

Jihadism and the law: Can we handle the current threat?

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The present contribution considers the threat of Jihadism inspired “foreign fighters” returning from Syria and evaluates current legal measures to deal with this threat. The evolution of Jihadism is followed starting from 1973, and the nature of the current threat is described. It is concluded on the basis of an analysis of existing German laws that current frameworks are sufficiently equipped to deal with acts associated with terrorism, but that the social dynamics (recently described as a “swarm”) and the plurality of motivations of the current Jihadist movement may pose considerable challenges.

I. Introduction

As we are approaching the 15th anniversary of the September 11 attacks of 2001, Jihadism still appears to be very much alive and, more worrisome, kicking. The attacks on the Jewish Museum of Brussels, carried out at the time of writing of this brief, are considered by many a forebode of a new swarm of radical Jihadist activity in Western Europe, particularly fueled by events in the now frighteningly Near-Middle East. The nature of the threat poses considerable challenges to the intelligence and security establishment directly involved in dealing with the threat, to the interethnic co-existence within Western Society, and also, more tacitly, to the democratic and legal principles on the basis of which many modern Western democracies are founded. The outrage following *Edward Snowden’s* revelations regarding NSA’s enhanced surveillance practices highlight how the necessary security measures to counter the threat may compromise basic democratic values, most notably the protection of privacy. What’s more, the threat also poses a challenge to the legal system of many Western countries. We are dealing with (a) transnational movement(s), both deliberately glued and accidentally coalesced by a complex mixture of ideological ardor, global and local realpolitik, clever media tactics and individual psychology, culminating in a great variety of expressions, from sympathy to the cause to the most outrageous mass casualty attacks. It should be apparent that no single law is able to deal with all this complexity. Are current frameworks sufficiently equipped with the conceptual tools to capture and deal with unwanted behavior while keeping innocents exculpated? The present paper first describes the evolution of the Jihadist movement, then the nature of the current threat, and finally considers existing legal frameworks in the light of this threat.

II. The evolution of Jihad

There have been many accounts of the history of Al-Qaida and the associated Jihadi movement.¹ Some trace the origins

¹ E.g. *Wright*, *The looming tower, Al-Qaeda and the road to 9/11*, 2006; National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission report, Final report of the National Commission on Terrorist Attacks upon the United States*, 2004; *Gunaratna*, *Inside Al Qaeda, Global network of terror*, 2002.

of the movement back to 1984, when Abdul Azzam founded the Afghan Service Bureau on the Pakistani-Afghani border to connect “foreign fighters” to the Mujahidin resistance seeking to ward off the Soviet invasion in Afghanistan.² Many place the starting point in 1979, indeed considered by many a “pivotal year”³, when the Soviet invasion was initiated. But as a pivot, 1973 may be considered equally if not more relevant than 1979. This is the year of the first oil crisis.

From *The Prize*⁴, *Daniel Yergin’s* seminal analysis of the role of oil in world power politics, it can be inferred that the 1973 oil crisis and the associated rise in oil prices came with two consequences that are crucial for the understanding of the evolution of Jihadism. First, the crisis led to an awareness of the potential political role that many Muslim countries, at that time the main oil producing countries in the world, could play on the world stage. For the first time, oil provided a leverage tool for “the” Muslim voice to be heard in the international political arena. This spurred the emergence of various Islamic political movements and a general political engagement especially among the Muslim youth. In the late 1970s, political and revolutionary movements convinced of the binding power of Islam emerged throughout the Islamic world, including Iran, Saudi Arabia and Pakistan.⁵

A second consequence of the rise in oil prices relates to the global strategic landscape of that time. In 1973, the USA was heavily involved in Vietnam, more than 10.000 kilometers from its shores. With the sharp rise in oil prices, the transportation of military equipment and personnel suddenly became unaffordable.⁶ The oil crisis had thus revealed the Achilles heel of American power: Its dependence on Arabic oil to fuel its military might. The Soviet Union, with its vast energy resources, realized this and sought to capitalize on its competitive advantage against its rival superpower. The idea was to take the Soviet Army all the way to Sindh and Baluchistan, Pakistan’s most southern provinces, from where oil transports from the Persian Gulf to elsewhere could be effectively controlled, thus seriously undermining America’s military reach.

As is well-known, history took a different turn. When the Soviets invaded Afghanistan in 1979, merely a necessary step to reach Pakistan, they met resistance by the local Mujahideen, eventually strengthened by American, Pakistani and Saudi support.⁷ The latter two countries in particular were also supportive of politically conscious young Muslims from

² *Wright* (Fn. 1).

³ *Caryl*, *Strange Rebels, 1979 and the Birth of the 21st Century*, 2014.

⁴ *Yergin*, *The prize, The epic quest for oil, money and power*, 1991.

⁵ *Coll*, *Ghost wars, The secret history of the CIA, Afghanistan, and bin Laden, from the Soviet invasion to September 10, 2001*, 2004.

⁶ *Wesseling*, *Fuelling the war, Revealing an oil company’s role in Vietnam*, 2000.

⁷ *Coll* (Fn. 5).

around the world who travelled to Afghanistan to fight on behalf of Islam against the invading communist “unbelievers”. Across the Afghan-Pakistan border initiatives were set up to facilitate the connection between these youngsters and the Mujahideen resistance fighting in Afghanistan.

The emergence of Al-Qaida, the international face of organized Jihadism, can be understood against this backdrop.⁸ Its forerunner, the Afghan Service Bureau, was established by the Palestinian Abdul Azzam in 1984 in Peshawar on the Pakistani-Afghan border, with the wealthy Osama Bin Laden providing financial support for the initiative. The Afghan Service Bureau shows how Jihadist organizations function, up to this day. The organizations help to recruit and train interested youngsters from across the world to prepare them and connect them to battle in the name of Islam in places where Muslim are considered to be oppressed or humiliated. In terms of network analysis, Jihadist organizations, including Al-Qaida, thus serve as “facilitators” that connect various interest groups to battle grounds, and equip these interest groups with the beliefs, know-how and instruments, to be effective on these grounds.⁹

It has been a matter of debate whether these networks of “foreign fighters” actually played an important role in the outcome of the war in Afghanistan. But the fact that there are different perspectives in this debate has mattered a lot. After the Soviets were forced to leave Afghanistan, and the subsequent collapse of the Soviet Union, the United States was eager and swift to claim victory in the name of capitalism and democracy. But in doing so, many Mujahideen veterans of the Afghanistan war felt betrayed because they felt they had been decisive.¹⁰ Upon returning to their home countries, the ‘foreign fighters’ felt particularly betrayed as they noticed how eager the rulers in their countries were to recognize the role of the USA in the defeat of the Soviets, and in doing so, how much they were willing to give up Islamic ideals, exactly the ideals that had inspired the foreign fighters.

The ambiguities of attribution turned particularly contentious shortly after Saddam Hussein’s invasion in Kuwait in 1990.¹¹ The Saudi kingdom was forced to react and choose the United States as their main ally. In this decision, the foreign fighters of the Afghan war believed, the true intentions of the Saudi Kingdom were revealed: Rather than hiring the veterans of the Afghan war to defend the holy land, the Saudis preferred the irreverent Americans in exchange for oil money and the associated exuberant lifestyle for the happy few. Bin Laden, initially received in Saudi Arabia with gratitude upon returning from Afghanistan, was among those who felt enraged. It meant the beginning of his fight with the Saudi Government, leading to Bin Laden’s exile to Sudan in 1992, and a couple of years later to the attack on the Khyber Towers in Dharhan, Saudi Arabia.

Bin Laden’s experiences in Saudi Arabia coincided with the experiences of many other foreign fighters returning from the Afghanistan war. Although they were sometimes hailed for their heroism in battle, their ardor and religious orthodoxy was often met with suspicion as it potentially implied a threat to the vested interests of those in power in the Arab world, interests that were largely based on compromises of Islamic ideals in exchange for monetary compensation for the happy few. In Egypt in 1997, for example, the Al-Gama’a al-Islamiyya carried out its attack on German tourists in Luxor to address Egypt’s heavy dependency on Western sources of income (and of irreverence). In Algeria, after the government had cancelled free elections to prevent the Islamic Salvation Front (FIS) from taking power and ruling by Islamic principles, several Afghan fighters found new meaning in the armed struggle that ensued between the Algerian military and the Islamists, including the notorious GIA (Group Islamique armé, or Armed Islamic Group). Indeed, throughout the final decade of the past century, the veterans of the Afghan war continued their fighting ways in places where they believed Muslims were under threat. These places include Kashmir, Somalia and Bosnia, while Afghanistan itself remained haunted by violence throughout the 1990s.¹²

In part because of the West’s lenient immigration laws, the veterans also reached centers in Europe and the US from where they could preach about the humiliation of Muslims throughout the world, and share heroic stories of the armed struggle in the name of Islam. These stories resonated well among first and second generation young Muslim immigrants who felt excluded and disaffected by the highly materialistic culture in the West. The essential function of the Jihadist organizations to facilitate the linking of politically engaged Muslims to conflict zones where Muslims are under threat thus continued and expanded in the 1990s to also excite Muslim immigrants in Europe and the United States. The Hamburg Cell, a network of Muslim engineering students from the Arab world, brought together by a clandestinely and professionally operating organization and inspired by the stories of humiliation and the subsequent vengeful response in Chechnya, Bosnia and other places, is probably the best known example.

Indeed, following its hideous act, the 11th of September 2001 terrorist attacks, the fear was raised that other, similar networks were active in the West and elsewhere. This fear was confirmed in Singapore, where plots by Jama-Islamiya, an Al-Qaida affiliate, were revealed around the time of the terrorist attacks in the USA.¹³ In other places, the hunt for these networks was less successful. In Indonesia, the Bali bombing on Jalan Legian of October 2002 left more than 200, mostly Australian tourists and Indonesian locals, dead.¹⁴ One and a half year later, on the 11th of March 2004, Madrid was shocked by the most deadly terrorist attacks on its soil, with a

⁸ E.g. Wright (Fn. 1); Gunaratna (Fn. 1).

⁹ See e.g. Arquilla/Ronfeldt, Networks and netwars, The future of terror, crime, and militancy, 2001.

¹⁰ Coll (Fn. 5).

¹¹ E.g. Coll, The Bin Ladens, An Arabian family in the American century, 2008.

¹² Roy, Globalized Islam, The search for a new Ummah, 2004.

¹³ Ministry of Home Affairs (Singapore), The Jemaah Islamiyah arrests and the threat of terrorism, White paper, 2003.

¹⁴ Ramakrishna, Radical pathways, Understanding Muslim radicalization in Indonesia, 2009.

coordinated series of bomb blasts killing 191 and wounding many more.¹⁵ In November 2004, the controversial Dutch filmmaker Theo van Gogh was assassinated in Amsterdam by a young Dutch-Moroccan.¹⁶ On July 7 2005, the London transport system was hit by several nearly parallel explosions, killing over 50.¹⁷

Although in all these European cases, it was clear that there was at least some sort of involvement of terrorist networks, the extent to which these networks were guided by a central command (i.e. the Al-Qaida leadership), and in the Dutch case, whether the single shooter could be considered part of a more extensive network, became subject of debate.¹⁸ Clearly, the US military actions in Afghanistan following the September 11 attack had seriously undermined Al-Qaida's capabilities to facilitate the Jihadi movement. At least, since the start of the US campaign in October 2001, Afghanistan was no longer a secure basis for Al-Qaida operations, and many of the key leaders were forced to flee to the neighboring Pakistan from where it became increasingly difficult to overtly prepare and direct attacks. As a result, some argued, the Jihadi movement was no longer linked through an active leadership, but rather through shared ideals, attitudes, and role models.¹⁹ Anywhere in the world, footage of the "war on terror" and the widespread availability of Jihadist websites afforded the emergence of networks of individuals who shared the same ideology and interest in fighting the West and unbelievers throughout, but who were also physically separated and unaware of other members of the network. The 2010 suicide bombing attack in Stockholm by an Iraqi immigrant that injured two innocent bystanders, is often considered an example of "let 1000 flowers blossom" self-radicalization that appeared to be the primary modus operandi of the Jihadist movement in Europe around that time.²⁰ The Fort Hood Shootings of November 2009 represents another example.

The attack as was carried out in Stockholm may appear to represent just a small threat in comparison to the threat posed by earlier attacks, the September 11 attacks and the public transport bombings in Madrid and London. Indeed, while some nations, most notably Pakistan, witnessed an increase in attacks from 2008 on, it appears that Jihadism had gradually lost its appeal at the first turn of decades in the 21st century. This, in part as result of the increased effectiveness of counterterrorism efforts, leading up to the killing of Bin Laden and other important figures within Al-Qaida (including Al-Awlaki). For another part, the dynamic in the Arabic world appeared to have fundamentally changed. The Arab spring

that emerged in 2008 appeared to favor non-violent mass uprisings to the violent terrorism that had failed to bring the (Sunni) population in these areas any closer to improving their socio-political situation. As the dictatorships of Tunisia, Egypt and Libya collapsed, optimism about a democratic, non-violent future for North-Africa and the Arabic Peninsula had reached levels that made a resurgence of Jihadism appear very unlikely.²¹

III. The current threat

Events have taken a dramatic turn, however. Jihadism did resurge. In some countries, most notably Syria, the popular uprisings turned into a bitter fight with much better armed and prepared government forces. In other countries, such as Iraq and Egypt, the newly instilled democratic systems quickly revealed their shortcomings, favoring some while excluding others. In these circumstances, the message that one needs to pick up arms to establish a truly unified, "pure" Islamic community, as Jihadism espouses, resonates now virtually more than ever.

The message not only resonates in the countries just mentioned. In fact, in these countries, the recent rise of ISIS in Iraq and Syria seemed to have been received more by fear than by support, even among the original Al-Qaida leadership.²² But particularly in Europe, intelligence and law enforcement agencies have observed a dramatic rise in appeal and clout of Jihadi networks. A recent report by the Dutch General Intelligence and Security Service (Dutch acronym: AIVD), for example, claims that the Syrian war has served as an important catalyst for Jihadism, but also delineates other factors that contribute to the rapidly expanding appeal of the Jihadi movement in the Netherlands.²³ First, elements within the Jihadi movement have learned from earlier contacts with the eyes and ears of intelligence and have found ways to circumvent security measures, enabling virtually unmonitored travelling to the conflict areas and enhanced organization and professional capabilities of the movement. Secondly, social media is increasingly used as a tool to garner support for the Jihadist cause, to discuss Jihadi themes, and to provide practical information on meetings and activities. The result is, so the AIVD argues, that Jihadism has come into the public sphere, where it is easily accessed. Although the public nature of the Jihadist debate uncovers the ambiguities and disagreements over the interpretation of the cause, it has certainly also contributed to its accessibility and thereby considerably enhanced its recruiting power. What's more, in many Western European countries, there are no laws that constrain the use and content of social media, allowing for an unbounded spreading of the message. The AIVD further notes that as a result of the use of social media, the Jihadist movement can no longer be considered as a network with central figures that

¹⁵ *Sánchez*, El archivo del duelo, Análisis de la respuesta ciudadana ante los atentados del 11 de marzo en Madrid, 2011.

¹⁶ *Buruma*, Murder in Amsterdam, The death of Theo van Gogh and the limits of tolerance, 2006.

¹⁷ London Assembly/Greater London Authority, Report of the 7 July Review Committee, 2006.

¹⁸ *Hoffman*, Foreign Affairs May 2008, 133; *Sageman*, Leaderless jihad, Terror networks in the twenty-first century, 2008.

¹⁹ *Sageman* (Fn. 18).

²⁰ *Seib/Janbek*, Global terrorism and new media, The post-Al Qaeda generation, 2011.

²¹ See *Hoffman*, CTC Sentinel May 2012, 12, for a discussion.

²² E.g. *Coker*, Wall Street Journal, July 11 2014,

<http://online.wsj.com/articles/why-the-new-jihadists-in-iraq-and-syria-see-al-qaeda-as-too-passive-1405096590>.

²³ AIVD, Transformation of jihadism in the Netherlands, swarm dynamics and new strength, 2014.

connect to their followers. Rather, the network has become decentralized, whereby anybody can potentially influence anybody, without a central instance that directs the discussion and actions.

The AIVD observes:

The Jihadi movement in the Netherlands has changed substantially in the way in which it is structured and connected. The Jihadist movement in the Netherlands has taken on the characteristics of a swarm. With this, it is meant that the movement is of a strongly decentral nature, with many different particles that each are to a great extent self-regulating. Together, however, they move while preserving coherence and direction as a collective, despite their sometimes apparent whimsicality and unpredictability. The preservation of coherence and direction is not so much dependent on the a few guiding figures, but of the collective self-regulation on a decentral level. This implies, among others, that there is only limited leadership and hierarchy, and most centers around horizontal social influence, by friends, family, neighbors, and the like-minded, both in the online and offline world.²⁴

In the spring of 2014, the re-emergence of Jihadism in Europe has been given a face in Mehdi Nemmouche. On the 24th of May, he allegedly entered the Jewish Museum of Belgium in Brussels with an AK-47 and started shooting, killing three on site and lethally wounding another. Nemmouche, a dual citizen of France and Algeria, was arrested six days later in Marseille. In his bags, the police found next to several weapons including an AK-47, a message apparently claiming responsibility for the attack and symbols associated with the Islamic State of Iraq and the Levant. It turned out that the alleged perpetrator of the shootings had spent a number of years in prison, where he had come into contact with radical Islam, converted, and had been inspired to set off to join ISIS and fight in Syria. Reports on the shooting and the shooter fail to specify whether Nemmouche was sent from Syria to Brussels to carry out an attack, but the relatively short period between his return in March and the assault in May suggests he might have returned with a specific mission.

In this sense, the acts by Nemmouche may appear to bear some resemblance with the earlier described veterans who continued their militancy upon returning from the fighting in Afghanistan. However, the mere presence in a conflict zone can certainly not be taken as the definitive indication that a “foreign fighter” will carry out an attack domestically and the Nemmouche case may therefore certainly not be understood as the only way in which “foreign fighters” may come to pose a threat to Western Europe. In fact, in one of the few publications on the issue, *Hegghammer* concludes: “Western Jihadist may not all be equally motivated to attack in the West. In fact, the tentative data presented here indicate that most prefer to fight outside the West and that most foreign fighters do not ‘come home to roost.’”²⁵

Are there, in the context of the new wave of Jihadist radicalization, any conditions to be specified that typically and

inevitably lead to the commitment of extremist or terrorist motivated crimes? *Hegghammer*’s conclusion suggests it is not foreign fighting. The consensus of terrorism scholars is also that neither personality nor psychopathology can account for engagement in terrorist activity.²⁶ Indeed, one may say that any account on the basis of relationships between a single variable and terrorist activity is likely to miss out on the complexity of the phenomenon. Rather than identifying (root) causes, the analysis of terrorism foremost benefits from the identification of enabling factors that jointly determine a dynamic and multifaceted process that increases the likelihood of terrorist activity.²⁷

There is a long and contentious history of defining terrorism and the confusion increases once radicalization is included in the analysis.²⁸ Even beyond the notion that ‘one man’s terrorist is another man’s freedom fighter’ one finds considerable diversity in formal descriptions of the phenomenon. In our specific case of Jihadism, as well as generally, it is of importance to emphasize that most definitions focus on *acts*, thus deviating from public debates that seem often to be more focused on the implicated actors. Specifically, the use of violence (or threat to use violence) is typically considered the key characteristic next to the political, social, religious or otherwise ideological motivation behind the acts. But the description of the origins of Jihadism illustrates that acts of violence for ideological purposes may actually consist of multiple components that may be carried out by different individuals at different moments in time for different reasons, and that, to complicate matters further, there may be variation in the extent to which these acts are considered offenses that endanger the state depending on international and geopolitical relations in the timeframe within which these acts take place.

From the horrible acts of September 2001 and the more recent shootings at the Brussels’ Jewish Museum of Belgium, one can easily infer the plurality of terrorist acts. These attacks have long historic build-ups of sometimes, as in the case of the September 11 attacks, several decades. And during these decades, many activities, often considered legal and sometimes even considered heroic, have deliberately but also incidentally contributed to the ultimate highly publicized act. “September 11” as described above can thus be considered the culmination of enhanced political engagement among young Muslims in the 1970s, Abdul Azzam’s founding of the Afghan Service Bureau, Bin Laden’s financing of that bureau, involvement in civil wars in Algeria and Bosnia, involvement in terrorist attacks in e.g. Egypt and Saudi Arabia and recruitment activity in Europe, among many other acts.

It is clear that these separate activities cannot be explained in terms of a single, underlying motivation or a single risk profile. Indeed, the literature on terrorist motivation shows a

²⁶ *Kruglanski/Fishman*, *Terrorism and Political Violence* 2006, 193.

²⁷ *Kruglanski/Dechesne*, in: Baumeister/Vohs (Eds.), *Encyclopedia of Social Psychology*, 2007.

²⁸ *Schmid*, *Perspectives On Terrorism* 2012, 158,

<http://www.terrorismanalysts.com/pt/index.php/pot/article/view/schmid-terrorism-definition>.

²⁴ AIVD (Fn. 23), p. 8.

²⁵ *Hegghammer*, *American Political Science Review*, February 2013, 1 (12).

plethora of motivations assumed to underlie involvement in terrorist organizations, ranging from the pursuit of material gains, to the need for social affiliation, and the gratification of epistemic needs. Thus, as *Jerrold Post* has aptly labelled it, for the individual terrorist “the cause may not to be the cause”.²⁹ Not all who join a terrorist organization do so to serve the ideology that the organization espouses. These notions further suggest that it is important to differentiate between group level motivation (which is, by definition, related to the organization’s ideology) and individual level motivation (which may be completely unrelated to the ideology).

The current threat coming out of the Jihadi movement, then, is not a single “thing”, which can be described in terms of a single activity, which can be predicted by simple causes, which can be explained in terms of a single motivation, and which can be grouped as a single organization. Rather, it is a complex, dynamic system that is enabled by many factors on multiple levels. It is a complex combination of many different acts carried out by many different actors, including the participation in real-life and cyber-discussions on the need for Jihad, including the organization and participation in events that celebrate Jihadism, including the recruiting for the Jihad, including the financing and provision of other support for the movement, including the preparation and actual departure for Jihad in Syria and other conflict areas, including the facilitation of entrance to combat zones for Jihadis, including the military and ideological training of newcomers in these combat zones, including the involvement in actual fighting, and including – possibly – the planning and execution of attacks upon returning from Syria. All these acts, and there are probably many more, are unlikely to be driven by a single motivation. Jihadist organization would wish otherwise claiming Salafi Islam to be the single driver, but the reasons to engage may vary from a genuine interest in the mishaps of the Syrian people, to the longing for adventure, to commitment to a friendship, to the desire to become a soldier, or to the absence of something better to do. “Foreign fighters” returning from Syria may come back motivated (and prepared) to carry out an attack. But they may also return tired of fighting, but heavily traumatized, trained in using heavy arms and indoctrinated, thereby increasing the likelihood that they will react with extreme violence to stressful situations even in the absence of a deliberate plan to carry an attack. Furthermore, social media is changing the nature of the Jihadi movement. Indeed, one may question whether there still is a central organization that guides the acts of the movement as a whole. Rather, information made available through disseminators rather than actual organizations such as ISIS inspire interested individuals and encourage them to form their own opinion. There is no active recruitment, no pressure to join and no specific direction. There is, then, no organization or group that can be pinpointed to join the Jihadi movement. There is, what the Dutch intelligence and security services AIVD has termed “a swarm”, a dynamic system of mutually influencing elements that seems to gravitate towards the idea that it is

²⁹ *Post*, in: Reich (ed.), *Origins of terrorism, Psychologies, ideologies, theologies, states of mind*, 1990, p. 25 ff.

noble to pick up arms to fight for the unification of the (Sunni) Muslim community that is founded on purist principles.³⁰

IV. Legal capacities to counter the threat

This article started with the question whether current laws are equipped with the criteria and consequents to deal with the current threat coming out of Jihadist inspired fighters that return from fighting in place like Syria and returning to their homes in Western Europe. With the help of legal scholars, relevant articles from German law were considered in the light of the description of the threat. These articles of the German Criminal Code include:

- Section 89a: Preparations of a serious violent offence endangering the state
- Section 89b: Establishing contacts for the purpose of committing a serious violent offence endangering the state
- Section 91: Encouraging the commission of a serious violent offence endangering the state
- Section 129: Forming criminal organizations
- Section 129a: Forming terrorist organizations
- Section 129b: Criminal and terrorist organizations abroad: extended confiscation and deprivation

As noted before, terrorism, or more broadly radicalism, is primarily a problem once it becomes associated with action. Terrorism becomes terrorism when it involves the use of violence, the threat of the use of violence and preparations for the use of violence. Thus, descriptions of specific acts may help scholars to define, rather specifically, why terrorism is a problem. In this context, German law seems indeed well-equipped with the conceptual tools to pinpoint to the acts that jointly constitute the threat.

These acts include from 89a:

1. instructing another person or receiving instruction in the production or the use of firearms, explosives, explosive or incendiary devices, nuclear fission material or other radioactive substances, substances that contain or can generate poison, other substances detrimental to health, special facilities necessary for the commission of the offence or other skills that can be of use for the commission of an offence under subsection (1) above,
2. producing, obtaining for himself or another, storing or supplying to another weapons, substances or devices and facilities mentioned under No. 1 above,
3. obtaining or storing objects or substances essential for the production of weapons, substances or devices and facilities mentioned under No. (1) above, or
4. collecting, accepting or providing not unsubstantial assets for the purpose of its commission.

And from 89b:

5. receiving instruction for the purpose of the commission of a serious violent offence endangering the state

³⁰ AIVD (Fn. 23).

From 91:

6. displays or supplies to another written material which by its content is capable of serving as an instruction to the commission of a serious violent offence endangering the state, if the circumstances of its dissemination are conducive to awakening or encouraging the preparedness of others to commit a serious violent offence endangering the state,
7. obtains written material within the meaning above for the purpose of committing a serious violent offence endangering the state

When these principles are considered in the light of the description of activities of the currently revived Jihadist movement, the criteria for law enforcement intervention seem to be well-specified. The activities that have described to contribute to terrorist attacks are all represented in the legal articles.

However, two other elements of the Jihadist threat may be less well covered by the law and may actually introduce some interpretational ambiguities once applied to a specific case. The first concerns motivation. Terrorism is described in German law in the context of “offences endangering the state”. Once Jihadists are put on trial, it will be a challenge to assess with sufficient certainty that these acts endanger the state. First, Jihadism, as described earlier, is not an inherently anti-Western ideology. Indeed, there were times, during the Afghanistan war, that the Jihadists were hailed as heroes, also by Western observers. In addition, it is clear that in Iraq, but especially in Syria, the foes of the Jihadi movement are also acting in ways that not necessarily coincide with Western interest, and certainly violate internationally agreed upon human rights. Hence, fighting in Syria is not necessarily endangering the Western states, and certainly not their moral foundation. Furthermore, *Hegghammer’s* research showing that only few ‘foreign fighters’ are planning attacks upon coming back in the West is also significant, because it shows that ‘foreign fighting’ and the associated weapons training, ideological indoctrination, and exposure to extreme violence, in the majority of instances does not translate into a threat for the Western world. It will therefore be difficult to apply the notion of “endangering the state” without a thorough consideration of the motivation of a suspect, as well as the broader political and international context in which the attack took place. And here, matters will likely become murky.

A second element that may require further reflection concerns the notion of “organization”. The sections 129, 129a, and 129b, all make reference to the formation and membership of criminal/terrorist organizations. But in recent times, it has been questioned whether Jihadism is actually an organization. Dutch intelligence, for example, describes it as a dynamic system or swarm, with no leadership and bottom-up coordination. One may question whether even the label “group” is appropriate. Not all individuals within the dynamic system would identify with a social unity that could be labeled a jihadi “group”. Perhaps the term movement is most appropriate, but with it, the boundaries between Jihadism and non-Jihadism become obscured. For example, should using

social media to obtain information about Salafism, a purist but not-necessarily violent interpretation of Islam, or even to obtain information about ISIS, be considered a crime or an activity that “endangers the state”?

In the absence of an organization or group, but with a dynamic system that has a steering influence on individuals throughout the world, current legal systems in the Western World may have found their greatest challenge. Rather than embedded in an organization or group, it appears that the individual Jihadist is currently tied to others via a shared virtual frame of reference. Jihadism is connected through ideas and the cyberworld. Criminalizing these ideas and the cyberworld will prove highly problematic and potentially endangering the democratic system of the West. Indeed, in this sense, we are not just dealing with a threat coming from “them”. Jihadism forces us, now more than ever, to determine what ideas are acceptable within the democratic order, and by doing so, something that the democratic legal order is apparently unable to self-regulate.

V. Conclusion

The present contribution considered the evolution of the Jihadism, the current threat coming out of this movement and the state of legal means to deal with this threat. The acts of terrorism that the current form of Jihadism may bring about may very well be dealt with current legal formulations. More problematic, however, is to designate special significance to these Jihadist acts relative to the same acts carried out by other organizations, groups or movements. Notions such as “organization” and “endangering of the state” may be difficult to determine, unambiguously, in individual cases of Jihadist related radicalization, and therefore of limited use.