The Citizenship Hook: Obligations to British and French Foreign Fighters Under the European Convention on Human Rights

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INTRODUCTION

The rise of the Islamic state in Iraq and Syria (ISIS) was characterized by unprecedented numbers of Western citizens travelling across the globe to fight for the "caliphate." Western governments were shocked by the tens of thousands of ISIS supporters, and struggled to address the home-grown radicalism ISIS's rise revealed.[1] Though ISIS is by no means gone for good,[2] staggering military defeats returned much of the land ISIS seized in Iraq and Syria to their respective governments[3] and created an entirely new humanitarian crisis in the region: what to do with the thousands of ISIS fighters, both local and foreign, that remained in custody of the Iraqi and Syrian governments? European states who refuse to take custody of their nationals, instead maneuvering to have Iraq handle their punishment with its widespread practices of torture and capital punishment, are violating their obligations under the European Convention of Human Rights (ECHR or Convention).

With Syrian President Bashar al-Assad focused on other conflicts within Syria's borders and most of the ISIS detainees in Syria in the tenuous control of the Syrian Democratic Forces,[4] Iraq became the only stable government force with the jurisdiction and infrastructure to try most of these fighters. Currently, thousands of fighters from Europe face trial in Iraq,[5] and both the United States[6] and Iraq[7] made requests for European states to repatriate their citizens to face trial at home. European governments have been less than enthusiastic about repatriation;[8] however, few have been as proactive in their opposition as the United Kingdom ("U.K.") and France. Since the rise of ISIS, the U.K. has increasingly relied on a series of counter-terrorism laws to prohibit citizen foreign fighters

1. *See, e.g.*, Anelise Borges, *Europe's problem with jihad: The foreign fighters who tore families apart*, EURONEWS (Mar. 10, 2019), https://perma.cc/X7QL-D4WM; *How many IS foreign fighters are left in Iraq and Syria?*, BBC (Feb. 20, 2019), https://perma.cc/3898-WRXF.

2. Mark Giglio & Kathy Gilsinan, *The Inconvenient Truth About ISIS*, ATLANTIC (Feb. 14, 2020), https://perma.cc/X4AH-4FEY.

3. Ryan Pickrell, *Trump declares 100% of the ISIS caliphate has been liberated, but forces on the ground say it's not over yet*, BUS. INSIDER (Feb. 28, 2019, 2:51 PM), https://perma.cc/VYN4-6HGP.

4. Hind Hassan, Amel Guettafti & Adam Desiderio, *Thousands of Foreign ISIS Fighters in Syria Will Go on Trial Starting in March*, VICE NEWS (Feb. 19, 2020, 6:10 AM), https://perma.cc/K8F2-A2T8.

5. Hollie McKay, *Iraq handing out thousands of death sentences in hasty trials for ISIS fighters*, FOX NEWS (Jun. 7, 2019), https://perma.cc/HE59-AJCS.

6. H.J. Mai, *Why European Countries Are Reluctant To Repatriate Citizens Who Are ISIS Fighters*, NPR (Dec. 10, 2019, 4:58 PM), https://perma.cc/QBF7-PT45.

7. *Iraq could help repatriate or convict detained foreign ISIS fighters in Syria: Iraqi PM*, KURDISTAN 24 (Feb. 27, 2019, 10:11 AM), https://perma.cc/9VMS-EEX5.

8. Many European leaders have expressed a desire for a hybrid tribunal to take custody over the prosecutions of local and foreign ISIS fighters. Helen Warrell, *Sweden proposes international tribunal to try Isis fighters*, FIN. TIMES (May 19, 2019), https://perma.cc/M324-28SV. However, these plans have never fully come to fruition, and States, increasingly confronted with the logistical issues of dealing with so many former ISIS supporters, have fallen back on Iraq to handle the problem. Pesha Magid, *How Europe is Handing of Its ISIS Militants to Iraq*, FOREIGN POL'Y (Jun. 15, 2019, 6:00 AM), https://perma.cc/D84U-RVV6.

from returning to the U.K.,[9] and in some cases, to strip them of their citizenship.[10] Rather than enshrining its response in law, France has relied on diplomatic negotiations with and strategic assistance to Iraq to ensure its citizens do not return home.[11]

At the same time, individuals awaiting trial in Iraq face staggering abuses. Under Iraq's 2005 anti-terror law, prosecutors must only prove that the individual was a member of ISIS in order to obtain a conviction resulting in the death penalty.[12] In a system infamous for human rights abuses, reports of trials lasting ten minutes,[13] torture,[14] and forced confessions[15] are pervasive. Even in cases where defendants can prove that they have suffered abuse, it rarely makes a difference in the outcome of trial or judgement of a death sentence.[16]

This article examines the situation of British and French nationals who are currently facing trial or have already been convicted as ISIS foreign fighters in Iraqi courts. Part I looks at the domestic legal and policy regimes the U.K. and France have established to deal with the threat posed by nationals accused of engaging in terrorist activities, and the ways in which they have implemented their decision not to repatriate their nationals, currently detained in Iraq. Part II examines the substantive protections of the ECHR, and whether the fundamentally protected rights of these detained British and French nationals are being violated by their detention in Iraq. Part III examines the current extraterritorial scope of the ECHR and whether these detained nationals are deserving of ECHR protections. Finally, Part IV proposes an additional basis for European countries expanding extraterritorial jurisdiction: citizenship. This article ultimately concludes that there is ECHR jurisdiction over many, if not all, of the individuals in Iraqi custody, and that the United Kingdom and France violate articles 2 and 3 of the ECHR when they refuse to take custody of their citizen foreign fighters and choose instead to defer to or facilitate Iraqi jurisdiction over their nationals.

I. DOMESTIC LEGAL REGIMES

States traditionally have a great deal of autonomy in defining the nature of their citizenship and managing the rights and freedoms attendant to that status.[17] The

9. *See* discussion of TEOs *infra* Section I.A.1.

10. *See* Kenan Malik, Opinion, *Deportations to Jamaica, the Shamima Begum case and Windrush betray a woeful regard for the notion of citizenship,* GUARDIAN (Feb. 16, 2020, 3:00 AM), https://perma.cc/6RZU-84AD.

11. *See* discussion *infra* Section I.B.

12. Magid, *supra* note 8.

13. *Id.*

14. Ben Taub, *Iraq's Post-ISIS Campaign of Revenge*, NEW YORKER (Dec. 17, 2018), https://perma.cc/4XQS-QYSZ.

15. Pilar Cebrián, *They Left to Join ISIS. Now Europe Is Leaving Their Citizens to Die in Iraq.*, FOREIGN POL'Y (Sept. 15, 2019, 4:36 AM), https://perma.cc/5RSD-N8SH.

16. Magid, *supra* note 8.

17. WILLIAM A. SCHABAS, THE EUROPEAN CONVENTION ON HUMAN RIGHTS: A COMMENTARY, 1072 (Oxford 2015) [hereinafter ECHR COMMENTARY] ("Nevertheless, it is obvious that the status of

provisions of the ECHR rarely make a distinction between citizens and noncitizens of a state, but rather establish a series of rights that apply to all individuals within the states' jurisdiction, regardless of their legal status.[18] The greatest international obligation with regards to a state's treatment of its nationals, the positive right to a nationality contained in article 15 of the Universal Declaration of Human Rights,[19] is not actually included in the ECHR.[20] Both the U.K. and France acknowledge their obligation to respect nationality in the way they structure their domestic legal and policy-based approaches to the question of nationality and its denial. This section will first address the U.K., which is unique in its approach to dealing with foreign fighters because it has developed a vast series of legal provisions explicitly related to their exclusion and the deprivation of their citizenship. The U.K. approach will then be contrasted with that of France, which like much of the international community has chosen to take a policy-based approach to the treatment of terror suspects, choosing to deal with individuals on a case-by-case basis rather than establishing a concrete legal regime. Despite their markedly different structures, the U.K. and France's exclusion of their nationals from their jurisdiction (and therefore the territorial jurisdiction of the ECHR) has enabled them both to turn away from the question of what to do with their nationals who joined ISIS as foreign fighters.

A. The United Kingdom

The United Kingdom first established the power to deprive Britons of their citizenship during World War I,[21] but the modern legal regime related to the

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nationality must be governed by the laws of the relevant country. The terms for the recognition of citizenship, and for its denial, remain a prerogative of national law.").

18. *See, e.g.*, Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2, Nov. 4, 1950, E.T.S. No. 5, 213 U.N.T.S. 221 [hereinafter, ECHR] ("Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally. . ."). *Cf.* Council of Europe, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto, art. 3, Sept. 16, 1963, E.T.S. No. 46 [hereinafter, Protocol No. 4] ("Prohibition of the expulsion of nationals").

19. G.A. Res. 217 (III)A, Universal Declaration of Human Rights, art. 15 (Dec. 10, 1948) [hereinafter UDHR] ("(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."). The U.N. Convention on the Reduction of Statelessness is more reflective of current international concerns, which relate not to a positive right to a specific nationality, but rather protections against the deprivation of a nationality rendering an individual stateless. G.A. Res. 896 (IX), Convention on the Reduction of Statelessness, art. 8 (1) (Dec. 4, 1954) ("A Contracting State shall not deprive a person of its nationality of such deprivation would render him stateless.").

20. Subsequent decisions of the European Court of Human Rights have indicated that while deprivation of citizenship is not explicitly protected against in the ECHR, a State's decision to render a group or individual stateless can be challenged under article 8 of the ECHR, which establishes a right to respect for private and family life. *See, e.g.*, Kurić and Others v. Slovenia, App. No. 26828/06, 2012-IV Eur. Ct. H.R. 1, 64 (holding that "erasure" of several thousand residents within Slovenia from the citizenship rolls (rendering them stateless) after the breakup of the former Yugoslavia violated article 8 of the ECHR).

21. British Nationality and Status of Aliens Act 1914, 4 Geo. 5, c. 17, § 7 (Eng.). This was a power not often employed by the British government; during World War I, fewer than forty Britons were

exclusion and deprivation of nationals for national security purposes did not come into force until the 2006 Immigration, Asylum and Nationality Act.[22] Since that legislation, the U.K. has developed three stages of interaction with individuals suspected of terrorist activities: control orders, temporary exclusion orders, and deprivation of nationality. Control orders, and their successor Terrorism Prevention and Investigation Measures (TPIMs),[23] are used by the U.K. to place a terrorism suspect within the state under close supervision.[24] This section will focus on the other two measures, most commonly used against individuals suspected of leaving the country to become foreign fighters: temporary exclusion orders and denaturalization.

1. Temporary Exclusion Orders

Temporary Exclusion Orders ("TEO"), were first established in the Counter-Terrorism and Security Act of 2015 ("CTSA")[25] and require an individual not to return to the United Kingdom for a period of two years.[26] The Secretary of State may issue a TEO if a series of five conditions are met, including that (A) there is a reasonable suspicion that the individual has been involved in terrorist activities abroad; (B) the order is necessary to protect members of the public from a risk of terrorism; (C) the individual is outside of the U.K.; (D) the individual has a right of abode in the U.K.; and (E) a court gives the Secretary permission, or the Secretary "reasonably considers that the urgency of the case requires a temporary exclusion order to be imposed without obtaining such permission."[27] Because TEOs may only be imposed upon reasonable suspicion that an individual has been involved in terrorist activities abroad and poses a threat to members of the British public, they will normally be considered urgent, and therefore may be imposed without the necessity of court permission.[28]

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deprived of their nationality, while in the Second World War, only four individuals were denaturalized. Malik, *supra* note 10.

22. Immigration, Asylum and Nationality Act 2006, c. 13, § 56(1) (Eng.).

23. *See* Prevention of Terrorism Act 2005, c. 2, §§ 1-9 (Eng.) (establishing control orders) *repealed by* Terrorism Prevention and Investigative Measures Act 2011, c. 23, §§ 1-5 (Eng.) (replacing control orders with "Terrorism Prevention and Investigative Measures," known as TPIMs). After several high-profile cases where applicants successfully alleged that control orders breached U.K. human rights obligations, the government moved to the TPIM model, a lesser version of control orders believed to be more complaint with the U.K.'s obligations under Article 5 of the ECHR, which protects the right to liberty. Helen Fenwick, *Explainer: what's the difference between TPIMs and control orders?* THE CONVERSATION (Jun. 8, 2017, 8:03 AM) [hereinafter *TPIMs v. Control Orders*], https://perma.cc/2C4J-S7BY.

24. *See* Dominic Casciani, *Q&A: Control Orders*, BBC NEWS (Jan. 11, 2011, 13:32), https://perma.cc/CC77-S5QS; Fenwick, *TPIMs v. Control Orders, supra* note 23.

25. Counter-Terrorism and Security Act 2015, c.6, §§ 2-4 (Eng.) [hereinafter CTSA].

26. *Id.* § 4(3)(b) ("A temporary exclusion order – is in force for the period of two years (unless revoked or otherwise brought to an end earlier).").

27. *Id.* § 2(3)-(7).

28. *See* Helen M. Fenwick, *Reconciling International Human Rights Law with Exclusive Non-Trial-Based Counter-Terror Measures: The Case of UK Temporary Exclusion Orders*, 64 IUS GENTIUM 121, 129 (2018) [hereinafter *IHRL and TEOs*].

The CTSA also includes a mechanism for individuals subject to a TEO to return to the U.K., through the issuance of a 'permit to return,' which must be issued to an individual who fills out the application and complies with requirements set out in the permit.[29] One of these conditions includes a requirement that the individual subject to the TEO "attend an interview with a constable or immigration officer at a time and place specified by the Secretary of State."[30] The permit will dictate the time, manner and location of an individual's return,[31] as well as any additional requirements the U.K.'s Home Office wishes to impose.[32] This permit can be issued upon application of an individual subject to a TEO, or proactively by the Secretary of State in responding to an urgent situation, such as the individual's imminent deportation from a third-party country.[33]

The Prime Minister did not initially plan to impose TEOs to deal with the rising concerns that nationals who had joined ISIS would return and commit terrorist activities in the U.K. The Conservative leadership initially considered introducing a provision in the 2015 Act to strip ISIS foreign fighters of citizenship, regardless of whether that citizenship was gained through naturalization or birth, or whether they had another citizenship to fall back on.[34] The imposition of TEOs was presented as a compromise where the British government could still exclude nationals without resorting to the more extreme measure of denaturalization.[35] However, upon imposition of a TEO the national's British passport is invalidated,[36] making the measure functionally the same as a temporary revocation of citizenship. Because these measures are invoked once a person is outside of the country, they are forced to stay in the secondary country without appropriate travel documents. And by revoking the documents outside of the country, the government ensures that the individual is without the recourse of the protections of the ECHR, because it is a traditionally territorial convention. Furthermore, upon expiration of the TEO at the end of the two-year period, the Secretary of State is permitted to extend the TEO for another term,[37] and there is no provision in the CTSA that imposes a limit on the number of times a TEO may be extended, enabling a de-facto removal of citizenship for anyone under reasonable suspicion of committing terrorist activities abroad.

The U.K. justified TEOs as compliant with its ECHR obligations, discussed *infra* Section II, not based on an assessment or recalibration of human rights norms,[38] but on a theory of extraterritoriality: "The Home Office notes that TEOs

29. CTSA, *supra* note 25, §§ 5-6.
30. *Id.* § 6(2)(a).
31. *Id.* § 5(4).
32. *Id.* § 5(2).
33. *Id.* § 7.
34. HOME AFFAIRS COMMITTEE, COUNTER-TERRORISM SEVENTEENTH REPORT, 2013-14, HC 231, ¶¶ 97-100 (UK).
35. Fenwick, *IHRL and TEOs*, *supra* note 28, at 128-29. *See* discussion *infra* Section I.A.2.
36. CTSA, *supra* note 25, § 4(9).
37. *Id.* § 4(8).
38. Fenwick, *IHRL and TEOs*, *supra* note 28, at 128.

may only be imposed on subjects outside the U.K. As such, the ECHR is not directly engaged."[39] The rationale relies further on the contrast between temporary exclusion and denaturalization relied upon in the justification for the CTSA, stating "[c]ompared with deprivation, temporary exclusion involves manifestly less significant interference with an individual's ability to request the U.K.'s assistance overseas or to travel to the U.K."[40]

2. Denaturalization

The Immigration, Asylum and Nationality Act of 2006 enabled the Secretary of State to "deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good,"[41] as long as that deprivation would not render the individual stateless. This key restriction prohibiting statelessness was removed in the 2014 Immigration Act for those who gained citizenship through naturalization and "conducted themselves in a manner that is seriously prejudicial to the vital interests of the United Kingdom".[42] Immigration Minister Mark Harper explained that while "[w]e do not want to be overly prescriptive about what [seriously prejudicial to the vital interests of the U.K.] means. . .we would envisage it covering those involved in terrorism or espionage or those who take up arms against British or allied forces."[43] Through the use of this authority, more Britons were deprived of their nationality in 2017 than in both world wars combined.[44]

These citizenship laws create a two-tiered system within the U.K. where "[a]nyone with recourse to other citizenship (regardless of their connection to that country) is effectively being told that their "Britishness" is contingent upon continued good behavior (at the discretion of the Home Secretary)",[45] while "[f]or the "British-British" however (people with no recourse to other citizenship) their citizenship is protected and exists into perpetuity. It is contingent upon nothing."[46] Shamima Begum, a British woman who left the U.K. to join ISIS as a teenager, has become an international example of this dichotomy after the U.K. decided to strip her of her British citizenship based on the permissible national

39. Counter-Terrorism and Security Act 2015, c. 6, Memorandum by the Home Office ¶ 10 (UK).

40. *Id*. ¶ 12.

41. Immigration, Asylum and Nationality Act 2006, c. 13, § 56(1) (Eng.).

42. Immigration Act 2014, c. 22, § 66(1) (Eng.).

43. HOME OFFICE, IMMIGRATION BILL, FACT SHEET: DEPRIVATION OF CITIZENSHIP (CLAUSE 60) (Jan. 2014) https://perma.cc/PF29-6CWF.

44. Malik, *supra* note 10. Less than forty Britons were deprived of their citizenship in World War I, and only four had their citizenship revoked in World War II. *Id*. 104 people had their citizenship revoked in 2017. Lizzie Dearden, *Shamima Begum: Number of People Stripped of UK Citizenship Soars By 600% in a Year*, INDEP. (Feb. 20, 2019, 3:11 PM), https://perma.cc/XBV6-FFLZ.

45. Shiraz Maher (@ShirazMaher), TWITTER (Feb. 10, 2020, 7:21 AM), https://perma.cc/K9MM-TC3H. Maher goes on to point out that this policy "adversely impacts all children of immigrants, all Jews, and everyone from Northern Ireland." Shiraz Maher (@ShirazMaher), TWITTER (Feb. 10, 2020, 7:21AM), https://perma.cc/ZJ6E-4RVZ.

46. Shiraz Maher (@ShirazMaher), TWITTER (Feb. 10, 2020, 7:21 AM), https://perma.cc/QJ5A-N4CD.

security justification.[47] Begum's mother is Bangladeshi, and although Begum has never been to Bangladesh and doesn't have Bangladeshi citizenship, British officials cited her biological right to that citizenship as a justification that it did not render her stateless.[48] The Special Immigration Appeals Commission that refused Begum's appeal against her denaturalization acknowledged that the al-Roj refugee camp in northern Syria where Begum is forced to stay exposes her to a risk of torture and degrading treatment in violation of explicit ECHR protections against such treatment.[49]

B. France

In 2016, in the wake of a coordinated series of terror attacks across Paris the preceding November, the French National Assembly adopted an amendment to the Constitution that would extend denaturalization to dual-nationals born in France who were convicted of terrorism.[50] Upon review by the Senate, however, the amendment was rejected, due to criticism from President Hollande's Socialist party related to human rights obligations.[51] Since that debate, France has dealt with the variety of questions posed by its nationals who are foreign fighters on a case-by-case basis rather than through a vast network of anti-terror and immigration laws.

This ad-hoc approach has been guided significantly by French public opinion, which wants France to have nothing to do with its nationals who joined ISIS as foreign fighters.[52] Acquiescing to this public demand, "France has adopted a clear-cut unofficial policy of outsourcing, asking Iraq to prosecute French fighters

47. *Shamima Begum Loses Appeal Over Citizenship Removal*, AL JAZEERA (Feb. 7, 2020), https://perma.cc/U2KJ-JFBT.

48. This contention is directly belied by the statement of Bangladeshi Foreign Minister Abdul Momen, who stated that Begum has "nothing to do" with Bangladesh and would be refused entry. "He added that if she did end up coming to Bangladesh, she would fall foul of the country's 'zero tolerance policy' towards terrorism. 'Bangladeshi law is very clear. Terrorists will have to face the death penalty,' he said." *Shamima Begum: IS Bride 'Would Face Death Penalty in Bangladesh*', BBC NEWS (May 3, 2019), https://perma.cc/J2GB-GMHG.

49. Owen Bowcott, *Shamima Begum Loses First Stage of Appeal Against Citizenship Removal*, GUARDIAN (Feb. 7, 2020, 8:12 AM), https://perma.cc/M5SV-C5C3.

50. Daniel Severson, *French Constitutional Amendment on Emergency Powers Moves Forward*, LAWFARE (Feb. 12, 2016, 10:38 AM), https://perma.cc/G3N2-JSM7. *See also Three Hours of Terror in Paris, Moment by Moment*, N.Y. TIMES (Nov. 9, 2016), https://perma.cc/EX7J-MVDX.

51. Fenwick, *IHRL and TEOs*, *supra* note 28, at 133. Members of Hollande's party accused him of 'betraying the principles of the republic,' with the legislation and his justice minister resigned after the amendment was proposed, presented as an opportunity to reunite the country after the November terror attacks that killed 130 people. *See Three Hours of Terror, supra* note 50; Martin A. Schain, *France's Bridge Too Far: François Hollande's Constitutional Crisis*, FOREIGN POL'Y (May 12, 2016), https://perma.cc/29L8-BW8J; Kim Willsher, *Hollande drops plan to revoke citizenship of dual-national terrorists*, GUARDIAN (Mar. 30, 2016, 7:32 AM), https://perma.cc/8XNV-EWST; Kim Willsher, *Hollande drops plan to revoke citizenship of dual-national terrorists*, GUARDIAN (Mar. 30, 2016, 7:32 AM), https://perma.cc/EQ5W-LM9V ("Human rights organisations said the move to remove French nationality from convicted terrorists would be unconstitutional in creating two different classes of French citizenship, in contravention of the constitution's founding principle of equality.").

52. Constant Méheut, *France Judges Dead Jihadists but Refuses to Repatriate the Living*, N.Y. TIMES (Jan. 26, 2020), https://perma.cc/Z33N-SZGR.

to keep them away from Europe."[53] In 2017, French special forces worked with Iraqi soldiers to provide providing names and photographs of at least thirty nationals it identified as high value targets.[54] According to a current and a former foreign-affairs adviser to the French Government, "[t]he motive for the secret operation is to ensure that French nationals with allegiance to Islamic State never return home."[55] The operation was clearly designed to keep these French nationals abroad in Iraq so France could avoid activating its human rights obligations under the ECHR.

> The French special forces maintain their distance from the killings – France has no death penalty – by directing Iraqi fighters to target French Islamic State fighters, according to the current and former French government advisers. . . 'If anyone is alive, in jail, because they surrendered, they will be executed in Iraq for joining the Islamic State. And France won't intervene,' said a current French official familiar with the matter. 'It's a convenient solution.'[56]

However, since the military degradation of the Islamic State, France has intervened considerably in cases involving French nationals accused of acting as foreign fighters for the Islamic State – doing everything in its power to ensure that Iraq takes jurisdiction over their cases[57] despite the threat of execution and potential ill-treatment faced by its nationals in Iraqi custody.[58] "Citing several unidentified sources, French daily newspaper Le Figaro reported on June 7 that Iraq had asked Paris for $1 million for each foreign jihadist sentenced to death and $2 million for those given long-term sentences."[59] French President Emanuel Macron met with Iraqi president Barham Salih in order to lobby for Iraqi prosecution of the French foreign fighters, and after lengthy discussions, emerged with a declaration from President Salih that French nationals would be transferred to, or remain in, Iraqi custody for trial, while President Macron pledged additional military and economic support for Iraq.[60] According to the U.N. Special Rapporteur on

53. Matteo Pugliese, Commentary, France and Foreign Fighters: The Controversial Outsourcing of Prosecution, ITALIAN INST. FOR INT'L POL. SCI. (Jan. 9, 2020), https://perma.cc/5A8R-6A3J.

54. Tamer El-Ghobashy et. al., *France's Special Forces Hunt French Militants Fighting For Islamic State*, WALL STREET J. (May 29, 2017, 4:35 PM), https://perma.cc/47P5-HP67.

55. *Id.*

56. *Id.*

57. Jacob Schulz, *France Makes a Play to Try Foreign Fighters in Iraq*, LAWFARE (Nov. 4, 2019, 3:37 PM), https://perma.cc/5WJF-SYJ6. *See also Paris tente de convaincre Bagdad d'accepter le transfert de ses jihadistes de Syrie,* L'OBS (Oct. 17, 2019, 8:05 AM) [hereinafter *L'Obs Article*], https://perma.cc/8YVX-92Y6.

58. *France FM to visit Iraq to discuss trials for French ISIS fighters in Syria*, KURDISTAN 24 (Oct. 16, 2019, 12:38 PM), https://perma.cc/2EMN-HPEC ("After some French nationals claimed in court that Iraqi officials had tortured them, Human Rights Watch (HRW) called on nations not to rely on Iraq [to prosecute their fighters], a country notorious for using torture to extract confessions to try their citizens. ").

59. *France denies Iraq has yet asked for money to try jihadist fighters*, REUTERS (Jun. 13, 2019, 10:38 AM), https://perma.cc/PL5T-CSW4 ("While the ministry denied the report, a French official briefing reporters after a visit by Iraq's prime minister in May said Paris expected Baghdad to make an official request, including financially, on what it needed to handle large numbers of Islamist fighters.").

60. Magid, *supra* note 8.

extrajudicial, summary or arbitrary executions, there are credible allegations that the Syrian Democratic Forces arrested seven French nationals and transferred those individuals to Iraqi custody "at the alleged request of the French Government or with its suspected involvement".[61]

Since these decisions, twenty-one French nationals have been convicted in Iraq for "belonging" to the Islamic State, a charge which allows the imposition of the death penalty.[62] Eighteen of those convicted were sentenced to death, while the others were sentenced to life imprisonment.[63] The trials of the initial eleven defendants were attended by French consular officials.[64]

II. THE EUROPEAN CONVENTION ON HUMAN RIGHTS – FUNDAMENTAL PROTECTIONS

The ECHR does not rank the rights and protections enshrined within its provisions, but there are some so fundamental that no derogation is permitted from them under Article 15, and the mere risk of a violation is actionable under the convention. These include the right to life and the prohibition of torture.[65] These rights have been the substantive foundations for assertions of extraterritorial jurisdiction in many cases.[66] This section will explore the relevant provisions establishing the right to life and the prohibition against torture, and examine whether those ECHR protections are being violated for British and French nationals in Iraq.[67]

A. Right to Life

As discussed previously, the right to life enshrined in Article 2 is one of the most fundamental rights established within the Convention. This right is contained within three different provisions of the Convention, which reflect the evolving attitudes within Council of Europe member states about how the imposition of the death penalty interacts with this absolute right to life. This section will explore both the right enshrined in Article 2, and the subsequent Additional

61. Press Release, U.N. Office of the High Commissioner for Human Rights, Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions, UN expert urges efforts from France for the return of 7 nationals awaiting execution in Iraq (Aug. 12, 2019) [hereinafter *Callamard*], https://perma.cc/J9BH-R2KK.

62. *L'Obs Article*, *supra* note 57; Callamard, *supra* note 61.

63. *L'Obs Article*, *supra* note 57; Callamard, *supra* note 61.

64. Alissa J. Rubin, *French ISIS Supporters on Death Row in Iraq Ask for Mercy*, N.Y. TIMES (Jun. 3, 2019), https://perma.cc/Q6PL-UAKM.

65. EUROPEAN COURT OF HUMAN RIGHTS, GUIDE ON ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, RIGHT TO LIFE ¶ 2 (Aug. 2020) [hereinafter ECtHR GUIDE ON ART. 2] https://perma.cc/E9C5-EWD5 ("Article 2 ranks as one of the most fundamental provisions of the convention, one which in peace time, admits of no derogation under Article 15. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe.").

66. *See, e.g.*, Al-Saadoon and Mufdhi v. United Kingdom, App. No. 61498/08, 2010-II Eur. Ct. H.R. 61, 122-33, https://perma.cc/DHV2-VKP6; Al-Skeini and Others v. United Kingdom, App. No. 55721/07, 2011-IV Eur. Ct. H.R. at 99, 166-72 https://perma.cc/E49D-WMDV.

67. This section will address whether a violation of the substantive right exists under current European Court of Human Rights precedent and interpretation of these rights. The next section will address whether the Court would have jurisdiction over any found violations.

Protocol Nos. 6 and 13, which abolish the death penalty in times of peace and of war, respectively. Before the death penalty was abolished through the additional protocols, claims against *refoulement* to states that would impose it were considered under Article 3 for inhuman treatment. The discussion of the death penalty, and the court's jurisprudence, still rely heavily on this interpretation under Article 3, even though it is now considered also a violation of Article 2, so these later sections will discuss both rights.

1. Article 2: The Right to Life

Article 2(1) of the ECHR states that "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."[68] This protection has both positive and negative obligations: "not only must the state refrain from 'intentionally' depriving a person of life, it must also 'take appropriate steps to safeguard the lives of those within its jurisdiction.'"[69] This requirement to safeguard lives within its jurisdiction can sometimes extend to violations of this right outside of a state's territorial border. For example, a state may not extradite, deport, or expel an individual when there is an established risk that there will be a violation of the right to life.[70] As attitudes surrounding the death penalty continued to evolve for Council of Europe member states, the question became how to reconcile these significant protections with the loophole in article 2(1) allowing for the death penalty.

2. Additional Protocol Nos. 6 and 13: The Death Penalty

Protocol No. 6 was passed in 1950, and declares that the death penalty shall be abolished, except in times of war or during the imminent threat of war.[71] This loophole allowing for capital punishment during wartime was closed by Protocol No. 13 in 1983, which abolished the death penalty in all circumstances, and provided for no derogation or reservation from the prohibition.[72] Taken together, the prohibitions in Protocol No. 13, combined with "consistent State practice in observing the moratorium on capital punishment, have been found by the Court to be strong indications that Article 2 has been amended so as to prohibit the death penalty in all circumstances."[73]

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68. ECHR, *supra* note 18, art. 2(1).

69. SCHABAS, ECHR COMMENTARY, *supra* note 17, at 122 (quoting L.C.B. v. the United Kingdom, 1998-III Eur. Ct. H.R. ¶ 36).

70. *See, e.g.*, Kaboulov v. Ukraine, App. No. 41015/04, ¶ 99 (2009).

71. Council of Europe, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty, arts. 1-2, Nov. 4, 1950, E.T.S. No. 114.

72. Council of Europe, Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, art. 1, Apr. 28 1983, E.T.S. No. 187.

73. ECtHR GUIDE ON ART. 2, *supra* note 65, ¶ 74.

Because most European states have abolished the death penalty, these provisions become relevant primarily in situations where a member state is seeking to extradite, deport, or expel an individual to a country where that person might face the death penalty.[74] In spite of the passage of Protocols 6 and 13, the European Court of Human Rights ("ECtHR") has chosen to analyze cases relating to the risk of imposition of the death penalty upon extradition as a violation of Article 3's prohibition of torture, cruel, inhuman and degrading treatment. In *Soering v. United Kingdom*, the Court found the U.K. to have been in breach of its Article 3 obligations when it extradited Mr. Soering to Virginia to face murder charges without a diplomatic assurance against the imposition of the death penalty.[75] The Court noted that the breach of Article 3 "derives from the applicant's exposure to the so-called 'death row phenomenon.' This phenomenon encompasses a number of circumstances to which the applicant would be exposed if, after having been extradited to Virginia to face a capital murder charge, he were sentenced to death."[76] The inquiry in *Soering* and other death row cases has been fact-specific; the Court must ascertain whether there was a "real risk" of the imposition of the death penalty.[77]

For British and French foreign fighters facing trial in Iraq, the risk of the imposition of the death penalty, and a subsequent violation of Articles 2 and 3 under the current ECtHR analysis, is certainly real. Under the Iraqi Penal Code, the penalty for membership in a terrorist organization is death.[78] At the end of 2018, an Iraqi magistrate estimated that Iraq's terrorism courts were handing out at least twenty-five death sentences a day for alleged ISIS affiliates,[79] and estimates in August of 2019 calculated that while over 100 individuals had been executed since the beginning of the year, there were over 8,000 awaiting execution on death row.[80] So far, at least twenty-one European foreign fighters have been sentenced to death in Iraq,[81] and while none have been executed, twenty remain on death row, including eighteen French nationals.[82] Because an Article 2 analysis does not require actual death, and the potentiality of the imposition of the death penalty is sufficient to constitute a violation in extradition cases, European nationals facing trial in Iraq will certainly meet the threshold for a viable claim

74. *See, e.g.*, Al Nashiri v. Poland, App. No. 28761/11, ¶ 578 (2014), https://perma.cc/487D-7GCB; *Al-Saadoon*, 2010-II Eur. Ct. H.R. at 61.

75. Soering v. United Kingdom, App. No. 14038/88, 161 Eur. Ct. H.R. (ser. A) at ¶¶ 11, 20 (1989).

76. *Id.* ¶ 81. Analysis of this phenomenon requires the Court to delve into the particular circumstances of not only the defendant, but the infrastructure of capital punishment in the third-party State. Jon Yorke, *Inhuman Punishment and the Abolition of the Death Penalty in the Council of Europe*, 16 EUR. PUB. L. 77, 97 (2010).

77. *Al Nashiri*, App. No. 28761/11, at ¶ 578.

78. Magid, *supra* note 8.

79. Taub, *supra* note 14.

80. Lawk Ghafuri, *Iraq has executed 100 since January, 8,000 on death row: official*, RUDAW (Aug. 19, 2019), https://perma.cc/PG3B-Y5S9.

81. *See* Cebrián, *supra* note 15; Callamard, *supra* note 61.

82. Cebrían, *supra* note 15. (After a German citizen, Lamia K., was sentenced to death, Germany intervened, securing a commutation of her sentence to 20 years after an appeals process.).

that their rights under Articles 2 and 3 have been violated by their potential to face the death penalty.

B. Article 3: Prohibition of Torture, Cruel, Inhuman and Degrading Treatment

Article 3 of the ECHR states that "No one shall be subjected to torture or to inhuman or degrading treatment."[83] Under many analyses, Article 3 is considered one of the most fundamental provisions within the Convention: it is one of the shortest and is set out in "absolute terms," providing no opportunities for exceptions, justification in times of emergency or national security threat,[84] or derogation.[85] It is also malleable, encompassing a wide range of activity from the threshold "ill-treatment," reaching a "minimum level of severity [that] involves actual bodily injury or intense physical and mental suffering,"[86] up to and including more severe acts of torture.[87]

Like in cases where a member state is forbidden from extraditing, deporting or otherwise expelling an individual to a country where the individual will face a real risk of torture, inhumane or degrading treatment, or capital punishment, substantial grounds establishing a credible fear of article 3-prohibited treatment also present a bar to an individual's removal to such country.[88] In *Chahal v. the United Kingdom*, the Court established that this bar exists regardless of the reasons the state is seeking expulsion, and that the United Kingdom could not balance the threat to its national security presented by such individual against the risk of ill-treatment the individual may endure from the receiving country when weighing its decision whether to extradite.[89] The Court stated,

> . . . "the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration", and so national security: "[c]ould not be invoked to override the interests of the individual where substantive grounds had been shown for believing that he would be subject to ill-treatment if expelled."[90]

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83. ECHR, *supra* note 18, art. 3.

84. SCHABAS, ECHR COMMENTARY, *supra* note 17, at 168.

85. ECHR, *supra* note 18, art. 15(2).

86. Ireland v. United Kingdom, App. No. 5310/71, 25 Eur. Ct. H.R. (ser. A), ¶ 167 (1978), https://perma.cc/65WE-9LVP. This assessment of the minimum level of severity is fact-specific, and the Court must take into consideration factors including the duration of treatment, the physical and mental effects of the treatment, and factors about the victim including their age, sex, and health. *Id.* ¶ 162.

87. The ECHR has never provided an exact definition of torture, although there are certain elements common within its caselaw: (1) the infliction of severe mental or physical pain or suffering, (2) the intentional or deliberate infliction of the pain, and (3) the pursuit of a specific purpose, such as gaining information, punishment or intimidation. AISLING REIDY, COUNCIL OF EUROPE, HANDBOOK NO. 6: THE PROHIBITION OF TORTURE, HUMAN RIGHTS HANDBOOK SERIES, 12 (2003), https://perma.cc/Y76V-R4AS.

88. *See, e.g.*, Saadi v. Italy, App. No. 37201/06, 2008-II Eur. Ct. H.R. 207, 209-10, https://perma.cc/8KNZ-YGLB.

89. Chahal v. United Kingdom, App. No. 22414/93, 23 Eur. Ct. H.R. 413, ¶ 80 (1996), https://perma.cc/N3MU-4XQY.

90. Yorke, *supra* note 76, at 97 (citations omitted) (quoting *Chahal*, App. No. 22414/93 at ¶¶ 80, 78).

In cases where there is a credible fear of torture, diplomatic assurances against the conduct have rarely, if ever, been seen by the ECtHR as sufficient to mitigate the risk of an Article 3 violation.[91] This credible fear can be established by proof of previous torture of the individual while in the third-party state's custody,[92] widespread ill-treatment of similarly situated individuals,[93] or ill-treatment within the detention facilities of a state that is so pervasive that it rises to a level where such treatment is a near-certainty.[94] When an applicant before the ECtHR alleges a real risk of torture, the burden of proof that normally applies to the applicant is removed, and the Court will "study all the material before it, from whatever source it originates."[95]

European foreign fighters in Iraqi custody face a real risk of torture in violation of Article 3. The Iraqi system is infamous for its widespread violation of the prohibition against torture, and because a sentence under the 2005 anti-terror law only requires a confession, investigators seeking convictions are incentivized to use abuse and torture to extract the necessary statements.[96] Accounts from observers at the trials of individuals accused of involvement with the Islamic State report a significant number of the defendants making accusations or bearing physical evidence of torture while in detention.[97] While only one of the original eleven French foreign fighters sentenced to death alleged torture,[98] the presence of French consular officials at eleven trials was likely an incentive for state

91. *See* discussion of diplomatic assurances *infra* Section III(B).

92. *See, e.g.*, Hilal v. United Kingdom, App. No. 45276/99, 2001-II Eur. Ct. H.R. 293, 313-14 (2001), https://perma.cc/2N4L-LH7J (taking into consideration the applicant's prior ill treatment while in detention).

93. *See, e.g.*, Jabari v. Turkey, App. No. 40035/98, 2000-VIII Eur. Ct. H.R. 149, 158-60 (2000), https://perma.cc/9NRE-ANEE (recognizing reports produced by Amnesty International of women accused of adultery being stoned to death, relevant penal codes allowing the punishment, and publicly available surveys as evidence establishing a real risk of ill-treatment).

94. *See, e.g.*, Omar Othman (aka Abu Qatada) v. Secretary of State for the Home Department, SC/15/2005, United Kingdom Special Immigration Appeals Commission (SIAC), 25 Feb. 2007, §§ 350-52 (2007),https://perma.cc/2WYM-HRUX (acknowledging that the use of torture to obtain confessions "is quite widespread in the GID and of longstanding, that there is a climate of impunity" and that evidence is likely to be used at trial that results from that torture). Though this is a case in the United Kingdom domestic courts, the analysis is based on the ECHR provisions related to article 3. The Special Immigration and Appeals Commission considered this evidence while deciding on a question of article 6 trial rights, and ultimately concluded that the use of evidence obtained by torture would not constitute a violation. *Id.* §§ 449-59. This conclusion was overturned on appeal by the England and Wales Court of Appeal. *See* Othman (Jordan) v. Secretary of State for the Home Department [2008] EWCA (Civ) 290 [47-48] (Eng. and Wales), https://perma.cc/XRP7-B3N7.

95. Husayn (Abu Zubaydah) v. Poland, App. No. 7511/13, ¶ 396 (2014), https://perma.cc/75QZ-RUW8.

96. Magid, *supra* note 8. The use of evidence, including confessions, obtained through torture also constitutes a breach of the article 6 right to a fair trial. *See* Jalloh v. Germany, App No. 54810/00, 2006-IX Eur. Ct. H.R. 281, 315, https://perma.cc/V87J-AGYU.

97. *See, e.g.*, Taub, *supra* note 14; Magid, *supra* note 8 ("A defense lawyer who did not want to be named said flatly that torture was common in these cases. 'They'll torture them with electricity to get them to sign something in a language they don't understand,' he said in between court sessions.").

98. Magid, *supra* note 8. After the allegation was made, the judge ordered a medical examination, which ultimately found no signs of torture on Aouidate's body. *Id.*

security officials to limit their abuse, or at least attempt a higher degree of discretion. Since then, the seven French nationals transferred from SDF custody were "reportedly subject to torture or other ill-treatment."[99] The prevalence of ill-treatment of non-European detainees suggests that as international attention on the fate of European foreign fighters wanes, the risk of ill-treatment in violation of Article 3, already substantial, will only increase.

III. EXTRATERRITORIAL JURISDICTION OF THE ECHR

The British and French foreign fighters facing trial in Iraq face a real risk of torture and imposition of the death penalty as long as they remain in Iraqi custody. However, the question of whether these violations rise to the level of an actionable violation of the ECHR by the U.K. and France will turn on whether jurisdiction extends to those individuals who remain outside the territorial scope of the Convention. This section will examine the existing bases for extraterritorial jurisdiction and whether foreign fighters from France and the U.K. may assert ECHR jurisdiction under the ECtHR's current jurisprudence.

A. Current Bases for Extraterritorial Jurisdiction

The ECHR is a primarily territorial document, intended to confine a state's behavior within its territorial bounds. However, the ECtHR has recognized that jurisdiction may extend extraterritorially in an increasing number of "exceptional circumstances."[100] These exceptions have generally been found where there is a degree of control over individuals or a territory, or where a state party is exercising public powers abroad. Generally, these assertions fall into two different categories which will be examined in this section: (1) where state parties are operating outside of their territory and (2) where third party states violate fundamental ECHR protections after an extradition, deportation, or expulsion by a member state.

1. Violations by State Parties Outside of Their Territory

At its core, ECHR jurisdiction is fundamentally territorial.[101] In *Banković v. Belgium*, the Court held that individuals killed in the course of NATO airstrikes in the Federal Republic of Yugoslavia did not fall under the jurisdiction of the ECHR because the airstrikes were conducted outside of territory normally covered by the Convention.[102] The Court did not, however, foreclose the possibility that there might be additional bases for extraterritorial assertions of jurisdiction, stating "other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case."[103] It acknowledged a number

99. Callamard, *supra* note 61.

100. Banković v. Belgium, App. No. 52207/99, 2001-XII Eur. Ct. H.R. 333, 352, https://perma.cc/CDQ7-LHX8.

101. *Id.* at 351.

102. *Id.* at 359.

103. *Id.* at 352.

of exceptions, including: where a state, "through the effective control of the relevant territory and its inhabitants abroad. . .through the consent, invitation or acquiescence of the Government of that territory, exercises all or some of the public powers normally to be exercised by that Government," and where the "activities of [a state's] diplomatic or consular agents abroad and on board craft and vessels registered in, or flying the flag of, that State."[104]

While *Bankovic*'s language indicated a strong preference for the territorial foundations of the ECHR, the enumerated exceptions became a basis for a considerable expansion of extraterritorial jurisdiction in later cases. *Al-Skeini v. United Kingdom*,[105] clarified and expanded the exceptions enumerated in *Banković*, dividing them into two primary categories: effective control over a territory, and state agent authority and control.[106] Effective control over a territory embodies a more traditional understanding of the scope of extraterritorial jurisdiction: where a state exercises effective control of a territory, it is responsible for "securing the entire range of substantive Convention rights in the territory in question."[107] State authority and control, on the other hand, demonstrates a new and considerably more expansive approach to the understanding of jurisdiction because it has nothing to do with territory. The Court in *Al-Skeini* held that a state agent's exercise of authority and control over a single individual, *even outside an area under the state's effective control*, was sufficient to establish jurisdiction over that interaction, and the agent therefore had the obligation to "secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual."[108] This recognition that Convention rights could be "divided and tailored" around the situation reflected the Court's discomfort with the idea that state agents could ignore the fundamental protections of the Convention simply because they no longer operated within its territorial bounds. *Al-Skeini* became symbolic of a more flexible approach to the concept of jurisdiction than was initially outlined in *Banković*.

Beyond the actions of states and their agents, extraterritorial jurisdiction has been found in a limited number of cases, even where state parties committed no violation at all. The Court has additionally recognized that the ECHR's protections extend extraterritorially to situations where a state knowingly relinquishes control over an individual to a third-party state when there is a significant likelihood that state will violate fundamental ECHR protections.[109]

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104. *Id*. at 356.

105. Al-Skeini and Others v. United Kingdom, App. No. 55721/07, 2011-IV Eur. Ct. H.R. at 99, https://perma.cc/6BPH-NC7P.

106. *See* BERNADETTE RAINEY, ELIZABETH WICKS, & CLARE OVEY, *The Scope of the Convention, in* THE EUROPEAN CONVENTION ON HUMAN RIGHTS, 84, 94-96 (Jacobs, White & Ovey eds., 7th ed. 2017).

107. *Al-Skeini*, 2011-IV Eur. Ct. H.R. at 157.

108. *Id*. at 168.

109. *See e.g*., Saadi v. Italy, App. No. 37201/06, 2008-II Eur. Ct. H.R. 207, 242, https://perma.cc/8KNZ-YGLB.

2. Risk of Violations by Third Parties

An essential principle of treaty law is that states not party to a Convention may not be legally bound by its requirements. However, there are certain limited circumstances where a state party to the Convention may be held accountable by the Court for a third-party state's violation of certain fundamental ECHR protections. This obligation primarily arises in cases of expulsion or extradition, where removing an individual to a third-party state creates a credible risk, usually of cruel, inhuman or degrading treatment or execution.[110] This jurisprudence once again follows the reasoning of the ECtHR in its precedent defining the scope of extraterritorial jurisdiction over state actions: where a state is in a position to uphold fundamental Convention protections, it must not shirk that responsibility.[111]

This obligation arises not only for citizens of a state party, but for anyone over whom the state asserts even temporary jurisdiction. In *Al-Saadoon,* the ECtHR held that the British armed forces' detention of two Iraqi nationals, in Iraq, brought the individuals under the U.K.'s jurisdiction, establishing a "paramount obligation to ensure that the applicants' arrest and detention did not end in a manner which would breach their rights."[112] When British forces transferred the detainees to Iraqi custody, they put them "at real risk of being sentenced to death and executed", which constituted a violation of Article 3 of the ECHR.[113] The Court highlighted how the U.K. made no attempt in that case to seek diplomatic assurances from Iraq that the detainees would not be at risk of capital punishment if they were transferred to Iraqi custody.[114] In certain cases, like those in which the third-party state is one that allows capital punishment, a binding guarantee (or diplomatic assurance) not to seek the death penalty will mitigate the risk of a ECHR violation, and enable the state party to proceed with the transfer of an individual from their custody.[115]

However, in cases where an individual faces a credible threat of cruel, inhuman, or degrading treatment (outside of the capital punishment context), the Court is much more resistant to accepting diplomatic assurances as sufficient to alleviate member states' obligations under Article 3. The distinction between the

110. Al-Saadoon and Mufdhi v. United Kingdom, App. No. 61498/08, 2010-II Eur. Ct. H.R. at 61, 127 https://perma.cc/MJP5-8QJT.

111. *See, e.g.*, *Al-Skeini*, 2011-IV Eur. Ct. H.R. at 168.

112. *Al-Saadoon,* 2010-II Eur. Ct. H.R. at 66.

113. *Id.* at 133. As discussed above, the Court's precedent (dating back to before the passage of Additional Protocols 6 and 13), conceptualizes the risk of execution as psychological suffering that rises to the level of inhuman treatment. *Id. See also* Kirkwood v. the United Kingdom, App. No. 14079/83, 37 Eur. Comm'n H.R. 1580 (1984) https://perma.cc/5F4L-AXNS (considering the "death row phenomenon" in California as giving rise to an issue under Article 3). The Court in *Al-Saadoon*, finding a breach of Article 3, "did not consider it necessary to decide whether [this risk of capital punishment also gives rise to] violations of the applicants' rights under Article 2 of the Convention and Article 1 of Protocol No. 13. *Al-Saadoon,* 2010-II Eur. Ct. H.R. at 133.

114. *Al-Saadoon*, 2010-II Eur. Ct. H.R. at 132-33.

115. SCHABAS, ECHR COMMENTARY, *supra* note 17, at 1100.

two categories of diplomatic assurances, though both relate to Article 3 obligations, is the legality of the underlying action:

> [T]he undertakings not to impose capital punishment take place within a fully legal framework, given that the death penalty itself is provided by law in certain States. Torture, on the other hand, is never authorized by law, and an undertaking not to conduct it is ultimately rather meaningless. If an undertaking is considered necessary, the situation in the third State suspected of conducting torture is already too dire.[116]

The Court's jurisprudence supports this contention.[117] In fact, "as Human Rights Watch emphasizes, 'there has been no case in which a state has extradited or otherwise transferred a person based on, *inter alia,* diplomatic assurances against torture and ill-treatment where the [ECHR] has ruled that the transfer was in full compliance with the Convention.'"[118] In the few cases where a deportation or extradition was allowed by the Court for insufficient evidence proving the likelihood of ill treatment,[119] the Court has censured the state for procedural violations.[120]

B. The Case for Extraterritorial Jurisdiction over French and British Foreign Fighters

The British and French foreign fighters are in a unique position because they are in Iraqi custody not because of a state party's decision to extradite, but rather of their refusal to repatriate or allow the individual's return. Under the Court's existing jurisprudence, there must be some degree of control over the individual or the territory to assert jurisdiction. This section will look at the specific situations surrounding French and British foreign fighters and assert that there is a basis for jurisdiction over French fighters, as well as British fighters subject to a temporary exclusion order.

1. French Foreign Fighters

The case of French foreign fighters detained in Iraq is unique, because the French government has faced a significant amount of media attention as it

116. *Id.*

117. *See, e.g.*, Chahal v. United Kingdom, App. No. 22414/93, 23 Eur. Ct. H.R. 413, ¶ 80 (1996), https://perma.cc/N3MU-4XQY.

118. Andrew I. Schoenholtz & Jacob L. Goodman, *Transatlantic Perspectives on Migration: Immigration Control of Terrorism and the Prevention of Torture*, INST. FOR THE STUDY OF INT'L MIGRATION 7 (Feb. 2009) (quoting Intervention Submitted by Human Rights Watch and AIRE Center, Ismoilov and Others v. Russia, App. No. 2947/06, ¶ 42, (July 2007)), https://perma.cc/CS8U-PXYG.

119. As pointed out by Schoenholtz and Goodman, the Court's language in these cases further emphasizes the strong disfavor with which it approaches diplomatic assurances with regard to torture. The Court has never found that a diplomatic assurance is sufficiently credible, but rather that the information provided by the applicant made a finding that there was a "real risk" of such treatment impossible. *Id.*

120. *Id.*

grappled with how to deal with its citizens in arrested and detained in Iraq. Based on media reports, the French nationals detained in Iraq may have a compelling case for jurisdiction based on France's authority and control over the fighters at any of three different instances.

First, effective control may have been established for many detainees because French special forces were present at and directed their arrest.[121] The act of detaining a suspect on foreign soil has been found by the Court to be sufficient to establish authority and control over an individual in numerous cases,[122] even where custodial control by the state was temporary and eventually transferred to a third-party.[123] If French forces participated in the arrest or capture of these individuals, this alone should be sufficient to establish jurisdiction over those individuals and therefore, French obligations under the Convention for detainee treatment once in Iraqi custody. Reports indicate that French forces directed their Iraqi counterparts to handle detention in order to establish a degree of separation from the arrest, and therefore not trigger Convention obligations. This distinction should not hinder this assertion of jurisdiction if applicants impacted by this detention can prove that French forces had a sufficient degree of control over the arresting Iraqi forces who were used to conduct the operations.

This is a fact-specific inquiry and would depend essentially on the relationship between the French special forces and the Iraqi soldiers who completed the arrest. In *Jaloud v. the Netherlands*, the Court examined a number of factors ranging from U.N. Security Council Resolutions, memoranda of understanding between relevant parties, command structures, division of responsibilities between different state personnel, and established expected duties when it held that the Netherlands exercised "jurisdiction" over an individual who was shot at a checkpoint[124] manned by both Iraqi Civil Defense Corps members and Netherlands forces.[125] The indication that a degree of separation between French forces and their Iraqi counterparts with respect to the arrest of French foreign fighters was manufactured specifically so France could avoid triggering the protections of the ECHR will not sit well with the Court.

Second, a sufficient degree of control may have been established by the assistance agreements between France with Iraq.[126] Traditionally, the state agent

121. *See* El-Ghobashy, *supra* note 54.

122. *See, e.g.*, Öcalan v. Turkey, App. No. 46221/99, 2005-IV Eur. Ct. H.R. 131, 164-65, https://perma.cc/A3PP-L9K2.

123. *See, e.g.*, Al-Saadoon v. United Kingdom, App. No. 61498/08, 2010-II Eur. Ct. H.R. 61, 131-32, https://perma.cc/4RH5-2XEV ("[T]he respondent State's armed forces, having entered Iraq, took active steps to bring the applicants within the United Kingdom's jurisdiction, by arresting them and holding them in British-run detention facilities. . . [and] the respondent State was under a paramount obligation to ensure that the arrest and detention did not end in a manner which would breach the applicants' rights".).

124. Jaloud v. Netherlands, App. No. 47708/08, 2014-VI Eur. Ct. H.R. 229, 299-302, https://perma.cc/J69V-8V67.

125. *Id.* at 239.

126. *See France denies Iraq has yet asked for money to try jihadist fighters*, *supra* note 59; Magid, *supra* note 8.

authority and control framework has been established in a series of cases that deal with military uses of force, especially in Iraq after the U.S.-led invasion. However, this is not the only circumstance where authority and control establish jurisdiction. In *Al-Skeini*, the Court recognized that a state's jurisdiction "may extend to acts of its authorities which produce effects outside its own territory."[127] The most well-developed caselaw in this area is related to the consequences of extradition and expulsion, discussed above. However, the Court has emphasized in its discussion of extraterritorial jurisdiction that the acts of diplomatic and consular agents may establish jurisdiction when they exert authority and control over others outside a state's territory, and that when a member state exercises public powers at the consent, invitation, or acquiescence of a third-party state, that also establishes jurisdiction.[128] There is no natural limit in the Court's reasoning that keeps this from extending to the actions of state diplomatic agents exerting such a sufficient degree of authority and control over nationals who are living outside their territory that they ensure their prosecution elsewhere. Before the negotiations between Iraq and France, Iraq had made statements regarding its intent to help repatriate foreign fighters to face prosecution in their home countries.[129] If an applicant can prove that the decision not to repatriate those citizens and instead to try French citizens in Iraq came as a result of those negotiations and the subsequent assistance agreements, they may successfully claim that France held a degree of effective control of the detainees during the negotiations.

Finally, the Special Rapporteur on extrajudicial, summary, or arbitrary executions expressed concerns that French detainees were transferred from the custody of the Syrian Democratic Forces to Iraqi custody "at the alleged request of the French Government or with its suspected involvement."[130] If that involvement was physical, jurisdiction could be established in the same manner as for the detainees for whom French special forces presided over their arrest. If the alleged request or involvement was diplomatic or financial, the inquiry would need to proceed in the same way as the discussion of jurisdiction over the negotiations between French and Iraqi officials. In either case, the fact that French officials had enough control over their citizens to ensure, through physical custody or otherwise, that their prosecution proceeded in Iraq and outside of the ECHR's protections may be sufficient to establish the degree of control necessary for jurisdiction.

2. British Foreign Fighters

The United Kingdom is a harder case, because unlike France, there is very little known about detained British fighters in Iraq and how they came to be

127. Al-Skeini and Others v. United Kingdom, App. No. 55721/07, 2011-IV Eur. Ct. H.R. at 167, https://perma.cc/6BPH-NC7P.

128. *Id.* ¶¶ 134-35.

129. *Iraq could help repatriate or convict detained foreign ISIS fighters in Syria: Iraqi PM*, KURDISTAN 24 (Feb. 27, 2019, 10:11 AM), https://perma.cc/VY8Q-RKDT.

130. Callamard, *supra* note 61.

there. Because the facts of individual cases are difficult to parse, the strongest case for the extension of jurisdiction over British citizens is if they are subject to the TEOs discussed previously.[131] There are a number of ways in which TEOs may require state agent control to a degree that establishes jurisdiction, depending on the conditions imposed on the particular individual.[132] The most compelling case, however, is established by the interview requirement for a "permit to return." The Secretary of State *must* issue a permit to return "within a reasonable period" to any applicant subject to a TEO if they comply with the requirements established.[133] According to the CTSA, the only grounds the Secretary has for refusing to issue the permit is if the Secretary requires the individual to report to an interview with a state agent "at a time and a place specified by the Secretary of State" and the individual does not attend.[134] Dictating the appearance of an individual in a third-party state at a diplomatic or consular facility of a state party to the Convention, and imposing penalties equivalent to the removal of citizenship for a failure to appear would certainly fall under the state agent authority and control prong establishing U.K. jurisdiction over the individual.[135] This is likely the case for any individual subject to a TEO, but is made even stronger if an individual requested a permit to return and ended up detained in Iraq after either failing to attend the interview (and therefore being prohibited from returning), or through the cooperation of British agents after their interview.

IV. ADDITIONAL PROTOCOL 4: EXPANDING EXTRATERRITORIAL JURISDICTION FOR NATIONALS

The ECHR is a declaration of fundamental rights, and as such, it deals very little with the concept of nationality.[136] In fact, there are only three references to citizenship (or the lack thereof) in the entire Convention.[137] Only *one* provision in the ECHR grants protections to individuals as a result of their citizenship: Article 3 of Protocol No. 4, which prohibits the expulsion of nationals. This section will explore Article 3 of Protocol No. 4 and explain why this unique protection for citizens should be adopted by the Court as an additional basis for extraterritorial jurisdiction.

131. *See* discussion *infra* Section I.A.1.

132. *See* Fenwick, *IHRL and TEOs*, *supra* note 28, at 135-37.

133. CTSA, *supra* note 25, § 6(1).

134. *Id.* § 6(2).

135. *See* Fenwick, *IHRL and TEOs*, *supra* note 28, at 137.

136. ECHR, *supra* note 18, art. 14 ("The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as. . .. national or social origin, association with a national minority, property, birth or other status.").

137. ECHR, *supra* note 18, art. 15 (Restrictions on the political activity of aliens); Protocol No. 4, *supra* note 2, art. 3 (Prohibition of the expulsion of nationals); Protocol No. 4, *supra* note 2, art. 4 (Prohibition of collective expulsion of nationals).

A. Article 3 of Additional Protocol No. 4: Prohibition of Expulsion of Nationals

Article 3 of the Fourth Protocol states,

> (1) No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national. (2) No one shall be deprived of the right to enter the territory of the State of which he is a national.[138]

Although it is the only provision of the ECHR that deals directly with rights granted exclusively to individuals as nationals of a Council of Europe member state, it is not a frequently cited provision within the Convention. According to the ECtHR's database, HUDOC, the Court has never rendered a ruling based on its protections.[139] In order to best understand the implications of the rights established by Article 3, then, it is important to look at the text of Protocol No. 4 and the history surrounding its drafting.

1. Text

With the exception of Article 1, the rights established by Protocol No. 4 deal largely with freedom of movement and protections against forms of expulsion.[140] Article 2, establishing freedom of movement, enshrines rights to choose a residence and leave any country for all individuals within a Council of Europe member state.[141] These rights may be subject to necessary restrictions enshrined in the laws of state parties related to the protection of national security, "*ordre public*," crime prevention, public health and morals, the protection of other rights and freedoms, and the interests of the public in a democratic society.[142]

In contrast to Article 2, Articles 3 and 4 go further, outlining negative obligations against a state party not subject to the limitations outlined above, even in the case of the national security. Article 4 prohibits a state from collective expulsion of aliens. Article 3 protects citizens from collective expulsion as well, but goes further, prohibiting states from expelling any national from their state, even through individualized measures,[143] and from depriving a national of the right to enter their territory.[144]

Together, these three articles indicate a special relationship between a citizen and the territory of their state that the drafters sought to protect. With World War II still a recent memory, it's clear that protections against collective expulsion were at the forefront of the drafters' priorities. But equally significant was their choice to separate out those protections, distinguishing between nationals and aliens while enshrining additional protections for individual citizens against

138. Protocol No. 4, *supra* note 18, art. 3.
139. SCHABAS, ECHR COMMENTARY, *supra* note 17, at 1701.
140. Protocol No. 4, *supra* note 18, art. 2 (Freedom of movement); *id.* art. 3 (Prohibition of the expulsion of nationals); *id.* art. 4 (Prohibition of collective expulsion of aliens).
141. *Id.* art. 2(1)-(2).
142. *Id.* art. 2(3)-(4).
143. *Id.* art. 3(1).
144. *Id.* art. 3(2).

expulsion and denial of re-entry. The case of foreign fighters presents a number of significant and foreseeable reasons why national security, *ordre public*, and public interest justifications might be desirable limitations on these rights of citizens, but the drafters explicitly did not include them in this case, demonstrating the fundamental nature of the status and relationship they were seeking to protect.

2. Drafting History

There were two fundamental issues on the minds of the drafters as they established the provisions of Article 3: a desire to protect against the ethnic cleansing that characterized European conflict over the first half of the twentieth century,[145] and to outline the rights inherent to a nationality.

There was considerable conversation among the drafting committee about the possibility of a state expelling a national after their denaturalization, and proposed that the article include the following text: "a state would be forbidden to deprive a national of his nationality for the purposes of expelling him."[146] While the Committee approved of the principle, the drafting experts thought it inadvisable to wade into issues related to the legitimacy of measures depriving individuals of their nationality, and that it would provide practical difficulties for establishing that the intent of the denaturalization was expulsion.[147] In *X v. Federal Republic of Germany*, the Commission suggested, however, that an issue under Article 3 "might arise where an application to obtain nationality was refused where there was a relationship to an expulsion order, such that there was a presumption that the purpose of refusing nationality was expulsion."[148]

Both the drafters in the explanatory report and the ECtHR in *X v. Federal Republic of Germany* seem to suggest that while Article 3 of the Fourth Protocol does not go so far as to establish a right to a nationality, the Convention did not intend for the revocation of citizenship or the exclusion of a citizen as a way to inoculate member states from their obligations to individuals protected by Article 3. This interpretation is further supported by the Grand Chamber's extension of Article 4's protections against collective expulsion of aliens "to cover the *refoulement* of migrants stopped before they enter the national territory."[149]

> The Court has already found that. . .the purpose of Article 4 of Protocol No. 4 is to prevent States being able to remove certain aliens without examining their personal circumstances and, consequently, without enabling them to put forward their argument against the measure taken by the relevant authority. If,

145. SCHABAS, ECHR Commentary, *supra* note 17, at 1067.

146. Council of Europe, *Explanatory Report to Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto*, E.T.S. No. 46, ¶ 23 (1963) [hereinafter *Explanatory Report to Protocol No. 4*], https://perma.cc/D2KN-MDTY.

147. *Id.*

148. SCHABAS, ECHR COMMENTARY, *supra* note 17, at 1702 (citing *X v. Federal Republic of Germany*, App. No. 3745/86, 31 Eur. Comm'n H.R. Dec. & Rep. at 107 (1969)).

149. *Id.* at 1078.

> therefore, Article 4 of Protocol No. 4 were to apply only to collective expulsions from the national territory of the States Parties to the Convention, a significant component of contemporary migratory patterns would not fall within the ambit of the provision, notwithstanding the fact that the conduct it is intended to prohibit can occur outside national territory.[150]

In *Hirsi Jamaa*, the Court essentially recognized that Article 4 served as a supplemental basis for extraterritorial jurisdiction when acts of state agents outside of a state party's territory mirrored those prohibited by the article and were designed to keep the protections inherent in that article from going into effect. Like for Article 4, state actions outside its territory should not be allowed to prevent Article 3 rights from being asserted, and jurisdiction over the cases of excluded nationals should not be determined simply because a state is more or less skilled at obtaining third party assistance to circumvent its obligations.

B. Citizenship as a Basis for Jurisdiction

At the heart of Article 3 of Protocol No. 4 is a recognition and protection of the right of a national of a state to their homeland. While a national's right to leave may be circumscribed by state interests including national security, public safety, and the rights and freedoms of others,[151] their right to enter and remain is inalienable.[152] The significance of citizenship to this right cannot be understated: as the only citizenship right protected by the ECHR, and an unqualified right at that, the fact of citizenship can be the only bar to asserting its guarantees.

Section 2 of Article 3 ensures that a citizen may not be deprived of a right to enter.[153] Like in *Hirsi Jamaa*, it is easy to imagine a situation where a national may encounter state-supported barriers to entry that occur outside of a state's territory. Unlike in *Hirsi Jamaa*, it is easy to imagine how through negotiations and strategic maneuvering, a state party to the Convention could ensure the impenetrability of those barriers to entry without meeting the effective control or state agent authority and control tests to trigger extraterritorial jurisdiction. Illustrative examples of such measures may be found within France's varied attempts to avoid taking custody over their citizens. However, when states are seeking, as a public policy or legal matter, to ensure that their citizens do not return home in violation of Article 3 of Protocol No. 4, the fact of citizenship alone should be a sufficient basis for jurisdiction. This is a natural, but limited expansion of the Court's extraterritorial jurisprudence, and would be tied inherently to the fundamental citizenship rights established by Article 3. Because expulsion would necessarily occur on the territory of a state, citizenship as a basis for extraterritorial jurisdiction would only apply in cases where

150. Hirsi Jamaa and others v. Italy, App. No. 27765/09, 2012-II Eur. Ct. H.R. 97, 154, https://perma.cc/THY8-CUAP.

151. Protocol No. 4, *supra* note 18, art. 3(3).

152. *Id*. art. 4.

153. *Id*. art. 3(2) ("No one shall be deprived of the right to enter the territory of the State of which he is a national.").

an alleged violation of Section 2 of Article 3 could be asserted. This would only occur in cases like those of the foreign fighters, where due to an undesirable quality, a state has rejected certain individuals' desire to return home. It would also, necessarily, only apply to citizens of state parties that ratified Protocol No. 4.[154]

This expansion would allow future Court jurisprudence on Article 3 to mirror that of Article 4, especially in cases where nationals, like European foreign fighters in Iraq, are at a significant risk of fundamental rights violations such as capital punishment and torture. The Court's *nonrefoulement* cases present a facet of its jurisprudence unyielding to state interests, as a result of the recognition that the rights to life and against torture are so fundamental a state may not play a role in their violation even if they have no connection to the individual they are compelled to protect. Extending jurisdiction in these cases allows the same principle to be asserted in the case of a state's nationals, which is the very least that should be guaranteed by the strong protections set out in Section 2 of Article 3.

CONCLUSION

The situation of European foreign fighters in Iraq is unique in light of ECHR protections, and reveals a number of significant new challenges for states attempting to confront global terror groups. This current approach adopted by countries like the U.K. and France of exclusion and denaturalization will have implications far beyond those citizens languishing in Iraqi jails. Critics have stressed that this approach can often create societal divisions where for certain groups, citizenship in a state becomes conditional on good behavior.

For those unwilling or unable to meet such citizenship preconditions, the U.K. and France have been eager to allow Iraq to handle the difficult task of dealing with the staggering number of ISIS supporters. Through measures including TEOs, denaturalization, and diplomatic pressure, the U.K. and France have gone to great lengths to ensure that their citizen foreign fighters never make it back within the jurisdiction of the ECHR. In order to do so, however, they have traded the fundamental rights of British and French foreign fighters for domestic security and public approval – a bargain forbidden by the ECtHR.[155]

Though it may be more convenient to simply forget the problem of homegrown radicalization that these foreign fighters represent, the British and French governments have the domestic legal infrastructure to try those accused of travelling abroad to join ISIS.[156] In the U.K., antiterrorism legislation covers a number of

154. Greece and Switzerland have not signed on to Protocol No. 4, and Turkey and the United Kingdom, though signatories, have not ratified it. COUNCIL OF EUROPE, CHART OF SIGNATURES AND RATIFICATIONS OF TREATY 046, https://perma.cc/49EQ-SE6T, (Nov. 14, 2020).

155. *See* Chahal v. United Kingdom, App. No. 22414/93, 23 Eur. Ct. H.R. 413, ¶ 80 (1996), https://perma.cc/N3MU-4XQY.

156. In *Soering,* the ECtHR acknowledged that the ability to be tried in a citizen's own country without the attendant rights violations factored into the fact-specific inquiry required of the Court, stating "However, sending Mr Soering to be tried in his own country would remove the danger of a fugitive criminal going unpunished as well as the risk of intense and protracted suffering on death row. It is therefore a circumstance of relevance for the overall assessment under Article 3 (art. 3) in that it goes

offenses specifically related to foreign fighters, including travelling abroad to commit or prepare a terrorist offense or to obtain training, and an individual may be prosecuted in the U.K. for acts of terrorism even if they were committed overseas.[157] Acts preparing or assisting in the preparation of terrorism are punishable by up to life in prison.[158] Due to the structure of TEOs, British officials have the capability to monitor an individual suspected of terror-related offenses before they even enter the country.[159] The French Criminal Code includes "conspiracy with a terrorist enterprise," which prohibits participating in a group formed for the purpose of terrorist acts,[160] and carries a penalty of ten years for those found not to have assumed a leadership role.[161] A 2012 provision extends jurisdiction to citizens and residents even for acts committed outside French jurisdiction.[162] In fact, these fighters might face conviction for the same offense (membership in a terror organization), prosecuted by officials with the same degree of evidence (testimony of the accused), regardless of which country takes jurisdiction over their cases. The most significant difference is that if jurisdiction is asserted by a country under the jurisdiction of the ECHR, the attendant rights violations that accompany both the collection of evidence and the punishment of alleged membership in a terrorist organization in Iraq will be forbidden.

Iraq does not want the responsibility of dealing with European foreign fighters on top of the thousands of regional ISIS members currently awaiting justice,[163] and the only reason they remain in Iraqi custody is that European states refuse to allow their repatriation, in direct contravention of Article 3 of Protocol No. 4. In doing so, these state parties have exposed their nationals to fundamental ECHR violations that they have the ability to prevent through repatriation, while also ensuring that justice is served for the crimes they committed. The European states, and the U.K. and France especially, are in a position to ensure that these fundamental rights to life and the protection against torture are upheld[164] and the ECtHR should hold them to that obligation. If it chooses not to, it risks further entrenching the impression created by these laws and practices that European citizenship is only truly deserved by certain individuals, and may be revoked from the rest if they fail to live up to those expectations.

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to the search for the requisite fair balance of interests and to the proportionality of the contested extradition decision in the particular case." Soering v. United Kingdom, App. No. 14038/88, 161 Eur. Ct. H.R. (ser. A) at ¶ 110 (1989).

157. Terrorism Act 2000, c. 11, § 63(A)-(B), https://perma.cc/7KVQ-AN7X.

158. Terrorism Act 2006, c. 11, s 5, https://perma.cc/PEP4-W552.

159. *See* discussion of TEOs *supra* Section I.A.1.

160. Code Pénal [C. PÉN.] [Criminal Code] art. 421-2-1 (Fr.).

161. Code Pénal [C. PÉN.] [Criminal Code] art. 421-5 (Fr.).

162. Loi No. 2012-1431 du 21 décembre 2012 relative à la sécurité et à la lutte contre le terrorisme [Law No. 2012-1431 of Dec. 21, 2012, Regarding Security and the Fight Against Terrorism] Dec. 21, 2012, art. 2.

163. *Iraq could help repatriate or convict detained foreign ISIS fighters in Syria: Iraqi PM*, KURDISTAN 24 (Feb. 27, 2019, 10:11 AM), https://perma.cc/Z5KC-WU5R.

164. *Id.*