



## **Risks arising from the migration of foreign terrorist fighters and the basis for their accountability**

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### **Introduction**

**Subject:** Foreign fighters represent a current and future security threat to most countries of the world. Therefore, measures to stop their flows and scrutinize individual dealings with their returnees are among the basic tasks in the context of combating terrorists and recruiting them in intellectual, moral and military aspects, which requires the governments of countries to implement their national legal right. and the international community to prosecute them and achieve justice for the innocent victims.

**Keywords:** Migration, Foreign Terrorist, ISIS

**Importance:** Presented in the following:

1. Draw the attention of decision makers to the threat of foreign terrorist fighters to national security.
2. Statement of the means adopted by the United Nations Security Council to prevent and combat the flow of foreign terrorist fighters to conflict areas in the world in general, and Iraq and Syria in particular.

**Objectives:** They are as follows:

1. Benefit from international measures to combat foreign terrorist fighters.
2. State the risks of foreign fighters resulting from terrorist operations that amount to crimes against humanity and genocide, and prosecute and punish them.





**The problem:** The phenomenon of immigration of foreign terrorist fighters is a major security challenge for the countries of the world, in addition to the existence of difficulties related to questioning, prosecuting and punishing them individually or collectively according to national or international legal rules, especially since the majority of countries in the world affirm that they do not exercise control over their nationals in conflict areas, nor over the camps in which they are held, hence, it claims that it does not bear responsibility for any human rights violations or crimes committed by them within their terrorist organizations, nor is it obligated to return them to their homeland due to the lack of a local or international legal basis for that, which perpetuates their terrorist and security risks.

Basically, the central question of the research is: Who are the foreign terrorist fighters? And what are their features? What are the national and international legal bases for prosecuting them?

**Hypothesis:** The researchers assume that foreign terrorist fighters are a source of an escalating future strategic threat to all countries and societies in the event that they are not prevented, suppressed and combated successfully on the intellectual, moral, security and military levels, especially after the majority of them spread all over the world after being defeated militarily in Iraq. In order not to escape punishment, they must be questioned, tried, and punished according to the rules of Iraqi and international law.

**Scientific research methodology:** The inductive method was adopted, because it is one of the methods that are suitable for research in political and legal studies, it includes levels of observation and description, hypothesis and analysis, evaluation and conclusion, and the inductive approach proceeds from the part (foreign terrorist fighters) to the whole (international migration). The scope of the research is determined by the





phenomenon of immigration of foreign terrorist fighters, their risks, and the foundations of their legal accountability.

**Structure:** It was divided into two items, as follows: First - Introducing foreign terrorist fighters. Second - the basis for the prosecution of foreign terrorist fighters.

### **First: Introducing Foreign Terrorist Fighters:**

#### **1-The concept of foreign terrorist fighters:**

The phenomenon of foreign fighters is not new, but their numbers have increased in the countries from which they originate, and the terrorist groups they join, and they have become a source of security concern all over the world. In 2014, the Security Council expressed concern about reports that more than 15,000 foreign terrorist fighters from more than 80 countries have traveled to join or fight alongside al-Qaeda-linked terrorist entities in Syria, Iraq, Somalia and Yemen, as well as several countries in the Maghreb and the Sahel region<sup>(2)</sup>.

Most countries in the world are currently producing foreign terrorist fighters, distributed among various groups linked to al-Qaeda around the world, including the terrorist organization ISIS. Their number increased in 2015 to more than 25,000 thousand foreign fighters coming out of more than 100 countries, and their flows are directed mainly towards Syria. and Iraq, most of them young people between the ages of 15 and 35<sup>(3)</sup>. Today, foreign terrorist fighters are concentrated in Syria, Iraq, and Afghanistan, with smaller numbers in Yemen, Libya, Pakistan, the countries of the Sahel, Somalia, and the Philippines<sup>(4)</sup>.

When foreign fighters return home, the burden of responsibility shifts to the government of the country of return to determine the most effective responses to the matter. Ideally, each return would be treated as a special case. The return of foreign fighters





with hostile intentions could pose various security threats, including giving instructions to carry out terrorist acts or coordinating organized plans in this field, or even carrying out individual attacks of the type called (lone wolf), or influencing or providing support to local extremist networks<sup>(5)</sup>.

## **2- Distinctive features of foreign terrorist fighters:**

In order to identify foreign terrorist fighters and distinguish them from others, Prof. Hegghammer emphasizes that: "A foreign fighter is someone who has joined an insurgency and worked within its framework. This criterion distinguishes between terrorist foreign fighters and those who specialize in violence against non-combatants"<sup>(6)</sup>. Among the most important distinguishing features of foreign fighters are the following<sup>(7)</sup>:

1. That foreign fighters are not openly sponsored by the state.
2. Foreign fighters work in countries that are not their own.
3. Foreign fighters use insurgent tactics to achieve their goals and objectives.
4. That the main goal of foreign fighters is to overthrow a particular government, or to occupy a specific region.
5. The foreign fighters' main motivation is ideological reward.

## **3- Definition of Foreign Terrorist Fighters:**

A foreign combatant was defined as "an individual who leaves his country of origin or habitual residence to join a non-state armed group in an armed conflict outside his country, primarily for ideological, religious and tribal motives"<sup>(8)</sup>. Malet D. defines foreign fighters as "non-citizens of conflict countries who join rebel movements during a civil war"<sup>(9)</sup>. The Security Council defined foreign terrorist fighters as: (individuals who travel to a country other than their one in which they reside or hold a





nationality, for the purpose of committing, planning, preparing or participating in terrorist acts or providing or receiving training in acts of terrorism, including in the context of armed conflict)<sup>(10)</sup>.

It is worth noting that foreign fighters are the most influential people in terrorist organizations, which do not pay much attention to local fighters. Foreign fighters were responsible for 90% of the bloodiest attacks in Iraq, although they represented 10% of the total number of ISIS terrorists.

## **Second - Basis for Prosecuting Foreign Terrorist Fighters:**

### **1- Individual international criminal responsibility:**

International crimes do not fall under the statute of limitations and do not exempt the individual from accountability and trial. After continuous international efforts, states realized that the internal judiciary cannot by itself guarantee individual respect for the rules of international law, so responsibility in international criminal law has become the responsibility of natural persons with a criminal will and intent, whether they committed the crime on behalf of their states or for their own account, and this principle was adopted by international law After World War II and the formation of the Nuremberg and Tokyo Military Tribunals. It is the same principle adopted by the 1993 Criminal Tribunal System for the former Yugoslavia, the 1994 Rwanda Military Criminal Court System and the International Criminal Court<sup>(11)</sup>.

### **2- International crimes that do not fall under the statute of limitations and do not exempt the individual from accountability and trial:**

The 1968 Convention on the Non-Prescription of War Crimes and Crimes against Humanity affirmed the principle of non-prescription for war crimes and crimes against humanity, and by ensuring its comprehensive and universal application, no statute





of limitations applies to them regardless of the time of their commission<sup>(12)</sup>.

Perhaps among the most important principles of international cooperation in tracking, arresting, extraditing and punishing persons guilty of war crimes and crimes against humanity are the following<sup>(13)</sup>:

1. These crimes, regardless of the place where they were committed, shall be the subject of investigation, and the persons against whom there is evidence that they have committed them shall be subject to prosecution, arrest and trial, and shall be punished if they are found guilty.
2. Every country has the right to prosecute its citizens for these crimes.

### **3- International conventions that allow the prosecution of foreign terrorist fighters:**

#### **A- The Convention on the Prevention and Punishment of the Crime of Genocide of 1948:**

The number of parties to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 reached (152) until 2022, and it became effective on January 12, 1951<sup>(14)</sup>. The Convention affirmed that: "Genocide is a crime under international law and undertakes to prevent and punish it"<sup>(15)</sup>.

The convention provides for the punishment of acts of genocide, conspiracy to commit it, direct and public incitement to commit it, attempt to commit it, and participation in it<sup>(16)</sup>. The perpetrators of genocide and other related acts shall be punished, whether they are constitutional rulers, public servants, or individuals<sup>(17)</sup>. Persons accused of committing this crime shall be tried before a competent court of the state on whose territory the act was committed, or before an international





criminal court that has jurisdiction over whoever is one of the contracting parties. has recognized her mandate<sup>(18)</sup>.

### **B- The United Nations Convention against Transnational Organized Crime of 2000:**

The number of parties to the United Nations Convention against Transnational Organized Crime for the year 2000 reached (190) parties until 2022, and it became effective on September 29, 2003<sup>(19)</sup>. The convention emphasized that it is applied to prevent, investigate and prosecute transnational crimes, especially criminal acts and serious crimes<sup>(20)</sup>.

### **C- International conventions on combating terrorism:**

The global conventions and protocols to combat terrorism amounted to eighteen treaties that were adopted over a period of more than 40 years, from 1963 to 2010, and it was recognized that they allow the prevention and suppression of international terrorism. Each of these treaties targets different, specific crimes. These treaties only apply when the offense is transnational, that is, when it involves an external element, such as if the alleged offender is not a national of the country in which the offense was committed. This requirement is a direct consequence of the purpose the treaties seek to achieve: to help states to cooperate with one another. If the terrorist act was committed of a purely national nature without an international dimension, these treaties would not have any additional value<sup>(21)</sup>.

After completing the criminalization of the behaviors stipulated in the global conventions and protocols in the domestic laws of each country, it remains to determine which country should initiate the prosecution of the alleged perpetrators of the crime, so each country must determine the scope of its jurisdiction over terrorist acts. The jurisdiction of states is determined when a





crime covered by these instruments is committed on the territory of a state, that state usually bears the responsibility to prosecute the perpetrator. This jurisdiction is based on the principle of territorial jurisdiction<sup>(22)</sup>.

#### **4- The Statute of the Permanent International Criminal Court:**

The Permanent International Criminal Court was established under the Statute of the Court, and the number of its parties reached (123) parties until the year 2022, and it became effective on: July 1, 2002<sup>(23)</sup>. This court is responsible for investigating, prosecuting and trying the most serious international crimes committed in the world. Its jurisdiction is complementary to the jurisdictions of states, and the court exercises its jurisdiction only when the state does not have the will or ability to seriously carry out investigations or prosecutions. During the negotiations on the Statute, the issue of extending the jurisdiction of the Criminal Court to terrorist acts was discussed, however it was finally decided, in Article 5, that the jurisdiction of the Court would be limited to crimes of genocide, crimes against humanity, war crimes and the crime of aggression. Hence, the International Criminal Court could, in theory, consider terrorist acts if those acts included the elements of one of the aforementioned crimes<sup>(24)</sup>.

#### **Conclusion**

From the foregoing, it is clear that the phenomenon of foreign terrorist fighters represents a serious threat to the national security of many countries of the world. Although there are some practical difficulties in questioning, prosecuting and punishing them individually or collectively under national or international legal rules, they must be prevented and suppressed







by all available intellectual, value and security means, and punished judicially.

### **First: Conclusions:**

1. International legal rules recognized the individual responsibility of foreign terrorist fighters, due to the terrorist crimes they committed, and to prosecute and punish them individually or collectively under national law in application of the rule of territorial jurisdiction, and the principle of their non-impunity.
2. The principle of individual international criminal responsibility has become a peremptory rule in international law and is recognized by convention and agreement. Therefore, the national judiciary has consistently applied the principle of individual responsibility for foreign terrorist fighters for the terrorist crimes they commit, which amount to crimes against humanity and genocide, as confirmed by them. Security Council resolutions on combating terrorism.

### **Second: Proposals:**

1. That the concerned countries harmonize their legal system with the international legal rules for combating foreign terrorist fighters.
2. That the countries concerned develop strategies for preventing and combating the flow of foreign terrorist fighters to them. The core elements of the strategy are to collect information on them including their personal data when they travel and information from national watch lists, to prevent suspicious movements of them fast enough to thwart their travel plans, to address violent terrorism, and to develop appropriate national strategies for their reform, prosecution or surveillance.





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<sup>(2)</sup> United Nations, General Assembly, (A/HRC/28/28), 19 December 2014, Human Rights Council, Twenty-Eighth Session, Agenda Items 2 and 3, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Promotion and protection of all human rights, civil, political, economic, social and cultural, including the right to development, Report of the United Nations High Commissioner for Human Rights on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Document: (GE.14-24751/130115), p. 14.

<sup>(3)</sup> United Nations, Security Council, Letter dated 24 March 2015 addressed to the Chair of the Security Council Committee established pursuant to resolutions 1999/1267 and 1989/2011 concerning Al-Qaida and associated individuals and entities from the Analytical Support and Sanctions Monitoring Team, Analysis and Recommendations on the Threat Global Shaped by Foreign Terrorist Fighters, May 19, 2015 (S/2015/358), Index No. 15-04790 (A)), p.9, p.16.

<sup>(4)</sup> Document: (04790–15 (A)), Ibid, p. 15.

<sup>(5)</sup> Charles Lister, Returning Foreign Fighters: Criminalization or Reintegration? (Washington, DC, USA: Brookings Institution, 2015), pp. 3-4.

<sup>(6)</sup> Colgan and Hegghammer, “Islamic Foreign Fighters: Concept and Data”, Paper presented at the International Studies Association Annual Convention, Montreal, 2011, p. 6. and see also: Geneva Academy of International Humanitarian Law and Human Rights, Foreign Fighters under International Law, (Academy Briefing No: 7, Geneva -Switzerland, October 2014), p.6.

<sup>(7)</sup> Colgan and Hegghammer, “Islamic Foreign Fighters: Concept and Data”, Op.Cit, P.6. and see also: Geneva Academy of International Humanitarian Law and Human Rights, Foreign Fighters under International Law, Op.Cit, P.6.

<sup>(8)</sup> Geneva Academy of International Humanitarian Law and Human Rights, Foreign Fighters under International Law, Op.Cit, P.6.

<sup>(9)</sup> D. Malet ‘Why Foreign Fighters? Historical Perspectives and Solutions’, Orbis Journal of Foreign Affairs, Vol. 54, No. 1 (Winter 2010), p. 9.

<sup>(10)</sup> United Nations, Security Council, Resolution 2178 Adopted by the Security Council at its 7272nd meeting, held on September 24, 2014, (S/RES/2178 (2014)), Document No.: (14-61606 (A)).





<sup>(11)</sup> Saja Jawad Abdul-Jabbar, Individual Criminal Responsibility for Crimes Against Humanity in International Criminal Law, Master Thesis, Middle East University, Faculty of Law - Department of Public Law, Jordan-Amman, 2019, pp. 25-26. See also: Muhammad Saddam Manasri, The Individual Center in Public International Law, previous source, p. 68.

<sup>(12)</sup> Article 1 of the Convention on the Non-Prescription of War Crimes and Crimes against Humanity, adopted and opened for signature, ratification and accession by United Nations General Assembly Resolution 2391 (XXIII) of November 26, 1968, entry into force: November 11 1970, in accordance with the provisions of Article 8. Human Rights: A Collection of International Instruments, Volume I, United Nations, New York, 1993, 94.XIV-Vol.1, Part 1, p. 946.

<sup>(13)</sup> Paragraphs (1-2) of the principles of international cooperation in tracking, arresting, extraditing and punishing persons guilty of war crimes and crimes against humanity, adopted and published by United Nations General Assembly Resolution 3074 (XXVIII) of December 3, 1973. Human rights: International Instruments Collection, Volume I, United Nations, New York, 1993, (94.XIV-Vol.1, Part 1), p. 952.

<sup>(14)</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948, CHAPTER IV: HUMAN RIGHTS, STATUS AS AT: 06-01-2022, Entry into force: 12 January 1951, in accordance with article XIII, United Nations, Treaty Series, vol. 78, p.277.

<sup>(15)</sup> Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted and opened for signature, ratification or accession by United Nations General Assembly Resolution 260 A (III) of December 9, 1948, entry into force: January 12, 1951 according to the provisions of Article 13. Human Rights: A Collection of International Instruments, Volume I, United Nations, New York, 1993, 94.XIV-Vol.1, Part 1, p. 939.

<sup>(16)</sup> Article (3) of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

<sup>(17)</sup> Article (4) of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

<sup>(18)</sup> Article (6) of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

<sup>(19)</sup> United Nations Convention against Transnational Organized Crime, New York, 15 November 2000, CHAPTER XVIII: PENAL MATTERS, STATUS AS AT: 06-01-2022, Entry into force: 29 September 2003, in accordance with article 38, United Nations, Treaty Series, vol. 2225, p. 209.

<sup>(20)</sup> Article (1/3) of the United Nations Convention against Transnational Organized Crime, adopted and offered for signature, ratification and





accession by United Nations General Assembly Resolution 25 of the fifty-fifth session of November 15, 2000. UN Doc. A/RES/55/25.

(<sup>21</sup>) United Nations, United Nations Office on Drugs and Crime in Vienna, International Cooperation in Criminal Matters Related to Combating Terrorism, New York, 2012, pp. 9-11.

(<sup>22</sup>) Ibid, pp. 13-14.

(<sup>23</sup>) Rome Statute of the International Criminal Court, Rome, 17 July 1998, Entry into force: 1 July 2002, in accordance with article 126, CHAPTER XVIII: PENAL MATTERS, STATUS AS AT: 06-01-2022, United Nations, Treaty Series, vol. 2187, p.3.

(<sup>24</sup>) United Nations, United Nations Office on Drugs and Crime in Vienna, International Cooperation in Criminal Matters Related to Combating Terrorism, Op.Cit, p. 45.

