>244</sup>

---

<sup>240</sup> Lewis Herrington, "British Islamic extremist terrorism: the declining significance of Al Qaeda and Pakistan," *International affairs* 91, no. 1 (2015): 20

<sup>241</sup> Ronald D. Crelinsten and Alex P. Schmid, "Western responses to terrorism: a twenty-five year balance sheet," *Terrorism and Political Violence* 4, no. 4 (1992): 309

<sup>242</sup> Boutin, "administrative measures against," 7

<sup>243</sup> Amnesty International, *UK: Human rights: a broken promise*, 23 February 2006, 8

<sup>244</sup> *Ibid.*, 8

## 5.1 Threat assessment

The UK has five different levels which provide a broad indication of the likelihood of a terrorist attack. The five levels are: LOW (an attack is unlikely to occur), MODERATE (it is possible that an attack occurs, but not likely), SUBSTANTIAL (there is a strong possibility an attack will occur), SEVERE (an attack is highly likely to occur) and CRITICAL (an attack is expected any moment).<sup>245</sup> The threat levels are set by the MI5 and distinguishes between threat levels from international terrorism and Northern-Ireland related terrorism. The table below provides the threat levels of international terrorism since 2011.

Table 2: Threat levels United Kingdom 2011-2019<sup>246</sup>

Date	Threat level	Description <sup>247</sup>
11 July 2011	SUBSTANTIAL	
29 August 2014	SEVERE	In response to conflict in Iraq and Syria
23 May 2017	CRITICAL	After Manchester Arena Bombing
27 May 2017	SEVERE	
15 September 2017	CRITICAL	After Parsons Green bombing
17 September 2017	SEVERE	Threat level lowered after two man are arrested <sup>248</sup>
23 July 2019	SEVERE <sup>249</sup>	

<sup>245</sup> "Threat levels," MI5, accessed on May 15, 2019.

<https://www.mi5.gov.uk/threat-levels>

<sup>246</sup> Ibid.

<sup>247</sup> BBC, "Reality Check: how terrorism threat levels work, *BBC*, September 25, 2017,

<https://www.bbc.com/news/uk-politics-40031087>

<sup>248</sup> Benjamin Kentish, "Terror threat level lowered from 'critical' to 'severe' after Parsons Green Tube attack arrests," *The Independent*, September 27, 2017,

<https://www.independent.co.uk/news/uk/home-news/london-attack-latest-parsons-green-district-line-bomb-terror-threat-level-lowered-severe-critical-a7951736.html>

<sup>249</sup> "threat levels," MI5. Recently, changes to the threat level system in the UK were made. The threat level, which described the threat from international terrorism, now describes the national threat level from all forms of terrorism, irrespective of ideology. This means that the threat level now describes the threat to the UK from left-wing, right-wing, Northern Ireland and Islamist terrorism all together.

As table 2 shows, the first increase in the threat level in 2014 was directly related to the conflict in Syria and Iraq. Former prime minister David Cameron announced that the threat of Britons travelling to the conflict zones to fight with IS was growing. He said that the beheading of James Foley by a British Arab showed that the conflict in Syria and Iraq was not a conflict which could be ignored. By then Home Secretary Theresa May mentioned in a statement that “the increase in the threat level is related to developments in Syria and Iraq where terrorist groups are planning attacks against the West. Some of these plots are likely to involve foreign fighters who have traveled there from the UK and Europe to take part in those conflicts.”<sup>250</sup> The second increase in the national threat level occurred in May 2017 in the direct aftermath of the Manchester Arena bombing. The perpetrator of that attack, Salman Abedi, was believed to have links with IS and to have travelled to Syria prior to the attack. IS also claimed that the Manchester attack was carried out by a “soldier of the Caliphate”.<sup>251</sup> The third increase in the UK threat level occurred in September 2017, after 18 year old Ahmed Hassan planted a bomb on a tube train in London. He is said to have been trained to kill by IS.<sup>252</sup>

In short, all raises in national threat levels in the UK since the outbreak of the Syrian civil war in 2011 have been connected to that conflict and IS. This shows how severe the threat of IS is to the UK.

## 5.2 Foreign terrorist fighter threat

It is argued that the United Kingdom plays a leading role in tackling Jihadism.<sup>253</sup> The country also suffered from several jihadist related violent terrorist attacks in the past 15 years (see figure 1 and appendix 1). The first major jihadist attacks occurred in 2005. On July 7, a series of suicide attacks on the public transport system were conducted, killing 52 people. Two weeks later, on 21 July, there were four attempted bomb attacks which disrupted a part of London’s public transport system.<sup>254</sup> Between 2005 and 2015, several “smaller” attacks

---

<sup>250</sup> BBC, “UK threat level raised to ‘severe’, *BBC*, August 29, 2014, <https://www.bbc.com/news/uk-28986271>

<sup>251</sup> Dearden, Lizzie and Benjamin Kentish, “Salman Abedi ‘travelled to Syria and Libya’ before carrying out Manchester attack,” *The Independent*, May 24, 2017, <https://www.independent.co.uk/news/uk/home-news/salman-abedi-manchester-libya-syria-suicide-bomber-terrorist-attack-middle-east-islamist-a7752761.html>

<sup>252</sup> Ian Cobain, “Parsons Green bomb trial: teenager ‘trained to kill by Isis’,” *The Guardian*, March 7, 2018, <https://www.theguardian.com/uk-news/2018/mar/07/parsons-green-tube-bombing-ahmed-hassan-on-trial>

<sup>253</sup> Stef Wittendorp Roel de Bont, Edwin Bakker and Jeanine de Roy van Zuijdewijn, *Measures against jihadist foreign fighters: a policy comparison between the Netherlands, Belgium, Denmark, Germany, the UK and the US (2010 to 2017)* (Leiden, Universiteit Leiden, 2017), 16, <https://openaccess.leidenuniv.nl/handle/1887/64739>

<sup>254</sup> AIVD, “Tijdlijn van aanslagen.”

occurred.<sup>255</sup> From 2017, multiple jihadist inspired attacks occurred in the UK. Amongst the two previously described attacks there were also the Westminster attack (London, 22 March 2017), an attack on policy officers at Buckingham Palace (25 August 2017) and the London Bridge attack (3 June 2017). With a total of five attacks in 2017, the UK observed a significant shift in the jihadist terrorist threat.<sup>256</sup>

The threat posed by Islamist terrorism and foreign terrorist fighters joining IS, is currently described as the foremost security threat to the UK.<sup>257</sup> The British government has expressed deep concerns over Muslims travelling from the UK to Syria in name of jihad since late 2013. Those fighting in Syria alongside IS have rapidly become the greatest terrorist threat to the UK since Al Qaeda in 2003.<sup>258</sup> The government warned that these departees risked prosecution and imprisonment upon their return.<sup>259</sup>

The UK Office for Security and Counter-Terrorism (OSCT) reported that the majority of British foreign fighters who have joined IS hold a British citizenship. Most of these fighters are between the ages of 18 and 30 years old, but the average age seems to reduce. Almost all British foreign fighters are Muslim.<sup>260</sup> The OSCT argues that there is not one unifying motivation for individuals to become foreign fighters, but that several underlying factors play an important role, mostly related to having a weak social status.<sup>261</sup>

The first IS foreign terrorist fighter-related terrorism conviction in the UK occurred in May 2014. Mashudur Choudhury was found guilty for preparing terrorist acts, contrary to section 5(1) of the TA 2006.<sup>262</sup> He was arrested upon his return from Syria. There was no evidence that he had attended a training camp, but was found guilty based on correspondence (emails, messages, skype conversations) he had prior to his departure to Syria.<sup>263</sup>

---

<sup>255</sup> London, 29/6/2007: two unexploded car bombs were discovered in London; Exeter, 22-5-2008: a man attempted a failed suicide attack; London 22-5-2010; A woman stabs Stephen Timms, A British politician; London 22-5-2013: Two man kill a British Army soldier; London, 6-12-2015: A man attacks people with a knife at a metro station. Information retrieved from AIVD: "Tijdlijn van aanslagen in het Westen."

<sup>256</sup> HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism*, London: HM Government, 2018, 8  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/716907/140618\\_CCS207\\_CCS0218929798-1\\_CONTEST\\_3.0\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716907/140618_CCS207_CCS0218929798-1_CONTEST_3.0_WEB.pdf)

<sup>257</sup> *Ibid.*, 8

<sup>258</sup> Herrington, "British Islamic," 35

<sup>259</sup> *Ibid.*, 24

<sup>260</sup> Van Ginkel et al., "Profiles, threats & policies," 40

<sup>261</sup> *Ibid.*, 40

<sup>262</sup> Christophe Paulussen and Eva Entenmann, "National responses in select Western European countries to the foreign fighter phenomenon," in *Foreign fighters under international law and beyond*, ed. Andrea de Guttry, Francesca Capone and Christophe Paulussen (The Hague: TMC Asser Press, 2016): 415

<sup>263</sup> *Ibid.*, 416

### 5.3 Counterterrorism and foreign terrorist fighter approaches

This chapter briefly outlines the British counterterrorism approaches and especially those aimed specifically at the foreign terrorist fighter phenomenon. Additionally, those approaches that have been enacted prior to the outbreak of the Syrian conflict, but served as a bases for later approaches aimed at preventing the movement of foreign terrorist fighters, are also outlined here. Despite the fact that the UK opted-out on Directive 2017/541/JHA, the country still possesses an extensive list of counterterrorism legislation like the Terrorism Acts of 2000 and 2006, the Anti-Terrorism Crime and Security Act, the Terrorism and Investigation Measures (TPIM) 2011, the 2015 Counter Terrorism and Security Act and the Counter Terrorism and Border Security Act 2019 (see table 4).

The Prevention of Terrorism Act 2005 (PTA 2005) introduced control orders. Based on these control orders, the executive could impose a variety of restrictions on individuals suspected to be or have been involved in terrorist related activities.<sup>264</sup> It allows the Home Secretary to impose a wide range of restrictions on either nationals or foreigners in order to prevent or restrict involvement by that individual in terrorist-related activities.<sup>265</sup> Control orders were used 52 times in the period between 2005 and 2011 for varying periods, and received a lot of criticism as the executive was allowed to impose restrictions (without fair trial guarantees) on a wide range of human rights.<sup>266</sup> Rights that are violated include the right to respect private and family life, freedom of expression, the right to a fair trial, freedom of assembly and association and the right to liberty.<sup>267</sup>

In 2011, the British government enacted the Terrorism Prevention and Investigation Measures (TPIM) Act to replace the heavily criticized control orders of the PTA 2005. Amnesty International however argues that the TPIM still fails to address the manner in which the control orders falls short of international human rights obligations.<sup>268</sup> The TPIMs were supposed to provide a better balance between on the one hand, protecting an individual's rights and freedoms and providing security for society on the other hand. TPIMs seems quite similar to control orders, as they also allow the executive to impose a range of restrictive measures on individuals suspected from terrorist activities. There are however notable

---

<sup>264</sup> Prevention of Terrorism Act 2005, section 2(1)

<sup>265</sup> *Ibid.*, section 1(3)

<sup>266</sup> Boutin, *Administrative measures against*, 6

<sup>267</sup> Amnesty International, *A broken promise*, 24

<sup>268</sup> Amnesty International, *United Kingdom: the terrorism prevention and investigation measures bill 2011*. <https://www.amnesty.org/download/Documents/28000/eur450072011en.pdf>

differences between the measures of the TPIM orders and the earlier mentioned control orders. Firstly, the executive could devise all sorts of restrictions for control orders, while the restrictions imposed under the TPIM orders are thoroughly listed in the Act. Secondly, the scope of the listed restrictions have been refined. Thirdly, the TPIM orders can be imposed for a maximum of two years, and after that can only be extended by the Secretary of State. Control orders on the other hand could be extended every year (for one year) for an indefinite period.<sup>269</sup> The criteria to impose TPIMs are firstly that the Secretary of State is satisfied, on the balance of the probabilities, that the individual has been or is involved in terrorist-related activities and secondly that the Secretary of State reasonably considered that the measure is necessary to protect the general public from terrorism.<sup>270</sup> TPIM orders include house arrests, electronic tagging and monitoring, and physical relocation.<sup>271</sup> As of August 2017 the measures applied to six individuals; five of them were British nationals.<sup>272</sup>

The procedures for imposing TPIM orders received criticism as these measures would continue to allow the government to rely on secret evidence,<sup>273</sup> making it difficult for a suspected person to appeal against a TPIM order. In the UK, intercept evidence in criminal trials is precluded by laws as the government wants to keep its methods and sources secret. It therefore seems like the allowing for secret evidence in the “necessary” TPIM (and control) order regime is created by the UK’s policy choice to preclude such evidence in criminal trials.<sup>274</sup> Therefore, it is argued the TPIM allows the government to bypass the ordinary criminal justice system by the argument of the government that these control order regimes constitutes necessary or proportionate limitations on human rights, while this is essentially the UK’s own making.<sup>275</sup>

---

<sup>269</sup> Terrorism Prevention and Investigation Measures Act 2011, section 2(6)

<sup>270</sup> Boutin, “administrative measures against,” 6

<sup>271</sup> For an overview of TPIM orders, see appendix 3

<sup>272</sup> European Parliamentary Research Service, “ ex-post evaluation,” 85

<sup>273</sup> Amnesty International, *terrorism prevention and investigation*.

<sup>274</sup> *Ibid.*, 5

<sup>275</sup> *Ibid.*

Table 4: Overview counterterrorism laws United Kingdom<sup>276</sup>

Year	Law	Context	Measures
2000	Terrorism Act (TA 2000)	Anti-terrorism legislation is mainly based on this act	The first section of the Act provides a definition of terrorism <sup>277</sup>
			Criminalized membership (or supporting) a proscribed terrorist organization <sup>278</sup>
			Persons suspected of terrorism can be arrested and detained, without charge, for up to 48 hours <sup>279</sup>
			Stop-and-search <sup>280</sup>
2001	Anti-Terrorism Crime and Security Act	Two months after the 9/11 attacks	Developed a regime of indefinite administrative detention for foreigners suspected of terrorism. <sup>281</sup>
2005	Prevention of Terrorism Act		Control orders
2006	Terrorism Act 2006 (TA 2006)	Aftermath of the July 2005 bombings	Providing terrorist training became an offence <sup>282</sup>
			All preparatory acts which are carried out with the intent to commit acts of terrorism could be penalized with life time imprisonment <sup>283</sup>

<sup>276</sup> Only adopted measures either specifically aimed at the foreign terrorist fighter phenomenon or counterterrorism measures which could also apply to restricting the movement of foreign terrorist fighters are outlined here.

<sup>277</sup> Section 1 of the Terrorism Act 2000 defines terrorism as follows: Section 1 (1) In this Act “terrorism” means the use or threat where- (a) the action falls within subsection (2), (b) the use of threat is designed to influence the government [or an international governmental organization] or to intimidate the public or a section of the public, and (c) the use or threat is made for the purpose of advancing a political, religious[, racial] or ideological cause. (2) Action falls within this subsection if it- (a) involves serious violence against a person, (b) involves serious damage to property, (c) endangers a person’s life, other than that of the person committing the action, (d) creates a serious risk to the health or safety of the public or a section of the public, or (e) is designed seriously to interfere with or seriously to disrupt an electronic system. (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

<sup>278</sup> Terrorism Act 2000, section 11 and 12

<sup>279</sup> Ibid., section 41

<sup>280</sup> Ibid., section 44

<sup>281</sup> Boutin, “Administrative measures against,” 5

<sup>282</sup> Terrorism Act 2006., section 6

<sup>283</sup> Ibid., section 5

2011	Terrorism and Investigation Measures (TPIM) 2011	Replacing the control orders after criticism	Introduced TPIMs (a range of restrictive measures, including house arrests, electronic tagging and monitoring and physical relocation) <sup>284</sup>
2012	CHANNEL program		Intervenes before an individual becomes radicalized <sup>285</sup> .
2014	Immigration Act 2014		Powers of the Home Secretary to revoke citizenships were expanded <sup>286</sup>
2015	Counter Terrorism and Security Act 2015	Government action was deemed necessary to deal with the increased terrorist threat related to developments in Syria and Iraq <sup>287</sup>	Seizing of passports up to 30 days
			Introduced Temporary Exclusion Orders (TEO)
			Reintroduced relocation measures
2019	Counter Terrorism and Border Security Act 2019 <sup>288</sup>	Terrorism laws had to be updated for the digital age in order to respond to recent attacks like in London and Manchester (2017)	Criminalizes publication of images which could suspect membership of support of a proscribed organization
			Criminalizes watching or accessing information online which could be used for preparing or committing terrorist acts
			Information on electronic devices can be accessed at the border

<sup>284</sup> See appendix 3 for an overview of TPIM orders

<sup>285</sup> Van Ginkel et al., "profiles, threats & policies," 42

<sup>286</sup> Paulussen and Entenmann, "national responses," 418; Reed, de Roy van Zuijdewijn and Bakker, "pathways of foreign fighters," 9-10

<sup>287</sup> "Counter-terrorism and Security Act," Counter-terrorism and security act: impact assessments, GOV.UK, last modified, 26 November 2014,

<https://www.gov.uk/government/collections/counter-terrorism-and-security-bill>

<sup>288</sup> "Counter-terrorism and Border Security Act 2019," Legislation.gov.uk, Accessed on 23 May, 2019,

<http://www.legislation.gov.uk/ukpga/2019/3/contents/enacted>

#### 5.4 Preventing the movement of foreign terrorist fighters

With the start of the Syrian conflict and increasing numbers of foreign terrorist fighters, the UK started to implement counterterrorism measures also specifically aimed at the foreign terrorist fighter phenomenon. Some measures were already in some form in place and were therefore updated during this period.

In the United Kingdom, there are broadly two options for ensuring that a foreign terrorist fighter remains outside the country. These are depriving someone's citizenship or placing Temporary Exclusion Orders on individuals. Other measures aimed at preventing the movement of foreign terrorist fighters are the TPIMs and the CTSA 2015. The TPIMs have been described before, as this legislation mainly served as a replacement for the control orders of the PTA 2005. Therefore, this legislation is not enacted in the light of the foreign terrorist fighter phenomenon.

Depriving British nationality was already allowed for in 1981 by section 40 of the British Nationality Act 1981.<sup>289</sup> The overhaul of nationality deprivation legislation started after 2000. This can be viewed in the broader process of redesigning nationality laws in order to respond to increasing concerns about national security and to restrict immigration.<sup>290</sup> Citizenship was seen as a status that should be earned. The rethinking about this membership took place while immigration debates were being rephrased as security issues.<sup>291</sup>

Section 40 (2) of the British Nationality Act 1981 outlines that British citizenship can be revoked if the Secretary of State of the Home Department is satisfied that doing is "conductive to the public good".<sup>292</sup> When tested in court, it was clarified that "conductive to the public good" was viewed as being in the interest of national security.<sup>293</sup> However, this description is vague and therefore allows for discretion. Generally seen, these orders may not be made if an individual would become stateless after revoking the British nationality. There are however exceptions to this rule: if a person is a naturalized citizen and in cases where an individual has conduct himself in way which is considered to be seriously prejudicial to the vital interest of the UK and there are reasonable grounds that the individual is able to become a national of another state, then a person can be rendered stateless under this

---

<sup>289</sup> British Nationality Act 1981 (UK) section 40

<sup>290</sup> Mantu, "human right to nationality," 32

<sup>291</sup> Ibid., 32

<sup>292</sup> Braun, "Home Sweet Home," 332

<sup>293</sup> Mantu, "human rights to nationality," 33

Act.<sup>294</sup> Once this decision is made by the Secretary of State, there is no need for judicial approval.

Appeals against the decision to revoke a citizenship must be made within 28 days in the UK after receiving the order to the Special Immigration and Appeals Committee (SIAC).<sup>295</sup> Especially for those outside the country, this poses a problem. If the decision is posted to their UK address for example, the deadline to appeal may lapse. In the UK, the Home Secretary is empowered to deprive someone's citizenship. Judicial approval is not required; the exercise of revoking a person's citizenship is not contingent on conviction for a terrorism-related offence.

The powers of the Home Secretary were expanded in May 2014 with the new Immigration Act. A new (heavily debated) law enabled the Home Secretary to also revoke citizenship of citizens without dual nationality.<sup>296</sup> However, international human rights law places limitations on deprivation of citizenships (like the UN Convention on the Reduction of Statelessness of 1961). Also, if the UK revoked the citizenship of a person based on terrorist motives, it is doubtful other countries will provide a potential terrorist with a citizenship, which would result in this person remaining stateless. Despite the fact people can be rendered stateless, it seems like the measure has not yet been widely applied to citizens without dual nationality, probably also to avoid heavy criticism on the ethical difficulties of leaving someone stateless.

The British authorities do not release exact figures on the use of these powers, but indications show that between 2010 and 2016 the Home Secretary used its citizenship revocation powers for 33 individuals.<sup>297</sup> British citizenship can also be revoked if it has been obtained by way of fraud or lying. It is estimated that between 2010 and 2016, 37 citizens have been deprived from their citizenship on these grounds. In this period, a total of 70 persons' citizenship has been revoked, all of them dual national.<sup>298</sup> In 2017 it was noted that since 2016, the UK citizenship of about 152 IS foreign terrorist fighters had been revoked. It

---

<sup>294</sup> British Nationality Act 1981 (UK) section 40 (4A)

<sup>295</sup> Braun, "Home sweet home," 339

<sup>296</sup> Paulussen and Entenmann, "National responses," 418; Reed, de Roy van Zuijdewijn and Bakker, "pathways of foreign fighters," 9-10

<sup>297</sup> Victoria Parsons, "Theresa May deprived 33 individuals of British citizenship in 2015," *The Bureau of Investigative Journalism*. June 21, 2016. <https://www.thebureauinvestigates.com/stories/2016-06-21/citizenship-stripping-new-figures-reveal-theresa-may-has-deprived-33-individuals-of-british-citizenship>

<sup>298</sup> Ibid.

was not clear whether all these individuals were citizens with dual nationalities.<sup>299</sup> In almost all cases in which citizenship was revoked, the persons were staying abroad at the time of enforcement of the measures.<sup>300</sup>

Besides nationality deprivation, the British government has also other options for preventing the movement of foreign terrorist fighters. The introduction of the Counter-Terrorism and Security Act 2015 (CTSA 2015) empowered the authorities to prevent individuals from travelling to Syria and Iraq related to the activity of IS. Under sections 2-4 of the CTSA 2015, Temporary Exclusion Orders (TEO) were introduced. If the citizenship of a person cannot be legally revoked, the TEO can disrupt and control the return of British individuals which are reasonably suspected of involvement in terrorist acts abroad and pose a threat to the UK.<sup>301</sup> As a result of a TEO, the travel documents of the suspected individual are cancelled. In cases like these, the passports can be canceled for up to 30 days.<sup>302</sup> Additionally, a suspect can be placed on international and domestic no-fly lists, preventing suspects from re-entry to the UK for up to two years.<sup>303</sup> When the Secretary of state imposes an TEO on an individual, this person is not allowed to return to the UK. The British individual in this case can only return to the UK if the Secretary of State issues that individual with a permit to return.<sup>304</sup> The former British Home Secretary, Amber Rudd, announced in May 2017 that since the introduction of the TEO in 2015, it had only been used once at that time.<sup>305</sup>

The CTSA 2015 also allowed for the seizure and temporary retention of passports or other travel documents for up to fourteen days, in cases it was suspected an individual left for terrorism-related purposes.<sup>306</sup> This two week period could be extended to a period of thirty days with judicial approval.<sup>307</sup>

Additionally, the CTSA 2015 modified some of the modalities of the TPIM orders. It reintroduced the relocation measure (which had been removed under the 2005 control order regime due to concern on civil liberties) but added a new safeguard, which meant that

---

<sup>299</sup> Jamie Dettmer, "Britain strips more than 100 Islamic State fighters of citizenship," *VOANews*, July 30, 2017. <https://www.voanews.com/a/britain-strips-is-fighters-of-citizenship/3964920.html>

<sup>300</sup> Parsons, "Theresa May deprived."

<sup>301</sup> Braun, "Home sweet home," 333

<sup>302</sup> Wittendorp et al., *policy comparison*, 42

<sup>303</sup> Kopitzke, "an ineffective response," 325

<sup>304</sup> Braun, "Home sweet home," 333

<sup>305</sup> Peter Walker, "Rudd admits anti-terror exclusion powers used only once since 2015," *The Guardian*, May 29, 2017, <https://www.theguardian.com/uk-news/2017/may/29/uk-used-anti-terror-exclusion-powers-once-since-2015-amber-rudd-admits>

<sup>306</sup> Kopitzke, "an ineffective response," 325

<sup>307</sup> *Ibid.*, 325

involuntary relocation could not take place further than 320 km from the residence of the individual.<sup>308</sup> The UK government claimed that the TPIM would be less restrictive compared to the control order measures and would have more safeguards. Therefore, the Bill sets out five conditions which must be met before the Home Secretary imposes TPIMs.<sup>309</sup> The most important feature distinguishing the TPIM from the control orders under the PTA 2005 is the fact that the threshold for the measures changed from having *reasonable suspicion* of involvement in terrorism-related activities to having *reasonable belief* that an individual has been involved in terrorism-related activities. Amnesty International however graves concern that this will have little effect in practical application.<sup>310</sup> Even though there are some improvements in the TPIM compared to the control orders, there is no enhanced judicial scrutiny.

---

<sup>308</sup> CounterTerrorism and Security Act 2015, section 16(3)

<sup>309</sup> Amnesty International, *UK: prevention and investigation*

<sup>310</sup> *Ibid.*, 8

## Chapter 6: France

France has like several other European countries a history of internal (terrorist) violence, mostly performed by regional separatist groups like the ones in Corsica and the Basque country. It suffered a major wave of terrorist attacks in the mid-1980s. Since then, the French government has refined a preemptive criminal justice approach in countering terrorism. The French counterterrorism approach originated from a sweeping legislation in 1986. This 1986 law defined terrorism as “an individual or collective enterprise intending to gravely trouble public order by means of intimidation of terror”.<sup>311</sup> The law created a group of “investigatory magistrates”: officials entrusted with the combined functions of a judge and a prosecutor whose objective was, as a neutral party, to conduct impartial investigations.<sup>312</sup> The definition of terrorism in this law lacks specificity and therefore failed to exclude lesser crimes.

To understand the importance of human rights protection or violations in the French counterterrorism approach, the importance of *l'État* in France should be addressed. France struggled a long time to unify and conform a stable and democratic government. The *l'Etat* provided the French with stability and most aspects of French life are provided for by the government in Paris. Therefore, the French generally support an ultra-centralized government and might ignore its excessive abuse of power and violations of civil liberties and rights more than citizens in other nations.<sup>313</sup> They might be more willing to give up certain rights in exchange for the safety and stability their government provides.

Besides the political history in France, which might influence the stance towards human rights violations, the changing ethnic composition of France could also be of influence. The largest Muslim population in Europe resides in France and the Islam is the second most popular religion in France. The growing popularity of the xenophobic political party *Rassemblement National* (formerly known as *Front National*), shows that not all immigrants are welcome in France.<sup>314</sup>

### 6.1 Threat assessment

France has had different national terrorist threat systems (called the Vigipirate plan). Until 2014, the system had four different levels of alert. These levels were presented by colors and

---

<sup>311</sup> Sudborough, “war against fundamental rights,” 464

<sup>312</sup> *Ibid.*, 465

<sup>313</sup> *Ibid.*, 461

<sup>314</sup> *Ibid.*, 462

varied from yellow (level 1) to Scarlet (level 4). In February 2014, a new Vigipirate plan come into force. It was a more simplified version of the previous plan and had only two distinct levels: vigilance and attack alert. The current French national terrorist threat system (since 2015), has three different levels (or two levels and one sub-level):

- Vigilance: there are numerous permanent security measures, valid at all times and places.
- Heightened security/risk of attack: the country is confronted with a high level of a terrorist threat. There are concerns that whole territories (a targeted area of particular activity sector) may be targeted. The permanent security measures are reinforced by additional measures and there is no set time limit.
- Attack emergency: vigilance and maximum protection directly after an attack or in the case of imminent threat of a terrorist attack. Exceptional measures are imposed to prevent any imminent risk of a terrorist act or for emergency services being targeted following an attack. Exceptional measures are also imposed to alert the population and the duration of these measures is limited to the crisis management phase.<sup>315</sup>

Table 3: Threat levels France<sup>316</sup>

Date	Threat levels <sup>317</sup>	Description
19 March 2012	Scarlet level	After Toulouse shootings <sup>318</sup>
24 March 2012	Red level	Level lowered after suspect of the Toulouse shooting was arrested
20 February 2014	Vigilance	Level set to vigilance as the updated Vigipirate threat levels came into force
7 January 2015	Attacks emergency	After île-de-France attacks and Charlie Hebdo shooting
14 November 2015	State of Emergency	After the November 2015 Paris attacks. The state of emergency ended on 1 November 2017
12 December 2018	Attack emergency	Following the deadly shooting in Strasbourg <sup>319</sup>

<sup>315</sup> "Vigipirate levels," Gouvernement.fr, assessed on May 19, 2019.

<https://www.gouvernement.fr/en/vigipirate-levels>

<sup>316</sup> Bastié, "Le Plan Vigipirate."

<sup>317</sup> In France, different threat levels can apply to specific areas in the country. This table only includes national threat levels

<sup>318</sup> France 24, "France raises terror alert level after Jewish school shooting," *France 24*, March 20, 2012, <https://www.france24.com/en/20120320-france-raises-terror-alert-level-midi-pyrenees-jewish-school-shooting-ozar-hatorah-scarlet-toulouse>

<sup>319</sup> The Local, "France raises security alert level to maximum but what does that mean for the public?," *The Local*, December 12, 2018,

Especially in the light of the November 2015 attacks, France qualifies the terrorist threat level as high, specifically in regards with (returning) foreign terrorist fighters and home-grown terrorist.<sup>320</sup>

## 6.2 Foreign terrorist fighter threat

There is not a typical profile of the French foreign terrorist fighter. They come from all regions in France and different socio-economic environments. A growing contingent of the French foreign terrorist fighters aiming to settle in the Caliphate are women and sometimes even entire families.<sup>321</sup>

If focusing on absolute numbers of foreign fighters who left to the conflict zones in Syria and Iraq, France is the most troublesome country in Western Europe (see table 1 and figure 2).

Like the UK, France suffered several jihadist attacks in the past years (see table 1). However, in contrast to the UK, France suffered these attacks since 2012. The first jihadist attack on French soil, in Toulouse in March 2012 in which seven people were killed, was also the first attack witnessed on European soil in which a foreign terrorist fighter was involved. Mohammed Merah was a Frenchman of Algerian origin who had turned to Salafism when in prison. He made two journeys (to Pakistan and Afghanistan) and it is believed that he was trained by Al Qaeda there.<sup>322</sup>

Between 2012 and 2018, France witnessed 28 terrorist jihadist attacks, more than any other Western European country.<sup>323</sup> The deadliest attacks were the November 2015 Paris attacks, in which 130 people were killed in a series of attacks throughout the city of Paris. The attacks consisted of a man who detonated a suicide bomb at the *Stade de France* at a soccer match, followed by several shootings by three armed gunmen at bars and restaurants and finally, a hostage event at the Bataclan Concert Hall.<sup>324</sup> All these men, including two additional (Iraqi) assailants had all been sent by IS commanders to stage attack in Europe. Beyond those directly involved in these attacks, a total of 30 individuals have been found to be involved in the attacks of which 16 had been foreign terrorist fighters in Syria or Iraq. These attacks influenced French counterterrorism majorly, as will be outlined later in this chapter.

---

<https://www.thelocal.fr/20181212/france-raises-alert-level-and-boosts-security-at-christmas-markets>

<sup>320</sup> Van Ginkel et al., "profiles, threats & policies," 22

<sup>321</sup> Ibid., 31

<sup>322</sup> Paulussen, "repressing the foreign," 5

<sup>323</sup> See appendix 1 for overview of the attacks

<sup>324</sup> Cragin, "November 2015," 212

### 6.3 Counterterrorism and foreign terrorist fighter approaches

The French counterterrorism approach is characterized as a preemptive approach with an emphasis on intelligence gathering and an aggressive prosecution to dismantle alleged terrorist networks.<sup>325</sup> By the time the fight against Islamic terrorism became more evident after the attacks in 2001, France already established perhaps one of the most developed counterterrorism policies in Europe.<sup>326</sup>

In France, there is a close cooperation between police, intelligence services and specialized prosecutors and investigating judges. The criminal justice system in France is based on the inquisitorial approach: the public prosecutor opens a judicial investigation but an investigating judge can oversee the process, helped by the police.<sup>327</sup> In ordinary criminal cases in France, the police can arrest and hold a suspect for up to 24 hours, which may be extended for an additional 24 hours, before the suspect is either released or brought before a judge. While in custody, the detainees have the right to see a lawyer. In the case of terrorism, suspects may be detained up to four days, before they are able to consult a lawyer. On top of this, the police can imprison suspects for several years while conducting their investigation.

Offences of terrorism are provided for in the Criminal Code. The French Criminal Code (*Pénal Code*) defines terrorism as a number of several listed acts, which are carried out with the intent to disturb public order by the use of acts of terrorism.<sup>328</sup>

Central to the French preemptive approach since 1996 is the *association de malfaiteurs en relation avec une entreprise terroriste*, hereafter referred to as the malfaiteurs article. It allows the authorities to act on preparatory acts committed in a group in the context of seeking to commit terrorist acts.<sup>329</sup> Authorities can thus intervene preemptive and prosecute individuals well before a crime has been commissioned. Estimates show that between 2012 and April 2016, about 220 of 300 proceedings on jihadists were based on the malfaiteurs article.<sup>330</sup> Several human rights concerns already raised from the malfaiteurs article. Especially the right to a fair trial<sup>331</sup> was violated by this law as suspects spend quite some time (four days,

---

<sup>325</sup> Human rights watch, "Preempting justice; counterterrorism laws and procedures in France," July 1, 2008. <https://www.hrw.org/report/2008/07/01/preempting-justice/counterterrorism-laws-and-procedures-france>

<sup>326</sup> Ibid.

<sup>327</sup> Ibid.

<sup>328</sup> Criminal code, article 421

<sup>329</sup> Human rights watch, "preempting justice

<sup>330</sup> Wittendorp et al., *policy comparison*, 27

<sup>331</sup> Universal Declaration of Human rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948), article

sometimes even six) before being brought before a judge and because secret information was used that was not disclosed with the suspect, prohibiting this person from challenging the decision.<sup>332</sup>

As mentioned, French counterterrorism approaches have been heavily influenced by the terrorist attacks in 2015. After the attacks in Paris between 7 and 9 January 2015, French prime Minister Valls indicated that France was “at war” with terrorism, jihadism and radical Islam.<sup>333</sup> In the direct aftermath of these attacks, several decrees aimed at implementing some of the provisions of the 2014 anti-terrorism law were implemented. In a study on the impact of the January 2015 attacks on French counterterrorism legislations, it was observed that in a short time, the French government engaged in a “legislative fever” in order to boost the capacities of the criminal justice system and the law enforcement agencies once again.<sup>334</sup> The legislations outlined in table 5 confirm this observation.

The Paris attacks of November 2015 brought yet again new challenges to France. Within the group of the core attacks, there were seven individuals from Belgium and France who had travelled to Syria and Iraq to fight for IS. These seven attackers returned home specifically to stage terrorist attacks in Europe.<sup>335</sup>

A day after the attacks, a state of emergency was declared. Under this state of emergency, several measures were introduced which deviate from the ordinary law regime. This usually resulted in the fact that pre-judicial authorization for some of the measures was not required in this situation. This resulted in the first two weeks after the attacks in 2.029 house searches and 296 individuals being object of forced residency.<sup>336</sup>

A state of emergency intends to partly derogate from human rights obligations, but still many of the measures have been heavily criticized. The state of emergency in France extended the powers of local authorities to place suspects under house arrest without prior judicial authorization. Moreover, the security threat these suspects are believed to represent

---

<sup>332</sup> Human rights watch, “preemptive justice.”

<sup>333</sup> Dan Bilefsky and Maïa de la Baume, “French Premier Declares ‘war’ on Radical Islam as Paris grids for Rally,” *The New York Times*. January 10, 2015. <https://www.nytimes.com/2015/01/11/world/europe/paris-terrorist-attacks.html>

<sup>334</sup> Paulussen, “repressing the foreign,” 8

<sup>335</sup> Cragin, “November 2015,” 218

<sup>336</sup> Amnesty International, *Amnesty International report 2015/16: the state of the world’s human rights*, London: Amnesty International, 2016. <https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF>

was often not detailed. Amnesty International and Human Rights Watch have criticized the measure and have documented several abuses under the measure.<sup>337</sup> On 19 January 2016 five UN Special Rapporteurs (on the rights to freedom of peaceful assembly of association, on freedom of opinion and expression, on the situation of human rights defenders, the right to privacy and on the protection and promotion of human rights and fundamental freedoms while countering terrorism) concluded that the state of emergency imposed excessive and disproportionate restrictions on fundamental rights and freedoms.<sup>338</sup> In December 2016, more than a 100 organizations stressed the French government to lift the state of emergency as well as right wing political parties in France.<sup>339</sup>

Nevertheless, the French government extended the emergency regime in February 2016 and in May 2016 again (to the displeasure of human rights organizations). Former French President Hollande announced on 14 July 2016 that the state of emergency would not be extended after the end of the Tour de France, but the very same day, Mohamed Lahouaiej-Bouhel committed a violent terrorist attack in Nice, killing 86 people and wounding hundreds of others. The state of emergency was therefore extended again, and eventually expired in November 2017.<sup>340</sup>

In the spring of 2016, a new legal strategy was announced by the Parisian court: the *malfaiteurs* article would be used more in connection with the more severe category of ‘crimes’ instead of the category of ‘délits’, a lighter category of crimes. The evidence required for ‘délits’ were less stringent compared to that of ‘crimes’. The change was mainly implemented to match the response to the severity of the offences committed in Syria and Iraq.<sup>341</sup>

---

<sup>337</sup> Tayler, “human rights rollbacks,” 473

Human Rights Watch, “France: abuses under the state of emergency,” February 3, 2016.

<https://www.hrw.org/news/2016/02/03/france-abuses-under-state-emergency>

<sup>338</sup> Office of the High Commissioner for Human Rights, “UN rights experts urge France to protect fundamental freedoms while countering terrorism,” *OHCHR*, January 19, 2016.

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16966&LangID=E>

<sup>339</sup> Paulussen, “repressing the foreign,” 10-11

<sup>340</sup> Amnesty International, *Amnesty International report 2017/18: state of the world’s human rights*. London: Amnesty International, 2018. <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>

<sup>341</sup> Wittendorp et al., *policy comparison*, 27

Table 5: Overview counterterrorism laws in France<sup>342</sup>

Year	Law	Context	Measures
1996	Law 96-647		Revoking citizenship
	Malfeiteurs article		Authorities can act on preparatory terrorism-related acts committed in a group
2005	<i>Loi relative à lute contre le terrorism (LCT)</i> <sup>343</sup>	In response to the 2005 London bombings to strengthen counterterrorism measures	Increased punitive measures for criminal association and increased maximum policy custody in terrorism cases
			Increased the breach of government surveillance without judicial control
			Strengthened border control
2012	Law regarding Security and the fight against terrorism <sup>344</sup>	Adopted in the aftermath of the Toulouse attacks.	Inciting terrorism online is criminalized
			Freezing of assets for those who incite terrorism
			Acts committed outside France could be prosecuted in French court <sup>345</sup>
2014	De-radicalization campaign <i>Entreprise terrorist individuelle</i>		Telephone hot-line was activated for those who suspected their relatives would become radicalized <sup>346</sup>
			Authorities can act on preparatory terrorism-related acts, also if committed by an individual.
			Criminalized searching, obtaining and making of objects for preparing a terrorist act <sup>347</sup>

<sup>342</sup> Only adopted measures either specifically aimed at the foreign terrorist fighter phenomenon or counterterrorism measures which could also apply to restricting the movement of foreign terrorist fighters.

<sup>343</sup> Law No. 2006-64

<sup>344</sup> *Loi relative à la sécurité et à la lute contre le terrorisme*, Law 2012-1432

<sup>345</sup> Criminal Code, article 113-13

<sup>346</sup> Nicolas Boring, "France: six French citizens prohibited from leaving under new anti-terrorism law," February 26, 2015. <http://www.loc.gov/law/foreign-news/article/france-six-french-citizens-prohibited-from-leaving-under-new-anti-terrorism-law/>

<sup>347</sup> Criminal Code article 421-2-6

	<i>Loi Cazeneuve</i>		Authorities may ban a French citizen from France
			Entry ban
<b>2015</b>	‘stop jihadism’ platform <sup>348</sup>	Several new counterterrorism legislations were implemented	Several rehabilitation programs aimed at de-radicalization
	July 2015 law	after the January 2015 attacks in	Mass surveillance techniques are allowed to use without judicial oversight
	November 2015 law	France	Mass surveillance of all electronic communications was allowed
	State of emergency	After the November 2015 attacks	Powers of local authorities were extended
<b>2016</b>	Renewed emergency law		Empowered the police to raid homes, search luggage and vehicles and seize electronic data from telephones or computers, all without prior approval from a judge <sup>349</sup>
			Tripled the maximum duration of house arrests (from one month to three months) for persons who returned from an area abroad where terrorist groups are operating <sup>350</sup>
	June 2016		Extra restrictions could be posed on returnees like house arrests, area restrictions and notification requirements
<b>2017</b>	October 2017	Bill was adopted to introduce new counterterrorism measures into ordinary law	Administrative measures could be imposed even without sufficient evidence

<sup>348</sup> Nicholas Vinocur, “France unveils anti-jihad campaign with video and website,” *Reuters*. January 28, 2015 <https://www.reuters.com/article/us-france/mideast-video/france-unveils-anti-jihad-campaign-with-video-and-web-site-idUSKBN0L11VT20150128>

<sup>349</sup> Tayler, “human rights rollbacks,” 472

<sup>350</sup> *Ibid.*, 474

#### 6.4 Preventing the movement of foreign terrorist fighters

France also started to implement counterterrorism measures specifically aimed at the foreign terrorist fighter phenomenon when numbers of foreign terrorist fighters started to increase. However, different from the UK, France usually implemented these new legislations after terrorist attacks which involved foreign terrorist fighters. Some measures which were already in place, were therefore updated.

In France, it was already possible in 1996 to revoke the nationality of naturalized citizens in case a person was convicted for a terrorist offence.<sup>351</sup> This revocation must take place within ten years of the person's nationality having been conferred.<sup>352</sup> In 1998, a safeguard against statelessness was introduced in *Loi 98-170 or law Guigou* in order to comply with the ECN standards.<sup>353</sup> Therefore, in contrast to the UK, the person concerned may not become stateless. Another contrast with the UK is the requirement of conviction for a terrorist offence. This functions as an extra safeguard.<sup>354</sup> The measure of citizenship revocation is however not often applied, which may reveal the rather symbolic function of this measure.<sup>355</sup>

Shortly after the attacks of November 2015, the French government announced a controversial plan to deprive nationality of French citizens convicted of terrorist offences. This entails that the nationality of French-born dual citizens could also be deprived. The plan was however very criticized and former President Hollande failed to reach agreement on the plan.<sup>356</sup>

France has broadly two options for imposing travel bans for travelling outwards. The first option is imposed in the course of legal investigation. During a judicial investigation into a crime, judges can impose certain restrictions on suspects. Examples of these restrictions are area restrictions, house arrest, notification requirements and surrendering one's passport or other identity documents. Several of these measures have been imposed in cases of would-be or actual travelers and returnees in order to limit their freedom of movement.<sup>357</sup>

---

<sup>351</sup> Loi 96-647, section 12

<sup>352</sup> Civil law (Code civil), article 25 and 25-1

<sup>353</sup> Mantu, "human right to nationality," 35

<sup>354</sup> Ibid., 35

<sup>355</sup> Boutin, "administrative measures against," 15

<sup>356</sup> France 24, "Hollande drops controversial bid to strip terrorist of French citizenship," *France 24*, March 30, 2017, <https://www.france24.com/en/20160330-hollande-drops-controversial-bid-strip-terrorists-french-citizenship>

<sup>357</sup> Wittendorp, *policy comparison*, 50

The second option was introduced in 2014. The *Loi Cazeneuve* (named after the French minister of The Interior at that time) was established in November 2014. This law enables French authorities to ban a French citizen from leaving France if there are serious concerns that the individual is leaving to join a terrorist group or to participate in terrorist activities.<sup>358</sup> The maximum length of the travel ban is six months, and the total duration cannot exceed two years.<sup>359</sup> The travel ban has been implemented by decree after the attacks of January 2015. If a travel ban is imposed, the passport of the individual is declared void and must be surrendered to the authorities.<sup>360</sup> Between January and November of the year 2015, 222 individuals were subjected to this travel ban.<sup>361</sup>

There were however multiple concerns for potential human rights violations. The bill would allow the French government to ban French nationals from leaving the country on very broad grounds. Additionally, these decisions could be taken based on information gathered by intelligence services that may be secret and therefore, these persons would not be able to challenge these decisions. Both these concerns address the possible violation of the human right to a fair trial.

Besides a travel ban, the law also includes a ban on entering or staying in France for those non-resident foreigners which pose a threat to French security. The travel and entry bans received less criticism compared to other (administrative) measures implemented by the French government. They do raise human rights concerns (for the right to a fair trial for example) but can be seen as not too excessively restrictive means to prevent foreign terrorist fighters from travelling.

The state of emergency, which followed the attacks of November 2015, provided for several new counterterrorism measures, like house searches, area restrictions, closing specific locations and banning specific meetings. Measures specifically aimed at preventing the movement of individuals suspected from terrorist offences also include house arrests. During the state of emergency, the maximum duration of house arrests was tripled to three months. These house arrests were for those persons who returned from areas outside France where terrorists groups are operating.<sup>362</sup> The state of emergency also allowed for the deportation of

---

<sup>358</sup> Boring, "six French citizens."

<sup>359</sup> Wittendorp et al., *policy comparison*, 39

<sup>360</sup> *Ibid.*, 39

<sup>361</sup> Amnesty International, *report 2015/16*

<sup>362</sup> Tayler, "human rights rollbacks," 474

foreign nationals. Statistics show that between 2012 and 2016, 60 deportations referred to foreign jihadists, of which 17 deportations took place in 2016 alone.<sup>363</sup>

The provisions of the state of emergency from 2015 to 2017 have also been applied to the IS foreign terrorist fighter travelers and returnees specifically. It is however difficult to decide how many of the measures imposed on the basis of the state of emergency are connected with (would-be) travelers and returnees.<sup>364</sup> One of the reasons for this is that it is difficult to determine whether the imposed restrictions under the state of emergency concerned cases of (suspected) jihadism or were connected with the international climate conference in Paris in 2016.<sup>365</sup>

Finally, a legislative amendment in June 2016 enabled the Minister of Interior together with the Paris public prosecutor to pose extra restrictions on returnees. These restrictions also include area restrictions, house arrests, notification requirements and the mandatory reporting of a person's residence as well as refraining a person from having contact with persons deemed a threat to national and public safety.<sup>366</sup>

---

<sup>363</sup> Wittendorp et al, *policy comparison*, 53

<sup>364</sup> *Ibid.*, 52

<sup>365</sup> *Ibid.*, 53

<sup>366</sup> Boutin, "administrative measures against," 15

## Chapter 7: Analysis

This chapter reflects on the research that has been conducted in this thesis. First, the three different sub questions presented in the second chapter of this study are answered. The chapter finalizes with a discussion on this research and suggestions for improvements of the research.

### 7.1 Answering sub questions

The first sub question was the following: *Are recent IS related terrorist attacks (from 2011 onwards) connected with the implementation of new approaches aimed at preventing the movement from foreign terrorists fighters in the UK and France?* Both countries introduced several new counterterrorism laws since the foreign terrorist fighter phenomenon became more pertinent. Both countries have implemented administrative measures like revoking citizenship, tougher laws regarding the issuance of passports, travel bans, the TPIMs in the UK and expulsion of foreigners and measures to prevent foreigners entering the country in France<sup>367</sup>, as shown in tables 4 and 5.

In May 2014, the powers of the Home Secretary in the UK were expanded which allowed for the revoking of citizenship of individuals without dual nationality. The immigration act does not specifically mentions the foreign terrorist fighter phenomenon or the conflicts in Syria and Iraq. However, only three months later, the UK increased its threat level in 2014 due to the developments in Syria and Iraq and the fear that foreign terrorist fighters would stage attacks in the UK.<sup>368</sup> Therefore, it seems like there were no specific foreign terrorist fighter measures at this point, but there was general awareness of this rising issue. Therefore, the Counter Terrorism and Security Act 2015 (CTSA 2015) did mention specifically the prevention of travelling to Syria and Iraq in its impact assessment, and enacted several measures (TEOs, retention of passports and the reintroduction of relocation measures).

In France also implemented several counterterrorism measures after 2011. In most cases, references in these new legislations have been made to terrorist attacks. For example, the *Loi relative à la sécurité et à la lutte contre le terrorisme* (law regarding security and the fight against terrorism was implemented in the aftermath of the Toulouse shootings in 2012

---

<sup>367</sup> Van Ginkel et al., "profiles, threats & policies," 59

<sup>368</sup> BBC, "UK threat level raised."

and the November attacks of 2015 caused a ‘legislative fever’ in the French government. When focusing specifically on measures aimed at restricting the movement of foreign terrorist fighters, a similar trend is observed. The *Loi Cazeneuve*, which enables authorities to ban a French citizen from France, was updated after the January 2015 attacks. The state of emergency, which followed the November 2015 attacks and was lifted in November 2017, also allowed for extensive powers for authorities to counter the threat posed by (returning) foreign terrorist fighters. For example, the state of emergency allowed for the deportation of foreign nationals in France and extended the duration of house arrests and area restrictions.

In short, French legislation does indeed mention jihadist terrorist attacks as a reason or motivation for implementing new legislation aimed at preventing the movement of foreign terrorist fighters, while it seems like the UK implements these type of legislation more in the broader context of the Syrian conflict and the foreign terrorist fighter phenomenon.

The second sub question of this thesis was: *What specific human rights obligations are violated in the UK and France in their approaches aimed at preventing the movement of foreign terrorist fighters?* As this study shows, there are several human rights obligations that are violated by France and the UK. The easiest way for states to prevent the movement of foreign terrorist fighters is to restrict issuance of passports or to deprive their nationality.<sup>369</sup>

The act of revoking citizenship falls within the legislative power of national states.<sup>370</sup> The national laws on nationality and citizenship describe the circumstances under which citizenship can be revoked. The discretion of national governments is broadly seen limited under international law by the duty to avoid statelessness, the principle of non-discrimination and the prohibition of arbitrary deprivation of nationalities.<sup>371</sup> There is broad consensus that deprivation of nationality, even from individuals suspected from terrorism should not result in statelessness.<sup>372</sup> The French legislation for depriving nationalities, only applies to citizens with dual citizenship. This means that individuals will not be rendered stateless.

In the UK on the other hand, legislation allows for depriving citizenship of individuals with a single nationality in some cases. At a first glance, due to the enshrined exception, it seems like this legislation is not in direct conflict with international agreements like the UN Convention on the Reduction of Statelessness of 1961. However, the law could in the end still

---

<sup>369</sup> Kopitzke, “an ineffective response,” 324

<sup>370</sup> Van Waas, “deprivation of nationality,” 476

<sup>371</sup> *Ibid.*, 476

<sup>372</sup> *Ibid.*, 480

go against the underlying aims of this Convention. The UK legislation does indeed describe that the citizenship of an individual can be revoked in cases where there is a reasonable belief that this individual will be able to obtain nationality in another country, it is not clear what cases are exactly entailed here.<sup>373</sup> Also, the home Secretary can revoke citizenships in cases this act would “be conducive to the public good”. These vague terms in the legislation offer great discretion to the state. Furthermore, if the UK decided to revoke the citizenship of an individual based on terrorist activities, it is not likely another state will grant this person a citizenship. Therefore, this individual would still be rendered stateless.

Secondly, if individuals are placed under a TEO, these persons are prevented from re-entering the UK. In this way, that makes them temporarily quasi-stateless. Therefore, this legislation as well seems to be in contrast with the aims of the Convention on the Reduction of Statelessness.

As expected the right to freedom of movement is also often violated often by both researched countries. Both countries implemented various measures which restricts the movement of foreign terrorist fighters. However, not all these measures received the same amount of criticism on human rights violations. The entry and travel bans implemented by the French government in 2014 received less criticism on human rights concerns compared to other implemented (administrative) measures. This is probably because these measures are seen as less excessively restrictive means aimed at preventing the travelling of foreign terrorist fighters.<sup>374</sup>

The researched policies also showed that the right to a fair trial is also violated multiple times by both countries. For example, in the UK appeals against the decision of citizenship deprivation must be made within 28 days. However, if the individual is abroad and does not receive the order, this person is not able to appeal the decision. Also, in the case of TPIM orders for example, the UK government relies on secret evidence from its intelligence agencies, which makes it difficult for a suspect to appeal against an order.

In France, the violations of the right to fair trial grave great concern. The main concern expressed by human Rights Watch in the case of France was that the expansion of the government’s counterterrorism powers are subject to vague and broad standards of evidence,

---

<sup>373</sup> Braun, “home sweet home,” 337

<sup>374</sup> Boutin, “administrative measures against,” 11-12

which could result in restrictions on fundamental human rights, mainly on the right to fair trial.<sup>375</sup>

The final sub question of this thesis was the following: *How could the approaches aimed at restricting the movement of foreign terrorist foreign fighters in the UK and France be improved?* It is clear that there is no one-size fits all solution to the problem of the problem of the foreign terrorist fighter phenomenon. In order to ensure compliance with human rights obligations while preventing the movement of foreign terrorist fighters, several suggestions are presented here. Firstly, governments should implement safeguards when administrative measures are used.<sup>376</sup> Specifically for measures aimed at preventing the movement of foreign terrorist fighters, safeguards should be in place to ensure the protection of the impact on the right to freedom of movement<sup>377</sup> (in cases of house arrests or travel bans for example). Another example of a safeguards could be enhancing judicial scrutiny, in order to provide for more fair trails.

Secondly, a common understanding of the definition of a (jihadist) foreign terrorist fighter should be developed. Preferably, there should be a unified definition on European level.<sup>378</sup> As has been shown multiple times in this thesis, the lack of clear definitions on important concepts like “terrorism” and “foreign terrorist fighters”, leaves room for own interpretation which could result in various human rights violations. If states would agree on definitions internationally, this could enhance effective international cooperation and a more effective use of policies already in place.

Thirdly, the national cases of France and the UK highlight here the need for states to be reminded of their obligations in respect of nationality and statelessness. Additionally, international and European human rights bodies should act more actively in protecting these rights and challenge the states who violate these rights.<sup>379</sup> Even though the measure of citizenship revocation is not used often, violations of these rights should be addressed in order to prevent vague standards which could lead in further human rights violations.

And finally, states should reflect on existing measures and asses the efficiency and downfalls of these measures.<sup>380</sup> Both the UK and France have enacted (or proposed) new laws

---

<sup>375</sup> Human Rights Watch, “preempting justice.”

<sup>376</sup> Boutin, “administrative measures against,” 3-4

<sup>377</sup> Ibid.,11-12

<sup>378</sup> Bakker, Paulussen and Entenmann, “returning jihadist foreign fighters,” 31

<sup>379</sup> Mantu, “human right to nationality,” 39

<sup>380</sup> Boutin, “administrative measures against,” 24-25; Paulussen, “repressing the foreign,” 23

regarding citizenship revocation. If assessing the efficiency of these measures in the past, it is observed that these measures are hardly ever applied in both countries. Therefore, states should focus on amending those policies and legislation which could really be effective. In addition to this, states should increase knowledge and experience sharing on local, national and international level.<sup>381</sup>

The literature agrees on the need for a comprehensive approach by states which balances both punitive as well as de-radicalization and reintegrating measures in countering the threat of foreign terrorist fighters. At this point, it seems like countries focus primarily on preventing radicalized individuals from traveling to the conflict zones. However, as described previously, individuals who were prevented from travelling, might become lone wolves or homegrown terrorist and still pose a threat for Western European governments. Therefore, in the future, the focus of the measures should be more on developing strategies to manage those foreign terrorist fighters who return from the conflict zones. In doing so, a more long-term approach to the foreign terrorist fighter phenomenon might be established.

## 7.2 Discussion

There are several aspects of this study which could be improved in future research. As this study relies on publicly available information, conclusions on motivations of legislation or human rights violations can only be made to a certain extent. In order to fully explore the motivations of imposing new legislation and the impact of terrorist attacks or other developments on new legislation, further research should also include interviews with public officials involved in the study. Also, it would be interesting to interview human rights organizations like Amnesty International or Human Rights Watch to interview them on their views on human rights violations, in order to examine these violations more extensive.

For the analysis of legislation, it would for future research be helpful to include a native French speaker in the process. Not all counterterrorism or foreign terrorist fighter legislations in France were available in English. This complicated the process and limited the scope of documents which could be used and analyzed in this research.

---

<sup>381</sup> Bakker, Paulussesn and Entenmann, "returning jihadist foreign fighter," 30-31

## Chapter 8: Conclusion

The threat of terrorism has been with us for many decades and will probably stay with us in the future. It is unrealistic to aim for a world completely rid of terrorism. Hence, as countering terrorism will stay one of the top priorities of Western democracies, attention should be aimed at effective long-term counterterrorism measures, while upholding human rights obligations. It is argued that counterterrorism legislation has developed without a clear human rights dimension, as states and international institutions continue to introduce wide definitions of terms like “terrorism”, “a terrorist act” and “a foreign terrorist fighter”, which could potentially enlarge behavior that violates human rights.<sup>382</sup> This study tried to examine this notion in the specific case of approaches aimed at preventing the movement of IS foreign terrorist fighters.

The research question of this thesis was the following: *What are the human rights issues in the approaches aimed at preventing the movement of (returning) foreign terrorist fighters in the UK and France since 2011?* It can be concluded that both the UK and France have enacted new legislations since the threat of (returning) foreign terrorist fighters became more pertinent. With rising concerns about the foreign terrorist fighter phenomenon, states have been rediscovering the use of nationality policies as a potential instrument to increase national security.<sup>383</sup> Both the UK and France have enacted legislation, which makes it easier to revoke nationality. As outlined previously, certain checks must be satisfied by national government in case of revoking nationalities. The UK and France do not meet some of these checks. By describing the problems these countries have with meeting these specific checks, the broader human rights issues in countering the threat posed by foreign terrorist fighters are outlined here.

The first check is that nationality deprivation is clearly regulated in domestic law. This directly exposes one of the main issues in human rights violations while countering terrorism. As there is no universal agreement in international law on the definition of terrorism, this prerequisite is already somewhat problematic.

The second condition is that the act of nationality revocation is in accordance with standards of due process. This entails that a person must have the opportunity to appeal a decision.<sup>384</sup> The UK government often relies on secret evidence from its intelligence agencies

---

<sup>382</sup> Mantu, “human right to nationality,” 38

<sup>383</sup> Van Waas, “deprivation of nationality,” 469

<sup>384</sup> Van Waas, “deprivation of nationality,” 477

which is not available for the suspect, making it harder to appeal against a decision. In France, counterterrorism powers are subject to vague and broad standards of evidence. Additionally, fundamental rights law assures that persons who are charged with a crime should be promptly informed about the charge. The preemptive detention approach in France violates this right. Suspects may be detained for several days, before they are able to consult a lawyer. The right to a fair trial is undermined in this case as the suspect cannot probe questions about the evidence used against them.<sup>385</sup> A recurring problem in French counterterrorism law therefore seems to be that the references to human rights obligations are so vague they actually become irrelevant.<sup>386</sup>

The third condition concerns a legitimate aim. As mentioned, the aim of preventing terrorism and protecting national security are viewed as legitimate aims. The UK argues that the measure of nationality revocation is justified because the measure is in the interests of national security and the protection of the public good. In France, revocation of citizenship is aimed on those individuals who have been convicted of a terrorist offence.

The fourth condition was that the measure would be considered as the least intrusive means. This condition is difficult to assess. However, even though both countries apply the measure of citizenship deprivation, it must be stated that in both researched cases the measure still remains a marginal policy instrument. This might indicate that both countries indeed view this measure as the least intrusive one.

The final condition was based on proportionality. It is difficult to find international agreement on this condition. In the UK, no judicial approval is needed for citizenship revocation, as the act of citizenship revocation is not contingent on conviction for a terrorism-related offence. However, as outlined in chapter 2, some foreign terrorist fighters return home in order to leave behind a life of extremist violence. In this case, citizenship revocation would not be proportional at all. However, given the severe consequences a loss of nationality might result in, it is difficult to justify nationality deprivation in terms of proportionality in any case. As in France a conviction is needed for citizenship revocation, it could be argued that this would be more proportional compared to the British case.

The cases of France and the UK therefore show that even within Europe, states have not all ratified the same international instruments. National preferences and national expressions of

---

<sup>385</sup> Human Rights Watch, "preempting justice."

<sup>386</sup> Sudborough, "war against fundamental rights," 479

sovereignty therefore still play an important role in policies like citizenship revocation.<sup>387</sup> The UK has introduced the most far-reaching (and heavily criticized) legislation which allows the deprivation of nationality, even if it renders an individual stateless. In France, the main concern expressed by human rights organizations concerns the right to a fair trial. A recurring problem in both international and national counter terrorism legislation stays the vague and broad definitions of crucial terms. Therefore, the debate on human rights violations while countering terrorism often concerns *potential* human rights violations instead of *actual* human rights violations. However, if human rights are to survive the war on terrorism, governments should implement specific human rights protections and safeguards in their counterterrorism policies, as proposed by international treaties. Arrests and prosecutions will always be necessary when addressing the foreign terrorist fighter phenomenon, but if governments would succeed in enhancing a climate of greater trust, a more effective long-term approach to the foreign terrorist fighter phenomenon might be established.

---

<sup>387</sup> Mantu, "human right to nationality," 38

## Bibliography

ABC News. "Bush Declares war on terror". *ABC News*. Video file. September 20, 2001.

<https://abcnews.go.com/search?searchtext=bush%20declares%20war%20on%20terror>

Algemene Inlichtingen- en Veiligheidsdienst. *Doelwitten in beeld: vijftien jaar jihadistische aanslagen in het Westen*. Den Haag: AIVD, 2019.

<https://www.aivd.nl/documenten/publicaties/2019/05/21/aivd-publicatie-doelwitten-in-beeld.-vijftien-jaar-jihadistische-aanslagen-in-het-westen>

-----"Tijdslijn van aanslagen in het Westen." Accessed 25 May, 2019.

<https://www.aivd.nl/onderwerpen/terrorisme/tijdslijn-van-aanslagen-in-het-westen>

Al Jazeera. "US: We are at war with Islamic State group." *Al Jazeera*, September 13, 2014.

<https://www.aljazeera.com/news/middleeast/2014/09/us-are-at-war-with-islamic-state-group-201491323051540963.html>

Amnesty International. *Amnesty International report 2015/16: the state of the world's human rights*. London: Amnesty International, 2016.

<https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF>

-----*Amnesty International report 2017/18: the state of the world's human rights*. London: Amnesty International, 2018.

<https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>

-----*UK: Human rights: a broken promise*. Amnesty International, February 23, 2006.

<https://www.amnesty.org/download/Documents/76000/eur450042006en.pdf>

-----*United Kingdom: the terrorism prevention and investigation measures bill 2011: control orders redux*. London: Amnesty International, 2011.

<https://www.amnesty.org/download/Documents/28000/eur450072011en.pdf>

Bakker, Edwin, Christoph Paulussen and Eva Entenmann. "Returning jihadist foreign fighters: challenges pertaining to threat assessment and governance of this pan-European problem." *Security and human rights* 25, no. 1 (2014): 11-32

Bakker, Edwin and Jeanine de Roy van Zuijdewijn. "Jihadist foreign fighter phenomenon in Western Europe: a low-probability, high-impact threat." *ICCT Research Paper* 6, no. 9 (2015): 1-22

Barret, Richard. *Beyond the Caliphate: foreign fighters and the threat of returnees*. The

Soufan Center, 2017. [https://thesoufancenter.org/wp-](https://thesoufancenter.org/wp-content/uploads/2017/11/Beyond-the-Caliphate-Foreign-Fighters-and-the-Threat-of-Returnees-TSC-Report-October-2017-v3.pdf)

[content/uploads/2017/11/Beyond-the-Caliphate-Foreign-Fighters-and-the-Threat-of-Returnees-TSC-Report-October-2017-v3.pdf](https://thesoufancenter.org/wp-content/uploads/2017/11/Beyond-the-Caliphate-Foreign-Fighters-and-the-Threat-of-Returnees-TSC-Report-October-2017-v3.pdf)

- Bastié, Eugénie. “Le plan Vigipirate relevé au plus haut niveau, en «alerte attentats».” *Le Figaro*, January 7, 2015. <http://www.lefigaro.fr/actualite-france/2014/12/22/01016-20141222ARTFIG00097-plan-vigipirate-trente-ans-de-vigilance-a-l-egard-du-terrorisme.php>
- BBC. “IS ‘caliphate’ defeated but jihadist group remains a threat.” *BBC*, March 23, 2019. <https://www.bbc.com/news/world-middle-east-45547595>
- “Reality Check: how terrorism threats levels work.” *BBC*. September 25, 2017. <https://www.bbc.com/news/uk-politics-40031087>
- “UK terror threat level raised to ‘severe’.” *BBC*, August 29, 2014. <https://www.bbc.com/news/uk-28986271>
- Bilefsky, Dan and Maia de la Baume. “French Premier Declares ‘War’ on Radical Islam as Paris Grids for Rally.” *The New York Times*. January 10, 2015. <https://www.nytimes.com/2015/01/11/world/europe/paris-terrorist-attacks.html>
- Boring, Nicolas. “France: six French citizens prohibited from leaving under new anti-terrorism law.” February 26, 2015. <http://www.loc.gov/law/foreign-news/article/france-six-french-citizens-prohibited-from-leaving-under-new-anti-terrorism-law/>
- Boutin, Bérénice. “Administrative measures against the foreign fighters: in search of limits and safeguards.” *ICCT Research Paper* 7, no. 12 (2016): 1-36
- Braun, Kerstin. “Home, Sweet Home: managing returning foreign terrorist fighters in Germany the United Kingdom and Australia.” *International Community Law Review* 20, no. 3-4 (2018): 311-346
- Bures, Oldrich. “EU’s responses to foreign fighters: New threat, old challenges?” *Terrorism and Political violence* (2018): 1-18.
- Cobain, Ian. “Parsons Green bomb trial: teenager ‘trained to kill by Isis’.” *The Guardian*, March 7, 2018. <https://www.theguardian.com/uk-news/2018/mar/07/parsons-green-tube-bombing-ahmed-hassan-on-trial>
- Conte, Alex. “States’ Prevention and Responses to the Phenomenon of Foreign Fighters against the Backdrop of International Human Rights Obligations.” In *Foreign Fighters under International Law and Beyond*, edited by Andrea de Guttry, Francesca Capone and Christophe Paulussen, 283-298. The Hague: TMC Asser Press, 2016.
- Coolsaet, Rik. *Facing the fourth foreign fighters wave: what drives Europeans to Syria, and to IS? Insights from the Belgian case*. Brussels: Egmont, The Royal Institute for International Relations, 2016.

- Council of Europe. “Chart of signatures and ratifications of Treaty 046.” Accessed 31 July, 2019. [https://www.coe.int/en/web/conventions/full-list/-conventions/treaty/046/signatures?p\\_auth=sPVGQQe3](https://www.coe.int/en/web/conventions/full-list/-conventions/treaty/046/signatures?p_auth=sPVGQQe3)
- Council of the European Union. *The European Union Counter-Terrorism Strategy*. Brussels: Council of the European Union, November 30 2005. Accessed on 19 May 2019 <https://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014469%202005%20REV%204>
- Cragin, Kim R. “The November 2015 Paris attacks: the impact of foreign fighter returnees.” *Orbis* 61, no. 2 (2017): 212-226.
- Crelinsten, Ronald D. and Alex P. Schmid. “Western responses to terrorism: a twenty-five year balance sheet.” *Terrorism and Political Violence* 4, no. 4 (1992): 307-340.
- Dearden, Lizzie and Benjamin Kentish. “Salman Abedi ‘travelled to Syria and Libya’ before carrying out Manchester attack.” *The Independent*, May 24, 2017. <https://www.independent.co.uk/news/uk/home-news/salman-abedi-manchester-libya-syria-suicide-bomber-terrorist-attack-middle-east-islamist-a7752761.html>
- Dettmer, Jamie. “Britain strips more than 100 Islamic State fighters of citizenship,” *VOANews*, July 30, 2017. <https://www.voanews.com/a/britain-strips-is-fighters-of-citizenship/3964920.html>
- European Parliamentary Research Service. *The return of foreign fighter to EU soil: ex-post evaluation*. Brussels: European Union, 2018. Accessed on 7 May, 2019. [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_STU\(2018\)621811](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2018)621811)
- Europol. *European Union Terrorism Situation and Trend Report (TE-SAT 2013)*. The Hague: Europol, 2013. Accessed on 28 April, 2019. <https://www.europol.europa.eu/activities-services/main-reports/te-sat-2013-eu-terrorism-situation-and-trend-report>
- *European Union Terrorism Situation and Trend Report (TE-SAT 2017)*. The Hague: Europol, 2017. Accessed on 3 May 2019. <https://www.europol.europa.eu/activities-services/main-reports/eu-terrorism-situation-and-trend-report-te-sat-2017>
- *European Union Terrorism Situation and Trend Report (TE-SAT 2018)*. The Hague: Europol, 2018. Accessed on 3 May, 2019. <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-2018-tesat-2018>
- France 24. “France raises terror alert level after Jewish school shooting.” *France 24*. March

- 20, 2012. <https://www.france24.com/en/20120320-france-raises-terror-alert-level-midi-pyrenees-jewish-school-shooting-ozar-hatorah-scarlet-toulouse>
- “Hollande drops controversial bid to strip terrorist of French citizenship.” *France* 24. March 30, 2016. <https://www.france24.com/en/20160330-hollande-drops-controversial-bid-strip-terrorists-french-citizenship>
- Freeman, Michael. *Freedom or Security: The Consequences for Democracies Using Emergency Powers to Fight Terror*. Westport, CT: Praeger, 2003.
- Gibbons-Neff, Thomas. “Number of foreign fighters entering Iraq and Syria drops by 90 percent.” *The Guardian*, April 26, 2016. [https://www.washingtonpost.com/news/checkpoint/wp/2016/04/26/number-of-foreign-fighters-entering-iraq-and-syria-drops-by-90-percent-pentagon-says/?noredirect=on&utm\\_term=.5b01636290c0](https://www.washingtonpost.com/news/checkpoint/wp/2016/04/26/number-of-foreign-fighters-entering-iraq-and-syria-drops-by-90-percent-pentagon-says/?noredirect=on&utm_term=.5b01636290c0)
- <https://www.theguardian.com/uk-news/2019/jan/22/prevent-strategy-on-radicalisation-faces-independent-review>
- Ginkel, Bibi van, Eva Entenmann, Bérénice Boutin, Grégory Chauzal, Jessica Dorsey, Marjolein Jegerings, Christophe Paulussen, Johanna Pohl, Alastair Reed and Sofia Zavagli. “The foreign fighters phenomenon in the European Union: profiles, threats & policies.” *ICCT Research papers* 7, no. 2 (2016): 1-70.
- Gouvernement.fr. “Vigipirate levels.” Accessed on May 19, 2019. <https://www.gouvernement.fr/en/vigipirate-levels>
- GOV.UK. “Counter-terrorism and Security Act.” Counter-terrorism and security act: impact assessments. Last modified: 26 November 2014. Accessed on 28 July, 2019. <https://www.gov.uk/government/collections/counter-terrorism-and-security-bill>
- Hegghammer, Thomas. “Should I stay or should I go? Explaining variation in Western Jihadist’ choice between domestic and foreign fighting.” *The American Political Science Review* 107, no. 1 (2013): 1-15
- Herrington, Lewis. “British Islamic extremist terrorism: the declining significance of Al Qaeda and Pakistan.” *International affairs* 91, no. 1 (2015): 17-35
- Hicks, Neil. “The impact of counter terror on the promotion and protection of human rights: a global perspective.” In *Human rights in the ‘war on terror’*, edited by Richard Ashbly Wilson, 209-224. New York: Cambridge University Press, 2005.
- HLN. “Jihadist roept Nederlandse en Belgische ‘broeders’ op tot actie.” *Het Laatste Nieuws*. Video file. September 23, 2014. <https://www.hln.be/nieuws/buitenland/jihadist-roept-nederlandse-en-belgische-broeders-op-tot-actie~a459cdab/>

- HM Government. *CONTEST: The United Kingdom's Strategy for Countering Terrorism*. London: HM Government, 2018.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/716907/140618\\_CCS207\\_CCS0218929798-1\\_CONTEST\\_3.0\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716907/140618_CCS207_CCS0218929798-1_CONTEST_3.0_WEB.pdf)
- Human Rights Watch. "France: Abuses under state of emergency." February 3, 2016.  
<https://www.hrw.org/news/2016/02/03/france-abuses-under-state-emergency>
- "Preempting Justice; counterterrorism Laws and procedures in France." July 1, 2008. <https://www.hrw.org/report/2008/07/01/preempting-justice/counterterrorism-laws-and-procedures-france>
- Ignatieff, Michael. *The lesser evil: political ethics in an age of terror: the Gifford lectures*. Princeton: Princeton University Press, 2004.
- Kentish, Benjamin. "Terror threat level lowered from 'critical' to 'severe' after Parsons Green Tube attack arrests." *The Independent*. September 17, 2017.  
<https://www.independent.co.uk/news/uk/home-news/london-attack-latest-parsons-green-district-line-bomb-terror-threat-level-lowered-severe-critical-a7951736.html>
- Kopitzke, Cory. "Security Council Resolution 2178 (2014): An Ineffective Response to the Foreign Terrorist Fighter Phenomenon." *Indiana Journal of Global Legal Studies* 24, no. 1 (2017): 309-341
- Legislation.gov.uk. "Counter-terrorism and Border Security Act 2019." Accessed on 23 May, 2019. <http://www.legislation.gov.uk/ukpga/2019/3/contents/enacted>
- Limbada, Zubeda and Lynn Davies. "Addressing the foreign fighter terrorist phenomenon from a human rights perspective." *International Community Law Review* 18, no. 5 (2016): 483-493
- The Local. "France raises security alert level to maximum, but what does that mean for the public?" *The Local*, December 12, 2018. <https://www.thelocal.fr/20181212/france-raises-alert-level-and-boosts-security-at-christmas-markets>
- Luban, David. "The war on terrorism and the end of human rights." In *War after September 11*, edited by Verna Gehring, 51-62. Lanham, MD: Rowman & Littlefield Publishers, 2003.
- Malet, David. *Foreign Fighters: transnational identity in civil conflicts*. Oxford: Oxford University Press, 2013.
- Mantu, Sandra. "'Terrorist' citizens and the human right to nationality." *Journal of contemporary European Studies* 26, no. 1 (2018): 28-41.
- Martins, Bruno Oliveira. "The political-legal Nexus in EU Counter-terrorism: An Assessment

- of the Two-track influences between the EU and the UN.” *European Politics and society* 17, no. 2 (2015): 181-195.
- McMahan, Jeff. *Killing in war*. Oxford: Clarendon Express, 2009.
- MI5. “Threat levels.” Accessed May 15, 2019. <https://www.mi5.gov.uk/threat-levels>
- Nowak, Manfred, and Anne Charbord. *Using Human Rights to Counter Terrorism*. Cheltenham: Edward Elgar Publishing, 2018.
- Office of the High Commissioner for Human Rights (OHCHR). “UN rights experts urge France to protect fundamental freedoms while countering terrorism.” *OHCHR*. January 19, 2016. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16966&LangID=E>
- Ojanen, Tuomas. “Administrative counter-terrorism measures- a strategy to circumvent human rights in the fight against terrorism?” In *Secrecy, national security and the vindication of constitutional law*, edited by David Cole, Federico Fabbrini and Arianna Vedeschi, 249-267. Cheltenham: Edward Elgar Publishing.
- Parsons, Victoria. “Theresa May deprived 33 individuals of British citizenship in 2015,” *The bureau of Investigative Journalism*. June 21, 2016. <https://www.thebureauinvestigates.com/stories/2016-06-21/citizenship-stripping-new-figures-reveal-theresa-may-has-deprived-33-individuals-of-british-citizenship>
- Paulussen, Christophe. “Repressing the foreign fighter phenomenon in Western Europe: Towards an effective response based on human rights.” *ICCT Research Papers* 7, no. 10 (2016): 1-39.
- Paulussen, Christophe and Eva Entenmann. “National responses in select Western European countries to the foreign fighter phenomenon.” In *Foreign Fighters under International Law and Beyond*, edited by Andrea de Guttry, Francesca Capone and Christophe Paulussen, 391-422. The Hague: TMC Asser Press, 2016.
- Penketh, Anne. “French suspect in Brussels Jewish museum attack spent year in Syria.” *The Guardian*, June 1, 2014. <https://www.theguardian.com/world/2014/jun/01/french-suspect-brussels-jewish-museum-attack-syria>
- Pew Research Center. “Globally, People Point to ISIS and Climate Change as Leading Security Threats.” Assessed 22 July, 2019. [https://www.pewresearch.org/global/2017/08/01/globally-people-point-to-isis-and-climate-change-as-leading-security-threats/?utm\\_con-](https://www.pewresearch.org/global/2017/08/01/globally-people-point-to-isis-and-climate-change-as-leading-security-threats/?utm_con-)

[tent=buffer5b9c6&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://www.researchgate.net/publication/315111111)

- Reed, Alastair and Johanna Pohl. "Disentangling the EU foreign fighter threat: the case for a comprehensive approach." *Rusi Newsbrief* 37, no. 1 (2017).
- Reed, Alastair, Jeanine de Roy van Zuijdewijn and Edwin Bakker. "Pathways of foreign fighters: policy options and their (un)intended consequences." *ICCT Research Papers* 6, no. 1 (2015): 1-19
- Rostow, Nicholas. "Before and after: the Changed UN response to terrorism since September 11<sup>th</sup>." *Cornell International Law Journal* 35, no. 3 (2002): 475-490.
- Scheinin, Martin. "Impact of post 9/11 counter-terrorism measures on all human rights." In *Using human rights to counter terrorism*, edited by Manfred Nowak and Anne Charbord, 92-124. Cheltenham: Edward Elgar Publishing, 2018.
- Schmid, Alex, P. and Judith Tinnes. "Foreign (terrorist) fighters with IS: A European Perspective." *ICCT Research Papers* 6, no. 8 (2015): 1-69.
- Sudborough, Calliope Makedon. "The War against Fundamental Rights: French Counterterrorism Policy and the Need to Integrate International Security and Human Rights Agreements." *Suffolk Transnational Law Review* 30, no. 2 (2007): 459-483.
- Taylor, Letta. "Foreign Terrorist Fighter Laws: Human rights Rollbacks under UN Security Council Resolution 2178." *International Community Law Review* 18, no. 5 (2016): 455-482.
- Toshkov, Dimitar. *Research design in political science*. New York: Palgrave, 2016.
- United Nations General Assembly. *Uniting against terrorism: recommendations for a global counter terrorism strategy*. 27 April 2006, A/60/825. Accessed 18 May, 2019 <https://undocs.org/A/60/825>
- "Universal Declaration of Human rights." 217 (III) A. Paris, 1948. Accessed 4 May, 2019. <https://www.un.org/en/universal-declaration-human-rights/>
- Vidino, Lorenzo. "European foreign fighters in Syria: dynamics and responses." *European View* 13, no. 2 (2014): 217-224.
- Vinocur, Nicholas. "France unveils anti-jihad campaign with video and website." *Reuters*. January 28, 2015. <https://www.reuters.com/article/us-france-mideast-video/france-unveils-anti-jihad-campaign-with-video-and-web-site-idUSKBN0L11VT20150128>

- Waas, Laura van. "Foreign fighters and the deprivation of nationality: national practices and international law implications." In *Foreign Fighters under International Law and Beyond*, edited by Andrea de Guttry, Francesca Capone and Christophe Paulussen, 469-487. The Hague: TMC Asser Press, 2016
- Walker, Peter. "Rudd admits anti-terror exclusion powers used only once since 2015." *The Guardian*. May 29, 2017. <https://www.theguardian.com/uk-news/2017/may/29/uk-used-anti-terror-exclusion-powers-once-since-2015-amber-rudd-admits>
- Walzer, Michael. *Just and unjust wars: a moral argument with historical illustrations*. New York: Basic Books, 1977
- Arguing about war*. New Haven: Yale University Press, 2004
- Whitman, Jeffrey. "Just War Theory and the War on Terrorism: A Utilitarian Perspective." *Public Integrity* 9, no. 1 (2007): 23-43
- Wilkinson, Paul. *Terrorism versus democracy*. London: Routledge, 2011.
- Wilson, Richard Ashby. *Human rights in the 'war on terror'*. Cambridge: Cambridge University Press, 2005.
- Wittendorp, Stef, Roel de Bont, Edwin Bakker and Jeanine de Roy van Zuijdewijn. *Measures against jihadist foreign fighters: a policy comparison between the Netherlands, Belgium, Denmark, Germany, France, the UK and the US (2010 to 2017)*. Leiden: Universiteit Leiden, 2017 <https://openaccess.leidenuniv.nl/handle/1887/64739>
- Yin, Robert K. *Case study research: design and methods*. Thousand Oaks, CA: SAGE publications, Inc., 1994

## Appendices

### Appendix 1: Overview jihadist terrorist attacks in Western European countries 2004-2018

<b>Year</b>	<b>Date</b>	<b>Country/Place</b>	<b>Description</b>
<b>2004</b>	11 March	Madrid, Spain	2004 Madrid train bombings
	02 November	Amsterdam, Netherlands	Theo van Gogh murder
<b>2005</b>	07 July	London, UK	7 July London bombings, 7/7 attacks
	21 July	London, UK	21 July London bombings
<b>2006</b>	31 July	Keulen-dortmund-Koblenz, Germany	2006 German train bombing attempts
<b>2007</b>	29 June	London, UK	2007 London car bombings
	30 June	Glasgow, Schotland	Glasgow airport attack
<b>2008</b>	22 May	Exeter, UK	Exeter attempted bombing
<b>2009</b> <sup>388</sup>	12 October	Milan, Italy	October bomb attack Milan
<b>2010</b>	01 January	Aarhus, Denmark	Danish cartoonist attack
	11 May	Uppsala, Sweden	Terrorist attack on Lars Vilks
	22 May	London, UK	Stabbing of Stephen Timms
	09 October	Aarhus, Denmark	Attack on newspaper Jyllands-Posten
	11 December	Stockholm, Zweden	2010 Stockholm bombings
<b>2011</b>	02 May	Frankfurt, Germany	Frankfurt airport shooting
<b>2012</b>	11/15/19 March	Toulouse/Montauban, France	Toulouse and Montauban shootings
	19 September	Paris, France	September 2012 Sarcelles attack
	10 December	Bonn, Germany	Bonn train station failed attack
<b>2013</b>	05 February	Copenhagen, Denmark	Failed attack on Lars Hedegaard Jensen
	22 May	London, UK	Killing Lee Rigby (British military)
	25 May	Paris, France	2013 La Défense stabbing
<b>2014</b>	24 May	Brussel, Belgium	Jewish museum attack
	20 December	Joué-les-Tours, France	2014 Tours police station stabbing
<b>2015</b>	07 January	Paris, France	Charlie Hebdo shootings
	08/09 January	Paris, France	Île de France attacks
	03 February	Nice, France	2015 Nice stabbing
	14 February	Copenhagen, Denmark	2015 Copenhagen shootings

<sup>388</sup> On 25 December 2009, a man attempted a failed bombing on Northwest Airlines flight 253 from Amsterdam to Detroit. As the attempt occurred twenty minutes before landing in Detroit, this attack is excluded here as not viewed as an attack in Western Europe.

	26 June	Saint-Quentin-Fallavier, France	Saint-Quentin-Fallavier attack
	21 August	Amsterdam-Paris, Netherlands-France	the Attempted Thalys attack
	17 September	Berlin, Germany	2015 Berlin knife attack
	29 September	Sandholm, Denmark	Danish asylum centre stabbing
	13 November	Paris, France	November 13 Paris attacks
	06 December	London, UK	2015 Leytonstone tube station attack
<b>2016</b>	01 January	Valence, France	Valence mosque attack
	07 January	Paris, France	Janaury 2016 Paris police station attack
	11 January	Marseille, France	Jewish teacher stabbing
	26 February	Hannover, Germany	2016 Hannover stabbing
	22 March	Brussel, Belgium	2016 Brussels bombings
	16 April	Essen, Germany	Sikh Temple bombing
	13 June	Magnanville, France	2016 Magnanville stabbing
	14 July	Nice, France	Nice truck attack
	18 July	Würzburg, Germany	Würzburg train attack
	24 July	Ansbach, Germany	2016 Ansbach bombing
	26 July	Saint-Etienne-du-Rouvray, France	2016 Normandy church attack
	06 August	Charleroi, Belgium	2016 stabbing of Charleroi police officers
	03 September	Paris, France	Foiled attack Notre Dame
	04 September	Osny, France	Osny prisoner attack
	05 October	Brussels, Belgium	2016 stabbing of Brussels police officers
	26 November	Ludwigshafen, Germany	2016 Ludwigshafen bombing plot
	19 December	Berlin, Germany	2016 Berlin truck attack
<b>2017</b>	03 February	Paris, France	Louvre machete attack
	18 March	Paris, France	2017 Orly Airport attack
	22 March	London, UK	Westminster attack
	07 April	Stockholm, Sweden	2017 Stockholm truck attack
	22 May	Manchester, UK	Manchester arena bombing
	03 June	London, UK	London Bridge attack
	06 June	Paris, France	2017 Notre-Dame de Paris attack
	19 June	Paris, France	June 2017 Champs-Elysees car ramming attack
	20 June	Brussels, Belgium	June 2017 Brussels attack

	30 June	Linz, Austria	2017 Linz stabbing
	28 July	Hamburg, Germany	2017 Hamburg knife attack
	09 August	Levallois-Perret, France	2017 Levellois-Perret attack
	17 August	Barcelona, Spain	Barcelona attacks
	18 August	Cambrils, Spain	Cambrils attack
	19 August	Turku, Finland	2017 Turku attack
	25 August	London, UK	Sword attack on London police at Buckingham Palace
	25 August	Brussels, Belgium	August 2017 Brussels attack
	15 September	Paris, France	2017 soldier attack with knife
	15 September	London, UK	Parsons Green train bombing
	30 September	Paris, France	Failed bomb attempt Port d'Auteuil
	01 October	Marseille, France	2017 Marseille stabbing
<b>2018</b>	23 March	Trèbes, France	Trèbes attack
	12 May	Paris, France	2018 Paris knife attack
	29 May	Liège, Belgium	2018 Liège attack
	14 August	London, UK	2018 Westminster car incident
	31 August	Amsterdam, Netherlands	Amsterdam Central stations stabbing
	11 December	Strasbourg, France	2018 Strasbourg attack

Appendix 2: Statistical overview jihadist attacks in Western European countries 2004-2018

<b>Year</b>	<b>The UK</b>	<b>France</b>	<b>Europe</b>	<b>Total</b>
<b>2004</b>	0	0	2	2
<b>2005</b>	2	0	0	2
<b>2006</b>	0	0	1	1
<b>2007</b>	2	0	0	2
<b>2008</b>	1	0	0	1
<b>2009</b>	0	0	1	1
<b>2010</b>	1	0	4	5
<b>2011</b>	0	0	1	1
<b>2012</b>	0	2	1	3
<b>2013</b>	1	1	1	3
<b>2014</b>	0	1	1	2
<b>2015</b>	1	5	4	10
<b>2016</b>	0	8	9	17
<b>2017</b>	5	8	8	21
<b>2018</b>	1	3	2	6
<b>Total</b>	14	28	35	77

### Appendix 3: Overview of TPIM orders<sup>389</sup>

<b>Measure</b>	<b>Description</b>
<b>Overnight residence measure</b>	An individual must remain overnight at a specified residence and/or the individual must reside at a residence provided by the home Office
<b>Travel measure</b>	An individual is not allowed to leave the country or a specified area within the country or cannot possess any travel documents
<b>Exclusion measure</b>	An individual is restricted from entering a specified location, area or place.
<b>Movement directions measure</b>	The police gives directions to an individual in relation to his or her movements and the individual should comply with these directions.
<b>Financial services measure</b>	Access to financial services is restricted, like limited access to bank accounts.
<b>Electronic communication device measure</b>	Restrictions for usage of mobile phones, audiovisual recording devices or memory storage, and internet. This measure also applies to others in the same residence as the individual as well as a spouse and children.
<b>Property measure</b>	An individual is prohibited from transferring money and property without permission of the Home Secretary.
<b>Association measure</b>	An individual is restricted from association and communication with other individuals.
<b>Work or studies measure</b>	Specific types of employment and academic studies are restricted. Additionally, an individual should obtain permission to begin employment or a study.
<b>Reporting, photography and monitoring measures</b>	These measures include the requirement for an individual to report itself to a police station, have their photograph taken and to wear an electronic tag.

<sup>389</sup> Amnesty International, *terrorism prevention and investigation*, 6-7