

The influence of multi-level governance on returning Foreign Fighter cases in the Netherlands

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Abstract

The research in this thesis will investigate to what extent measures are taken towards the phenomenon of returning Foreign Fighters to the Netherlands and whether these are influenced by different levels of governmental decision-making. More specifically, it answers the following question: **“To what extent does European and international law influence the law, policy and practice regarding returning Foreign Fighters in the Netherlands?”**. This is done by laying out the different levels on which decisions are made and measures taken towards Foreign Fighters. It starts with examining the presence at the international level and measures proposed. Then it goes on to the European level and investigates to what extent the phenomenon exists and in which ways it is addressed. Lastly, the research investigates the Dutch level of decision-making and practical application of this in court cases, in this case in the Context investigation. The research found that the phenomenon is present at all levels and that coherence in policy approaches is quite present. However, from the perspective of criminal law and practical application, it can be stated that there is limited multi-level influence present and that therefore fragmentation still exists.

List of Abbreviations

AIVD	Dutch General Intelligence and Security Service (Algemene Inlichtingen- en Veiligheidsdienst)
CoE	Council of Europe
CT	Counter-Terrorism
DCC	Dutch Criminal Code
EU	European Union
ECHR	European Convention on Human Rights
F(T)F	Foreign (Terrorist) Fighter
GCTF	Global Counterterrorism Forum
NCTV	National Coordinator for Counterterrorism (Nationale Coördinator Terrorismebestrijding en Veiligheid)
IS	Islamic State
UN	United Nations
UNSC	United Nations Security Council

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1. Introduction

In the United Kingdom there is currently a highly discussed debate about a British teenager that travelled to Syria to join the Islamic State but that now wants to return back to Britain (Rawlinson & Dodd, 2019). The girl left Britain in 2015 when she was 15 years old, she is now 19 and has a child. The British Home Secretary is thinking about revoking the British citizenship of the girl (Rawlinson & Dodd, 2019). However, the Home Secretary is not allowed to make a person stateless, but the British Nationality Act of 1981 does allow him to remove a person's citizenship if it can be showed that the person has behaved 'in a manner which is seriously prejudicial to the vital interests of the UK' (Rawlinson & Dodd, 2019). The girl has a Bangladeshi heritage and therefore the Home Secretary has reasonable grounds for believing that the girl can become a national of Bangladesh under the law of that country. This response is one of the most serious responses that the British government has against involvement in terrorism (Rawlinson & Dodd, 2019). The Home Secretary decided that the girl's citizenship should be revoked, as he points to the fact that the girl supported a terrorist organization and with that hatred against the country and the values connected to the country (Rawlinson & Dodd, 2019).

In the meantime in the Netherlands, there is a debate about the potential threat that returning Foreign Fighters can represent (RTLNieuws, 2019). Due to a lot of discussions in different European countries about whether to retrieve Foreign Fighters back from Syria and other places in which they are captured, the Dutch Coordinator of Terrorism and Security (NCTV) stated that bringing back these jihad fighters will pose a realistic threat (RTLNieuws, 2019). Furthermore, bringing back and imprisoning these Foreign Fighters does not solve the issue, because when they get out of prison, they are still dangerous (RTLNieuws, 2018). Jihad fighters that are in prison can build up new networks and learn new things, which makes them sometimes even more radicalized compared to when they got in, instead of deradicalized as is the objective (RTLNieuws, 2018). Therefore, it is important to investigate what the consequences of imprisoning Foreign Fighters are and how anti-radicalisation measures should be imposed.

These two examples illustrate the current debate and controversies about returning Foreign Fighters and anti- or deradicalization measures. Furthermore, these examples show that different European countries have different views and approaches to this recent phenomenon. The jihad fighters or Foreign (Terrorist) Fighters (FTF) have gone to Syria, Iraq or other African

countries for different reasons, but mostly to fight for the Islamic State (IS) or to engage in the conflict in other ways. The current challenge regarding these Foreign Fighters is that they are returning to their countries of residence or of nationality. This phenomenon poses a risk to the people in the countries that they return to and to their governments, because they can bring the radicalized techniques and methods to these countries and therefore pose a threat to public order and public security. Therefore, these countries need to focus on prevention and anti-radicalisation policies and measures. Furthermore, different pieces of legislation at different levels of government influence the domestic laws and policies, but also the practice of these countries, leading to a diversity in interpretations and approaches to this problem. This paper can contribute to the current debate how to handle returning Foreign Fighters in legislative and practical terms, because there is no clear approach on regulating FFs in international, European and Dutch law and practice yet. There will be a focus point on the prevention and anti-radicalisation measures that are taken, because there is still unclarity and variation in the approaches. It is important to investigate how further radicalization can be prevented and how Foreign Fighters should be treated in the justice system. The main question of this thesis will therefore be:

To what extent does European and international law influence the law, policy and practice regarding returning Foreign Fighters in the Netherlands?

I. Research Design and Methodology

To provide an answer to this main question, descriptive hermeneutic research is performed that will answer several sub-questions that will be discussed now. These sub-questions are related to the different levels of government on which legislation and policies are prepared and executed that affect other levels of government. Chapters 2 until 4 discuss the different levels at which decisions on this issue are taken. These chapters are divided into two parts: one part discusses the breeding ground of radicalization and motives of people to go and fight for the jihad, the other part discusses the prevention and anti-radicalization approach towards the issue. Additionally, chapter 5 goes deeper into the application of legislation in cases regarding FFs and returnees. With this, it can be shown to what extent returning Foreign Fighters are possibly prosecuted and rehabilitated and what the consequences are.

First of all, it needs to be clear what a Foreign Fighter is and because this challenge is transnational, it needs to be clear how this phenomenon is regulated at the international level. Therefore, the first sub-question is:

What is the position of international law towards Foreign Fighters?

This question addresses the first part in defining the notions of terrorism and of a Foreign Fighter (FF) in international law and addresses radicalization. For the second part of the chapter relating to anti-radicalization and prevention measures, it seeks to see how these definitions create certain perspectives and approaches to fighting terrorism. Hereby a focus is on preventing terrorism and using anti-radicalization measures against returning FFs. For these parts, different United Nations Security Council Resolutions are assessed to see how these position terrorism and Foreign Fighters. Furthermore, from these resolutions, the different measures for preventing and going against radicalization are derived. First, UNSC Resolution 2170 is analysed, which is mostly focussed on national obligations to prevent fighters from travelling to the conflict to join the fight and to take up more counter-terrorism measures on prevention and to bring terrorists to justice (United Nations Security Council, 2014a). Another source is the UNSC Resolution 2178, which defines the Foreign Terrorist Fighter for the first time at the international level and it stresses the comprehensive approach that states should follow (United Nations Security Council, 2014b). This Resolution furthermore focusses on reintegration and rehabilitation strategies. The UNSC Resolution 2396 stresses that there is action needed in the areas of border security, the sharing of information, judicial measures and strategies on prosecution and reintegration (United Nations Security Council, 2017). Then, the United Nations has an Addendum to the Madrid Guiding Principles which focuses mostly on creating an effective international judicial response to the FTF phenomenon and their returnees, which implies prosecution and anti-radicalization strategies (UN Security Council Counter Terrorism Committee, 2018). Besides these resolutions, certain recommendations of the Global Counterterrorism Forum will be assessed to assess guidelines on responses to Foreign Terrorist Fighters and terrorism in general. Finally, the UN Counter-Terrorism Strategy is analysed as it sets the overall framework of the international level towards combating terrorism.

Going on to the next level of legislation, the European Union level is examined, because this also influences domestic legislation. The sub-question of this part is:

What is the position of European Union law towards Foreign Fighters?

This chapter discusses aspects of the radicalization process in Europe and the crime-terror nexus. The EU has several pieces of legislation that are directed at combating terrorism and Foreign Fighters. The second part starts with laying out the general strategy of the EU towards Counter Terrorism. Going on, the Additional Riga Protocol of the Council of Europe is focussed on prevention measures and therefore states that certain acts, such as taking part in a group for the purpose of terrorism or travelling abroad for terrorist purposes, are a criminal offence (Council of Europe, 2015). This Additional Protocol is an additive to the CoE Convention on the Prevention of Terrorism, which is adopted to make sure that the existing international texts are effectively implemented in fighting terrorism (Council of Europe, 2007). Furthermore, the EU Directive 2017/541 on combating terrorism was implemented to replace Framework Decision 2002/475/JHA as the foundation of the EU countries' criminal justice response to counter terrorism and is therefore the latest updated version (European Parliament, 2017). This Directive defines the notion of terrorist offences and offences related to this and introduces sanctions and penalties for the persons that committed the offences (European Parliament, 2017).

Finally, the Dutch position towards Foreign Fighters needs to be considered to see how the Foreign Fighters are treated and to investigate the influence of trans-national law on Dutch domestic law. The third and final sub-question is:

How are Foreign Fighters regulated and treated in the Netherlands?

With the case study focus on the Netherlands, the Dutch approach to returning Foreign Fighters is examined with the influence of foreign law. The added value of this case study is to see the influence of international and European legislation and policy within the Dutch context. Furthermore, with this case study, it can be assessed to what extent returning Foreign Fighters are addressed and what possible gaps in the approach are. The focus in the second part of chapter four will be on prevention and anti-radicalization measures that are taken on these returning Foreign Fighters, including imprisonment and deradicalization programs. These are also included in the Comprehensive Action Programme to Counter Jihadism and the Dutch National Counter-Terrorism Strategy (Renard & Coolsaet, 2018) which will be discussed in more detail. In chapter five, the 'Context-case' is investigated, which was a large terrorism case in the Netherlands that examined the recruitment and travel of certain Dutch Foreign Fighters to Syria (Openbaar Ministerie, 2015). In the investigation, there are 22 suspects in total, of which some have been prosecuted, while some have not yet. Several of these cases are used to examine to view the judgement and interpretation of the courts. This thesis can hopefully

provide a clearer answer to the influence of international and EU law on the Foreign Fighter phenomenon and how the challenge regarding returning FFs can be addressed.

II. Key Concepts and Body of Knowledge

a. Body of Knowledge

There is literature on terrorism, but the literature on the return of Foreign Fighters to EU Member States is still developing. Some of the current literature is discussed here. Firstly, the paper of Renard and Coolsaet (2018) discusses that people going abroad to fight in a conflict and then return to their country of nationality or residence is not a new phenomenon. However, the number of returnees was usually not that high and therefore the national authorities used a case-by-base approach in dealing with these returnees. Currently there is a growing number of people leaving to fight on foreign soil for the jihad and later on returning, these returns can be characterized in three waves. The first wave of returnees was in late 2012, when people returned that were disillusioned from the conflict in Syria and did not know why they even went there (Renard & Coolsaet, 2018). The countries to which these people returned were quite tolerant to them, because they were struggling with how to define the motivations of these people to leave the country and fight. Later on, in 2014-2015, the policies towards returnees were way stricter, in all countries the UNSC Resolution 2178 and the later EU Directive 2017/541 were the basis for systematic investigation and arrests of possible fighters and returnees (Renard & Coolsaet, 2018). These supranational instruments put a higher pressure on prosecutors to put criminal sanctions on potential FFs and it restricts the leeway of national jurisdictions in the prosecution (Paulussen & Pitcher, 2018).

The approaches of different EU member states towards addressing returning Foreign Terrorist Fighter differ substantially, as there is not one clear strategy (European Parliament, 2018). For example, in the Netherlands and the UK there is no criminal conviction needed for the deprivation of a returnee's citizenship, whereas in Belgium and France this has to be the case (European Parliament, 2018). Furthermore, detention and probation systems differ, which leads to unclarity in an overall policy approach and the handling of returning FFs. Renard and Coolsaet (2018) make a comparison between the Dutch, Belgian and German approach towards convicting returning jihadi fighters. The Belgian response is mostly a criminal justice response, implying that the application of criminal law is very important for convicting returnees (Renard & Coolsaet, 2018). The penitentiary strategy in Belgium is to disperse FF returnees among the

general prison population, while in the Netherlands FFs are placed in a strict Terrorist Ward in which they are isolated and have limited rights (Renard & Coolsaet, 2018). In Germany on the other hand, there is not one clear national strategy, therefore the different states differ in their approaches of returnees, leading to different deradicalization programs in prisons (Renard & Coolsaet, 2018).

Thus, there is no clear approach yet that is most effective for addressing the FF phenomenon. The influence of international and European law and policy on this issue will set certain obligations for member countries, but this can also lead to more fragmentation due to fuzziness of abstract legislation and provisions which leads to different interpretations of legal texts.

b. Multi-level Governance

An important concept in this research is the notion of multi-level governance, because different levels of governance and their influences are investigated in this research. Multi-level governance is defined as an administrative system in which power is distributed across different layers, horizontally and vertically in different levels of government (Hague, Harrop, & McCormick, 2016). This implies that there is interaction between different levels and parts of governments, meaning that not one government is able to solve the problem, therefore the multiple levels have to cooperate to solve problems (Hague et al., 2016). Actors from all layers and sectors interact and all of them have different resources and knowledge available, for example, the European Union has a lot of research committees that investigate policy objectives that can eventually result in regulations, directives or recommendations. On the other hand, the national level has their national policy and a large budget, while the lower levels have more insight in the execution of policies and their consequences. Multi-level governance implies that the state no longer monopolizes European and international level policy-making or the aggregation of domestic interests (Marks, Hooghe, & Blank, 1996). Instead, competences of decision-making are shared between different actors at different levels. So, supranational institutions such as the European Parliament have an independent influence in the policy-making process which is not dependent on the states that they represent (Marks et al., 1996). Therefore, collective decision-making is no longer done by individual states only. In the Netherlands, the Constitution gives a special position to international and EU law, because they have to consider the content of treaties and provisions as they are binding on the law of the country (Heringa, 2016). The Netherlands is a member of the UN and the EU and therefore has certain obligations in response to legislative and judicial measures (Heringa, 2016).

c. Foreign (Terrorist) Fighter

Malet (2013) discusses the phenomenon of Foreign Fighters in conflict zones all over the world. In his book, he defines Foreign Fighters as “noncitizens of conflict states who join insurgencies during civil conflicts” (Malet, 2013, p. 9). He analyses how insurgencies recruit different individuals from abroad that at first do not seem to have a direct connection with the war and with this finds out that similar recruitment strategies have been used (Malet, 2013). The United Nations Security Council Resolution 2178 defines the notion of a Foreign Fighter in legal terms, which is viewed from a counter-terrorism perspective as it defines the notion of FTFs, Foreign Terrorist Fighters (Paulussen & Pitcher, 2018). A Foreign Terrorist Fighter is defined as: “an individual who travels to a State other than their State 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” (Paulussen & Pitcher, 2018, p. 5). This notion has some problematic aspects, because it is difficult to prove for what reasons or with which intentions people will travel abroad. The Resolution wants states to make certain acts of FTF serious criminal offences, such as fundraising the travel of FTFs (Paulussen & Pitcher, 2018). However, the UNSC does not refer to terrorism in such a way.

Going on to the European Union level, the Additional Riga Protocol discusses the UNSC Resolution 2178, but it also does not define terrorism itself. For this definition, it refers to the Convention on the Prevention of Terrorism of the Council of Europe, which states that: “for the purposes of this Convention, ‘terrorist offence’ means any of the offences within the scope of and as defined in one of the treaties listed in the Appendix” (Paulussen & Pitcher, 2018, p. 7). Moreover, the Additional Protocol tries to prevent terrorist acts and therefore criminalizes a set of actions. These actions are: participating in an association or group for the purpose of terrorism, receiving terrorism training, travelling abroad for terrorism purposes, including an attempt to do so, funding to travel abroad for terrorism purposes and organizing or facilitating travelling abroad for terrorism purposes (Paulussen & Pitcher, 2018). This Additional Protocol states that Member States need to implement the procedures in line with human rights obligations of states (Hurley, 2018). Courts can base their decisions on these aspects of the given perspective of Foreign Terrorist Fighters in determining their judgements. Furthermore, the European Parliament and the European Council set up the Directive 2017/541 on combating terrorism, which replaces the Council Framework Decision 2002/475/JHA and amends the Council Decision 2005/671/JHA. This Directive updates the EU position towards terrorist offences and it wants its Member States to target FTFs and people that help them (Hurley,

2018). The content of the Directive states three newly established terrorist offences: the first is to receive training for the purpose of terrorism, secondly, to travel for the purpose of terrorism, and thirdly, organizing or facilitating the travel for the purpose of terrorism (Hurley, 2018). All these pieces of legislation lead to different implementations in legal systems due to different interpretations of the content of the laws. This will lead to fragmentation and fuzziness in applying the law for courts, as the definitions of terrorism and FTF are not that clear.

d. Prevention and Anti-radicalization

In combating and preventing jihadism, the UN has created the United Nations Global Counter-Terrorism Strategy in 2006, that creates several policy measures on the international level that wants to improve the instruments at other levels in combating terrorism (Ligthart, 2016). The UN calls for international cooperation to address the issue of Foreign Fighters (Ligthart, 2016). In focussing on counter-terrorism, the EU Counter-Terrorism Strategy that fights against terrorism consists of four pillars: prevent, protect, pursue and respond (European Parliament, 2018). For this research, the focus will be on the pillars of prevent and pursue, as they comply with the objectives of trying to prevent terrorism and how to handle and deradicalize returning Foreign Fighters. In the EU Counter-Terrorism Strategy, the responsibility for compliance lies primarily with the Member States of the EU, leaving a scope for variation in approaches (European Parliament, 2018). The EU is there to strengthen the capabilities of the states through the exchange of information, to facilitate cooperation in the EU, to develop a collective capability and to coordinate the strategy of the EU with international actors such as the UN (European Parliament, 2018). In 2014, the Strategy came to include the notion of Foreign Fighters at the heart of its priorities, because a coherent approach for the EU was needed, therefore measures in four different areas were implemented: prevention of radicalization, detection of suspicious travel, prosecution and investigation of FFs, and cooperation with countries outside the EU (European Parliament, 2018). The before-mentioned EU Directive 2017/541 was implemented to set a standard for the criminal justice approach to certain acts with the purpose of terrorism, but several difficulties appeared with addressing returnees (European Parliament, 2018). In the Netherlands, the Comprehensive Action Program to Counter Jihadism was implemented in 2014 (Ligthart, 2016). The program consists of 38 different measures that need to combat terrorism and Foreign Fighters, related its main goals of protecting the democracy and rule of law of the Netherlands by combating the jihadist-focussed movement and try to remove the base for radicalization (Ligthart, 2016). There are five different categories of measures: risk reduction, travel interventions, radicalization, social media, and

information sharing (Ligthart, 2016). For this research, most of them are important, as they all try to take preventative measures in combating terrorism and Foreign Fighters. Next to this, the Dutch Counter-Terrorism Strategy 2016-2020 adapts the former CT-Strategy that ended in 2015. It aims at five areas: procure, prevent, protect, prepare and pursue (Bellasio et al., 2018). For this research the areas of procure, prevent and pursue are the most important ones, because it is investigated how policies should be designed to prevent terrorism and what judicial responses towards returning Foreign Fighters are the most effective (Bellasio et al., 2018). The Dutch approach focusses on the need of a multi-level approach that is multi-disciplinary, directed to threats but also complies with the rule of law (Bellasio et al., 2018).

III. Social and Scientific Relevance

As explained before, the approach towards returning Foreign Fighters is not clearly stated in law and there is not that much literature on this issue yet. The diversity of approaches in prevention and anti-radicalization leads to unclarity. This is furthermore influenced by the different levels of government at which decisions are made, leading to more fragmentation. The domestic level must incorporate decisions made at the international and European level in order to address and prosecute returning Foreign Fighters. Moreover, it is useful to investigate the consequences of criminal justice approaches and to see what happens in prison. Besides this, it is worthy to examine how to prevent further radicalization. Therefore, this research is relevant as it seeks to investigate the influence of the international and European level legislation on the Dutch level addressing returning Foreign Fighters. It wants to assess whether enough is done in the multi-level context on fighting and preventing radicalization globally, regionally and nationally. In more detail, it looks at certain cases of Foreign Fighters and returnees to see the approach towards prevention and anti-radicalization policy and the multi-level influence, because this phenomenon is still developing just as the jurisprudence on this issue.

IV. Conclusion

The relevance of this thesis lies in the fact that it investigates the approach towards returning Foreign Fighters in a multi-level context in which a specific focus is taken towards the Dutch level. This because radicalization and terrorism have become more and more predominant in society nowadays and therefore a more coherent framework is needed. In analysing the issue in this context, possible gaps or opportunities can be investigated that will be assessed for

improvement. The sub-questions in this thesis will present the different levels, as they are discussed in separate chapters. This chapter has already shortly discussed the relevance and problematic aspects of this issue and provides an introduction into the topic.

2. Global Foreign Terrorist Fighter phenomenon

In order to investigate the multi-level influence of legislation and policy, this chapter will answer the first sub-question which is: ‘What is the position of international law towards Foreign Fighters?’ However, there is also a substantive part which relates to the FTF phenomenon being a global issue and therefore in need of international measures taken. The chapter is divided into two parts, it starts with a discussion of radicalization at the international level. In this part several publications and newspaper articles on radicalization, motives for becoming a Foreign Terrorist Fighter and the international network of IS are analysed which encounter possibilities for radicalization and it focuses on Foreign Fighters. The chapter goes on with investigating international documents on counterterrorism and anti-radicalization. In these documents, several prosecution and prevention measures are discussed. For this part, different United Nations Security Council Resolutions, the Madrid Guiding Principles and its Addendum will be discussed, as well as Recommendations of the Global Counterterrorism Forum (GCTF). Furthermore, the United Nations Global Counter-Terrorism Strategy as well as publications regarding global measures for countering terrorism and prosecuting Foreign Fighters are examined. In the end, an answer will be provided to the first sub-question.

I. Radicalization of FFs globally

Radicalization is a term that is often mentioned (Basra, Neumann, & Brunner, 2016; European Parliament, 2018; Hegghammer, 2013) when studying terrorism and Foreign Fighters, the notion has increasingly been used since the 9/11 attacks in 2001. The causes and origins of terrorism and extremism are now more prominently investigated, mainly for developing a more comprehensive approach towards preventing more attacks. However, the definition of the term is quite diverse and unclear, because the concept cannot be understood on its own but needs to be placed in a certain context (Schmid, 2013). Furthermore, there are many different researches on the roots of terrorism, making it more difficult to come up with a clear perspective on what the role of radicalization is and how this is defined (Schmid, 2013). In his paper, Schmid (2013) tries to define radicalization, de-radicalization and extremism to see how the issues can be approached better. He looks at different levels as having causes for radicalization, these are the micro-level involving personal problems and feelings of alienation, the meso-level which refers to the wider (radical) milieu of the individual, and the macro-level which refers to the role of government and public opinion that can be radicalized (Schmid, 2013). The problem with trying

to come up with the specific notion of radicalization is one of definition and complexity. The first one because a lot of different definitions exist making it hard to create a general notion (Schmid, 2013). The latter due to the fact that a lot of research has been done on the micro-level, which is almost always fragmented because of differences in individual milieus (Schmid, 2013), therefore making it very complex to come up with a definition that will be applicable to a more general level than the micro-level.

Radicalization was found to be a very difficult concept to define due to heterogeneity in existing conceptualizations and therefore the roots of the concept were investigated to come up with a more universal definition. Furthermore, governmental and inter-governmental definitions also vary widely in their scope and meaning of radicalization (Schmid, 2013). Eventually, radicalization is conceptualized in a very broad range¹ by Schmid (2013), which covers more instances than definitions upon that point did cover. In this case, it can be said that it is good to have a broader definition, because it can include more situations under which there is radicalization. Furthermore, the author does not say that all points in the definition need to be present for an instance to be called radicalization, which also leaves room for using this definition on the meso- or macro-level.

There is research done on radicalization (European Parliament, 2018; Schmid, 2013), terrorism (Basra et al., 2016) and Foreign Fighters (Hegghammer, 2013; Paulussen & Pitcher, 2018), but there is still a lot to investigate and therefore more research but also measures are necessary in certain areas relating to these issues in order to investigate how radicalization takes place, in this case at the international level. For this, it is important to examine trends and dynamics in numbers and motives of Foreign Fighters as well as the influence of the internet and social media to investigate possibilities for measures.

A lot of people have joined the forces in Syria and Iraq to fight for IS. Currently, all governments see a drop in the number of people fleeing the country and going to foreign soil to fight (Mehra, 2016). This is due to military efforts, but also increased information sharing between countries and a better surveillance and control. However, more Foreign Fighters are expected to return to their country of residence or origin (Mehra, 2016). This will pose new problems for the global order because it is unsure which people will return and what their intentions for returning will be. Therefore, international measures are needed to guide these returnees, to prosecute, and to prevent further radicalization. Besides this, the background of

¹ See notes in appendix for the definition

these FTFs has to be investigated, as was found that a lot of terrorists that carried out attacks, such as the ones in Paris in November 2015 and Brussels in March 2016, had a crime-related background (Mehra, 2016).

It is difficult to obtain all the background information for all the Foreign Fighters, because a lot is done in secrecy as these FFs do not want to be publicly known. Therefore it is difficult to investigate their motives for either leaving the country and go to fight or train in Syria or Iraq or to radicalize and commit attacks in their home-country. Hegghammer (2013) in his article distinguishes between domestic and foreign fighters and investigates why foreign fighting has been more predominant for three non-hierarchical reasons: it was easier, because they need training, and because they prefer this. The first reason relates to the choice for opportunity of going abroad, it can be asked whether this is easier than coordinating and operating things at home. The study found that, logically, both are risky, because going abroad asks for a lot of arrangements that can be shady and with unknown people, whereas staying at home and operating from there has become increasingly more surveilled due to international information sharing systems (Hegghammer, 2013). The second reason is about going abroad for jihad training, it is therefore an instrument for creating the opportunity for domestic fighting afterwards (Hegghammer, 2013). There are different opportunities for acquiring military skills abroad, but these need not necessarily be the ones that are needed for domestic fighting. The last reason is about legitimacy for fighting, in which going to the conflict is perceived as more legitimate, mainly due to religious views (Hegghammer, 2013). Furthermore, the use of propaganda, especially via the internet, has led to a lot of people going to fight abroad. These findings indicate that governments should improve their communication strategies to address and get more insight in the FTFs and their arrangements.

Nowadays, the internet and social media are important sources for organizations like Islamic State to promote their ideology and actions, to make announcements and to radicalize and recruit other people. IS has a special intelligence branch called Emni which has created a global network of jihad fighters which they mainly operate via social media and the internet (Callimachi, 2016). The intelligence service is crucial in the managing and organization of IS fighters as it is also the external operations branch. They have send a lot of trained fighters back to plan domestic attacks and there are lots of people involved in only providing instructions or information that are not yet linked to IS itself (Callimachi, 2016). The Emni also controls all the video and propaganda of the organization with which they try to create an even bigger network and they try to fill the gaps they currently have (Callimachi, 2016), which means that

they try to radicalize and persuade more and more people. However, due to global protective steps in preventing online radicalization and hate speech, which will be discussed in more detail below, a lot of messages contain encrypted information (Mehra, 2016).

Thus, radicalization was found to be a global problem and therefore should also be addressed on a global scale. In doing so, the chapter will go on with analysing measures at the international level, such as measures by the United Nations as they strive for global peace and security.

II. Anti-radicalization and prevention in international law and policy

This part of the chapter discusses how to tackle the issue of people radicalizing and going to fight for the jihad and what to do with them when they return. Furthermore, it seeks to assess how to prevent people from radicalizing. Certain UNSC Resolutions, UNSC Guiding Principles, GCTF Recommendations and the UNSC Counter-Terrorism Strategy are examined to derive the measures and policies proposed and taken at the international level. As this thesis investigates the approach towards FTFs and especially towards FTF returnees, most of the documents in which measures, strategies and approaches are discussed, will mainly be focused and written based on these points.

a. UNSC Resolutions 2170(2014), 2178(2014) and 2396(2017)

Firstly, the United Nations Security Council (UNSC) is analysed, which is a highly politicized organ of the UN that is primarily responsible for maintaining peace and security in the international order (United Nations Security Council, n.d.). It determines international threats, settles disputes about these and can impose sanctions, all in order to restore international peace and security (United Nations Security Council, n.d.). The UNSC can make Resolutions, which are formal expressions of a collective action of a UN organ (United Nations Security Council, n.d.). The UNSC Resolution 2170(2014) is the first one mentioning Foreign Fighters, but without a definition of the notion. The Resolution states that terrorism currently is one of the major threats to international peace and security (United Nations Security Council, 2014a) and therefore it needs to be fought by international collaboration of all states. This should also lead to measures on prevention and anti-radicalization. Thus, the substantive reason of this chapter in the thesis is that international measures against terrorism and in this case especially FTFs are needed. The Resolution urges that all states need to cooperate in order to find and bring FTFs to justice in accordance with international law and therefore calls for a comprehensive approach with active participation and collaboration (United Nations Security Council, 2014a). This is

also urged on the European and Dutch level, which are discussed in chapters 3 and 4. However, it does not give any guidance on how to enforce or implement this for the states, it only states the accordance with international agreements and international humanitarian law (United Nations Security Council, 2014a). The cooperation of states is done by exchanging information, effective border controls and the Resolution starts with the urge to list individuals that can pose a terrorist threat (United Nations Security Council, 2014a). In this Resolution, there is no specific reference to a platform for the information exchange yet.

Then, the UNSC Resolution 2178(2014) is a very important one (Paulussen & Pitcher, 2018) in this issue, firstly, because it provides a definition of a Foreign Terrorist Fighter. This notion is defined 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” (United Nations Security Council, 2014b, p. 2)

It furthermore again states that the measures that its Member States take need to comply with international law, importantly complying with human rights and the rule of law (United Nations Security Council, 2014b). It urges states to become part of international conventions on counter-terrorism to increase the implementation of measures and create a more global approach (United Nations Security Council, 2014b). However, there are still no guidelines on implementation and enforcement for states. The threat that FTFs pose needs the examination of the factors underlying the motives and circumstances for becoming one (United Nations Security Council, 2014b), such as the process of radicalization, how people are recruited, and the financial support offered. The Resolution notes in paragraph 18 several important developments in the international sphere which try to prevent and counter terrorism, such as the work of the Global Counterterrorism Forum², which will be discussed below in section II.c. Besides this, the Resolution identifies certain matters as being criminal offences and urges states to take these up in their domestic laws to be able to prosecute FTFs (United Nations Security Council, 2014b). These matters are: travelling or attempting to travel to another state for the purpose of terrorism such as planning or training for terrorist acts, the provision or collection of funds for people to participate or travel, the organization or facilitation of the travel of people (United Nations Security Council, 2014b). These offences are taken up in the Additional Riga Protocol

² S/RES/2178 (2014), par. 18

and EU Directive 2017/541 too, which are discussed in chapter 3, sections II.b and II.c. However, the Resolution does not state any height of sanctions or sentences for these crimes, it only states that they should be penalized considering the seriousness of the criminal offence. Again, the importance of cooperation of states is urged, in which this time Interpol is considered a global platform for the exchange of information.

Lastly, the UNSC Resolution 2396(2017) focusses on member states' responsibility in countering terrorism and terrorist acts by taking measures to prevent radicalization and approach returning FTFs, especially in creating partnerships with local levels (United Nations Security Council, 2017). Again, it expresses the importance of a better international cooperation through information sharing via for instance Interpol (United Nations Security Council, 2017), but also about judicial processes and prevention and reintegration strategies. For the most part, the Resolution focuses on the criminal prosecution of FTFs and on rehabilitation and reintegration strategies. For the criminal prosecution, it remarks again that states should put FTFs on watch lists, and that they should develop judicial measures and strategies to integrate the terrorist-related offences (United Nations Security Council, 2017), as discussed in Resolution 2178, into their domestic system. However, it also states that prisons can be incubators for radicalization (United Nations Security Council, 2017) and therefore better monitoring of FTFs in prisons is needed to address the challenge, this is furthermore addressed at the European level in chapter 3 section I. For rehabilitation and reintegration, it can be said that states need to use risk assessments for returning FTFs and based on these take the appropriate action to de-radicalize them (United Nations Security Council, 2017). These individual risk assessments are taken up in the Dutch CT Strategy discussed in chapter 4 section II.b. In the process of rehabilitation and reintegration, the Resolution points out that organizations in civil society can play a role, because they engage with local entities as described in its Article 32³. This call for effective partnerships but with central oversight by government asks for improvement in guidelines on how to sustain these relationships and to what extent the local level should get delegated authority. This Resolution also states that the Madrid Guiding Principles of the UNSC should be reviewed, which resulted in an Addendum to the Principles, that is discussed below. This was due to the increased threat perspective of returning FTFs and the possibility of gaps in the current approach of states.

³ S/RES/2396 (2017), art. 32

All these three Resolutions are legally binding and therefore the member states of the UN need to implement the measures stated in these Resolutions into their domestic legislation and policies and are thereby bound by international law. However, this is stated about enforcement and implementation too, therefore there is no real guidance for states. These Resolutions have been influential in giving a definition of FTFs and stating criminal offences as being terrorist. Furthermore, the notion of collaboration has been considered important. However, the Resolutions leave room for improvement in for instance guidelines on national-local partnerships and on the height of penalties for the criminal offences indicated. Therefore, this is a broad framework and leaves the specific interpretation upon this point to the states themselves. This must be, because strict hard law cannot be implemented everywhere due to cultural differences.

b. UNSC 2015 Madrid Guiding Principles and its 2018 Addendum

The UNSC Madrid Guiding Principles of 2015 were created after the Security Council held a special meeting which was related to FTFs and their potential threats. There are 35 Guiding Principles that are set up in line with UNSC Resolution 2178 and thereby fill in possible gaps for the member states in implementing the measures of the Resolution which would hinder them in going against the FTF flow (UN Security Council Counter Terrorism Committee, 2015). The Guiding Principles are addressing certain areas, which are: detection, intervention and prevention of incitement and recruitment of FTFs, prevention of travel by border security, and criminalization, prosecution and rehabilitation and reintegration strategies (UN Security Council Counter Terrorism Committee, 2015). All of these are linked towards the issue of Foreign Fighters and their possible return and therefore aim to give the member states practical tools to set their legislation in line with the Resolution. In these Principles, the most predominant things are creating an effective approach needs international cooperation and therefore states need to work together in collecting and sharing information and in securing borders in order to control for individuals travelling abroad and becoming an FTF. Furthermore, engagement with local communities and civil society, in for instance community-policing, is of significant importance, as they can set up strategies to counter terrorist narratives which prevent further radicalization and incitement (UN Security Council Counter Terrorism Committee, 2015). Besides this, it is important to look at the challenges that exist with criminalizing and prosecuting FTFs and the application of the new legislative measures (UN Security Council Counter Terrorism Committee, 2015).

The 2018 Addendum to the Madrid Guiding Principles is a review of the existing Guiding Principles which was asked for in UNSC Resolution 2396 due to the developing threat that the FTFs that return pose. The Addendum consists of 17 Guiding Principles which is intended to give a guideline for addressing the developing problem of FTFs for states (UN Security Council Counter Terrorism Committee, 2018). It gives guidance in areas of risk assessment, interventions and prison programs for rehabilitation and reintegration (UN Security Council Counter Terrorism Committee, 2018). These are particularly important in addressing the issue of returning FFs as they will be prosecuted. For the partnerships with the local level, the Addendum states that the approach should be multidisciplinary (UN Security Council Counter Terrorism Committee, 2018), which will create a more comprehensive approach, this will come back in the Dutch CT Strategy in chapter 4⁴. However, the guidelines on the cooperation are not that specific, the question of delegation and creating a platform or organization for the collaboration and exchange of information remain. Furthermore, in its Article 13⁵ it states that prisoners should be separated on their legal status, age and gender (UN Security Council Counter Terrorism Committee, 2018), which will help in preventing radicalization in prisons. The Addendum principles give more specific guidelines for states on how to interpret and implement certain provisions and measures into their domestic legislation. However, these Guiding Principles are not legally-binding and therefore states do not have a specific obligation to follow these principles and implement them.

c. Recommendations of Global Counterterrorism Forum

The Global Counterterrorism Forum is a multilateral CT platform that is supporting the implementation of the UN Global Counter-Terrorism Strategy that will be discussed below. The Forum is international and consists of 29 countries and the European Union with the goal of preventing and combating terrorism and with this prosecuting acts of terrorism (Global Counterterrorism Forum, 2019). The GCTF created a FTF initiative called ‘The Hague – Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon’ in 2013 which brought together policy makers and practitioners to develop the Good Practices in this Memorandum which will help governments in developing their policies and approaches towards FTFs (Global Counterterrorism Forum, 2013). The Good Practices focus on four areas of the FF phenomenon: radicalization and violent extremism, recruitment and facilitation, fighting and traveling, and returning and reintegrating (Global

⁴ See Table 1 for a link between the different instruments and measures

⁵ S/2018/1177, art. 13

Counterterrorism Forum, 2013). The implementation of the Good Practices or Recommendations of the GCTF needs to be done in line with international as well as domestic legal rules and regulations. Due to differences in motivations of FTFs it is challenging for governments to decide how to approach them. Therefore, the Good Practices state that governments should use a wide range of information sources to detect returnees (Global Counterterrorism Forum, 2013), with this they can create a better risk assessment and evaluate how to engage with the returnee. Furthermore, investigation and prosecution of FTFs should be strengthened by creating better legislation by sharing information with other states. In Good Practice 19⁶, there are key principles for engagement and development of reintegration programs, leading them to be comprehensive⁷ to the situation of the FTF which is crucial in responding to the threat that they possibly pose (Global Counterterrorism Forum, 2013).

In 2015, the GCTF proposed an Addendum to the The Hague – Marrakech Memorandum as it wanted to address the ‘Life Cycle of Radicalization to Violence initiative of the GCTF itself (Global Counterterrorism Forum, 2015). This Addendum mainly focuses on returnees and how states should implement law enforcement tools to address them and counter their possible threats. States should adopt an approach that incorporates preventive, security, criminal and rehabilitative measures in order to address returning FTFs (Global Counterterrorism Forum, 2015). The document proposes 7 recommendations, first of which stresses that states need to make sure they detect returnees in time and increase the sharing of information about returnees with other states. Second and thirdly, the states need to make risk assessments that fit the individual returnee to provide the best intervention approach and therefore a case-by-case approach is applied in which specific categories of returnees, such as women or children, can be addressed (Global Counterterrorism Forum, 2015). Furthermore, states need to work closely together with local communities and also with actors in the private sector and civil society (Global Counterterrorism Forum, 2015) to get better insights in the returnees and their movements. Then, rehabilitation strategies should be imposed in but also beyond the criminal justice response of states (Global Counterterrorism Forum, 2015).

The Good Practices of the GCTF are not legally binding and therefore do not put an obligation on states to implement the specific measures or strategies proposed. Resolution 2178 mentions that interested states can be assisted with the practical implementation of the UN CT legal and policy framework (United Nations Security Council, 2014b). However, the GCTF is more a

⁶ GCTF The-Hague – Marrakech Memorandum, Good practice 19

⁷ See Table 1 for relations between GCTF Recommendations and other measures

facilitator for states to continue discussions on implementation of measures and it offers assistance (Global Counterterrorism Forum, 2013), with which it plays an important role in laying out both sides, also measures that will be counterproductive (Bos, Ginkel, & Mehra, 2018). The documents provide additional guiding for states to comprehensively address the potential threat that returning FFs pose. The Recommendations that are proposed are in line with other documents related to FTFs, under which legally binding instruments such as the UNSC Resolutions. However, it is difficult to examine to what extent the proposed Good Practices have been implemented, as the impact is usually hard to measure and therefore different studies will be necessary (Bos et al., 2018).

d. United Nations Global Counter-Terrorism Strategy

The UN Counter-Terrorism Strategy was adopted in 2006 as a Resolution with a Plan of Action with implementation responsibility for the Member States themselves (United Nations Office of Counter Terrorism, 2006). This Strategy is linked with the other instruments because they all fit in the CT Strategy, even though some focus on FTFs more specifically. It endorses a common strategic approach towards fighting terrorism which consists of four pillars (United Nations Office of Counter Terrorism, 2006). The first one is about addressing the conditions that are conducive to spreading terrorism. The second pillar proposes measures to prevent and combat terrorism (United Nations Office of Counter Terrorism, 2006), which focuses on the capacity-building and knowledge-building of states such as law enforcement and border control. Pillar three focuses on the capacity of states to prevent terrorism and to strengthen the role of the UN system, which includes coordinating responses with the Task Force (United Nations Office of Counter Terrorism, 2006). The last pillar states that measures taken to counter terrorism need to be in line with human rights protection and the rule of law. This strategy is legally binding and therefore states have an obligation to follow the measures taken and to implement these into their domestic legislation. Therefore, the global approach towards fighting terrorism will be coordinated between states, but, as these measures are very broad and vague, there is still room for interpretation in the states themselves.

III. Conclusion

In providing an answer to the first sub-question, the international approach towards Foreign Fighters can be best characterized as highly concerned, urging involvement and active participation of states, but putting forward very abstract and broad instruments and guidance.

Radicalization and with this the issue of Foreign Fighters has become more predominant in the West in the last years. The term radicalization itself includes a lot of different aspects and background conditions, leading to different motivations for individuals to become radicalized and possibly become a Foreign Fighter. A lot of people went to IS to fight for them, but now the current flow is backward with FTFs returning from the conflict zone back to their countries of origin or residence. As analysed, there are different instruments present at the international level to address FTFs and returnees. First, the Resolutions of the UNSC that are legally binding and set measures for better international cooperation and condemning the flow of FTFs by bringing them to justice. Furthermore, they state certain offences as being criminal which states need to implement in their domestic legislation. Though, the implementation procedure and the height of penalties for states is not clearly set out in the Resolutions. These measures also urge an effective partnership with local authorities and non-governmental actors, as these can be influential in detecting and addressing radicalization. The UN Global Counter-Terrorism Strategy also focuses on a better international collaboration for fighting the problem. Therefore, the internationally binding instruments are important in defining the problem and a broad global approach, but in these documents, there is considerable room for interpretation due to a lack of clarity and guidance and thus leaving the states with possible unclarity and uncertainty in implementing measures. This leaves states with a substantive authority in shaping the policies. Next to these binding instruments, the UN and the GCTF have non-binding guiding principles, recommendations and good practices that give assistance to states in how to facilitate the implementation of these measures. The non-binding instruments are more specific in how to approach the implementation and give strategies for states to follow, for creating a better approach towards the issue. Thus, the threat of FTFs is given a lot of importance at the international level, also with setting certain measures for comprising a global approach, but the content of these measures asks for guidance which is given by non-binding instruments. This because the UN and other international organizations are at the top of the multi-level governance pyramid, leaving the content broad and vague. Therefore, room for implementation is left as these instruments are not obliged to states. Improvements could be made in setting out procedures for enforcement and implementation to the states.

3. Europe and European Union towards Foreign Fighters

This chapter will answer the second sub-question: ‘What is the position of European law towards Foreign Fighters?’ The purpose is to investigate to what extent the problem exists at the European level and in that case, European measures need to be taken. In order to do this, the chapter is as well divided into two parts. The first part addresses the breeding ground of radicalization at the European level and discusses the current flow of returnees to Europe with the threat they can possibly form. This is done by discussing several publications on returnees and threat assessments. The chapter goes on with investigating anti-radicalization and prevention measures that are taken at the European level against Foreign Fighters and returnees. For this, it discusses the EU Counter-Terrorism Strategy, the Additional Riga Protocol of the Council of Europe and the EU Directive 2017/541 on combating terrorism. Furthermore, different articles and publications laying out instruments and policies are discussed. Finally, there will be a conclusion that answers the second sub-question.

I. Radicalized FF in Europe, a societal challenge

The phenomenon of Foreign Fighters and returnees is not new in Europe, there have been different waves of Foreign Fighters with a European heritage to participate in conflicts outside of Europe. However, the number of FFs with a European background has never been that high (Renard & Coolsaet, 2018). On the other hand, Foreign Fighters were always seen as possible threats to the security of the countries, due to the possibility of information advantages held about future attacks or the fact that they had terrorist training. Therefore, states thought that the normal criminalization process would not work for them. For returnees it can be said that some of them have posed risks for domestic radicalization and attacks but that the threat has not been that influential (Renard & Coolsaet, 2018). In the current IS Caliphate, the number of Europeans joining the organization and going abroad to fight has been remarkably high, which is partly due to peer-communication via social media platforms that were found to be influential in recruiting and sympathizing people (Renard & Coolsaet, 2018). The approximate number of FFs from the EU lies around 4000 from which around 30% has returned to Europe (Ginkel & Entenmann, 2016). With this increase in FFs, the threat assessment of returnees is crucial and needs to be considered with developing policies, of which EU policies and measures will be discussed below. Mainly due to specific terrorist attacks in Europe, such as in Paris and Brussels, threat levels of states have increased and they also see the possibility of FFs

participating in organizing attacks or taking a lead in the organization domestically (Ginkel & Entenmann, 2016).

Coming back to the radicalization, Basra et al. (2016) discuss the new crime-terror nexus and its implications for threats of terrorism and Foreign Fighters. This nexus has certain implications for how terrorist and jihadist groups in Europe work and is therefore important to understand for countering terrorism (Basra et al., 2016). The term crime-terror nexus is not new, as it emerged after the Cold War and the increased usage of information techniques, but the term itself and its dynamics are now different than at those times. The current observation is that criminals and terrorists are not finding themselves together in organizations, but that they converge in social networks and their environments, leading to recruitment in the same pool of people and therefore creating overlap which has consequences for radicalization of individuals (Basra et al., 2016). It was found that the narrative of IS and jihadis goes well with personal desires and needs of criminals, therefore implying that going from crime to terrorism is a way smaller path than often thought of (Basra et al., 2016). Besides this, it was found that prisons have played an important role in radicalizing and recruiting individuals. Prisons are places of vulnerable people and insecurity which makes it easier for people from extremist groups to find and recruit other individuals that are angry and have criminal pasts (Basra et al., 2016). Furthermore, in prisons, criminals and terrorists are grouped together which creates the opportunities for cooperation, as viewed in the crime-terror nexus. Prisons also leave people that have done their time with a few possibilities for reintegration into society (Basra et al., 2016). All these findings present reasons to think about radicalization in terms of connection to the crime-terror nexus and stresses importance to investigating this interaction. Moreover, it calls for measures relating to better monitoring in prisons and increased control here, as a lot of radicalization can take place there due to vulnerability of individuals and a lack of rehabilitation programs. This implies that states also need to take measures to improve the rehabilitation and deradicalization programs, to better prevent radicalization in general and to create a better approach towards the issue of returning Foreign Fighters.

The returning of FFs from conflicts poses several challenges to Europe and the EU which require a strategic response. First of all, as discussed before, the FTFs that return will be seen as a threat to the security of the country due to experiences with terrorism and terrorist fighting which can lead to domestic terrorism (European Parliament, 2018). Secondly, this is not an individual issue, because in a lot of cases, the FFs brought their family or started a family in the conflict zone and therefore they will not come back alone, but they will take these people with

them (European Parliament, 2018). This leaves the countries with the challenge how to deal with a variety of people and their motivations coming back into the country. Lastly, it can be stated that the issue of returnees has to do with a wide field of policies, such as ones relating to prevention, but also to information exchanges and criminal justice approaches, including deradicalization and rehabilitation programs (European Parliament, 2018). The FTF phenomenon is also very much present at the European level, with about 4000 FFs in the conflict-zone, which calls for action. Therefore, the European Union has developed different strategies and policies in different areas in order to address the problem of returnees in a more comprehensive way at the European level, which will be discussed in the second part of this chapter.

II. Anti-radicalization and prevention in European policy and law

This part will discuss measures set out and taken at the European level regarding the prosecution of FFs, but also about anti-radicalization policies and strategies for prevention of radicalization. It examines different instruments that will have an influence on the way domestic courts prosecute returnees and other measures taken regarding this issue in Member States. It starts by examining the EU's Counter-Terrorism Strategy which lays out the general focus areas and challenges for the EU. It goes on with the Additional Riga Protocol on the prevention of terrorism that additionally put forward certain criminal acts that should be classified as terrorist. Lastly, the EU Directive 2017/541 on combating terrorism is examined, which is about the EU's criminal justice approach towards FTFs and extended the list of criminalized acts. All these instruments will be assessed and with this, the influence on its Member States, as well as possible gaps in legislation and policy measures will be seen and discussed.

a. European Union Counter-Terrorism Strategy

The EU Counter-Terrorism Strategy was adopted in 2005 by the Council in order to set out a general strategy for fighting terrorism globally and creating a safer Europe (European Council, 2005). The Strategy is connected to the beforementioned instruments in a way of presenting an overall guiding framework for the EU and its Member States to follow and base their policies on. As the EU Directive 2017/541, which will be discussed below, states in paragraph 31: "prevention of radicalization and recruitment to terrorism ... requires a long-term, proactive and comprehensive approach." (European Parliament, 2017, p. 6). The Strategy requires a combination of measures in different areas, such as criminal justice, integration, prevention,

anti-radicalization and rehabilitation programs and for these, Member States need to cooperate and share information and experiences. The EU Counter-Terrorism Strategy consists of four pillars: prevent, protect, pursue, and respond (European Council, 2005). For this research, mainly the pillars of prevent and pursue are relevant as they connect to anti-radicalization and prevention policies and these relate with the Dutch CT Strategy discussed in chapter 4, section II.b. In the prevent pillar, the EU strives at addressing the causes of radicalization and recruitment of terrorism (European Council, 2018a). This is done by developing a common approach to investigate and tackle problematic behaviour, investigating environments, such as prisons, that influential for incitement and recruitment, and to develop a media and communication strategy for informed explanation of EU policies (European Council, 2005). The pursue pillar of the Strategy addresses obstructing FTFs to plan their travel or attack and to bring them to justice (European Council, 2018a). Here for, national capabilities must be strengthened but also the need to cooperate and exchange information is stressed (European Council, 2005) as this leads to a increased ability of pursuing and bringing FTFs and returnees to justice.

In 2014, the Strategy was adapted, as an extra part was added to the Strategy which was directed towards the situation in Syria and Iraq with a particular focus on FFs (European Council, 2014). There was an immediate priority of ensuring that the threat does not grow by condemning the flow of FTFs (European Council, 2014). For the Prevent pillar, this extension of the Strategy is more external and aims at working with and in third countries to fight recruitment and radicalization (European Council, 2014). Considering Pursue, it is urged that capacity should be build that complies with human rights and the rule of law in investigation and prosecution to enable identification and prosecution in line with international standards and measures (European Council, 2014). This Strategy concerning the situation in Syria and Iraq calls on EU Member States to implement UNSC Resolutions 2170 and 2178 (discussed in chapter 2 section II.a) because they urge for action to stop the flow of FFs and to counter radicalization and incitement (European Council, 2014). In 2016, the European Counter-Terrorism Centre (ECTC) was developed, which is a platform that mainly investigates FTFs and terrorist financing and it provides opportunity for information sharing and cooperation regarding investigation and monitoring for Member States (European Council, 2018b). The responsibility for implementing measures in line with the EU Counter-Terrorism Strategy lies with the Member States themselves as the EU only provides the framework and platform for cooperation and information exchange (European Parliament, 2018). This provides freedom for the Member

States because there are no strict rules to implement, but they are a member of the EU, meaning that they must follow and stick to the framework provided, in this case the CT Strategy.

b. Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism

The Council of Europe (CoE) is an entity that brings together governments from Europe on certain core values, being human rights, democracy and the rule of law (Council of Europe, n.d.). The EU focuses on the same values, but the two are not the same. The Council of Europe tries to make governments agree on certain minimum standards for legislation in different areas and then monitors how the standards are applied (Council of Europe, n.d.). The EU can build upon these standards in creating their legal instruments (Council of Europe, n.d.). The treaties of the CoE are also open to non-EU states, therefore having a greater spread in Europe. In Warsaw in 2005, the CoE Convention on the Prevention of Terrorism was open for signature, which defined a set of acts as terrorist offences and called upon governments to take measures to prevent and counter terrorism (Council of Europe, 2015). In 2015, there was an Additional Protocol to this Convention of which the purpose was to make additional provisions to the Convention on measures taken to prevent terrorism and its negative effects, mainly on the enjoyment of the right of life (Council of Europe, 2015). The Additional Protocol calls for governments to make participating in a terrorist association, training for terrorism, travelling or attempting to travel abroad for terrorism, funding for terrorism and organizing travel for the purpose of terrorism all a criminal offense under their domestic law when committed unlawfully and intentionally (Council of Europe, 2015). These offences are also criminalized by UNSC Resolution 2178 (chapter 2 section II.a) and EU Directive 2017/541 (chapter 3, section II.c)⁸. All these offences relate to FTFs, which the CoE in its Additional Protocol defines in its article 4⁹ as:

“a person travelling to a state, which is not that of the traveller’s nationality or residence, for the purpose of the commission of, contribution to or participation in a terrorist offence, or the providing or receiving of training for terrorism” (Council of Europe, 2015, p. 2).

This definition is somewhat different than the one of the UN, as it does not necessarily refer to the planning or organization of terrorism, which the UNSC Resolution 2178, discussed in

⁸ See Table 1 for a comparison of the different instruments and the criminalization of acts

⁹ CETS217, art. 4

chapter 2, section II.a, does. Therefore, it leaves to question whether these aspects of FTFs are not seen as important, but it can be analysed that planning or organizing terrorism are usually done before travel. In certain instances, there may be an obligation to include the parts of the UN definition into the European one, as the UN Resolutions pose an obligation to all states. However, this still remains important during the travel of FTFs as they will lead to people going to fight and commit attacks, this can also be connected to the crime-terror nexus as explained by for example Basra et al. (2016) and Mehra (2016). Furthermore, the Protocol wants states to have a point of contact and information exchange with other states that is always available (Council of Europe, 2015). As a final point of notice, the Additional Protocol states in its article 8 that the establishment, implementation and application of the criminalization should be subject to the principle of proportionality¹⁰ (Council of Europe, 2015). This means that to achieve the action, the only measures that should be taken are the ones necessary to achieve the objective, therefore, minimizing the burden by not taking more action than needed (Schütze, 2015). However, the Council of Europe does not have the power to make binding legislation due to a voluntary basis for signing and ratifying. Due to the sharing of core values, the EU often builds on standards created by the CoE and uses these in its agreements and instruments (Council of Europe, n.d.). Up until now, the Addendum is signed by 24 states and ratified by 17, the Netherlands has not ratified the Addendum¹¹ (Council of Europe, 2019).

c. EU Directive 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

The European Parliament and the Council adopted a new Directive in 2017 that was mainly due to the changing levels of security in the EU due to FTFs leaving member states to go and fight (European Parliament, 2018). An updated piece of legislation was needed to address the growing terrorist threat posed to the EU Member States (European Parliament, 2018). The EU Directive 2017/541 builds upon the UNSC Resolution 2178 (discussed in chapter 2 section II.a) and the previously mentioned Additional Protocol of the Council of Europe, because it mainly criminalizes certain offences as being terrorist and addresses its Member States to implement these (European Parliament, 2017). All these measures need to be in line with the protection of human rights in the EU (European Parliament, 2017). In its paragraph 8, the Directive specifies that these offences are qualified as terrorist when they are committed with a specific terrorist aim (European Parliament, 2017)¹², therefore giving importance to the notion of terrorist intent,

¹⁰ CETS217, art. 8

¹¹ See Table 1 for implementation of measures in the Netherlands

¹² Directive (EU) 2017/541, par. 8

which is also incorporated in Dutch law as discussed in chapter 5. It furthermore provides more specific penalties for these offences (European Parliament, 2017), but it is still not that clear what and how strict the sanctions should be. Since certain objectives cannot be achieved at the level of the Member States, the EU may adapt measures, but along the principles of subsidiarity and proportionality (European Parliament, 2017). Subsidiarity meaning that measures should be taken at the lowest level possible and proportionality requires that actions taken by the EU do not go beyond the necessary objectives of the Treaties. The Directive, in paragraph 31, states that to combat terrorism, a long-term, proactive and comprehensive approach with measures in different fields is needed (European Parliament, 2017). This however leaves to question how this approach should be created and whether a special platform, organization or agency should be created in which these different fields come together. This is a classical dilemma in multi-level governance and a problem of sharing or delegating competences.

Besides, this Directive can be seen as a way of response to the FF issue in a less fragmented way in the EU (Paulussen & Pitcher, 2018), because it wants to update the measures and the existing framework to fit the current problem. The Directive therefore also states that better cooperation is needed, also with third countries, because the FTF phenomenon is a global one (European Parliament, 2017). Due to an increased linkage between organized crime and terrorist groups (Paulussen & Pitcher, 2018), the Directive emphasizes in its article 20 the need for investigative tools for governments and the exchange of information with other Member States¹³ (European Parliament, 2017). This Directive is a binding instrument, but it leaves scope for interpretation of implementation. Thus, the EU Member States need to create legislation, regulations and provisions to incorporate the measures set in the Directive for compliance (European Parliament, 2017).

III. Conclusion

Altogether, the FTF phenomenon is also highly present at the European level, as now the number of FTFs with a European background is highest. Describing the European approach towards Foreign Fighters it can be stated that measures are taken in a wide variety of areas, the focus is on criminalization, but that there is still some fragmentation present. In investigating the crime-terror nexus, findings indicated that more criminals become radicalized jihadi's, especially in prisons, which poses a threat as people already have criminal experiences.

¹³ Directive (EU) 2017/541, art. 20

However, the returnees need to be punished, so it leaves to question how this should be done comprehensively. Besides this, there is an increasing threat of FTFs that return, because there is potential that they can perform terrorist attacks domestically. Also, these people can bring their families home, stressing the importance of addressing issues regarding women and children. At the European level, the approach calls for measures and strategies in a wide range of areas, as can for example be seen in the EU Counter-Terrorism Strategy and the call for a comprehensive approach. This approach calls for cooperation between different levels, such as national and local, but also transnational levels, and urges measures in many areas in order for cooperation between actors from different fields. Then, the non-binding, Additional Protocol of the CoE gives a definition of an FTF and urges states to criminalize certain offences and calls for proportionality, meaning that the institution that acts can only act in order to achieve the goal, but not further. This to protect Member States from excessive actions and influence by the EU. The non-binding character is not a problem per se, as in this case, the offences stated in this Protocol are taken up in the beforementioned EU Directive 2017/541. This Directive criminalizes these offences mentioned in the Additional Protocol and UNSC Resolution 2178 and urges Member States to incorporate these into their domestic legislation. However, because of the nature of the instrument, the strategies and approaches of Member States will differ, as they have to implement the EU Directive, but there is freedom in ways of implementation. Directives provide leeway for states in choosing their way to implement the measures. This can lead to differences in implementation, but as long as the nature of the Directive is clearly set out, the purpose of the instrument will have the same goal in all the Member States.

Reflecting on these measures and the issue, it can be said that a lot has been done on criminalizing offences, as the Directive pushes all Member States to implement these and use them in their criminal justice approach. However, the specific penalties are not given, but left to the courts. The sharing of information, also with third countries, is furthermore an important aspect mentioned, which is currently done via Europol and Eurojust. However, there is improvement possible in the sharing of information with the local level in setting up an agency or platform in which this can happen. Furthermore, considering the radicalization in prisons, the EU could create measures to secure better monitoring in prisons to reduce the crime-terror nexus. As a reference to the international level, at the EU level reintegration and rehabilitation strategies created could be more focussed on the involvement of civil society as stated by the UN (chapter 2, section II.a) and go beyond the criminal justice system as put forward by the GCTF (chapter 2, section II.c).

4. Dutch policy and practice on Foreign Fighters

This chapter, as well as the following one, will answer the last sub-question: ‘How are Foreign Fighters regulated and treated in the Netherlands?’ The purpose is to investigate what has been done at the Dutch level to address the Foreign Fighter issue and to see the influences of international and European legislation and measures into the Dutch system. The chapter is divided into two parts, the first considers radicalization in the Netherlands, hereby discussing several publications on the flow of FFs to the conflict zone, but also the reverse flow of returnees. The second part lies out the measures taken at the Dutch level in prevention and anti-radicalization of FFs and returnees. In doing this, the Dutch Comprehensive Action Programme to Combat Jihadism and the Dutch Counter-Terrorism Strategy are analysed with their follow-up implemented measures. Furthermore, different publications and articles discussing instruments and policies will be analysed. In the end there will be a conclusion that answers the third sub-question.

I. Radicalization of FFs in the Netherlands

In trying to create measures to address the challenges Foreign Fighters and returnees pose, it is firstly important to see how they become FFs, therefore understanding reasons for radicalization. Bakker and Grol (2017), in their book, analyse radicalization and use different levels in which factors play a role in radicalization. Besides this, there are events that can accelerate radicalization called catalysts (Bakker & Grol, 2017). First, there is the external level, which is for instance the political, economic or cultural environment in which people live. These factors do not influence the individual directly, and are therefore not that influential in radicalization, but they determine the living environment. Then, there is the group-level, in which social factors play a role in bridging between the external level and radicalization (Bakker & Grol, 2017), as there are mechanisms about relations between the individual and the group. These factors are mainly about identification and group pressure. The third level is the individual level, which is mainly about how one experiences his environment and the thought thereof (Bakker & Grol, 2017). Radicalization is dependent upon personal experiences and consequences of these, but frustrations and inequalities about one’s environment are a breeding ground for radicalization (Bakker & Grol, 2017). Additionally, catalysts can speed up the radicalization process, as they influence the thoughts and behaviour of people in the process of

radicalizing, such as events that have a deep emotional impact on a person, like the death of a family member or a fight with your friends (Bakker & Grol, 2017).

Researchers have tried to classify jihadis to search for patterns and ways of radicalization. Shiraz Maher, a radicalization researcher of King's College London, has done research and came up with four types of jihadi fighters (Cassidy, 2014). These are suicide-terrorists, that go for martyrdom and commit a suicide attack as soon as they arrive (Bakker & Grol, 2017). Then, there are adventure-seekers, that are mainly attracted by the tensions in the conflict zone (Cassidy, 2014). Thirdly, there are idealists, or humanitarian jihadis that go to Syria to help the people that suffer (Cassidy, 2014). Lastly, the devoted jihadis are the ones that burned American flags and are now willing to kill Americans or people supporting them (Bakker & Grol, 2017). Another researcher making a typology is Bjørger, that created dynamic categories, in which people can go from one type to the other (Bakker & Grol, 2017). The first type is the ideologic activist, having a leading role in the conflict and usually being very charismatic (Bakker & Grol, 2017). Then, there are followers and people that hang around. For them it is mostly about belonging to a group and being accepted instead of ideology (Bakker & Grol, 2017). Among this type, there is a group of people that have recently become converted to the Islam, which are more likely to feel they must prove something for the group. A big group of these converts are socially frustrated youths according to Bjørger (Bakker & Grol, 2017), for which violence is mostly legitimized by anger due to discrimination or isolation. Furthermore, extreme ideologies can provide straight-forward answers for people and are therefore leaning upon people's uncertainty, trying to make them feel that they get certainty by believing radical ideas as they are simple and clear (Doosje, Loseman, & Bos, 2013).

Another article analysing Dutch people to become FFs is the one of Weggemans, Bakker, and Grol (2014). Although there is no clear, general profile of a Dutch Foreign Fighter, the authors state that there are some general observations that can be made on the basis of communication by the Dutch Intelligence and Security Service (AIVD) (Weggemans et al., 2014). It was found that the group consisted mainly of young males with different socio-economic and ethnic backgrounds, and, more importantly, most of them had joined terrorist groups, such as IS (Weggemans et al., 2014). From 2010 on, the movement of jihadists grew increasingly and more people have left to go and fight in Syria (General Intelligence and Security Service, 2014). The increased flow was due to increased cooperation between conflict countries and jihad movements, such as Sharia4Holland and Behind Bars, and new means of communication for propaganda which led to a lot of new recruits (General Intelligence and Security Service, 2014).

These new means of communication include the increased usage of social media within the movement, which has changed the flows of information, as they can now go through channels like Twitter, in which an enormous amount of people can see and read them (General Intelligence and Security Service, 2014). The AIVD makes analyses and does research on cybersecurity and cyberterrorism in order to prevent, detect and remove online incitement which can lead to terrorist recruitment (Algemene Inlichtingen- en Veiligheidsdienst, n.d.).

There have been approximately 300 Dutch persons that have successfully travelled to the conflict area to join the terrorist militia (Vries, 2018). Furthermore, it is examined that around 50 persons have returned (Vries, 2018). New dynamics in the jihadist world, mainly due to the Arab Spring and the civil war in Syria, pose new risks to the Netherlands (General Intelligence and Security Service, 2014). Here we come to the threat of terrorist attacks against the country, because European jihadists are involved in the conflict in Syria and may therefore struggle against the West and Western perspectives (General Intelligence and Security Service, 2014). Furthermore, as is important for this thesis, the risk that returnees from the conflict area can pose to the Netherlands is substantial considering their perceived knowledge and contacts with which they can create opportunities for future jihadi travellers (General Intelligence and Security Service, 2014). The AIVD in the Netherlands stresses that they need to prioritize the monitoring of developments in the area of jihad and terrorism and that this information can be used by policy-makers to create better responses (General Intelligence and Security Service, 2014). The Parliament has adopted a law that can restrict freedom of movement of potential terrorists for reasons of national security¹⁴, this can even lead to a ban on leaving the country (Zeldin, 2017). The Dutch government has a responsibility for its citizens and therefore needs to address the risk that FFs pose to their country (Ligthart, 2016). In the Netherlands, there are therefore 5 levels of threat that present the nature and seriousness of terrorist threats, (Renard & Coolsaet, 2018). In 2013, the threat level was increased from limited (2) to substantial (4), mainly due to the Dutch FFs leaving to travel to the conflict zones (Ligthart, 2016). Concluding from this, it can be said that FFs also pose a threat to the Netherlands and therefore the country has created and adopted several measures to address and combat the threats. These will be discussed in the next part below.

¹⁴ Stb-2017-51

II. Dutch anti-radicalization and prevention laws and policies

This part will analyse the measures taken in the Netherlands to counter terrorism, prosecute and rehabilitate Foreign Fighters and returnees. It will consider different instruments and strategies used in addressing the threat of Foreign Fighters and returnees. Firstly, the Dutch Comprehensive Action Programme to Counter Jihadism is analysed, which laid out the first actions and measures taken against radicalization and the flow of FTFs. Then, the Dutch National Counterterrorism Strategy of 2016-2020 is examined, which shows the overall strategy of the Netherlands against terrorism and with this the prevention and anti-radicalization measures taken. In the next chapter, these measures are analysed when applied in Dutch FF cases.

a. Dutch Comprehensive Action Programme to Counter Jihadism 2014

The Comprehensive Action Plan to Counter Jihadism was set up by the Ministry of Security and Justice because of the global threat posed by jihadism and therefore the need of a comprehensive program that can combat the core of jihadists and the dissemination of their ideas by judicial and administrative measures¹⁵ (Ministry of Security and Justice, 2014). The Programme proposes measures in different areas such as risk reduction, travel interventions and radicalization in order to combat and counter terrorism and protect Dutch democracy (Ministry of Security and Justice, 2014). Here for, departees that join terrorist groups are subject to criminal investigation, they are arrested upon return and face prosecution (Ministry of Security and Justice, 2014). Returnees can also be placed under supervision, which is part of the long-term surveillance approach stated in the Comprehensive Action Programme (Wittendorp, Bont, Bakker, & Zuijdewijn, 2017). Participation in terrorist armed struggle is an offence, just as stated in UNSC R2178 (chapter 2 section II.a) and EU Directive 2017/541 (chapter 3 section II.c) (Ministry of Security and Justice, 2014). Convicted individuals are placed in the Terrorist Ward (Ministry of Security and Justice, 2014), which are special departments created to prevent the further radicalization among the other prisoners.

Furthermore, the Dutch nationality can now be revoked from people that join terrorist organizations due to an amendment to the Dutch Nationality Act (Zeldin, 2017), but this can only be done when people have more nationalities, as a person cannot be left stateless. This can be legitimized by keeping potential threats out of the country to prevent attacks and further radicalization. However, states also have an obligation to their citizens and, as can be seen on

¹⁵ See Table 1 for an overview of objectives and measures adopted

the levels in which radicalization can play a role as discussed before, this does not necessarily counter radicalization, because it can come from within the country. There is no specific need for FTFs or returnees in order for people to radicalize. In the Nationality Act, there is also a new article on legal protection for people that have their citizenship revoked (Zeldin, 2017), which provides these people with appeal of the decision. In countering radicalization, there is cooperation with a variety of actors of multiple disciplines, such as the Muslim community, but also with key actors on national and local levels (Ministry of Security and Justice, 2014). One of the measures states that the collaboration between government and municipalities continues and therefore sets out an integrated multidisciplinary approach¹⁶ (Ministry of Security and Justice, 2014). However, the program still does not give an explicit statement or example on how this collaboration works and on which level this takes place. Besides this, the Programme redefines the important role the Netherlands plays in the GCTF¹⁷ and hereby recognizes that the country plays an active role in the cooperation at the international level.

b. Dutch National Counterterrorism Strategy 2016-2020

Since the 9/11 attacks in New York, there was a new phase in the development of terrorism, this can also be seen in the Netherlands (C.S.L. van Nimwegen, 2006). Terrorism was now way more wide spread and prominent globally as well as in the Netherlands (C.S.L. van Nimwegen, 2006). Therefore, the government came up with the Action Plan Counter-Terrorism and Security in 2001 (Staten-Generaal, 2001), containing 43 measures to create a preventative and repressive approach (Wittendorp, Bont, Zuijdewijn, & Bakker, 2017).¹⁸ Furthermore, the assassination of Pim Fortuyn in 2002 and of Theo van Gogh in 2004 made it clear for the Dutch government that measures were necessary, as terrorism had come from within the country and not from the outside (C.S.L. van Nimwegen, 2006). After this, there were several policies to counter terrorism initiated and a National Coordinator for Counterterrorism (NCTV) was appointed to create a coordinated Dutch response (National Coördinator Terrorismebestrijding en Veiligheid, 2011). The first Counterterrorism Strategy was the one of 2011-2015.

After the evaluation report of the 2011-2015 CT Strategy with recommendations, the National Counterterrorism Strategy 2016-2020 was set up by the NCTV of the Ministry of Security and Justice. The core of the Strategy is the comprehensive approach in which mainly preventative, repressive and curative measures will be taken (Government of the Netherlands, 2016). In the

¹⁶ The Netherlands comprehensive action programme to combat jihadism, measure 31

¹⁷ See Table 1 for a link with the recommendations of the GCTF

¹⁸ See Table 1 for an overview of the Action Plan

Strategy there are five areas of intervention, these are: Procure, Prevent, Protect, Prepare and Pursue¹⁹ (Government of the Netherlands, 2016). For the purpose of this thesis, the areas of Procure, Prevent and Pursue are the most important, in which Prevent and Pursue could also be seen in the EU CT Strategy as discussed in chapter 3 section II.a. Procure is the element that is additional when compared to the EU CT Strategy²⁰. This area is about gathering data about threats to national security and with this, working together with local levels, also with actors outside the public environment (Government of the Netherlands, 2016). Therefore, again, the multidisciplinary approach is demanded. Procure is somewhat incorporated in the EU Strategy, but it is possibly not seen as a separate pillar, as information is the key to making predictions about threats. Regarding the second area of Prevent, the aim is to prevent and disturb extremism and to combat terrorist attacks (Government of the Netherlands, 2016). Here for, the Strategy urges a comprehensive policy and implementation with a wide range of interventions at different levels by different authorities and partners (Government of the Netherlands, 2016). These interventions need to be tailored by making individual risk assessments for creating the best prevention approach. This because there is no single profile of a Foreign Fighter as radicalization is dependent on factors such as age, level of education and a person's milieu.

In the Strategy, the objective of Pursue relates to the criminal investigation of FFs and is there for preventative and repressive effects and prioritizes preventing terrorist offences from being carried out (Government of the Netherlands, 2016). In doing so, information-sharing practices need to be strengthened and the possibilities offered by law need to be used (Government of the Netherlands, 2016). The Parliament has passed several bills in the last years which led to additional legal instruments for countering terrorism (Government of the Netherlands, 2016). Additionally, focus should be placed on reintegration into society of FTFs by participation in deradicalization programs (Government of the Netherlands, 2016). The evaluation of the former Strategy found some factors that could have a negative effect on the intervention of authorities in trying to combat terrorism, such as in times when the threat is not that predominant, partners could drift apart and capabilities differ greatly (Government of the Netherlands, 2016). Therefore, the new Strategy incorporates several strategic principles, such as aligning with social strategies and taking a local approach with multidisciplinary case management (Government of the Netherlands, 2016), in order to optimize and prevent these negative influences. Even though, cooperation among the different disciplines and institutions can be

¹⁹ See Table 1 for an overview of objectives and measures adopted

²⁰ See Table 1 for a comparison of the strategies

complex, the powers and responsibilities usually have overlap and therefore there needs to be coherence for the Strategy to work (Government of the Netherlands, 2016).

III. Conclusion

Due to the increased flow of Foreign Fighters and having about 300 fighters successfully travelling to the conflict in Syria or Iraq and around 50 having returned, the phenomenon is posing a challenge to the Netherlands. In this challenging context, the Dutch approach can be best described as: witty, charming and favouring prevention. However, it is not easy for the Dutch government to create a general approach towards these FTFs and returnees because the profiles and motivations of these people differ enormously. Furthermore, the breeding ground for radicalization can be at different levels and will have different consequences. This creates variety and makes it hard to create overall applicable typologies, as differences can be dynamic. Besides, it is difficult to address the phenomenon due to the increased usage of social media services on which content is shared that glorifies the terrorism and with this creates possibilities for incitement and recruitment of others to participate in the conflict. Returnees can also pose considerable threats to the Netherlands, as it is not clear what they have experienced and whether they are still radicalized when they come back. Here for, the Dutch government and courts have created and adapted their legislation, policies and practices to address the challenges. The Comprehensive Action Programme to Combat Jihadism sets measures to combat radicalization and terrorism and gives judicial measures for prosecution of FTFs and returnees. The Netherlands Counterterrorism Strategy proposes the overall strategy against terrorism and focuses on five areas of intervention which all come towards a comprehensive and multidisciplinary approach. However, there is still no clarity about how this approach should be created and on what level there is a platform for discussion and information exchange in the partnerships between national and local levels.

5. Dutch Foreign Fighter Case Studies

This chapter will further investigate Dutch policy and practice by analysing several court cases of individuals convicted in the police investigation called the Context-case. The investigation includes 22 suspects, of which some have been prosecuted by Dutch courts (Openbaar Ministerie, 2015). It will be investigated which instruments the court uses to analyse the cases and prosecute the individuals as they were found guilty of various terrorist offences. This shows the criminal justice response in the Netherlands against FTFs and returnees.

I. Additional Dutch measures regarding prevention and anti-radicalization

After 9/11, the Netherlands has created legislation that was more directed towards the phenomenon of terrorism as this became a more predominant issue (Wittendorp, Bont, Zuijdewijn, et al., 2017). Since 2004, international terrorism has been criminalized and terrorist offences have been incorporated in the Dutch Penal Code²¹. This has been a result of influences of mainly European instruments, as the predecessor of EU Directive 2017/541 (chapter 3 section II.c) criminalized acts related to recruitment, training for terrorism and provocation (Council, 2002). Here for, judges could better address the suspected convicts of terrorist offences, as more offences were criminalized and punishable. With this, the criminal offences regarded as terrorist, as later stated in the UNSC Resolution 2178 (chapter 2 section II.a) and EU Directive 2017/541, were already in place in the Dutch legislation (Renard & Coolsaet, 2018). In 2017, the Dutch Parliament adopted an Interim Act on Counterterrorism Administrative Measures that will last until 2022 (EP Committee on Civil Liberties, 2017). This emerged from the Comprehensive Action Programme to Combat Jihadism (chapter 4 section II.a)²². With this Act, there are different administrative measures that can be imposed against suspects, such as travel bans, expiry of passports when travelling to the conflict zone or periodically reporting to the authorities (National Coördinator Terrorismebestrijding en Veiligheid, 2017). These can only be imposed when there is conduct that is related to terrorism and when there is a concern for national security in the Netherlands (National Coördinator Terrorismebestrijding en Veiligheid, 2017). These measures can help to prevent travel to the conflict zone, so they are helpful in counterterrorism, but there is some concern regarding fundamental rights. This because the measures are enforced by political administrative

²¹ Bulletin of Acts and Decrees 2004 290

²² See Table 1 for measures adopted after Comprehensive Action Programme

authorities instead of independent judges, meaning that there is no scrutiny and no safeguard for applying the measures in line with human rights legislation yet and creates problems with restrictions on liberties (Boutin, 2016). Besides this, the decisions on administrative measures are taken on confidential evidence and therefore the person involved in the decision does not know on what grounds this is taken (Boutin, 2016). Thus, administrative measures need to be implemented proportionally, otherwise they would restrict for instance the freedom of travel (Boutin, 2016). However, they are independent measures, because they do not lead to criminal sanctions and are therefore separate from multi-level governance as they are not decided on by judges.

II. Context trial

There have been different trials concerned with suspects in the Context-investigation of the Dutch police. In the Context trial in December 2015, 9 individuals have been convicted for several offences. First of all, some of them have been prosecuted for participating in an organisation that has the purpose to commit terrorist offences²³. The threat that international terrorist networks pose is urged in UNSC R2178²⁴, however, this Resolution does not provide a base for the criminalization of participating in an organization for terrorist purposes. The EU Directive 2017/541 in its article 4 does criminalize offences relating to a terrorist group, that include directing a terrorist group or participating in the activities, including supplying resources or funding. This is related to the Dutch articles, as these criminalize participating in an organization for the purpose of terrorism or terrorist crimes, but also the supply of resources or the financing. Furthermore, the Dutch Criminal Code gives higher sentences to the leaders of terrorist organizations.

In the Context case, Azzedine C. and Soufiane Z. were seen as the main leaders of this organisation called De Ware Religie, as they came together with other people frequently to provide information and speeches and with this tried to recruit more people for the jihad fight (Bakker & Grol, 2017). These two and others suspected of taking part in the organization, worked together frequently and structurally and coordinated lectures, speeches and even a website called The Truth (De Waarheid) (Bakker & Grol, 2017). They kept in contact with fighters in Syria and regulated communication, instructions and documents for those that

²³ Art. 140a DCC

²⁴ See Table 1 for the links between the different instruments

wanted to travel to Syria ("Prosecutor v. Imane B. et al.," 2015). Furthermore, the police found a note in the house of Soufiane Z. on which he wrote that for the 'De Ware Religie', there should be a team for media, translations, finance and activities, which can be related to a structured organisation (Lensink & Alberts, 2015). The court ruled that there was a structured and long-lasting partnership between the suspected, which was sometimes looser, but it kept consisting of the core members and different organizational elements ("ECLI:NL:RBDHA:2015:14365," 2015). The court urged that it was not believing the Islam as a religion or its thoughts and ideology that stood to trial but that it was the actions or the suspects that were found punishable (Bakker & Zuijdewijn, 2015). Furthermore, the court stated that the suspected had terrorist intent with their organization for terrorist purposes. The notion of terrorist intent²⁵ was incorporated in the Dutch Criminal Code in 2004²⁶ in order for prosecutors to prove an additional element of the crime instead of a new crime (Paulussen & Pitcher, 2018). When terrorist intent is proven, the sanctions will be higher.

Another charge in the Context trial was recruitment for jihad or terrorist purposes. This notion holds that a person recruits another person for a war or violent conflict²⁷, in this case for terrorist purposes ("ECLI:NL:RBDHA:2015:14365," 2015). Article 205 DCC criminalizes the recruitment and when this is done for terrorist purposes, the sentence will be higher by a third. This article is in line with the UNSC R2178 which urges the criminalization of, among other things, the wilful organization or other facilitation, including acts of recruitment, of the travel for terrorism (United Nations Security Council, 2014b). Besides this, EU Directive 2017/541 in Article 6 criminalizes the recruitment for terrorism as soliciting another person to commit or contribute to terrorist offences listed in the Directive (European Parliament, 2017), which also falls together with the DCC. One of the accused, Oussama C., was found guilty of recruitment for terrorism ("ECLI:NL:RBDHA:2015:14365," 2015). He posted messages, images and videos online, but also send these to others. Furthermore, he expressed his opinion about IS, the conflict and Assad many times and very prominently in order to influence people ("ECLI:NL:RBDHA:2015:14365," 2015). Here for, the court ruled that he was trying to recruit people for the violent jihad.

²⁵ Art. 83 and 83a DCC

²⁶ Bulletin of Acts and Decrees 2004 290

²⁷ Art. 205 DCC

Then, certain suspected were convicted of incitement to hatred and violence²⁸ and for disseminating texts and pictures that could lead to incitement²⁹. In EU Directive 2017/541, incitement is discussed as public provocation to commit a terrorist offence (European Parliament, 2017), which entails distributing or making public of a message with the intent of inciting one of the terrorist offences listed, and hereby causing a threat that more offences will be committed, is punishable. This relates to Articles 131 and 132 of the DCC. For the international level, the UNSC R2178 mentions the concern of online incitement, but it does not put forward criminal offences related to this, leaving no impact on the judgement in the Netherlands in this case. For the Context trial, the court referred to different media, such as the website of De Ware Religie, Facebook pages, Twitter, YouTube videos and demonstrations for incitement. Moreover, it stated that using different flags, those of IS and Al-Qaeda, was inciting to hatred and violence as they specifically referred to the violent conflict in Syria and Iraq ("ECLI:NL:RBDHA:2015:14365," 2015). The court needed to determine where the line between freedom of expression and criminal incitement was in this case (Fry, 2016). It ruled that the suspected violated their right to freedom of expression to distribute texts and images that could lead to incitement and that they incited for hatred and violence ("ECLI:NL:RBDHA:2015:14365," 2015). However, the court stated that only messages on public platforms could be evidence for incitement, as these are available for everyone, while private messages are not ("Prosecutor v. Imane B. et al.," 2015).

In the Context trial, two of the convicts were absent during their trial, therefore, a trial in absentia ("Prosecutor v. Imane B. et al.," 2015). The Dutch Public Prosecution Service starts criminal investigations against Dutch jihad fighters that are still in the conflict zone so they could give a verdict when the people would return (Paulussen & Pitcher, 2018). This can only be done when the accused is notified of the date and place of his/her trial and other formalities according to the provisions of the Code of Criminal Procedure (Renard & Coolsaet, 2018). The prosecution has to make a serious effort to inform the defendant, however, usually it is hard to know whether the message was actually delivered (Renard & Coolsaet, 2018). Trials in absentia are possible in civil law systems, such as the Netherlands, because there jurisdiction is the power of the court to state the law, which can also be done when the accused individual is not present (International Bar Association, 2016). In international criminal justice, there are not that much trials in absentia, which is mainly due to the issues relating to compliance with

²⁸ Art. 131 DCC

²⁹ Art. 132 DCC

international human rights as the International Covenant on Civil and Political Rights states in its Article 14 that individuals have the right to be tried in their presence (International Bar Association, 2016). Trials in absentia can help states to gather evidence for the conviction as soon as possible and when the individual returns, it will immediately face the prosecution and sentence. However, Soeteman (2017) states that the right to be present at a trial and to receive a fair trial is one of the most important ones for a suspect. The notion of fair trial and right to be present³⁰ is laid out in the European Convention of Human Rights (ECHR). Soeteman (2017) argues that people have the right to be present at their trial, even suspects of terrorism. For this principle, it can be said that the impact of international and European instruments is not that influential, as trials in absentia are present in the Netherlands, as long as they comply with human rights standards.

Eventually, in the Context trial of December 2015, nine individuals have been prosecuted. The sentences range from 7 days in prison, which is for one inciting message, to 6 years imprisonment for travelling to Syria to take part in the violent conflict, committing terrorist offences, participating in a terrorist organisation and distributing inciting materials ("ECLI:NL:RBDHA:2015:14365," 2015). These sentences have been based on the Dutch Criminal Code without much influence of international and/or European instruments as these only gave minimum or maximum guidelines on sentences (European Parliament, 2017) or stated that the matter should be penalized in a matter duly reflecting the seriousness of the offence (United Nations Security Council, 2014b). However, there are still challenges that remain for courts, because the jurisprudence is still limited, as not that many cases have been handled yet. Furthermore, there are difficult elements to consider, such as the principle of fair trial and terrorist intent.

Another person that came in sight of the Dutch authorities regarding the Context investigation was Maher H. He was the first Dutch returning Foreign Fighter that was convicted by the courts ("Prosecutor v. Maher H.," 2014). He was found guilty of preparing to commit murder and manslaughter with terrorist intent ("Prosecutor v. Maher H.," 2014), because he had travelled to Syria and had participated in the violent conflict. Furthermore, he was found guilty of disseminating inciting materials in which he called upon people to participate in the conflict ("Prosecutor v. Maher H.," 2014). The District court sentenced him with 3 years imprisonment, but he appealed the decision. Then the Court of Appeal ruled that he should get 4 years in prison

³⁰ Art. 6 ECHR

and additionally ruled that he actually trained for terrorism because he had bought outdoor wear, visited websites about jihad, put photos with Kalashnikovs online, and that he had travelled to Syria ("Prosecutor v. Maher H.," 2014).

III. Conclusion

Certain provisions related to terrorist offences and offences for terrorist purposes have been incorporated into Dutch legislation for quite some time. However, the true impact of international and European instruments on decisions and judgements is not that big, as most of the provisions are translated and somewhat changed into the Dutch Criminal Code. Therefore, the latest law and policy developments have not been such an added value for judges, as most of the provisions were already present in the Netherlands. Besides this, due to different instruments and strategies created, such as the Comprehensive Action Programme to Combat Jihadism, new measures and practices have been created. This all to better address the problem of radicalization on different levels and to go against terrorism. However, there is not that much to find yet on the application of these (administrative) measures. In the Context trial, the court has given an extensive verdict on the evidence and their decisions, which has created some opportunity for more trials related to Foreign Fighters and returnees, as this can provide for examples. However, it is still hard for courts to make decisions on where the borderline or threshold lies, because there is not that much jurisprudence on the issues and use of articles yet. The court thus faces several challenges when convicting FTFs and returnees, including the challenge on revoking citizenship or trials in absentia.

6. Conclusion

This thesis was created by the researcher with the aim of answering the following main question:

To what extent does European and international law influence the law, policy and practice regarding returning Foreign Fighters in the Netherlands?

With this, the researcher wanted to investigate the Foreign Fighter phenomenon and to what extent this is present and tackled at different levels. This last chapter will give a summary of the findings in the different chapters relating to the different sub-questions, as stated in the first chapter. On the basis of these main findings, it will provide an overall conclusion for the thesis. In the end there will be some further suggestions and implications for the influence of multi-level governance on returning Foreign Fighter policy and practice.

I. Main findings of partial conclusions

The first level addressed was the international level, which has shown that the Foreign Fighter phenomenon is a global issue and therefore international measures are needed. It found that there is not one clear profile of an FF and therefore measures taken need to address various areas and offences. Different legislative pieces leave substantive authority for states in implementing and shaping the policies in their countries relating to FFs and returnees due to broad and abstract concepts and measures. The third chapter went on with the following level, the European one. This discussed that the crime-terror nexus is very much present nowadays and that prisons are possible incubators for radicalization. Here for, measures need to be taken in order to prevent further radicalization. A lot has been done in criminalizing different offences as terrorist, only the specific implementation and enforcement is left. Chapter 4 discusses the phenomenon at the Dutch level, which promotes a multidisciplinary and comprehensive approach. However, this remains difficult due to a variety of FTF profiles and a lack of a platform for discussion and information exchange. The last chapter has investigated the application of various legislative and policy matters to the practice in different FTF cases. It found that there is not that much jurisprudence yet, but that courts have successfully convicted different FTFs and returnees but that several challenges remain for courts.

II. Main conclusion

Multi-level governance is very much present in the phenomenon of Foreign Fighters nowadays because the issue exists globally and therefore measures are needed on the international level, as well as regional, national and local levels in order to tackle the problem. It was found that there is not one specific profile of a Foreign Fighter, which leads to a difficulty in creating an approach, as the circumstances will differ. Further, radicalization can be present at different levels of an individual's environment and can therefore influence a person in different ways. This is one of the concerns which makes it hard for states to address Foreign Fighters and especially returnees, because there is not one approach that can be applied to all as it will not work the same in every case. However, multi-level governance and policies are not useless because of the fragmentation, as in multi-level governance there is not one actor that has all the decision-making powers and therefore cooperation between actors will lead to a more effective and comprehensive approach.

Internationally, the United Nations have created different instruments on Foreign Fighters, prevention and criminalization of FFs that are urged to be implemented by states. The Resolutions of the UNSC criminalize certain offences as terrorist and call upon states to implement these into their domestic legislation for them to prosecute FFs and returnees based on these offences. Besides this, the UN level created global watch lists, on which countries could put people known and suspected of terrorism in order to acknowledge these persons globally. At the international level, a central government approach is demanded with room for civil society organizations, therefore making the approach multidisciplinary as cooperation is needed. The GCTF was created as a global platform for discussion and it provides states with further guidelines on implementing international instruments. Most of the measures at the global level are very broad and abstract as they need to be applied on an international scale. Furthermore, because most international instruments are non-binding, they do not put specific obligations for states. However, this leaves room for implementation for decision-makers as measures are very general and there is no specific obligation to implement these. This can lead to more fragmentation in states, as differences can exist, and rules may be unclear.

In Europe, special attention is regarded to the crime-terror nexus, as nowadays, more individuals that were previously convicted become terrorists which is dangerous. Therefore, states need to prevent further radicalization in prisons. Instruments at this level also provide offences marked as terrorist to be criminalized and call for increased information sharing, also with third countries. In this case, there is also room for the EU to create instruments, strategies

and measures to help the implementation and enforcement in states, as long as this is done in line with the principle of proportionality. Therefore, there is some more room for direct involvement of the EU in domestic matters, but only to the extent of reaching the goal, which is preventing and combating terrorism and especially Foreign Fighters. Besides this, the EU Directive 2017/541 that criminalizes specific terrorist offences for member states to implement, falls for the most extent together with the UNSC Resolution 2178. This is due to the fact that the EU engages with the UN and further wants to tackle global challenges. The Directive provides some room for interpretation for states, because directives need to be incorporated, but there are no hard rules on how the measures should be implemented. This can lead to differences between member states, and to possible fragmentation. However, the European level also calls for better partnerships with local authorities, which can partly get authority.

Domestically, in this case in the Netherlands, different instruments and strategies are created to combat terrorism and Foreign Fighters, which are in a way the same as ones created in the EU. For instance, the Dutch Comprehensive Action Programme to Combat Jihadism has set out different measures in order to address FFs and returnees and to prevent radicalization from happening. This has led to further measures adopted in relation to the revocation of Dutch citizenship and administrative measures as travel bans. Besides this, the Dutch Counterterrorism Strategy lies out the plan of action against terrorism and with this focuses on a comprehensive and multidisciplinary approach. In the Netherlands, there have been cases in which Foreign Fighters and returnees have been convicted for their acts in relation to the conflict in Syria and terrorism. However, the courts face certain challenges with addressing these individuals, because there usually is a lack of information and uncertainty about the actions of the FFs in the conflict zone. Besides, there are difficult aspects to prove for prosecutors or to find enough evidence for, such as the notion of terrorist intent, which in line with Dutch law, can lead to higher sentences.

Now the answer to the main question will be presented. It was found that the international level primarily influences EU and domestic law and policy. This because it sets standards for the legislation and practice of states that need to be incorporated, but it does not provide the instruments that are directly applicable to returning Foreign Fighter cases. It states the offences to be criminalized, but these need further implementation in order to be applied. For the European level, it can be said that besides putting forward instruments that need to be incorporated, it also influences the domestic practice. This because the EU has certain legislative and decision-making powers to regulate and create measures themselves, as long as

this is proportionate to the goal of addressing Foreign Fighters and returnees. For the domestic level, the Netherlands, this means incorporating the measures at the different levels, but these still provide leeway for their implementation because of broad- and abstractness. Therefore, the Netherlands can create an approach that fits their domestic system and strategy. From a policy approach, it can be said that among states, there will be more coherence because the framing of policies will be the same in different countries, as they stick to and need to incorporate multi-level measures. The only thing that changes per state are the national priorities and programs which can create different directions within the strategies or instruments. From a criminal law perspective, it can be concluded that there will be some fragmentation, especially towards returnees, but some elements related to preventing or blocking returnees are included in other measures. Also, there is not that much multi-level influence in the application of legislation and policies towards accused. However, this does necessarily need to be bad, because the Netherlands has room in creating its approach and needs to incorporate all levels, even the local level, in enforcing a comprehensive but multidisciplinary approach.

III. Future research

In this issue, there are some improvements possible in the approaches or measures set out at different levels. First of all, there is a classic dilemma of multi-level governance or a competence problem. This has to do with the absence of a platform of discussion and cooperation on different levels in which different fields can come together. In all instruments it is put forward that it is important that there is such a platform for discussion and sometimes this is created by an organization, such as the GCTF. However, it is also urged that domestically, there is a strong partnership with the local levels. This is even urged in the Dutch Counterterrorism Strategy. However, in every case, it is not clear on which level or how this cooperation and discussion should be done. Therefore, there is improvement possible in creating a platform, agency or organization in which the different levels and institutions can come together and discuss the issues.

Furthermore, the local level an important actor in discovering radicalization as they can find the breeding grounds way sooner and can cooperate with local actors to prevent the (further) radicalization of individuals. Besides this, local players can be important factors in the reintegration process of FFs and returnees, as they can work together with civil society institutions in the local environment to create an approach fitting to the person. This cooperation

and importance are somewhat mentioned in certain instruments, also in Dutch ones, but it can be made more explicit or prominent, as the importance of the role can be determining.

Then, there is improvement possible in guiding the implementation and enforcement for states as there is leeway for them in implementing the measures created at different levels because these are either very broad, not strictly applicable or non-binding. This can be done by creating a strategy or guidelines on how the implementation should be done in line with the end goal of addressing Foreign Fighters and returnees in a multi-level context.

Another matter that can be thought of in order to create a better approach towards the transnational problem is the usage of operational cooperation among the different levels. In operational cooperation there is cooperation among states and law enforcement authorities in order to commonly approach the law enforcement, in this case against Foreign Fighters and returnees. This form of cooperation is multi-level and cross-border as different levels and authorities need to interact and cooperate in order to better address the problem. Further research on how to incorporate operational cooperation in the context of Foreign Fighters is needed, but it can certainly be a possibility for better and more comprehensive, thus less fragmented, approach towards the phenomenon.

With these measures taken regarding Foreign Fighters and returnees, there is an impact on the human rights of all the people in the states affected. This because criminalization on a global scale will have an influence on the human rights protection internationally. All instruments discussed urged that the implementation of measures should be in line with human rights legislation and policies. The FF and returnee phenomenon are present on a global scale and measures are taken that restrict certain freedoms, also the ones of people in the state they return to. For instance, the government, police, security services, and law enforcement authorities will try to collect more data on suspected travellers. However, this will conflict with the right towards privacy and will furthermore have an impact on other people in the state, also ones that are not even affected with FFs, as their data can be collected too. Besides this, certain provisions can pose challenges regarding the protection of human rights in prosecution. An example is the trial in absentia, as this conflicts with the right to have a fair trial. The FF phenomenon and its implications on human rights needs further and deeper investigation and possibly measures should be adapted in order for them to be in line with human rights legislation.

Lastly, it can be concluded that the Foreign Fighter phenomenon is an on-going and continuously changing issue and therefore new strategies and policies will be developed and

implemented. Furthermore, there will be more cooperation, internationally as well as locally, but it remains hard to see the actual influence of these. Furthermore, it remains unclear to generally see which measures that are taken and how these have been influenced. Therefore, further research could be improved by taking more time to delve into the problem and measures taken and to reflect on approaches of different member states to see the implementation of different instruments. Besides this, due to the developing character of the phenomenon, further research can be done on new issues regarding the issue or new measures taken.

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Appendix

Notes

- 1 Definition of radicalization by Schmid (2013): “an individual or collective (group) process whereby, usually in a situation of political polarisation, normal practices of dialogue, compromise and tolerance between political actors and groups with diverging interests are abandoned by one or both sides in a conflict dyad in favour of a growing commitment to engage in confrontational tactics of conflict-waging. These can include either (i) the use of (non-violent) pressure and coercion, (ii) various forms of political violence other than terrorism or (iii) acts of violent extremism in the form of terrorism and war crimes. The process is, on the side of rebel factions, generally accompanied by an ideological socialization away from mainstream or status quo-oriented positions towards more radical or extremist positions involving a dichotomous world view and the acceptance of an alternative focal point of political mobilization outside the dominant political order as the existing system is no longer recognized as appropriate or legitimate.” (Schmid, 2013).

Table 1: Implementation of programs/strategies/measures in the Netherlands

In the table, certain links, relationships and references are made to instruments either in the table or discussed in the thesis. This to show the relationship and development of laws, policies and strategies. These links are made in bold.

	Goal/purpose/objective	Measures proposed	Actual laws passed related to these measures
UNSC Resolution 2178 (2014)	Express concern about terrorism and Foreign Fighters and reaffirm that states should take measures against terrorism and FFs	States criminal offences to be established in domestic legislations as terrorist: Travel or attempt to travel for purpose of terrorism or providing or receiving terrorist training Wilful provision or collection of funds for terrorist purposes Wilful organization or other facilitation of the travel for terrorism (EU Dir. 2017/541 art. 3-12)	These measures were already present (Bulletin of Acts and Decrees 290 2004) or have become present in the Dutch Criminal Code (DCC art. 134a, 205, 131, 132, 140, 140a) and with this the Netherlands complies with the resolution as it has implemented the measures and applies these in concrete cases against Foreign Fighter and returnees. The Netherlands is co-chairing the GCTF, which provides international assistance in implementation in line with the Resolution
GCTF The Hague-Marrakech Memorandum on Good Practices	Inform and guide governments as they develop policies, programs, and approaches to address the FTF phenomenon	Against violent extremism: Create proactive counter-narratives (UNSC R2178 art. 16) Not identifying FTFs with any religion, culture etc.	Many of these recommendations can be seen in the UNSC Resolution 2178, such as controls on borders and travel documents (UNSC R2178 art. 2), cooperation

		<p>Against recruitment: Build community awareness Information sharing among different levels (UNSC R2178 par. 19)</p> <p>Against travel and fighting: Sensitive law enforcement and intelligence information Appropriate legal regimes and administrative procedures Screening measures (UNSC R2178 art. 3) Prevent misuse of travel documents (Comp. Action Program 2014 measure 7 and 15)</p> <p>Upon return: Range of information sources to anticipate and detect returnees Individual-level risk assessments (NL CT Strategy, Comp. Action Program 2014 measure 26) Update legislation regarding criminalizing recruitment of FTFs and participation in terrorist activities (UNSC R2178 art. 6 and EU Dir. 2017/541 art. 3-12) Comprehensive reintegration</p>	<p>between different levels (UNSC R2178 art. 11) and countering violent extremism (UNSC R2178 art. 15 and 16). However, it remains difficult to see to what extent these good practices are implemented.</p>
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		programs (UNSC R2178 art. 4)	
Council of Europe Additional Protocol to the Convention on the Prevention of Terrorism (Riga Protocol)	Supplement provisions in the CoE Convention on the Prevention of Terrorism regarding the criminalization of acts and the negative effects of terrorism on the full enjoyment of human rights	Criminalization of following acts: Participating in an association for the purpose of terrorism Receiving training for terrorism Travelling abroad for terrorism Funding travelling abroad for terrorism Organizing or otherwise facilitating travelling abroad for terrorism (UNSC R2178 art. 6 and EU Dir. 2017/541 art. 3-12) Timely exchange of information between parties	Has been signed, so there is the political commitment. Has not been ratified yet in the Netherlands, but the criminal offences are incorporated into Dutch legislation via UNSC R2178 and EU Directive 2017/541 and therefore there is no direct need to ratify.
European Union Counter-Terrorism Strategy	Fight terrorism globally and make Europe safer.	Prevent: Addressing causes of radicalization and terrorist recruitment. EU strategy for combating radicalisation and recruitment to terrorism in 2008. Protect: (Comp. Action Program 2014 measures 7, 14,15) Securing external borders Securing transport Passenger Name Record (PNR) (GCTF GP 12, 13) Pursue: Strengthen national capabilities	Directive 2017/541 art. 3-12: criminalizing the following offences as terrorist: Public provocation to commit a terrorist offence Recruitment for terrorism Providing training for terrorism Receiving training for terrorism Travelling for the purpose of terrorism Organizing or otherwise facilitating travelling for the purpose of terrorism Terrorist financing

		<p>Fight against terrorist financing (EU Dir. 2017/541 art. 11)</p> <p>Improving cooperation and information exchange between police and judicial authorities (NL CT Strategy)</p> <p>Depriving terrorists of means of communication and support</p> <p>Respond: Preparing and managing the consequences of an attack EU crisis coordinated response Risk assessment tools (Comp. Action Program 2014 measure 34) Civil protection mechanism</p> <p>Effective counter-terrorism policy integrating the internal and external aspects → cooperate with third countries (Comp. Action Program 2014 measure 36-38)</p>	
Action Plan Counter-Terrorism and Security 2001	Preventing acts of terrorism	<p>Prevention: Increase of size and cooperation security agencies Increased control of borders and passports (Comp. Action Program 2014 measure 15)</p>	Amendment of Passport Act (Comp. Action Programme measure 15)

		<p>Detection: Expansion of capacity for police to detect terrorism (EU Dir. 2017/541 par. 21) Expansion of biometrics to detect persons earlier More rights in tapping telephones and achieving access (EU Dir. 2017/541 par. 21)</p> <p>Financial integrity: Better monitoring of financial transactions Financial policing</p> <p>Defence</p> <p>The Netherlands needs to ratify international and European treaties quickly</p>	
Bulletin of Acts and Decrees 290 2014	Amend and supplement the Penal Code and some other laws in connection with terrorist crimes (Crimes of Terrorism Act)	<p>Notion of terrorist intent/objective (DCC art. 83, 83a and EU Dir. 2017/541 par. 17) Criminalize following offences as terrorist: Financing or facilitating for terrorism (EU Dir. 2017/541 art. 11 and Riga Protocol art. 5) Participating in a terrorist organization (UNSC R2178 par. 12, EU Dir. 2017/541 art. 4 and DCC 140, 140a)</p>	All these measures have been incorporated in the Dutch Criminal Code and can therefore be applied in court cases Some measures, such as public provocation were already incorporated

		Recruitment for terrorism (UNSC R2178 art. 6c, EU Dir. 2017/541 art. 6 and DCC 205)	
Comprehensive Action Programme to Combat Jihadism 2014	Threat posed by global jihadism calls for a comprehensive programme to combat and counter jihadism.	<p>Risk reduction regarding jihadist travellers:</p> <p>1: Departees who join terrorist militias subject to criminal investigation</p> <p>3c: Long-term, behaviour-influencing and custodial measure for hospital order patients and sex and violent offenders</p> <p>4: Dutch nationals stripped from nationality when joining terrorist militias</p> <p>11: Administrative measures for risk reduction of travellers → temporary measures (GCTF GP 11, 13)</p> <p>13: Exit facility in the Netherlands (EU CT Strategy)</p> <p>7+15: Travel documents declared invalid (GCTF GP 13)</p> <p>Travel interventions:</p> <p>14: In case of a reasonable suspicion of departure, penal actions are taken (EU CT Strategy and NL CT Strategy)</p> <p>Radicalisation:</p>	<p>3c: Legislative proposal 33 816 → longer and better supervision on rehabilitation and changing behaviour.</p> <p>4: amendment Dutch Nationality Act (Article 14, 2b)</p> <p>11: Interim Administrative Measures Act of 2017 → restraining order, banning order or temporary reporting to authorities</p> <p>18: Dutch Criminal Code 205 and 134a (UNSC R2178 art. 6c and EU Dir. 2017/541 art. 6)</p> <p>29: draft bill on Computer Criminality III</p> <p>34: A legislative bill will be submitted in order to create a legal basis that would allow the collection of reservation and check-in information from the aviation industry</p>

		<p>18: Criminal law intervention in case of recruitment</p> <p>20: Facilitators and distributors of jihadist propaganda are disrupted in their activities</p> <p>Social media and the internet:</p> <p>29: Combating the dissemination of radicalising, hatred-inciting and violent jihadist content. (EU Dir. 2017/541 par. 22)</p> <p>Information exchange and cooperation:</p> <p>34: Improving detection of jihadists travel movements (UNSC R2178 art. 15, EU Dir. 2017/541 art. 20 and EU CT Strategy)</p>	
National Counterterrorism Strategy 2016-2020	Comprehensive approach with an emphasis on preventive, repressive and curative measures with five areas of intervention. (EU CT Strategy)	<p>Procure:</p> <p>Direct information-gathering (GCTF GP 17)</p> <p>Contextual information</p> <p>Prevent:</p> <p>Preventing recruitment by intervening in the process at an early stage → cooperation with different partners (UNSC R2178 art. 15 and EU CT Strategy)</p> <p>Freeze assets of terrorists in order to</p>	<p>New laws between 2004-2009 prohibit engaging in preparations for an act of terrorism or participating in terrorist training, examining witnesses without revealing identity, increased options for investigating and prosecuting terrorist offences</p> <p>2013: DCC terrorist financing criminal offence (EU Dir. 2017/541 art. 11,</p>

		<p>combat terrorist financing Prevent travel (EU Dir. 2017/541 art. 11 and Riga Protocol art. 5) Disrupt terrorist networks</p> <p>Protect: Physically protecting national security → proportional security measures Protecting civil aviation → security checks, focus on automated services (UNSC R2178 art. 9) Cybersecurity → Terrorist Threat Assessment for the Netherlands (DTN) and the National Cybersecurity Assessment (CSBN) (EU Dir. 2017/541 par. 22)</p> <p>Prepare: Monitoring Crisis scenarios Renegade procedure (signed but not ratified)</p> <p>Pursue: (GCTF GP 6) Proactive intervention to prevent attack → part of intervention strategy Legal instruments used for CT (2004-2009) (GCTF GP 11)</p>	<p>Riga Protocol art. 5 and DCC 421)</p>
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		Periodic assessments conducted to look for additional policy measures in order to maintain set level by fixed and flexible measures	
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