Forum: General Assembly Sixth Committee

Issue: The question of the legal status for returning jihadists and their families

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**Introduction**

Thousands of foreigners, guided by radical propaganda, joined the Islamic State in Iraq and the Levant (ISIL) movement in northern Syria. As they joined the extremist movement, they became jihadists who fight to uphold Islamic ideologies that often involve violence. In March 2019, the ISIL has been defeated, as declared by the Syrian Democratic Forces (SDF), at the village of Baghouz. This defeat not only signified the loss of ISIL’s power but also a substantial depletion of their forces. It, however, created an issue for these foreign jihadists and their family members, who are willing but unable to return to their States of origin for various reasons—the physical inability of being detained by either the SDF or Iraqi forces or the legal inability of the unacceptance of their original countries.

Viewing this issue from a utilitarian perspective, repatriation of the returning jihadists is an urgent move that should be taken by the States of origin—it is the only way to put them under the control of their original country, where they could be prosecuted, interrogated, and hopefully deradicalized. This issue not only concerns the returning jihadists themselves, but also the family members who either left the country with them or were married or born to them. Being kept as detainees by either the SDF or the Iraqi authorities not only cause direct human rights violations due to the unfavorable conditions given but also poses possibilities for them to rejoin extremist movements or become further radicalized.

**Definition of Key Terms**

**Caliphate**

Caliphate is the political-religious state of the Muslim community. In this issue, the caliphate is referring to the occupied Syrian and Iraqi territories where the Islamic State in Iraq and the Levant (ISIL) formerly claimed to be their caliphate.

**Jihadist**
A jihadist is a person who hold strong beliefs that “an Islamic state governing the entire community of Muslims must be created.” They justify the violent conflict involved in achieving this necessity. They are, at often times, referred to as militants.

**Foreign terrorist fighters (FTFs)**

Foreign terrorist fighters (FTFs) are identified as “individuals who travel to a State other than their State of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict” (United Nations, 2014). The phrase “foreign terrorist fighters (FTFs)” is an official term used by the UN. In this report, the terms jihadists and foreign terrorist fighters will be used interchangeably. However, it is important to not be confused since jihadists can be referred to any IS fighters in this context while FTFs are exclusive to those who have joined the movement from foreign countries other than Iraq and Syria.

**Repatriation**

To repatriate a person means to return them to their country of origin. One of the key issues is how the States of origin are unwilling to repatriate their nationals detained in the Syrian and Iraqi territories.

**Background Information**

**Recruitment of foreign fighters and affiliation of family members**

Between 2011 and 2016, more than 42,000 foreigners from 120 countries had joined terrorist groups. Out of them, approximately 5,000 of them are from Europe, according to the Radicalisation Awareness Network (RAN), which is affiliated to the European Union (EU). Many of those who decided to join would travel to the so-called caliphate and burn their passports at the border ceremonially to declare how they join onto the movement. The numbers of FTFs joining the movement appeared to peak in 2015, but the numbers significantly grew in 2016 when it comes to traveling to Syria.

**Women and children**

Women jihadists are often jihadi brides, who are “young women groomed by online recruiters to marry Islamist fighters in Syria,” whereas jihadist children are either brought to the caliphate by the FTFs or born to jihadists. The existence of women and children adds complexity to the issue since it is difficult to determine the extent to which they are involved in the terrorist movements.
Foreign terrorist fighters return

A mass influx of returning FTFs appeared to be unlikely to experts. According to the RAN, an average of 30% of FTFs return to Europe, with countries such as Denmark, Sweden and the United Kingdom having higher figures. Contrary to experts' anticipation, a number of FTFs and their families return to their original countries, though with unknown intentions. Returnees vary in terms of intentions as well as conditions. While some of them would be disillusioned and remorseful, others who have been through deep indoctrination would hold violent extremist views and even become radical influencers. The most concerning issue lies with the fact that some FTF returnees could possibly be carrying the sole intention of planning and executing attacks. These unknown intentions pose a risk for the States of origin, which will be elaborated later when it comes to determining the legal status of these returnees.

Methods of return

Following the fall of ISIL, which will be discussed in a later section, most FTFs and their families are detained by either the Syrian Democratic Forces (SDF) or the Iraqi government. However, for those FTFs who actively sought to return to their original country and are not captured by the aforementioned forces, different methods were used. Some returnees request consular support from their State of nationality, which is most likely the case if they need to acquire a new passport for themselves and for their children who were born in either Syria or Iraq. Others would take a risky route by traveling on false identity documents.

The military defeat of ISIL and its effects on the status of the jihadists and their families

On March 23rd, 2019, the US-backed Syrian Democratic Forces (SDF) declared that they have defeated the ISIL, marking the end of a four-year war. The ISIL fighters made their final stand in the village of Baghouz and were eventually eliminated. This defeat also signified how the ISIL has lost the caliphate they have proclaimed for the past four years. However, the military defeat of the extremist group does not necessarily diminish the threat they pose. In spite of the substantial loss from the defeat, the ISIL still has control between 14,000 and 18,000 militants in the area, including up to 3,000 foreigners.
**How the area under IS control has shrunk**

![Map showing territorial control](image)

*Figure 1: The occupation of Syrian and Iraqi territory by the ISIL from 2015 - 2019*

**Approaches taken by Syrian and Iraqi forces after the defeat**

Following the defeat, the SDF has captured ISIL fighters, including FTFs. In the meantime, up to thousands of women and children have been living in displaced people camps in areas controlled by the SDF. As of August 2019, according to the Special Envoy of the Global Coalition to Defeat ISIS, around 2,000 FTFs remain in SDF custody, with 1,000 of them being European. As the International Center for the Study of Violent Extremism (ICSVE) has investigated, the women and children of these former jihadists are being kept by the SDF at Camp Hol, Camp Ain Issa, and Camp Roj in Syria, with up to 11,000 foreign women and children.

The Iraqi government, on the other hand, has exercised its sovereign right to prosecute adult FTFs and to keep them in detention. The number of FTFs detained in Iraq is estimated to be around 1,000. The Iraqi authorities had openly stated how they implemented the use of harsh interrogation methods on the captured in order to collect confessions as pieces of evidence for terrorist convictions. However, the Iraqi government has asked States of origin to repatriate the children of FTFs.

**The effects of the Turkish incursion**

Seven months after the defeat of the ISIL, the United States formally declared its withdrawal from Syria, which allowed the Turkish incursion and increased the urgency of the problem. The Turkish incursion in northern Syria poses a problem since it has affected the areas
where the detained FTFs and their families are held. The Kurdish-based SDF has reportedly decreased the number of security guards at the detention camps, causing detainees to either flee to their original countries or rejoin the ISIL movement, posing a risk for the European governments. Some argued that the SDF did not have the capacity to keep all the ISIL fighters, both domestic and foreign, in the first place. Nonetheless, the reluctance of the European countries to repatriate their nationals adds on to the issue since they have not come up with any alternatives in dealing with the detainees. The concerns raised by the European governments are discussed in a later section.

State obligation to repatriate families under international law

There is not a succinct international law that strictly obligates States to admit returning jihadists and their family members into their original countries. Therefore, the admission of these returnees is heavily dependent on their nationality under customary international law and human rights law. Nonetheless, States have commitments established under different international laws that they are expected to fulfill. With that said, the action of States preventing the return of jihadists and their family members by revoking their nationalities constitute a breach of international law as well as their duties such as avoiding statelessness and upholding principles of non-discrimination. The laws classified hereunder are particularly concerning the family members of the returning jihadists, given they are less likely to be directly involved in the terrorist movements.

International counter-terrorism law

International counter-terrorism law consists of a plethora of counter-terrorism treaties and Security Council Resolutions. This section will only outline States’ responsibility to repatriate their nationals as described in these counter-terrorism laws. However, these instruments do not encompass violence in non-international armed conflicts (NIACs) that have a domestic nature.

In several UN Security Council (SC) resolutions, the UN has recognized the peculiarities attached to the status of the family members of the FTFs. As the ISIL had lost control over its so-called caliphate, some of its associates—including the FTFs and their members—have been detained in Syrian and Iraqi territories. As an effort to uphold the human rights of the FTFs and their family members, the SC has passed resolutions. For instance, Resolution 2396 (2017) regulates the Member States to conduct an investigation on individuals in order to establish reasonable grounds to identify them as terrorists or FTFs. The resolution also underscores the importance of developing sensitivity towards women and children associated with foreign terrorist fighters in order to distinguish their roles in relation to the FTFs. On an important note, the resolution also called the Member States to ensure consular access to their nationals who are detained in accordance with domestic and international law.
The law of diplomatic and consular relations

The Vienna Convention on Diplomatic Relations (VCDR) and the Vienna Convention on Consular Relations (VCCR) outlined the basic functions of diplomatic missions and consular posts of “protecting in the receiving State the interests of the sending State and of its nationals.” Regarding the discussion of detained or captured FTFs and their family members who are kept in custody by a third party or a non-state actor such as the SDF, the legal question kicks in when viewing the possible exercise of diplomatic protection in responses to cases where the “international minimum treatment standard” is not met for the detainees. When these standards have not been met, the States of origin are entitled to exercise diplomatic protection on behalf of their nationals who are detained in Syrian and Iraqi territories.

International human rights law

Additional to fulfilling the diplomatic and consular services regulated by the VCCR and VCDR, the application of international human rights treaties beyond national borders is also of concern in response to the detained FTFs and their family members. The basis of human rights laws stems from the Universal Declaration of Human Rights (UDHR), which, despite not being legally binding, serves as the cornerstone in upholding human rights and drafting of the human rights treaties. Some treaties include the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The treatment received by the women and children related to the FTFs raises concerns and could constitute breaches to human rights. While the States of origins are not directly responsible for the human rights violations suffered by their citizens in foreign states, the extent to which these States should exert an extraterritorial reach of human rights treaties and owe their citizens human rights obligations is still uncertain.

Regarding the situation of the FTFs and their family members who are detained in Syria under the SDF, the States of origins have a more prominent role since the Syrian government did not show any interest in intervening with these foreigners staying in its territories. In relation to the detainees in Iraq, the situation is different from that of Syria. The FTFs and their family members who are detained are actually subjected to the Iraqi jurisdiction, who is the Receiving State, given that they are not diplomats, Heads of State, or military personnel of foreign States.

In summary, while the States of origin do not have the direct obligation to ensure the human rights of its detained nationals nor exercise control over the detainees, they presumably have the tendency to recognize the extraterritorial obligation they have in upholding the human rights that they FTFs and their family members are entitled to in the various human rights
treaties. For instance, States should endeavor to ban the ill-treatment given to the children of the FTFs at the camps in Syria and Iraq and should further, as regulated in the Convention on the Rights of the Child (CRC), implement means to foster the children’s “health, self-respect and dignity.”

Challenge of accepting returning jihadists

As previously mentioned, returning jihadists could have different intentions that are not known by their States of origin, posing a challenge for States to decide whether or not they should accept the returnees back into their country. Other challenges such as reintegration to society follow after the admission of returnees.

Potential security risks, and prosecution

Governments generally believe that returnees at an earlier stage could be either genuinely disillusioned or remorseful per their return. However, returning jihadists are believed to more likely be radicalizers who would continue to carry and even execute the extremist ideals. In its manual of guiding countries to respond to returning FTFs, the Radicalisation Awareness Network (RAN) has listed out various terrorist attacks in Europe that are to some extent perpetrated by the FTF returnees, including the Brussels attack directed at the Jewish Museum in May 2014 and the Paris attacks in November 2015. With precedents of how returnee FTFs could pose a danger to the citizens, it is challenging for countries to identify which returnees to accept. Hence, whether a criminal investigation should be carried out or not must be decided on a case-by-case basis and requires extensive resources. An issue with having case-by-case decisions is the possibility of being arbitrary. Therefore, it is especially important to ensure that these decisions regarding the criminal investigation are decided by the judicial system instead of influenced by politicians or the media.

With that said, the adoption of the UN Security Council Resolution 2178 not only defined foreign terrorist fighters (FTFs) but also regulated States to enact laws to suppress the FTFs. According to the European Union, most European countries introduced new legislation to enable the prosecution of returnees who belonged to and/or supported a terrorist group. However, there is still a great degree of variation in terms of defining the relevant crimes. Generally, European courts convict men who are registered as fighters in ISIL documents. Some courts convict women on the grounds of providing logistical support to terrorist groups in the household. Nonetheless, a widely accepted fact is that it would not be sufficient to convict a person who was simply present in the area that was formerly controlled by the ISIL.

Governance challenges
As mentioned in the discussion of providing diplomatic and consular protection for their nationals who are detained by either the SDF or Iraqi forces, States of origin have the obligation to repatriate at least the family members of the FTFs if not the FTFs themselves. This obligation, although not strictly regulated by a particular law, has been a challenge for the governance of the States. The decision of whether to admit returning jihadists back to their countries or not could constitute a dilemma between upholding human rights for all and guaranteeing the safety of citizens of the country of origin. Due to such a challenge, some States of origin are condemned on the grounds of neglecting the human rights of the FTFs and their families who are kept in custody.

**Issue of citizenship**

Some countries, such as the United Kingdom (UK) and the United States of America (USA), revoked the nationality of the FTFs. Countries such as the UK do so with the claim that these FTFs are entitled to another country’s citizenship upon their departure from their original country. Such action is against international law since this could be considered as an arbitrary act of removing one’s citizenship. Since the influx of returning jihadists began in March 2019 following the fall of the ISIL, some European Union (EU) countries started to allow the deprivation of citizenship with the terrorist conviction established. For instance, in April 2019, Germany enacted a law that denied the citizenship of the adults who have a second nationality or were involved in the terrorist militia.

**Deradicalisation and reintegration**

Following the decision of whether to accept the returning jihadists or not, the deradicalization and reintegration of these individuals create another task for the government. Even if these returning jihadists were not directly involved in the terrorist movement where they actively fight, the States of origin believe that Islamic ideologies, to a certain extent, have influenced all the jihadists and their family members who left their country and joined the ISIL. As significant as this step is to accepting returning jihadists back to their States of origin, it is not as much of a concern for this particular issue regarding determining their legal status.

**Major Countries and Organizations Involved**

**France**

As of August 2014, up to 900 French citizens had traveled to Syria. The legal status of the returnees is determined by the French Criminal Code, which penalizes “[the participation] in a group formed, or an agreement made, for the purpose of preparing” an act of terrorism. The punishment is
either ten years of incarceration and a 225,000 euro fine or twenty years of incarceration and a 500,000 euro fine for those found to have leadership roles.

The French government asserted that there is no distinction between the combatants who joined ISIL and the residents who merely lived in the so-called caliphate. The President has affirmed that there is no program for the return of jihadists, while the interior minister Christophe Castaner added that “jihadists will be imprisoned if return.”

In terms of dealing with children, while the French media recognizes the humanitarian sufferings of the detainees, the country opposes the returning of jihadist children and will only consider the request on a case-by-case basis. Thus far, France has repatriated five orphans and a three-year-old girl whose mother was sentenced to life in prison in Iraq.

**Germany**

German security forces claimed that “about 400 German citizens have joined IS in Iraq and Syria and about 40 have died, at least five in suicide attacks. More than 130 are believed to have returned, 25 of whom had direct combat experience.” Many of the returnees who have been charged received low prison terms that are usually single-digits while others received suspended sentences. Nonetheless, Germany has reportedly kept suspected jihadists under close inspection and worked with border officials to gather information on alleged travelers to Syria. The German criminal code does not convict women who took care of the household in the ISIL-controlled territories.

In April 2019, Germany introduced a non-retrospective law that denied individual citizenships on the grounds of the possession of more than one nationality or the involvement in the terrorist militia.

**Iraq**

Iraq, along with Syria, is where the ISIL formerly claimed to be its caliphate. Succeeding the defeat of the ISIL in March 2019, the Iraqi government has exercised its jurisdiction in putting captured jihadists on trial. The estimated number of jihadists who are foreigners is estimated to be approximately 1,000. The Iraqi government had admitted that they had implemented harsh methods to interrogate the captured jihadists. This method was used in hopes of gathering confessions for terrorist convictions; however, it could constitute violations of human rights and require intervention from the States of origin.

**Islamic State in Iraq and the Levant (ISIL/Da’esh)**

The Islamic State in Iraq and the Levant (ISIL) or Da’esh, is a Sunni jihadist group. It holds an extremist ideology that claims itself as a caliphate and asserts religious authority over all worshippers.
The ISIL, since its declaration in 2014, has recruited up to 40,000 fighters, with at least 5,000 of them from Europe. The recruitment of foreign fighters often involves propaganda with themes such as identity to strengthen a sense of in-group and out-group. The recruitment process is separated and involves interviews of the foreign fighters, who cross Turkish-Syrian borders with the help of facilitators.

Following the loss of territories of Syrian and Iraqi land, up to 10,000 of the IS fighters are detained by either the SDF or the Iraqi government. However, their fall did not mark the end of the threat they pose since their leader is still at large, and networks at other locations still persist.

**United Kingdom**

The United Kingdom (UK) is well-known for its legislation of revoking British citizenship of several jihadists who joined the ISIL. Although this could be considered as a human rights violation, the UK has denied citizenship for those of dual nationals or are entitled to the nationality of another country, as claimed by the government. The case of Shamima Begum is one of the most high-profile examples in which she joined the terrorist group as a 15-year-old back in 2015 but became stateless under the UK’s claim of she being entitled to Bangladeshi citizenship.

Under British law, a British national who travels “abroad to commit or prepare a terrorist offense, or to obtain training in terrorism” is considered as a suspect and eligible to be prosecuted even if the crimes are committed overseas. Acts of preparation or assistance of terrorism are also considered to be criminal offenses that could be punished by life imprisonment. Moreover, the UK polices are granted the power to “take terrorism prevention and investigation measures (TPIMs).” This signifies how they have the authority to restrict individuals who they believe are suspects of being terrorists.

**The United States of America (USA)**

The United States of America (USA) is one of the key players in the issue. In regards to the Syrian conflict, the US forces support the Kurdish-led Syrian Democratic Forces (SDF). Following their defeat of the ISIL in March 2019, the US President Donald Trump has expressed his hopes for countries to repatriate their citizens. Trump stated that former IS propagandists will not be allowed home, but the court has the power to overturn the decision.

In October 2019, the US troops withdrew from northern Syria, allowing Turkish incursion and adding onto the unrest with escaping SDF detainees.

**Syrian Democratic Forces (SDF)**

The Syrian Democratic Forces (SDFs) is a non-state armed group that opposes to the current Syrian government and is performing governmental functions over the Syrian territory. They are Kurdish people backed by US forces. In March 2019, the SDF declared its military victory against the ISIL and captured the former ISIL fighters in the Syrian territory. Following up on that, they have kept up to 2,000
FTFs in custody since then although they did not exercise their jurisdiction to try each individual. In October 2019, as the US formally withdrew its troops in northern Syrian, the SDF lost control over the Turkish incursion and caused a certain degree of unrest that allowed some of the detained FTFs to escape.

**Timeline of Events**

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<th>Date</th>
<th>Description of event</th>
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<tr>
<td>September 14th, 2014</td>
<td>The United Nations Security Council (UNSC) held a meeting with the Heads of State or Government to address the issue caused by foreign terrorist fighters (FTFs). As a result of this meeting, the Security Council adopted resolution 2178 that gives a concrete definition of FTFs.</td>
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<tr>
<td>December 4th, 2018</td>
<td>Qatar and the UN Counter-Terrorism Committee Executive Directorate (CTED) jointly held a briefing on Doha Forum on returning foreign terrorist fighters.</td>
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<tr>
<td>December 27th, 2018</td>
<td>The Security Council convened to adopt Addendum to the Madrid Guiding Principles, which was adopted in July 2015 to guide the Member States in coping with the flow of FTFs, to focus more on the returning and relocating of FTFs.</td>
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<tr>
<td>March 23rd, 2019</td>
<td>The Syrian Democratic Forces (SDF) declared the defeat of ISIL at the Syrian and Iraqi territories. Many of the IS fighters are now detained by the SDF or the Iraqi forces, with a large number of them being FTFs and their families.</td>
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**Relevant UN Treaties and Events**

- Vienna Convention on Diplomatic Relations (VCDR), April 18, 1961 (*Treaty Series, vol. 500, p. 95.*)
- Resolution 2178, 14 September 2014 (*S/RES/2178*)
- Resolution 2396, 21 December 2017 (*S/RES/2396*)
- Addendum to the guiding principles (*S/2018/1177*)
Previous Attempts to solve the Issue

The United Nations Approach

As part of its efforts to integrate counter-terrorism measures, the United Nations (UN) have had several attempts in solving the issue of returning FTFs. The involvement with dealing with issues regarding FTFs began with the Security Council’s adoption of Resolution 2178 on September 14th, 2014, where the definition of FTFs is succinctly given. From there on, the same resolution called upon states to pass laws as an effort to suppress FTFs. Aside from SC resolutions, the UN Security Council Counter-Terrorism Committee (CTC) has also created the Madrid Guiding Principles as an endeavor to combat terrorism and identify the flow of foreign fighters. The principles had a preliminary focus on three tasks for the States of origin to follow, which are the detection and intervention of the FTFs’ actions, the prevention the FTFs’ cross-border movement, and “criminalization, prosecution, international cooperation and the rehabilitation and reintegration of returnees.”

Approaches taken by the States of origin

Most European countries have taken a more defensive approach and are reluctant to repatriate detained FTFs in Syria and Iraq. Some countries, such as the United Kingdom, Germany, and Denmark, have revoked citizenship of those who have been involved in terrorist movements. In terms of the legal status, different countries have established different relevant rules in regards to determining the status of the returning jihadists and their family members. For instance, while most countries agree on how individuals who are involved in the terrorist movements should be convicted of the charges of terrorism, countries have different views on whether or not it is sufficient to convict women who supported the movement logistically and other nationals who merely resided at the area during the ISIL’s occupation.

Possible Solutions

Arguably, the most favorable solution to this issue is to have States of origin to repatriate the detained FTFs in Syria and Iraq. Although they are not regulated to do so by any international law, the application of various international laws on counter-terrorism, consular access, and human rights all indicate the States’ right and responsibility to uphold human rights for the returning jihadists. Regarding the concerns of the status of the jihadists, countries should be advised to decide on the need of prosecution on a case-by-case basis. However, before doing so, it is essential for countries to agree on a set of principles on the individuals who are eligible to be convicted with terrorism charges in order to prevent arbitrary or biased decisions guided by political motives instead of from a human rights perspective.
Another approach to this issue is to address reintegration imperative for returning jihadists. Even though this measure is not directly related to determining the legal status of the returning jihadists, it is essential to address ways of reintegration and deradicalization since States of origin could alleviate their concerns of the amplification of radical ideologies from the returning jihadists.

Bibliography


Appendix or Appendices


II. RAN MANUAL Responses to returnees: Foreign terrorist fighters and their families: ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf#page=17