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Foreign fighters in Syria and Iraq

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Pieter OMTZIGT, Netherlands, Group of the European People's Party

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Political Affairs and Democracy, Mr Dirk Van der Maelen, on his comprehensive report, and supports by and large the proposed draft resolution and draft recommendation. The committee points out that it has dealt with a similar issue in its [Opinion 289 \(2015\)](#) on the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217); unfortunately, the amendments proposed in it were not taken into account by the Committee of Ministers when adopting the said additional protocol.²

2. The committee proposes some amendments to further strengthen the draft resolution and draft recommendation regarding some legal and human rights aspects. Some of these amendments are also aimed at putting more emphasis on the need to combat the “Islamic State” (“IS”), which might be responsible for acts of genocide and other crimes against humanity, and on the prevention of the phenomenon of foreign fighters.

B. Proposed amendments

Amendment A (to the draft resolution)

At the end of paragraph 2, add the words “and may have perpetrated acts of genocide and other serious crimes punishable under international law. States should act on the presumption that “IS” commits genocide and be aware that this entails action under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide”.

Amendment B (to the draft resolution)

In paragraph 3, after the words “which openly reject and attack” insert the word “European”.

Amendment C (to the draft resolution)

At the end of paragraph 3, add the following sentence: “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.”

1. Reference to committee: [Doc. 13559](#), Reference 4069 of 3 October 2014. Reporting committee: Committee on Political Affairs and Democracy, see [Doc. 13937](#). Opinion approved by the committee on 25 January 2016.

2. [Doc. 12712](#).



Amendment D (to the draft resolution)

At the end of paragraph 4, add the following sentence: "Fighters who may have perpetrated genocide and/or other serious crimes prohibited under international law and seek international protection upon their return to Europe should under no circumstances be granted refugee status."

Amendment E (to the draft resolution)

In paragraph 9, third sentence, replace the words "prevention, discouragement and reintegration policies which may yield long-term results" by "prevention and discouragement policies which may yield long-term results".

Amendment F (to the draft resolution)

After paragraph 18, insert the following new paragraph: "The Assembly notes that a number of countries take measures to take away the nationality of foreign fighters. That is admissible as long as international law and proper judicial procedures are followed."

Amendment G (to the draft resolution)

In paragraph 19, first sentence, after the words "departures of Europeans to the conflict zones, as well as", delete the words "readaptation and".

Amendment H (to the draft resolution)

In paragraph 20.1, after the words "protection of populations", replace the words "prevention of radicalisation, and deradicalisation and reintegration of returnees into their home communities" by "and of human rights, prevention of radicalisation, and deradicalisation".

Amendment I (to the draft resolution)

After paragraph 20.1, insert the following new paragraph: "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;"

Amendment J (to the draft resolution)

In paragraph 20.6, after the words "for spreading" add the following words "the heinous crimes committed by "IS" and".

Amendment K (to the draft resolution)

After paragraph 20.8, insert the following new paragraph: "strongly condemn and sanction, if need be, religious leaders preaching hate and violence and otherwise attacking European fundamental values;"

Amendment L (to the draft resolution)

In paragraph 20.10, after the words "to develop a gender-specific approach in prevention", delete the words "and re-integration".

Amendment M (to the draft resolution)

After paragraph 20.11, insert the following new paragraph: "decline to grant refugee status to persons who might have perpetrated genocide or other serious crimes prohibited under international law and to share information about such persons with other member States."

Amendment N (to the draft resolution)

In paragraph 20.12, replace the words "outreach, rehabilitation and reintegration" by "outreach and rehabilitation".

Amendment O (to the draft recommendation)

Delete paragraph 5.

C. Explanatory memorandum by Mr Omtzigt, rapporteur for opinion

1. I can only congratulate Mr van der Maelen on his report, which rightly stresses that the phenomenon of the so-called “foreign fighters” travelling to join “Islamic State” (“IS”) and other violent extremist groups in Syria and Iraq is becoming a serious threat to domestic and international security. The report analyses in depth the roots of the problem and suggests a few avenues on how to tackle it at international level.

2. I should like, however, to propose a few amendments to the draft resolution and the draft recommendation, with a view to completing them mainly with regard to some legal aspects, especially the need to prevent genocide. “IS” is a dangerous organisation which is most probably responsible for acts of genocide, crimes against humanity and other serious crimes prohibited under international law. States have positive obligations to prevent such heinous crimes, by preventing their citizens from travelling abroad for the purpose of committing such acts. Therefore, more focus should be put on the issue of preventing such travel in the first place. I would also like to point out that stronger measures are needed to fight the phenomenon in question, in particular deradicalisation measures and measures aimed at preventing religious leaders from preaching hate and violence.

1. Amendment A (to the draft resolution)

This amendment aims to put into focus the hideous crimes committed by “IS” in the territories occupied by that organisation, in particular in Syria and Iraq. According to some sources, the mass murders committed by it of Chaldean, Assyrian, Melkite Greek and Coptic Christians, Yezidis, Shia Muslims, Sunni Kurds and other religious or ethnic groups fall well within the definition of genocide.³ According to a report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq,⁴ members of “IS” may have perpetrated genocide against the Yezidi community as well as other crimes against humanity against civilian populations and war crimes.

2. Amendment B (to the draft resolution)

This amendment aims to specify that “IS” and other violent extremist groups reject and attack *European* fundamental values.

3. Amendment C (to the draft resolution)

By signing the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide,⁵ States confirmed that “genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish” (Article I). The undertaking to *prevent* genocide was further examined by the International Court of Justice in its judgment *Bosnia and Herzegovina v. Serbia and Montenegro*,⁶ which specified that this obligation “is one of conduct and not one of the result”. This obligation is “rather to employ all means reasonably available ..., so as to prevent genocide so far as possible” and it varies according to the capacity of States “to influence effectively the action of persons likely to commit, or already committing, genocide”; the latter may depend on the geographical distance between the State and the events, the strength of the political links between the State and the main actors in the events; and the legal restrictions of action imposed on the State based on its particular legal position vis-à-vis the situations and affected people.

3. Genocide Watch, Dr. Gregory H. Stanton, [ISIS is Committing Genocide](#), 14 October 2015.

4. Report of the Office of the UN 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, 13 March 2015, A/HRC/28/18, paragraphs 16-20 and 78.

5. Adopted by the General Assembly of the United Nations on 9 December 1948, United Nations Treaty Series No. 1021.

6. [Judgment of 26 February 2007](#), paragraph 430. See also paragraph 461 and article by E. Mayroz, [The legal Duty to “prevent”: after the onset of “genocide”](#), *Journal of Genocide Research* 2012, 14:1, 79-98.

Thus, this amendment proposes to add a new paragraph to the draft resolution in order to recall States' obligation to prevent genocide and that States should take all necessary measures to prevent their citizens from taking part in such atrocious acts under the auspices of "IS" or other extremists groups. In this context, preventing potential fighters from travelling to the areas occupied by "IS", if based on reasonable grounds and evidence, would constitute an indispensable measure under Article I of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Amendment D (to the draft resolution)

According to Article 1.F of the United Nations 1951 Convention relating to the Status of Refugees, the provisions of the convention shall not apply to any person with respect to whom there are serious reasons for considering that, *inter alia*, he/she "had committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes" (item "a"). As there is circumstantial evidence that "IS" members have committed such crimes, member States of the Council of Europe should do their utmost to avoid granting refugee status to such fighters returning to Europe and seeking international protection. Therefore, this amendment aims to add this aspect of the problem to the draft resolution.

5. Amendment E (to the draft resolution)

This amendment aims to delete the word "reintegration", as one should rather focus on the prevention of the phenomenon of "foreign fighters" and take firmer measures against it. As "IS" is responsible for acts of genocide and other heinous crimes, member States of the Council of Europe should not promote the reintegration of individuals who have committed such crimes and they should effectively prosecute their perpetrators.

6. Amendment F (to the draft resolution)

Since there is an ongoing discussion on the deprivation of nationality of foreign fighters (especially if they have multiple nationality), I consider that this possibility should also be considered as an avenue to prevent this phenomenon. However, such a measure can only be taken if it is in line with international law, including the United Nations Convention relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961, and if proper judicial procedures are followed.

7. Amendment G (to the draft resolution)

See explanatory note for Amendment E.

8. Amendment H (to the draft resolution)

This amendment aims to add a reference to the need to protect human rights, when trying to strike a balance between the various possible solutions to the phenomenon of "foreign fighters". As the Assembly has already pointed out in its [Opinion 289 \(2015\)](#), the criminalisation of the mere act of travelling to areas occupied by "IS" may raise concerns as to the respect of certain fundamental rights and freedoms, and in particular the freedom of movement. Moreover, this amendment aims to delete the words "reintegration of returnees into their home communities" (see explanatory note for amendment E).

9. Amendment I (to the draft resolution)

This amendment aims to add a new paragraph which would pinpoint States' obligation to take all necessary measures to prevent genocide (see explanation under Amendment C).

10. Amendment J (to the draft resolution)

This amendment aims to point out the necessity to inform the public about the atrocities committed by "IS" and, by doing so, to discourage potential fighters from travelling to the areas under its occupation.

11. Amendment K (to the draft resolution)

This amendment aims to introduce a stronger wording concerning the problem of radicalisation resulting from the action of extremist preachers in a number of mosques throughout Europe. They preach hate, violence (such as calling for the killing of infidels) and other behaviour running counter to European values (such as slavery). Their action is often closely related to the recruitment of future “IS” fighters. Member States should take stronger measures to condemn and sanction, if need be, the behaviour of religious leaders or ministers who promote, excuse or even “sanctify” criminal acts. As noted by the European Court of Human Rights, statements which amount to hate speech or to glorification of or incitement to violence, cannot be regarded as compatible with the notion of tolerance and run counter to the fundamental values of justice and peace set forth in the Preamble of the Convention.⁷

12. Amendment L (to the draft resolution)

See explanatory note for Amendment E.

13. Amendment M (to the draft resolution)

This amendment aims to emphasise the need to avoid granting refugee protection to former fighters involved in genocide or other crimes against humanity, in line with Article 1.F of the United Nations 1951 Refugees Convention (see explanation for Amendment D), and to share information about such persons among member States of the Council of Europe.

14. Amendment N (to the draft resolution)

See explanatory note for Amendment E.

15. Amendment O (to the draft recommendation)

This amendment aims to delete paragraph 5 of the draft recommendation, which invites the Committee of Ministers to consider the feasibility of developing a definition of “terrorism”. Such a proposal sounds unrealistic, as, so far, various international organisations have failed to establish such a definition. Article 1 paragraph 1 of the Council of Europe Convention on the Prevention of Terrorism,⁸ does not define this term; it only stipulates that a “terrorist offence” means any of the offences defined in one of treaties listed in its Appendix (such as the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 or the International Convention Against the Taking of Hostages, adopted in New York on 17 December 1973). Neither is a definition of “terrorism” or “terrorist act” contained in Resolution 2178 (2014) of the Security Council of the United Nations on “Threats to international peace and security caused by terrorist acts”, mentioned in Mr van der Maelen’s report. To open the Pandora’s box of searching for and agreeing on such a definition risks deflecting the attention of the international community from the urgent task at hand of finding practical measures to prevent the spread of crimes against the life and limb of innocent citizens for purported religious or ideological motives and punish the perpetrators of any such crimes that it has not been possible to prevent.

7. See, for example, *Gündüz v. Turkey*, decision on the admissibility of 13 November 2003, Application No. 59745/00.

8. CETS No. 196, opened for signature on 16 May 2005.