On Issue of International Tribunal to Prosecute Former Terrorism Supporters

The year 2019 marked a decisive defeat of the Islamic State of Iraq and the Levant (referred to as Daesh in Arabic; *editor's note*: an organization banned in the Russian Federation), which established a quasi-state in parts of Iraq and Syria. This group included more than 100,000 fighters from 86 countries in its ranks, who operated, primarily, in Syria and Iraq. After enslaving up to 10 million local residents, Daesh’s jihadist fighters essentially initiated an ethnic cleansing campaign in the territories conquered by them by killing Syrian and Iraqi Christians, Yazidis, Shiites and Kurds.

Although the so-called ‘Islamic caliphate’ has now ceased to exist in the form of a quasi-state, a substantial number of ISIS/ISIL fighters remain at large. This terrorist organization has splintered into small radical groups, which are transforming into new entities and spreading all over the Middle East and beyond. Insurgents are infiltrating the local populace in Syria, Iraq and many other Arab countries, and they are creating so-called ‘sleeper cells’ and waiting for orders to resume coordinated military operations. These jihadist fighters are also making their way to other nations, where ISIS has a foothold or where Daesh has supporters.

The presence of these experienced ISIL supporters, who have fought in battlefields, is viewed as a serious threat to security in countries to which these insurgents are returning.

At the same time, as victory over Daesh is drawing near, the issue of whether to officially repatriate jihadist fighters, who happen to be EU citizens, as well as their families or not is becoming more and more acute for the European Union. We are talking about the return home of approximately 3,000 people, who joined the terrorist group in Syria and Iraq, and who are now in either refugee camps or military prisons.

On 17 February, U.S. President Donald Trump made an offer to United States’ allies in Europe to take in more than 800 Daesh fighters, captured by Americans in Syria. At the same time Washington reminded the European Union...
that, according to a statement made by Mustafa Bali, the spokesman for SDF (the Syrian Democratic Forces), there are approximately 1,300 foreign jihadist prisoners of war in Syrian Kurdistan alone, where there is no legal framework for prosecuting these insurgents.

In response, Europeans indicated that it would be extremely difficult for them to accept Trump’s offer. Moreover, representatives from several European countries tried to explain to the U.S. leader that it would be better to first take action against Daesh insurgents in Middle Eastern nations.

Many European countries, including Belgium, Germany, France, the Netherlands and Switzerland, have openly stated that they were against the return of those citizens who had fought for ISIS. These nations are planning to ban them from entering their home countries, to deprive them of their right to seek consular assistance, and are even considering the option of taking away their citizenship. For many European politicians, allowing former Daesh fighters to return home is a politically awkward and unpopular move, because many of these officials take advantage of anti-immigrant and often Islamophobic sentiments of the population.

According to a statement on this issue made by Julian King, the European Commissioner for the Security Union, during an interview with the Augsburger Allgemeine Zeitung newspaper on 19 February, the EU was not going to become involved in any debates about the possible return of captured Daesh terrorists to Europe. Julian King also added that the responsibility for making a decision on whether to allow these citizens back or not rested with the corresponding member-states of the EU.

In such a climate, and undoubtedly, with a prod from Washington, Syrian Kurds urged the United Nations to establish special International Tribunals in Syria in order to prosecute captured Daesh insurgents in February of this year. However, many countries that were home to these jihadis before they had come to Syria are in no hurry to respond to Kurdish demands or to allow their citizens back.

While sharing their views on this topic in European political circles, representatives of these EU nations have stated that the return of former Daesh fighters would cause issues with the collection of evidence for their crimes, necessary to build and support prosecutors’ cases. Switzerland was the first nation to announce that it would prefer that its citizens, who had fought for ISIL, not return home to face charges and instead be prosecuted in Syria or Iraq. And many other European nations support such a stance. And international law does not unequivocally stipulate where these former ISIS insurgents, with European passports, ought to face trial in. Courts in nations, whose citizenship these fighters hold, can establish jurisdiction over this case, and so can countries where the crimes had been committed.

In order to prevent the return home of Europeans from ISIS, a number of European countries have chosen to begin the process of revoking their citizenship. In Germany, for instance, legal frameworks are being established to enable the government to take away citizenship of people who fought for Daesh. Great Britain has already revoked passports of several wives married to former fighters, while Austria wants to deny such individuals consular assistance.

Still, the idea of establishing an International Tribunal in the EU to prosecute former ISIS supporters is being actively promoted by Washington, as the United States needs to resolve its issue (i.e. what action to take against most of the insurgents captured by U.S. forces), and to also use such a court of justice for its own propaganda purposes. Sweden, with open support from Washington, has been ‘ardently’ working on this ‘project’ recently.

Hence, on 3 June Mikael Damberg, Sweden’s Minister for Home Affairs, met with European experts to discuss the idea of creating an International Criminal Tribunal to prosecute former Daesh supporters and individuals who had committed war crimes in Iraq and Syria. Eleven European nations had responded to Sweden’s invitation and expressed their willingness to send their officials to Stockholm. ‘A delegation from the European Union and the United Nations Investigative Team to Promote Accountability for Crimes Committed by Daesh’ also took part in the event. In his statements to journalists Mikael Damberg highlighted that the meeting of officials was the first step towards creating the International Criminal Tribunal to prosecute former ISIL supporters. He also said that, at this stage, it was important to decide on sources of finance for, the reach and location of the International Tribunal, and to develop a road map of practical steps.

In addition, Mikael Damberg signaled that in the best case scenario, a priority would be to not only hold Daesh supporters but also all the individuals involved in war crimes and crimes against humanity in Iraq and Syria accountable. With the aforementioned statement he, therefore, indicated (clearly on request from Washington) his intention to extend these public accusations to the current Syrian government, i.e. Bashar al-Assad and his officials.
Irrespective of the fact that they were the people who had contributed the most to the fight against Daesh and its subsequent defeat. At the same time, Mikael Damberg did not seem to understand that prosecuting the Syrian leadership and its allies was not really feasible at present despite the propagandistic nature of the U.S. request.

In September, the Netherlands is planning to hold a ministerial conference in New York in order to discuss the future of the idea of creating the International Tribunal to prosecute former supporters of terrorism.

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