

From Fighters to Bargaining Chips: How Europe Legitimised the PYD/YPG Threat?

İhsan Faruk Kılavuz

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WRITTEN BY

İhsan Faruk Kılavuz

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İSTANBUL / TÜRKİYE

TRT WORLD LONDON

PORTLAND HOUSE

4 GREAT PORTLAND STREET NO:4

LONDON / UNITED KINGDOM

TRT WORLD WASHINGTON D.C.

1819 L STREET NW SUITE 700 20036

WASHINGTON DC

researchcentre.trtworld.com

Introduction

The influence of terrorism extends beyond battlefields, affecting states both directly and indirectly, even outside conflict zones. Although the phenomenon of foreigners joining militant groups abroad is not new, the conflicts in Iraq and Syria have intensified Western fears—particularly concerning individuals who fought for Daesh/ISIS and other violent extremist organisations.

European states are among those most concerned with the “foreign terrorist fighters” (FTF) issue. Thousands of European-origin terrorist sympathisers have left their home countries to join conflicts in Syria, Iraq, Somalia and so on. The risks and threats these individuals pose have not remained confined to conflict zones; rather, their potential return to their home countries has become a significant security challenge. Facing this complex threat, European states have made a strategic miscalculation in their approach to resolving the FTFs issue. Astonishingly, European governments have chosen to *outsource the detention* of Daesh/ISIS-affiliated terrorists—some of the most dangerous actors of our time—to camps run by another terrorist organisation, the PYD/YPG, in northeastern Syria. This decision is nothing short of alarming, effectively placing international security concerns into the hands of a group with its own troubling agenda.

This misguided strategy has provided the PYD/YPG with a dangerous degree of leverage, enabling it to exploit Syria’s prolonged power vacuum. This situation has emboldened the group and granted it a bogus legitimacy to leverage to pursue its separatist ambitions, posing severe risks to regional stability and security. By portraying itself as a judicial authority and using detained FTFs as bargaining chips, the PYD/YPG has successfully extracted concessions from European governments, facilitated destabilisation efforts and established a fiefdom in north-east Syria characterised by terror and oppression. Therefore, addressing and resolving the FTF issue is imperative not only for ending impunity and safeguarding human rights but also for ensuring regional stability.

In light of these considerations, this paper will first discuss the existing power vacuum in Syria and analyse how the PYD/YPG seeks to exploit this situation to gain legitimacy. Subsequently, it will provide an overview of the broader FTF phenomenon and critically examine Europe’s current approach toward addressing this challenge, including a discussion of proposed solutions. Finally, it will argue that repatriating European-origin FTFs from camps in northeastern Syria and prosecuting them within national judicial systems constitutes both the most appropriate response and an obligation under international law. Additionally, the paper will highlight the importance of European cooperation with Türkiye and Syria through collective efforts to resolve this critical issue effectively.

The PYD/YPG's Pursuit of Legitimacy amid the Power Vacuum in Syria

The unexpected collapse of the Assad regime profoundly altered the political and military dynamics in Syria and the broader region, leading to the instantaneous disintegration of an authoritarian regime that had endured for decades. This created a deep power vacuum in the country, attracting the competing interests of regional and international actors. Although this power vacuum is not a new phenomenon—its roots dating back to the early days of the Syrian civil war—it has significantly expanded in scope as the regime weakened over time, reaching a critical juncture with recent developments.

One of the most significant consequences of this power vacuum has been the rise of the terrorist group PYD/YPG, which has leveraged this void to become a dominant actor in northeastern Syria, establishing an illegal and rogue state-like governance structure.

Originating before the civil war, this group capitalised on the rise of Daesh. It gained strength from the U.S.-led anti-Daesh coalition, positioning itself ironically as a coalition partner in the fight against terrorism. By exploiting the instability and conflict environment created by the civil war, the PYD/YPG occupied territories abandoned by the Assad government, committing numerous human rights violations against Arab and Turkmen populations, and solidified its occupation under the guise of fighting terrorism.

It advanced its long-term goal of creating a semi-autonomous political and military structure, directly challenging Syria's territorial integrity and sovereignty by presenting its separatist actions as anti-terrorism efforts.

The separatist designs of the PYD/YPG and its efforts to gain legitimacy in the eyes of the international community toward realising these ambitions have been facilitated by military and political support from external actors, particularly the United States and European governments.

Initially, PYD/YPG sought to gain *de facto* legitimacy in the eyes of international actors by acting as a military proxy and infantry force for Western powers in their fight against Daesh. However, following Daesh's loss of territorial influence, the group shifted its strategy to position itself as a "protector" power to sustain its relevance. Within this framework, PYD/YPG began overseeing foreign Daesh detainees in camps located in northeastern Syria and leveraging their detention as a form of coercive diplomacy. By keeping these individuals away from their countries of origin, PYD/YPG aimed to use the issue of foreign terrorist fighters—an acute concern for European states—as a bargaining tool. Simultaneously, it sought to portray itself as a judicial authority, employing this strategy as a form of 'lawfare' to bolster its claims to legitimacy.

Establishing Pseudo-Judicial Institutions as a Tactic of Lawfare

In its pursuit of legitimacy, the PYD/YPG frequently employs lawfare tactics, notably by establishing pseudo-judicial institutions and conducting various sham judicial activities within territories under its control. Through these self-styled courts, the organisation seeks to present itself as an alternative governance model capable of competing with—and potentially replacing—traditional state institutions. By engaging in this form of "state mimicry," the PYD/YPG not only attempts to legitimise its ideological framework but also aims to suppress dissent, impose internal discipline, reduce local communities' dependence on central authorities, and signal to international supporters

its institutional readiness for a potential post-separation scenario.

Although the judicial mechanisms established by the PYD/YPG constitute a clear instance of "statehood performance" rather than genuine judicial independence or legitimacy, such practices are not unprecedented among non-state actors and terrorist groups. Numerous militant organisations with diverse ideological backgrounds have historically adopted similar lawfare strategies to enhance their perceived legitimacy. For instance, during the 1920s conflict in Northern Ireland, the Irish Republican Army (IRA)

established courts within territories under its influence to conduct so-called “mock trials” (Arthur&Cowell-Meyers, 2025) These trials aimed at asserting IRA authority and presenting an alternative legal system to British rule, thereby seeking domestic and international legitimacy. Similarly, Daesh implemented its judicial system based on a pretend “caliphate law” in territories it controlled across Syria and Iraq. Through these sham courts, Daesh sought to provide general judicial services while addressing grievances against its members to gain local acceptance (Alami, 2014).

Another illustrative example is provided by Sri Lanka’s Liberation Tigers of Tamil Eelam (LTTE), which maintained approximately sixteen judicial institutions within areas under its control. Among these institutions was a supreme court-like body explicitly designed to replace the Sri Lankan Supreme Court. Notably, the LTTE advanced beyond the mere establishment of courts by founding a “law faculty” to train young jurists who would staff these pseudo-judicial entities, thereby enhancing their lawfare strategy (Sundaytimes).

Despite frequent adoption by terrorist organisations, such pretended judicial structures inherently lack legitimacy and cannot effectively replicate or replace traditional state judicial functions. These pseudo-courts operate without legal authority and fail fundamentally to uphold universal legal principles and norms. Trials conducted by these

entities often disregard basic standards of fair trial rights, instead reflecting ideological biases and political agendas specific to each organisation. Moreover, punishments imposed frequently involve physical penalties—including executions—that violate modern legal standards; additionally, public displays of executed individuals further underscore their illegitimacy.

In this context, PYD/YPG’s sham judicial activities have similarly served as instruments for suppressing Arab and Turkmen populations in occupied regions, silencing opposition voices, and advancing separatist ambitions (Human Rights Watch, 2014). For example, in northeastern Syria, the PYD/YPG attempted to establish institutions such as a “Supreme Electoral Council” and a “Constitutional Court” under the pretext of enforcing a so-called “Social Contract,” which local groups were coerced into signing (Yeni Safak, 2014) However, these moves ultimately failed due to diplomatic interventions by the Turkish government. Furthermore, The PYD/YPG’s selective release of hundreds of Daesh militants—previously considered criminal under its own bogus judicial framework—through arrangements such as the Raqqa reconciliation demonstrates how these pseudo-judicial processes are shaped by terrorist interests and political expediency rather than genuine legal considerations (BBC Turkish, 2017). Such actions exemplify the threats these illegitimate judicial practices pose within conflict zones.

An Overview at the Issue of Foreign Terrorist Fighters

Foreign terrorist fighters (FTF) were defined by the UN Security Council as individuals who travel to a foreign country to engage in, plan, or support terrorist acts or receive terrorist training. The rise of groups like Al-Qaeda and Daesh has facilitated the global mobilisation of FTFs, with an estimated 40,000 individuals from over 120 countries travelling to conflict zones such as Syria and Iraq by 2015. This influx of fighters has not only strengthened terrorist groups and exacerbated local instability in conflict regions, prolonging conflicts and hindering post-conflict recovery efforts, but also created long-term security risks for countries of origin, transit, and destination.

Following the collapse of Daesh’s so-called caliphate in Iraq and Syria, the threat posed by FTFs has shifted towards the security risks associated with returning or relocating foreign terrorist fighters. These individuals, often having

experienced combat and exposure to extremist ideologies and international terrorist networks, are viewed as potential triggers for future violent incidents. (Hoffman&Furlan, 2020) The issue becomes even more complex when considering the situation of women and children associated with FTFs, particularly in terms of ethical and legal dilemmas related to repatriation, prosecution, rehabilitation, and reintegration into society (Dworkin, 2019).

Thus, the problem of foreign terrorist fighters extends beyond conflict zones, as the threat posed by returning FTFs has become a significant concern for countries of origin. This concern is heightened by the tension between the security risks of FTF returns and states’ international legal obligations—an unresolved gap that some actors have exploited.

European Governments' Approach to the Issue: Enabling PYD/YPG's Exploitation

In 2014, following Daesh's declaration of a caliphate in Iraq and its subsequent call for sympathisers worldwide to join its ranks, Europe rapidly became one of the primary sources of foreign terrorist fighters. Thousands of radicalised individuals from European countries travelled to conflict zones in Iraq and Syria to join Daesh. This unprecedented influx of foreign fighters not only created immediate security risks and operational challenges but also fundamentally altered the nature and scope of the terrorist threat as Daesh's territorial control weakened. With the erosion of Daesh's capabilities on the ground, many European-origin

FTFs began returning—or attempting to return—to their home countries, effectively shifting the epicentre of terrorism threats directly onto European soil. Thus, what was initially perceived as a distant security issue quickly became a direct and urgent threat, compelling European states to recognise the FTF as a critical matter requiring immediate intervention.

However, due to the unprecedented scale and urgency of this threat and its relatively novel nature, the measures adopted by European states have predominantly been reactive rather than strategic. These responses have pri-



Members of PKK terrorist organization stage a protest against Turkey with Belgium's permit at Schuman Square in Brussels, Belgium on May 27, 2016. (Dursun Aydemir - Anadolu Agency)

oritised short-term security concerns over long-term legal obligations and societal responsibilities. Furthermore, Europe's widespread adoption of a non-repatriation policy regarding FTFs has introduced additional complexities beyond immediate security considerations. Specifically, this approach raises significant concerns related to international law compliance and inadvertently strengthens terror groups such as PYD/YPG.

At the core of European governments' stance toward their citizens detained abroad lies a deliberate policy of non-repatriation. Most European states have consistently refused to repatriate their nationals held in detention camps controlled by PYD/YPG in Syria, primarily due to perceived future security risks associated with their return (Dworking, 2019). Moreover, these states do not acknowledge repatriation as a mandatory legal obligation. Nevertheless, this non-repatriation approach has faced substantial criticism from accountability, fair trial rights, and human rights perspectives.

Detention facilities administered by non-state armed groups fail to meet minimum international human rights standards necessary for humane living conditions. Consequently, indefinite detention under such conditions constitutes clear violations of detainees' fundamental human rights under several international conventions. Moreover, by refusing repatriation and effectively abandoning their citizens to PYD/YPG's kangaroo courts—which lack legitimacy under international law—European states are complicit in undermining fair trial principles and indirectly legitimising the purported judicial authority exercised by these terrorist-affiliated entities.

Indeed, PYD/YPG-run courts suffer from severe deficiencies regarding judicial independence and impartiality. These tribunals are susceptible to political interference; trials conducted therein are guided not by universally recognised legal principles but rather by the political interests of PYD/YPG leadership. Furthermore, fundamental fair trial guarantees are routinely violated: detainees have limited to no access to legal representation; evidence presented is often insufficient or unreliable; and verdicts frequently rely on confessions reportedly obtained through torture or coercion (Amnesty International, 2015).

Beyond these profound legal shortcomings, Europe's decision to leave citizens under PYD/YPG control generates even greater risks by granting implicit legitimacy to a terrorist group. By tacitly recognising PYD/YPG's judicial mechanisms through their non-repatriation policies, European governments inadvertently confer upon this group an unacceptable degree of *de facto* legitimacy. In

particular, states such as the United Kingdom and France have gone further by systematically revoking citizenship from detained nationals—an act that violates international law under the UN Convention on Statelessness—in order to evade potential domestic judicial rulings mandating repatriation based on citizenship rights. Such a stance facilitates the abandonment of these individuals into PYD/YPG custody and emboldens the group's illegitimate judicial practices and associated human rights abuses. Paradoxically, these policies directly contradict Europe's commitment to international law and fundamental Western legal values. On the other hand, this stance can also be interpreted as indirect support for armed non-state groups in another country, which is prohibited under international law. The International Court of Justice firmly established this prohibition in the 1986 Nicaragua Case, where it was recognised as one of the cornerstone principles of state responsibility.

Hence, numerous human rights organisations and international bodies have repeatedly urged European governments to repatriate their citizens from illegal detention facilities in northeastern Syria in order to prevent impunity and halt ongoing human rights violations. At this juncture, the Turkish government also has strongly criticised Europe's current stance on this issue because it grants significant political leverage to PYD/YPG by implicitly acknowledging its judicial authority—thus elevating the group's status from merely a security threat into one posing additional political and legal risks for Türkiye. Indeed, Turkish Foreign Minister Hakan Fidan has explicitly highlighted that PYD/YPG exploits Daesh-linked detainees as instruments for political blackmail against the international community (Nordic Monitor, 2024).

Indeed, Europe's current approach effectively positions PYD/YPG forces as "prison guards" responsible for managing Europe's unwanted FTFs. This dynamic significantly enhances the group's bargaining power vis-à-vis European capitals.

In conclusion, addressing the FTF issue in an appropriate manner is crucial—not only for mitigating internal security threats within Europe or reducing regional security risks faced by countries such as Türkiye—but also for ensuring adherence to international law and human rights standards. Equally important is eliminating a critical source of political leverage exploited by terrorist-affiliated groups such as PYD/YPG. Preventing dangerous precedents that legitimise non-state armed actors' exercise of judicial authority is essential for preserving global legal norms and safeguarding fundamental principles of justice.

Proposed Solutions

Several solution proposals have been put forth to address this challenge:

1. UNOSOM-like Structure Proposal: This approach involves establishing a third-party jurisdiction model. It would be applicable when the state where crimes were committed lacks effective governance, doubts judicial impartiality, or is unwilling to ensure justice (Tas, 2021). The model draws inspiration from the United Nations Operation in Somalia (UNOSOM), which the UN Security Council authorised to restore order following the collapse of the central government in 1991. However, implementing such a framework for prosecuting foreign Daesh fighters in Syrian camps faces significant challenges since it requires broad global consensus and strong international cooperation, which are unlikely given Syria's current political instability and transition uncertainties. Additionally, the UN Security Council has historically struggled to achieve consensus on critical issues, further complicating the establishment of such a system. Integrating international personnel into judicial processes and ensuring their security and operational guarantees pose additional difficulties.

2. Guantanamo-like Model: Another proposed solution is a Guantanamo-like model based on the U.S. "War on Terror" approach, where terrorist suspects were detained at Guantanamo Bay and tried by military commissions. However, this model has been widely criticised for violating fundamental principles of international law. It has been accused of infringing upon the *habeas corpus* principle by detaining individuals indefinitely without legal justification (Report, UN Economic and Social Council, 2006). The military commission trials have also been criticised for lacking impartiality and independence and failing to meet international standards. Furthermore, allegations of torture, inhumane treatment, and violations of the right to a fair trial have undermined the credibility of this model. Therefore, adopting a Guantanamo-like system for prosecuting FTFs in Syria is not feasible due to the risks of violating human rights and international law.

3. Ad Hoc or Hybrid Courts: A further proposal involves establishing *ad hoc* or hybrid courts, which have received significant support from European states. (Adanan&Mollay, 2019) For instance, Sweden's former Interior Minister Mikael Damberg and the Netherlands' former Foreign Minister Stef Blok have advocated for an international court similar to those established for

former Yugoslavia and Rwanda (Warell, 2019). However, setting up such courts in Syria or Iraq faces substantial obstacles. Previous *ad hoc* courts have been criticised for lengthy and costly trials, raising concerns about efficiency and timely justice. Moreover, these courts are often perceived as "victor's justice," casting doubts on their impartiality (Haskell&Waldorf, 2011). Hybrid courts, which involve collaboration between local and foreign judges, face additional challenges due to the need for expertise in international criminal law and local legal systems. The risk of political interference also threatens their independence and impartiality. Consequently, these methods are deemed impractical for prosecuting FTFs in Syria.

4. Infeasibility of ICC Prosecution: Another proposal involves prosecuting foreign terrorist fighters at the International Criminal Court (ICC), a theoretical possibility under the Rome Statute for nationals of states recognising the ICC's jurisdiction. However, practical obstacles render this option largely unfeasible. The ICC's jurisdiction is limited to genocide, crimes against humanity, war crimes, and aggression, typically targeting high-ranking individuals responsible for the most serious offences. Although certain crimes committed by Daesh-affiliated FTFs may fall within these categories, the ICC's selective approach—which prioritises prosecuting senior-level perpetrators—combined with operational limitations, resource constraints, and procedural complexities, makes it unsuitable for addressing the urgent need to prosecute FTFs. Furthermore, ICC proceedings are lengthy and costly, requiring extensive evidence collection, witness protection mechanisms, and rigorous procedural safeguards that strain the Court's already limited budget and operational capacity. Therefore, considering the pressing necessity for immediate solutions to the FTF issue—particularly given the security risks associated with their prolonged detention in camps—ICC prosecutions do not constitute a viable option for effectively addressing the challenge posed by FTFs.

Given these challenges and the impracticality of the proposed solutions, the most feasible legal approach is for countries of origin to repatriate FTFs and prosecute them in domestic courts. This method ensures that legal proceedings are conducted within the framework of national laws while adhering to international human rights standards.

Repatriation as both a Solution and an Obligation in Combating Impunity

The repatriation of foreign terrorist fighters from detention camps and their subsequent prosecution in national courts by European states represents not only the most feasible approach given the impracticability of alternative solutions but also constitutes a fundamental obligation under international law in the fight against impunity.

Impunity, defined as the *de facto* or *de jure* inability to hold individuals accountable for crimes, represents a critical obstacle to achieving international criminal justice and fully realising fundamental human rights. It arises when perpetrators evade investigation, prosecution, and duly punishment, thereby undermining the rule of law and perpetuating cycles of violence and injustice (Andreu-Guzman, 2015). Thus, from the perspective of international criminal justice, addressing impunity is indispensable, and both treaty-based and customary international law imposes a legal duty on states to take all necessary measures to prevent it.

International law unequivocally mandates states to fight impunity by utilising all available legal mechanisms. This obligation is enshrined in various legal instruments, including the UN Security Council Resolutions 1373 and 2178. These resolutions require states to ensure that individuals involved explicitly in acts of terrorism are investigated, prosecuted, and punished under international standards. UNSCR 2178 specifically obliges states to address the threat posed by FTFs by implementing measures to bring them to justice while respecting human rights and the rule of law. Moreover, customary international law and treaties such as the Geneva Conventions underscore the responsibility of states to prosecute individuals responsible for war crimes, crimes against humanity, and genocide.

In the context of Daesh, whose members have committed egregious violations, including war crimes, crimes against humanity, mass killings, sexual slavery, torture, and other atrocities that amount to gross violations of international law in Iraq and Syria (Resolution 2190, Council of Europe, 2017), failure to prosecute these individuals would constitute a grave breach of international obligations. Allowing such individuals to remain detained in the camps indefinitely without trial or accountability perpetuates impunity and undermines the credibility of international criminal justice. Therefore, repatriating FTFs from detention camps

is a critical step toward combating impunity, as detention without trial not only violates fundamental human rights but also denies victims justice. From the victim-centred perspective, prosecuting perpetrators is essential for achieving justice and providing closure to those who have suffered unimaginable harm. Accountability serves as a form of recognition for victims' suffering and reinforces their dignity. Furthermore, ensuring that perpetrators face justice sends a powerful message that such crimes will not be tolerated, thereby contributing to deterrence and preventing future atrocities.

Consequently, from the international criminal justice perspective, repatriating FTFs from detention camps and prosecuting them in national courts is essential in combating impunity. It fulfils states' legal obligations under international law while addressing victims' demands for justice and contributing to global security. By holding perpetrators accountable for their actions through fair trials, states reaffirm their commitment to the rule of law, deter future atrocities, and uphold the principles of justice that underpin the international legal order. Failure to act perpetuates impunity and undermines efforts to achieve lasting peace and reconciliation in conflict-affected regions. Therefore, repatriation must be seen as a legal duty, a moral imperative, and a cornerstone of global efforts against impunity.



(Ahmed Muhammed Ali - Anadolu Agency)

A Suitable Legal Remedy for the Repatriation: Extraterritorial Jurisdiction

On the other hand, the principle of territoriality might present a legal obstacle to states repatriating their own citizens who are FTFs and prosecuting them before their national courts. Hence, addressing and overcoming this challenge through the concept of extraterritorial jurisdiction would be beneficial in effectively tackling the issue of FTFs.

The principle of territoriality, a cornerstone of international law, grants states exclusive authority to enforce their laws within their borders. This principle ensures that crimes committed, contracts signed, or other legal matters arising within a state's territory fall under its jurisdiction. The rationale behind this principle lies in the sovereignty of states over their territories and the practical advantages it provides for judicial processes, such as better access to evidence, witnesses, and other resources necessary for fair trials (Hansen, 2008). However, while territorial jurisdiction is a fundamental concept in international criminal law, its strict application in the context of FTFs raises significant concerns.

When strictly applied to FTFs, the territoriality principle suggests that individuals should be prosecuted in the jurisdictions where their crimes were committed—Iraq and Syria. While this approach aligns with the *locus delicti* rule (where the crime occurred), there are substantial reservations about its feasibility and fairness in these contexts.

In Iraq, terrorism trials have been widely criticised for severe human rights violations, including limited access to legal representation, coerced confessions obtained through torture, lack of transparency in judicial proceedings, and the discriminatory use of the death penalty (Phillips, 2021). Such practices violate fundamental principles of fair trial standards under international law and undermine the credibility of justice systems (Widagdo, Indrayanti, Saraswati, 2021).

Similarly, prosecuting FTFs in Syria presents challenges due to the country's fragile state and ongoing transitional process. Years of conflict have significantly weakened Syria's judiciary, which has limited capacity to conduct impartial trials that meet international standards. Moreover, evidence collection in conflict zones is often unreliable or inaccessible, further complicating efforts to ensure justice. The absence of a stable legal framework exacerbates these issues, making it unlikely that prosecutions conducted under such conditions would uphold the rule of law or deliver justice to victims.

Beyond procedural shortcomings, relying on Iraqi and Syrian courts for FTF prosecutions also risks perpetuating impunity rather than combating it. Many Daesh members are accused of committing war crimes, and crimes against humanity—offences that demand rigorous accountability mechanisms. However, given the systemic deficiencies in these jurisdictions, there is a high likelihood that such prosecutions would fail to address the full scope of these crimes or provide meaningful redress to victims.

Given these challenges, strict adherence to the principle of territoriality for prosecuting FTFs in Iraq and Syria is problematic. Instead, alternative approaches should be considered to ensure justice is effectively delivered. These alternatives must include repatriating FTFs to their home countries for prosecution under the principle of universal jurisdiction to uphold international legal standards but also strengthen global efforts to combat impunity and deliver justice for the atrocities committed by Daesh members.

Extraterritorial jurisdiction serves as an essential legal framework that extends the scope of a state's jurisdiction to prosecute offences committed outside its territorial boundaries. This principle provides alternative solutions where proper avenues for legal action are unavailable, thereby addressing significant gaps in the pursuit of justice. By utilising extraterritorial jurisdiction, international criminal justice can be effectively advanced through legal proceedings conducted in foreign jurisdictions, reducing the existence of "safe havens" where individuals responsible for grave offences evade accountability (Philippe, 2006).

Extraterritorial jurisdiction encompasses three primary sub-principles: the principle of active personality, the principle of passive personality, and universal jurisdiction. While the principle of passive personality has limited applicability to resolving the issue of FTFs, both the principle of active personality and universal jurisdiction offer viable alternatives to prosecuting these individuals outside Iraq and Syria.

The principle of active personality enables states to exercise prescriptive and adjudicative jurisdiction over their nationals, regardless of where their actions were committed. It provides a robust legal basis for states to repatriate their citizens from camps and prosecute them in domestic courts. By applying their laws to their nationals without reliance on territorial considerations, states can ensure ac-

countability for crimes committed abroad. Given that thousands of FTFs from over 100 countries travelled to Iraq and Syria to join Daesh, this principle offers a compelling justification for states to repatriate and prosecute their nationals (Wilson Center, 2017). Such an approach addresses the FTF issue and enhances national security by leveraging intelligence gathered during judicial processes. Information obtained from FTFs regarding organisational structures, activities, and networks can significantly contribute to formulating more effective counter-terrorism strategies. Furthermore, prosecuting FTFs in national courts strengthens global counter-terrorism efforts by fostering international collaboration and intelligence-sharing among states. In this context, utilising the principle of active personality to bring Daesh fighters to trial in domestic courts represents not only a practical solution but also a legal obligation for European states to combat impunity.

In addition to prosecuting their nationals, there are circumstances where European states may need to try non-nationals to ensure justice is served. This is where universal jurisdiction becomes a critical tool within international law. Universal jurisdiction allows states to prosecute individuals for grave offences, including war crimes, crimes against humanity, and genocide, regardless of where the crimes were committed or the nationality of the perpetrators or victims (Kaya, 2020). Unlike other forms of jurisdiction, universal jurisdiction is rooted solely in the nature and gravity of the crimes themselves (Kocaoglu, 2005). It operates on the premise that certain offences are so egregious that they constitute crimes against all humanity, warranting accountability from any member of the international community. In essence, universal jurisdiction empowers states, as representatives of the global community, to hold perpetrators accountable for violations of universally shared human values.

Significant cases under customary international law have affirmed the exercise of universal jurisdiction, including the Eichmann Case (1961), the Demjanjuk Case (1986), and the Pinochet Case (1999). These precedents highlight that universal jurisdiction remains valid even when not explicitly incorporated into a state's domestic legal framework. States cannot reject their responsibility to prosecute such crimes because universal jurisdiction is absent from their national legislation; doing so would undermine efforts to uphold international criminal justice.

The application of universal jurisdiction has already proven effective in addressing Daesh-related atrocities. For instance, Germany has utilised this principle to prosecute non-citizens for crimes committed outside its territory. A notable example is a German court's prosecution of an individual accused of committing genocide against the Yazidi community in Iraq. Despite not being a German citizen and committing crimes outside German territory, the defendant was tried under German law following the principle of universal jurisdiction and was sentenced to life imprisonment for genocide. This case underscores how universal jurisdiction can serve as a powerful mechanism for delivering justice when other avenues are unavailable.

In conclusion, addressing the issue of FTFs detained in camps requires innovative legal solutions grounded in international law. The principle of active personality and universal jurisdiction provide viable frameworks for repatriating and prosecuting these individuals in domestic courts or foreign jurisdictions. These mechanisms prevent impunity and uphold international criminal justice while serving as a deterrent against future atrocities. By leveraging these principles, states can fulfil their obligations under international law while contributing to global efforts to combat terrorism and ensure accountability for serious international crimes.

Turning Solutions into Reality Through Cooperation

As stated so far, while the repatriation of foreign terrorist fighters by European states and their prosecution in national courts remains the principal solution to the FTFs problem, the most effective and feasible pathway to achieving this goal necessitates cooperation between European governments, Türkiye, and Syria. Indeed, the complexity of the FTFs issue, coupled with its transnational character, underscores the indispensable role of regional collabora-

tion. Specifically, Türkiye and Syria have consistently emphasised their readiness and have repeatedly called upon European governments for collective engagement to resolve this critical security challenge.

Ankara has demonstrated a proactive stance in addressing the FTFs issue, particularly through its co-chairmanship of the Counter ISIL Coalition Working Group on Foreign Terrorist Fighters (WGFTF). Its comprehensive approach



(Aşkın Kayağan - Anadolu Agency)

includes stringent border security measures, intelligence-sharing mechanisms, and legal frameworks aimed at preventing the movement and financing of terrorist entities. Furthermore, Türkiye has consistently urged source countries to implement necessary legal and administrative measures to prevent their nationals from becoming FTFs since the onset of the Syrian crisis. Similarly, Syria's current transitional administration has expressed openness toward international cooperation in combating terrorism and stabilising the country.

Enhanced cooperation between European governments, Ankara, and Damascus presents a pragmatic and effective pathway toward addressing the complex challenge posed by FTFs. Such collaboration would facilitate not only judicial accountability for returning fighters but also contribute significantly to broader regional stability. By working

collectively with Türkiye and Syria, European states can effectively manage security risks associated with returning FTFs while supporting stabilisation efforts in Syria's ongoing transition process. This partnership would reinforce Syria's territorial integrity and sovereignty, thus fostering a more stable environment conducive to regional peace.

Finally, a collaborative approach to addressing the issue would significantly contribute to regional stability by lessening the footprint of the PYD/YPG, one of the primary sources of terror and instability. By removing the FTFs issue as a leverage play card from the hands of this terrorist organisation and effectively sidelining its manipulations, such an approach would weaken its capacity to destabilise the region. This could foster a more secure environment conducive to sustainable peacebuilding efforts in Syria, paving the way for long-term stability and reconciliation.

Conclusion

To sum up, the issue of FTFs presents security and stability risks for regional states and Europe. Addressing this complex challenge through a coordinated repatriation strategy—implemented jointly by European capitals in cooperation with Ankara and Damascus—would effectively mitigate security concerns and remove a critical bargaining chip from the hands of the PYD/YPG. Such a cooperative approach would significantly contribute to regional counter-terrorism efforts, depriving the PYD/YPG of arti-

cial legitimacy and weakening its destabilising influence in northeastern Syria. Furthermore, repatriation aligns with international legal standards and human rights principles, ensuring accountability and justice. Ultimately, a collaborative solution grounded in international law and collective responsibility represents the most viable pathway toward sustainably resolving the FTF issue while promoting regional stability and security.

Bibliography

Adam Hoffman & Marta Furlan, 'Challenges Posed by Foreign Terrorist Fighters', (2015), Program on Extremism-George Washington University. < <https://extremism.gwu.edu/sites/g/files/zaxdzs5746/files/Challenges%20Posed%20by%20Returning%20Foreign%20Fighters.pdf> >

Amina Adanan & Jean Molloy, 'The Use of Extraterritorial Jurisdiction to Prosecute Returning Foreign Fighters' (2019), Criminal Justice in Ireland. < <https://criminaljusticeinireland.wordpress.com/2019/10/16/the-use-of-extraterritorial-jurisdiction-to-prosecute-returning-foreign-fighters/> >

Amnesty International, 'Syria: Arbitrary Detentions and Blatantly Unfair Trials mar PYD Fight against Terrorism', (2015). < <https://www.amnesty.org/en/latest/press-release/2015/09/syria-abuses-mar-pyd-fight-against-terrorism/> >

Anthony Dworkin, 'Beyond Good and Evil: Why Europe Should Bring ISIS Foreign Fighters Home', (2019), European Council of Foreign Relations. < <https://ecfr.eu/publication/beyond-good-and-evil-why-europe-should-bring-isis-foreign-fighters-home/> >

Burak Kaya, 'The Principle of Territoriality in International Conventions', (2020), Journal of Economic and Administrative Approaches. < <https://dergipark.org.tr/tr/download/article-file/1160911> >

Burak Tas, 'Jurisdiction over Terror Suspects in the Absence of an Effective Government: The Example of Syria' (2021), Dokuz Eylül University Law Review. < <https://dergipark.org.tr/tr/pub/deuhfd/issue/66018/998257> >

Cherif M. Bassiouni, 'Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice', (2001), Virginia Journal of International Law. < <https://via.library.depaul.edu/lawfacpubs/606/> >

Council of Europe, 'Resolution 2190 on Prosecuting and Punishing the Crimes against Humanity or even Possible Genocide Committed by Daesh', (2017). < <https://pace.coe.int/en/files/24219> >

Federico Andreu-Guzman, 'International Law and the Fight against Impunity', (2015), International Commission of Jurists. < <https://www.icj.org/wp-content/uploads/2015/12/Universal-Fight-against-impunity-PG-no7-comp-Publications-Practitioners-guide-series-2015-ENG.pdf> >

Hellen Warell, 'Sweden Proposes International Tribunal to Try ISIS Fighters', (2019), Financial Times. < <https://www.ft.com/content/9086250e-7802-11e9-bbad-7c18c0ea0201> >

Human Rights Watch, 'Syria: Abuses in Kurdish-run Enclaves', (2014). < <https://www.hrw.org/news/2014/06/18/syria-abuses-kurdish-run-enclaves> >

Leslie Haskell & Lars Waldorf, 'The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences' (2011), Hastings International & Comparative Law Review. < https://repositoryuclawsf.edu/hastings_international_comparative_law_review/vol34/iss1/2/ >

Mona Alami, 'ISIS's Governance Crisis (Part II): Social Services' (2014), Atlantic Council. < <https://www.atlanticcouncil.org/blogs/menasource/isis-s-governance-crisis-part-ii-social-services/> >

Nordic Monitor, 'Ankara Plans to Push for Repatriation of European ISIS Fighters and Their Families in Syria', (2024). < <https://nordicmonitor.com/2024/12/ankara-plans-to-push-for-repatriation-of-european-isis-fighters-and-dependents/> >

Paul Arthur & Kimberly Cowell-Meyers, 'Irish Republican Army', Britannica. < <https://www.britannica.com/topic/Irish-Republican-Army> >

Ruger Lu Phillips, 'A Tribunal for ISIS Fighters – A National Security and Human Rights Emergency', (2021) Just Security. < <https://www.justsecurity.org/75544/a-tribunal-for-isis-fighters-a-national-security-and-human-rights-emergency/> >

Setyo Widagdo, Kadek Wiwik Indrayanti, Anak Agung Ayu Nanda Saraswati, 'Repatriation as a Human Rights Approach to State Options in Dealing with Returning ISIS Foreign Terrorist Fighters', (2021), Sage Journals. < <https://journals.sagepub.com/doi/10.1177/21582440211032679> >

Sinan Kocaoglu, 'Universal Jurisdiction', (2005), Journal of the Union of Turkish Bar Association. < <https://tbbdergisi.barobirlik.org.tr/m2005-60-176> >

Thomas G.Hansen, 'The Refugee, the Sovereign and the Sea', (2008), Danish Institute for International Studies. < <https://www.econstor.eu/bitstream/10419/44650/1/560120990.pdf> >

UN Economic and Social Council, UN Doc E/CN.4/2006/120, 'Situation of Detainees in Guantanamo Bay', (2006). < <https://digitallibrary.un.org/record/570963?v=pdf> >

Wilson Center, 'ISIS After the Caliphate', (2017), < <https://www.wilsoncenter.org/article/isis-after-the-caliphate-0#:~:text=By%20November%202017%2C%20the%20ISIS,killed%2C%20over%20130%20leaders%20eliminated> >

Xavier Philippe, 'The Principles of Universal Jurisdiction and Complementarity: How Do the Two Principles Intermesh?' (2006), International Review of the Red Cross. < https://international-review.icrc.org/sites/default/files/irrc_862_9.pdf >

