

Foreign Fighters under International Law and Beyond

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Editors

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Foreword

The main threat to international security in the twentieth century was conflict between States. Two World Wars led to the creation of the United Nations in 1945, a forum established to ensure that disputes between States did not turn into military confrontations. NATO was established shortly after, as the dreams of a stable post-war order were shattered by the reality of the Cold War.

Policy makers today are rapidly adjusting to the idea that the assumptions underpinning security planning in the twentieth century do not apply to an array of transnational threats which have emerged over the past twenty years. Nowhere is this more apparent than in the case of foreign fighters (FFs).

As this publication will highlight, the phenomenon of foreigners joining conflicts thousands of miles from their homes is not new. Thanks to Orwell and Hemingway, many of us are familiar with the example of the international brigades which were formed to fight on behalf of the second Spanish Republic in the 1930s. More recently, FFs went to Afghanistan in the 1980s to fight Soviet occupation. And many outsiders flooded into the Balkans (particularly Bosnia) in the early 1990s to take up arms against the government in Belgrade.

These examples, in particular the latter two, barely attracted our attention at the time. In Europe, many reasoned that the phenomenon was welcome given that ‘my enemy’s enemy is my friend’. However, in hindsight, it is clear that the conflicts in Bosnia and in Afghanistan were incubators for the problems we face today, when foreign nationals join groups such as al-Shabab and Boko Haram in Africa, and Da’esh and al-Nusra in the Middle East.

A recent report published by the United Nations highlights the scale of the problem. An estimated 25,000 foreign nationals are fighting on behalf of terrorist groups around the world. Many of these are concentrated in Iraq, Syria, Somalia, Nigeria and across North Africa. Half of the world’s countries have supplied FFs. Over the past year, the numbers have doubled and there are no signs of this slowing down.

Given the trend, the public is right to be concerned. Further terrorist attacks in European capitals are inevitable, either because individuals feel inspired to copy terrorists’ brutality or as foreign terrorist fighters (FTFs) return to their

homes. Da'esh in particular has proved adept at convincing thousands of gullible European citizens that their interests are best served by taking up arms against some of the world's most tolerant and diverse societies.

This publication offers a number of prescriptions for tackling the FF phenomenon. I do not claim to have all of the answers, but it strikes me that policy makers should be guided in their actions by three watchwords:

Confidence

By global standards, European societies remain among the most advanced on earth. The fact that the continent represents the world in so many respects, including the diversity of its population, is a fundamental strength. The fact that we host so many thriving Muslim communities is the best possible response to the terrorist narrative suggesting that the West is at war with Islam. We should work with our diaspora communities relentlessly to promote this message;

Caution

The first duty of any government is to protect its citizens. Understandably there is a debate underway in many European capitals on the changes necessary to ensure that our security apparatus is equipped to deal with the FF phenomenon. For example, the European Parliament is (rightly in my view) considering a Directive on Passenger Name Records to ensure that law enforcement experts have access to potentially crucial data on the movements of FTFs. But in proposing new measures, we should ensure that they comply with the values which have become synonymous with the EU, namely respect for human rights, democracy and the rule of law;

Unity

EU citizens have been the target of three significant attacks in 2015 (Paris in January and Bardo and then Sousse in Tunisia). These attacks were clearly inspired by terrorist groups which purport to represent Islam. We will inevitably suffer further attacks, not least as FTFs return to their home countries. But I am confident that by working together across the EU to develop a coherent response to the terrorists' message, we will overcome this generational challenge. In doing so, we will need the support of education specialists who can recognise the signs of radicalisation and equip future generations with critical thinking skills; we will need to develop greater expertise in our law enforcement approach, building

stronger partnerships between police and local communities; and we need a unified diplomatic and humanitarian effort to bring an end to the conflicts which give many terrorist groups their centrifugal force.

This volume provides food for thought in all of these areas. It is well-timed and, I am sure, will become an essential reference text for policy makers.

Gilles de Kerchove
EU Counter-Terrorism Coordinator

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Abbreviations

| | |
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| ACBPS | Australian Customs and Border Protection Service |
| ACSRT | African Centre for the Study and Research on Terrorism |
| AFRIPOL | African Police Cooperation Organisation |
| ALA | Arab Liberation Army |
| ANZCTC | Australia-New Zealand Counter-Terrorism Committee |
| AP I | Additional Protocol I to the 1949 Geneva Conventions |
| AP II | Additional Protocol II to the 1949 Geneva Conventions |
| API | Advanced Passenger Information |
| AQAP | Al-Qaeda in the Arab Peninsula |
| AQIM | Al-Qaeda in the Islamic Maghreb |
| ASIO | Australian Security Intelligence Organisation |
| AST | Ansar al-Sharia in Tunisia |
| ATU | Action against Terrorism Unit |
| AU | African Union |
| AWB | Afrikaner Resistance Movement |
| BPC | Belgian Penal Code |
| CISSA | Committee of Intelligence and Security Services of Africa |
| CODEXTER | Council of Europe Committee of Experts on Terrorism |
| CoE | Council of Europe |
| CRC | Convention on the Rights of the Child |
| CSCC | Center for Strategic Counterterrorism Communications |
| CSIS | Canadian Security Intelligence Service |
| CTC | Counter-Terrorism Committee |
| CTED | Counter-Terrorism Committee Executive Directorate |
| CTITF | Counter-Terrorism Implementation Task Force |
| CVE | Countering Violent Extremism |
| DCC | Dutch Criminal Code |
| DHS | Department of Homeland Security |
| ECHR | European Convention on Human Rights |
| ECOWAS | Economic Community of West African States |

| | |
|-------|---|
| ECRIS | European Criminal Records Information System |
| EEAS | European External Action Service |
| ENP | European Neighbourhood Policy |
| EU | European Union |
| EUMS | European Union Military Staff |
| FF | Foreign Fighter |
| FRY | Federal Republic of Yugoslavia |
| FSA | Free Syrian Army |
| FTF | Foreign Terrorist Fighter |
| FTO | Foreign Terrorist Organisation |
| GC | Geneva Convention |
| GCCS | Global Center on Cooperative Security |
| GCTF | Global Counterterrorism Forum |
| IAC | International Armed Conflict |
| ICC | International Criminal Court |
| ICCPR | International Covenant on Civil and Political Rights |
| ICCT | International Centre for Counter-Terrorism—The Hague |
| ICL | International Criminal Law |
| ICSR | International Centre for the Study of Radicalisation and Political Violence |
| ICTR | International Criminal Tribunal for Rwanda |
| ICTY | International Criminal Tribunal for the Former Yugoslavia |
| IDPs | Internally Displaced Persons |
| IHL | International Humanitarian Law |
| IHRL | International Human Rights Law |
| ILC | International Law Commission |
| IR | International Relations |
| IS | Islamic State |
| ISIL | Islamic State of Iraq and the Levant |
| ISIS | Islamic State of Iraq and Syria |
| JHA | Justice and Home Affairs |
| KLA | Kosovo Liberation Army |
| MENA | Middle East and North Africa |
| MLA | Mutual Legal Assistance |
| MLAT | Mutual Legal Assistance Treaties |
| MUJAO | Movement for the Oneness of the Jihad in Africa |
| NCTC | National Counterterrorism Center |
| NGO | Non-Governmental Organisation |
| NIAC | Non-International Armed Conflict |
| NSAG | Non-State Armed Group |
| NZSIS | New Zealand Security Intelligence Service |
| OHCHR | Office of the High Commissioner for Human Rights |
| OSCE | Organization for Security and Co-operation in Europe |
| PIRA | Provisional Irish Republican Army |
| PNR | Passenger Name Record |

| | |
|-----------|--|
| POW | Prisoner of War |
| PTSD | Post-Traumatic Stress Disorder |
| RAN | Radicalisation Awareness Network |
| SCSL | Special Court for Sierra Leone |
| SIS | Schengen Information System |
| SNTT | Say No to Terror |
| SSCAT | Syria Strategic Communications Advisory Team |
| STL | Special Tribunal for Lebanon |
| TEU | Treaty on European Union |
| TFEU | Treaty on the Functioning of the European Union |
| TIDE | Terrorist Identities Datamart Environment |
| UK | United Kingdom |
| UN | United Nations |
| UNAMI | United Nations Assistance Mission for Iraq |
| UNGA | United Nations General Assembly |
| UNICRI | United Nations Interregional Crime and Justice Research Institute |
| UNODC | UN Office on Drugs and Crime |
| UNSC | United Nations Security Council |
| UNSG | United Nations Secretary-General |
| USAID/OTI | US Agency for International Development's Office of Transition Initiatives |
| VBIED | Vehicle-Borne Improvised Explosive Device |

Editors and Contributors

About the Editors

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