Citizenship revocation in response to the foreign fighter threat

Under what conditions may it be legitimate and permissible?

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Abbreviations

CERD Committee on the Elimination of Racial Discrimination
CoE Council of Europe
IOM International Organization for Migration
ECHR European Convention on Human Rights
ECtHR European Court for Human Rights
ECN European Convention on Nationality
EU European Union
HRC Human Rights Council
ICJ International Court of Justice
ICCPR International Covenant on Civil and Political Rights
ICCT The International Centre for Counter-Terrorism
ICSR International Centre for the Study of Radicalization
ILC International Law Commission
IS Islamic State
1961 Statelessness Convention – the 1961 Convention of the Reduction of Statelessness
1954 Statelessness Convention – the 1964 Convention relating to the Status of Stateless Persons
UDHR Universal Declaration of Human Rights
UN United Nations
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1 Introduction

1.1 Background

The issue of foreign fighters involved with the Islamic State (IS, also variously known as the Islamic State in Syria, ISIS, the Islamic State in the Levant, ISIL, and by the corresponding Arabian acronym Daesh) has been high on the international agenda in recent years, culminating in the adoption of the United Nations Security Resolution 2178 on September 24, 2014. The consequent enacting of new legislation and amendments of pre-existing law, as well as various policy responses on administrative, criminal and socio-political levels promptly followed. Heated debates, informing and informed by these legislative measures, have taken place across many states as to the most appropriate and effective policy responses.

The return of foreign fighters to their countries of origin is an extremely relevant question preoccupying most of the governments of Western Europe, who face similar, tightly connected security challenges to one-another, along with many other governments in different parts of the world. The foreign fighter phenomenon is not new. Afghanistan in the 1980s and the Spanish Civil War in the 1930s are just some of the famous examples that attracted a large number of foreign fighters. However, the scale of the issue, including not simply the sheer number of foreign individuals involved in the conflict in Syria and Iraq but also the relatively high proportion from the Western states, is unprecedented. The unparalleled recruitment to IS, the level of its organization and rapid success, and its extensive territorial ambitions in such a sensitive region, present a threat to the general security of the surrounding regions (including Europe and Russia) beyond even that of al-Qaeda1. One of the key concerns is individuals returning from the combat zones, further radicalized, trained, and both willing and able to carry out terrorist acts in the countries of origin.

One of the most controversial responses to address this threat has been the expansion of the citizenship deprivation powers across many states worldwide. The politically sensitive and divisive nature of this measure has led to the politicization of the issue. Several states, including the United Kingdom, Canada and Austria, to name a few, have amended their

1 Brannen, 2014; Rogers, 2015
legislation to allow for the easier revocation of the citizenship by introducing new causes. The UK in particular appears to be setting a trend in remodeling citizenship deprivation powers while many other states are considering similar measures as the phenomenon captures global attention.

Counter-terrorism measures, with citizenship deprivation being one of the most legally powerful examples, have the potential not only to greatly affect individual rights and liberties, but also to affect the tensions between the national, international and transnational levels. Therefore, citizenship deprivation in the context of the foreign fighter issue must be scrutinized for its compatibility with international human rights law and the responsibilities under human rights treaties of those states who have enacted such measures. As a politically sensitive and controversial measure, it may have the potential to affect the institution of citizenship as a whole. At the same time, it is unclear whether such measures would advance the security prospects of the states, raising immediate questions. Can a state revoke a legally-attained citizenship and not break its human rights obligations? Is such a measure justified in the name of national security or as a continuation of the "war against terror"? Is it even ever an appropriate response, and are there alternatives?

The aim of this thesis, therefore, is to address these questions through an analysis of the deprivation of citizenship in modern, democratic states as a response to the foreign fighter phenomenon, and whether it can ever be justified on national security or other grounds. The discussion will be supported by case studies, focusing particularly but not exclusively on the case of the UK and on recently enacted and updated legislation in these states, considered in the context of the current political and social environments and compliance with international human rights norms. Special consideration will be given to the impact of such legislation on rights and liberties, and its necessity and effectiveness as a counter-terrorism, preventative or punitive measure. Alternative measures to address the threat will be briefly discussed as well.

The specific research question I aim to answer can be phrased "Does citizenship deprivation in response to the foreign fighter phenomenon have a place in a democratic society and what does international law require of states who wish to utilize citizenship deprivation in response to the foreign fighter phenomenon?" In other words, under what conditions, if any, can citizenship deprivation be seen as a legitimate and effective measure?
The potential societal relevance of an answer to this question would lie in the application of relevant international law, and knowledge gathered from previous and current experiences with citizenship deprivation, to this particular policy option, which reflects the shifting nature of terror and citizenship.

1.2 Chapters overview

The thesis consists of six sections. The introductory section provides a short introduction, a methodology and deals with the definitional issues.

The second chapter positions the debate about foreign fighters into the current perspective, creating the analytical backdrop for the project. Special attention will be paid to discussing the scale of the conflict as well as the specific concerns around the foreign fighter phenomenon prompting the adoption of the citizenship deprivation measures discussed in the consequent chapters.

The third chapter will focus on citizenship revocation as a policy option in response to the foreign fighter phenomenon. It will start by discussing citizenship as a concept and setting forth the human rights framework establishing the right to nationality. Next it will provide a discussion of the citizenship deprivation developments in the United Kingdom as well as an overview of how a number of Western countries have expanded their denationalization powers or made more active use of the existing ones in response to the rising terrorist threat. The choice of countries is dictated by the need to compare and contrast the responses of states with various citizenship tradition, as well as various experiences with terrorism.

The forth chapter will discuss, on the basis of the previous chapters, whether citizenship revocation in response to the foreign fighter phenomenon has a place in a modern democratic society and under which conditions it may be permissible. A range of other available administrative, criminal and socio-political measures to address the same threat will be discussed as well.

The conclusion will summarize the main findings and argue that citizenship deprivation is an exceptionally hard measure with far reaching consequences for the individual concerned, and
if such a measure is to be retained and utilized by governments, it should comply with a number of international law and human rights obligations, as well as be limited to very specific and strictly defined cases.

1.3 Methodology

Given that the subject of the research is based in a continually evolving political and security environment, it comes with a number of legal and theoretical challenges. A multidisciplinary approach that includes legal and extra-legal considerations allows, therefore, for a deeper understanding of the underlying issues.

For this kind of study it is beneficial to make use of the legal tradition known as “law in context” where the focus point is not law but the generalized and generalizable problems in society. This approach is an alternative to the “black-letter-law” tradition, and it combines legal and non-legal solutions to the issue, such as political or social re-arrangements.

The legal phenomenon, in our case the newly enacted legislation that broadens the denationalization powers of states, will be considered in its political and social context. Specifically, I will assess the newly enacted or updated citizenship deprivation legislation against human rights standards, such as prevention of statelessness, prohibition against arbitrary deprivation of nationality and non-discrimination, and domestic rule of law standards.

International human rights law and domestic laws of the states under discussion will be relied upon as well.

The data is collected mostly through analysis of official documents, academic and legal sources, as well as case studies. Supplementary information has been gained by consulting Truls Tønnessen, who is a historian with extensive knowledge of the foreign fighters' phenomenon and states' responses, from the Norwegian Defence Research Establishment (FFI).

The primary sources used in this thesis include official documents with the relevant legislation of the states discussed and legal sources such as treaty and customary law, general principles of law and selected judicial decisions.

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2 McConville and Chui, 2007:1
The main human rights treaties relied upon in this research are the 1961 Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality. The 1954 Convention Relating to the Status of Stateless Persons, Universal Declaration of Human Rights and European Convention on Human Rights have been used as well. Additionally, the Inter-American Convention on Human Rights and the 1997 Draft Articles on Nationality in Relation to the Succession of States have been consulted to clarify several issues or find supporting information.

The secondary sources include reports of inter-governmental and civil society organizations, academic articles, legal reviews and media articles.

Speaking about limitations of this thesis, it is important to note that studies which deal with very recent events, are by their nature limited by a lack of data -- neither the consequences of a scenario, nor the impacts of actions taken in response, can yet be fully known. In this instance, it is not yet clear what the impacts of returned foreign fighters -- both hostile and non-hostile to their parent state -- will be; it is equally challenging to judge the impact of legislation and measures taken in response to these poorly-understood impacts. However, this is not to suggest that such studies are fruitless; quite the opposite. It is only through such assessment of the current situation and the successes and drawbacks of responses taken, that we can inform and refine further measures that better balance effectivity with obligations under human rights laws.

Research of this nature inherently involves qualitative judgements. As a result, while many academic and legal opinions have been consulted for this work to provide a firm basis of study, my conclusions are of course influenced by my personal predispositions.

1.4 Definitions

This section outlines the main terms used throughout the thesis.

The term “foreign fighter” came into wide use after the events of 9/11. The subsequent US-led invasion of Iraq put the phenomenon into the spot light with foreign fighters associated with al-Qaeda having reportedly played a large role in complicating and intensifying the conflict. There are multiple definitions of who a foreign fighter is. The definitions will vary depending
on the context of the discussion. For example, David Malet's definition of foreign fighters is “non-citizens of conflict states who join insurgencies during civil conflict”\(^3\), while Thomas Hegghammer elaborates on this definition and describes a foreign fighter as “an agent who (1) has joined, and operates within the confines of, an insurgency, (2) lacks citizenship of the conflict state or kinship links to its warring factions, (3) lacks affiliation to an official military organization, and (4) is unpaid”\(^4\). Hegghammer's definition, being more detailed, thus includes only those who join the conflict for ideological reasons.

UNSC Resolution 2178 defines foreign fighters as “individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict”.

This thesis will rely on the definition proposed by the Geneva Academy of International Humanitarian Law and Human Rights which posits that “a foreign fighter is an individual who leaves his or her country of origin or habitual residence to join a non-state armed group in an armed conflict abroad and who is primarily motivated by ideology, religion, and/or kinship”\(^5\). This description covers a multitude of possible individual scenarios.

Moving on to the concepts of citizenship and nationality it is necessary to mention that they have two distinct meanings. In the debates on citizenship deprivation of foreign fighters, however, the concepts of citizenship and nationality have often been used interchangeably and for our specific purposes can usually be assumed to be synonymous, unless the context is such that there is a clear distinction.

It is beyond the scope of this study to review in depth the development of the modern concepts of citizenship and nationality in the Western world; however, it is important to be clear on the distinction between the two concepts, which have different meanings in legal and social sciences\(^6\). This can be especially important when one is dealing with a number of multidisciplinary sources, as is the case in the current paper.

To clarify, the words “national” and “nationality” refer to a legal relationship between a

\(^{3}\) Malet, 2013:9
\(^{4}\) Hegghammer, 2011:58
\(^{5}\) Kraehenmann, 2014:.6
\(^{6}\) Eide, 2000:91
person and a state. This is a legal usage of the word on which this thesis will rely. In a non-legal context the word “national” can refer to the ethnic origin or ethnonational identity. Until recently in the English legal language the word citizen has not been used often, while the word national has been preferred. This semantic change can partly be explained by the link between individuals and the state having been influenced by the human rights discourse, as it is through state and national level that individuals are best protected by the human rights standards. It is specifically after the second World War that the concept of nationality, and the understanding of what nationality entails, has changed and now its content is better covered by the term “citizenship”.

Citizenship can be acquired through one of the three routes: by birth on the territory of a State (jus soli), by descent from a national of a State (jus sanguinis) or by naturalization. This distinction makes a difference for the current discussion. Many of the foreign fighters are naturalized citizens, although it is not uncommon that they were born on the territory of the state of their habitual residence and thus are citizens by birth with no other effective nationality. The details, of course, depend on a particular state's citizenship legislation and the extent to which it applies jus soli or jus sanguinis. It will also depend on other factors, such as the requirements for naturalization for those not acquiring citizenship jus soli, or whether dual citizenship is accepted either for citizens jus soli seeking second citizenship through a third-party state's requirements or for citizens of a third-party state seeking naturalization. The legislation for the allocation of nationality, acquisition of citizenship and its loss are regulated by states. However, states are not free to pass unilateral legislation on the matter, as it is also governed by international law. The international legal checks on the state's discretion to decide on citizenship matters will be discussed below.

Finally, deprivation of citizenship should not be confused with denationalization and denaturalization. Deprivation of citizenship is initiated by the governmental organs and is seen both as a sanction for behavior that hurts the interests and security of the state and as a security measure. There exist two types of citizenship deprivation: denationalization towards individuals who acquired citizenship by birth and denaturalization towards naturalized

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7 Ibid:91  
8 Ibid:91  
9 Ibid:104  
10 Safran:1997
individuals. Some countries only allow denaturalization, while others, notably UK (since 2002), allow both. It is worth noting that denationalization has often been used interchangeably with denaturalization. This can be explained by the fact that the majority of denationalizations in Europe in the 20th century composed the reversal of naturalizations. However, in light of the trend set by the UK, the distinction is becoming increasingly meaningful, as the UK government extended citizenship deprivation powers to all citizens, including those who obtained the citizenship *jus soli*.

For the purposes of this work, the concepts of denationalization and citizenship deprivation will be used interchangeably, unless otherwise stated.

### 2 Foreign fighters as a phenomenon

The issue of foreign fighters who are citizens or residence of the EU countries traveling to join radical terrorist groups, most prominently IS, is becoming more pressing in light of the growing numbers of such individuals and the potential dangers associated with their return known as the “blowback effect”.

The phenomenon of foreign fighters is not novel. Many of the recent armed conflicts have attracted volunteers, who, in groups or individually have chosen to travel to the battlefield for a variety of reasons ranging from ideological to financial or a combination thereof. Some of the most prominent examples of the last decades include the conflicts in Afghanistan following the Soviet invasion, the conflicts in Bosnia, Iraq post Saddam Hussein, Chechnya, Somalia, Yemen and now Iraq and Syria.

The unmatched scale of the transnational war volunteering has been developing for several decades before reaching the current level.

According to Thomas Hegghammer, the current phenomenon of foreign fighters delineates in a more radical shape from a sub-movement of Islamism, known as populist panIslamism. This

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11 Mills, 2016:3
12 Ibid:3
13 Hegghammer and Nesser, 2015
sub-movement emerged in the 1970s following strategic action by marginalized elites employed in nonviolent international Islamic organizations. These activists, who were searching for increased budgets and political relevance, cultivated an alarmist discourse and emphasized external threats to the Muslim nation\textsuperscript{14}. It can be argued that IS capitalized on this discourse and further fueled it by mobilizing and polarizing the Muslim populations against their governments and the West while promising spiritual, social and material benefits.

2.1 The scale of the conflict

While the phenomenon of foreign fighters is not a new one, the scale of the current conflict and foreign fighters' involvement is of an unmatched magnitude, compared to the previous cases.

IS is a Salafi jihadist militant group that follows an extreme interpretation of Sunni Islam\textsuperscript{15}. The group changed its name several times leading to a definitional confusion. IS was founded in 1999 by a Jordanian extremist Abu Musab al-Zarqawi under the name Jama'at al-Tawhid wal-Jihad (translated as "The Organisation of Monotheism and Jihad")\textsuperscript{16}.

By 2004 the group chose to be associated with Osama bin Laden and considered itself a brunch of Al-Qaeda in Iraq under the name “Al-Qaeda in Mesopotamia”\textsuperscript{17}. Abu Musab al-Zarqawi was killed in 2006 by an American targeted attack, but the group continued its existence as an umbrella network for several jihadi organizations engaged in a terrorist campaign against the United States, its coalition and the Shiite population of Iraq. Between 2006 and 2011 the group was known as ISI – Islamic State of Iraq\textsuperscript{18}. Arguably it was the events of the Arab Spring in Syria in 2012 - when non-violent protests got violently and indiscriminately suppressed and turned into a full scale civil war – were a defining moment in the group's strengthening and development. A Syrian brunch of the group called Al-Nusra Front was created followed by disagreements between ISI, Al-Nusra Front and Al-Qaeda that finally led to the established of the Islamic State of Iraq and Syria – ISIS as

\textsuperscript{14} Hegghammer, 2010:56
\textsuperscript{15} Bunzel, 2015: 7-9
\textsuperscript{16} Zelin, 2014:1
\textsuperscript{17} Bunzel, 2015: 14
\textsuperscript{18} Zelin, 2014:3
we know it today\textsuperscript{19}.

It can be argued that during the Syrian civil war the group exploited the chaos and legal vacuum to gain control over swaths of the Syrian territory as the revolutionary movement created an ideal atmosphere for the group to grow and thrive.

Since the expansion into Syria and proclamation of the caliphate in June 2014, ISIS has turned into one of the world's most dangerous jihadi organizations with territorial claims and presence in Iraq, Syria, Libya, Afghanistan, Egypt, Algeria, Pakistan, Yemen, Nigeria, Russian North Caucasus and militant proponents in several more countries, the list growing.

The appearance of ISIS on the world's stage is a special phenomenon that has the potential to greatly affect the development and the course of events in the surrounding region.

The group has developed an unmatched ability to sell its agenda and recruit through social media trespassing linguistic, geographical and cultural boundaries. It uses various social platforms like Twitter, Facebook and Youtube, among others, reaching the widest amount of potential recruits and promising opportunities to the people experiences cultural and social confusion and economic difficulties.

Due to the rise of the group authorities in multiple countries have expressed strong concerns about their citizens and residents traveling to join the group and coming back. After several large attacks have been carried out in Europe (Paris, London, Brussels), security and police agencies, as well as politicians are predicting further and more violent attacks. Thus, Ron Wainwright, the current director of Europol, believes that Europe is currently facing one of its biggest terror threat crises and warns of large scale attacks. According to Europol's estimates as of February 2016, up to 5000 foreign fighters have returned to Europe from terrorist training camps\textsuperscript{20}.

It can be argued that the wave of militants traveling to Iraq and Syria to join ISIS is comparable to the rush to join Taliban in Afghanistan, although on a much larger scale with far more people going there. A much simpler travel back and forth is also a concern. Coupled with the refugee crisis, it is becoming increasingly strenuous to monitor arriving individuals in order to detect potential terrorists.

Speaking of numbers of both traveling and returning foreign fighters, it is challenging to

\textsuperscript{19} Bunzel, 2015:25-30
\textsuperscript{20} Newstalk, 2016
collect this kind of data with precision as the numbers are continuously changing. Most available numbers are, therefore, informed guesses and estimates. Thus, the International Organization for Migration estimates that 55,528 migrants and refugees reached Europe by sea already during January 2016 which is about 2000 individuals per day. It makes the number of arrivals in the first two months of 2016 is more than 11 times as many as the same period last year. The organization predicts that before the end of summer 2016 more than 1 million migrants will have arrived to Europe, while the total number of arrivals for 2015 is 1,047,844 individuals. However, Ron Wainwright, the director of Europol, believes the evidence that terrorists are systematically infiltrating the flow of refugees to reach Europe unnoticed is yet to be established.

While national governments do not know or publicly admit precise counts of their nationals who have gone to fight, estimates have been gathered by such organizations as the UN, the Soufan Group and the International Centre for the Study of Radicalisation (ICSR), among others. Thus, according to ICSR, already by December 2013 the number of foreign fighters in Syria was around 11,000 individuals from 74 nations - higher than in any other instance of foreign fighter mobilization since the Afghanistan war in the 1980s. Up to 2800 of those fighters were thought to be European of Western, while others from the middle East. Soon after, however, the number has risen considerably.

To compare, Hegghammer estimated a slightly lower number of individuals from Europe for winter 2013 - approximately between 1100 and 1700, while the recent approximation by Europol as of February 2016 states that there are currently between 3000 and 5000 European citizens who came back to Europe after having traveled to terrorist training camps abroad. Many of those fighters have traveled to join IS in Iraq and Syria. A study by the Soufan Group in 2014 estimated that there were over 12,000 foreign fighters which have arrived from at least 81 nations in the Syrian conflict, and that about 3000 had

\[ \text{IOM, 2016; Associated Press, 2016} \]
\[ \text{Newstalk, 2016} \]
\[ \text{ICSR, 2013} \]
\[ \text{Hegghammer, 2013} \]
\[ \text{Dearden, 2016} \]
come from the West\(^{26}\). According to the organization, the number of foreign fighters went up to over 20,000 in 2015\(^{27}\).

While most foreign fighters in Syria and Iraq come from the neighboring and North African countries such as Tunisia, Saudi Arabia, Turkey, Morocco, Jordan, the conflict has drawn a significant amount of European citizens and residents from such countries as Belgium, Germany, the Netherlands, UK and France\(^{28}\). Out of the European countries, UK and most recently Belgium have contributed the highest numbers of foreign fighters. UK intelligence services have estimated that approximately 760 jihadists have traveled to Syria and Iraq with about half of them having returned, while out of approximately 6,000 Europeans who fought in the region, up to 533 are estimated to be Belgian. That makes Belgium the country that contributed the highest number of foreign fighters in Syria, per capita, out of any Western European country\(^{29}\).

Experts estimate that the average rate of returnees to Western countries is now at around 20-30% (up to 50% in some countries), posing a significant risk to security and law enforcement agencies that must assess the threat they pose\(^{30}\).

As illustrative as these numbers are to access the particular country's situation, they should also be seen in the broader context. Since the Schengen Agreement provides for an easy travel through most of Europe, it is only natural that foreign fighters take advantage of that. Thus, a foreign fighter with a German passport returning to France or Switzerland poses as much potential danger as a French or Swiss national traveling to Germany after training in Syria. The ease of travel in the European Union and the porousness of the borders in the neighboring countries makes the threat continent-wide.

### 2.2 Concerns about the foreign fighters

The concerns related to foreign fighters broadly fall into two categories. Firstly, the

\(^{26}\) Soufan Group, 2014:9  
\(^{27}\) Ibid  
\(^{28}\) ICCT, 2013:2  
\(^{29}\) Simcox, 2016  
\(^{30}\) Soufan Group, 2015:4
phenomenon of foreign fighters falls into a gray zone of international law. It is not always clear which body of law and which country should be responsible for prosecuting the acts of such individuals, which creates difficulties for finding peaceful solutions.

The second concern which is directly related to the current paper is the so-called “blowback effect” - the growing number of foreign fighters returning to home countries and potentially able to engage in acts of politically or ideologically motivated violence. Already in 2013 Europol expressed a worry in its report that those individuals will come back more radicalized, having gained new connections, ideological training and possible combat experience and ready to utilize those31. These legitimate concerns have led to various policy measures in multiple countries, some of which will be analyzed in this paper.

While previous research shows that only a small amount of returning foreign fighters will resort to violent or terrorist acts at home, it is still a legitimate concern. There are reasons to believe and indications that the minority of returnees will engage in terrorist activities. Hegghammer estimates that only one in nine will engage in terrorist activities after the conflict but those who will are twice as likely to kill, which he calls a “veteran effect”32. The challenge lies in distinguishing between those individuals who pose a threat and those who do not.

The recent attacks on the Jewish Museum in Brussels in May 2014, Paris attacks in November 2015 and the most recent Brussels attacks in March 2016 by the individuals connected to foreign fighters show that the security risks connected to the phenomenon of foreign fighters is real and imminent.

31 Europol, 2013
32 Hegghammer, 2013:11
3 Citizenship under international law

3.1 Citizenship as a concept

The modern institution of citizenship has been developing alongside the evolution of the contemporary European state system; the meaning of the concept, therefore, has been changing and adapting in response to the changes and developments in society and international law.

The idea of the modern citizenship institution was inspired by the Enlightenment philosophers and emerged following the events of the French Revolution where citizenship was given a special legal status rendering all citizens equal and granting them specific civic and political rights. This concept had a paramount influence on the development of democracy and the modern state. It is also worth noting that in the years before the French Revolution, the new American state presented a Bill of Rights as part of a written constitution which represented a first step towards a modern citizenship. These were strongly influenced by the Enlightenment philosophers and in turn strongly influenced the French Declaration of the Rights of Man (which stood as the de facto constitution of France throughout the early years of the Revolution) and the later constitutions of France, and so the later European concepts of citizenship.

Citizenship, developed in the ensuing centuries from the lines thus laid out in the French and American Revolutions, can then be defined as a legal relationship between an individual and a state. The volume of rights, freedoms and responsibilities held by an individual is directly linked to their citizenship. In other words, citizenship is the legal basis of all the rights, freedoms and responsibilities of a person; several decades ago it was already possible to describe citizenship as “man's basic right for it is nothing less than the right to have rights”.

Modern citizenship can be seen as comprising three parts: it is a formal legal status, it confers a defined set of rights and it is based on a common national identity. As Eide puts it, the main functions of the modern citizenship are “to include, to equalize, to protect”.

The concept of citizenship has, therefore, a double function – a means of protection of the rights of individuals and a means to protect rights and interests of a state.

33 Mills, 2016:4, privilege not a right
35 Bosniak, 2006
36 Eide, 2000:66
According to different theories, citizenship can be conceived as the right to have rights, as a privilege or as a contract\(^{37}\). Each of these understandings of the citizenship concepts play part in the justification of citizenship revocation which will be considered below.

### 3.2 The right to nationality as a fundamental right

The right to nationality is a fundamental right for the enjoyment of most other rights and freedoms. Traditionally states used to enjoy wide discretion in granting and regulating the access to nationality, in so far as they did not affect other state's rights and obligations. However, the rising importance of the universal human rights doctrine led to the understanding that nationality related laws and practices have to be in conformity with the principles of international law.

This utmost importance of the right to nationality is reflected in a number of key international documents. Thus, Article 15 (1) of the UDHR declares that “everyone has the right to nationality” and that “no one shall be arbitrarily deprived of his nationality”. This is a fundamental international provision.

In the decades following the adoption of the UDHR, the right to nationality attracted more attention and manifested itself in such binding international treaties as the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the 1961 Convention on the Reduction of Statelessness Convention and the International Convention on the Elimination of All Forms of Racial Discrimination, among others. These instruments address and define issues related to nationality and citizenship from different perspectives. In 2004, the UN Commission on Human Rights reaffirmed the right to nationality as a fundamental human right in Resolution 2005/45 on Human Rights and Arbitrary Deprivation of Nationality.

In the European context, the most significant documents on the matter are the European Convention on Human Rights (ECHR) and the European Convention on Nationality (ECN).

\(^{37}\) Hailbronner, 2015/14:23
Interestingly, there is no specific provision on nationality in the ECHR. As explained in a publication on the matter by the Council of Europe, the ECHR does not recognize the doctrine of “nationality”. Article 1 states that “everyone” within the jurisdiction of a contracting party enjoys the rights and freedoms provided by the Convention. This means, at least theoretically, that the rights and freedoms recognized in the ECHR are universally available to all individuals, be they nationals, non-nationals, refugees or stateless. Although there is no substantive provision on nationality in ECHR, it can still be derived from Article 8 on private life. Article 8 has indeed been engaged in order to discuss nationality issues in case law. Thus, in Genovese v Malta, the ECtHR discussed the connection between the concept of “private life” and the concepts of nationality and citizenship. Additionally, Article 3 on the prohibition of expulsion of nationals of the Protocol 4 to ECHR can be relied upon when discussing nationality matters within the ECHR framework.

The ECN represents the most recent development on the issues of citizenship and nationality in national and international law. The convention defines nationality as “the legal bond between a person and a state and does not indicate a person’s ethnic origin” in Article 2(a) and states that everyone has a right to nationality in Article 4(a). Article 7 provides provision on loss on nationality ex lege or at the initiative of a State Party. Most importantly, in the context of our discussion, Article 7 (1) (d) allows for loss of nationality at the initiative of a State party in case of “conduct seriously prejudicial to the interests of the state”.

Upon examining the context of these documents related to the right to nationality, we can distinguish the three principles that put legal restrictions on state sovereignty in respect to citizenship regulation: the prohibition against racial discrimination, the prohibition against statelessness and the prohibition of arbitrary deprivation of nationality which will be discussed below.

### 3.3 The prohibition against discrimination

The prohibition against racial and ethnic discrimination, being a part of customary law, is an integral part of all international, regional and national human rights instruments. It is also a

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38 Goodwin-Will, 2014: 12
39 ECtHR, Genovese v Malta
40 Open Society Justice Initiative, 2006:5
moral norm representing the idea of equality among all humans. In regulating questions of nationality and citizenship, states must avoid discrimination on any ground prohibited in international human rights law, such as sex, religion, race, color, national or ethnic origin and others, established by Article 2 of the ICCPR, among others.

The International Convention on the Elimination of all Forms of Racial Discrimination recognizes that there may be a distinction between citizens and non-citizens in Article 1.2 noting that “this Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens”. However, the Committee on the Elimination of Racial Discrimination has stated that this exemption “must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the UDHR, the ICESCR and the ICCPR. Additionally, it explains that “under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim”.

In Chapter 5.1 it will be discussed what this Recommendation, as well as the whole principle of non-discrimination requires of states who conduct citizenship deprivations in order for them to not be illegitimate, disproportional or otherwise unlawful.

In the European context, the ECN explicitly provides in Article 5 (2) for non-discrimination between nationals, including between nationals by birth and those who acquired the nationality subsequently. It also contains a general provision on non-discrimination in Article 5 (1).

Additionally, Article 14 of ECHR guarantees the prohibition of non-discrimination and equal treatment in the enjoyment of other rights of the Convention, while Protocol 12 to the ECHR, not yet ratified by all EU Member States, elaborates on the scope of the prohibition of dis-

41 CERD, General Recommendation XXX, 2004:1
42 Ibid:2
crimination by guaranteeing equal treatment in the enjoyment of any right (including rights under national law)\textsuperscript{43}.

3.4 The prohibition against statelessness

Statelessness can be defined as a lack of nationality, as in the lack of a recognized legal link between an individual and a state. That is a condition of insecurity and indignity affecting at least 15 million people, according to Open Society Foundations \textsuperscript{44}.

The international community has made significant advances in addressing the issue. Following the social and legal developments after the Second World War, a distinctive legal regime has emerged. This includes the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, among other supporting human rights treaties and related provisions. These two conventions comprise the central international framework for the reduction of statelessness and the protection of stateless persons.

The 1954 Convention which “\textit{aims to regulate and improve the legal status of stateless persons}” affirms that fundamental rights of stateless persons must be protected. It also establishes a set of minimum rights that must be made available to stateless persons, including the right to education, employment and housing, as well as access to travel documents and administrative assistance.

The international legal definition of a stateless person as "a person who is not considered as a national by any State under the operation of its law" can be found in Article 1 of the 1954 Convention. This definition can now be considered to be a part of customary international law.

It refers to the concept of the \textit{de jure} statelessness, as the obligations imposed by this important but not widely ratified Convention were intended to apply to \textit{de jure} stateless persons. At the time of drafting the Convention it was assumed that de facto stateless persons would be covered by the 1951 Convention relating to the Status of Refugees. However, the practical reality of today is such that \textit{de facto} statelessness presents an even greater problem.

\textsuperscript{43} CoE, 2010:13
\textsuperscript{44} Open Society Foundations, 2014:1
than *de jure* statelessness, and not all de facto stateless persons qualify for a refugee status\(^45\). In the relation to the current discussion, many of the foreign fighters are deemed to possess dual nationalities. Here is where the concept of *de facto* statelessness comes into question – some of those individuals might formally have another nationality, but not an effective and functioning one which they can practically turn to should they be deprived of their current one. There is no official definition of *de facto* statelessness yet and some situations might fall into the gray zone leading to confusion.

Still, a *de facto* stateless person can be described as “a person unable to demonstrate that he/she is *de jure* stateless, yet he/she has no effective nationality and does not enjoy national protection”.\(^46\) The concept of de facto statelessness depends on the understanding of the concept of “effective” nationality, which will be considered below\(^47\). *A de facto* stateless person risks being in a uniquely vulnerable position, exposed to violence, exclusion, poverty and inability to access basic civic functions, because by not being effectively protected by any state, such a person exists outside the law. The revocation of citizenship of mono nationals or individuals with double nationalities whose second nationality is not “effective”, will have a bearing on the status of such individuals under international law, because membership in the international community is mediated through belonging to a specific national community. The revocation of citizenship in such a case may lead to statelessness which in turn may be a violation of international law.

Another important international instrument on the matter is the 1961 Convention that seeks to diminish statelessness by creating a special protective framework. It reaffirms the right of every person to nationality (although not to a specific nationality). Significantly for the current discussion, it establishes the prohibition against deprivation of nationality that results in statelessness. Article 8(1) stipulates that a “Contracting state shall not deprive a person of his nationality if such deprivation would render him stateless”. Article 8 does provide a list of limited legitimate grounds for deprivation of nationality even if they result in statelessness, but it also states that such a deprivation can only happen only if the law of the state in

\(^{45}\) Open Society Justice Initiative, 2006:2

\(^{46}\) UNHCR-Inter-parliamentary Union, 2005:11

\(^{47}\) International Justice Resource Center:p.9
question already provided for this at the moment of accession and declaration was made to this effect, and when the due process rights are guaranteed.

In addition to these two fundamental Conventions on the matters of statelessness, there is an array of supportive documents which can be referred to when discussing the issue. These are, among others, the UDHR and the 1930 Hague Convention on certain questions relating to the conflict of nationality laws, that recognizes the right of countries to determine their citizenship as long as it is consistent with the standards set out by international law (Article 1).

One of the more recent developments in the European context is the ECN adopted in 1997 by the Council of Europe. It is a comprehensive expression of legal opinion on the right to nationality at the European level.

Article 7 of the Convention provides for the loss of nationality for “conduct seriously prejudicial to the vital interests of the State Party” along with six other circumstances. However only in one of these circumstances (fraudulent conduct, false information or concealment of fact) can deprivation happen as an exceptional measure if the person would be left stateless.

Article 8 allows nationals to renounce their nationality provided they do not thereby become stateless.

Given that nationality can be a contentious issue which States deem to be within the realm of their national interests, the 1961 Convention and the 1954 Convention are not universally ratified. The ECN has been signed by 29 countries but ratified only by 20. This gives states a big margin of appreciation when it comes to regulating nationality issues within its borders. Therefore, under the current state of international law, it appears that states have the right to create stateless people in certain circumstances.\footnote{Lavi, 2011:22} However, despite the technical possibility to render individuals stateless, this state power should be questioned, as the international law requires.
3.5 The prohibition against arbitrary deprivation of nationality

Deprivation of nationality with the view to expel an undesired individual from a state is not a new phenomenon. It has been a standard feature of liberal democratic states through their evolution. It can be argued that the current revival of deprivation powers that started following 9/11 and is continuing with the new force in response to the foreign fighter threat is another chapter in that history.49

First of all it is necessary to define the “arbitrariness”. According to a publication of the HRC on arbitrary detention, the “notion of “arbitrary” stricto sensu includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary”50.

Additionally, one can rely on the drafting history of article 9 of the ICCPR which “confirms that „arbitrariness“ is not to be equated with „against the law“, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law”51.

The first fundamental prohibition of arbitrary deprivation of nationality can be found in Article 15 (2) of UDHR, stating that “no one should be arbitrarily deprived of his nationality”. Similar provisions can also be found in later international and regional documents, such as Article 20(3) of the Inter-American Convention on Human Rights and Article 16 of the 1997 Draft Articles on Nationality in Relation to the Succession of States, among others. A series of UN Human Rights Council Resolutions are also available on this issue.

At the European level, the ECN specifically states in Article 4 that the rules on nationality of each State shall be based on the principle that no one should arbitrarily be deprived of their nationality, among others.

Theoretically, deprivation of citizenship is not at odds with democratic principles, unless it is arbitrary and goes against accepted international legal principles, most importantly the

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49 Mills, 2016:2

50 A/HRC/22/44, 2012: para 61
51 Ibid
protection against statelessness which follows logically from the fundamental importance of
the human right to nationality, as set out in Article 8 of the 1961 Convention discussed above.
This concept will further be discussed in Chapter 5.1, where it will be considered what
international law requires of states in terms of citizenship deprivation.

4 Citizenship deprivation in response to the foreign fighter
phenomenon

4.1 The most common rationales for deprivations

This chapter will discuss the most common grounds behind the deprivation of citizenship and
whether these measures are effective in achieving the goal they are meant to achieve.
The rationales are interconnected and when governments justify denationalization measures,
they do not strictly adhere to one of the rationales. It has been suggested, however, that after
9/11 the national security concept has taken over the breach of allegiance concept in
justification of denationalization measures52.
Yet there is a point to address the most common of them individually in order to better
understand the concepts and see whether citizenship deprivation measures advance any of the
goals the states are aiming to achieve when they conduct deprivations. It is particularly
interesting, therefore, whether the deprivations advance security or strengthen the allegiance
to the state, and whether deprivation as punishment is at all permissible.
It appears that while the amendments adopted across a range of countries are all a reaction to
the same issue – the threat posed by foreign fighters - the rationales for citizenship
deprivation, or rather the way the states justify the measure, differ53.

4.1.1 Security rationale

One of the typical rationales behind the deprivation debate is the national security reasoning.
It seems intuitive to many that citizenship deprivation aims to protect the state and it citizens

52 van Waas, 2016:475
53 Ibid: 473
by diminishing the likelihood of terrorism-related offences. Without citizenship and ability to re-enter the country, the potential terrorists won't be able to carry out attacks, the argument goes. Along this line of thought, a number of states have justified the expansion of the citizenship deprivation powers with the concerns about the rising terrorism threat and the public safety.

However, this assumption is questionable as the protective rationale does not make much sense as a practical matter. The foreign fighter problem is largely conceived as a problem of return and associated risks – a “potent narrative of weaponized citizens”\textsuperscript{54}. In practice, however, denationalization does not seem to advance counter-terrorism efforts much. You can't take away someone's citizenship for being associated with ISIL before you know they are associated with ISIL, Peter Spiro argues. Once the security services are aware of the threat, however, they can use other more traditional measures such as travel bans, passport revocations, criminal prosecution, increased surveillance to name a few\textsuperscript{55}.

Another goal of the security-driven citizenship deprivations might be to have a deterrent effect - a sort of a symbolic gesture that is supposed to deter potential terrorists. The practical effectiveness of this measure will be discussed below.

An additional question to consider is the international, not only national security. How would throwing a dangerous individual out of one state advance the international security that is supposed to be the common goal of the whole international community? Such a forced relocation of supposedly dangerous individuals would not help collective or even local security.

Instead, security-wise in the long run it might be more fruitful to consider the whole picture, from the reasons for radicalization of mostly young individuals to the general situation in Iraq and Syria. In other words, it is necessary to also focus on the underlying reasons behind the issue, rather than just the symptoms.

\textsuperscript{54} Spiro, 2015/14: 8
\textsuperscript{55} Ibid
4.1.2 Breach of allegiance rationale

Citizenship deprivation may be explained from the point of view of the states trying to uphold their values by limiting their citizenship and all the benefits that it entails to “good” citizens – the individuals who maintain allegiance to the state. This rationale relies on the understanding of citizenship as a form of allegiance or contract\textsuperscript{56}, while the legal relationship between an individual and a state came to be referred to as a “genuine link”\textsuperscript{57}. Already in 1955 ICJ defined nationality as “a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties”\textsuperscript{58}.

By travelling to join a terrorist movement abroad or attacking/attempting to attack the very foundation of the community such individuals destroy this allegiance between themselves and the state, and can no longer rely on the rights and protections that the citizenship provides.\textsuperscript{59}. This rationale behind the deprivation can also be considered to have a punitive element to it but it is not the main focus\textsuperscript{60}.

Most recently, the Canadian Immigration Minister Chris Alexander when commenting on 2014 Strengthening Canadian Citizenship Act, described the issue as one of “loyalty and allegiance”\textsuperscript{61}.

Along the same line of thought it has even been suggested in the US context that the foreign fighter would not be deprived of their nationality for committing prohibited acts but he or she, by committing such acts, voluntarily renounce the nationality through, for example, aligning with the IS, destroying passports on camera and other such acts\textsuperscript{62}.

Peter H. Schuck from the Yale Law School persuasively argues that maintaining the attacker's legal connection to the state they have attacked in form of citizenship should not outweigh protecting the state's other citizens which is a fundamental duty of any state towards its

\textsuperscript{56} Van Waas, 2016:474
\textsuperscript{57} Eide, 2000: 95
\textsuperscript{58} ICJ, Liechtenstein v. Guatemala (1955)
\textsuperscript{59} Hailbronner, Kay, Revocation of Citizenship of Terrorists: a Matter of Political Expediency
\textsuperscript{60} Van Waas, 2016: 474
\textsuperscript{61} Alexander, 2014
\textsuperscript{62} Van Waas, 2016: 475
people. After all, why should not a state be able to protect and defend itself and its own citizens from an existential threat (provided it is narrowly interpreted) from an individual who has launched a dangerous attack (suitably defined and rigorously proved)?

Schuk therefore believes that severing the attacker's connection to the state is an appropriate response from the point of view of logic and justice, provided this would not render the person concerned stateless.

In light of globalization and the issues that it brings, the desire of states to reassess what citizenship means and should mean, and to “strengthen” the citizenship is understandable. The global nature of terror is viewed as a threat to the nation-state and the institution of citizenship. The need to reassess the sovereignty in the field of citizenship is both a legal and political project, meaning that it depends on legal rules of citizenship attribution and at the same time proposes a model of a “worthy citizen”.

Within these lines, it is common to phrase citizenship revocation legislation as relying on the notions of breaking the allegiance in form of treason, spying or terrorism, among others. For example, it postulates in section 11 of Israel's “Nationality Law” that Israeli citizenship can be revoked for a “breach of allegiance” defined as an act of terror, treason or acquiring citizenship in an enemy state or permanent residency in an enemy land.

The denationalization of individuals to keep up the boundaries of membership and a political community is not a new phenomenon. The historical practice of terminating nationality upon formal transfer of allegiance once used to be a near-universal practice. To an extent fighting for the IS is a shift of loyalty incompatible with loyalty to, say, UK or France. However, in practice there is no “citizenship” in the IS, as it is not a recognized state, despite their ambition to be that. One cannot be born into IS or be naturalized into it. So in case of foreign fighters associated with the IS, this rationale does not hold much ground. The allegiance has to be symmetrical, but there is no allegiance to IS and membership in IS that can legally and practically compare to an allegiance to/membership of a modern democratic state.

Seeing the citizenship in this way (as an entitlement bestowed upon “worthy” citizens with

63 Schuk, 2015/14: 9
64 Mantu, 2015:20
65 Lavi, 2011:2
66 Spiro, 2015/14: 7
appropriate behavior by an executive and taken away from bad citizens for bad behavior) makes citizenship more of a privilege and less of a secure legal status. This treatment of citizenship puts into question the democratic institution of citizenship.

4.1.3 Punitive rationale

Finally, a common sentiment behind citizenship deprivation is “to punish”. It can be argued that the deprivation of citizenship as a punitive measure is meant to match the severity of the act committed. After all the act which aims to undermine the national security of the state, or a similarly radical offence, is grave enough to justify a grave punishment.

The crime that is directed against the very foundation of the law and the state is unique and requires a radical punishment, the theory goes, namely the banishment of the individual from the political community.

The punitive use of deprivation, however, has long been condemned, especially if it might lead to statelessness. Already in 1958, the US Supreme Court noted that “the civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as a punishment for crime”.

The International Law Commission has stated on this matter that the deprivation of nationality for the “sole purpose” of expulsion is “abusive, indeed arbitrary within the meaning of Article 15, para 2 of the UDHR”. In addition, it has long been argued that revocation of citizenship as punishment does not aim to advance the security or prevent threats to the social order.

It is interesting to note, that, for example in the UK, which is the main case study of this research, and Austria, the policy of denationalization is isolated from the penal system. All in all, it is difficult to justify citizenship deprivation as a punitive measure, since it does not

67 Mantu, 2015: 19  
68 Lavi, 2011: 3  
69 Spiro, 2015/14: 7  
70 US Supreme Court, Trop v. Dulles (1958) para 102  
71 ILC, A/69/10, 2014: 33  
72 Spiro, 2015/14: 7  
73 Van Waas, 2016: 473
seem advance any legitimate goals, such as justice or prevention of future crimes.
Finally, when speaking about the revocation of citizenship as a punishment we should bear in mind its gravity as a measure. An important drawback/feature of citizenship revocation as punishment is that it also denies the individual stripped of their citizenship an opportunity to be rehabilitated as the principal belief of the modern penal theory. Judging from the experience of the past conflicts, involving foreign fighters, it has been shown that many of them were able to be reintegrated.

While the current conflict is of a different scale, it does not necessarily mean that today’s foreign fighters won’t be able and willing to reintegrate. Citizenship deprivation removes such a possibility.

In one of the most compelling criticisms of citizenship deprivation as punishment, US Supreme Court Chief Justice Warren argued that it can be seen as “the total destruction of the of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development... This punishment is offensive to cardinal principles for which the Constitution stands. It subjects the individual to a fate of ever-increasing fear and distress.”

As mentioned at the beginning of the chapter, the justifications for adopting and using the citizenship deprivation powers differ. Different states may choose different ways of justifying the need for this policy and different ways of enacting the new laws.

We can see that the differences between the typical rationales for deprivation reveal a tension, even confusion, in the underlying justifications for deprivations – a question which is relevant when assessing such measures against international law. It appears that all justifications include a punitive element, whether an individual is punished for breaking the allegiance with the state by joining an armed group abroad or travelling to a prohibited area of armed conflict, or whether he is punished for endangering the public safety and order. It seems accepted that punishment for the sake of punishment and expulsion only is not legitimate.

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74 Van Waas, 2016: 474, Macklin 2015: 5
75 ICCT, Zuidewijn and Bakker, 2014
76 US Supreme Court, Trop v. Dulles (1958) para 101-102
77 van Waas, 2016: 473
4.2 Case study - the UK as the leading example and the general trend

A pattern has been emerging in response to the perceived threat from the returning foreign terrorist fighters, in which the nationality of such individuals is revoked. A number of states have made use of their existing or extended their powers of citizenship deprivation, and the increasing use of such might lead to a violation of well-established principles of human rights principles. As many states have not ratified the statelessness conventions, it appears that safeguards against statelessness are often absent. Should the trend of denationalizing mono-nationals expand, this could potentially endanger the institution of citizenship and set bad precedents in combating statelessness. It could also have consequences for dual nationals whose second nationality stands on vague grounds.

As many foreign fighters are dual nationals, the option of revoking a nationality seems logical to many. The desire to do so is consistent with the duty of the state to protect its own citizens; however, the manner in which the new laws have been used is often far from the international human rights standards. In addition, the UK have made it possible to revoke a nationality of a mono-national. The new laws are often vague and open to interpretation, leading to the possibility of abuse - or resigning mono-nationals deprived of citizenship to a legal vacuum and lengthy, prohibitively expensive court cases.

It has always been the case that liberal democratic states could revoke citizenship as a form of punishment following a criminal conviction. Even so, this power was barely used in the last fifty years.

However, after the attacks on the World Trade Centre in September 2001 there followed an extraordinary course of legal action with citizenship deprivation, on what may vaguely be defined as security grounds, in response for instance to acts “seriously prejudicial to the vital interests of the State”. The understanding of such harmful acts, which effectively imply the breaching of the duty of loyalty which stems from nationality, can be found in many states' legislations in various terms. Some allow the deprivation of a person's nationality for an offence that endangers the security of the State, or if it is deemed to be in the public interest,

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78 Mills, 2016: 3
79 Mills, 2016: 2
Whichever phrasing the concept takes in different legislations, it is clear that states tend to enjoy a margin of discretion in the interpretation of the law, which varies from state to state. In some cases, notably the UK, the government enjoys broad discretion in determining when to deprive a person of nationality. Most recently, following the Islamic State crisis it has become increasingly common to make use of existing powers or enact new legislation in response to the new scale of threat presented by the foreign fighters. Britain arguably leads the way in such practices and appears to have gone further than other countries in advancing its security agenda. The UK government has extended its deprivation powers by introducing several new pieces of legislation and has consequently increased the number of deprivations. Other countries have been more hesitant in addressing the issue. Such powers, however, may already in *de facto* terms in the US, where a number of its citizens have been detained without the usual rights of due process. Even if British citizenship legislation initially presented an anomalous case, it set a precedent that led to a range of European countries discussing and debating similar legislation, while referring to the British citizenship deprivation example as the “British model.” Most space will, therefore, be accorded to the British case as the British practices seem to be highly consequential for citizenship deprivation practices in other countries and are arguably reshaping the citizenship concept and deprivation model. I will then briefly discuss a number of other states who have enacted or are currently debating similar legislation, to show an emergence of a trend in deprivation policies.

### 4.2.1 Recent citizenship deprivation developments in the UK

Britain has played a large role in developing the modern human rights standards. It helped

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80 HRC, 2013
81 Mills, 2016: 3
82 Mills, 2016: 23
83 Ibid
develop the 1954 and 1961 UN Conventions and consequently signed and ratified both. Britain’s general approach has focused on preventing the travel of individuals to the conflict zone, using a mix of preventative and repressive measures.

Citizenship stripping powers have been a part of the state's counter-terrorism strategy for nearly a decade, incorporated into the overall counter-terrorism structure; however, recently they have been drastically updated to confront the current threat.

The British Nationality Act of 1981 (which came into force in 1983), narrowed the previous grounds for citizenship deprivation and outlawed the creation of statelessness. As mentioned above, though, the citizenship deprivation powers were not actively used, and in response to the shifting of the perceived threats - for instance, from the possible risks from British citizens with dual Irish nationality to those from British citizens with dual Syrian or Jordanian nationality - the UK government felt that the powers needed to be updated and extended.

Since the beginning of the 21 century the citizenship deprivation legislation has been amended several times.

In 2002, in response to 9-11, the state saw the first significant change to the citizenship deprivation powers set out in 1981 British Nationality Act. The amendment allowed the Home Secretary to deprive a person of their citizenship if satisfied they have acted in a manner “seriously prejudicial to the vital interests” of the state. The notion of what constitutes “vital” interests was not defined, and the Government indicated it regarded the concept as “an evolving one” and did not see the benefit of further defining the term. Although the deprivation powers were extended, the changes also brought the legislation in line with the human rights standards set out in the ECN which the government were intending to sign and ratify. Most importantly, it was specified that citizenship deprivation could not be conducted if it would render the individual stateless.

However, the debate on denationalization and security continued with the Conservative MP David Cameron stating in 2003 that “Every country must have the right to decide who it allows to stay within its borders. We must make sure we have the right to deport people who

84 Mills, 2016: 10
85 Mills, 2016: 10
86 Goodwin-will, 2014: 6
87 Mills, 2016: 10
are a threat“88. The ECN was not ratified at the end.

2006 saw the citizenship deprivation provisions amended again in another revival of the deprivation debate. The 2006 amendment of the 1981 British Nationality Act allowed the Home Secretary to revoke the citizenship whenever satisfied that “deprivation is conductive to the public good”89. It was partially in response to the 7 July 2005 London bombings – a series of coordinated terrorist attacks in central London, which left 52 civilians dead and more than 700 injured.

Following this event, the Prime Minister Tony Blair announced that “the rules of the game are changing” and that the government was taking a more severe stance towards the terrorist threat by considering a serious of fundamental legislation changes, especially in the instances governing the issues of citizenship and security - to the point of endangering the human rights responsibilities of the country. Thus he promised to amend the Human Rights Act to make the deportation of people deemed a threat less complicated90.

From 1981 until 2014, therefore, the British government could only remove the citizenship of an individual if they possessed another nationality. In that case the removal of British citizenship would not, at least, formally render them stateless.

However, in 2014 a controversial amendment to the 1981 British Nationality Act was passed. The 2014 Immigration Act makes it possible for the Home Secretary to revoke citizenship of a naturalized British citizens, even if they possess no other nationality, if it is "conducive to the public good" and if there are "reasonable grounds for believing" that such an individual might acquire the citizenship of another country91.

According to the amended section 40 of the Act the Home Secretary is enabled to make an order to deprive a person of their British citizenship status in any of the following cumulative circumstances:

- The person obtained their citizenship status through registration or naturalization, and the

88 Williams, Alled and Clarke, 2003 (Daily Mail)
89 Immigration, Asylum and Nationality Act, 2006: Section 56 (1),
90 Jeffery, 2005
91 Mills, 2016: 11
Home Secretary is satisfied that this was obtained by means of fraud, false representation or concealment of any material fact (s40(3));

- The Home Secretary considers that deprivation “is conducive to the public good”, and would not make the person stateless (s40(2); s40(4));

- The person obtained their citizenship status through naturalization, and the Home Secretary considers that deprivation is conducive to the public good because the person has conducted themselves “in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory”; and

- The Home Secretary has reasonable grounds to believe that the person is able to become a national of another country or territory under their laws (s40(4A))

In the first and third scenarios - if it is "not conducive" to the public good for an individual to remain in the country, or where citizenship is believed to have been obtained fraudulently, deprivation of citizenship is permissible even if the person would be left stateless.

An important question to consider is the definition of the “public good”. According to the official documents, deprivation “conducive to the public good” means depriving in the public interest on the grounds of involvement in terrorism, espionage, serious organized crime, war crimes or unacceptable behaviors.

As Lord Slynn noted in 2001 in Secretary of State for the Home Department v. Rehman, “there is no definition or limitation of what can be “conducive to the public good” and the matter is plainly in the first instance and primarily one for the discretion of the Secretary of State”.

This undefined and thus open to flexible interpretation phrase lays out foundation enabling the Home Secretary to conduct citizenship deprivations sets a bad precedent for the institution of citizenship as a whole and creates a questionable two-tier standard of citizenship.

4.2.2 The general trend

Other countries, notably Commonwealth nations such as Australia and Canada, but also

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92 British Nationality Act, 1981: Section 40 (amended)
93 UKVI Nationality Instructions, 2014: volume 1, chapter 55
94 Secretary of State for the Home Department v. Rehman
France and the Netherlands, have proposed to adopt the “British model” as a response to the foreign fighter threat\(^95\). However, such proposals have been met with resistance, perhaps due to different conceptions of citizenship, along with different constructions of constitutional law. Notably, the UK has a precedent-based constitution and does not refer to a written constitution. In France, for instance, to enact similar legislation should require consideration (and amendments of) the written constitution. Commonwealth nations also often, but far from exclusively, have constitutional structures similar to the UK - they all originally inherited a form of English Common Law.

A number of European countries, notably Austria and Belgium, have also updated their legislation to allow the revocation of citizenship in circumstances related to terrorism.

Similarly, under French law, a French-born dual national convicted of terrorism-related offences may have their nationality revoked under certain terrorism-related conditions. In 2014 France debated extended citizenship revocation powers, inspired by the British model; however, it was rejected by the National Assembly for being unconstitutional and disproportionate\(^96\).

It has been argued that the proposal seems to target the French of immigrant backgrounds, notably Arab and North African. By enabling the citizenship deprivation of dual citizens, the proposed law would effectively create two classes of citizenship, with dual citizens being part of the second class. Such singling out of citizens is seen as an attack on the French citizenship tradition - *droit du sol*, the right to citizenship for those born of the French soil\(^97\).

Similar debates have been ongoing in Sweden, Norway, Spain, the Netherlands and other European states, inspired by the IS foreign fighter problem. In some instances such proposals have been so far ultimately rejected.

In comparison to European countries, Australia and Canada have taken a more decisive stance on citizenship revocation.

In Canada the Citizenship Act has been amended in June 2014, in the aftermath of the terrorist

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\(^95\) Mills, 2016: 23  
\(^96\) Mills, 2016: 1  
\(^97\) The Economist: 2016
attacks of October 2014. This was done in an evident trend with a number of other states who have updated their terrorism legislation in response to terrorist attacks, but also in response to the foreign fighter issue. The act has increased the deprivation powers, making it possible to remove the citizenship of dual nationals who are convicted of terrorist offences, treason or spying for a foreign government or fought with any terrorist organization. The deprivation powers are similar to those of Britain, the crucial difference being is that the individual is required to have been convicted.

Along the same lines in 2014 the Counter-Terrorism Legislation Amendment, otherwise referred to as the “Foreign Fighters Act” has been introduced in Australia. The government claimed that Australia was in urgent need of new broad measures to deal with the foreign fighter issue.

The Act added a number of controversial amendments to the state's counter-terrorism legislation focusing directly on the foreign fighter threat. It introduces new criminal offences and extends immigration powers. Specifically, it allows for citizenship deprivation of dual nationals, including young children, for participating in a number of terrorism-related activities and even for damaging Commonwealth property. On a related note, it declares a controversial criminal offence, punishable by 10 years in prison, for entering or remaining in a declared area. In practice, this may greatly affect the freedom of movement. In addition, Australia introduced other pieces of legislation which, among others, allow for deprivation of nationality of dual citizens who engage in terrorism-related conduct, and increase intelligence gathering powers.

The Abbot government’s anti-terror measures have been described as a “return to the outdated, post-9/11 rhetoric of “balancing” rights and security” in favor of the latter.

To conclude, the recent changes in citizenship deprivation powers across a number of countries has largely been undertaken in response to the foreign fighter phenomenon. Arguably, many of such legislation changes have been inspired by the UK, the so-called British model, where the government (the Home Secretary) possesses broad executive powers

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98 Government of Canada: 2015
100 Hardy, 2015
to revoke citizenship.

The differences in the details of the citizenship deprivation debate can arguably be explained by different cultures and conceptions of citizenship. Thus, it can be argued that in the UK the citizenship (acquired) is treated as a legal technicality with the focus on formal legality that hinders the natural course of justice, while for example in France the equalizing capabilities of citizenship are considered foundational to the nation and state, with the roots of such citizenship understanding going to the French Revolution\textsuperscript{101}.

The differences can also be explained by varying experiences with terrorism in general and terrorist acts connected to foreign fighters in particular. After 9/11, however, a more uniform agenda and understanding of the issue has been observed across many states.

It is still early to speak about the impact of the Western denationalization regimes, as the picture is rapidly developing, but already now it is possible to say that some of the effects will be grave in their negative influence on democracy and personal liberties, parallel with the years following 9/11.

5 Does citizenship deprivation have a place in a democratic society?

5.1 Under what conditions may citizenship deprivation be lawful and permissible?

In this chapter I consider the implications of citizenship deprivation from the point of view of international law and the requirements it places on states. I will therefore examine the standards of non-arbitrariness, non-discrimination and the prevention of statelessness in order to find out how and if the citizenship deprivation powers can be exercised compatibly with the international law provisions.

Citizenship deprivation in itself does not contravene the international law. However, to be

\textsuperscript{101} Mills, 2016: 23
legitimate, it must comply with the international legal standards – specifically and most importantly, those of non-arbitrariness, non-discrimination and the prevention of statelessness.

It is clear that the discretion of states to decide on issues of nationality and citizenship should be limited through a variety of powers and institutions.

Speaking about non-arbitrariness, the report of the UN Secretary General “Human Rights and Arbitrary Deprivation of Nationality” has posited that there are five checks that must be satisfied if citizenship deprivation is not to be arbitrary\textsuperscript{102}. It should be noted that where deprivation is pursued on discriminatory grounds, it will amount to a \textit{prima facie} finding of arbitrariness. In addition, where a deprivation results in statelessness, it can make the test of arbitrariness more difficult to satisfy\textsuperscript{103}.

Firstly, the rules for deprivation must be clearly regulated by the domestic laws of the state, giving it a firm legal basis. The standards for revocation should not be vague. Given that citizenship revocation is one of the most severe measures, punishable conduct must be carefully defined and specified, and limited only to the most extreme offenses. The example of UK powers of deprivation, which grant broad discretionary powers to the Home Secretary to deprive individuals of their citizenship if justified by the “public good”, is, therefore, problematic. As discussed above, the concept of the “public good” is sufficiently vague and elastic to be susceptible to abuses of power.

Secondly, in order to not be arbitrary, due process rights must be respected: the process must be fair and transparent; procedural guarantees must be in place, particularly the practical opportunity to appeal the decision before an independent body; and an adequate notice to the individual concerned must be provided.

In addition, the question of due process rights in relation to deprivation was further elaborated by the International Law Commission’s Draft Articles on Nationality of Natural Persons in relation to the Succession of States. It states in Article 17 that the decision leading to deprivation must be issued in writing and be open to effective administrative or judicial

\begin{flushright}
\phantomsection\label{footnote102}
\textsuperscript{102} HRC, Human Rights and Arbitrary Deprivation of Nationality, 2013
\end{flushright}

\begin{flushright}
\phantomsection\label{footnote103}
\textsuperscript{103} van Waas, 2016: 476
\end{flushright}
review.

Furthermore, considerations of due process should be adapted to the specific case, taking into account any peculiarities of the issue. In this specific case, it is particularly important for the individual to be “actually or virtually present rather than having to contest the government's action from exile”\textsuperscript{104}. In recent years it has not been unknown for the UK to deprive individuals determined to be acting against “the public good” of their citizenship while they are abroad\textsuperscript{105}. These cases attracted public attention partially because they were followed by renditions or killings of the individuals deprived of their British citizenships. Most famously, Bilal el-Berjawi, a British-Lebanese citizen and an alleged Al-Qaida member, was killed by a US drone attack in Somalia after being stripped of his British citizenship\textsuperscript{106}.

The British government explained that the deprivation of citizenship of an individual who is outside the UK territory has not been a targeted tactic but has been required by operational reality as the most appropriate response at that moment\textsuperscript{107}.

Deprivation removes all rights of an individual as a citizen of a state and makes them particularly vulnerable to human rights violations and excessive and arbitrary use of state power. Rights of due process in such cases would be heavily impacted, as the claimants might not be able to practically exercise their right to appeal the decision, due to the potential lack of full explanation on their decision and the geographical distance, as well as other practical matters. In addition, the appeal will have to be filed from abroad and it can take a considerable time before it is settled\textsuperscript{108}. Taken as a whole, this would make the formal existence of the appeal mechanism useless. In the UK case, where the decision has an immediate effect, the individuals will not be able to appeal from within the country, which would endanger one of

\textsuperscript{104} Schuk, 2015/15: 9
\textsuperscript{105} Worthinton, 2014; Parsons, Ross, 2014
\textsuperscript{106} Woods, Ross, Wright, 2013
\textsuperscript{107} Ross and Galey, 2013
\textsuperscript{108} Overview of responses in 11 countries, p.16
the most fundamental rights of due process\textsuperscript{109}.

This practice risks being incompatible with the established human rights standards and the international obligations of the states. It is only to be hoped that it won't become a consistent practice in the UK and elsewhere.

Finally, when speaking about the due process rights, the severity of the measure under discussion should be borne in mind. When considering procedural and evidentiary requirements, the government's burden and standard of proof must be exceedingly demanding, perhaps even going beyond a reasonable doubt required for criminal convictions\textsuperscript{110}.

Thirdly, in order to not be arbitrary the revocation of citizenship must serve a legitimate purpose that is consistent with the objectives of international human rights law. International law, as discussed above, strictly limits the circumstances under which citizenship deprivation can be considered as serving a legitimate purpose. Thus, 1961 Statelessness Convention provides for the limited exceptions in which deprivation of nationality leading to statelessness may serve a legitimate purpose (Article 7.4 and 7.5, Article 8.2 and 8.3).

At this point we return to the rationales behind the citizenship deprivation which were discussed earlier. While advancing national security and protecting the state's citizens is certainly a legitimate aim, the deprivation of citizenship in order to punish is not. In addition, given the widespread academic and legal opinions that citizenship deprivation does not advance national security and does not serve as a reliable preventative measure\textsuperscript{111}, it is questionable whether citizenship deprivation can serve a legitimate purpose in most cases.

Fourthly, in order to not be arbitrary the citizenship deprivation must be the least intrusive means of attaining the desired result. It might be difficult to argue how citizenship deprivation is the least intrusive means of addressing the issue in the presence of the other existing counter-terrorism measures. The alternative measures, which span from preventative to post-

\textsuperscript{109} Ibid
\textsuperscript{110} Schuk, 2015/14: 9
\textsuperscript{111} Macklin 2014, Paskalev 2015, Joppke 2015
return policy options on multiple levels, are discussed in Chapter 5.2.

Finally, citizenship deprivation as a chosen measure must be proportionate to the specific case. The principle of proportionality is a general principle of international law that requires balancing between competing values and includes elements of severity, duration and scope. To be consistent with this principle, the measure should be limited “to the extent strictly required by the exigencies of the situation”\textsuperscript{112}.

It seems that under the human rights and international law framework, the deprivation of citizenship leading to statelessness would always be disproportionate. Less severe and more traditional means of addressing national security concerns, which are in place in every state, should be preferred.

Moving on to the standard of non-discrimination in international law in relation to citizenship deprivation, it is worth noting that the way such legislation is constructed in many states means that certain groups of people will find their citizenship more easily at risk than others. In the case of foreign fighters, it particularly concerns the individuals with dual nationality because they can be made stateless more easily than mono-nationals, due to the constraints of the 1961 Statelessness Convention.

The most recent adoption or update of citizenship deprivation powers has been largely inspired by the specific phenomenon of foreign fighters, much in the same way as the adoption of counter-terrorism measures across many states after 9/11, which means that certain groups of people are likely to be targeted and scrutinized more than others. On this note it is important to address the way these individuals are portrayed by the media and how this portrayal, in turn, affects some groups in the society. In the foreign fighter debate, the individuals concerned are consistently seen as “foreigners”, “aliens” and deportable “threats” that are unable to assimilate despite having the citizenship of the state in question, or even having been born there. In addition, the threat coming from

\textsuperscript{112} Ranstorp and Wilkison, 2003: 127
foreign fighters is portrayed in sovereign terms of national security. This kind of narrative transforms the citizen into an alien, positioning “us” against “them”. The idea of “belonging” is exploited to suit whatever political and security agenda the states might have at the moment. Often this foreignness and perceived inability to assimilate is attributed not only to the particular individuals who have been proven to be foreign fighters, but also to their family, social circle they come from and even people who “look like them” on the basis of their ethnicity and in the context of our current fears. Instead of regarding those proven guilty as criminals to be dealt with domestically, they are portrayed and experienced as “threats” to be removed permanently.

This creates a double standard that treats citizens differently from one another; and in order to transform undesired citizens into aliens, they must first be deprived of their nationality. It can therefore be argued that in the case of citizens who are deemed to be a threat, their nationality is treated as a mere technicality to be removed before they can be sent out of the country for good. As Honig eloquently put it in relation to the US security policies: “… although we may sometimes persecute people because they are foreign, the deeper truth is that we almost always make foreign those whom we persecute.”

It can be argued, therefore, that citizenship deprivation discriminates against particular groups of people – those with an immigrant background and those with dual nationality because they are more likely to be stripped of at least one of their nationalities. In addition, within the EU, dual nationals whose second nationality is also of an EU member state are likely to enjoy less protection from citizenship deprivation than those whose second citizenship is from a non-EU state. Such persons with dual EU membership would neither be rendered stateless not lose the special rights and benefits that come with an EU citizenship. This produces the inconsistency that individuals with different “sorts” of citizenship will be treated differently for the same kind of conduct, no matter how illegal and dangerous, or how legal and safe, it might be.

Along these lines, some commentators worry about the impact of creating two tiers of

113 Mills, 2016: 18
114 Honig, 2002
115 Edwards, van Waas, 2014
citizenship – citizens who cannot ever be rendered stateless due to them being born in a state or being mono-nationals, and citizens who can be rendered stateless under vaguely defined, exploitable conditions due to them being naturalized or possessing more than one citizenship. This places the concepts of citizenship, equality and, most importantly, non-discrimination under threat as it leads to an inquiry as to whether such a situation is compliant with the legal principle of non-discrimination.

If we address the international legal instruments to look for a way of resolving this issue, we will see that the 1961 Statelessness Convention accepts that naturalized nationals may be more at risk of loss of nationality than nationals by birth\textsuperscript{116}. Thus, Article 7(4) states that a naturalized person might lose their citizenship after a long period of residence abroad, subject to certain conditions.

European Convention on Nationality, on the other hands, states in Article 5(2) that “each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently”. The uncertainty that is evident from examining these two major instruments means that the subject requires further research, especially in light of the current events.

The issue of potential discrimination between mono- and dual- nationals also merits attention. As van Waas explains, since dual citizens are more vulnerable to denationalization, it can also indirectly affect the opportunity to enjoy dual nationality, since choosing it would mean having to accept a less secure status. In addition, should a dual national commit a crime grave enough to trigger citizenship deprivation, such an option would be much more likely than should a mono national find themselves in the same situation\textsuperscript{117}.

Finally, to comply with the prohibition against statelessness in discussing under which conditions citizenship deprivation might be permissible, the first thing to be noted is that statelessness is to be avoided at all costs. States must make sure that stringent safeguards against statelessness are in place. Along these lines it has been suggested that only dual nationals who possess another effective nationality may be deprived of their citizenship. The dual nationality situation, however, should be examined on a case by case basis, as should

\textsuperscript{116} van Waas, 2016: 483
\textsuperscript{117} van Waas, 2016: 483
the concept of “being able to acquire another nationality”. The alternative nationality may be purely nominal and the individual might have no practical connection to it.

Another scenario is nationals of a certain state, for whom it is the sole nationality, being stripped of it while outside that state. This scenario would touch upon the issues of international legal obligations of states towards each other.

Considering the case of the UK, Professor Guy Goodwin-Gill, a leading immigration lawyer and fellow of All Souls College, Oxford, believes that other countries would be “entitled to ignore any order by the British government that left an individual stranded and stateless on their territory”\textsuperscript{118}. He explains that no state can be expected to accept the “outcasts” of another state – those individuals deprived of citizenship for serious criminal conduct acting against the very interests of the state. Assuming that the citizenship deprivation is justifiable, even if the person is entitled in principle to apply for citizenship of another state, it is not clear that that state should entertain or be pressured to entertain such an application and potentially expose themselves to a similar threat.

5.2 Alternative measures

In this section other available measures that address the same concerns and threats will be discussed. Most Western countries already have an extensive counter-terror apparatus in place; however, many states have introduced or updated policies to counteract the rise of the perceived threat from returning foreign fighters. Most current counter-terrorism efforts focus on preventing radicalized individuals from travelling to join a terrorist organization in the first place, and confronting the potential threat from those who have returned.

Broadly speaking, the approaches to returnees can be divided into inclusive and exclusive ones\textsuperscript{119}, consisting of administrative, criminal and socio-political measures. The inclusive approach focuses on preventing the radicalization of individuals, both of the potential foreign fighters and the returnees. This approach utilizes mostly socio-political measures such as awareness building, counter- and de-radicalization narratives and campaigns, monitoring, counseling and psychological aftercare to potential foreign fighters and non-threatening

\textsuperscript{118} Goodwin-Will, 2014
\textsuperscript{119} Bakker, Paulussen, Etenmann, 2013; Lister, 2015
returnees. Practical assistance in finding housing, communication and cooperation with local communities and religious/spiritual authorities is also often provided. This approach is only applicable to the individuals who are themselves willing to engage with the program, and who have not yet committed any grave crimes yet.

Perhaps the best example of such a liberal reintegration framework is the so-called “Aarhus model” in Denmark. The creators of the Aarhus model state that the program has a solid scientific grounding and positive results. Preben Bertelsen, a psychology professor at Aarhus University, explains that the primary focus of the program is “inclusion”.120 Active effort against discrimination is another focus in the fight against radicalization.121

The Aarhus approach is famous for being “soft” and re-integration focused, but it does not mean that the individuals who have committed grave crimes would not be duly prosecuted. Such individuals would still face justice should it be proven that they joined or fought with a terrorist organization, such as IS.

However, in addition to the criminal and legal measures, the model focuses significant attention on extra-legal activism, such as collaboration between city officials, police, social workers, healthcare units, as well as assistance with education, accommodation and, if appropriate, getting into the work force. Dialogue with religious communities, associations and mosques also plays a major role. The Aarhus model involves three key elements: an early prevention program for potential travelers and an exit program for returnees, prosecution of persons who have committed violent crimes, in Denmark or elsewhere, and prevention and countering threats to national security.122

Despite being a relatively small state, Denmark has produced more fighters per capita than any other western European country, with the exception of Belgium.123 Like many other European states, it has debated the denationalization of foreign fighters and other harsh measures. The Aarhus program was criticized for being dangerous, soft and, in the words of

120 Henley, 2014
121 Agerschou, 2014/15: no.1
122 Preben, 2015: 242
123 Henley: 2014
the Danish legislator Martin Henriksen for “sending a signal of weakness that instead of punishing the so-called holy warriors, they're given all the advantages of a welfare state”.\textsuperscript{124}

Despite the criticism, however, the program does seem to work. According to the official data, in 2013 there were 31 individuals who left to join the IS, while in 2014 it seems there was only one.\textsuperscript{125} The Aarhus model is not an approach that could be easily applied in many states, but it is a promising experiment that can inform future counter-radicalization and counter-terrorism efforts, and an example of a successful combination of preventative, punitive and rehabilitating measures.

It has been argued that “soft”, internal counter-radicalization approaches are not very efficient in this context, as they were developed to counter a threat much less radical and of a less exceptional nature than IS. Many of such approaches tend to focus disproportionately on economic and social estrangement, as well as mental health\textsuperscript{126}. While these are necessary features of any counter-radicalization campaign, focusing mostly on these factors ignores the degree of transregional ideological radicalization that the armed group propagates.

In addition, such approaches are feared to result in a higher number of terrorist attacks, because a higher number of potentially dangerous persons will dare to return\textsuperscript{127}. It is possible that such approaches are better suited to deal with radicalization and the surrounding issues in the long term, while more severe measures are needed to counteract the immediate threat.

The exclusive approach, on the other hand, aims to criminalize any radical activity and prosecute the radical individuals. In terms of potential travelers, this approach relies on such measures as the seizure of passports, confiscation of travel documents and bans on travel to particular zones, aiming to prevent citizens from becoming foreign fighters in the first place. Common criminal measures employed across a range of countries include the criminalization of recruitment, training and taking part in the activities of a terrorist group.

\begin{thebibliography}{99}
\bibitem{124} Cobiella: 2015
\bibitem{125} Agerschou, 2014/15: no.1
\bibitem{126} Olidort, 2015
\bibitem{127} ICCT, 2015: 14
\end{thebibliography}
Many of these measures have been adopted following the 2014 UN Security Council Resolution 2178, which condemned violent extremism and urged member States to adopt a serious of measures to “prevent and suppress the recruiting, organizing, transporting or equippering of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or participation in terrorist acts”. The States were also urged to ensure that their domestic laws establish serious criminal offenses for the above mentioned, and other related, acts.

Some of these measures are controversial from the human rights point of view. The criminalization of travel to a certain zone risks greatly endangering freedom of movement. The fact of travel is much easier to prove than the participation in, let alone intent to participate in, terrorist acts or, say, war crimes. However, criminalizing the fact of travel alone is questionable as it would greatly impart the freedom of movement of those individuals who travel to the prohibited zone for peaceful reasons, such as business or visiting relatives.

Other controversial measures included prevention of foreign fighters from reentering their country of nationality, as well as preventative arrests of potential fighters.

When it comes to the returning foreign fighters, the security services are likely aware of all of them and monitor them to at least some degree, leaving little possibility for planning and carrying out a terrorist attack, but at the same time potentially interfering with the right to privacy.\textsuperscript{128}

Such restrictive and repressive policies, if applied in a blanket manner, may discourage disillusioned individuals from returning home – and therefore from reporting their disillusion to future potential fighters – as well as discouraging families from reporting their radicalized relatives or their suspicious activities for fear of criminal prosecution. These policies might also contribute to the alienating of Muslim communities and deepening the feeling of victimization that some individuals already experience and that radicalized individuals seek to exploit to their own benefit.\textsuperscript{129}

\textsuperscript{128} Sinkkonen, 2015: 5
\textsuperscript{129} Lister, 2015: 12
A harsh, prosecution-based approach might deal with the immediate problem, that is the particular dangerous individual, but it will arguably not help the situation in the long run. Therefore, a more encompassing approach is needed where inclusive and exclusive approaches are combined, both to address the potential travelers and those who have returned. This longer term, combined approach, aims at removing the conditions in which individuals can become radicalized. Criminal prosecutions obviously also have their place to address immediate concerns and particular individuals, but long-term prevention is needed to address the underlying problems. This involves engagement by the state with alienated communities – but also requires engagement from such communities, and as noted such engagement becomes increasingly difficult if large numbers of such communities are driven to feel victimized by the state. A related concern is the immediate, blanket criminalization of returning foreign fighters. As in the Aarhus approach, de-radicalized fighters who are genuinely disillusioned and become opposed to IS or related groups could be better employed educating potential radicals in their communities about the realities of life as a fighter under IS than they would be in jail. Such an approach does not, of course, preclude criminal measures – even to the point of citizenship deprivation should such be permissible under international law in a particular case – taken against particular individuals.

6 Conclusion

Citizenship (nationality) is a protected legal status and right that has been internationally recognized in a number of key documents for decades. Citizenship is so important to the national and international status of the individual that it has been described as the “right to have rights”, while its deprivation has been compared to political death. Citizenship deprivation is an exceptionally severe measure – a penal sanction of the most serious kind, which deprives an individual of their membership in a political community and endangers their rights and freedoms, making them vulnerable to abuses of power and placing them in a legal vacuum. Despite the severity of the measure, it has been used more in the recent years which can partially be explained by the changing concept of citizenship to meet the challenges posed by globalization, terrorism and other security issues.

130 Macklin, 2014/15: 3
A new wave of citizenship revocation in response to the foreign fighter phenomenon has been observed across a range of states worldwide, reminding us of the post-9/11 agitation where national security and personal liberties were seen as two opposites that needed to be balanced, with favor being given to security. That security often remained favored was explained by the rising threat of international terrorism and a need for a hard line approach to deal with it. Similarly, in the current situation with IS, many states have updated and expanded their police, intelligence and citizenship deprivation powers to counteract the threat, which is assumed to be complex, multidimensional and worldwide.

Some governments justify the measure on grounds of the “war against terror” or the “public good”, while some explain it from the traditional view of a “breach of allegiance”. The punishment rationale is also sometimes brought up.

However, despite the widening use of the deprivation powers, there is no evidence of the effectiveness of this measure. The necessity of such practices, even in the face of heightened terror alert, is therefore questionable. There is currently no established data proving that citizenship deprivation brings any added benefit to security or has any deterrent effect.

These measures shift the understanding of citizenship and nationality as a fundamental political and human right grounded in international law to the understanding of citizenship as a privilege where governments choose whom they wish to govern using elastic concepts such as the “public good”. This is a dangerous development which might undermine the progress made in combating statelessness (by setting bad precedents by the leading Western powers), as well as jeopardizing the institution of citizenship by making it less secure.

In my view, the threat of international terrorism should be addressed collectively on an international level through the well-established counter-terrorism framework consisting of a range of policy options. This framework is certainly not perfect, but it is constantly evolving to address the changing nature of international terrorism, and should not be undermined by sending alleged or actual terrorists into the legal vacuum, or to the states less capable of dealing with the issue. Deporting dangerous individuals from one state to another does not seem like a viable or practical solution which could help collective international security. It might actually have the opposite effect by contributing to the general global insecurity in the long term.

In the case of mono-nationals, a nation like the UK doesn't have the right to pressure other
states to grant citizenship to an individual deemed dangerous enough to have their citizenship stripped, and few states would take such an individual voluntarily; and yet, to comply with international law, the UK cannot leave them stateless.

Therefore, before citizenship deprivation is even considered in an individual case other, more traditional, measures from the arsenal of criminal and administrative policy should be preferred. A balance of exclusive and inclusive approaches should be combined to complement each other. Such a balance is necessary to address radicalization, which is another side of the foreign fighter issue. In the long run, the issue of foreign fighters presents not only an immediate security issue, but also a long-term challenge to remove the environments in which radicalization can spread. The governance challenge will be, therefore, to find a measured balance between a range of policy options, as well as between the human rights obligations and security aspirations, which, however, should not be seen as mutually exclusive.

Given the international threat of the modern day terrorism and the threat posed by IS in particular, a successful approach must combine efforts both in the domestic and international fronts.

The 1961 Convention on the Reduction of Statelessness stipulates an international commitment to reducing and ultimately eliminating statelessness; deprivation of nationality should therefore be an exceptional measure. The permissible grounds for citizenship deprivation and their practical application should be severely limited and well defined, so as to avoid blanket application and uncertainty. The right of states to deprive individuals of their nationality should be strictly regulated and limited by the appropriate national and particularly international legislation. Any new proposal that potentially endangers individual rights must be duly inspected in a democratic debate for its compatibility with the existing human rights standards; disproportionate and unconstitutional measures should be rejected.

Given the considerable interference with individual rights that citizenship revocation would bring, it can only be justified in exceptional circumstances. In addition, it should perhaps be limited to dual nationals. As I have argued, citizenship deprivation always appears to be disproportionate where it would lead to statelessness, and especially so when less drastic means to address national security and other concerns exist. For dual nationals, cases should
be assessed on a case by case basis to make sure that the second nationality is an “effective”
one, and the individual stripped of one nationality would not end up being *de facto* stateless. It
should always be borne in mind, however, that limiting citizenship deprivation powers purely
to dual citizens might aid in not creating stateless persons but might instead endanger the
institution of democratic citizenship by creating two types of citizens – those who are totally
safe in their citizenship and those who are not. This is another issue that is at the intersection
of the principle of non-discrimination and the concept of citizenship, and merits further
research.

Finally, if citizenship deprivation is to be retained, it should be limited to those cases where
serious breaches of law are documented and the connection to the country in question is weak.
In the view of all of the above, it seems that from the human rights point of view deprivation
of citizenship is in most cases an inappropriate response to the threat posed by foreign fighters
and other security considerations, given its significant international law implications.

If the liberal democratic values and the progress made by the human rights movement in the
last half a century is to be upheld, it is necessary to keep up the moral principles even in the
face of terror and make sure the legislators are not carried away trying to address the
perceived and actual threats with grand but democratically problematic gestures.
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