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THE UNSUSTAINABILITY OF ISIS DETENTIONS IN SYRIA

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Cover photo: Suspected ISIS fighters wait to be searched by members of the Kurdish-led SDF after leaving ISIS's last holdout of Baghouz, in Syria's Deir Ez-Zor Province, on February 27, 2019.

(DELIL SOULEIMAN/AFP/Getty Images)

Above photo: Suspected ISIS fighters walk together towards a screening point for new arrivals run by the SDF, outside Baghouz, on March 6, 2019.

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KEY POINTS

- * The seeds of ISIS 2.0 reside in the prison population being held in detention by coalition partners in areas liberated from ISIS.
- * This is particularly a threat in Syria, where the Syrian Democratic Forces (SDF) lack the resources, capacity, and support to detain ISIS fighters and their families indefinitely.
- * Without a commitment from coalition partners for resources and manpower to maintain these detention centers, the SDF may become vulnerable to insurgency tactics such as prison breaks, which helped give rise to the organization in 2012.
- * This problem is exacerbated by inconsistent and erratic decisions coming out of the White House, complicating matters on the ground and confounding diplomats, commanders, and coalition partners.
- * An inability to address this issue will jeopardize the gains made in the fight against ISIS, threaten the minimal stability the coalition and its partners have been able to reestablish in liberated areas, and pose a risk to a resurgence of attacks in Iraq and Syria, and potentially even the U.S. and its allies.

INTRODUCTION

Experts continue to sound the alarm about the potential resurgence of ISIS, and not without reason. Over the last several months of the final offensive against ISIS, its members have reportedly slipped back into Iraq, crossed the border into Turkey, or returned to their home countries — often undetected — to fight another day or carry out future attacks.

An equally pressing threat is the fact that the coalition partner force in Syria simply does not have the resources or the support it needs to detain ISIS members indefinitely, exacerbating the potential for an ISIS resurgence if former fighters are released or broken out of prison. The answer to this problem likely lies in a layering of strategies and solutions, one that accounts for inconsistent policies, and ensures ISIS members both answer for their crimes and cannot remain a threat to any society.

THE PROBLEM

The U.S.-led operation to defeat ISIS in Syria is the most successful unconventional military campaign in history. What began as a quiet deal in 2014 between U.S. Special Forces and a smattering of the People's Protection Units (YPG) to defend the town of Kobani on the Turkish-Syrian border grew into a four-year coalition partnership

to support a nearly semi-autonomous force through air support, intelligence, and an on-the-ground presence.

The combined force, now known as the Syrian Democratic Forces (SDF), numbers over 60,000, encompassing both Kurds and — increasingly as it moved down into Arab areas and the Euphrates River Valley — Arabs. It controls nearly one-third of the territory of Syria, overseeing millions of people, and maintains local civilian councils in liberated areas to help meet immediate stabilization needs and ensure internally displaced persons can return home.¹ It effectively defeated the ISIS caliphate with limited U.S. investment.

The SDF faces a number of challenges, however, that threaten to destabilize its already fragile control over one-third of the Syrian state: 1) the Assad regime is determined to bring the SDF and its areas under state control; 2) Iran and its proxies are infiltrating tribes in the south; 3) Turkey is threatening a military incursion from the north; and 4) ISIS is working to stoke an insurgency in liberated areas. All of these risks are exacerbated by the inconsistency from the White House and uncertainty about American intentions and staying power.

But perhaps the most immediate destabilizing factor is what to do with the influx of ISIS members and their families that have poured out of the Middle Euphrates River Valley, particularly since February 2019.

In January, the SDF launched its final push to clear the rest of the area to the north of the Euphrates from ISIS. Since then, they have had to halt or slow the offensive multiple times to allow civilians, as well as thousands of ISIS families, to evacuate. Reports suggest that over 40,000 people have fled in the last three months, including 15,000 alone since the SDF announced it was relaunching its assault on Feb. 9.² These numbers are staggering and far higher than what had been anticipated and planned for before the assault.

Publicly, the Department of Defense has acknowledged around 800 foreign fighters have been detained by the SDF. But as was recently reported by *The Wall Street Journal*, defense officials now estimate those numbers have increased to “the thousands.” Neither the SDF nor the Pentagon has ever released figures on the total number of detainees in Syria, nor have they provided a breakdown of the number of Iraqi or Syrian fighters detained compared to foreign ones. But a defense official speaking to Reuters in early March admitted that the Pentagon and the SDF had been consistently wrong in estimating how many fighters and families were left in areas still controlled by ISIS, and estimated the SDF held about 4000 Iraqi and Syrian fighters and over 1000 foreign ones.³

The ultimate disposition of these fighters is a grave challenge. One has only to look at Iraq to see how prison breaks and an incapacity to deal with terrorist

detainees can cause an insurgency to spread like wildfire. In Iraq's Camp Bucca many future ISIS members, including ISIS leader Abu Bakr al-Baghdadi, conspired together, radicalized other prisoners, and grew their following; former guards at the prison called it a “pressure cooker for extremism.”⁴ Furthermore, raiding prisons is a textbook strategy for extremist groups. In 2012, after he was let out and subsequently returned to terror, al-Baghdadi released a sermon stating that it should be the group's number one priority.⁵ Directly after the sermon, ISIS began to raid prison after prison, taking advantage of the weak Iraqi security system, and sweeping anyone they found in the cells effortlessly into their ranks.

On March 7, the commander of CENTCOM, General Joseph Votel, testified to the House Armed Services Committee, warning, “What we are seeing now is not the surrender of ISIS as an organization but in fact a calculated decision ... taking their chances in camps for internally displaced persons, or going to ground in remote areas and waiting for the right time for a resurgence.”⁶ This is yet another indicator that ISIS is reverting back to the same playbook they've used before, ready to lie in wait until an opportunity arises.

The SDF is already under tremendous pressure in areas under its control to allow local Syrians who joined ISIS to be dealt with through their own tribal legal system, evidenced by the deal the SDF



A member of the SDF raises the hood of a Bosnian man suspected of being an ISIS fighter as he is searched after leaving the group's last holdout of Baghouz, on March 1, 2019. (BULENT KILIC/AFP/Getty Images)

cut during the battle for Raqqa and, more recently, when it released nearly 300 local Syrian fighters to their tribal elders.⁷

While the U.S. draws down its troop levels in Syria and consolidates toward the southeast to protect al-Tanf garrison and the northeast to monitor the Turkish border region, areas in between will be increasingly at risk of ISIS insurgency given the lack of resources and focus elsewhere.

POSSIBLE OPTIONS

REPATRIATION TO COUNTRY OF ORIGIN

While repatriations of fighters have occurred, they've been slow, inconsistent, and minimal in number. Several countries,

such as the United Kingdom and France, refuse to repatriate fighters because they are worried that their laws at home will prevent the judicial system from properly pursuing charges against them. So far, only a few countries have admitted to repatriating fighters (mostly from Iraq), and in February Iraq announced it had received over 200 repatriated citizens from Syria, out of an estimated total of 500.⁸

But that's a small percentage of the detained foreign fighters — not to mention local fighters — and doesn't account for the hundreds the SDF has likely detained since February and the hundreds more they are likely to detain when the battle for Baghouz is finally over.

Furthermore, repatriation of fighters to their country of origin leads to inconsistent trials and punishments, despite the fact that

many of them have committed the same crimes. The countries that have agreed to take back fighters so far have only done so because they have far more stringent anti-terror laws that they can use to punish these individuals.

Countries like France, Belgium, and Australia have either refused to repatriate the fighters or stripped them of their citizenship in an attempt to rid themselves of the responsibility for bringing them home and pursuing criminal charges. Instead, they have advocated that the fighters — despite their citizenship — should be tried locally, where the crimes occurred.⁹

GUANTANAMO BAY

The Trump administration has consistently signaled that it views Guantanamo as a potential solution to the problem of what to do with the thousands of ISIS detainees, including signing an executive order at the end of January 2019 to keep the facility open and operational.¹⁰ However, the administration has yet to announce any plans for how this would actually work and it presents a number of legal and logistical issues, including how to prosecute and detain these individuals there and what to do with them once their sentence has been served.

FUND PRISONS AND DETENTION CENTERS IN SDF-CONTROLLED PARTS OF SYRIA

Charlie Savage from *The New York Times* reported last summer that the prisons in SDF-controlled areas were a temporary solution, but that the SDF is not a “permanent jailer,” stating that “it is not a sovereign government with a recognized court system; it has set up ad hoc terrorism tribunals — and abolished the death penalty — but is using them to prosecute only Syrians, not foreigners.”¹¹

While the U.S. has already put money and manpower into establishing and refurbishing several detention centers, this is a short-term solution to a long-term problem. This can only work if the U.S. or another coalition partner maintains a presence in the northeast, and, as we’ve seen over the last several months, that is untenable and already in jeopardy.

RETURN OF THE STATE

The return of Aleppo to regime forces in December 2016 marked a turning point in the Syrian civil war. Since then, the regime has retaken nearly all of the territory it had lost, cutting deals to consolidate the rebel groups into Idlib Province. It appears almost certain that Assad has won the war, and thus the return of the regime, including in areas currently controlled by the SDF, is likely inevitable. The SDF and the regime have already entered into negotiations on the northeast several times over the last two years, and with the U.S. on the way out, it’s only a matter of time before they reach a deal. This also means the U.S. and coalition would lose access to the detainees being held by the SDF (presuming the U.S. is still

not talking to the regime), meaning the U.S. would lose critical intelligence that could help prevent attacks by ISIS remnants that fled to Europe, returned to their home countries without detection, or are active in Iraq and Syria.

This scenario is not one the U.S. government would support and is not ideal for a number of reasons, including that the Assad regime is made up of war criminals who have massacred hundreds of thousands of their own people to remain in power. Bashar al-Assad would also likely use this as a tool, as he has in the past. He has been accused of releasing thousands of extremists from prison during the 2011 uprising to help justify his violent crackdown against peaceful protesters that he portrayed as terrorists.¹² Furthermore, his prisons are notorious for torture and mass killings of detainees without trial, cases of which are well documented.¹³

TURN FIGHTERS OVER TO IRAQ

Iraqi Prime Minister Adel Abdul-Mahdi has offered to try foreign fighters who participated in terror attacks carried out in Iraq in the country's courts, and the government has already announced it will prosecute 13 French fighters that the French have refused to take back.¹⁴

While it's only been five years since ISIS invaded Iraq and overran the Iraqi Security Forces (ISF), the ISF has come a long way, taking back their entire country from the terror group and successfully conducting

counterterrorism operations that have led to a massive reduction in violence across Iraq. And while Iraq is more stable and less violent than it has been in 16 years, its newly formed government isn't complete and is on shaky ground. Waves of protests rocked the south last fall due to a lack of government services, and violence is once again on the rise in areas like Anbar and Nineveh provinces.

There is also a capacity problem: Iraq's prisons are already teeming with members of ISIS and al-Qaeda. There have also been substantiated allegations of torture, corruption, and a lack of a judicial legal process that will limit countries' willingness to turn over their own citizens, though that does not appear to be a factor in the French decision.¹⁵

INTERNATIONAL TRIBUNAL

As reported by CNN, human rights lawyer Amal Clooney and Yezidi survivor and 2018 Nobel Peace Prize winner Nadia Murad have advocated for an international tribunal where ISIS members could be tried for war crimes at the International Criminal Court (ICC) in The Hague.¹⁶ It's unclear how much traction this idea actually has, but there does not appear to be a strong appetite on the part of the international community to pursue this course. In addition, investigation, intelligence, and security consultant Simon Palombi told CNN that the ICC is traditionally used to pursue international charges against leadership, and not "the



The new International Criminal Court building in The Hague, July 30, 2016. (Michel Porro/Getty Images)

thousands of foot soldiers of ISIS," as in this case. Furthermore, neither Iraq nor Syria are members of the ICC and therefore the ICC does not have jurisdiction over crimes committed in those countries, making it virtually impossible to pursue this avenue.¹⁷

The United Nations established the UN Investigation Team for Accountability of Da'esh/ISIS, led by Karim Khan, but its mandate is simply to help the Iraqi government investigate ISIS members for crimes committed in Iraq within the Iraqi court system, and it has no ability to try members being held in Syria.¹⁸

LOOKING AHEAD

The White House and coalition partners, in defining the residual mission in Syria, should ensure: 1) the necessary resources and

capability to support the SDF in detaining these people in the long term; 2) the provision of resources and technology to deter any breakouts or attacks on facilities; and 3) interim efforts to repatriate as many as possible, with the rest either going to Iraq or — inevitably — returning to some form of centralized Syrian government control.

In the short term, it is critical that coalition partners, especially those who have a high number of fighters in detention, contribute funding to help maintain the infrastructure of the SDF detention centers. This also requires that some U.S. and coalition boots remain on the ground to help support the SDF. We should use our money and personnel to ensure a reliable force is keeping an eye on these dangerous people to prevent a resurgence of ISIS and potential attacks against our homelands.

A long-term solution is far more complicated. Given the legal difficulties of establishing an international tribunal, it may be best to use pre-existing mechanisms such as the Global Coalition to Defeat ISIS's Foreign Terrorist Fighter Working Group to establish minimum standards by which ISIS members must be tried. This might allow countries that can't meet those standards to create alternative pathways by which to prosecute fighters, such as France is doing by allowing their citizens to be tried in Iraq for crimes committed there.

Of course, this raises a number of legal issues as well as human rights concerns that will have to be thought through. As Max Abrahms, a counterterrorism expert and assistant professor of political science at Northeastern University, tweeted, "Political scientists have long debated

whether liberal norms negatively affect counterterrorism effectiveness. The return of ISIS fighters and their families are an example where there is indeed a trade-off. Respecting liberal values is not cost-free for terrorism prevention."¹⁹ This is an unprecedented transnational issue that will need to be settled in a transnational fashion and will require us to reconcile our commitment to liberal values with our commitment to security.

The bottom line is the SDF cannot remedy this problem alone, and with the United States planning to significantly draw down its presence and coalition partners so far refusing to offset the drawdown, it's a problem we need to come to grips with immediately. Were we really expecting a non-state actor proxy force to have the capacity to detain, try, and carry out



Members of the Kurdish-led SDF escort trucks carrying men, identified as ISIS fighters, out of ISIS's last holdout of Baghouz in Syria's Deir Ez-Zor Province, on February 20, 2019. The implosion of the jihadist proto-state has left Western nations grappling with how to handle citizens who left to join ISIS. (DELIL SOULEIMAN/AFP/Getty Images)

punishments for the thousands of ISIS members we were removing from territory they had claimed?

With all the debate on Syria, we can't lose sight of this critical issue. The seeds of ISIS 2.0 are in this prison population. How the detention of these fighters is handled is probably the single most important question confronting the mission, yet it's one that has been lost as diplomats, commanders, and our coalition partners scramble to make sense of inconsistent decisions coming out of the White House. A refusal to address this threat will only cause ISIS to resurge even more quickly, regain territory it lost to the coalition, and reestablish its capacity to plan, coordinate, and carry out attacks against the U.S. and its allies.

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