

Disrupting the Foreign Fighter Flow: Interdiction and Prosecution

by Jan Schwarzenberg

U.S. persons travelling to other lands to become foreign fighters are a threat to domestic security in the U.S. Numerous reports over the past decade note the presence of foreign fighters arriving in conflict areas such as Iraq and Syria to take part in extremist violence. Over time, the reported number of foreign fighters has continued to mount, with alleged fighters arriving from an increasing number of countries. Extremist groups urge these fighters to continue their extremist violence when they return home and recruit others to their cause. Preventing both their travel overseas and the promotion of violent extremist activity inside the U.S. is essential to maintaining domestic security.

This article focuses on the extent of the foreign fighter problem, and examines the legal challenges to counter that problem. This effort is based on the assumption, which will be demonstrated to be correct, that returning foreign fighters continue their violent practices and seek to spread extremist ideology. The article will conclude with a recommendation to use existing legislation to address the absence of a national strategy dealing with American foreign fighters.

The U.S. lacks an overarching strategy to deal with foreign fighters. Presently the U.S. deals with individual cases as they arise without developing a program to halt extremist recruitment of Americans for terrorist causes. Policymakers have three challenges in confronting the issue of foreign fighters: 1) possessing the legal authority and grounds to identify the would-be foreign fighters and prosecute them before their departure; 2) establishing the extraterritorial jurisdiction to prosecute returning Americans for terrorist actions committed outside the U.S., if not outwardly preventing their re-entry; and 3) resolving these challenges within a constitutionally-protected framework.

Under current existing legislation, law enforcement agencies have the authority to uncover

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and identify potential foreign fighters. In order to obtain convictions, investigations must carefully follow the dictates of recently created counterterrorism laws. Related authorities can also be used to prosecute those who have returned from actually committing terrorist acts overseas. While similar to criminal investigations, there is sufficient difference in the guidelines of counterterrorism procedural rules as to cause cases to be dismissed, if not strictly applied.

Is There Really a Foreign Fighter Flow?

Combatting the flow of foreign fighters must start with understanding the scope of the problem. The criminal nature of foreign fighter activity drives the perpetrators purposefully and intentionally to avoid detection, making analysis difficult, at best.

The International Police organization INTERPOL created a Fusion Task Force in 2002 consisting of counterterrorism officers from thirteen countries. The task force has focused on the threat posed by foreign fighters flowing to the Middle East conflict zones to gain combat experience and training.¹ Since early 2013, INTERPOL has identified over 500 foreigners fighting in the Middle East. INTERPOL Secretary General Ronald K. Noble said there is enough evidence to demonstrate that foreign fighters are coming from America, Europe, North Africa, Asia, and the Middle East.²

In this same timeframe, INTERPOL has issued 812 color-coded notices specific to foreign fighters. INTERPOL notices are alerts sent to all 190 member countries; the color defines what information is being sought on a particular individual. The three countries with the highest number of notices issued referencing foreign fighters are Azerbaijan (210), the Netherlands (94), and Belgium (89.) The remainder emanate from twenty-nine other countries, including the U.S.³

According to Gilles de Kerchove, anti-terrorism chief for the European Union, more than 3,000 European foreign fighters have joined the extremist groups in Syria and Iraq. This statistic, along with an estimate from the Central Intelligence Agency of up to 31,000 foreign fighters in Syria and Iraq alone, prompted the United Nations Security Council to pass a resolution compelling members to prevent their nationals from becoming foreign fighters in Syria and Iraq.⁴

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Countering Foreign Fighters via Law Enforcement

Relying upon multiple sources and cobbling together authorities originally created by other issues produces a multidisciplinary response to the problem. Previously-created laws, intended to target other criminal acts, can now be utilized in this venue. In addition, a series of recently-created laws are also being put to the test to arm law enforcement with the ability to counter terrorist threats. Specifically, several titles under the USA PATRIOT Act (PATRIOT Act) have been instrumental in permitting law enforcement and intelligence agencies to share information. This legislation allows law enforcement to access personal records with relaxed warrant regulations and to waive Fourth Amendment protections without any judicial oversight.

FBI Director James Comey called Syria a safe haven and training ground for Westerners, who emerge with “the worst kind of relationships and the worst kind of training.”⁵ To prevent terrorist recruitment, becoming a foreign fighter must be treated as a crime, and law enforcement must be free to investigate and prevent the

departure of would-be extremists. Returning foreign fighters, despite seeing themselves as supporters of a higher cause, have engaged in illegal activities while abroad. Besides holding them responsible for their foreign illegal activities, prosecution upon their return reduces the risk of their continued terrorist activity in the U.S. When they are treated as criminal suspects

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and not enemy combatants, they are subject to U.S. law. Consequently, law enforcement must ensure interdiction activities strictly adhere to the rules of criminal procedure to lead to successful prosecution and conviction of foreign fighters who are, ultimately, threatening to attack other residents and institutions of the U.S.

Particularly challenging for law enforcement is the apprehension of foreign fighters who have seemingly committed no crimes within the U.S. Activity restricted to conduct in a foreign land, especially in ungoverned, lawless, or stateless areas beyond the reach of U.S. law enforcement, creates jurisdictional and procedural challenges. Topping the list is simply the ability to discern what their activities were in a foreign area. Building such information for eventual prosecution necessarily involves the assistance of intelligence agencies that have their own bin of legal challenges. It was the enactment of the PATRIOT Act in 2001 that permitted enhanced sharing of information between intelligence and law enforcement regarding U.S. persons. Such information had previously been severely restricted, leading some authors to argue it led

to the information gaps that contributed to the attacks of 9/11.⁶ The aim is to ultimately hold the foreign fighters accountable for their overseas activities in order to prevent any continuation or resurrection of their actions back in the U.S.

The Threat Among Us

The issue of foreign fighters is more than a theoretical threat. The White House recently acknowledged Americans had indeed traveled to Syria and Iraq to join the terrorist group Islamic State (ISIS), and some of them had already returned.⁷ This elevated official concern for an ISIS-style attack being conducted within the U.S. by these terrorist veterans. At the time of the statement, since expanded, it was believed approximately 100 Americans had joined forces with ISIS. “It is ... believed that some 40 of those who left this country to join up with [the Islamic State] have now returned to our country,” said Representative Timothy H. Bishop, New York Democrat.⁸

According to FBI Special Agent Jim Davis:

A Minnesota man recruited to fight for ISIS was killed in Syria last month, five years after his high school friend died fighting for the terror group al-Shabaab in Somalia. Still another Minnesota man was apparently killed fighting for ISIS last month, this time in Iraq. As many as 40 other young men from Minneapolis have joined Islamic fighters after they were pulled in by jihadists through social media.⁹

Reportedly, the extent of foreign fighter training and movement is significantly increasing.¹⁰ During the entire decade of the 1990s, according to the Congressional Research Service, between 1,000 and 2,000 Americans traveled overseas to fight for extremist organizations, winding up in Afghanistan, Bosnia, and Chechnya.¹¹

Although an insignificant number when compared to 300+ million residents in the U.S.,

the impact of the actions of even such a small group can significantly surpass any other threat. The nineteen hijackers of 9/11 launched the U.S. into a decade-plus of war and altered our way of life forever. In 2011, four attackers in London killed 52 people and injured another 700. Finally, the 2004 simultaneous Madrid bombings, which killed 191 persons and injured an additional 1,800, occurred just three days before national elections, and the opposing party was swept into office on the hastily-composed promise of withdrawing Spanish troops from the western coalition fighting in Afghanistan. The threat of additional bombings by Spanish Al Qaeda supporters was enough to alter the strategic direction of the Spanish government.

The Tsarnaev brothers who perpetrated the Boston bombings in 2013 were inspired by extremist propaganda, specifically the Al Qaeda on-line English-language magazine. Disaffected Muslim immigrants, the Tsarnaev brothers grew to hate the U.S. for what they perceived to be war crimes committed in the Middle East by the U.S. military executing national policy. Based upon a desire to seek revenge, the brothers planted two bombs detonating seconds apart. Three people were killed immediately; a fourth person, a campus police officer, was killed later during their escape attempt. Another 264 people were injured in the blasts, some severely, suffering traumatic limb amputations. Though acting alone, their actions completely shut down the city of Boston for days. Schools and businesses were closed, public transportation was halted, and residents were restricted to a curfew and were told to “shelter in place” while police hunted the brothers. The far-reaching impact of their actions, motivated by politico-religious beliefs, severely shook the nation.¹²

The Threat of Foreign Extremism to Us

Each of these four examples independently demonstrates what very small groups of

radicalized extremists, two to twenty people, can do to our nation. Furthermore, communications in the modern age allow extremist groups to extend their message and recruitment globally. Via the internet, they can reach across the globe, soliciting funds, materiel, and recruits from sympathizers. By the same means, they can encourage followers to open new fronts of violence in their own countries, attacking the same institutions or enemies. Beginning around 1999, Osama bin Laden was already writing that Al Qaeda needed to recruit westerners, particularly Americans, who could move freely around the world with their U.S. passports, mainly to deliver Al Qaeda communications and manage financial transactions for the group.¹³

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Recent events demonstrate the effectiveness of anti-American propaganda streaming from terrorist organizations overseas inspiring individuals here. Ali Mohammed Brown is charged with murdering a New Jersey teenager. His own statement to police said the act was vengeance for the millions killed in Iraq and Syria by the American government.¹⁴ There is no clear evidence that this act was supported by any particular terrorist group. However, there is a general, overarching message promulgated by terrorist groups, particularly Al Qaeda and ISIS, to seek out American-based followers to attack American institutions and citizens in retaliation for the policies of the American government.

Representing a more direct link to terrorist ideology and support, the perpetrator of the

massacre at Fort Hood, TX, Nidal Hasan, was found to have been in correspondence with an Al Qaeda ideologue. “The threat posed to America’s security by individuals within the United States who support terrorists is very real,” said Bill Lewis, the Assistant Director in Charge of the FBI’s Los Angeles Field Office. “This case demonstrates the process by which individuals living in the United States were groomed and radicalized toward an extremist ideology and, ultimately, planned the murder of Americans.”¹⁵

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Americans who couple ideology with violent acts perfected and honed through combat experience create a “clear and present danger” to the safety and security of the U.S. Although U.S. municipal police are increasingly becoming militarized, they can easily be unprepared for a well-orchestrated, military-style attack by a dedicated, trained, and experienced unit of extremists. Police SWAT teams would eventually win the day, as is usually the case in active shooter instances, but the initial attack would be devastating and effective. The Navy Yard shooter in Washington, D.C., in 2013, killed twelve persons and wounded four others before police killed him.¹⁶ During the 2013 terrorist attack on the Westgate shopping mall in Nairobi, Kenya, it took a combined police and military response four days to sweep through the complex, during which time 67 people were killed by terrorists.¹⁷ The fact that the FBI thinks anywhere from forty to one hundred foreign fighters have returned from war zones is more than enough to wreak havoc in U.S. cities.

Given the potentially deadly consequences, with the 9/11 attacks as evidence, even just forty war-zone experienced and radicalized Americans is too many. Those already returned must be apprehended, and those planning to go must be halted.

U.S. Persons Prosecuted Supporting Terrorism

“Since 9/11, the Department of Justice has prosecuted more than 500 terrorism cases.”¹⁸ Realizing the reality of the threat, the U.S. government has not been idle in addressing foreign fighters. Using a two-pronged approach, the government has sought to both prevent potential fighters from departing and apprehend those returning. Its success is unfortunate testimony of the dramatic size of the problem.

American citizen Adam Gadahn was indicted for treason in 2006. The first American to be so indicted since World War II, Gadahn had converted to Islam and moved to Pakistan. Once there, he joined Al-Qaeda and became an active English-language propagandist for them.¹⁹ Converting to Islam and even travelling to Pakistan, depending upon one’s intent for moving there, arguably, does not meet the tenets of treason. However, actively providing support to Al-Qaeda to further its message and attempting to recruit other non-Arabs to its cause clearly transcends the line between mere thought and actual action. The fact that the U.S. was engaged in active combat with elements of Al Qaeda cements the charge of treason against Gadahn.²⁰

Shannon Conley of Colorado was convicted in September of 2014 of supporting a terrorist organization, specifically the Islamic State. Yet to be sentenced, she faces five years in prison and a \$250,000 fine. Though warned to desist via repeated interviews with FBI agents, she was arrested while boarding a flight leading her, ultimately, to Syria. Conley’s stated goal was to fight with the extremists in Syria. If prevented

from that, her secondary goal was to apply her skills as a trained nurse's aide administering to wounded extremists.²¹

Typical of what extremist organizations seek to recruit, the cases of Colleen LaRose and Jamie Paulin Ramirez demonstrate the tested validity of exercising jurisdiction over acts committed by U.S. citizens outside the country. Both women had travelled to other countries to commit crimes; yet, they were successfully prosecuted for those crimes in the U.S. LaRose was convicted in 2014 and sentenced to ten years in prison for her part in an Al Qaeda plot to kill a Swedish artist who had published a cartoon of the prophet Mohammed. LaRose had also recruited another would-be jihadist, Ramirez, who was sentenced to eight years. Ramirez traveled to Ireland to marry a Tunisian jihadist she had been introduced to on-line by LaRose. What drew particular attention to these cases was the fact that neither woman fit the popular image of an Islamic extremist terrorist. Both women converted to Islam late in life. Both grew up in the U.S. in communities that had no interaction with Muslim refugees. Their immediate friends and families had no idea either had any interest in Islam.²²

Legal Challenges to Halting the Foreign Fighter Flow

There are three concerns centered on the flow of foreign fighter: 1) preventing a U.S. resident from departing to participate as an armed combatant in a foreign conflict area; 2) intercepting and apprehending that U.S. person upon his or her return from having fought in a foreign conflict area; and 3) prosecuting them for violations of U.S. law perpetrated while in the foreign conflict area.

The operational and a legal sides of these concerns must be addressed simultaneously. Discovering the foreign fighter's intent, movement, or actions can each individually and severally establish a criminal predicate for

investigation and prosecution; however, any one of these can be challenged by the constitutional guarantees accorded to persons under U.S. jurisdiction. Satisfying the legal challenge to discovery and intent of the individual solves the operational challenge of interrupting, arresting, and prosecuting that individual.

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The First Amendment protects an individual's thoughts, opinions, readings, and access to information. While there might be an attempt to halt the influx of extremist ideology via the internet under the label of inciting hate crimes, an individual's access to such material is protected. In the case of *Proctor v. Oklahoma*, the Criminal Court of Appeals of Oklahoma opined that a mere thought (*mens rea*) cannot be prosecuted, as it is an individual's right under the First Amendment to freely possess ideas.²³ Implementing that idea, however, (*actus rea*) is the point at which a criminal violation may occur. An important distinction is that a criminal act itself need not occur. Steps taken that are influenced by the thought, in this instance extremist ideology, that lead to a criminal act suffice to meet the parameters for prosecution. Therefore, accessing or possessing extremist materiel is not itself a crime. However, taking steps to put into action any recommendations urged by the extremist materiel can be considered a crime.

Treason is the only crime specifically mentioned in the U.S. Constitution. Article III, Section 3 states, "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving

them Aid and Comfort.” Thus, giving support to an enemy of the country is sufficient to be tried for treason. It is not required for an individual to have actually “waged war” against the U.S., as outlined in the first clause. It also does not require, as courts have upheld, that the U.S. has declared war against a country or entity for treason to be applied to anyone supporting that opposing country or group.

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To “adhere to the enemy” and provide “aid and comfort,” as delineated in the second clause, sufficiently meets the parameters of treason. The Constitution’s definition of treason is codified under Title 18 of the U.S. Code, paragraph 2381, emphasizing that the aid and comfort rendered may be equally within the U.S. or elsewhere. This is further supported by Title 18 of the U.S. Code, paragraph 2339, which criminalizes support to a designated foreign terrorist organizations. Furthermore, 18 U.S.C. 2339 extends jurisdiction over U.S. citizens anywhere such support may have been rendered, including extraterritorially.

In discovering and identifying persons rendering aid to foreign terrorist organizations, Title II of the PATRIOT Act expanded previously limited surreptitious surveillance authority of law enforcement agencies. Under the PATRIOT Act, mere suspicion of supporting terrorism or engaging terrorists is sufficient grounds to seek a warrant via the Foreign Intelligence Surveillance Act (FISA) to review e-mail and phone records. The same reference within the PATRIOT Act also authorizes an FBI agent

to issue a National Security Letter, without recourse to the courts, to obtain financial and other personal records of individuals suspected of involvement with terrorism.

Thus while subscribing to terrorist magazines or accessing terrorist websites is not itself a criminal activity, it can be used as the basis to obtain warrants from a FISA court for further investigation. Factors, such as association with known radicals, espousing radical beliefs in the work place or school, or denouncing government policies toward the Middle East can all serve as grounds for further surreptitious surveillance. The goal for law enforcement is to discover an individual’s intent to either join an extremist organization or at least materially support it from the U.S.

Prior to passage of the PATRIOT Act, a warrant could be obtained from a FISA court only to search for further evidence of foreign intelligence activity already known to be in existence. Because the activity concentrated on foreign agents aiming to harm the U.S., as opposed to criminal activity, a lower standard of proof was permitted by FISA courts to issue a warrant, as opposed to criminal warrants over-riding Fourth Amendment guarantees. A significant change authorized by the PATRIOT Act, however, is the issuance of a FISA warrant to discover if foreign intelligence activity is being conducted. Terrorism based upon extremist ideology stemming from the Middle East is considered a subset of foreign intelligence activity. This gives rise to determining whether lower-standard FISA warrants or stricter criminal warrants should be issued to conduct invasive surveillance of individuals suspected of supporting terrorism.

The second challenge lies in preventing a foreign fighter from re-entering the country. Arriving at a U.S. port of entry possessing a U.S. passport or residency card, the foreign fighter is returning “home.” The question is by what authority may a customs or border patrol officer

even inquire as to the foreign fighter's itinerary and activities during his or her foreign sojourn? Without probable cause or a criminal predicate to act upon, such probing questions apparently violate the Fourth Amendment guarantee to be free of warrantless searches, which include invading a person's privacy regarding his or her personal business.²⁴ Customs officers, however, are imbued with special authority not granted to other law enforcement agents. Specifically, under Title 19 of the U.S. Code, customs officers are authorized to arrest without a warrant any person they believe has committed a felony.²⁵ If in the course of their inquiries as to a returning resident's travels, the customs officer becomes suspicious that the individual may have supported a foreign terrorist organization while abroad, in violation of Title 18 of the U.S. Code, this is sufficient grounds to place that person under arrest. Subsequent investigation will determine if this was in fact the case and establish the grounds upon which to prosecute the individual.

The most important aspect to halting the flow of foreign fighters is the prosecution of individuals who in fact supported foreign terrorist organizations by joining their ranks. Gathering evidence against the individual who has not yet departed the country is relatively simpler than doing so in the case of a person overseas. However, the greater issue is driven by the question of by what authority may the U.S. hold an individual accountable for his or her actions outside the country? The answer lies again in Title 18 of the U.S. Code, in article 2339B. Article 2339B is a sub-section of the article prohibiting support of a foreign terrorist organization, in which support is unaffected by whether or not the U.S. is actively engaged in conflict with the terrorist organization.

Supporting terrorism anywhere at any time is the crime; it does not need to be a terrorist group attacking Americans or American interests. This definition opens the door to

assisting partner nations suffering a terrorist problem even though the terrorism is locally confined and not threatening the U.S. in any way. Article 2339B does not specify only foreign terrorist organizations attacking U.S. persons or interests; it simply states foreign terrorist organizations, intentionally implying any terrorist organization anywhere.

Article 2339B also delineates the difference in its application toward U.S. and non-U.S. persons. The article is careful in its wording; extraterritorial authority extends to U.S. persons, both citizens and permanent resident aliens, no matter where they are in the world conducting the activity that establishes the offense of supporting terrorism.

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U.S. citizen John Walker Lindh was captured in Afghanistan and taken into custody after the prisoner riot that killed former Marine and CIA case officer Michael Spann. American born and raised, Lindh was returned to the U.S. for prosecution. Lindh embraced Islam as a young teenager, learned Arabic, traveled to Yemen and then Pakistan to study. He crossed into Afghanistan in early 2001 to join the Taliban. At no time did Lindh commit any potentially criminal acts within the U.S., yet he remained subject to U.S. jurisdiction for all of his activity in Yemen, Pakistan, and Afghanistan. Accused of terrorism, treasonous acts and supporting those who attacked America, Lindh accepted a twenty-year sentence in a plea bargain that dropped the terrorism charges and avoided a trial. He is due for release in 2019.

Article 2339b also extends jurisdiction over

supporting terrorism by non-U.S. citizens if they should be brought to or found in the U.S., no matter that the offense occurred at some time in the past and "...even if the conduct required for the offense occurs outside the United States."²⁶

This clause can therefore justify extradition of any individual of any citizenship to the U.S. from any country in which they might be hiding, so long as the U.S. has a pre-existing extradition treaty with that particular country. It can also be used to prosecute an individual who has otherwise taken up peaceful legitimate residence in the U.S., perhaps having sought political asylum as a refugee from a conflict zone.

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An example of exactly this capability was the conviction in 2011 of Waad Ramadan Alwan of Bowling Green, KY. Alwan immigrated in 2009, claiming asylum, fearing persecution if he remained in Iraq. Yet after a year-long investigation, his fingerprints were found to match those lifted earlier from an unexploded improvised explosive device (IED) targeting U.S. soldiers in Iraq. At the time that Alwan constructed and emplaced the IED, he had no connection to the U.S. He only became a legal resident alien some years after that incident. He also admitted to having placed ten or eleven other IEDs attacking U.S. soldiers and to having fired weapons at U.S. soldiers in Iraq. Because his previous act constituted the offense of supporting a foreign terrorist organization and he was now in the U.S. and subject to U.S. law, the conviction under Article 2339 held.

Alwan came to the attention of law enforcement because he recruited other Iraqi

immigrants in Kentucky. He purchased what he thought were sophisticated, though secretly inert, weapons that were then shipped, he thought, along with thousands of dollars in cash, to insurgents still in Iraq. Alwan was sentenced in 2013 to 40 years in prison with supervision for life after his release. He escaped the life sentence handed down to his co-defendant only because he assisted the investigation and prosecution against his co-defendant.²⁷

Counterterrorism versus the Constitution

As demonstrated above, there presently exists sufficient means for law enforcement to investigate and prosecute American residents supporting foreign terrorist organizations. Laws are already in place that, while not specific to any one group or organization, have kept pace with the evolving face of terrorism sufficiently in their generic application to cover most instances. Legislation created in the U.S., however, only applies to persons brought under its jurisdiction. This jurisdiction has been successfully applied based not on locus but status, in that U.S. persons anywhere in the world can be held liable to U.S. law extraterritorially.

Not addressed in this equation is the non-U.S. person conspiring or conducting, terrorist activities against the U.S. from outside the country. How and where does that person fall under a legal system of prevention? If made known to that country's government and law enforcement agencies, the terrorist's activities might be just as quickly interrupted. This is partially the function of the INTERPOL colored notices mentioned earlier. The notices serve to alert member countries that an individual resident in their country has been suspected or openly implicated in illegal activity elsewhere in the world.

The notices alone, however, are not sufficient to the task of interrupting foreign fighters. To equally address terrorism transnationally,

nations must develop international conventions. It serves no purpose for the U.S. to develop encompassing laws regarding the flow of foreign fighters if other countries do not have similar laws that can be equally enforced. The U. S. can enter into bilateral negotiations with individual countries which, even inadvertently, are supporting foreign fighters, be it with safe passage or assembly. Proposing resolutions through international bodies such as the United Nations, Organization for Security and Cooperation in Europe, or the Association of South East Asian Nations reaches a much larger audience, rewards the effort exponentially, and creates a unified blockade globally.

President Obama recently addressed the United Nations Assembly to propose a resolution aimed specifically at halting foreign fighters. The resolution imposes a global travel ban on persons intent upon engaging in combat in foreign areas. Through this resolution, each member country is obliged to halt or prevent the transit through its territory of anyone, of any nationality, enroute to being a foreign fighter. The resolution also calls on the UN to freeze monetary assets of foreign fighters maintained by any signatories to the resolution.²⁸

The challenge in such a resolution lies in its enforcement. Each nation would need to create and enact new laws and subsequent regulations to comply with the resolution. The interpretation and application of the resolution would be subject to local culture and societal mores. One avenue under discussion is to apply economic sanctions against countries that do not comply with the resolution or alternatively fail to enforce the laws.²⁹

By spreading the responsibility of halting foreign fighters around the globe, the aim is to disrupt the cycle: radicalization at home, travel to a conflict zone in support of a terrorist organization, and then returning home again. Each UN member nation signatory to this convention must assume responsibility

within its own jurisdiction to take steps to disrupt that cycle. These can include efforts to counter the radicalization of the youth, prevent travel to conflict zones for the purpose of supporting terrorist organizations, and capture those returning from conflict zones trying to innocently or surreptitiously re-enter their home nations. According to National Security Adviser Susan Rice, the resolution “will increase the obligations on states to try to prevent and deter the flow of foreign fighters. It will also place new emphasis on the challenge of countering violent extremism in one’s own domestic context.”³⁰

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Subsequent to President Obama’s appearance and presentation before the UN, the UN Security Council unanimously adopted the resolution. UN Secretary-General Ban complimented the resolution’s quick passage. Citing statistics from the UN’s own Al Qaeda-Taliban Monitoring Team, Secretary-General Ban noted over 13,000 foreign fighters from more than 80 member states had joined ISIS since the eruption of fighting in Syria.³¹

Conclusion

We live in a dangerous world that demands that policymakers think critically and anticipate challenges presented by those would seek to do us harm. Today’s terrorist groups have developed extremely sophisticated public messaging. They have proven themselves to be very adept at utilizing social media. They manage to reach out across the world to Muslim communities in most countries. Like

any international conglomerate advertising to a global market, they have succeeded in swelling their ranks by recruiting Muslims around the world to join them. In essence, the radicalization of erstwhile moderate Muslims is done in advance via the web. Extremist groups no longer need to take time to cultivate recruits from among their own populations. Via online radicalization, recruits are motivated at home and arrive ready to commit themselves to the terrorist causes.

The threat of the foreign fighter to the homeland can be halted with aggressive law enforcement functioning fully within the dictates of constitutional law.

International foreign fighters bring exponential advantages to the terrorist leadership. Even those unskilled in terrorist activity bring a passport and, in some cases, an ethnic background with features not normally associated with Middle East terrorists. Following adequate training and experience, these foreign fighters can join the front lines in the Middle East, causing confusion to established forces combating the terrorist ranks. However, Al Qaeda and ISIS would prefer they return to their home states, passing easily through immigration and customs controls as returning residents, there to initiate asymmetric warfare pulling that state's attention and resources away from the front line fight in the Middle East. This attacking in the rear, so to speak, can deliver huge dividends to the terrorist movement by evincing public emotion which, in turn, can influence the government to alter its foreign policies and withdraw from areas the terrorists are contesting.

Without access to terrorist personnel rosters, it is difficult to determine the exact national origin of many foreign fighters. This

can only be discerned by collective information sharing among countries banding together to halt terrorism. Having done so, conservative estimates support there have indeed been U.S. persons joining terrorist ranks in different conflict areas. Worse yet, the practice has existed for such time that many of those U.S. foreign fighters have now returned to the U.S. and to varying degrees are unaccounted for. Being in some cases unknown and un-located, their continued communication with and support of extremist groups remains hidden. Whether their continued support is restricted to shipping funds and materiel, recruiting new foreign fighters, or actively plotting attacks within the country remains an open question.

The threat of the foreign fighter to the homeland can be halted with aggressive law enforcement functioning fully within the dictates of constitutional law. At all levels, the cycle of a foreign fighter can be interrupted. De-radicalized returned foreign fighters, like former gang members turned community outreach counsellors, can disabuse would-be terrorist supporters of any romantic or ideological notions associated with their favorite terrorist organizations. Existing legislation cloaks federal investigators with the authority to uncover potential foreign fighters and establish their intent to support terrorism versus merely discussing the terrorist movement as a political debate. Such information is now sufficient to halt a foreign fighter's planned departure to join a foreign terrorist organization. As has been shown, legislation is in place to extend jurisdiction to the extraterritorial acts of U.S. persons, holding them accountable for terrorist support outside the country and prosecuting them upon return for those activities.

The next step to halting foreign fighter flow is for countries around the world, particularly those most affected by their citizens becoming foreign fighters, to implement the UN resolution at the national level to halt the departure of their

citizens to become terrorists. Countries that presently act as transit routes for foreign fighters need to implement laws that differentiate between the occasional tourist and those bent on evil intent and purpose. The sharing of information extends as well to terrorist acts committed in third countries, so that independent nations may prosecute and incarcerate their citizens upon return.

Successfully dissuading persons from succumbing to the extremist propaganda, halting the departure of would-be foreign fighters, punishing them for their acts upon their return from conflict zones, and working in close collaboration with partner nations together all enhance the domestic security and international security by breaking the cycle of the foreign fighter flow, preventing further terrorist acts from being committed. **IAJ**

NOTES

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