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COUNTERTERRORISM, FOREIGN FIGHTERS AND CRIMINAL JUSTICE RESPONSES IN EUROPE



Foreign fighters are individuals who, for a variety of different reasons, join an armed conflict abroad. The reasons for joining a far-away armed conflict could range from marginalisation in their own countries, bullying, peer-pressure, a desire to get married, a need to acquire the sense of belonging or simply for the so-called 'thrill-seeking'

This paper discusses the effectiveness of criminal justice responses in deterring recruitment of citizens as foreign fighters in places of conflict. Although there is no consensus on the definition of terrorism among national laws, this term is usually used to point to politically motivated violence or a threat of violence perpetrated by non-state actors against civilian targets. Counterterrorism encompasses a broad range of actions aimed at deterring, preventing and pre-empting terrorist acts which change according to the nature of security threats. Because terrorism threats constantly evolve, it is important to continue reviewing, strengthening and adapting counterterrorism responses.

While the overall threat to European security has increased over recent years, one of the main concerns continues to be transnational Islamist terrorism based on the ideology of 'Salafi Jihadism' (Europol, 2016). Salafism refers to a strictly orthodox Sunni Muslim sect advocating a return to early Islam. The concepts of violent 'jihad' ('struggle') and return to 'pure' Islam are embodied in the ideological constructs of both Al-Qaeda and the so-called ISIS (Islamic State of Iraq and Syria). There are some differences between these two groups with regards to their recruitment strategies, organisational dynamics, reliance on new media and depictions of violence, membership rules and their practice of governance. While Al-Qaeda is portrayed as an elite group and 'rather an idea than an organisation' (Cockburn, 2015: 54), ISIS is known for its pragmatism and strategic approach, including successful use of social media to appeal to mass audiences that facilitate recruitment.

This paper focuses on the issue of recruitment and addresses the problem of the closely related phenomenon of foreign fighters traveling to and from conflict zones. Specifically, it aims to examine

criminal justice responses that tackle the issue of foreign fighters who participate in the conflict in both fighting and non-combat capacities such as spiritual leaders or family members.

Recruitment strategies

Foreign fighters are individuals who, for a variety of different reasons, join an armed conflict abroad. In this paper, foreign fighters are defined as nationals of countries that are not Syria or Iraq. The reasons for joining a far-away armed conflict could range from marginalisation in their own countries, bullying, peer-pressure, a desire to get married, a need to acquire the sense of belonging or simply for the so-called 'thrill-seeking'. Sometimes all the abovementioned sociological and psychological reasons overlap as the decision-making process takes place. There is no single profile of a foreign fighter, and there could be many external and internal factors that influence a person's decision to travel to the conflict zone. At the same time, it is believed that a typical 'jihadi' foreign fighter is male, and aged between 18 and 29 years old, although there are many exceptions (Stern and Berger, 2015). Moreover, a disproportionate number of people who convert to Islam can also be found among foreign fighters, and they are believed to be particularly vulnerable to fundamentalist rhetoric (Barrett, 2014).

Foreign recruitment has been an important component of Al-Qaeda's tactics. However, while most of Al-Qaeda's foreign fighters originated from the Middle East and Asia, ISIS relies on recruitment from the West. Moreover, Stern and Berger (2015) argue that ISIS propaganda is disproportionately slanted towards foreign nationals, as their messages are released simultaneously in English, French and German, and later translated into other languages, such as Urdu, Indonesian and Russian. The perpetrators who publicly executed the American

journalists Steven Sotloff and James Foley had British accents. Migration to the so-called caliphate (or 'hijra') has also been described as a religious duty by the ISIS leader Abu-Bakr al-Baghdadi in his sermons which encourage Muslims worldwide to travel to Syria and Iraq (Cockburn, 2015).

Foreign recruitment is directed not just at those soldiers who join Islamic militants on the battlefield, but also at women who are recruited to fulfill other functions in the Islamic State or overseas. The term 'jihadi bride' denotes women who are believed to have fled their homes to marry ISIS militants and live in accordance with the principles of Sharia law. A significant percentage of all foreign travelers in Syria and Iraq are now female (Europol, 2016). Most of those who travel to join ISIS marry fighters soon after arrival and give birth to children. Women are not actively taking part in frontline combat, although they generally have been trained in the use of weapons. However, their roles may change in the future, and they might be used as suicide bombers, as suggested by Europol (2016).

The International Centre for the Study of Radicalisation and Political Violence (ICSR) estimates that approximately 20,000 foreign fighters have joined the group (Neumann, 2015). According to recent reports, approximately 500 British citizens were affiliated with ISIS in Syria and Iraq as of August 2016 (Stern and Berger, 2015), although other sources claim that this number is higher, possibly around 850 individuals (BBC, 2016). There is growing concern about what these individuals will do once they leave the Middle East and a risk of the foreign fighters returning to their home countries further radicalised and equipped with contacts, status and military and/or explosive training. Having witnessed violence and brutality in Syria, they might adopt even more extremist ideas and decide to inspire or direct new attacks.

Prevention measures

Considering the large number of foreign fighters in Syria and the abovementioned threat to security they could pose, many countries have started to adopt new measures in the framework of counterterrorism responses. In 2013 four priority areas were agreed by the European Union (EU) member states: prevention, information exchange on identification and detection of travel, criminal justice response, and cooperation with third countries (European Council, 2015). The following year member states called for the accelerated implementation of measures in these four priority areas emphasising the need to improve the judicial response and checks at the external borders (European Council, 2015). Moreover, in the wake of the Paris attacks European states announced strengthening of their security services and border controls.

However, security measures recently imposed by many nations to prevent foreign fighters from joining ISIS have reportedly increased the variety of routes to the so-called 'caliphate' via air, land and sea (Masi and Sender, 2015), including offering new opportunities to organised crime groups to smuggle people from Turkey to Syria. Besides travel bans, work with community leaders and de-radicalisation programmes, how can European states prevent their nationals from travelling to Syria?

Some European states are currently proposing to revoke the nationality of combatants fighting with ISIS. Twenty Britons with dual nationality were stripped of their citizenship in 2013 while they were in Syria (Swinford, 2014). Germany and the Netherlands are also currently considering amending the Nationality Acts to allow revocation of nationality but it is not clear how soon these changes will come into effect. On the one hand, denationalisation policies would make it easier to prevent potentially radicalised individuals from returning to their home countries. On the other hand, in the case of a person with only one nationality, the international law prohibits the revocation of citizenship unless certain exceptions to the 1961 Convention on the Reduction of Statelessness are satisfied. Significant legal obstacles enshrined in international law treaties might prevent states from fully implementing plans to strip suspected terrorists of citizenship (Jayaraman, 2016).

Further proposed measures to stop individuals from joining ISIS include providing police with the powers to confiscate the passports of suspected foreign fighters and blocking their return to their home countries. Among other possible options would be to introduce certain changes to the domestic criminal justice arrangements, making it more risky for the Western supporters of ISIS to travel overseas. Will prosecuting foreign fighters and applying harsh punishments deter more individuals from taking part into somebody else's conflict?



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Judicial responses

France and Russia exemplify punitive criminal justice responses that include jail sentences, fines and restriction on civil liberties. The French Criminal Code considers conspiracy with a terrorist enterprise as a crime punishable by ten years of incarceration and a fine of €225,000, or by up to twenty years of incarceration and a fine of €500,000 for those individuals found to be in a leadership role (Criminal Code of France, 2014). In Russia current criminal law provides a five to ten year term of imprisonment followed by a two-year restriction on civil liberties for joining ISIS (Criminal Code of the Russian Federation, 1996). This article has recently been applied to the case of Varvara Karaulova, a 20-year-old philosophy student from Moscow who reportedly fell in love with an ISIS fighter and tried crossing the border after marrying him in a secret online ceremony. She was arrested in Turkey and sentenced to four and a half years of imprisonment in December 2016 (Titko, 2016).

At the same time, the solution of criminalising all foreign fighters presents certain weaknesses. It is crucial to distinguish between the foreign fighters who wage violent 'jihad' in the Middle East and those individuals who venture to the battlefield fighting with the coalition forces against the Islamic State such as the Kurdish 'Peshmerga' battalions. Joanna Palani, a Danish citizen of a Kurdish origin who fought against ISIS in Syria with the 'Peshmerga' unit, currently faces a jail sentence in Copenhagen. She had previously been issued a travel ban for 12 months. Besides a failure to distinguish between volunteers who fight against ISIS as Joanna Palani, and radicalised individuals who join extremist organisations abroad, criminalisation of foreign fighters and deliberate application of punitive policies might impede those fighters who become disillusioned by ISIS ideology and their life in the so-called 'caliphate' to return to Europe.

While the issue of radicalisation and extremism in Europe continues to pose an important security concern, it is essential to agree on a clear definition of a 'foreign fighter' and use it consistently in order to facilitate a more effective counterterrorist strategy, ensure coherence of policies and data collection, and adequately address the threats of ISIS foreign recruitment in Europe.

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