

FORUM: General Assembly Sixth Committee (Legal)

QUESTION OF: The legal status for returning jihadists and their families

SUBMITTED BY: South Africa

CO-SUBMITTERS: Somalia, South Korea, Dominica, Eritrea, Croatia, Argentina, Botswana, Uruguay, Latvia, Tanzania, Angola, Micronesia, Zimbabwe, Mauritius, Mozambique, Mexico, Nicaragua, Sri Lanka, Nepal, United Arab Emirates, Samoa, Colombia, Marshall Islands

THE GENERAL ASSEMBLY,

Recalling Resolution 2178 (2014) and the definition of foreign terrorist fighters (FTFs) who are “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,”

Expressing grave concern over the acute and growing threat posed by the unprecedented flow of foreign terrorist fighters returning or relocating, particularly from conflict zones to their countries of origin, as a result of the loss of Islamic State of Iraq and the Levant (ISIL)’s power,

Expecting Member States and the United Nations system to take measures, pursuant to international law, to address all drivers of violent extremism conducive to terrorism, both internal and external, in a balanced manner as set out in the United Nations Global Counter-Terrorism Strategy,

Affirming that terrorism cannot and should not be associated with any religion, nationality, or civilization,

Noting that Member States face challenges in obtaining admissible evidence, including digital and physical evidence, from conflict zones that can be used to help prosecute foreign terrorist fighters and those supporting foreign terrorist fighters,

Reminding that Member States may need to continue to engage with offenders after release from prison to avoid recidivism, in accordance with relevant international law and taking into consideration, where appropriate, the United Nations Standard Minimum Rules for the Treatment of Prisoners, or “Nelson Mandela Rules”,

Acknowledging that returning FTFs have the potential to utilise their training, combat experience, knowledge and contacts to commit terror acts and that they represent a major security threat to all Member States,

Reaffirming the universal right of the child, which also applies to children of jihadists,

1. Calls upon Member States to repatriate all returnees who are detained by either the Syrian Democratic Forces (SDF), Iraqi forces or any parties involved in jihadist detention, are citizens of the country and are willing but unable to return to their country of origin, in order for them to be able to receive legitimate treatment and jurisdiction;
2. Encourages all Member States to provide individualized legal cases to FTFs upon their return, as each and every one of them is human beings and subject to civil and human rights;
3. Asks all Member States to enhance international cooperation in preventing cases where returning jihadists go unnoticed during their travel to their country of origin by:
 - a) consistently exchanging information regarding the actions and movements of FTFs through legal information-sharing instruments and multilateral forums
 - b) following the updates and warnings shared by the United Nations Security Council Counter-Terrorism Committee (CTC)

- c) requesting help from international, regional, and sub-regional counter-terrorism mechanisms and organizations in cases where assistance is needed to achieve full and effective implementation of the resolutions on the issue, as well as supporting such States that are in need of a helping hand
 - d) frequently appending the international wanted list with people from their national radicalized lists, therefore avoiding situations where FTFs go unnoticed in other countries
 - e) adopting the United Nations Global Counter-Terrorism Strategy and implementing its requirements in order to be in coordination with the other Member States while maintaining secure maritime, land and air borders;
4. Requests the creation of an international judicial council named United Nations Jihadists' Prosecution Council (UNJPC), which will work along the United Nations Security Council Counter-Terrorism Committee (CTC) and the supreme courts of Member States, and will:
- a) consist of 3 law experts from each of the P5 States and 2 from each one of the UNSC members, who will be chosen by the Department of Justice of each Member State
 - b) come together semi-monthly to negotiate over recent incidents and cases regarding returning jihadists
 - c) study, analyze and evaluate the cases of suspected FTFs in terms of the sufficiency and the reliability of the evidence being presented
 - d) prevent the potential use of disproportionate penalties in cases where the Member States seek an immediate solution
 - e) have the right to observe the criminal hearings taking place at local courts and supreme courts
 - f) gather information to see to what extent a returnee was involved in the actions of a terrorist organization, from:
 - i. official counter-terrorism reports
 - ii. records of the investigations done by the States concerning travel data which will be exchanged through mechanisms in accordance with domestic and international law
 - iii. members of the family in the country of origin or the communities to which the jihadist belongs
 - g) make private recommendations as to whether a suspected FTF should be prosecuted and how the decided punishment will be carried out, which will:
 - i. require two-thirds of the council's votes to pass as a legitimate outcome
 - ii. be included in the case file as an official report for cases regarding the situation of fighter returning to their nation of origin
 - iii. be utilized as an additional remark as not as a definite ruling on the case;
5. Condemns the act of citizenship revocation towards returning FTFs and their families in the fight against statelessness, especially those being carried out without sufficient evidence and information, in order to minimize the number of individuals facing unjust jurisdiction, limit recidivism, and protect the right of nationality as Article 15 of the 1948 Universal Declaration of Human Rights declares;
6. Establishes an international programme named United Nations Support for Returning Fighters (UNSRF), which will be funded by the United Nations Centre for Counter-Terrorism (UNCCT), have national counterparts for willing States, supervised by the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO), and work towards the global facilitation of reintegration and rehabilitation for returning jihadists in order to ensure that they don't pose a national threat, by:
- a) having specialized organisations such as Croix Rouge, Medecins Sans Frontières/ Doctors Without Borders and Society for the Psychological Study of Social Issues to offer and monitor physical and psychological support to returnees, prisoners, and detainees, by means of:

- i. detailed risk assessments, which will be done periodically throughout the treatment process and will be indicative of the psychological state of the individual
 - ii. one-on-one, age and gender-sensitive meetings
- b) granting housing support for those in need of accommodation
- c) holding special meetings between psychologists and their family members
- d) organizing safe and private meetings for individuals within the programme, which will be supervised by each of their mentors and will aim to create a positive supportive environment among the patients
- e) allowing this organization to continue its actions with FTFs who are imprisoned
- f) supporting the promulgation of peaceful Islamic ideals, by means of:
 - i. working with religious authorities in vulnerable communities to ensure that sermons are not conducive to radicalization
 - ii. creating compulsory religious education programs for repatriated fighters focused on diversity and social cooperation
 - iii. hosting community events and initiatives to foster interaction between former FTFs and peaceful Islamic community leaders in their home states, with a focus on dialogue about diversity and acceptance;

7. Asks for the assignment of a local multi-entity coordination team to each case regarding the prosecution and probation of a returnee, which will:

- a) consist of offices including but not limited to:
 - i. regional police force of the country of origin
 - ii. family support professionals
 - iii. probation representatives
 - iv. non-governmental organization (NGO) professionals
- b) have monthly meetings about the returnee in which each individual agency communicates the progress of the individual's sentence or punishment and where they are in terms of the process of reintegration
- c) develop a tailored action plan for the returnee, which will later be used throughout the entirety of their reintegration process, and will include:
 - i. instructions on which agencies will be carrying out meetings with the returnee
 - ii. policies on how the probable needs of a non-prosecuted returnee or a prosecuted one who has served their time will be met;

8. Calls upon Member States affected by jihadist extremism to repatriate confirmed jihadist fighters' children and implement them into de-radicalization programs for returning children, through means such as but not limited to:

- a) placing these children in foster families funded by and evaluated by the UN to adjust them to the culture and the society, ensuring that there be a system in place to allow time and resources for:
 - i. children to build trust with their caregivers
 - ii. the hospital or medical professionals to create a medical record for the child to secure future care
 - iii. the creation of a plan for the future of the child in order to promote a caring family presence, lawful citizenship on the part of the child, along with continuity of medical and or psychological care before and after
- b) placing these children in special boarding schools to prevent the spread and the resistance of their ideologies, before entrusting them, after as long rehabilitation as necessary, to their legal guardians, if they have any.