

Global framework against the 'terrorist diaspora': collateral effects for individuals and States

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Background

- Terrorist attacks in Brussels and Paris: growing threat of foreign terrorist fighters
- Resolution 2178 (2014), first definition of “foreign terrorist fighter”.
- Resolution 2178: obligations on individuals and States.
- Among the different measures taken at the national level:
 - Revocation of citizenship
 - Criminal law responses



Revocation of citizenship

- Beccaria: “death in respect to the body politic”.
- Past few years, many States have passed laws against foreign fighters, including deprivation of citizenship (e.g. Bahrain, Australia, Netherlands, Belgium).
- Concerns: discrimination as to ethnic origin.

- A product of Resolution 2178?

Many States adopted this measure before 2014.

-Not in the wording of this instrument. By contrast: “nothing among the obligations imposed by the Resolution “shall oblige any State to deny entry or require the departure from its territories of its own nationals or permanent residents”.





Revocation of citizenship

1. Impact on the individual

- Human rights to nationality (art. 15 UDHR, art. 8 Statelessness Convention, SC).
 - Exception: “inconsistently with his duty of loyalty to the Contracting State, the person has conducted himself in a manner seriously prejudicial to the vital interests of the State”.
- Link between Loyalty and nationality. International Court of Justice: “legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties”.
- Revocation of nationality, matter of domestic jurisdiction with LIMITS:
 - “except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body” (SC).
 - “that no one shall be **arbitrary** deprived of his or her nationality” (UDHR).





Revocation of citizenship

1. Impact on the individual

- ECtHR: case-law in relation to the right to a private and family life:
 - *K2 v. the UK* (2017). Revocation because of terrorism-related activities. Not arbitrary:
 1. Existing British law.
 2. Procedural guarantees respected.
 3. Not statelessness.
 4. Family no longer living in UK.
 5. Fight against terrorism: legitimate aim.
- Consequence: loss of protection of some of the human rights recognised by that State (political rights and freedom of movement).





Revocation of citizenship

2. Impact on the State

- Apart from the individual impact, revocation of citizenship can also have a negative impact on international relations.
- Obligations between the State of origin and the State of destination:
 - The State which admits into its territory a national from a foreign State is entitled to **deport** him or her, under certain circumstances, to his or her State of nationality.
 - The State of nationality is obliged to **accept the return** of its own nationals. This is consequence of the right that every person has to enter and leave their State of nationality.



Revocation of citizenship

2. Impact on the State

- If the citizenship of a suspected terrorist fighter is **revoked while abroad**, then the State's obligation to accept him is completely **circumvented**:
 - “the good faith of a State which has admitted an alien on the assumption that the State of his nationality is under an obligation to receive him back would be deceived if by subsequent denationalisation this duty were to be extinguished”.
 - “Race between states as to who denationalizes first, creating friction in international relations”.
- Security risk for the international community: “it is appropriate or even lawful **to ‘export’ terrorism risks to other countries**, especially as they probably have less information and capability to deal with the risk?”.
- In addition, breach of the obligation to prosecute terrorist of your nationality.



Criminal law responses

- Paragraph 6 UNSC Resolution 2178, obligation to criminalise: travelling abroad for the purpose of terrorism and its facilitation; providing or receiving terrorist training; provision or collection of funds to finance these travels.
- Council of Europe: Riga Protocol (2015); criminalisation of similar conducts.
- European Union: Directive on combating terrorism (2017).
- National law: implementation depending on the region.



Criminal law responses

1. Impact on the individual

- Criminal convictions of foreign terrorist fighters.
- Human rights protection in Resolution 2178, Riga Protocol and EU Directive on combating terrorism.
- However, several concerns:
 - Anticipated criminalization, both the conduct and all its preparatory acts. Conducts of law-abiding people for legitimate reasons.
 - Presumption of innocence.
 - Justification for oppressive regimes.



Criminal law responses

2. Impact on the State

- Criminal law: sovereignty of the State, monopoly of the use of violence.
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- Growing importance of the international arena:
 - International crimes and tribunals.
 - Multilateral conventions against transnational crimes (such as terrorism).
- Role of the UNSC: universal legislator? Development of new obligations for both individuals and States in a widespread way.





Conclusion

1. Citizenship's revocation and preventive criminal law: potential to disturb the rights and obligations of the individuals, as well as the delicate balance of international relations between States.
2. Revocation of citizenship: not justified by recent supranational instruments. Violation of human rights and obligations towards the State of destination, as well as an exportation of security risks.
3. Preventive criminal law. Justified by recent supranational instruments. Risk of violation of procedural rights, as well as a diminishment of State's sovereignty in the area of criminal law.
4. Raison d'être of these responses against foreign terrorist fighters are radically incompatible: how can States revoke citizenship on grounds of terrorism and, at the same time, respect international obligations to prevent and prosecute terrorism?





**Thank you very much for your
attention**

