

To School or to Syria? The foreign fighter phenomenon from a children's rights perspective

Rozemarijn van Spaendonck*

1. Introduction

Since the 2011 'Arabian Spring', a growing number of citizens from Western European countries have left their homes to join the fighting parties in Syria and Iraq or to settle in the caliphate proclaimed by Islamic State (ISIS).¹ The departure of European citizens to Syria and Iraq has been regarded as detrimental for several reasons. Firstly, the presence of foreign fighters strengthens jihadist militias such as Jabat al-Nusra or ISIS. These militias aim to attack the West and are condemned by the EU and UN for violating human rights and committing war crimes.² Secondly, returnees are considered to be a security threat to their home state.³ During their stay with these militias, fighters might develop the necessary attitudes and skills to commit a terrorist attack in Europe.⁴ The attacks in Brussels and Paris in 2014-2016 illustrate that this threat is not imaginary.

For these reasons, the Western European states have sought remedies to prevent people from leaving their territories for Syria or Iraq. This undertaking is complicated by the fact that most travellers are relatively young.⁵ There are several reports of underage fighters like Younes from Belgium, Achraf from the Netherlands and Jaffar from the UK, who were 13, 16 and 16 years old respectively when they travelled to Syria.⁶ In France, Germany and the UK 'schoolgirl jihadis' or 'jihadi brides' are a cause for concern.⁷ These young women travel to Syria or Iraq to marry a jihad fighter and to bear children. Another category of young travellers are children who are taken by their parents to Syria or Iraq.⁸

* Rozemarijn van Spaendonck (r.w.vanspaendonck@uu.nl) is a PhD candidate at the Willem Pompe Institute for Criminal Law and Criminology, Utrecht University (the Netherlands). The author conducted this research as a student of the Legal Research Master's Programme, Utrecht University School of Law. Special thanks are extended to Prof. Ido Weijers for his support.

1 P.R. Neumann, 'Foreign fighter total in Syria/Iraq now exceeds 20,000; surpasses Afghanistan conflict in the 1980s', 26 January 2015, <www.icsr.info/> (last accessed: 1 April 2016).

2 UN Doc. S/RES/2170 (2014). Council conclusions of 16 March 2015 on the EU Regional Strategy for Syria and Iraq as well as the ISIL/Da'esh threat (7267/15).

3 In this contribution, the term 'home state' is used to indicate the Western state from which people leave to Syria and Iraq. The use of the term 'foreign fighter' is avoided in this text, because it holds the presumption that all those who travel intend to fight. The more neutral term 'travel' is therefore preferred here.

4 E. Bakker et al., 'Returning Jihadist Foreign Fighters. Challenges Pertaining to Threat Assessment and Governance of this Pan-European Problem', (2014) 25 *Security and Human Rights*, no. 4, <http://doi.org/10.1163/18750230-02501002>, pp. 11-32. D. Byman, 'The Homecomings: What Happens When Arab Foreign Fighters in Iraq and Syria Return?', (2015) 38 *Studies in Conflict and Terrorism*, no. 8, <http://doi.org/10.1080/1057610X.2015.1031556>, pp. 581-602. T. Hegghammer & P. Nesser, 'Assessing the Islamic State's Commitment to Attacking the West', (2015) 9 *Perspectives on Terrorism*, no. 4, pp. 20-21.

5 D. Weggemans et al., 'Who Are They and Why Do They Go? The Radicalisation and Preparatory Processes of Dutch Jihadist Foreign Fighters', (2014) 8 *Perspectives on Terrorism*, no. 4, pp. 100-110.

6 L. Vervaeke, 'Belgische terreurcel krijgt gezicht', *de Volkskrant*, 23 January 2015. J. Groen, 'Farid is zijn zoon definitief kwijt', *de Volkskrant*, 20 January 2015. S. Malik, 'The toll of extremism: 50 Britons killed fighting for Syria and Iraq militants', *The Guardian*, 30 July 2015.

7 E. Bakken & S. de Leede, 'European Female Jihadists in Syria: Exploring an Under-researched Topic', *ICCT Background Note* April 2015. See also H. Sherwood et al., 'Schoolgirl jihadis: the female Islamists leaving home to join Isis fighters', *The Guardian*, 29 September 2015.

8 A separate issue is children who are born in areas controlled by jihadist militias. This is beyond the scope of this paper.

Irrespective of whether a minor has left voluntarily or has been taken by family members, the home state has a special responsibility to guarantee his or her safety and well-being following the UN Convention on the Rights of the Child (CRC). According to Article 3 CRC, the best interests of the child should be the primary consideration in all actions concerning children. Under the threat of terrorism, however, fundamental rights – including children’s rights – are more easily transgressed.⁹ Compared to adults, children are more vulnerable to undue state intervention because the state has multiple instruments (i.e., child protection measures) to intervene in their lives.

This research explores to what extent the best interests of the child are taken into account at the international, national and local level when preventing minors from travelling to Syria and Iraq. Are measures specifically designed for and directed towards minors? And if not, to what extent is the special position of minors considered while taking more general measures? In light of this analysis, recommendations are provided to enhance the approach towards foreign fighters and radicalization.

As the research question indicates, this contribution examines the existing approach at three levels (international, national and local) to shed light on the interaction between these levels. To illustrate measures taken at the national level, the Netherlands was chosen because the Dutch have taken an active international role in fighting the foreign fighter phenomenon. It is, for instance, one of the leading countries in the Global Counterterrorism Forum when it comes to foreign fighters.¹⁰

The choice for the Netherlands was decisive for the selections at the international and local level. At the international level, the United Nations (UN), the Council of Europe (CoE) and the European Union (EU) were selected because the Netherlands is one of their Member States. These organizations have developed both soft and hard law instruments in response to the foreign fighter phenomenon. At the local level, the municipality of The Hague was chosen because it is confronted with a relatively large number of people who have travelled to Syria and Iraq. Also, the Hague Police received a Dutch award as an acknowledgement for their contribution to law enforcement and their approach towards radicalization and terrorism.¹¹

The article is structured in the following way. In Section 2, the children’s rights perspective will be clarified and the definition of the best interests of the child will be operationalized. Then, the approach at the international level will be discussed in Section 3. The national and local level will be addressed in Sections 4 and 5 respectively. These three levels will be compared and analysed in Section 6. In Section 7, the conclusions of this research are presented.

2. A children’s rights perspective

The current attempts by states to prevent children from travelling to Syria and Iraq can be placed in a longer tradition of humanitarian law. The Fourth Geneva Convention of 1949 and the Protocols of 1977 have already provided for the protection of children up to the age of 15 against war and armed conflicts.¹² This protection was further enhanced when the CRC came into force in 1989.¹³ Article 38 CRC stipulates that States Parties should do everything in their power to protect and care for children affected by war, and to guarantee that children under the age of 15 do not take part in hostilities. The Optional Protocol on the involvement of children in armed conflict elaborated on this right.¹⁴ It raised the age for participation in an armed conflict to 18. Furthermore, it obliged States Parties to take all feasible measures to prevent non-state actors, like militias, from recruiting children under the age of 18 or using them in hostilities.

9 See e.g., M. Ranstorp & P. Wilkinson (eds.), *Terrorism and Human Rights* (2003).

10 The Global Counterterrorism Forum is an international platform for national counterterrorism officials and practitioners. The Netherlands co-chairs the ‘Foreign Terrorist Fighters Working Group’. See <www.thegctf.org> (last accessed: 1 April 2016).

11 <www.gonsalvesprijs.nl/> (last accessed: 1 April 2016).

12 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1977 Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977 Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, available at <www.icrc.org/> (last accessed: 1 April 2016). See e.g., N.J. Udombana, ‘War is not child’s play! International law and the prohibition of children’s involvement in armed conflicts’, (2006) 20 *Temple International and Comparative Law Journal*, pp. 73-74, 79-81.

13 1989 Convention on the Rights of the Child, UN Doc. A/RES/44/25.

14 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Minors in Armed Conflicts, UN Doc. A/RES/54/263.

Taking responsibility in accordance with these treaties is complicated for states considering that minors travel approximately 3,000 kilometres from their European homes and join militias which condemn the Western world in which these minors grew up. The situation is even more complex for countries that undertake military actions against these groups. The UN Analytical Support and Sanctions Monitoring Team remarks about the use of underage fighters by ISIS: 'This will create complex challenges for Member States when it comes to countering fighters while giving primary consideration to the best interests of the child.'¹⁵

Despite these difficulties, various measures have been proposed and taken at the international, national and local level to prevent children from leaving their home state to travel to Syria and Iraq. Following Article 3 CRC, these measures must be designed and executed in accordance with the best interests of the child. Before examining these interests, it is worthwhile to define what is understood by a 'child'.

According to Article 1 CRC, 'a child is every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier'. The underlying principle is that a child is in need of protection and care due to his or her physical and mental immaturity.¹⁶ As the child develops, immaturity will be less of a justification for special treatment.

As the short description of the development of humanitarian law has already illustrated, some arbitrariness is inherent in the demarcation of age boundaries. Nonetheless the demarcation is particularly relevant as many travellers are in the grey area between childhood and adulthood.¹⁷ Why should a 17-year-old traveller be the subject of more protection than an 18-year-old? Research suggests that higher impulsivity, risk-taking behaviour and the search for identity and recognition play a major role in radicalization.¹⁸ The development of these faculties, however, is not complete upon the eighteenth birthday of the child.¹⁹ This prompts the question whether lawmakers should make a distinction between minor and – young – adult travellers at all. Nonetheless, this distinction is relevant in the current legal framework and is therefore assumed to exist in this article.

With this in mind, the discussion will now turn to the 'best interests' of the child. On this 'leading principle' of the CRC, the Committee on the Rights of the Child has adopted General Comment No. 14.²⁰ According to this Comment, several elements should be taken into account for the assessment and determination of the best interests. This contribution focuses on 'the child's views', 'the child's identity', 'the preservation of the family environment and maintaining of relations' and 'care, protection and safety of the child' because these seem to be particularly relevant in the context of the foreign fighter phenomenon.

With regard to the child's views, Article 12 CRC provides that children have a right to express their views in every decision that affects them, and that their views are given due weight according to the age and maturity of the child.²¹ While taking measures to prevent children from travelling to Syria and Iraq, the views of the child should be taken into consideration. From a procedural perspective, this means that a venue must be created for the child to express his or her views on the measures proposed or taken.

As to the child's identity, Article 8(1) CRC obliges States Parties to respect the right of the child to preserve his or her identity, which includes his or her religious and cultural identity. Furthermore, Article 14 CRC protects the child's freedom of thought, conscience and religion. More specifically, Article 20(3) CRC stipulates that when a child is separated from his or her parents and is placed under state protection, due regard must be had to the child's ethnic, religious and cultural background. As children travelling to Syria

15 Analysis and Recommendations with regard to the global threat from foreign fighters, UN Doc. S/2015/358 (2014), p. 12.

16 See note 13, supra, ninth consideration of the preamble. See also S. Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (1999), pp. 51-57.

17 See note 5, supra.

18 A. Silke, 'Holy warriors exploring the psychological processes of Jihadi radicalization', (2008) 5 *European Journal of Criminology*, no. 1, <http://doi.org/10.1177/1477370807084226>, pp. 99-123. B. Doosje et al., 'Determinants of Radicalization of Islamic Youth in the Netherlands: Personal Uncertainty, Perceived Injustice, and Perceived Group Threat', (2013) 69 *Journal of Social Issues*, no. 3, <http://doi.org/10.1111/josi.12030>, pp. 586-604.

19 L. Spear, 'The adolescent brain and age-related behavioral manifestations', (2000) 24 *Neuroscience & Biobehavioral Reviews*, no. 6, [http://doi.org/10.1016/S0149-7634\(00\)00014-2](http://doi.org/10.1016/S0149-7634(00)00014-2), pp. 417-463. B. Casey et al., 'The Adolescent Brain', (2008) 1124 *Annals New York Academy of Sciences*, <http://doi.org/10.1196/annals.1440.010>, pp. 111-126.

20 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1), UN Doc. CRC/C/GC14 (2013).

21 See also General comment No. 12 on the right of the child to be heard, UN Doc. CRC/C/GC/12 (2009).

or Iraq are usually of the Islamic faith, this should be taken into account by the state when measures are imposed on this group.

With respect to the preservation of the family environment and the maintaining of relations, Article 15 CRC states that children cannot be subjected to arbitrary unlawful interference with their privacy or family. Besides, Article 9 CRC specifies that children cannot be separated from their parents against their will, except when competent authorities determine that this is in the child's best interests. Although preserving the family unity is regarded as an important aspect, this is challenging when parents hold extremist views which are hostile to Western values or even plan to travel to Syria and Iraq themselves. Research shows, however, that most parents do not support their children in their desire to join the fighting parties.²²

The final element that should be taken into account is the care, protection and safety of the child. The CRC Committee considers this to be a 'comprehensive ideal of ensuring the child's "well-being" and development', both at present and in the future.²³ Guaranteeing the care, protection and safety of the child provides an important argument to prevent minors from travelling to Syria and Iraq. The UN and Human Rights Watch, for instance, have reported that children are killed or injured by fighting parties, are recruited and used in combat and have no access to education, healthcare or humanitarian aid.²⁴ Alternatively, the home state must ensure that the measures which are taken to prevent children from leaving, provide sufficient care, protection and safety for the child.

The weight of these and other elements in the overall assessment of the best interests varies from case to case. Whereas decision-makers in individual cases should consider the specific situation of the child, the legislator should include the circumstances of children in a particular group or in general in its collective decisions.²⁵ Moreover, the best interests of the child must be weighed against other interests, such as national and international security.²⁶

3. An international perspective on preventing departures to Syria and Iraq: the United Nations, the Council of Europe and the European Union

Preventing individuals from travelling to Syria and Iraq has an inherently international dimension: it affects not only the home state, but also transit states and the state of destination. It is therefore not surprising that considerable efforts at the international level have been put into addressing this issue. For practical reasons, the discussion of these efforts has been limited in this contribution to the UN, the CoE and the EU. In Section 3.1, a general overview is provided of the measures taken by these organizations in response to the foreign fighter phenomenon. In Section 3.2, attention is paid to the measures pertaining to the prevention of radicalization.

3.1. Responding to the foreign fighter phenomenon

The UN, CoE and EU have dealt primarily with the foreign fighter phenomenon in the context of the fight against terrorism. To address the foreign fighter phenomenon, the legal and organizational infrastructure created after the attacks of 9/11 has been expanded. Although it is fascinating how many organs, bodies, agencies or committees within these international organizations are involved in developing and executing a counter-terrorism strategy, it is beyond the scope of the paper to address them all. The discussion is, therefore, limited to the legal instruments of the principal organs or bodies of the UN, CoE and EU that have

22 M. van San, 'Onze kinderen zijn geen terroristen. Families van Belgische en Nederlandse Syriëgangers over het vertrek van hun geliefden', (2015) 57 *Tijdschrift voor Criminologie*, no. 3, <http://doi.org/10.5553/TvC/0165182X2015057003002>, pp. 300-314.

23 General comment No. 14, *supra* note 20, para. 71.

24 Report of the Secretary General on minors and armed conflict in the Syrian Arab Republic (27 January 2014), UN Doc. S/2014/31. Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria (19 November 2014), UN Doc. A/HRC/27/CRP.3. Human Rights Watch, "'Maybe We Live and Maybe We Die': Recruitment and Use of Minors by Armed Groups in Syria' (June 2014), <www.hrw.org/> (last accessed: 1 April 2016).

25 See General Comment No. 14, *supra* note 20, paras. 32, 80-84.

26 *Ibid.*, paras. 36-40.

responded to the foreign fighter phenomenon.²⁷ First, the measures of the UN, CoE and EU will be described in that order. Then, some observations will be made from a children's rights perspective.

3.1.1. The United Nations

At the UN, both the General Assembly and the Security Council addressed the foreign fighter phenomenon for the first time in the context of existing counter-terrorism measures. During the review of the 'Global Counter-Terrorism Strategy' in June 2014, the General Assembly expressed its concerns regarding the rising number of foreign terrorist fighters and encouraged Member States 'to address this threat by enhancing their cooperation and developing relevant measures to prevent and tackle this problem'.²⁸

Shortly after the General Assembly, the Security Council explicitly responded, for the first time, to the rapid increase in foreign fighters in the Middle East in a resolution on threats to international peace and security caused by terrorist acts by Al-Qaida. The Security Council urged Member States to take all necessary measures to suppress the flow of foreign fighters, to bring foreign fighters to justice and to prevent the movement of terrorists and terrorist groups, by enhancing border controls, information exchange and cooperation among states. Finally, it encouraged Member States 'to engage with those within their territories at risk of recruitment and violent radicalisation to discourage travel to Syria and Iraq'.²⁹

The Security Council elaborated on these elements in Resolution 2178, which was completely dedicated to the foreign fighter phenomenon.³⁰ An important aspect of the Resolution was the call by the Security Council to Member States to criminalize 1) individuals, both nationals/residents and those leaving from their territories, who travel or attempt to travel to a state other than their states of residence or nationality, for the purpose of preparing, planning or committing terrorist acts or providing or receiving terrorist training, or 2) nationals or organizations in their territories who wilfully finance or facilitate these kinds of travels.³¹

3.1.2. The Council of Europe

Moving to the European level, the CoE also re-examined its existing counter-terrorism framework in response to the foreign fighter phenomenon. In particular, Resolution 2178 of the UN Security Council was translated by the CoE into an Additional Protocol to the Convention on the Prevention of Terrorism in 2015.³² In line with Resolution 2178, Article 4 of the Additional Protocol states that signatories must criminalize individuals who travel to a state to commit, contribute to or participate in a terrorist offence. Articles 5 and 6 address the funding, organization or otherwise the facilitation of travelling for terrorist purposes.³³

Furthermore, the Committee of Ministers presented an Action Plan to fight violent extremism and radicalization leading to terrorism. This action plan had two objectives: 1) to reinforce the international legal framework and 2) to prevent and fight violent radicalization.³⁴

3.1.3. The European Union

Not only the CoE, but also the EU adjusted its counter-terrorism strategy to respond to the foreign fighter phenomenon. In 2006, the European Council adopted its own counter-terrorism strategy based on four

27 The difficulty of discussing all entities involved in countering terrorism is illustrated by the organigram published by the Peace and Security Section of the UN Department of Public Information. This organigram lists no less than 43 '[m]ain actors of the UN System in Counter-Terrorism Efforts' (emphasis added). See <http://www.un.org/en/terrorism/ctitf/pdfs/CT_organigram_2013_English.pdf> (last accessed: 1 April 2016).

28 UN.Doc. A/RES/68/276(2014), para. 31. The Global Counter-Terrorism Strategy is adopted by the General Assembly in 2006. It contains the UN's strategic approach towards terrorism.

29 UN.Doc. S/RES/2170(2014), para. 8.

30 UN.Doc. S/RES/2178 (2014). For the first evaluation, see the annex to UN.Doc. S/RES/2015/338.

31 Ibid., para. 6. See C.C. Murphy, 'Transnational Counter-terrorism law: Law, Power and Legitimacy in the 'Wars on Terror'', (2015) 6 *Transnational Legal Theory*, no. 1, <http://doi.org/10.1080/20414005.2015.1042229>, pp. 31-54.

32 Explanatory Report to the Additional Protocol on the Convention on the Prevention of Terrorism, CM(2015) 61 addfinal.

33 CETS No. 217.

34 CM(2015) 74 addfinal.

pillars: prevent, protect, pursue and respond.³⁵ Although the foreign fighter phenomenon has been on the EU's agenda since 2013, it gained momentum after the Charlie Hebdo attack in January 2015. The members of the European Council formulated three specific areas of action: 1) ensuring the security of citizens, 2) preventing radicalisation and safeguarding values and 3) cooperating with international partners.³⁶

In the aftermath of the Paris attacks in November 2015 and the Brussels attacks in March 2016, the justice and home affairs ministers met to further strengthen the EU response to terrorism. On both occasions, they presented conclusions on enhancing the criminal justice response to radicalisation leading to terrorism.³⁷ In this regard, it is interesting to note that the EU signed the CoE Convention and Additional Protocol in October 2015.³⁸ Shortly afterwards, the European Commission has started proceedings to update the existing Framework Decisions on terrorism. In the proposed Directive, travels to other states for terrorist purposes, or attempts to do so, or to finance or facilitate these activities will be criminalized in accordance to the CoE Additional Protocol.³⁹

3.1.4. Conclusion

Based on the description of the measures taken by the UN, CoE and EU, several observations can be made about the response to the foreign fighter phenomenon. Firstly, the fight against terrorism is the point of departure for addressing the issue of foreign fighters. This type of framing excludes individuals who travel to Syria and Iraq for purposes other than joining in combat. This affects women and children in particular because these groups are more likely to settle in these areas without resorting to violence. There is no special international policy for these groups.

Secondly, it is rarely explicitly acknowledged that the issue of foreign fighters concerns relatively young people and that children's rights, therefore, might be at stake. The UN Security Council only refers to international legal obligations, like human rights, refugee law and humanitarian law, and the rule of law, but not specifically to children's rights. In contrast to the UN, the CoE has explicitly referred to children's rights in the Explanatory Report to the Additional Protocol to the Convention on the Prevention of Terrorism. Article 8 of the Additional Protocol states that signatories must ensure that the implementation of the Protocol is in accordance with human rights obligations. Interestingly, the Explanatory Report clarifies that in this respect, the CRC 'may be of particular relevance due to the young age of some persons travelling with terrorist purpose.'⁴⁰ With regard to the EU, the European Commission has mentioned the right of the child as one of the fundamental rights that should be considered in the fight against terrorism.⁴¹ No specific reference is made by EU organizations to the rights of children who travel to join in combat.

Thirdly, the description shows that international organizations suggest similar types of measures, such as the measures to criminalize travels for terrorist purposes and to prevent radicalization. Only with regard to the measures aiming at preventing radicalization are measures specifically directed at children and/or young adults. In the next section, these measures are discussed more extensively.

3.2. Preventing radicalization

Although the references to children's rights are limited, the UN, CoE and EU do pay attention to children and the youth in the context of preventing radicalization. Similar to the outline of the previous section, the measures will first be described for each organization. Then, some remarks are made in light of the best interests of the child.

35 The EU Counter-Terrorism Strategy, Doc. 14469/4/05. For a discussion of the EU measures, see also B. van Ginkel & E. Entenmann (eds.), *The Foreign Fighters Phenomenon in the European Union* (ICCT Research Paper), April 2016, <http://doi.org/10.19165/2016.1.02>.

36 Riga Joint Statement by the members of European Council, 12 February 2015, <https://eu2015.lv/images/Kalendars/leM/2015_01_29_jointstatement_JHA.pdf> (last accessed: 1 April 2016).

37 Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism, 845/15, 20/11/2015, <<http://www.consilium.europa.eu/en/press/press-releases/2015/11/20-conclusions-radicalisation/>> (last accessed: 1 April 2016).

38 Note of 28 April 2014 on the European Agenda on Security, COM(2015) 185 final, p. 14.

39 COM(2015) 625 final.

40 CM(2015) 61 addfinal, para. 75.

41 COM(2015) 625 final, p. 12. Reference is made to Article 24 of the EU Charter of Fundamental Rights.

3.2.1. The United Nations

At the UN level, the Security Council explicitly recognized in Resolution 2178 the position of children when it called upon Member States 'to cooperate to address the threat posed by foreign fighters, including by preventing the radicalization to terrorism and recruitment of foreign terrorist fighters, *including children*' (emphasis added). Regarding the prevention of radicalization, it attributed an important role to local communities and non-governmental actors to develop a counter-narrative against violent extremism and to address the conditions conducive to terrorism 'by empowering youth, families, women and religious, cultural and education leaders'. Finally, it underscored the importance of education to counter terrorist narratives.

3.2.2. The Council of Europe

Similar elements can be recognized at the European level, but they are further elaborated upon. In the CoE's Action Plan to fight violent extremism and radicalization leading to terrorism, concrete measures in the public sector, in particular in schools, are introduced.⁴² According to the CoE, '[f]ormal and informal education, youth activities and training of key actors (including in the media, political fields and social sectors) have a crucial role in this respect'.⁴³ One example of a measure aimed at schools is a project to describe the main competences that citizens need to function in a democratic society and to participate in an intercultural dialogue. These competences will be used as a framework for Member States to incorporate these concepts in their own education system.

Another measure of the CoE's Action Plan aims at combating hate speech on the Internet by continuing the 'No Hate Speech Campaign'. By strengthening human rights education, youth participation and media literacy, this campaign strives to counter all online hate speech, varying from cyber-bullying to discrimination. The CoE also stimulates the development of a counter-narrative against the misuse of religion. A platform is for instance offered to religious leaders, academics and victims, but also community leaders and students are invited to speak up about the misuse of religion.

3.2.3. The European Union

Similar to the UN and the CoE, the EU emphasizes the importance of preventing and countering radicalization leading to terrorism and violent extremism. In June 2014, the European Council revised the EU Strategy for Combating Radicalisation and Recruitment to Terrorism in reaction to the emergence of terrorists acting alone, foreign fighters and the disrupting potential of the Internet and social media.⁴⁴ In the aftermath of the attack on Charlie Hebdo, several elements of the Strategy were highlighted by the European Council.⁴⁵

One of those elements is that measures are taken to detect and remove Internet content that promotes terrorism and violent extremism. Related to this, communication strategies are developed to counter violent extremism primarily on the Internet and in social media. From a children's rights perspective, it is interesting to note that the European Commission has expressed its concern about the influence of violent extremism on the youth. According to the Commission, this group is more susceptible to extremist messages, but supervision of their activities on the Internet and in social media by, for instance, parents or teachers is lacking. Therefore, the Commission encouraged initiatives that stimulate critical thinking, both on the Internet and in the youth's daily lives.⁴⁶ Another element of the Strategy that was underlined by the European Council is that projects that promote tolerance, non-discrimination, fundamental freedoms and intercultural dialogue and that give a voice to victims of terrorism are stimulated.⁴⁷ Finally, funding has

42 CM(2015) 74 addfinal.

43 Ibid.

44 Doc. 9936/14.

45 Report on implementation of measures (Doc. 9422/1/15); Follow-up to the statement of the Members of the European Council of 12 February 2015 on counter-terrorism: State of play on implementation of measures (Doc. 12318/15).

46 COM(2013) 941 final, pp. 9-10.

47 Report on implementation of measures (Doc. 9422/1/15), pp. 17-18.

been made available for programmes directed at schools, but also to vocational training and workplaces, to promote citizenship and common values and to combat the radicalisation and marginalisation of the youth.⁴⁸

According to the European Council, the success of this Strategy depends to a large extent on implementation at the local level. Teachers, social workers and community leaders, for instance, are considered to play a crucial role in addressing radicalization. To support local practitioners, the European Commission has developed the Radicalisation Awareness Network (RAN).⁴⁹ The RAN creates a platform to share local experiences and best practices. In September 2013, the working group RAN International and External Dimensions adopted the ‘Declaration of Good Practices with Foreign Fighters for Prevention, Outreach, Rehabilitation and Reintegration’.⁵⁰ This document includes several illustrations of best practices with regard to the radicalisation of children and the youth.

3.2.4. Conclusion

The description of the measures taken by the UN, CoE and EU shows that international organizations suggest similar measures which are particularly directed towards the youth. Schools, for instance, are considered to be an important channel to offer the programmes to stimulate critical thinking and civic and democratic values. It is interesting to note that the organizations further emphasize the importance of first-line professionals at the local level to prevent radicalization and to support programmes to train teachers, but also other first-line professionals to recognize signs of radicalization and to respond appropriately.

The strong emphasis on the local level raises the question of how the efforts of these international organizations interact with the efforts on the national and local level. Whereas removing violent extremist materials from the Internet is evidently more effective in an international context, the development of a counter-narrative, educational materials, or training programmes for first-line professionals is maybe more appropriate for national authorities. In the next section, a national perspective on preventing travels to Syria and Iraq will be presented by discussing the measures taken in the Netherlands.

4. A national perspective on preventing departures to Syria and Iraq: the Netherlands

The previous section showed that an important role is reserved for the state, both at the national and local level, to prevent travels to Syria and Iraq. At the national level, the Dutch government has presented ‘The Netherlands comprehensive action programme to combat jihadism’ (*Actieprogramma Integrale Aanpak Jihadisme*, hereafter: Programme).⁵¹ This Programme aims at protecting the rule of law, combating and weakening the jihadist movement in the Netherlands and removing the factors which are conducive to terrorism.⁵²

It is interesting to note that this Programme, but also other policy documents and the Dutch news media, use the term ‘out-travellers’ (*uitreizigers*) to indicate those people travelling from Europe to Syria and Iraq. In contrast to the international term ‘foreign fighters’, the term ‘out-travellers’ is more neutral towards the intent of the travellers. This obscures whether measures are imposed against all – potential – travellers, or only those who seek to fight. Notably, the English translation of the Programme helps to clarify this issue because it uses the term ‘verified departees who join terrorist militias’ regarding the repressive measures (criminal measures and administrative measures). This suggests that these measures are aimed at those who travel with violent or terrorist purposes.

The scope of the measures proposed in the Programme is rather broad: it covers the criminal justice system, the child protection system and the administrative sphere. In this order, the measures will be

48 Ibid., pp. 17-19.

49 <http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/radicalisation_awareness_network/index_en.htm> (last accessed: 1 April 2016).

50 <<http://www.icct.nl/download/file/RAN-Declaration-Good-Practices-for-Engagement-with-Foreign-Fighters.pdf>> (last accessed: 1 April 2016).

51 Dutch parliamentary documents: *Kamerstukken II 2013-2014*, 29754, no. 253. English version published at <https://english.nctv.nl/currenttopics/press_releases/2014/dutch-government-strengthens-actions-to-combat-jihadism-and-radicalisation.aspx> (last accessed: 1 April 2016).

52 Ibid., p. 2.

discussed in Section 4.2 to 4.5. First, the development of jihadism in the Netherlands will be addressed to provide some background information.

4.1. The development of jihadism in the Netherlands

Since 2002, the Dutch General Intelligence and Security Service (AIVD) reported on the radicalization of youths with an immigrant background.⁵³ These youths picked up on extremist ideas on the Internet or from radical dogmatists and used them to develop a suitable ideology for the European context. Their local contexts – friends, family – formed the beginning of jihadist networks in which ideology and Jihad were discussed. The most notorious example of such a network is the *Hofstadgroep*. One of its members killed the journalist and film director Theo van Gogh in 2004.⁵⁴

After 2006, the threat posed by local networks diminished. The AIVD concluded that networks became looser or fell apart due to a lack of leadership, internal tensions due to a lack of group dynamics and successful interventions by the authorities. The local threat, however, had taken on an international dimension: – former – members cherished the desire to participate in the jihad in countries such as Afghanistan and Somalia. The majority of those who actually tried to travel to these areas were intercepted by the Dutch authorities.⁵⁵

From 2010 onwards, the jihadist movement quickly grew because it professionalized in two ways.⁵⁶ First, the failed attempts had generated knowledge and expertise which led eventually to successful border crossings. Once connected to international networks, the pioneers obtained more knowledge and contacts that were helpful to move others abroad.⁵⁷ Secondly, the use of overt and provocative activism became fashionable. Modelled after Belgian examples, Sharia4Holland and Behind Bars/Street Dawa were established in the Netherlands.⁵⁸ These groups organized campaigns and demonstrations in, for instance, The Hague. These events were important to strengthen the networks and spread jihadist ideas. Since the first wave of fighters left for Syria in 2012 and 2013, these groups have become less active. The last overt demonstration was in June 2014.⁵⁹

Also outside these groups, young people organized jihadist activities. Internet and social media have played an important role in that respect. Jihadists share news and opinions with kindred spirits at a high rate through the Internet and social media. From Syria and Iraq, they report on the conflict, but also on camaraderie and adventure which speaks to young people. In this way, they encourage each other to travel to Syria and Iraq.⁶⁰

In November 2015, the National Coordinator for Counterterrorism estimated that around 220 people left the Netherlands for Syria and Iraq. Some 42 of them had died in combat and 30 had returned to the Netherlands. Approximately five individuals left the Netherlands each month. Whereas the Coordinator reported in June 2015 that the number of women and children was rising, no remarks were made on children in the November report.⁶¹ The AIVD, however, reported in January 2015 that at least 70 Dutch children remain in areas under the control of jihadist militias or ISIS in Syria and Iraq. Whereas approximately one-third have been born in those areas, two-thirds have been brought there by one or both parents.⁶² There is no report on the number of minors who have travelled voluntarily to Syria and Iraq.

53 AIVD, *The radical dawa in transition, The rise of Islamic neoradicalism in the Netherlands* (2006). AIVD, *The violent jihad in the Netherlands, current trends in the Islamic terrorist threat* (2006). AIVD, *Recruitment for the jihad in the Netherlands* (2002).

54 B. Schuurman et al., 'A history of the Hofstadgroep', (2014) 8 *Perspectives on Terrorism*, no. 4, pp. 65-81.

55 AIVD, *Local jihadist networks in the Netherlands* (2010).

56 AIVD, *The transformation of jihadism in the Netherlands* (2014).

57 *Ibid.*, pp. 11-12.

58 L. Vidino, 'Sharia4: From Confrontational Activism to Militancy', (2014) 9 *Perspectives on Terrorism*, no. 2, pp. 2-16.

59 See AIVD 2010, supra note 55, pp. 12-13.

60 *Ibid.*, pp. 16-19. See also J. Carter et al, *#Greenbirds: Measuring Importance and Influence in Syrian Foreign Fighter Networks* (2014). J. Klauwen, 'Tweeeting the Jihad: Social media Networks of Western Foreign Fighters in Syria and Iraq', (2015) 38 *Studies in Conflict & Terrorism*, no. 1.

61 Summary of the 40th edition of the Terrorist Threat Assessment for the Netherlands (DTN40), November 2015, <english.nctv.nl> (last accessed: 1 April 2016).

62 AIVD, *Life with ISIS: the Myth Unravelling* (2016).

4.2. Criminal justice measures

To prevent people from travelling to Syria and Iraq, the criminal justice system plays an important role in the Dutch approach towards jihadism and foreign fighters. In Section 4.2.1 a general overview is provided of the measures in the Programme that are rooted in the criminal justice system. In Section 4.2.2, the implications of these measures are discussed from a children's rights perspective.

4.2.1. General overview of criminal justice measures

Measure 1 of the Programme entails that recognized travellers who join jihadist militias will be the subject of a criminal investigation. In addition, Measure 14 states that criminal actions are taken upon reasonable suspicion of departure. The potential traveller will be arrested and detained as a suspect.⁶³ The legal basis for these measures are the 2004 and 2009 Terrorism Acts which adapted the existing Criminal Code to accommodate terrorist offences by criminalizing certain types of behaviour combined with 'terrorist intent'.⁶⁴ The latter means that the offence is committed with the intent to a) intimidate the population, b) force the government to act, tolerate or omit, or c) destabilize or destroy the basic structure of the state or international organization.⁶⁵ When behaviour can be classified as terrorist crime, more restrictive pre-trial procedures apply and the sentence can be significantly harsher.

In addition to changing some procedural aspects and maximum sentences, these Acts also outlawed new types of behaviour. In particular, these Acts criminalized activities in the preparatory stage of a terrorist attack. Measure 1 of the Programme specifically refers to participation in a terrorist organization and taking part in providing terrorist training.⁶⁶ The latter offence includes online training or training abroad. Furthermore, Measure 18 involves the prohibition of recruitment activities for armed combat.⁶⁷ To detect recruiters, the Dutch police force has created special teams.⁶⁸

It is interesting that the Dutch government has not signed the Additional Protocol to the Convention on the Prevention of Terrorism and has not taken action to make it a criminal offence to travel to or remain in territories governed by terrorist organizations. Right-wing political parties have specifically requested the government to incriminate the latter activity.⁶⁹ However, the Minister of Justice has refused by referring to a report stating that there are many legal impediments to this.⁷⁰ It remains to be seen how the Netherlands will respond to more international pressure to incriminate such activities.

In addition to the terrorist offences, Measure 19 of the Programme stimulates criminal interventions for inciting hate and violence.⁷¹ Measure 29d-f introduces a specialist team that monitors the Internet and social media for violent extremist materials.⁷² Although these measures are not classified as terrorist offences, they are important for the prevention of radicalization because they limit the exposure of the youth to these materials. Of course, minors who disseminate these materials can be held criminally liable themselves.

Not only substantive criminal law, but also the execution of sentences is covered by the Programme. According to Measure 2, suspects and persons convicted of a terrorist offence are placed in the Terrorist Ward.⁷³ Lastly, Measure 3 of the Programme states that travellers who have returned will be placed under long-term supervision, for instance, by imposing a (partially) suspended sentence or conditional parole.⁷⁴

63 See Programme, supra note 51.

64 Dutch legislation: *Wet Terroristische misdrijven*, Stb. 2004, 290. *Wet strafbaarstelling van het deelnemen en meewerken aan training voor terrorisme (...)*, Stb. 2009, 245. For an elaborate discussion of the Dutch framework, see K. Veegens, *A Disrupted Balance? Prevention of terrorism and compliance with fundamental rights and principles of law – The Dutch anti-terrorism legislation* (2012).

65 Dutch legislation: Art. 83a Criminal Code.

66 Dutch legislation: Arts. 140 and 134a Criminal Code.

67 Dutch legislation: Art. 205 Criminal Code.

68 Dutch parliamentary documents: *Kamerstukken II 2015-2016*, 29754, no. 326, appendix: fourth progress report of the Programme.

69 Dutch parliamentary documents: *Kamerstukken II 2015-2016*, 29754, no. 332.

70 Dutch parliamentary documents: *Handelingen II 2015-2016*, no. 27, item 3, pp. 43-44. See also P.H.P.H.M.C. van Kempen & M.I. Fedorova, *'Foreign terrorist fighters': strafbaarstelling van verblijf op een terroristisch grondgebied* (2015).

71 Dutch legislation: Art. 137c-f Criminal Code.

72 See Programme, supra note 51.

73 Ibid.

74 Ibid.

4.2.2. A children's rights perspective on the use of criminal justice measures

From a children's rights perspective, the extensive use of the criminal justice system to prevent departures to Syria and Iraq is a reason for concern. As the previous section showed, there is a broad range of criminal behaviours in the preliminary phase of a terrorist attack which can be criminally sanctioned. The Dutch Terrorism Acts are often criticized for even intervening too much in the preliminary phase of a terrorist attack. This is regarded as a breach of fundamental principles of criminal justice and the rule of law. Arguably, intervening at this stage represents an undesirable shift from punishing acts to punishing intentions. Moreover, the criminal law is allegedly no longer used as an *ultimum remedium* or last resort.⁷⁵

In the case of minors, this is even more reason for concern as diversion is preferred following Article 40 CRC. The possibilities for diversion might not be fully explored if authorities resort too quickly to criminal measures. This concern is somewhat mitigated by the fact that no minors have been brought to justice for terrorist offences. It is unclear whether no minors have been suspected of terrorist offences, or whether these minors were indeed diverted.

Even if minors were convicted of terrorist offences, it is unlikely that they would be subjected to harsh sentences that are typical for terrorist offences. Juvenile detention is limited to 12 months for 12 to 15-year-olds and 24 months for 16 and 17-year-olds. Only in exceptional cases can 16 and 17-year-olds be sentenced as adults. The juvenile judge can apply adult sentencing schemes if the severity of the crime, the personality of the perpetrator or the circumstances under which the crime has been committed give reason to do so.⁷⁶

It is mere speculation as to whether judges would actually apply adult sentences because there are no examples. One can however think about the possible arguments for either side. On the one hand, an adult sentence could be applied because terrorist offences are serious in nature and shock society. On the other hand, some behavioural patterns (i.e. the search for identity, high impulsivity and risk-taking behaviour) amounting to participation in terrorist activities are typical for adolescence. This could be an argument in favour of juvenile sentencing.

With regard to the execution of sentences, it should be noted that, in theory, minors can be placed in the Terrorist Ward. This can result in the undesirable situation that adults and minors are placed on the same ward.⁷⁷ Also, the level of facilities might not be suitable for minors.⁷⁸ In the past, two minors were selected for placement in the Terrorist Ward. The public prosecutor, however, found the conditions not appropriate for minors due to their susceptibility to radicalization.⁷⁹ In practice, it is highly unlikely that minors are placed in the Terrorist Ward.

4.3. Measures in the administrative sphere

In addition to the criminal justice system, the Dutch government has announced a broad variety of administrative measures to prevent people from travelling to Syria and Iraq. Whereas some measures are more preventive in nature, others have a more repressive character. Again, the discussion of these administrative measures starts with a general overview. In Section 4.3.2, the measures are evaluated from a children's rights perspective.

4.3.1. A general overview of administrative measures

The first set of administrative measures mentioned in the Programme is directed at countering radicalization by stimulating the people around individuals at risk to detect and respond to radicalization. Measures 21 and 22 of the Programme aim at improving cooperation between the authorities and the Muslim community.

75 See Veegens, supra note 64; J.M. ten Voorde, 'Het deelnemen en meewerken aan training voor terrorisme getoetst aan de strafbaarstelling van de voorfase', (2012) *Delikt & Delinkwent*, no. 2, pp. 94-112; G.P.M.F. Mols, 'Over het bereik van artikel 134a Sr: het dioramaperspectief', (2015) *Strafblad*, no. 1, 10.

76 Dutch legislation: Art. 77b Criminal Code.

77 Art. 37c CRC and Art. 10 ICCPR.

78 Dutch report: Raad voor de Strafrechtstoepassing en Jeugdbescherming, 'Advies over de bijzondere opvang voor terroristen', 25 september 2006.

79 T.M. Veldhuis et al., *Terroristen in Detentie: Evaluatie van de Terroristenafdeling* (2010), pp. 120 and 154.

For instance, periodic consultations with Imams are organized to discuss countering radicalization, the upbringing of children (Quran education, informal parenting styles), discrimination and islamophobia. Moreover, Measures 27 and 28 seek to strengthen the public debate on radicalization, citizenship and the rule of law.⁸⁰

Measure 23 organizes support for concerned citizens. They can contact the helpline for anonymous crime (*Meld Misdaad Anoniem; M.*). Between January and September 2015, 77 reports were assessed to be relevant and sent to the relevant authorities.⁸¹ Family members can also contact the radicalization helpline (*Hulplijn Radicalisering*) to ask questions or to be assisted by a confidant. The private organization behind the helpline has stated that they received 300 calls between January and November 2015.⁸² Furthermore, family members can receive information and assistance from the 'family support radicalization centre' (*Familiesteunpunt Radicalisering*). This centre aims to prevent radicalization from brothers, sisters or other family members as well.⁸³ Moreover, projects are developed to support parents to raise their children to be confident and resilient.⁸⁴

Not only families, but also educational institutions are facilitated to detect and counter radicalization following Measure 24. In general, schools can request assistance by the Inspectorate of Education and are informed through a web portal operated by the Ministry of Education. In 18 municipalities, instructors in high schools and vocational-education institutions are trained to recognize and cope with radicalization.⁸⁵ Content-wise, educational institutions are stimulated to give citizenship a more prominent place in the curriculum.

In addition to these preventive measures directed towards countering radicalization, some proposed measures are more repressive in nature. Measure 20 entails that facilitators and propagators of jihadist propaganda are 'disrupted' by the authorities. This means that these individuals are more closely scrutinised for social security or tax fraud and public nuisance complaints. Also, affiliations with extremism or terrorism will be introduced as a legal ground to refuse housing in areas which are vulnerable to social disruption.⁸⁶

Facilitators and propagandists, but also recruiters and others who are linked to terrorist activities, are targeted with the proposed Act on Temporary Administrative Measures to Combat Terrorism.⁸⁷ If this proposal is enacted, the Minister of Security can impose a duty to report or an area ban on persons linked to terrorist activities. Likewise, the Minister can prohibit these persons from leaving the Schengen area if a reasonable suspicion exists that they aim to join terrorist organizations abroad.

Another set of measures concerns the withdrawal of travel documents and the nationality of travellers. Measures 7 and 15 state that if there are sufficient grounds to assume that individuals have left, travel documents are refused or revoked.⁸⁸ The basis for revoking or refusing travel documents is the expectation that the person will commit acts outside the Netherlands which constitute a threat to the national security or safety of friendly powers.⁸⁹ Between December 2013 and November 2015, 150 passports were revoked or refused on these grounds.⁹⁰

Moreover, Measure 4 states that verified travellers who join terrorist organizations abroad will be stripped of their Dutch nationality if they have more than one nationality.⁹¹ Additionally, verified travellers with a non-EU nationality will be declared undesirable foreign nationals for the Schengen Area. This means that they will be deported if they return to the Netherlands. To make these measures effective, the Dutch authorities seek to intensify international cooperation and optimize the existing detection means according to Measures 36 and 27.⁹²

80 See Programme, supra note 51.

81 See note 68, supra.

82 See <hulplijnradicalisering.nl> (last accessed: 1 April 2016)

83 See note 68, supra, appendix 3.

84 See note 68, supra.

85 Ibid.

86 Dutch parliamentary documents: *Kamerstukken II* 2015-2016, 34314, no. 2.

87 Dutch parliamentary documents: *Kamerstukken II* 2015-2016, 34359, no. 2.

88 See Programme, supra note 51.

89 Dutch legislation: Art. 23 *Paspoortwet*.

90 See note 68, supra.

91 Implemented by Dutch parliamentary documents: *Stb.* 2015, 121

92 See Programme, supra note 51.

4.3.2. The administrative measures from a children's rights perspective

The description of these administrative measures shows that the Dutch government has introduced both preventive and repressive measures that can intervene in the rights of children. Concerning the preventive administrative measures, some of them are specifically directed towards minors and young adults. One example is the prominent role of family members in detecting and preventing radicalization. With regard to the best interests of the child, it is a positive step that family members are encouraged to engage with their children. As Section 4.5 on the child protection system will demonstrate, a minor is less likely to be separated from his or her parents if the parents discourage extremist views. Another example of a measure that is especially relevant to the youth is the emphasis on education, not only for detecting radicalization but also to stimulate critical thinking, and democratic and civic values.

In contrast to the preventive measures, there seems to be little attention for the position of minors with regard to repressive measures. To some extent, this is understandable as minors are, for instance, not the usual recipients of social benefits, financial allowances or permits. However, it is not inconceivable that minors are subjected to area bans, travel bans or duties to report. The explanatory memorandum does not clarify how children's rights are protected in these situations. An area ban, for example, interferes with the right to education if the school is located in the forbidden area or with the right to family life if the parents reside in the forbidden area. Additionally, a duty to report seems excessive if a child is also required to attend school during these days.

Also the withdrawal of travel documents and nationality can be problematic from a children's rights perspective. Stripping a minor of his or her nationality seems to be at odds with Article 7 CRC, which states that children have a right to a nationality, and Article 3 CRC. It seems to be difficult to imagine a situation in which it would be in the best interests of the child that he or she loses one of his or her nationalities even when it will not render the child stateless. Still, it impedes his or her return from a war zone to the Netherlands and this is not in the interest of the child. In this light, it is remarkable that the Minister of Justice and Security stated that it is irrelevant for revoking someone's nationality whether this person has reached the age of majority, but that this could be part of a proportionality test.⁹³ Considering the CRC, it is recommended that the law specifies that minors cannot be stripped of one of their nationalities.

In general, one can question whether these administrative measures are secured with sufficient procedural safeguards in light of the best interests of the child. To avoid the strict procedural safeguards which are applicable in the criminal justice system, the authorities have introduced increasingly administrative measures. In the literature, the term 'pinball philosophy' has been introduced for this practice: the citizen is played like a pinball between criminal and administrative measures. Especially when the duty to report, an area ban or a travel ban is based on classified information, citizens will encounter difficulties when appealing against these decisions because the authorities can refuse to provide access to the information on which the administrative measure is based.⁹⁴

Minors are even more vulnerable in this regard because they often lack the skills and resources to engage in complex legal proceedings. For that reason, criminal cases against minors are brought before the juvenile court which is specialized in dealing with minors. A comparable provision is lacking for appeals against the administrative measures like the duty to report or an area ban. Arguably, the children's right to be heard is better safeguarded when an appeal against these administrative measures is possible at the juvenile court. Although juvenile courts rarely decide upon administrative matters, this construction is not unprecedented in the Dutch legal system.⁹⁵

93 Dutch parliamentary documents: *Handelingen II* 2014-2015, no. 60, item 10 (*Ontnemen van het Nederlanderschap bij terroristische misdrijven*).

94 G.P.M.F. Mols, 'De flipperkastfilosofie', (2015) *Strafblad*, no. 2, 14.

95 A juvenile can appeal to the juvenile court against the municipality's decision to refuse – partly – individualized care. See Dutch legislation: Art. 8 *Bijlage 2 bij de Algemene wet bestuursrecht*.

4.4. Child protection measures

In addition to the criminal justice and administrative measures, the Dutch government has also referred to the child protection system in the Programme. According to Measure 17, child protection measures will be taken if there is a suspicion that a minor is involved in a suspected departure.⁹⁶ Because these measures can only be used against minors, this is the clearest example of an approach specifically designed for minors who intend to travel to Syria and Iraq. In Section 4.4.1 a short description of the Dutch legal framework for child protection measures is provided. In Section 4.4.2, the case law will be discussed in which child protection measures were imposed on potential travellers. In the final section, these cases are analysed in light of the best interests of the child.

4.4.1. A general overview of child protection measures

Before discussing the relevant case law, it might be useful to sketch the Dutch legal framework for child protection measures. In the Netherlands, first-line professionals and others can report suspicions of child abuse to the Child Care and Protection Board (hereafter: the Board), which can initiate an investigation. Based on the investigation, the Board may request the juvenile court to take child protection measures.

In cases of under-age travellers, a family supervision order (*ondertoezichtstelling*) and placement in care facilities (*uithuisplaatsing*) are the most common requests. The family supervision order entails that a family supervisor is assigned to support the minor and assist his or her parents with the minor's care and upbringing. The minor can be subjected to a family supervision order when the minor's development is seriously threatened by his or her upbringing, the minor and/or the parents do not accept the necessary support and the parents are expected to be able to care for the minor within a reasonable period of time.⁹⁷

In addition to the family supervision order, the judge can decide to authorize custodial placement if this is necessary for the care and upbringing of the minor, or to investigate the minor's mental or physical condition.⁹⁸ In some cases, the Board requests that the minor be placed in closed care facilities (*accommodatie voor gesloten jeugdhulp*). This is regarded as a severe form of deprivation of liberty and, therefore, is surrounded by strict legal safeguards. The juvenile court can order such a placement when the development or upbringing of the minor raises serious concerns for the minor's maturity or when it is necessary to prevent the minor from withdrawing or being withdrawn from state supervision.⁹⁹

4.4.2. Imposing child protection measures on potential travellers

With this legal framework in mind, this section will describe how the Dutch juvenile courts deal with potential travellers in practice. Between February 2013 and November 2015, the Child Care and Protection Board investigated 58 cases in which minors were suspected of being involved in a departure to Syria or Iraq.¹⁰⁰ Of these 58 cases, 37 cases concerned minors who were suspected of being taken by their families to Syria or Iraq. In one case, the AIVD reported to the Board that there were strong indications that in two families the parents planned to travel soon with their minors. Upon the request of the Board, the juvenile court decided that there was a pressing and immediate need to place the minors under family supervision for three months and to authorize custodial placement for four weeks.¹⁰¹ After the hearing which took place after two weeks, the juvenile court revoked these measures because it determined that there were insufficient grounds for state supervision. It considered that the report of the AIVD was inadequate to establish that the children's safety was at risk. By that time, three out of four parents had been released from preventive custody, the

96 See Programme, supra note 51.

97 Dutch legislation: Art. 1:255 Civil Code.

98 Dutch legislation: Art. 1:265b Civil Code.

99 Dutch legislation: Art. 6.1.2 *Jeugdwet*.

100 See note 68, supra.

101 Dutch case law: Midden-Nederland District Court 29 August 2014, ECLI:NL:RBMNE:2014:3986 and ECLI:NL:RBMNE:2014:3989. This was an emergency order, which can be imposed by the juvenile court upon the request of the Child Protection Board without a hearing in which the facts are presented.

parents' travel documents had been seized and the parents were willing to cooperate with the Board. For these reasons, the juvenile court found that compulsory measures were not necessary.¹⁰²

In the remaining 21 cases investigated by the Board, minors were suspected of travelling independently to Syria or Iraq.¹⁰³ In some cases, the Board requested that the minor be placed in closed care facilities. An example is the case of a radicalized girl.¹⁰⁴ The Board suspected that the girl intended to marry a jihadist and established a high risk that she would travel to the caliphate. The juvenile court ordered family supervision for three months because the girl seemed to be 'very impressionable'. It was particularly concerned by her contacts with the jihadi fighter. Also, it feared for her social-emotional development due to her contacts with radicalized friends and family. Therefore, the juvenile court appointed a family supervisor to 'strengthen the personality of the [minor], so that she learns to make choices based on her own beliefs. Until now, her behaviour, expressions and appearance show that she obstructs the development of her identity by maintaining insecure dependency relations.' It did not, however, order placement in a closed care facility because there were no specific indications that the girl was ready to travel to Syria. In fact, the juvenile court found that placement in a closed care facility could impede the girl's progress as an intern and at school. In that way, custodial placement might actually contribute to radicalization. Since both the mother and daughter recognized that the contacts with the fighter impeded the girl's development, the juvenile court decided that both deserved the opportunity to show their resistance towards people with radical thoughts and methods.

In contrast to this case, another juvenile court authorized the placement in a closed care facility of a 16-year-old girl who attempted to travel to Syria.¹⁰⁵ In the summer of 2014, this girl came into contact with people in Syria who convinced her to travel there. With her mother's bank card and her sister's identity card in her pocket, she left for Syria but was arrested at the Hungarian-Serbian border. Back in the Netherlands, the juvenile court placed her under family supervision and granted authorization for placement in a closed care facility for two months. The parents appealed against this decision because they believed that their child had recognized her mistake and would not withdraw from her parent's supervision again. The Court of Appeal, however, found that the minor's situation was still too fragile. Personality tests and action plans for de-radicalization had not been completed and the Court of Appeal was not convinced that the minor had truly abandoned her plans. Moreover, the Court of Appeal believed that the parents underestimated the seriousness of the situation and the necessity for measures to guarantee the girl's safety. It also preferred that the minor's treatment would start in the 'neutral setting' of the closed youth facility. For these reasons, the Court of Appeal upheld the decision of the district court.

4.4.3. Child protection measures from a children's rights perspective

The cases discussed in the previous section illustrate how judges take the best interests of the child into account. It is possible to recognize several elements of the best interests of the child that were discussed in Section 2 (the child's views, the child's identity, the preservation of family relationships and the care, protection and safety of the child). Regarding the child's views, children of 12 years or older have the opportunity during the proceedings to express their opinion. In general, they express their wish to go home and state that they will not try to leave. If the courts lack faith in their statements, they explain their reasons. In the case of the children who were at risk of being taken by their parents, they were aged between 1 and 8 and thus too young to be heard during the proceedings.¹⁰⁶

The second element, the child's identity, is an important consideration for the courts. This is illustrated by the case in which the juvenile court appointed a family supervisor to support the girl in developing her personality. Another notable example is the following consideration. In a similar case, the juvenile court held, *inter alia*:

102 Dutch case law: Midden-Nederland District Court 15 September 2014, ECLI:NL:RBMNE:2014:4179 and ECLI:NL:RBMNE:2014:4180. See also The Hague District Court 8 September 2014, ECLI:NL:RBDHA:2014:11272.

103 See note 68, *supra*.

104 Dutch case law: Gelderland District Court 6 March 2015, ECLI:NL:RBGEL:2015:1690.

105 Dutch case law: 's-Hertogenbosch Court of Appeal 29 January 2015, ECLI:NL:GHSHE:2015:245.

106 See notes 101 and 102, *supra*.

'Additionally, the juvenile judge emphasizes that the minor has the right to her own development and identity. If certain thoughts take such extreme forms, however, that they prompt her to take drastic decisions regarding the arrangement of her life – without consultation with and the consent of her parents –, the child has to be protected from herself and – if necessary involuntarily – be assisted in making those decisions.'¹⁰⁷

In this case, the juvenile court extended the placement in a closed care facility.

The third element, the preservation of family relationships, is recognizable in the way that judges approach parents. Even when the AIVD suspects parents of taking their children to Syria or Iraq, the juvenile court does not take the decision to place a child in a care facility lightly and requires stronger indications. When minors are placed in closed care facilities, the juvenile court instructs that this time is used for further investigations into the seriousness of the situation and in order to develop an action plan. The duration of the placement is strictly limited.¹⁰⁸ This reasserts the fact that separating parents and children is a last resort for judges. Furthermore, the parents' attitudes towards social workers or other forms of assistance are an important consideration for the juvenile court.

Finally, the care, protection and the safety of the child is taken into account. The discussed cases suggest that the child's safety overrules other aspects of the best interests of the child, such as the child's identity and the preservation of family ties. As stated above, there must be strong indications that the safety of the minor is actually at stake. Travelling to Syria and Iraq is explicitly recognized as a threat to the safety of the child. This is illustrated by a case in which a minor was missing and had possibly travelled to Syria. The juvenile court stated explicitly in this case that participating in combat in conflict areas poses a threat to the security and development of the minor. Therefore, the juvenile court authorized a provisional family supervision order and placement in a closed care facility contingent upon a behavioural examination if he would return.¹⁰⁹

When child protection measures have been ordered, the cultural and religious background of the minor plays a role in the execution in two ways. On the one hand, it is quite conceivable that radicalized youths spread their ideas and strengthen their network in youth facilities. In one case, the juvenile court stated that it is an 'utopia' to assume that a radicalized girl would not be influenced in a youth facility when she remained in the company of another girl with whom she intended to travel to Syria.¹¹⁰ Similarly, a researcher questioned whether youth facilities are in fact 'neutral settings' and what impact radicalized youths have on their non-radicalized peers in these facilities.¹¹¹ In fact, the Dutch Secretary for Health, Welfare and Sport acknowledged the risk that radical beliefs are disseminated in youth facilities, but maintained that this risk is manageable.¹¹²

On the other hand, the execution of child protection measures should not be completely void of religious and cultural aspects if they are relevant to the minor's background. This is also reflected in the Youth Act, which states that the religion, philosophy of life and cultural background of the minor and his or her parents should be taken into account when determining the appropriate form of child care.¹¹³ However, other research concluded that the religious freedom of children seems to be a 'non-issue', as little has been written on the subject.¹¹⁴

5. A local perspective on preventing departures to Syria and Iraq: The Hague

In the previous section, the national approach towards foreign fighters was examined in light of children's rights. In addition to the measures taken at the national level, local authorities play a prominent role in

107 Dutch case law: The Hague District Court 28 March 2013, ECLI:NL:RBDHA:2013:15159.

108 See M. de Jong-De Kruijff, 'Minderjarige jihadreizigers: nut en noodzaak van plaatsing in gesloten jeugdzorg', (2014) 63 *Ars Aequi*, no. 10, pp. 727-731.

109 Dutch case law: Amsterdam District Court 34 January 2014, ECLI:NL:RBAMS:2014:565.

110 Dutch case law: The Hague Court of Appeal 29 July 2014, ECLI:NL:GHDHA:2014:2566.

111 See De Jong-De Kruijff, supra note 108, p. 730.

112 Dutch parliamentary documents: *Kamerstukken II* 2014-2015, 3338.

113 Dutch legislation: Arts. 2.3(4)(b), 2.4 (3)(b), 4.1.1(2) *Jeugdwet*.

114 S. Meuwese, 'Godsdienstvrijheid van kinderen', (2001) 50 *Ars Aequi*, no. 7/8, p. 557.

preventing journeys to Syria and Iraq. The national Programme emphasizes at various points the importance of actions at the local level. Measure 26, for instance, addresses the local approach to counter radicalization. Measures 30 and 31 state that the national authorities should support the local approach and that national and local authorities should exchange information and expertise.¹¹⁵ This section aims to shed light on the approach at the local level. In this section, the award-winning approach of The Hague is discussed as a case study. In Section 5.1, some background will be provided on The Hague. In Section 5.2, the actual approach of this municipality will be discussed.

5.1. Introduction to The Hague

The Hague is the seat of government in the Netherlands. It is also known for housing important international organizations such as the International Court of Justice and the International Criminal Court. In 2015, The Hague was the third-largest city in the Netherlands with approximately 500,000 inhabitants. Nearly half of the population were native Dutch (49.9%). The proportion of Western immigrants was 15.6% and of non-Western immigrants 34.4%. Some 16% of the population, especially Turks and Moroccans, identify themselves as Muslim.¹¹⁶

In Dutch news coverage, The Hague was nicknamed 'jihad city' due to frequent reports of radicalization and jihadism.¹¹⁷ It was the home of the *Hofstadgroep* and of the movement Behind Bars/Street Dawa.¹¹⁸ In 2014, a demonstration by jihadists showing support for ISIS caused national turmoil.¹¹⁹ Additionally, a relatively high number of people left The Hague for Syria and Iraq. In September 2015, 56 individuals travelled from The Hague to Syria and Iraq. Of these travellers, two boys were underage. The municipality also reported that one underage boy had returned from Syria, ten underage girls had plans to leave and three minors were stopped at the moment of their departure.¹²⁰ For this reason, it is interesting to take a closer look at the approach of The Hague towards radicalization and jihadism.

5.2. The Hague's approach towards radicalization and jihadism

To tackle polarization, radicalization and jihadism, the Municipal Executive (*college van burgemeester en wethouders*) outlined their approach in November 2014.¹²¹ The approach has two components, that is to say prevention and an individualized approach to returned and intercepted travellers. With regard to prevention, a distinction is made between general prevention and specific prevention.¹²² General prevention focuses at the underlying causes of radicalization, such as educational disadvantages, unemployment and social exclusion.¹²³ These causes are addressed by integration policies, which are beyond the scope of this article.

Specific prevention concentrates on developing a tailored approach for individuals or groups at risk of radicalization.¹²⁴ The specific prevention measures and the individualized approach to returned and intercepted travellers are the focus of this section. Within this framework, the Municipal Executive identified several priorities: 1) the individualized approach, 2) knowledge and expertise, 3) networks and communication and 4) social resistance.¹²⁵

The first priority aims at intensifying the individualized approach. An important element is the local multi-agency consultations on specific individuals at risk of radicalization or of departing to Syria and Iraq.¹²⁶ In the case of a minor, these consultations are attended by, for example, representatives from the municipality,

115 See Programme, supra note 51.

116 <www.denhaag.buurtmonitor.nl> (last accessed: 1 April 2016).

117 R. Salome & C. van der Wal, 'De jihadstad achter de duinen', *AD/Algemeen Dagblad*, 5 July 2014.

118 See Schuurman et al., supra note 54 and Vidino, supra note 58.

119 H. Logtenberg, 'Den Haag staat niet in brand, zegt Van Aartsen', *NRC Handelsblad*, 15 August 2014.

120 Municipality of The Hague Documents: 'Technische vragen Programmabegroting 2016-2019', 9 October 2015, RIS 287060, appendix.

121 Municipality of The Hague Documents: 'Hoofdlijnenbrief preventie polarisatie, radicalisering en jihadisme 2015-2019', 12 November 2014, RIS 278115, appendices 2 en 3, p. 446.

122 Ibid.

123 Ibid.

124 Ibid.

125 Municipality of The Hague Documents: 'Uitvoeringsprogramma preventie, polarisatie en radicalisering: speerpuntenprogramma', 24 April 2015, RIS281554, appendix, p. 14.

126 Ibid. This is also mentioned in the national Programme, supra note 51, Measure 26.

the local police force, the public prosecution service, the intelligence services, the Child Care and Protection Board and the Youth Care Institution (*gecertificeerde instelling*). Gathering different agencies stimulates an exchange of information and the coordination of activities. A common strategy designed for minors is to strengthen parental supervision and stimulate the child's return to school.¹²⁷

The second priority is to provide sufficient knowledge, skills and tools to frontline workers to prevent radicalization. In addition to the knowledge institutions on the national level, The Hague has also established its own knowledge centre to gather knowledge and expertise on what strategies are successful in countering radicalization (*Lokaal Kennis & Expertisecentrum Polarisatie en Radicalisering*).¹²⁸ The centre collects information from local first-line professionals (the police, teachers, social workers), 'key figures' (citizens with a prominent place in the community), cultural and religious organizations and make their results available to them.¹²⁹ In addition to this centre, another local information centre specializing in preventing polarization and radicalization offers training to first-line professionals (*Infopunt Preventie Polarisatie en Radicalisering*).¹³⁰

The third priority pertains to developing networks in the neighbourhood and intensifying communication between the municipality and its citizens. In recent years, the municipality has invested in 'eyes and ears in the neighbourhood' by building a network of first-line professionals, representatives of religious and cultural communities and other key figures. In the coming years, The Hague aims to find new key figures to reach the local youth. Some of them will be encouraged to initiate or participate in the public debate. Others will become 'buddies' with youngsters at risk of radicalization. They will help their 'buddy' to develop a stable identity.¹³¹

With regard to the communication between the municipality and citizens, the Municipal Executive wants to associate the municipality with The Hague's slogan: 'the international city of peace and justice'. To give a feeling of belonging in society, the Municipal Executive appeals to the 'The Hague Power': 'the power of passionate professionals, involved citizens, strong women, young people that strive towards a life worth living and parents who support them'.¹³²

The final priority is to increase social resistance to radicalization and jihadism. Education plays a central role in this regard. Schools are encouraged to dedicate classes to citizenship, democratic values and critical thinking. A local institution (*Centrum 16/22*) develops teaching packages directed at high school students regarding identity development. Teachers can ask for help if they need assistance with discussing religious themes.¹³³

Also social organizations and communities are involved in increasing social resistance. The municipality seeks to intensify also its contacts with Jewish and Muslim organizations. With the Muslim community, both safety issues and increasing resilience against radicalization and jihadism will be addressed. Women's organizations are also engaged because women play a crucial role in raising children and family contacts. Special attention is paid to young girls, for instance, by organizing 'girls-only afternoons'.¹³⁴

Lastly, the municipality encourages the development of a counter-narrative against jihadism. Although it provides assistance with offering expertise on social media and youth culture, local communities have to decide upon the content. At the meeting of the City Council of 29 April 2015, the Mayor emphasized that there is no 'State of Islam'.¹³⁵

In short, the approach of the municipality concentrates on the prevention of radicalization. In light of children's rights, the individualized approach seems to be a positive development because the specific circumstances of a child's case are taken into account. On the other hand, it is unclear to what extent the

127 Ibid.

128 Ibid.

129 Ibid.

130 Ibid.

131 Ibid.

132 Ibid.

133 Ibid.

134 Ibid.

135 Municipality of The Hague Documents: 'Verslag Commissie Bestuur 29 April 2014', RIS282163.

minor can provide input in this multi-agency consultation and thus whether his or her views are taken into account.

The other measures are more directed towards the environment of the child. As was also stressed on the international and national level, parents, schools and social workers play an important role in detecting and countering radicalization. With regard to the child's identity, it is positive that the municipality aims to create an environment in which thoughts can be shared, and that it includes the Muslim community in that attempt.

6. Discussion of the international, national and local perspective in light of the best interests of the child

So far, this paper has discussed the international, national and local perspective separately. In this section, these perspectives will be combined in the light of the best interests of the child. As discussed in Section 2, special attention will be given to the various elements of the best interests of the child: the child's views, the preservation of family ties, the child's identity and the care, protection and security of the child. First, some general comments are made about the way children are addressed in this issue. Then, the repressive measures will be examined, followed by a discussion of the preventive measures.

6.1. Addressing children's rights

One interesting finding is that the distinction between minors and adults is rarely made in relation to preventing departures. At the international, national and local level, measures are taken which are directed at the 'youth'. Which age group qualifies as 'youth' is not further defined in the studied documents. Upon request, the municipality of The Hague clarified that they aim at 12 to 23-year-olds 'with deviations in both directions'.¹³⁶ Hence the term 'youth' is used for both minors and adults.

By using this term, the issue of demarcating age boundaries is avoided. As discussed in Section 2, most travellers are in the grey area between childhood and adulthood. This would be disregarded if an overly strict distinction between minors and adults were to be made. Nonetheless, minors have a different legal position than adults. As the state has an obligation to protect them, it also has more instruments by which to do so. This makes minors vulnerable to undue state intervention. This difference in the legal position is somewhat obscured if minors and – young – adults are bundled together. This might explain the next finding of this study, that is to say that policy-makers do not address the legal position of minors. After all, belonging to the 'youth' is not a legal qualification which allows for special protection.

It is notable that the position of minors is rarely explicitly acknowledged in legal documents. Only the CoE mentions the CRC in the Explanatory Report to the Additional Protocol to the Convention on the Prevention of Terrorism. Neither the UN, the EU, the Dutch government nor the municipality of The Hague refer explicitly to the rights of children travelling to Syria or Iraq. At the international level, legal documents contain considerations that measures should be taken while respecting human rights in general. At the national level, however, human rights are not mentioned in the Programme but only in concrete legislative proposals. At the local level, human rights are not mentioned at all.

The lack of attention for children's rights is even more remarkable when one considers that it can also support policies to prevent journeys to Syria and Iraq. The explicit recognition that children are vulnerable to such travels and that the state has a special responsibility towards this groups symbolizes the human rights that are considered to be fundamental to Western societies. If anything, the importance of symbols is illustrated by the emergence of jihadism. In that light, it seems appropriate that authorities refer to children's rights as a human rights counter-narrative and, of course, subsequently realize their effects.

The attention to human rights and/or children's rights can also provide a justification for state intervention. Preventing minors from travelling to Syria and Iraq, for instance, is a logical consequence of the state's obligation to prevent children from participating in armed conflict or to protect children against

¹³⁶ E-mail from a representative of the Security Department, Municipality of The Hague, 27 July 2015.

violence.¹³⁷ One would expect that the authorities raise this argument in order to defend their interventions instead of solely focusing on the fight against terrorism and the possible security threat that returnees pose to Western societies.

6.2. Repressive measures

The focus on security is most clearly visible with regard to repressive measures such as criminal and administrative measures. These repressive measures are justified by referring to national security or the international fight against terrorism. This type of reasoning neglects the fact that some travellers do not intend to join in combat, but travel to these areas for other purposes like the schoolgirl brides. Policymakers have not answered the question whether those individuals should be subjected to administrative or even criminal measures to prevent them from leaving. Furthermore, they have ignored the difficulty of establishing the terrorist purposes which form the basis for these new measures.

If repressive measures are exclusively directed towards foreign fighters, it is easier to understand why attention for the position of minors is lacking. The vulnerability and innocence often associated with childhood are difficult to reconcile with the image of a heavily armed fighter. Similarly, children who commit serious offences such as murder or rape can be sentenced as adults in many jurisdictions on the pretext of 'adult crime, adult time'.¹³⁸ Despite the severity of these actions, the CRC recognizes that children are still entitled to special protection and this should be considered at both the international, national and local level.

With regard to criminal measures, attempts to criminalize travelling for terrorist purposes, including attempts to and the facilitation and financing of those journeys, affect minors. By enlarging the scope of criminal measures, more juveniles will be affected by these measures. Unfortunately, the CoE has been the only international organization which has explicitly recognized that children might be affected by the criminalization of travelling to areas controlled by jihadist militias. At the national level, the Dutch government does not intend to implement these similar criminal provisions. However, it does emphasize a criminal law approach towards individuals who travel with terrorist purposes. Although no exceptions are made for juveniles, the effects are somewhat mitigated by the juvenile provisions, which make it less likely that minors will be subjected to severe sentences for terrorist offences. Nonetheless, it should be stressed that Article 40 CRC requires that minors are diverted from the criminal justice system as much as possible. This should be kept in mind by the investigating and prosecuting authorities.

Further reasons for concern are the proposed measures at the national level to strengthen the administrative response to travels. In contrast to criminal justice system and the child protection system, there are no procedural safeguards specifically designed to protect minors. The Minister of Security will take the decision to impose, for instance, the duty to report, an area ban or a travel ban. Compared to juvenile judges, however, the Minister has less experience with weighing the best interests of the child and is maybe more driven by policy considerations. From a children's rights perspective, and in particular the right to be heard, it is recommended to create the possibility to appeal against the Minister's decision at the juvenile court.

6.3. Preventing radicalization

Luckily, no Dutch minors have to date been subjected to repressive measures. One possible explanation could be that the Dutch emphasis on preventing radicalization and on deradicalization has been effective. Several sets of measures at all three levels can be discerned.

First, one set of measures seeks to prevent minors from being exposed to violent extremist materials. At the international and national level, attempts are made to remove these materials from the Internet and social media. Recruitment, training and inciting hatred are criminalized at the European and national

¹³⁷ See notes 12-14, supra.

¹³⁸ E.g. G. Larry Mayes & R. Ruddell, *Do the crime, Do the Time: Juvenile Criminals and Adult Justice in the American Court System* (2012). I. Weijers et al., 'Transfer of minors to the criminal court in Europe: Belgium and the Netherlands', in: J. Junger-Tas & F. Dünkel (eds.), *Reforming Juvenile Justice* (2009), pp. 105-124.

level. Also at the national level, measures are taken to enable the authorities to ban recruiters from neighbourhoods where radicalization is an issue or to press criminal charges.

Furthermore, changing the discourse is an item on every international, national and local to-do list. At all levels, the development of a 'counter-narrative' is stimulated by involving Muslim communities, religious leaders and scholars. The authorities aim to facilitate this process, but are not interested in developing a 'State of Islam'. Another way to change the discourse is to stimulate citizenship, critical thinking and identity development among the youth. To that end, the importance of education is widely recognized. Organizing training and support for teachers and designing teaching packages is proposed at all levels. In addition to changing the environment, individualized measures are proposed to prevent radicalization. Identity development can be stimulated on a voluntary basis such as the 'buddy' system introduced in The Hague or mandated in the child protection system or the criminal justice system.

The attention to the development of the child's identity is promising in light of the best interests of the child. It forms an acknowledgement of the continuing growth and maturity of the child. However, one can question to what extent these measures are truly open to the child's religious and cultural baggage. The Western understanding of identity, but also of citizenship, democracy and human rights, is not universally shared. By presenting these constructs as neutral, common grounds, it is neglected that the minor may be influenced by a culture or religion which holds different views on these matters.

In practice, the attitude of teachers, social workers and other first-line professionals will determine whether minors express their views, practice their religion or maintain their ties with their cultural background. However, these professionals are often wearing two hats. While they have to engage in an open exchange of ideas with the child, they are expected to report signs of radicalization to the authorities as well. Similar concerns can be raised about the treatment of minors in custodial placement or juvenile detention facilities. How do professionals in these facilities strike a balance between the child's right to identity and religion, and countering radicalization?

In that regard, it is recommended that more attention is paid to a child's religious or cultural background in the execution of programmes regarding citizenship, critical thinking or identity development and in the execution of child protection measures or criminal sanctions. First-line professionals should be made aware of the religious and cultural rights of the child, and invest in learning about his or her religious or cultural background.¹³⁹

Another set of prevention measures strives towards strengthening the relationship between the minor and his or her parents, which is laudable from a children's rights perspective. The attention being given to parents is especially evident when measures are taken at the national and local level. Also juvenile judges elaborate on the parents' attitudes in their decisions. The success of the national hotline illustrates that many parents are concerned and seek ways to take action.

Whereas some parents play a positive role in countering radicalization, others take their children to Syria and Iraq. It is striking that the latter issue is not addressed in international, national or local policy documents. Until today, the only illustration of the way in which these cases are dealt with is the case before the juvenile court in which the AIVD suspected that two families planned to travel to Syria. A recommendation for policymakers is to develop separate strategies to address this group. For example, this group might be sensitive to a campaign which concentrates on the poor living conditions, the lack of facilities and civilian casualties in Syria and Iraq.

Finally, this study illustrated the proliferation of institutions, organizations and individuals which claim to be experts on radicalization issues. For instance, the UN, CoE, EU, Dutch government and The Hague each have their own organizations to gather and exchange experiences from first-line professionals. It should be borne in mind that the activities of other municipalities, states, NGOs and international organizations were

139 E.g. L. Kirmayer et al., *Cultural Consultation: Encountering the Other in Mental Health Care* (2014). R.M. Ortega & K.C. Faller, 'Training child welfare workers from an intersectional cultural humility perspectives: A paradigm shift', (2011) 90 *Child Welfare*, no. 5, pp. 27-49.

beyond the scope of this study. The multitude of organizations raises not only efficiency concerns, but also prompts the question of how the quality is to be monitored.

7. Conclusion

Since 2012, various measures have been taken at the international, national and local level to prevent citizens from travelling to Syria and Iraq. When these measures concern minors, the best interests of the child as codified in the CRC should be considered. This research examined the following question: to what extent are the best interests of the minor taken into account at the international, national and local level when preventing minors from travelling to Syria and Iraq? Are measures specifically designed for and directed towards minors? And if not, to what extent is the special position of minors being considered while taking more general measures? In the previous section, some recommendations were presented.

In conclusion, children's rights are rarely acknowledged by policy makers. Only the use of the child protection system is an example of measures exclusively designed for minors. Juvenile courts weigh various elements of the best interests of the child in their decision to impose child protection measures. Also measures are taken which are not exclusively aimed at minors, but at 'youth' in general. These measures touch upon various elements of the best interests of the child, such as identity development and strengthening the ties between the child and his or her family. With regard to the preventive measures, it was recommended that more attention is paid to the way that first-line professionals deal with the cultural or religious background of the child. Furthermore, the multitude of organisations involved raises efficiency and quality issues.

As to the repressive approach, the special position of minors is rarely acknowledged. It is recommended that criminal law is used carefully with regard to minors who have attempted to or succeeded in travelling to Syria or Iraq. With regard to the administrative instruments, it is unclear how the best interests of the child will be weighed against national security interests. Sufficient procedural safeguards should be put in place to guarantee the child's best interests.

Finally, it is recommended that the authorities use children's rights as an argument to intervene and prevent minors from travelling. To do so effectively, different groups of travellers should be discerned based on their intentions. Although a jihadi bride takes a different approach to a jihadi warrior, it is in both their best interests to remain in their home state. This is a strong argument for the authorities to intervene, but unfortunately this is often neglected. ■