

YOUTH - THE PHENOMENON OF RETURNING FOREIGN TERRORIST FIGHTERS AND ITS CHALLENGES



The phenomenon of foreign terrorist fighters (FTFs) is a matter of great concern for the international community. Newspapers and media are full of stories pertaining to the radicalization of young people who left their country of origin to engage in violent extremism in other countries.

Foreign terrorist fighters are defined 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.”^[1]



According to the Security Council, over 30,000 FTFs from over 100 Member States were attracted by terrorist organizations such as Al-Qaida, the Islamic State in Iraq and the Levant (ISIL, also known as Da'esh). "Because the related challenges are by their nature international, the Council has called on Member States to enhance their international cooperation in preventing their travel. Attempts to combat the threat through a purely domestic approach will not work."^[2]

It is difficult to estimate the number of FTFs killed, as well as the number of those who have returned to their countries of origin or have relocated to third countries.^[3] The reasons for the return of FTFs to their home countries vary: it can be due to disillusionment, remorse, capture or simply the unfulfilled dream of receiving benefits which were promised during radicalization. Handling this situation is a major challenge for many countries. While foreign terrorist fighters are a serious problem in the countries to which they travel, they arguably pose a greater risk when they are in their home countries. Some countries remain more vulnerable to this phenomenon than others, but overall it is an international problem that requires new approaches.

In 2014, the United Nations Security Council passed

resolution 2178 to address the threat posed by foreign terrorist fighters. It called on Member States to adopt legislation that prevents the transit of FTFs. Recalling this resolution, the Council further passed resolution 2396 at the end of 2017 and urged the strengthening of measures to counter the threats posed by returning foreign terrorist fighters. The main concern was that the intention of returning terrorist fighters was not to rehabilitate themselves, but to foster radicalization. In many cases, their return yielded new threats and gained skills, but also traumas. Many of the returning fighters were trained to carry out attacks in their countries of origin and therefore pose a serious threat to the community.

The Hague-Marrakech Memorandum, recognizing the major challenge the phenomenon of foreign terrorist fighters represents for the international community (countries of origin as well as transit and destination countries), brought together a list of good practices that should help States to better handle the risks they are facing. These good practices are meant to provide guidance and support to States by helping to adapt the required and improved legislation. The challenge that exists regarding returning foreign fighters involves important considerations: should these people be treated as victims that are to be reintegrated into society or as criminals to be put on trial? How can they establish the truth about the atrocities that foreign terrorist fighters may have committed and support the global fight against impunity?

In the process of seeking justice and fighting impunity, the international community has a responsibility to ensure cooperation and, more importantly, to challenge incorrect prejudices in order to prevent polarization of opinions between States. What approach is best in striking a balance between the need to seek justice and the need to rehabilitate in order to avoid stigmatization (which provides further fuel for radicalization)?

The legal status of foreign terrorist fighters varies according to the domestic legal system but overall seems to be rather unclear. The approaches that States have taken to address the return of foreign fighters have up to now been rather stringent at both the liberal and conservative ends of the spectrum.

The conservative way of dealing with returning foreign fighters includes the criminalization of acts committed abroad in the context of "foreign fighting" and follows conservative ideas of criminal justice. This approach chooses to conduct rehabilitation during time served in prison. Of course, this requires the prison and its staff to be specially trained and equipped with the skills necessary to eliminate the risk of relapse.

The liberal

approach prioritizes rehabilitation and reintegration, focusing more on the ordeal that foreign terrorist fighters might have gone through. Also, returning fighters who have already served jail sentences or have not been found guilty of any charges must somehow be rehabilitated and reintegrated. This helps to prevent them from spreading further radicalization or re-succumbing to extremism, thereby harming national and international communities. The process of reintegration and rehabilitation is very individual and varies from person to person, effectively placing an even greater burden on the affected countries. It includes mental support for the returning fighters – many of whom suffer from post-traumatic mental diseases – and support for their families, which is one aspect that seems to be forgotten quite often in the discourse. The families of returning foreign fighters pose an especially sensitive challenge to countries. Global expertise on working with children associated with foreign terrorist fighters or children who are born into a family of foreign terrorist fighters is still very limited. Despite this, it should be a priority for institutions to work with children so that radicalization can still be prevented. To implement this approach, States will have to guarantee that they possess the necessary prerequisites for these institutions to be put in place.

Another approach

that States take is the view that foreign terrorist fighters are “victims of human trafficking”. The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, defines trafficking in persons as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”^[4] By kidnapping and brainwashing young women and young men who are sometimes not even 18 years of age, the Islamic State effectively takes advantage of them. The meeting of the required facets of deception, transport and exploitation, or in some of the cases of young women travelling to Syria or Iraq for the purpose of joining the Islamic State can surely amount to human trafficking. A typical situation by which terrorist organizations gain the consent of these young women is entrapping them with the promise of being jihadi wives. Their age makes them vulnerable to exploitation. This, of course, influences the way domestic law must regard the actions taken by these young foreign terrorist fighters. The consent of the victim is irrelevant if achieved by fraud or coercion. If the consent is given by a minor, it is also considered invalid. Therefore, once they return home, they require special attention regarding their reintegration as well as their legal responsibility needing to be guaranteed.

“Returning foreign

terrorist fighters pose an enormous challenge with no easy solution,” Vladimir Ivanovich Voronkov, Under-Secretary-General of the United Nations Counter-Terrorism Office, stated in November 2017. “This is a truly global challenge that demands an urgent and concerted multilateral response.”^[5] In any case, the thing that is needed the most but at the same time presents

one of the greatest challenges, is international cooperation. INTERPOL holds a database that is meant to support countries in identifying those who are considered “returning terrorist fighters.” Border control is more crucial than ever because of another problem which concerns how returning terrorist fighters might use the refugee system of their home countries to illegally smuggle themselves back in.

The affected countries are in serious need of international support. Besides cooperation in border control, this includes the general improvement of transnational data exchange. Resolution 2178 also called for a more holistic approach on countering terrorism in general. Recalling and reaffirming earlier resolutions, it states that “... terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed, and [that we remain] determined to contribute further to enhancing the effectiveness of the overall effort to fight this scourge on a global level.”^[6]

The Author

Barbara Stadlbauer. Having grown up in Germany, Austria and the United States, she studied Law in Vienna and Transnational Crime and Justice in Turin. After graduation from the LL.M. programme she moved to Tunisia, where she is currently working in the development of the educational sector.

^[1] [https://undocs.org/S/RES/2178\(2014\)](https://undocs.org/S/RES/2178(2014))

^[2] <https://www.un.org/sc/ctc/focus-areas/foreign-terrorist-fighters/>

^[3] <https://www.un.org/sc/ctc/wp-content/uploads/2018/04/CTED-Trends-Report-March-2018.pdf>

^[4] <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

^[5] https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/20171128USGVoronkov_statement_SCFTFbriefing_Asdelivered.pdf

^[6] [https://undocs.org/S/RES/2178\(2014\)](https://undocs.org/S/RES/2178(2014))

