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

*Foreword by* Prof. Martin Scheinin

Francesca Capone  
Christophe Paulussen  
Rebecca Mignot-Mahdavi *Editors*



Springer

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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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among others, UNHCR, UNICEF, OHCHR, Plan International, Open Society Foundations, the Women's Refugee Commission, the United States Department of State, the European Parliament and the Norwegian Refugee Council.

# 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)

# Chapter 1

## Introduction



Francesca Capone, Christophe Paulussen and Rebecca Mignot-Mahdavi

### Content

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**Abstract** In this introductory chapter, the editors contextualise the topic of returning foreign fighters and provide a general overview of the book's structure and contents, presenting its different parts and chapters.

**Keywords** Foreign fighters • ISIS • Foreign terrorist fighters • Returnees • Family members • Criminal law • Administrative measures

The notion of returning foreign fighters epistemologically reflects the framework of the nation State, somehow even more strongly than the notion of foreign fighters.<sup>1</sup> The term designates people who go fight abroad other peoples' wars and cross States' boundaries again to go back home once the fight is over. This term, by affirming the framework of the nation State, simultaneously denies the universalist proposition of jihadist movements. While the authors of this volume have not coined the term returning foreign fighters themselves, and might even criticise its theoretical assumptions in some occasions, they seize it as an object of study and take its epistemological underpinnings seriously by asking how States themselves actually take care or do not take care of 'their' foreign fighters.

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<sup>1</sup> Li 2020.

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Although the foreign fighters phenomenon is not a uniform movement but includes a broad range of actors, motivations and ideologies, and encompasses movements from and to many parts of the world, this book mainly focuses on the return of individuals from Syria and Iraq to European countries. This means that more research will be required on the topic and we are perfectly aware of the fact that this volume does not (and also cannot) represent the final effort to discuss and analyse the foreign fighters (FFs) phenomenon.<sup>2</sup>

Like many other complex and ever-evolving issues, the rise and changing fortunes of FFs, in particular those who joined ISIS and are commonly addressed as foreign terrorist fighters (FTFs),<sup>3</sup> would deserve to be monitored closely for a long time. Yet, we felt the need to capture the current moment, despite the fact that States and International Organisations (IOs) are still striving to deal with the terrible toll of an unprecedented global pandemic and other major current crises, including the climate crisis and the armed conflict in Ukraine.

Indeed, also as regards returning FFs, a term that we define broadly as encompassing prospective returnees as well as actual ones, States, as well as IOs, are facing an increasing number of challenges. This, in a nutshell, is ‘just’ a further facet of a phenomenon that triggers legal, moral and security concerns at the horizontal level (i.e. the relationship between States) and at the vertical level (i.e. the relationship between States and individuals). The lack of a uniform approach makes it extremely complex to provide durable and fruitful solutions. For example, the scant uniformity across the domestic approaches to the prosecution, as well as to the rehabilitation and reintegration of returning FFs, can have significant security ramifications in the context of what to do with returned, convicted and released FFs.

As States and IOs are still ‘learning by doing’, the role of the academic community is to help steer the process by bridging the divide between international standards and their implementation at the national level and between security concerns and human rights law. In addition to doctrinal research, some of the chapters in this book take a socio-legal viewpoint, and such scholarly work can also contribute to formulating diagnoses that other actors or disciplines can use to shape sound and well-informed policies. Furthermore, the academic community can and should assist in identifying ways forward that are both effective, sustainable and international law-compliant. Those are, ultimately, the goals that the present volume seeks to pursue by collecting contributions that tackle different, although interrelated aspects connected to the

<sup>2</sup> de Guttry et al. 2016, p. 2. In the previous volume, we defined as foreign fighters “individuals, driven mainly by ideology, religion and/or kinship, who leave their country of origin or their country of habitual residence to join a party engaged in an armed conflict”. Although several years have passed since the volume has seen the light we still endorse this definition, which, in our view, is broad enough to cover the multifaceted aspects of this phenomenon.

<sup>3</sup> UNSC 2014, preambular para 8, famously defines FTFs as “individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict”. This definition, as we highlighted also in the previous volume, is quite controversial and it triggers a number of important issues. See, *inter alia*, Krähenmann 2014; Krähenmann 2016, pp. 234–241; Capone 2016, pp. 232–237.

return of FFs and their family members. In particular, with regard to the status of FFs' family members some additional caveats are needed. In fact, a cursory look at the current international legal framework and especially at the United Nations Security Council (UNSC)'s relevant resolutions will show that UN Member States are not only required to criminalise and punish certain conduct, but also to implement reintegration and rehabilitation strategies, with an emphasis on the importance to develop measures tailored to the specific needs of women and children. More in detail, UNSC Resolution 2396 (2017) underscores the dual status of FFs' family members, who "may have served in many different roles, including as supporters, facilitators, or perpetrators of terrorist acts", but may also be victims of terrorism.<sup>4</sup> This ambiguity is not just a matter of labels, but represents a complex problem in itself, which calls for a holistic and forward-looking approach.

In response to this wide array of issues and questions, the present volume's scope is to provide the reader, i.e. academics, policy makers, practitioners and the public at large, with a thorough and analytical overview of some key aspects, selected by the editors on the basis of the outstanding expertise of the authors who agreed to contribute to this collective endeavour. In fact, whereas the previous volume on FFs that two of the current editors published a few years ago, aimed at offering a broad overview of the phenomenon, representing a manifestly multidisciplinary collection of 25 essays authored by experts with different backgrounds, the present one has a much narrower focus as it expressly zooms in on the responses that the international community and individual States are implementing in response to returning FFs and their families. Furthermore, when discussing national responses, the geographical scope of the present volume is, as explained earlier, focused on European countries.

In more detail, this book consists of 12 chapters, divided into three parts. Part I of the volume sets the scene and it starts, after this introduction by the editors (this chapter), with a chapter authored by Thomas Renard that tackles the main issues that Europe is facing to deal with the return of FFs and their families (Chap. 2). It is followed by a contribution from David Malet and Jason E. Fritz that provides a historic overview of the phenomenon and discusses patterns of returnee behaviour and State responses to returnees, comparing the current situation to past scenarios prior to the twenty-first century (Chap. 3). The last chapter of this part, authored by Francesca Capone, will question the victims/perpetrators dichotomy, reflecting on the status and role of FFs' family members (Chap. 4).

Part II of the volume explores the international dimension. The first contribution, by Bibi van Ginkel, discusses the extent to which the current international legal framework provides useful guidance in this domain and whether the actors involved on the international plane, in particular the UN and the Global Counterterrorism Forum (GCTF), are playing a sufficiently effective and impactful role (Chap. 5). The second contribution, authored by Helen Duffy, focuses on the reach of human rights obligations and the jurisdictional challenges that the presence of FFs and their family members in Syrian camps is posing to their States of origin (Chap. 6).

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<sup>4</sup> UNSC 2017, para 31.

Finally, Part III of the volume delves into the national dimension and offers a critical overview of the key and most problematic aspects that need to be addressed in this context. This part starts with a contribution by Christophe Paulussen and Tanya Mehra on the prosecution of FFs at the national level and the evidentiary and charging matters that arise before domestic courts (Chap. 7). The chapters after that discuss, respectively, the qualification of the activities of (returned) FFs under national criminal law (Chap. 8, authored by Thomas Van Poecke and Hanne Cuyckens) and the lack of individualisation of sentences and their enforcement at the expense of reintegration, with a focus on France as a case study (Chap. 9, authored by Rebecca Mignot-Mahdavi). Next, in Chap. 10, Laura van Waas and Anne Brekoo examine the approaches that States of origin of FFs are enacting in order to treat as ‘foreign’ their own citizens and focus on two specific and highly controversial strategies, i.e. deprivation of nationality and denial of readmission. The following chapter, by Romyana van Ark, discusses the role of family courts as part of States’ counter-terrorism toolkit and it questions the degree to which this represents a welcome development to enhance the protection of the children of FFs (Chap. 11). The last chapter is authored by Marloes van Noorloos, who, using the Netherlands as a case study, analyses the boundaries of freedom of expression in relation to terrorist speech, reflecting on the potential ramifications for the right to freedom of expression of the measures adopted at the domestic level that affect FFs at large and in particular returnees (Chap. 12).

The idea for this book project originated in February 2019. The idea back then was to organise a conference on the topic of returning foreign fighters and to develop the conference papers into chapters that would feature in a follow-up publication to our 2016 book *Foreign Fighters under International Law and Beyond*. Although the conference did not materialise in the end, the idea of the edited volume was born and did not leave our minds since. When the project, after a relatively slow start, finally got up to speed, the world was confronted with the COVID-19 pandemic, putting a few things quickly into perspective. Although the crisis, which has affected both editors and authors, slowed down the book project, the latter was never abandoned. We have to admit that we are quite proud of the fact we have continued with this edited volume despite everything that happened since, and we are immensely grateful for the patience, professionalism and flexibility of the authors and of Frank Bakker and Kiki van Gurp from T.M.C. Asser Press. We are also extremely thankful and honoured that Prof. Martin Scheinin, the very first UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, was willing to write the foreword to our book. Finally, we would like to thank Nashab Parvez, intern at the T.M.C. Asser Instituut, for his meticulous work on making sure the drafts were put in the required format and to Agori Michopoulou, Farouk Souriti, Kaya van der Horst and Lily Zanjani, all interns at the T.M.C. Asser Instituut as well, for their assistance with the index and list of abbreviations.

As indicated, the FFs topic will not go away. In August 2021, the Taliban seized power in Afghanistan after the United States (US) and the Taliban had agreed for the US to withdraw from the country where it had fought its longest war ever. These events led to fears of Afghanistan becoming “a new base for international terrorist

groups like al-Qaeda and a home for foreign fighters to train and plot”.<sup>5</sup> Conflict zones and fragile States may indeed attract new FFs or welcome FFs relocating from other conflict areas, but most of the attention in the last few years has been on how to respond to FFs (and their families) who wish to return or are already returning to their country of origin or habitual residence. Also the tragic armed conflict in Ukraine, currently unfolding in front of our eyes, has led to discussions whether the foreign volunteers joining the Ukrainian armed forces could be viewed as FFs in the first place (according to our definition, which is not limited to people joining non-state armed groups, they could), whether travelling to Ukraine to fight would be unlawful and what the risks are of those fighters’ involvement in the conflict, as well as their return. Although these situations are not discussed in the present book, we hope that the observations, recommendations and calls for caution that can be found in the chapters of the current volume will be useful to any future debates on (returning) FFs, both in the academic world and in the world of policy makers and practitioners, as well as to the public at large.

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<sup>5</sup> Byman 2021.

# **Part I**

## **Setting the Scene**



# Chapter 2

## Europe and Its Returning Foreign Fighters: Overview of the Policy Response



Thomas Renard

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**Abstract** A number of European foreign fighters returning from Syria and Iraq have been involved in terrorist activities in Europe, such as terrorist attacks or recruitment activities. The attack on the Brussels Jewish Museum in May 2014, particularly, triggered a whole new counter-terrorism response to this challenge in Europe, compared with the policy response to the previous generations of returnees. This chapter looks into the evolution of the European policy response to returnees from Syria and Iraq since 2012, focusing on the key stages of this approach, namely: detection, prosecution, prison management, and rehabilitation. Throughout this chapter, a number of important challenges and dilemmas are highlighted.

**Keywords** Returnees • Counter-terrorism • Prison • Radicalisation • Prosecution • Rehabilitation

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This chapter was finalised mid-2021. Newer developments have not been taken into account.

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## 2.1 Introduction

Before the mobilisation of jihadi volunteers for Syria and Iraq, Europe had been confronted with (returning) foreign fighters. However, the threat and the counter-terrorism challenges were never as high as during the past decade. This chapter describes the evolution of the policy response to (returning) foreign fighters in Europe since 2012. It focuses on the various dimensions of the response, as well as its various levels, and notably the European and national levels.

The mobilisation of European volunteers for the jihad in Syria was unprecedented. Europeans had travelled to fight jihad abroad before, in Afghanistan, in Bosnia, in Iraq, or in Somalia, among other places.<sup>1</sup> But never in such numbers. Since 2012, more than 5000 men and women have travelled from Europe to the Levant in order to join a jihadi group (mainly Jabhat al-Nusra and the Islamic State, ISIS). This is twice as many as all those who had travelled to Afghanistan (since the 1980s), Bosnia (1990s), Somalia (since the 1990s), Iraq (2000s) and Yemen (since 2010s) combined.<sup>2</sup> For some countries, like Belgium, there were seven times more of these so-called foreign fighters travelling to Iraq and Syria after 2012 than to all other jihadi theatres in the past.<sup>3</sup>

Another major difference with previous mobilisations was the greater presence of women among European departees, representing around 20 percent of the total contingent, whereas female foreign fighters were a much rarer occurrence previously.<sup>4</sup> Together with these women, the jihad in Iraq and Syria also became more ‘family-friendly’: an unprecedented number of children, around 1600, either travelled with their parents or were born in the region.<sup>5</sup>

Progressively, the mobilisation of foreign fighters came to be seen as a global challenge, discussed at the UN level notably, as well as a European challenge addressed by the EU institutions. However, within Europe, the phenomenon was mostly limited to a cluster of Western European countries. More than 80 percent of all European fighters originated from only five countries: France, Germany, UK, Belgium and the Netherlands.<sup>6</sup> Other countries impacted by this phenomenon include Denmark, Sweden, Finland, Austria, Spain, Italy, Portugal or Ireland.

The unprecedented number of European departees inevitably resulted in an equally unprecedented number of returnees in Europe. In 2019, it was estimated that around 1600 of the European foreign fighters had returned, or at least had left the conflict zone in Syria and Iraq.<sup>7</sup> The vast majority had returned before the fall of 2015. This represents around 30 percent of the initial contingent of foreign terrorist fighters (FTFs). It is indeed generally considered that about a third of the contingent was

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<sup>1</sup> Malet 2018.

<sup>2</sup> Ibid.

<sup>3</sup> Renard and Coolsaet 2018b.

<sup>4</sup> Entenmann and Van Ginkel 2016.

<sup>5</sup> Cook and Vale 2019; Renard and Coolsaet 2018c.

<sup>6</sup> Barrett 2017; Entenmann and Van Ginkel 2016.

<sup>7</sup> King 2019, p. 44.

killed during the conflict, and the other third remains in the area, whether in detention or at large. Interestingly, the rate of returns oscillates quite significantly across countries in Europe. For instance, about half of the foreign fighters from Denmark (70/159) and the UK (450/900) have returned, whereas only 20 percent of those from France (290/1300) and the Netherlands (60/300) returned. In Germany (350/1050) and Belgium (135/430), the rate of return is at 30 percent. No study has yet looked into these different ratios across countries, but one possible explanation could be that the very national dynamics of recruitment also worked the other way around. As it is known that many foreign fighters lived in relatively homogenous national or linguistic groups,<sup>8</sup> it could be hypothesized, for instance, that friendship and kinship ties had an impact on the dynamics of defection and return. The geographic localisation of these contingents may have facilitated some returns (if stationed near the Turkish border, e.g.), or perhaps it was yet another combination of factors that explain this discrepancy in the national rates of return. In any case, there is room for more research in this specific aspect.

Intelligence services know from previous conflicts that veteran jihadis can constitute a serious security threat, and this challenge was already discussed at national and EU levels since 2013, notably under the leadership of the EU Counter-terrorism Coordinator, Gilles de Kerchove.<sup>9</sup> However, this did not result in concrete legal or administrative measures to prevent or manage returning fighters before 2014. As a result, a number of volunteers returned to Europe in 2012–14, either unnoticed or without systematic monitoring.

The terrorist attack committed by Mehdi Nemmouche in Brussels in May 2014 was a turning point in this regard. Nemmouche, a French citizen, allegedly radicalised in prison, had left for Syria in late 2012, only days after his release from prison. After spending over a year in the conflict zone, he returned to Europe via Malaysia and Singapore with the intention of plotting an attack. On 24 May 2014, he killed four people in the Jewish Museum of Brussels. This was the first successful attack by a returning fighter from Syria in Europe, following at least one failed attempt in France in February 2014.<sup>10</sup>

Nemmouche's attack crystallised the threat of returnees. At that point, it became clear that at least some returning fighters could be a direct security threat to Europe, requiring not only a national response but also a European and international one given the transnational nature of the threat. The Brussels Jewish Museum attack was followed by a number of meetings at the European and international levels in order to consider policy options to deal with foreign fighters and returnees. For instance, an informal meeting of EU Ministers of Interior (among the “most concerned countries”) took place in Milan in July 2014, which led to an “action plan” regarding (returning) foreign fighters.<sup>11</sup> Discussions at the international level led eventually to the adoption of UN Security Council (UNSC) Resolution 2178 in September 2014 regarding

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<sup>8</sup> CSIS 2016, p. 64.

<sup>9</sup> Quatremer 2014.

<sup>10</sup> Callimachi 2016.

<sup>11</sup> Nielsen 2014.

foreign terrorist fighters.<sup>12</sup> The urgency of taking measures against returnees was further reinforced following the terror attack on *Charlie Hebdo* in January 2015 involving a returnee from Yemen (Chérif Kouachi). A week later, the Belgian police dismantled a terrorist cell in Verviers, which was constituted by returnees from Syria, allegedly plotting a coordinated attack. National responses to returning foreign fighters have evolved since 2014, as will be further detailed in this chapter, but 2014 was clearly the turning point in deciding that returnees from Syria and Iraq could not be handled in the same way as previous waves of returnees: a stronger legal and security response was needed.

## 2.2 Returnees: One Label, Many Realities

The two-stream flow of foreign fighters, back and forth between Europe and Syria-Iraq, remained relatively uninterrupted from 2012 until 2015. Nonetheless, several ‘waves’ or ‘generations’ of returning foreign fighters can be distinguished. According to the RAN manual on returnees, the first generation of returnees consisted mostly of disillusioned volunteers who had allegedly travelled to Syria for humanitarian reasons, or to fight the Assad regime, whereas the second generation consisted more of battle-hardened fighters, possibly still radicalised or with violent intentions.<sup>13</sup> Renard and Coolsaet speak instead of two main waves of return, reflecting the key evolutions of the situation in Syria rather than different profiles (as the RAN manual recognises itself that there are large overlaps of profiles between the alleged ‘generations’).<sup>14</sup>

The first wave of returns, in fact the majority of returns—occurred in 2012–14, prior to the establishment of the so-called caliphate, whereas a second wave took place in 2014–16, following the beginning of the US-led Global Coalition against Daesh strikes and the progressive loss of territory by ISIS. From late 2016 onwards, very few returns occurred, in spite of expectations that the number of returnees would spike,<sup>15</sup> as ISIS had lost control of most territories bordering Turkey, thus complicating cross-border smuggling, and border security had been significantly strengthened across Europe. While there was no ‘third wave’ following the fall of the caliphate, but only a trickle of returnees, there were still more than 400 adult European foreign fighters detained in Syria and Iraq in 2021, and more still at large (or unaccounted).<sup>16</sup> The issue of repatriation is not addressed in this chapter,<sup>17</sup> but this significant contingent constitutes another potential ‘wave’ of returnees in the future (although a very uncertain one).

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<sup>12</sup> UNSC 2014.

<sup>13</sup> RAN 2017, p. 20.

<sup>14</sup> Renard and Coolsaet 2018a, p. 4.

<sup>15</sup> Europol 2017, p. 7.

<sup>16</sup> Renard and Coolsaet 2020.

<sup>17</sup> See Chap. 6 by Duffy in this volume.

Beyond ‘waves’ we can also distinguish between the main ‘ways’ of return, of which we identify mainly three: the “Turkish highway”,<sup>18</sup> that is basically returning through Turkey, the same way that was used to travel into Syria; the clandestine route, that is basically returning through illegal routes, notably mingling among migrants’ flows as the attackers in Paris (November 2015) and Brussels (March 2016) did; and repatriation or expulsion (what media often qualified as ‘repatriation’ was in fact more a form of organized expulsion of foreign fighters detained in Turkey). A few European citizens were repatriated from Syria and Iraq, although almost exclusively unaccompanied children.<sup>19</sup> The repatriation of adult fighters detained in Syria and Iraq remains highly contentious and hypothetical at the time of writing these lines, in 2021.

Regarding the profile and motivation of these returnees, it is almost impossible to make any type of generalisation. There is no “homogenous profile”.<sup>20</sup> The RAN manual distinguished, for instance, between four main profiles: the disillusioned /remorseful; the opportunistic (still driven by ideology but seeking better life conditions); the soldier (sent back to Europe to conduct an attack or with a specific mission); and the unwilling returnee (captured and repatriated).<sup>21</sup> Of course, these profiles are ideal-types that do not reflect the real-life complexity of the cases. Furthermore, it should be emphasised that these profiles are not linked to any specific ‘wave’ or ‘way’ of return described above. In other words, these various profiles could be found among early as well as late returnees. For instance, the first wave of returnees included a number of individuals traumatised by war (i.e. presenting PTSD symptoms), disappointed by life in Syria, or individuals disillusioned by jihad, particularly following the war between jihadi groups (mainly between ISIS and Jabhat al-Nusra) in 2013, which resulted in a number of foreign fighters, including friends and former ‘brothers in arms’, fighting and killing one another.<sup>22</sup> But, it also included individuals who travelled back and forth to recruit friends, collect their social benefits, get hospitalised or give birth before returning to Syria. It also included the first individuals sent back to Europe in order to perpetrate an attack, such as Mehdi Nemmouche. Similarly, the second ‘wave’ included a number of traumatised and disillusioned foreign fighters, but also the members of the Abdelhamid Abaaoud-network, responsible for the attacks in Paris in November 2015 and Brussels in March 2016,<sup>23</sup> and other die-hard jihadis. Upon return, the experience of returnees also varies extensively. Some are incarcerated, others not. Some go back to their previous lives, while others struggle to re-socialise. Some are traumatised by their experience, while others miss the exhilaration of war.<sup>24</sup> Such heterogeneous profiles highlight the complexity of

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<sup>18</sup> Yayla 2019.

<sup>19</sup> Renard and Coolsaet 2020.

<sup>20</sup> French Senate 2018, p. 51.

<sup>21</sup> RAN 2017, p. 7.

<sup>22</sup> Doornbos and Moussa 2016.

<sup>23</sup> Suc 2018.

<sup>24</sup> Greenwood 2019; Crettiez and Ainine 2017.

developing a single policy response to returnees, which has led European authorities to develop a tailored, flexible approach, as described in the next section.

Furthermore, discussions on returnees often lose sight of the fact that not all foreign fighters were...fighters. While the vast majority joined a terrorist organisation and supported the group's ideology and use of violence, not all of them participated directly in violent actions. Indeed, some had a more supportive role, such as working in the administration, among many possible non-fighting tasks.<sup>25</sup> In terms of risk-assessment, this implies that individuals that did not participate directly in violent actions in Syria and Iraq may have a different profile than those who fought, murdered civilians or raped women. This fact partially undermines the distinction that was traditionally made, including among intelligence services,<sup>26</sup> between male FTFs (allegedly fighters) and female FTFs (allegedly 'jihadi brides' or 'breeding mothers'). However, a key challenge with regard to risk-assessment and prosecution is precisely to determine what each individual concretely did (and did not do) during the conflict. A large number of returnees or currently detained fighters in Syria and Iraq claim—often abusively—that they never participated in violent acts or that they were only cooks or drivers—some even claim they arrived in Syria 'by accident'.<sup>27</sup>

European intelligence services are well aware of this variety of profiles and motivations. In 2015, for instance, the head of the Belgian intelligence service (VSSE) already specified that:

not all returnees are dangerous. Of course not. Some are tormented by what they saw there [in Syria], they have seen atrocities and don't want to hear about it anymore. There are also adventurers who didn't find what they were looking for. But there is also a small minority, completely radicalised, coming back with a plan, with a mission. They deserve our utmost attention.<sup>28</sup>

Similarly, the EU Counter-terrorism Coordinator Gilles de Kerchove said in November 2014 that "we don't know how many [fighters] will return...and among those who will return, we don't know how many will engage in violent activities". De Kerchove then speculated that it would possibly be only a fraction of all returnees, but it is still a threat that is "important enough to prevent the heads of [European] intelligence services from sleeping at night."<sup>29</sup> A similar assessment still applies to the women currently detained in Syria, some of which are considered to have distanced themselves from the jihadi ideology, whereas others are deemed to remain clearly committed.<sup>30</sup> Overall, only a small number of returnees from Syria and Iraq have been involved in plots or attacks in Europe. Hegghammer and Nesser identified 11 European returnees from Syria-Iraq plotting an attack between 2012 and June 2015

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<sup>25</sup> De Bont et al. 2017.

<sup>26</sup> See for instance the distinction made by the French intelligence services: French Senate 2018, p. 51.

<sup>27</sup> French Senate 2018, p. 51. See also: Independent 2019.

<sup>28</sup> Lamfalussy and Laruelle 2015.

<sup>29</sup> Quatremer 2014.

<sup>30</sup> VSSE 2019, pp. 14–15.