Repatriating Western Jihadists: The Impact of U.S. Syria Policy

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Brief Analysis

Unless Washington changes its mixed message on foreign fighters and helps its European allies find practical solutions, it may soon face another mass outbreak of seasoned operatives from Syria.

Among the many security dilemmas raised by President Trump's premature Syria withdrawal decision is what to do about the Western nationals caught fighting there for the Islamic State (IS). Hundreds of these jihadists are still being held by the Kurdish-led Syrian Democratic Forces (SDF) in the northeast corner of the country, and it is unclear how long this detention arrangement can continue after the bulk of U.S. forces depart.

The president's latest statements further complicate the matter. After repeatedly and erroneously claiming that the recapture of IS territory amounts to the group's total defeat, he tweeted on February 16 that European nations should repatriate and prosecute the estimated 800 IS fighters held by the SDF. "The alternative," he added, "is not a good one in that we will be forced to release them." European security services are acutely aware of the threat this could pose, and the president only stoked those worries by tweeting, "The U.S. does not want to watch as these…fighters permeate Europe, which is where they are expected to go…Time for others to step up." Yet prosecuting IS fighters in their home countries presents a variety of legal, rehabilitative, and intelligence challenges, while offering no sure bet that returnees will refrain from domestic terrorism.

OBSTACLES TO REPATRIATION

Many of the practical mechanisms required to safely repatriate Western jihadists are still very much a work in progress, such as finding sufficient admissible evidence for prosecution, and reintegrating deeply radicalized and sometimes violent individuals once they serve their sentence. European governments often mandate very short prison terms or even dismiss charges for citizens who go abroad to fight on behalf of designated terrorist organizations. For instance, Jamila Henry, a British female jihadist who spent six months with IS in the organization's former "capital" of Raqqa, Syria, was spared from serving any jail time upon returning home several years ago. Other reports indicate that Britain has only prosecuted one in ten returnees from Syria thus far.

The unnecessary pressure to repatriate suspects quickly also adds extra strain on security services as they weigh whether and how to track returnees once they are released from prison. A number of individuals assessed as being "low risk" have ended up committing terrorist attacks, most infamously the January 2015 *Charlie Hebdo* shootings, perpetrated by Frenchmen who first met as members of a group that sent local Muslims to fight coalition forces in Iraq. Sentencing and monitoring dilemmas can land far closer to home than U.S. policymakers may realize—for instance, Canada recently released jihadist Kevin Omar Mohamed even though he is viewed as a "high risk to public safety" after joining an al-Qaeda faction in Syria.

Given these challenges, many countries are wary of allowing IS members to return home. Within the past week alone, the Netherlands and Switzerland have stated that they do not want to repatriate such citizens, while Britain has grappled with the tricky legal problem of stripping their citizenship. Three days after the president's repatriation tweet, the British government revoked the citizenship of Shamima Begum, who had joined IS in Syria and declared she did not regret the decision. London erroneously claimed that she holds dual nationality with Bangladesh, when in fact she merely has family heritage there—creating an awkward situation for another country that might not have the capacity to deal with such cases. This same dynamic played out between Australia and Fiji regarding the citizenship of Syria returnee Neil Prakash. Ironically, President Trump seems to understand the repatriation dilemma quite well when confronted with it directly—in a February 20 tweet, he ordered the State Department not to allow Hoda Muthana back into the United States after she joined IS in Syria.

POTENTIAL SOLUTIONS—AND DEAD ENDS

Western countries are considering a variety of approaches to addressing these problems, though all of them require sufficient time to implement. For example, some European governments have recognized that their high thresholds of evidence for prosecution can make it difficult to take action against returnees, particularly when joining a certain group is not a serious crime in that jurisdiction. Therefore, some countries may soon follow Australia's example by designating travel to certain parts of foreign warzones as illegal (e.g., Raqqa), allowing authorities to prosecute returnees simply for going to areas known to be controlled by terrorist entities. Others are considering legal changes that render more evidence admissible in court—for example, a new Spanish government document reportedly proposes allowing prosecutors to use DNA samples, documents, and other items obtained from foreign troops, which could help them charge returnees on specific terrorist acts rather than just IS membership.

Alternatively, if some countries prove completely unwilling to take back their own citizens, the International Criminal Court could consider establishing something akin to "jihadist Nuremberg trials," taking into account testimony from locals and online forensics based on each jihadist's history of promoting IS while en route to or traveling within the group's former territory. Or, if these countries are willing to extradite their citizens, the U.S. court system could help with potential prosecutions, similar to the cases of British citizen Abu Hamza al-Masri, Kuwaiti citizen Sulayman Abu Ghaith, and Belgian citizen Nizar Trabelsi.

Yet the United States faces hurdles of its own in collecting sufficient evidence from regional battlefields to prosecute

returnees. It may therefore be more worthwhile to give lower-level IS members plea bargains in exchange for help in prosecuting higher-level members involved in more egregious crimes. Such deals could be particularly powerful leverage for individuals longing to come home. The significant number of FBI agents already deployed abroad could help build cases against these less-cooperative, high-value targets.

The Trump administration is also debating the idea of sending some returnees to Guantanamo Bay—the Justice Department has balked at this measure, while the White House supports it. Yet recent history indicates that dumping suspects into Guantanamo detention centers would yield slow prosecutions with spotty results. The military prison route makes even less sense when one considers that civilian courts inside the United States have a very strong track record of successfully prosecuting terrorist suspects, without the resultant perception problems associated with Guantanamo's past torture allegations.

Interestingly, similar debates unfolded in Arab countries three decades ago following the anti-Soviet jihad in Afghanistan. The legal, social, and geopolitical context was a far cry from that facing Western officials today, but the pattern of governments taking different approaches to jihadist returnees still prevailed, so it is useful to look at the results.

For instance, Saudi Arabia and Yemen were relatively laissez faire about allowing their citizens to return home, while Algeria and Egypt cracked down harshly against individuals who fought in Afghanistan. Yet all four countries were later affected by jihadist unrest and terrorism—the main difference is that Algeria and Egypt faced it sooner (in the early to late 1990s), while Saudi Arabia and Yemen have faced it at various times this century. Another result is that foreign fighters who could not go home fled elsewhere: to European communities, where some of them helped incubate today's radical movements, or to other battlefields such as Bosnia and Chechnya. The **consequences of that flow (https://www.washingtoninstitute.org/policy-analysis/view/globalized-jihad-then-1993-and-now)** to and from Afghanistan are still being played out today—a sobering realization given that the flow of foreign fighters to Syria was much larger.

CONCLUSION

The challenges posed by detained IS members are both complicated and time sensitive. Unfortunately, the president's handling of the issue—from his premature Syria withdrawal to his insistence that European partners repatriate their citizens even as Washington declines to do the same—has exacerbated transatlantic tensions at a time when cooperation is sorely needed. As one European official asked recently in private conversation, "Does the Trump administration not understand that its actions in Syria are undermining our national security? We are not an ocean away from Syria, this problem is at our back door."

To mend this rift, the administration should help European authorities create new legal regimes or alternative methods of prosecution, while also minding the lessons learned from past jihadist flows and ineffective detention policies. Otherwise, if no practical solution is found, and the U.S. security blanket in northeast Syria is largely pulled away while hundreds of fighters still languish in SDF detention, then IS may take action of its own to change the status quo—namely, breaking them out of prison and attempting to refuel its insurgency, just as it did in 2012-2013. In that scenario, European security services would have to worry not only about homegrown terrorist plots and risky returnees, but also about the possible resumption of large-scale, externally coordinated terrorist attacks like those seen in 2004-2005 and 2014-2016.

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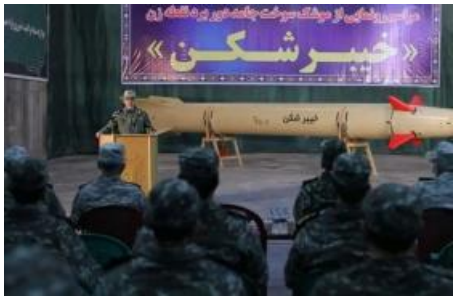

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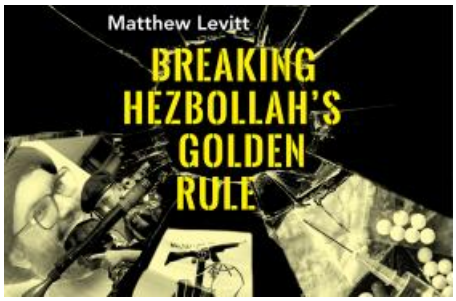

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