

# Returning Foreign Fighters: Responses, Legal Challenges and Ways Forward

Francesca Capone · Christophe Paulussen ·  
Rebecca Mignot-Mahdavi  
Editors

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# Foreword

The world of counter-terrorism is full of quick turns and surprises, and it forms a fascinating subject for academic research in law, social science and history. Time and again people and governments are confronted with dreadful acts of terrorism that demonstrate how the phenomenon of terrorism is real and constitutes a real threat to the lives of ordinary people, as well as to international peace and security. Hence, serious study of terrorism and the fight against it is not detached from reality so that it would be conducted in some academic ivory tower. Scholars in various disciplines do their best to use their knowledge and skills to deliver research that would help in building a safer world, free from, or at least protected against, terrorism. In particular from the perspective of legal research, one of the main outcomes of that continuous undertaking is that combating terrorism with the wrong means, for instance through policies and practices that violate human rights, will be counterproductive. Human rights violations in the name of countering terrorism easily become a reason for subsequent acts of terrorism, both as a structural cause within societies suffering of terrorism, conflict, poverty and exclusion and as a triggering cause for individuals that are susceptible for being recruited into terrorism.

International, European and national counter-terrorism law itself reflects these dilemmas. Many of its central features and instruments have been crafted in panic, as a hasty political response to a high-profile terrorist attack or other unexpected negative development. Sadly, such ill-advised responses to a threat that in itself is real tend to perpetuate themselves. As a result, important dimensions of the available framework of counter-terrorism law are not only problematic as to their compatibility with human rights but also ineffective in respect of the actual threat.

The rapid adoption of international, European and national instruments against the flow of persons from European or other countries to Syria, Iraq or other conflict zones where they might engage in acts of terrorism or other forms of physical violence has become yet another example of these troubling tendencies. UN Security Council Resolution 2178 (2014), the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (2015) and the EU Directive on Combating Terrorism (2017) all suffer from conceptual and legal flaws that greatly reduce their effectiveness in addressing the problem, while at the same time putting human rights

at risk. To mention only one example, the three instruments create mutually incompatible legal obligations for states in respect of acts of violence committed by ‘foreign fighters’ during an armed conflict abroad.

This excellent collection of eleven expert studies on the phenomenon of foreign (terrorist) fighters allows the interested reader to gain a thorough understanding of the phenomenon and the policies and measures undertaken by the international community and individual states to combat it. Historical, political, jurisdictional, evidentiary, judicial, punitive, administrative, humanitarian and many other aspects of the matter are carefully examined by the skilful authors. The individual chapters have been expertly edited by a strong editorial team and thereby integrated into a book that will prove a rewarding reading experience. The collection does not fail to address the fate of family members of perpetrators of violence, or the threat posed to European or other nations by conflict-hardened returnees who would be in need of care and rehabilitation but who might also constitute a genuine security threat to others. The seemingly easy but actually quite thorny solution of citizenship-stripping also has its own chapter in the volume. Aptly, the final chapter in the book looks into the consequences for freedom of expression of measures to combat the foreign fighter phenomenon, demonstrating how even the most well-established and unquestioned human rights may be at risk when the toolbox of counter-terrorism instruments is opened.

Oxford, UK  
January 2022

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# Abbreviations

AANES	Autonomous Authority for North East Syria
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACommHPR	African Commission on Human and Peoples' Rights
AIVD	Dutch General Intelligence and Security Service
API	Advance Passenger Information
CA3	Common Article 3
CC	Criminal Code
CCPR	International Covenant on Civil and Political Rights
CESCR	UN Committee on Economic, Social and Cultural Rights
CETS	Council of Europe Treaty Series
CGLPL	<i>Contrôleur Général des Lieux de Privation de Liberté</i>
CIA	Central Intelligence Agency
CoE	Council of Europe
COI	Commission of Inquiry
CONTEST	United Kingdom's Strategy for Countering Terrorism
CRC	Convention on the Rights of the Child/Committee on the Rights of the Child
CSO(s)	Civil Society Organisation(s)
CT	Counter-Terrorism
CTC	UN Security Council Counter-Terrorism Committee
CTED	UN Security Council Counter-Terrorism Committee Executive Directorate
CTG	Counter-Terrorism Group
CTIVD	Dutch Review Committee on the Intelligence and Security Services
CUTA	Coordination Unit for the Threat Analysis
DDP	Home Office's Desistance and Disengagement Programme
DWR	De Ware Religie/Die Wahre Religion (the true religion)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESCRs	Economic, Social and Cultural Rights

EU	European Union
EWCA	England and Wales Court of Appeal
EWHC	England and Wales High Court
FCO	Foreign and Commonwealth Office
FF(s)	Foreign Fighter(s)
FIJAIT	<i>Fichier judiciaire automatisé des auteurs d'infractions terroristes</i>
FNLA	National Front for the Liberation of Angola
FTF(s)	Foreign Terrorist Fighter(s)
GCTF	Global Counterterrorism Forum
IACHR	Inter-American Commission on Human Rights
IAC(s)	International armed conflict(s)
IACtHR	Inter-American Court of Human Rights
IB	International Brigades
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICCT	International Centre for Counter-Terrorism—The Hague
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IED(s)	Improvised Explosive Device(s)
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IIIM	International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic
IO(s)	International Organisation(s)
IS	Islamic State
ISIL	Islamic State of Iraq and the Levant
ISIS	Islamic State in/of Iraq and Syria
KLA	Kosovo Liberation Army
LTTE	Liberation Tigers of Tamil Eelam
NATO	North Atlantic Treaty Organization
NCTV	Dutch National Coordinator for Security and Counter-Terrorism
NES	North East Syria
NGO(s)	Non-Governmental Organisation(s)
NIAC(s)	Non-International Armed Conflict(s)
NSAG(s)	Non-State Armed Group(s)
OCHA	UN Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
OM	Dutch Public Prosecution Service
OSCE	Organization for Security and Co-operation in Europe
PKK	Kurdistan Workers' Party
PNR	Passenger Names Record
PTSD	Post-traumatic Stress Disorder
QPR	<i>Quartier de Prise en charge de la Radicalisation</i>



SCM	Syrian Center for Media and Freedom of Expression
SDF	Syrian Democratic Forces
TFEU	Treaty on the Functioning of the European Union
TIS	Category of Individuals Sentenced for Terrorist Offences
TPIM(s)	Terrorism Prevention and Investigation Measure(s)
UK	United Kingdom
UKSC	United Kingdom Supreme Court
UN	United Nations
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
UNCRC	United Nations Convention on the Rights of the Child/United Nations Committee on the Rights of the Child
UNGA	United Nations General Assembly
UNHCR	Office of the United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Committee
UNICEF	United Nations International Children’s Emergency Fund
UNITAD	United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNTS	United Nations Treaty Series
US	United States
VSSE	Belgian intelligence service
WOM	Wet Openbare Manifestaties (Dutch Public Manifestation Act)