

Report: Advanced Summer Programme on Countering Terrorism Legal Challenges and Dilemmas

29 August - 2 September 2016

Monday 29 August (Day 1): Countering Terrorism: Introduction and Legal Frameworks

Session 1 – Defining Terrorism under International and Domestic Laws

Judge David Baragwanath (Special Tribunal for Lebanon)

Judge Sir David Baragwanath started the Summer Programme on Countering Terrorism with a lecture titled 'Defining Terrorism under International and Domestic Laws'. Judge Baragwanath argued strongly for the urgent need for the law to play its full role in this exercise and outlined six steps to tackle the current ambiguity and lacunae that surround a definition of terrorism.

1. Terrorism should be an international crime and thus needs to be defined and applied.
2. The global threat emanating from ISIL must be understood.
3. There is a need for an internationalist approach as plainly a merely national response, however secure, cannot by itself deal with the entire threat.
4. There is a need to deal with institutional stasis.
5. The problem is not simply of Islamic extremists; it is one of general principle.
6. There is a need to achieve an effective system of counter-terrorism within international law, both by adopting a definition and through its application.

Noting that there currently exist more than 250 definitions of terrorism, Judge Baragwanath criticised current efforts to find common ground on an all-inclusive single definition, arguing that without a concise common definition of terrorism there is an infringement of the principle of legality.

Emphasising the Special Tribunal for Lebanon's (STL) Appeals Chamber decision in which it found that a customary rule about the crime of international terrorism exists in international law, Judge Baragwanath noted that despite the various definitions of terrorism, there exists a great deal of settled law and an overlapping core which the STL decision has confirmed.

In closing his presentation, Judge Baragwanath argued for the involvement of the Security Council under Article 24 of the UN Charter to introduce a definition of terrorism. This was based on the principle that the Security Council holds primary responsibility for the maintenance of international peace and security.

Session 2 – Essential Counter-Terrorism Paradigms: The War Paradigm vs the Law Enforcement Paradigm

Prof. Richard English (Queen's University Belfast)

In the second introductory session, Prof. English presented two paradigms through

which states may address terrorism and counter-terrorism, namely the war paradigm and the law enforcement paradigm.

He began by providing some context concerning the increased interest in terrorism since 9/11, noting that the average monthly terrorism-related death toll has increased over the last 15 years. In attempting to counter terrorism, he suggested that it is likely any response will involve elements of both paradigms and the question is more likely to surround how they should be balanced.

Prof. English highlighted five main ideas when considering this topic: first, when addressing terrorism, there tends to be an amnesia through which past experiences are not considered to be relevant or are passed over due to perceived differences; second, there is an intimate relationship between acts of terrorism and the corresponding counter-terrorism responses that can be either destructive or productive; third, there is a need to be objective and emotionless when dealing with terrorism; fourth, the particular context of each counter-terrorism situation needs to be considered and catered to; and fifth, there is a need to be realistic to the public about the goals and aims of any counter-terrorism activity.

In addressing the war paradigm, Prof. English highlighted that there are certain advantages to relying on a military response. For example, terrorists often frame their fight in a 'war' context, citizens may feel safer with a military response and it may well be effective. However, he argued that a military response risks blow back, such as collateral damage, appearing to be a foreign occupier and, thus, generating further recruits. In contrast, the law enforcement paradigm may be able to ameliorate some of these blow back effects by focusing more on the protection of civil and human rights, promoting trust within communities and looking at the long term consequences of any action undertaken. Ultimately, Prof. English suggested that any response should use elements of both paradigms that are well coordinated, both internally and externally, and have a focus on the long term consequences of actions undertaken.

Session 3 - The Role of International Human Rights Law in Countering Terrorism and its Challenges

Dr. Jan-Peter Loof (Leiden University)

Dr. Jan-Peter Loof outlined two issues to be addressed within his presentation:

1. Can the threat of terrorism cause a derogation of human rights as a result of a state of emergency?
2. In the context of counter-terrorism, how is privacy and mass data interception by intelligence services dealt with?

With respect to the first issue, Dr. Loof outlined the law on derogation clauses within both the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). He focused on Article 15 of the ECHR and Article 4 of the ICCPR, and how governments may derogate from their obligations.

Second, Dr. Loof discussed the justification behind derogation clauses, defining such measures as temporary in nature. For example, Article 15 of the ECHR is strictly limited by the exigencies of the situation where the risk threatens the life of the nation. This has been interpreted as requiring actual or imminent danger that is ongoing or about to happen.

Third, Dr. Loof highlighted the increasing difficulty in differentiating between states of emergency and ordinary periods.

He outlined that the European Court of Human Rights (ECtHR) has often employed a wide margin of appreciation, notably with *A and Others v. UK* (2009). In applying a proportionality test the Court is able to balance the restriction of fundamental rights with the exigencies of the situation.

Dr. Loof also inquired whether there exist appropriate redress mechanisms for those who claim their right to privacy was unjustly interfered with, especially with respect to the protection of minorities, or those easily suspected of terrorist offences. There was then a closing observation on the increasing technological capacity of surveillance and the human rights concerns that can arise from bulk surveillance. The ECtHR has generally been critical of this, notably in *Szabó and Vissy v. Hungary* (2016),

but has fallen short of stating that their practice is per se disproportionate. Moving forward, Dr. Loof encouraged the participants to look at forthcoming cases on these issues decided by the ECtHR.

Session 4 – Case Study: Extraordinary Rendition and Human Rights Implications

Prof. John Vervaele (Utrecht Law School/College of Europe)

Prof. John Vervaele discussed the topic of extraordinary rendition in a terrorism context. While rendition has historically occurred for a long time, the events of 9/11 in New York marked a change in its use, especially in the USA. Prior to 9/11, the CIA estimated that 80 extraordinary renditions had taken place and following 9/11, this number jumped to between 500-1000 cases. Unlike extradition or administrative rendition, extraordinary rendition aims to entirely avoid legal or judicial processes by abducting individuals and often moving them between secret prisons across the world in order to, *inter alia*, extract information.

Since information about the US' extraordinary rendition program became public, a significant amount of work has been done to better understand the practice and a number of cases have also come to light. These include, *inter alia*, ECHR cases concerning: Mr. Abu Omar, who was abducted in Milan with the assistance of Italian authorities and was ultimately handed over to the CIA where he was transported to Germany and Egypt; and Mr. El Masri, who was abducted in Macedonia with the assistance of local Macedonian forces, transferred to the CIA and then taken to Afghanistan and Albania. Similarly, at the ECtHR, cases concerning *al Nashiri v. Romania* and *Abu Zubaydah v. Lithuania* remain ongoing.

In examining the human rights implications of extraordinary rendition, Prof. Vervaele considered issues relating to extraterritoriality, the use of the state secrets privilege to prevent information being adduced, the range of rights affected (eg illegal or arbitrary detention, access to a legal remedy, right to family and private life, or prohibition of torture) and the consequences of decisions by human rights courts. In so doing, he suggested that: there needs to be a greater focus on both the positive and negative human rights obligations of states; immunity for serious human rights violations (including the misuse of the state secrets privilege) should be removed; the concept of joint responsibility should be better used in international human rights courts; and access to remedies for victims (whether civil or criminal in nature) needs to improve.

Tuesday 30 August (Day 2): A Closer Look at the Battlefield

Session 1 – The Global War on Terror and Beyond

Prof. Richard English (Queen's University Belfast)

Prof. Richard English began the second day by emphasising that we cannot consider current circumstances or situations without understanding the decisions of the past.

He opened by observing that although ISIS is a new version of things we have seen before, the broad pattern is very well known. If we look at the motivations of the PLO, then the motivations for foreign fighters in Iraq and Syria should not surprise us. Similarly, Prof. English believes that a study of involvement in Afghanistan in the 19th century should have made the results of the 2001 unsurprising.

Addressing the issue of security threats within counter-terrorism, Prof. English acknowledged the difficulty that can arise from hardening so-called 'soft targets', such as transport hubs. He noted that often, when targets are protected strongly, this can persuade groups to target other options that remain unprotected.

Moving to discuss the role of intelligence, Prof. English reiterated that both high grade intelligence and its correct interpretation is essential for an effective counter-terrorism strategy. Prof. English also emphasised that although there is a high cost to extensive surveillance, it is cheaper than the economic impact that a terrorist attack would likely have upon a nation. As an example, he pointed to the recent impact on France since the attacks in Paris and Nice. He noted that there is a need to recognise the dark moral decisions required in counter-terrorism, and to create frameworks that protect the liberal democracy and allow effective counter-terrorism.

In turning to the root causes of terrorism, Prof. English rejected the call that terrorists are inherently drawn to violence because they are psychopaths. Instead he called for calmer rhetoric in comparison to 'ridding the world of evil', noting that terrorists have a weak grasp of international relations and politics.

Prof. English emphasised the need to understand root causes, as there is a difference between the legitimacy of the root cause and acknowledging the cause of the terrorist action. Prof. English argued that such measures are a delicate balance, pointing to the recent success of the Colombia peace process, but also highlighting the difficulty this process faces with ISIS. He concluded that the linkage between intelligence gathering and understanding the root causes are essential to tackling terrorism.

In concluding, Prof. English posited that the exaggeration of the terrorist threat, the over use of military force, and the misdiagnosis of the cause have been and continue to be present in the war on terror.

Session 2 – The Protection of Cultural Heritage during Armed Conflict

Dr. Marina Lostal (The Hague University of Applied Sciences)

Dr. Marina Lostal's presentation honed in on the issue of protecting cultural heritage during armed conflicts and the associated legal framework that prevents the destruction of cultural objects or buildings. This has become a topical issue following the International Criminal Court's first case concerning the alleged destruction of cultural heritage in Mali. In this regard, Dr. Lostal argued that the Court's Prosecutor has been focusing on the importance of the destruction of cultural heritage as it destroys the root of a people and the structure of a culture.

Moreover, the UN Security Council has recently noted that money from looting is a major source of income for terrorist groups, including the Islamic State.

Dr. Lostal first presented an historical introduction to the destruction of cultural heritage. She traced looting back to the Roman Empire, then the Goths and subsequently the Crusaders, who had possibly the worst reputation for plunder. Changes began to occur due to Emer de Vattel who, in his book *The Law of Nations*, first argued that cultural property should not be damaged because it does not increase the military's strength.

Accordingly, cultural items or buildings should not be damaged except in cases of military necessity – this dual approach of prohibition plus exceptions remains in today's legal framework.

Dr. Lostal then discussed the applicable international regime that governs cultural heritage during armed conflict. During this part, she introduced key provisions, such as: article 27 of the 1907 Hague Convention (IV); art 8(2)(e)(iv) of the 1998 Rome Statute; and art 4 of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict. Common issues that emerged from the discussions included determining what exactly constitutes cultural property (eg buildings, artwork, both, or other), who decides what is cultural property, what is a military purpose or military necessity in the context of cultural property, and whether states parties need to prevent not only their armed forces but also civilians from causing damage. The session concluded with a group activity in which the participants applied the relevant law to a factual situation.

Session 3 – The Use of Drones in Countering Terrorism

Ms. Jessica Dorsey (PAX)

Ms. Dorsey outlined the structure of her presentation and began by discussing the background to the use of drones within counter-terrorism, giving some of the advantages and disadvantages of their use, alongside some useful websites and data on the use of drones and their estimated civilian casualties. Ms. Dorsey emphasised the importance of understanding the purpose and objectives of drones in order to analyse their effectiveness, and that her work focused on maintaining pressure upon all parties to increase transparency and openness with their practice of using drones as a counter-terrorism measure.

Second, Ms. Dorsey introduced the legal framework of *jus ad bellum*, *jus in bello* and the law enforcement paradigm to outline how drone strikes can be carried out within these systems. Multiple questions were fielded about the US drone programme and the legal justifications used by the US Administration.

Ms. Dorsey then moved to a discussion of effectiveness within counter-terrorism efforts. Attention focused on effectiveness not being limited to just death tolls, but reducing the ultimate potency of the terrorist threat. Overall, views of effectiveness focused on eliminating the enemy at minimal financial and human cost, but also on having a greater emphasis on the long term impact of drone use. Ms. Dorsey noted that the short-sighted approach of decapitation strikes often leads to a new leader emerging, and lacks the longer term strategic perspective.

In summary, Ms. Dorsey emphasised there is an ongoing and complicated discussion surrounding drones, with the need for increased clarity and agreement on counter-terrorism principles. The risk of non-state actors acquiring drones and autonomous weapon systems also raises important questions for the future of drones and counter-terrorism.

Wednesday 31 August (Day 3): From Investigation to Prosecution: How to Build a Terrorism Case?

Session 1 – From Intelligence Gathering to Intelligence Sharing

Mr. Sergei Boeke (Institute for Security and Global Affairs at Leiden University)

The third day of the course commenced with an informative lecture on intelligence gathering and interpretation by Sergei Boeke.

Initially, Mr. Boeke contextualised the issues and reminded participants of the importance of understanding the role and mandate of any intelligence agency they deal with. He stressed the distinction between HUMINT (human intelligence) and SIGINT (signals intelligence), the variances between intelligence and law enforcement agencies, as well as the differences between national security services and foreign intelligence services. Importantly, it was reiterated throughout the discussions that a successful intelligence operation will likely be kept secret, whereas an unsuccessful one may well receive significant media coverage.

Mr. Boeke then described the role of analysts within the intelligence systems as being those who collect the various strands of information and provide advice or make a determination as to whether it is actionable. To this end, he emphasised the need to be aware of transposing one's own thinking onto others when examining intelligence and of seeing the types of things that one expects to see. He further suggested that both SIGINT and HUMINT have vital roles to play but may have different qualities or values. For example, SIGINT is faster but may still be unreliable, whereas HUMINT may be more reliable but the networks used to gather it take longer to build.

The potential role of intelligence sharing between agencies or between states raises numerous questions. For example, is the raw data or the analysis to be shared? Should sources, including human sources, be shared? Who should information be shared with? Mr. Boeke stressed that generally, in practice, the larger the sharing circle, the less detailed information will be shared. Moreover, trust that takes a long time to build may be broken rapidly. On an international level, an example of successful intelligence sharing is the Five Eyes program. This has expanded from the intelligence community to include the law enforcement communities in the USA, UK, Canada, New Zealand and Australia.

Session 2 – The Role of the Police in Countering Terrorism

Prof. Cyrille Fijnaut (Tilburg University)

Prof. Cyrille Fijnaut focused on the role of the police in countering terrorism and organised cross-border crime. He introduced a recent report he has written that highlights the rise of Islamist terror and jihadist groups, their willingness to commit mass atrocity attacks, and their refusal to negotiate with their enemies.

Prof. Fijnaut then moved to discuss modern policing in Europe and the importance of a visible police presence on the streets. He argued that terrorism is not something in the abstract. For example, it has links with the illegal weapons and drugs trade and thus, there is a need to have a separated criminal and security service that overlooks the interconnected nature of the modern world. He argued that by viewing counter-

terrorism policy in a more holistic manner, we improve our understanding of its cross-border nature and the ability of our police and security forces to work together to combat shared threats.

Within his presentation Prof. Fijnaut also discussed the topic of lone wolf attacks, debating with the audience members on whether the concept of lone wolves is an accurate representation of the terrorist threat, or instead if even those who appear to work isolated from a central group in fact rely upon an extensive support network. The speaker and attendees enjoyed an engaging discussion on this matter with various views emerging on the topic, ranging from those who were sceptical of the phenomenon to those who argued that lone wolves form a real and present danger that counter-terrorism experts should take notice of, particularly in light of the recent attacks in Nice and Germany.

Session 3 – The Protection and Use of Witnesses in Terrorism Cases

Mr. Iwan Waltenburg & Mr. Chris O'Brien (Special Tribunal for Lebanon)

In a comprehensive presentation, Mr. Iwan Waltenburg and Mr. Chris O'Brien discussed witness protection in terrorism cases including through the use of the practice of the Special Tribunal for Lebanon. Witness protection is a set of measures undertaken in the context of criminal proceedings to assist with adducing witness evidence and, accordingly, to facilitate the prosecution of an accused person. The types of crimes that often require this kind of protection include, among others, terrorism, biker groups, organised crime and gang crime. More simply put, witness protection is needed in cases that concern crimes that could not be effectively prosecuted without it.

In the terrorism context, prosecutors may find it difficult to bring cases to trial due to a lack of witness evidence, especially from insider witnesses or associates. This can be exacerbated by the fact that terrorist groups are often ideologically driven, have a high capability of threat and members may face severe consequences for departing the group or providing evidence to police. After 9/11, the need to get prospective witnesses to trial and to ensure effective prosecutions became a priority. This in turn reinvigorated the role of witness protection as a vital part of a successful prosecution. Criteria such as the involvement of the person in the crime, the relevance of their evidence, the seriousness of any intimidation faced and their willingness or suitability to receive protection are used in the determination of whether an individual needs protection.

Mr. Waltenburg and Mr. O'Brien discussed a variety of issues that arise in daily practice when considering witness protection. For example, ethical issues such as whether violent criminals or terrorists should be protected was debated. Similarly, the variety of options available to ensure protection, ranging from limited protective measures, to anonymity and relocation, was discussed. Finally, they concluded with a discussion pertaining to witness intimidation, as exemplified by several purported cases.

Session 4 – Study visit to Eurojust – Countering Terrorism under the Legal Framework of the European Union

Case Analysis Unit (Eurojust)

The visit to Eurojust presented the participants with a unique opportunity to see its premises and to better understand how Eurojust assists with countering terrorism within the European Union. Eurojust aims to support and strengthen cooperation between national authorities in Europe in the fight against serious cross-border crime. Accordingly, Eurojust deals with crimes such as terrorism, drug trafficking, counterfeiting and forgery, fraud, cybercrime and trafficking in human beings, illegal immigrant smuggling, etc.

Several of the mechanisms that Eurojust offers in order to assist its member states include Coordination Meetings, Coordination Centres and a range of publications on the issue of terrorism. Coordination Meetings offer representatives of the relevant national law enforcement agencies or judiciary offices an opportunity to meet and to discuss the case's particular features and needs. These can lead to the establishment of Joint Investigation Teams or the setting up of a Coordination Centre which facilitates the real-time exchange of information and increased operational support during operations carried out in Europe and beyond. This can involve assisting with the drafting of European Arrest Warrants or other documents, as needed. Moreover, various Eurojust analytical products are available to practitioners from the member states of the European Union.

Thursday 1 September (Day 4): Countering and Trying Terrorists

Session 1 – Study visit to the Special Tribunal for Lebanon

Special Tribunal for Lebanon

On the Thursday morning, the summer programme visited the STL and had presentations from Chambers, the Registry, the Prosecution and the Defence Office.

The Chambers presentation provided a detailed and informative overview of the Tribunal, including its history, jurisdiction and cases. In particular, attendees were informed about the details surrounding the attack against the former Lebanese Prime Minister Hariri and the path to today's situation, including the suspects indicted by the Court and the current stage of proceedings. The speaker described the importance of UNSC Resolution 1757 and emphasised that the STL holds primacy over Lebanese jurisdiction for crimes concerning the attack.

The second speech was from the Registry who discussed external relations, in particular their online media profile. The speaker discussed in further detail the role of the Court's judicial support sections including its court management services and the language services sections, as well the administrative support sections.

Third, the Office of the Prosecutor (OTP) talked in detail about their case strategy at the Tribunal, focusing on the telecommunication between the suspects in this case. Its evidence focuses on a series of networks that the OTP alleges connects the individual suspects together with the plan to assassinate Mr. Hariri. The OTP discussed some of the challenges it has faced with this case which then led into the presentation made by the Defence Office.

Finally, the Defence Office of the STL gave an energetic and interesting presentation from their perspective, directly challenging some of the key principles outlined by the Prosecution. Attendees learned not just about the legal issues, but also about the political perception of the Tribunal in Lebanon.

The presentations provided insight into the mandate and status of the Tribunal, including the issue of trials in absentia. They were thought provoking and left attendees with many questions to ask.

Session 2 – Countering Terrorism at the Supranational Level: The Role of the UN and other International and Regional Players

Dr. Bibi van Ginkel (Clingendael/ICCT)

Dr. van Ginkel's seminar focused on the tools and apparatus available for countering terrorism at the supranational level. In so doing, she highlighted the approaches of, *inter alia*, the UN Security Council and General Assembly, the UN Global Counter-Terrorism Strategy, the EU, the Global Counterterrorism Forum (GCTF) and the Organization for Security and Co-operation in Europe (OSCE). Throughout her presentation, Dr. van Ginkel considered how the contributions of each group could be better managed and how they interact to counter terrorism globally. She also emphasised that there are lacunae present at the supranational level despite significant overlap and sometimes competition between these institutions in practice.

At the UN level, the first General Assembly resolution that referred to terrorism dates back to the 1970s. Until 9/11, the General Assembly generally adopted resolutions on terrorism and counter-terrorism in relation to human rights.

Following 9/11, terrorism shifted to being a priority of the Security Council and led to numerous resolutions being agreed upon that focus on combatting this phenomenon, including that of Resolution 1373. This resolution, in particular, expanded the role of the Security Council and mandated that states criminalise certain behaviour in their domestic jurisdictions. This type of resolution is still being used as

is evident in Resolution 2178 (2014). Through this resolution, the Security Council has defined foreign terrorist fighters and set out its response to them.

In addition to UN bodies, the EU, the GCTF and the OSCE were also discussed. Dr. van Ginkel provided an overview of their work, legal documents and decisions, focusing on what each group contributes to countering terrorism on a supranational level. For example, the GCTF has been pushing for better practices in relation to detention and reintegration of terrorism suspects through its working groups. In contrast, the OSCE works from the idea of various principles which provides different angles and insights into how best to approach countering violent extremism.

Session 3 – Countering Foreign Terrorist Fighters: The Prevention Side

Ms. Sangeeta Goswami (Human Security Collective)

Ms. Goswami began by providing a definition of foreign (terrorist) fighters and an overview of the phenomenon. Ms. Goswami outlined the basis of her presentation that foreign fighters are not a new phenomenon but can be viewed as four waves: first, those who fought against the Soviet Union in Afghanistan in the 1980s; second, those from the 1990s fighting in Bosnia; third, those who fought in the post-Iraq war era; and now, since 2012, those participating in the Syrian civil war.

Noting that there are an estimated 28,000 foreign fighters from 100 countries, with an estimated 5-7,000 from western Europe, Ms. Goswami informed the audience that Belgium has the highest per capita number of foreign fighters.

Ms. Goswami discussed inclusiveness, dialogue and trust building between the community and key security, religious and other stakeholders, as well as social justice, economic development, community security and religious education as some of the factors that play a key role in preventing violent extremism. Ms. Goswami also noted that there may be unintended consequences of counter-terrorism policies, such as the Financial Action Task Force (FATF) whose use of financial blocks has meant that innocent individuals and humanitarian organisations have faced sanctions.

Ms. Goswami then elaborated on the work that the Human Security Collective undertakes, notably working with communities in vulnerable areas to prevent growing polarisation, build resilience and strengthen social cohesion.

She outlined the objective of human security which attempts to protect human lives from threats in a way that aligns with long term human fulfilment.

She then provided examples of their work with individuals from the West Bank, Gaza and Libya, with a particular focus on foreign fighters from Delft and Tunisia. In understanding the systemic causes, Ms. Goswami identified the pull factors that often lead young people to go to Syria. These include the religious message, Islamophobia within their home towns, unemployment, personal grievances, structural conditions, poverty and thrill seeking. Ms. Goswami added that work is still continuing to better understand these factors.

In concluding, Ms. Goswami emphasised that there is no 'one size fits all' approach; what might work to understand foreign fighters in Delft will not necessarily apply elsewhere.

Friday 2 September (Day 5): Pressing Challenges in the Counter-Terrorism World

Session 1 – Countering Foreign Terrorist Fighters: The Repression Side

Ms. Lucia Ling (Netherlands Ministry of Security and Justice)

Ms. Ling began her presentation by outlining the mission of the NCTV which aims to promote safety, stability and social cohesion in the Netherlands by promoting stability and resilience as well as identifying threats throughout the country.

Ms. Ling elaborated that there are the following pillars to the work of NCTV: Counter-terrorism; Cyber Security; National Security and Crisis Management. Within these pillars, the NCTV works to analyse and identify threats, provide surveillance and protection for persons, property, services and events, and to ensure effective crisis management following an incident. Discussing the current security threat assessment in the Netherlands, Ms. Ling said that the Netherlands is at a 'substantial threat' of an attack, but without any specific indication that an attack is imminent. Ms. Ling noted that the threat remains primarily of jihadist nature, but violence on the part of the far right or the far left has increased since 2015.

Turning to the Dutch counter-terrorism strategy for 2016-2020, Ms. Ling informed the group that it was sent to Parliament on 11 July 2016, and that its comprehensive approach remains its core feature. The strategy itself contains five areas of focus: 1) Procure; 2) Prevent; 3) Protect; 4) Prepare; and 5) Pursue. These combine together to form this comprehensive approach to counter-terrorism. As such, there is a combination of both preventative and repressive measures that join the local, national and international dimensions to countering terrorism.

Discussing the rise of foreign fighters who travel from the Netherlands, Ms. Ling confirmed that approximately 260 individuals have travelled to Syria, with 180 remaining in conflict areas, 40 having returned and 43 deceased. Ms. Ling also remarked that although the numbers are predominately male, there are growing numbers of female foreign fighters.

In addressing the return of foreign fighters, Ms. Ling discussed the Comprehensive Action Programme from 2014, which includes intervention at a local level and a range of administrative measures, including travel bans, area bans and the potential revocation of Dutch nationality.

Recent legislative measures have included an act on the revocation of Dutch nationality after an irrevocable conviction for training for terrorism (1st April 2016), with further administrative measures pending.

Session 2 - Prosecuting Foreign Terrorist Fighters: a Belgian Perspective

Ms. Wenke Roggen (Belgian Public Prosecution Service)

Wenke Roggen of the Belgian Public Prosecution Service provided interesting insights into the prosecution of foreign terrorist fighters in Belgium. Currently, there are estimated to be around 275 Belgians who are believed to be in Syria, and those who have left or who are considering leaving are traced by the Belgian government. As a result, the Belgian Prosecutors have had experience in prosecuting foreign terrorist fighters, including cases involving children or women who travel to Syria, and have started to develop significant jurisprudence and good practices in this regard.

Ms. Roggen commenced by detailing the relevant law under which these fighters may be charged, highlighting the availability of offences such as participation in a terrorist group, public provocation of terrorist acts or travel with intent to commit a terrorist offence. The Act of 18 February 2013 also criminalises terrorist training, whether a person receives or provides the training. One article of particular importance in practice was also identified; this was art 141bis which provided an exception through which Belgian terrorism law does not apply to the activities of the armed forces in an armed conflict. However, it has since been decided in case law that clandestine armed forces, such as some terrorist groups, cannot be considered as parties to an armed conflict in an international humanitarian law context as they lack the organisational element, including an identifiable chain of command. This means that members of these groups may be prosecuted in Belgium.

Ms. Roggen then explored how foreign terrorist fighters have been prosecuted in practice. First, she discussed the type of evidence used which ranges from real world evidence (including whatsapp messages, skype messages, informants, interrogations, flight records, etc) to the online world (including communications interceptions, social media analysis, open source material, online intrusion, etc). She then presented a case example, discussing the types of evidence used, some of the legal questions that arose throughout the prosecution, and the role of the court and the prosecutor in trials in absentia.

The week was concluded with a High Level Panel on “The Use of Administrative Measures in the Context of Foreign Terrorist Fighters”. For a report, please visit: <https://icct.nl/update/report-icct-high-level-panel-2016/>