European Council

Repatriation of foreign fighters in ISIL

Research Report

Leiden Model United Nations 2021

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Forum: *European Council (EC)*

Issue: *Repatriation of foreign fighters in ISIL*

Position: *Deputy Chair*

Introduction

Since the self-proclaimed Islamic State lost its last physical stronghold in Raqqa, Syria, thousands of foreign ISIL fighters, along with their wives and children, still live detained in Iraq or in Kurdish detention camps in northeastern Syria. The question now is how to deal with this issue - a question that became urgent after last month's United Nations Security Council briefing on the rise of ISIL in Syria. About 40,000 people comprise ISIL, from 81 countries. Some have fought in Iraq and Syria (IS), while others, including women and their children, have been victims of violence. Whether they come voluntarily or not, those who stay - most of them women and children - live in dire conditions that human rights groups have described as alarming.

Due to the territorial defeat of the Islamic State of Iraq and the Levant (ISIL), debates and questions about what member states should do either individually and/or collectively, with foreign terrorist fighters (FTF) have become more relevant and controversial all at once. This report examines whether states are obligated to repatriate ISIL FTFs by law, as well as the options available for those countries to deal with the return of ISIL fighters. This report also notes that the international legal framework is generally geared towards the repatriation of FTFs for prosecution and rehabilitation purposes. While countries have taken diverse and controversial approaches when managing the return of fighters, the choice to repatriate and prosecute them fairly in their country of origin is seen as the most logical and preferred approach, not only for the member state of origin but also for the future of the international community at large.

Definition of Key Terms

Repatriation:
Repatriation in a broader context refers to anyone returning to their country of origin, which may include refugees, deportees and in this case foreign terrorist fighters of ISIL.

ISIL:
The Islamic State, also referred to as the Islamic State of Iraq and the Levant, the Islamic State of Iraq and Syria, or by its Arabic abbreviation, Daesh, is a militant group and a former national unrecognized quasi-state.

Foreign Terrorist Fighters (FTFs):
FTFs are foreign fighters who travel for the purpose of terrorist activity.

Human Rights:
Human rights are fundamental rights and freedoms that belong to everyone in the world, from birth to death. These fundamental rights are based on shared values such as dignity, fairness, equality, respect and independence and are defined and protected by law.

Syrian Democratic Forces (SDF):
The Syrian Democratic Forces (SDF) are an alliance in the Syrian civil war consisting mainly of Kurdish, Arab, and Syrian militias.

General Overview

The Islamic State - also known as ISIS, ISIL or Daesh - emerged from the remnants of Al Qaeda in Iraq (AQI). ISIL was kept on the low for several years after the wave of US military troops invaded Iraq in 2007. But it started reemerging in 2011, exploiting the vulnerability in Iraq and Syria, due to political instability, to carry out attacks and strengthen their force. The group changed its name to the Islamic State of Iraq and Levant (ISIL) in 2013. At its high, the Islamic State (ISIL) held about a third of Syria and about forty per cent of Iraq. But by December 2017, it had lost ninety-five per cent of its territory, including both its two largest territories, Mosul, Iraq's second-largest city, and the northern Syrian city of Raqqa. At the height of its power, the Islamic State of Iraq and Levant (ISIL) had around 60,000 fighters, 40,000 of whom were third-country citizens. When its territorial dominance mostly ended in 2017, the Syrian Democratic Forces (SDF) took responsibility for the arrest of ISIL fighters, including foreign fighters (non-Iraqi and non-Syrian people who left their country to join ISIL). Currently, the SDF controls around half a dozen of war camps in which around 10,000 ISIL fighters are being held, of whom 2,000 are foreigners.

The phenomenon of foreign terrorist fighters is nothing new within the global arena. What's new is the indisputable fact that it's increasingly conceptualized from the perspective of terrorism. The term foreign terrorist fighters (FTFs), was first developed within the mid-2010 thanks to its global scale and was further introduced in the UN Security Council Resolutions (UNSCRs) 2170 and 2178, both of which were unanimously adopted in 2014 under the 1945 Charter. FTFs include all individuals who travel to another member state, with the intention of joining a terrorist force and those who offer or receive terrorist training.

In reference to armed conflicts, the problem of FTFs has for years constituted and posed a serious threat to international peace and security. Through UNSCR 2178, therefore, attempts are made to deal with such a threat. Member states are currently facing a challenge on whether or not they should actively repatriate thousands of ISIL FTFs, who are being held in prisons and refugee camps within northeast Syria and Iraq. Although this matter is of great importance, only a few countries have agreed to acknowledge it and successfully repatriate their FTFs. Others, like the UK and France, however, have refused the repatriation of ISIL FTFs on the premise that by repatriating their many challenges will arise.

The first challenge related to repatriation is the security challenge. Governors often portray ISIL fighters as hardline individuals with extremist beliefs resulting in the most significant reason why countries are reluctant to accept repatriation being the potential threats that FTFs may pose to national security after their return, seeing as the training and knowledge that FTFs have received while being overseas are viewed as a significant threat within state borders, making many officials fear that the repatriation of these individuals could lead to a "backlash" of terrorist attacks.

Another issue is the legal dilemma, primarily the challenge of gathering evidence to prove a

crime happened in Syria or Iraq, seeing as not all countries have similar legislation to the United States where even trying to join a terrorist group is considered a crime. The third challenge is of political nature; the challenge of overcoming public opposition to the repatriation of foreign ISIL fighters is something that many governors are dreading, seeing as many citizens are opposed to the repatriation.

Finally, the rehabilitation of those repatriated will be a social challenge, with acts that include de-radicalization programs; the involvement of religious counsellors or academics and psychologists; utilizing family structure and civil society organizations; accessing jobs and mental health support.

Many foreign fighters with Western European citizenship, especially those with an immigrant background, reason themselves by claiming that they joined ISIL because of the discrimination that they were facing and the governments' inactiveness in the matter. Today, those same countries are once again not active when facing the problem. In a U.N. Security Council resolution in 2020 on the repatriation of foreign ISIL fighters, both France and the United Kingdom used their veto powers, while insisting that the wording of "mandatory" repatriation should be removed and instead of making repatriation an individual decision for each member state. Towards the end of the session, the United States vetoed the resolution, resulting in the UN Security Council not obliging countries to repatriate their citizens.

In a number of cases, Western governments have tried to deny repatriation to citizens with an immigrant background accused of joining ISIL by sending them abroad in their so-called "countries of origin" including in cases where the FTFs had never even visited those countries, leaving member states such as Belarus, Bangladesh, India, Yemen, Pakistan and other developing countries to solve the problem of developed countries, while dealing with their own FTFs. Even if these countries agree to take in the accused, they will face numerous difficulties when prosecuting them due to the lack of evidence, which is often not shared internationally. In addition, the chances for FTFs to successfully integrate into a society that is not familiar to them are very slim.

In the face of these challenges, most governments favour the commonly cited no-return options. The first is to maintain the status quo, which means that Kurdish forces continue to hold foreign ISIL fighters in a high-security environment; despite the fact that many foreign ISIL fighters have illegally returned to their home countries. The potential consequences of this no-return option, such as a major prison break reviving ISIL forces, are undesirable. Another option is one that includes the UN; to convene trials in existing international courts or to establish an international tribunal. The International Criminal Court (ICC) is the main candidate; however, seeing as Iraq and Syria are non-members they are outside its jurisdiction. So far, governments supporting the establishment of the court have only considered Iraq and Syria as possible locations, seeing as the proximity to the countries where ISIL committed its crimes means that governments will not be obliged to repatriate their FTFs. However, Syria's diplomatic isolation and the state's own crimes make this option unlikely. It is also impractical to establish a court in Iraq, as the 2005 Iraqi Constitution explicitly states that "no special or exceptional court can be established".

While the defeat of ISIL is clearly an advantage for the international community, the situation still poses human rights issues and challenges in the context of the FTFs. Thousands of FTFs are still being held in refugee camps and prisons under the custody of the SDF and Iraqi authorities, posing a threat to national and international security. As aforementioned, discussions about

states' obligations to their FTFs, although controversial, are becoming increasingly relevant.

The resolution, adopted under Chapter VII of the Charter of the United Nations, states that all Member States have an obligation to ensure the appropriate prosecution, rehabilitation and rehabilitation of returned FTFs. Despite such obligations, however, states have in practice adopted diverse and even controversial approaches to fighters wishing to return home. While not all options are in the national interest of every country, some options take precedence in the context of human rights.

Major Parties Involved

USA

Although the infamous American Guantanamo Bay prison remains open, allowing indefinite detention of the accused individuals of terrorism, no steps towards this direction have been made. Several American women who have not been stripped of their citizenship have yet to return from camps in northern Syria claiming that the US has only repatriated the FTFs that are minors, as they are considered victims, or those who have sufficient evidence to be prosecuted and persecuted. They also add that since they are adults with no sufficient evidence for a prosecution they are stuck there with no one helping them to return. The USA's "obsession" with law enforcement and incarceration, and in particular the existence of the Guantanamo Bay prison camp, was an important tool of Islamist propaganda, fueling furthermore, the widespread anti-American feeling among Muslims around the world, helping promote recruitment for groups like ISIL.

European Union

The 2015 Paris and 2016 Brussels attacks are two of the most well-known atrocities in Europe that saw individuals who were previously involved in organized crime and trafficking join one of the most "successful" terrorist organizations in the world. It is now widely concluded that the FTFs from Europe are not just radicals anymore, but criminals who have turned to political violence at some point in their criminal "careers". As a result, the threat posed by the "link between crime and terrorism" still pervades Europe.

Years after ISIL lost its last territory in Syria, more than 200 women from 11 European countries and their 650 children live in two camps in Syria. Although Europeans make up only a fraction of the 60,000 people held in the camps, mostly Iraqis and Syrians, European governments face growing pressure when it comes to the repatriation of them. Security experts, human rights groups and lawyers representing some of those who had joined ISIL recognize that European governments face legitimate security challenges, as well as dynamic politics in countries that fear terrorist attacks, but they also note that, by leaving European citizens in Syria and Iraq, more adversities may occur, including the possibility of them joining terrorist group targeting Europe. Another concerning fact is the advocacy group Reprieve report, which notes that many women in the camps are being trafficked, raped, forced into marriage and domestic slavery.

Despite all of the above, in many European countries, repatriation is still in doubt, said a French intelligence official. Security analysts say part of the reluctance is that repatriated women may or may not receive light prison sentences. Britain has revoked the British citizenship of nearly 20 women who had joined ISIS, in some cases even taking them to court to prevent their return. France has rejected many calls for repatriation, even as some women have gone on a

month-long hunger strike. The Netherlands and Sweden say they can accept children, but not their mothers.

United Kingdom

Around 5,000 European citizens have travelled to Iraq and Syria as "foreign fighters", of which around 800 are British and about 20% are women and children not counting the children who were born in Iraq and Syria during the time that FTFs served ISIL. Currently, most of the FTFs are in prison camps in Syria and Iraq. The Iraqi constitution contains important guarantees for those who remain. These rights include the right not to be arbitrarily detained, the right to a fair trial, and the right not to be subjected to torture or degrading treatment. However, the criminal justice system in Iraq is tense and weak. Numerous NGO reports show persistent violations of international obligations and, above all, Iraq applying the death penalty for a wide range of crimes. There are legal arguments to assert that the UK is at least not complicit in the death penalty, and in 2017 the UK said: 'It is a longstanding policy of HMG[1] to oppose the death penalty under all circumstances and we aim to do everything we can in order to prevent the execution of any UK citizen overseas. In order for justice to be served, we must make sure that convictions are based on respect for the rule of law, and this is not guaranteed in Iraq".

[1] Her Majesty's Government. It refers to the British Government

Timeline of Events

2004	Al-Qaeda is established in Iraq by Abu Musab al Zarqawi.
June 2006	Zarqawi dies in a U.S. strike and Abu Ayyub al Masri takes his place.
October 2006	Al Masri announces the establishment of the Islamic State in Iraq (ISI)
2008	"Membership" in ISI is significantly reduced. By early 2008, 2,400 ISI members had been killed and 8,800 arrested, out of the previous 15,000 members. The flow of foreign fighters into Iraq increased from 120 per month to five or six per month in 2009.
2013	ISI changes their name to the Islamic State of Iraq and the Levant as they expand in Syria.
2014	Raqqa is taken over by ISIL, becoming its capital while Al-Queda cuts all ties with ISIL.
November 2017	Both President Trump and Russian President Vladimir Putin issued a joint statement, in which the two countries agreed to continue their cooperative efforts against the Islamic State until it is defeated.
December 2017	Iraqi prime minister announces the defeat of ISIL
2021	The challenges that Member States face when it comes to FTFs and their repatriation still remain four years later, most states repatriate only minors and minors, avoiding teenage boys and men.

Possible Solutions

Raising awareness

Nationalism, like any extreme ideology, can and needs to be addressed primarily through education. That would mean creating educational systems that promote the importance of differentiation, acceptance and the idea of internationalism. Furthermore, raising awareness for its implications and effects is extremely important, especially when we're referring to uneducated, or poorly educated societies, like those of many countries globally. Given the fact that the countries that can truly resolve the issue seem reluctant or even negative about doing so, the delegates should focus on enhancing cooperation with said countries. Member States with veto rights have the power to affect the situation either positively or negatively; that being said, while we cannot revoke vetoes nor question them, it is imperative that conversations, negotiations or conferences take place so that there can be clear communications in regards to policies and impending decisions.

Establishment of legislation

As aforementioned, many Member States face many challenges when it comes to repatriating their FTFs seeing as they do not have proper legislation concerning individuals who travel to join a terrorist group. By establishing laws concerning those individuals it would only assist states with FTF repatriation, thus easing the ongoing tension and the debate that accrued when ISIL lost a great amount of land. Notable is also the fact that the establishment of the aforementioned laws would only speed up the process of repatriation, which will be beneficial for both governors and FTFs seeing as the fighters and their families are currently living in camps in West Syria in inhumane conditions.

Immediate Repatriation of Children

One extremely concerning matter that must be addressed immediately is that of the children of FTFs. Adults made a conscious decision when travelling with the intention of joining ISIL, whereas hundreds of children were either brought with or were born at the height of ISIL's power. Children are living in inhumane conditions while they are being restricted from basic human rights such as education. Nowadays education is the key standard in order for an adult to be employed and ensure economic stability. By dismissing the fact that young kids and teenagers are being deprived of education for several past years we are feeding into the problem. Member states in cooperation with repatriation focused NGOs ought to repatriate children and initiate an education plan applicable for these children in order for them to be able to have a future. Delegates should focus on the cooperation between member states and NGOs, keeping in mind that the longer these children stay in Syrian camps while multiple of their human rights are being violated, the more possibilities there are for them to develop a "terrorist" mindset seeing as they are only familiar with ISIL's way of living.

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