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Revocation of citizenship and penalising foreign fighters

You asked for information on the following questions:

1. Are there laws or powers in place now that can strip you of your Australian citizenship?
2. Are there any laws in the world which identify people who have formal or informal allegiances to foreign powers and/or hostile foreign powers and that take punitive action with penalties against them and what are the penalties.

Response

Revocation of Australian citizenship

1. Yes. Under the [Australian Citizenship Act 2007](#), the Minister can revoke citizenship in circumstances involving offences or fraud: see [section 34](#). The revocation provisions provide for revocation if a person commits a 'serious crime' at any time *prior* to the person becoming an Australian citizen, provided they are convicted for 12 months or more for that crime. However, this applies only to applications for Australian citizenship by conferral (not to those who acquired Australian citizenship automatically). However, revocation under section 34 cannot occur if the revocation would render a citizen stateless (without nationality).

Section 34 of the *Australian Citizenship Act 2007* also provides for revocation of Australian citizenship when the approval to become an Australian citizen was the result of third party fraud. For example: Fraudulent conduct by a migration agent in the citizenship application. This applies to applications for Australian citizenship by descent and conferral. Similarly, revocation under section 34 cannot occur if the revocation would render a citizen stateless (without nationality).

If an individual did not automatically become an Australian citizen and the Minister exercised the power under subsection 22A(1A) or 22B(1A), the Minister can revoke the citizenship in circumstances involving a failure to comply with special residence requirements: see [section 34A](#).

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In addition, the Minister can revoke Australian citizenship if an individual with dual nationality serves in the armed forces of a country at war with Australia: see [section 35](#) which relevantly states:

Service in armed forces of enemy country

(1) A person ceases to be an [Australian citizen](#) if the person:

(a) is a national or citizen of a foreign country; and

(b) serves in the armed forces of a country **at war with [Australia](#)**.

(2) The person ceases to be an [Australian citizen](#) at the time the person commences to so serve [emphasis added].

Suggested further reading:

- B Walker (Independent National Security Legislation Monitor), [Annual Report](#), 28 March 2014, accessed 8 January 2015. See especially chapter 5 entitled 'Passport Cancellation and Citizenship Issues' at pp.37—59.
- P Hughes, [Australian jihadists: Is revoking citizenship the answer?](#), Lowy Interpreter weblog, 20 August 2014, accessed 8 January 2015
- A Lockyer, [If blocked from returning home, where will Australia's jihadists go?](#) The Conversation, 9 September 2014

Penalties imposed in other countries

2. It is not a criminal offence to have an allegiance to a foreign country or dual citizenship. In fact, there are an estimated 4 million Australian citizens who enjoy dual citizenship.

Akil N. Awan (Assistant Professor in Modern History, Political Violence and Terrorism at Royal Holloway, University of London) explores the options being pursued by countries around the world facing the problem of returning foreign fighters in an article entitled '[What Happens When ISIS Comes Home?](#)'. The relevant part of this paper is extracted immediately below:

...How then, should states deal with their errant sons, who choose to return home once the conflict has lost its glamour and appeal?

Essentially, there are really only three options on the table.

Firstly, states could potentially opt to revoke citizenship. The Canadian government has just announced precisely that, citing its long-established Canadian Passport Order, which gives officials the right to terminate citizens' travel papers. However, for most countries, this is likely to be a nonstarter. Unless the accused happened to possess dual nationality, it would be deemed illegal to render a person stateless under existing UN conventions and therefore violate international law, as British governmental lawyers recently established. Moreover, [IS has issued new passports to their fighters](#), many of whom publicly burnt their original national identity documents in response. And so invalidating citizenship would inadvertently place Islamic State's claims to sovereignty and allegiance on equal footing with bona fide nation-states, and therefore only serve to reinforce the perception of IS as a legitimate alternative polity in the international order.

The second option would be to rehabilitate returnees by disengaging them from violence (commonly referred to as de-radicalization). The British government, in the panicked wake of the Jihadi John

situation, recently announced that British jihadists returning from Iraq and Syria would be forced to attend “de-radicalization” programs, “[in order to reverse their warped brainwashing](#).” Whilst this strategy is far preferable to rendering individuals stateless, for those of us who study radicalization, and attempt to understand the heady appeal that ISIS, Al Qaeda or indeed any form of violent extremism holds for some young people, these sorts of pronouncements do pose some concerns...

The third and final option being mooted by some governments, is to seek a punitive, rather than rehabilitative, response by criminalizing all those who return from fighting in Syria. And whilst we certainly should hold those who have committed crimes accountable, in the absence of clear evidence of criminality, this is simply not feasible for the rest. Not only is it impracticable and cost-prohibitive, but also morally indefensible, considering that some of the young men and women who traveled there to fight did so for largely altruistic reasons, moved by the plight of Syrians suffering under Assad’s brutal regime. Of course, others had far less idealistic motives, stirred by the thrill of adventure, or escapism from the ennui of their lives back home, or simply swept up in the raw euphoria of being part of the Jihadist zeitgeist.

The position taken in much of Europe is succinctly summarised in an article entitled [For Jihadists, Denmark Tries Rehabilitation](#), in The New York Times on 13 December 2014 which relevantly states:

In [much of Europe](#), the answer has been to lock them up, or at least put them under investigation by prosecutors. Belgium, Britain, France, Germany and Norway have all detained many returning fighters, on suspicion that they either joined a terrorist organization abroad or violated restrictions on travel to Syria.

The Netherlands has barred some Syria fighters from returning, and ordered those who do and face trial to wear ankle bracelets. Belgium, the country with the highest number of Syria fighters per capita, has not only targeted returnees but also prosecuted people who stayed at home and encouraged others to go to fight.

Mayor Boris Johnson of London summed up what has become Europe’s most common response in [an article in The Daily Telegraph](#). “We need to make it crystal clear that you will be arrested if you go out to Syria or Iraq without a good reason,” he wrote.

Denmark, with the second-highest number of foreign fighters per capita, has gone in the other direction, shunning punishment in favor of rehabilitation...

A paper by entitled ‘[Foreign Fighters under International Law](#)’, published by the Geneva Academy in October 2014 discusses the three main options countries have to prosecute foreign fighters. Namely, foreign fighters may be prosecuted for ordinary crimes, or on the basis of domestic terrorism legislation, or under international law if they are suspected of committing or being involved in war crimes or other international crimes while they participated in an armed conflict abroad.

The relevant part of this paper is extracted immediately below:

2. Prosecution of foreign fighters

States have several options if they decide to take criminal law measures to punish their nationals who join an armed insurgency abroad.

First, returning foreign fighters may be prosecuted when they return to their home country if they are suspected of committing or being involved in war crimes or other international crimes while they participated in an armed conflict abroad. As we have seen, IHL governs the conduct of non-state actors during an armed conflict, regardless of their nationality or permanent residency status (see Sections B and C). In Europe, all EU member states as well as Switzerland and Norway have ratified the Rome Statute of the ICC and have the necessary implementing legislation to enable them to exercise jurisdiction over war crimes, crimes against humanity, and genocide, including over crimes committed during an armed conflict abroad. The prosecution of returning foreign fighters for war crimes or other international crimes would face few jurisdictional obstacles, because states could rely on active nationality rather than the more controversial principle of universal jurisdiction.

NGOs,³⁹⁶ the UN Commission of Inquiry on Syria,³⁹⁷ and the OHCHR³⁹⁸ have reported that, during the current conflicts in Syria and Iraq, Islamic State and its fighters have been responsible for grave and widespread violations of IHL, which may amount to war crimes or crimes against humanity.³⁹⁹ The crimes cited include: executions of civilians and other persons no longer participating in hostilities, hostage-taking, ill-treatment and torture of detainees, sexual and gender-based violence, and recruitment of children.⁴⁰⁰ Foreign fighters who fought with Islamic State may have been involved in such acts and may face prosecution for their involvement,⁴⁰¹ regardless of whether or not they held senior positions within Islamic State.⁴⁰² To date, however, no investigations of returning foreign fighters for war crimes or other international crimes have been reported.

Second, foreign fighters may be prosecuted for ordinary crimes. In most states, it is not in itself illegal to travel to and participate in an armed conflict abroad. The recently adopted Security Council resolution 2178 (2014) requires states to criminalise travel and attempted travel of 'foreign terrorist fighters' (see above, section D). Already, before the adoption of this resolution, several countries are believed to have amended their criminal law to prevent such travel and to counter the mobilization of foreign fighters in Syria. The government of Saudi Arabia has reportedly prohibited its citizens from participating in unlawful military action⁴⁰³ abroad. It has also prohibited calls by clerics to donate money to Syria's armed opposition groups or to wage jihad in Syria. However, the law does not seem to be enforced effectively. Saudis constitute one of the largest groups of foreign fighters in Syria.⁴⁰⁴ In Russia, where the law already prohibited participation in unlawful armed groups within Russia, an amendment to the Criminal Code broadened the prohibition to include participation abroad with the aim of harming Russian interests.⁴⁰⁵ The same amendment increased the maximum penalty for the offence to six years. In January 2014, a Chechen man who had allegedly joined the Syrian insurgency in July 2013 was charged in absentia with participating in the activities of illegal armed forces abroad.⁴⁰⁶

Whether or not they craft specific laws to address the phenomenon, many states can use their regular criminal law framework to prosecute outgoing and returning foreign fighters. During a NIAC, domestic law and IHL have always applied in parallel; and domestic law has generally criminalized use of force against the state.⁴⁰⁷ As a result, foreign fighters in NIACs can be prosecuted under national criminal laws, even for acts that do not violate IHL, such as lawful and proportionate attacks against military objectives (see Section B).

If domestic fighters flee abroad, they may escape prosecution because the jurisdiction of national law in most states does not extend to acts committed by foreigners abroad⁴⁰⁸ (with the possible exception of war crimes and other international crimes, such as torture). If foreign fighters return home, however, national law frequently has jurisdiction on the basis of the active nationality principle. Foreign fighters may therefore face prosecution for acts committed during an armed conflict abroad. For example, the UK investigated and arrested several British citizens accused of involvement in the kidnapping of journalists in Syria.⁴⁰⁹ In addition, ordinary criminal law may be used to prosecute potential foreign fighters for acts they take to prepare to commit such crimes. A

Dutch Court convicted two prospective foreign fighters for preparing to commit murder and arson.⁴¹⁰ IHL recommends amnesty for individuals who merely participate in hostilities and commit acts during NIACs that are lawful under IHL. Arguably, the same recommendation could apply to the states of origin/citizenship of foreign fighters, which may not be involved in any way in the relevant armed conflict.⁴¹¹

Finally, foreign fighters who join or attempt to join an armed group that has been officially listed as a terrorist organization may be investigated and prosecuted on the basis of domestic terrorism legislation. In fact, most reported investigations and prosecutions of foreign fighters returning from Syria and (above all) individuals planning to travel to Syria, as well as individuals associated with their recruitment, appear to be based on domestic terrorism legislation, reflecting the fact that most foreign fighters have reportedly joined or intended to join Islamic State or al-Nusra. The UK reported a surge in Syria-related terrorism arrests and charges during 2014.⁴¹² Similarly arrests and prosecutions for Syria related-terrorism offences were reported in many Western countries, including Australia,⁴¹³ Belgium,⁴¹⁴ France,⁴¹⁵ Germany,⁴¹⁶ Spain,⁴¹⁷ and the USA.⁴¹⁸

In another 2014 paper entitled, '[Foreign fighters in Syria](#)' by the Soufan Group, Richard Barrett discusses the approaches that are being used in other countries to deal with foreign fighters when they return. The relevant part of this paper is extracted immediately below:

Broadly speaking, there are two approaches to deterring people from fighting in Syria or dealing with them when they come back. One is to stigmatize all participation and to threaten those who go with legal or administrative consequences, confiscating passports or even revoking nationality. The other is to do everything possible to help returnees to reintegrate. In some countries these two policies exist side by side.

Several European States, for example, have or are considering criminalizing unauthorized participation in a foreign war, and most already have laws that penalize membership of a designated group, such as ISIS or Jabhat al-Nusra. But the collection of reliable evidence in the latter case is difficult, especially in countries where the prosecution must also demonstrate that the group intends harm to national interests. The Russian Federation adopted a law towards the end of 2013 that criminalizes involvement in an armed group abroad contradictory to Russian policy;⁵⁶ but such laws do not act as a deterrent and are broadly framed, complicating mutual legal assistance between States. They may also discourage fighters from returning who have become disillusioned or even disgusted by what they have seen, or feel they have done what they set out to do and just want to go home.

A Jabhat al-Nusra coordinator has been quoted as saying in mid-March 2014:

Since the second week of January until now ... hundreds, if not more than two thousand (foreign fighters), went back to their home countries.⁵⁷

A senior commander in Ahrar al-Sham gave a similar report:

Most foreign fighters arrive with good intentions and often recoil when they witness wrongdoing or brutal tactics by the groups they join. This can spur them to join other groups, or simply to return to their home countries disenchanted.

These returnees are unlikely to pose a threat, particularly in the short term. But the problem remains of how to sift out those who may just return to their old lives or perhaps need some help to reintegrate, from those who pose a risk to society.

Saudi Arabia has tried to both prevent people from leaving to fight and to encourage those who are already there to return by enacting a new law, and offering a period of amnesty before it took effect. A rare royal decree of 3 February 2014 stipulates penalties for anyone who

'participates in hostilities outside the Kingdom, in any way, or who belongs to a radical religious or ideological movement or group, or one classified as a terrorist organization domestically or internationally, or who supports or adopts its ideology or approach in any way, or expresses sympathy with it by any means, or provides any financial or moral support for it, orally or in writing'

Saudi citizens will know what this means and will see the decree as a significant political statement as well as authorizing the authorities to take action across a wide front. However, the more that Saudi Arabian

involvement in Syria switches from supporting groups that oppose the Government to supporting groups that are fighting extremists, the more likely that fighters from Saudi Arabia will see their Government as part of the enemy.

For those who do return, Saudi Arabia offers help. Since the King issued his decree, at least 300 Saudi fighters have gone home and entered the well-established 'counseling and care' program for people who have been caught up in radical groups. Few countries will be able to provide the facilities that exist in Saudi Arabia, but many other States with fighters in Syria benefit from some sort of reintegration program, whether run at a national or at a community level. These programs should also take into account the possibility that returning fighters will have received psychological damage and suffer from post-traumatic stress disorders. Furthermore, as more women participate in the fighting, States will have to decide whether they need to adapt existing programs or introduce new ones to meet this new requirement.

An initiative undertaken by Algeria, which has a long experience of dealing with violent extremism dating back to the start of the 1990s, is to engage the family of a fighter from Algeria as soon as it is known that he is in Syria. Families are almost always shocked to find that one of their members has gone to fight and are ready therefore to discuss with the authorities why he might have gone and what should be done when he returns. This allows an opportunity both to weigh the likely threat and to work out a viable response.

There is also a focus on family support structures in the development of reintegration programs in Europe, including on issues concerning de-radicalization and healthcare, as well as on countering radical influences from outside. Such programs exist despite the stern and retributive language emerging from government spokesmen, but they do depend on the willingness of the family and the returnee to participate and assume a degree of family cohesion that is often not present in the families of foreign fighters. Other countries are looking at these programs to see if they should introduce them as well.

Suggested further reading:

- [No place like home: What to do when jihadists return](#), BBC News, 18 November 2014
- [British jihadists: Turning them around](#), The Economist, 15 November 2014
- [A soft approach to returning British fighters](#), Al Jazeera, 12 October 2014
- [Canada's foreign fighters - And don't come back](#), The Economist, 23 September 2014.
- [Australians fighting overseas: how the foreign incursion laws work](#), The Guardian, 5 December 2013.
- [What Happens When Islamic State's Foreign Fighters Return?](#), Bloomberg, 1 December 2014
- [Denmark tries a soft-handed approach to returned Islamist fighters](#), Washington Post, 19 October 2014
- [Nations Trying to Stop Their Citizens From Going to Middle East to Fight for ISIS](#), The New York Times, 12 September 2014.
- [Responding to Foreign Terrorist Fighters - A Risk-Based Playbook for States and the International Community](#), Global Center on Cooperative Security, November 2014
- [Western Foreign Fighters: Innovations in Responding to the Threat](#), Institute for Strategic Dialogue, 2014

I hope this information has been of assistance. If you require additional information or clarification, please do not hesitate to contact me.