

'Returning from Islamic State: Risk and Response'
(Speech at King's College London, 27 February 2023)

Introduction

1. In the middle of the last decade, tens of thousands of foreigners¹, including 5,000 Europeans², progressed to the battlefields of Syria and Iraq³. Islamic State declared its caliphate, and France and Belgium were rocked by major terror attacks planned and executed by returning jihadis. Western countries, surveying the terrorism landscape, reached a position on the Islamic State travellers: stop them from returning⁴.
2. Each country has its own laws and practices. The UK hardened its defences by a policy of deprivation, removing citizenship from dual nationals, exclusion, and discouraging the return of mono-Brits. Counter-terrorism can be a numbers game, and during those fraught years the prospect of dozens of battle-hardened individuals returning to the UK *en masse* would have tested police and security services to their limits.
3. Time passed. About half of the UK-linked travellers had returned by 2018, somewhat higher than the European average⁵. The Caliphate fell and thousands died in the bloody battles of Raqqa and later Baghouz⁶. Some of the European travellers were taken into detention, alongside many thousands of Syrians and Iraqis, in camps and prisons across North-East Syria⁷. Others remain at large.

¹ Between 2011 and 2020, over 42,000 people travelled out from over 120 countries, peaking in 2015 but stemming significantly after 2016: Psoiu, D., and Renard, T., 'Responses to returning foreign terrorist fighters and their families', RAN (2nd Edition, 2022).

² Psoiu, D., and Renard, T. say 5,000. Van Dongen, T., Wentworth, M., Arkhis, H., 'Terrorist Threat Assessment 2019-2021', ICCT (Feb 2022) give a figure of 6,000.

³ Estimated as the third largest exodus to battlefields, after the International Brigades of the Russian revolution and the Spanish civil war: Renard, T., Coolsaet, R. (Ed), 'Returnees: who are they? Why are they (not) coming back and how should we deal with them?', Table 1, Egmont (2018). Note that the figure for Syria/Iraq includes Kurdish-aligned Peshmerga.

⁴ The government committed to using "everything in [its] power to prevent their return": HC Deb, 18 March 2019, C258WH.

⁵ Roughly a third of the European travellers came back: Psoiu, D., and Renard, T. According to Van Dongen, T. et al, in early 2022 Finland was the highest (63% returned), with the UK in the second tier of countries. Germany and France were about one third. On or below 20% were Netherlands, Australia, Italy, Slovenia, Spain, Switzerland and US.

⁶ Government estimates of killed UK-linked travellers have grown: 15% (Baroness Williams, Hansard (House of Lords) Written Answer, 10 Oct 2016); 20% (HMG, 'Contest' (June 2018)); the current estimate is 25%.

⁷ An estimated 120,000 prisoners and dependents now reside in several camps around North-Eastern Syria, including 40,000 children of which 30,000 are under 12: UN, 'Thirtieth report of the Analytical Support and Sanctions Monitoring Team' (2021). The largest proportion of women and children are located in Al-Hol (55,000) and Camp Roj IDP camp (approximately 2,400): C3 and C4 v Secretary of State for Foreign, Commonwealth & Development Affairs [2022] EWHC 2772 at para 17.

4. Now the UK's posture of "strategic distance"⁸, characterised by deprivation, limited consular assistance to UK nationals⁹, and funding to the Kurdish detaining authorities¹⁰, is at a crossroads. The numbers are not what they once were. About 900 UK-linked individuals travelled to Syria and Iraq. Of the 450 or so who did not return to the UK, and only a fraction remain in prisons and camps. There are no official figures, but estimates are of about 60 UK-linked children¹¹, with a fewer number of women¹² and an unknown number of men. The pace of repatriation by other European countries has picked up¹³ and UK's policy of strategic distance has fallen under the spotlight.

The Shamima Begum Debate

5. This speech considers UK-linked individuals in detention in North-East Syria, most of whom travelled, in the parlance, to 'align with' Islamic State¹⁴, and the interaction between the risk they present, and the UK's counter-terrorism response should they return. The decision of the Special Immigration Appeal Commission earlier this month tells us that related decisions belong to the political rather than the legal sphere¹⁵, although legal powers and legal consequences will feature high on the list of considerations.
6. One side of the debate avers that former UK residents are our problem, that they are riskier left where they are, that the bad ones can easily be prosecuted, and the rest can be managed by the UK's respected counter-terrorism system. This side points to the age and naivety of some of those who travelled out, and to the position of young children taken or born in theatre.
7. The other side contend that these people have got their just desserts, that they forfeited any right to sympathy when they went to join torturing murderers, and that at least some of them will carry out or inspire terrorist attacks if returned. They doubt that prosecution or constant monitoring is a feasible solution, are sceptical about claims of trafficking, and point out that very few countries have repatriated male fighters.

⁸ The government's policy of strategic distance was referred to in this interview: 'Shamima Begum must be treated as a threat, anti-terror commander Neil Basu says', Evening Standard, 15 December 2020.

⁹ Exemplified in the case of C3 and C4, supra. We know about the internal policy adopted by Canada in early 2021, because it was disclosed in a court case BALOH 1(A), supra, at paras 77-78. It applied to unaccompanied child, children who it was necessary to separate from their parents owing to extraordinary circumstances, and other cases where there was credible evidence that an individual's circumstances had "significantly changed". For these cases the Canadian government would initiate an assessment on whether to extend extraordinary assistance having regard, among other things, to national security.

¹⁰ Government statement dated 27 April 2022 in response to UN Rapporteur communication dated 1 February 2022 on the situation of a number of boys and men in North-East Syria.

¹¹ In September 2020, the BBC reported an estimate by Save the Children that there were 60 British children in camps: 'Islamic State: British child rescued from Syria, foreign secretary says' (16.9.20).

¹² The campaigning organisation Reprieve estimated about 20 or so women: 'Trafficked to ISIS' (2021), part 4.

¹³ The open-source repatriation tracker published by the NGO Rights and Security International lists repatriations to date by France (188), Germany (102), and the UK (11). France, Germany and the UK were the main sources of travellers to Syria and Iraq: Van Dongen, T. et al, supra, at p15). In January 2023 alone there were repatriations by Spain (15), France (47) and Netherlands (40).

¹⁴ Al Qaida supporters also travelled to Syria and Iraq.

¹⁵ Shamima Begum v Home Secretary, SIAC, Appeal No: SC/163/2019 (22.2.23).

8. The true complexity of this debate may explain its occasional stridency, but the decision-point could come sooner than expected through US and allied pressure¹⁶, Turkish military activity¹⁷, court rulings¹⁸, or natural disasters such as the recent earthquake. As always, I am speaking entirely independently. I started working on this speech with an open mind and did not expect to reach the conclusions that I have.
9. There are two parts to what follows. The first part concerns risk and the arguments for and against repatriation. The second part is about the mechanics of repatriation - how to put the toothpaste back into the tube – and the complexities arising from deprivation of citizenship.

Risk

10. For a long time, the tide of Islamist terrorist violence in Great Britain¹⁹ has risen and fallen under the influence of travel to foreign zones: from small spots of ungoverned territory hosting terrorist training camps, to wide and intense areas of armed conflict to which jihadis come to fight from the UK and across the world.
11. Major attacks or attack plans by UK residents in the first decade - the ‘shoe bomb’ plot (Richard Reid), the fertiliser bomb plot (Operation Crevice), the ricin plot, the ‘dirty bomb’ plot (Dhiren Barot), the 7/7 suicide attacks, the failed suicide attacks of 21/7, the transatlantic airline plot (Operation Overt) - were all carried out by one or more men who had fought or received training in the valleys of Pakistan or Afghanistan²⁰.
12. No surprise then that the exodus to Syria and Iraq put the UK on high alert. The first European attack by a Syria traveller was Mehdi Nemmouche’s 2014 attack on the Jewish Museum in Brussels, followed by the coordinated attacks in Paris in 2015 and Brussels (again) in 2016. Further risks posed by such individuals are logistical support, creating networks, acting as recruiters or fundraisers, engaging in radicalisation and propaganda, or seeding future foreign fighters²¹.

¹⁶ “We urge all governments to follow Spain’s example and repatriate their nationals, especially women and children”: US Department of State, ‘US Welcomes Spain’s Repatriation of Nationals from Northeast Syria’ (press release, 11.1.23). The US has repatriated all 39 of its travellers.

¹⁷ To date, responding to risk of Turkish incursions has not curtailed the SDF’s counter-IS capabilities: US Lead Inspector General, ‘Report to the US Congress on Operation Inherent Resolve’ (quarter 1.10.22 to 31.12.22).

¹⁸ In a recent judgment, the Federal Court of Canada held that Canadian citizens held in detention in Syria including men had a constitutional right to repatriation: *BOLOH 1(A) and others v HM King and Minister of Foreign Affairs and International Trade*, Federal Court (Hon Mr Justice Brown), 2023 FC 98, at paras 104-6. There is no equivalent right under UK, ECHR or international law: *HF and others v France* App nos 24384/19 and 44234/20, Grand Chamber (14 September 2022). Many cases will turn on their facts, and it is difficult to predict to what extent cases will have wider implications, at least until appeals have been exhausted.

¹⁹ Northern Ireland’s experience is different.

²⁰ Attacks in the 2020s linked back to those old proving grounds. Usman Khan, the Fishmongers’ Hall attacker, had previously been sentenced for conspiring to get weapons training in Pakistan; Khalid Ali, who attempted a knife attack at the palace of Westminster, had been a Taleban bombmaker in Afghanistan.

²¹ It is plausible that the presence of veterans of Afghanistan, Algeria, Bosnia and Iraq in particular parts of Europe can be linked to clusters of subsequent terrorist travel: Duffy, L., ‘Is There A Way To Resolve Europe’s Problem in Repatriating Jihadist Fighters and Their Families?’, *European Eye on Radicalisation* (Webinar, 2022). Cf. the role played by former Libyan Islamic Fighting Group member Abdalraouf Abdallah (also friend of Salman Abedi, the Manchester Arena Bomber) in assisting others to travel to Syria to join Islamic State: Daniel De Simone, ‘Manchester Arena Inquiry: Prisoner in touch with bomber to be released’, *BBC News* (26.11.20).

13. What can you say about all the different individuals who travelled out from the UK? Consider, **firstly**, their motives for travelling. Islamic State certainly attracted those familiar figures with AK-47s and wispy beards who in previous years plied their trade around Kashmir, Bosnia, Afghanistan and East Africa and we call Foreign Terrorist Fighters.
14. But other UK residents were lured by a quasi-state with its aspirations to an economy and civil administration. It called to the butcher (in the more benign sense of the word) and the baker, and the doctor and the nursery worker, alongside many women. Making up about 18% of the European contingent, women may have come to perform terrifying acts of violence, but others wanted to dwell in this allegedly pure state, indifferent to its cruelties of course, but performing a domestic role²². For them, the positive desire to join the Caliphate may have been as important as their hostility to the West.
15. **Secondly**, their actions in theatre. In most cases, determining an individual's actions on the battlefield or role in the Caliphate is aspirational rather than realistic. Without specific intelligence, the most that can be said is that the individual is *likely* have been exposed to violence or further radicalisation and *may* have drawn into a violent or combat role or received training. This allows assessments to be drawn about capacity or psychological desensitisation or ideological mindset, but they are generally inferences.
16. **Thirdly**, their reasons for staying. It is quite possible that those UK-linked individuals who stayed did so because of firmer commitment to Islamic State than those who returned²³. The position is probably more complex: early returns may have been motivated by family or financial reasons, or because of injury. The early years also saw some very dangerous individuals return to the UK²⁴; other may have wished to return but were unable to do so.
17. **Fourthly**, there is the impact of detention. Detention may have led to remorse, dimmed the fires of commitment, and stoked a desire to flee brutality and return to a normal life, or conversely those months and years may have consolidated hostility against the West. It's hard to know.
18. None of this means is intended to dispel the filigree of doubt that must exist in even the blandest cases. But faced with these uncertainties which are the stock-in-trade of risk assessment, I would venture two observations: concerning gender, and background risk.
19. The government position is that it does not make a judgment based on gender and that women can pose as significant a risk to national security as returning male fighters²⁵. But in

²² Dawson, L., 'A Comparative Analysis of the Data on Western Foreign Fighters in Syria and Iraq: Who Went and Why?', ICCT Research Paper (2021).

²³ Most Europeans returned in two waves: 2013-14, prior to the declaration of the caliphate, and then in early 2015, after which the number of voluntary returns significantly tailed off: Rigotti, C., Barboza, J., 'Unfolding the case of returnees: How the European Union and its member States are addressing the return of foreign fighters and their families', *International Review of the Red Cross* (2021), 103 (916-917), 681–703.

²⁴ Cf the TPIM case of Secretary of State for the Home Department v EB [2016] EWHC 1970 (Admin): an individual travelled to and remained in Syria during February and March 2013 and returned to UK in June 2013. In October 2013 he was assessed to be engaged in UK-focussed attack-planning involving acquisition of a firearm and bomb-making instructions. Tarik Hassane was convicted of attack-planning after his return from Syria: he planned to carry out a UK drive-by shooting.

²⁵ Baroness Williams of Trafford, written answer, UIN HL11135 (22 December 2020). There are some exceptionally dangerous females. This is obviously true: see for example, the case of US citizen Allison

the absence of specific intelligence, broad judgments are inevitably made. It is male not female returners who have carried out attacks in Europe and elsewhere²⁶. The UK's experience is that women are far less likely to carry out attacks or any other sort of terrorist offending –in the 20 years to September 2022 there were 1004 men versus 89 women convicted of terrorism²⁷.

20. Of course, the strategic importance of women within Islamic State should not be understated²⁸. My intention here is raise the point that gender-based assessments could *in the absence of specific intelligence* have operational legitimacy. Consider the four factors discussed: compared to men, women are less likely to have travelled for purpose of fighting; are less likely to have played battlefield role; may well have had less autonomy in being able to leave; and now make up majority of those UK-linked individuals detained.
21. Women with children may also fear child protection measures being taken against them by Western states, mitigating against further terrorist engagement on return²⁹. Our European partners appear to agree: all bar one EU repatriations to date have been of women, and outside Europe even Kazakhstan, which heads the pack, has proven far more likely to bring back women and children than men³⁰.
22. I confess to having no answer to those who say this could be discriminatory or belittles female agency or fails to recognise the important roles played by female terrorists, save to point to the statistics and the steps being taken by our allies.
23. Next, the risk posed by the detained individuals must be judged in the context of the background risk that Islamic State *already* poses as, in its broadest sense, an ideology for UK-based attackers and plotters. It is notable that no successful attack on the UK has come from a returner, despite the 400 or so who travelled out and then returned³¹. Rather, it is frustrated travellers, who never experienced Islamic State in the flesh, who are strongly represented in both attacks and attack planning. The well-known risk of self-initiated attacks is more likely to crystallise in contact from knives and blunt objects, for which weapons training in Syria gives no advantage. Given the palette of risk that Islamic State already presents to police and security forces, the question is how much Islamic State adds as a destination.
24. The above analysis would feel very different if UK-linked returner carried out an attack tomorrow. But the status quo does not eliminate risk: in the early 2000s there was a tradition of external attack-planning by Al Qaida individuals based overseas, who were able to inspire

Fluke-Ekren, leader of the all-female Khatiba Nusaybah battalion, sentenced in the US to twenty years: Criminal Complaint dated 15 May 2019 (Case No.1:19-mj-231); US DoJ press release dated 1.11.22.

²⁶ See those listed in Hoffman, A., Furlan, M.

²⁷ Operation of police powers under the Terrorism Act 2000, quarterly update to September 2022, Table A.09.

²⁸ Ingram, K., 'The militarisation of motherhood: repatriating ISIS's Western Women', Lowy Institute (2022).

²⁹ Psoiu, D., and Renard, T., "Responses to returning foreign terrorist fighters and their families, 2nd Edition, 2022", Radicalisation Awareness Network, report that the reintegration of mothers who have succeeded in returning with small children is heavily dependent upon their fear of losing their children due to child protection measures.

³⁰ Out of 714 returned, only 37 are men: Repatriation Tracker, supra.

³¹ I refer specifically to UK-linked returners. The Parsons Green attacker, Ahmed Hassan, had attended an IS training camp in Syria before he entered the UK and claimed asylum: R v Hassan, Haddon-Cave J, Sentencing Remarks (23.3.18) at para 18.

and coordinate attacks in the UK³². Plotting in detention may be easier than plotting at home³³. If plot came to attack, the option of managed return might in retrospect appear to have been preferable³⁴.

25. The extent to which the risk of repatriating individuals is counter-balanced by the risk of *not* repatriating individuals is unknowable but un-ignorable.
26. UK repatriation would not solve the presence of IS in the region. Were all UK-linked travellers to be brought home tomorrow, thousands and thousands would remain in detention, perhaps amongst them a future Sayyid Qutb³⁵ or Al-Baghdadi³⁶ plotting the next chapter of Islamist violence. So any additional risk arising from a continuing UK presence in the camps might be marginal.
27. But non-repatriation comes with its own UK-specific risks, or perhaps more accurately, if repatriation is going to happen at some point in time, “twere well/ it were done quickly”³⁷. For UK-linked children the less time spent being incubated as Cubs of the Caliphate, an active IS programme³⁸, the better. Allied to this, managed return, with proper preparation, reception committees, police with risk management plans in place, local authorities primed to undertake safeguarding, wider family members engaged, is better than chaotic return.
28. Finally, it is eminently foreseeable from the language that is already being used by NGOs and campaigning organisations, that the non-return of UK-linked individuals may become a source of exploitable grievance amongst those who wish us harm. If the UK stood alone, then “Europe’s Guantanamo” would soon become “Britain’s Guantanamo”. This is a factor that cannot, I think, be discounted, when talking about longer term risk to the UK.
29. I’ve spoken about risk deliberately, because the overwhelming objective of counter-terrorism and terrorism legislation is to bear down on the risk of terrorist violence and associated activity. But it is notable that much of the debate concerning Shamima Begum is about moral fault. Terrorism is a moral and indeed emotional subject, particularly and rightly for those who are its victims. Dialogue is coloured by notions of treachery and betrayal. I don’t suggest these notions are irrelevant in a democracy where decisions must be explained to an anxious and affronted public. But cold-hard risk management is different, and repatriation, if it took place, should not be confused with moral absolutism.

Response to Risk

³² Eliza Manningham-Buller, Director General Security Service (Speech, 9.11.06).

³³ Cf the case of Jawad Akbar (Op. Crevice plotter sentenced to life imprisonment). In August 2022, the Parole Board refused to order his release because it was intended to deport him. Even though post-release supervision and monitoring would be sufficient in the UK, the same could not be said following his removal to Italy.

³⁴ Khan, S., Parsons, I., 'Resolving the Stalemate: Foreign Fighters and Family Members in Syria', RUSI (Dec 2021).

³⁵ The brutal treatment of Islamist founding-father Sayyid Qutb in Egyptian detention is often credited for his inspiration and success as an ideologue.

³⁶ His role in Islamic State is often attributed to his time in as a prisoner of the US in Camp Bucca, Iraq.

³⁷ Macbeth, Act 1, Scene 7.

³⁸ UN Security Council, ‘Sixteenth report of the Secretary-General on the threat posed by ISIL (Da’esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat’ (S/2023/26, 1.2.23).

30. How confident should the UK be in its ability to manage the risk on return? None of what I am going to describe is free. There is some cost and effort associated with any repatriation effort³⁹, and resources will be needed for criminal investigation, monitoring, rehabilitation, and child safeguarding⁴⁰.
31. Bluntly, we should not look to our criminal justice system as a comprehensive risk management tool. It is far easier for countries like France and Germany to be confident that their returners will be incapacitated for a reasonable time in custody with the possibility of moral and physical disengagement before release⁴¹. Other countries can take advantage of wider forms of criminal liability catering for battlefield uncertainty and the grey-zone between alignment with and membership of a proscribed organisation⁴²; use of custody during investigation; prior trials in absentia; different standards of admissibility; and the presence of victims⁴³. The US benefits from the material support offence⁴⁴, experience with cooperating witnesses⁴⁵, and has been willing to conduct voluntary evidential interviews in camps⁴⁶.
32. By contrast, as illustrated by the US prosecution of ‘the Beatles’, the UK has struggled to prosecute its citizens for actions in theatre⁴⁷. Along with the inherent evidential challenges, the UK has different tests for criminal liability, coupled with a vigorous and cherished adversarial system, meaning that prosecutors balk at promising oven-ready prosecutions. The UK struggles (again, rightly) with the legal implications of dealing with non-State actors in the context of detention and criminal justice. If an individual did not want to return from a camp or detention, and strange as it seems such individuals exist⁴⁸, an extradition treaty in the classic state-to-state sense would not be possible and other mechanisms would need to be identified that would resist legal challenge⁴⁹.
33. Set against these prosecutorial difficulties is the UK’s world-leading integration between police and security services, including its use of ‘disruptive’ prosecutions. These do not indict

³⁹ Case of C3 and C4, *supra*, at paras 31-32.

⁴⁰ See for example, Department for Education, ‘Advice for local authorities – safeguarding children returning to the UK from Syria’. Different European countries have different pathways for return: a notable pattern is the automatic separation of children from their parents on return, for observation, and placement with relatives or foster parents, whilst parents are detained for investigation. The involvement of wider family has proven beneficial, as have in camp briefings prior to departure to manage expectations.

⁴¹ Sentences in Germany are often comparatively short, including for war crimes. It has been suggested that prior detention in Syria may serve to mitigate sentences even further.

⁴² E.g. France’s ‘association de malfaiteurs en relation avec une entreprise terroriste’, Article 21-2-1. I have previously observed that UK terrorism legislation does not quite deal with those who provide moral but not necessarily material support: ‘Scanning the Horizon: Technology and Risk’ (22.1.20).

⁴³ Because of its big refugee influxes, there was a greater chance of victims (especially Yazidi victims) being present in Germany: Koller, S., Schiele, A., ‘Holding women accountable: Prosecuting female returnees in Germany’, *CTC Sentinel* December 2021 38.

⁴⁴ 18 USC s 2339A and 2339B.

⁴⁵ See *USA v Musaibli*, United States Court of Appeals, Sixth Circuit. No. 22-1013 (ruling 2 August 2022); *US v Fluke-Ekren*, *supra*. For various reasons, the UK does not have the same tradition of participating witnesses: cf. the observations of Clare Montgomery KC on the difficulties of prosecuting serious fraud in the podcast ‘Double Jeopardy’ (12.12.22).

⁴⁶ As in *US v Jihad Mohammed Ali*, Case No. 19-MJ-03950-TORRES, Criminal Complaint (3.12.19).

⁴⁷ For details of UK prosecutions see *Terrorism Acts in 2020* at 2.25.

⁴⁸ Koser, K., Schumicky-Logan, L., ‘Risks and responses repatriating foreign terrorist fighters and families’, *Lowy Institute* (3.11.22).

⁴⁹ In light of *R v Horseferry Road Magistrates’ Court*, *ex parte Bennett* [1994] 1 AC 42.

conduct in theatre but capture other types of criminal behaviour and can provide a route to conviction and imprisonment and an allied reduction in risk⁵⁰.

34. Prosecution can also fulfil the objective of accountability. It is only human to want to see these individuals punished for their choices. That desire for just desserts may be partially assuaged by the knowledge that detention will have been harsh, but all this is extra-legal⁵¹ rather than a basis for policy. The noble and rational goal of accountability is different and requires renewed attention. UK government policy is directed at locally-administered justice⁵², but this seems a forlorn hope faced with the hurdles of lack of capacity for prosecutions⁵³; the lawfulness of non-State bodies administering justice⁵⁴; fair trial standards; harsh conditions pending trial; use of the death penalty (in Iraq); risk to witnesses; relations with Syria; and lack of options for international tribunals⁵⁵. Other European countries have had notable success in prosecuting war crimes committed in Syria such as pillage, mistreatment of bodies, recruitment of child soldiers, killing prisoners, but only after return⁵⁶.
35. Away from crime the UK operates a well-tested suite of civil powers. Temporary Exclusion Orders (TEOs) cover the practicalities of managed return by requiring the individual to fly back on a particular plane at a particular time; and impose reporting and attendance requirements once back⁵⁷. TPIMs, the successors of control orders, offer highly controlling and intrusive measures that are justifiable in high risk cases, although the potential risk posed by children, against whom TEOs and TPIMs have never been used, and their longer-term integration is a three-pipe problem⁵⁸ at least. Imaginative use of the UK's post-Brexit autonomous sanctions regime⁵⁹ could be considered: designation results in a highly intrusive form of monitoring which is far more restrictive than might be suggested by the idea of financial sanctions⁶⁰.
36. There are also situational risk factors which work in the UK's favour: the limited availability of firearms, and fewer pockets of extreme alienation of the type that can be found in France or Belgium or Denmark. There is some evidence from Europe that returning women may have elevated status within extremist communities, rather like convicted terrorists in prison⁶¹. All countries have their own strengths and weaknesses, but all things considered, the UK is probably no worse off than the rest of Europe.

⁵⁰ See the 4 additional prosecutions referred to in Terrorism Acts in 2020 at 2.25.

⁵¹ Although it could in principle act as mitigation of sentence following conviction.

⁵² Rt Hon Brandon Lewis (Home Office), written answer (UIN 12905, 12 February 2020).

⁵³ The UN has provided training to Iraqi judges: Yuruk, B., 'UN trains Iraqi judges in international criminal law to try Daesh/ ISIS members', Anadolu Agency (6.12.22).

⁵⁴ Mehra, T., Wentworth, M., 'New Kid on the Block: Prosecution of ISIS Fighters by the Autonomous Administration of North and East Syria', ICCT (16.3.21). The Iraqi Federal Supreme Court has declared that a local draft law to establish a criminal tribunal for ISIL crimes in the Kurdistan Region of Iraq was unconstitutional: 'Position Paper on an ISIL accountability mechanism in Iraq', Yazda (August 2022).

⁵⁵ Duffy, L., webinar, supra, Neither Iraq nor Syria party to Rome Statute: 'Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda on the alleged crimes committed by ISIS' (8.4.15). See also, Loft, Pl, Walker, N., 'Atrocities against the Yazidi religious community', House of Commons Library, CDP-0027 (2022) (3.2.22).

⁵⁶ 'Overview of National Jurisprudence', Eurojust Genocide Network Secretariat (January 2023). This approach is known as the 'cumulative prosecution' of FTFs for terrorism-related offences and war crimes.

⁵⁷ An example of a TEO on individuals returning from Syria given in Terrorism Acts in 2018 at 8.45.

Restrictions can last up to 2 years: s4(3)(b) Counter-Terrorism and Security Act 2015.

⁵⁸ Conan Doyle, 'The Red Headed League' (1891).

⁵⁹ Counter Terrorism (Sanctions) (EU Exit) Regulations 2019.

⁶⁰ Hall, J., 'Report of the independent reviewer of terrorism legislation on the operation of the Counter Terrorism (Sanctions) (EU Exit) Regulations 2019' at 4.36.

⁶¹ Hall, J., 'Terrorism in Prisons' (2022) at 2.6 to 2.8.

Repatriation and Nationality

37. I have already mentioned the Temporary Exclusion Order power, created in 2015 at the height of Islamic State travel. It carries striking information about the UK's response in its DNA. The power can only be used against individuals with a right to reside in the UK, in practice British nationals and certain Commonwealth citizens⁶². The implication is that no other former resident, including those who were previously British but have now been deprived, would ever be allowed to return and therefore there was no need for this type of risk management measure for them.
38. Official statistics show that 104 dual nationals were deprived of their citizenship in 2017⁶³. There is no official breakdown, but it is a reasonable inference that many of these deprivations related to Islamic State. At that time, there was a legitimate fear that the UK's counter-terrorism system could be overwhelmed by returners and the figures reflect this. The UK was not alone in using or seeking to use deprivation. Other states scrambled to put equivalent measures on their statute books⁶⁴ but for a combination of reasons did not deploy it to the same extent.
39. But in hindsight it may be that deprivation, particularly at this scale used by the UK, will turn out to have had unintended consequences and will complicate the winding down of the UK-linked presence in Syrian detention.
40. **Firstly**, deprivation impinges on the fate of children who were brought over by their families. These victims of poor parental choice are detained in dire conditions⁶⁵, surrounded by violence⁶⁶, and (in the case of boys) face removal to adult detention on reaching adolescence⁶⁷. Although no children have been deprived of citizenship, many of their mothers have. Since the UK's position (and that of the SDF detaining authorities, who have ultimate authority over detention and release) is that a child should not be forcibly separated from its mother⁶⁸, either the UK must bite the bullet and repatriate the deprived mother as well or rely upon a mother agreeing to separate from her child.

⁶² See Terrorism Acts in 2018 at para 8.61.

⁶³ HM Government, Transparency Report 2018: Disruptive and Investigatory Powers (Cm.9609, July 2018) at section 5.9.

⁶⁴ Other countries created deprivation laws in response to Islamic State. Australia revoked the citizenship of 12 dual nationals between 2015 and 2019: Webber, D., 'Human Rights Law and Counter Terrorism Strategies', Routledge (2022); until the Australian Citizenship Amendment (Allegiance to Australia) Act 2015 was held to be unconstitutional in *Alexander v Minister for Home Affairs* [2022] HCA 19. According to Webber, other countries which implemented deprivation powers included Belgium (31), Denmark (1), Germany (0), Israel (19), Italy (0), and the Netherlands (23).

⁶⁵ BOLOH 1(A), *supra*, at para 13; see further, Ni Aolain, F., 'Position of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria' (UN, May 2021).

⁶⁶ Lead Inspector General Report to the US Congress (1.10.22 to 31.12.22), *supra*.

⁶⁷ Daily Telegraph, 'British boys held in Syrian camp face being sent to adult prison' (13.2.23).

⁶⁸ See C3 and C4, *supra*, at para 24 for expression of this policy; and also FCDO, "Statement by Ambassador Jonathan Allen at the Security Council briefing on international threats to peace and security caused by terrorist acts - Addressing the Global Threat of Daesh" (10.2.21).

41. Other countries take the view that children must be repatriated irrespective of the citizenship of the mother⁶⁹. The government has already accepted the exceptions may need to be made, but we are, perhaps, no longer in the territory of exceptions.
42. **Secondly**, repatriation of UK-linked individuals would require major nettle-grasping. At the very least it would require the grant of entry clearance to individuals with no right to enter and, I suggest, an amendment to the Temporary Exclusion Order power so that it was available to anyone who entered the UK. I do not underestimate how difficult this would be for Ministers and, absent a well-communicated and clear justification, for the public. No doubt this solution would be supported by the UK's allies.
43. **Thirdly**, the minimal option of repatriating UK nationals (of whom only a handful remain) begs uncomfortable questions for the wider deprivation policy. The position of the government to date has been that deprivation never exposed an individual to serious harm or death because a UK-linked individual who has been deprived of their British nationality was likely to receive broadly the same treatment (for better or worse) as an individual who retains British nationality⁷⁰. This has held true to date: the UK has focussed its repatriation efforts on a limited number of orphans and unaccompanied children⁷¹.
44. But if some UK adults were now repatriated, that position could fray. Is this one of the long-tail consequences of deprivation: that all deprived individuals should be blocked, whether their risk is manageable or not, less the most dangerous should also clamour for return? Would repatriation now, despite the passage of time, call into question the original judgments that were made about the consequences of deprivation and exposure to ill-treatment? Should deprivation be considered a permanent solution or would it have been better, to copy but not coin a phrase, to have engaged in merely temporary exclusion?

Conclusions

45. There was a sense, when the Islamic State phenomenon was at its height, that domestic counter-terrorism legislation and resources might be insufficient to manage the risk from returners, and the baton of risk management accordingly passed from counter-terrorism policing using Terrorism Act powers, to immigration powers, in particular deprivation.
46. I hope I have illustrated that the debate on the legacy of strategic distance is ill-served by polarised views. Others will have different views, but for me the key points that emerge from this survey are as follows:
 - The numbers are now very different from what they once were, and the number of detained Europeans ought to be capable of being parcelled out amongst the countries from which they set out.
 - Prosecution is never going to be the UK's primary risk management tool for individuals returning from Syria, but it hard to say that overall the UK is in a worse position in managing terrorist risk than other European nations.
 - There are reasons to distinguish the general position of detained women from that of men, particularly given the fate of their detained children where time is of the essence.

⁶⁹ For example, Germany: Koller, S., webinar, supra.

⁷⁰ R (on the application of Begum) v Secretary of State for the Home Department [2021] UKSC 7 at paras 23-4.

⁷¹ Whilst refusing to repatriate British women with children as in the Case of C3 and C4, supra.

- If repatriation is to be happen, it will be necessary to work through the immigration consequences of deprivation, putting the burden back on the domestic counter-terrorism legislation, with possible amendments to the Temporary Exclusion Order regime.
47. Like most observers⁷², I have said very little about the position of men, a category which will include some brought over by their parents as children but who are now adults. Even if the UK sped up repatriation of women and children in line with other Western nations and committed to the eventual emptying out of men from camps and prisons, few could blame Ministers for invoking the famous prayer of St Augustine: in due course, but not yet. At least returning women and children now would open up space to consider options for the few detained men who remain such as proactive investigation to determine whether terrorist or disruptive prosecution is really impossible; and planning for the use of Temporary Exclusion Orders and, in appropriate cases, TPIMs.

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⁷² Aoláin, F., Charbord, A., 'Repatriating Alleged ISIS-Linked Men from Northeast Syria: The Start of Judicial Responses to the Political Stalemate', Just Security (16.2.23).