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Children's rights, Counter-terrorism Legislation and Racialized Security Goals: The Case of Ms Shamima Begum and of the Foreign ISIS Children Detained Indefinitely and Illegally in Northeast Syria.

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Abstract
After the territorial defeat of the Islamic State of Iraq and Syria **(**ISIS) thousands of women and children who were associated with ISIS have been interned and detained in various camps in northeast Syria. The present article analyses the story of Ms Shamima Begum, a British teenager who, in 2015, was groomed and trafficked to Syria to marry an ISIS fighter and the case of thousands of foreign children, who are currently detained indefinitely, for their perceived links with the terrorist organisation. The investigation will be carried through the lens of international law by exploring whether the tenets of children's and human rights have been side-lined in favour of short- term security concerns, possibly buoyed by practices of discrimination.

Keywords: Anti-Muslim racism, child-soldiers, children's rights, terrorism, repatriation.

Introduction

Law is built by humans using the theories they have. When those theories were racist, laws were racist. When theories of sex and gender discriminated against women, so did the law. Fortunately, for the progress of humankind and the development of their civil societies, there are many cases of well-thought and extremely forward-thinking theories that paved the way for elaborated and progressive laws and international treaties: the Convention on the Rights of the Child (1989)[1] is a case in point.

On the other hand, there are cases of nebulous, weak and sometimes conservative theories that contributed to the elaboration of patchy and

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complicated (rather than elaborated) laws: the international counter-terrorism legislation is an example of such precarious theorisation.

It becomes enormously problematic and a possible source of unwarranted sanctions when the two aforementioned bodies of laws coexist as a framework for the legal (and humanitarian) treatment of children who were recruited as child soldiers by a terrorist organisation, ISIS, or who were born under the ISIS regime, conducing to likely violations of human and children rights, very often buoyed by practices of racial profiling and gender discrimination.

On March 23 2019, the Islamic State of Iraq and Syria (ISIS) was finally defeated, and the SDF[2], a non-state actor declared victory over the terrorist organisation. Its demise has led to the incarceration of over 11,000 male fighters; additionally, thousands of women and children previously affiliated with ISIS have been detained in refugee camps in Syria, Iraq and Libya.

The final victory over ISIS has produced a dire humanitarian crisis in the detention camps, where thousands of women and young children endure "appalling and inhumane conditions of shelter, health and hygiene"[3]. Additionally, violence against women and girls has remained systemic: instances of domestic and sexual violence, femicides, forced child marriages, and the absence of access to education characterise the camps environment[4].

In northeast Syria, there are three camps: Ain Issa, al-Hawl and Roj. The largest is al-Hawl, and the SDF runs it.

As of March 2024, there are an estimated over 59.000 women and children at the camp. Around 6500 are non-Iraqi and non-Syrian women and children; they are housed in a foreigners' annexe and they are not allowed to leave al-Hawl camp because of their perceived dangerousness.

Al-Hawl camp's children make up about two-thirds of al-Hawl residents[5]. Some are orphans, and all have witnessed violence, and some have been taught to practice it. They were employed under the Islamic State as scouts, spies, cooks and bomb planters and sometimes as fighters and suicide bombers. Children have been traditionally central to ISIS' military strategy and its aims for self-perpetuation. At the height of ISIS' control in Syria and Iraq, children were forced to attend ISIS-administered schools and were subjected to indoctrination through its imposed Salafi-Jihadi curriculum, encompassing ideological precepts and military training[6]. However, not every child was involved in terrorist-related activities. A

majority of the children had no choice but to live under ISIS, and many were even born into the regime.

Foreigners in the camp include people from about 60 countries, including, among others, many European ones (the UK, Germany, France, Belgium, Sweden, Denmark, Norway, the Netherlands, and Finland), together with Algeria, Australia, Canada, Kosovo, Russia and Tunisia.

The Democratic Autonomous Administration of North and East Syria (DAANES) has repeatedly declared that it has no intention or financial resources to prosecute the people detained in the camps; it has persistently asked home countries to repatriate their citizens to be eventually tried under domestic law.

The pernicious stigmatisation as terrorists has made the repatriation of ISIS wives and ISIS child soldiers difficult, slow and inconsistent; very often, European and non-European countries have decided to strip their citizens of their nationality, leaving foreigners (including children) in these detention camps stateless and in legal limbo. Child rights experts insist on the risk of double victimisation for the children who, after being abducted, recruited, used and exposed to violence at an early age, continue to live in extremely dire conditions, vulnerable to the teaching and the indoctrination of the Islamic State surviving members.

This article examines the case of Ms Shamima Begum, a British teenager whom I met during my ethnographic work in the UK and who, in 2015, was groomed and trafficked to Syria to marry an ISIS fighter and successively stripped of her British nationality. It also analyses the cases of the foreign children (former ISIS child soldiers or born under the ISIS regime from foreign parents), who are currently interned indefinitely in camps in northeast Syria.

It proceeds by discussing relevant international law, addressing human rights, children's rights and counter-terrorism.

It then concludes by arguing that if home countries refuse to repatriate ISIS children and former ISIS child soldiers such as Ms Shamima Begum, this should satisfy the eligibility conditions for asylum in order to pursue a very much-needed programme of rehabilitation elsewhere. It also suggests that the lack of a unified policy approach towards their rehabilitation (through repatriation) could suggest the existence of alarming practices of racial profiling against them, especially on the European countries' part, who have been the least active and most reluctant in the repatriation process.

2. Methodological note

This study employs a combination of approaches deriving from political science, sociology and sociology of law.

During five years of fieldwork (2004–2009) among radical Islamist parties in London, Luton, Burnely, Birmingham, and Southend, I took part in many meetings as a non-participant observer and interviewed 80 party members of al Ghurabaa and the Saved Sect, including their leaders, Anjoum Choudary and Abu Izzadeen.

My interviewees were all male, the majority were born and brought up in the UK, resided in the Greater London area and were aged between 16 and 45.

When I embarked upon this fieldwork, my main concern was that experience is never objective. I did not start from a theory or from a survey of the existing literature, but from the fieldwork, favouring an approach that would let theory emerge from an analysis of the data: the ground theory approach[7] .

My objectives were to learn from the al Ghurabaa and Saved Sect members about their political discourses and practices and to find out how their Islamism was practised, in the context of the relations of power with the UK government. I began with a prepared list of relatively open-ended questions, to enable me to find out more about each interviewee, relating to their backgrounds and, crucially, the reasons why they had joined al Ghurabaa and the Saved Sect.

There were also some practical difficulties involved in the project, related to both my status as a woman and a non-Muslim, inquiring about their idea of the "political".

In this instance, I found the suggestions of the feminist ethnography very useful in tackling the dilemma of how to conduct the practicalities of the relationship between the researcher and the 'researched'. A feminist ethnography entails unstructured or semi structured interviewing. One of the objectives of feminist interviewing[8] technique is to build a more sympathetic relationship between the researcher and the people who are sharing their stories.

Sometimes the interviews turned into conversations, specifically with the younger members who did not want to be quoted in the first place. For ethical and moral reasons, I report our conversations using pseudonyms, with the single exception of the young Khuram Butt, guilty of the London Bridge attack. Those field experiences allowed me to learn and

understand much. Primarily, I grasped and glimpsed something of the complexity of their situation: the overlapping levels of their identities, which, as young boys born and bred in the UK, they had to cope with.

Their Islamist discourses and practices were primarily lived and experienced in a country that had no Muslim background, and which my interviewees felt and represented to themselves as a country where they were members of a minority, subject to different practices of discrimination.

If part of the present study is based on my ethnographical research in the UK and the analysis of its rich data, the rest is an examination of the complicated and uneven relationship between the International Counter terrorism legislation, the International Humanitarian Law and the international documents and the Conventions that enshrine the rights and freedom of human beings. In particular, the analysis is focused on the application of international anti- terror laws vis a vis the Convention on the Rights of the Child and its Optional Protocols, the Universal Declaration of Human Rights and the 1951 International Convention on Refugees.

In relation to the case of Ms Shamima Begum and the similar cases of the foreign ISIS children detained in North East Syria, the present study is determined to assess the extent to which the tenets of children and human rights have been sacrificed in name of national security. This article also invites a debate on the possible practices of racial profiling that they might have affected the way states of nationalities have dealt with the above mentioned cases, enabling a politicized misuse of counter- terrorism law and infringement of fundamental rights. The present article also intends to propose a different perspective, by suggesting that Ms Begum and the numerous foreign ISIS children detained indefinitely in North East Syria are primarily victims of terrorism, rather than its perpetrators. The current refusal by States of nationalities to repatriate them favour a secondary form of victimization that inflates- instead of breaking- the circle of terror and terrorism.

3. The story of Ms Shamima Begum.

I met Ms Shamima Begum in 2006 when she was very young, while I was conducting my field work with Islamist activists in the UK[9] .

I met her at her family home in Bethnal Green (East London), where she lived with her immediate family and a young cousin, my interviewee,

who was by then a member of al Ghurabaa, a radical Islamist party banned in July 2006, under the Second Terror Act.

It had been quite common for me to conduct interviews at the interviewees' family homes; from a methodological point of view, by adopting a feminist ethnography, it is a familiar environment where the ensuing interviews and conversations can proceed in a relaxed manner, with the opportunity to observe the subjects of study interactions within the family unit.

What has never happened during my five years of field work is that a child had asked to participate in the conversation by asking questions about Islamism as a concept and about practices of anti-Muslim racism in the UK. Her mother did not allow Shamima to sit with her cousin and me during the interview and decided to usher her out of the room by claiming that "those conversations and those things are not for girls like you".

After the end of the interview, I left her house with a fond memory of her family's kindness and hospitality; above all, her great curiosity and very inquisitive eyes stayed with me for a long time. I then reflected upon the fact that young girls and children like Shamima experience and learn of practices of sexism first and foremost within the quiet domesticity of their family life, where the male members (like Shamima's cousin) could pursue political passions and activism, that were considered unsuitable for women and young girls. I also hypothesised that later on in her life, her experience of the national institutions and the civil society in the UK would have provided her with other kinds of challenges and levels of discrimination[10] that, coupled with those within her private sphere, would have positioned Ms Begum at the inconvenient intersection of two kinds of racisms: a gender-based one and an anti-Muslim one.

In 2015, Shamima, together with two of her friends, Kadiza Sultana and Amira Abase, both 16 years old, had left the UK, flying to Turkey first to reach Syria to join ISIS.

I felt extremely worried about her and surprised that her relatives, her school teachers and also the UK authorities had been incapable of preventing her and her school friends (three minors) from leaving the country to join a terrorist group.

At the beginning of 2019, Ms Begum was found by a *Times* journalist in a refugee camp in northeast Syria, pregnant with her third child after having lost her other two children due to the camp's unsanitary conditions and lack of aid and primary health care.

In February 2019, the UK Home Office and the then home secretary Sajid Javid stripped Ms Begum of her British citizenship on the grounds that she constituted a risk to national security, leaving her stateless, as Ms Begum did not hold any other nationality. According to the British Nationality Act (2014), the Home Office can revoke British nationality on various grounds. Between 2018 and 2019, 250 people have been stripped of citizenship by the UK government. Although the Home Office refused to identify how many of these people were related to ISIS and how many of them were minors, it is known that all of them were members of a minority group, that none of them held dual English and Israeli passports, and none of them had been made stateless as they held double nationality[11].

She has also been refused entry into the UK to stand trial and appeal against the UK Home Office's decision to denationalise her. In February 2021, even the UK's highest court denied her bid to return home to contest the deprivation.

In the meanwhile, she lost her third child, Jarrah, due to a severe lung infection contracted in the camp.

Ms Begum has been interviewed several times by journalists and documentarists[12]. What emerged from her account of her life under ISIS is that she did not become a wife by choice, but she was coerced into joining ISIS, into marrying a foreign fighter and into witnessing people being violated, tortured and decapitated, causing her enormous distress and the development of a severe form of PTSD.

In this regard, the political decision taken in 2019 by the Home Office to strip her of her nationality, to make her stateless without any sort of protection by adducing reasons for the potential threat that her presence in the UK could pose to the national security, becomes difficult to understand and above all to justify. Her treatment also dangerously overlooks the fact that ISIS child soldiers, as she was biographically when she travelled to Syria, can also be trafficked, and thus, they are victims of terror fighters rather than their supporters or loyal followers.

In Ms Begum's case, it is a matter of public record that she was recruited online by a well-known female ISIS recruiter before she went to Raqqa in 2015 at the age of 15. Upon her arrival, she was put in a house for young women and married off to an adult Dutch fighter within one week. She was a child bride.

From a legal point of view, it should not be difficult to establish that Ms Begum's case was one of human trafficking. If ISIS recruited and

transported her with the specific purpose of exploiting and abusing her, this means that she was trafficked and treated abusively. Unlike with adult victims, the means by which it happened, such as grooming, do not need to be proven as a minor cannot ever consent to their exploitation even if they seem to have agreed to travel to a terrorist organisation[13].

The UK media have instead rushed malignantly to label Ms Begum as an "ISIS bride", "terror wife", and "runaway teen" by ignoring the fact that at 15, Ms Begum could not legally make any choice, such as travelling to Syria and getting married. Her condition was one of extreme vulnerability that would have required protection by the UK official authorities rather than punishment, de-nationalisation and possibly racial profiling.

What sets a dangerous precedent in terms of violation of human rights is that governments do not seem to investigate whether trafficking occurred in ISIS international recruitment and under the caliphate itself. The common counter-argument that it is extremely difficult to collect evidence abroad, specifically in a geographical area like northern Syria afflicted by an ongoing civil war, does not apply to Ms Begum's case, as some evidence of her initial recruitment can be readily found within her home country's jurisdiction. In this regard, her prompt repatriation, including interviewing her, could have helped collect more evidence of ISIS trafficking strategies, and it could have potentially saved a larger number of victims of trafficking. Unfortunately, for countries grappling with how to deal with their citizens who are allegedly linked to ISIS, whether someone is trafficked and can be repatriated seems to depend on who it is that is being exploited.

In 2002, three members of the radical Islamist party Hizb ut Tahrir UK (HT), British citizens Maajid Nawaz (23), Reza Pankhurst (26) and Ian Nisbet (27), were arrested in Egypt while canvassing for HT, a party outlawed in Egypt as a terrorist party and only recently banned in the UK as an extremist party[14]. Its political programme is based on the idea that the only legitimate form of government for Muslims is the caliphate; HT members' activity is devoted to the institution of a caliphate government in the Middle East by overturning the "illegitimate secular regimes" [15]. HT's manifesto is very similar to that of ISIS, although it is unclear whether HT would use terrorist attacks to achieve its political goals. Maajid, Reza and Ian were sentenced to prison in Egypt, charged with attempting to overthrow the state and preparing terrorist activity [16]. The British

government led by Tony Blair, who had fully embraced ideologically and politically the War on Terror, together with Amnesty International, conducted a complicated and prolonged diplomatic negotiation with the Egyptian authorities for their release: successfully, after four years, in March 2006 Maajid, Reza and Ian returned home to the UK. As of December 2023, Reza and Ian were still members of the HT UK executive committee, while Mr Nawaz has recused the party on the grounds that it is a radical anti-democratic party whose political activity contributed to the radicalisation of young Muslims in the UK.

By comparing the stories of the three (adult) radical Islamists and the support they received from the British authorities and the public after their imprisonment in Egypt with the story and the ongoing imprisonment of Ms Begum, whose rights have been taken away due to a coerced choice she made when she was a minor, it is reasonable to argue that Shamima as a young woman seemed to have been twice the victim of widespread practices of sexism and racism, in the UK (as well as under ISIS); it is also possible to argue that the definition of terrorism in relation to an event, and the related representation of victimhood in relation to a normative subject of rights are intrinsically political choices, depending on who it is that is being allegedly terrorising, and who it is that is being terrorised and victimised.

In 2021, in Newcastle (UK), the public authorities managed to successfully prosecute a sex trafficking gang whose victims, young Eastern European women, were described as "vulnerable preys of an organised, cynical systematic organisation"[17]. This condemnation of sexual exploitation should have been applied to Ms Begum's case, and yet the UK Home Office, rather than supporting and protecting Ms Begum as a child who was groomed online by a criminal group known for its predation[18] has decided to deny her the rights to repatriation, rehabilitation, recovery and reintegration.

The key to anti-trafficking frameworks is that trafficked persons are recognised first and foremost as rights holders, including by having a right to remedy for the government's failure to exercise due diligence to prevent and investigate their being trafficked abroad to proscribed groups. In the context of terrorism, as in the case of Ms Begum, the identification of victims of trafficking implies that there are a certain set of guarantees that are designed precisely to keep their rights as trafficked persons intact in situations of forced criminality[19].

Trafficked persons are often forced to commit crimes linked to their trafficking, such as undocumented labour or sex work; for this reason, the EU Anti-Trafficking Directive (2005)[20] and the anti-slavery protection under British law agree that trafficking victims should not be held liable "under criminal, civil or administrative laws" for unlawful activities that are either a direct consequence of (for adult victims) or "related to" (for child victims) having being trafficked; above all, this guarantee of non-punishment should apply "regardless of the gravity or seriousness of the offence committed" (Article 82 (2)). In relation to child recruits to terrorist groups like ISIS, the CRC, its additional protocols and the ILO Convention 182 require that their involvement in "criminal activities shall not undermine their status as both a child and a victim or their related rights to special protection"[21].

The decision to strip Ms Begum of her citizenship by making her de jure stateless and more vulnerable to future abuses is a sanction that violates the non-punishment guarantee for ISIS child recruits and for ISIS recruits who were trafficked.

In February 2023, the Special Immigration Appeal Commission (SIAC) decided to uphold Javid's ruling and although it had acknowledged that there was credible suspicion that Ms Begum "was recruited, transferred and then harboured for the purpose of sexual exploitation", that was "insufficient" for the commission to deem the home secretary's decision unlawful, in its ruling[22].

What the home secretary's decision appears to have ignored is that his decision has resulted in a form of double punishment: unwarranted sanctions against trafficking victims in situations when such penalties are on their terms also independently antithetical to human rights, by denying the human rights of those who are and were once victims of terrorism and trafficking.

Besides a legal standpoint, there is also a long-term security consideration that the British government appeared to have neglected in relation to Ms Begum's case.

My long ethnographic work with radical Islamists in the UK and the analysis of the relative data have revealed that the process of radicalisation among young people and young activists occurred primarily socially before assuming any ideological character. Only later in their lives did the Islamists interviewed decide to embrace a *radical* ideology that seemed to make sense of their daily struggles.

Based on my numerous conversations with Mr Khuram Butt, guilty of the 2017 London Bridge terror attack, I argue that what pushed him to choose violence over peaceful political means was the firm belief that the society he lived in was so corrupt that it legitimated and justified the discrimination and forms of injustice he had experienced as a Muslim[23].

In relation to Ms Begum and her tragic life story, it is undeniable that she feels—as she declared during an interview[24]—victimised as a woman and as a Muslim, deprived of any rights as a stateless person and above all of the possibility of pursuing a programme of rehabilitation for a flourishing life.

To a certain extent, she might consider that the Islamist propaganda she fell for before being trafficked to Syria, which depicted Britain as an anti-Muslim country, where Muslims and their *Muslimness* must be eradicated, where Muslims were constant victims of violations and abuses, was not totally unfounded in light of her life events[25].

It is also easy to envision, based on my ethnographical experience, that cases like Ms Begum's can be masterfully capitalised by eloquent Islamist leaders in order to galvanise their acolytes towards political plans of revenge and violence in the UK as well as in the camps where young people like Shamima are detained illegally.

What those considerations could suggest is that the circle of violence and insecurity within the social fabric thrive primarily on injustice and lack of reparative justice for victims like Shamima. Short-term security policies like those of de-nationalisation would not make a country and a society more secure and free from terrorism; quite the opposite, these policies contribute to making a country more vulnerable to future disruptions of democratic life and to the spectre of violence.

The British government could have engaged Ms Begum in the fight against terrorism by sharing her story as a basis to trigger public discussion on human rights, the rule of law and democratic values, aiming at fostering citizens resistant to terrorism recruitment. Her illegal detention in a camp in Syria and her condition as a stateless person (not to mention her traumatic experience of being a victim of gender-based violence committed by terrorists) make her rehabilitation impossible, against what the international humanitarian laws and Security Council Resolutions oblige its member states to do[26]. In addition to that, her life story could become a tragic case of an endless cycle of gender-based violence and discrimination,

where both an official government (the UK) and a terrorist group (ISIS) paradoxically seemed to have acted jointly.

4. International Humanitarian Law, Children's rights and Counter-terrorism legislation.

Given that children (and women) have been deprived of their liberty and they live in overcrowded and unsanitary conditions without procedural guarantees under the authority of SDF, it is crucial to understand the grounds upon which they are held, as this also contributes to framing their home country's obligations.

Without wanting to delve into the complicated subject of the international law regulation of the procedural aspects of security detention in armed conflicts and non-international armed conflicts (NIAC), what is worth highlighting in this context is that the international humanitarian laws "do not constrain States detention power" and states are thus free to act in accordance with their own national law and policy choices[27].

Since in NICAs, all detention issues fall within the sovereign interests of a single state, "domestic law applies to detention ground[s] and procedures tempered by human rights law obligations"[28]. This implies that any deprivation of liberty, including internment, must be based on grounds established in law, in addition to being non-arbitrary and in line with existing treatment standards and procedural safeguards, including the right of *habeas corpus*, the right to be promptly informed of the reason of the detention, access to a lawyer, and the "right to periodic review of the necessity for continued detention, in case of security detention"[29].

In relation to the children, their detention in northeast Syria is exclusively based on the claim that they pose a security threat to the host country and their home countries[30], a condition that would necessarily require a specific determination on an individual basis and cannot be assessed collectively on the base of a connection, ascertained or otherwise alleged, with a terrorist organisation or a foreign terror fighter.

The Convention on the Rights of the Child, the most comprehensive treaty protecting children worldwide, also addresses situations of children in armed conflicts, especially those used in combat zones. Articles 39 and 40 describe states' commitment to promote the recovery and social integration of child victims in armed conflict. Recovery and reintegration "shall take place in an environment which fosters the health, self-respect and dignity of the child"[31]. This obligation is mirrored and reinforced by the

text of the two principal resolutions on Foreign Terror Fighters (FTFs) which specifically ask member states to develop rehabilitation and reintegration strategies, targeting not only returning FTFs but also their family members, especially children[32] . Moreover, the extraterritorial application of the CRC and its optional protocols (OPAC) has been particularly emphasised with regard to the recruitment and use of child soldiers. This is particularly relevant in relation to the case under scrutiny, as the defeat of ISIS has not eliminated the risk that children left without any protection could be recruited by armed forces and extremist groups.

The foreign children at al-Hawl camp are an extremely vulnerable population, at the intersection of two kinds of vulnerabilities, one real and another representational: they are children, and they are represented as terrorists and ISIS affiliates, despite the fact that the majority of them were born into ISIS or introduced to ISIS by their parents; their capacity to choose to "join" ISIS was extremely limited by their age and by the circumstances. The UN has rightly emphasised that "the recruitment and exploitation of children by terrorists and violent extremist groups is to be considered a serious form of violence against children"[33]. Consequently, it is reasonable to contend that children recruited by terrorist groups like ISIS or born under their brutal regime should be treated first and foremost as victims rather than perpetrators or active terrorists. Additionally, the CRC, together with UN guidelines, stresses that at least up until 18 years old children are often understood not to be able to exercise meaningful choice, even if they claim to act on their own. This consideration becomes crucial in relation to the fact that the stigmatisation of the children of ISIS as *terrorists* puts them at high risk of being ostracised by their communities: as a matter of fact, children detained at the al-Hawl camp and in the other two camps are already subjected to forms of secondary victimisation.

The UN takes the very enlightened and progressive position that recognising children who participated in armed conflicts as victims rather than combatants is justified: this provides children with crucial access to the rights of the victims of crime by granting access to specific rights, like the right to repatriation and rehabilitation.

Security Council Resolution n. 2178 (2014)[34] and Security Council Resolution n. 2396 (2017) have jointly emphasised that "there should be a presumption against the prosecution of children and should be treated primarily as victims"[35].

Resolution 2396 (2017) requests member states to assess and investigate individuals whom they have reasonable grounds to believe are terrorists or foreign terrorist fighters and to "distinguish them from other individuals, including family members who may not have been engaged in foreign terrorist fighter related offences"[36].

In addition, the resolution underlines that "women and children associated with foreign terrorist fighters require special focus when developing tailored prosecution, rehabilitation and reintegration strategies" by stressing the importance of "assisting women and children associated with foreign terrorist fighters and who may be victims of terrorism"[37].

It is crucial to emphasise that the demographic cohort of al-Hawl (as in the other two camps) is greatly diverse, encompassing a spectrum of radicalised and non-radicalised individuals, both perpetrators and victims of ISIS crimes, including those coerced to abide by ISIS governance (as in the case of Ms Begum). Nevertheless, despite constituting a small minority, ISIS supporters are still very active, especially at al-Hawl, by wielding a disproportionate level of influence on the very young camp residents that may facilitate the spread of extremist ideology and lead to child recruitment and radicalisation. This suggests that the home country's inclination to classify all camp residents as a security threat and "terrorists" in order to justify their refusal to repatriate them has proven highly detrimental and counter-productive in terms of the fight against terrorism and plain violation of UN Security Council Resolution 2396.

Even for children accused of crimes related to terrorist organisations, the prioritisation of non-judicial measures, rehabilitation and reintegration is necessary in order to prioritise children's best interests. Additionally, children should have access to facilities that provide health and human dignity[38].

The squalid conditions of the al-Hawl camp, combined with the international outcry regarding the humanitarian crisis these children face, demonstrate that the children are not being treated with dignity and respect at the camp. It is also crucial to highlight that "not all the children de jure can be considered to have the capacity to commit crimes"[39]: there is no presumption of guilt that applies to these children as a population as there is no requirement under the universal counter-terrorism instruments to criminalise association with or membership of a terrorist group[40]. This should constitute enough evidence that the detention of children at the al-

Hawl camp for five years now violated the international norms delineating the correct way to detain them, and this should constitute a major concern for their home countries.

There is a further consideration to make concerning the extraterritorial application of human rights treaties following the likely transfer of prisoners, including children, not repatriated by their home countries, from Syria to Iraq, where the national law convicts people simply because they joined ISIS and there have been reports of children subjected to arbitrary arrests and prosecutions with torture being used as a way to coerce confessions[41].

This scenario entails that the decisions made by the states of nationality of FTFs and their families will represent the cause for further "foreseeable violations"[42]. As a matter of fact, the inaction of the states of nationality will allegedly result in breaches of human rights, in violation of the principle of *non-refoulment*, and of international humanitarian law, which prohibits the transfer of detainees to countries where they could suffer from torture and ill-treatment.

It is reasonable to argue that those children are predominantly detained due to political stigma in violation of the law of armed conflicts , international human rights law, and international humanitarian law by constituting an example of (abusive) state overreach and the sacrifice of children's rights in favour of badly conceived and short-term national security goals.

Their repatriation constitutes the first step towards a process of rehabilitation and reintegration into society. Where child returnees are concerned, states need to adopt a case-by-case approach without practising forms of racial profiling that, at different stages, have characterised security policies at the domestic level within EU countries[43].

5. Repatriation, Child protection and Racial Profiling.

Repatriation or the right to return is embodied in several major international declarations, treaties and conventions, such as Article 13 of the Universal Declarations of Human Rights (UDHR)[44], Article 12 of the International Covenant on Civil and Political Rights (ICCPR)[45] and the 1951 Refugee Convention[46]. The UN Human Rights Committee has also stated that the "government must not, by stripping a person of nationality… arbitrarily prevent this person from returning to her or his own country"[47].

The UN Human Rights Committee adds that "there are few, if any circumstances in which deprivation of the right to enter one's own country could be reasonable"[48]. In addition, repatriation is recognised under international customary law: "Many commentators conclude that aside from being required by specific provision in international treaties, the right to return is obligatory under customary international law in the human rights context"[49]. The right to return is a principle that ensures refugees and exiles a right to return to their home countries, and it is a legally binding obligation on governments. If this principle is applied to the foreigners at the al-Hawl camp, all countries become legally obliged to allow their citizens to return home or to facilitate their return.

In the specific case of some citizens linked to ISIS, there are binding UN Security Council Resolutions that require states to bring terrorists to justice and to develop appropriate strategies for returning terrorist fighters. If detainees are guilty of some crimes, their home countries should take all the relevant steps towards their prosecution. Repatriation does not imply that terrorists are pardoned, but, quite the opposite, it allows detainees to return to their home countries and to face the consequences of their actions abroad under their judicial systems; this will also uphold the right of the victims of terrorism and victims and survivors of violence perpetrated by terrorists to obtain forms of reparative justice. As for the minors who were used as soldiers, child brides, spies, bomb planters and generally combatants by such a brutal regime or were born into the regime, states should elaborate a unified policy approach for their rehabilitation through repatriation as their inaction will cause further damage in terms of breach of children's rights and relevant security problems.

In relation to children, Articles 7 and 8 of the CRC address their right to return. Article 7 states that every child has a right to nationality and that "State parties shall ensure the implementation of this right, in particular where the child would otherwise be stateless"[50]. Likewise, Article 8 highlights that when a child is illegally deprived of their identity, states shall "provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity"[51]. Like any adult under international law, children at al-Hawl camp have a right to return to their countries of nationality or their parents' home countries, and the CRC specifically protects this right. States neglect their duty to protect the right to nationality when children are detained indefinitely (and illegally) in northeast Syria.

As it is clear, international law grants every person the right to return to their country and, above all, for the case under investigation, specifically requires countries to fulfil a child's right to acquire a nationality; the UN High Commissioner for Refugees (2017)[52] states that this duty extends to children born abroad so they do not become stateless.

Women and children at the al-Hawl camp experience the de facto denial of their right to return as there is no practical ability to return. As discussed in this paper, repatriation is the most effective way to end the humanitarian crisis at the al-Hawl camp because children would be taken out of detention and returned to their parents' home countries (for those born under ISIS) or theirs.

However, as argued before, states of nationalities have been extremely slow and partly reluctant to repatriate children while choosing to apply measures, such as prolonged internment and citizenship revocation, that not only are in breach of international human rights law, children's rights and international humanitarian law but that are also counter-productive in terms of prevention of terrorism. This suggests that it is arduous to rely on this option to end the humanitarian crisis of ISIS children and former ISIS child soldiers. Thus, I attempt to explore whether they could qualify for asylum under international refugee law.

According to the 1951 Refugee Convention, a refugee is "someone who is unable or unwilling to return to their country of origin, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality or membership of a particular social group or political opinion"[53].

The foreign children at al-Hawl camp are unable to return to their country of origin. Their country of origin is not Syria, assuming that they were brought to Syria from abroad (by their parents or trafficked like Ms Shamima Begum) or that they are entitled to their parent's citizenship even if born under the ISIS regime. Unfortunately, there is no publicly available data that reports how many of these children were brought into ISIS or were born under ISIS. The majority of the children at the al-Hawl camp, including those born as a result of rape by ISIS members, lack birth registration documents, or they have been lost.

The children at the al-Hawl camp have a well-founded fear of persecution on account of their being members of a particular social group, specifically "children who lived in the ISIS regime and who do not have the ability to be repatriated to their home country"[54].

Given that they meet the definition of a refugee, foreign children at the al-Hawl camp qualify as refugees under international law when their home countries actively prevent them from coming back to their countries or their parents' home countries and the international community should consider refugee designation for children when it is in the children's best interest to pursue that. The proposed solution could end the human rights violations occurring in northeast Syria and could give displaced and stateless children the very much-needed opportunity to pursue a programme of rehabilitation and integration in a new country.

It is reasonable to counter-argue that the refugee designation would constitute a method of last resort that presents several challenging diplomacy issues of determining which country will take the children, how many of them, and—crucially—the issue of separating them from their mothers (if they are not orphans or listed as unaccompanied). This latter concern could find an acceptable solution offered by Article 10 of the CRC, which states that every country is required to attempt family reunification for refugee children. In this way, refugee designation would be a way for children to leave the al-Hawl camp, with states seeking to reunify the child with other family members.

Finally, the present article is eager to open a debate on whether the reluctance of states to repatriate ISIS children and former ISIS child soldiers might be affected by practices of racial profiling and not only by concerns related to importing extremism.

The CRC, its optional protocols and UN Security Council Resolutions clearly ask countries to repatriate family members of FTFs by maintaining the position that child soldiers are to be considered primarily as victims of terrorists rather than their supporters; they also have the right to pursue a programme of rehabilitation and reintegration into society.

In October 1945, after the collapse of the criminal Nazi regime, the Allied forces in Berlin faced the enormous task of de-nazifying the population, specifically the youngest members who, since 1933, were coerced into joining the Hitler Youth (Hitler Jugend), a proper army composed of children aged between 10 and 18, who had taken part in the Nazi crimes and atrocities against humanity[55]. The UK and the USA set up many rehabilitation programmes for HJ members in order to educate them "to democracy, tolerance, respect of minority rights", teaching non-violent methods of conflict resolution[56]. The programmes were instituted on the progressive idea that members of the HJ were themselves victims of the

Nazi regime: as minors, they were in need of being re-educated on a civilised way of living together, as opposed to the brutality they were trained to practice during the Nazi period.

Likewise, in the last two decades, former child soldiers in Central Africa have been enormously supported through many successful rehabilitation programmes set up by UN agencies and international NGOs[57]. At the core of those efforts, there is the fundamental principle, enshrined in the CRC, its optional protocols and UN official documents and reports, that children, due to their age and to limits in their knowledge, options, and cognitive developments, are primarily victims of armed groups and terrorist organisations and in need of special attention.

It constitutes a serious concern for the international community that states of nationalities, many European ones, have practically refused to uphold children's rights in relation to ISIS children and former child soldiers by not fulfilling their obligation to promote their rehabilitation and reintegration into society. There is the upsetting consideration, as claimed by several family members of children detained at al-Hawl[58] that European governments refuse to take them back, not only for security concerns but through sedimented practices of racial profiling and anti-Muslim racism, that did not arise in relation to other rehabilitation programmes for former child soldiers. In a historical comparison with HJ and their rehabilitation programme, it seems that ISIS children are treated as the unredeemable *Other*, at the crossroads of epistemological practices of orientalism and the unshakeable racialisation of Muslim-ness, that the War on Terror has sketched as the domestic and international enemy to annihilate.

In a way, since 2001, in name of national security, many European countries engaged in the strategy of the War on Terror have legitimized numerous racist practices against Muslim communities, whose "badge" was no longer and exclusively their race or their culture, but predominantly their alleged "innate" tendency to radicalization, extremism and terrorism.

5. Conclusion.

After the territorial defeat of ISIS on March 23 2019, thousands of women and young children who were associated with ISIS were interned and detained in various camps in northeast Syria, under the control of the SDF, for their perceived links with the terrorist organisation. The conditions of those camps, specifically of the largest one, al-Hawl, have led to an international outcry due to the dire humanitarian crisis experienced by the

detainees, exposed to lack of food, water, and medicine and constant violence, including sexual assaults perpetrated by the camp guards. The DAANES declared that it has no intention or financial resources to prosecute the detainees, and it has repeatedly asked detainees' states of nationalities to repatriate them. However, as of 2024, most Western countries have either repatriated only a small fraction of the detainees or denied repatriating them due to national security concerns. Many Western countries have resorted to denationalising their citizens (including minors and unaccompanied minors).

The present article has analysed the case of Ms Shamima Begum, a British teenager who was trafficked to Syria in 2015 as an ISIS bride and who was made stateless in 2019 by the UK Home Office on security grounds.

The analysis has evidenced how the UK government's decision to make Ms Begum stateless is a pernicious violation of her rights as a victim of trafficking, as enshrined in UK anti-trafficking laws and international treaties. It has also suggested that Ms Begum has been positioned by the UK authorities at the intersection of practices of gender discrimination and anti-Muslim racism as a comparative analysis with the diplomatic policies employed in relation to British Islamists detained abroad and the domestic legislation for victims of trafficking have evidenced. Ms Begum, as a victim of a terrorist group, has also experienced a form of secondary victimisation, unable to pursue a programme of rehabilitation and reintegration into society.

In relation to the thousands of foreign ISIS children detained at the al-Hawl camp, the article has analysed relevant international law and argued that their detention because of a perceived link with ISIS grossly violates both the law of armed conflict and international human rights law.

If international law does not impose on states of nationality a straightforward obligation to repatriate the family members of FTFs, several relevant commitments established under the different fields of international law analysed in this article argue strongly in favour of repatriation as the best option to act in compliance with the existing international framework.

Despite the nebulous approach adopted by states in relation to repatriation, there is an urgent need to emphasise the crucial role that states of nationality are summoned to play in ceasing the dramatic cycle of violence to which children (and women) have been exposed during the

Caliphate, and which they are currently experiencing as detainees in northeast Syria.

This article has also advanced a proposal to solve the dire humanitarian crisis in overcrowded camps in northeast Syria after considering that it is unlikely that states of nationality, by complying with the existing international framework, will proceed to repatriate children in the short-term.

As demonstrated, according to the 1951 Refugee Convention that grants protection to people who have a nationality and to stateless, the children of ISIS are eligible for asylum under international law when their countries (or their parents' countries) refuse to repatriate them.

In particular, it is reasonable to argue that they are persecuted as a specific social group (ISIS children and ISIS child soldiers) by their home countries, by the Syrian government (and the Iraqi one alike) and by DAANES. The present author is aware of the fact that the proposed solution might prove to be challenging on several levels, but it could help children to leave the camp to pursue a programme of rehabilitation elsewhere and to apply for family reconciliation, soon afterwards.

As a concluding remark, the present article has suggested that well beyond security concerns, there might be practices of racial profiling in place that affect repatriation and rehabilitation policies in relation to ISIS children, as demonstrated by a comparison with other successful rehabilitation programmes in Europe and elsewhere, in relation to the HJ and the child soldiers in Central Africa.

Finally, this author would like to emphasise the concept that the protection of children and their rights worldwide should be considered a collective responsibility without any form of disparity or discrimination. The existence of detention camps where children and former child soldiers are interned indefinitely and illegally, deprived of their fundamental right to a flourishing life, should be considered a crucial and worrying deviation from a model of a democratic, liberal, law-abiding society that specifically Western states are proud to be associated with and to champion in their relationships with the many illiberal and tyrannical regimes elsewhere, especially in the Middle East.

The CRC still holds as the best tool to protect children's rights; its implementation stands also as a guidance to a functioning democracy where justice is performed and forms of reparative justice are owed to young victims of dysfunctional systems of politics and violence.

End Notes

[1] United Nations (1989) Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989

[2] Syrian Democratic Forces: formed as a rebel alliance in the Syrian Civil War, it is composed primarily of Kurdish as well as some smaller Armenian, Arab, Turkmen and Chechen forces. It is military-led by the People's Protection Units, a Kurdish militia recognized as a terrorist group by Turkey. Since the territorial defeat of ISIS in 2019 the SDF has been involved with resisting the growing Turkish occupation in North Syria.

[3] Office of the High Commissioner for Human Rights. "UN Commission of Inquiry in Syria: Respect for the Rule of Law and Fundamental Rights must not be undermined for Political Expediency or sacrificed for Security Considerations". OHCHR. 2019. www.ohchr.org/en/NewsEvents/Pages/DisplayNews.asp?NewsID=24585.

[4] Rights and Security International. "Abandoned to Torture: Dehumanizing Rights Violations Against Children and Women in North East Syria". R.S.I. 2021.

[5] United Nations Children's Fund. "Whole of Syria humanitarian situation: Report January-June 2024". UNICEF. 2024. Available at http://reliefweb.int/report/syrian-arab-republic-unicef-whole-syria-humanitarian-situation-report-january-june-2024.

[6] Cecilia Polizzi, (2023) "Children affected by Foreign Fighter Phenomenon", CRTG Vol II, 2023. https://www.crtgroup.org/posts/children-affected-by-the-foreign-fighter-phenomenon%3A-guidelines-on-managing-the-humanitarian-and-security-dimensions-in-northeast-syria.

[7] Anselm Strauss and Juliet Corbin, *Basic of Qualitative Research.* (Newbury Park: Sage, 1990).

[8] Ann Oakley, *Experiment in Knowing: Gender and Method in the Social Sciences.* (Cambridge: Polity Press, 2000).

[9] Danila Genovese, "Representation and Self-Representation of Radical Islamism in the UK: The Dangerous Exclusion" in *Islam in the Plural: Identities, (Self-)Perceptions and Politics,* eds. C. Flood et al. (Leiden: Brill, 2011), 25-42; Danila Genovese, "The Tragedy of Islamism in Britain. A fetishism for politics. The case of Hizb ut Tahrir" in *Rethinking Islamism beyond jihadi violence,* ed. E. Orofino (Wilmington, Delaware: Vernon Press, 2023), 219-244; Danila Genovese, *La meta-politica e il terrorismo. Gli Islamisti Britannici tra politiche multiculturali e pratiche di razzismo* (Milano: Mimesis edizioni, 2023) https://www.mimesisedizioni.it/libro/9788857591841;

Danila Genovese, "The War on Terror and the War of Terror. The Reflective politics of an elite of grievances and their young acolytes quest for justice", *Italian Sociological Review* 13 no. 2 (2023): 179-200.

[10] See William Macpherson, *The Stephen Lawrence Inquiry* (London: The Stationery Office, 1999); Kalwant Bhopal, *White Priviledge. The Myth of Post racial Society* (Bristol: Polity Press, 2018).

[11] Colin Yeo, *Welcome to Britain. Fixing our Broken Immigration System* (London: Biteback Publishing, 2020).

[12] Michael Nollet and Xavi Carrasco, "The return: Life after ISIS", SKY Documentaries, 2021.

[13] See International Labour Office, *Wounded Childhood. The Use of Children in Armed Conflict in Central Africa* (Geneva: ILO Publications, 2003); Angelina Jolie and Geraldine Van Bueren, *Know Your Rights and Claim them, A guide for Youth (*London: Anderson Press, 2021).

[14] In January 2024, the UK government banned HT as a terrorist party, under the Second Terror Act.

[15] Hizbu ut Tahrir, *Hizbu ut Tahrir* (London: Al Khilafa Publications, 2005).

[16] Owen Bowcott, "People were begging for mercy", The Guardian, 11 April, 2006. https://www.theguardian.com/world/2006/apr/11/egypt.owenbowcott.

[17] Sophie Doughty, "Police raid New Castle properties in sex trafficking probe as three arrested", Chronicle Live, 14 April, 2021. Available at https://www.chronicle.co.uk/news/Northeast-news/police-raid-newcastle-properties-sex-20378725.

[18] See Asaad Almohammad, "ISIS Child-Soldiers in Syria. The Structural and Predatory recruitment, Enlistment, Pre-training indoctrination, Training and Development" *The International Centre for Counter Terrorism-the Hague* 8 no. 14 (2018).

[19] International Labour Office, *Wounded Childhood. The Use of Children in Armed Conflict in Central Africa* (Geneva: ILO Publications, 2003).

[20] Council of Europe, *Convention on Action against Trafficking in Human Beings* (Strasbourg: Council of Europe Publications, 2005).

[21] United Nations (2000) Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, adopted and opened for signature, ratification and accession by General Assembly Resolution 88/64 of 21 January 2000.

[22] Dan Sabbagh, "Shamima Begum a victim of trafficking when she left Britain for Syria, court told", The Guardian, 4 October, 2023. Available at https://www.theguardian.com/uk-news/2023/oct/24/shamima-begum-victim-of-trafficking-when-she-left-uk-for-syria-court-told.

[23] See Genovese (2023b) p.189.

[24] BBC TWO,"The Shamima Begum Story", BBC, 7 February, 2023. Available at https.//www.bbc.co.uk/iplayer/episode/m001j079/the-shamima-begum-story
[25] See Genovese (2023b) p.198.
[26] Francesca Capone, "The Children and Wives of Foreign ISIS Fighters", *Questions of International Law* 60 (2019): 69-90.
[27] Lawrence Hill-Cawthorne, *Detention in Non-international Armed Conflict* (Oxford: Oxford University Press, 2016).
[28] Gabor Rona, "International Law, targeting and detention in the age of International Terrorism",
Just Security, 2015.Available at www.justsecurity.org/ 27674/international-law-targeting-detention-age-terrorism.
[29] Zelalem Mogessie Teferra. "National Security and the Right to liberty in Armed conflict", *International Review of the Red Cross* 98 no. 3 (2018): 961-980.
[30] Marco Sassoli, (2009) "The Concept of Security in International Law Relating to Armed Conflicts," in *Security: A multidisciplinary Normative Approach,* ed. Cecilia Bailliet (Leiden: Martinus Nijhoff, 2009), 7-22.
[31] See Convention on the Rights of the Child (1989), Art. 39.
[32] United Nations (2017) Security Council Resolution 2396 (21 December 2017).
[33] UN Office on Drugs and Crime, *Handbook on Children recruited and exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System.* (Vienna: United Nations office, 2017).
[34] United Nations (2014) Security Council Resolution 2178 (24 September 2014).
[35] Office of the United Nations High Commissioner for Human Rights. "Human Rights Report 2019". OHCHR. 2019.
https://www.ohchr.org/sites/default/files/Documents/Publications/OHCHR/report2019.pdf.
[36] See UN Doc. S/RES/2396, 2017, para 396.
[37] See UN Doc. S/RES/2396, 2017, para 31.
[38] See UN Office for Drugs and Crimes(2017) p.98.
[39] *Ibid.* p.71.
[40] See Ben Saul (ed.), *Research Handbook on International Law and Terrorism* (Cheltenham: Edward Elgar Publishing, 2014).
[41] Human Rights Watch. "Everyone must confess. Abuses against Children Suspected of ISIS Affiliation in Iraq". HRW. 6, March 2019.
www.hrw.org./sites/default/files/report.pdf/iraq0319.
[42] O De Shutter et al.,"Commentary on the Maastricht Principles on Extrateritorial obligations of States in the Area of Economics, social and Cultural Rights", *Human Rights Quarterly* 34 no. 4 (2012): 1084-1169.
[43] See Arun Kundnani, *The Muslims are coming!: Islamophobia, Extremism, and the Domestic War on Terror* (London-New York: Verso Book, 2014, p.38).

[44] United Nations (1948) Universal Declarations of Human Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 217 of 10 December 1948.
[45] United Nations (1966) International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966.
[46] United Nations (1951) Convention Relating to the Status of Refugees, adopted and opened for signature, ratification and accession by General Assembly Resolution 137 of 26 July 1951.
[47] Office of the United Nations High Commissioner for Human Rights. "Human Rights Report 2019". OHCHR. 2019. https: //www.ohchr.org/sites/default/Files/Documents/Publications/OHCHR/report2019/pdf.
[48] *Ibid.*
[49] Eric Rosand, B. Heidi Ellis, and Stevan Weine, "Minding the Gap: how to provide more comprehensive Support to the Children of ISIS", Brookings, 2020. Available at https://www.brookings.edu/articles/minding-the-gap-how-to-provide-more-comprehensive-support-to-the-children-of-isis/.
[50] See United Nations (1989) Convention on the Rights of the Child.
[51] *Ibid.*
[52] UN High Commissioner for Refugees. Report of the United Nations High Commisssioner for Refugees covering the period 1 July 2016-30 June 2017. UNHCR. 2017.
https://digitallibrary.un.org/record/1303980?ln=en.
[53] See United Nations (1951) Convention Relating to the Status of Refugees.
[54] See UN High Commissioner for Refugees (2017).
[55] Fisher, J. (2007) *Disciplining Germany: Youth, Re-education and Re-constrction after the Second World War.* Detroit: Wayne State University Publishing.
[56] *Ibid,* p.15.
[57] See International Labour Office (2003).
[58] RFI, "French Council of State rejects appeals to allow jihadis families to come home", Radio France Internationale, April 24, 2019.
https://www.rfi.fr/en/france/20190424-french-council-state-rejects-appeals-allow-jihadist-families-come-home.