The Threat of ISIS: Returning Fighters and Repatriation Efforts - The Bottom Line

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ABSTRACT

The below analytical points were shared during the virtual panel discussion organized by Bulan Institute for Peace Innovations on 14 May 2021.

Below is a summary of the points that the author shared.

The Foreign Fighters (FFs) or Foreign Terrorist Fighters (FTFs) are not a new phenomenon; they existed long within human history. What recently changed is the scope of the risk of the returnees that is hugely worrisome. We are talking about people who – not all of them – have been molded in violent ideologies, who are trained in making bombs, build networks, plan and execute terrorist attacks, and, most importantly, have raised their tolerance to violence significantly.

In this presentation, there are three main points that I would like to make when talking about the threat of ISIS and the issue of returning fighters:

1. The threat of ISIS and returning foreign fighters question the efficiency and the effectiveness of the field of counterterrorism.

2. It put question marks on the idea of toolkits and toolbox in peacebuilding, a field which adopts approaches mostly from the era of the cold war with the sole focus on crisis.

3. There is a need for more effective collaboration. Sustainable rehabilitation and reintegration of returning foreign terrorist fighters can only happen by taking into consideration three key components: non-violence, an efficient delivery of justice, namely, criminal justice, and full realization of human rights. Their absence will only backfire.

I. The issue of returning foreign terrorist fighters is a question of international law and criminal justice

The issue of returning foreign fighters depends largely on the concept of nationality. Under both customary international and human rights law, nationality is framed to regulate admission to a State. Being an institution of domestic law that has consequences in international law (here the case of national returnees) lays the ground for the State's duty to admit its nationals and allow them to reside within its territory. Such a duty exists mainly as an obligation that is needed to balance States' sovereignty to regulate the presence of foreigners on their territory[1].

Under international human rights law, the State's obligation to admit its nationals reflects the individual's right to enter and reside free from expulsion in his/her country of nationality.

Article 13(2) of the Universal Declaration of Human Rights (UDHR), states that *"everyone has the right to leave any country, including his own, and to return to his country"[2]*, and Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR) includes further that *"no one shall be arbitrarily deprived of the right to enter his own country"[3]*.

The flow of FTFs mobilizing worldwide, and nowadays seeking to return to their countries of origin has fueled the debate and triggered new questions on denationalization as legitimate policy instruments[4]. Revoking nationality as a measure to prevent the return of FTFs is a violation of international law, often combined with the breach of the duty to avoid statelessness and the principle of non-discrimination.

Deprivation of nationality comes into play also with regard to the repatriation of FTFs and their families as when states resort to this action, it is done with the intent that the deprivation of nationality 'releases' them from the obligation to seek the return of their nationals proactively.

The use of the deprivation of nationality was exhibited in Shamima Begum's case: Shamima Begum is British citizen. On 19 February 2019, the United Kingdom Secretary of State decided to deprive her of her British citizenship on the basis that her return would represent a risk to national security. A decision that the supreme court backed and ruling that Ms. Begum is not allowed to enter the UK to appeal against the decision of deprivation of citizenship.

Although the State has to repatriate its citizens from conflict zones, the mere expression of the desire of its citizens to return home put a burden of right on the State to exhibit efforts for and proactively engage in their repatriation.

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[1] John J. Tani Jr. *Black flags of their fathers: The Islamic State's returning foreign fighter youths and their implications for US domestic security*. Thesis December 2017.
[2] Universal Declaration of Human Rights: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf
[3] International Covenant on Civil and Political Rights, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
[4] Ibid. John J. Tani Jr. (2017)

The Secretary-General of the UN, Antonio Guterres, signed the Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children[5], highlighting that any repatriation effort needs to consider humanitarian and human rights standards, as well as the dimensions of gender and age. These key principles, even if they concern the repatriation, rehabilitation, and reintegration of women and children, it must also be done within the principle of the proximity of the detention institutions. Meaning that the family of the detained FTFs must be within the proximity where his family is, which legally put a duty on states to also repatriates prisoners FTFs.

The UN Security Council Resolution 2396[6] (2017) asserts that foreign terrorist fighters may travel with family members they brought with them to conflict zones, with families they have formed, or family members born while in conflict zones. The UN Security Council Resolution 2396 highlights the need for the Member States to assess and investigate these individuals for any potential involvement in criminal or terrorist activities and does not give derogation to detain FTFs outside their country of origin away from their families.

We all should learn from the failure of Guantanamo bay prison and how the isolation of FTFs and away from their families can only backfire.

II.   Foreign terrorist fighters and the limitation of the provision of evidence

It is largely recognized that at the height of foreign fighters' involvement in the conflict in Iraq and Syria, ISIS had between 27,000 and 42,000 foreign terrorist fighters at its disposal[7]. The large difference in numbers informs on the uncertainties regarding the data.

However, there is a uncertainty on the number of potential returnees. Estimations varies but a simplistic way to calculate the number of possible returnees is to subtract the number of those who have returned already and those who have died from the total number of data regarding foreign fighters that travelled from a particular country. The remainder would be the number of individuals who could potentially return. However, for this simplistic calculation to work, there is a need for accurate data regarding those who travelled to conflict zones and prove the intent of joining to fight a war. Until today, counterterrorism agencies lack accurate and reliable data.

The potential returnees are then faced with three possibilities: perish, stay, or return. With these three types of foreign fighters, it is believed that many of them will never go home at all; instead, they will be joining new military operations elsewhere (so we can add another

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[5] Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups (April 2019), https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key_principles-april_2019.pdf

[6] UN Security Council Resolution (21 December 2017), https://undocs.org/en/S/RES/2396(2017)

[7] Soufan Group, "Foreign Fighters Update," The Soufan Group. "Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq." December 2015. https://www.jstor.org/stable/resrep10784

category of those who relocate: *Al muhajirun*). This is the case of those who join the combats in Libya, some conflicts in the Sahel and southern Africa, such as Mozambique. Some others will return disenchanted and not interested in bringing the violence with them, which questions what rehabilitation would best suit them knowing that they have been self-convinced of the reversed terrorist ideology.

It is critical to differentiate and speak about FTFs categories. Today, we still have one image of the FTFs: a returnee that brings with him/or her a baggage of destructive ideology and high tolerance to violence. This is the general image that we all have of foreign terrorist fighters. But this image is contrasted by the main challenge; that of collecting evidence: it is difficult to collect evidence against, I am afraid to say, most of those foreign fighters because:

a) Most countries, in the European Union, African Union, North African nations, and others, are not present in Syria and much less in Iraq.

b) Most countries do not cooperate with Assad's regime and cannot, therefore, have the data and intelligence that will permit them to have evidence against these people.

c) Countries indicted people when they post a photo on social media, pausing with the ISIS flag in the background. But that is not enough for evidence for judicial prosecution.

The question remains: how can we prove their involvement in terrorist organizations? With the lack of enough evidence, eventually, fewer cases would go to court, and if they go, the delivery of justice will be questioned.

This is even more important to consider when we contextualize the events. People from the MENA region started to join Iraq and Syria in times of social 'uprising against authoritarianism (coined as The Arab spring) and the crackdown of Assad's regime against the people in Syria. Images from several international media, triggered a wave of anger. An anger that promoted many women and men, to go to Syria with the intent, I think, to support the people's movement against the regime. Then, they were received by *Jabhat al Nusrat* that the majority of people did not know and ought to think of it as a terrorist group. It was not Al Qaeda or ISIS *(Daesh)*. So the idea of proving the intent of joining a terrorist organization would at times be very nuanced.

With that said and upon their return, with most returnees, we will need to think about alternative options. Even with prison, the maximum of 5 to10 years sentence that most countries provide in their laws will eventually come to an end, if the FTF is not pardoned, upon good conduct, before completing the sentence.

Accordingly, here where the rehabilitation becomes important. We will need to consider prison as the last resort because we all know how prisons can be a breathing ground for radicalization to violent extremism. Also, and as Gilles de Kerchove EU counterterrorism

Coordinator, rightly mentioned in 2015[8] in regards to the message we send to those who are still in conflict zones. With limited delivery of justice, the message that we will send:

1. Make it hard for us to get them back. This is for example, the case of foreign fighters from the Sahel that were in Libya, and how we see them spreading to other conflict hotspots such as Mozambique, and how they might be infiltrating into Chad, bringing the fight in-country.

2. We should learn for what didn't work and backfire in the past, and that is how states dealt with the mujahidin in Afghanistan and the withdrawal of the Russians, with the absence of approaches to rehabilitation and reintegration.

III.   Toolkits? Not quite there yet

The field of rehabilitation and reintegration has not risen to become a field where one can claim that we have toolboxes that work anytime, anywhere with just contextual tweaks. We have scattered experiences that have been implemented, not without errors, in different countries. In the Middle East, EU, North Africa and Sahel, the lack of global and regional approaches leaves us with various country-specific experiences only. These experiences go from the hardcore British model that focuses on keeping their FTFs away as much as possible. If their nationality is a hurdle from keeping them away from Britain, well they withdraw the nationalities (which is against international laws). The other end of the spectrum focuses on the humane aspects of rehabilitation and reintegration such as in the Aarhus region in Denmark.

The UN call for foreign fighters to leave Libya has caused that a large number of foreign fighters have either returned home, or stayed in areas where there is almost an absence of State, with a security vacuum such as in southern Libya, or in the border areas of Mali, Niger and Burkina Faso.

Envisioning the repatriation of the FTFs back home necessitates a clear vision and a framework. Two approaches can be envisioned. A retrospective approach that's focuses on punishment through prosecution and imprisonment. This approach is an old model that seems to be surpassed because punishment is backward-looking, necessitates a reliable delivery of criminal justice, and is mostly selective.

The other approach is a prospective one, a forward-looking and centers around knowing the truth to prevent future violent extremism crime-related. These two approaches have been discussed and analyzed to deliver transitional justice and reconciliation processes to deal with gross human rights violations.

The Moroccan experience in dealing with returnees FTFs seems to have more chances to succeed because the country has the prerequisites for truth processes. It dealt in the past

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[8] Gilles de Kerchove presentation during the event organized by the Washington Institute for Near East Policy, on Rehabilitation and Reintegration of Returning Foreign Terrorist Fighters. The event was organized on 20 February 2015 on the margins of the White House Countering Violent Extremism Summit.

with human rights violations of 42 years under the previous power settings. Morocco decided to repatriate its nationals estimated to1654 Moroccan who left to Iraq and Syria, some 225 with criminal record and recidivism; 745 who died on the conflict zones, 288 women from whom 82 have returned, 391 (another number of 199 has been mentioned as the total of Moroccan children who are currently in Syria), and 8 FTFs have been repatriated. The latest repatriations date on March 2019. The measures taken by the country to face the COVID 19 pandemic have changed the Moroccan government's priorities. It is important to note that these numbers[9] are estimates and can shift according to the ongoing investigations.

Morocco decided that women and children will benefit from tailored rehabilitation and reintegration programs without prosecution, while adult men will go through a judicial process. Perhaps things will change in the future, and we could see the country going through a process of building a legal system for FTFs without punishment, in the same way it did through the work of the Moroccan truth commission and the national reconciliation. Until then, the threat of terrorism is still plausible. In fact,14 terrorist cells were dismantled in 2019 against 21 terrorist cells in 2020.

The bottom line

Returning foreign fighters presents a major challenge to policymakers in tackling the ever-evolving foreign fighter phenomenon. There is much inclination towards a "hard approach" of prosecution and long prison sentences. But it should be clear that this will fail to address the entirety of the problem and that criminal justice measures need to be augmented by prevention and rehabilitation policies.

However, much still needs to be done to evaluate effective practices of these counterterrorism programs. Various experiences suggest that programs work well when adapted to a country's institutional culture and, particularly, when that culture favors collaboration between different stakeholders. Experiences in several countries have demonstrated that providing radicalized individuals with practical help in rebuilding their lives seems to be working in countering their return to violent extremism much more than focusing on a program that focuses on radical ideology alone. Several de-radicalization programs focusing on messages cartoons and comic books seems to have not reached their intended objectives.

With countries taking different approaches, it is crucial that robust evaluations are built into these programs and that their outcomes are widely discussed so that different stakeholders benefit from the lessons learned. To do so, we need to help take off the burden to be right from experts in the field and cultivate a culture of correction and learning among field practitioners and analysts.

More than ever, it is time to face this challenging phenomenon of returnees FTF and become further comfortable with nuances, doubt, and uncertainty. It starts by

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[9] These numbers were shared by a representative of BCIJ (Bureau Central Investigations Judiciaires).

acknowledging that we don't have toolkit/toolboxes, or indeed effective and tested ones, but rather scattered experience, yet rich to learn from to design effective programs that work not only in a crisis, but most importantly in everyday life.

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