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Ticking Time Bombs’ or Victims First?: Children in the Former Islamic State

Reflection Essay

In my paper “Ticking Time Bombs’ or Victims First?: Children in the Former Islamic State,” I sought to address the issue of foreign children—who were brought or born in the former Islamic State—and who are presently detained in camps in northeast Syria. These children now reside in overcrowded and dangerous detainment camps that are not conducive to their health or wellbeing. While the Kurdish-led Syrian Democratic Forces (SDF) who have been guarding the detainees since 2019 have pleaded with countries to repatriate their citizens, many states—including Canada—have been slow to take action.¹ To date, only three Canadians (including two children) have been released from the camps.²

Going into the project months ago, what interested me most was the dichotomy I saw in my initial research, where children were frequently portrayed as either grave threats to national security, or as victims of the Islamic State of Iraq and Syria (ISIS). Domestic politicians and security analysts have often described these children as threats—or “ticking time bombs.”³ Portrayals of these children as threats to national security due to their association with ISIS were used to justify their continued suffering. My paper explored the concept of the extraterritorial application of international human rights law, as well as a broader concept of the right for child victims of armed conflict to reintegration and recovery.

Reflecting on my experience related to the research and writing done for my paper, there are several things that come to mind. The first was the challenge of locating *legal* arguments for repatriation, when repatriation is much more easily justified under *security* or *humanitarian* considerations. From a humanitarian perspective, it is not difficult to make the argument that these children should be returned to an environment that can better ensure their wellbeing. Several UN Special rapporteurs, for example, have called not repatriating these children a “moral failure.”⁴ From a security perspective, radicalization experts have also called for repatriation, emphasizing that they may pose a greater long-term threat if

¹ See generally “Bring Me Back to Canada” (29 June 2020), online: *Human Rights Watch* <www.hrw.org>.

² See Annie Bergeron-Oliver & Christy Somos, “Canadian woman released from ISIS detention camp in Syria”, *CTV News* (28 June 2021), <www.ctvnews.ca>.

³ See Aïssata Athie, “The Children of ISIS Foreign Fighters: Are Protection and National Security in Opposition” (18 December 2018), online: *IPI Global Observatory* <theglobalobservatory.org>.

⁴ See United Nations Human Rights Special Procedures, “Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic” (2020) at 2, online (pdf): *OHCHR* <www.ohchr.org>.

they continue to be exposed to extremist ideologies.⁵ Locating legal arguments for repatriation when there is no clear right to repatriation under international law, however, proved more challenging. While states cannot deny their citizens entry or deprive a person of nationality, they are under no obligation to take proactive steps to return them to their country of origin.⁶

The second is a reflection on the evolving approach to the extraterritorial application of human rights treaties. In November 2020, for example, the Committee on the Rights of the Child made its decision on an internal communication procedure, determining that France had jurisdiction over several children of French families who had been brought to Syria by their parents and were now in detention camps in the country.⁷

This is a fascinating area that has noble aspirations to expand human rights protections, but also challenges the assumed universality of human rights, and raises concerns related to arbitrariness or creating an undue burden for states.⁸

Lastly is the relevance of areas of the social sciences to providing context to my paper. In my paper, I acknowledged that it would be a glaring omission to neglect to address the underlying currents of Islamophobia and xenophobia that permeate the discussions regarding foreign children detained in northeast Syria. This included acknowledging that children who have joined armed groups considered to be ‘terrorist’ groups often face stricter responses and are more likely to face detention and punishment than children who join other armed groups.⁹ Moreover, gendered analyses such as one offered by Fionnuala Ní Aoláin (the U.N. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism) helped to ensure that an emphasis on the vulnerabilities of girls did not neglect the suffering of boys.¹⁰ These reflections provided critical context and nuance to my paper, and I was grateful to the interdisciplinary approach of the “To Look and to Play/Regards et Jeux” project for allowing me the space to explore them.

I am very grateful to the “To Look and to Play/Regards et Jeux” project for all of its support this summer, and for providing me the opportunity to explore this topic.

⁵ See Ana Luquerna, “The Children of ISIS: Statelessness and Eligibility for Asylum under International Law” (2020) 21:1 Chicago J Intl L 148 at 156–157.

⁶ See Alessandra Spadaro, “Repatriation of Family Members of Foreign Fighters: Individual Right or State Prerogative?” (2020) 70:1 Intl Comparative LQ 251 at 253.

⁷ See Félix A Aguetant, “A Turn of the Tide in the Extraterritorial Application of Child Rights” (2021) 14:3 J Politics & L 51 at 51.

⁸ *Ibid* at 55; Marko Milanovic, “Repatriating the Children of Foreign Terrorist Fighters and the Extraterritorial Application of Human Rights” (10 November 2021), online (blog): *EJIL:Talk!* <www.ejiltalk.org>.

⁹ See Francesca Capone, “‘Worse’ than Child Soldiers? A Critical Analysis of Foreign Children in the Ranks of ISIL” (2017) 17:1 Intl Crim L Rev 161 at 174.

¹⁰ See Fionnuala Ní Aoláin, “Gendering the Boy Child in the Context of Counterterrorism: The Situation of Boys in Northeast Syria” (8 June 2021), online: *Just Security* <www.justsecurity.org>.

Annotated Bibliography

Source #1:

Aguettant, Félix A, “A Turn of the Tide in the Extraterritorial Application of Child Rights” (2021) 14:3 J Politics & L 51.

In “A Turn in the Tide of the Extraterritorial Application of Child Rights,” author Félix Aguettant described the recent developments of an individual communication procedure by the Committee on the Rights of the Child in November 2019 that determined that France—that has denied any existence of competence in Syria—has jurisdiction over hundreds of children of French jihadists in northeast Syrian camps. In the short article, Aguettant demonstrates both the benefits and pitfalls of this development in the extraterritorial application of human rights.

This source was a helpful aid in my paper as it provided a succinct summary of recent developments, as well as addressed similar tensions between public security and rights of the child.

Source #2:

Capone, Francesca, “The children (and wives) of foreign ISIS fighters: Which obligations upon the States of nationality?” (2019) 60 Questions Intl L 69.

Francesca Capone seeks to provide a response to the question of whether or not there is an obligation on states of nationality to repatriate to accompanying family members of foreign terrorist fighters (FTFs) through the lenses of multiple areas of international law, including “international humanitarian law, international counter-terrorism law, the law of diplomatic and consular relations and international human rights law.” Ultimately, Capone identifies that while a “straightforward obligation” may not exist, multiple commitments under international law argue in favour of repatriation.

This source was useful for my paper as it echoed many similar arguments made by human rights organisations (i.e. Human Rights Watch or the Open Society Justice Initiative included below), while providing a more objective and rigorous legal analysis.

Source #3:

Capone, Francesca, “‘Worse’ than Child Soldiers? A Critical Analysis of Foreign Children in the Ranks of ISIL” (2017) 17:1 Intl Crim L Rev 161.

In “‘Worse’ than Child Soldiers? A Critical Analysis of Foreign Children in the Ranks of ISIL,” Capone examines the phenomenon of children affiliated with ISIL through the lens of the law related to child soldiers. Capone identifies how children affiliated with ISIL are typically regarded first and foremost as threats to national security. They provide an overview of the current legal framework, and address some of the challenges relevant to designing a meaningful reintegration process.

Likewise, this source was helpful as it addressed the core tension between public security and the rights of the child that I sought to address in my paper.

Source #4:

Carroll, Jacinta, “The citizen as enemy combatant: dealing with foreign terrorist fighters” (2019), online (pdf): *Australian National University* <nsc.crawford.anu.edu.au>.

In this brief policy paper, Jacinta Carroll provided a succinct summary of the challenges relevant to the issue of FTFs in the Australian context. It addressed both legal challenges—such as evidentiary issues with domestic prosecution—and other challenges relating to government communication and the public debate surrounding the issue. It included two case studies, including of the Australian teenager Zaynab Sharrouf, who travelled to Syria with her parents at the age of 13.

This source was helpful to my paper as public perception has fuelled much of the response to this issue. The critical analysis of how governments communicate their strategies was helpful in going beyond the legal context, identifying variables that impact state behavior. The case study in particular was particularly valuable to my research.

Source #5:

“European States’ Obligations to Repatriate the Children Detained in Camps in Northeast Syria” (2021), online (pdf): *Open Society Justice Initiative* <www.justiceinitiative.org>.

This legal briefing paper by the Open Society Justice Initiative provided a comprehensive legal analysis meant to assist European lawyers advocating for the repatriation of children detained in northeast Syria. Through the lens of a child’s rights perspective, it addressed both overarching human rights considerations, as well as key substantive human rights such as the right to life, the right to be free from torture and ill treatment, and the right to liberty and security. Ultimately, the paper identifies a duty for European states to take proactive measures to repatriate these children.

While in the European context, this detailed source provided a detailed analysis that strengthened several sections of my paper.

Source#6:

Luquerna, Ana, “The Children of ISIS: Statelessness and Eligibility for Asylum under International Law” (2020) 21:1 *Chicago J Intl L* 148.

In “The Children of ISIS: Statelessness and Eligibility for Asylum under International Law” Ana Luquerna provided a comprehensive analysis that explores whether stateless children detained in camps in northeast Syria may be eligible for asylum under international law. Luquerna expands their analysis to include children who are *de facto* stateless due to the unwillingness of states of nationality to repatriate them. Ultimately, Luquerna concludes that these children “meet the requirements for refugee status because they are being persecuted as a particular social group (defined as “children who lived in the ISIS regime and who do not have the ability to be repatriated to their home country”).”

While Luquerna's core argument was not reflected in my analysis, their points related to the Convention on the Rights of the Child (CRC) were helpful. As one of the most recent sources, this article also helped to strengthen the background section on the humanitarian crisis in my paper.

Source #7:

Ní Aoláin, Fionnuala, "Gendering the Boy Child in the Context of Counterterrorism: The Situation of Boys in Northeast Syria" (8 June 2021), online: *Just Security* <www.justsecurity.org>.

This short blog post by Fionnuala Ní Aoláin provided a gendered analysis of the role of boys in the Islamic State of Iraq and Syria. Aoláin emphasizes that gendered analyses cannot only address the harms experienced by women and girls, but must recognize the unique impacts of terrorism and counterterrorism on boys "precisely because of the assumptions being made about their gender (male), the parentage (presumed association with ISIL), the geography (Syria), and their religious beliefs (Muslim)." Aoláin emphasizes that the rights of children are universal, and boys must be recognized as children in situations of armed conflict.

Aoláin's empathetic and nuanced analysis was helpful to my paper as it addressed a significant blindspot in both policy papers and the academic discourse on this topic. As Aoláin implores, it was a reminder to avoid the reproduction of harmful tropes in any analysis on this topic.

Source #8:

Nyamutata, Conrad, "Young Terrorists or Child Soldiers? ISIS Children, International Law and Victimhood" (2020) 25:2 J Confl & Sec L 237.

In "Young Terrorists or Child Soldiers? ISIS Children, International Law and Victimhood," Conrad Nyamutata addresses the "contentious" and inconsistent status of Western citizens who travelled to join ISIS as children. Nyamutata argues for 'ISIS-associated' children to be considered as child soldiers, with all the protections afforded to child soldiers extended to them—including to be treated as victims first.

Nyamutata's analysis was very helpful to my paper as it drew explicit links between a well-established area of international law—the law related to child soldiers—with the more contemporary issue addressed by my paper.

Source #9:

Spadaro, Alessandra, "Repatriation of Family Members of Foreign Fighters: Individual Right or State Prerogative?" (2020) 70:1 Intl Comparative LQ 251.

In "Repatriation of Family Members of Foreign Fighters: Individual Right or State Prerogative?" Alessandra Spadaro reflects on recent decisions by Belgian and Dutch courts related to family members of ISIS fighters now detained in northeast Syria. Spadaro explores the questions of the right to consular assistance, the right of return to one's own country, and the extraterritorial application of human rights treaties. Ultimately, Spadaro argues that these individuals hold no

individual right to be repatriated by their state of nationality, yet identifies related policy reasons why states should nevertheless repatriate their nationals.

Spadaro's analysis was very helpful to my paper as it provided counterarguments to the arguments presented in multiple other sources. As one of the few sources to argue for an absence of a right to repatriation, it helped to 'pressure test' potential weaknesses in these arguments and provide greater nuance in my analysis.

Source #10:

van Spaendonck, Rozemarijn, "To School or to Syria? The foreign fighter phenomenon from a children's rights perspective" (2016) 12:2 Utrecht L Rev 41.

Rozemarijn van Spaendonck's analysis in "To School or to Syria? The foreign fighter phenomenon from a children's rights perspective" reflects on the international, national and local level efforts to prevent citizens from travelling to join ISIS. For children, van Spaendonck encourages an approach that takes the best interest of the child into account, in accordance with article 3 of the CRC. Ultimately, van Spaendonck concludes that present approaches do not distinguish between children and adults, particularly when criminal or administrative measures are taken.

As one of the earliest sources identified, van Spaendonck's analysis was helpful for sections of my paper that addressed the best interest of the child.