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Genocide in the Middle East

UPDATED REPORT

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Executive Summary

The situation in Syria and Iraq is catastrophic and has led to one of the worst humanitarian crises in decades. The persecution of religious minorities has entered a critical stage, starting a debate about whether this persecution has reached the threshold of genocide.

In early 2016, the Parliamentary Assembly of the Council of Europe and the European Parliament both adopted resolutions declaring the atrocities committed by ISIS/Daesh in the Middle East as genocide and calling upon states to take actions in line with their obligation to “prevent” genocide. In March 2016, the United States Administration also denounced ISIS atrocities committed against Christians and other religious minorities in the Middle East as genocide.

Further action is needed for the genocide to be stopped, and the first step in this process is recognizing that the genocide is taking place.

This memorandum scrutinizes the situation in Syria and Iraq and the atrocities committed by ISIS/Daesh in both countries. It then analyzes the international legal framework on genocide, specifically the elements of genocide under Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and applies the law on genocide to the situation in the Middle East. It concludes that the atrocities taking place in Syria and Iraq meet the definition of genocide under international law, and that states therefore have an obligation to act. Lastly, it outlines the steps that can be taken by states within the international legal framework set up to prevent and punish acts of genocide.

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(a) Background

1. Christians are the most persecuted religious group in the world. The research conducted by the Pew Research Center's Forum on Religion and Public Life published in August 2011¹ revealed that Christians were harassed² in 130 countries (between mid-2006 to mid-2009).³ In 104 countries, the harassment was done by governments and organisations and, in 100 countries, by social groups and individuals.
2. The harassment of Christians was the highest in the Middle East and North Africa (90% of countries). However, Christians were also harassed in more than two-thirds of European countries (69%), 37% of American countries, 71% of Asian countries, and 68% of Sub-Saharan Africa.⁴
3. However, the persecution of Christians and other religious minorities in Syria and Iraq differs significantly from the rest of the world due to the magnitude of the persecution and the intent behind it.⁵
4. The persecution of Christians and other religious minorities in Syria and Iraq is predominantly conducted by extremist groups, including Islamic State (ISIS/Daesh)⁶ and Jabhat al-Nusra⁷. Religious minorities in Syria and Iraq are specifically targeted by ISIS/Daesh because of belonging to a religious minority group. Many of the victims were and continue to be Christians and are targeted by ISIS/Daesh and other extremist groups because of being Christian.

Syrian Arab Republic (SAR)

5. The Syrian Civil War, between the Syrian forces and the opposition fighting against the Assad regime, began on 15 March 2011, as sparked by the Arab Spring, and is entering its sixth year. The Islamic State has used the ongoing conflict in the SAR to expand and attempt to build a 'caliphate' in many regions of SAR.

¹ Pew Research Center, The Pew Forum on Religion and Public Life, Rising Restrictions on Religion One-third of the World's Population Experiences an Increase, August 2011, available at <http://pewforum.org/Government/Rising-Restrictions-on-Religion.aspx>

² Harassment here includes: "physical assaults, arrests and detentions, the desecration of holy sites and discrimination against religious groups in employment, education or housing. Harassment and intimidation also include such things as verbal assaults on members of one religious group by other groups or individuals in society." Ibid.

³ Ibid., 64.

⁴ Ibid., 66.

⁵ This will be explained in due course.

⁶ ISIS/Daesh is an extremely violent group imposing violent religious ideology and not allowing any religious diversity. ISIS/Daesh targets anyone who opposes their ideology. However, religious and ethnic minorities have particularly suffered from the hands of IS and on a mass scale.

⁷ Jabhat al-Nusra, a branch of al-Qaeda, is a Sunni Islamist opposition fighting Syrian Government forces since 2012.

6. In early 2015 the population of SAR was estimated at 20 million. 92.8% of the population was Muslim, 5.2% Christian and 2% other.⁸ In 2011, the population of Christians was assessed at over 2 million and constituted 10% of the whole Syrian population. The population of Christians dropped from over 2 million in 2011 to less than 1 million in 2015.⁹
7. In mid-January 2015 there were over 3.9 million registered Syrian refugees in Lebanon, Jordan, Turkey, Iraq and Egypt. Over 9.3 million Syrians required basic assistance, and over 8 million were internally displaced.¹⁰ It is estimated that in 2015 alone, over 700,000 Christians in Syria sought refuge.¹¹
8. The persecution of Christians in SAR is extreme. Examples include three Christian men who were executed for refusing to convert to Islam¹², a Catholic priest who was beheaded by the rebels¹³, at least 15 Assyrian Christians who were beheaded or shot¹⁴, three Christians who were executed¹⁵, and at least 10 people who were ordered executed by a self-proclaimed “religious court” for being Christian.¹⁶
9. In September 2013, 36 Muslim religious leaders issued a fatwa allowing Sunni Muslims to seize the property belonging to Christians or other non-Muslim religious groups.¹⁷ Numerous Christians and Christian religious leaders became victims of kidnappings. Greek Orthodox Archbishop Boulos Yazigi and Syrian Orthodox Archbishop Yohanna Ibrahim are still missing.¹⁸
10. In September 2013, Jabhat al-Nusra attacked the predominantly Christian town of Maaloula, killing 20 people, abducting 15, and destroying Christian religious places.¹⁹ No Muslims were attacked.
11. In October and November 2013, over 1,500 families in the Christian village of Sadad were being held hostage by Jabhat al-Nusra. 45 people were killed.²⁰

⁸ Aid to the Church in Need, Persecuted and Forgotten? A Report on Christians Oppressed for their Faith 2013-2015. Syria. Available at: <http://www.acnuk.org/persecuted#countries>.

⁹ Aid to the Church in Need (n 8).

¹⁰ Aid to the Church in Need (n 8).

¹¹ Aid to the Church in Need (n 8).

¹² Michael Carl, 3 Christians executed after refusing to Convert, available at:

<http://www.wnd.com/2013/12/3-christians-executed-after-refusing-to-convert/>

¹³ Patrick Goodenough, Reported Beheading of Syrian Priest Boosts Fear for Christians' Safety, available at: <http://www.cnsnews.com/news/article/reported-beheading-syrian-priest-boosts-fear-christians-safety>

¹⁴ Inés San Martín, Syrian Sources Say ISIS Executed 15 Christians – With More Killing to Come, available at: <http://www.cruknow.com/faith/2015/02/26/syrian-sources-say-isis-executed-15-more-christians-with-more-killing-to-come/>.

¹⁵ ANSAMED, Syria: ISIS releases execution video of Christian hostages, available at: http://www.ansamed.info/ansamed/en/news/sections/generalnews/2015/10/08/syria-isis-releases-execution-video-of-christian-hostages_13e82495-c747-4095-9446-d32ecd12b899.html.

¹⁶ Hindustan Times, Syria: Al Qaeda-led Religious Court Executes 10 in Aleppo, available at: <http://www.hindustantimes.com/world/syria-al-qaeda-led-religious-court-executes-10-in-aleppo/story-yoDR2s5f1rcupBMGfJY9iN.html>.

¹⁷ Aid to the Church in Need (n 8).

¹⁸ Ibid.

¹⁹ Ibid.

12. In October 2014 Franciscan Father Hanna Jallouf and 20 Christians were kidnapped by Jabhat al-Nusra.²¹ They were eventually freed.
13. In January 2015, it was reported that the Armenian Catholic Father Michel Kayyal and Greek Orthodox Father Maher Mahfouz were killed.²²
14. In February 2015, ISIS/Daesh seized 35 Assyrian Christian villages, kidnapping over 300 Christians. ISIS/Daesh released 23 people in March 2015 and demanded £15 million for the release of 230 remaining people.²³ The remaining villagers, amounting to over 1,200, fled to other villages (Hassake and Qamishli), leaving the 35 villages deserted for months. They started returning in June 2015 when Christian and Kurdish fighters took over the villages.²⁴
15. The exact number of casualties of the Syrian Civil War (and of the Christian victims) is unknown. It is assumed that as of 24 November 2014, 197,378 people were killed (including 62,347 civilians).²⁵ However, according to the Syrian Observatory for Human Rights, there may be over 80,000 more deaths that were unrecorded.²⁶
16. Many people are executed as a result of a death penalty imposed by the extremist groups in breach of the rules of due process and fair trial, and often without any trial at all. Such executions continue and the death penalty is used as a punishment for failing to convert or failing to adhere to Islamic sharia law. Furthermore, apart from killings and executions, religious minorities are subject to torture, inhuman and degrading treatment, sexual violence, rape, enforced displacement and disappearance.²⁷
17. No adequate steps have been taken by the Syrian Government to stop the abuse and unlawful executions and to respect the right to life as protected under international law. As a result, SAR is ranked 4th on the 2015 World Watch List, which ranks the top 50 countries where Christians are persecuted.²⁸

Iraq

18. In early 2015, the population of Iraq was estimated at 32.6 million comprising 98% Muslims, 1% Christians and 1% other religious minorities.²⁹

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Charlotte Alfred, Inside The Advocacy Group That Keeps Track Of Syria's War Casualties, The Huffington Post, 24 November 2014, available at: http://www.huffingtonpost.com/2014/11/24/syrian-observatory-for-human-rights_n_6201182.html.

²⁶ Ibid.

²⁷ Tom Malinowski, ISIL's Persecution of Religious Minorities in Iraq and Syria, <http://www.state.gov/j/drl/rls/rm/2014/231483.htm>

²⁸ Open Doors, 2015 World Watch List, available at <https://www.opendoorsusa.org/christian-persecution/world-watch-list/syria/>

²⁹ Aid to the Church in Need, Persecuted and Forgotten? A Report on Christians Oppressed for their Faith 2013-2015. Iraq. Available at: <http://www.acnuk.org/persecuted#countries>.

19. Iraq is ranked 3rd on the 2015 World Watch List. After ISIS/Daesh proclaimed a 'caliphate' in many regions of Iraq, the situation of Christian minorities in Iraq deteriorated and continues to be critical.
20. Because of the ongoing persecution of Christians and Yazidis, the United States Commission on International Religious Freedom (USCIRF) recommended in their 2015 Annual Report that the U.S. government designate Iraq as a country of particular concern (CPC) under the International Religious Freedom Act (IRFA).³⁰
21. In 2003, the Christian population in Iraq was estimated at 1.4 million.³¹ Currently the Iraqi Christian population is estimated at 260,000.³²
22. The attacks on the Christian population increased after the fall of Saddam Hussein, reaching its critical stage in October 2010 when 52 Christians were killed in an attack on the Syrian Catholic Cathedral in Baghdad.³³
23. In December 2013, three attacks targeting Christians in Baghdad killed at least 37 people, and injured over 59.
24. In June 2014, ISIS/Daesh took over Mosul, giving an ultimatum to Christians living there (then over 30,000) to convert to Islam, pay a tax, leave Mosul or face death.³⁴ Thousands of Christians fled to the Nineveh Plains.
25. In August 2014, ISIS/Daesh took over Qaraqosh, causing over 100,000 Christians to flee. The same fate has met the Christian population of al-Kosh. Numerous Christian sites were destroyed by the extremists.
26. In August 2014, ISIS/Daesh moved to Sinjar (Nineveh province) and massacred Yazidis, Assyrian Christians, Shi'a and other minorities.³⁵ Over 200,000 people (mostly Yazidis) managed to escape to the mountains. However, ISIS/Daesh surrounded the mountains and Yazidis were not able to escape. Over 500 Yazidis were murdered by ISIS/Daesh, and many died of starvation or dehydration.³⁶
27. In September 2014, Mosul schools with Christian affiliations were forced to stop teaching Christian religious education and change their Christian names.³⁷ Subsequently, in December 2014, Christian churches began to be used as prisons.
28. Apart from Christians, other minority groups are facing extreme persecution in Iraq. From 2005 to 2013, the Yazidi population fell by 200,000³⁸, and the Mandaean

³⁰, United States Commission on International Religious Freedom, 2015 Annual Report, available at: <http://www.uscifr.gov/reports-briefs/special-reports>, 95.

³¹ Ibid., 96.

³² Ibid., 96.

³³ Aid to the Church in Need (n 29)

³⁴ United States Commission on International Religious Freedom (n 30), 96.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Aid to the Church in Need (n 29)

³⁸ United States Commission on International Religious Freedom (n 30), 96.

population decreased by 90% (either by death or forced migration), leaving only a few thousand in Iraq.³⁹

29. ISIS/Daesh has also persecuted Muslims that do not agree with their ideology. In October 2014, 150 Sunni Muslims were found murdered in a mass grave.⁴⁰

(b) The Threshold of Genocide

30. Genocide is a term that was introduced by Raphael Lemkin. Lemkin defined genocide as:

a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.⁴¹

31. Based on Lemkin's definition of genocide, the United Nations General Assembly adopted the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Convention on Genocide) defining genocide in Article II as:

(...) any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

32. The definition of genocide from the Convention on Genocide was mirrored in Article 6 of the Rome Statute and in the statutes for the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). In the over 60 years since it was drafted, the original wording from 1948 remains unchanged. Furthermore, the Preparatory Commission for the International Criminal

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation. Analysis, Proposals for Redress.* (Carnegie Endowment for International Peace, Washington DC 1944) 79.

Court (PCICC) prepared an explanatory note to help with interpretation of Article 6 of the Rome Statute (and other provisions) reaffirming the intention of the drafters of the Convention on Genocide.⁴²

33. Despite the fact that the wording of Article II of the Convention on Genocide differs significantly from the definition of genocide as introduced by Lemkin, in that it is more restrictive, it has to be emphasised that genocide is not limited to the acts of murder and killings, as it is often erroneously assumed. The following clarification in *Prosecutor v. Jean-Paul Akayesu* is noteworthy:

Contrary to popular belief, the crime of genocide does not imply the actual extermination of group in its entirety, but is understood as such once any one of the acts mentioned in Article II(2)(a) through II(2)(e) is committed with the specific intent to destroy “in whole or in part” a national, ethnical, racial or religious group.⁴³

34. This is supported by the wording of Article II. Furthermore, the *actus reus* of the crime of genocide as set out in Article II is not exhaustive.

(c) The Elements of the Crime

Mens Rea

35. “Genocide is an organised and not a spontaneous crime.”⁴⁴ The organizational aspects of the crime of genocide imply a degree of preparation and planning of the underlying acts, and of the end result. The crime of genocide requires *dolus specialis*, that is, intent to conduct the underlying act (as listed in Article II of the Convention on Genocide) and intent in relation to bringing about the ultimate aim, this is, the destruction of the group, ‘in whole or in part’.⁴⁵ This ulterior intent, the ‘intent to destroy’, distinguishes genocide from other crimes (crimes against humanity or war crimes).⁴⁶ As noted by the Trial Chamber in *Prosecutor v. Jean-Paul Akayesu*⁴⁷:

Genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged. Thus, the special intent in the crime of genocide lies in “the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”

36. In the case of *Prosecutor v. Radislav Krstic*, the Trial Chamber indicated that while the intention to destroy must be in relation to the entire group, the targeted group may be smaller yet significant as to have an impact on the group as a whole.

⁴² Report of the Preparatory Commission for the International Criminal Court, Addendum, Part II, Finalized Draft Text of the Elements of Crimes PCNICC/2000/1/Add.2.

⁴³ *Prosecutor v. Akayesu* (Judgement) ICTR-96-4 (2 September 1998), 497.

⁴⁴ William Schabas, *Genocide in International Law* (Cambridge University Press, Cambridge 2000) 208.

⁴⁵ Kai Ambos, ‘What Does ‘Intent to Destroy’ in Genocide Mean?’ (2009) 91 *International Review of the Red Cross* 834.

⁴⁶ *Ibid.*, 836.

⁴⁷ *Prosecutor v. Akayesu* (Judgement) ICTR-96-4 (2 September 1998), 498.

the aim of the Genocide Convention is to prevent the intentional destruction of entire human groups, and the part targeted must be significant enough to have an impact on the group as a whole.⁴⁸

37. This was further elaborated by the Trial Chamber in *Prosecutor v Radislav Krstić* in relation to the atrocities committed against Bosnian Muslims:

[t]he Bosnian Serb forces knew, by the time they decided to kill all of the military aged men, that the combination of those killings with the forcible transfer of the women, children, and elderly would inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica.⁴⁹ The Bosnian Serb forces effectively destroyed the community of the Bosnian Muslims in Srebrenica as such and eliminated all likelihood that it could ever re-establish itself on that territory.⁵⁰

38. Consequently, even if the biological destruction concerns a smaller group, the deaths of a smaller group, combined with terror among the rest of the group and enforced disappearance, may lead to factual disappearance of the group from the region and accordingly may reach the threshold of genocide. Moreover, in relation to causation, the findings of the Trial Chamber in *Prosecutor v Radislav Krstić* suggest that “knowledge” (as opposed to intent) that the underlying acts would lead to destruction of the group in the area, would amount to genocide.

39. It therefore follows that a variable degree of *mens rea* would be required from different actors, for example, the intent required from superiors would be higher than in case of a subordinate. It is implausible to assume that every participant of the perpetrating forces would have to have the specific intent to commit acts intending to destroy the groups in whole or in part. In case of subordinates, there is a presumption that they know the intention of their superiors when they receive an order requesting them to conduct an act that is manifestly illegal and is directed against individuals belonging to a protected group. This was affirmed by the International Law Commission stating:

He cannot escape responsibility if he carries out the orders to commit the destructive acts against victims who are selected because of their membership in a particular group because he was not privy to all aspects of the comprehensive genocidal plan or policy. The law does not permit an individual to shield himself from criminal responsibility by ignoring the obvious. For example, a soldier who is ordered to go from house to house and kill only persons who are members of a particular group cannot be unaware of the irrelevance of the identity of the victims and the significance of their membership in a particular group. He cannot be unaware of the destructive effect of this criminal conduct on the group itself. Thus, the necessary degree of knowledge and intent may be inferred from the nature of the order to commit the

⁴⁸ *Prosecutor v. Radislav Krstić* (Appeal) IT-98-33-A (19 April 2004), 8.

See also: *Prosecutor v. Goran Jelisić* (Judgement) IT-95-10-T (14 December 1999), 82: “[g]iven the goal of the [Genocide] Convention to deal with mass crimes, it is widely acknowledged that the intention to destroy must target at least a *substantial* part of the group.”

⁴⁹ *Prosecutor v. Radislav Krstić* (Judgement) IT-98-33-T (2 August 2001), 595.

⁵⁰ *Ibid.*, 597.

prohibited acts of destruction against individuals who belong to a particular group and are therefore singled out as the immediate victims of the massive criminal conduct.⁵¹

40. In the *Akayesu* case,⁵² it was held that the genocidal intent was to be inferred from the underlying acts themselves, namely from “the massive and/or systematic nature of the atrocity’. The Chamber in *Akayesu* further indicated that:

in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.⁵³

41. The foregoing reasoning was reiterated in the *Karadzic and Mladic* case,⁵⁴ where it was held that genocidal intent may be implied from the acts carried out.
42. It is notable that the PCICC at the Working Group on Elements of Crimes has proposed the lowering of the threshold and the application of the test for negligence when assessing acts of genocide, suggesting that; “[t]he accused knew or should have known that the conduct would destroy, in whole or in part, such group or that the conduct was part of similar conduct directed against that group.”⁵⁵ However, as matters stand this amendment was not adopted and the *mens reas* requirement for genocide remains as per the initial intention of the drafters of the Convention on Genocide.

Actus Reus

43. **Protected groups:** Article II of the Convention on Genocide protects national, ethnical, racial and religious groups. However, it does not incorporate cultural, political, social and economic groups.⁵⁶ The General Assembly Resolution 96(I) proposed a broader approach to recognising genocide, when “racial, religious, political, and other groups have been destroyed, entirely or in part.”⁵⁷ However, this wording was not adopted; therefore the groups protected under Article II of the

⁵¹ Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May 26 July 1996, note 13 above, p. 90.

⁵² *Prosecutor v. Akayesu* (Judgement) ICTR-96-4 (2 September 1998), 477.

⁵³ *Ibid.*, 477.

⁵⁴ *Prosecutor v. Karadzic and Mladic*, IT-95-5-R61, IT-95-18-R61, 94.

⁵⁵ Discussion Paper Proposed by the Co-ordinator, Article 6: The Crime of Genocide’, UN Doc. PCNICC/1999/WGEC/RT.1.

⁵⁶ Kurt Jonassohn, ‘What is Genocide?’ in Helen Fein (ed.), *Genocide Watch* (Yale University Press, New Haven 1992) 17.

⁵⁷ General Assembly Resolution 96(I), 11 December 1946.

Convention on Genocide continue to be limited to four groups without any reference to “other groups.” In practice, the limitation of genocide to the defined groups can cause difficulty when attempting to establish whether a persecuted group falls under one of the four protected groups. As a result, the test to be applied is a subjective one, namely, whether the perpetrator perceived the victims as belonging to “a national, ethnical, racial and or religious group.” The subjective test approach was adopted by the ICTR in the case of *Prosecutor v. Kayishema and Ruzindana*⁵⁸ where the Tribunal established that it was enough that “a group [was] identified as such by others, including perpetrators of the crimes.”⁵⁹ The ICTR has found that the determinative factor is the subjective knowledge or belief of the perpetrators as to the group identity of the victims.

44. **Destruction and intent to destroy:** The crime of genocide is committed when the specific acts, as listed in Article II(a)-(e) of the Convention on Genocide, are committed with the intent to destroy the group. The General Assembly Resolution 96(I) indicated that genocide is “a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings.” However, the “destruction” does not have to materialize and the “the denial of the right if existence” may take various forms:⁶⁰

The physical destruction of a group is the most obvious method, but one may also conceive of destroying a group through purposeful eradication of its culture and identity resulting in the eventual extinction of the group as an entity distinct from the remainder of the community.⁶¹

45. The acts which qualify as “destruction” thus constituting genocide or genocidal acts may include:

murder; summary executions; torture; rape; mayhem; so called 'ethnic cleansing'; the wanton devastation of villages, towns, districts and cities; the siege of villages, towns, districts and cities; the starvation of the civilian population; the interruption of, interference with, and harassment of humanitarian relief supplies to the civilian population by the international community; the bombardment of civilian population centres; and the detention of civilians in concentration camps or elsewhere.⁶²

46. At the time of drafting the text of the Convention on Genocide, the Soviet Union strongly emphasised that “[t]he concept of physical destruction must embrace not only cases of direct murder of particular groups of the population for the above-mentioned reasons, but also the premeditated infliction on such groups of conditions of life aimed at the destruction of the group in question.”⁶³ The drafters of the

⁵⁸ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999.

⁵⁹ *Ibid.*, 98.

⁶⁰ Larissa van den Herik, ‘The Meaning of the Word ‘Destroy’ and the Implications for the Wider Understanding of the Concept of Genocide’ in J. Ten Cate and H. van der Wilt et al. (ed.), *60 Years Genocide Convention*, available at SSRN: <http://ssrn.com/abstract=1989848>

⁶¹ *Prosecutor v. Akayesu* (Judgement) ICTR-96-4 (2 September 1998), 574.

⁶² *The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* 1993 I.C.J. 1 (8 April 1993).

⁶³ UN Doc. E/AC.25/7, Principle II.

convention ensured that the wording used in the convention was precise and restrictive to avoid the indefinite expansion of the convention.⁶⁴ However, the list in Article II of the Convention on Genocide should not be read as an exhaustive list.

47. **Killing members of the group:** The word “killing” is to be understood in its ordinary meaning, this is, an act causing death. As indicated by the PCICC, the elements of this act are that:

1. The perpetrator killed one or more persons.
- (2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.)
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.⁶⁵

48. **Causing serious bodily or mental harm to members of the group.** The PCICC indicated that this act of causing serious bodily or mental harm has to take “place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.”⁶⁶ Rape and sexual assault may well be classified as acts causing both: physical and mental harm. Other genocidal acts able to cause physical or mental harm sustained include:

enslavement, starvation, deportation and persecution (...) and by their detention in ghettos, transit camps and concentration camps in conditions which were designed to cause their degradation, deprivation or their rights as human beings, and to suppress them and cause them inhumane suffering and torture.⁶⁷

49. It has been argued that contrary to physical harm, the mental harm has to more severe, and over all, more severe than merely a temporary psychological injury.⁶⁸ This neglects the fact that ‘post traumatic stress disorder’ (PTSD), can have ongoing (but not permanent) adverse mental health impacts which remain for significant period of time and gravely impact on a victim’s daily life and activities.

50. **Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part:** The PCICC stated that the ‘conditions of life’ inflicted must be “calculated to bring about the physical destruction of that

⁶⁴ Ad Hoc Committee on Genocide, Ad Hoc Committee's Terms of Reference, Note by the Secretary-General, UN Doc. E/AC.25/2.

⁶⁵ Report of the Preparatory Commission for the International Criminal Court, Addendum, Part II, Finalized Draft Text of the Elements of Crimes PCNICC/2000/1/Add.2, 6. Elements 2-3 are common to all acts named in Article 6.

⁶⁶ Ibid.

⁶⁷ *Attorney General of the Government of Israel v. Adolf Eichmann*, 36 I.L.R. 5 (Dist.Ct. Jerusalem, 1961)

⁶⁸ Nehemiah Robinson, *The Genocide Convention: A Commentary* (Institute of Jewish Affairs, New York 1960) ix.

group, in whole or in part” and that the act has to have taken “place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.”⁶⁹ The rationale for the *actus reus* in this instance was comprehensively elucidated by France when discussing the wording of the Convention on Genocide, stating:

the ghetto, where the Jews were confined in conditions which, either by starvation or by illness accompanied by the absence of medical care, led to their extinction, must certainly be regarded as an instrument of genocide. If any group were placed on rations so short as to make its extinction inevitable, merely because it belonged to a certain nationality, race or religion, the fact would also come under the category of genocidal crime.⁷⁰

51. Further included are “economic, financial and commercial blockade intentionally causing great suffering or seriously injuring physical integrity or mental or physical health”⁷¹, and “subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement.”⁷²
52. **Imposing measures intended to prevent births within the group:** The PCICC stated that in the event of genocide by preventing births, the imposed measures have to be “intended to prevent births within that group.”⁷³ This *actus reus* would include “sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages.”⁷⁴ Equally, it has been argued that rape may be perceived as a measure imposed to prevent birth:

In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother’s group (...) rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats of trauma, not to procreate.⁷⁵

53. **Forcibly transferring children of the group to another group:** The PCICC clarified this act as forcibly transferring one or more persons under the age of 18 to another group, where the perpetrator knew that the persons were under 18. The forcible

⁶⁹ Report of the Preparatory Commission for the International Criminal Court, Addendum, Part II, Finalized Draft Text of the Elements of Crimes PCNICC/2000/1/Add.2, 7.

⁷⁰ UN Doc. E/AC.25/SR.4, 14.

⁷¹ *United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Court*, Proposal for Article 5 Submitted by Cuba (53rd Sess., U.N. Doc. A/CONF.183/C.I/L.17 (1998)).

⁷² *Prosecutor v. Jean-Paul Akayesu* (Judgement) ICTR-96-4-T (2 September 1998) 505.

⁷³ Report of the Preparatory Commission for the International Criminal Court, Addendum, Part II, Finalized Draft Text of the Elements of Crimes PCNICC/2000/1/Add.2, 7.

⁷⁴ *Prosecutor v. Jean-Paul Akayesu* (Judgement) ICTR-96-4-T (2 September 1998), 506.

⁷⁵ *Prosecutor v. Jean-Paul Akayesu* (Judgement) ICTR-96-4-T (2 September 1998), 507-508.

transfer is “not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.”⁷⁶ The gravity of this act can be adequately presented on the case Aboriginal and Torres Strait Islander children separated from their families in Australia:

the predominant aim of Indigenous child removals was the absorption or assimilation of the children into the wider, non-Indigenous, community so that their unique cultural values and ethnic identities would disappear, giving way to models of Western culture...Removal of children with this objective in mind is genocidal because it aims to destroy the “cultural unit” which the Convention is concerned to preserve.⁷⁷

(d) Genocide v. Crimes against Humanity and War Crimes

54. Despite the fact that the crime of genocide, crimes against humanity and war crimes are often put into one basket, there are numerous differences that should not be overlooked. There is a general misconception about the threshold of genocide in relation to how many people have to die before genocide may be officially recognised. Furthermore, there is often political reluctance to recognise genocide because of the associated duty to act/prevent that follows such recognition. However, because of the magnitude of the crime of genocide, it is crucial to distinguish it from other crimes, recognise it and act accordingly in order to keep the promise of “never again.” The differences between the crimes of genocide, crimes against humanity and war crimes on the example of the definitions from the Rome Statute are considered hereunder.

Crimes against Humanity

55. The wording used in Article 6 of the Rome Statute mirrors the wording used in Article II of the Convention on Genocide. The same wording was also used for the purposes of ad-hoc tribunals, for example, the ICTR and ICTY. This shows that there is international consensus in relation to the definition/understanding of the crime of genocide. However, while the Convention on Genocide does not mention crimes against humanity or war crimes, the Rome Statute (as well as the statutes for various ad-hoc tribunals) incorporates both clearly specifying their elements. Article 7 of the Rome Statute defines crimes against humanity as:

(...) any of the following acts when committed as part of a widespread or systematic attack directed against any civilian, with knowledge of the attack:

- a) Murder;

⁷⁶ Report of the Preparatory Commission for the International Criminal Court, Addendum, Part II, Finalized Draft Text of the Elements of Crimes PCNICC/2000/1/Add.2, 8.

⁷⁷ Australian Human Rights and Equal Opportunities Commission, Bringing Them Home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, pp. 270±5, www.austlii.edu.au/au/special/rsj-project/rsjlibrary/hreoc/stolen

- b) Extermination;
 - c) Enslavement;
 - d) Deportation or forcible transfer of population;
 - e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - f) Torture;
 - g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - i) Enforced disappearance of persons;
 - j) The crime of apartheid;
 - k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
56. It is accepted that the *actus reus* in Article 7 of the Rome Statute is to a certain degree incorporated in the *actus reus* of Article II of the Convention on Genocide. Article 7 of the Rome Statute contains a more precise list of acts qualifiable as crimes against humanity.
57. The acts listed in Article 7 of the Rome Statute are required to be committed as a “as part of a widespread or systematic attack directed against any civilian, with knowledge of the attack.” This means that single acts of violence would not suffice to meet the threshold of crimes against humanity. However, the *mens rea* threshold for crimes against humanity is much lower as there is no requirement of specific intent as in case of genocide in Article II of the Convention on Genocide. Furthermore, Article 7 of the Rome Statute does not contain reference to specifically protected groups as in Article II of Convention on Genocide) but its protection covers all civilians.
58. The wording used in both provisions means that despite the fact that the same acts can constitute either genocide or crimes against humanity, the crucial distinction will be whether the atrocities were indented to destroy a specifically protected group, in whole or in part. Such specific intent is often very difficult to establish and therefore many genocide acts will fall short of the recognition of genocide. The distinction would come down to the fact whether there is enough evidence to establish that the perpetrators intended to destroy the protected group in whole or in part, or whether the specific intent can be implied based on the pattern of the atrocities committed.

War Crimes

59. War crimes are defined in Article 8 of the Rome Statute as:

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, 'war crimes' means:

a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

i) Wilful killing;

ii) Torture or inhuman treatment, including biological experiments;

iii) Wilfully causing great suffering, or serious injury to body or health;

iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

vii) Unlawful deportation or transfer or unlawful confinement;

viii) Taking of hostages.

(...)

60. The elements of *actus reus* in Article 8 of the Rome Statute do not differ significantly from the acts which qualify as genocide or crimes against humanity. Article 8 of the Rome Statute is intentionally very detailed in order to include numerous scenarios that are otherwise not covered by any other provisions. However, the war crimes as listed in Article 8 of the Rome Statute do not refer to crimes committed at the same level as in case of genocide or crimes against humanity. In any event, particular attention is given to crimes committed in accordance to a plan or a policy. Furthermore, as in case of other crimes against humanity, there is no requirement of a 'specific intent' for the atrocities to be classified as war crimes.

61. The example of definitions of genocide, other crimes against humanity and war crimes as per the Rome Statute shows that while the *actus reus* of all three crimes may be very similar, it is the degree of the crimes, i.e., their systematic occurrence and the specific intent, that are decisive in distinguishing the various atrocities from having reached the threshold of genocide. These differences should not be

overshadowed by political considerations and fear of identifying atrocities in the appropriate manner.

62. The example of the three crimes further shows that genocide does not just happen overnight. Under certain circumstances, genocide can develop from war crimes and crimes against humanity. However, this progression takes time and often happens with an attendant ignorance by the international community which gives the perpetrators a *carte blanche*. A failure by the international community to act, and act promptly will often lead to atrocities escalating until they reach the threshold of genocide.

(e) Have ISIS/Daesh atrocities against Christians met the threshold?

63. It is clear that the situation of Christians in Syria and Iraq is critical and requires the urgent assistance of the international community. It is important therefore to scrutinise whether the above described atrocities in Syria and Iraq have met the threshold of genocide.

Mens Rea

64. Proving intention beyond reasonable doubt is extremely difficult. One would have to prove not only that ISIS/Daesh intended to conduct the underlying acts but also that ISIS/Daesh has had the intent to destroy Christian groups in Syria and Iraq, in whole or in part. However, in case of ISIS/Daesh this specific intent is well documented in its official propaganda videos and newspapers including Dabiq, the official ISIS/Daesh magazine used for propaganda and recruitment.
65. In October 2014, ISIS/Daesh published the 4th issue of Dabiq with a cover photo showing a black ISIS/Daesh flag flying over the Vatican. The message to the “crusaders” in the magazine confirmed ISIS/Daesh desires to conquer Rome and “break the cross.”

And so we promise you [O crusaders] by Allah’s permission that this campaign will be your final campaign. It will be broken and defeated, just as all your previous campaigns were broken and defeated, except that this time we will raid you thereafter, and you will never raid us.

We will conquer your Rome, break your crosses, and enslave your women, by the permission of Allah, the Exalted. (...) If we do not reach that time, then our children and grandchildren will reach it, and they will sell your sons as slaves at the slave market” [Indeed Your Lord Is Ever Watchful].⁷⁸

66. In February 2015, the magazine published an article on ISIS/Daesh capturing 21 Coptic Christians confirming ISIS/Daesh’s specific plan to target Catholic Christians, persecute the “crusaders”:

This month, the soldiers of the Khilāfah in Wilāyat Tarābulus captured 21 Coptic crusaders, almost five years after the blessed

⁷⁸ Dabiq ‘The Failed Crusade’ (2014), 1435 Dhul-Hijjah, 4th Issue, 5.

operation against the Baghdad church executed in revenge for Kamilia Shehata, Wafa Constantine, and other sisters who were tortured and murdered by the Coptic Church of Egypt.⁷⁹

Therefore, the Islamic State leadership decided to target the Catholic Christians of Baghdad so as to teach the tāghūt of the Copts – Shenouda – that the price of Muslim blood is costly and so accordingly, if his church persecuted any Muslimah in Egypt, he would be directly responsible for every single Christian killed anywhere in the world when the Islamic State sought its just revenge...⁸⁰

67. This statement confirms that the attacks of the crusaders (Christians) in Iraq (as well as Egypt) were coordinated acts of systematic pattern specifically intended against Christians. Furthermore, the magazine was used to call for jihād against Christians and other religions:

The truth is also clear regarding bay'ah to the Khalīfah Abū Bakr al-Baghdādī (hafidhullāh) and jihād against the Jews, the Christians, the Rāfidah, and the proponents of democracy. No one gives precedence to the words of a scholar over the orders that came from Allah and His Messenger (sallallāhu 'alayhi wa sallam) except those described by Allah's statement, {They have taken their scholars and monks as lords besides Allah} [At-Tawbah: 31].⁸¹

Go forth for jihād and defend your Islam wherever you may be.⁸²

68. In November 2015, the ISIS/Daesh magazine restated the intention of ISIS/Daesh to fight against cross-worshippers (Christians):

Shortly after the Russian airstrikes began, the resolute soldiers of the blessed Shāmī Wilāyah of Saynā' succeeded in downing a Russian passenger plane, resulting in the deaths of 224 Eastern crusaders. The operation exacted revenge upon the cross-worshippers for recently killing hundreds of Muslims in Shām, including their women and children.⁸³

69. The message conveyed in ISIS/Daesh's official newspapers and videos is very clear. However, it has been argued that the element of "intent to destroy" has not been met, as some Christian communities in Syria and Iraq were given a "choice" to convert, pay a tax, flee or face death. It may be argued that ISIS/Daesh would not have given such choice to Christian communities if ISIS/Daesh had an intent to destroy. However, the question would be whether the Christian communities were in fact given a "choice". This will be elaborated upon in due course.

⁷⁹ Dabiq, 'From Hypocrisy to Apostasy. The Extinction of the Grayzone' (2015), Rabi'Al-Akhir 1436, 7th Issue, 30.

⁸⁰ Ibid., 31.

⁸¹ Ibid., 70.

⁸² Ibid., 75.

⁸³ Dabiq, 'Just Terror', (2015), 1437 Safar, 12th Issue, 43.

70. Considering that the Christian population in Iraq decreased from 1.4 million to less than 260,000, and the Christian population in Syria decreased from over 2 million in 2011 to 1 million in 2015, it is without a doubt that a significant part of the Christian community as a group was destroyed intentionally by ISIS/Daesh. Patriarch Gregorios III of the Melkite Church, when talking about the persecution of Christians in Syria, lamented, “The danger is that if they leave the region of the Middle East, they will never go back.”

Actus Reus

71. **Killing members of the group:** It is undisputed that ISIS/Daesh has killed persons belonging to a protected group (Christian community) with intent to destroy the group, in whole or in part. Despite the fact that Islam and Christianity coexisted in Syria and Iraq for centuries, it was not until ISIS/Daesh established caliphate in many regions of Syria and Iraq that Christianity was perceived as an enemy that had to be destroyed.⁸⁴ Furthermore, considering the widespread practice of such killings, this conduct indeed takes place in the context of a manifest pattern of similar conduct against Christians. The exact number of Christian victims of ISIS/Daesh persecution is unknown. Some of the reported cases of casualties are documented online.⁸⁵
72. **Causing serious bodily or mental harm to members of the group:** Many Christians have been injured, tortured, raped, and subject to prolonged detention, interrogation, and starvation, therefore suffering from physical injuries (as well as psychological injuries). The exact statistics of the injured (physically or mentally) are not known.
73. **Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part:** Christians living under the caliphate of ISIS/Daesh have to pay a high tax, have limited or no access to paid work, and are often deprived of access to food and water. Enslaved Christians are starved, beaten, and tortured. Christians under ISIS/Daesh caliphate or Christians that have fled ISIS/Daesh and are forced to seek refuge in neighbouring countries are in an urgent need of humanitarian help and assistance, including access to food and water, sanitation, and safe shelter. The conditions of life deliberately inflicted by ISIS/Daesh on Christian minorities in Syria and Iraq are designed and intended to bring about the physical destruction of the Christian community in Syria and Iraq, in whole or in part.
74. **Imposing measures intended to prevent births within the group:** Christians are subjected to sexual violence and rape. As explained in the case of *Prosecutor v. Akayesu*, rape can be treated as a measure used to prevent births.⁸⁶
75. **Forcibly transferring children of the group to another group:** Many children are being removed from their parents to become child soldiers for ISIS/Daesh or to be

⁸⁴ WND, ‘Isis Declares Christians No.1 Enemy’, available at: <http://www.wnd.com/2014/10/isis-document-ids-christians-as-enemy-no-1/>

⁸⁵ Islamic Terror Attacks on Christians, available at: <http://www.thereligionofpeace.com/pages/christianattacks.htm>.

⁸⁶ *Prosecutor v. Akayesu* (Judgement) ICTR-96-4 (2 September 1998), 507-508.

raised as Muslims. This happened to a 3-year-old girl Christina, who was taken from her mother Aida Hana Noah and is being raised as a Muslim under IS caliphate.⁸⁷

The Relationship between Persecution and Genocide

76. It has been argued that the atrocities committed against Christians in Syria and Iraq should be perceived as crimes of persecution and not genocide.⁸⁸ Persecution as a crime against humanity is not a new concept and derives from the Nuremberg Trials.
77. The concept was furthered in the Rome Statute. Under Article 7(1)(h) of the Rome Statute

persecution against any identifiable group on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.

78. The crime of persecution is a form of discrimination on ethnic, racial or religious grounds, without the element of intent to destroy. The crime of persecution can eventually lead to genocide if all other elements of genocide are established. It has been argued that extreme persecution can amount to genocide if it intends the destruction of a group, in whole or in part.⁸⁹

Persecution as a crime against humanity is an offence belonging to the same genus as genocide [...] In both categories what matters is the intent to discriminate: to attack persons on account of their ethnic, racial, or religious characteristics [...] Thus, it can be said that, from the viewpoint of *mens rea*, genocide is an extreme and most inhuman form of persecution. To put it differently, when persecution escalates to the extreme form of willful and deliberate acts designed to destroy a group or part of a group, it can be held that such persecution amounts to genocide.⁹⁰

79. The atrocities committed against Christians in Syria and Iraq are undoubtedly crimes of persecution (as crimes against humanity). However, considering the systematic pattern of coordinated attacks, the magnitude and intensity of the crimes, and the resulting disappearance of the Christian communities from Syria and Iraq, all conducted with an intent to destroy the group in whole or in part, the atrocities committed against Christians in Syria and Iraq have outgrown the crime of persecution and have reached the threshold of genocide.
80. There are three main arguments for why the atrocities committed against Christians do not amount to genocide. First, as in case of the U.S. Administration, the focus is often on a single event when considering whether genocide took place, for example

⁸⁷ Nadine Maenza and Tina Ramirez, 'Why Won't the Obama Administration Label the Massacre of Christians in Iraq, Syria Genocide?', available at: <http://www.aina.org/news/20151206045554.htm>

⁸⁸ Ibid.

⁸⁹ *Prosecutor v. Kupreškić et al.* (Judgement) IT-95-16-T (14 January 2000) 636.

⁹⁰ Ibid.

the massacre in Sinjar (Iraq) in 2014. However, such approach ignores the impact of coordinated attacks with a systematic pattern which aims for the destruction of a group, in whole or in part. In order to protect vulnerable groups from genocide, any investigation would have to be broad enough to consider the pattern of the coordinated acts and their impact on the group.

81. Second, it has been argued that the fact that Christians in Iraq and Syria were given a “choice” (whether to convert and pay tax or to die, be tortured etc), means that ISIS/Daesh did not intend the destruction of Christian communities in Iraq and Syria.⁹¹ It has been reported that Christians were given a “choice” to convert, flee or die. Can this be seen as a “choice” strong enough to rebut the clear evidence of specific intent to destroy Christian minorities in Syria and Iraq, in whole or in part?
82. It may be argued that there is a motive behind ISIS/Daesh keeping some Christians alive. It is plausible to assume that while killing Christians in Syria and Iraq would further ISIS/Daesh’s aim of destroying Christian communities in Syria or Iraq (in whole or in part), this aim can be achieved allowing Christians to live under the ISIS/Daesh caliphate (and be more beneficial for the ISIS/Daesh). Christians are allowed to live under ISIS/Daesh caliphate under the condition of paying *jizyah*. This benefits ISIS/Daesh in that it receives financial recourses that otherwise would not have been available to them. Furthermore, imposing high *jizyah* on people limits their living (or surviving resources) what in conjunction with often limited working possibilities may mean “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” as under Article II(c) of the Convention on Genocide. It was confirmed by various UN agencies, that as a result of the ongoing conflict in Syria, terror threat imposed by ISIS/Daesh, various regions are struggling with humanitarian crisis leading to severe malnutrition, dehydration and ultimately, to death.
83. Unfortunately, allowing Christians to leave the region under ISIS/Daesh caliphate is not more merciful than any of the other options given to Christians by ISIS/Daesh. Christians often leave most of their belongings behind, take with them only what they can carry, travel for miles without food/water/sanitation. Many will not make it to a safe haven. Furthermore, there is no guarantee that the Christians able to leave will not become victims of other ISIS/Daesh groups in the neighbouring region. These conditions of life are again deliberately inflicted upon Christians to bring about their destruction in whole or in part.
84. Third, it has been argued that, generally speaking, the threshold of genocide has not been reached yet. However, no independent commission of experts on genocide has investigated the atrocities committed against Christians in Syria and Iraq. Therefore, the denial of genocide is unfounded.

(f) Responsibility of States

85. According to the United Nations Office of the Special Adviser on the Prevention of Genocide, “the primary responsibility to prevent and stop genocide lies with the State

⁹¹ The United States Holocaust Memorial Museum, ‘Bearing Witness Trip Report: The Islamic State’s Targeting of Iraqi Minorities in Ninewa’, available at: <http://www.ushmm.org/confront-genocide/about/initiatives/bearing-witness-trips/syria-a-bearing-witness-trip>

in which this crime takes place.”⁹² Resolution 60/1, the 2005 World Summit Outcome, elaborated on that responsibility, clearly explaining the scope:

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.... The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.⁹³

86. However, the State in which the crimes take place is not the exclusive bearer of this responsibility.

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.⁹⁴

87. In accordance with UN General Assembly/Security Council Resolution A/69/981–S/2015/500:

2) The international community has a responsibility to encourage and assist States in fulfilling this responsibility;

3) The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the UN Charter.

88. Considering the fact that the States where the genocide of Christians takes place (Syria and Iraq) have not taken any steps to prevent their genocide, the international

⁹² Office of the Special Adviser on the Prevention of Genocide, Booklet, 2 (available at: www.un.org/en/preventgenocide/adviser/pdf/osapg_booklet_eng.pdf).

⁹³ A/RES/60/1, Resolution 60/1, 2005 World Summit Outcome, 24 October 2005, 138

⁹⁴ Ibid.

community has a responsibility to take steps to protect the victims and prevent annihilation of the group. As the genocide of Christians in Syria and Iraq continues, it should be the priority of the international community to prevent further atrocities and to provide the victims with adequate help and assistance.

89. Furthermore, States should take steps to support the UN Security Council referral of the situation in Syria and in Iraq to the International Criminal Court (ICC). As Syria⁹⁵ and Iraq are not parties to the Rome Statute, in order for the ICC to have jurisdiction over the situation in Syria and Iraq the UN Security Council has to refer the situation in both countries to the ICC.⁹⁶ This step, in relation to the situation in Syria, was unsuccessfully pursued in 2014.
90. In 2014, after numerous calls from the international community, France introduced a draft UN Security Council resolution referring the situation in Syria to the ICC. The resolution was cosponsored by 65 countries⁹⁷. On 22 May 2014, the permanent members of the UN Security Council voted on a draft resolution that would have referred the situation in Syria to the ICC. The Russian Federation and China voted against the draft resolution.
91. Considering that the UN Security Council successfully referred the situation in Darfur, Sudan in 2005 and the situation in Libya in 2011 to the ICC, States should renew their efforts to encourage the UN Security Council to refer the situation in Syria and Iraq to the ICC.

⁹⁵ Syria has been a signatory since 29 November 2000 but has not ratified it.

⁹⁶ Under Article 13 of the Rome Statute, the ICC jurisdiction could be exercised when:

(a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

On 8 April 2015, Ms. Bensouda, the ICC Prosecutor, made a statement in relation to the crimes committed by ISIS/Daesh and indicated that the jurisdiction to investigate the atrocities of foreign fighters in Syria and Iraq was too narrow.

⁹⁷ Albania, Andorra, Australia, Austria, Belgium, Botswana, Bulgaria, Canada, Central African Republic, Chile, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Jordan, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland and United States of America.

92. Alternatively, the UN Security Council could adopt a resolution establishing a commission of experts on genocide to investigate the atrocities committed against Christians in the Middle East. This approach was taken in case of Bosnia and Rwanda. First after the commission's finding of genocide, the UN Security Council took further steps to address the problem.

(g) Why it is Important to Recognize the Persecution of Christians as Genocide?

93. Considering the fact that the States where the genocide of Christians takes place (Syria and Iraq) have not taken any steps to prevent genocide taking place in their territories, the international community has a responsibility to take steps to protect the victims and prevent annihilation of the group. As the genocide of Christians in Syria and Iraq continues, it should be the priority of the international community to prevent further atrocities and to provide the victims with adequate help and assistance.
94. Recognition of atrocities committed against Christians in Syria and Iraq as genocide would be the first step towards justice to allow the survivors to move forward. Such recognition of genocide in itself confirms the magnitude of injustice, pain and suffering experienced by the victims.
95. Furthermore, such recognition of genocide would matter for their resettlement, restitution, compensation, and rehabilitation. Only by recognising the atrocities committed against Christians in Syria and Iraq as genocide will the victims be able to receive
96. Recognising atrocities as genocide carries robust implications under international law. Recognition of atrocities as genocide is usually followed by rapid international response to stop the atrocities, to help the survivors with their urgent needs and to initiate prosecution of the perpetrators. As described by Dr Gregory Stanton, founder of Genocide Watch and professor at George Mason University in Virginia:

In 2007, three epidemiologists and I counted the number of times the words genocide and ethnic cleansing were used in the New York Times, law journals, UN press releases and statements by Amnesty International and Human Rights Watch to describe four recent genocides — Bosnia, Rwanda, Kosovo and Darfur. We discovered that as long as ethnic cleansing was used to describe these situations, there was no forceful action to stop them. As soon as the situations were called 'genocide,' forceful action resulted and ended the killings, except in one case — Darfur — where a UN Commission of Inquiry rejected the genocide word, the G-word.⁹⁸

97. Stanton further suggested that recognising ISIS/Daesh atrocities against Christians as genocide would mean that the persecuted Christians would receive preferential treatment:

⁹⁸ Samuel Smith, Does It Matter If the U.S. Calls ISIS Violence Against Christians 'Genocide'?, available at: <http://www.christianpost.com/news/isis-violence-christians-genocide-152702/#ZMJQgkQQ0WzH1UkV.99>

Members of such groups are much more likely to receive preferential treatment as bona fide refugees, under the UN convention and protocols on the status of refugees, to which the U.S. is a party, and under the refugee laws of the United States. It gives Christians and others being targeted for genocide the presumption that they have a well-founded fear of persecution based on their religious or ethnic identity.⁹⁹

98. Once the persecution of Christians in Syria and Iraq is recognised as genocide, it is highly likely that the UN Security Council would renew its attempts to refer the situation in Syria to the ICC (and begin its attempt to refer the situation in Iraq to the ICC). Alternatively, the UN Security Council can take steps to obtain information to confirm or rebut whether the ISIS/Daesh atrocities committed against Christians in the Middle East amount to genocide.

(h) International Community on Persecution of Christians as Genocide

Developments in Europe

The Parliamentary Assembly of the Council of Europe

99. The Council of Europe was the first major international institution to condemn the actions of ISIS/Daesh in the Middle East as genocide. The Council of Europe is a regional intergovernmental organization whose goal is to promote human rights, democracy, and the rule of law among the 47 member states. On 27 January 2015, the Parliamentary Assembly of the Council of Europe adopted Resolution 2091 (2016) entitled “Foreign fighters in Syria and Iraq.” The resolution states:

2. [The Parliamentary Assembly] notes with great concern that many of these recent terrorist attacks are claimed by, and may be attributed to, individuals who act in the name of the terrorist entity which calls itself Da’ish and who have perpetrated acts of genocide and other serious crimes punishable under international law. States should act on the presumption that Da’ish commits genocide and should be aware that this entails action under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide.

3. ... The Assembly recalls that under international law States have a positive obligation to prevent genocide, and thus should do their utmost to prevent their own nationals from taking part in such acts. ...

21. The Assembly calls on member, observer and partner for democracy States to: ... fulfil their positive obligations under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide by taking all necessary measures to prevent genocide.¹⁰⁰

⁹⁹ Ibid.

¹⁰⁰ Resolution 2091 (2016), available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=22482&lang=EN&search=KjoqfHR5cGVfc3RyX2VuOIJlc29sdXRpb24=>

The European Parliament

100. On 4 February 2016, the European Parliament adopted a resolution on the systematic mass murder of religious minorities by ISIS/Daesh. The European Parliament is the representative organ of the European Union, and is an elected body representing 28 Member States.

101. The resolution stresses that:

... the so-called "ISIS/Daesh" is committing genocide against Christians and Yazidis, and other religious and ethnic minorities, who do not agree with the so-called "ISIS/Daesh" interpretation of Islam, and that this therefore entails action under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide."¹⁰¹

102. The resolution continues, calling for the following action:

4. Urges the members of the UN Security Council to support a referral by the Security Council to the International Criminal Court in order to investigate violations committed in Iraq and Syria by the so-called 'ISIS/Daesh' against Christians, Yazidis and religious and ethnic minorities; ...

9. Urges ... to work actively on fighting radicalisation and to improve their legal and jurisdictional systems in order to avoid their nationals and citizens being able to travel to join the so-called 'ISIS/Daesh' and participate in violations of human rights and international ... law; ...

14. Stresses the importance of the international community providing protection and aid, including military protection and aid, in accordance with international law, to all those targeted by the so-called "ISIS/Daesh".

103. Prior to the resolution of 4 February 2016, on 12 March 2015, the European Parliament has passed a non-binding resolution in response to the (then) recent attacks, abductions, and other atrocities by ISIS/Daesh in the Middle East. The resolution condemned the atrocities committed by ISIS/Daesh and indicated that they could amount to genocide:

Strongly condemns ISIS/Da'esh and its egregious human rights abuses that amount to crimes against humanity and war crimes according to the Rome Statute of the International Criminal Court (ICC), and which could be called genocide; is extremely concerned at this terrorist group's deliberate targeting of Christians, Yezidis, Turkmen, Shi'ites, Shabak, Sabeans, Kaka'e

¹⁰¹ European Parliament resolution of 4 February 2016 on the systematic mass murder of religious minorities by the so-called 'ISIS/Daesh' (2016/2529(RSP)), available : <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0051+0+DOC+XML+V0//EN&language=EN>

and Sunnis who do not agree with their interpretation of Islam, as part of its attempts to exterminate any religious minorities from the areas under its control; underlines that there must be no impunity for the perpetrators of these acts and that those responsible should be referred to the ICC; recalls, in this context, the unresolved kidnapping of Bishops Yohanna Ibrahim and Paul Yazigi by armed rebels in Aleppo Province, Syria, on 22 April 2013.¹⁰²

Developments in the United Kingdom

104. On 21 December 2015 a letter was sent the Prime Minister signed by 75 members of both Houses, calling on the Government to recognize the genocide. On 18 February 2016 a follow up letter was sent to the Prime Minister signed by human rights campaigners and senior lawyers, including the former Lord Chancellor.
105. On 22 January 2016, the House of Commons tabled Early Day Motion 998 on the treatment of Yazidi and Christian minorities. The motion denounced genocide committed by ISIS/Daesh and was signed by 48 MPs.
106. On 9 February 2016, in response to Lord Alton's oral question in the House of Lords, the Earl of Courtown confirmed that Her Majesty's Government would not take a view on whether genocide was occurring in the Middle East, as such a decision was a matter for the "international judicial system" and not Governments or other non-judicial bodies. The Earl of Courtown indicated that it was a long standing government policy but did not elaborate on the role the Government plays in the "international judicial system."
107. On 10 February 2016, Shadow Foreign Secretary, Hilary Benn, submitted a number of written questions to the Secretary of State for Foreign and Commonwealth Affairs concerning the situation in Iraq and Syria, and specifically asked whether the Government recognised the killing of the Yazidis by ISIS/Daesh as genocide.
108. On 18 February 2016 a follow up letter was sent to the Prime Minister signed by human rights campaigners and senior lawyers, including the former Lord Chancellor.
109. The On 22 February 2016, Foreign Secretary Philip Hammond replied to Hilary Benn's written questions with the Government's stock response; condemning the atrocities committed by ISIS/Daesh against all civilians, including Christians, Mandeans, Yazidis and other minorities, as well as the majority Muslim population in Iraq and Syria, but reiterating that it is long-standing Government policy that any judgments on whether genocide has occurred are a matter for the international judicial system rather than governments or other non-judicial bodies. The Foreign Secretary noted that the Government supported the ICC "in its efforts to end impunity for the most serious crimes of international concern by holding perpetrators to account," but did not elaborate on the British Government's role in that process.

¹⁰² European Parliament resolution on recent attacks and abductions by Daesh in the Middle East, notably of Assyrians, 2015/2599(RSP), 2, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0071>

110. On 3 March 2016, another House of Commons motion was tabled (no. 1192), with MPs expressing “frustration at the reluctance of Ministers to present evidence and to work to create a consensus at the UN that the killing is genocide.”
111. The topic of genocide has also been discussed in the House of Lords on several occasions, most recently on 3 and 9 February 2016 and will again be considered in the context of the Immigration Bill on Monday 21 March 2016.

Developments in France

112. France has undertaken steps to raise awareness of the situation in the Middle East to the attention of the UN Security Council and to gather world leaders to work together to end the atrocities committed by ISIS/Daesh against religious and ethnic minorities.
113. In 2014, France introduced a draft UN Security Council resolution referring the situation in Syria to the ICC. The resolution was cosponsored by 65 countries and was voted on by the members of the UN Security Council on 22 May 2014. However, two of the permanent members, the Russian Federation and China, voted against the draft resolution meaning that it was not adopted.
114. In March 2015, France called a meeting of the UN Security Council on Christians in the Middle East. Mr. Laurent Fabius, French Minister of Foreign Affairs and International Development, assured those present that the protection of Christians in the Middle East was at the heart of French policy. On 27 March 2015, Mr. Fabius confirmed that: “We are witnessing a true genocide. The Islamic State group in particular kills, enslaves or exiles people who don't think like them, especially Christians. It's not enough to raise awareness - we need to implement concrete solutions to protect these vulnerable populations.”¹⁰³
115. On 8 September 2015, during the International Conference on the Victims of Ethnic and Religious Violence in the Middle East, Mr. Laurent Fabius indicated that ISIS/Daesh wanted to “physically destroy all traces of a past in which civilizations and the major religions lived side by side.” Mr. Fabius emphasized that the UN Security Council should respond accordingly by referring the situation in the Middle East to the ICC.
116. France has clearly recognized the atrocities committed by ISIS/Daesh against Christians in the Middle East as genocide and continues to be a powerful voice on the world stage in support of this recognition and the important steps that flow therefrom.

Developments in the United States

117. On 17 March 2016, John Kerry, Secretary of State, made an announcement confirming the position of the U.S. Government stating:

Daesh is responsible for genocide against groups in areas under its control, including Yazidis, Christians and Shia Muslims. Daesh

¹⁰³ France 24, “Mideast’s religious minorities at risk of ‘genocide’”, available at <http://www.france24.com/en/20150327-religious-minorities-threat-mideast-disappear-france-un-fabius/>

is genocidal by self-proclamation, by ideology, and by actions. What it says, what it believes, and what it does. Daesh is also responsible for crimes against humanity, and ethnic cleansing, directed at the same groups, and in some cases also against Sunni Muslims, Kurds and other minorities. I say this even although the ongoing conflict and lack of access to key areas has made it impossible to develop a fully detailed and comprehensive picture of all that Daesh is doing, and all that it has done.

118. This statement was brought about after long campaigns of civil society, including prominent politicians, academics, and activists that have spoken in favour of recognising ISIS/Daesh genocide of Christians and other religious minorities in the Middle East. I shall now present the main development around the topic in the United States.

The U.S. Commission on International Religious Freedom (USCIRF) 2015 Annual Report

119. The 2015 Annual Report covering the period between 31 January 2014 and 31 January 2015 was published in April 2015. In the report, the USCIRF recommended that the U.S. government:

Call for or support a referral by the UN Security Council to the International Criminal Court to investigate ISIL violations in Iraq and Syria against religious and ethnic minorities, following the models used in Sudan and Libya, or encourage the Iraqi government to accept ICC jurisdiction to investigate ISIL violations in Iraq after June 2014.¹⁰⁴

Call for or support a referral by the UN Security Council to the International Criminal Court to investigate ISIL violations in Iraq and Syria against religious and ethnic minorities, and continue to call for an International Criminal Court investigation into crimes committed by the al-Assad regime, following the models used in Sudan and Libya.¹⁰⁵

USCIRF Statement on the Designation of Victims of Genocide, Persecution, and Crimes Against Humanity in Syria and Iraq

120. On 7 December 2015, USCIRF called the United States government to recognise the atrocities committed against Christians, Yazidis, Shi'a, Turkmen, and Shabak communities in Syria and Iraq as genocide.
121. USCIRF reiterated the recommendation from their 2015 Annual Report that the United States government call for or support the referral by the UN Security Council to the International Criminal Court to investigate ISIS/Daesh crimes against religious minorities in Syria and Iraq.

House Concurrent Resolution 75 (H.Con.Res. 75)

¹⁰⁴ The U.S. Commission on International Religious Freedom, 2015 Annual Report, available at: <http://www.uscirf.gov/reports-briefs/annual-report>, 98.

¹⁰⁵ Ibid., 118.

122. U.S. House of Representatives Resolution 75 was introduced by Congressman Jeff Fortenberry and had 203 cosponsors¹⁰⁶. H.Con.Res.75 called for the recognition of the atrocities committed against Christians and other religious or ethnic minorities specifically targeted because of their religious or ethnic background as war crimes, crimes against humanity and genocide. H.Con.Res.75 appealed to the Arab States wishing to uphold religious freedom to take active steps to prevent further atrocities from occurring, and establish special tribunals to address the crimes committed against Christians and other minorities.¹⁰⁷
123. H.Con.Res.75 was introduced in House on 9 September 2015, and referred to the House Committee on Foreign Affairs. On 2 March 2016, the House Committee on Foreign Affairs passed H.Con.Res.75. On 14 March 2016, H.Con.75 was passed by the U.S. House of Representatives without a single dissenting vote.

Knights of Columbus Joint Letter to John F. Kerry

124. On 4 December 2015, Knights of Columbus Supreme Knight Carl Anderson, religious leaders, and professors, among others, sent a joint letter to U.S. Secretary of State John Kerry asking for a meeting to brief him on the genocide of Christians in Iraq and Syria. The letter argues that Christians in Syria and Iraq were specifically targeted for eradication because of their religion.¹⁰⁸ The authors have evidence in support of:

assassinations of Church leaders; mass murders; torture; kidnapping for ransom in the Christian communities of Iraq and Syria; its sexual enslavement and systematic rape of Christian girls and women; its practices of forcible conversions to Islam; its destruction of churches, monasteries, cemeteries, and Christian artifacts; and its theft of lands and wealth from Christian clergy and laity alike.

125. The letter further indicates, "We will also present ISIS' own, public statements taking 'credit' for mass murder of Christians, and expressing its intent to eliminate Christian communities from its 'Islamic State'."¹⁰⁹
126. The letter asks the Secretary to consider in his review the fate and situation of Christians not only from Nineveh, Iraq, since summer 2014, but to expand the scope of the enquiry i.e. to broaden the timeframes and expand the area geographically to include other territories in Iraq and also in Syria. The authors of the joint letter emphasises also that the mere fact that Christians were given a choice (whether to convert and pay tax or to die, be tortured etc), should not preclude the acts committed against Christians from being recognised as genocide.

¹⁰⁶ House Concurrent Resolution 75, available at: <https://www.congress.gov/bill/114th-congress/house-concurrent-resolution/75/cosponsors>, last accessed: 9 March 2016.

¹⁰⁷ Ibid.

¹⁰⁸ Joint letter to the Honorable John F. Kerry, Secretary of State, U.S. Department of State, 4 December 2015, available at: <http://www.kofc.org/un/en/resources/communications/middle-eastern-genocide-declaration-john-kerry.pdf>

¹⁰⁹ Ibid.

The Consolidated Appropriations Act 2016

127. The Consolidated Appropriations Act 2016, requires the Secretary of State to prepare and submit an evaluation of the situation in the Middle East within 90 days from 15 December 2015, namely, by 17 March 2016. The relevant Section 7033 states:

(d) ATROCITIES PREVENTION.—Not later than 90 days after enactment of this Act, the Secretary of State, after consultation with the heads of other United States Government agencies represented on the Atrocities Prevention Board (APB) and representatives of human rights organizations, as appropriate, shall submit to the appropriate congressional committees an evaluation of the persecution of, including attacks against, Christians and people of other religions in the Middle East by violent Islamic extremists and the Muslim Rohingya people in Burma by violent Buddhist extremists, including whether either situation constitutes mass atrocities or genocide (as defined in section 1091 of title 18, United States Code), and a detailed description of any proposed atrocities prevention response recommended by the APB: Provided, That such evaluation and response may include a classified annex, if necessary.

(e) DESIGNATION OF NON-STATE ACTORS.—The President shall, concurrent with the annual foreign country review required by section 402(b)(1) of the International Religious Freedom Act of 1998 (22 U.S.C. 6442(b)(1)), review and identify any non-state actors in such countries that have engaged in particularly severe violations of religious freedom, and designate, in a manner consistent with such Act, each such group as a non-state actor of particular concern for religious freedom operating in such reviewed country or surrounding region: Provided, That whenever the President designates such a non-state actor under this subsection, the President shall, as soon as practicable after the designation is made, submit a report to the appropriate congressional committees detailing the reasons for such designation.¹¹⁰

128. On Thursday 17 March, Secretary of State John Kerry said that the United States had determined that ISIS' action against the Yazidis, Christians and other minority groups in Iraq and Syria constituted genocide.

Testimony of Mr Carl A. Anderson

129. On 9 December 2015, Mr. Carl A. Anderson, Supreme Knight of the Knights of Columbus, testified at the hearing of the Subcommittee on Africa, Global Health, Global Human Rights and International Organizations of the House Foreign Affairs

¹¹⁰ H.R.2029, Consolidated Appropriations Act, 2016, 519. Available at: <https://www.congress.gov/bill/114th-congress/housebill/2029?q=%7B%22search%22%3A%5B%22%5C%22hr2029%5C%22%22%5D%7D&resultIndex=1>.

Committee on “Fulfilling the Humanitarian Imperative: Assisting Victims of ISIS Violence.”¹¹¹

130. Anderson advocated for recognising the persecution of Christian communities in Iraq and Syria as genocide. He called on Congress to adopt House Concurrent Resolution 75.
131. In his testimony, Mr. Anderson raised the issue that despite the fact that there are some refugee camps of the U.N. High Commissioner for Refugees (UNHCR) in Iraq and Syria, Christian communities in Iraq and Syria are afraid to take shelter in the camps due to ongoing religiously motivated violence in the camps. Furthermore, Syrian Christians and other minorities were excluded from the U.S. Syrian Refugee Resettlement Program.
132. Mr. Anderson also responded to the point that ISIS/Daesh gives Christians, as people of the book, a “choice” (e.g., paying a tax or fleeing) and thus are not victims of genocide:

Many times the payment of jizya is not presented as an option for these Christians. In the instances where the jizya has been exacted, it has failed to ensure that the Christians could live as Christians, that they were protected from rival jihadists or even other members of ISIS, or that the amount of the payment was not raised over time until it became an impossible sum, causing the family’s home and even children to be confiscated and the adults killed or forced to become Muslims. A Dutch journalist reported just such an incident in *Idlib* in 2013 when a number of Christian families began to pay the jizya but, after the amount demanded kept increasing over several months, some Christians decided to flee, leaving behind their farms and property, while others who could not pay or escape were forced to convert to Islam. In the Christian valley outside Homs, an Orthodox priest reported that those who couldn’t pay the jizya and who were not able to flee were killed. In some places, ISIS rulers reportedly demand that the jizya be paid in gold, a tax that would be impossible to sustain. Middle East scholar and, until earlier this year, the coordinator of U.S. government ideological counterterrorism messaging, Alberto Fernandez, writing in a study for MEMRIs, noted the absence of any open church or evidence of Christian life in Raqqa, where the jizya contract was reportedly drawn up between ISIS and local Christians. He found ISIS jizya to be “a Salafi Caliphate publicity stunt.” It should be needless to state that being forced to convert to Islam, under penalty of death or sexual enslavement, is evidence of religious genocide, not an alternative to it.

Today any Christian who was not able to flee when ISIS took control of their area has been killed, taken captive, enslaved, or forced to live as a Muslim. There, no holy Masses or other forms of Christian worship are tolerated and its two thousand year old Christian culture and communities have been effectively eradicated.

¹¹¹ Testimony of Mr. Carl A. Anderson before the House Foreign Affairs Committee, available at: www.kofc.org/en/news/releases/detail/testimony-carl-anderson-human-rights.html

Capitol Hill Panel Discussion

133. A panel discussion on persecution of Christians and other minorities as genocide took place on 16 December 2015 and was attended by numerous members of the United States House of Representatives and human rights activists. They argued that calling the persecution of Christians in Iraq and Syria genocide mattered because it affected the remedies available to them and changed how the international community responded to the crisis.

Joint Letter from Members of the United States Congress

134. On 23 December 2015, 30 members of the United States Congress sent a letter to U.S. Secretary of State John Kerry. In the joint letter, the members of Congress express their concerns about the situation in Iraq and Syria and about the fact that the Administration was preparing a genocide finding only in relation to Yazidis, that is, without including Christians in that finding.

135. The joint letter emphasises:

At the hands of ISIL, Christians and other minorities have faced mass murder, crucifixions, sexual slavery, torture, beheadings, the kidnapping of children, and other violence deliberately calculated to eliminate their communities from the so called Islamic State.

136. The letter refers to the Knights of Columbus letter from 4 December 2015, and asks the Secretary to consider the evidence available to that letter's authors. The letter emphasises that it would be erroneous to consider the ultimatum given to Christians by ISIS/Daesh as a choice that could preclude the atrocities from being recognised as genocide.

Marco Rubio and Russell Moore in the Washington Post

137. U.S. Senator Marco Rubio and Russell Moore, president of the Ethics & Religious Liberty Commission of the Southern Baptist Convention, wrote in the Washington Post on 24 December 2015 that more attention must be paid to the atrocities committed against Christians.¹¹²

Hillary Clinton Statement

138. On 29 December 2015, former U.S. Secretary of State Hillary Clinton, agreed that there was enough evidence to support the position that persecution of Christians has reached the threshold of genocide. She said,

What is happening is genocide, deliberately aimed at destroying not only the lives but wiping out the existence of Christians and

¹¹² Marco Rubio and Russell Moore, 'This Christmas, we must remember slaughtered Christians in the Middle East', available at: <https://www.washingtonpost.com/news/acts-of-faith/wp/2015/12/24/marco-rubio-and-russell-moore-this-christmas-we-must-remember-slaughtered-christians-in-the-middle-east/>

other religious minorities in the Middle East in territory controlled by ISIS.¹¹³

The United States Holocaust Memorial Museum's Bearing Witness Trip Report "The Islamic State's Targeting of Iraqi Minorities in Ninewa"

139. The report focuses on the experiences of ethnic and religious minorities living in Ninewa, Iraq (Christians, Yazidis, Turkmen, Shabak, Sabaeen-Mandaean, and Kaka'i) from June to August 2014. The report summarises some of the atrocities committed against the Christian population:

In January 2008 ten churches and convents were the targets of bomb attacks (...). In October 2008, the assassination of 14 Christians in Mosul led to the exodus of about 12,000 Christians from the city. In October 2010, a siege on a church in Baghdad left more than 50 Christians dead. In 2012, an extremist group in Mosul issued an ultimatum to Christians in the city to leave or be killed. In 2013, bombs timed to explode as worshippers left churches in Baghdad killed 35 people.

140. The situation of Christians in Ninewa has deteriorated since the rise of ISIS/Daesh in Iraq. On 17 June 2014, ISIS/Daesh issued a decree giving the Christian population three options: convert to Islam, pay a jizya or leave the city by noon on 19 June 2014. On that day, the homes of Christian people were marked with an N.
141. The report suggests that the crimes committed against Yazidis in Ninewa in August 2014 amounted to genocide. The report indicates that the treatment of Yazidis differed from the treatment of other minorities that were the "people of the book" (like Christians or Jews). Christians and other "people of the book" were given a choice to convert, pay a tax, flee or face death. According to the report, this was decisive when considering whether ISIS/Daesh intended to destroy the specific group.

Letter to President Obama of 17 February 2016

142. On 17 February 2016, a letter signed by prominent lawyers, academics, and activists was sent to President Obama calling him to recognise the atrocities as genocide. The letter indicated that "without a formal declaration the U.S. Government has abdicated its duty and vow to confront the most heinous of human rights violations, namely genocide."

United Nations

Statement of the Special Rapporteur on Minority Issues

143. Between 27 February and 7 March 2016, the Special Rapporteur on Minority Issues, Rita Izsák, visited Iraq to scrutinise the situation of minorities in the country.¹¹⁴ The

¹¹³ Samuel Smith, Hillary Clinton Says What Obama Won't: ISIS Committing 'Genocide' Against Christians, available at: <http://www.christianpost.com/news/hillary-clinton-says-what-obama-wont-isis-committing-genocide-against-christians-153763/#Gx7oYq7qUeWEEHZU.99>

Special Rapporteur emphasised that while the minorities suffered immensely under ISIS/Daesh caliphate, the challenges started before the rise of ISIS/Daesh.¹¹⁵ She noted:

Religious communities consistently raised their concerns regarding discriminatory laws and practices which undermine and violate their religious rights and freedoms. ... I am also concerned about the current format of Identification Cards which obliges everyone to choose one of three main religions – Muslim, Christian or Yezidi - even if the person belongs to a different religion or considers herself/himself as a non-believer. The mandatory declaration of religious affiliation should be re-considered as it can easily be misused and abused.¹¹⁶

144. The Special Rapporteur emphasised that the threat to minorities in Iraq was real and required an adequate response. The Special Rapporteur said that

It was shocking to learn that since 2003 the Christian population has an estimated decline from 1.8 million people to just 300,000. Yezidi representatives also noted that some 100,000 Yezidis had already left the country with 100 to 200 more leaving each day, as they see little hope for the future in Iraq.¹¹⁷

145. The Special Rapporteur referred to her conversation with some Christians minorities:

Christians described to me death threat messages and the frequent requests for “protection money” that were made to Christians in Mosul many years before the actual fall of the city. I was saddened to hear testimonies of those who had lived peacefully alongside neighbours of different religions for years who found themselves attacked by those same neighbours or denounced to Daesh.¹¹⁸

146. The Special Rapporteur concluded that it had to be assessed whether the atrocities committed against minorities in Iraq met the legal threshold of genocide. However,

information suggests to me that indeed all atrocities against Yezidis including killings, bodily and mental harm have been committed with an intent to destroy them as a community, in whole or in part. A full investigation into the crimes committed by Daesh and any other parties to the conflict must be conducted and the perpetrators held accountable for all crimes and human rights violations, including war crimes, crimes against humanity and genocide where they are found to have taken place. Although Iraq has not yet acceded to the Rome Statute of the International Criminal Court, it could request an ad-hoc jurisdiction over the

¹¹⁴ Statement of the Special Rapporteur on minority issues on conclusion of her official visit to Iraq, 27 February to 7 March 2016, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17157&LangID=E>

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

claims of mass atrocity crimes committed by Daesh. Consideration should be given to the ICC opening preliminary investigations. The ICC in the meantime should initiate proceedings against those who are nationals of ICC State Parties. Therefore, it is very important to maintain documentation and evidence must be protected from damage or demolition.

Report of the Office of the United Nations High Commissioner for Human Rights from 27 March 2015

147. The Report of the Office of the United Nations High Commissioner for Human Rights from 27 March 2015 commenting on the human rights situation in Iraq in the light of abuses committed by ISIS/Daesh and other extremist groups indicates that the attacks of ISIS/Daesh against religious and ethnic groups were “perpetrated against civilians because of their affiliation or perceived affiliation to an ethnic or religious group.”¹¹⁹
148. The Report indicates that it was “reasonable to conclude, in the light of the information gathered overall, that some of those incidents may constitute genocide.”¹²⁰
149. The Report concludes that based on the evidence available at the time:
- Members of ISIL may have perpetrated genocide against the Yezidi community by killing, causing serious bodily or mental harm and forcibly transferring members of the group, including children, in the context of a manifest pattern of conduct aimed at the destruction of the group.
 - Members of ISIL may have committed crimes against humanity by perpetrating murder, enslavement, deportation or forcible transfer of population, severe deprivation of physical liberty, torture, rape, sexual slavery, sexual violence and persecution, committed as part of widespread or systematic attacks directed against civilian populations pursuant to or in furtherance of an organizational policy to commit such attacks.
 - Members of ISIL may have committed war crimes by perpetrating murder, mutilation, cruel treatment and torture, outrages upon personal dignity, taking of hostages, the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, directing attacks against the civilian population, directing attacks against buildings dedicated to religion or against historic monuments, pillaging a town or place, committing rape, sexual slavery and other forms of sexual violence, conscripting or enlisting children under the age of 15 years or using them to participate actively in

¹¹⁹ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, A/HRC/28/18, 16, available at:

http://ap.ohchr.org/Documents/sdpage_e.aspx?b=10&se=163&t=9

¹²⁰ Ibid., 16.

hostilities, ordering the displacement of the civilian population or destroying or seizing the property of an adversary.

- ISIL is perpetrating serious human rights violations in areas which are under its de facto control; including torture, cruel and inhuman treatment, and extrajudicial killings.¹²¹

United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) Report

150. The UNAMI and OHCHR Report on the Protection of Civilians in the Armed Conflict in Iraq (11 December 2014 – 30 April 2015) confirms that:

ISIL continues to commit systematic and widespread violations and abuses of international human rights law and international humanitarian law. In some instances, these may amount to war crimes, crimes against humanity, and possibly genocide.¹²²

151. The Report clearly states that the atrocities violate Iraqi and international law, amount to war crimes, crimes against humanity and possibly genocide.¹²³

Report of the United Nations High Commissioner for Human Rights from 27 July 2015

152. The Report of the United Nations High Commissioner for Human Rights on “Technical assistance provided to assist in the promotion and protection of human rights in Iraq”, indicates that:

UNAMI/OHCHR continued to receive numerous credible reports of gross violations and abuses of human rights and serious violations of international humanitarian law being perpetrated by ISIL against civilians in an apparent widespread or systematic manner. In some instances, these may amount to war crimes, crimes against humanity, and genocide.¹²⁴

Report of the Special Rapporteur from 16 June 2015

153. The Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, of 16 June 2015 states in paragraph 11:

There is evidence that ISIL has committed serious violations of international law, including genocide, crimes against humanity, war crimes and serious violations of human rights law. The

¹²¹ Ibid., 76.

¹²² United Nations Assistance Mission for Iraq and the Office of the United Nations High Commissioner for Human Rights Report on the Protection of Civilians in the Armed Conflict in Iraq (11 December 2014 – 30 April 2015), 8, available at: www.ohchr.org/Documents/Countries/IQ/UNAMIRreport1May31October2015.pdf

¹²³ Ibid., 32.

¹²⁴ Report of the United Nations High Commissioner for Human Rights on “Technical assistance provided to assist in the promotion and protection of human rights in Iraq”, A/HRC/30/66, 18, available at: <http://reliefweb.int/report/iraq/technical-assistance-provided-assist-promotion-and-protection-human-rights-iraq-report>

Security Council has determined that ISIL represents a threat to international peace and security, has unequivocally condemned the gross and systematic abuses of human rights by ISIL and has stressed the need to bring perpetrators, including foreign terrorist fighters, to justice, but has failed to take more decisive action or to refer the situation to the International Criminal Court.¹²⁵

(i) Conclusion

154. As a result of the ISIS/Daesh extermination campaign against Christians in Syria and Iraq, their population dramatically decreased caused by killings and executions, or by forced migration. There is a real danger that the Christian population of Syria and Iraq will disappear altogether. Therefore, the persecution of Christians in Syria and Iraq has reached the threshold of genocide.
155. The fact that Christian communities were given an “option” to convert, pay a tax, flee or face death does not preclude the recognition of the atrocities as genocide. Genocide is not limited to biological destruction of the whole group. The end result of the ultimatum given to Christians in Syria and Iraq remained the same, that is, the Christian population in Syria and Iraq is on the path to extinction—numerous Christians were killed, some were forced to convert and many Christians had to flee their home and seek refuge in neighbouring countries.
156. To date, no adequate steps have been taken to respond to the situation of Christians in Syria and Iraq. The September 2015 session of the UN Human Rights Council and November 2015 session of the Forum on Minority Issues were filled with first-hand testimonies of the killings, forced migration and destruction of communities. However, the UN has not acted. In order to change the situation, we first must recognise the persecution of Christians as genocide and not as unrelated single events of persecution or discrimination. Once the genocide is recognised, we will be able to respond adequately by way of international cooperation.
157. The example of the genocidal acts against Christians in Syria and Iraq is not a novelty to which the international community would not know how to respond to. After the Holocaust, the genocide in Rwanda, Yugoslavia, and Armenia in addition to many other tragedies in the last century, the international community should now be able to recognise genocide and act to prevent it.
158. Once the atrocities reach the threshold of genocide, the international community should act in order to stop it and help the survivors. However, this is not happening and the international community continues to debate while the genocide continues unabated.

¹²⁵ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, A/HRC/29/51, 11, available at:

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>

159. Steps that can be taken by States:

- **Urge UN Security Council to establish a commission of experts on ISIS/Daesh genocide of Christians and other religious minorities in the Middle East; and subsequently**
- **Urge the UN Security Council to establish an international ad hoc tribunal to prosecute the perpetrators, or**
- **Urge the UN Security Council to refer the situation in the Middle East to the International Criminal Court.**
- **Urge the Prosecutor of the ICC to undertake a preliminary examination of the acts committed by foreign fighters in the Middle East (from countries that are state parties to the Rome Statute).**