

# The Netherlands and the prosecution and trial of Islamic State suspects in Rojava/The Autonomous Administration in North and East Syria

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**THE COMMENTARIES**

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**Abstract**

*After the military defeat of the Islamic State (IS) in Syria and Iraq, the challenge of dealing with foreign IS fighters emerged, with many of them being held in detention facilities under the jurisdiction of the Autonomous Administration in North and East Syria. Yet, indecisiveness and unwillingness of the anti-IS coalition to establish a mechanism for the actual prosecuting and trying of IS suspects has raised significant concerns, as it could potentially lead to the re-emergence of the organization. This article delves into the Netherlands' efforts to explore potential collaborations with the Autonomous Administration in North and East Syria for prosecuting and trying IS suspects. The data for this article was obtained through a Freedom of Information Act (Wet Openbaar*

*Bestuur, WOB) request. The documents, spanning from 2018 to 2021, reveal that more than just international law, political considerations played a significant role in hindering*

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*the implementation of cooperation with the authorities in the Autonomous Administration in North and East Syria.*

## **Introduction**

After the military defeat of the Islamic State (IS) in Syria and Iraq, the challenge of dealing with foreign IS fighters emerged, with many of them being held in detention facilities under the jurisdiction of the Autonomous Administration in North and East Syria<sup>2</sup> (AANES). While the authorities in the Autonomous Administration have appealed to the international community for assistance in prosecuting foreign IS fighters, there has been a lack of concrete action to support the Autonomous Administration and bring to trial the thousands of suspected IS fighters from more than 50 countries currently detained in the facilities under its control. Furthermore, European countries, including the Netherlands, have refused to repatriate and then prosecute and try their citizens suspected of involvement with Islamic State.

The absence of a mechanism for prosecuting and trying IS foreign terrorist fighters (FTF) has raised significant concerns, as it could potentially lead to the re-emergence of the organization<sup>3</sup>. Consequently, the prosecution and trial of IS suspects held in the custody of the Autonomous Administration have been subjects of extensive debate among European states. As it has made several calls to the international community to prosecute and try IS suspects, this article delves into the Netherlands' efforts to explore potential collaborations with the authorities in the Autonomous Administration in North and East Syria for prosecuting and trying IS foreign terrorist fighters. In order to gain insight into the precise efforts of the Netherlands, a request for information on the subject was filed by the author to the Ministry of Foreign Affairs on January

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<sup>2</sup> Mironova, V. (2021). *The Challenge of Foreign Fighters: Repatriating and prosecuting ISIS detainees*. Washington DC, Mei Policy Center and Coble, K. S. (2021). "Addressing the Foreign ISIS Fighter Problem: Detention and Prosecution by the Syrian Democratic Forces." *Military Law Review* 229(1).

<sup>3</sup> Dent, E. (2018). *The Unsustainability of ISIS Detentions in Syria*. Washington DC, The Middle East Institute.



2, 2022, with reference to the Freedom of Information Act (*Wet Openbaar Bestuur, WOB*). The request asked for all documents that contain information about the efforts of the Netherlands to bring about the international prosecution and trial of IS suspects.

In the decision communicated on April 28, 2022, the Ministry of Foreign Affairs explained that not all relevant documents had been declassified and made public and that some documents were only being partially declassified<sup>4</sup>. While a total of 38 documents within the scope of the request had already been disclosed; 11 further documents were now disclosed and 92 documents partially disclosed, and 12 documents were not disclosed. One reason given for not making all the relevant documents fully public was that their release might jeopardize cooperation with international organizations and states. Were such relevant information to be made public, it was stated, the necessary confidentiality and effectiveness of diplomatic exchanges and bilateral consultations could be undermined, possibly resulting in international organizations and states becoming more reluctant about sharing confidential information with the Netherlands. Balancing the importance of international relations and the public interest in such disclosure the state considered the former to outweigh the latter, the decision letter wrote.

A document, in this context, can be anything from an email to advice, memo, or, what is called, a non-paper. The documents covered the period 2018–21 and were sent as an annex to the decision; all translations in this text were made by the author. The documents mainly use the term foreign terrorist fighters (FTFs), Daesh and ISIS which is derived from the English translation of the Arabic name of the jihadist group: the “Islamic State of Iraq and al-Sham” generally rendered as “The Islamic State of Iraq and the Levant” (ISIL) and “The Islamic State of Iraq and Syria” (ISIS). In 2014, the group shortened its name to “Islamic State” (IS). In this article, with the

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<sup>4</sup> The dataset for this article is available on request.

exception of citations, I will use the term Islamic State or IS as it is the more generally used term today.

### **Policy narrative**

A basic premise of the policy narrative of the Netherlands as expressed in the documents is that crimes committed by IS must not go unpunished; moreover, prosecution and trial should take place in the region as people who suffered at the hands of IS war criminals must be able to witness first-hand that justice is done. Regarding the legal procedure, the Netherlands has three red lines: i) prosecution and trial must be in accordance with international humanitarian law, ii) there must be no imposition of the death penalty, and iii) there must be consular access to suspects of Dutch nationality (00001, 00004, 00005, 00007, 00008, 00020, 00055, 00073)<sup>5</sup>.

Four potential options for prosecuting and trying IS suspects or Foreign Terrorist Fighters in the region have been identified. The first option involves cooperation with Iraq. However, there is a significant obstacle to collaboration with Iraq, which is its reluctance to abolish the death penalty and its unwillingness to work with the international community to enhance its capacity to handle the numerous pending cases. There is also an initial hope expressed that Iraq might consider becoming a party to the Rome Statute (00022, 00060, 00073), enabling high-profile IS members to be tried before the International Criminal Court (ICC) in The Hague. Yet, expectations of possible cooperation with Iraq were not met. The second option entails cooperation with Syria. This option is ruled out, as the Netherlands does not have diplomatic relations with Damascus and does not consider it desirable to restore them. The third option is to prosecute and try IS Foreign Terrorist Fighters in other countries within the region. However, this possibility is dismissed as unlikely (00063). Aside from Israel, Turkey is the only neighboring country that does not have capital punishment. The fourth option involves collaboration with the Syrian Democratic

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<sup>5</sup> Numbers refer to the documents cited.



Council (SDC) and the Autonomous Administration of North and East Syria (AANES), which is protected by the Syrian Democratic Forces (SDF). This option is dismissed in some documents (00020, 00029, 00034) and considered a possibility in others (00028, 00030, 00050, 00076, and 00079).

Over the past few years, there have been regular discussions within and among Dutch state institutions about the prosecution of foreign terrorist fighters (FTFs). These discussions have involved senior officials of the Ministry of Foreign Affairs of the Netherlands from various policy directorates, including the Directorate for North Africa and the Middle East (DAM), the Directorate of Legal Affairs (DJZ) responsible for European and international legal matters, as well as advising on international law, the Directorate for Europe (DEU) responsible for coordinating an integrated foreign policy with EU member states, the Directorate of Consular Affairs and Visa Policy (DCV) responsible for consular services to Dutch nationals abroad (including detainees). Others included in the correspondence were the National Coordinator for Counterterrorism and Security (NCTV), along with the embassies in Baghdad and Ankara. The discussions have covered various topics, including the scale of the problem of instigating and completing legal procedures against FTFs, which court should be made responsible for the prosecution, where it should take place, the political landscape, international legal issues, and, specifically, how support for the prosecution and trial of FTFs in northeast Syria relates to international law

The Netherlands is an active participant in international discussions about the prosecution and trying of IS suspects. In the period 2018–21, the Netherlands was a member of the European groups referred to as “the CORE-8” (also comprising Germany, Finland, Sweden, Denmark, France, Belgium, and the UK) and CORE-7 (the same

countries except for Finland).<sup>6</sup> These European countries advocate prosecution and trial in the region, and the Netherlands claims to be a driving force in discussing the prosecution and trial of FTFs. Documents made available by the response to the freedom-of-information request also include information on a “side-event” to be held at the 74<sup>th</sup> meeting of the United Nations General Assembly in September 2019 on “Accountability for atrocity crimes committed by ISIS in Syria and Iraq” (00071; see Figure 1). The key proposition of the event was formulated thus:

There is general agreement that Daesh [IS] needs to be held accountable for their crimes, some of which may amount to genocide. It is our joint responsibility to prevent impunity for the most serious crimes including those committed by Daesh.


The aim of the meetings was formulated as “to bring a solution to bring justice to the victims of crimes committed by Daesh in Iraq and Syria a step closer building on previous meetings” (ibid.).

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<sup>6</sup> “The DVB/TN [National Security Division of the Security Policy Department at the Ministry of Foreign Affairs in the Netherlands] is the main representative of the Netherlands in the CORE-7, although it does liaise with the NCTV [Nationaal Coördinator Terrorismebestrijding en Veiligheid – National Coordinator for Security and Counterterrorism] on the matter.” See: <https://open.overheid.nl/documenten/ronl-4ca18819-85d3-4524-a918-a15793d205ce/pdf>, page 46.



**Figure 1.** Invitation to the meeting “Accountability for atrocity crimes committed by ISIS in Syria and Iraq” organized on September 25, 2019, as a side event of the 74<sup>th</sup> UN General Assembly meeting.



Ministry of Foreign Affairs of the  
Netherlands

**SAVE-THE-DATE**

523353

The Ministers of Foreign Affairs of the Kingdom of the Netherlands and the Republic of Iraq will host a restricted side event in the margins of the UN General Assembly high-level week, titled:

***Accountability for atrocity crimes committed by ISIS in Syria and Iraq***

on Wednesday, 25 September from 13:15 till 14:45 at ...

**Point of Contact**

10.2.a

Permanent Mission of the Kingdom of the Netherlands to the UN  
664 3rd Avenue, 16th Fl., New York, NY 10017

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E

**Objective** sharing options for accountability for atrocity crimes committed by ISIS. Aims to discuss possible solutions to bring justice to the victims of crimes committed by ISIS in Iraq and Syria.

**Invitations** will be sent out at ministerial level, the event is by invitation only.

**Format** key note speeches and high level panel after which floor is open for discussion in a closed setting (of course respecting voor dat het besloten is).

00071

The Netherlands also participated in at least one meeting organized by international NGOs on the challenges and possibilities of the prosecution of FTFs in northeast Syria, had contacts with the Syrian Democratic Council (SDC) and the representatives of the Autonomous Administration in Europe regarding the prosecution, trial, and detention of IS suspects, and sought advice from experts and a national committee on international law.

Regarding the persons to be prosecuted, reference was made to FTFs in a non-dated non-paper discussing the outcomes of a meeting held by the Foreign Terrorist Fighters Working Group, “at a minimum to include Daesh and AQ [al-Qaeda] and affiliated groups”. The same paper also noted that “Investigation into alleged crimes committed by all parties to the conflict in Syria and Iraq would be preferable but practically very difficult” (00063). In most of the documents provided, “FTFs” seems to refer mainly to IS fighters.

## **Mechanisms**

The mechanism or court through which to take legal proceedings is discussed in various documents. In a memo from 2019 (00029), eight options are listed, together with assessments of each one’s feasibility, thus:

1. International Criminal Court (ICC). The possibility of prosecuting and trying individuals suspected of involvement with the Islamic State (IS) at the ICC was deemed unfeasible. This is primarily because i) Iraq and Syria are not signatories to the Rome Statute, which establishes the jurisdiction of the ICC. Furthermore, ii) attempts to make prosecution possible by a United Nations Security Council resolution had already failed twice due to opposition from Russia and China
2. An ad hoc UN tribunal. The option of an ad hoc UN tribunal was also not considered feasible, as i) a necessary UNSC resolution would most likely be blocked by Russia and China; ii) there was a lack of willingness among countries to bear the





substantial costs associated with such a tribunal (the Yugoslavia tribunal incurred annual expenses of \$170–285 million dollars); iii) The time required to establish the tribunal was deemed impractical; iv) There was no immediate willingness among countries to accept prisoners after conviction; v) The focus of a tribunal is typically on senior cadres, making it unsuitable for prosecuting IS foot soldiers.

3. A variation on the Sierra Leone Tribunal or the so-called hybrid tribunal. The hybrid option was not considered feasible for the reasons given above (for option 2). In addition, Iraq considered the hybrid variant a violation of its sovereignty. Furthermore, given the absence of diplomatic relations with Syria, cooperation for exchanging evidence was both unattainable and undesirable.
4. National prosecution and trial in Iraq and/or Syria. National prosecution was not considered feasible for partially undisclosed reasons. A complication mentioned is that for prosecution in Iraq, i) detainees need to be transferred there from Syria, and ii) Iraq has no jurisdiction over non-Iraqi nationals who have not committed crimes in Iraq. Prosecution and trial in Syria is mentioned as not feasible i) because the lack of diplomatic relations with the regime and ii) because the suspects are not detained by the regime but the SDF.
5. Trial by the SDF. The SDF option was not considered feasible as it was said that the SDF is i) a non-state actor, ii) has no legal system, and iii) does not want to prosecute suspects in the region.
6. The “tribal” version. This “tribal” version refers to the prosecution and trial implemented in Rwanda after the genocide. It was not considered feasible as it would i) not comply to international norms and ii) would be oriented to punishment followed by reintegration and rehabilitation, which is not applicable to non-nationals.
7. A Nuremberg version. A Nuremberg version was not considered feasible as i) Approval from the UNSC would be necessary; ii) there were similar objections to those against

- option 3; iii) no country would be likely to be willing to act as host; iv) the costs of such a tribunal would be high, it would be unclear where convicts would serve their sentences; and v) the focus of any prosecution would be on the senior cadres.
8. The Lockerbie version. Prosecution and trial in the Lockerbie case followed an agreement reached between Libya and the UK, with the court being established in the Netherlands under a bilateral treaty between it and the UK. This option was not considered feasible for a combination of the reasons mentioned under options 1 and 7. Moreover, Iraq regarded hybrid and international prosecution as a violation of its sovereignty, while no diplomatic relations existed with Syria.

In an undated “non-paper” (00062) entitled “Foreign Terrorist Fighters Working Group,” the above-mentioned options were also explored under the headings of “ICC,” “Hybrid options,” and “National courts in the region,” including other, yet unnamed countries other than Iraq and Syria. The documents released also included discussion of a proposal made by UNAMI to develop a specialized Iraqi tribunal to try crimes committed by IS and other parties in Iraq (00057, 00060, 00062, 00066, 00067, 00068), but this proposal again met with doubt (00060, 00063); given the focus of this article on Rojava, it is not further discussed here.

Although the Netherlands holds the view that suspects should be prosecuted in the region where the crimes were committed, it is willing to make an exception for high-profile members of IS. These persons could be brought before an international tribunal. In a memo named “International Tribunal for ISIS in The Hague” (00059), the idea of establishing an international tribunal for IS leaders in the Netherlands is discussed. The memo argues that the Netherlands prioritizes the struggle against impunity and explains that a Dutch commitment is to follow two tracks, both national and international legal proceedings. To date, the memo continues, efforts have focused on an international tribunal in the region. The offer to establish an international tribunal to prosecute and try senior leaders in the



Netherlands is deemed consistent with a long Dutch history of accountability and international criminal law.

In this document, the Hague is noted as renowned for being a city of peace and justice that has hosted several courts and tribunals, such as the ICC, the Lebanon tribunal mechanism, and the Yugoslavia and Rwanda tribunals. However, the memo continues, it is important to bear in mind that the probability of establishing an International Tribunal for IS is low as there is currently no support for this in the United Nations Security Council. Moreover, the memo mentions the risk of proposing to host an international tribunal in the Netherlands, as this would break with the current narrative that IS detainees in Northern Syria cannot be brought to the Netherlands. The memo also mentions another risk: suspects who are acquitted and witnesses and victims from the region attending the trial might apply for asylum when in the Netherlands (00059).

In yet a further document (00055), it is argued that international crimes, genocide, war crimes, crimes against humanity, forced disappearances, torture, and the crime of aggression punishable under the Dutch International Crimes Act (*Wet Internationale Misdriften*, WIM) are all punishable in the Netherlands. The Netherlands can exercise jurisdiction irrespective of the nationality of the accused or where the alleged crimes have taken place, provided that the accused is on Dutch territory.

Thus, the released documents indicate that within Europe, the Netherlands actively advocates for the prosecution of FTFs in the region—specifically, national prosecution in Iraq and Syria—and is not directly dismissive of hosting an international court to prosecute and try senior leaders in the Netherlands. However, both these possibilities are mined with complications. Firstly, no progress is being made in discussions with the Iraqi government about the prosecution of FTFs held in Rojava. A practical problem is the transfer of FTFs from detention centers in Rojava to Iraq, and a more fundamental issue is the death penalty, which is present in Iraq's legal system. Since the Netherlands does not have diplomatic

relations with Syria or a desire to restore them, this country is not eligible for an IS court. An international court would either require a UNSC resolution, which is deemed unlikely, or an interstate agreement, which would require collaboration with Iraq and is again unlikely, as the country considers an international or hybrid court a violation of its sovereignty.

Anticipating future prosecution and trial, the Netherlands pursued a policy of contributing to initiatives that collect and secure evidence for the future prosecution and trial of suspects. Mentioned are the Investigative Team Iraq (ITI) or the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) and the International Impartial and Independent Mechanism IIIM to assist in the investigation and prosecution of persons responsible for the most serious crimes under International law committed in the Syrian Arab Republic” (00072). The Netherlands sees itself as an initiator of both evidence-gathering mechanisms (00067). UNITAD and IIIM are considered important as they lay the groundwork for accountability efforts (00072).

## **Rojava**

Yet there’s a lack of progress on the issue of the prosecution and trial of FTFs in Iraq, while the absence of a relationship with Syria, and the low probability of a UNSC resolution makes these national and international mechanisms for prosecution and trial also unlikely. It is in this stalemate that the option of pursuing legal procedures against the FTFs currently in custody in northeast Syria (Rojava) comes to the agenda. The Autonomous Administration in North and East Syria is also willing to prosecute and try the FTF, though in other documents this willingness of the Autonomous Administration to prosecute and try IS FTFs in the region is denied (00029).

The Netherlands explored the Rojava/AANES option and discussed it multiple times with its European partners. However, it must be



noted that the Netherlands is also ambiguous when it comes to prosecution and trial in Rojava/AANES. Collaboration with the Autonomous Administration is sometimes considered impossible and undesirable (00034). A document dated November 28, 2019 (00020), gives four major drawbacks of this route: i) the SDF is not a state actor; ii) Rojava does not have its own judicial system or one that meets international standards; iii) proceeding there may create tensions [with whom is redacted], and iv) there is uncertainty about the actual control the SDF/SDC still has on the ground in North-East Syria (as a result of Turkey's invasion and occupation). Another memo mentions the name of the country with which tensions may arise: formalizing relations with the SDF/SDC would be very sensitive since Turkey considers the SDF/SDC to be a terrorist organization (00028).

A document dated February 13, 2020 mentions that a trial by Syrian Kurds would be extremely complicated legally and politically, yet worth exploring (00050). In 2019, the Netherlands, apparently represented by GEV-PA (30), participated in a meeting on the prosecution of FTFs in northeast Syria organized by two NGOs—Fight for Humanity and the Geneva Academy. The GEV-PA is the permanent representation of the Netherlands in various “International Organisations in Geneva, dealing with human rights, disarmament, trade and economics, health and humanitarian issues”<sup>7</sup>. The SDC and representatives of the Autonomous Administration were also present. The SDF made a presentation at this meeting stating that it had over 2,000 FTFs detained (5% of whom were from the Netherlands) and that Syrian IS fighters were already being tried under anti-terrorism legislation in the People's Courts of the Kurdish self-government. IS suspects for whom it cannot be conclusively established that they have committed a crime, the SDF explained, are tried under tribal law, with a focus on rehabilitation and

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<sup>7</sup> <https://www.permanentrepresentations.nl/permanent-representations/pr-un-geneva/the-mission/staff>

reintegration<sup>8</sup>. For the FTFs, a mechanism for prosecution and trial was not yet in place.

The Autonomous Administration argued that there are sufficient international examples of tribunals, including those for the former Yugoslavia, for Rwanda, at Nuremberg and at Tokyo, and the document indicates that the Autonomous Administration also clearly indicated its view that (alleged) perpetrators should be tried in the territory where they committed the crimes (00030). It felt that it was competent and capable of ensuring a fair trial; it had, after all, it already tried more than 7,000 Syrian IS fighters, with investigations into a further 2,820 Syrians ongoing. The Autonomous Administration further argued that a tribunal in Rojava would facilitate the collection of evidence and attendance of witnesses. It was open to substantive and logistical expertise from third countries and requested support regarding the rehabilitation of the families of IS fighters.

From the report of the talks with the SDC, a lack of capacity to prosecute and try FTFs in the Autonomous Administration becomes apparent; this was due to a shortage of well-trained prosecutors, judges, and lawyers and of sufficient detention facilities to securely hold all the individuals likely to be convicted. There were concerns about the influence of IS in one of the camps (outside the town of al-Hol, or al-Hawl)—the largest camp for people displaced when IS was dislodged from Syria by the SDF (with US support) and the SDC presented plans to separate out radical prisoners. Documents from the Dutch Ministry of Foreign Affairs indicate that the SDC was requesting assistance to address the issues related to prosecution, trial, and detention. The possibility of an international or hybrid tribunal for high-profile cases was also discussed at the 2019 meeting, which participants from the Netherlands found valuable because they were able to communicate directly with the SDC (00030). The

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<sup>8</sup>Documents indicate that Syrian IS convicts were receiving relatively lenient sentences (00030, 00063), with a focus on deradicalization and rehabilitation aimed at reintegration.



Netherlands considers it a positive feature of the situation in Rojava that, unlike Iraq, it has no death penalty (00028).

Clearly, the Dutch government is serious about collaboration with the SDC/SDF and the Autonomous Administration. Advice was requested from the External Foreign Law Adviser (Externe Volkenrechtelijke Adviseur, EVA)—which concluded that a tribunal in north-eastern Syria would be at odds with the principle of non-intervention and the sovereignty of Syria (00054). However, a memo dated August 15, 2019 stated that the EVA offered little substantiation for this conclusion and seemed not to have considered more recent developments in international law that could possibly offer more room for cooperation with the SDF (00079). The advice of the EVA is referred to as an “opinion” (00054). In a March 6, 2020 email, reference is made to a report by a professor of international law who was said to believe that there was no legal objection to prosecution by the SDF (00076). Also, a commission of international law experts indicated that certain forms of support may not necessarily violate the principle of non-intervention. A draft non-paper entitled “Foreign Terrorist Fighters: Justice Mechanisms” discussing the option of trial in Rojava—“using Syrian law modified by the Rojava Social Contract through their existing courts with international support”—mentions the need to “make sure that assistance provided” to the SDF would not “breach the principle of non-intervention” (00075).

However, this seems not to have led to concrete steps. Since international law in itself does not prevent cooperation with a non-state actor, it must be presumed likely that it was political considerations that resulted in implementation not being further explored—per an email sent on February 10, 2020:

Agree that we should avoid that we have to pull the car toward the SDF on our own. Unless we have at least a significant portion of CORE7 members with us, I don't think it's wise to go into this solo. (00039)

Pertinently, the consequences of working with the SDF and the Autonomous Administration for Dutch relations with Turkey were considered an obstacle in Ministry of Foreign Affairs memos (00002, 00028)

The Ministry feared parliament pushing the government towards support for the Syrian Kurds. A Ministry email states that [name redacted]<sup>9</sup> had maintained his motion for trials conducted by the Kurds and the exploration of possible support for this. The email continues with the observation that a formulation in terms of “concrete proposals to facilitate” would be problematic. To avoid this and to bind parliament to the advice of EVA, the email from the Ministry of Foreign Affairs suggests wording the motion so as just to give “due regard to the advice of international law advisor,” an advice that the officials had earlier considered an outdated and narrow opinion (00039). The intervention of the Ministry in the work of parliament is successful: the final wording of the motion conformed to the Ministry’s suggestion: “[The motion] requests that the government, taking into account the advice of the international law adviser, further investigate whether Syrian nationals from the Netherlands in Syria can be tried by the local Syrian-Kurdish authorities”.

## Conclusions

A fundamental principle embedded within the Netherlands' policy narrative is that crimes committed by IS must not go unpunished. Furthermore, the Netherlands firmly advocates that prosecution and trials should take place within the region, enabling those who have suffered at the hands of IS war criminals to witness firsthand that justice is being served. While the data indicates the Netherlands' commitment to prosecuting and trying IS Foreign Terrorist Fighters in the region, it also reveals challenges in formulating a consistent policy, let alone its implementation.

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<sup>9</sup>The motion was likely written by Martijn van Helvert of the Christian Democrat Appeal party (CDA), see: <https://zoek.officielebekendmakingen.nl/kst-35300-V-22.html>





The option to prosecute and try IS FTF in cooperation with the Autonomous Administration of North and East Syria was considered a viable one. The data shows that the Autonomous Administration of North and East Syria was open to cooperation, the legal system does not endorse capital punishment, and international law does not prohibit collaboration with non-state actors. Upon reviewing the data obtained it becomes evident that the Netherlands has diligently explored opportunities to collaborate with the Syrian Democratic Council (SDC) and the Autonomous Administration in prosecuting and trying IS suspects. Additionally, the possibility of prosecuting and trying senior IS leaders before a tribunal in The Hague was also considered. However, the desire to prosecute and try IS suspects in collaboration with the SDF/SDC and the Autonomous Administration may have faced obstacles due to political concerns, primarily Turkey's stance on the SDF/SDC, which it considers a terrorist organization.

The Autonomous Administration of North and East Syria has expressed its intent to independently put IS FTF on trial, citing the international community's failure to establish a mechanism for prosecuting and trying foreign fighters. If the Autonomous Administration proceeds with creating its own prosecution and trial mechanism, it may set new precedents. The prosecution and trial of IS suspects with Syrian nationality have already contributed to bolstering the legitimacy of the Autonomous Administration and its legal system. Now, by applying international law and adjudicating on the FTFs, the Autonomous Administration can potentially become a *de facto* actor in the realm of international law. As security analyst Ardian Shajkovci writes in a post on this topic, the “fact that many governments remain impervious to the idea of repatriation [of their FTF nationals] could also be interpreted as an implied state consent in allowing the SDF a lawmaking role<sup>10</sup>.” However, without support from the international community, prosecuting and trying IS FTFs is an extremely challenging task. In the absence of a mechanism for

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<sup>10</sup> <https://www.hstoday.us/subject-matter-areas/counterterrorism/arguments-for-and-against-trying-european-foreign-terrorist-fighters-in-syria/>

prosecuting and trying IS FTFs, the resurgence of this organization poses a present danger.

