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An International Issue with Domestic Responses: A Comparative Study of Norwegian and Swedish Judicial Approaches to the Return of the Women of ISIS

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**An International Issue with Domestic Responses:
A Comparative Study of Norwegian and Swedish
Judicial Approaches to the Return of the Women of
ISIS**



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Abstract

After a brutal war, ISIS (Islamic State of Iraq and Syria) lost its significant territorial areas. How to deal with the organization's members returning back to their home countries, has been subject to heated debate. By focusing specifically on the role of the organization's female members this paper explores the differences in the judicial approaches to the returning ISIS-women, through a case study analysis of Norway and Sweden. By discussing the differences in the expansion of national terror legislation, its implementation in relation to the women of ISIS, and the possible contributing factors to the different approaches, this paper answers the following research question: *how do Norway and Sweden differ in their judicial approach to the Norwegian and Swedish women of ISIS returning back home between 2012-2022? Moreover, what are the main contributing factors leading to the differences in the approaches?*

The paper argues that Norway is more punitive towards returning women than Sweden. This is due to Norway's legislation on terrorism participation, which allows for prosecution without classifying which actions count as participation. Furthermore, the paper argues that this differs from Sweden's legislation on participation, which requires evidence of grave terrorist crimes committed in order to prosecute. This, the paper demonstrates, results in Sweden lacking the legal framework to prosecute its female nationals returning from ISIS. Lastly, the paper explores possible factors contributing to the different judicial approaches and highlights the Swedish legislative council, the effect of recent terrorist attacks, and loud critics as the most significant. Through the use of the case study, this paper contributes to knowledge on the implications domestic judicial differences can have in combatting transnational threats like terrorism.

Keywords: ISIS, Female Terrorism, Legislation, Prosecution, Agency, Participation, Critical Terrorism Studies.

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Introduction

The Syrian civil war remains a dark spot in history. At its peak, the Islamic State of Iraq and Syria (ISIS) controlled large areas of both Syria and Iraq and terrorized hundreds of thousands of people living in their so-called 'Islamic Caliphate'. The bloody reign of ISIS shocked the world. Public beheadings, slavery, mass killings, and torture were common scenes inside the self-proclaimed caliphate (Saad 2020, 1). ISIS quickly became a global phenomenon due to its international character. Around 30 000 people from around 85 countries joined the group, and although a good majority of these recruits are from the Middle East, many of them came from Western nations (Benmelech and Kloor 2020, 1458). After ISIS's defeat in its last enclave in Baghouz in Syria, most of the groups' remaining members were placed in camps in the Northern region. While Syria was left in ruins, the question remained what to do with the thousands of foreigners; men and women, who had left their countries in order to join the Islamic State.

The use of foreign fighters in conflicts is not a new phenomenon. They are defined as *non-nationals who are involved in armed violence outside their habitual country of residence* (Kraehenmann 2014, 5). But, what is extraordinary about ISIS is how many of these foreigners were women. ISIS differs from many other terrorist organizations due to their mission of creating a worldwide Islamic caliphate, and the specific role of the women was essential for the success of the state-building project. As this paper will demonstrate, the women possessed significantly different roles within the caliphate than those of the men. While the men were expected to fight on the battleground to gain more territory, the women were supposed to ensure the growth of the organization by supporting the men from home. This entailed tasks such as housework, cooking, and raising the children who would grow up to be the next generation of ISIS (Hoyle, Radford, and Frenett. 2015, 32).

Due to the specificity of their role within the caliphate, entailing that they perform their share of jihad (*holy war*) by being housewives, the prosecution of the women upon return to their home countries has been subject to heated debates. Countries have opted for vastly different strategies and different judicial responses, attempting to deal with the homecoming of the women once part of the most feared terrorist organization in the world.

While the return of the ISIS-women back to their home countries is an international issue, the debate surrounding their possible prosecution has been especially heated in Norway and Sweden. This is because the neighboring countries have opted for very different judicial approaches regarding prosecution of the specific role of the women. Whereas Norway stands out as the nation with one of the strictest legal frameworks for terrorism participation in Europe,

the Swedish legal framework lacks legal ground to prosecute the women upon return (Svendsen 2019). This results in severely different destinies for the women upon return, depending on which side of the Scandinavian border their passport is issued. Whereas the only Norwegian woman who has returned was sentenced to prison for the time she spent as a member of ISIS, only one of the approximately 14 returned Swedish women has been sentenced (Svendsen 2019).

Their significantly different judicial approaches towards the returning women of ISIS and the direct implications this has for the women make Norway and Sweden an interesting comparative case study. The differences in the treatment of the women upon return have raised important questions regarding the categorization of terrorists, the classification of acts of terror, and the consequences of the role of the women inside of the caliphate. Since the issue is current and ongoing, we have much to learn from it.

A comparative case study of Norway's and Sweden's judicial approach to the homecoming of ISIS women will add to the literature on this issue in three ways. First, while the number of Swedish and Norwegian women who have returned is quite low (1 Norwegian and 14 Swedish), there have been few studies systematically analyzing and comparing this group. Secondly, a comparative case study between the two countries demonstrates differences and similarities in the categorization of terrorists, demonstrating the political nature of the concept, which is missing in previous studies. And lastly, attempting to understand why the countries have opted for such different strategies, this paper will highlight underlying social and institutional factors contributing to the differences, which are not observable in existing academia.

Gendering the question of ISIS is important in order to understand the complexity of the issue regarding the women. This allows for centering the question around the women, a much-understudied group compared to their male associates. The paper will contribute to the feminist literature on terrorism by offering new perspectives to the conceptual debate on the agency of female terrorists. As this paper will demonstrate, much of the previous scholarly debate on female members of Islamic jihadist groups has been centered around determining the role of women as either victims or perpetrators (Bloom and Lokmanuglo 2020). This paper, however, aims to dig deeper than the binary distinction, by demonstrating the importance of historical and contextual knowledge of an organization like ISIS. Demonstrating that the role of the women is far more complex than the binary distinction of victim/perpetrator and that in many cases, they will function as both.

With the objective of conducting a comparative case study analysis describing and discussing the judicial differences between the two countries, and elaborating on the possible reasons for each, this paper will answer the research question: *how do Norway and Sweden differ in their judicial approach to the Norwegian and Swedish women of ISIS returning back home between 2012-2022? Moreover, what are the main contributing factors leading to the differences in the approaches?*

The time span of 2012-2022 is chosen because the decade is relevant in relation to the expansion of terror legislation which will be discussed further in the paper. Additionally, the restricted amount of years allows for detail-focused research, which facilitates a structured study of the returned women. The structure of this paper is divided in the following way. First, the literature review presents previous work on the life of women inside of the caliphate, the scholarly debate on terrorism definitions, a conceptual debate on the binary distinction of victim/perpetrator, and an overview of previous work on prosecution of the women. The arguments section presents the two key arguments of the paper. This is followed by the methods section that explains the benchmarks of comparison and the sources and data used to facilitate the comparison. Furthermore, the theoretical framework discusses and explains the theoretical foundations which underpin and help explain the research question and key arguments.

Chapter 1 compares the expansion of the Swedish and Norwegian legal framework on terrorism by discussing the differences in the new laws introduced in response to the growing ISIS threat. Chapter 2 compares the countries' implementation of these laws, and discusses how this affects the women, through the use of two case studies of returned women on both sides of the border. Following this, chapter 3 will discuss the results of Chapters 1 and 2, and further analyze possible factors contributing to the differences in the countries' judicial approaches. Lastly, the conclusion sums up the key findings of the research, as well as gestures towards further possible research in the wider discussion on women and terrorism, and the implications of the intersection between international and domestic policies responding to transnational threats.

Literature Review

Introduction

The controversies surrounding the lives the women had inside of the so-called 'Caliphate' are many, and the specific character of their role has led to a headache upon return to their home countries. As will become evident in this literature review, the women executed a significantly

different role than the majority of the ISIS-men. Henceforth, the direct consequences of their assumed role deserve more research.

This literature review provides an overview of the scholarly debate thus far on the return of the ISIS-women. This is done by first analyzing and discussing the literature on the ISIS-women's life in relation to the structure of the organization. Following this is an analysis of the debate on the academic definition of terrorism, demonstrating how this functions poorly in explaining the women's role in ISIS. Lastly, a discussion of the perceptions of the role of the women as perpetrators or victims leads the way to the last section which engages with the previous literature on the prosecution of the women.

Women's Role in the Caliphate

In order to discuss the prosecution of returning women in Norway and Sweden, it is important to first understand their role inside of the 'Caliphate'. Studying the ideological literature on jihad, (*holy war*), Nelly Lahoud argues that most jihadi leaders believe that the non-combat support of women is vital for the groups' success, and thus, the women are excluded from all military-related activities (Lahoud 2014, 785). ISIS' strict non-combat roles for the women entailed that they pursued roles of mothers and wives. Anita Peresine and Alberto Cervone's analysis of the power structure of the group argues that the women's role was strictly to take care of the home and to ensure the survival of the organization by raising the new generation of ISIS (Peresine and Cervone 2015, 503). Furthermore, according to Peresine and Cervone, the marginalization of women was essential to ISIS's power system, and this made it highly unlikely for the women to commit any violence themselves. In this aspect, ISIS appears to be much more conservative and restrictive than previous jihad formations (Peresine and Cervone 2015, 503).

Adding to this literature, Mah-Ruk Ali's study content analysis of ISIS' manifesto for its female members, demonstrates that the women's space was inside of the house and that they were only allowed to leave the house if accompanied by a male relative (Ali 2015, 13). Furthermore, there is no evidence that ISIS would allow women to take up combat roles, even if the women would be interested in doing so (Peresine and Cervone 2015, 504). Henceforth, the roles envisaged for the women as 'merely' wives and mothers were considered so important by ISIS in their state-building project of creating an Islamic Caliphate, that they did not exploit possible military advantages female fighters could have yielded.

Definitional issues of terrorism- where do the ISIS women fit in?

Extensive research has been done on terrorism, and the field of study has grown rapidly since 9/11 (Golder and Williams, 2004). However, as this section will demonstrate, much of this research is based on definitions of terrorism, which all entail serious violence or the threat of it. What constitutes as terrorism, and what does not, is a contested debate. In order to understand how the two Scandinavian countries' judicial approach to the return of the Norwegian and Swedish women of ISIS can differ so greatly, it is interesting to look at the scholarly debate on definitions of terrorism.

Many attempts have been made in order to create an academically agreed-upon definition. One of the most cited works is Alex Schmid's attempt to reach an academic consensus definition from 1988, which was further revised and updated in 2011. After gathering over 200 different definitions from academics and other professionals, Schmid's definition refers to terrorism as 'fear-generating, coercive political violence, direct violent action with no moral constraint, targeting civilians' (Schmid 2011, 158). Similar to Schmid, Leonard Weinberg, Ami Pedahzur, and Sivan Hirsch-Hoefler's empirical analysis of 109 academic definitions of terrorism, concludes that the deciding factor when defining terrorism is extreme violence, however, they stress that we should be willing to label terrorism as a range of different activities, as long as they are violent (Weinberg et al. 2004, 787). Alan Greene expands on this, and challenges the idea of defining terrorism both in domestic and international law, thereby stressing the importance of multiple definitions of terrorism, whose breadth depends on specific circumstances for which they are desired (Greene 2017, 415).

On the other hand, David Collier and James Mahon strongly criticize the efforts made to extend the definition of terrorism. They argue that when scholars take a category developed from one set of cases and then extend it to more cases, the new cases deviate so much from the previous that the category becomes inapplicable in its form (Collier and Mahon 1993, 845). Evidently, reaching an accord on an academic definition of terrorism is complicated. Furthermore, as this paper will discuss, most of the women of ISIS did not commit violence. Henceforth, the focus on violence, or the threat of violence, as a necessary component to an academic definition of terrorism, inherently excludes most of the women of ISIS as possible terrorists. Therefore, in order to explain how some of the returning women can be sentenced under terrorism legislation, a new perspective on what constitutes as terrorism and who can be categorized as a terrorist is necessary.

Victims or perpetrators?

Because of the extremely patriarchal and highly oppressive structure of ISIS, the extent to which the women had agency over their own lives inside of the caliphate is highly debated. Because of their restricted and often violently oppressed lives, Debangana Chatterjee argues that the women should be considered victims with no free choice or action (Chatterjee 2016, 202). Disputing this claim, Katharina Kneip explains that the women executed their type of jihad by carrying out a political act. By engaging in this jihad, they sought emancipation and empowerment, where they wanted to take control over their life (Kneip 2016, 92). However, when discussing the female agency in the caliphate, Ayse Lokmanoglu and Mia Bloom argue that the freedom of the women was severely limited and that their every moment was micro-managed by men. Furthermore, they stress that women were exploited and capitalized on in order to actively recruit male foreign fighters (Lokmanoglu and Bloom 2020, 8).

The public perceptions of the female agency become evident in Western media. Aiming to provide a reflection on the language used to make sense of women joining ISIS from Western societies, Alice Martini (2018) challenges the neo-orientalist depiction of the women as ‘jihadi brides’, and the men as ‘foreign fighters’. By categorizing the women as ‘jihadi brides’, they are imminently constructed as vulnerable and passive objects. However, joining a terrorist organization represents a great gesture of agency, Martini argues (Martini 2018, 471). Similar to Martini, Jiwani’s (2021) discourse analysis of Canadian media outlets highlights a specific type of gendered Islamophobia of the female returnees of ISIS, complicating their integration back into society (Jiwani 2021, 56).

Evidently, scholars disagree on the extent of female agency inside the caliphate. Much has been written on the women’s lives and their amount of freedom, but little attention is paid to the consequences this has upon return to their home countries. Therefore, this paper’s research is valuable to add to the discussion on the categorization of the women as agents of terrorism, and by demonstrating how this plays out judicially, this paper will fill a necessary gap in the scholarly literature on female terrorism.

Prosecution

Collecting evidence far away from a warzone is difficult, and courts in the West are now faced with the challenging task of judging their citizens’ responsibility for atrocities committed by ISIS. Scholars like Stenger (2023), Spadaro (2021), and Widagdo et. al. (2021) all agree that repatriating the women, men, and children who were part of ISIS would be the wisest approach for Western states. However, reality demonstrates that the issue is far more complicated than

this, as the states have opted to deal with the female ‘returnees’ differently. Discussing the United Kingdom’s revocation of British teenager Shamina Begum’s citizenship, Mercedes Masters and Salvador Santino F. Regilme Jr. argue that persistent colonial and stratified conceptions of citizenship influence the British political rhetoric of defining who is a threat to the security of the nation (Masters and Regilme 2020, 341). These studies provide interesting perspectives regarding the states’ responsibility, but as this paper will demonstrate, repatriation of the women is highly unlikely in some countries like Norway, because the women refuse to return, due to fear of prosecution (Solberg 2022).

The question of prosecution depends on each state’s legal framework on terrorism. Attempting to determine whether the female returnees could be prosecuted within international law, Jessica James argues that there is a margin within international law where the non-combat roles of the women could be prosecuted, such as settling into appropriated houses abandoned by force (James 2019, 20). Adding to James’ perspective, Samar El-Masri advocates for the International Criminal Court to prosecute the women and men of ISIS responsible for the sexual slavery of Yazidi girls (El-Masri 2018, 1048). On the other hand, Evan Jones argues that due to gaps in data and bias concerning gender and conflict, the women of ISIS wrongfully receive different treatment in court than the men (Jones 2020, 247). Furthermore, Jones disagrees with James that women should be prosecuted on non-combat roles, and appeal that women should be prosecuted on the same terms as men, in order to provide justice for the victims of ISIS’s brutalities.

Despite bringing forward valuable arguments on prosecution, El-Masri and Jones ignore the fact that women have to be prosecuted for their own crimes, not their husbands’ or other ISIS-men. Very few published papers discuss the specificity of the women’s non-combat role in relation to legal frameworks on terrorism. One of the few papers discussing this exact dilemma is written by Elizabeth Buner, where she discusses American terrorism legislation and how American ISIS-women fit into this. She clarifies mere membership in a terrorist organization is not illegal in the US, but the provision of material support is. Material support is very broad, and she argues that this could possibly include bearing children for the organization. However, her recommendation is to only prosecute the women who actively recruited new members through social media (Buner 2016, 448). The little work that already exists on the prosecution of the women is somehow speculative because it does not deal with how this plays out in practice. Speculating on the outcome of the case of an Irish ISIS woman, Anne Speckhard argues that the women who traveled to Syria are not just victims and that the travel and membership of a terrorist organization is punishable in many European countries.

Speckhard sums up much of the main issue which will be dealt with in this paper when she says that the Irish lady is definitely guilty of believing wishful lies about Syria, whether she will be found guilty of being a terrorist herself, remains to see (Speckhard 2020, 6).

Conclusion

The attempts of reaching a universally agreed upon academic definition to study terrorism have not yielded any final result. Previous studies do however all categorize terrorism as a violent political act. As this paper will further demonstrate, this functions poorly in describing the role of the women inside of the caliphate, and even poorer in explaining how these women can be sentenced under terrorism legislation upon return. The literature on the women's life inside the caliphate demonstrates that most of the women have not committed any acts of violence. They have however contributed to the survival of the organization as mothers and wives. The degree of agency and free will the women had, is highly debated, and the judicial consequences of their decision to join the brutal organization deserve more research. Moreover, as this literature review has demonstrated, the distinction between victim and perpetrator is often too simplified. A complicated situation like that of the women of ISIS demonstrates that in many cases the women will act like both. This paper will further discuss two different approaches how to deal with this polemic discussion.

The case of the ISIS-women's return is complicated and needs to be researched from a gendered perspective. The trajectories of these women are highly individual and require an in-depth analysis. Henceforth, a case study is necessary in order to study how nations deal with their homecoming differently. As the methodology section will elaborate on further, Norway and Sweden have approached the homecoming of their female nationals with ISIS affiliation differently. This paper is important to map the different destinies the Norwegian and Swedish women may experience upon return. In broader terms, by conducting a detailed comparative case study, this paper will contribute to the debate on who is categorized as a terrorist, what counts as terrorism, and a new understanding of the consequences of the role of women in ISIS. Furthermore, the research will contribute to valuable knowledge on how domestic judicial differences can impact an internationally shared agenda on combatting violent extremists.

Arguments and Methods

Arguments

The main question of this paper is the following: *how do Norway and Sweden differ in their judicial approach to the Norwegian and Swedish women of ISIS returning back home between 2012-2022? Moreover, what are the main contributing factors leading to the differences in the approaches?* In response to the question, this research maintains two key arguments.

The first argument concerns the first part of the question and relates directly to how Norway and Sweden differ in their judicial approaches. This paper argues that Norway and Sweden differ in two ways: first, in the process of expanding their national terrorism legislation in response to the growing threat of ISIS sympathizers, and second in their approach to which actions count as terrorist actions and can thus be prosecuted as such. Norway tends to be more punitive towards the ISIS-women than Sweden. This is mainly due to Norway's expansion of its terrorism legislation allowing the country to criminalize and prosecute participation in a terrorist organization without specifying what counts as participation, and Sweden's decision not to do so (Straffeloven chapter 18, §136a). Sweden's law on terrorism participation is more rigid and leaves less room for interpretation, as it requires evidence of terror-related crimes in order to facilitate prosecution. This, the paper argues, makes Sweden unable to prosecute the vast majority of the returning women of ISIS.

Henceforth, Norway's legal framework allows for prosecution of mere participation, whereas in Sweden, prosecution requires evidence of committed acts of violence during the time in the caliphate. Therefore, unless there is clear evidence that the women have committed terrorist acts, the Swedish women will go free (lagrådet 2019). Whereas in Norway, the women would be prosecuted for being a member of ISIS, and not based on evidence of committed acts encompassed within traditional terrorist-defined actions.

The second argument relates to the second aspect of the question and considers the main contributing factors to the difference in the judicial approaches between the two countries. The paper argues that Sweden and Norway differ in their approach to the returning ISIS-women mainly due to three factors. The first of these factors is the judicial organ called the legislative council, an organ that exists in Sweden and not in Norway. The Swedish legislative council heavily criticized the government's attempt of passing a bill on terrorism participation similar to that of Norway's which resulted in the bill being scrapped, and Sweden being unable to

prosecute the majority of the returning ISIS-women. The second factor is the effect of recent terrorist attacks. The paper demonstrates how especially the terrorist attack in Norway in 2011 resulted in the adoption of stricter Norwegian terror legislation, which facilitated the prosecution of ISIS returnees some years later. Lastly, the third factor contributing to the different approaches is the effect powerful and loud Swedish critics have had on influencing the debate on the expansion of terror legislation in the country. The paper demonstrates that the same phenomenon is not observable in Norway between 2012-2022. Moreover, the paper argues that these three factors are connected, and together they contribute to the difference in the strategies of both countries when receiving returning women from ISIS.

Methods

This thesis will be built upon a comparative case study of Norway and Sweden. The two specific countries are chosen because despite being similar in many aspects (neighboring countries, a shared history, Scandinavian cooperation, ethnic similarities among others), they differ greatly in their judicial response to the homecoming of ISIS-women. The two countries have adopted different legislation in response to the growing issue of ISIS sympathizers, and the prosecution of such thus differs. A case study approach allows for a deeper understanding of each country's terror legislation, and the reasoning behind it. Furthermore, the comparative method facilitates a description of the specific aspect of differences and similarities in the judicial approach, as well as a discussion regarding the consequences of each approach comparatively (Lamont 2021, 207).

Benchmarks of comparison

In order to conduct a comparison between the two countries, two specific aspects of the judicial approaches will be analyzed. Below, the two different benchmarks of comparison will be introduced.

1. Expansion of national terror legislation.
2. Implementation and possibilities for prosecution.

The first benchmark of comparison and chapter 1 of this paper will concern how the two countries have expanded their legal framework on terrorism crimes between 2012-2022. As this paper will demonstrate, both countries have criminalized traveling for terrorism purposes due to legally binding UN resolutions and EU protocols. However, as this chapter will discuss, Norway expanded its terrorism legislation further, criminalizing terrorism participation without

elaborating which actions that count as such (Straffeloven chapter 18, §136a). Sweden however, opted not to do so, on the reasoning that it would break with the Swedish constitutional right of freedom of association (Iagrådet 2020b). The countries have opted for different strategies in regard to curbing the issue of ISIS sympathizers. The outcomes of this playing out in the judicial system in regard to the ISIS-women will thus differ greatly depending on which side of the border the women return to. This benchmark will contribute to the discussion of the political aspect of terrorism-knowledge, by demonstrating the differing processes of the creation of terror laws in both countries.

The second benchmark of comparison and the second chapter of this paper will compare the implementation of the laws discussed in Chapter 1 and thus the two countries' possibilities for prosecuting the returning ISIS-women. By introducing case studies of the prosecuted women from both countries, this chapter will compare the thresholds for what counts as terrorism, and what it takes to get you sentenced as a returning ISIS-woman in each country. A comparison between the only prosecuted Norwegian woman and the only prosecuted Swedish woman will contribute to a discussion on how the distinctions in the legal frameworks affect the women very differently. Furthermore, this chapter will discuss how each judicial approach relates to concepts of masculinization of terrorism and agency.

After the expansion of terrorism legislation and the possibilities for prosecution based on this have been compared in the two countries, the possible reasons why the two countries differ in their judicial approaches will be discussed. The results of the comparative study of the benchmarks will be analyzed from a wider perspective, to understand the main contributing aspects of the countries' different approaches. This chapter will discuss three different factors and elaborate on why they are valuable insights to explain the issues discussed in Chapters 1 and 2. The three main factors which will be introduced and discussed in this chapter are the Swedish legislative council, the effect of recent terrorist attacks, and the effect of loud Swedish critical voices in the terror debates. Through an explanation of the three factors separately, but also stressing their correlation, this last chapter will provide knowledge on some of the underlying reasons for the difference in Norway's and Sweden's approaches to the returning ISIS-women.

This paper will draw upon both primary and secondary sources. The primary documents will comprise legal documents on terrorism legislation collected from online law databases in both

countries, official documents from Swedish and Norwegian governments regarding the question of returning ISIS-women, reliable and verifiable newspaper articles, EU protocol documents, and UNSC (United Nations Security Council) documents regarding foreign-fighter prosecution. The secondary sources will consist of various books written about the women, journals and peer-reviewed articles on female terrorists, and various opinion pieces written in newspaper articles discussing the judicial approach of the two countries.

Lastly, it is important to mention that this paper has certain limitations. First, due to security as well as time limitations, fieldwork was not possible for this thesis. Henceforth, there was no possibility of communicating with the women in question directly. However, this issue was overcome through the adaptation of data-triangulation. This results in reliable and empirical data, allowing the author to use a diverse collection of sources through different temporal and local contexts (Flick 2002). Additionally, since this is an ongoing issue, there is a lot of secrecy regarding the women's return due to privacy concerns. Consequently, names are often shielded from the public. However, since some of the cases have already been up in court, the issue has sparked a significant public debate. Through a combination of legal documents and secondary newspaper articles, the limitation of secrecy in regard to the privacy of the women is overcome.

Theoretical framework

Critical Terrorism Studies

This paper is a part of the wider studies of terrorism studies. However, as the literature review has demonstrated, previous attempts to create a one-fits-all academic definition of the term 'terrorism' have been unsuccessful. In order to comprehend the complexity and the political nature of the term, the theoretical insights for this paper will therefore draw upon the approach of Critical Terrorism Studies (CTS). A prominent scholar within the field of CTS, Richard Jackson, criticizes the way in which the so-called 'orthodox' terrorism studies approach the construction of the terrorism label (Jackson 2007, 245). Furthermore, he argues that the scholarly work on terrorism simply 'takes the world as it is' and fails to understand that terrorism is a concept with political meaning. The field of CTS challenges the 'neutral' knowledge of terrorism. Thereby, CTS challenges the idea that the label of 'terrorist' or 'terrorism' is given, and stresses the idea that the term is socially constructed, and will differ depending on the context it is applied (Breen Smyth et. al. 2008, 3).

The social-constructivist approach to terrorism studies that CTS offers, is essential in order to understand how Norway and Sweden can differ so greatly in their approach to the return of the ISIS-women. Moreover, CTS perspectives are relevant in building the key arguments of this paper in two ways. Firstly, the CTS approach is vital for discussing the expansion and formation of terror legislation in both countries, which is elaborated on in Chapter 1. By demonstrating how two relatively similar countries differ in the process of expansion of terror legislation, CTS perspectives can help explain the political aspect of the formation of laws. Secondly, the CTS approach is relevant for the development of the second key argument of the paper. The second argument deals with the underlying reasons for Norway's and Sweden's differing approaches and argues that the judicial approaches differ mainly due to three main factors. Albeit, in order to study the underlying social and institutional factors contributing to these differences, the social constructivist approach of CTS is a relevant starting point. The CTS approach allows for a critical study and assessment of the possible contributing factors resulting in the diverging terror laws.

Lastly, the case studies demonstrate that the labelling of the women as terrorists and thus prosecuting them as such will differ depending on the country. The contributions of CTS to the field of terrorism studies is very useful in order to explain how two neighboring countries can differ in the way in which they define acts of terrorism (Stump and Dixit 2013). By comparing the countries' approaches, this paper will contribute with knowledge to the field of CTS and the political use of the term terrorism, by demonstrating how someone can be regarded as a terrorist in one country, but not on the other side of the border.

Feminist IR perspectives on terrorism

As discussed in detail in the literature review, previous terrorism studies often fail to elaborate on the role of women. Furthermore, as demonstrated, much of the work on terrorism underestimates the role or simply omits the role of women. The famous question of 'Where are the women?' from Cynthia Enloe's work centering the women in international politics from 1993, remains relevant. (Enloe 1993).

Feminist IR (International Relations) scholar Laura Sjoberg's work critiques current definitions of terrorism and further explains how they structurally omit women from the spotlight of research (Sjoberg 2009, 70). Sjoberg's work is important for this paper because of her perspectives on how a feminist approach to the study of what counts as terrorism might advance the definition of the term, and thereby make it more operational both for research and legislative practices (Sjoberg 2009, 75). Structurally omitting the women creates a false

perception of terrorism, feminist scholar Aleksandra Gasztold argues. This results in terrorism studies exclusively treating the term as something unfairly connected to ‘masculine attributes’ such as extreme violence, power, and fear, and categorizing women as inherently peaceful and as victims (Gasztold 2020, 73). This insight is essential for this paper because it conceptualizes how the ‘masculinized’ study of terrorism fails to explain how women can be sentenced under terrorism legislation in Norway, without inhabiting the specific ‘masculine attributes’ mentioned by Gasztold, and without necessarily having committed violence themselves.

Furthermore, as discussed in the literature review, the question of agency is debated to a great extent within feminist IR perspectives on terrorism. Whereas some scholars argue that decision making of the women was non-existent due to the highly patriarchal structure of ISIS (Chatterjee 2016, 202), others argue that the decision of joining the group is highly political and requires a great amount of agency (Kneip 2016, 92). Focusing on women who did not consider themselves combatants in terrorist organizations, Ortals and Poloni-Staudinger contribute to the scholarly debate on female agency. Their theoretical work is particularly interesting for this paper because of the way they demonstrate how women can straddle the victim-agent binary by being the agents, victims, and witnesses to violence at the same time (Ortals and Poloni-Staudinger 2014, 337).

The feminist perspectives on terrorism helps building the key argument of the paper through the two important concepts discussed above; masculinization and agency. This is particularly relevant for the first key argument of the paper, which argues that the two countries differ in the judicial classification of what counts as terrorism participation- and thus in their possibilities of prosecution. The paper discusses how Sweden’s legal framework treats terror as something with primarily ‘masculine’ attributes, as explained by Gasztold (2020). Whereas Norway’s ‘broader’ perception of what constitutes as terrorism participation escapes this categorization. Furthermore, arguing that the two countries differ in their perception of what counts as participation is based on knowledge from the feminist discussion on agency. Moreover, the possibilities of prosecution are based on national legal frameworks. And whether the women get sentenced or not, will depend on the court’s perception of the women’s agency and ‘free will’ throughout her time as an ISIS-member.

Lastly, the feminist lens on terrorism allows for centering the question around the women, understanding their role in the caliphate, and relating this to the specific judicial outcomes. Henceforth, gendering the study on terrorism is necessary in order to understand how a traditionally ‘masculinized’ label that normally categorizes women as peaceful victims can relate to the women of ISIS, who find themselves on both sides of the victim/perpetrator binary.

Chapter 1: Expansion of National Terrorism Legislation

As ISIS was gaining increasingly more ground in Syria and Iraq, international organizations like the EU (European Union) and UN (United Nations) put pressure on member states to halt the influx of foreign fighters (FTF) to the region. Therefore, UNSC's resolution 2178 was unanimously signed 24th of September 2014 and *decided* that states shall prevent all recruiting, traveling, organizing, and equipping any nationals that travel for terrorism purposes (UNSC res. 2178 204, 4/8). Additionally, the resolution *encourages* all states to intensify their counter-terrorism practices through any possible strengthening of national terrorism legislation to facilitate prosecution of foreign fighters. Similarly, a year later, the Council of Europe adopted the additional protocol on the prevention of terrorism, also called the Riga-Protocol (Council of Europe 2015, No.217). the Riga-protocol further requires all signatory states to adopt new counter-terrorism measures, such as criminalizing traveling or receiving training for the purpose of terrorism (Council of Europe 2015, No.217).

The resolution and protocol are relevant for this section because they applied pressure on the member states to act in regard to the growing issue of FTFs. Additionally, Both Sweden and Norway are obliged to adhere to the UN resolution and the EU protocol, and they are therefore decisive in the formation of some of the new laws adopted in the countries. This chapter first elaborates on Norway's and Sweden's expansion of terror legislation separately. This is followed by a comparison of the two countries, while discussing the political aspect of terrorism legislation, drawing on knowledge from the field of Critical Terrorism Studies (CTS).

1.1 Expansion of Norway's terror legislation

As the number of men and women leaving Norway to join the caliphate was increasing, the Ministry of Justice issued a proposal on changes to the criminal law regarding terrorist offences in 2012. In the Norwegian system, the proposal is first drafted by experts and civil servants within the relevant ministry, then it is sent to a public hearing. After the public hearing is concluded, the proposal needs to be approved by the whole government before being sent to a vote at the parliament. The proposition needs to get a majority vote in the parliament before the bill is signed by the king and stamped and put into practice by the prime minister (Regjeringen 2019c). This process enabled the ratification of the expansion of terror legislation which will be elaborated on further in this section.

By expanding the legal framework on crimes related to terrorism as early as 2012, Norway stands out as one of the European pioneers in adapting criminal law in order to accommodate the threat of ISIS (Svendsen 2019). Norway did already have substantial terrorist laws from 1902 and 2005. These deal with particularly serious crimes such as manslaughter, murder, bombing, and recruitment for terrorism purposes. However, the new bill drafted by the Ministry of Justice involves additions to these previous terror laws on preparations and participation in terror. The approved bill suggests criminalizing preparations for terror, extending criminal liability for possession of weapons and explosives, and criminalizing terrorist training. Additionally, the ministry suggests criminalizing qualified participation in a terrorist organization through different forms of active support (justiskomiteen 2012-2013). The bill highlights that previously existing terrorism legislation did not state that participation in a terrorist organization is illegal, but that the experts now find it necessary in order to meet the growing terrorist threats.

Furthermore, the bill states that within previously existing legislation, certain *actions* by a participant could be prosecuted, such as recruitment to carry out a terrorist act and support through money or other goods to a terrorist organization. However, despite these actions being punishable, the line for a punishable attempt is relatively close in time to the actual full-scale terrorist act. The chances of intervening and preventing the terrorist act can therefore be limited, the ministry explains (justiskomiteen 2012-2013). Therefore, the criminal law *§136a punishment for participation in a terrorist organization* was approved. The law states that anyone who forms, participates in, recruits, or provides financial or other material support to a terrorist organization is punished with imprisonment of up to 6 years (straffeloven §136a 2013). Which actions count as participation are not elaborated on further in the law.

The expansion of the terror legislation explained above was adopted early by the Norwegian state, allowing them to facilitate prosecution of ISIS participation. Furthermore, after pressure from both the UN resolution and the EU protocol explained above, Norway expanded its legislation even further by criminalizing traveling for terrorism purposes in 2017 (Regjeringen 2017b). However, this law was only implemented in 2019, which was late into the Syrian civil war. Moreover, as prosecution cannot be applied retroactively, possible prosecution of ISIS-women through the traveling-law is limited.

1.2 Expansion of Sweden's terror legislation

Just like in Norway, most Swedish laws begin with a proposal from the relevant ministry together with the sitting government. Different from Norway however, the Swedish government

has to send the proposal to an independent legislative council consisting of judges from the supreme court and the supreme administrative court. This legislative council analyzes the proposal and determines whether it contains judicial problems or goes against any constitutional right. After approval from the council, the government delivers the proposed bill for voting in parliament. In order to be put into practice and stamped by the king and prime minister, the bill needs to get a majority vote (Regjeringen 2015a).

The Swedish legislation on terrorist crimes is spread out through several different laws. Most of these laws were established as responses to the 9/11 attacks in 2001 (Norstedts Juridik 2020b). Among the laws in Swedish terror legislation is the law on terrorist acts, the recruitment law, and the law regarding financial support. These already existing laws all refer to actions of particularly serious crime. The law on terrorist acts refers only to serious crimes damaging Swedish society and its values, including crimes such as manslaughter and bombing. Similarly, the recruitment law refers only to serious crimes such as murder and manslaughter. And finally, the law regarding financial support distinguishes that the support must be through taking up arms or leasing land (Riksdagen 2022d, §2). Henceforth, the Swedish terrorism legislation remains unchanged since the early 2000-thousands and did not go through a project of expansion in order to facilitate prosecution of ISIS returnees, like their neighboring country.

However, the Swedish government was early in attempting to criminalize participation in terrorist organizations. With the intention of facilitating and simplifying prosecution, the government sent a bill regarding terrorism participation to the legislative council in 2010. The judges in the legislative council criticized the bill heavily and immediately shut it down, based on their understanding that criminalization of participation would go against the constitutional right of freedom of association (Norstedts Juridik 2020b). Furthermore, the council concluded that a clarification of what counts as participation would be needed in order to criminalize it.

Therefore, in a second attempt of passing the bill, the government hired a special investigator, commissioned to review the current terrorism legislation in 2017 (Andersson, Høgestøl and Lie 2017, 65). Based on the results from the investigation, the government polished its previously proposed bill and drafted a new suggestion for criminalization of terrorism participation. The highlighted acts counting as participation in the bill are all very specific and refer to active participation such as dealing with weapons, and leasing land, or transport services (Riksdagen 2022c, §13). The bill was approved by the legislative council, and if found guilty under this law, you risk up to two years in prison. The Swedish participation law was only put into force in 2020, and since it cannot be used retroactively, the possibility of prosecuting ISIS returnees under this law is limited.

Based on pressure and legal obligations from the UN resolution and EU protocol, Sweden criminalized traveling for terrorism purposes 1st of April 2016 (Andersson, Høgestøl and Lie 2017, 65). The new law states that *a person can be charged with traveling to another country, with the intention of committing or preparing a particularly serious crime* (Riksdagen 2022b, §10). The legislative council criticized the proposal, stating that *intention* is difficult to prove (Lagrådet 2015a, Prop. 16:78). However, the council found no possibility to oppose the proposals on the ground that they were attributable to binding decisions under international law (Andersson, Høgestøl, and Lie 2017, 67).

1.3 Comparison of Norwegian and Swedish Expansion of terror legislation

This chapter has demonstrated that both Sweden and Norway had already had an extensive legal framework regarding terrorism crimes prior to the Syrian civil war. However, these previous laws all referred to crimes of particularly seriousness, such as murder, manslaughter, and bombing. Therefore, in an attempt to facilitate prosecution and to halt the flow of nationals joining ISIS, Norway's initiative of expansion of the legal framework resulted in the adaptation of several new laws.

Out of all the laws discussed above, the most interesting for this chapter is the law referring to terrorism participation. Because, unless there is evidence of specific crimes committed by the women in the caliphate, the women could not be prosecuted under the previously existing legal framework on terrorism referring to acts, recruitment, or financial support explained above. While Norway managed to get the participation law through already in 2013, Sweden's attempt was shut down by the legislative council, and the Swedish government had to specify which actions would count as participation, in order to get the bill through. Moreover, the specified actions all referred to particularly serious crimes. Norway does not have a legislative council like Sweden and passed the law without elaboration on which specific actions that would count as terrorism participation (Straffeloven §136a). Evidently, the lack of clarification leaves more room for interpretation within the Norwegian law, and Sweden's decision to classify the acts counting as participation must be that of particularly serious crimes, might limit their possibility of prosecuting female returnees. Lastly, not only was the Norwegian law on participation passed earlier (2013), but it is also significantly stricter (up to six years in prison) than the corresponding Swedish law passed in 2020 (up to two years in prison).

This chapter has demonstrated how two neighboring countries can differ so greatly in the expansion of their terrorism legislation. As highlighted in this chapter, the most decisive

difference in regard to the ISIS-women, is that of the participation law. By leaving the question of participation open for interpretation, Norway took a decisive decision in order to facilitate the prosecution of a wider specter of returnees within their legal framework on terrorism.

By highlighting the process of the construction of laws, this chapter has demonstrated that laws are political, and they do not occur in a vacuum. They are drafted by a government with certain interests, and their approval differs depending on the country. As discussed in the theoretical framework section, the discipline of Critical Terrorism Studies (CTS) stresses the idea that the perception of what constitutes as terrorism is neither neutral nor objective (Stump and Priya 2013). Instead, it is highly political and related to its geographical and social context (Jackson 2007, 246). Henceforth, this chapter has added to the discipline of CTS, by demonstrating that two relatively similar countries can adopt different new laws, leading to different possible judicial responses to the ISIS-women. Consequently, the differences in national legal frameworks determine who can get sentenced as a terrorist, and who cannot. This in turn, further determines the perceptions of who is a terrorist and who is not. The next chapter will elaborate further on this, by discussing in detail how the differences of the terror legislation elaborated on in this chapter plays out in reality, and how this affects the returning women in both countries.

Chapter 2: Implementation and the Possibilities of Prosecution

As discussed in the literature review, the role of the women inside the caliphate was usually a supporting one. This means that the women would ensure the survival of the organization by taking care of the children, and making sure the men had everything they needed at home (Hoyle, Radford, and Frenett. 2015, 32). Furthermore, in the cases that the women themselves committed crimes during their time in Syria, evidence would be difficult to find. This is due to ISIS making it clear in their manifesto that women should stay inside their houses, and if they were to go outside, they were required to be accompanied by their husbands (Mah-Ruk 2015). The boundaries to the women's space of action were strict, and if overstepped, they were unlikely to be documented since this was against the laws of the terrorist organization (Mah-Ruk 2015).

Henceforth, lack of evidence is an issue in terms of prosecution of the returning women. Sweden and Norway have chosen to deal with this differently. Building on the knowledge of the differences in legislation between the two countries from the last chapter, this chapter aims to understand the implementation of the laws, and consequently how this affects the women

differently. As we know, Norway's participation law leaves a lot more room for interpretation, whereas the Swedish equivalent requires more rigid evidence of particularly serious crimes committed.

In order to understand the threshold of what counts as terrorism participation, and the effects this has on the possibilities of prosecution in each country, two case studies will be introduced. Between 2012-2022, the only Norwegian woman who returned back to Norway was prosecuted. On the other side of the border, 14 Swedish women have returned, and only 1 has been prosecuted (Dagens Nyheter 2022). The two prosecuted women and their sentences will be compared in order to understand how the difference in terrorism legislation plays out in practice. The chapter first elaborates on the case studies from each country separately. This is followed by a comparison of the cases of the sentenced women and a discussion on what it takes to get you sentenced in each country. Lastly, the differences between the countries' approaches are discussed through the lens of feminist IR perspectives on terrorism. This includes the idea of a 'masculinized' perception of terrorist acts and the agency of women in terrorism.

2.1 Norway's Possibilities of Prosecution

In the timespan of 2012-2022, at least 11 women left Norway to join ISIS. Five of them are in internment-camps in Syria, one has returned back home, and the rest are expected to have died (Solberg 2022). The only returnee, who will be referred to as Sara in this chapter for protection of privacy, returned in February 2020 (Fjeld et al. 2020). Norway's decision to repatriate Sara together with her children sparked a heated debate and resulted in a government crisis, where the populist right-wing party (FRP) left the government in protest (ibid 2020). As explained in Chapter 1, Norway's criminalization of terrorism participation does not specify what exactly counts as participation, thus leaving room for interpretation. Sara's case turned out to be highly polemic, and her sentence was appealed two times before the supreme court sentenced her for terrorism participation under the criminal law §136a in 2022 (Supreme Court 2022, 2418-A). This section will elaborate further on her story and discuss how her case counts as participation under Norwegian law.

Sara grew up and lived in Norway her whole life. She left Norway to join ISIS in February 2013, after she had married her Norwegian husband online. The court highlights that she traveled to unite with her husband in Syria voluntarily (Supreme Court 2022, 2418-A). Sara and her Norwegian husband had one child inside the caliphate, and after her husband died, she got married two more times (Døvik 2022). She had one more child after this, but both of her

later husbands died. After ISIS lost its territories in Syria, Sara, and her two children were put in the internment-camp Al-Hol in 2019, before they were eventually repatriated by Norwegian authorities in 2020.

Sara was initially sentenced to three years and six months in the district court for her participation in ISIS. She appealed to the court of appeal and got two years and six months before she was eventually given one year and four months by the supreme court. Her lawyer argued that since ISIS is extremely patriarchal and the women had no freedom, Sara was a victim of human trafficking rather than a terrorist (Zondag and Døvik 2022). The prosecutor, on the other hand, argued that Sara knew exactly what she was going to, and that she was aware of how limited her opportunities would be in Syria. The prosecutor further argued that being a wife, a mother, taking care of the house, and washing clothes is punishable by Norwegian law, in the context of ISIS in Syria (Supreme Court 2022, 2418-A). However, the prosecution team and the judges in the case all agreed that Sara was a victim of violence and human trafficking after the death of her Norwegian husband in 2015 when she was forcibly married to two other men. During this time, the court has evidence that Sara actively tried to get out of Syria (ibid.).

Moreover, terrorism participation was only criminalized in June 2013, thus she cannot be sentenced for the months in the caliphate before this. Sara was therefore sentenced for terrorism participation in the period between June 2013 and April 2015, during the time she was married to her Norwegian husband. Despite not having any proof of committed violence or any other serious crimes while in Syria, the court argued that Sara can be classified as a participant in a terrorist organization (Supreme Court 2022, 2418-A). This is because the sentence highlights that the role of a housewife was essential to the survival of ISIS. Furthermore, the sentence reads that “by performing housework and taking care of her husband at home, she filled the important role intended for women in the organization, and this is categorized as an active and qualified contribution to the maintenance of ISIS” (Supreme Court 2022, 2418-A).

Sara’s case demonstrates that the role of a housewife and mother within the caliphate is enough to get you sentenced under the Norwegian law on terrorism participation. Henceforth, the threshold for what counts as participation is arguably quite low. Sara’s case entails that the remaining Norwegian women in internment-camps in Syria would all have to expect prosecution if they decide to return home, not because of specific crimes committed inside of the caliphate, but the mere fact that they are considered participants of ISIS.

2.2 Sweden's Possibilities of Prosecution

In the period between 2012-2022, it is estimated that around 35 women left Sweden to join ISIS. 14 of these women have returned home, around 16 are expected to be situated in the internment-camps in Syria, and the rest have most likely died (Dagens Nyheter 2022). As explained in the first chapter, the Swedish law on terrorism participation was only approved in 2020 and cannot be used to prosecute anyone before this. Additionally, the clarification of participation relating only to crimes of particular seriousness omits the possibility of prosecuting the majority of the returning women under this (Norstedts Juridik 2020b).

When questioned in parliament regarding the judicial approach to the ISIS-women in 2020, the government replied that unless there is evidence of criminal acts committed in the caliphate, Sweden will not prosecute the women (Riksdagen 2020a, skriftlig fråga 3632). The Swedish legislative council also issued a statement on the parliament hearing, arguing that by criminalizing mere participation, the country would criminalize normal activities such as taking care of children. This, the council argues, puts the women in a dilemma where just their parenting makes them into terrorists (Iagrådet 2020b). Evidently, it takes more than being a housewife and mother to get you sentenced under Swedish terrorism legislation. As mentioned, only one out of the 14 female returnees has been prosecuted. This woman's name is Lina and will be referred to by her real name, as this is used openly in Swedish media and court documents. This section will elaborate further on Lina's story, and discuss how she got sentenced, within Sweden's narrow possibilities of prosecution of ISIS-women.

Lina left Sweden for Syria in April 2013 together with her 12 old year son, Joan. Once she got to Syria, she was reunited with the father of her child, whom she had married while they were both still living in Sweden. During their time in Syria, the couple had five more children. The court reads that while in Syria, Lina's oldest son, Joan, was actively trained both at home and in training camps to become a child soldier for ISIS (Norstedts Juridik 2022a). Furthermore, the court highlights that Lina equipped her son with weapons inside of the house, which he further used on the battlefield after being recruited as a child soldier. Shortly after Lina's husband dies in an attack in Raqqa, Joan is killed on the battlefield, only 16 years old (Heimersson, Hansson, and Snårbacka 2022).

For bringing Joan to ISIS, providing him training at home, and failing to prevent him from being recruited as a child soldier, Lina got sentenced to six years in prison under the charges of gross violation of international law and war crime (Heimersson, Hansson, and Snårbacka 2022). Lina's lawyers argued that because of ISIS's patriarchal structure, there was little she could have done to prevent her son's fatal destiny. However, the prosecutors highlight

that Lina was active in the radicalized environment in Sweden and that she was well aware of what she was bringing her son to in Syria. Furthermore, the prosecutors point to evidence that Lina had no interest in attempting to prevent her son from participating in the battleground. On the contrary, evidence demonstrates that she encouraged it and that she was later proud of being a mom to a so-called ‘martyr’ (Norstedts Juridik 2022a).

Lina’s case is historic because it is the first time a woman has been sentenced for war crimes in Sweden (Heimersson, Hansson, and Snårbacka 2022). As mentioned, the Swedish government stated that unless there is clear evidence of crimes committed, the Swedish women will not get prosecuted. Evidently, Lina’s case is the only one that has had any evidence of crimes committed. Being responsible for the active recruitment of her son as a child soldier, and consequently, his death makes Lisa’s case a particularly grave one. The evidence of Lina’s role in the caliphate allowed the Swedish court to issue the historic sentence. However, as the numbers of female Swedish returnees demonstrate, the remaining women will most likely go free upon return to their home country, unless there is clear evidence of crimes of particular seriousness.

2.3 Comparison of Norway’s and Sweden’s Possibilities of Prosecution

This chapter has demonstrated that there are big differences in the way in which Norway and Sweden are able to prosecute returning women, which evidently affects the women on each side of the border differently. Much of this is due to Norway’s participation law which was discussed in detail in Chapter 1. Because of this law, Norway sentenced Sara, whom they can argue was an ISIS participant by occupying the role of a housewife (Supreme Court 2022, 2418-A). Sweden however, lacks the legal framework for prosecuting the returning women on the same basis as Norway. As the numbers demonstrate, only one out of 14 Swedish female returnees is prosecuted between 2012-2022 (Dagens Nyheter 2022). Moreover, this was due to the special gravity of her case and the evidence the court possessed of her active support of the organization’s brutal use of child soldiers.

Masculinization of terrorism

As discussed in the theoretical framework, previous studies on terrorism have been criticized by feminist IR scholars. Gasztold (2020) argues that the studies unfairly treat terrorism as something with ‘masculine attributes’ such as violence or battle. This, Gasztold argues, has led to a masculinization of the study of terrorism, resulting in the role of women being ignored

(Gasztold 2020, 73). Evidently, a masculinized perception of what constitutes terrorism functions poorly in explaining the destiny of the ISIS-women.

As Norway opted to not categorize which actions count as terrorism participation, defining a terrorist as something with so-called 'masculine attributes' as described by Gasztold was avoided. In other words, the women's role in the caliphate is being sentenced without specifying certain attributes. In this way, Norway can shed away from the masculinization of the term by stating that everyone will be prosecuted as a participant, no matter the role. In Sweden however, the law requires evidence of the crimes committed inside the caliphate. As the roles designated as criminal were only possessed by the men, the women's roles are somehow omitted. This is unless they have evidence of extraordinary crimes such as Lina's, described in the case study above.

Agency

The question of female agency inside of terrorist groups is discussed greatly within the feminist IR perspectives on terrorism. As the literature review of this paper demonstrated, much of Western media refer to ISIS-women as naive 'jihadi brides' (Martini 2018, 471). However, this categorization of the women can take away their agency both in the decision to join the organization and when committing to their designated role inside of the caliphate.

By studying the impact of the different countries' legislation from a gendered perspective, the importance of perceived female agency in ISIS is evident. Whereas Sweden's legislation might be perceived as legislation that takes into account the subjugation of the women in the highly patriarchal structure of ISIS, it can potentially remove the agency of the women participating in the organization, through their specific given role. Just like most of the men, most of the women joined ISIS with a purpose, ideology, and goal (Lokmanoglu and Bloom 2020, 8). From the perspective of Norway, by not prosecuting the role the women obtained, which was the role they were supposed to have inside of the organization, we omit their participation in the ISIS structure and consequently take away their agency.

It is important to study this issue from a gendered perspective in order to recognize the multiplicity of the stories of these women. As demonstrated in the Norwegian case study on Sara, she was deemed a terrorist and a victim of human trafficking at the same time (Supreme Court 2022, 2418-A). The fact that the women could obtain roles as both perpetrator and victim at the same time, exposes the utter complexity of the legal issues upon return. Studying this from a gendered perspective complicates the issue even further, by highlighting that it might appear as 'fairer' to understand the role of the women as objects of the extreme structural

violence inside of ISIS. But, at the same time realizing that omitting their role from the judicial response might erase their decision-making and agency inside of the structure of ISIS.

Chapter 3: Why? Contributing factors to the different approaches

The two first chapters of this paper have dealt with *how* the two countries differ in their judicial approach to the returning women. While researching the expansion of the legal framework and how this affects the women on each side of the border differently, it became evident that these differences emerge for a reason. As discussed, laws are political and do not occur in a vacuum. The perception, development, and application of these laws differ depending on the country. When writing about the formation and consequences of these laws, it appeared that they emerged due to structural as well as social differences. Furthermore, three factors stood out as the most important contributors to Sweden's and Norway's path to different judicial approaches.

These three factors are related to differences in the judicial institutions and the social perceptions of terror legislation. First, this chapter discusses the initial contributing factor which is the legislative council, a judicial organ that exists only in Sweden. Secondly, the chapter considers the effect that terrorist attacks have had on the adaptation of stricter legislation in both countries. And lastly, the chapter discusses the possible effect loud Swedish critics have had in influencing the perception of stricter terror legislation. The brief discussion of these three factors will lead to a more complete understanding of why the two countries have opted for different strategies between 2012-2022.

3.1 The Legislative Council

As discussed in Chapter 1, the legislative council is a Swedish independent judicial organ that analyzes and controls whether proposed bills from the government contain any judicial issues or conflict with any constitutional right. The government is not legally obliged to send its proposals to the council, but if they opt not to do so, they need to provide a valid reason why. The recommendations the council proposes after analyzing the received bill are not mandatory, hence, the government is not legally obliged to take them into account. However, the legislative council's decisions are highly respected in Sweden, and the government rarely goes against their advice (Algotsson 2009).

The Swedish process of attempting to criminalize mere participation in a terrorist organization is an example of the government's respect for the council's recommendations. The

first proposal on criminalization was sent to the council by the Labour Party, the Christian Democrats later pushed for adaptation of the law in the parliament, as did the Right-Wing Populist party (Riksdagen 2020a). Evidently, there was clear will throughout a wide specter of political parties to adopt a participation law equal to that of Norway's. However, due to the council's critiques, the bill was never passed for voting.

In Norway, the control of the proposed bills is done in the Ministry of Justice's law department, and the country does not have an organ that evaluates constitution issues like the legislative council (Backer 2009, 177). The Norwegian ministry passed the law, and it passed through a majority vote in parliament. The different judicial institutions for approving laws enabled the Norwegian participation law to go through, allowing them to prosecute the returning ISIS-women when Sweden could not. Henceforth, despite the fact that the political will of adapting the participation law was very present in Sweden, the recommendations from the legislative council ranked higher, making this organ a significant factor contributing to the difference in the judicial approaches between the countries.

3.2 The effect of terrorist attacks

On the 22nd of July 2011 Norwegian right-wing extremist Anders Behring Breivik killed 77 people in an attack in Oslo and at the youth camp at Utøya (Borchgrevink 2012). The horrific terrorist attack is the gravest in Norwegian history since the second world war. The public outrage regarding the failed security measures prior to and during the attack was massive, and the government therefore set up an independent commission (22nd of July commission) to investigate the attack. Alongside the investigation, the committee also created the bill on the expansion of Norwegian terror legislation in 2012 together with the Ministry of Justice. As explained in previous chapters, this bill was the one that criminalized mere participation, allowing Norway to prosecute the returning ISIS-women. Henceforth, the aftermath of the 22nd of July attack in Oslo had an important impact on drafting the bill, through the committee created as a response to the attack (Andersson, Høgestøl, and Lie 2017, 25). Furthermore, scholars argue that because of the magnitude of the attack, there was very little public resistance to the proposed bill, as it was made public less than one year after the attack, and avoiding anything similar from happening again was of utmost interest (Borchgrevink 2012).

A couple of years later, on the 7th of April 2017, a truck deliberately drove into and killed five people, one of them only 11 years old, in Stockholm, Sweden. The sentenced terrorist, Rakhmat Akilov, an Uzbek asylum seeker later declared sympathy for ISIS (BBC 2017). As a natural reaction to the attack, voices were raised for stricter terrorism legislation in

Sweden, Andersson explains (Andersson, Høgestøl, and Lie 2017, 43). Therefore, the government hired a special investigator to review the national terror legislation shortly after the attacks in 2017. As explained in Chapter 1, the investigation resulted in an expansion of the Swedish terror legislation, but the participation law introduced was not broad enough to encompass the returning ISIS-women.

Evidently, both countries' immediate reaction after the terrorist attacks was to review and evaluate existing terrorist legislation. Due to the magnitude of the Norwegian attack, it arguably triggered a stronger public reaction and a more thorough evaluation process than that of their neighboring country. By contributing to the formation of the renewed and stricter terror legislation bill, it is clear that the 22nd of July commission, and consequently also the attack itself, was decisive in the formation of Norway's legislation. Thus consequently, the attack in 2011 turned into a decisive factor for Norway's current judicial approach to ISIS returnees. Whereas Sweden also adopted stricter legislation after the attack in 2017, their legislation on terrorist acts remained less strict than that of Norway. To argue that Sweden would have implemented stricter legislation if the attack had been bigger would be speculation. However, there is no doubt that both attacks had a clear effect on the legislation.

3.3 Swedish public debate on terror legislation

Swedish scholars such as Magnus Ranstorp and Peder Hyllgren, who are both high-profiled political scientists as well as specialists at the Swedish Defense Academy, argue that the reasons for the Swedish legal framework on terrorism being meager are not only institutional (Stokke 2017, Ranstorp 2019). Similarly, Magnus Norell, an adjunct scholar at the Washington Institute and senior policy advisor for the European Foundation for Democracy in Brussels, argues that Sweden is slow in expanding terror legislation due to loud critics influencing the debate on terror legislation (Svensson 2020). The scholars argue that the delay effect is rooted in how the Swedish public debate environment has developed since the 9/11 attacks.

During the 21st century, critical authors, scholars, and organizations have occupied a significant space in the debate on terror legislation in Sweden (Ranstorp 2019). Among the loudest critics is one of Sweden's most famous authors, Jan Guillou. He has been an eager participant in televised debates, public events, and articles, where he refers to terror laws as 'An attack on Muslims and a collective discrimination which only adheres to people called Mohammed' (Hakelius 2021). Furthermore, in Guillou's spirit, the very influential Swedish non-profit organization Charta 2008 was created.

Charta 2008 was a powerful non-profit organization that had hundreds of members before it closed down in 2019 (Charta 2008). The main message of the organization was that the various expansions of Swedish terror legislation go against the Magna Carta principle, which states that ‘no one shall be arbitrarily arrested and detained without a fair trial’ (British Library, Magna Carta). When the Swedish government attempted to pass a bill similar to the Norwegian participation law, Charta 2008 heavily criticized the law as being politicized and racist. Furthermore, they argued that the law would go against international law and constitutional rights (Charta 2008 2016).

At its peak, Charta 2008 was a powerful and influential organization with several famous members such as Jan Guillou. This allowed them to participate in influencing the debate environment regarding terror laws in a way that was not present in Norway. Norway does not have an equivalent of Charta 2008 of any relevance, and the public debate on terror legislation has not included as much criticism and polarization as that of the Swedish (Stokke 2017). The loud Swedish critical voices have had an effect on the contribution of skepticism in society regarding the expansion and tightening of terror legislation. This is not to say that these powerful voices have decided the course of action in the process, but rather that they have contributed to influencing the direction of the conversation regarding the issue. These critics can help explain why the processes of the expansion of laws can look different in both countries since this element is not observably present in Norway.

3.4 Concluding remarks on the three factors

This chapter has discussed three different aspects that have been contributing factors to the differences in Norway’s and Sweden’s judicial approaches to the returning ISIS-women. Arguably the most obvious of these three is the aspect of the legislative council. It is easily observable that the Swedish legislative council is a decisive factor to Sweden’s differing approach, by rejecting the government’s proposal on participation. Furthermore, the magnitude of the terrorist attack on Norway contributed to the creation of the bill (and its public acceptance) which was decisive for Norway’s possibility of prosecuting their returning female nationals from ISIS. Lastly, as difficult as it is to measure the influence the Swedish critics have had on the public debate on terror legislation, it is evident that this element has shaped the conversation around the topic in a way that has not been present in Norway.

Moreover, these three factors do not operate separately from each other, and to understand the reasons why Norway and Sweden differ in their approaches, it is important to realize that they are all connected. Together, the institutional difference of the legislative

council, the traumatic experiences of terrorist attacks, and social aspect of the vocal critics on terror legislation all contribute to shaping the national approach to the returning ISIS-women. And once again, as laws are political, they are drafted, ratified, and accepted differently depending on which side of the border you are on.

Conclusion

By comparing the judicial approaches to the returning Norwegian and Swedish ISIS-women, this thesis has demonstrated how one law has been decisive in Norway's ability to prosecute the women and Sweden's lacking opportunity to do the same. Furthermore, the in-depth analysis of the different judicial approaches has demonstrated that the difference in the expansion of legislation and its implementation is due to both institutional and social factors. The thesis therefore finds that Sweden and Norway differ in their judicial approach to the returning ISIS-women mainly due to the decisive difference in their participation law. Entailing that Norway prosecutes the returning women for being 'merely' members. Membership meaning that the women will be prosecuted for being housewives and mothers inside of the caliphate. Furthermore, as Sweden's participation law requires more evidence of active participation than being a housewife and mother, Sweden does not prosecute unless there is evidence of grave crimes committed, as evidenced in the case study of the Swedish woman. The thesis has thus demonstrated how the implementation of this one law has resulted in widely different approaches regarding the women. Lastly, to gain a richer understanding of the background of the different approaches, the thesis highlighted the legislative council, the effect of terrorist attacks, and the effect of loud critics as the main decisive factors to why two relatively similar countries can choose widely different strategies for the same posed threat.

By first elaborating on the expansion of national terror legislation of both countries, this paper contributed with knowledge to the political aspect of the creation of laws. Furthermore, by discussing the process of this through the theoretical lens of critical terrorism studies, the paper established that Norway adopted more and stricter laws than its neighboring country in the period between 2012-2020. This results in Norway being more punitive towards the returning women, which is demonstrated through the case studies of prosecuted women on both sides of the border in chapter two. The sentences of Sara and Lina demonstrated that the threshold for what counts as terrorism participation is significantly lower in Norway than in Sweden. Furthermore, how this could affect the women from a feminist theoretical perspective was discussed through the concepts of 'masculinization' and female agency. This discussion

reflected on how the Norwegian legal framework escapes the general classification of terrorism as something masculine, by categorizing all types of participation as participation.

Additionally, the discussion reflected on how it might appear fairer to the women to categorize them as mere victims, but also how this can have strong complications in terms of female agency and decision-making. Lastly, the three main factors leading to the different judicial approaches were elaborated on briefly. Based on knowledge from CTS and the complexity of political terrorism knowledge, the interconnectedness of the three factors and the importance of studying them together was stressed.

Studying the legal framework in relation to ISIS in Sweden and Norway exemplifies and sheds light on how countries choose to respond differently to the same threat posed by ISIS. Henceforth, as demonstrated in this paper, domestic politics define how a country can respond to an international issue such as terrorism. In a broader sense, the case studies of this paper explored the problematics and implications of domestic responses to transnational threats. By studying the differences in the judicial approaches of the two Scandinavian countries, we can observe the intersection between international and domestic policies and the effects of this. International politics and obligations are exemplified through the UN resolution and the EU protocol which obliged all member states to take action against the growing transnational threat of ISIS. The binding decisions within international law forced countries to adopt a series of new terror legislation. However, as demonstrated in this paper, domestic politics is decisive in determining both the formulation and the extent to which new legislation will be adopted or not. The implications of this are notably observable through the case study of Norway and Sweden, where women who have most likely lived relatively similar lives inside of the caliphate, face completely different destinies depending on which side of the border they return to.

In broader terms, this paper, therefore, contributes to explaining how different approaches to a transnational threat can impact the effectiveness of countering violent extremism. Due to the global outreach of ISIS, people from all over the world left to join the organization. Many of the members of the organization have had similar experiences and often committed similar crimes during their time in the caliphate. Henceforth, from a counterterrorism perspective, it can therefore be very problematic that individuals face severely different consequences depending on their nationality. Countering violent extremism is an international goal and as the case study of Norway and Sweden has illustrated, the strategy and toolbox of methods to reach this goal can differ depending on geographical context. This paper

has thus contributed to a broader area of study, highlighting domestic judicial obstacles to a shared international cooperative agenda to combat violent extremism.

The conclusions drawn from this paper can be used in order to test the intersection of international and domestic policies in other countries. Further studies on this can increase our knowledge of the implications that different domestic policies have on the responses to transnational threats such as terrorism. To better understand the international effect this has on countering violent extremism, further research should include a larger number of case studies. Additionally, as the issue of the different judicial strategies for the returning women of ISIS is very current, we still have much to learn from it. Further research on the women that have returned, but also those who voluntarily or involuntarily still find themselves in Syria, could contribute to vital new knowledge on effective counterterrorism strategies. Lastly, as this paper has demonstrated, women and terrorism are heavily understudied compared to the vast focus on men. Therefore, in order to get a better and more applicable understanding of groups like ISIS, future studies should include a lot more research on female members.

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