Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2190 (2017)[1]

Prosecuting and punishing the crimes against humanity or even possible genocide committed by Daesh

Parliamentary Assembly

1. The Parliamentary Assembly recalls its Resolution 2091 (2016) on foreign fighters in Syria and Iraq. It reiterates its position that "individuals who act in the name of … Daesh … have perpetrated acts of genocide and other serious crimes punishable under international law. States should act on the presumption that Daesh commits genocide", along with its calls on its member and observer States to "fulfil their positive obligations under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide [1948 Genocide Convention] by taking all necessary measures to prevent genocide".

2. Numerous national parliaments, including those of Council of Europe member States such as Austria, France, Lithuania and the United Kingdom, as well as those of Australia, Canada and the United States of America, have also condemned Daesh's actions as genocide, as have the European Parliament, the United States and Canadian governments and Pope Francis. These political positions reflect the expert assessments of authoritative international mechanisms including the United Nations Independent International Commission of Inquiry on the Syrian Arab Republic, the United Nations High Commissioner for Human Rights and the United Nations Special Rapporteur on minority issues.

3. There is conclusive evidence that Daesh has committed genocidal acts against members of the Yazidi, Christian and non-Sunni Muslim minorities including mass and individual killings, and serious bodily or mental harm, by way of torture, beatings and inhuman and degrading treatment and, in the case of the Yazidi and Christian groups, rape, sexual slavery and abuse. Furthermore, there is conclusive evidence that Daesh has:

3.1. subjected Yazidis to forced labour, including military service, and terrorist indoctrination, including training children as suicide bombers, amounting to serious bodily and mental harm; deliberately inflicted conditions of life calculated to bring about the Yazidi group's physical destruction, in part, by way of subjection to siege and to unsanitary living conditions and inadequate nutrition without access to medical care; imposed measures intended to prevent births, by separating Yazidi women and men; and forcibly transferred children of this group to another, with subsequent forced conversion and indoctrination of these children;

3.2. deployed members of Christian minorities as "human shields", causing serious bodily or mental harm, and separated Christian children from their mothers, forcibly transferring them to another group.

4. These acts have been committed by Daesh with intent to destroy, in whole or in part, the Yazidi, Christian and non-Sunni Muslim minority groups. In particular, Daesh has made numerous declarations of doctrine and policy encompassing the destruction of Yazidi, Christian and non-Sunni Muslim minorities as groups, and declared its intention to commit specific genocidal acts against them, before and during commission of these acts. These include descriptions of the Yazidi as "devil-worshipping pagans" and references to Christians as "slaves of the cross" whose women and sons would be enslaved. The atrocities committed by Daesh against all three groups are systematic and entirely consistent with these declarations. Daesh's systematic destruction of Yazidi, Christian and non-Sunni Muslim places of worship is further

1. *Assembly debate* on 12 October 2017 (34th Sitting) (see Doc. 14402, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pieter Omtzigt; and Doc. 14418, opinion of the Committee on Political Affairs and Democracy, rapporteur: Ms Thorhildur Sunna Ævarsdóttir). *Text adopted by the Assembly* on 12 October 2017 (34th Sitting).

evidence of its genocidal intent in committing the above-mentioned acts. Its theft of homes and property of Yazidis, Christians and non-Sunni Muslims also indicates a genocidal intent to disperse, and weaken the cohesion of, these groups, with a view to their destruction.

5. Neither Syria nor Iraq is Party to the International Criminal Court (ICC), whose material jurisdiction includes the crime of genocide, as well as other crimes under international law. The United Nations Security Council has been prevented by the vetoes of two of its permanent members from referring the situation in Syria to the ICC, and the ICC Prosecutor has declined to open an investigation in relation to offences that may have been committed by nationals of a State Party to the Rome Statute of the ICC. There is thus at present no international judicial mechanism actually capable of trying Daesh. In this connection, the Assembly recalls that the primary responsibility for the investigation and prosecution of crimes covered by the Rome Statute rests with national authorities, especially those of the States where those crimes have taken place.

6. On the basis of the foregoing, the Assembly calls on Council of Europe member and observer States and States whose parliaments enjoy observer or partner for democracy status with the Parliamentary Assembly, where applicable, to:

6.1. formally recognise that Daesh has committed genocide, notably against the Yazidi people, Christian minorities and non-Sunni Muslim minorities;

6.2. take prompt and effective action in accordance with their obligation under the 1948 Genocide Convention to prevent and punish acts of genocide, and their general responsibility to act against crimes under international law, including by:

6.2.1. providing for universal jurisdiction over crimes covered by the Rome Statute of the ICC, where this is not already the case, and, following the example set by Sweden and Germany, investigating and, where justified, prosecuting any suspected Daesh members who come within their jurisdiction or control;

6.2.2. prosecuting all offences committed within their jurisdiction relating to Daesh's activities abroad, and in this connection, ratifying and fully implementing the 2005 Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) and its 2015 Additional Protocol (CETS No. 217);

6.2.3. not prioritising, systematically and exclusively, with regard to the members of Daesh, the application of national anti-terrorist legislation, to the detriment of their universal jurisdiction when examining cases involving the crimes described in the Rome Statute of the ICC;

6.2.4. implementing the recommendations set out in Assembly Resolution 2091 (2016), in particular not granting refugee status to fighters who may have committed acts of genocide and/or other serious crimes prohibited under international law and who seek international protection on returning to Europe, in accordance with the exclusion clauses provided for in Article 1F of the United Nations Convention of 28 July 1951 on the Status of Refugees;

6.2.5. contributing to the collection and preservation of evidence of Daesh's crimes, including by making voluntary contributions to the budget of the United Nations International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, in order that it may become fully operational without further delay;

6.2.6. supporting the Secretary-General of the United Nations in setting up the investigative team described in Resolution 2379 (2017) of the United Nations Security Council to support the Iraqi justice system in gathering evidence of war crimes, crimes against humanity and genocide committed by Daesh in Iraq;

6.2.7. insisting that the United Nations ordinary budget should, as soon as possible, contribute to the funding of the mechanism and of the investigative team;

6.2.8. not obstructing any possible future United Nations Security Council resolution that may contribute to the prosecution of Daesh members before an international, hybrid or national tribunal.

7. The Assembly calls on the Iraqi authorities to contribute to and co-operate with the work of the investigative team. It calls on the international community to provide the necessary resources for the investigative team to become promptly operational. It further calls on the United Nations to consider

establishing a special judicial mechanism for trying crimes committed by Daesh in Iraq, which could be based on existing international or hybrid models, or a system based in the Iraqi national courts with assistance from international experts as advisers rather than judges.

8. The Assembly also calls on:

8.1. Syria and Iraq to ratify the Rome Statute of the ICC;

8.2. the Independent International Commission of Inquiry on the Syrian Arab Republic to proceed with its report on genocide committed by Daesh against religious minorities other than the Yazidis;

8.3. the ICC Prosecutor to reconsider, in the light of subsequent submissions by concerned parties, her decision not to open a preliminary inquiry into crimes committed by Daesh.