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Natolin

WHERE TERRORISM MEETS ARMED CONFLICT

CUMULATIVE PROSECUTION OF FOREIGN TERRORIST FIGHTERS IN THE EU

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ABSTRACT & KEYWORDS

The conflicts in Syria and Iraq confronted EU Member States with citizens travelling abroad to join terrorist groups such as IS in Syria and Iraq. These individuals, commonly known as foreign terrorist fighters, can be prosecuted under domestic crimes implementing the Counterterrorism Directive (EU) 2017/541, but also under war crime statutes where they committed war crimes. Prosecution under both legal frameworks is called cumulative prosecution. This research compared how Belgium and the Netherlands prosecute foreign terrorist fighters and to what extent their prosecutorial strategy entails cumulative prosecution. The Netherlands actively attempts to prosecute foreign terrorist fighters for both war crimes and terrorism offences. Nevertheless, obstacles remain, most importantly evidentiary difficulties and limited administrative capacity to prosecute war crimes. Belgium, on the other hand, has long practically excluded all cumulative prosecutions. Part of the reason was a paradoxical peculiarity in Belgian law: a domestic armed conflict exclusion clause, which was initially meant to reinforce prosecution under international humanitarian law. Besides, successful cumulative prosecution was also troubled by institutional problems comparable to those in the Netherlands. This research argues that cumulative prosecution should be better embedded as a prosecutorial strategy in the EU and the Member States. To achieve this, the Counterterrorism Directive (EU) 2017/541 should be amended, and Member States should institutionally strengthen the ability of investigative and prosecutorial authorities to pursue war crime charges, alongside terrorism offences.

Keywords: Foreign terrorist fighters, cumulative prosecution, counterterrorism law, international humanitarian law, armed conflict exclusion clause, European criminal law.

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ABBREVIATIONS

2002 EU Framework Decision	Council Framework Decision of 13 June 2002 on combating terrorism, O.J. L 164.
AP	Additional Protocol to the Geneva Conventions
BCC	Belgian Criminal Code
BPPS	Belgian Public Prosecution Service
CAH	Crimes Against Humanity
CICs	Core International Crimes
Counterterrorism Directive	Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017, on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, O.J. L 88/6.
CTL	Counterterrorism Law
DCC	Dutch Criminal Code
DICA	Dutch International Crimes Act
DPPS	Dutch Public Prosecution Service
EU	European Union
FTFs	Foreign Terrorist Fighters
GCs	The Four 1949 Geneva Conventions
IAC	International Armed Conflict
ICL	International Criminal Law
IHL	International Humanitarian Law
IS	Islamic State
NIAC	Non-International Armed Conflict
UNSC	United Nations Security Council

CHAPTER 1 INTRODUCTION

1.1 BACKGROUND

Significant numbers of European Union (“EU”) nationals have travelled abroad to join terrorist factions in Syria and Iraq since 2011, whose prosecution has proven to be complex. More than 40,000 foreign fighters from over 110 countries are estimated to have travelled to Syria and Iraq to join Sunni jihadist groups.¹ Of these, around 5,000 originated from Western European countries, many of whom became foreign terrorist fighters (“FTFs”).² The involvement of FTFs principally concerned Islamic State (“IS”), but also extended to other jihadist groups active in Syria and Iraq.³

The term FTF has never been uniformly internationally defined. Currently, the most authoritative definition continues to be United Nations Security Council (“UNSC”) Resolution 2178. This resolution defines the term 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”.⁴

The prosecution of FTFs is a politically sensitive yet legally important issue. EU Member States may prosecute FTFs under four categories of offences. FTFs that have engaged in a non-international armed conflict (“NIAC”) as fighters can, depending on the

¹ UNSC, “Greater Cooperation Needed to Tackle Danger Posed by Returning Foreign Fighters, Head of Counter-Terrorism Office Tells Security Council”, Press Release, SC/13097, 28 November 2017, retrieved 3 May 2026 <<https://press.un.org/en/2017/sc13097.doc.htm>>.

² Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences, Genocide Network Secretariat, Eurojust, May 2020, p. 6, retrieved 3 May 2026 <https://www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2020-05_Report-on-cumulative-prosecution-of-FTFs_EN.PDF>; Thomas van Poecke and Hanne Cuyckens, “The Qualification of the Activities of (Returned) Foreign Fighters Under National Criminal Law”, in *Returning Foreign Fighters: Responses, Legal Challenges and Ways Forward*, eds. by Francesca Capone, Christophe Paulussen and Rebecca Mignot-Mahdavi (The Hague: T.M.C. Asser Press, 2023), p. 143-173, at p. 144.

³ Daniel H. Heinke and Jan Raudszus, “Germany’s Returning Foreign Fighters and What to Do About Them”, in *Returnees: Who Are They, Why Are They (Not) Coming Back and How Should We Deal with Them?*, eds. Thomas Renard and Rik Coolsaet, Egmont Paper 101 (Brussels: Egmont, 2018), p. 41-45, at p. 45; Sandra Krähenmann, “Foreign Fighters under International Law and National Law”, *Militair Rechtelijk Tijdschrift*, no. 6 (2015), retrieved 3 May 2026 <https://puc.overheid.nl/doc/PUC_21650_11>.

⁴ UNSC Resolution 2178 of 24 September 2014, UN Doc. S/RES/2178, preambular para. 8. By definition, counterterrorism law applies to FTFs. This is also what separates FTFs from foreign fighters more generally: foreign fighters may travel abroad to participate in an armed conflict without engaging in terrorist conduct. Conduct by State armed forces during armed conflict is in principle regulated by international humanitarian law and international criminal law.

facts, be prosecuted for (i) ordinary domestic crimes, partially determined by transnational criminal law,⁵ (ii) terrorism offences, (iii) crimes against humanity (“CAH”) and (iv) war crimes under international humanitarian law (“IHL”, traditionally known as *ius in bello*). FTFs can be prosecuted under each individual regime, but also under several regimes cumulatively. This practice is a growing phenomenon among the Member States, and since war crimes and CAH count as core international crimes (“CICs”)⁶ – and are closely related to *ius cogens* norms – these crimes may also be prosecuted on the basis of universal jurisdiction. However, the underlying rationales of the different crimes differ profoundly.

First, ordinary domestic crimes under domestic criminal law concern the sovereign right of every state to determine its own criminal law. Second, terrorism offences concern conduct committed with a terrorist purpose, of which violations are determined by a set of domestically, regionally and internationally instruments comprising Counterterrorism Law (“CTL”). Third, CAH are widespread or systematic attacks directed against civilian populations, which can occur during both peacetime and wartime, and can be prosecuted under domestic implementations of International Criminal Law (“ICL”).

Fourth, war crimes are serious violations of IHL, committed in the context of armed conflict, both interstate and intrastate,⁷ which can similarly be prosecuted under domestic implementations of ICL. However, unlike CTL, IHL as such does not illegalise war or acts of war but rather seeks to regulate the course of the war. Although the interaction between IHL and domestic crimes (ordinary and terrorism offences) is rather straightforward in an international armed conflict (“IAC”), the interaction between IHL and domestic crimes is much more complex in the situation of an NIAC. In an IAC, combatant privilege is provided to combatants engaged in lawful acts of war, thereby precluding prosecution under domestic law.⁸ Conversely, in an NIAC, no such combatant privilege exists, and combatants can be prosecuted domestically. This presents the legal question of which body

⁵ In relation to FTFs, the following treaties are most important: International Convention for the Suppression of Terrorist Bombings, 1997; International Convention Against the Taking of Hostages, 1979; International Convention for the Suppression of the Financing of Terrorism, 1999; International Convention for the Suppression of Acts of Nuclear Terrorism, 2005.

⁶ The four CICs comprise genocide, CAH, war crimes, and the crime of aggression. Genocide and the crime of aggression could – from a jurisdictional perspective – be applied cumulatively with CTL to FTFs, but they pertain to situations that are inherently different.

⁷ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (Cambridge: Cambridge University Press, 2005), p. 568–603.

⁸ AP I, Article 43(2) in conjunction with GC III, Article 4(A); ICRC, “Protected persons: Prisoners of war and detainees”, 2026, retrieved 3 May 2026 <<https://www.icrc.org/en/law-and-policy/protected-persons-prisoners-war-and-detainees>>.

of law the Member States should apply in the prosecution of FTFs, as multiple offences under the different bodies of law could be applicable.⁹

1.2 RESEARCH PROBLEM

Currently, there is a lack of legal rules or widely accepted soft-law norms regulating the prosecution of illegal acts under both CTL and IHL. This presents a problem as it generates legal fragmentation and normative questions regarding the best prosecutorial policy on the prosecution of FTFs.¹⁰ Simultaneous or parallel prosecution of closely connected conduct under both CTL and IHL can be possible, and is referred to in this thesis as cumulative prosecution. For this thesis, the term cumulative prosecution does not involve prosecution involving CTL in combination with ordinary domestic crimes, CAH, genocide or the crime of aggression.

The Counterterrorism Directive (EU) 2017/541 (Counterterrorism Directive)¹¹ is a central EU instrument in cumulative prosecution, as it establishes the European counterterrorism framework. However, it does not regulate, nor rule on the legality or desirability of cumulative prosecution. Its armed conflict exclusion clause is confined to the non-binding Recital 37, which states that the Directive “does not govern the activities of armed forces during periods of armed conflict, which are governed by IHL within the meaning of those terms under that law.” Yet the temporal, personal, geographical, and material scope of this exclusion, as well as the armed conflict nexus requirement, can each be interpreted differently across Member States.¹² Moreover, recitals are not in themselves

⁹ John A.E. Vervaele, “Foreign (Terrorist) Fighters: Combatants and/or Terrorists or Just Enemies?”, in *Dealing with Terrorism: Empirical and Normative Challenges of Fighting the Islamic State*, eds. Marc Engelhart and Sunčana Roksandić Vidlička (Berlin: Duncker & Humblot, 2019), p. 35-60, at p. 35-37.

¹⁰ Hanne Cuyckens and Christophe Paulussen, “The Prosecution of Foreign Fighters in Western Europe”, *Journal of Conflict & Security Law*, 24, no. 3 (2019), p. 537-565, at p. 561-562; Opening Remarks of Ben Saul, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in the context of the International Conference on the Investigation and Prosecution of Terrorism Offences Committed in the Context of Armed Conflict, Council of Europe Committee on Counter-Terrorism, Strasbourg, 15 May 2024, retrieved 3 May 2026 <<https://rm.coe.int/unsr-saul-2024-5-council-of-europe-remarks-ct-ihl-final/1680b1511b>>.

¹¹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017, on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, O.J. L 88/6.

¹² Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences, Genocide Prosecution Network, Eurojust, September 2025, p. 14-15, retrieved 3 May 2026 <<https://www.eurojust.europa.eu/sites/default/files/assets/files/cumulative-prosecutions-of-foreign-terrorist-fighters-for-core-international-crimes-and-terrorism.pdf>>.

transposed, and few Member States appear to have enacted an explicit domestic exclusion clause that mirrors the recital.¹³

Academically, this study is relevant as there is a research gap concerning cumulative prosecution under the Counterterrorism Directive by the Member States. Practically, the proposed research has gained urgency given that cumulative prosecution has seen a rise in the EU since the defeat of IS.¹⁴ In the bigger picture, this research also serves a larger purpose. The prosecution of FTFs from Syria and Iraq is emblematic of the broader question of how people, taking part in non-state armed groups engaged in terrorist conduct, should be prosecuted. For example, this is potentially also relevant to European foreign (terrorist) fighters in the pro-Russian Pyatnashka International Brigade.¹⁵ Beyond the prosecution of nationals, non-nationals can also be cumulatively prosecuted, which greatly expands the number of people who could potentially be cumulatively prosecuted.¹⁶

1.3 RESEARCH QUESTIONS

This thesis seeks to answer the following main research question: “*Should the EU regulate cumulative prosecution of foreign terrorist fighters for terrorism offences and war crimes, and, if so, through which legal and institutional mechanisms can cumulative prosecution be embedded in the EU and the Member States?*”

To structurally answer the main research question, the following sub-questions are addressed in this research:

1. *How do Directive (EU) 2017/541 and International Humanitarian Law regulate the legal criminalisation and prosecution of conduct that may be labelled as both war crimes under International Humanitarian Law and terrorism under the Directive?*

¹³ Only Belgium and Ireland have codified an exclusion clause: Belgium – Code pénal, 1867, Art. 141bis; Ireland – Criminal Justice (Terrorist offences) Act 2005, 2005, secs. 6(4) (general terrorism offences) and 10(6) (terrorist bombing).

¹⁴ See: ICCT, “Mapping Cumulative Prosecutions in Europe”, last updated 6 October 2025, retrieved 3 May 2026 <<https://interlinkagesdatabase.icct.nl/>>.

¹⁵ Undesirable Foreign Funding and Influences: Challenges and Responses, Thematic Panel 7 Secretariat, July 2025, p. 5, retrieved 3 May 2026 <https://home-affairs.ec.europa.eu/document/download/da7e9868-a677-48f9-9541-3b366b0029bd_en>; OLG München, Beschluss vom 30 Oktober 2024 – BGH AK 86/24, para. 19.

¹⁶ Prosecution of foreign nationals for CICs is possible under universal jurisdiction. Prosecution for terrorism offences of foreign nationals is in many cases based on jurisdiction through Article 6(4) of the Terrorist Bombings Convention, *supra* note 5, see: District Court of Rotterdam 20 April 2023, ECLI:NL:RBROT:2023:3294, paras 5-5.4.

2. *How does the legal and prosecutorial framework of the Netherlands shape the cumulative prosecution of foreign terrorist fighters for terrorism offences and war crimes?*
3. *How does Belgium's legal and prosecutorial framework shape the cumulative prosecution of foreign terrorist fighters for terrorism offences and war crimes?*
4. *How could cumulative prosecution be legally and institutionally more strongly embedded in the EU and the Member States?*

1.4 METHODOLOGY

This research adopts a library-based, doctrinal research approach structured around different sub-questions and methodologies. The first sub-question on the current legal framework is descriptive and is addressed through doctrinal legal research. The second and third sub-questions combine doctrinal legal research with qualitative interviews. The doctrinal element covers both the applicable legal framework governing the permissibility of cumulative prosecutions and relevant case law. The doctrinal analysis is supplemented by semi-structured interviews with prosecutors and academic researchers in the Netherlands and Belgium, since prosecutorial practice is shaped in part by internal strategies and considerations that are not publicly available. The fourth sub-question is inherently comparative, and presents the normative corollary from the results of the first three sub-questions. To answer the main research question, I will synthesise the findings from the four sub-questions.

1.5 SCOPE AND LIMITATIONS

The scope of this thesis is delimited by a central confinement: it examines only the cumulative application of IHL and CTL within the EU legal order, which is bound by international law.¹⁷ Ordinary domestic crimes and CAH – which might also be cumulatively applicable to the prosecution of FTFs – fall outside the scope of the present study.

Ordinary domestic offences and CAH differ from terrorism offences because they do not raise the same structural tension with IHL. Whereas IHL allows for proportional and

¹⁷ This thesis proceeds from the premise that EU Member States are bound to act consistently with international law, including IHL. This premise follows, inter alia, from Article 3(5) TEU.

necessary conduct of hostilities, CTL principally criminalises all violent conduct with a terrorist intent and related preparation. This contrast does not apply to CAH and ordinary domestic crimes in relation to terrorism offences. Moreover, the enforcement of ordinary domestic crimes and CAH does not involve the same extensive investigative powers and jurisdiction that is applicable to terrorism offences. These reasons also explain why the armed conflict exclusion clause was initially developed in international CTL.

Ordinary domestic criminal law and CAH also differ from IHL. Whereas IHL is applicable in the context of armed conflicts, CAH and ordinary domestic crimes lack this key contextual element. It is true that FTFs can, in some cases, be prosecuted for CAH and ordinary domestic crimes alongside war crimes and/or terrorism offences. However, this does not raise the problem of unclear and uncertain interaction between IHL and CTL.

As to the limitations, a salient limitation of this research is the accessibility of Belgian criminal judgments: Belgian lower court criminal judgments remain generally unpublished. While professional researchers are in direct contact with the judicial administration to access case law,¹⁸ this method was unattainable within the framework of the present research. Nonetheless, this research limitation is partially mitigated by the fact that the research was supplemented by interviews.

1.6 OUTLINE

This thesis follows the following structure. Chapter 2 sets out the legal interaction between IHL and the Counterterrorism Directive. Chapter 3 analyses Dutch law and practice on cumulative prosecution. Chapter 4 examines the Belgian approach, focusing on the armed conflict exclusion clause and prosecutorial practice. Chapter 5 draws on both case studies to propose legal and institutional reforms at the EU level. Finally, the conclusion answers the main research question.

¹⁸ Thomas Renard, “The Belgian Approach to Female Violent Extremist Offenders”, in *Female Jihadis Facing Justice: Comparing Approaches in Europe*, eds. Tanya Mehra, Thomas Renard and Merlina Herbach (The Hague: ICCT Press, 2024), p. 17-40, at p. 17-18.

CHAPTER 2 THE INTERACTION BETWEEN IHL AND EU CTL

Before 2001, CTL was largely sectoral and targeted specific acts rather than political violence in general. Moreover, several treaties expressly preserved the primacy of IHL in armed conflict through armed conflict exclusion clauses. After 9/11, this changed markedly.¹⁹ UNSC resolutions expanded CTL to cover preparatory conduct and applied it also within armed conflict,²⁰ without comparable IHL carve-outs.²¹ This resulted in growing overlap between IHL and CTL, so that the same conduct may now be prosecuted both as a war crime and as a terrorist offence. Overlap between the two bases for criminal liability is in itself not problematic; it becomes so only when the regimes overlap without any legal mechanisms. However, that is precisely the current situation when it comes to the prosecution of FTFs. This chapter starts by setting out the present application of IHL to FTFs in Section 2.1, followed by the application of CTL to FTFs in Section 2.2, along with a discussion about the applicability of the Counterterrorism Directive as an instrument of CTL to FTFs. Finally, the conclusion will answer the first sub-question.

2.1 THE APPLICATION OF IHL TO FTFs

IHL is the body of law applicable to armed conflicts in the legal sense. Because FTFs in Syria and Iraq were active in the NIACs raging in those two countries, the distinction between the application of IHL in IACs and in NIACs is important. First, the definition of an IAC is rather straightforwardly defined as “an armed conflict exists whenever there is a resort to armed force between States”.²² In contrast, the existence of an NIAC is much more ambiguous. An NIAC is defined as “protracted armed violence between governmental authorities and organised armed groups or between such groups within a State”,²³ and key

¹⁹ Sandra Krähenmann, “Legal Framework: Addressing Terrorism and Counter-Terrorism”, *Collegium*, no. 47 (2017), p. 1-208, at p. 17-24.

²⁰ The following clauses were most consequential in this regard: UNSC Resolution 1373 of 28 September 2001, UN Doc. S/RES/1373, op. para 1(b), 2(a) and 2(e); UNSC Resolution 2178 of 24 September 2014, UN Doc. S/RES/2178, op. para 6.

²¹ There are two important exceptions applicable to non-sectoral conduct: the 1997 Bombings Convention, *supra* note 5, criminalises attempt and complicity, in Art. 2(2)–(3), and the 1999 Financing Convention, *supra* note 5, criminalises terrorist financing in Articles 2(1) and 2(5).

²² ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, 2 October 1995, para. 70.

²³ *Ibid.*

factors are the (i) organisation of the parties involved, and (ii) intensity of the conflict. Once the NIAC threshold is met, IHL applies to the situation.²⁴

While the designation of a conflict as an armed conflict — and more precisely as an IAC or NIAC — can be subject to intense international debate, the Syrian and Iraqi conflicts, to which this research is confined, have widely been classified as NIACs,²⁵ with a parallel IAC in Syria from the international operations conducted by States without the consent of Syria's government.²⁶

Classifying a situation as a NIAC as opposed to an IAC has two main legal implications. First, the Geneva Conventions (“GCs”) were primarily drafted for IACs. As a result, most treaty provisions, including the grave breaches, do not apply directly in NIACs, which limits the scope for prosecution of war crimes in relation to conduct committed in an NIAC. There are three principal exceptions. Common Article 3 of the GCs applies expressly to NIACs and sets minimum standards binding all parties. Additional Protocol (“AP”) II further develops protections for victims in NIACs.²⁷ Lastly, in addition to treaty law, a significant body of customary IHL applies in both IACs and NIACs. Accordingly, when this thesis refers to war crimes in the context of FTFs, it relies on these three sources: Common Article 3, AP II, and customary IHL applicable to NIACs.

A second implication of the classification of an armed conflict as NIAC is that combatant privilege is absent. Fighters in NIACs do not enjoy immunity from prosecution for acts of war that are lawful under IHL. This enables domestic authorities to prosecute participation in armed conflict under domestic criminal law, including CTL, even when, under IHL, no unlawful act of war has been committed. This legal structure makes

²⁴ Whereas treaty obligations under IHL normally bind only High Contracting Parties, Common Article 3 of the GCs is drafted to bind “each Party to the conflict”, which includes both State armed forces and non-State organised armed groups.

²⁵ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Independent international commission of inquiry on the Syrian Arab Republic, UN Doc. A/HRC/21/50, August 2012, para. 12, endorsed by Human Rights Council Resolution 21/26 of 17 October 2012, UN Doc. A/HRC/RES/21/26; Genocide Network Secretariat 2020, *supra* note 2, p. 8-10.

²⁶ War Watch, “Armed Conflicts in Syria”, Geneva Academy of International Humanitarian Law and Human Rights, June 2025, retrieved 3 May 2026 <<https://warwatch.ch/situations/armed-conflicts-in-syria/>>.

²⁷ Syria and Iraq are parties to the GCs but have not ratified AP II. Based on personal correspondence with the DPPS and Eurojust, this has not precluded Dutch (or other European) prosecutions for war crimes, which can rely on customary IHL: Interview with Guus Sannes, public prosecutor in the CTER cluster, Public Prosecution Service, and Christin van der Torre, Senior Legal Officer in the IM cluster, Public Prosecution Service, The Hague, 30 March 2026; Email correspondence with the Genocide Prosecution Network Secretariat, Eurojust, 7 April 2026.

cumulative prosecution legally possible. Prosecution under domestic criminal law of lawful acts of war committed in the course of an IAC, on the other hand, is not in line with the GCs and customary IHL, and is thus excluded from this research.

Notably, an IHL violation does not, in itself, directly mean that an individual is individually prosecutable, as a war crime is defined as a “*serious* violation of international humanitarian law”,²⁸ and individual prosecution can only take place if a war crime was committed that can be attributed to an individual. This leaves substantial margin of appreciation to States. That said, the Rome Statute provides a benchmark in the criminalisation of war crimes,²⁹ defining – through hard law and jurisprudence – what conduct constitutes a war crime in an NIAC.

Contrary to a common assumption, IHL contains a dense set of prohibitions outlawing the terrorisation of civilians. Breaches of these prohibitions may amount to a war crime. At the core lies the prohibition of “acts or threats of violence the primary purpose of which is to spread terror among the civilian population” codified in Article 13(2) of AP II, Article 51(2) of AP I, as well as being customary IHL.³⁰ On top of that, there exists an international customary IHL obligation requiring States to investigate war crimes allegedly committed during both IACs and NIACs and to prosecute suspects when appropriate.³¹ That said, conduct amounting to war crimes need not always be prosecuted specifically as war crimes, but can be classified as ordinary crimes or terrorism offences.³² Especially because terrorism was not listed as a grave breach in the GCs and was not incorporated into the Rome Statute, the war crime of terror against civilians has been invoked only sparingly in national prosecutions, its most prominent applications remaining those of the ICTY in *Galić* and *Milošević*.³³

²⁸ Henckaerts & Doswald-Beck, *supra* note 7, p. 568-603, emphasis added.

²⁹ Rome Statute of the International Criminal Court, 1998.

³⁰ Henckaerts & Doswald-Beck, *supra* note 7, p. 8-11.

³¹ Henckaerts & Doswald-Beck, *supra* note 7, p. 607-611.

³² Thomas van Poecke, “Terrorism and Armed Conflict: A Transnational Criminal Law Framework” (PhD dissertation, KU Leuven, 2025), p. 223-224.

³³ *Ibid.*, p. 302-404; ICTY, *Prosecutor v. Galić*, Case No. IT-98-29-A, 30 November 2006; ICTY, *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, 12 November 2009.

2.2 THE APPLICATION OF CTL TO FTFs

The Counterterrorism Directive forms the principal instrument in the EU against terrorism. However, the Directive is not the only relevant instrument. Besides the Directive, CTL concerning FTFs has been heavily influenced by UNSC resolutions.

Importantly, no UNSC resolution has adopted a single definition of terrorism, which is why, currently, Article 2(1)(b) of the Terrorist Financing Convention provides an authoritative formulation of terrorism offences. It defines – for the purpose of that convention – as a terrorism offence any “act intended to cause death or serious bodily injury to a civilian [...], when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government [...] to do or to abstain from doing any act.”³⁴

To understand how CTL can be applied to FTFs, the next subsection discusses the UNSC obligations imposed on United Nations Member States, after which the Directive and its armed conflict exclusion clause will be examined.

2.2.1 POST-2001 UNSC OBLIGATIONS TOWARDS FTFs

After 9/11, four resolutions have transformed terrorism law into a body of rules operating alongside IHL in relation to FTFs. Starting in 2001, UNSC Resolution 1373 (2001)³⁵ required States to take wide-ranging measures to suppress and criminalise terrorism-related conduct, with emphasis on terrorist financing and the broader support networks that enable attacks. It obliged States to criminalise funding and assistance, freeze assets, deny safe haven, and cooperate in investigations and extradition. Resolution 2178 (2014)³⁶ built on this and turned specifically to FTFs. It required States to stop and punish not only attacks, but also preparatory conduct, such as recruitment, travel, providing equipment, and financing for terrorist purposes. Resolution 2396 (2017)³⁷ went further and emphasised border controls, passenger information sharing, and stronger judicial cooperation to deal with returnees. Lastly, in 2019, UNSC Resolution 2462 (2019)³⁸ was adopted as a modern

³⁴ Terrorist Financing Convention, *supra* note 5, Article 2(1)(b).

³⁵ Resolution 1373, *supra* note 20.

³⁶ Resolution 2178, *supra* note 20.

³⁷ UNSC Resolution 2396 of 21 December 2017, UN Doc. S/RES/2396.

³⁸ UNSC Resolution 2462 of 28 March 2019, UN Doc. S/RES/2462.

instrument on combating terrorist financing which also reaffirmed prior UNSC resolutions on terrorism and FTFs.

These resolutions encourage a policy to prosecute FTFs through CTL, but do not further clarify how the overlap of the resolutions with IHL should be managed.³⁹ Notwithstanding, they do oblige States to criminalise conduct in their domestic criminal law that would normally not violate IHL. Attempted travel for terrorist purposes is an example of this.

The discussed lack of a universally accepted single definition of terrorism further conflates the separation between IHL and CTL, but on top of that, no provision with an explicit armed conflicts exclusion clause has been adopted. Paragraph 6 of Resolution 2462 (2019) does contain a reminder that States must comply with IHL, but this is the closest the UNSC has come in terms of managing the overlap of IHL with CTL. That said, it must be emphasised that the UNSC resolutions do not oblige States to prosecute FTFs under terrorism or pursue a prosecutorial strategy aimed at terrorism offences; the UNSC resolutions only oblige member states to criminalise certain conduct as terrorist conduct in their domestic criminal law. Therefore, the issue of overlap between CTL and IHL is ultimately left to the Member States who implement the binding UNSC resolutions.

2.2.2 COUNTERTERRORISM DIRECTIVE 2017/541

The Counterterrorism Directive was adopted in 2017 based on Article 83(1) TFEU and serves as an instrument establishing minimum rules in the EU on the criminalisation of terrorism. It integrated the UNSC resolutions described above.

Article 3(1) of the Counterterrorism Directive enumerates a set of criminal acts which Member States must criminalise under national law. These include, inter alia, attacks upon a person's life, attacks on physical integrity, kidnapping, and extensive destruction of infrastructure. Where the acts are committed with the additional compulsory or intimidatory intent in Article 3(2) – which adds the “terrorist intent” requirement – then the

³⁹ Stéphane Ojeda, “Global counter-terrorism must not overlook the rules of war”, Humanitarian Law & Policy Blog, 13 December 2016, retrieved 3 May 2026 <<https://blogs.icrc.org/law-and-policy/2016/12/13/global-counter-terrorism-rules-war/>>; Agathe Sarfati, “International humanitarian law and the criminal justice response to terrorism: From the UN Security Council to the national courts”, *International Review of the Red Cross*, 103, no. 916–917 (2021), p. 267–293, at p. 269.

acts can be labelled as terrorism. The terrorist intent requirement is fulfilled when acts are committed with the aim of “seriously intimidating a population”, or “unduly compelling a government or an international organisation”, or “seriously destabilising or destroying the fundamental political, constitutional, economic, or social structures of a country or an international organisation”.⁴⁰

This terrorist intent element is not identical to IHL’s primary purpose to spread terror among civilians. The Counterterrorism Directive’s category is broader. It includes the compulsion of governments and the destabilisation of constitutional or social structures. This breadth can capture conduct that is not primarily “terrorising civilians” in the IHL sense. Moreover, Articles 4 to 12 of the Directive criminalise support, preparatory conduct linked to terrorism, and participating in the activities of a terrorist group. These acts will similarly not qualify as war crimes under IHL. The Directive’s concept of terrorism is thus substantially broader than IHL’s prohibition on spreading terror among civilians.

2.2.3 THE ARMED CONFLICT EXCLUSION CLAUSES

To manage the interface of CTL with IHL, many counterterrorism conventions contain an exclusion clause. The general function is to avoid regulating the activities directly connected to an armed conflict through CTL,⁴¹ although the scope and application of exclusion clauses can vary. The exclusion clause is normally framed around activities of armed forces and the governance of those activities by IHL, leaving open whether the exclusion clause applies to NIACs.

The Counterterrorism Directive similarly contains an exclusion clause in Recital 37, stating that the “Directive does not govern the activities of armed forces during periods of armed conflict, which are governed by international humanitarian law [...]”. The recital thus states that the Directive should not have the effect of altering criminal liability for participants in activities of the armed forces. However, the recital’s scope remains undetermined. It leaves undetermined whether it excludes prosecutions of acts committed by armed forces active in an NIAC. The notion of “armed forces” is unclear and has been

⁴⁰ Counterterrorism Directive (EU) 2017/541, Article 3(2).

⁴¹ Thomas Van Poecke, Frank Verbruggen and Ward Yperman, “Terrorist Offences and International Humanitarian Law: The Armed Conflict Exclusion Clause”, *International Review of the Red Cross*, 103, no. 916-917 (2021), p. 295-324, at p. 295-301.

interpreted by most Member States to only refer to actors engaged in an IAC,⁴² although not by all Member States. Most evidently, the clause is codified in a recital, which means it is meant to provide interpretive context, not autonomous operative law.⁴³ Therefore, the Directive does not currently regulate the interaction between CTL and IHL, and it is up to the Member States how and whether to deal with cumulative prosecution.

2.3 INTERIM-CONCLUSION

In answer to sub-question 1, the Member States are presently afforded little binding guidance on navigating the overlap between the Counterterrorism Directive and IHL, and the choice whether to pursue cumulative prosecution rests with the Member States. Where an NIAC exists, and an FTF commits a war crime, that FTF may be prosecuted for the war crime under domestic criminal law implementing ICL. Concurrently, prosecution can take place under domestic CTL, provided the elements of both offences are satisfied. Nothing in the Directive prevents Member States from cumulative prosecution. That said, Recital 37 of the Counterterrorism Directive provides some interpretative guidance.

⁴² Genocide Prosecution Network, *supra* note 12, p. 15.

⁴³ See also: Ben Saul, “From conflict to complementarity: Reconciling international counterterrorism law and international humanitarian law”, *International Review of the Red Cross*, 103, no. 916–917 (2021), p. 157–202, at p. 196-197.

CHAPTER 3 CUMULATIVE PROSECUTION IN THE NETHERLANDS

Having clarified in Chapter 2 that EU law does not conclusively regulate the relationship between terrorism offences and IHL, the analysis now turns to national practice. The Netherlands provides an instructive case study because it has no domestic armed conflict exclusion clause and permits cumulative prosecution where the facts support both terrorism charges and war crimes. This chapter examines how cumulative prosecution is applied in practice. It first outlines the Dutch legal framework in Section 3.1, then analyses the absence of an exclusion clause in legislation and case law in Section 3.2. This chapter assesses prosecutorial practice concerning FTFs in Section 3.3, and finishes with a conclusion.

3.1 LEGAL FRAMEWORK OF CUMULATIVE PROSECUTION

The Dutch domestic framework for terrorism offences is laid down primarily in the Dutch Criminal Code (*Wetboek van Strafrecht*, abbreviated “DCC”),⁴⁴ while CICs are criminalised in the Dutch International Crimes Act (*Wet internationale misdrijven*, abbreviated “DICA”).⁴⁵

Terrorism offences were introduced in 2004 by the Terrorism Offences Act,⁴⁶ following the adoption of the 2002 EU Framework Decision on combating terrorism (“2002 EU Framework Decision”).⁴⁷ They are codified through the DCC, where Article 83 DCC enumerates a series of ordinary offences that become terrorism offences when they are committed with a terrorist intent. The notion of “terrorist intent” (*terroristisch oogmerk*) is defined in Article 83a DCC, and broadly tracks the Counterterrorism Directive, Article 3(2). Once terrorist intent is proven, the ordinary offences enumerated in Article 83 DCC become terrorism offences. Most important in this regard is Article 140a DCC, which criminalises membership of a terrorist organisation as a crime punishable by a prison sentence of up to fifteen years.

⁴⁴ *Wetboek van Strafrecht*, 1881.

⁴⁵ *Wet internationale Misdrijven*, 2003; *Kamerstukken II* 2001-2002, 28337, nr. 3.

⁴⁶ *Wet terroristische misdrijven*, 2004.

⁴⁷ Council Framework Decision of 13 June 2002 on combating terrorism, O.J. L 164.

The framework around CICs was developed after World War II, and in 2003, a unified Dutch criminalisation of CICs was established with the adoption of the DICA. This development was especially propelled by the Rome Statute ratification and the subsequent establishment of the International Criminal Court.⁴⁸ The DICA criminalises all four CICs: CAH, genocide, war crimes, and the crime of aggression and follows the structure of the Rome Statute. Articles 5 and 6 of the DICA criminalise war crimes. Where Article 5 is geared towards war crimes committed in the context of an IAC – and is by extension thus inapplicable to FTFs in the context of the Syrian civil war and the war in Iraq – Article 6 criminalises war crimes committed in the course of an NIAC.

3.2 (ABSENCE OF THE) ARMED CONFLICT EXCLUSION CLAUSE

In the Netherlands, there has never been a domestic armed conflict exclusion clause prohibiting prosecution under CTL in certain cases, nor is there any other domestic legal rule encouraging or preventing the prosecution from applying any of the two bodies of law. When introducing the Dutch counterterrorism regime implementing the 2002 EU Framework Decision, the Dutch government chose not to implement the exclusion clause of Recital 11, the predecessor of Recital 37 of the Counterterrorism Directive. Later, when the DCC was amended in 2018 to implement the Counterterrorism Directive from 2017,⁴⁹ no legislative amendment was initiated either to introduce the exclusion clause in the Dutch criminal law. Nevertheless, despite the fact that no exclusion clause had been codified, the discussion about the exclusion clause has been litigated in court.

At the Supreme Court level, the interaction between Dutch criminal law and IHL was first clearly articulated in *Kesbir* in 2004,⁵⁰ which concerned the requested extradition of a PKK leader to Turkey for the crime of membership of a terrorist organisation. Since that crime did not yet exist in the DCC, double criminality was based on the crime of “participation in an organisation whose purpose is the commission of crimes”⁵¹ coupled

⁴⁸ Giel Verhagen, “Brothers in Arms? The Selection and Prioritisation of Core International Crimes and Terrorism in the Netherlands”, *International Criminal Law Review*, 23, no. 4 (2023), p. 522-551, at p. 528-529.

⁴⁹ Minister van Justitie en Veiligheid, “Mededeling implementatie Richtlijn (EU) 2017/541 van het Europees Parlement en de Raad van 15 maart 2017 inzake terrorismebestrijding en ter vervanging van Kaderbesluit 2002/475/JBZ van de Raad en tot wijziging van Besluit 2005/671/JBZ van de Raad (PbEU L 88/6)”, no. 67789, *Staatscourant*, 3 December 2018.

⁵⁰ Supreme Court, *Kesbir*, 7 May 2004, ECLI:NL:HR:2004:AF6988.

⁵¹ DCC, *supra* note 44, Article 140.

with ordinary domestic crimes of aggravated assault and murder. In this case, the defence argued that the PKK was a party to an NIAC, which results in the exclusive application of IHL. The court rejected this argument, stating that “the view that humanitarian international law applies exclusively in the event of an internal armed conflict, thereby precluding ordinary criminal law, is incorrect.”⁵²

In 2015, in the case *Context*,⁵³ the Dutch prosecution prosecuted nine suspects for terrorism offences committed in the Syrian civil war. By then, Dutch law clearly distinguished between ordinary domestic crimes and terrorism offences, so the issue arose around a more specific counterterrorism setting than in *Kesbir*. In response to the defence that IHL should be applied exclusively, the District Court found that the exclusion clause in Recital 11 of the 2002 EU Framework Decision was not binding.⁵⁴ Nevertheless, the Court went on to interpret the clause and concluded that it did not protect members of non-state armed groups that are party to an NIAC. The Court argued that “armed forces” normally means state forces, that fighters in a NIAC have no combatant privilege, and that excluding such conduct from terrorism law would conflict with the post-9/11 purpose of Dutch, EU, and United Nations counterterrorism measures.⁵⁵ This position was reaffirmed in the *Tamil Tigers* case in 2017.⁵⁶

Although the courts did not engage in depth with the specific relationship between IHL and terrorism law, the case law is clear: the Netherlands does not have and has never had an exclusion clause. The exclusion clause has never been codified, nor has it been accepted by any court on appeal. The defence of FTFs has therefore more often centred on proof, legal qualification of armed groups, and the threshold for war crimes than on the recognition of an exclusion clause.

⁵² *Kesbir*, *supra* note 50, para. 3.3.7.

⁵³ District Court of The Hague, *Context*, 10 December 2015, ECLI:NL:RBDHA:2015:14365.

⁵⁴ *Ibid.*, para 7.37.

⁵⁵ *Ibid.*, paras 7.37-7.43.

⁵⁶ Supreme Court 4 April 2017, ECLI:NL:HR:2017:574, paras 3.1-3.6.

3.3 PROSECUTORIAL PRACTICE CONCERNING FTFs

Given that the prosecution in the Netherlands is conducted by the Dutch Public Prosecution Service (*Openbaar Ministerie*, abbreviated “DPPS”), which is in principle free to pursue cumulative charges, it is pertinent to examine how, when, and why the Dutch prosecutor decides to press such charges, both legally and through administrative considerations.

As regards any statutory guidance to the public prosecutor on cumulative prosecution, one can keep it brief: the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*) stipulates that the public prosecutor has the authority to prosecute and may select its cases based on prosecutorial discretion.⁵⁷ Concrete prosecution priorities are derived primarily from the public prosecutor’s policy and capacity, and discretion is thus significant in FTF cases.

Since prosecutors have substantial legal leeway to determine whether or not to pursue the type of charges against suspects, policy considerations are a determinant factor. Concerning terrorism charges against FTFs, Dutch policy is that identified returnees are arrested upon return on suspicion of a terrorist offence. In practice, the standard provisions for arrest are Article 140a Sr and Article 96(2) DCC.⁵⁸ Charges for these offences are more easily provable and offer the prosecution time to further its criminal case, while the suspect remains incarcerated in pre-trial detention.

It has become clear from the interviews,⁵⁹ jurisprudence,⁶⁰ and literature⁶¹ that the current Dutch practice is to pursue cumulative prosecution of FTFs where this is appropriate and possible, although this is not an absolute rule. The prosecution of FTFs is in principle grounded in terrorism offences, but where concrete suspicions of the commission of war crimes are present, the DPPS will prosecute cumulatively. In practice,

⁵⁷ In Dutch, this principle is called the *opportuniteitsbeginsel*, partially codified in Articles 167(2) and 242 *Wetboek van Strafvordering*, 1921.

⁵⁸ *Kamerstukken II* 2020-2021, 29754, no. 618, p. 7; *Kamerstukken II* 2022-2023, 29 754, no. 656, p. 2.

⁵⁹ Sannes & Van der Torre, *supra* note 27.

⁶⁰ ICCT, “Netherlands: 10 cases”, last updated 6 October 2025, retrieved 3 May 2026 <<https://interlinkagesdatabase.icct.nl/cases/Netherlands>>.

⁶¹ Tanya Mehra, “The Dutch Approach to Female Violent Extremist Offenders”, in *Female Jihadis Facing Justice: Comparing Approaches in Europe*, eds. Tanya Mehra, Thomas Renard and Merlina Herbach (The Hague: ICCT Press, 2024), p. 95–123, at p. 100; William Fortin and Ligeia Quackelbeen, “The Use or Misuse of Terrorist Membership Labels for the Prosecution of Core International Crimes”, *Journal of International Criminal Justice*, mqaf043 (2025), p. 1-21, at p. 17–19.

however, this policy is shaped by two main obstacles: the evidential requirements for a war crimes conviction, and the capacity of the relevant investigative and prosecutorial teams.⁶²

3.3.1 EVIDENCE IN CUMULATIVE PROSECUTION

The availability of evidence is a central factor in the prosecution of FTFs. Terrorism offences often have a broader and more preventive architecture and can therefore be more easily proven. For example, travel evidence and digital material may already suffice to support terrorism charges, especially participation or preparatory offences. By contrast, war crimes require proof of specific conduct, in addition to contextual elements comprising the armed conflict and a nexus between the conduct and that conflict. Field missions abroad can be a central element in gathering this evidence.⁶³ In the prosecutions of FTFs in Syria and Iraq, this evidential hurdle can sometimes be overcome because of unusually strong digital evidence.⁶⁴ Nonetheless, it is intelligible that crimes committed in IS-controlled territory in Syria are exceptionally difficult to prove unless digital evidence, credible witness statements, or both are available. This translates into two specific, relevant effects complicating cumulative prosecution.

First, the complexity and time-consuming nature of the investigations means that time pressure can form a limitation. Where a suspect is in pre-trial detention, the case must be brought before the court within 110 days after arrest at the latest.⁶⁵ The prosecution must thus decide at an early stage whether there is already a sufficient basis to add charges for crimes under the DICA. The inclusion or exclusion of a war crime charge is not only legally important but also consequential for the subsequent procedure, as an indictment including war crimes will go to the specialised International Crimes Criminal Chamber of the District Court of The Hague, and bundling a later war crime case is highly difficult.⁶⁶ Besides, separate handling of the cases by different courts is undesirable, given that the conduct, the

⁶² See also: Verhagen, *supra* note 48, p. 529-533.

⁶³ The Long Arm of Justice: Lessons from Specialized War Crimes Units in France, Germany, and the Netherlands, Human Rights Watch, September 2014, p. 41-42, retrieved 3 May 2026 <https://www.hrw.org/sites/default/files/reports/IJ0914_ForUpload.pdf>.

⁶⁴ Christophe Paulussen and Kate Pitcher, "Prosecuting (Potential) Foreign Fighters: Legislative and Practical Challenges", ICCT Research Paper, January 2018, p. 26-30; Genocide Prosecution Network, *supra* note 12, p. 20-21.

⁶⁵ Rijksoverheid, "Wat zijn mijn rechten en plichten als ik word aangehouden voor een strafbaar feit?", retrieved 3 May 2026 <<https://www.rijksoverheid.nl/onderwerpen/rechtspraak-en-geschiedenis/vraag-en-antwoord/wat-gebeurt-er-als-ik-word-verdacht-van-een-strafbaar-feit>>.

⁶⁶ Sannes & Van der Torre, *supra* note 27.

context around the crimes, and the evidence are, to a high degree, intertwined. Moreover, bundling may also give rise to *ne bis in idem* defences.⁶⁷

Secondly, witness statements can be an essential piece of evidence for war crime charges, as the proven conduct must be specific. However, the public prosecution must also be able to guarantee the safety of the witnesses it brings forward, which is not always possible.⁶⁸ If witness safety cannot adequately be guaranteed, the DPPS faces a dilemma, and war crimes charges may then become harder to prosecute in practice than the terrorism charges, since terrorism charges can often still be brought forward regardless of witness statements.

3.3.2 CAPACITY FOR THE PROSECUTION OF CICs

Another factor that may inhibit cumulative prosecution is the relatively limited capacity to investigate and prosecute CICs committed abroad.⁶⁹ At the investigative level, CIC cases are handled by the IM cluster, which employs 43 FTE,⁷⁰ whereas terrorism cases are handled by the considerably larger CTER cluster, which consists of around 151 FTE.⁷¹ At the prosecutorial level, both clusters belong to the National Office of the Public Prosecution Service, each with around three prosecutors and supporting staff.⁷² Although the two clusters cooperate closely in cases of cumulative prosecution,⁷³ the comparatively small size of the CIC apparatus remains significant, especially because war crimes cases are generally more labour-intensive and time-consuming than terrorism cases.⁷⁴

⁶⁷ Ibid.

⁶⁸ Human Rights Watch, *supra* note 63, p. 18-20, 48-50; Sannes & Van der Torre, *supra* note 27.

⁶⁹ Verhagen, *supra* note 48, p. 548.

⁷⁰ Onderzoek naar de taakuitvoering bij de Landelijke Eenheid, Inspectie Justitie en Veiligheid, December 2021, p. 13, retrieved 3 May 2026 <<https://www.inspectie-jenv.nl/site/binaries/site-content/collections/documents/2022/01/25/rapport-onderzoek-naar-de-taakuitvoering-bij-de-landelijke-eenheid/Rapport+Onderzoek+naar+de+taakuitvoering+bij+de+Landelijke+Eenheid.pdf>>.

⁷¹ *Kamerstukken II* 2022-2023, 27925, no. 939, p. 3.

⁷² *Kamerstukken II* 2016-2017, 34550, no. 91, p. 8.

⁷³ Sannes & Van der Torre, *supra* note 27; Human Rights Watch, *supra* note 63, p. 41.

⁷⁴ In 2013, a DICA-case cost approximately EUR 1.5 million to pursue, see: Alette Smeulders, “Tien jaar wet internationale misdrijven: een evaluatie”, *Delikt en Delinkwent*, 44, no. 4 (2014), p. 267-290, at p. 289.

3.4 OUTCOME: PROSECUTION OF FTFs IN THE NETHERLANDS

Having assessed the legal and administrative framework around public prosecution, it is time to consider what it has resulted in, in terms of convictions. In total, the Dutch General Intelligence and Security Service estimates that since 2012, about 300 persons left the Netherlands for Syria and Iraq with the intention of joining a terrorist faction.⁷⁵ As of 31 January 2025, about 110 adult returnees had come back to the Netherlands.⁷⁶ Because identified adult returnees are arrested on suspicion of terrorism offences upon return, it can be expected that around 110 cases of jihadi terrorism have been opened.⁷⁷

As to cumulative prosecution, the Netherlands has so far cumulatively prosecuted nine FTFs of war crimes on top of terrorism offences, while most of the indictments also contained CAH.⁷⁸ Of these, a meagre two cumulative prosecutions have led to a cumulative conviction.⁷⁹ That said, the DPPS has also successfully prosecuted two FTFs for CAH on top of terrorism offences.⁸⁰ In total, the DPPS has charged eleven people for one or more CICs on top of a terrorism offence,⁸¹ and no FTF has been prosecuted for war crimes only.⁸² This number is low, but likely affected by evidential and capacity-related obstacles. It should also be borne in mind that not every returnee will necessarily have committed war crimes. Many returnees, including many women, may not have been directly involved in specific war-crimes conduct. Even where involvement is suspected, proof of specific war crimes and their contextual elements remain difficult.

A comparison of sentencing outcomes does show that cumulative prosecution is key to ensuring higher prison sentences. On the basis of ten terrorism-only convictions of combatants (who could therefore in theory also have been prosecuted for war crimes), the

⁷⁵ Algemene Inlichtingen- en Veiligheidsdienst, “Uitreizigers en terugkeerders”, retrieved 3 May 2026 <<https://www.aivd.nl/onderwerpen/aandachtsgebieden/terrorisme/uitreizigers-en-terugkeerders>>.

⁷⁶ Ibid.

⁷⁷ For the number of convictions of women, see: Mehra, *supra* note 61, p. 97-98.

⁷⁸ ICCT 2025 (3), *supra* note 60, all cases listed except “hasna A.”

⁷⁹ ICCT 2025 (3), *supra* note 60, cases “Oussama A.” and “Ahmad al-K.”

⁸⁰ ICCT 2025 (3), *supra* note 60, case “Mustafa A.”, and Court of Appeal The Hague 25 March 2026, ECLI:NL:GHDHA:2026:462, which is the appeal of the case “Hasna A.” listed in the ICCT Database: ICCT 2025 (3), *supra* note 60.

⁸¹ The ten cases on: ICCT 2025 (3), *supra* note 60 and Court of Appeal The Hague 25 March 2026, ECLI:NL:GHDHA:2026:462.

⁸² Rechtbank Den Haag, “Zaken internationale misdrijven”, de Rechtspraak, retrieved 3 May 2026 <<https://www.rechtspraak.nl/organisatie-en-contact/organisatie/rechtbanken/rechtbank-den-haag/over-de-rechtbank/organisatie/international-crimes-cases>>. All the cases after 2014, when IS declared itself a caliphate, listed under the countries Syria and Iraq were cases of cumulative prosecution and also appear in the ICCT Database: ICCT 2025 (3), *supra* note 60.

average prison sentence is just under 5 years.⁸³ Against that baseline, the cases of cumulative prosecution showed that a cumulative conviction can substantially increase sentencing. In *Oussama A.*, the Court of Appeal imposed seven years' imprisonment, of which 2.5 years was expressly based on the war crime,⁸⁴ and in *Ahmad al-K.* the sentence rose to 23 years and 6 months after a cumulative conviction.⁸⁵ The inverse is also informative; the war crime charge failed twice on appeal, and in these cases, the sentence was once dropped from six years to five years and four months⁸⁶ and the other time from six years to four years.⁸⁷

3.5 INTERIM-CONCLUSION

To conclude and to answer the second sub-question, it has become clear that the Dutch case study shows that cumulative prosecution is legally available and institutionally accepted, as neither legislation nor case law imposes an armed conflict exclusion clause that would bar the concurrent prosecution of war crimes and terrorism. In principle, the DPPS is willing to pursue cumulative charges where the facts justify doing so. In practice, however, cumulative prosecution remains exceptional. The DPPS is constrained as war crimes require specific proof, capacity, and early choices in the pre-trial phase. As a result, Dutch practice still relies predominantly on terrorism charges, even though cumulative prosecution reflects the full gravity of the conduct and may lead to more severe sentencing outcomes.

⁸³ Supreme Court, 13 December 2022, ECLI:NL:HR:2022:1858; Court of Appeal The Hague, 7 July 2016, ECLI:NL:GHDHA:2016:1978; Court of Appeal The Hague, 25 May 2018, ECLI:NL:GHDHA:2018:1249; Court of Appeal The Hague, 4 February 2021, ECLI:NL:GHDHA:2021:172; Court of Appeal The Hague, 26 February 2021, ECLI:NL:GHDHA:2021:297; Court of Appeal The Hague, 20 December 2021, ECLI:NL:GHDHA:2021:2640; District Court The Hague, 1 December 2014, ECLI:NL:RBDHA:2014:14652; District Court Rotterdam, 2 August 2018, ECLI:NL:RBROT:2018:6386; District Court The Hague, 23 July 2019, ECLI:NL:RBDHA:2019:7431; District Court Rotterdam, 2 April 2025, ECLI:NL:RBROT:2025:4546.

⁸⁴ Court of Appeal The Hague 26 January 2021, ECLI:NL:GHDHA:2021:103, sec. VIII.

⁸⁵ For the cases and sentences, see ICCT 2025 (3), *supra* note 60.

⁸⁶ ICCT 2025 (3), *supra* note 60, case “Ahmad al-Y.”

⁸⁷ ICCT 2025 (3), *supra* note 60, case “Yousra L.” The same conclusion was drawn by larger quantitative research, see: Syria Justice and Accountability Centre, “Universal Jurisdiction Under Scrutiny: A Quantitative Analysis of 250+ Syrian Cases”, June 2023, retrieved 3 May 2026 <<https://syriaaccountability.org/content/files/2023/06/UJ-Report-EN.pdf>>.

CHAPTER 4 CUMULATIVE PROSECUTION IN BELGIUM

Having examined Dutch practice in Chapter 3, the analysis now turns to Belgium. Belgium constitutes a revealing case study because, unlike the Netherlands, it did adopt a domestic armed conflict exclusion clause intended to regulate the relationship between terrorism offences and armed conflict. This chapter first outlines the Belgian legal framework in Section 4.1. It then analyses the domestic exclusion clause, its judicial interpretation, and its subsequent amendment in Section 4.2. Finally, it assesses prosecutorial practice and outcomes of FTF prosecution in Sections 4.3 and 4.4.

4.1 LEGAL FRAMEWORK OF CUMULATIVE PROSECUTION

In Belgium, the legal framework of CTL as well as CICs is governed by the Belgian Criminal Code (*Strafwetboek*, abbreviated “BCC”).⁸⁸ Terrorism offences were introduced in 2003 and entered into force in January 2004,⁸⁹ implementing the 2002 EU Framework Decision. Later, in 2015, the BCC was revised,⁹⁰ expanding the scope of terrorism offences to include financing and preparatory conduct. These offences are codified in the BCC, primarily Articles 137 to 141ter. Article 137 BCC follows the Counterterrorism Directive by defining terrorism as an intentional act capable of serious harm and committed with the aim of intimidating a population, coercing public authorities, or destabilising fundamental State or international structures.⁹¹ The other provisions criminalise a broader range of terrorism-related conduct, including participation in the activities of a terrorist group. Article 139 defines what constitutes a terrorist group, and Article 140 criminalises participation in the activities of such a group and therefore constitutes an important basis for the prosecution of FTFs.

CICs are also codified in the BCC. Articles 136bis, 136ter, and 136quater criminalise genocide, CAH, and war crimes, respectively. Interestingly, Article 136quater

⁸⁸ Code pénal, 1867. On 1 September 2026, the New Belgian Criminal Code will enter into force. It replaces the BCC adopted in 1867 and will modernise and simplify the code.

⁸⁹ Loi du 19 décembre 2003 relative aux infractions terroristes, 2003.

⁹⁰ See: Thomas Renard and Rik Coolsaet, “From the Kingdom to the Caliphate and Back: Returnees in Belgium”, in *Returnees: Who Are They, Why Are They (Not) Coming Back and How Should We Deal with Them?*, eds. Thomas Renard and Rik Coolsaet, Egmont Paper 101 (Brussels: Egmont, 2018), p. 19-40, at p. 25.

⁹¹ Also see: Ward Yperman and Jogchum Vrielink, *Counter-Terrorism Law and Returnees: The Belgian Legal Framework Applicable to Returnees from War Zones in Syria and Iraq* (The Hague: Eleven International Publishing, 2023), p. 1-58.

BCC defines war crimes by reference to the GCs, the APs, and the laws and customs applicable in armed conflict. Unlike the Dutch model, Belgium does not rely on a separate international CICs statute comparable to the DICA.

In terms of prosecution, the Belgian Public Prosecution Service (*Openbaar Ministerie / Ministère Public*, abbreviated “BPPS”) enjoys prosecutorial discretion under the principle of opportunity.⁹² Therefore, the BPPS may, within legal constraints, decide whether or not to pursue cumulative prosecution.

4.2 THE ARMED CONFLICT EXCLUSION CLAUSE

Unlike the Netherlands, Belgian law does contain a domestic provision governing the relationship between CTL and IHL through a domestic armed conflict exclusion clause in Article 141bis BCC. The article states that Title Iter of the BCC, which enumerates the terrorism offences, does not apply to “the activities of armed forces during an armed conflict, as defined in and governed by international humanitarian law.”⁹³ Belgium’s exclusion clause is not merely a non-binding implementation of Recital 37 of the Counterterrorism Directive, but a firm, fully codified exclusion clause, which makes Belgium a contrasting case study to the Netherlands.

When Belgium implemented the 2002 EU Framework Decision through the Law of 19 December 2003 on terrorism offences, it inserted Article 141bis into the BCC, thereby domestically implementing the exclusion clause of Recital 11 of the Framework Decision. With this amendment, Belgian support for a strong exclusion clause was not only internationally expressed, but also acted upon domestically. The wording of this clause was broad, and unlike formulations limited to conduct “in accordance with IHL”, this initial Belgian provision referred to activities “governed by IHL”. The letter of the law thus suggests that the exclusion clause’s scope extends to the whole field regulated by IHL, including conduct that might violate IHL. However, the scope of the clause has been severely limited by the judiciary.

⁹² Constitution belge, 1831, Article 151(1); Code d’instruction criminelle belge, 1808, Article 28quater.

⁹³ See also: Van Poecke, *supra* note 32, p. 199-211.

4.2.1 SHARIA4BELGIUM

One of the pivotal cases on the scope of application of Article 141bis BCC was the case *Sharia4Belgium*.⁹⁴ This case concerned the prosecution of *Sharia4Belgium*, a radical jihadist network based in Antwerp that recruited and indoctrinated young people in Belgium and sent them to Syria to join jihadist groups – *Majlis Shura Al-Mujahideen* and *Jabhat Al-Nusra*. In total, 46 individuals were charged with terrorism offences committed in Belgium and Syria between 2010 and 2014. The core argument of the defence was that Article 141bis BCC, the exclusion clause, was applicable, and that the terrorism title of the BCC could accordingly not apply.

On 24 May 2016, the Belgian Court of Cassation (court of last instance) issued its judgment and dismissed the cassation challenge. It confirmed that Article 141bis does not preclude the terrorism convictions and that the appellate court had lawfully concluded that the Syrian groups in question were not “armed forces” or “organised armed groups” for the purpose of the exclusion clause.⁹⁵ The court articulated the following arguments for this decision. First, there had been no armed conflict in Belgium, so Article 141bis could not exclude the Belgian-based recruitment and organisational activities of *Sharia4Belgium* members, as the geographical scope of the exclusion clause did not extend to Belgium. Furthermore, although the courts accepted that there was an NIAC in Syria, it held that the terrorist factions in Syria with which *Sharia4Belgium* cooperated could not be regarded as “armed forces” or “organised armed groups” in the relevant IHL sense for purposes of the exclusion clause, given that they lacked the organisational structure.⁹⁶

The important conclusion that was drawn from this case was that jihadist terrorist groups active in Syria and Iraq were not covered by Article 141bis BCC as they did not fulfil the organisation requirement to be recognised as armed forces in an NIAC. Yet, arriving at this conclusion, the Court of Cassation, as well as the lower courts, expressed extensively their ideological and moral considerations concerning the extremist aims and terrorist practices of *Majlis Shura Al-Mujahideen* and *Jabhat Al-Nusra*. They should have

⁹⁴ Court of Appeal of Antwerp, *Prosecutor v FB et al [Sharia4Belgium]*, 27 January 2016, C/101/2016, unpublished; Court of Cassation, *MEY et al. v ORV et al. [Sharia4Belgium]*, 24 May 2016, P.16.0244.N. The lower court judgments are also included in the bibliography. Because of unpublished cases, see also: Van Poecke & Cuyckens, *supra* note 2, p. 147-157; Cuyckens & Paulussen, *supra* note 10, p. 553-559; Van Poecke, Verbruggen & Yperman, *supra* note 41.

⁹⁵ *MEY et al. v ORV et al.*, *supra* note 94, paras 6-11.

⁹⁶ *Ibid.*

stayed neutral, accepting that the IHL criteria of organisation and intensity apply, regardless of the ideological foundations of any of the parties involved.

4.2.2 PKK

The first case after *Sharia4Belgium* in which a different line of reasoning emerged was the PKK case.⁹⁷ This case concerned the Belgian prosecution of forty PKK-affiliated individuals active in the Belgian division of the PKK for terrorism offences. All individuals were accused of either participating in the activities of the Belgium branch of the PKK as a terrorist group or of leading it. The defence's central defence was based on the exclusion clause of Article 141bis BCC, whose applicability was the central issue of the judgment.⁹⁸ The core question was thus whether the PKK had to be treated under Belgian criminal law as a terrorist group, or rather as an organised armed force party to an NIAC in Turkey.

On 28 January 2020, the Court of Cassation gave its judgment, confirming that prosecution for terrorism offences had to be refused.⁹⁹ First, the Court of Cassation accepted the Court of Appeal's determination that the conflict between Turkey and the PKK met the threshold of an NIAC.¹⁰⁰ The Court accepted that Article 141bis BCC could exclude the application of the terrorism title where the relevant acts were activities of armed forces during an armed conflict governed by IHL. However, this did not mean that an armed group could never be qualified as a terrorist group. The Court of Appeal noted that if terrorism offences attributable to the organisation had been committed outside the armed-conflict context, that organisation could still fall within Article 139 BCC.¹⁰¹ In the PKK case, this was not sufficiently established. The result was that participation in the PKK's activities could not be prosecuted as participation in a terrorist group. At the time, this reasoning ensured that the exclusion clause would not apply to jihadist terrorist groups like IS, which committed terrorism offences outside the conflict, most importantly terrorist attacks across the world.

⁹⁷ Court of Appeal of Brussels, *Prosecutor v SU et al. [PKK]*, 8 March 2019, 2019/939, unpublished; Court of Cassation, *Prosecutor v SU et al. [PKK]*, 28 January 2020, P.19.0310.N. The lower court judgments are also included in the bibliography. Because of unpublished cases, see also: Van Poecke & Cuyckens, *supra* note 2, p. 147-157; Cuyckens & Paulussen, *supra* note 10, p. 553-559; Van Poecke, Verbruggen & Yperman, *supra* note 41.

⁹⁸ *Ibid.*

⁹⁹ *Prosecutor v SU et al. [PKK]*, *supra* note 97, dictum.

¹⁰⁰ *Prosecutor v SU et al. [PKK]*, *supra* note 97, paras. 1-9.

¹⁰¹ Van Poecke, *supra* note 32, p. 204.

4.2.3 NARROWING SCOPE OF THE ARMED CONFLICT EXCLUSION CLAUSE

Although a textual interpretation would result in the exclusion of prosecution for terrorism of groups active in an NIAC, it can be concluded that the judiciary has altered the meaning of the clause. In *Sharia4Belgium*, the courts refused to apply Article 141bis BCC because the organisation did not fulfil the organisational requirement, taking into account that it is a terrorist group. However, in *PKK*, the courts did apply the exclusion clause to PKK, taking into account the fact that it did not commit terrorism offences outside the conflict. Therefore, the exclusion clause practically only applies to conduct that is both governed by, and in line with IHL.

This alteration of the meaning of the exclusion clause did not happen unattended. In January 2024, the exclusion clause was amended, adding a subordinate clause at the end of the article, stating that the exclusion clause only applies “where such acts fall within the applicable rules of international humanitarian law and are in accordance therewith.”¹⁰² This amendment practically codified existing jurisprudence that the exclusion clause applies only to acts committed by armed forces where the acts committed are in line with IHL. The new provision therefore does not exclude cumulative prosecution as such. Rather, it excludes the application of terrorism law only where the conduct falls within lawful armed-conflict activities.

Interestingly, in its judgment of 22 May 2024, the Court of Cassation held that Article 141bis BCC, both before and after its amendment, did not exclude terrorism prosecution for conduct unlawful under IHL. According to the court of Cassation, Article 141bis was never intended to immunise people from terrorism prosecution where their conduct may amount to war crimes.¹⁰³ The Court also held that ancillary conduct, such as financing a terrorist organisation, does not amount to activities of armed forces governed by IHL and therefore does not fall within the exclusion clause’s material scope.¹⁰⁴

¹⁰² Loi du 18 janvier 2024 visant à rendre la justice plus humaine, plus rapide et plus ferme III (1), 2024, Article 17.

¹⁰³ Court of Cassation, *M. M.*, 22 May 2024, P.24.0088.F, p. 2-3.

¹⁰⁴ *Ibid.*, p. 4.

4.3 PROSECUTORIAL PRACTICE CONCERNING FTFs

Belgian practice around the prosecution of FTFs presents a paradox. One might expect that the existence of a domestic armed conflict exclusion clause would discourage prosecutors from charging FTFs under terrorism law and encourage prosecution of war crimes and other CICs. However, bar two provisional exceptions,¹⁰⁵ the opposite occurred. Precisely because Belgian law contained an exclusion clause, the prosecution of FTFs was channelled only through terrorism offences rather than war crimes.¹⁰⁶ The significance of the two exceptions should not be overstated. No judgment on the merits has been produced, and for now, the cases primarily show a relatively recent potential shift in investigation and charging practice.

The paradox of how the exclusion clause led to prosecution for terrorism offences is central to understanding the Belgian position. Nonetheless, the absence until now of cumulative prosecution cannot be explained by the exclusion clause alone. Rather, it resulted from multiple factors: the legal qualification of terrorist groups, institutional organisation, and Belgian criminal procedural law. These three factors will be discussed consecutively.

4.3.1 LEGAL QUALIFICATION OF TERRORIST GROUPS

A central factor not to prosecute FTFs for war crimes was likely the BPPS's reluctance to reopen the debate on the legal qualification of the groups joined by FTFs in Syria and Iraq.¹⁰⁷ For years, the Belgian approach had proceeded on the premise that these entities were terrorist organisations, not armed forces or organised armed groups within the

¹⁰⁵ ICCT, "Belgium: 1 cases" [sic], last updated 6 October 2025, retrieved 3 May 2026 <<https://interlinkagesdatabase.icct.nl/cases/Belgium>>; Reuters, "Belgium arrests suspected al Qaeda member over Iraq attacks", 5 May 2023, retrieved 3 May 2026 <<https://www.reuters.com/world/europe/belgium-arrests-suspected-al-qaeda-member-over-iraq-attacks-2023-05-05/>>; AFP, "Belgium arrests Iraqi suspected of Al-Qaeda 'war crimes' in Baghdad", Arab News, 5 May 2023, retrieved 3 May 2026 <https://www.arabnews.jp/en/middle-east/article_95123/>. These two provisional exceptions concern two people arrested in 2023 on suspicion of war crimes, terrorism offences, and – for one of the two suspects – CAH.

¹⁰⁶ ICCT 2025 (1), *supra* note 105; Syria Justice and Accountability Centre, *supra* note 87, p. 18; Renard, *supra* note 18, p. 22-23.

¹⁰⁷ Interview with Dr. Thomas van Poecke, doctor in law and Judicial Law Clerk, KU Leuven, video call, 31 March 2026; Interview with Prof. Dr. Frank Verbruggen, Professor of Criminal Law, KU Leuven, video call, 1 April 2026. Subsections 4.3.2 and 4.3.3 are primarily based on the information exchanged in the interviews with these scholars, whose views were very similar. There is no public information available to support many of the claims made as the BPPS will not acknowledge them given the practical – as opposed to legal – reason for lack of cumulative prosecution.

meaning of IHL. Once that convenient line had been adopted, a meaningful turn toward cumulative prosecution became institutionally undesirable. To pursue war crimes more seriously would have required at least recognition that the terrorist groups operated not only as terrorists, but also as armed forces. Yet that recognition risked reviving the very exclusion clause that the prosecution had sought to keep outside the case.

If the prosecution were to accept that such groups could fall within the ambit of IHL, it would become harder to maintain without qualification that terrorism law applied. The more one acknowledged that the terrorist groups in Syria and Iraq functioned also as armed groups party to the armed conflicts, the more plausible it became that Article 141bis might be triggered, at least for parts of the activities. From the perspective of the BPPS, that was a destabilising prospect. Until the PKK case stimulated the move to amend or neutralise the exclusion clause, this logic strongly discouraged any genuine prosecutorial shift toward cumulative prosecution.

4.3.2 INSTITUTIONAL ORGANISATION AND CAPACITY

Another explanation lies in the internal organisation of the BPPS, which seems to be more rigid than the DPPS. Terrorism and CICs are handled by the BPPS in two different sections,¹⁰⁸ and the interaction and communication between the two teams seemed to have been suboptimal.¹⁰⁹ In that sense, the absence of cumulative prosecution was partly the result of its institutional structure.

Moreover, similar to the Netherlands, capacity is not equally divided between teams investigating and enforcing IHL and CTL. In 2021, the BPPS itself stated in its annual report that the capacity for the prosecution of war crimes was heavily compromised, which restrained enforcement.¹¹⁰ In total, the Belgian Federal Public Prosecutor's Office currently retains 34 federal magistrates responsible for prosecution.¹¹¹ In 2021, only three magistrates and two additional staff members were tasked with the prosecution of CICs in the section IHL and military competences.¹¹² This stands in contrast to the capacity devoted to the

¹⁰⁸ Ministère public, "Parquet fédéral – A propos de nous", section "2. Composition", retrieved 3 May 2026 <<https://www.om-mp.be/fr/votre-mp/parquet-federal/organisation-particularites>>.

¹⁰⁹ Interview with Van Poecke, *supra* note 107; Interview with Verbruggen, *supra* note 107.

¹¹⁰ Parquet fédéral, "Rapport annuel 2021", p. 182-184, 190, retrieved 3 May 2026 <<https://www.om-mp.be/sites/default/files/Rapport%202021.pdf>>.

¹¹¹ Ministère public, *supra* note 108.

¹¹² Parquet fédéral, *supra* note 110, p. 88.

prosecution of terrorism, which was 8 magistrates and 5.5 more staff members.¹¹³ The division of manpower in the Belgian federal police points to a similar asymmetry. Parliamentary material indicates that anti-terror police services together comprised 233 collaborators, including 195 investigators, with a planned increase to at least 250 staff members.¹¹⁴ While the headcount of the teams focused on the investigation of CICs in the federal police is not published, it is unlikely that the number will be as high for those teams.

This capacity imbalance helps explain why terrorism offences remained the standard prosecutorial route. As discussed in relation to the Netherlands in Section 3.3, terrorism offences are perceived as broader, more familiar, and evidentially easier to prove than war crimes. The BPPS had long-standing experience with terrorism files, whereas the prosecution of war crimes and the other CICs remain exceptional and secondary. Once such framing is institutionally adopted and jurisprudence is created, it becomes self-reinforcing and difficult to change without a clear purpose.

The institutional organisation and capacity obstacle of the BPPS also explain why no FTF has been prosecuted for CAH. The Belgian pattern is broader than the non-use of war crimes. Prosecution of FTFs for CAH has been relevant in other countries, and charges for CAH have never been blocked by the exclusion clause. Yet, no such prosecution has taken place in Belgium.

4.3.3 BELGIAN CRIMINAL PROCEDURAL LAW

Lastly, a procedural factor influencing the prosecutor's strategy might be the fact that the Court of Assizes holds jurisdiction and cannot be evaded in serious crimes for which the statutory punishment exceeds twenty years of imprisonment.¹¹⁵ Due to the practical complexity of the Court, prosecutors have an incentive to avoid the cumbersomeness and lengthy process of the Court of Assizes. Nevertheless, if the BPPS were to prosecute specific war crimes, as opposed to general terrorism participatory and preparatory crimes,

¹¹³ Ibid.

¹¹⁴ Rapport fait au nom de la Commission de l'Intérieur, de la Sécurité, de la Migration et des Matières administratives, Chambre des représentants de Belgique, session 2022-2023, Doc 55 2932/024, 13 December 2022, p. 44-45.

¹¹⁵ Constitution belge, 1831, Article 150; Code d'instruction criminelle, 1808, Article 216novies; Loi du 4 octobre 1867 sur les circonstances atténuantes, 1867; Yperman & Vrielink, *supra* note 91, p. 59-65. The new Belgian Criminal Code enters into force on 1 September 2026. In the New Belgium Criminal Code, Article 216novies of the Code d'instruction criminelle will be amended, but maintains a similar regime.

this could necessitate the seizure of the Court of Assizes, which the BPPS is possibly reluctant to do.

4.4 OUTCOME: PROSECUTION OF FTFs IN BELGIUM

The most recent data about the number of FTF returnees stems from 2023, stating that there had been no more than 150 Belgian returnees up to that moment.¹¹⁶ By 2021, Belgium had prosecuted 98 women linked to jihadi terrorism, which was practically all Belgian adult females who had returned as FTFs.¹¹⁷ No published data has been obtained that more precisely depicts the number of returnees and what they have been prosecuted for.

As stated, at least two people are believed to be in pre-trial detention and are formally investigated for cumulative crimes. The first case concerns an unnamed Syrian national who was arrested in March 2023 on suspicion of war crimes committed for ISIS near Palmyra and participation in a terrorist organisation.¹¹⁸ The second is the Iraqi O.Y.T. case.¹¹⁹ It concerns an alleged al-Qaeda member suspected of involvement in car bombings in Baghdad's Green Zone. He is reportedly under investigation for terrorist murders, participation in a terrorist group, war crimes and CAH. These cases do show that Belgian prosecutors have become more willing to combine terrorism charges with CIC charges. This conclusion is also corroborated by the annual report of the BPPS in 2021, which stated that cooperation between the terrorism section and the IHL section was improving.¹²⁰

4.5 INTERIM-CONCLUSION

To conclude and to answer the third sub-question, the Belgian case study shows that the existence of a domestic armed conflict exclusion clause did not generate a practice of war crimes prosecution of FTFs. On the contrary, Belgian practice long remained exclusively centred on terrorism offences, while prosecutions for war crimes and other CICs against FTFs were virtually absent. Doctrine alone does not explain the Belgian pattern. The lack of cumulative prosecution also stems from (i) the reluctance to qualify jihadist groups as armed forces for IHL purposes, (ii) the institutional organisation and capacity of the BPPS

¹¹⁶ Renard, *supra* note 18, p. 17.

¹¹⁷ Renard, *supra* note 18, p. 20.

¹¹⁸ ICCT 2025 (1), *supra* note 105.

¹¹⁹ Reuters, *supra* note 105; AFP, *supra* note 105.

¹²⁰ Parquet fédéral, *supra* note 110, p. 224-225.

and investigative departments, and (iii) Belgian procedural law. These three factors all contributed to a system in which terrorism became the default legal framework.

CHAPTER 5 EMBEDDING CUMULATIVE PROSECUTION IN THE EU AND THE MEMBER STATES

Drawing on the experiences of Belgium and the Netherlands and juxtaposing them, a broader discussion of cumulative prosecution in the EU is pertinent. The reality that cumulative prosecution is now an accepted prosecutorial strategy has to be acknowledged, but the question remains how the EU can provide tools to improve and enhance cumulative prosecution in the EU. To answer this question, Section 5.1 explains why cumulative prosecution is preferable to terrorism-only prosecution. Section 5.2 proposes an amendment to the Counterterrorism Directive, after which Section 5.3 identifies the institutional measures needed to make cumulative prosecution effective in practice.

5.1 THE DESIRABILITY OF CUMULATIVE PROSECUTION OF FTFs

Cumulative prosecution of FTFs remains contested because it sits at the intersection of CTL and IHL.¹²¹ This section briefly sets out the main arguments for and against cumulative prosecution, before explaining why it has nevertheless become an increasingly accepted prosecutorial strategy in Europe.

5.1.1 ARGUMENTS IN FAVOUR OF CUMULATIVE PROSECUTION

Several arguments support the cumulative prosecution of returning FTFs for both terrorism offences and war crimes.¹²² Cumulative prosecution captures the full criminality of the conduct at issue. The activities of many FTFs cannot be reduced to a single crime under one category of criminal law, as FTFs might have truly infringed both CTL and IHL. FTFs who joined IS have participated in a terrorist organisation, and in their acts as members of this terrorist organisation, could also have committed war crimes. Cumulative prosecution therefore is not only doctrinally accurate, but also in line with fair labelling.

¹²¹ For example, see: Saul 2021, *supra* note 43; Valérie Paulet, *Universal Jurisdiction Annual Review 2020* (Geneva: TRIAL International, 2020), p. 9-12; Kelisiana Thynne, “Better a War Criminal or a Terrorist? A Comparative Study of War Crimes and Counterterrorism Legislation”, *International Review of the Red Cross*, 103, no. 916-917 (2021), p. 237-266, at p. 264-266; Van Poecke, Verbruggen & Yperman, *supra* note 41.

¹²² Cf this subsection with: Van Poecke, *supra* note 32, p. 240-259; Hanne Cuyckens, “Foreign Fighters and the Tension between Counterterrorism and International Humanitarian Law: A Case for Cumulative Prosecution Where Possible”, *International Review of the Red Cross*, 103, no. 916-917 (2021), p. 581-603; Genocide Prosecution Network, *supra* note 12.

Moreover, cumulative prosecution can lead to heavier sentences. A terrorism-only conviction may not fully reflect the gravity of the conduct engaged, while cumulative prosecution ensures that courts can impose sentences that accurately reflect the gravity of all criminal acts committed, which is also beneficial to the victims.

5.1.2 ARGUMENTS AGAINST CUMULATIVE PROSECUTION: WAR-CRIMES-ONLY PROSECUTION

Notwithstanding its advantages, cumulative prosecution is also open to objection.¹²³ Cumulative prosecution does not always correspond with fairness and legal certainty, as touched upon in Chapter 2. In armed conflict, IHL tolerates different forms of violence than CTL, which criminalises a broad range of violent conduct. When CTL is applied without restraint, there is a risk that conduct linked to armed conflict is automatically designated as terrorism, even when IHL is conceived to govern precisely that conduct.

Secondly, prosecution under CTL may undermine some of the values protected by IHL itself, and CTL holds the risk that it is applied excessively or is weaponised in disregard of human rights.¹²⁴ If all conduct associated with a non-state armed group is labelled terrorist regardless of adherence to IHL, it could remove an incentive for non-state armed groups to comply with IHL. Related to that, terrorist labelling can obstruct future reconciliation and post-conflict settlements.

Lastly, Cumulative prosecution may also worsen prosecutorial dependency on CTL. Because terrorism offences are often supported by broad investigative powers, more developed institutional expertise, and lower evidentiary hurdles, cumulative prosecution may incentivise prosecutors to treat war crimes as merely an optional supplement.

¹²³ Cf this subsection with: Van Poecke, *supra* note 32, p. 220-239; Emanuela-Chiara Gillard, “IHL and the Humanitarian Impact of Counterterrorism Measures and Sanctions: Unintended Ill Effects of Well-Intended Measures”, Chatham House, September 2021, retrieved 3 May 2026 <https://www.chathamhouse.org/sites/default/files/2021-09/2021-09-03-ihl-impact-counterterrorism-measures-gillard_0.pdf>.

¹²⁴ See, for example, the recurrent use of terrorist labelling in armed-conflicts, including Israel’s description of Gaza flotilla initiatives as Hamas-linked, and the United States’ framing of the Iraq War as part of the broader “war on terror”.

5.1.3 HOW CUMULATIVE PROSECUTION OF FTFs HAS BECOME AN ACCEPTED STRATEGY IN THE EU

While the arguments in favour and against cumulative prosecution are relevant, many authors present an incorrect dilemma. In the literature, much discussion has ensued on the dichotomy between either prosecution under IHL or cumulative prosecution, whereas war-crimes-only prosecution is, and has been hitherto, difficult to sustain in practice. The conduct abroad committed by FTFs is difficult to prove, and, especially as long as terrorism is not domestically codified as a war crime, a full armed conflict exclusion clause applicable to FTFs could in practice lead to impunity. Therefore, the correct dilemma is not between cumulative prosecution and war-crimes-only prosecution, but between terrorism-only prosecution and cumulative prosecution. This was illustrated by Sweden's earlier war-crimes-only cases before it codified the offence of participation in a terrorist organisation in 2023.¹²⁵

Practice has also increasingly moved towards cumulative prosecution. Not only has the Netherlands long viewed cumulative prosecution as a positive enforcement strategy, but other countries have also long engaged in cumulative prosecution. In total, there have been 96 recorded cases of cumulative prosecution in the EU of FTFs until 6 October 2025.¹²⁶ The list of countries having cumulatively prosecuted an FTF includes Germany, Sweden, the Netherlands, France, Portugal, Finland, Latvia, Hungary, and, since 2025, Belgium. Ever since 2018, Eurojust has also deliberately pushed for the pursuit of cumulative prosecution by the Member States,¹²⁷ and in 2021, the Global Counterterrorism Forum and its Member States, comprising 29 countries plus the EU, agreed on a

¹²⁵ Genocide Network Secretariat 2020, *supra* note 2, p. 22-23; Genocide Prosecution Network, *supra* note 12, p. 12-13.

¹²⁶ ICCT 2025 (2), *supra* note 14.

¹²⁷ Prosecuting War Crimes of Outrage upon Personal Dignity Based on Evidence from Open Sources: Legal Framework and Recent Developments in the Member States of the European Union, Genocide Network Secretariat, Eurojust, February 2018, retrieved 3 May 2026 <<https://www.eurojust.europa.eu/publication/prosecuting-war-crimes-outrage-upon-personal-dignity-based-evidence-open-sources-legal>>; Genocide Network Secretariat, *supra* note 2; Conclusions of the 31st Meeting of the Network for Investigation and Prosecution of Genocide, Crimes against Humanity and War Crimes, Genocide Network Secretariat 2022, Eurojust, April 2022, retrieved 3 May 2026 <<https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-31-genocide-network-meeting-conclusions.pdf>>; Genocide Prosecution Network, *supra* note 12.

memorandum recommending best practices and stating that cumulative prosecution of FTFs is advantageous.¹²⁸

A possible objection to this approach of the prosecution of FTFs is that, instead of pursuing cumulative prosecution, States should establish the war crime of terror against civilians as a firm basis for criminal liability and substitute CTL by this war crime. To a certain extent, codifying the war crime of terror against civilians could enable a war-crimes-only approach. However, there are strong reasons to expect that even if this war crime were domestically codified, it could not replace CTL. First, the war crime of terror does not criminalise the same conduct as CTL. It does not cover travelling to participate in the activities of a terrorist organisation or more preparatory conduct, such as recruitment and financing activities,¹²⁹ even though these offences have been central to the prosecution of FTFs in the Netherlands and Belgium.

Secondly, much of the conduct that could fall under the war crime of terror against civilians can already be prosecuted through other codified or customary war crimes. Examples include indiscriminate attacks, murder, torture, pillaging, and unlawful attacks on civilian objects.¹³⁰ These acts are also separately criminalised under IHL and international criminal law,¹³¹ and separate codification of terrorism as a war crime would not always make a significant change. Therefore, domestic codification of the war crime of terror against civilians could strengthen the symbolic and doctrinal recognition of terrorising violence in armed conflict, but it would not remove the need for CTL.

5.2 PROPOSAL FOR AN AMENDMENT OF THE COUNTERTERRORISM DIRECTIVE

Having established that cumulative prosecution should be pursued whenever possible and appropriate, this must be connected to a legal amendment proposal of the Counterterrorism Directive. As discussed in Section 1.2, the current Directive's armed conflict exclusion clause is unsatisfactory: it is placed in the preamble rather than in the operative text, and its

¹²⁸ Memorandum on Criminal Justice Approaches to the Linkages Between Terrorism and Core International Crimes, Sexual and Gender-Based Violence Crimes, Human Trafficking, Migrant Smuggling, Slavery, and Crimes Against Children, Global Counterterrorism Forum, September 2021, retrieved 3 May 2026 <<https://icct.nl/sites/default/files/2023-01/Memorandum%20on%20Linkages.pdf>>.

¹²⁹ Henckaerts & Doswald-Beck, *supra* note 7, p. 8-11.

¹³⁰ *Ibid.*

¹³¹ For example see: Rome Statute of the International Criminal Court, 1998, Article 8.

scope is unclear, the result of which is legal uncertainty. However, more fundamentally, the exclusion clause encourages the disapplication of CTL when the actions of armed forces in armed conflict are governed by IHL. This approach to CTL is counterproductive and is not applied in practice, as demonstrated by the Belgian exclusion clause before it was amended. Instead, the exclusion clause should allow for cumulative prosecution of war crimes and terrorism offences.

The scope of the exclusion clause should be clarified along four axes: the temporal scope, personal scope, material scope, and the geographical scope coupled with the nexus requirement. Of these four, the temporal and geographical scope are the least fundamental. The temporal scope should be confined to activities during armed conflicts that fulfil the threshold of armed conflict. The geographical scope should not be reduced to the immediate battlefield, but apply to acts where the nexus requirement is fulfilled, meaning their connection to the conflict must be sufficiently clear. This means that the same armed group may fall within the exclusion clause for some activities, but not for others taking place outside the armed conflict. More fundamental are the questions of whether non-state armed groups should be covered by the exclusion clause at all, and if so, which type of armed activities.

5.2.1 PERSONAL SCOPE

The first fundamental issue is the personal scope of the exclusion clause. More specifically, the question is whether the clause should apply only to the armed forces of States, or also to non-state armed groups. At present, most Member States except Belgium interpret the exclusion clause in the Counterterrorism Directive to be inapplicable to non-state armed groups, thereby precluding its application to FTFs.¹³² This approach allows for cumulative prosecution of FTFs, but is at the same time also contrary to the letter of the law, which only establishes “armed forces” as its personal scope. Any amendment of the Directive should acknowledge reality and allow for the prosecution of non-state armed groups under CTL.

That said, enabling the prosecution of FTFs under CTL should not happen by excluding non-state armed groups from the personal scope of the exclusion clause. Rather,

¹³² Genocide Prosecution Network, *supra* note 12, p. 15.

whether CTL should ultimately yield must depend on the material scope of the exclusion clause. A personal scope that fundamentally excludes non-state armed groups altogether, regardless of their conduct, would be conceptually and doctrinally inconsistent with IHL. The inclusion of non-state armed groups in the exclusion clause of the Directive is necessary to ensure that some conduct by actors may exclude the application of CTL, which should be determined by the material scope of the clause.

5.2.2 MATERIAL SCOPE

For the material scope, the core choice is between two models. Under the broader model, CTL is displaced whenever the relevant activities are governed by IHL. Under the narrower model, CTL is displaced only when the relevant activities are in accordance with IHL. The latter approach should be preferred.

A clause excluding all activities governed by IHL would go too far. It would not only remove from the scope of CTL conduct that complies with IHL, but also conduct that violates it. Such a clause would exclude terrorism charges even in relation to conduct that constitutes war crimes, despite the fact that war crimes are, as shown, difficult to successfully prosecute. Moreover, given that not all violations of IHL constitute war crimes, this would result in a situation where acts prohibited by IHL could go unpunished. This would either lead to a socially and politically unacceptable situation, or be counterproductive and in practice privilege a pure ICL approach that is often disingenuous in FTF cases. For the reasons set out in Section 5.1, that is not a satisfactory model.

Limiting the exclusion to activities in accordance with IHL strikes a more appropriate balance. It ensures that CTL does not apply to conduct that IHL specifically regulates and tolerates. In these situations, domestic ordinary crimes and CAH remain available as instruments under which FTFs could be prosecuted if criminal liability is regarded as too restricted. At the same time, where conduct violates IHL, the clause preserves CTL as a parallel instrument to establish criminal liability. The serious FTF cases concern acts such as intentional attacks against civilians, hostage-taking, torture, sexual violence, or summary executions. There is no convincing reason why CTL should be displaced in such cases. On the contrary, these are precisely the cases in which cumulative prosecution under both CTL and ICL is most justified.

5.2.3 LEGISLATIVE PROPOSAL

A possible formulation of the exclusion clause in the Counterterrorism Directive could be: “This Directive does not apply to activities committed by armed forces and armed groups in the context of an armed conflict that are in accordance with international humanitarian law.”

With this amendment, the existing exclusion clause is supplemented by an explicit statement that the exclusion clause applies to armed forces *and armed groups*, thereby equally applying to non-state armed groups. Moreover, the clause’s scope is restricted to activities *in accordance with international humanitarian law*.

5.3 EMBEDDING CUMULATIVE PROSECUTION INSTITUTIONALLY IN THE EU AND THE MEMBER STATES

Legislative change would help to prompt and enable prosecutors to focus more on the prosecution of CICs. Yet, as primarily shown by the Belgian example, institutional and administrative change is just as essential. The EU can play a role in this process by exerting influence on the Member States through Eurojust, as has already occurred. Nonetheless, encouraging cumulative prosecution is not enough. Drawing on experience from the Netherlands and the main impediments to frequent and successful cumulative prosecution, more is needed. Most important in this regard are reforms in evidence collection and reforming prosecutorial and investigative administrations.

5.3.1 ADMINISTRATIVE CHANGES

In terms of administration, the lack of capacity in the investigation and prosecution of war crimes is a straightforward shortcoming that ought to be corrected. However, this shortcoming is closely connected to more fundamental obstacles to cumulative prosecution, which should also be addressed.

Fundamentally, the institutional structure for investigating, prosecuting, and adjudicating war-crimes cases must be strengthened.¹³³ Experience and expertise in war crime prosecutions are especially important given that war crimes in themselves are already more demanding to prosecute relative to terrorism offences, and exclusively focusing on CTL for the prosecution of FTFs will only further deteriorate institutional knowledge in this regard. Therefore, professionalisation and institutional knowledge in this area of law is essential to increase cumulative prosecutions of FTFs. The Member States should thus establish specialised units in the judiciary, public prosecution service and police to strengthen and professionalise their national capabilities to handle war crime cases.

A good example of this practice is the Netherlands. The Netherlands assigns CIC cases to specific teams in the National Police, the Public Prosecution and the judiciary.¹³⁴ On the other end of the spectrum lies Belgium; in Belgium, there is no specialised judicial institution in CICs. Even worse, in Belgium, the prosecutor might be incentivised to avoid charges for which the Court of Assizes hold jurisdiction.¹³⁵ Belgium should dismantle this system. That said, the gravity of this judicial organisational feature should not be overstated: out of the nine people cumulatively charged in the Netherlands, only two were charged with war crimes for which the Court of Assizes would have held mandatory jurisdiction if they were prosecuted in Belgium: torture and homicide.¹³⁶ The other seven concerned pillaging or outrages upon dignity, which would be correctionalisable in Belgium.

Inside the improved institutional structure, cooperation between the departments is essential. One of the impediments in Belgium for cumulative prosecution was likely a lack of interdepartmental communication.¹³⁷ In contrast, in the Netherlands, interdepartmental collaboration is common and tight.¹³⁸ Such interdepartmental collaboration is key to

¹³³ See also: Key Factors for Successful Investigations and Prosecutions of Core International Crimes, Genocide Network Secretariat, Eurojust, May 2022, p. 3, retrieved 3 May 2026 <<https://www.eurojust.europa.eu/publication/key-factors-successful-investigations-and-prosecutions-core-international-crimes>>.

¹³⁴ See Section 3.3.1.

¹³⁵ See Section 4.3.3.

¹³⁶ Constitution belge, 1831, Article 150; Code d'instruction criminelle, 1808, Article 216novies; Loi du 4 octobre 1867 sur les circonstances atténuantes, 1867. For the two cases, see: ICCT 2025 (3), *supra* note 60, cases "Ahmad al-K", and "Mustafa A."

¹³⁷ See Section 4.3.2.

¹³⁸ See Section 3.3.2.

successfully prosecuting cumulatively, where experience and knowledge from both teams must be bundled.

5.3.2 EVIDENCE COLLECTION

Besides legislative reform and specialised prosecutorial departments, Member States must also improve their ability to collect evidence. In Dutch CIC investigations, roughly 80 to 90 per cent of the evidence was gathered abroad in past cases, which often required foreign field missions by investigators and prosecutors.¹³⁹ As these field missions can be very costly and require expertise, the EU should consider establishing joint mechanisms to realise international evidence collection. Similarly, acknowledging the essential factor that Open-Source Intelligence can play in the prosecution of FTFs, the EU should consider setting up an expertise centre for Open-Source Intelligence.

5.4 INTERIM-CONCLUSION

Chapter 5 has answered sub-question 4 by arguing that cumulative prosecution can be embedded in the EU and the Member States through both legal and institutional reform. Legally, the Counterterrorism Directive should include an armed conflict exclusion clause that applies to both State armed forces and non-state armed groups, but excludes conduct that is in accordance with IHL. Moreover, if Member States truly want to strengthen their capability to prosecute cumulatively, they should act beyond the law. They should establish specialised CIC departments within the police, prosecution service and judiciary; improve capacity to investigate and prosecute CICs; strengthen interdepartmental cooperation; and collect evidence internationally through European cooperation.

¹³⁹ Human Rights Watch, *supra* note 63, p. 41-42.

CONCLUDING REMARKS

When the Arab Spring ultimately led to the Syrian civil war, spilling over to the War in Iraq and culminating in the declaration of IS as a caliphate, EU Member States were confronted with fringe extremist jihadist citizens who joined IS and other jihadist terrorist factions in Syria and Iraq and became FTFs. Eventually, many of them returned, which led to the conundrum of how these FTFs should be prosecuted considering CTL and IHL obligations, as their conduct could often be qualified as both war crimes and terrorism offences.

This research sought to better understand how prosecutions of FTFs should ideally be executed, and how cumulative prosecution could be better embedded in the EU in order to answer the main research question. The analysis shows that while criminalisation of terrorism offences is mandatory, EU Member States retain prosecutorial autonomy over whether or not to prosecute cumulatively. Nothing in the Counterterrorism Directive excludes prosecution as the armed conflict exclusion clause in Recital 37 is non-binding and its scope is unclear. Similarly, while IHL does mandate prosecution of war crimes where appropriate, the prosecution does not have to be grounded in war crimes.

The Dutch and Belgian case studies confirm divergence in prosecutorial strategy vis-à-vis FTFs. In the Netherlands, cumulative prosecution is institutionally and legally accepted, as Dutch criminal law does not contain an armed conflict exclusion clause. So far, nine FTFs have been prosecuted cumulatively, although only two prosecutions have led to war crime convictions. The main obstacles are evidential and institutional. War crimes require proof of specific conduct, the existence of an armed conflict, and a sufficient nexus between the conduct and that conflict. Evidence is often difficult to obtain or only accessible abroad, witnesses may be unavailable or unsafe, and digital evidence does not always prove the specific war-crimes conduct required. Moreover, CIC investigations require specialised expertise and capacity, which remain more limited than in terrorism investigations.

Still, this stands in stark contrast to Belgium, where, hitherto, the prosecution has not cumulatively prosecuted anybody. The most important reason specific to Belgium is its domestic exclusion clause, which paradoxically led to a terrorism-only prosecutorial strategy, as the BPPS was likely reluctant to rekindle a settled debate that the exclusion

clause did not apply to jihadist FTFs. Besides that, Belgium encountered the same obstacles as the Netherlands to successful cumulative prosecution.

Moving forward, the EU should now regulate and encourage cumulative prosecution more. The Counterterrorism Directive should contain an exclusion clause applying to armed forces and armed groups, but only where their conduct is in accordance with IHL. This would protect lawful conduct in armed conflicts and at the same time preserve cumulative prosecution for conduct that violates IHL and fulfils the elements of terrorism offences. Member States must also strengthen CIC capacity, improve cooperation between terrorism and CIC units, and develop better mechanisms for international evidence collection.

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Interview with Guus Sannes, public prosecutor in the CTER cluster, Public Prosecution Service, and Christin van der Torre, Senior Legal Officer in the IM cluster, Public Prosecution Service, the Hague, 30 March 2026.

Guus Sannes is a public prosecutor in the CTER cluster, focusing on terrorism offences in the Netherlands. As a public prosecutor, he is responsible for the prosecution of people charged with terrorism offences. Christin van der Torre is a senior legal officer in the IM cluster, focusing on CICs committed by people over whom the Netherlands has jurisdiction to prosecute. As a senior legal officer, she fulfils a legal and supporting role within the criminal justice process, and she works closely with the public prosecutors.

Interview with Dr. Thomas van Poecke, doctor in law and Judicial Law Clerk, KU Leuven, video call, 31 March 2026.

Thomas van Poecke is a doctor in law at KU Leuven whose PhD focused on the relationship between counter-terrorism law and IHL, particularly the role of the exclusion clause as a mechanism for regulating overlap. Thomas van Poecke researched many different countries and international instruments, and as a Belgian national, is well-versed in the prosecution of FTFs by Belgium. Currently, Thomas van Poecke is a Law Clerk at the Court of First Instance of Antwerp.

Interview with Dr. Christophe Paulussen, Senior Researcher, T.M.C. Asser Instituut, video call, 13 March 2026.

Christophe Paulussen is a senior researcher and coordinator of the research strand “In the public interest: accountability of the state and the prosecution of crimes” at the T.M.C. Asser Instituut, and an associate fellow at the International Centre for Counter-Terrorism. His research focuses on IHL, ICL, CTL and the prosecution of FTFs.

Interview with Tanya Mehra, Associate Fellow, International Centre for Counter-Terrorism, video call, 2 April 2026.

Tanya Mehra is specialised in legal responses to terrorism and the prosecution of FTFs. In 2024, she co-edited a book with the ICCT Press, titled “Female Jihadis Facing Justice: Comparing Approaches in Europe”, and at ICCT, she was

¹⁴⁰ Across the interviews, the questions focused on four common issues: (i) when and why prosecutors choose cumulative prosecution or limit themselves to terrorism charges, (ii) the influence of the armed conflict exclusion clause on that choice, (iii) the institutional and evidentiary factors shaping prosecutorial strategy, and (iv) the normative justification and added value of cumulative prosecution in cases concerning FTFs. The interviews that directly underpin statements made in the body of the thesis are referenced in the footnotes. All interviewees gave consent for the use of their interview for this thesis, and all footnotes making reference to the interview as a source have been verified by the interviewees. While not all interviews are cited, no statements are made that contradict information shared by the interviewees during the interviews, and all interviews are used by the author to corroborate claims for which a direct reference in the footnote was deemed unnecessary.

responsible for the development of the Foreign Terrorist Fighters Knowledge Hub and the Interlinkages Database.

Interview with Prof. Dr. Frank Verbruggen, Professor of Criminal Law, KU Leuven, video call, 1 April 2026.

Frank Verbruggen is a Professor of Criminal Law and currently serves as Chairman of the Institute of Criminal Law at KU Leuven. His research centres on human rights, organised crime and terrorism, cybercrime, intrusive investigative methods, and mutual recognition and harmonisation in the EU.

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