Foreign Fighters under International Law and Beyond

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Editors

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ISBN 978-94-6265-098-5 ISBN 978-94-6265-099-2 (eBook)
DOI 10.1007/978-94-6265-099-2

Library of Congress Control Number: 2015954346

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

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Printed on acid-free paper

Springer Science+Business Media B.V. Dordrecht is part of Springer Science+Business Media
(www.springer.com)

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

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

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About the Editors

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