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**From Girls to Women**  
**Are (Minor) Female Foreign Fighters Child Soldiers or**  
**Jihadi Terrorist Brides?**  
**(A Legal Analysis of the United Kingdom's and Aus-**  
**tria's State Responses to this Phenomenon)**

**Author: Mag. Tamara Siwczyk**  
Supervisor: Dr. Kathleen Cavanaugh

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**Author:**

Mag. Tamara Siwczyk

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Prof. Siobhan Mullally

**Thesis supervisor:**

Dr. Kathleen Cavanaugh

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## **Abstract**

This thesis aims to provide a comprehensive analysis of a gendered perspective on the phenomenon of (former minor) foreign fighters who joined the so called Islamic State on an unprecedentedly large scale.

In the recent years, political discourse in the public domain in Western Europe has generated great interest not only in the phenomenon on foreign fighters but also in the so called 'jihadi brides'.

This thesis provides historical and political backdrop on the general phenomenon of foreign fighters and the rise of the terrorist organisation ISIS in the context of the outbreak of the Syrian civil war.

In concreto, the present paper provides an insight into the highly complex legal, sociological, and political issues of female children that flock to ISIS in Syria and Iraq. Drawing on the state practices and general western media coverage on those girls and young women, this thesis offers the theoretical framework within which to analyse how gender plays into counterterrorism strategies and how the gender and child-soldier perspectives are often overlooked.

The legal (national and international) obligations of the respective states in relation to the contemporary phenomenon of foreign fighters are explored, and against this backdrop this thesis examines whether the actual states' responses and practices are in accordance with said obligations.

To this end, this thesis analyses the case studies of the former UK citizen Shamima Begum and the two Austrian citizens Sabina Selimovic and Samra Kesinovic. Finally, the paper probes various narratives argued from the general state (security) perspectives to address the issue of foreign fighters and ask whether there is a possible solution to the question of (prospective returning) foreign fighters.

## 1. Introduction

Since the outbreak of the civil war in Syria in 2011, Europe has been confronted not only with the emergence of the new terrorist group that called itself the Islamic State in Iraq and Syria, but also with the phenomenon of European foreign fighters who voluntarily migrated to the conflict to join various insurgency groups. Most of those fighters travelled to the conflict to become ISIS members. While the phenomenon of foreign fighters is not itself unprecedented, it has ushered in a new wave of foreign fighters equipped with several new features.

According to a recent study from 2018 by the Egmont Institute, an estimated 5,000 adults and children from Europe have flocked to ISIS since 2012. Out of these 5,000 foreign fighters, around 1,500 are estimated to have returned to their respective home countries in the past years.<sup>12</sup> In parallel, the European polity has been shocked by a number of terrorist attacks by ISIS (conducted by their operative personnel or inspired by ISIS) on European Union soil in the recent years. Though only a small number of those terrorist incidents were perpetrated by (or with contributions from) foreign fighters returnees, each of these attacks was indubitably one too many.

In 2014, the first terrorist attack on European soil which involved a foreign fighter veteran was perpetrated by a French national returning from the civil war in Syria. His attack on the Jewish museum in Brussels left four people dead.<sup>3</sup> The most tragic coordinated attacks followed a year later, in November 2015, in Paris, and were conducted by an operational group of nine individuals. Of

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<sup>1</sup> T. Renard and R. Coolsaet, 'Returnees: Who are they, why are they (not) coming back and how should we deal with them? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands', *Egmont Paper 101 published by Egmont - The Royal Institute for International Relations*, 2018, p.3 [http://www.egmontinstitute.be/content/uploads/2018/02/egmont.papers.101\\_online\\_v1-3.pdf?type=pdf](http://www.egmontinstitute.be/content/uploads/2018/02/egmont.papers.101_online_v1-3.pdf?type=pdf), (accessed on 30 May 2019).

<sup>2</sup> It has to be noted upfront, that all numbers mentioned in relation to foreign fighters have to be regarded with extreme caution since they are estimates and might deviate from one another due to several factors. Some numbers refer to different years, the accuracy of figures might sometimes deviate from country to country and some statistics as based on different definitions of foreign fighters. Notwithstanding this deviations and level of imprecision, the author has chosen to mainly adopt the numbers and statistics by the Soufan Centre and the Egmont Institute since they are based on current data and a largely consistent.

<sup>3</sup> Europol, 'TE-SAT 2015', *The European Union Terrorism Situation and Trend Report*, 2015, p.5 <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-2015>, (accessed on 20 May 2019).

these nine, seven were later identified as returning foreign fighters, who were French and Belgium citizens.<sup>4</sup>

In May 2017, visitors of a pop concert in Manchester were attacked by a suicide bomber, who had received training by ISIS supporters in Libya prior to his return to his country of origin, the UK.<sup>5</sup>

On the one hand, the general European public was appalled by the mere fact that European citizens and individuals who had their habitual residence in Europe would voluntarily follow the call of jihad and join a terrorist group such as ISIS, which made headlines through their use of aggravated cruelty against their enemies, such as beheadings or sexual slavery.<sup>67</sup>

On the other hand, there is another reason why the phenomenon of foreign fighters has frightened the polity, namely, the fear that more terrorist plots such as the Paris attacks might follow. It also explains why dealing with this issue is salient for Europe's counter terrorism strategy. Many European countries are therefore faced with the challenge of adequately assessing the threat posed by returning foreign fighters, and with the question of which states' responses will prove effective to diminish the threat.

The purpose of this essay is to examine, if European states frame an one-dimensional picture of foreign fighters and if 'one-fits-all' approach will prove effective and is in accordance with international human rights.

Therefore the research question reads as follows:

- Are European states identifying nuanced aspects of the different types of foreign fighters?
- Are they subsequently capable of applying counter terroristic measures appropriately considering the extent of gender-specific and age-related vulnerabilities in relation to minor female foreign fighters?

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<sup>4</sup> R. K. Cragin, 'The November 2015 Paris Attacks: The Impact of Foreign Fighter Returnees', *Orbis*, Volume 61, Issue 2, 2017, p. 218.

<sup>5</sup> R. Barrett, 'Beyond the Caliphate - Foreign Fighters and the Threat of Returnees', *Report by the Soufan Center*, 2017, p.15, <https://thesoufancenter.org/wp-content/uploads/2017/11/Beyond-the-Caliphate-Foreign-Fighters-and-the-Threat-of-Returnees-TSC-Report-October-2017-v3.pdf>, (accessed on 4 June 2019).

<sup>6</sup> BBC, 'James Foley: Islamic State militants 'behead reporter'', *BBC*, 20 August 2014, <https://www.bbc.com/news/world-middle-east-28862268>, (accessed on 13 July 2019).

<sup>7</sup> S. El-Masri, 'Prosecuting ISIS for the sexual slavery of the Yazidi women and girls', *The International Journal of Human Rights*, Volume 22, Issue 8, pp. 1059-1060.

Since this is a highly complex topic, the present paper exclusively examines two state practices in detail against the backdrop of these states' international (and national) human rights obligations. These two countries are Austria and the United Kingdom.

This thesis delves into a normative debate regarding the practice and legitimacy of denationalisation through depriving an individual of their citizenship while at the same time acknowledging that states have other means with which to tackle the issue of their returning foreign fighters, which is addressed subordinately.

The intention is to first provide the reader with the main legal obligations of the respective states concerning the right to nationality, its deprivation, and the right to return. Though it is part of the sovereign prerogative to strip its citizens of their nationality, states must nevertheless comply with international and national human rights law, and their powers are therefore subject to legal limitations.<sup>8</sup>

Second, this paper examines whether state responses by the UK and Austria to the recently emerged phenomenon of foreign fighters is in accordance with the international, regional and national legal obligations. This is done by using three case studies, introduced below, as a prism through which to evaluate this question.

The United Kingdom was chosen as one of the two states to be studied in the present paper, since it is the country with the second highest total numbers of foreign fighters flocking to ISIS-controlled territories.<sup>9</sup> Another pertinent factor for the selection of the UK was the fact that it has already deprived a relatively large number of its dual nationals from their citizenship as a counterterrorism measure in recent years.<sup>10</sup> In particular, the United Kingdom has deprived the case study of this paper, namely, Shamima Begum, of her British citizenship, which rendered her de facto stateless.<sup>11</sup> This paper thus examines the lawfulness of this act.

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<sup>8</sup> S. Mantu, "Terrorist" citizens and the human right to nationality', *Journal of Contemporary European Studies*, Volume 26, Issue 1, 2018, p. 29.

<sup>9</sup> Barrett, 'Beyond the Caliphate - Foreign Fighters and the Threat of Returnees', p.13.

<sup>10</sup> L. Zedner, 'Citizenship Deprivation, Security and Human Rights', *European Journal of Migration and Law*, Volume 18, Issue 2, 2016, p. 231.

<sup>11</sup> K. Rawlinson and V. Dodd, 'Shamima Begum: Isis Briton faces move to revoke citizenship', *The Guardian*, 19 February 2019, <https://www.theguardian.com/world/2019/feb/19/isis-briton-shamima-begum-to-have-uk-citizenship-revoked>, (accessed on 5 July 2019).

For this study, Austria was chosen as the second country, because, first, its denationalisation legislation differs from that of the UK and, second, Austria is following another path in its state's response in general.

Austria was also selected because, interestingly, after Belgium, it is the EU country with the second highest ratio of foreign fighters per capita. This comes from a report by the Soufan Center, which estimated that in 2017 about 150 individuals from Austria remained in the conflict zone.<sup>12</sup>

This is backed up by newest number released by the Austrian Federal Ministry of the Interior from 2019, according to which about 100 foreign fighters remain in the Levante and Iraq. Of these, an estimate of 30 are said to be Austrian citizens.<sup>13</sup>

Thus, the present thesis aims to fill a research gap in the context of (female) foreign fighters from Austria, since there is a relative scarcity of (gendered) academic literature on this topic. Furthermore, it appears highly important to contribute to the respective research in Austria concerning the relatively high numbers of foreign fighters that left the country.

The state responses are examined in relation to three very specific cases of young women who travelled to Syria to join ISIS as children. The case studies involve the former British citizen Shamima Begum and two Austrian women, Sabina Selimovic and Samra Kesinovic, who left their respective countries at the ages of 15 and 16 years, respectively, to join ISIS and were (most likely) married upon their arrival in the so-called caliphate.<sup>14</sup>

They left for Syria in 2014 and 2015, respectively, which effectively means that they have now reached adulthood, provided that they are still alive.

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<sup>12</sup> Barrett, p.12.

<sup>13</sup> APA, 'Hin und Her um österreichische IS-Frau und ihr Kind', *Der Standard*, 9 April 2019, <https://next.der-standard.at/story/2000101088422/anwalt-oesterreichische-is-sympathisantin-in-syrien-will-zurueck>, (accessed on 25 June 2019).

<sup>14</sup> APA, 'US-Anti-Terror-Experte: Ein Wiener ‚Jihad-Mädchen‘ tot', *Der Standard*, 17 December 2014, <https://www.derstandard.at/story/2000009512269/un-anti-terror-experte-ein-wiener-jihad-maedchen-tot>, (accessed on 3 July 2019).

While Shamima Begum is known, with some notoriety, to be alive and residing in a Kurdish-run refugee camp in Syria, where she was found by the British media, namely, *The Times* reporter Anthony Lyod and visited several times by the media, it remains unclear whether Selimovic and Kesinovic remain alive.<sup>15161718</sup>

This paper delves into the challenges of identifying women's unique gendered motivations for joining terrorist groups in general, as well as the need for greater recognition of their agency on the one hand and the recognition of the unique threat they might pose upon their return on the other. Additionally this thesis raises the question of whether the legal definition 'child soldier' is fitting for these girls, given that they were recruited by ISIS as minors and, if so, why states do generally not apply this term in relation to this phenomenon.

In the context of minority this thesis evaluates whether the three case studies presented in this paper are able to exemplify the victimhood of gender-specific exploitations by ISIS.

Finally this thesis examines the situations in which these women (and their offspring) find themselves today, and, by comparing these two states' legislation and responses, this research addresses the crucial question of whether these result in different outcomes for the foreign fighters in question.

While the public political debate on the phenomenon of foreign fighters is strongly based on the struggle between national security versus human rights of foreign fighters, this thesis aims to show that this struggle should not be fought at the expense of one or the other. Furthermore, it intends to demonstrate that this waging of 'our' rights against 'their' rights creates a false dichotomy of a black-and-white struggle.

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<sup>15</sup> A. Loyd, 'Shamima Begum: Bring me home, says Bethnal Green girl who left to join ISIS', *The Times*, 13 February 2019, <https://www.thetimes.co.uk/article/shamima-begum-bring-me-home-says-bethnal-green-girl-who-fled-to-join-isis-hgvqw765d>, (accessed on 23 June 2019).

<sup>16</sup> A. Sehmer, 'Isis teen 'poster girl' Samra Kesinovic 'beaten to death' as she tried to flee the group', *Independent*, 25 November 2015, <https://www.independent.co.uk/news/world/europe/isis-teenage-poster-girl-samra-kesinovic-beaten-to-death-by-group-as-she-tried-to-flee-killings-a6747801.html>, (accessed on 23 June 2019).

<sup>17</sup> APA, 'Stadt Wien prüft, ob Großmutter ihre Enkel aus Syrien zurückholen darf', *Der Standard*, 29 May 2019, <https://next.derstandard.at/story/2000104026881/stadt-wien-prueft-ob-grossmutter-ihre-is-enkel-zu-rueckholen-darf>, (accessed on 23 June 2019).

<sup>18</sup> T. Schmidinger, 'Background information on Sabina Selimovic and Samra Kesinovic' [interviewed via telephone call by Tamara Siwczyk], 27 June 2019.

This simple twofold view on the issue of foreign fighters and the negation of their wish of repatriation becomes complicated when female children flock to a terrorist organisation which not only violates their rights as children but also takes advantage of their gender-specific vulnerabilities. This is exemplified through the respective case studies of this thesis.

## **2. Historical and Political Backdrop of the Phenomenon of Foreign Fighters**

### **2.1. Foreign Fighters in the Context of the Syrian Civil War**

Since the outbreak of the civil war in Syria in the spring of 2011, citizens all over the globe have joined various actors involved the conflict, which gradually spanned over territories in Iraq as it continued.

On the one hand the conflict involved the self-proclaimed Islamic State and other Sunni factions, such as the Jabhat al Nusra (today self-styled as Jabhat Fath al-Sham), Jaish al Muhajireen wal-Ansar and the Free Syrian Army, which were partly supported by Gulf States. On the other hand, fighting on the side of the Assad régime were militant Shia groups from Lebanon, such as Hezbollah, as well as troops from Iran, Afghanistan, and Iraq.<sup>19</sup> In addition, other fighters fought for the Kurdish Peshmerga, though it should be noted that the latter category are not always included in the estimates of foreign fighters.<sup>20</sup>

The Islamic State has its roots in al-Qaeda in Iraq, and in 2006 it founded its own organisation called the Islamic State in Iraq, which remained strongly affiliated with al-Qaeda. During the civil war in Syria, it merged with various forces which were active there and became the Islamic State in Iraq and Syria around 2013, emancipating itself from al-Qaeda through this operational move. After the military consolidation of contiguous territories in the area of northern Iraq and eastern Syria, it declared the creation of its own caliphate under the name 'Islamic State' in 2014.<sup>21</sup>

Though the phenomena of foreign fighters is generally not a new one in historical terms, certain factors cause the inflow of foreign fighters from Western countries to Syria and Iraq to join ISIS stand out.<sup>22</sup> First, the number of foreign fighters who have responded to the call of jihad reached unprecedented levels compared to previous wars and conflicts in which individuals joined a fight in

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<sup>19</sup> E. Bakker, C. Paulussen and E. Entenmann, 'Dealing with European Foreign Fighters in Syria: Governance Challenges & Legal Implications' (2013) *ICCT Research Paper*, pp.2 <https://icct.nl/wp-content/uploads/2013/12/ICCT-Bakker-Paulussen-Entenmann-Dealing-With-European-Foreign-Fighters-in-Syria.pdf>, (accessed 18 May 2019).

<sup>20</sup> E. Bakker and M. Singleton, 'Foreign Fighters in the Syria and Iraq Conflict: Statistics and Characteristics of a Rapidly Growing Phenomenon', in A. de Guttery, F. Capone, C. Paulussen (eds.), *Foreign Fighters under International Law and Beyond*, The Hague: T.M.C. Asser Press, 2016, p.13.

<sup>21</sup> N. Zamir, 'The Armed Conflict(s) Against the Islamic State'; in T. D. Gill (ed.), *Yearbook of international humanitarian law. Volume 18, 2015*, The Hague, Asser Press, 2016, pp. 91.

<sup>22</sup> Bakker and Singleton, *Foreign Fighters under International Law and Beyond*, p.10.

a foreign country.<sup>23</sup> According to Feinberg's research, foreign fighters represent 15–20% of the total numbers of fighters in the war in Syria.<sup>24</sup>

The West had never before seen such rapidly growing recruitment numbers, especially with regard to women<sup>25</sup> and children who joined the jihadist terrorist group.<sup>26</sup>

Second, the logistics concerning travel to Syria (and thence to Iraq) is certainly one factor that is linked to the unprecedentedly high numbers of Western foreign fighters compared to previous conflicts in the Middle East or Asia. This also partly explains why some ISIS members managed to 'frequently travel back and forth' from Syria to Europe.<sup>27</sup>

Another reason why the recent phenomena of foreign fighters in the Levant is remarkable is the fact that the civil war in Syria rapidly developed into a proxy war in which regional powers became involved out of their own interests and benefits, which partly explains why so many non-citizens engaged in the conflict. Aside from Saudi-Arabia and other Arab Gulf States who have supported diverse sectarian Sunni fractions, countries such as Iran, Russia, and China have bolstered the Assad régime either through direct or indirect support.<sup>28</sup>

Finally the manner of recruiting the foreign fighters for the conflict in Syria and Iraq was unique, because ISIS used social media as a channel for recruitment which proved to be successful an which will be discussed in detail below.<sup>29</sup>

## **2.2. Inconsistent Terminology of the Phenomenon of Foreign Fighters**

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<sup>23</sup> Bakker and Singleton, p.13.

<sup>24</sup> A. Feinberg, 'Here We Come: The Evolution of Foreign Fighters' Flow to Syria and Iraq in 2013-2016', *ICT Research Paper*, 2017, p.7, <https://www.ict.org.il/Article/1954/the-evolution-of-foreign-fighters>, (accessed 9 June 2019).

<sup>25</sup> C. Hoyle, A. Bradford and R. Frenett, 'Becoming Mulan? Female Western Migrants to ISIS', *Report of the Institute for Strategic Dialogue*, 2015, p.8, [https://www.isdglobal.org/wp-content/uploads/2016/02/ISDJ2969\\_Becoming\\_Mulan\\_01.15\\_WEB.pdf](https://www.isdglobal.org/wp-content/uploads/2016/02/ISDJ2969_Becoming_Mulan_01.15_WEB.pdf), (accessed on 7 June 2019).

<sup>26</sup> A. Athie, 'The Children of ISIS Foreign Fighters: Are Protection and National Security in Opposition?'

<sup>27</sup> L. Vidino, 'European foreign fighters in Syria: dynamics and responses', *European View*, Volume 13, Issue 2, 2014, p. 221.

<sup>28</sup> Bakker and Singleton, pp.19.

<sup>29</sup> A. Aly, S. Macdonald, L. Jarvis & T. M. Chen, 'Introduction to the Special Issue: Terrorist Online Propaganda and Radicalization', *Studies in Conflict and Terrorism*, Volume 40, Number 1, 2017, p. 2.

It is essential to understand that this thesis does not address so-called Lone Wolf terrorism, which concerns attacks that have been perpetrated by 'unaffiliated individuals and small cells' which were inspired by ISIS and must be distinguished from foreign fighters.<sup>30</sup> While the Islamic State frequently claimed responsibilities for these terrorist plots, the individuals who perpetrated them never travelled to the ISIS-controlled territories to receive training or other forms of support and acted without directions from ISIS.<sup>31</sup>

Another group which is not addressed in this paper, since they do not fall under the definition of foreign fighters but are rather given the terminology 'wannabe foreign fighters' are individuals who attempt to travel to the conflict zone but fail to do so.<sup>32</sup> The reasons for failing can be either because their imminent departure was disrupted before they journey began or because they were held up in a transit state and never reached Syria or Iraq.<sup>33</sup>

Various terms describe the phenomenon of individuals flocking to join groups in armed conflicts, such as 'foreign fighters', 'foreign terrorist fighters', 'foreign rebel fighter', 'foreign jihadist fighter', 'mujahidins', and 'transnational insurgent', among others. According to Bakker and Singleton the adjectives added to the first term are oftentimes used to describe certain organisations or categories of groups.<sup>34</sup> This effectively means that certain terms might relate to different phenomena, but some terms do (at least partly) overlap, and the terms are sometimes used interchangeably.

The United Nations defined the term of 'foreign terrorist fighters' in its 2014 UN Security Council Resolution 2178 as 'individuals who travel to a State other than their States of residence or national for the purpose of the perpetration, planning or preparation of, or participation in, terrorists acts or the providing or receiving of terrorist training, including in connection with armed conflict'.<sup>35</sup> However, the numbers referred to in this thesis and by European governments encompass Europeans' inflow not only to terrorist groups but also to pro-government groups, which is one of the

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<sup>30</sup> G. Michael, 'Counterinsurgency and Lone Wolf Terrorism', *Terrorism and Political Violence*, Volume 26, 2014, p. 45.

<sup>31</sup> Cragin, 'The November 2015 Paris Attacks: The Impact of Foreign Fighter Returnees', p. 216.

<sup>32</sup> J. de Roy van Zuijdewijn, 'Terrorism and Beyond: Exploring the Fallout of the European Foreign Fighter Phenomenon in Syria and Iraq, Perspectives on Terrorism, Volume 10, Issue 6, 2016, <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/559>, (accessed on 13 July 2019).

<sup>33</sup> L. Lindekilde, P. Bertelsen and M. Stohl, 'Who Goes, Why, And With What Effects: The Problem of Foreign Fighters from Europe', *Small Wars & Insurgencies*, Volume 27, Issue 5, 2016, p. 860.

<sup>34</sup> Bakker and Singleton, pp.12-13.

<sup>35</sup> UNSC Res 2178 (24 September 2014) UN Doc S/RES/2178

reasons why the United Nations definition of 'foreign terrorist fighters' is not used in this research.<sup>36</sup> Adding the word 'terrorist' means that, for instance, Europeans traveling to Iraq to join pro-government forces would not fall within the scope of the UN definition, although they are usually represented in the statistics of foreign fighters.

The UN definition has its limitations and caveats, since it pre-emptively narrows the scope of the purpose of travel to the conflict zone, which does not seem fitting in the context of the role assumed by most female IS recruits in the caliphate. The role of children within ISIS is even more complex in this regard because of the age-related diminished cognitive faculty, which will be discussed below.

Therefore the term 'foreign fighters' used here is in accordance with the more broad definition used by Bakker and Singleton. In their book, they define foreign fighters as 'individuals, driven mainly by ideology, religion and/or kinship, who leave their country of origin or their country of habitual residence to join a party engaged in an armed conflict'.<sup>37</sup>

The present chapter will demonstrate below that the latter terminology does not immediately bring to mind a certain group of foreign fighters, namely women who join ISIS and are often depicted solely as 'jihadi brides'. Even so it will demonstrate that women's and girl's main motivation to follow the call of jihad is frequently concurrent with the motivations named in Bakker's and Singleton's definition.

### **2.3. Numbers and Statistics of Foreign Fighters**

The United Nations Security Council Resolution 2178 obliged its member states to criminalise the (attempted) travel of their citizens to Syria and Iraq in order to become foreign fighters.<sup>38</sup> Therefore many states were not documenting those numbers prior to said resolution and this partly explains

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<sup>36</sup> A. Feinberg, 'Here We Come: The Evolution of Foreign Fighters' Flow to Syria and Iraq in 2013-2016', p. 4.

<sup>37</sup> Bakker and Singleton, p. 12.

<sup>38</sup> UNSC Res 2178 (24 September 2014) UN Doc S/RES/2178

why there are no accurate numbers in this context but only estimates, which should be regarded with caution.<sup>39</sup>

According to Barrett from the Soufan Group, and to the Egmont Institute an estimate of 40,000 foreign fighters from more than 110 countries joined insurgencies during the civil war in Syria and Iraq.<sup>40</sup><sup>42</sup> Other estimates arrive at a total of 30,000 foreign fighters.<sup>43</sup> Since the latter number stems from older research from around the year 2015, they do not contradict the estimate of 40,000 foreign fighters, in the author's opinion, and this thesis is thus based on the larger estimate. Of these 40,000 foreign fighters, about 5,000 are believed to have come from Europe; more precisely, they are either nationals of European states or have had their habitual residence in those states. Of this group, at least 550 are believed to be female foreign fighters.<sup>44</sup>

Numbers and statistics are even scarcer with regards to children that are living or have lived in the (former) ISIS-held territories or that can be classified as foreign fighters.<sup>45</sup> According to the United Nations about 12 % of a total of 41,490 foreign fighters are believed to be minors.<sup>46</sup>

The reliability of these numbers is hampered by the fact that it is at oftentimes unclear whether girls who were minors (under the age of 18 years) at the time of their departure to the caliphate were counted solely as children or if they were additionally counted as women.

This thesis focusses specifically on female children who travelled from Europe to join ISIS, reached adulthood during their stay in the caliphate, and want to return to their country of origin to-

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<sup>39</sup> Renard and Coolsaet, 'Returnees: Who are they, why are they (not) coming back and how should we deal with them? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands', p.9.

<sup>40</sup> Barrett, p. 7.

<sup>41</sup> Renard and Coolsaet, p. 9.

<sup>42</sup> It has to be reiterated that various studies base on different definition of foreign fighters, which is also the case in the statistics used by the Egmont Institute and the Soufan Center. Though they both use an estimate of a total of 40.000 foreign fighters, the first includes fighters who joined all jihadi groups as well as Peshmerga, while the latter uses the same number but found that this number is made up only by foreign fighters who flocked to ISIS.

<sup>43</sup> Bakker and Singleton, p.10.

<sup>44</sup> A. Peresin, 'Fatal Attraction: Western Muslims and ISIS', *Perspectives on Terrorism*, Volume 9, Issue 3, 2015, <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/427/html>, (accessed 5 June 2019).

<sup>45</sup> F. Capone, 'Child Soldiers: The Expanding Practice of Minors recruited to Become Foreign Fighters', in de Guttry, A., Capone, F., Paulussen, C. (eds.), *Foreign Fighters under International Law and Beyond*, The Hague: T.M.C. Asser Press, 2016, p. 189.

<sup>46</sup> UNSC, 'Security Council, Briefed by United Nations Counter-Terrorism Head, Stresses ISIL is now A Covert Global Network Despite Significant Losses' (23 August 2018) Press Release SC/13463

day. Furthermore, the present paper focusses on girls and women who joined ISIS in their territories in Syria and Iraq from the beginning of the civil war in Syria in 2011 until today, while at the same time acknowledging the existence of other ISIS strongholds in Libya and Yemen and that there are other terrorist organisation in the MENA region or other countries such as Somalia who have declared their loyalty to ISIS.<sup>4748</sup>

#### **2.4. The Gender Perspective on the Foreign Fighters Phenomenon**

Since the proclamation of the caliphate by ISIS scholars, practitioners and policy makers have dedicated a great deal of research and terrorism studies to analysing the broad phenomena of foreign fighters, their motivations for joining a terrorist group, the threat they pose, and how states should deal with them in the future.<sup>49</sup>

However female foreign fighters and their agency have often been overlooked in these studies, as has the unique means by which they are recruited, their assumed roles according to their gender in the caliphate, and the threat these girls and women might pose upon their return to Europe.<sup>50</sup>

Additionally the general media representation (as well as some scholarly work) of female terrorists tends to emphasise their personal and emotional reasons for joining terrorist groups rather than their political or religious motivations, which, as a result, become invisible.<sup>51</sup>

This development is lamentable, since women represent at least 10% of European foreign fighters, and an absence of a gendered view on this phenomenon leads inevitably to a one-dimensional understanding of their motivations to join the terrorist group. This subsequently results in great difficulties for policymakers to find nuanced, gender-tailored and appropriate counter-terrorism measures to prevent women and girls from joining jihadist groups such as ISIS in the first place or to contribute effectively to their deradicalisation.<sup>52</sup>

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<sup>47</sup> Bakker and Singleton, p. 21.

<sup>48</sup> European Institute of Peace, 'The Islamic State in East Africa', Report by the European Institute of Peace 2018, p.7, [http://www.eip.org/sites/default/files/Report\\_IS%20in%20East%20Africa\\_October%202018.pdf](http://www.eip.org/sites/default/files/Report_IS%20in%20East%20Africa_October%202018.pdf), (accessed on 30 May 2019).

<sup>49</sup> Hoyle, Bradford and Frenett, 'Becoming Mulan? Female Western Migrants to ISIS', p. 8.

<sup>50</sup> S. de Leede, 'Women in Jihad: A Historical Perspective', *ICCT Policy Brief*, September 2018, p. 8, <https://icct.nl/wp-content/uploads/2018/09/ICCT-deLeede-Women-in-Jihad-Sept2018.pdf>, (accessed 7 June 2019).

<sup>51</sup> V. Cseke-Taskai, 'Wives imported from the West - the Migration of Western Women to the Islamic State', Paper presented at the ECPG Conference, University of Lausanne, 8-10 June 2017, <https://ecpr.eu/Events/PaperDetails.aspx?PaperID=33639&EventID=114>, (accessed on 6 June, 2019).

<sup>52</sup> Hoyle, Bradford and Frenett, p. 39.

The general media representation is in line with normative gender categories, according to which women are less likely to act out of political or religious beliefs when joining a terrorist groups. Instead, it is assumed that they engage in jihad out of emotional, personal motivations. This explains, for example, why female members of ISIS who travelled to the Levant from the West are frequently given the nickname 'jihadi bride' in the public media of the Western hemisphere.<sup>53</sup> This indicates that women's violence in a terrorist organisation is gender-sensationalised, but only in relation to one narrative, which is based on the perception that female ISIS recruits are driven by the romanticised idea of finding a husband.

Mixed with this opinion is the narrative of female victimhood, which unfolds in two ways. First, the narrative suggests that women must be victims because they must have been forced into terrorism, since it is impossible to understand how a female individual could voluntarily enlist in a group that oppresses women, demands them to give up certain rights and freedoms, and practises gendered violence and sexual slavery.<sup>54</sup>

Second, it implies that women's traditional role in wars is that of the vulnerable sex in need of defence, which is also applicable to the female members of ISIS.<sup>55</sup> This perception leads to the one-dimensional assumption that female members of terrorist organisations pose less of a threat and are thus less criminally liable than their male counterparts.<sup>56</sup> This explains why female returnees who returned earlier from the Syrian civil war were generally not prosecuted.<sup>57</sup>

However such a simplified and reductionist view does not coincide with women's motivations and agency or victimhood in jihad due to the 'significant amount of diversity within the profiles of women'.<sup>58</sup> Additionally, it must be reiterated that such an understanding makes it impossible to

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<sup>53</sup> Cseke-Taskai, 'Wives imported from the West - the Migration of Western Women to the Islamic State'.

<sup>54</sup> Cseke-Taskai, 'Wives imported from the West - the Migration of Western Women to the Islamic State'.

<sup>55</sup> Cseke-Taskai, 'Wives imported from the West - the Migration of Western Women to the Islamic State'.

<sup>56</sup> E. E. J. Strømme, 'Jihadi Brides or Female Foreign Fighters? Women in Da'esh - from Recruitment to Sentencing', *PRIO Centre on Gender, Peace and Security - GPS Policy Brief*, January 2017, <https://www.prio.org/utility/DownloadFile.ashx?id=1219&type=publicationfile>, (accessed on 9 June 2019).

<sup>57</sup> Renard and Coolsaet, p. 4.

<sup>58</sup> E. M. Saltman and M. Smith, 'Till Martyrdom Do Us Part - Gender and the ISIS Phenomenon', *Report of the Institute for Strategic Dialogue*, 2015, p. 5, <https://www.isdglobal.org/wp-content/uploads/2016/02/Till-Martyrdom-Do-Us-Part-Gender-and-the-ISIS-Phenomenon.pdf>, (accessed on 7 June, 2019).

counter the highly complex issue of girls who follow the call of jihad and travel to the conflict in Syria and Iraq, or to deradicalise them effectively.<sup>59</sup>

#### **2.4.1. Female Foreign Fighters - Who are They and Why Do They Go?**

It is crucial to note that, similarly to their male counterparts, there is not one typical profile of female foreign fighters or of their motivations for joining ISIS. Instead, it appears that women share many motivations with male European ISIS volunteers, though there are a few gender-specific drivers as well.<sup>60</sup>

Generally, there is a lack of socio-demographic profiles due to several obstacles to gathering data, such as hesitation to operate with researchers, privacy regulations, or the mere fact that many women are still being investigated by the police. However, some information could be gathered and evaluated.<sup>61</sup> According to the Institute for Strategic Dialogue, these women display great diversity in age and cultural and socio-economic background. However, a significant amount of them are in their late teens to early twenties, while the youngest girl to travel to the ISIS caliphate was only thirteen years old.<sup>62</sup> The majority of them are also members of the Muslim diaspora in the second or third generation, whereas a smaller number consisted of new converts.<sup>63</sup>

According to another study by the Institute for Strategic Dialogue, which reviewed the social media accounts of several women and their self-identified reasons for joining ISIS, the motivations were mainly political or religious. On the one hand, these women claim that the *ummah* (Muslim community)<sup>64</sup> is under attack, which leads to grievances at the treatment of it and on the other hand, they

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<sup>59</sup>E. Bakker and S. de Leede, 'European Female Jihadists in Syria: Exploring an Under-Researched Topic', *ICCT Background Note*, April 2015, p. 10, [https://www.icct.nl/download/file/ICCT-Bakker-de-Leede-European-Female-Jihadists-In-Syria-Exploring-An-Under-Researched-Topic-April2015\(1\).pdf](https://www.icct.nl/download/file/ICCT-Bakker-de-Leede-European-Female-Jihadists-In-Syria-Exploring-An-Under-Researched-Topic-April2015(1).pdf), (accessed 7 June 2019).

<sup>60</sup> E. Bakker and S. de Leede, 'European Female Jihadists in Syria: Exploring an Under-Researched Topic', p. 5.

<sup>61</sup> Bakker and de Leede, p. 4.

<sup>62</sup> E. M. Saltman and M. Smith, 'Till Martyrdom Do Us Part - Gender and the ISIS Phenomenon', p. 16.

<sup>63</sup> A. Peresin, 'Fatal Attraction: Western Muslims and ISIS'.

<sup>64</sup> Hoyle, Bradford and Frenett, p. 11.

feel that it is their religious duty as Muslims to assist in the process of building a new state, the caliphate.<sup>65</sup>

The first two reasons can be categorised as 'push factors', that is, 'factors that prime certain women to be more vulnerable to extremist propaganda', according to Saltman and Smith.<sup>66</sup> Further important push factors that have been determined by academic research are experiences of discrimination, cultural and social alienation within western culture, or difficulties in competing in work or school life, partly due to their migrant background.<sup>67,68</sup>

Another reason which leads foreign fighters to be pushed out of their life as they know it in Europe is frustration over 'international inaction' to mitigate the suffering of the Muslim (either Shia or Sunni) community caused by the Assad régime.<sup>69</sup>

However, Dawson and Amarasingam argue that low economic and social prospects within European society are only subsidiary push-factors<sup>70</sup> which is in line with the fact that some female foreign fighters come from economically stable households.<sup>71</sup>

Pull-factors, on the other hand, describe factors that tend to pull these women towards ISIS membership. The romanticised idea and honourable connotation of marriage to an ISIS fighter is one of them. Further factors that lead to women or girls to migrate to ISIS-held territories is the idea of sisterhood and camaraderie in general – the idea of contributing to building the caliphate the strict interpretation of the Sharia as its constitution.<sup>72</sup>

While the push-factors are predominantly consistent with the male foreign fighter's motivation of joining ISIS; the pull-factors vary due to the different gender roles to be assumed upon arrival in the caliphate.<sup>73</sup>

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<sup>65</sup> Hoyle, Bradford and Frenett, pp. 10.

<sup>66</sup> Saltman and Smith, p. 8.

<sup>67</sup> Saltman and Smith, pp. 9-18.

<sup>68</sup> L. L. Dawson and A. Amarasingam, „Talking to Foreign Fighters: Insights into the Motivation for *Hijrah* to Syria and Iraq“, *Studies in Conflict & Terrorism*, Volume 40, Issue 3, p. 192

<sup>69</sup> Saltman and Smith, pp. 9-13.

<sup>70</sup> L. L. Dawson and A. Amarasingam, 'Talking to Foreign Fighters: Insights into the Motivation for *Hijrah* to Syria and Iraq', *Studies in Conflict & Terrorism*, Volume 40, Issue 3, p. 192.

<sup>71</sup> A. Peresin, 'Fatal Attraction: Western Muslims and ISIS'.

<sup>72</sup> Saltman and Smith, pp. 8-18.

<sup>73</sup> Saltman and Smith, p. 13.

These diverse push- and pull-factors show multicausal reasons that motivate girls and women to follow the call of jihad and travel to Syria or Iraq. In contrast to how they are pictured in the public media, many of these factors (especially the push-factors) are political and religious in nature, rather than simply consisting of the romantic attraction to the caliphate in order to be married off to a fighter.

#### **2.4.2. ISIS's Social Media Campaign and Gender-Tailored Approach to Attract Female Foreign Fighters**

As a backdrop to this section, it is pertinent to state that the use of social media in jihadist movements, which emerged on a greater scale around the 2010s, held many benefits for a terrorist organisation such as ISIS. The 'jihadi digital empowerment revolution' changed the way in which terrorists were able to disseminate propaganda, recruit, and plot operations.

The move from analogue to digital communication became cheaper, more rapid, and, to a certain extent, more clandestine, thus enabling an easier transnational intercommunication for terrorists.<sup>74</sup>

The following section demonstrates how the terrorist organisation ISIS tailored its propaganda to attract female recruits for its jihad and the role of social media in this phenomenon.

ISIS not only recognised that it had to use social media to develop an extensive, transnational reach to recruit new members, but also understood that women and girls as potential recruits had to be contacted by members of the same sex in order to build a basis of trust and camaraderie due to mutual interests and backgrounds.<sup>75</sup>

One of the first terrorist organisations to develop revenues in order to recruit globally through the use of social media and online platforms was Al Shabaab.<sup>76</sup> After Al Shabaab's success with its

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<sup>74</sup> T. Hegghammer, 'The future of Jihadism in Europe: A Pessimistic View', *Perspectives on Terrorism*, Volume 10, Issue 6, 2016, <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/566/html>, (accessed on 15 June 2019).

<sup>75</sup> D. Van Leuven, D. Mazurana, R. Gordon, 'Analysing the Recruitment and use of Foreign Men and Women in ISIL through a Gender Perspective', in A. de Guttry, F. Capone, C. Paulussen (eds.), *Foreign Fighters under International Law and Beyond*, The Hague: T.M.C. Asser Press, 2016, pp. 105-106.

<sup>76</sup> Renard and Coolsaet, p. 13.

strategy, and learning from the limitations of Al Qaeda's internet campaign<sup>77</sup>, ISIS adopted a novel social media campaign to make transnational propaganda for its cause and to target possible new recruits and raise funds.<sup>78</sup>

It is commonly assumed that ISIS used a great amount of its monetary resources on building a well-funded propaganda campaign to develop the 'brand'<sup>79</sup> which is also evidenced by how they translate their messages on social media into a great number of languages. Digital technologies, or applications such as Twitter, Tumblr, Facebook, ask.fm, YouTube, Diaspora, and the app 'Dawn of Glad Tidings' developed by ISIS itself, as well as the private chatrooms that come with using these applications, each serve different purposes for the so called Islamic State. This social media strategy allows Da'esh to appeal to a broad audience, to radicalise then subsequently recruit and indoctrinate individuals, by creating a virtual community prior to their arrival in Syria or Iraq, already fostering the feeling of camaraderie.<sup>80</sup>

The emergence of the sophisticated use of social media gives individuals who wish to join ISIS a comprehensive overview of daily life in the caliphate, as well as practical and helpful instructions regarding the travel to the ISIS caliphate.<sup>81</sup>

Women and girls are told which clothes to bring and which travel routes to take while at the same time encrypting locations in their messages or using secure channels (such as surespot or kik) that future travellers will not be hindered in following.<sup>82</sup>

A crucial factor that made ISIS recruitment efforts so successful and attractive to women was their realisation of the importance to extensively use of girls and women in social media. Some female supporters of ISIS (whether they are in the ISIS held zone or abroad) were assigned the role of online disseminators, that is, vocal recruiters for other girls, who tweet or post on different apps about their day-to-day life as wives and mothers in the caliphate. These life-style tweets or posts are mixed with news from their normal life and graphic, disturbing pictures of beheaded corpses.<sup>83</sup>

Online dissemination of hateful tweets and pictures of brutality serves many purposes. It helps to frame the picture of an ordinary life for young women and girls, in which pictures of cats and happy

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<sup>77</sup> Aly et al., 'Introduction to the Special Issue: Terrorist Online Propaganda and Radicalization', pp. 2-5.

<sup>78</sup> Bakker and de Leede, p. 8.

<sup>79</sup> Aly, et al., p. 4.

<sup>80</sup> Aly, et al., pp. 2-4.

<sup>81</sup> R. Gan, L. S. Neo, J. Chin and M. Khader, 'Change is the Only Constant: The Evolving Role of Women in the Islamic State in Iraq and Syria (ISIS)', *Women and Criminal Justice*, 2019, p. 6.

<sup>82</sup> Hoyle, Bradford and Frenett, p. 18.

<sup>83</sup> J. Klausen, 'Tweeting the Jihad: Social Media Networks of Western Foreign Fighters in Syria and Iraq', *Studies in Conflict and Terrorism*, Volume 38, Number 1, 2015, pp. 12-14.

children are mixed with images of corpses. Moreover it serves the purpose of psychological warfare through disseminating images of enemy corpses.<sup>84</sup>

The use of pictures of female members of ISIS, such as the photos of the two Austrian girls, Sabina Selimovic and Samra Kesinovic, is also a means of creating peer pressure and luring more men to follow the call of jihad, because it conveys the message that if even women can 'fight' for ISIS, then Muslim men have an even greater duty to do so.

ISIS's propaganda conveys the message that female members that come to Syria and Iraq are respected and assigned the honourable role of wife and mother. This promise turns out to be elusive, since the various social media accounts of these girls and women paint another picture, one which is different from what was promised.<sup>85</sup>

A research study was performed by the Institute for Strategic Dialogue in 2015 concerning minor female foreign fighters voluntarily migrating to the caliphate, and this study concluded that the real life of those girls was, in many areas, not what they had expected. For example, though many girls aspired to become wives of fighters, they were not always prepared for the emotional strains and implications of being subjected to widowhood at such a young age. The study researched the social media accounts of girls residing in the caliphate and demonstrated that some complain of a deficit of clean water, the cold Syrian winter, and access to medical care, especially with regard to pre-natal care and childbirth. However, many of the relevant female ISIS members added in their tweets and posts that this is how they learned to have *sabr* (patience).<sup>86</sup>

## **2.5. Child Foreign Fighters and the Cubs of the Caliphate - Who Are the Children of ISIS and Why Do They Go?**

The following section analyses the socio-legal aspects of children who migrate to ISIS-held territories to become ISIS recruits.

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<sup>84</sup> Klausen, 'Tweeting the Jihad: Social Media Networks of Western Foreign Fighters in Syria and Iraq', pp.12-17.

<sup>85</sup> Saltman and Smith, p. 18.

<sup>86</sup> Saltman and Smith, pp. 48-50.

First, it is important to mention that within the civil war in Syria there are numerous other insurgency (and terrorist) groups, as well as government forces, that have recruited children.

There are various ways, how a child can become a 'foreign fighter' of ISIS.

In terms of their background it can be stated that there are local children or children who come from different countries all over the world who are ISIS recruits.

Some children are born in the self proclaimed caliphate of ISIS.

Local children become members of ISIS when their families join the organisation or through abduction, force or intimidation of the terrorist group.

Then there are children of Western foreign fighters, who travel to the ISIS held territory with their families. Most importantly to this paper, however, are minor western foreign fighters who travel to the Middle East by themselves.<sup>87</sup>

A crucial component of the strategy of the Islamic State is the recruitment and subsequent deployment of children in various roles in their holy war. These children are given the nicknames 'lion cubs' or 'cubs of the caliphate' by the terrorist group itself, and this emotive language is one of the reasons that children are drawn to such an organisation.<sup>88</sup>

While much research is dedicated to the use of child soldiers and children associated with armed forces or armed group in Africa and South America, less research is available on child recruitment in the Middle East,<sup>89</sup> and even scarcer academic information is available on the multi-dimensional, highly complex issue of children from the West who voluntarily travel to the Levante and Iraq in order to join ISIS.

It must be stated that the multi-casual motivations of children traveling to join ISIS are predominantly similar to the push- and pull-factors of girls and young women referenced in the chapter above.<sup>90</sup>

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<sup>87</sup> Capone, *Foreign Fighters under International Law and Beyond*, p. 199.

<sup>88</sup> J. Morris and T. Dunning, 'Rearing Cubs of the Caliphate: An Examination of Child Soldier Recruitment by Da'esh', *Terrorism and Political Violence*, 2018, p. 11.

<sup>89</sup> J. Morris and T. Dunning, 'Rearing Cubs of the Caliphate: An Examination of Child Soldier Recruitment by Da'esh', p. 1.

<sup>90</sup> Capone, p. 189.

### **2.5.1. Legal and Political Backdrop to the Classification of the Ongoing Conflict in Syria, Iraq and the Islamic State**

Against the backdrop of International Humanitarian Law regarding the recruitment of children and their use in hostilities, it is important to classify the conflict in the Levant and Iraq that started with the Syrian civil war. While there has been a vast amount of scholarly work and debate surrounding this question, this thesis does not delve into the issue of whether the Islamic State can be legally qualified as a state under international law.

This armed struggle involves a variety of (terrorist) opposition and insurgent groups which are to be classified as non-state actors in combat with the régime of Bashar Al-Assad. However, the classification of the Islamic State has been highly contentious among scholars. According to both the declaratory and the constitutive state theories, the essential requirements for statehood are (i) a permanent population, (ii) a permanent territory, and (iii) a government. Following the constitutive theory, statehood also requires the recognition of other states.<sup>91</sup> While the constitutive theory has lost support in recent years, in the case of ISIS, it does seem legitimate to follow the terms of the theory, since the IS 'represents an extreme lack of recognition', which thus leads to the conclusion that IS did not attain statehood.<sup>92</sup>

However, because there are two states fighting against the Islamic State (Iraq and Syria), it is salient to note, that Iraq and Syria are not at war with one another. Since the conflict takes place between each state on the one side (Syria and Iraq) and many non-state armed groups (such as IS) on the other, it is therefore to be classified as a non-international armed conflict (NIAC) according to International Humanitarian Law.

### **2.5.2. The Sociological Classification of Minor (Female) Foreign Fighters**

The following section aims to provide an understanding on the social problem of European children associated with ISIS and the legal problems that arise with this phenomenon.

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<sup>91</sup> Whereas the declaratory theory classifies the recognition by other states as a mere declaratory requirement which has no legal effect on statehood.

<sup>92</sup> Zamir, *Yearbook of international humanitarian law. Volume 18, 2015*, p. 100.

When one thinks of minors from the West who travel voluntarily to the Levante to join ISIS, one rarely thinks of these individuals as child soldiers, a category which traditionally brings to mind children being forced to join a fighting party in a central African state.

This begs the question of why this connotation never arises in the public political debate or media coverage around the phenomenon of minors who migrate to ISIS to become foreign fighters. Ultimately, the cases of Shamima Begum and of the two Austrian girls Selimovic and Kesinovic involve teenage girls who are essentially recruited by an armed group for intended marriage to IS fighters and most likely for additional roles in its ranks.

This leads to the assumption that western boys and girls who follow the call of jihad do not receive the same sympathy (or possibly any at all) as the stereotypical child soldier. The fact that these children are associated with a terrorist group may become one of the most pertinent factors in this regard: According to a recent report by the Human Rights Watch, children involved in conflict in other states, such as Colombia or the Democratic Republic of Congo (DRC), are treated differently than children involved with terrorist groups such as ISIS, who are increasingly being punished and primarily seen as criminals affiliated with terrorism.<sup>93</sup>

This is surprising, since children involved in battles in these aforementioned states could also be members of terrorist groups. This difference in classification might suggest that European countries treat those members of terrorist groups differently, because these organisations are not targeting Europe in the same way that IS did and still does.

Another essential difference between the traditional view of a child soldier and the minor foreign fighters of ISIS lies in the perceived voluntariness with which these children leave the luxurious and peaceful surroundings of the West and trade it for an active warzone. This is in contrast to the classical examples of child soldiers are coerced by intimidation or forced due to poverty and lack of education into enlisting into the armed forced or an armed group.<sup>94</sup>

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<sup>93</sup> J. Becker, 'Some Child Soldiers Get Rehabilitation, Others Get Prison', *Human Rights Watch*, [website], 2019, para 5, <<https://www.hrw.org/news/2019/03/04/some-child-soldiers-get-rehabilitation-others-get-prison>>, (accessed on 10 June 2019).

<sup>94</sup> Capone, pp. 189-191.

However, this voluntariness is specious in the context of children, since it is well established that ISIS uses sophisticated methods of child grooming or recruitment which are oftentimes compared to the manner in which paedophiles target children.<sup>95</sup>

The third reason why the image child soldier does not seem to apply to the phenomenon of female child foreign fighters of IS might be due to their depiction in the Western public media. As stated above, many of these girls, who were teenagers at the time of their departure, were given the nickname 'jihadi bride'. According to Cseke-Táskai, who analysed the public discourse on the phenomenon of girls migrating to join ISIS, a vast amount of the media operates with simplifications, which results in the one-dimensional traditional depiction of these girls as jihadi brides. The articles which Cseke-Táskai examined tended to emphasise on the personal and emotional narratives in relation to their motives for their departure.<sup>96</sup>

The notion 'jihadi bride' itself makes it difficult to acknowledge the minority of these individuals, because a bride traditionally is not traditionally connoted with childhood.

One could argue against this analysis that many girls in question are teenagers around the age of 15 years, thus meaning that there are reasonable grounds to expect a certain age-adequate cognitive faculty from them and that they might have known what it means to live in a war-zone. For instance the UK Foreign Secretary, Hunt commented on the case of Shamima Begum and stated she 'knew the choices she was making' referring to her travel to Syria.<sup>97</sup>

However, there are basically two school of thoughts in the context of the recruitment of children. The first is the caretaker approach, which derives from the position that children are always victims when recruited into armed groups or forces. This approach argues that children can never be voluntarily recruited due to their age-related cognitive inability to make such a decision and that this perceived voluntariness is always strongly connected to structural conditions that make children prime targets for recruitment. The second is the free-ranger approach, which essentially states that

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<sup>95</sup> A. Almohammad, „ISIS Child Soldiers in Syria: The Structural and Predatory Recruitment, Enlistment, Pre-Training Indoctrination, Training and Deployment“, *ICCT Research Paper*, 2018, p. 6, <https://icct.nl/publication/isis-child-soldiers-in-syria-the-structural-and-predatory-recruitment-enlistment-pre-training-indoctrination-training-and-deployment/>, (accessed 7 June 2019).

<sup>96</sup> Cseke-Taskai, 'Wives imported from the West - the Migration of Western Women to the Islamic State'.

<sup>97</sup> The Telegraph, Jeremy Hunt admits granting Shamima Begum legal aid would make him „very uncomfortable“, *The Telegraph*, 15 April 2019, <https://www.telegraph.co.uk/news/2019/04/15/authorities-knew-shamima-begum-groomed-didnt-tell-family-ex/>, (accessed on 14 July).

children have multi-layered as well as multi-casual reasons to become voluntarily recruited into armed groups and that it is inaccurate to depict them as 'agentless victims'.<sup>98</sup>

Against the backdrop of the above-mentioned experiences of these female ISIS migrants about real life in the caliphate, it appears that they did not know what they were getting themselves into when traveling to an ongoing warzone, and hence, this paper follows the caretaker approach.

The question that subsequently arises with the sociological categorisation of female children of ISIS is whether they can legally fit under the umbrella of the international framework that regulates children's recruitment and use in active hostilities.

### **2.5.3. The Legal Classification of Minor (Female) Foreign Fighters**

According to Article 1 of the UN Convention on the Rights of the Child (CRC) any person below the age of 18 years is considered to be a 'child'. However according to Article 38 of the same convention, it remains lawful to recruit children of 15 years and above into a state's armed forces.<sup>99</sup>

About a decade after the adoption of the 'Cape Town Principles and Best Practices on the Prevention of Recruitment of Child Soldiers in Africa', which were the product of a symposium arranged by NGO working groups and UNICEF the latter initiated a review process, which resulted in the adoption of the so called 'Paris Principles' in 2007. The conference developed a non-binding document that was endorsed by a vast number of states and produced the widely recognised definition of the term 'children associated with armed forces or armed groups' refers to 'any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes'.<sup>100101</sup>

Though recognising that there are various contrasting definitions of child soldiers and children that are associated with armed conflict, the present paper continues to use the aforementioned definition according to the Paris Principles for the female children that join ISIS in the Levant.

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<sup>98</sup> Morris and Dunning, p. 4.

<sup>99</sup> Capone, p. 188.

<sup>100</sup> Morris and Dunning, p. 2.

<sup>101</sup> Capone, p. 189.

The term 'child soldier' does not seem to apply fittingly for female ISIS recruits, since the majority of them do not normally engage in active hostilities, according to the general intelligence that is acquired concerning life within the ISIS territory and from the social media accounts of various female ISIS members themselves.<sup>102</sup>

However, interestingly, some girls and women openly vocalise that they would wish to engage in combat activities and that this was partly the reason why they travelled to the conflict zone.<sup>103</sup>

According to the definition of 'children associated with armed forces or armed groups', which is wider than the term 'child soldier' itself, could cover girls who 'voluntarily travel' to Syria or Iraq in support of ISIS and who subsequently are married to ISIS fighters.

The three girls in the case studies were indoctrinated and mainly recruited by ISIS for sexual purposes. According to the UNODC Handbook, the exploitation of a child is defined as 'the use of the child in work or other activities for the benefit of others and to the detriment of the child's physical or mental health, development and education. Exploitation includes, but is not limited to, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including the commission of crime, slavery or practices similar to slavery. The term indicates that advantage is being taken of the child's lack of power and status'.

The mere fact that ISIS has a sophisticated machinery of indoctrination as well as grooming of children and has developed strategic tools on how to target children according to their gender implies that it must be to the benefit of this terrorist organisation. The advantages of luring underage female children to the caliphate are multidimensional. Unmarried female recruits are used as a recruitment tool to attract male foreign fighters, and they are the key to bringing a new generation of ISIS recruits into this world by bearing and raising children. The latter reasons made women indispensable for the state-building process of the Islamic State. Unequivocally, it is to the physical and mental detriment of a girl to travel to and to become pregnant and raise children in a warzone, as discussed in the case of Shamima Begum. It is important to mention that even children's perceived voluntariness to engage in sexual conduct does not make the sexual actions or the consent to a marriage legal per se, as demonstrated in the relevant case studies in the chapters below.

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<sup>102</sup> Capone, p. 191.

<sup>103</sup> Hoyle, Bradford and Frenett, pp. 31-32.

The recruitment and use of children in hostilities is generally condemned by the international community and is dealt with within the legal field of international humanitarian law (such as the Geneva Convention and its Additional Protocols), international human rights law (such as the UN Convention of the Rights of the Child and its Optional Protocols), and international criminal law.

In line with Article 77 (2) of the Additional Protocol of the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (AP I), Article 38 CRC declares that states must take all feasible measures to ensure that children who have not attained the age of 15 years do not take direct part in hostilities and to refrain from recruiting said children into their armed forces.<sup>104</sup>

This principle is reaffirmed in Article 4 (3) of Additional Protocol of the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (AP II), though this is distinguished by the absence of the wording 'all feasible measures', meaning that this obligation is rather result-oriented than oriented based on the effort made by the state party. Another factor that differentiates the obligation of APII from that of AP I is that the state is legal accountable whether a child is involved in direct or indirect hostilities. This suggests that Additional Protocol II offers a more effective protection to children under the age of fifteen years.<sup>105</sup>

Aside from the prohibition enshrined in Article 38 of the CRC, the Optional Protocol on the Involvement of Children in Armed Conflict (OPICRC) should be mentioned as well, since it offers greater protection for children with regard to Non-State-Armed Groups (NSAG). It is particularly stated in Article 4 of the OPICRC that NSAG are absolutely prohibited from recruiting children under the age of 18 years in either a compulsory or a 'voluntary' manner.<sup>106</sup>

Neither Syria nor Iraq are High Contracting Parties to the Optional Protocol on the Involvement of Children in Armed Conflict or AP II.

However it is negligible that Syria and Iraq abstained from ratifying AP II, because according to the ICRC's customary IHL study the prohibition of Article 4 (3) of AP II has gained customary status and thus is not only binding for states but for Non-State-Armed-Groups (NASG) as well.<sup>107</sup>

Though it should be mentioned that in relation to the foreign fighters phenomena, there is another legal principle that might lead to a protective effect of the CRC and its Optional Protocols, namely,

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<sup>104</sup> A. Sampaio and M. McEvoy, 'Little Weapons of War: Child Soldiers as Victims', *Netherlands International Law Review*, Volume 63, Issue 1, 2016, p. 55.

<sup>105</sup> Capone, p. 192.

<sup>106</sup> Sampaio and McEvoy, 'Little Weapons of War: Child Soldiers as Victims', pp. 61-62.

<sup>107</sup> Capone, p. 191.

the extraterritorial jurisdiction according to Article 2 of the CRC. This effectively means that the High Contracting Parties of the CRC and the OPCRC must ensure that every child in their jurisdiction is protected by the rights enshrined in said treaties, even if they are currently residing outside their respective home countries.<sup>108</sup>

While there is no doubt that the Islamic State is in violation of International Humanitarian Law due to its indiscriminate use of male children in direct hostilities and female children in indirect hostilities, whether they are under 18 or under 15 years old<sup>109</sup> the present paper's aim is to shed light on the obligations of state parties regarding the use of child soldiers.

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<sup>108</sup> Capone, p.v195.

<sup>109</sup> Capone, p.v203.

### **3. Shared Legal Obligations (International and Regional) of the United Kingdom and Austria**

#### **3.1. Shared Legal Obligations in Relation to Counterterrorism**

The crucial shared legal obligation of the UK and Austria on the international level is unequivocally the United Nations Security Council Resolution 2178. United Nations Security Council Resolution 2178 was adopted under Chapter VII of the UN Charter and imposes legal obligations on the member states to criminalise, for example, travel or attempted travel to the conflict zone in Syria for the purpose of participating in terrorist acts or of receiving terrorist training.<sup>110</sup>

This UNSC resolution acknowledges the well-known fact that children are also recruited as foreign fighters, and the resolution mentions the member states' responsibility to cooperate in order to prevent the radicalisation and the recruitment of foreign fighters, 'including children'.<sup>111</sup> Finally, this binding United Nations document repeats on many occasions that the member states must fulfil the obligations imposed upon them while at the same time complying with their human rights obligations based upon the UN Charter, international human rights law, international humanitarian law, and international refugee law.

Another UN Security Council Resolution that was adopted in relation to the phenomenon of foreign terrorist fighters was Resolution 1970, which aimed to inhibit and impede funding or donations to the benefit of foreign fighters.<sup>112</sup>

On the regional level, the United Kingdom and Austria are bound by several treaties due to their shared membership either in European Union or in the Council of Europe.

At the European Union level, the Directive on Combating Terrorism, which was adopted by the Council in 2017, must be mentioned.<sup>113</sup> Similar to UN SC Res 2178, this directive criminalises travel within, out of, or to the EU for terrorist purposes.

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<sup>110</sup> C. Kopitzke, 'Security Council Resolution 2178 (2014): An Ineffective Response to the Foreign Terrorist Fighter Phenomenon', *Indiana Journal of Global Legal Studies*, Volume 24, Issue 1, 2017, p.v310.

<sup>111</sup> UNSC Res 2178 (24 September 2014) UN Doc S/RES/2178

<sup>112</sup> UNSC Res 1970 (26 February 2011) UN Doc S/RES/1970

<sup>113</sup> Council and European Parliament Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA [2017] OJ L 88/6

### **3.2. Shared Legal Obligation in Relation to Child Soldiers and Children Associated with Armed Forces or Armed Groups**

The United Kingdom and Austria are both state parties to the UN Convention on the Rights of the Child (CRC) and to the Optional Protocol on the Involvement of Children in Armed Conflict (OPIC). Furthermore, both countries have endorsed and recognised the Paris Commitments and the Paris Principles in 2007.<sup>114</sup>

Regarding the Geneva Convention and its Additional Protocols, it can be stated that Austria ratified Additional Protocol of the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (AP I) and the Additional Protocol of the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (AP II) in 1983, and the United Kingdom did so in 1998.

Both states have thus committed themselves to the highest standards of protection of child soldiers and children associated with armed forces and armed groups.

### **3.3. Shared Legal Obligations in Relation to the Right to Nationality – Statelessness**

The milestone document of the United Nations, namely, the Universal Declaration of Human Rights (UDHR) of 1948, enshrines the right to nationality in Article 15. Furthermore, the article also explicitly prohibits states from arbitrarily depriving someone of their nationality. Many states hold the opinion that the UDHR is not a legally binding treaty, though scholars and practitioners have argued that it has become legally binding over time due to the fact that it has achieved the status of customary law.<sup>115</sup>

The legally binding International Covenant on Civil and Political Rights (ICCPR) from 1966, which followed the adoption of the UDHR, removes doubt that an individual has an enforceable right to

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<sup>114</sup> UN Children's Fund (UNICEF), The Paris Principles. Principles and Guidelines on Children Associated With Armed Forces or Armed Groups, February 2007, <https://www.refworld.org/docid/465198442.html>, (accessed 14 July 2019).

<sup>115</sup> R.K.M. Smith, *Textbook on International Human Rights*, New York, Oxford University Press, 2010, pp.v37-38.

not be deprived from the right to enter their own country, according to Article 12 (4) ICCPR.<sup>116</sup> Both the United Kingdom and Austria have ratified the ICCPR.

Another international obligation shared by Austria and the United Kingdom is the 1954 Convention Relating to the Status of Stateless Persons (hereinafter, the 1954 Convention), which is a legal instrument with which to define stateless individuals and safeguard their protection by establishing certain rights for them. Furthermore, the UN Convention on the Reduction of Statelessness of 1961 is closely linked to the right to nationality. The main aim of the treaty, of which both UK and Austria are state parties, is the reduction of 'particular instances of statelessness'. It does not grant a general right to nationality, but it contains paragraphs in which the High Contracting Parties are obliged to grant nationality to stateless persons.<sup>117</sup> To reduce the number of stateless persons, given particular circumstances, states have positive obligations to make sure their national legislation prevents and eliminate statelessness.<sup>118</sup>

On the regional level, the UK and Austria are both legally bound by the European Convention of Human Rights (ECHR), Article 8 of which also touches on the right to nationality, namely the right to private life. The European Court of Human Rights has already indicated in several cases in which a person's nationality is part of their social identity and should thus be protected under article 8 of the ECHR.<sup>119</sup>

The Council of Europe later adopted the European Convention on Nationality in 1997, which was ratified by Austria, but not by the United Kingdom.<sup>120</sup>

The most crucial regional obligations shared between Austria and the UK are unequivocally those based on European Union Law. While it generally lies in the competence of the EU Member States to regulate their citizenship and immigration law, the European Court of Justice (ECJ) has limited its power by reaffirming the principle of proportionality. It had done so in the Rottmann case, in which an Austrian citizen had under fraudulent circumstances obtained German nationality. Austria

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<sup>116</sup> Mantu, '„Terrorist“ citizens and the human right to nationality', p. 30.

<sup>117</sup> M. Foster and H. Lambert, 'Statelessness as a Human Rights Issue: A Concept Whose Time Has Come', *International Journal of Refugee Law*, Volume 28, Issue 4, pp. 566-567.

<sup>118</sup> Mantu, p. 30.

<sup>119</sup> *Karrashev v Finland* App no 31414/96 (ECtHR, 12 January 1999)

<sup>120</sup> Mantu, pp. 30-31.

subsequently deprived him of his original nationality and, upon identifying that Rottmann had fraudulently acquired the German citizenship, Germany deprived him of his nationality as well. The ECJ declared this case a matter of EU law, since the latter revocation by Germany deprived Rottmann of his European Union citizenship as well and found that this was not proportional. The ECJ stated that prior to the revocation of citizenship the effects of this act need to be examined under the aspect of proportionality.<sup>121122</sup>

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<sup>121</sup> Mantu, p. 31.

<sup>122</sup> Case C-138/08 *Janko Rottmann v Freistaat Bayern* [2010] ECR I-01449

## **4. The United Kingdom's Legal Obligation in Relation to the Phenomenon of Foreign Fighters with a Specific Outlook on the Case Study of Shamima Begum**

### **4.1. The United Kingdom and the Phenomenon of Foreign Fighters**

The United Kingdom has not been spared from the phenomenon on foreign fighters; on the contrary, Great Britain and Northern Ireland has one of the highest total numbers of nationals and persons with their habitual residence in the country to flock to ISIS. According to the Soufan Centre, an estimated 850 individuals have departed for Syria or Iraq from the UK, which means that it has the second highest numbers in total, after Germany, with around 900 individuals. Of these 850 foreign fighters, about 100 are believed to be women, and another 50 are estimated to be children.<sup>123</sup> As mentioned in Chapter 2 of the present paper, such estimates should be treated with extreme caution, since many states have not been able to track every citizen to join ISIS,<sup>124</sup> and estimates regarding foreign fighters vary exceedingly in general.

### **4.2. The Case Study of Shamima Begum**

Since there is relative multitude of information about the life (the circumstances of her marriage, the age of her husband, the children she had born) of Shamima Begum in the IS caliphate in comparison to the two Austrian case studies, this paper mainly examines, if she can be subsumed under the definition of a child soldier.

#### **4.2.1. Can Shamima Begum be Legally Classified as a Child Soldier?**

The United Kingdom is a state party not only to the UN Convention of the Rights of the Child, but also to the Optional Protocol to the Involvement of Children in Armed Conflict. Additionally, the United Kingdom ratified AP I and AP II in 1998, which means the United Kingdom has adopted a comprehensive legal framework in relation to child soldiers and has obliged itself to the highest standard of protecting children from recruitment by non-state armed groups, as enshrined in the

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<sup>123</sup> Barrett, p. 13.

<sup>124</sup> Renard and Coolsaet, p. 9.

aforementioned Article 4 of the Optional Protocol on the Involvement of Children in Armed Conflict. Due to the fact that said prohibition is absolute, without differentiating between the compulsory or voluntary recruitment of children under the age of 18, the contentious question of whether they can ever be recruited voluntarily becomes irrelevant in this regard. Since the OPCRC was ratified by the United Kingdom and is applicable extraterritorially, the High Contracting Party is obligated towards the children under its jurisdiction.<sup>125</sup>

According to Capone, the United Kingdom remains legally obligated under Article 4 (2) OPCRC to 'take all feasible measures to prevent children's recruitment and use by NSAGs', even when the child in question is no longer residing in its territory.<sup>126</sup>

This would consequently mean that the UK had this obligation towards Shamima Begum until she reached adulthood and must have therefor fallen under the scope of Article 4 of the OPCRC until that date.

Though some scholars, such as Bloom, argue that ISIS abstains from recruiting girls as child soldiers,<sup>127</sup> it should be noted that while this might be accurate, it does not address the issue of ISIS child recruits taking on various roles within the terrorist organisation, an issue which is explored in the following section.

Article 4 of the OPCRC reads as follows: '1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.'

According to a word interpretation the 'or' in this sentence should be understood in the sense, that the recruitment itself is prohibited, even if the recruitment does not lead to use in hostilities. This consequently leads to the understanding that 'children associated with armed forces or armed groups', as set out in the Paris Principles (which were endorsed by the United Kingdom), are also covered by the OPCRC.

There are no indications that Begum was used in active or passive hostilities. Nevertheless, however, she was recruited with the purpose of being married to an ISIS fighter, which can be deduced

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<sup>125</sup> Capone, pp. 93-195.

<sup>126</sup> Capone, p. 195.

<sup>127</sup> M. Bloom, 'Child Soldiers in Armed Conflict', in *Armed Conflict Survey*, International Institute for Strategic Studies, 2018, <https://www.iiss.org/publications/armed-conflict-survey/2018/armed-conflict-survey-2018/acs2018-03-essay-3>, (accessed on 17 June 2019).

by two observations. First, foreign females interested in joining ISIS who are not planning to marry upon their arrival there are promptly dissuaded from travelling.<sup>128</sup>

Second, the majority of female recruits are married off to male fighters shortly upon their arrival in the caliphate, and the newlyweds are rewarded by being given a house and monetary assistance, amongst other benefits.<sup>129</sup>

This subsequently begs the question of whether Begum can be legally classified as a child associated with armed forces or armed groups. According to the definition of the Paris Principles of 2007, a child associated with an armed force or armed group can also be a girl used for sexual purposes. While the objection might arise that this wording refers to sexual services to an armed group or military personnel of the armed group in general (similar to the practice of Bacha Bazi in Afghanistan), there are several arguments against such an interpretation. First, one would have to interpret the Paris Principles in the light of their predecessor, namely, the Cape Town Principles of 1997, which defined a child soldier as ‘any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and forced marriage’.<sup>130</sup>

According to the author, the fact that forced marriage is explicitly mentioned means that the children protected under these principles are also girls who are married to only one member of the armed group, even if it is to be classified as a forced marriage.

The second reason, why minor foreign girls that were married to adult ISIS fighters should fall under the protection of the Paris Principles is the fact that this legal document values inclusion and explicitly mentions the danger of girls being easily overlooked and invisible.<sup>131</sup> The document explicitly refers to the fact that girls in domestic positions and as wives are not considered in the same manner as child soldiers when it comes to the release process. This suggests that according to the Paris Principles, Begum would fall under the aforementioned definition of ‘children associated with armed forces or armed groups’.

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<sup>128</sup> Saltman and Smith, p.16.

<sup>129</sup> Hoyle, Bradford and Frenett, p. 21.

<sup>130</sup> UN Children’s Fund (UNICEF), Cape Town Principles and Best Practices, April 1997, [https://www.unicef.org/emerg/files/Cape\\_Town\\_Principles\(1\).pdf](https://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf), (accessed on 14 July 2019).

<sup>131</sup> UN Children’s Fund (UNICEF), The Paris Principles. Principles and Guidelines on Children Associated With Armed Forces or Armed Groups, February 2007, <https://www.refworld.org/docid/465198442.html>, (accessed 14 July 2019).

Begum was 15 years old when she travelled to Syria, accompanied by two friends from school, after being groomed online.<sup>132</sup> After their arrival, the three girls were forced to stay a few days in an all-female household, in which nobody told them of the purpose of their stay. Begum was then married off to a 23-year old Dutch ISIS fighter whom she had never met before. Even though Begum might give the impression that she has no regrets concerning her marriage, she was only 15 years old at the time and could therefore not legally consent to the marriage, according to British law. This suggests that this marriage without the legally valid will of the minor can be considered, to some extent, a forced marriage. According to UK law, it is not possible for a 15-year-old child to marry under any circumstances. Only when the child has reached the age of 16 years can they marry with the consent of their legal guardian. The marriage between Begum and her Dutch 'husband' is henceforth to be classified as legally void. Since she was 19 years old when she gave birth to her third child, it seems likely that the conception of her first child and thus the performance of sexual acts occurred when she was still 15 years old.<sup>133</sup>

Since the UK endorsed both the Paris and the Cape Town Principles, Begum should have to be legally classified as a 'child associated with an armed group' and should thus be protected under the aforementioned treaties ratified by the United Kingdom. However, it appears that the topic of her minority at the time of her departure and her subsequent use in ISIS had not been discussed from the perspective of victimhood at any time. It remains paradoxical that the United Kingdom was not able to protect a 15-year-old child (according to Article 1 of the CRC) like Begum from being recruited transnationally and online by a NSAG, namely, ISIS, and that the state's response is to punish the now-adult Begum.

#### **4.2.2. Was it Lawful for the United Kingdom to Deprive Shamima Begum of her UK Citizenship?**

Though it has already been established that the United Kingdom is a state party to the 1961 Convention on the Reduction of Statelessness, it is crucial to point out that despite popular opinion in the British media, this convention does not prohibit Britain to render individuals stateless. This is

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<sup>132</sup> H. Yusuf and S. Swann, 'Shamima Begum: Lawyer says teen was „groomed“', *BBC*, 31 May 2019, <https://www.bbc.com/news/uk-48444604>, (accessed on 17 June 2019).

<sup>133</sup> BBC, 'IS teenage bride Shamima Begum gives birth to boy', *BBC*, 17 February 2019, <<https://www.bbc.com/news/uk-47270857>> (accessed on 17 June 2019).

because the UK entered a reservation according to Article 8 (3) of the 1961 Convention, which retained the rights of denationalisation of naturalised individuals when certain requirements are met, such as conduct ‘in a manner the it seriously prejudicial to the vital interests of her Britannic Majesty’.<sup>134</sup> This national legislation had to be implemented prior to the UK’s becoming a state party of the UN convention in order to be permissible, and this requirement was met by the UK.<sup>135</sup> Furthermore, the action of citizenship deprivation alone does not constitute an arbitrary act per se and is thus not per se forbidden by international law.<sup>136</sup>

Nevertheless, the UK passed several national laws addressing citizenship deprivation, which had their own take on the permissibility of rendering British nationals stateless, such as the British Nationality and Status of Aliens Act of 1981 and the UK Immigration, Asylum, and Nationality Act of 2002. Neither of these national legislation acts allowed for citizenship revocation that resulted in statelessness,<sup>137</sup> and they are consequently examples (amongst others) that the United Kingdom, though not legally bound by the UN Convention of 1961 itself, obliged itself to refrain from denationalisation through national law.<sup>138</sup>

Before 2014 and the adoption of the Immigration Act, which is examined below, a latent expectation remained that the UK might become a state party to the European Convention on Nationality. This changed significantly when the Immigration Act was passed in 2014, Section 66 of which amended Section 40 of the British Nationality Act of 1981, under which the Home Secretary was given the power to revoke citizenship even when it results in statelessness if they are satisfied that this would be ‘conducive to the public good’,<sup>139</sup> provided that two further requirements are met. The individual concerned must be a naturalised citizen and must have ‘conducted him or herself in a manner which is seriously prejudicial to the vital interest of the United Kingdom’.

The latter terminology lacks a definition in British national law, but according to Explanatory Notes, the vital interests of the UK are jeopardised when a crime involves ‘national security, terrorism, espionage or taking up arms against British and allied forces’.<sup>140</sup>

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<sup>134</sup> Zedner, ‘Citizenship Deprivation, Security and Human Rights’, p. 232.

<sup>135</sup> Mantu, p. 30.

<sup>136</sup> Mantu, pp. 30-32

<sup>137</sup> L. Zedner, ‘Citizenship Deprivation, Security and Human Rights’, *European Journal of Migration and Law*, Volume 18, Issue 2, 2016, pp. 292- 232.

<sup>138</sup> Zedner, p. 232.

<sup>139</sup> Mantu, p. 34.

<sup>140</sup> Zedner, pp. 233-234.

After examining the UK's state obligations, the present paper aims to determine whether the state response regarded to the case of Shamima Begum was permissible under the law. Begum was born in the territory in the United Kingdom, whose parents are of Bangladeshi descent. Begum herself has never visited Bangladesh and does not hold a Bangladeshi passport or any other identity document. On 19 February 2019, Begum's family received a letter from the UK Home Secretary, Sajid Javid, which informed them that their daughter was stripped from her British citizenship according to the British Nationality Act of 1981. The author of the letter furthermore asked the family to contact Begum to inform her of this executive decision and inform her of the right to an appeal within 28 days.<sup>141</sup>

Article 40 (4A) (c) of the British Nationality Act requires the UK Home Secretary to have 'reasonable grounds for believing that the person is able' to become a national of another country. During a Q&A of the home affairs committee, Javid himself later explained that he and his predecessors had only used the power allotted to the UK Home Secretary by Article 40 of the British Nationality Act when the individual concerned had already a second nationality. While Javid refused to talk about the special case of Begum, he emphasised the illegality of rendering someone stateless on the grounds of an executive order according to Article 40.<sup>142</sup>

First, it is unlikely that Begum was a naturalised UK citizen, since she was born in the UK, which would make it illegal to render her stateless according to the British Nationality Act. But it is not public information, if Ms. Begum was actually a naturalised citizen or not.

In light of the remarks of the Home Secretary, the reason for the order to deprive Begum of her nationality is unclear, for Javid's remarks imply that he must think that she is a dual national. While it is correct that Begum is entitled to the Bangladeshi citizenship by descent, because according to Bangladeshi law an individual whose parents (or one of them) are Bangladeshi at the time of birth would be Bangladeshi citizen by descent,<sup>143</sup> it must be noted that this citizenship lapses if it is not

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<sup>141</sup> K. Rawlinson and V. Dodd, 'Shamima Begum: Isis Briton faces move to revoke citizenship', *The Guardian*, 19 February 2019, [online image], <https://www.theguardian.com/world/2019/feb/19/isis-briton-shamima-begum-to-have-uk-citizenship-revoked#img-2>, (accessed 21 June 2019).

<sup>142</sup> J. Selby, 'Shamima Begum: Does It Matter That She Was A Child When She Fled The UK For Syria?', *Human Rights News, Views & Info*, <https://rightsinfo.org/shamima-begum-does-it-matter-that-she-was-a-child-when-she-fled-the-uk-for-syria/>, (accessed on 5 June 2019).

<sup>143</sup> Dr. R. Van Ark 'British Citizenship Revoked, Bangladeshi Citizenship Uncertain - What Next for Shamima Begum?', *ICCT Perspective*, 11 March 2019, <https://icct.nl/publication/british-citizenship-revoked-bangladeshi-citizenship-uncertain-what-next-for-shamima-begum/>, (accessed 7 June 2019).

sought to be retained before the age of 21, according to the so called blood line law of Bangladesh, Section 5 of the Citizenship Act of 1951.<sup>144</sup><sup>145</sup>

In the case *Pham v the Home Secretary*, the Supreme Court explained in its judgement that in order to determine whether someone was rendered stateless, it is necessary not only to determine the national legislation of the foreign state in question but also the relevant state practice.<sup>146</sup>

The burden of proof concerning the facts of the case that might or might not lead to the statelessness of a person lies on the respondent who is seeking to deprive British citizenship, and hence, in this particular case, on the Home Secretary.<sup>147</sup> According to this legal remark, in the particular case of Begum, the burden of proof that, pursuant to the national legislation and state practice of Bangladesh, she will not be rendered stateless lies with the UK Home Secretary.

While the present paper does delve into Bangladeshi law or state practice, it does address the official reaction of Bangladesh to the case of Begum. Because her case is so prominent, this paper not only surveys the general state practice of Bangladesh, but how Bangladesh intends to deal with this particular woman. The official statement of the minister of foreign affairs of Bangladesh declared that Begum will not be allowed into Bangladesh and that she is not a citizen of this country, since she never visited it. Additionally, he remarked concerning the state's rigorous strategy on terrorism that it 'maintains a zero tolerance policy'.<sup>148</sup> Because this interview was published before Begum was stripped of her British nationality, the UK Home Secretary must have been aware of these comments before making his own decision. After the removal of nationality, Bangladesh's foreign minister expressed that Begum would face the death penalty by hanging due to her affiliation with a terrorist organisation if she entered the state. In an interview with ITV news, the foreign minister stated that 'If anyone is found to be involved with terrorism, we have a simple rule: there will be capital punishment. And nothing else'.<sup>149</sup>

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<sup>144</sup> E. Addley, 'What is the truth about Shamima Begum's citizenship status?', *The Guardian*, 21 February 2019, <https://www.theguardian.com/uk-news/2019/feb/21/what-is-the-truth-about-shamima-begums-citizenship-status> (accessed on 23 June 2019).

<sup>145</sup> BBC, 'Shamima Begum will not be allowed here, Bangladesh says', *BBC*, 21 February 2019, <https://www.bbc.com/news/uk-47312207>, (accessed 26 April 2019).

<sup>146</sup> *Pham v Secretary of State for the Home Department* [2015] UKSC 19

<sup>147</sup> *G3 v Secretary of State for the Home Department* SC/140/2017

<sup>148</sup> E. Addley and R. Ahmed, 'Shamima Begum will not be allowed here says Bangladesh', *The Guardian*, 20 February 2019, <https://www.theguardian.com/uk-news/2019/feb/20/rights-of-shamima-begums-son-not-affected-says-javid>, (accessed on 26 June 2019).

<sup>149</sup> ITV Report, 'Bangladesh's Foreign Minister tells ITV News Shamima Begum is „not our problem“', *ITV News*, 2 May 2019, <https://www.itv.com/news/2019-05-02/bangladeshs-foreign-minister-tells-itv-news-is-lamic-state-bride-shamima-begum-is-not-their-problem/>, (accessed on 26 June 2019).

Since Begum is living in a refugee camp in Syria after being officially deprived of her British nationality and after Bangladesh denied that she is a citizen, she will never be able to leave Syria, since both countries claim that they are not responsible. Begum will not have the means to retain her formal Bengali citizenship before the age of 21. At the same time, it must be noted that the mere fact of the existence of this Bengali citizenship is contested. A closer examination of the Bengali Citizenship law would be necessary to answer this question conclusively. Either way, it can be concluded that Begum is at least de facto stateless after the deprivation of her British citizenship, which holds great peril for someone living in a warzone.

Hence, it appears paradoxical that the UK Home Secretary is referring to the UK's international human rights obligations with regards to statelessness in the debate on foreign fighters, while at the same time leaving Begum in the administrative no man's land of de facto statelessness. Depriving her of her nationality means, in the words of Hanna Arendt, depriving her of the 'right to have rights'.<sup>150</sup> By depriving Begum of her nationality, the United Kingdom has divested itself of any further human rights obligations towards this individual, rendering her 'rightless'. Begum is now excluded from the nation-state system, which would otherwise entitle her through the relationship to her government to 'make use of her human rights', as Oman rightly argues. Oman further deduced from Hanna Arendt's work on statelessness that, for Arendt, its significance was not rooted in the 'condition of insecurity but in the fact that statelessness makes it impossible to become secure'.<sup>151</sup> The case study of Begum perfectly demonstrates how her membership in a terrorist organisation leaves her unwanted by both the British and the Bangladeshi communities. This situation makes it nearly impossible for Begum to change the limbo state she is currently in and become secure. The only reason that Begum was able to file for an appeal to the Special Immigration Appeals Commission within 28 days after the receipt of the deprivation order was that her family had organised a lawyer to visit her in Syria. If her family had not assisted Begum in this manner, she would not have been able to even file an appeal and would have been left de facto stateless until her 21<sup>st</sup> birthday, after which she would have been de jure stateless.<sup>152</sup>

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<sup>150</sup> H. Arendt, *The Origins of Totalitarianism* New York, Houghton Mifflin Harcourt, 1973, p. 296.

<sup>151</sup> N. Oman, 'Hannah Arendt's 'Right to Have Rights': A Philosophical Context for Human Security', *Journal of Human Rights*, Volume 9, Issue 3, pp. 281-282.

<sup>152</sup> N. Parveen, 'Shamima Begum's lawyer held back by Syrian forces', *The Guardian*, 17 March 2019, <https://www.theguardian.com/uk-news/2019/mar/17/shamima-begum-lawyer-held-back-by-syrian-forces>, (accessed on 4 July 2019).

It remains doubtful that the United Kingdom has acted lawfully under the ECHR. Not only does the order of denationalisation touch upon several rights granted by the ECHR (such as Article 2, right to life, and Article 8, right to family life), but the questions arises of whether Article 13 might become relevant as well. Zedner, for example, argues that since British national law only allows for the removal of citizenship with regard to dual nationals, it might be discriminatory. She further uses this argument to claim that if the Immigration Act justifies Section 66 on the grounds of national security, it would need to show that dual nationals per se are a greater threat to security.<sup>153</sup>

In conclusion, the decision of the UK Home Secretary was not in accordance with the European Union legal principle of proportionality. Not only were there other counterterrorist measures to deal with Begum, there seems to have been no consideration on the part of the UK with regard to the possibility of her recovering her original nationality, which is practically non-existent. The ECJ has already established its competence in a case such as that of Begum, since she was deprived not only of her UK citizenship but also of her EU citizenship, as established by the precedent of the Rottmann case.<sup>154</sup> It can be concluded that by depriving Begum of her UK citizenship, thus rendering her de facto stateless, the UK did not act lawfully within the relevant national and international law.

#### **4.3. The United Kingdom's General State Practice In Relation to Minor Foreign Fighters**

In the spring of 2019, the Home Office minister was quoted saying that in the past year, a small number of children who are British nationals returned to their home country via third countries. The same source stated that no consular assistance was given concerning travel out of Syria due to the absence of a consulate in the war-torn country and the fact that they 'will not put British officials' lives at risk to assist those who have left the UK to join a proscribed terrorist organisation'.<sup>155</sup> This official statement thus implies that children are not being treated differently than adults in the UK, even though it remains highly contentious that they could voluntarily 'join a proscribed terrorist organisation' and are rather indoctrinated and recruited in a similar way to that of child soldiers, as examined above. This statement also implies that the United Kingdom is not willing to repatriate its

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<sup>153</sup> Zedner, p. 236.

<sup>154</sup> Case C-138/08 *Janko Rottmann v Freistaat Bayern* [2010] ECR I-01449

<sup>155</sup> BBC, 'Small number of children return to UK', *BBC*, 10 April 2019, <https://www.bbc.com/news/uk-47885484>, (accessed on 17 June 2019).

own nationals from Syria, leaving it to the children and adults in question to make their way to a third country, which seems to be significantly difficult for them, since many are in Kurdish custody at the moment.

In general, it can be concluded that the United Kingdom's state practice in relation to its obligation under the international legal framework regarding the rights of children and their protection of recruitment is not effective, since children were able to travel to Syria and Iraq. The state practice of the UK when children are residing in the so-called caliphate is to omit any consular assistance in returning to the UK from Syria, with the result that the state is not living up to the extraterritorial effect of the treaties that regulate the protection of children in relation to armed conflict.<sup>156</sup>

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<sup>156</sup> Capone, p. 194.

## **5. Austria's Legal Obligation in Relation to the Phenomenon of Foreign Fighters with a Specific Outlook on the Case Studies of Sabina Selimovic and Samra Kesinovic**

### **5.1. Austria and the Phenomenon of Foreign Fighters**

As stated above in Chapter 3, Austria is a state party to both UN treaties concerning the status and the reduction of stateless persons and statelessness.<sup>157</sup> Furthermore it is a member of the Council of Europe and a High Contracting Party to the ECHR.

Austria is also bound as much as the United Kingdom by European Union law in matters of citizenship law.

However, unlike the United Kingdom, Austria ratified the European Convention on Nationality (ECN) in 1998, which then entered into force in 2000 and which forbids rendering a citizen stateless.<sup>158</sup> However, it should be noted in this context that Austria made several reservations in order to deprive someone of their citizenship, as outlined in the national Citizenship Act 1985.<sup>159</sup>

At an administrative level, Austria regulates in its Citizenship Act (*Staatsbürgerschaftsgesetz 1985*) who can be deprived of their Austrian nationality and to what extent this is legally permissible.

Article 32 of the Austrian Citizenship Act of 1985 provides for a deprivation of nationality when somebody enlists in their own free will into the military service of a foreign state.

Article 33 (1) allows the denationalisation if an Austrian citizen enlists in the service of a foreign state (provided that Article 33 cannot be applied) and if they conduct themselves in a manner seriously prejudicial to the national interests or the reputation of the Republic of Austria.

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<sup>157</sup> M. Stiller, '*Eine Völkerrechtsgeschichte der Staatenlosigkeit*', Wien, Springer Vienna, 2011, pp. 159 -182. Available from: E-Book Library, (accessed on 25 June 2019).

<sup>158</sup> Mantu, p. 31.

<sup>159</sup> C. Binder und P. Janig, 'Was tun mit Rückkehrern aus dem IS-Kampf?', *Wiener Zeitung*, 22 March 2019, <https://www.wienerzeitung.at/themen/recht/recht/2002107-Was-tun-mit-Rueckkehrern-aus-dem-IS-Kampf.html>, (accessed on 25 June 2019).

Article 33 (2) of the Austrian Citizenship Act of 1985 added a paragraph which provides for the legal deprivation of citizenship when someone participates voluntarily and actively in hostilities for an NSAG abroad in the context of an armed conflict, provided that this person is not rendered stateless.<sup>160</sup>

When reading the Articles 32 and 33 in the light of a word interpretation, the question arises of why Article 33 (2) alone contains the additional phrase 'providing that this person is not rendered stateless'. This is due to the fact, that according to that article, the Republic of Austria is allowed to deprive someone of their citizenship through a formal deprivation procedure when this person enlists in a foreign military, even if a person is rendered stateless by it. Austria made a relevant declaration concerning Article 8 (3) of the UN Convention on the Reduction of Statelessness.<sup>161</sup>

Interestingly, while other European countries are still unsure of how the foreign-fighter phenomenon should be addressed within their respective citizenship legislation, Austria already introduced an adaption of the respective law in 2014 as a consequence of the declaration of the caliphate by ISIS. In 2014, Austria implemented a completely new paragraph to Article 33 as part of a package regulating counter terrorism, the so called *Anti-Terror-Paket*. Through closer examination of the parliamentary submission by the Interior Ministry, the Austrian government from 2014 clearly stated that the intention of the adaption of the Austrian Citizenship Act along with other legislative adaptations was to efficiently counter Islamic terrorism. The federal ministry indicated that the possibility to deprive someone of their nationality should impede and aggravate the recruitment of foreign fighters by ISIS.<sup>162</sup>

The fact that the adoption of Paragraph 2 of Article 33 of the Citizenship Act of 1985 was necessary for the Austrian government in 2014 suggests that it was aware of the difficulties of subsuming the factual circumstance of a foreign fighter joining ISIS under Article 32 of said act.<sup>163</sup>

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<sup>160</sup> Bundesgesetz über die österreichische Staatsbürgerschaft (Staatsbürgerschaftsgesetz 1985 – StbG) StF: BGBl. Nr. 311/1985 (WV)

<sup>161</sup> J. Peyrl, 'Verlust der Staatsbürgerschaft', in J. Ecker, M. Kind and I. Kvasina, *StbG 1985 Staatsbürgerschaftsgesetz 1985*, Wien, Verlag Österreich, 2017, pp. 530-532.

<sup>162</sup> [https://www.parlament.gv.at/PAKT/PR/JAHR\\_2014/PK1069/#XXV\\_I\\_00351](https://www.parlament.gv.at/PAKT/PR/JAHR_2014/PK1069/#XXV_I_00351)

<sup>163</sup> Binder und Janig, 'Was tun mit Rückkehrern aus dem IS-Kampf?'

With respect to the Austrian Citizenship Act, this makes obsolete the legal question of whether the Islamic State in Iraq and Syria fulfils the legal requirements to subsume it under the definition of a state under international law.

Consequently, this means that, in Austria, according to Article 33 (2) of the Citizenship Act, it is not possible to deprive someone of Austrian nationality if doing so would lead to the individual's statelessness based on the factual circumstance that the individual was a foreign fighter of ISIS, due to the *lex specialis* principle.

However, it should be remarked at this point that women and children could likely not even fall under Article 33 (2) in any case, because the law requires the 'voluntary' participation in a NSAG and requires that the individual actively participates in hostilities.<sup>164</sup>

The requirement of voluntariness could exclude children since, pursuant to many practitioners and scholars, children can never fully consent to become child soldiers according to the caretaker approach.<sup>165</sup>

Additionally as stated in Peyrl's commentary on the adapted Austrian Citizenship Act of 1985, in order to fall under the scope of Article 33 (2) it requires either that someone individually acts in combat or that their action stands in close local, temporary, and causal connection with the combat action that occurred during the armed conflict. Referring to Chapter 2 of the present thesis, in which the role of women within the ISIS's caliphate is described, the vast majority of female members of ISIS never fought in combat. This could suggest that most women will most likely not be affected by the counterterrorist measure on the basis of the Republic's Citizenship Act of 1985.

The Austrian state response and practice did not (yet) confront women with the deprivation of their citizenship, though many conservative and right-wing politicians expressed the opinion that foreign fighters should not be allowed back into the country. The former Interior Minister Herbert Kickl, for instance, declared that he would 'not move his little finger' to allow this 'ticking time bombs' back into the country.<sup>166</sup>

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<sup>164</sup> Bundesgesetz über die österreichische Staatsbürgerschaft (Staatsbürgerschaftsgesetz 1985 – StbG) StF: BGBl. Nr. 311/1985 (WV)

<sup>165</sup> Morris and Dunning, p. 4.

<sup>166</sup> N. Weißensteiner, 'Flüchtlingsandrang, IS-Kämpfer, Pilz: Herbert Kickl ortet neue Gefahren', *Der Standard*, 10 April 2019, <https://next.derstandard.at/story/2000101179187/fluechtlingsandrang-is-kaempfer-pilz-wie-kickl-gefahren-entgegnetritt>, (accessed on 28 June 2019).

Though the Austrian political debate centres on the topic of the possible deprivation of citizenship in the context of foreign fighters, Austrian politicians, in most cases, have not said that it would be acceptable to render a person stateless by doing so. The only Austrian politician who has actively voiced this point of view is Hans Peter Doskozil of the Social Democratic Party, who stated that it should be irrelevant if the foreign fighter would face statelessness and justified his opinion through the balancing of interest. According to Doskozil, it is of more pressing concern to deport someone who fought for ISIS than to consider their own interests as citizens and not render them stateless. He then demanded that the government change the Citizenship Act again.<sup>167</sup>

Notwithstanding this argument, under the current administrative law regulating matters of citizenship, Austria cannot subsume female foreign fighters under any article of this law and can deal with its female foreign fighters (and with male foreign fighters) through Austrian criminal law.

According to Paragraph 278b (2) of the Austrian Criminal Code, it is punishable by a term of imprisonment between one and ten years to participate as a member of a terrorist organisation,<sup>168169</sup> which entails that the individuals commit a terrorist offense or support 'a terrorist group or its punishable offenses'. The bar for punishment is set quite low, since it also covers individuals who offer psychological support to strengthen the group's morale or those who provide information and financial means to the terrorist organisation.<sup>170</sup>

In relation to the cases studies of Selimovic and Kesinovic, examined below, it is worth noting the pertinent fact that both were children at the time at which they joined ISIS. Nevertheless, they had

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<sup>167</sup> APA, 'IS-Kämpfer: Doskozil für Aberkennung der Staatsbürgerschaft', *Die Presse*, 11 March 2019, [https://diepresse.com/home/ausland/aussenpolitik/5593795/ISKaempfer\\_Doskozil-fuer-Aberkennung-der-Staatsbuergerschaft](https://diepresse.com/home/ausland/aussenpolitik/5593795/ISKaempfer_Doskozil-fuer-Aberkennung-der-Staatsbuergerschaft), (accessed on 28 June 2019).

<sup>168</sup> Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch – StGB) StF: BGBl. Nr. 60/1974 (NR: GP XIII RV 30 AB 959 S. 84. BR: S. 326. NR: Einspr. d. BR: Einspr. d. BR: 1000 AB 1011 S. 98.)

<sup>169</sup> C. Bertel and K. Schwaighofer, 'Österreichisches Strafrecht Besonderer Teil II', Wien, SpringerWienNewYork, 2010, p. 236.

<sup>170</sup> S. Mandl and N. Katona, 'Strengthening Juvenile Justice Systems in the counter-terrorism context: capacity-building and peer-learning among stakeholders - National Report Austria 2018', *Report by the Ludwig Boltzmann Institute for Human Rights*, 2018, pp. 31, [https://bim.lbg.ac.at/sites/files/bim/attachments/strengthening\\_juvenile\\_justice\\_system\\_counter\\_terrorism\\_national\\_report\\_austria\\_0.pdf](https://bim.lbg.ac.at/sites/files/bim/attachments/strengthening_juvenile_justice_system_counter_terrorism_national_report_austria_0.pdf), (accessed on 28 June 2019).

reached the age of 14, after which point they can be held criminally liable under § 1 of the Austrian Youth Court Act of 1988,<sup>171</sup> meaning that they would be tried in a youth criminal case for the offenses they committed under the age of 18.<sup>172</sup>

## **5.2. The Case Studies of Sabina Selimovic and Samra Kesinovic**

On 11 April, 2014 the two Austrian citizens Sabina Selimovic and Samra Kesinovic left Austria for the ISIS controlled territory in the Levant and Iraq. Sabina Selimovic was 15 years old and Samra Kesinovic was 16 at the time of their departure. They were both born in Austria, were Austrian citizens, and belonged to the Muslim Bosnian diaspora. Both girls are said to have visited the Altun-Alem mosque, in which the salafist extremist Mirsad Omerovic, better known as Ebu Tejma, preached, prior to their departure to the caliphate. However, this claim is contentious. The families of both Selimovic and Kesinovic deny that they were indoctrinated by this preacher and claim that they were instead radicalised, as they said, 'on the streets'. Omerovic himself denied his involvement in the indoctrination and further radicalisation of Selimovic and Kesinovic and successfully sued against two Austrian newspaper tabloids in this regard.<sup>173</sup>

However, Omerovic was convicted by a criminal court in Austria to 20 years in prison because of his participation in a terrorist organization, terrorist crimes, and the general participation in organised crime.<sup>174</sup> Selimovic and Kesinovic disappeared in 2014, leaving written letters for their families stating that they 'will go to Syria and fight for Islam'.<sup>175</sup>

Immediately after their departure to join ISIS, both girls were listed as missing by Interpol.<sup>176</sup>

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<sup>171</sup> Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener (Jugendgerichtsgesetz 1988 – JGG) StF: BGBl. Nr. 599/1988 (NR: GP XVII RV 486 AB 738 S. 76. BR: AB 3573 S. 507.)

<sup>172</sup> Mandl and Katona, 'Strengthening Juvenile Justice Systems in the counter-terrorism context: capacity-building and peer-learning among stakeholders', p. 37.

<sup>173</sup> C. Zöchling, 'Mirsad O.: Der gefährlichste Prediger Österreichs', *Profil*, 14 July 2016, <https://www.profil.at/oesterreich/mirsad-o-prediger-oesterreichs-7119225>, (accessed on 23 June 2019).

<sup>174</sup> APA, 'Urteil im Grazer Jihadistenprozess: 20 Jahre Haft für Mirsad O.', *Der Standard*, 14 July 2016, <https://www.derstandard.at/story/2000041057875/urteil-im-grazer-jihadisten-prozess-20-jahre-haft-fuer-mirsad>, (accessed on 23 June 2019).

<sup>175</sup> APA, 'Interpol fahndet nach Wiener Schülerinnen in Syrien', *Der Standard*, 19 April 2014, <https://derstandard.at/1397521137173/Interpol-fahndet-nach-Wiener-Schuelerinnen-in-Syrien>, (accessed on 26 June 2019).

<sup>176</sup> P. Delassus, 'Sabina, 15 ans, la vie quotidienne d'une jihadiste', *Paris Match*, 22 October 2014, <https://www.parismatch.com/Actu/International/Sabina-15-ans-la-vie-quotidienne-d-une-djihadiste-638124>, (accessed on 24 June 2019).

Consequently, it was only possible to reconstruct their route by locating their phone signal, which showed that the two girls flew from Vienna over Ankara to Adana.<sup>177</sup>

Similar to the case of Begum in the UK, both girls received wide media attention in Austria, as well as in other European countries, since they were deployed by ISIS as their so called 'poster girls', a term the media accordingly adopted. The name was given to them due to the fact that images allegedly showing both girls emerged in which they were surrounded by men wearing arms, and one in which Selimovic was seen surrounded by men, herself holding an AK-47.<sup>178</sup>

The girls used social media upon the arrival in IS territory, but it remains unclear if it was really they who tweeted and posted the content.

About half a year after her arrival in Syria, Selimovic gave an online interview with the French newspaper 'Paris Match', in which she related that both girls were married and living with their husbands, who were Chechen foreign 'soldiers' of ISIS. Selimovic expressed additionally that she 'feels free' because she can practice her religion in the ISIS held territory, which she was not able to do in Austria.

In December 2014, a UN expert and member of the Counter Terrorism Executive Directorate (CTED) David Scharia commented in an interview that one of the girls 'was killed fighting in Syria', while the location of the other was unknown.<sup>179</sup>

Additionally, Begum revealed in 2019 in an interview with the British Media that she knew Kesinovic and that she had been executed as a form of deterrent because she tried to escape ISIS. Conversely, according to the Austrian tabloid newspaper *Österreich*, an insider from the the Federal Agency for Protection of the Constitution and Counter Terrorism (BVT) dismissed this intelligence, which later led to the defamation of Begum as a liar attempting to help Kesinovic go underground.<sup>180</sup>

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<sup>177</sup> D. Krutzler, 'Syrien: Österreichische Mädchen weiter vermisst', *Der Standard*, 6 May 2014, <https://der-standard.at/1397522642863/Syrien-Maedchen-weiter-vermisst>, (accessed on 24 June 2019).

<sup>178</sup> See for example a picture of Samra Selimovic:

K. Corcoran, 'The poster girls for jihad: Interpol searches for two Austrian teens 'who went to Syria to fight for Islamic rebels'', 18 April 2014, [online image], <https://www.dailymail.co.uk/news/article-2607735/The-poster-girls-jihad-Interpol-searches-two-Austrian-teens-Syria-fighting-Islamic-rebels.html>, (accessed on 26 June 2019).

<sup>179</sup> R. Bergman, 'Thousands of ticking Jihadi time bombs', *Ynetnews*, 15 December 2014, <https://www.ynetnews.com/articles/0,7340,L-4603420,00.html>, (accessed on 25 June 2019).

<sup>180</sup> L. Clarke-Billings, 'Shamima Begum 'lies about death of second ISIS bride to help her go underground'', *The Mirror*, 27 February 2019, <https://www.mirror.co.uk/news/uk-news/shamima-begum-lies-death-second-14060152>, (accessed on 25 June 2019).

According to poor information from a Tunisian female foreign fighter, Kesinovic was supposedly abused as a sex-slave of ISIS, while the last rumours surrounding Selimovic suggest that she might have been killed in March 2019 during the battle over Baghuz, one of the last strongholds of the terrorist organisation.

Neither woman has filed for a return to date, and it cannot be guaranteed that either is dead or alive.<sup>181</sup>

Nevertheless, in 2019, Selimovic's mother, who claimed to have been in irregular contact with her daughter since her departure for Syria, was able to locate her two grandchildren in the camp Al-Hol in the north of Syria with the help of political scientist and foreign fighter expert Thomas Schmidinger.

Sabina Selimovic gave birth to at least two children in IS territory, who are now living in a camp run by Kurdish forces and are under the care of a Syrian woman.<sup>182</sup>

Austria follows the *ius sanguini* principle: Hence children born to Austrian nationals automatically acquire their nationality. Since the children were not found together with Selimovic and due to the fact that no official birth certificates exist for the children, it remains unclear to the Austrian authorities whether these children are in fact Selimovic's and, consequently, Austrian citizens. The Ministry of Foreign Affairs has thus not initiated the return of Selimovic's children; instead the competent city administration of the municipality of Vienna (Magistrat Wien - MA 35) has put in place a procedure to acquire DNA samples of the children, a proceeding which remains ongoing and without results at the time of the submission of this paper.<sup>183</sup>

### **5.2.1. Can Sabina Selimovic and Samra Kesinovic be Legally Classified as Child Soldiers?**

As stated above, there is far less reliable intelligence and information available on the two Austrian cases studies of Selimovic and Kesinovic compared to that of Begum. While Begum was interviewed several times in the Kurdish-controlled camp, the survival of either Austrian woman cannot be confirmed. Furthermore, it remains unclear whether they were both married to Chechen foreign fighters upon their arrival in the caliphate, but many factors support this assumption. As described

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<sup>181</sup> T. Schmidinger interview, 2019.

<sup>182</sup> T. Schmidinger interview, 2019.

<sup>183</sup> APA, 'Stadt Wien prüft, ob Großmutter ihre Enkel aus Syrien zurückholen darf'.

above, girls and women who are not willing to be married off upon their arrival in the caliphate are actively dissuaded to migrate in the first place.

While it is unclear whether the children found in the Al-Hol Camp are in fact those of Selimovic, since a DNA test is still necessary, it is consistent with the salient role of women in the IS caliphate to bear children. It is unlikely that Selimovic's fate was any different in this regard. Provided that Selimovic and Kesinovic were in fact married to the Chechen foreign fighters, they must have been married shortly upon their arrival and were thus under the age of 18. Under Austrian law, it is necessary to have the consent of the legal guardian to be legally married between the ages of 16 and 18. Both girls went to the IS-held territory without the knowledge or consent of their parents, so the consent of the legal guardian can be regarded as non-existent. Additionally, in the case of Selimovic, who was only 15 years old at the time of her recruitment, her marriage was impossible under Austrian law. Accordingly, both Kesinovic's and Selimovic's marriages must be regarded legally void under Austrian law.

Due to the scarce amount of information regarding the age of their husbands and whether Kesinovic had children, these aspects will not be legally qualified.

Nevertheless, the marriage alone indicates that both Selimovic and Kesinovic were sexually exploited, since the terrorist group has taken advantage of their age-related cognitive inabilities by marrying them off with two other foreign fighters. It was certainly to the physical and mental detriment of both girls to travel to the ISIS caliphate, especially with regard to the fact that both might be dead now.

Aside from the images of the girls holding AK-47s, there are no other indicators that these young women ever fought in combat for ISIS. In conclusion, Kesinovic and Selimovic can forthwith not be subsumed under the definition of child soldiers, but due to the sexual exploitation to which they were subjected (as described in Sections 2.5.3 and 4.2.1), they must be classified as 'children associated with armed forces or armed groups', according to the aforementioned Paris Principles.

### **5.3. Austria's General State Practice In Relation to Minor Foreign Fighters**

Unlike the UK, the state practice of the Republic of Austria is dichotomous. On the one hand, a legislative change in 2014 with regard to the emergence of the IS caliphate enabled the government to deprive someone of their citizenship according to Article 33 (2). Though there is an ongoing public debate about this executive power in relation to the general phenomenon of foreign fighters, it appears that it can only be applied towards male adult foreign fighters, as described above in Chapter 5.1. On the other hand, the government and the foreign ministry seem to apply another state practice with regard to female foreign fighters, which can be described as reluctance towards repatriation. In the case of a 20-year-old Viennese woman who remained unnamed in the public media and who flocked to ISIS at the age of 16 and is now the mother of a two-year-old infant, the Ministry of Foreign Affairs acted peculiarly. Initially, the ministry was open to repatriation, because the best interest of the child was the primary consideration. In the meantime, the Interior Ministry gave its consent merely to the repatriation of the infant, who could be taken care of by its grandmother, but withheld repatriation from the mother.<sup>184</sup>

However, a few weeks later, the Ministry of Foreign Affairs claimed that the matter ‘had resolved itself’ since it received information that the request for repatriation had been withdrawn by the mother and that she additionally would not let her infant be repatriated on its own. Political expert Thomas Schmidinger, who visited the female foreign fighter before and after this claim by the Foreign Ministry, stated that this young woman expressed her unaltered wish to be repatriated during all of those visits.<sup>185</sup> This impression is strengthened based on her lawyer’s statements to the press that there must have been a misunderstanding.<sup>186</sup>

It seems peculiar that the Austrian government came so rapidly to the conclusion that this case has resolved itself. The talks with the Austrian government in relation to the case of the Viennese foreign fighter have now been ongoing for months, and there is no indication that this matter will be resolved in the months to come. As a result, the situation for the Viennese foreign fighter does not seem to differ greatly from the situation of Begum. Both are in Kurdish-controlled camps, both are in contact with their lawyers, but in both cases there is little indication that they will leave the camp soon.

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<sup>184</sup> APA, ‘Wiener ‚IS-Kämpfer‘ soll keinen Rückkehrwunsch haben’, *Wiener Zeitung*, 2 April 2019, <https://www.wienerzeitung.at/nachrichten/politik/welt/2002780-Wiener-IS-Kaempfer-ohne-Rueckkehrwunsch.html>, (accessed on 25 June 2019).

<sup>185</sup> T. Schmidinger interview, 2019.

<sup>186</sup> APA, ‘Hin und Her um österreichische IS-Frau und ihr Kind’.

## **6. The State Security Perspective**

After examining the phenomenon of foreign fighters from social, political and legal perspectives, three main narratives unfold on how to address the issues surrounding this topic. The first is the narrative that European states have no responsibility for their foreign fighters; the second explains that European states have a responsibility for them; and the last demonstrates how the consideration of nuanced aspects complicates the first two narratives. These are discussed in Sections 6.3–6.5. However, it remains salient to understand the threat that returning foreign fighters pose, which is discussed in Sections 6.1 and 6.2.

### **6.1. The Perceived Threat**

The ‘no responsibility’ narrative of many European states is strongly based on the perception that returning foreign fighters are ‘ticking time bombs’. As indicated above, this connotation was used by the former Austrian Interior Minister, as well as by his German counterpart Friedrich in 2013.<sup>187</sup>

Two main concerns arise in relation to returning foreign fighters. The first is that all of these individuals are war-experienced and weapons-trained, thus leaving them resilient towards barbaric crimes and battle-hardened, which enables them to plot attacks against their home countries in the West upon their return.<sup>188</sup>

The second concern is that all these returning foreign fighters have been strongly indoctrinated and are therefore able to recruit and inspire a new generation of future terrorists or become subject to recidivism themselves.<sup>189190</sup>

The perceived threat often differs from the reality. It is worrisome when politicians use rhetoric based on this perceived threat for the benefit of their own political agenda, and this is particularly

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<sup>187</sup> N. Busse, ‘Diese Leute sind tickende Zeitbomben in Europa’, *Frankfurter Allgemeine Zeitung*, 7 June 2013, <https://www.faz.net/aktuell/politik/inland/im-gespraech-hans-peter-friedrich-csu-diese-leute-sind-tickende-zeitbomben-in-europa-12213789.html>, (accessed on 30 June 2019).

<sup>188</sup> A. Speckhard, A. Shajkovci and A. S. Yayla, ‘What to Expect Following a Military Defeat of ISIS in Syria and Iraq?’, *Journal of Terrorism Research*, Volume 8 Issue 1, p. 82.

<sup>189</sup> D. Psoiu, ‘Subculture: The third wave of European jihad’, *Journal for Deradicalization*, Volume 15, Nr. 2, 2015, p. 164.

<sup>190</sup> S. See, ‘Returning Foreign Terrorist Fighters: A Catalyst for Recidivism Among Disengaged Terrorists’, *Counter Terrorist Trends and Analyses*, Volume 10, Issue 6, 2018, p. 11.

the case when it comes to terrorism, first because there is no internationally accepted definition of terrorism, a term which can consequently be subject to an inappropriately wide application.<sup>191</sup> Second, in relation to the dilemma of foreign fighters who joined terrorist groups, it appears that governments try to project the idea that all of them might pose a high threat upon their return by using the rhetoric of ticking time bombs.

There should be no doubt that it is in the interest of every state to correctly apply risk assessment in relation to counterterrorism. If states fail to do so, on the one hand, they might overlook individuals who have a chance of reintegration (and who can become pertinent players in the deradicalisation efforts of peers). On the other hand, it is important to concentrate counterterrorism resources on those individuals who indeed plan a terrorist attack upon their return to Europe.<sup>192</sup> This is why risk assessment is an indispensable element to develop effective counter terrorism strategies.

## **6.2. The Threat of Foreign Fighters According to Risk Assessment**

It must be noted upfront that the exact numbers on terrorist plots perpetrated on the territory of the European Union by foreign fighters who flocked to the ISIS held territory in Syria and Iraq are contested.<sup>193</sup>

Hegghammer and Nesser indicated in a study from 2015 that ‘the blowback rate – the proportion of outgoing fighters who return and plot attacks against their home country or region – from Syria is thus far very low indeed’. Their study resulted in a blowback rate according to which 1 in 360 returning foreign fighters would plot an attack in the West.<sup>194</sup>

However, it must be emphasised that this study did not include the coordinated attacks in 2015 in Paris (since they occurred after it was published), which left 129 individuals dead, a fact which would alter these numbers significantly. However, contrary to Hegghammer and Nesser’s study,

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<sup>191</sup> S. Dhillon and A. Mama-Rudd, ‘Human Rights and Counter-Terrorism’, *International Journal of Social Research Foundation*, Volume 4, Issue 2, 2016, p. 3.

<sup>192</sup> Bakker et al, ‘Dealing with European Foreign Fighters in Syria: Governance Challenges & Legal Implications’, p. 5.

<sup>193</sup> Renard and Coolsaet, p. 14.

<sup>194</sup> T. Hegghammer and P. Nesser, ‘Assessing the Islamic State’s Commitment to Attacking the West’, *Perspectives on Terrorism*, Volume 9, Issue 4, 2015, <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/440/871>, (accessed on 15 June 2019).

Cragin analysed similar data in 2017 and concluded that 50% of 27 attacks and 19 plots in Western Europe between January 2014 and July 2016 involved foreign fighters.<sup>195</sup>

Nevertheless, most academic studies on the threat posed by returning foreign fighters suggest that the number of violent incidents caused by returning foreign fighters is quite low.<sup>196</sup>

Unfortunately, a vast amount of research concerning the threat posed foreign fighters comes from 2015 and thus does not include attacks which occurred in the following years. However, as Malet correctly argues, it remains unlikely that 'mass numbers of foreign fighters' will 'launch major attacks'. He backs up this assumption with the argument that a high number (compared to terrorist attacks perpetrated) of foreign fighters already returned from ISIS-held territories and that the former waves of foreign fighters from earlier conflicts such as Somalia, Yemen, or Bosnia fortunately prove that there is not a large number of sleeper cells that remain dormant for years before engaging in domestic plots.<sup>197</sup><sup>198</sup>

As explained above, unprecedentedly high numbers followed the call of jihad, which can partly be reasoned with the accessible geographical location of the ISIS's caliphate, thus resulting in 'less selection for ideological commitment' than previous conflicts experienced, as Hegghammer and Nesser rightly argued.<sup>199</sup> ISIS recruits who wish to be repatriated to their respective home countries might for this reason pose a smaller threat than previous waves of returning foreign fighters.

Conversely, there is one crucial factor that aggravates the threat of current returning foreign fighters, since many of the contemporary foreign fighters requested repatriation at a time when the so-called Islamic State had already suffered a significant demise of its former territories.<sup>200</sup> This not only forced their members to flee into other parts of the region, but also led to their capture and imprisonment by the Kurdish administration, which are backed up by the US led coalition forces.<sup>201</sup>

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<sup>195</sup> Cragin, p. 294.

<sup>196</sup> E. Bakker and J. De Roy van Zuijdewijn 'Jihadist Foreign Fighter Phenomenon in Western Europe: A Low-Probability, High-Impact Threat', *ICCT Research Paper*, 2015, p. 16, <https://www.icct.nl/wp-content/uploads/2015/11/ICCT-Bakker-DeRoyvanZuijdewijn-Jihadist-Foreign-Fighter-Phenomenon-in-Western-Europe-October2015.pdf>, (accessed on 30 June 2019)

<sup>197</sup> Renard and Coolsaet, pp. 14.

<sup>198</sup> Pisiou, 'Subculture: The third wave of European jihad', p. 164.

<sup>199</sup> T. Hegghammer and P. Nesser, 'Assessing the Islamic State's Commitment to Attacking the West'.

<sup>200</sup> BBC, 'IS 'caliphate' defeated but jihadist group remains a threat', *BBC*, 23 March 2019, <https://www.bbc.com/news/world-middle-east-45547595>, (accessed on 1 July 2019).

<sup>201</sup> E. Francis and P. Blenkinsop, 'U.S.-backed Syria force seeks help with Islamic State prisoner 'time bomb'', *Reuters*, 18 February 2019, <https://uk.reuters.com/article/uk-mideast-crisis-islamicstate-detainees/us-backed-syria-force-seeks-help-with-islamic-state-prisoner-time-bomb-idUKKCN1Q71E0> (accessed on 10 July 2019).

Terrorism studies categorise different waves of returnees depending on the phase of the Syrian civil war in which they returned. The Soufan Center Report from 2017 illustrates this distinction between returnees and individuals who ostensibly want to return in five categories:

- '(i) those who left early or after only a short stay and were never particularly integrated with IS;
- (ii) those who stayed longer, but did not agree with everything that IS was doing;
- (iii) those who had no qualms about their role or IS tactics and strategy, but decided to move on;
- (iv) those who were fully committed to IS but forced out by circumstances, such as the loss of territory, or were captured and sent to their home countries; and
- (v) those who were sent abroad by IS to fight for the caliphate elsewhere'.<sup>202</sup>

According to this list, the contemporary cases of former ISIS members who seek to return to their respective home countries would be classified as group (iv), since they asked for repatriation at a time when external circumstances possibly forced them to.

In addition, not all ISIS recruits pose the same degree of threat upon their return with regard to their concrete experience and training in the conflict zone; this is certainly the case with, for example, women and girls. Though as described above some female ISIS recruits that join the jihad show a willingness to engage in combat, they 'are not fighters and should not be referred to as such'.<sup>203</sup>

It is highly likely that none of the female ISIS foreign fighter recruits ever actively participated in combat,<sup>204</sup> though there is one documented case of a Canadian female foreign fighter under the name L.A. who 'reportedly infiltrated hard-to-reach enemy territory and penetrated Kobane, Aleppo and Mosul'.<sup>205</sup>

Additionally, ISIS did inspire women to become actively violent as suicide bombers, which can be exemplified by the foiled terrorist plot near Notre Dame in Paris in 2006.<sup>206</sup> However, as noted above, lone wolves are not the subject of this present paper and fall under different statistics. Even the photo of 'ISIS's poster girl', Kesinovic, in which she was holding an AK-47, was probably taken for the use of propaganda rather than depicting the reality of Kesinovic's situation. According to the self-imposed rules of ISIS and the strict interpretation of the Sharia, it is prohibited for women to

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<sup>202</sup> Barrett, pp. 18.

<sup>203</sup> Hoyle, Bradford and Frenett, p. 38.

<sup>204</sup> Bakker and de Leede, p. 8.

<sup>205</sup> A. Perešin, 'Fatal Attraction: Western Muslimas and ISIS', *Perspectives on Terrorism*, Volume 9, Issue 3, 2015

<sup>206</sup> Strømme, 'Jihadi Brides or Female Foreign Fighters? Women in Da'esh - from Recruitment to Sentencing'.

become active on the battlefield.<sup>207</sup> According to Lahoud, ISIS's exclusion of women from combat is, in fact, not pursuant to Islamic law (which obliges all Muslims to take part in jihad in wartimes) but rather the product of their ideological attitude towards sexual segregation. This prohibition of mixing between the sexes is applied also in other areas of the caliphate, such as the proscription of interaction between male and females in social media and other online communication and the segregated housing of female recruits upon arrival in the caliphate.<sup>208</sup>

However, some female ISIS members were part of the so called Al-Khansaa Brigade, the exclusively female enforcement unit. Their tasks were to monitor the (mainly female) community and their moral behaviour in the caliphate.<sup>209</sup> This unit is said to have acted in an oppressive and violent manner, and there are documented cases of this unit practicing torture.<sup>210</sup>

Most female ISIS recruits therefore do not pose a high threat due to the fact that they have been trained with weapons. However, it does not exclude women generally from posing a threat upon their return due to the deep indoctrination they received in the caliphate. Thus, deradicalisation programmes will be necessary in this regard.

### **6.3. 'European States are NOT Responsible for Their Foreign Fighters'**

The first narrative, espoused by some European states, is that states have no responsibility for IS members who flocked to the conflict region because they deliberately turned against their home countries and became terrorists. This can be deduced, for instance, from arguments such as that of Kickl, who claimed that he would not 'not move his little finger' to allow these 'ticking time bombs' back into the country. Another example is the statement from a British politician saying he 'will not put British officials' lives at risk to assist those who have left the UK to join a proscribed terrorist organisation'. It is not only politicians but also scholars who argue that when an individual fights against values of the society to which they belong, this person 'forfeits the contractual conditions of membership', thus implying that they have ceased to be a member of society.<sup>211</sup> This narrative suggests that terrorists and individuals have not only broken the law, but they have chosen

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<sup>207</sup> Hoyle, Bradford and Frenett, p. 32.

<sup>208</sup> N. Lahoud, 'Can Women Be Soldiers of the Islamic State?', *Survival*, Volume 59, Issue 1, pp. 68.

<sup>209</sup> Gan et al., 'Change is the Only Constant: The Evolving Role of Women in the Islamic State in Iraq and Syria (ISIS)', p. 6.

<sup>210</sup> Barrett, p. 23.

<sup>211</sup> A. K. Webb, 'Swanning back in'? Foreign Fighters and the long arm of the state', *Citizenship Studies*, Volume 21, Issue 3, p. 296.

to cease being part of society and became instead the enemy. This explains why certain individuals are eventually excluded from a society and therefore denied certain human rights.

This narrative is additionally based on the notion of 'othering', which is examined here as a necessary backdrop to the present narrative. According to Carter, othering creates 'oppositional binaries that define us/other' and is consequently a 'dehumanising exercise'. In her research on the othering of UK Muslims, Carter further explores how the stigmatisation that is occurring is based on a 'fluid and subjective rather than objective category'.<sup>212</sup> While the hypothesis of this thesis is not primarily focused on the othering of Muslims, but on the othering of terrorists and individuals affiliated with terrorists such as foreign fighters of ISIS, the notion of othering obtains equally. Othering is a useful populist tool for politicians, allowing them to make exceptions and exclusions from human rights for a certain group of individuals without raising any fear in the majority population that they could be subject to a similar deprivation of human rights, because they belong to the group of 'us'.<sup>213</sup>

While there are good reasons and justifications for a nation in a state of emergency or under threat to apply extraordinary measures, this does not mean that national security trumps human rights per se. However, after the practice of othering has taken place and has been accepted by the majority of a society, the exclusion of 'them' is justified by the security of 'us'.

The international community reiterates continuously that states must counter terrorism in an effective manner while at the same time protecting and upholding human rights, and the deprivation of citizenship is a severe human rights violation.<sup>214</sup> However, often when states became active against terror, the human rights of terrorists are severely violated according to the justification that national security is the priority.

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<sup>212</sup> D.M. Carter, '(De)constructing difference : a qualitative review of the ,othering' of UK Muslim communities, extremism, soft harms, and Twitter analytics', *Behavioral Sciences of Terrorism and Political Aggression*, Volume 9, Issue 1, 2017, p. 22.

<sup>213</sup> D.M.D. Silva, 'The Othering of Muslims: Discourses of Radicalization in the New York Times, 1969 - 2014', *Sociological Forum*, Vol 32, Issue 1, 2017, pp. 140-141.

<sup>214</sup> Office of the United Nations High Commissioner for Human Rights „Human Rights, Terrorism and Counter-terrorism, *Fact Sheet No. 32 of the OHCHR*, 2008, p. 19 <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>, (accessed on 29 June 2019).

In state discourses both in the United Kingdom and in Austria, some politicians have not shied away from using rhetoric which places national security above all other concerns regarding the phenomenon of foreign fighters.

The UK home secretary has used draconian language in relation to foreign fighters with UK nationality. Indeed, Javid illustrated the wagging of interests according to his view by using the example of Begum's case when he wrote an article for *The Times*. The article was published on 17 February 2019, a few days prior to the revocation of Begum's citizenship, and its headline read 'If you run away to join Isis, like Shamima Begum, I will use all my power to stop you coming back'. In this article, he explains that 'As home secretary, my priority is to ensure the safety and security of this country - and I will not let anything jeopardize that'.<sup>215</sup> Mr. Javid also refers to the possibility of using his deprivation power while at the same time reminding that the UK 'will not make individuals stateless'. As demonstrated in the case study above, the situation in which Shamima Begum was left by the decision to revoke her citizenship has left her de facto stateless.

If one considers this outcome against the backdrop of Mr. Javid's statements in *The Times*, it appears that the avoidance of the de facto statelessness of foreign fighters is not supposed to jeopardize the United Kingdom's national security and is therefore trumped by the UK's national security.

While his continental counterpart, former Austrian Interior Minister Kickl, was more cautious with his words concerning the acceptance of statelessness during his time in office, he seems to have since shifted in his position. Kickl launched a request to the transitional government in place to refrain from repatriating IS-fighters and their supporters, even if they held Austrian citizenship, and he justified his demand with the security risk that they pose for the Austrian society. Kickl further explained that statelessness should not hinder the possibility depriving citizenship from someone who voluntarily became a member of ISIS.<sup>216</sup> However, it has to be mentioned that Kickl is no longer in office and no Austrian politician in government has addressed the issue of foreign fighters with the proposition of deprivation of citizenship so as to deliberately result in statelessness. As outlined in the previous chapter, to do so would, in any case, require a legislative amendment of

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<sup>215</sup> S. Javid, 'If you run away to join Isis, Like Shamima Begum, I will use all my power to stop you coming back', *The Times*, 17 February 2019, <https://www.thetimes.co.uk/article/if-you-run-away-to-join-isis-like-shamima-begum-i-will-use-all-my-power-to-stop-you-coming-back-8r2lpkfnn>, (accessed 26 April 2019).

<sup>216</sup> APA, 'Außenministerium prüft Rückholung von Kindern aus Syrien', *Salzburger Nachrichten*, 25 June 2019, <https://www.sn.at/politik/innenpolitik/aussenministerium-prueft-rueckholung-von-kindern-aus-syrien-72505918>, (accessed on 29 June 2019).

the Austrian Citizenship Act and even then would remain a violation of European and International Law.

In conclusion, it can be stated that when governments use the narrative of not being responsible for their citizens who flocked to ISIS, they tend to justify it as being in the interest of national security and with the fact that these individuals deliberately went to join ISIS.

However, when diverse aspects, such as minority or gender, are considered within this narrative, it seems unlikely that these justifications will withstand scrutiny, which is addressed in Section 6.5.

#### **6.4. 'European States ARE Responsible For Their Foreign Fighters'**

There are many well-founded reasons to support the narrative that European states are, in fact, responsible for their foreign fighters and should thus repatriate them. To be repatriated, it is a necessary requirement to not have been previously denationalised.

While the prior antagonistic narrative is partly founded in the notion of othering, this narrative is based on inclusion, namely on inclusion within the nation-state that has respect for the rule of law. When someone becomes a terrorist, they do not forfeit all their rights, and the draconian measure of denationalising an individual immediately is not justified.<sup>217</sup> While citizenship implies that a certain kind of loyalty exists between the citizen and the state, this is not a mere privilege but a right. Therefore, certain legal standards must be met, while deprivation without concern for legal standards seem to be a more punitive measure. Using this draconian measure of citizenship deprivation without regard to its appropriateness, for example, would rather bring to mind the mediaeval punishment of banishment.<sup>218</sup> Thus, inclusion with regard to the narrative examined in this section is not merely an option but is rather necessary under respect for rule of law.

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<sup>217</sup> P. Sykes, 'Denaturalisation and conceptions of citizenship in the 'war on terror'', *Citizenship Studies*, Volume 20, Issue 6-7, p. 754.

<sup>218</sup> C. Paulussen and L. Van Waas, 'UK Measures rendering Terror Suspects Stateless: A Punishment More Primitive Than Torture', *ICCT Perspectives*, <https://icct.nl/publication/uk-measures-rendering-terror-suspects-stateless-a-punishment-more-primitive-than-torture/> (accessed 25 June 2019).

After concluding that the rule of law prohibits rendering someone stateless and depriving someone of their nationality without regard to appropriateness, it is necessary to examine why states should repatriate their national foreign fighters.

First, the phenomenon of foreign fighters is an issue that has its roots in Europe and is thus, to some extent, a homemade problem for which the European states should be held accountable. Those estimated 5,000 individuals who flocked to ISIS from Europe were radicalised in Europe in their respective home countries. Though the EU has committed itself to prevent terrorism as one of the pillars in the EU's combat of terrorism, it clearly failed to succeed.<sup>219</sup> Furthermore, an examination of the different waves of migrating foreign fighters to the Levant and Iraq shows that some countries, such as Germany, allowed the exodus of some waves of foreign fighter to diminish their own domestic terrorist threat. However, this was only the case in some German federal states, and this practice ended completely after the adoption of UN Resolution 2178.<sup>220</sup>

Second, it is salient to note that states dealing with this phenomenon in a draconian and punitive way might fuel the further growth of extremism within Europe. This rationale is reinforced by research on the motivations to join an organisation such as ISIS, presented in Chapter 2 of this thesis. Female and male recruits oftentimes stated that the Muslim community was oppressed and under attack.

Third, European states might be better equipped to deal with the threat of foreign fighters than are the Kurdish groups in the camps in northern Syria. The phenomenon of foreign fighters is highly complex and multi-layered, and it might therefore be difficult for the Kurdish groups to deal with it, since the war in Syria has not ended and, while the territory of the Islamic State has been severely diminished, ISIS has not ceased to exist either. Additionally, reports about arbitrary arrests, abuse, and torture by the Kurdish Regional Government in Iraq have emerged in the recent months.<sup>221</sup>

## **6.5. Nuanced Aspects**

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<sup>219</sup> European Parliament resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations (2015/2063(INI)).

<sup>220</sup> Renard and Coolsaet, p. 47.

<sup>221</sup> Human Rights Watch, 'Everyone Must Confess' Abuses against Children Suspected of ISIS Affiliation in Iraq', *Report by Human Rights Watch*, 2019, p.22, [https://www.hrw.org/sites/default/files/report\\_pdf/iraq0319\\_web\\_1.pdf](https://www.hrw.org/sites/default/files/report_pdf/iraq0319_web_1.pdf), (accessed on 5 July 2019).

This section aims to demonstrate how the first two narratives, which adhered to a black-and-white binary perspective of possible state responses to the threat of foreign fighters can become unsustainable when different aspects are considered.

The first narrative, stating that the home country has no responsibility for its foreign fighters, is, as explained above, partly based on the assumption that all foreign fighters are terrorists. While there is no universally accepted definition of terrorism in international law, some minimum criteria exist which the international community can agree constitute terrorism. For instance, Saul defines the minimal agreement on the terminology of terrorism as ‘the instrumental political killing of civilians in peacetime’.<sup>222</sup> Adult individuals who joined ISIS and participated actively in atrocities, war crimes, or in the genocide committed against the Yezidi people can, pursuant to Saul’s terminology, indisputably be defined as terrorists.

The present paper did, however, question whether the same terminology can rightfully be applied to all women and to children in general. There are many groups of individuals that are or were technically members of the Islamic State but have become so in different manners. First, with this in mind, some women who joined ISIS in the Levant and Iraq travelled there under coercion by their husbands or male family members. Second, according to the caretaker approach, as outlined in Chapter 2 of this thesis, it appears contentious that minors who are recruited by ISIS can be unequivocally categorised as terrorists. This example becomes more complicated, if a distinction is applied between minors who have not reached the age of criminal liability and those who have. Finally, it seems highly specious that babies who are born in the IS caliphate are terrorists and should be treated as such according to the ‘no responsibility’ narrative. As mentioned in Chapter 5, in Austria there have been many signs that the babies of female foreign fighters might be repatriated. In the case of the unnamed young woman from Vienna, the Austrian Interior Ministry did agree exclusively to the repatriation of the baby and negated to grant the mother the same right. Yet it remains difficult to identify where the line is drawn in relation to the enjoyment of repatriation as a citizen, since the woman in question joined ISIS in a similar manner to those in the three case studies, that is, as a minor herself. According to the UN Convention of the Rights of the Child, this means that she became a member of ISIS as a child, even if she had already reached the age of criminal liability according to Austrian criminal law. While politicians have emphasised, in relation to

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<sup>222</sup> B. Saul, ‘Defining Terrorism: A Conceptual Minefield’, *Legal Studies Research Paper*, Sydney Law School, 2015, p. 11.

the babies of foreign fighters, that the child's well-being is a priority, it appears paradoxical that the mothers, when they themselves were children, did not benefit from the protection that the respective states were obliged to provide. Furthermore, the reluctance of states to repatriate those female foreign fighters with their children does unequivocally affect the well-being of their children, as exemplified in Begum's case. Begum was pregnant with her third child when she made her request for repatriation, which she partly justified with the physical health of her unborn baby. Since her first two babies had already died in the caliphate, she had a substantiated fear for her third child, who died about three weeks after birth, of pneumonia.<sup>223</sup>

This demonstrates the challenges of a black-and-white perspective on the subject, because the fate of the now adult female 'terrorist' foreign fighters is, to a certain extent, intertwined with the fate of their 'non-terrorist' children who were born in the conflict-zone.

Notwithstanding the example of babies living in the caliphate, other examples, such as the teenage female foreign fighters, might be even more difficult to neatly place into the categories of terrorists and non-terrorists. Binary narratives thus tend to fall apart when it is unclear who falls under the definition of terrorism.

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<sup>223</sup> BBC, 'Shamima Begum: IS teenager's baby son has died, SDF confirms', *BBC*, 8 March 2019, <https://www.bbc.com/news/uk-47500387>, (accessed on 10 July 2019).

## **7. Conclusion**

As explained above, the protection of national security does not trump human rights, due to their complementary and reinforcing relationship.<sup>224</sup> Furthermore, it is necessary to reiterate that it is not beneficial to national security when ineffective counterterrorist measures are being implemented by governments. Yet when this statement is seen in the light of counterterrorism measures against IS recruits and sympathisers, it appears that governments mainly address the issue of foreign fighters wishing to return instead of addressing the issue of ISIS sympathisers within their respective jurisdictions.<sup>225</sup> ISIS sympathisers can include, for example, those individuals who attempted but failed to travel to the ISIS caliphate. Academic literature regarding this special issue suggests that due to the frustration they experienced through their failure, they might pose an even higher threat to national security.<sup>226</sup> This group of persons continue to reside in Europe, but they are not targeted by draconian measures such as denationalisation. This is an example how counterterrorist measures can be applied differently to different terrorist threats. However, one can deduce that states do not counter terrorism or the different threats of terrorism effectively, since it would not make any difference if a terrorist plot would be perpetrated by someone who failed to join ISIS or someone who was repatriated by their respective government. For instance, one of the Charlie Hebdo attackers in Paris was convicted because of a failed attempt to travel to Iraq to join Al-Qaeda.<sup>227</sup> When, ten months later, coordinated attacks were carried out in the same city at the hands of (mainly) returned foreign fighters, it appears that a very similar threat had materialised. Yet there is little political or public media debate in the European polity about the threat of thwarted ISIS migrants or those who have already returned to their respective home countries compared to the contemporary heated debate concerning the possible repatriation of foreign fighters residing in Syria and Iraq.

The European States will continue to be confronted with the issue of foreign fighters aspiring to return, and it is therefore in the interest of the European states to adapt a comprehensive and effective counterterrorism strategy to address this issue in the future. This thesis provided insight into the contemporary state practices of two European states in relation to a very specific type of foreign fighter: girls who left Europe to join ISIS and became women in the so-called Islamic State.

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<sup>224</sup> Office of the United Nations High Commissioner for Human Rights „Human Rights, Terrorism and Counter-terrorism, *Fact Sheet No. 32 of the OHCHR*, 2008, <https://www.ohchr.org/Documents/Publications/Fact-sheet32EN.pdf>, p. 19 (accessed on 29 June 2019)

<sup>225</sup> Barrett, pp. 15.

<sup>226</sup> Renard and Coolsaet, p. 3.

<sup>227</sup> S. Joshi, 'Charlie Hebdo attack: A French intelligence failure?', *BBC*, 10 January 2015, <https://www.bbc.com/news/world-europe-30760656> (accessed on 4 July 2019).

The analysis of this category of ISIS recruits demonstrated that it is highly complex, with multi-causal drivers and dichotomous facets. These young women do pose a threat to the European polity since they were indoctrinated, but it remains crucial to distinguish amongst them, as not all women are battle-experienced, with many instead having spent a great amount of time stuck in a domestic role. Yet it continues to be essential that these women are also seen, to a certain extent, as victims due to their status unprotected children at the time of their recruitment by a NSAG. Additionally, these young women were, to a certain extent, victims of sexual exploitation as children affiliated with armed forces.

By considering the current state practices and official statements of politicians both of Austria and the United Kingdom in relation to their own (former minor) female foreign fighters, it has to be concluded, that they are not being treated any differently than other categories of foreign fighters. While Austria is not applying the draconian measure of deprivation of citizenship there seems to be no success-oriented effort to repatriate these women. Whereas the United Kingdom uses the measure of denaturalisation to discard itself from the problem and as exemplified in the case of Shamima Begum had no consideration of the extent of her victimhood. The death of her third child appears to have been accepted by the United Kingdom as a consequence of denying her the repatriation since she was no longer a citizen.

If governments are not capable of identifying (and not willing to identify) a certain extent of victimhood of their own former minor female foreign fighters, it is consequently impossible to apply counter terrorist measures which are appropriately considering gender-specific or age-related vulnerabilities that led these girls to the caliphate and therefore to the situation in which they find themselves today as women.

In conclusion, this paper has demonstrated how gender-specific vulnerabilities and the vulnerabilities of children can be easily overlooked by governments when national security is at stake due to terrorism.

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