Detaining ISIS terrorist suspects without trial by the USA in Rojava-Syria

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Abstract

This study discusses one of the USA's strategies, which is the detention of ISIS terrorist suspects without charge or trial in the case of Rojava, Syria. The significance of the subject is that it is one of the most controversial topics in contemporary politics and international law. A political analysis method was used and the research data was dealt with by examining a number of variables.

This paper discusses different reasons that affected the non-solution of the strategy used by the US government in the war on terror, as well as shows the division between international laws and provisions that are mentioned in international human rights law and international humanitarian law. This paper focuses on whether the performance of the process of detaining terrorist suspects without trial is legal or illegal. The paper also examines a case study of Rojava's trials, in Syria and how they deal with detainees. Furthermore, this study tries to explain non-governmental organizations' (NGO) attitudes, as these have played an important role in the showing of the USA's tactic. This study concludes that the detention of ISIS terrorist suspects without trial raises serious legal questions, particularly with regard to due process and the right to a fair trial. Under international law, individuals have the right to be brought before a competent court, to

be informed of the charges against them, and to have access to legal counsel and a fair trial.

Keywords: Prosecution, International Crimes, The USA, Syrian Democratic Forces (SDF), Detaining ISIS Terrorist Suspects, International Law.

1. Introduction

In the 21st century, the USA has faced a new form of terrorism that had not been seen before. In particular, when the Al Qaida terrorist group attacked the World Trade Centre and Pentagon, which were primary US symbols of power, on 11 September 2001. Then the USA created a new strategy to respond to them by addressing the 'war on terror'. The Bush administration also created a neo-conservatism policy of military action against them, removed the dictator's regimes such as Afghanistan and Iraq also created democratic systems for these countries as well as those who support terrorism groups such as Syria, including the tactic or strategy of the detention of terrorist suspects without trial, which involved a widespread series of counter-terrorist tactics, including the detention of terrorist suspects without charge or trial (Gardner, 2005).

In 2019, the Syrian Democratic Forces (SDF), a Kurdish-led, regional force backed by a United States-led military coalition, rounded up tens of thousands of Syrian and foreign ISIS suspects and family members as they toppled the last remainder of ISIS's self-declared "caliphate" in northeast Syria. The SDF detained these Syrians and foreigners in camps, prisons, and makeshift detention centers, where they were already holding several thousand others for suspected ISIS links (Becker & Tayler, 2023).

The main issue in the study is how the US uses the strategy of detention of ISIS terrorist suspects without trial as a part of its broader counterterrorism efforts, particularly after the rise of ISIS in Iraq and Syria. This strategy is often framed as necessary to protect US national security. Most academic scholars, journalists, and politicians have extensively

written about terrorism, their ideology, politics, geography, and religion. However, there is limited research about how this strategy works, how it is intended to enhance US security, and the legality of the detention of ISIS terrorist suspects in trials without charge in the case of Rojava prisons in Syria. That's why this research aims to discuss different reasons that affected the non-solution of the strategy used by the US government in the "War on Terror". Hence, this study also aims to show the division between international laws and provisions that are mentioned in international human rights law and international humanitarian law. To do that, this paper examines the status of ISIS terrorist suspects and why they have been classified as a terrorists in Syria and detained in the Rojava prisons without charge. That's why the main aim of this paper is to answer the main question which is how the US uses the strategy of detention of ISIS terrorist suspects without trial in order to enhance its security.

Importance of the Research:

1. This paper interprets the perspective of international law and international politics on the detaining of ISIS terrorist suspects without trial by the USA in Rojava-Syria.
2. This study encourages the relevant authorities to refrain from violating the human rights of accused detainees and their families and children detained in detention camps.
3. This paper, suggests an appropriate solution by the international community to release innocent people in prison and prosecute those accused of committing terrorist crimes and international crimes before a fair trial.
4. This study recommended the necessary solutions to prosecute the perpetrators at the domestic and international levels and restore peace and security for the region.

Research Methodology:

In this research, the qualitative approach will be employed as a way to undertake and advance the study. The approach proposed by this paper is derived from a review of a wide body of academic literature, the main sources of data used in this research are secondary sources, collecting the information in a scientific way is in the library, journals, and books, journal articles, and websites… etc. This paper has also adopted primary sources in order to interpret articles of international humanitarian law and international human rights law. For instance, the Geneva Convention, the Rome Statute, and other similar international agreements were used as a framework to analyze the case study of the detention of ISIS terrorist suspects in Rojava prisons in Syria. Moreover, the approaches of theory, comparative study, historical study, analytical study, and case study were used in this research as a method to complete the main aim.

2. Literature review of the new terrorism issue

Neumann (2009) stated the definition of terrorism as a social phenomenon, and a terrorist group is different from other social phenomena such as criminal gangs because of their aims, which are about achieving political change and not gaining financially. As a method of identifying the transformation from old to new terrorism, the changes that have happened can be captured in three categories. The first variable is the structure, which is different in these organizations. The old structure of terrorism was hierarchical. By contrast, new terrorism's structure is a network that is transnational in spread and location. Secondly, their aims, are to achieve change in the political or national order. Their ideology is also different according to the nature of Marxism and nationalism for old terrorism and being religion-inspired for new terrorism. Finally, their methods, in that new terrorism wants to achieve politically through violation of and symbolic acts against civilians, but old terrorism used legitimate targets and rules of engagement. One example

of old terrorism is the Irish Republican Army and Al Qaeda represents the new form of terrorism (Neumann, 2009).

Moreover, Fukuyama, in his book, *The End of History and the Last Man* (1992) mentioned the change in the world system from the bipolar to the unipolar and that this system would be administered by the USA, and in a modern liberal democracy it is obvious that this had different forms to appraise human societies. In addition, the modern system is characterized by Western developed countries and the fundamental principles of essential human rights and freedom spreading to all parts of the world, and they believe that their institutions and values of democracy, rule of law, individual rights, and economic freedom should be shared by people everywhere if given the opportunity (Booth and Dunne, 2002).

Booth and Dunne (2002) argue that before 11 September 2001, America played an important role in the administration of a unipolar world system, especially when the Soviet Union collapsed. Here, the US economy increased significantly and its democratic institutions also looked to develop in all parts of the world the role of technology brought countries together and made the world more like a village. However, this situation leads terrorist groups like al-Qaeda to attack the US symbols and happening 11 September events.

Thus, Frances Fukuyama as a prominent scholar in the 21st century has his own view regarding global issues and problems. He believes that terrorism is one of the most dangerous issues at the international level that threatens the whole global political system. That's why Fukuyama gave legitimacy to the international community, especially the USA to intervene in weak states like Syria. Thus, the USA based on this belief have their justification to detain ISIS terrorists in Rojava prisons in Syria (Fukuyama, 2004).

However, Samuel Huntington stated that these conflicts could turn into a clash of civilizations such as in the post-Cold War period, while the Blair and Bush administrations had obviously emphasized struggle and the war on terrorism. The dragon of the Soviet Union was also killed by the West but the jungle is still full of poisonous snakes, especially with the Al Qaida terrorism attacks on the World Trade Centre and Pentagon as primary US symbols of power on 11 September 2001. The key question is how deep are these fundamental changes and what must we do to counter those (Booth & Dunne, 2002)?

Moreover, Dellora (2012) argued that internment can be shown as the unlimited arrest of individuals by a state, and the denial of legitimate processes which should be available for them because they have a right to know about their charge, the proof against them, a public trial and the right to request a higher judicial authority. In addition, these measures are justified as necessary in some situations such as war or during terrorist attacks that will affect the national interests and security, and in order to ensure that the suspects are seen as dangerous and, if they are not detained, they will affect national security. Basically, states use a tactic such as the detention of terrorist suspects without trial because of intelligence gained by the security services, and, at the same, this tactic undertakes arrests that are without the rights that ordinarily would be accessible to those arrested. The debate has increased regarding the situation of liberties and civil security, as well as the relationship between judicial and executive authority in government.

Since the start of modern democracy, governments have presented their power to detain those who threaten them. This happened in both World Wars and 11 September 2001, when they announced the 'war on terror' that was coordinated by the coalition and supervised by the USA, however, this study focuses on the answers of states when ISIS terrorist groups were raised in Iraq and Syria in 2014. Moreover, the USA administered a policy of attacks against terrorists which involved detaining non-citizens without trial,

covertly holding over 10000 terrorist suspects plus thousands of their families of different nationalities. They started in Syria, where they arrested and held fighters who were taken to Rojava prisons, especially to Roj prison.

There are some reasons that caused the failure of the tactic or strategy used by the USA with the help of the SDF in the war on terror. First, using bad behaviour against individuals causes us to compromise our high principles of human rights, as well as detention without trial promoting bad behaviour by other countries. It means that governments are less concerned with fundamental human rights. To sum up, the main cause of the failure is that it affected freedom. It could be seen clearly in Western actions taken after 11 September 2001, where repressive measures were justified as a part of the war on terror. For instance, the Indian government has been using repressive measures against people in Kashmir and the government usually has a good excuse, which is the war on terror, because of the crackdown internationally (Shingavi, 2010).

Second, Davis (2004) argued that internments without trial are illegal. The war on terrorists is not an armed conflict because the modern war on terror is not like it was in the past, which clearly used wartime measures, and also in the war on terror no one is able to win; it means there is no finishing point, which will be the enemy's defeat on the one hand. On the other, it is true that when ISIS attacked Iraq and Syria and captured both large cities of Mousil and Raqa, it was horrifying but they did not threaten completely life in either country, even if their attacks had been successful in both cities, no one believed that it was a time to finish the governments of Iraq and Syria.

Third, according to the BBC (2002), detention without trial makes society unsafe. Giving a state the force to intern individuals without lawful process will not make a healthy society. Moreover, secret intelligence relies on information about individuals who are planning

terrorist acts which cannot be revealed in open trial. As past examples have shown us, some of the intelligence was flawed. For instance, the intelligence information about Iraq's chemical weapons program was incorrect. While a lot of individuals will be wrongfully locked up, a lot of unsafe ones will be at liberty.

Finally, Davis (2004) stated that democratic values are undermined by the detention of terrorist suspects without investigation because the principles of democracy are about protecting rights for the majority as well as the minority. Moreover, the value of habeas corpus, which is a legal order that individuals have to appear in court before they can be forced by law to stay in prison, is compromised by internment without trial. In addition, a principle of the American Constitution is that "no person shall be deprived of his liberty without due process".

3. Copenhagen school in international relations (IR)

This study is going to adapt the concept of securitization in the "Security: A New Framework for Analysis, 1998" Bury Buzan, Ole Waever, and Jaap de Wilde's view. Because Buzan and others are modern political thought in the 21st century, their views about securitization are creating relations between states and non-state actors. Also, the study is going to adapt the most important assumptions and the definition of international threats in their book (Buzan, et al., 1998, p. 21). Thus, the relationship between the USA with other non-state actors like SDF is based on the above understanding of Copenhagen school in international relations.

The school focuses on securitization theory, which examines how certain issues are framed as security threats. It focuses on the role of securitization and the construction of security threats in shaping international politics. The Copenhagen School has significantly influenced the study of terrorism and security studies. Its emphasis on the social

construction of security threats has provided valuable insights into the understanding of terrorism as a political and discursive phenomenon (Filimon, 2016, pp. 47-48). Indeed, ISIS can be defined as a group of terrorists according to most of the international laws, as this study explained in the part of committing international crimes by ISIS in Iraq and Syria. Thus, it can be said that the issues of ISIS are considered as a security threat to Middle Eastern countries, especially Iraq and Syria. They have not only become threats to Iraq and Syria, but they become threats to the whole international community.

Securitization theory offers a critical perspective on how security issues are constructed and addressed in the international arena. According to securitization theory, security is not an objective reality, but a socially constructed concept. It involves the process of framing an issue as an existential threat that requires unexpected measures to be taken. By securitizing an issue, actors seek to gain political support and legitimize exceptional actions. Securitization theory challenges traditional notions of security and highlights the role of power, discourse, and framing in shaping security agendas. It emphasizes the need for critical analysis of security practices and the potential for securitization to limit individual rights and democratic processes (Dunne, et al., 2016, p. 53). Here, the international community which is led by the USA in the issue of Syria is responsible for countering terrorist threats in the issue of rising ISIS in the Middle East, especially in Iraq and Syria.

Terrorism has become a significant concern in the field of international relations due to its transnational nature and impact. It poses challenges to state sovereignty, global security, and the balance of power among nations. Thus, the issue of ISIS terrorists is a main problem for the sovereignty of the Syrian state. The response to terrorism often involves cooperation and coordination among countries, as well as the development of international legal frameworks and counter-terrorism strategies (Munster, 2012). The

Copenhagen School's approach to terrorism is based on the concept of securitization. According to this theory, terrorism is not an objective threat but a socially constructed one. It argues that certain actors, such as governments or international organizations, have the power to define an issue as a security threat and take extraordinary measures to address it (GINGA, 2021, p. 187).

Moreover, Critics argue that the Copenhagen School's focus on securitization oversimplifies complex political issues. They claim that the framework neglects other important factors such as international human rights law, and economic, social, and cultural dimensions of security. Some scholars question the power dynamics inherent in the securitization process. They argue that the ability to define what constitutes a security threat is often held by dominant actors, leading to the marginalization of marginalized groups. Critics raise concerns about the normative implications of securitization. They argue that framing certain issues as security threats may legitimize extraordinary measures and limit democratic processes (Charrett, 2009). Hence, western countries, especially the USA legitimize their actions to counter terrorist groups like ISIS without taking into account the economy and social structures of the community of both Iraq and Syria.

The Copenhagen School's approach to International Relations continues to be highly relevant in the contemporary global landscape. As the field of International Relations evolves, the Copenhagen School is poised to contribute to the understanding of emerging challenges and complexities like the rise of ISIS in Iraq and Syria. Thus, this theory is important to understand how the USA detains ISIS terrorist suspects in Rojava prisons in Syria. This is because the ISIS terrorist groups not only pose threats to the security of countries like Iraq and Syria, but they also threaten the entire international global countries, especially the Western countries including the USA (Sabry, 2022).

To sum up, the Copenhagen School has made significant contributions to the study of terrorism in international relations. Their concept of securitization has provided a valuable framework for understanding how certain issues, including ISIS terrorism, are constructed as security threats. By analyzing the speech acts and discourses used by political actors, the Copenhagen School has shed light on the process through which ISIS terrorism is securitized and the implications this has for policy-making and international relations.

4. The rise of ISIS in Iraq and Syria

ISIS known as the Islamic State of Iraq and Syria, emerged as a significant extremist group in the region. It originated from the remnants of Al-Qaeda in Iraq and gained prominence during the Syrian Civil War. ISIS capitalized on the power vacuum created by the conflict in Syria and Iraq. It exploited sectarian tensions and grievances to recruit fighters and gain territory. ISIS is notorious for its brutal tactics, including mass killings, beheadings, and the establishment of a self-proclaimed caliphate. Its extremist ideology and violent actions have caused widespread fear and instability in the region. The emergence of ISIS has had a significant impact on regional and global security. It has attracted foreign fighters from around the world and inspired terrorist attacks in various countries (Wilson Center, 2019).

Both political and social factors are affected by the rising ISIS in those countries. Weak governance and instability in Syria created power vacuums that allowed extremist groups like ISIS to gain control. Sectarian tensions between Sunni and Shia populations in the region fueled support for ISIS among disenfranchised Sunni communities. The Syrian civil war and the power struggle between the Assad regime and opposition groups provided an opportunity for ISIS to establish a stronghold (Ababakr, 2022, pp. 13-15).

Furthermore, economic marginalization and high unemployment rates, particularly among young people, contributed to a sense of hopelessness and made individuals susceptible to recruitment by extremist groups. Radicalization through online propaganda and social media platforms played a significant role in the spread of ISIS ideology and recruitment efforts. The lack of trust in government institutions and disappointment with existing political systems also contributed to the appeal of ISIS as an alternative authority (Dagher, 2020).

In addition, ISIS began its expansion in Iraq and Syria in 2013, taking advantage of political instability and sectarian tensions in the region. By 2014, ISIS had captured large territories in both countries, including major cities like Mosul and Raqqa. The group used brutal tactics, including mass killings and public executions, to instill fear and establish control over the population. ISIS implemented a strict interpretation of Islamic law, imposing its ideology on the areas it controlled. The group established a self-declared caliphate, with Abu Bakr al-Baghdadi as its leader. ISIS controlled key infrastructure, such as oil fields and dams, which provided a significant source of revenue for the group. The group also used social media and propaganda to recruit fighters and spread its message globally (Abdulrazaq & Stansfield, 2016, pp. 526-530).

Moreover, several countries, including the United States, France, and the United Kingdom, launched military interventions to combat ISIS. These interventions involved airstrikes, ground operations, and training and support for local forces, especially Kurdish forces in Iraq and Syria. The international community has also engaged in diplomatic efforts to address the rise of ISIS. This includes diplomatic negotiations, sanctions, and international cooperation to disrupt ISIS financing and recruitment networks. After that ISIS has lost significant territory in Iraq and Syria in recent years. The group has faced military defeats and territorial losses due to international coalition efforts. While ISIS has

been weakened, it still poses a threat in the region. The group continues to carry out attacks and maintain a presence through sleeper cells. The international community must remain vigilant and continue to work together to prevent the resurgence of ISIS (U.S. Department of State, 2024).

Rojava, a region in northern Syria, has been a major battleground in the fight against ISIS. The region has been a magnet for foreign fighters, with ISIS establishing a significant presence in the area. The capture and detention of ISIS terrorists in Rojava has been a key focus for international efforts to combat terrorism. Rojava has also been embroiled in a complex and ongoing conflict involving various factions and regional powers. The conflict has resulted in significant instability and humanitarian challenges for the local population. Efforts are being made to address the root causes of the conflict and promote stability in the region.

The USA provides support to local forces in Rojava to detain ISIS terrorists. This includes training, equipment, and intelligence sharing to enhance their capabilities in counterterrorism operations. The USA plays a crucial role in coordinating efforts with international partners and local authorities in Rojava. This coordination ensures effective information sharing, joint operations, and the smooth transfer of detained ISIS terrorists to justice. The Syrian Democratic Forces (SDF) have played a crucial role in capturing ISIS terrorists and bringing them to their prisons. The SDF has been instrumental in holding and detaining ISIS terrorists, ensuring that they are unable to carry out further acts of violence.

In addition, Despite the challenges, there have been successful efforts in coordinating and cooperating with international partners in the fight against terrorism. Rojava has made progress in the rehabilitation of ISIS terrorists, providing them with education, vocational

training, and psychological support to reintegrate them into society. The detention of ISIS terrorists in Rojava has played a crucial role in preventing their resurgence and protecting local and international communities.

However, Detaining ISIS terrorists in Rojava poses significant security challenges due to the ongoing conflict in the region and the potential for attacks or escapes. The legal framework for prosecuting and detaining ISIS terrorists is complex and requires international cooperation and coordination. Rojava faces resource constraints in terms of personnel, facilities, and funding for the detention and rehabilitation of ISIS terrorists.

5. Committing International Crimes by ISIS Detained Suspects

The acts of ISIS against its population and the wide range of its enemies may amount to core international crimes. Since 2014, ISIS forces in different parts of Iraq and Syria have carried out human rights abuses, genocide, war crimes, and crimes against humanity.

SIS members are accused of committing genocide against innocent people in Syria and Iraq. According to article (2) of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and article (6) of the Rome Statute of the International Criminal Court (1998), ISIS committed genocide against Yazidi civilians aimed at destroying all or part of the Yazidis for religious and national reasons because on the one hand ISIS was a different religion from the Yazidis who considered themselves Muslims and considered the Yazidis infidels. On the other hand, ISIS was of different nationalities, they were Arabs and the Yazidis were Kurds (Zoonen and Wirya, 2017, p. 10).

On August 3, 2014, ISIS initiated assaults on communities and cities throughout Sinjar, focusing on the Yezidi community. Its soldiers seized 6,417 people and carried out the execution of at least 2,000 civilians (Human Rights Watch, 2017). ISIS forces also forced

Yazidis to convert to Islam and recruited Yazidi children. A UN report found evidence that ISIS intended to exterminate the Yazidi population as a group when it committed these acts and concluded that "such conduct may amount to genocide" (Omtzigt, 2017, pp. 7-8). In addition to their primary targets, militants have also attacked various other factions, including members of the Shiite community. Among the most extensive killings, ISIS militants were responsible for the death of hundreds of Shiite armed forces at Camp Speicher located outside Tikrit in June 2014. Due to religious differences, Iraqi soldiers were Shiite Muslims, but ISIS were Sunni Muslims (Hamasaeed and Nada, 2020).

ISIS Forces used prohibited means of warfare as part of a plan or policy, including serious violations of Article 3 of the four Geneva Conventions and other serious violations of applicable laws and customs in armed conflict.

ISIS breaches article (8) of the Rome Statute, namely, murdering, mutilation, cruel treatment, torture, humiliating and degrading treatment of personal dignity, taking of hostages, and Executions, and the implementation of sentences without prior rulings against individuals not involved in the conflict, including soldiers who have surrendered and those who have been left out of combat due to illness, injuries, or imprisonment, detention (Article 8, Rome Statute, 1998). Since June 2014, children have not only been killed and injured in fighting but also forced to participate in acts of widespread violence and atrocity crimes. Young girls as young as nine were made to endure sexual slavery and other sexual abuses. ISIL set up "cubs camps" where children from different backgrounds, including Yezidi boys as young as seven, were made to undergo forced military training and suicide missions (Independent International Commission of Inquiry on The Syrian Arab Republic, 2024, pp. 3, 4).

In addition, militants from ISIS targeted buildings that were safeguarded and devoted to religious, educational, artistic, scientific, charitable, historical, and medical purposes. Throughout the conflict, these militants extensively engaged in acts of gender-based violence, including rape, sexual enslavement, coerced childbirth, and employing women as tools of warfare, which could constitute war crimes (Goodman, Bergbower, Perrotte and Chaudhary, 2020, pp. 620-622).

Moreover, ISIS carried out systematic and directed attacks against civilian groups based on their ethnicity or political views, religion, or beliefs, potentially amounting to crimes against humanity. ISIS led to the significant displacement of people, with over 3.2 million individuals forced to leave their homes from January 2014 to October 2016, among whom it is believed around one million were children under the age of seventeen (Hawre Ahmed, 2022).

The assault on Sinjar by ISIS, followed by their brutal treatment of Yazidi captives, including the horrific sexual and physical abuse inflicted upon Yazidi women and children who were brought into Syria, constitutes a direct assault on the Yazidi community and the civilian population who were the main victims of the assault may qualify as a crime against humanity (Kubiš and Al Hussein, 2016, pp. 13-14). Although the international crimes committed are not necessarily committed by all ISIL suspects detained in Rojava-Syria, the detainees may include innocent people.

Although the suspected ISIS prisoners in Western prisons in Syria have committed terrorism and international crimes, at the same time many human rights violations have been committed by US forces and Kurdish forces in camps in al-Hol and Roj in Syria against themselves and their families.

It can be said that when a person commits a crime, whether serious or minor, he must be tried as soon as possible, not imprisoned and not prosecuted. So, the detention of ISIS terrorist suspects without trial by the USA in Rojava-Syria is illegal and not allowed by international law.

7. Judging ISIS Detained Suspects by Domestic or International Court

De Zayas (2005) stated that the right to security and liberty of individuals is guaranteed by many norms of municipal and international law, especially as these norms lay down the right to examine the legitimacy of a person's detention. Moreover, most international human rights law references are constituted by the Universal Declaration of Human Rights (UDHR) (1948). UDHR Article 9 stipulates that "no one shall be subjected to arbitrary arrest, detention, and exile". Also, Article 9 paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) corresponds with Article 9 of UDHR, by stipulating that "everyone has a right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". The body of the United Nations Human Rights Committee is responsible for monitoring that the states which are members of the ICCPR comply with ICCPR rules. Jurisprudence makes clear that internment which might be legal at the beginning, will, however, become illegal if it is continued unreasonably or not subject to periodic review:

> if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, in other words, it must not be arbitrary and must be based on grounds and procedures established by law (part. 1), information of the reasons must be given (part. 2)…And court control of the detention must be available (part. 4) as well as compensation in the case of a breach (part. 5). And if in addition, criminal charges are brought in such cases, the full protection of Article 9(2) and (3), as well as Article 14 must be granted.

All individuals under internment are entitled to general protection under Article 9 paragraph 1, even if they are asylum seekers. When states violate Article 9 by indefinite internment, this might also affect the violation of other provisions in the ICCPR articles. For example, Article 14 guarantees the right to a trial before a competent and impartial tribunal, Article 7 is a ban on torture, and Article 10 provides for humane treatment in times of internment (De Zayas,2005).

In addition, de Zayas (2005) argued that international humanitarian laws provide very specific details regarding protecting persons during armed conflict. As mentioned in both the Third and Fourth Geneva Conventions, Article 118 of the Third Geneva Convention clearly states that prisoners of war cannot be detained indefinitely: "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities"; this Article refers to the end of active conflicts, and it also does not matter whether or not peace dealings have been engaged. In addition, Article 75 of the Geneva Prisoners of War Convention of 1929 corresponds with Article 118 of the Third Geneva Convention, which lays down: "when belligerents conclude an armistice convention, they shall normally cause to be included therein provisions war". The test here is clearly that those detained in war should be released without delay. Moreover, Article 142 of the same Convention offers no comment regarding denunciation in time of hostilities; states shall be required to carry out the terms of the Convention by the norms of international law, which involves the release of prisoners of war. To sum up, the norms mentioned above, according to both human rights law and international humanitarian law, apply to different groups of persons deprived of their liberty. This is why the phenomenon of including persons held as security dangers, such as terrorist suspects, asylum seekers, common criminals, and enemy combatants, is illegal under both sets of laws.

Moreover, the trial of suspected ISIS detainees in Syria is essential because it will determine whether the accused is guilty or innocent. Moreover, the government will no longer be responsible for guarding, serving and providing health care to prisoners. Furthermore, victims are also compensated for the damage they have suffered as a result of the armed conflict.

At the international level, the prosecution and punishment of ISIS criminals will lead to the return and consolidation of peace and security in the region and the return of confidence in the courts and public authorities.

The question that needs to be answered is whether the national criminal courts or the international criminal courts are experts in judging ISIS prisoners in Western prisons in Syria accused of committing terrorist acts and international crimes such as genocide, war crimes, and crimes against humanity.

There are different opinions and discussions among scholars of international law about the answer to this question from the point of view of jurisprudence. Some believe that international criminal courts can play a greater role in the trial process, and have more support and influence at the international level. At the same time, the crimes are international crimes and threaten international peace and security, so the trial must be conducted before an international criminal court. Others believe that there is no difference that the National Criminal Court can prosecute and punish those responsible for international crimes, and that the trial process is faster. When it is said that an international crime is an international threat, it does not mean that the case must go before an International Criminal Court (Seils, 2016, pp.1-4).

From the perspective of international law, both the National Criminal Courts and the International Criminal Court have expertise and jurisdiction over genocide, war crimes, and crimes against humanity.

According to Article 17, paragraph 1, of the Rome Statute, "the case is being investigated or prosecuted by a State which has jurisdiction over it unless the State is unwilling or unable genuinely to carry out the investigation or prosecution". It means that if a state is unable or unwilling to prosecute and punish the perpetrators on charges of genocide, war crimes, and crimes against humanity, the case can be transferred to the International Criminal Court.

As a result, it can be said that both international and national courts have jurisdiction and specialty to prosecute criminals of international crimes.

On July 17, 1998, the United Nations established the International Criminal Court (ICC) by a vote of 120 countries, and on July 1, 2002, the court entered into force. According to Article 5, paragraph 1, of the ICC Statute, crimes of genocide, war crimes, and crimes against humanity are under the jurisdiction of the ICC (Alston and GoodMan, 2013, p. 1330). The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute (Article 11, paragraph 1). According to articles 25 and 26 of the Rome Statute, the court has jurisdiction over natural persons over the age of 18, not person-like states.

An important question arises: How can victims of the ISIS war in Syria and Iraq take their cases to the International Criminal Court against the perpetrators?

It is clear that neither Syria nor Iraq is a member of the ICC, so the case can only be brought before the court in the following ways:

1- According to article (13, paragraphs 1 and 3) of the Rome Statute Iraq and Syria should become members of the International Criminal Court. This allows the court to exercise its powers and investigate the case.

2- Because Iraq and Syria are not members of the court, their governments under Article (12, paragraph 3) of the Rome Statute must recognize the powers of the ICC and agree to the court investigating the case.

3- Through the UN Security Council, the case should be brought before the prosecutor general and the prosecutor general should investigate the case, as mentioned in article (13, paragraph 2) of the Rome Statute like the case of the Darfur genocide.

4- The State in which the person accused of the crime is a national according to article (12 paragraph 3) of the Rome Statute.

Another way to judge ISIS criminals in Syrian prisons is for the Security Council to establish a special international criminal tribunal under Chapter (7) of the UN Charter to prosecute those who have committed genocide, war crimes, and crimes against humanity. For example, in 1993 the Security Council decided to establish a special international criminal tribunal for the former Yugoslavia, and in 1994 it decided to establish a special international criminal tribunal for Rwanda to prosecute those responsible for genocide and other international crimes. Another example is the Special Court for Sierra Leone established jointly by the government of Sierra Leone and the UN to prosecute those responsible for serious violations of international humanitarian law and Sierra Leonean law during the country's civil war (1991–2002) (Alston and Goodman, 2013, pp. 1363, 1370).

It can be said that at the domestic level, the Syrian and Iraqi courts can judge ISIS criminals who have committed terrorist acts and international crimes, but, on a national level, the

courts in Iraq and Rojava are prosecuting the ISIS fighters not for core international crimes but for terrorism crimes, it appears the ongoing trials are flawed, corrupted, and the domestic legal systems are not able to prosecute the ISIS fighters because of lacking provisions for criminalizing the core international crimes. Also, internationally, the International Criminal Court and the Specialized International Criminal Court can play a role in prosecuting ISIS prisoners in Syria and Iraq in accordance with the measures mentioned before.

Therefore, the trial, whether domestic or international, will decide whether the accused is guilty or innocent, upon acquittal, the person is released and returns to his or her normal life, and after the court decides that the person is guilty, he or she receives his or her punishment.

That's why according to international law the detention of ISIS terrorist suspects without trial by the USA in Rojava-Syria is illegal and illegitimate because there is no reasonable cause not to prosecute these accused.

8. How have NGOs and the media contributed to the failure of this strategy?

By 2019 when the international coalition fighting ISIS announced the official finish of the self-proclaimed caliphate, the Syrian Democratic Forces (SDF) had captured well over 10,000 ISIS militants plus their families. The majority of the fighters and their families were detained in the final battle in Baghouz in March 2019, which was the last bastion of the terror group. The fighters are currently housed between two camps, with the families in the al-Hole camp and the ISIS fighters in the al-Roj camp respectively. Over 10,000 ISIS fighters are detained by the SDF in al-Roj alone, and these numbers include roughly 5,000 Syrians, 3,000 Iraqis, and 2,000 ISIS fighters from outside Syria and Iraq (Azeez, 2023).

Human Rights Watch (2023) has reported on Rojava Prisons that since establishing the prison, the total number of detainees who have been held is As of January 23, 2023, nearly 42,000 foreigners remain held in the region along with more than 23,000 Syrians. Nearly 37,000 foreign nationals are detained in al-Hol and Roj, two locked, sprawling camps primarily holding the wives, other adult female relatives, and children of male ISIS suspects. Nearly 27,000 foreigners in the camps are from neighboring Iraq, while nearly 10,000 others are from about 60 other countries. More than 60 percent of the camp detainees are children. Nearly 80 percent of the children are under the age of 12, and 30 percent are age 5 or younger. Approximately 5,000 other foreigners are held in prisons and "rehabilitation" centers, including up to several hundred children (Human Rights Watch, 2023).

Despite the Autonomous Administration of North and East Syria (AANES) initiation to bring the detainers to the court, however, the lack of international recognition for the AANES and its courts renders these trials illegitimate, further complicating future international legal efforts to prosecute these combatants. These attempt aims to organize the practice of detention without charge or trial into AANES law (Ajjoub, 2023). Human Rights Watch has strongly opposed the US government and AANES in continuing to detain terrorist suspects without charge or trial. In addition, many of the detainees are exposed to painful stress positions, placed in solitary confinement, threatened with military dogs, death, and torture, and put in conditions of extreme cold, heat, and noise. Human Rights Watch has urged the US government and AANES under international and human rights law to take legal action to repatriate internees safely to their countries or third countries and take legal action according to international fair trial standards for them (Human Rights Watch, 2022).

Moreover, Human Rights Watch (2022) strongly disagrees with the US government and SDF continuing to violate the rights of detainees at Roj prison and not respecting detainees under international and human rights law. Human Rights Watch has stated that the failure to bring the prisoners to the Swedish court by the SDF and the US government has meant a decade of damage to human rights law. They believe that Rojava prisons symbolize the violation of fundamental human rights. Amnesty International has strongly urged the US government to close the Roj facility and they have requested that the government respect international law (Watch, 2022).

In addition, Hart (2014) has discussed how the same tactic or strategy was used in Abu Ghraib Prison in Iraq, especially in relation to published pictures showing detainees whom the US military had abused and tortured. The US military had sexually and physically abused, tortured, and even killed prisoners. This behavior by the US military against detainees came to wide public attention at the international level of the media and these pictures were strong evidence that caused people inside Iraq and even outside to attack the USA and the failure of the US tactic to detain terrorist suspects without trial.

Thus, the aim of opening these prisons by the American authorities in Rojava was to fulfill one of the USA's strategies carried out during the war on terrorism to detain terrorist suspects without charge or trial. As is also known, the place where the prison was built is not legally part of the USA, which means it is not related to the US legal system but is under the control of US military authority.

9. Conclusion

This study has discussed one of the USA's tactics or strategies: the detention of terrorist suspects without charge or trial. In the 21st century, the USA has been faced with a new form of terrorism that had not existed before. In particular, ISIS terrorists were raised in

both countries of Iraq and Syria in 2014. The USA then created a new strategy to respond to them by establishing an international coalition as a part of a strategy that addresses the 'war on terror' in a widespread series of counter-terrorist tactics, including detaining terrorist suspects without charge or trial.

First, the paper finds how old forms of terrorism have deafferented from the new ones according to their structures, aims and methods, as well as the situation before 11 September 2001 as related to change in the world political system, especially after the end of the Cold War when the USA tried to spread the democratic system to all parts of the world. Moreover, this study showed different factors that affected the failure of the tactic or strategy used by the US government in the war on terror, as well as showing the division between international laws. These laws are mentioned in international human rights law and in international humanitarian law. In addition, the paper examined whether the performance of the process of detaining terrorist suspects without trial is illegal and also considered the case of Rojava prisons like al-Hol Camp and Roj Prison in dealing with detainees. Furthermore, this study finds how NGOs and the media played an important role in publishing reports of detainees at al-Hol Camp as well as Roj Prison, which affected the failure of the USA's strategy. Both Human Rights Watch and Amnesty International reports are based on the USA's decisions, such as indefinite detention without charge or trial in prisons, and many of the detainees exposed to threats and acts of cruelty.

To sum up, the US strategy of detaining ISIS terrorist suspects without trial is grounded in the belief that swift action is necessary to protect national security and prevent further attacks. However, this approach also raises significant legal, ethical, and human rights concerns. Balancing the need for security with respect for legal protections remains a challenging aspect of the US counterterrorism policy. Thus, the international community,

particularly the USA, has failed to prosecute ISIS criminals imprisoned in Syrian prisons on charges of terrorist activities and international crimes. There have been many human rights violations in Syrian prisons against people accused of membership in ISIS, terrorist acts, and international crimes.

Recommendations:

1. As an alternative to prosecutions, authorities should develop truth-telling mechanisms with a broad mandate and powers, including the right to subpoena testimony and witnesses, that would address abuses committed by all sides in the conflict, to complement judicial processes and reparations schemes.

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4. Take immediate steps to ease the registration of children of foreign nationals born in Syria, to facilitate their repatriation, and to prevent situations of statelessness created during the armed conflict.

5. Children should never be detained or prosecuted for their or their parents' actual or alleged association with armed groups, offer and facilitate immediate voluntary release or repatriation to all children currently interned or detained in the northeast, with their mothers where possible.

گڵدانەوەی تیرۆریستە گومانلێکراوەکانی داعش بەبێ داگایکردن لەلایەن ولایەتە یەکگرتوەکانی ئەمەریکا لە رۆژاڤا- سوریا

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پوختە

ئەم توێژینەوەیە تاوتوێ یەکێک لە ستراتیژی و تاکتیکانەی ولایەتە یەکگرتوەکانی ئەمەریکا دەکات کە بریتییە لە گڵدانەوەی تیرۆریستە گومانلێکراوەکانی داعش بەبێ دادگایکردن لە کەیسی رۆژاڤا- سوریا. گرنگی ئەم بابەتە لەوەدایە کەوا بە یەکێک لە ناونیشانە هەرە پرمشتومرەکانی نێوگۆرەپانی سیاسەتی هەنوکەی و یاسای نێودەوڵەتی دادەنرێت. لەم توێژینەوەیەدا، میتۆدی شیکاری سیاسی بەکارهاتوە و زانیارییەکانی توێژینەوەکە مامەڵەدەدەکات لەگەڵ هەڵسەنگاندنی ژمارەیەک گۆڕاوی جیاواز. ئەم توێژینەوەیە، باسی کۆمەڵێک هۆکاری جیاواز دەکات کە کاریگەریان هەیە لە چارەسەرنەکردنی ئەو تاکتیک و ستراتیژیانەی کە حکومەتی ئەمەریکا بەکاریاندێنیت لە شەڕی دژی تیرۆردا، لەگەڵ نیشاندانی جیاوازی لە نێوان یاسای نێودەوڵەتی و بنەماکانی کە باسکراوەن لە یاسای نێودەوڵەتی بۆ مافەکانی مرۆڤ و یاسای نێودەوڵەتی ئینسانی. ئەم توێژینەوەیە زیاتر جەخت دەکاتەوە لەسەر ئەوەی ئایا پرۆسەی گڵدانەوەی تیرۆریستە گومانلێکراوەکانی داعش بەبێ دادگایکردن یاسایە یان نا. هەروەها لەم توێژینەوەیەدا کەیسی داگاکانی رۆژاڤا- سوریا هەڵسەنگاندنی بۆ دەکرێ کە چۆن مامەڵە لەگەڵ گلدراوەکان دەکات. لەگەڵ ئەمەشدا، لەم توێژینەوەیەدا هەولدەدرێت هەڵوێستی رێکخراوە ناحکومییەکان بزانرێت سەبارەت بەم بابەتە کە رۆڵێکی بەرچاویان هەبووە لە نیشاندانی زانیاری پێویست بۆ ئەم

ستراتیژی و تاکتیکەی ئەمەریکا. دەرئەنجامی ئەم توێژینەوەیە بریتییە لەوەی کە بابەتی گلدانەوەی تیرۆریستە گومانلێکراوەکانی داعش کۆمەڵێک پرسیاری یاسای وروژاندیە، بەتایبەتی ئەوانەی پەیوەندیدارن بە پرۆسەی مافی دادگاییکردنێکی ڕون لەژێر چاودێری یاسای نێودەوڵەتی، و مافی تاکەکان بۆ دادگاییکردنەکە، و زانینی ڕێژەی سزایەکە بۆیان، هەبوونی مافی ڕاوێژی یاسای و دادگایەکی بەلایەنە.

کلیلی وشەکان: تاوانبار، تاوانە نێودەوڵەتییەکان، ولایەتە یەکگرتوەکانی ئەمەریکا، هێزەکانی سوریای دیموکرات، گلدانەوەی تیرۆریستە گومانلێکراوەکانی داعش، یاسای نێودەوڵەتی.

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