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

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A. Draft Resolution

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 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 against members of the Yazidi, Christian and non-Sunni Muslim minorities genocidal acts including mass and individual killing, 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 and sexual slavery and abuse. Furthermore, there is conclusive evidence that Daesh has:

Amendment 7
Tabled by Mr Talip KÜÇÜKCAN, Mr Şaban DİŞLİ, Ms Emine Nur GÜNAY, Mr Suat ÖNAL, Ms Leyla ŞAHİN USTA

In the draft resolution, at the beginning of paragraph 3, insert the following sentence: "Daesh has committed various crimes targeting different national, ethnic and religious groups, including Sunnis who do not adhere to its radical ideology, both in the territories it controlled and beyond, resorting not only to mass executions and suicide attacks, but also to prohibited weapons such as chemical weapons and to inhumane treatment such as torture and rape as well as using civilians as human shields."

Amendment 8
Tabled by Mr Talip KÜÇÜKCAN, Mr Şaban DİŞLİ, Ms Emine Nur GÜNAY, Mr Suat ÖNAL, Ms Leyla ŞAHİN USTA

In the draft resolution, paragraph 3, in the first sentence, after the words "conclusive evidence that", insert the following words: ", within the framework of criminal law,"

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 insanitary 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 the group to another group, with subsequent forced conversion and indoctrination of those 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 were committed by Daesh with intent to destroy, in whole or in part, the Yazidi, Christian and non-Sunni minority groups. In particular, Daesh made numerous declarations of doctrine and policy encompassing the destruction of Yazidi, Christian and non-Sunni Muslim minorities as groups and of intent to commit specific genocidal acts against them, before and during commission of these acts. These included descriptions of the Yazidi as “devil-worshipping pagans” and references to Christians as “slaves of the cross” whose women and sons would be enslaved. Daesh atrocities against all three groups were systematic and entirely consistent with these declarations. Daesh’s systematic destruction of Yazidi, Christian and non-Sunni Muslim places of worship is further 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.

Amendment 9
Tabled by Mr Talip KÜÇÜKCAN, Mr Şaban DİŞLİ, Ms Emine Nur GÜNAY, Mr Suat ÖNAL, Ms Leyla ŞAHİN USTA

In the draft resolution, paragraph 4, in the penultimate sentence, after the word "Christian", insert the following word: ", Sunni" and in the last sentence, after the word "Christians", insert the following word: ", Sunni"

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.

Amendment 11
Tabled by Ms Susanne EBERLE-STRUB, Ms Doris FIALA, Mr Christoph WENAWESER, Mr Roland Rino BÜCHEL, Mr Thomas MÜLLER

In the draft resolution, paragraph 5, in the second sentence, delete the words "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".

Amendment 12
Tabled by Ms Susanne EBERLE-STRUB, Ms Doris FIALA, Mr Christoph WENAWESER, Mr Roland Rino BÜCHEL, Mr Thomas MÜLLER

In the draft resolution, after paragraph 5, insert the following paragraph:

"The Assembly welcomes the establishment of the “International, Impartial and Independent Mechanism (IIIM) 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 the United Nations General

Assembly as an important step to ensure accountability for the crimes committed in Syria."

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;

Amendment 10
Tabled by Mr Talip KÜÇÜKCAN, Mr Şaban DİŞLİ, Ms Emine Nur GÜNAY, Mr Suat ÖNAL, Ms Leyla ŞAHİN USTA

In the draft resolution, paragraph 6.1, after the words "Daesh has committed", insert the following words: "various crimes targeting different national, ethnic and religious groups and there is conclusive evidence that, within the framework of criminal law, Daesh has committed"

6.2. take prompt and effective action in accordance with their obligation under the 1948 Genocide Convention to prevent and punish acts of genocide, as well as 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 investigating and, where justified, prosecuting any suspected Daesh members who come within their jurisdiction or control;

Amendment 1
Tabled by the Committee on Political Affairs and Democracy

In the draft resolution, in paragraph 6.2.1, after the words "not already the case, and", insert the following words: ", following the example set by Sweden and Germany,"

6.2.2. prosecuting all offences committed within their jurisdiction relating to Daesh 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);

Amendment 2
Tabled by the Committee on Political Affairs and Democracy

In the draft resolution, after paragraph 6.2.2, insert the following paragraph:

"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;"

6.2.3. implementing the recommendations set out in Assembly Resolution 2091 (2016) on foreign fighters in Syria and Iraq;

Amendment 3
Tabled by the Committee on Political Affairs and Democracy

In the draft resolution, in paragraph 6.2.3, after the word "Iraq", insert the following words: ", 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"

6.2.4. 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;

Amendment 4
Tabled by the Committee on Political Affairs and Democracy

In the draft resolution, after paragraph 6.2.4, insert the following paragraph:

"supporting the UN Secretary-General 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;"

Amendment 5
Tabled by the Committee on Political Affairs and Democracy

In the draft resolution, after paragraph 6.2.4, insert the following paragraph:

"insisting that the United Nations ordinary budget should, as soon as possible, contribute to the funding of the Mechanism and of the Investigative Team;"

6.2.5. 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 United Nations to establish such mechanisms as may be necessary to inquire and assist, including by way of collection and preservation of evidence, in the investigation and prosecution of persons responsible for serious crimes committed in Iraq. It calls on the Iraqi authorities to co-operate with any such initiatives. It calls on the international community to be prepared to provide the necessary resources for any such mechanisms 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.

Amendment 6
Tabled by the Committee on Political Affairs and Democracy

In the draft resolution, in paragraph 7, replace the first three sentences with the following sentences: "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."

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.