CSS STUDY

Foreign Fighters: An Overview of Responses in Eleven Countries

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Introduction

Over the last few months authorities in various countries have expressed strong concerns about the hundreds of their citizens fighting alongside various armed groups in the Syrian civil war. The presence of so-called "foreign fighters" (henceforth FFs) in Syria is considered particularly troublesome given the possibility that some of those who come back from the conflict might engage in acts of politically motivated violence in their countries of origin or in third countries.

The phenomenon of FFs is hardly limited to Syria or new. From the Afghan-Soviet war of the 1980s to various conflicts in the 1990s (Bosnia, Chechnya) and 2000s (Iraq, Somalia), the number of individuals who identified with various forms of militant Islamist ideology who have been involved as volunteers in various conflicts is estimated between 10,000 and 30,000.[1] Today in Syria, as in the past in other conflicts, a small yet significant percentage of these FFs come from OSCE member states. But the phenomenon of FFs is not limited to militant Sunni Islamism. There are in fact indications that, just as in the current conflict in Syria, individuals from OSCE member states have also joined rival Kurdish and Shiite militias. And, throughout contemporary European history, there are several instances of individuals, both from diaspora communities and not, joining all sorts of conflicts outside of their countries for a variety of motivations.

This study will analyze the approaches, policies and measures adopted by eleven countries in relation to the issue of FFs.[2] The report will focus mostly on so-called "jihadist" FFs, given that a) they are arguably the largest and most common group, and b) they are commonly believed to pose the largest threat in terms of "blowback." Many of the measures adopted by countries against jihadist FFs are potentially usable also against FFs mobilized by other motivations/ideologies. Nevertheless it is not uncommon for countries to view this former group with greater suspicion and to therefore act with particular vigor against it.

Similarly, many of the measures and dynamics described in this report are related to the situation in Syria, which recently has triggered a strong FF-related alarm. While exact numbers are not available, various studies indicate that up to 11,000 FFs are currently in the war-torn Arab countries and that up to 2,000 of them come from Western Europe alone – unprecedentedly large numbers that have triggered the current alarm.[3] But many measures are, of course, applicable also to other instances of FFs.

The concerns related to FFs are twofold. First, it is feared that, upon joining the conflict, FFs will commit acts that will accentuate its duration, sectarian nature and barbarity. But the biggest fear is related to the so-called "blowback effect" that could take place upon their return to their home countries or to a third country they reach after concluding their experience as FFs. These fears have been expressed by policy-makers throughout Europe and North America. In January 2014, EU Home Affairs Commissioner Cecilia Malmström warned about "Europeans [who] travel abroad to train and to fight in combat zones, becoming more radicalised in the process." "Some of these young men", she added, "have joined groups with terrorist agendas, they have been trained and hardened in war, and could pose a threat to our security upon their return from a conflict zone. In the longer term they could act as catalysts for terrorism."[4] Similarly, Matthew G. Olsen, the director of the US National Counterterrorism Center, has stated: "The concern going forward from a threat perspective is there are individuals traveling to Syria, becoming further radicalized, becoming trained and then returning as part of really a global jihadist movement to Western Europe and, potentially, to the United States."[5]

The fear that their newly acquired combat experience, network of contacts and ideological outlook might drive some FFs to carry out attacks after their combat experience is not universally shared. Despite common assumptions, the empirical evidence from previous conflicts has shown that only a small minority of FFs became involved in terrorist activities upon returning home. The fear of a blowback from FFs, for example, did not materialize after the Iraq war, as only a few returnees from it engaged in acts of terrorism in the West. Similarly, many argue, most individuals currently involved in Syria either harbor no ill intentions against their home countries or, for a variety of other reasons, will never act against them.

At the same time, there are indications that at least some FFs will indeed be engaged in terrorist activities upon returning home. The groundbreaking studies conducted by Norwegian academic Thomas Hegghammer have shown that only one in nine FFs engages in terrorist activities after the conflict but that those who do

1 Thomas Hegghammer, "The Rise of Muslim Foreign Fighters: Islam and the Globalization of Jihad", *International Security,* Vol. 35, No. 3 (Winter 2010/11), page 53.

2 The countries have been chosen, admittedly somewhat arbitrarily, based on a) their large size/geopolitical importance b) the severity by which they have been affected by the foreign fighters issue.

3 Aaron Zelin, *ICSR Insight: Up to 11,000 foreign fighters in Syria; steep rise among Western Europeans,* International Centre for the Study of Radicalisation, December 17, 2013; *Foreign Fighters in Syria,* report by the Meir Amit Intelligence and Terrorism Information Center, December 2013.

4 Charlotte McDonald-Gibson, "EU citizens fighting in Syria pose threat of terror attacks when they return home, says domestic affairs chief", *The Independent,* January 2014.

5 Eric Schmitt, "Worries Mount as Syria Lures West's Muslims", *New York Times,* July 27, 2014

are involved in plots that are twice as likely to kill.[6] It is clear that each FF's dangerousness should be assessed individually (something obviously very difficult to do) but that some do pose a threat.

With specific regard to the current conflict in Syria, there are already preliminary indications of a possible blowback effect. In Egypt, for example, individuals directly involved in various attacks carried out over the last few months by the group Ansar Bayt al-Maqdis were Syria returnees.[7] As for the West, in January 2014 the New York Times reported that American authorities believed that "Islamic extremist groups in Syria with ties to Al Qaeda are trying to identify, recruit and train Americans and other Westerners who have traveled there, to get them to carry out attacks when they return home."[8] Similar reports citing Western intelligence sources have since followed.[9] Various European militants in Syria have already publicly issued videos threatening their home countries.[10] And in the fall of 2013 British authorities reportedly thwarted a plot conceived by Syrian returnees to conduct Mumbai-style attacks in London.[11]

This report seeks to succinctly outline the approaches and measures adopted by eleven countries (10 OSCE members plus Australia) confronting the issue of FFs. For each country it will:

a) briefly outline the current trends related to FFs

b) describe the general approach to the matter

c) outline measures adopted to prevent individuals from traveling and becoming FFs. These measures are divided into:
   a) Criminal: norms used to make it a criminal offense to travel to become a FF;
   b) Administrative: measures, such as the confiscation of a passport, aimed at preventing the individual from traveling;
   c) Counter-radicalization approaches: "soft" measures, such as engagement with families or mentoring schemes, designed to convince the individual seeking to leave the country not to do so;

d) outline measures adopted in relation to individuals that have returned to the country after an experience as FFs. These measures are divided according to the tripartite order adopted for point c):
   a) Criminal: norms used to prosecute individuals who have become FFs;
   b) Administrative: measures aimed at reducing the potential threat posed by the individual or to punish him/her (in ways other than criminal prosecution);
   c) Counter-radicalization approaches: "soft" measures, such as psychological counseling, aimed at reintegrating and de-mobilizing the individual.

Two final clarifications are necessary. The first is terminological. Adopting David Malet's definition, FFs could be defined as "non-citizens of conflict states who join insurgencies during civil conflict."[12] There are, of course, gray areas. Should a short-time resident of country A but citizen of country B that joins a militia in country C be considered a FF from A or B? And what about a citizen of country A who, upon ending his fighting experience in country B, moves to country C? Does anti-FF legislation of country A apply to him? Does that of country C? These and many others are not purely theoretical but, rather, very practical issues.

The second clarification is of a methodological nature. In order to conduct this study the researchers used various sources. Information about the legal framework was obtained from various reports and journal articles. Media reports were useful for integrating these sources with current developments. Finally, several personal interviews with government officials and experts were crucial to obtaining a clearer picture of each country's approach and measures.

Common issues

Repressive measures

Important legislative differences exist from country to country, but there are some common patterns and challenges:

- In most countries, planning to travel to a conflict area is not a crime unless there are clear indications that the individual aims to join a terrorist organization or to commit crimes or has already committed preparatory crimes.

6 Thomas Hegghammer, "Should I Stay or Should I Go? Explaining Variation in Western; Jihadists' Choice between Domestic and Foreign Fighting", *American Political Science Review,* Volume 107, Issue 1, February 2013, pp. 1–15.

7 David Barnett, "Blowback in Cairo", *Foreign Policy,* January 9, 2014.

8 Michael S. Schmidt and Eric Schmitt, "Syria Militants Said to Recruit Visiting Americans to Attack US", *New York Times,* January 9, 2014.

9 See, for example, Barbara Starr, "Officials: Al Qaeda Tries to Recruit Americans in Syria", *CNN,* February 21, 2014.

10 For British militants, see Stephen Wright, "Fanatics in Syria vow to bring terror home to UK: Terrorists say they will attack public transport and financial centres", *Daily Mail,* February 5, 2014. For Belgians, see "Brian, un Anversois parti se battre en Syrie, menace la Belgique d'attentats", *La Libre,* December 10, 2013.

11 Amanda Williams, "Hundreds of British jihadis returning from fight in Syria spark terror alert after police and MI5 thwart Mumbai-style attack on London", *Daily Mail,* February 16, 2014.

12 David Malet, Foreign Fighters: *Transnational Identity in Civil Conflicts* (Oxford University Press, 2009), page 9.

- Similarly, in most countries individuals who return from a conflict zone can be charged only if certain specific criminally relevant behaviors are demonstrated.
- Therefore most countries seek to prosecute both aspiring and returning FFs under general terrorism offences.
- The activities of FFs are often characterized as receiving training for terrorism purposes. Some countries specifically criminalize the receiving of the training (so-called "passive participation" in training). Those who do not, generally try to do so through less specific terrorism-related offences.
- Most countries feel that current laws are adequate and legislative improvements are not needed. Successful prosecutions are hindered by the difficulties in collecting evidence.
- Many countries use administrative measures (such as immigration-related or child protection measures) as alternatives to criminal prosecutions. It is at times difficult to coordinate judicial and administrative measures. It is possible, for example, that a covert investigation might be disclosed by implementing administrative measures, such as the confiscation of a passport.

"Soft" measures

Most practitioners and experts recognize the limits of repressive measures:

- Evidentiary challenges make prosecutions impossible in many cases.
- Not all aspiring/returning FFs pose a threat and, unless they have committed crimes abroad, there might be no reason to criminalize them if they do not pose a threat. Reintegration seems, in some cases, a smarter path.
- Excessive repression might be counterproductive, as it might increase the sense of victimization felt by segments of the community.

For these reasons authorities in many countries have introduced "soft" measures aimed at preventing individuals from becoming FFs and at reintegrating returning FFs. Finding the balance between these and repressive measures is challenging but extremely important. It is arguable that this balance should be calibrated to each specific case. Ideally, authorities would possess a vast set of tools ranging from aggressive criminal justice measures to soft measures and would choose what tailored combination of them to use in every case.

The EU Commission-established Radicalisation Awareness Network (RAN) has worked to promote and share best practices aimed at countering radicalization, including in relation to the issue of FFs. A January 2014 RAN paper argued:

> *Only repression.....will not solve the problem. Prevention, signalling and providing programmes to help (potential) foreign fighters to leave the path of violent extremism are necessary as well. These actions are often organised on a local level. For instance, first line practitioners, such as teachers and youth workers, can be trained to recognise and refer those who are being influenced to go on jihad. Also, families can be partners in both detecting potential fighters and convincing them to deploy their engagement in a non-violent way. Finally, exit-programmes that have proven to be effective, can be tailored to the target group, for instance by employing formers or practitioners as acceptable intermediaries or coaches.*[13]

The RAN paper also suggested various approaches:

- Raising awareness among first line practitioners working with vulnerable individuals or groups at risk of radicalizing, in order to ensure that they are well equipped to detect and to respond to radicalization.
- Supporting family members of FFs, as they can provide key forms of support to, or have a positive influence on, the (potential) FF and, in many cases, can help with prevention or rehabilitation, re-integration and, to a lesser extent, de-radicalization.
- Engaging and empowering communities at risk in order to establish a trust-based relationship with authorities and to create resilience within communities.
- Establishing exit strategies (de-radicalization and disengagement).

Belgium

The current situation

Small numbers of Belgian-based militants have left the country to join conflicts in the past, but the current mobilization for Syria is unprecedented. As of February 2014, Belgian authorities were aware of 226 individuals who traveled to Syria to fight, of 26 who died there and 47 who have returned. Of those, only seven have been arrested.[14]

13 Conference paper RAN Cities Conference on Foreign Fighters, The Hague, January 30, 2014.

14 Interviews with Belgian officials, Brussels, February 2014.

The general approach

The Belgian government's approach consists of a mix of repression and prevention.[15] Given the relatively large number of FFs, the government has mobilized ample resources to confront the phenomenon, creating *ad hoc* coordinating structures and discussing new legislation. Various criminal tools are available, but evidentiary challenges hamper efforts to prosecute FFs. In some towns where dozens of youths have mobilized for Syria the issue is seen not just as a security threat but also as a social issue, and local authorities have implemented various measures to confront it.

Measures before departure

Criminal measures

Belgium's terrorism legislation, which was partially amended in March 2013, provides various tools that, while not specifically designed to punish travelling to participate in conflicts abroad, can be used to prosecute FFs. These include:

- Article 140, paragraph 1 of the Belgian Penal Code, which punishes actions that constitute "taking part in the activities of a terrorist group, (...), with the true knowledge that this participation contributes to the perpetration of a crime or an offence by the terrorist group." In some circumstances traveling to become a FF represents a behavior punishable under the article.
- Article 140, paragraph 2, punishes public incitement to commit a terrorist crime.
- Article 140, paragraph 3, punishes recruitment to commit a terrorist crime.
- Article 140, paragraph 4, punishes any individual who provides terrorist instructions or training.
- Article 140, paragraph 5, criminalizes the behavior of "any person who, in Belgium or abroad, receives instructions or training as referred to in Article 140, paragraph 4."

The difficulty in collecting evidence from the Syrian battlefield makes prosecution of returning FFs challenging.

In 2013, as authorities continued to monitor with apprehension the growing number of Belgian citizens and residents traveling to Syria, Minister of Interior Joelle Milquet convened a Task Force to explore possible preventive and repressive solutions to the issue.[16] One of the proposals was criminalizing travel to become a FF. The cabinet rejected the proposal, arguing that such provision would a) discourage families of aspiring FFs to approach authorities, b) have only limited deterrent effect, c) be difficult to enforce due to evidentiary limitations, and d) potentially indicate that the Belgian government was against those opposing the Syrian regime, something which was not the case. The proposal was therefore shelved, highlighting the legal and political difficulties related to the FF issue (in Belgium as elsewhere).

Non-criminal measures

Belgian authorities have adopted various measures aimed at preventing individuals from leaving the country to become FFs.[17] These include:

- The creation by the Ministry of Interior of "Task Force Syria", which explores measures to deter FFs.
- The creation by the Coordination Unit for Threat Assessment (OCAM/OCAD) of a list of individuals who are presumed/known to be in/have traveled to Syria or presumed/known to have intentions to travel to Syria. The list is sent to various entities (the Federal Prosecutor's Office, Federal Police, State Security, Ministry of Foreign Affairs and the Military General Service of Intelligence and Security) and each takes the appropriate measures.
- Various initiatives to coercively prevent minors from leaving the country. Minors can be put in forms of protective custody and subjected to measures such as being prohibited from using the internet and/or the telephone, and a change of school.
- An agreement with Turkey to stop certain Belgian nationals attempting to enter Syria via Turkey. Turkish authorities have access to a list of Belgian citizens/residents with known extremist sympathies drawn up by Belgian authorities. In August 2013 three Belgian nationals were denied access into Turkey based on the list.

Several preventive initiatives are carried out at the local level, particularly by municipalities that have seen high numbers of their residents leave for Syria. The municipality of Vilvoorde, for example, has created an *ad hoc* unit that combines police work with community engagement and partners with an array of entities (mosques, schools, social services, sport clubs...). The municipality also provides coaches/mentors to youths deemed on the path of radicalization and free psychological assistance to families of FFs and aspiring FFs. Similar models are present in various Belgian towns and cities.

15 Interviews with Belgian officials, Brussels, February 2014.

16 Edwin Bakker, Christophe Paulussen and Eva Entenmann, *Dealing with European Foreign Fighters in Syria: Governance Challenges & Legal Implications,* ICCT Research Paper, International Centre for Counter-Terrorism Studies, December 2013.

17 Interviews with Belgian officials, Brussels, February 2014.

Measures upon return

Several measures have been established in order to share information between and coordinate the activities of various entities within the Belgian state. A key role in this regard is played by the OCAM/OCAD.[18]

Authorities assess the threat posed by each returning FF. The intensity of the monitoring of each returnee is based on the level of threat he/she is assessed to pose. Criminal prosecution is the preferred tool when a) the specific individual is deemed a threat b) there is evidence that he/she engaged in criminal/terrorist activities.

For those who are not prosecuted, local authorities, operating in coordination with OCAM/OCAD, set up tailored initiatives aimed at reintegration. The country's counter-radicalization strategy (Action Plan Radicalism) has established more than 20 task forces throughout the country, through which various federal and local authorities exchange information and discuss potential interventions.

At the local level, some city councils have deleted individuals who are known to have travelled to Syria from the residents' registry, thereby terminating their unemployment benefits and other forms of social welfare. Other local initiatives carried out in conjunction with federal authorities aim at reintegrating returning FFs.

Canada

The current situation

Small numbers of Canadian citizens/residents have been involved in various conflicts over the last few years. As of February 2014 authorities estimate that about 130 Canadians have fought in overseas conflicts over the last few years, and some 30 are currently fighting in Syria (3 are presumed to have been killed there).[19] In its 2013 annual report, CSIS stated that "there is significant concern that extremism in Syria will result in a new generation of battle-hardened extremists who may seek to return to their home countries or export terrorism abroad."[20]

The general approach

Canadian authorities aim to use repressive measures to prevent individuals from leaving the country to become FFs and punish those who already did so if their activities are terrorism-related. Authorities are currently introducing a nation-wide counter-radicalization strategy.

Measures before departure

Criminal measures

Individuals who commit crimes (whether ordinary or terror-related) in relation to their aspiration to go abroad to fight are prosecuted. One case that is currently under trial is that of Mohammed Hersi, a Toronto man accused of seeking to join al Shabaab.[21] Hersi was charged with two terrorism offences, including attempting to participate in a terrorist group and counselling another person to do the same.

In April 2013 the Canadian Parliament passed a law (Bill S-7, the Combating Terrorism Act) that makes it illegal to attempt to travel overseas to join or train with a terrorist organization. Yet the law is untested, as no individual has been prosecuted under it as of March 2014.[22]

Non-criminal measures

Canadian authorities are in the process of launching a nation-wide counter-radicalization strategy that will seek to "help frontline officers respond when parents, educators or others in the community suspect a youth is being radicalized" and counter al Qaeda's narrative.[23]

Measures upon return

Canadian authorities question, monitor and seek to prosecute, when possible, returning FFs.[24]

There appear to be no efforts to reintegrate FFs upon return.

18 Interviews with Belgian officials, Brussels, February 2014.

19 Stewart Bell, "RCMP set to tackle extremism at home with program to curb radicalization of Canadian youth", *National Post,* March 4, 2014: interview with Canadian government official, Ottawa, March 2014.

20 Canadian Security Intelligence Service, 2011–2013 Public Report, available at: *https://www.csis-scrs.gc.ca/pblctns/nnlrprt/2011-2013/rprt2011-2013-eng.asp*

21 Megan O'Toole, "Terror suspect Mohamed Hersi to head directly to trial", *National Post,* December 14, 2011.

22 Stewart Bell, "Mother of Calgary Man Killed in Syria Says Canadian Government 'Guilty' in His Death for Issuing Passport", *National Post,* January 20, 2014.

23 Stewart Bell, "RCMP set to tackle extremism at home with program to curb radicalization of Canadian youth", *National Post,* March 4, 2014.

24 Interview with Canadian government official, Ottawa, March 2014.

Denmark

The current situation

Some Danish citizens/residents have fought as FFs in various conflicts in the past, but the numbers involved in the Syrian conflict are unprecedented. In December 2013 PET's Centre for Terror Analysis (CTA) estimated that at least 80 individuals had departed Denmark since the summer of 2012 to participate in the Syrian conflict. CTA argued that "not all of those who leave to engage in the conflict in Syria pose a threat to Denmark", but it also made clear in its assessment that it was possible that the specific skills acquired in Syria could be used by some to commit acts of terrorism in Denmark.[25]

The general approach

Danish authorities consider the issue of FFs a major threat to the country's security. In order to confront this challenge authorities adopt a mix of punitive and preventive measures.[26] Prosecutions are pursued when possible, but high evidentiary requirements often make them challenging. Building on a very extensive infrastructure created at the national and local level over the last few years, Danish authorities rely heavily on various counter-radicalization measures aimed at preventing the departure of aspiring FFs or demobilizing and reintegrating returning ones.

Measures before departure

Criminal measures

As in most countries, traveling to a foreign country and engaging in a conflict is not a crime per se under Danish law. Nonetheless, if an individual engages in various activities covered by Danish terrorism legislation during his stay in the foreign country, Danish authorities could prosecute him/her.[27] These activities range from committing acts of terrorism (Section 114 or 114a of the Danish Criminal Code) to being instructed "trained, instructed or in any other way taught to commit actions included in Section 114 or 114a." Given the difficulty of meeting these requirements before an individual leaves the country, as of February 2014 no criminal case has been opened against aspiring FFs before their departure.

Non-criminal measures

Danish authorities have put a significant emphasis on various non-criminal measures aimed at preventing individuals from leaving Denmark to become FFs. Some of these measures are administrative. Authorities, for example, have the power to confiscate passports of minors and do not issue new ones unless the minors' parents agree to it.[28]

Other measures are part of the country's wide and long-established national counter-radicalization strategy.[29] Throughout the country local authorities, heavily supported by the national government, have devised systems to a) liaise and build trust-based relationships with vulnerable communities and families, and b) intervene with various mentoring programs when confronted by cases of youth undergoing radicalization and/or seeking to become FFs.

This complex system aims at a) obtaining information on who leaves or seeks to leave the country (and who has returned), b) attempting to prevent individuals from leaving the country, and c) creating awareness in the community about the dangers and negative implications of FF traveling.

Measures upon return

The severe evidentiary requirements needed to prosecute FFs are more easily met for individuals who have traveled to a conflict zone and returned. In March 2013 a Danish court convicted two Danish-Somali brothers of terrorism training.[30] In the specific case, the brother undergoing training with al Shabaab in Somalia kept in constant communication with his younger brother in Aarhus, describing at length the terrorist activities he was engaged in. This allowed authorities to gather a large amount of very specific evidence that led to the first case in the country of individuals being convicted for obtaining training in a foreign training camp. Not in all cases is it possible to collect this kind of evidence and, tellingly, as of February 2014 no Danish subject has been charged for fighting in Syria. Authorities nonetheless monitor returnees closely and seek to assess the potential threat posed by each of them.[31]

The country's extensive counter-radicalization efforts are directed also at individuals who have returned from conflict areas. Local governments, supported by national authorities, engage in various initiatives aimed at

25 *The Threat to Denmark from Foreign Fighters in Syria,* report by PET's Center for Terroranalyse, December 4, 2013.

26 Telephone interview with Danish government official, January 2014.

27 Telephone interview with Danish government official, January 2014.

28 Telephone interview with Danish government official, January 2014.

29 A Common and Safe Future, Government of Denmark, January 2009; Lorenzo Vidino and James Brandon, *Countering Radicalization in Europe,* International Centre for the Study of Radicalization, King's College London, December 2012, pp. 49–58.

30 "Brothers guilty of training for terror", *UPI,* March 26, 2013.

31 Telephone interview with Danish government official, January 2014.

the reintegration, normalization, and de-radicalization of returnees. Activities include mentoring schemes, educational and vocational training, and psychological support.[32]

France

The current situation

French nationals and residents have fought in various conflicts over the last few years, but the number of French-based individuals reportedly fighting in Syria is unprecedented. In January 2014 President Francois Hollande stated that some 700 "young Frenchmen and young foreigners living in France" are believed to be in the war-torn Arab country, even though other officials have provided a lower number (250).[33] Minister of Interior Manuel Valls has described the possibility of these individuals returning to France as hardened jihadists as "the biggest threat that the country faces in the coming years."[34]

The general approach

French authorities have dealt with the issue largely through repressive measures. The ample powers French legislation grants law enforcement, intelligence agencies and investigative magistrates allows authorities to aggressively pursue aspiring and returning FFs and their recruiters/facilitators. Nonetheless, challenges in obtaining solid evidence from the battlefield pose a severe challenge to prosecutions.

Measures before departure

Criminal measures

Thanks to the very extensive powers given to them by French law, traditionally French authorities have adopted a very aggressive and prosecution-based approach towards terrorism-related activities. Authorities have charged individuals involved in terrorism-related activities (including traveling abroad to become FFs) under common criminal provisions with enhanced penalties or under specific norms such as the conspiracy for terrorism purposes *(Association de malfaiteurs terroristes)* which entail a special procedure and are pursued by specialized judges.[35] A law adopted by the French parliament in December 2012 (law n° 2012–1432) expanded the reach of French authorities, allowing investigative judges to specifically prosecute individuals for having participated in training camps abroad.[36]

Despite these broad legal tools, there are important evidentiary and political (i.e. the support the French government gave to the Syrian opposition) obstacles to the prosecution of FFs, particularly those who seek to fight in Syria.

The first case against aspiring FFs in Syria was celebrated in January 2014 against three individuals who had been arrested at Saint-Etienne airport in May 2012 on their way to Syria. The prosecutor accused the men of "association de malfaiteurs en vue de la préparation d'actes terrorists" (criminal association aimed at the preparation of terrorist acts) and asked for penalties of between 2 and 6 years. The verdict is expected for March.[37]

Measures upon return

French authorities question, monitor and seek to prosecute, when possible, returning FFs.[38]

There appear to be no efforts to reintegrate FFs upon return.

Germany

The current situation

German citizens/residents have participated in various foreign conflicts in the past, but the number of those involved in the Syrian civil war is unprecedented. As of February 2014 German authorities estimate the number of German militants in Syria at 270.[39] Authorities have re-

32 Telephone interview with Danish government official, January 2014.

33 "Hollande says 700 from France fighting in Syria", AFP, January 14, 2014; Nicholas Vinocur and Chine Labbé, "Exodus of French volunteers for Syria jihad growing: judge", *The Daily Star,* February 12, 2014; French top anti-terrorism judge Marc Trevidic explained the discrepancy by arguing that 250 indicated the number of French citizens/residents known to be fighting in Syria, while Hollande's larger number referred to the people passing through France on their way to Syria.

34 Ruth Sherlock and Tom Whitehead, "Al-Qaeda training British and European 'jihadists' in Syria to set up terror cells at home", *The Telegraph,* January 20, 2014.

35 *http://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/defense-et-securite/terrorisme/*

36 *http://www.service-public.fr/actualites/002537.html* and *http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=6DC36D7FA3662DB7BA5F9D935AD38BCE.tpdjo11v_3?cidTexte=JORFTEXT000026809719&dateTexte=&oldAction=rechJO&categorieLien=id*

37 "Procès des candidats au djihad: 2 à 6 ans ferme requis", *Le Nouvel Observateur,* January 31, 2014.

38 Nicholas Vinocur and Chine Labbé, "Exodus of French volunteers for Syria jihad growing: judge", *The Daily Star,* February 12, 2014.

39 Telephone interview with German Ministry of Interior official, January 2014.

peatedly expressed concerns about the phenomenon. Hans-Peter Friedrich, the country's former Minister of Interior, has stated that returnees from Syria trained in "deadly handwork" will be "ticking time bombs."[40]

The general approach

Germany's approach can be defined as a mix of repression and prevention. Prosecutions are pursued when the necessary evidence is available. Various administrative measures have been set up in order to prevent individuals from traveling. Also, various counter-radicalization initiatives seek to engage youths and their families before or after they travel to conflict areas.

Measures before departure

Criminal measures

As in many other countries, German law does not criminalize traveling to a conflict area per se. What does represent a punishable criminal offense is engaging in various terrorist activities during the conflict. In substance, the treatment of FFs is identical to that of individuals who in the past sought to join al Qaeda-affiliated groups in Afghanistan, Pakistan or Yemen. Specifically, Section 129a of the German Criminal Code punishes acts which can be deemed as the formation of, participation in and support for a terrorist organization. "Passive participation" in terrorist training is also punished.

Yet, given the difficulty of collecting evidence clearly linking a FF to these activities, as of February 2014 no German citizen/resident has been charged for activities linked to the Syrian conflict.

Non-criminal measures

German authorities have established a "travel disruption plan" comprising various measures aimed at preventing aspiring FFs from leaving the country.[41]

German security services often approach individuals they suspect of planning to leave the country through so-called "Gefährdeansprachen" (hazard talks), informing them that authorities are aware of their plans and reminding them of the implications of their actions.[42]

Moreover, the security services also notify the police, city councils, and offices for foreigners about individual cases, as they all have at their disposal measures to seek to prevent individuals from traveling. In the case of German citizens, their passports can be taken away if they pose a threat to internal or external security, or to other significant interests of Germany (the norm has been applied in several cases involving individuals seeking to travel to Syria). In the case of foreigners, given the impossibility of confiscating a non-German passport, authorities issue an order not to leave Germany.

Other initiatives fall in the realm of counter-radicalization and many of them are carried out at the state level. In the *land* of Hesse, for example, authorities: a) visit schools to explain the negative implications of traveling to Syria, b) are seeking to implement an early warning system to prevent individuals from traveling to Syria, and c) are creating a hotline and consulting centers for parents.[43]

A similar project that has already been implemented is HAYAT, a family counseling program available to family members or friends of individuals who are seeking to go to, have gone to, or have returned from Syria. Run by an independent foundation, the Berlin-based Centre for Democratic Culture, with the support of the Federal Office for Migration and Refugees (BAMF), HAYAT works as a bridge between families and the authorities.[44] The "Initiative Sicherheitspartnerschaft", which is a partnership between security agencies, representatives of the Muslim community, and the "Beratungsstelle Radikalisierung" are additional programs initiated by the BAMF.[45]

Cities like Bonn, Bochum and Düsseldorf are planning to implement the so-called "Wegweiser" (guideposts) – experts from the local Muslim community and social workers who serve as liaison for young adults, parents, teachers and other affected persons in order to detect and stop the radicalization process at an early stage.[46]

Measures upon return

Individuals who have reached conflict areas and have engaged in terrorist-related activities there can be prosecuted under German law. As of February 2014 there have been no arrests of individuals who have traveled to Syria, but several investigations are reportedly being conducted by authorities.[47] The crimes for which they can be prosecuted are similar to those for which German-based individuals who joined al Qaeda-linked outfits in Afghanistan, Pakistan and Yemen have been charged and, at times, convicted of over the last few years.

40 Nikolas Busse, "Diese Leute sind tickende Zeitbomben in Europa", *Frankfurter Allgemeine Zeitung,* June 7, 2013.

41 Telephone interview with German Ministry of Interior official, January 2014.

42 Telephone interview with German Ministry of Interior official, January 2014.

43 Benjamin Weinthal, "The German jihadists' colony in Syria", *The Long War Journal,* December 19, 2013.

44 Daniel Köhler, "Family Counseling as Prevention and Intervention Tool Against 'Foreign Fighters': The German 'Hayat' Program", *Journal EXIT-Deutschland,* Issue 3, 2013.

45 http://www.initiative-sicherheitspartnerschaft.de/SPS/DE/Startseite/startseite-node.html and http://www.bamf.de/DE/DasBAMF/Beratung/beratung-node.html

46 http://www.wegweiser.nrw.de

47 Interview with German Ministry of Interior official, January 2014.

Various administrative measures have also been set up to reduce the threat of returnees:

- The border police has developed an elevated sensitivity for detecting returnees.
- Individuals who are known to have left Germany are put on the so-called Schengen system and therefore authorities should be informed when they return to the Schengen area.
- In the case of non-German citizens, if their stay abroad has led them to violate the terms of their visa, authorities make sure that the visa is revoked.[48]

The Netherlands

The current situation

Small numbers of Dutch-based militants had left the country to join other conflicts in the past, but the current mobilization for Syria is unprecedented. As of February 2014 Dutch authorities estimate that more than 100 individuals have left the Netherlands to join various militant groups in the war-torn country, 70 are still there, 10 have died and 20 have returned.[49] Dutch authorities consider the phenomenon a significant threat to national security and have raised the terrorism threat level due to concerns over FFs returning from Syria.[50] The "Algemene Inlichtingen en Veiligheidsdienst" (AIVD) has argued that "Dutch jihadists are becoming more and more successful in connecting themselves to key international figures in these networks. If these people return to the Netherlands they will take with them all the contacts and skills that they acquired during their period abroad. This makes it possible for them to commit attacks or to support other jihadists in planning attacks in the West. Returning jihadists enjoy a significant degree of prestige, they are militant and they are capable of influencing others. They are therefore a radicalizing force."[51]

48 Interview with German Ministry of Interior official, January 2014.

49 *Threat level remains at 'substantial'; government action still necessary,* press release by the National Coordinator for Security and Counterterrorism, February 25, 2014; interview with Dutch officials, The Hague, February 2014.

50 Ivo Opstelten, "Letter of 13 March 2013 from the Minister of Security and Justice to the House of Representatives of the States General Containing a Summary of the March, 2013 Edition of the Terrorist Threat Assessment for the Netherlands (DTN32)", National Coordinator for Security and Counterterrorism – Ministry of Security and Justice, 13 March 2013, *http://english.nctv.nl/publications-products/Terrorist-Threat-Assessment-Netherlands/index.aspx*.

51 Samar Batrawi, "The Dutch Foreign Fighter Contingent in Syria", *The Sentinel,* October 24, 2013. "Reisbewegingen jihadistisch terrorisme", General Intelligence and Security Service of the Netherlands, September 2013.

The general approach

Authorities have reacted to the challenge with a very extensive mix of repressive and preventive measures.[52] The main aim of the Dutch government is "to contain this threat and prevent any new upsurge in the phenomenon" through a diverse set of measures.[53] Criminal prosecutions have been used in a handful of cases. Various administrative measures are frequently used. The country's extensive and long-established counter-radicalization structure has been redirected to deal mostly with the issue of FFs. Various punitive and re-integrative measures are put in place to deal with returnees.

Measures before departure

Criminal measures

The Dutch authorities' main aim is to prevent individuals from traveling to Syria, and prosecutions are one of the main tools used to accomplish the goal. Minister of Security and Justice Ivo Opstelten declared that "[p]articipating in armed jihad or jihadist training abroad is a criminal offence under article 134a of the Criminal Code. Returnees can also be charged with offences under other terrorism legislation."[54] Article 134a of the Dutch Criminal Code makes it illegal "to furnish oneself or another intentionally the opportunity, resources or intelligence, or to try to do so, in order to commit a terrorist crime or a crime in preparation or facilitation of a terrorist crime, or to acquire knowledge or skills to this end or impart these to another." While article 134a criminalizes the behavior of individuals who participate in armed conflicts abroad, article 205 of the Dutch Criminal Code punishes recruitment for terrorism purposes and can also be used in relation to the FFs problem.

Despite the introduction of these norms, the first successful prosecution of aspiring FFs to Syria was based not on specific counter-terrorism legislation but on "regular" criminal law provisions. In October 2013, in fact, the District Court of Rotterdam convicted two men of preparing crimes related to traveling to Syria. More specifically, one suspect was found guilty of making preparations for murder and the other of preparing arson and/or an explosion and of spreading, showing publicly or having in stock to spread or show publicly a text and/or a picture which incites to committing a (terrorist) crime.[55]

52 Interview with Dutch officials, The Hague, February 2014.

53 *Threat level remains at 'substantial'; government action still necessary,* press release by the National Coordinator for Security and Counterterrorism, February 25, 2014.

54 Christophe Paulussen, "The Syrian Foreign Fighters Problem: A Test Case from the Netherlands", Commentary, December 2, 2013.

55 Christophe Paulussen, "The Syrian Foreign Fighters Problem: A Test Case from the Netherlands", Commentary, December 2, 2013.

The court made it clear that the crimes were conducted in a "terrorism context", namely the armed conflict in Syria, but convicted the two men of ordinary crimes (one was ordered to spend a year in a psychiatric hospital and the other was sentenced to one year). In the wake of the verdict a prosecution spokesperson stated: "This is the first time that the Netherlands hands down such a judgment and this helps clarify the fact that it's illegal to go to Syria to fight [...]. Which means that we now have a legal precedent and can prosecute other people wanting to go to Syria or coming back."[56] Nonetheless it should be clarified that the court did not say that it is illegal to travel to Syria per se, just that it is illegal to conduct acts that can be considered preparatory to crimes to be committed there.

Other attempts to prosecute individuals seeking to travel to or recruit for Syria have so far been less successful.

Non-criminal measures

When prosecution is not possible Dutch authorities resort to an array of non-criminal measures to prevent travel:

- Surveillance and disruption by law enforcement and intelligence agencies.[57]
- Various forms of pressure (such as mandatory acceptance of educational/employment opportunities).[58]
- If the aspiring FF is a minor, the AIVD issues a notice *(Ambtsbericht)* that is sent to various concerned authorities, including the Child Protection Agency. The agency issues tailored measures that include custody in child care institutions, curfew and taking away identity documents. The measure is applied both in the case of teenagers seeking to go to Syria to become FFs and younger children whose parents want themselves to become FFs.
- If the aspiring FF is not a Dutch citizen and there are substantiated suspicions he/she will commit acts abroad that pose a threat to Dutch national security, the Ministry of Justice can rescind his/her residency permit. Similarly, dual nationals can be stripped of their Dutch citizenship under article 23 of the country's passport law if they are considered a threat.
- As of February 2014 Dutch authorities have cancelled 11 passports. The measure is taken if "there is good reason to suspect that when abroad an individual will act in a way that poses a threat to the Netherlands, such as joining an al Qa'ida combat group."[59]
- As of February 2014 Dutch authorities have frozen the bank accounts of four individuals for Syria-related matters pursuant to Anti-terrorist Sanctions Order 2007-II.[60]

These preventive efforts have been conducted by Dutch authorities through a multi-agency approach and increased cooperation among police, intelligence and various governmental agencies at the national and local level.

Measures upon return

Authorities seek to prosecute returnees if there is evidence they have committed crimes during their stay abroad. If criminal prosecution is not possible, various measures are implemented in order to reduce the threat they might pose. These measures are tailored to the specific case and follow an assessment of the characteristics of the individual. They entail a mix of "soft" and "hard" initiatives that seek to put pressure on the individual while simultaneously removing him/her from militant circles and reintegrating him/her into society.[61]

The sophisticated counter-radicalization structures put in place at the national and local level since the mid-2000s play an important role in this effort.[62]

Russian Federation

The current situation

Russia has an extensive history of dealing with the issue of FFs, both in terms of foreign citizens coming into its domestic sphere to fight and in terms of its own citizens fighting abroad. In relation to the current civil war in Syria, the exact number of fighters from Russia is difficult to establish, but ranges somewhere between 400-500 fighters as of December 2013.[63] Chechen fighters in Syria, in particular, tend to be more experienced and combat-ready than many of the other FFs and frequently take lead positions in the insurgency groups.

56 Christophe Paulussen, "The Syrian Foreign Fighters Problem: A Test Case from the Netherlands", Commentary, December 2, 2013.

57 Interview with Dutch officials, The Hague, February 2014.

58 Christophe Paulussen, "The Syrian Foreign Fighters Problem: A Test Case from the Netherlands", Commentary, December 2, 2013.

59 *Threat level remains at 'substantial'; government action still necessary,* press release by the National Coordinator for Security and Counterterrorism, February 25, 2014.

60 *Threat level remains at 'substantial'; government action still necessary,* press release by the National Coordinator for Security and Counterterrorism, February 25, 2014.

61 Interview with Dutch officials, The Hague, February 2014.

62 Lorenzo Vidino and James Brandon, *Countering Radicalization in Europe,* International Centre for the Study of Radicalization, King's College London, December 2012, pp. 27–47.

63 http://icsr.info/2013/12/icsr-insight-11000-foreign-fighters-syria-steep-rise-among-western-europeans

The general approach

Overall, the Russian approach to the FF issue has largely been punitive, with measures pursued both at the federal and local level, particularly in the North Caucasus.

Measures before departure

Russian authorities prosecute individuals seeking to become FFs if there are indications they are involved in terrorist activities. Evidentiary challenges limit these efforts. Authorities also often confiscate or refuse to issue travel documents to individuals suspected of becoming FFs.

Tight border controls have continued to be in place on the way in and out of Chechnya and the North Caucasus. Police operations are routinely carried out across the region to weed out any potential insurgency group suspected of conducting or participating in terrorist activity.

Soft measures have also been adopted across the region. Imams and representatives from the local authorities in Dagestan and Chechnya hold regular meetings and preach sermons to dissuade young men from going to Syria. Meetings are conducted in schools, with leaflets distributed describing the situation in the Middle East primarily as a political rather than a religious fight.[64] Films trying to dissuade young men from going to join the insurgency in Syria have been shown on Chechen TV.[65]

Measures upon return

Russian authorities have arrested and tried to vet individuals returning from Syria.[66] A piece of legislation that could be used in relation to returnees is the 359 Law on Mercenaries; i.e. the prohibition of Russian citizens from participating in a foreign army for hire. However, as noted by the Federal Security Service, it is very difficult to obtain the necessary evidence to prove the case in court and it has not as yet been invoked in relation to the FFs in Syria.[67]

A November 2013 amendment to the 2006 Anti-Terrorism Law has made it a criminal offence to participate in an armed group abroad "whose aims are contrary to Russian interests." Such activity is punishable with six years in jail. Training "with the aim of carrying out terrorist activity" is now also punishable with ten years in jail.[68] The terrorist legislation was invoked in the case of Shakhid Temirbulatov, who was accused of having fought in Syria in the summer of 2013.

64 *http://www.kavkaz-uzel.ru/articles/230371*

65 *http://aligrozny.livejournal.com/235503.html*

66 *http://www.kavkaz-uzel.ru/articles/230371*

67 *http://www.kp.ru/daily/26135/3026213*

68 *http://en.ria.ru/russia/20131103/184499077/Putin-Signs-Law-Punishing-Terrorists-Relatives.html*

Spain

The current situation

Small numbers of Spanish residents have fought in various conflicts in the past. As of January 2014 Spanish authorities estimated that 17 individuals (11 Spanish citizens and 6 Moroccan nationals residing in Spain) had traveled to Syria to join various jihadist groups, while some 25 had reached the country to join the Free Syrian Army.[69] The majority of the individuals from the former category are from the Spanish enclaves in the Moroccan territory of Ceuta and Melilla, where authorities have conducted various operations to dismantle recruiting networks. Authorities have also collected information indicating that some of these individuals had discussed planning attacks within Spain upon their return.[70]

The general approach

Spanish authorities are extremely concerned with the issue of FFs. Aside from some isolated preventive initiatives, their approach is largely based on criminal repression, both before departure and upon return. Efforts are focused on detecting individuals seeking to reach and coming back from Syria and to gather information about their involvement in specific terrorist activities in order to charge them.[71]

Measures before departure

Criminal measures

The Spanish Penal Code criminalizes joining terrorist organizations and participation in terrorist activities, including the organization and participation in training practices (article 576, section 2). Many norms were reformed in 2010 in order to include indoctrination and recruitment and better define concepts such as what constitutes a terrorist organization.[72]

With these norms, Spanish authorities aim to stop individuals seeking to become FFs. Yet the preemptive application of this legislation is extremely difficult. In order to charge an individual, in fact, prosecutors have to possess solid evidence indicating that he/she is already

69 Fernando Reinares and Carola García-Calvo, "Yihadistas en Siria procedentes de España: hechos y cifras", *Comentario Elcano,* 79/2013, December 18, 2013.

70 Fernando Reinares and Carola García-Calvo, "Yihadistas en Siria procedentes de España: hechos y cifras", *Comentario Elcano,* 79/2013, December 18, 2013.

71 Interview with official of the investigative services of the Spanish Ministry of Interior, January 2014.

72 María Ponte, "La reforma del Código Penal en relación a los delitos de terrorismo", Grupo de Estudios en Seguridad Internacional, 2010.

firmly integrated into the group (having, for example, sent funds or equipment to it).[73]

This evidentiary threshold is extremely difficult to meet before an individual leaves the country and therefore authorities have often no alternative but to let go individuals whom they suspect of wanting to become FFs but that they are unable to firmly link to a terrorist group.[74] As of February 2014 no individual seeking to travel to Syria has been charged before leaving Spain. On the other hand, several individuals reportedly involved in training, funding, and facilitating travel for aspiring FFs seeking to reach Syria have been charged over the last few months.[75] The men were part of a Ceuta-based recruiting network.

Non-criminal measures

Spain has not utilized any administrative measure to prevent travel by potential FFs.

The country recently launched a national counter-radicalization strategy which aims, among other things, at countering the narrative of recruiters, building trust with vulnerable communities and pulling individuals away from radicalization. Particular efforts are made to encourage families to report cases of FFs to authorities. These efforts are in their infancy and not as developed as in countries like Denmark or the Netherlands.

Measures upon return

Spanish authorities aim at prosecuting individuals who returned to Spain after an experience as FFs with groups considered terrorist.

There appear to be no efforts to reintegrate FFs upon return.

United Kingdom

The current situation

British citizens and residents have been involved in various conflicts over the last few years, but the numbers of those involved in Syria are unprecedented. It is currently estimated that some 500 individuals have left Britain to fight in the Syrian conflict.[76] British authorities have described this phenomenon as "a game-changer" and "the most profound shift in the threat we have seen...since 2003."[77]

The general approach

Britain's general approach has been to prevent the travel of individuals to Syria and other conflict zones through a mix of preventive and repressive measures. The British legal system provides several legal tools that cover the issue but, as in other countries, prosecution efforts are hampered by the difficulties in gathering evidence from the battlefield. The large counter-radicalization structure put in place almost a decade ago has been largely re-directed to confront the threat of FFs.

Measures before departure

Criminal measures

Individuals who commit crimes (whether ordinary or terror-related) in relation to their aspiration to go abroad to fight are prosecuted.

The number of preventive arrests for Syria-related terrorism offences has risen dramatically over the first weeks of 2014. In February, for example, two women were arrested at Heathrow on their way to Turkey when found in possession of €20,000 and charged with "trying to make money available for another, knowing or having reason to suspect it would be used for the purposes of terrorism."[78]

Non-criminal measures

Since the early 2000s British authorities have established an extensive counter-radicalization structure aimed, among other things, at preventing individuals from radicalizing.[79] Under the *Prevent* strategy authorities seek to put in place various measures that empower individuals and make them resilient against extremist messages. An important component of *Prevent* is *Channel*, a highly flexible intervention program implemented at the local level that seeks to pull individuals away from extremism through a tailored set of initiatives (in many cases men-

73 Interview with official of the investigative services of the Spanish Ministry of Interior, January 2014.

74 Interview with official of the investigative services of the Spanish Ministry of Interior, January 2014.

75 Fernando Reinares and Carola García-Calvo, "The Spanish Foreign Fighter Contingent in Syria", *CTC Sentinel,* January 15, 2014.

76 Ruth Sherlock and Tom Whitehead, "Al-Qaeda training British and European 'jihadists' in Syria to set up terror cells at home", *The Telegraph,* January 20, 2014.

77 Ruth Sherlock and Tom Whitehead, "Al-Qaeda training British and European 'jihadists' in Syria to set up terror cells at home", *The Telegraph,* January 20, 2014.

78 Adam Withnall, "British student Nawal Msaad charged with aiding Syrian terrorists 'was caught smuggling €20,000 in her knickers'", *The Independent,* January 24, 2014.

79 Lorenzo Vidino and James Brandon, *Countering Radicalization in Europe,* International Centre for the Study of Radicalization, King's College London, December 2012.

toring schemes). Over the last few months these measures have been focused with increased intensity on aspiring FFs.

Measures upon return

Traveling to Syria is not illegal per se. Rather, authorities seek to determine what each individual has done in Syria and if his/her actions constitute a violation of the country's Terrorism Act, namely that he/she "is or has been concerned in the commission, preparation and instigation of acts of terrorism."[80] Some norms of the Terrorism Act are used specifically to prosecute FFs. Section 6 subsection 2 in particular criminalizes "passive participation" in terrorist training.

Over the last few months various individuals have been arrested for engaging in conducts in preparation of terrorist acts and travelling to Syria in order to engage in acts of terrorism.[81] A particular case is that of three individuals arrested in the fall of 2012 and accused of having kidnapped a British freelance photographer and a Dutch journalist in Syria in July 2012. The men were accused of unlawful imprisonment, which prosecutors alleged was carried out as an act of terrorism.[82]

British authorities have also resorted to non-criminal measures to prevent FFs with dual nationality from returning to Britain. Under the British Nationality Act, the Home Secretary can strip dual-nationality individuals of their British passports if their presence in the UK is "not conducive to the public good." The decision does not require judicial approval and has immediate effect. It can be appealed, but if the subject, as it often is the case, is abroad when the decision is taken, the appeal has to be filed from abroad and it can take years before it is decided. In December 2013 *The Independent* reported that in 2013 Home Secretary Theresa May had revoked the citizenship of 20 individuals under the provisions of the Act.[83]

80 Frank Gardner, "What Triggers a Terrorism Arrest?" BBC, January 16, 2014.

81 See, for example, "Birmingham Pair in Court over Syria Terror Claims", *BBC*, January 18, 2014.

82 Edwin Bakker, Christophe Paulussen and Eva Entenmann, *Dealing with European Foreign Fighters in Syria: Governance Challenges & Legal Implications*, ICCT Research Paper, International Centre for Counter-Terrorism Studies, December 2013.

83 "Exclusive: No Way Back for Britons who Join the Syrian Fight, Says Theresa May", *The Independent,* December 23, 2013.

United States of America

The current situation

Over the last few years US authorities have witnessed dozens of US citizens/residents leaving the country to fight for al Shabaab in Somalia. As of February 2014 it is believed that at least 70 Americans have either traveled or attempted to travel to Syria to join the conflict there.[84] Many of those who have returned are under FBI surveillance.[85]

The general approach

US authorities do recognize that various motives drive individuals to join conflicts (the Syrian conflict in particular) and that not all those who do so pose a threat to the US[86] Yet the issue of FFs is seen with great apprehension and the FBI has made it one of its top priorities.[87]

The approach used by US authorities is largely punitive.[88] Some "soft" measures aimed at engaging communities and providing information on how to aid suffering populations abroad without intervening in the conflict do exist. But, for the most part, US authorities opt to pursue those who seek to become FFs or have returned from the conflict with the many and extremely comprehensive criminal tools available to them.

Measures before departure

Criminal measures

The US authorities' leaning toward criminal prosecution as the best tool to prevent individuals from leaving the country to join conflict is due, among other things, to the vast array of very flexible and effective legal tools at their disposal. The criminal justice tools generally used to disrupt and deter FFs are the same used to combat terrorism generally.[89] They include (depending on evidence and circumstances):

- Conspiracies within the United States to engage in violence against people or property overseas (18 U.S.C. § 956).
- Acts of terrorism and violence, including use of "de-

84 Michael S. Schmidt and Eric Schmitt, "Syria Militants Said to Recruit Visiting Americans to Attack US", *New York Times,* January 9, 2014.

85 James Gordon Meek, "From Syria to Stateside: New Al Qaeda Threat to US Homeland", *ABC News,* January 10, 2014.

86 Ken Dilanian, "Syria-trained US militants pose threat, officials say", *Los Angeles Times,* February 4, 2014.

87 Richard A. Serrano, "Americans Radicalized by Al Qaeda Are a Big Concern", *Los Angeles Times,* January 19, 2014.

88 Phone interview with FBI official, January 2014.

89 Phone interview with Department of Justice official, January 2014.

structive devices", overseas (e.g. 18 U.S.C. § 2332a, 2332b, 2332f).
- Providing material support to commit or prepare for a range of specified violent and terrorist crimes (18 U.S.C. § 2339A).
- Providing material support to a foreign terrorist organization (18 U.S.C. § 2339B).
- Receiving military-type training from a foreign terrorist organization (18 U.S.C. § 2339B).

Criminal prohibitions on providing material support to a designated foreign terrorist organization (FTO), and receiving training from FTOs, are a cornerstone of US efforts to prosecute terrorists and FFs.

The term "material support" is interpreted very broadly and indicates any material good or service, including one's body.

Penalties are very severe, particularly in comparison with those applied for similar crimes in European countries.

This set of norms has been used with remarkable success by US authorities over the last decade. Most recently, 16 people have been convicted nationwide for individuals traveling to Somalia or recruiting for al Shabaab.

US authorities use aggressive tactics to uncover and prosecute potential FFs. In April 2013, for example, US authorities arrested an 18-year-old US citizen, Abdella Ahmad Tounisi, for attempting to provide material support to a FTO (the al-Nusrah Front). The investigation began after Tounisi made contact online with an individual he believed to be a recruiter for al-Nusrah but was, in reality, an FBI employee acting in an online undercover capacity.[90] An almost identical case ended in November 2013 with the arrest of a North Carolina resident who had also engaged what he believed to be a recruiter but was in reality an FBI agent.[91]

Non-criminal measures

Even though criminal prosecutions are the preferred tool, other options such as deportation or removal of immigration status are considered when applicable.

FBI agents at times conduct interviews with individuals they suspect have intentions of leaving the country to join a conflict. Dissuading them from doing so is one (but not the only – intelligence gathering and potentially recruitment as a source are at times considered) of the purposes of the interview.

US authorities also use "softer" preventive measures, albeit not as extensively as some European countries. FBI agents and US prosecutors reach out to relevant communities throughout the country to explain the legal implications of joining foreign conflicts. The Department of Homeland Security has long established a dialogue with several vulnerable communities throughout the country. This engagement seeks to explain the dangers and implications of the FF phenomenon, provide information on how to be active in relation to conflicts without engaging in illegal activities and, more in general, establish a dialogue between authorities and communities. DHS and the Treasury Department also conduct briefings to communities explaining how to donate money for populations in conflict zones without incurring sanctions.[92]

Measures upon return

The same criminal justice infrastructure used to charge individuals before they leave the country is, *a fortiori*, applicable upon their return to the United States after their experience as FFs.

Authorities are adopting the so-called "Whole of Government" approach to investigate individuals who have returned from Syria, involving various federal and local agencies in the effort.

There appear to be no efforts to reintegrate, demobilize or de-radicalize returnees.

Australia

The current situation

Some Australian citizens/residents have fought as FFs in various conflicts in the past, but the numbers involved in the Syrian conflict (estimated between 120 and 150) are unprecedented.[93] Attorney General George Brandis encapsulated the fears of most Australian policymakers in January 2014 when he stated: "These individuals not only potentially breach Australian laws and commit offences offshore, but upon their return to Australia pose a significant national security risk."[94]

90 FBI Arrests Suburban Chicago Man on Charge of Supporting Terrorism Overseas, FBI Chicago, April 20, 2013. Available at: *http://www.fbi.gov/chicago/press-releases/2013/fbi-arrests-suburban-chicago-man-on-charge-of-supporting-terrorism-overseas*.

91 Individual Charged with Attempt to Provide Material Support to a Foreign Terrorist Organization, US Attorney's Office, Eastern District of North Carolina, November 12, 2013. Available at: *http://www.fbi.gov/charlotte/press-releases/2013/individual-charged-with-attempt-to-provide-material-support-to-a-foreign-terrorist-organization*.

92 Phone interview with Department of Homeland Security official, January 2014.

93 "Australian jihad recruits fighting in Syria may bring their terror skills home", News.com.au, January 29, 2014; Lauren Wilson, "Aussies fighting in Syria pose 'threat', says foreign minister Bob Carr", The Australian, April 14, 2013.

94 Matthew Benns, "Australian Jihad Recruits Fighting in Syria May Bring their Terror Skills Home", The Daily Telegraph, January 29, 2014.

The general approach

Australian authorities seek to prevent individuals from reaching areas of conflict (and Syria in particular) through a variety of criminal and administrative measures.

Measures before departure

Criminal measures

Individuals who commit crimes (whether ordinary or terror-related) in relation to their aspiration to go to Syria are prosecuted. As of early March 2014 only two individuals have been prosecuted for Syria-related crimes (one for recruiting and one for traveling).[95]

> *Moreover, in 2012 Australian authorities issued various public messages stating that:*
>
> *It is illegal under Australian law for any person in Australia, or any Australian citizen, including dual citizens, to provide any kind of support to any armed group in Syria. This includes:*
> - *Engaging in fighting for either side*
> - *Funding, training or recruiting someone to fight*
> - *Supplying or funding weapons for either side*
>
> *Doing so could result in heavy fines or a maximum penalty for an individual of 10 years imprisonment.*
>
> *It is illegal under Australian law to use social media in a way that would be reasonably regarded as menacing, harassing or offensive. The maximum penalty for an individual is three years imprisonment. It is also illegal to use social media to make threats to kill or cause serious harm to another person. The maximum penalty for an individual is 10 years imprisonment.*[96]

Non-criminal measures

ASIO, Australia's internal intelligence agency, has reportedly cancelled the passports of various individuals it accused of being ready to "engage in politically motivated violence" if they were allowed to leave the country or of having a "jihadi mentality" that made them a threat to the country's security.[97] Authorities seized 33 passports between June 2013 and March 2014, a record number.[98]

Australian authorities have placed particular emphasis on stopping funds they suspect of being related to FFs in Syria. Some individuals have reportedly received visits from ASIO agents warning them not to continue sending money to the country through the channels they had used. Some bank accounts have reportedly been frozen.[99]

Measures upon return

Australian authorities seek to prosecute returning FFs if the required evidence against them is available.

In June 2013 Federal Police Deputy Commissioner for National Security Peter Drennan suggested that control orders limiting individual liberties could be placed on returning FFs.[100]

95 Phone interview with Australian official, March 2014.

96 Ongoing Violence in Syria: Important information for Australian communities, communication by the Australian government, undated. Available at: *http://www.isv.org.au/Fact%20Sheet.PDF*

97 Natalie O'Brien, "ASIO Cancels Passports of Western Sydney Men for 'Jihadi Mentality'", Sidney Morning Herald, December 8, 2013.

98 Phone interview with Australian official, March 2014.

99 Natalie O'Brien, "ASIO Spying on Syria Fund-Raisers amid Terrorism Funding Fears", Sidney Morning Herald, January 12, 2014.

100 Andrew Zammit, "Tracking Australian Foreign Fighters in Syria", CTC Sentinel, November 26, 2013.

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