

Djihadists, returnees and jihadists' families: A major challenge for the International Community

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Mr. Chairman, Honorable Parliamentarians, ladies and gentlemen,

All the topics which should be discussed in that session are critical for counter-terrorism policies such as preventing radicalization in prison is indeed among critical key issues as well as all other preventative actions listed in the topics of today. Still, in order to be more focused, I will leave to my colleagues the task to provide you with appropriate information about both of them. On my side, I wish to concentrate my address that I was tasked to prepare on two critical issues related on one side to international cooperation in criminal matters in the prosecution and adjudication of the delocalized foreign terrorist fighters and on the other side the critical situation of populations currently detained or placed in camps situated in areas controlled by YPJ.

Mr. Chairman, Honorable parliamentarians, ladies and gentlemen,

The Mediterranean Region' Member States and countries of the Commonwealth of Independent States have to face nowadays a new major challenge posed again by the Foreign Terrorist Fighters. Especially, the Inter-Parliamentary

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Assembly of the CIS and the Parliamentary Assembly of the Mediterranean have to get a clear picture of the current situation in order to respond properly to those challenges from the political and legislative angles. The meeting of today and its special session on the FTF may provide us with directions and indications for our future work, both at the international and regional levels.

As clearly stated by you Mr. Chairman during the opening session, at least 14 000 militants are still Daesch Members and the immense majority of them are well trained to commit terrorist attacks either in other places of the World or in our regions

More specifically, it is quite clear that the international community has to look after the relocation of foreign terrorist fighters who have decided “to emigrate”, inter alia, towards Philippines, Indonesia, other countries of the South-East and South Asia or even Central Asia and Afghanistan which could constitute a good target for those terrorist organizations due, inter alia, to their the geographical situation of countries composed of many islands which are difficult to control as well as to the existence, there, of several extremist political movements and terrorist organizations which can be of a good help for those FTF. Already, the region has to be ready to counter the terrorist activities of Daesch in its new locations as this organization already launched a huge terrorist attack in the city of Marawi (Island of Mindanao) in Philippines² in May 2017 as well another one recently in Jolo Cathedral on 27 January 2019 in which 20 people were killed and 102 injured. It is quite significant that Daesch claimed the responsibility of that attack. For those types of attacks, international cooperation is clearly required to find terrorists responsible of them as well

² See the article of the Independent : <https://www.independent.co.uk/news/world/asia/it-is-equally-important-that-the-one-isis-gunmen-soldiers-army-marawi-city-street-battle-terrorist-jihadi-a7751406.html>

as to prosecute and adjudicate those terrorists. Unfortunately, similar attacks should be expected in our regions after the Daesch's announcement of the campaign called "*Vengeance for Sham*". For example, we have seen recently (between 8 and 10 April only!) 14 Daesch's statements on terrorism attacks in most of the external Daesch provinces under the banner of that campaign among them three in Western Africa and Sinai, two each in Somalia, Khorasan (Afghanistan), and Lybia and one in Wilayat Caucasus³. From those examples, you can see how much Daesch is active nowadays and we shall not think that terrorist organization is totally defeated.

In that context, international cooperation in criminal matters constitutes a key element. Of course, we have to take into consideration that, during the attacks, several terrorists are often killed but it is equally important that the ones who remain alive should be properly prosecuted and adjudicated by criminal courts in full respect of the rule of law. We shall always keep in mind that, for victims of terrorist acts, there is no peace without seeing perpetrators of those horrible attacks properly trialed and sentenced. Yes, but without relevant legislation in place, those trials cannot take place. Actually, for prosecutors and judges, this is not enough to be well trained as well as to have a solid professional background which is often the case in our regions. They need to be able to comply with the principle of dual criminality. In addition, according to that principle, legislation of countries involved in the international cooperation process have to be compatible; without this compatibility, there is no international cooperation in criminal matters. Unfortunately, in many cases, legislation of a given country is not compatible with the ones of other countries involved in those cases. If I come back to the example of

³ <https://thedefensepost.com/2019/04/14/isis-vengeance-for-sham/>

countries in which the last Daesch terrorist attacks took place, I am not sure at all of this compatibility. It means, for example, that elements concerning terrorists who have committed their horrible attacks in Jolo, Afghanistan, Caucasus, Western Africa and Sinai (Egypt), Libya could not be used by prosecutors and judges if legislation on terrorism are not compatible and unfortunately after the PAM's meeting in Rome in which we have seen how huge is the discrepancy among the various national legislation on terrorism, I am not sure that we have made progress on that issue. May I make a clear and strong call to our honorable Parliamentarians today to start to review their legislation just to make them compatible with the UN conventions again terrorism as well as with the UN Security Council resolution 2178 for the definition of FTF and to continue to discuss that issue on a permanent basis in order to assess progress made in that area. If we want to fight terrorism properly, there is no whatsoever solution for Parliaments without proceeding further on that issue.

The second point on which I wish to concentrate my intervention today is in connection with all those people, FTFs and their families who remain in the areas under the authority of the YPG combatants. There are, here, several elements of discussion on that situation. Furthermore, many countries and, indeed parliaments, of our two regions are concerned by that problem. Now, more than 70 000 people are in the camp of Al-Hol, among which more than 9 000 members of Daesch FTF family members including 6 500 children!⁴ It should be stressed that this situation is very bad for the international community. The first reaction from some Member States was to decline responsibility for those people who left the country of origin willingly and as a consequence of that to refuse to get those

⁴ <https://aawsat.com/english/home/article/1672906/children-death-toll-syrias-al-hol-camp-rises-235>

people back home. Even if that is true, some people have already passed away and the crisis would be getting worse and worse if we do not do anything.

Actually, there are three main problems to be solved in such a situation: the first one is the humanitarian crisis for which Parliamentary Diplomacy should intervene. The political role of Parliaments in that case, whenever possible, is key as well as Parliamentary International Organizations such as IPU, IPA, CIS, OSCE PA, Council of Europe Assembly of Parliamentarians and PAM.

The second one is a serious legal issue: while, when Daesh FTFs and their families are still in Iraq, the international community knows how to proceed to review the situation of each of family members, screening their personal situation throughout Interpol and exchanges of information among the prosecutorial and judicial authorities, situation is different here since we are facing a vacuum in terms of legal jurisdiction. There is not a single legal treaty between the YPG or YPJ and a State. So, the situation of those people could last forever if the international community does not take action. In that case, what kind of action? There is, in my view a solution that the international community as a whole could bring to the attention of the UN Security Council or to the General Assembly. Actually, the UN appropriate body should establish a Special Triage's Commission in order to sort out who is who, parents, and children of whom, who among them should be trial or not etc. That Commission should also clear the citizenship of each of the people being there and eventually refer to the relevant authorities of the United Nations Member States which have responsibility vis à vis their citizens. In addition, since it is legally impossible to determine jurisdiction on that territory,

there is no way that States can avoid their individual jurisdiction on their citizens. That Commission should be composed of lawyers, humanitarian specialists, Interpol officers who will provide relevant and impartial advice on both criminal responsibility as well as on physical and/or psychological stress and humanitarian situation of those people, including children. The Commission should also have the power to decide on jurisdiction for nationals with double citizenship, according to their previous residence or the one of their families or even whenever necessary from other criteria, well defined in advance. As a consequence of that situation, the establishment of the Commission is a matter of emergency, perhaps even with a small Court component whenever there is a negative conflict of jurisdiction, not a single country willing to take charge of some people with a criminal background or even a positive conflict of jurisdiction when several Member States have manifested a strong will to trial certain individuals. In that context, we should never forget that jurisdiction could be based on the place in which the offence was committed or on the citizenship of the perpetrator or the victim. According to the Justice's history, jurisdiction based on the citizenship of the perpetrator of the offence or on the victim of it was the first one established, since kingdoms borders at that time were not well defined and kings and queens had more jurisdiction on their subjects rather than on their territories.

To see Member States struggling to avoid jurisdiction would not be very nice. However, to have Member States doubtful about their jurisdiction is perfectly understandable. Consequently, the establishment of such a Commission would allow us to avoid seeing representatives of Members States, Parliamentarians from various countries who were all united against Daesch, unable to find proper decisions concerning the

current problems that we have to face. Should we recall that all Members States were united behind the United Nations Security Council to counter the FTF' phenomenon and Daesch when the UN Security Council adopted Res 2178 (2014). If we are not able to react properly in facing together this new challenge, we will give the wrong signal to terrorist organizations which would be encouraged by our behavior. Indeed, the Parliamentary Assembly of the Mediterranean started in Belgrade to think about it, especially thanks to our Moroccan Honorary Vice President. But we should go further between IPA CIS and PAM to have a more decisive impact at the political level but also to adopt a resolution on that matter. We should always remember that an issue of global character should have a response at the same level, otherwise it would be a recipe for failure. Despite of all the difficulties ahead of us, I am confident in our success.

Finally, I would like to thank you IPA CIS and PAM to have courageously organized that conference and especially you Mr. Chairman to be so dedicated to that topic that, I know, is so close what you have to face.

Thanks also to the IPA Daesch officers which have not spare their efforts to make this conference a real success.

Comme l'a dit Kofi Annan, ancien Secrétaire général de l'ONU⁵, du temps où je commençais à travailler sur le terrorisme à l'ONU, la victoire contre le terrorisme ne sera possible que si la communauté internationale trouve la volonté de s'unir dans une large coalition.

⁵ Communiqué de presse SG/SM/7977 du 1 octobre 2001

Thank you for your kind attention