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## **Addressing the issue of Daesh foreign fighters and their families returning from Syria and other countries to the member States of the Council of Europe**

<b>Contents</b>	<b>Page</b>
A. Draft Resolution .....	2
B. Draft Recommendation .....	9

## A. Draft Resolution

1. The Parliamentary Assembly recalls its Resolution 2091 (2016) "Foreign fighters in Syria and Iraq" and Resolution 2190 (2017) "Prosecuting and punishing the crimes against humanity or even possible genocide committed by Daesh". 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" and that "there is conclusive evidence that Daesh has committed genocidal acts against members of the Yazidi, Christian and non-Sunni Muslim minorities". Many of these acts, such as enslavement, sexual slavery, rape, imprisonment, torture and murder, also amounted to war crimes and crimes against humanity.
2. It notes that both the United Nations Commission of Inquiry on Syria in 2016 and the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) in 2021 concluded that Daesh committed genocide against the Yazidis. The UNITAD has also identified evidence of crimes committed against other groups, such as Shia, Christians and other communities.
3. Numerous national parliaments have also formally condemned Daesh's actions as genocide or crimes against humanity. Several criminal courts in Council of Europe member States have convicted Daesh members for terrorism-related offences, war crimes and crimes against humanity committed in Syria and Iraq. In 2021 a German court convicted an Iraqi Daesh member for genocide, crimes against humanity and war crimes, for cuffing a five-year-old Yazidi girl to a window in the scorching heat and letting her die in front of her mother, motivated by the intent to eliminate the Yazidi religious minority. This is the first time that a court, anywhere in the world, has recognised as genocidal a crime committed against a Yazidi victim.
4. The Assembly also recalls that States have a general obligation under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention) to prevent and punish acts of genocide, including complicity in genocide. According to the International Court of Justice, the duty of prevention requires a State to employ all means reasonably available, taking into account its capacity to influence effectively the actions of persons likely to commit, or already committing genocide. States therefore have a legal obligation to prevent genocide the very moment a State learns or should normally have learned of the serious risk of genocide, for instance by preventing the travel, recruitment and financing of foreign terrorist fighters who joined Daesh and who were likely to participate in the commission of genocide, and effectively prosecuting the perpetrators as a means to deter further crimes.
5. Since the outbreak of the Syrian armed conflict in 2011, thousands of foreigners from all over the world joined Daesh in Syria and Iraq, including with their families. A

considerable number of European citizens were among them. In response to the phenomenon of foreign terrorist fighters, United Nations Security Council Resolution 2178 (2014) established and reinforced international obligations to prevent and criminalise the travel, recruitment, and financing of foreign terrorist fighters. It also called on States to develop and implement prosecution, rehabilitation and reintegration for returning foreign terrorist fighters.

6. The Council of Europe reacted by adopting the 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217), becoming the first international organisation to set up a regional legal instrument to implement the obligations imposed by the United Nations regarding foreign terrorist fighters. However, this protocol, which came into force on 1 July 2017, has to date been ratified by only 23 member States.
7. Although some Daesh foreign fighters voluntarily returned to their countries in Europe or Central Asia, thousands of them, including European citizens and accompanying family members, remained in Iraq and Syria. Many are now held in detention in camps and prisons in northeast Syria, under the authority of the Autonomous Administration of North and East Syria, and Iraq. In Syria, the autonomous administration courts reportedly try only Syrian Daesh detainees but not foreigners (Iraqi and European). Those interned in camps, including children, live in substandard conditions, exposed to violence, sexual abuse and (further) radicalisation. Those held in Iraq are unlikely to receive a fair trial in compliance with international human rights standards and risk being sentenced to the death penalty. In addition, Iraq has not yet incorporated international crimes in its domestic legislation, and Iraqi courts therefore can only prosecute suspected Daesh fighters under anti-terrorism legislation.
8. The Assembly considers that the continued detention of Daesh foreign fighters in Syria or Iraq is untenable. Their prosecution in Syria or Iraq is currently not an adequate and human rights-compliant solution. It may also be counter-productive in terms of security concerns, given the risk of further radicalisation by Daesh in camps and the recurrence of prison breakouts, which may lead to an increase in the number of foreign fighters returning to Europe. Council of Europe member States should therefore reconsider their position that national Daesh fighters should primarily be tried in the countries where the crimes were committed.
9. The Assembly is convinced that the best solution would be the prosecution of Daesh foreign fighters before an international tribunal, given the international nature of the crimes committed, including genocide, and also given that Daesh fighters come from over 100 countries. Neither Syria nor Iraq are Parties to the International Criminal Court (ICC) and the ICC Prosecutor declined in 2015 to open a preliminary examination in relation to offences allegedly committed by nationals of States Parties to the Rome Statute of the ICC. There is a proposal for a hybrid tribunal within Iraqi national courts with assistance from international experts, as set out in Assembly Resolution 2190 (2017), but this has not yet received the necessary

political support from the Iraqi authorities. The Assembly thus regrets that there is still no international or hybrid judicial mechanism capable of trying Daesh fighters for international crimes committed in Syria and Iraq.

10. Pending the setting up of an international or hybrid tribunal, prosecution of Daesh foreign fighters in their States of nationality, or in other member States providing for universal jurisdiction, is the most obvious alternative to pursue and ensure accountability for their crimes. The Assembly acknowledges however the challenges national authorities face as well as the existence of legitimate security concerns of their citizens with regard to the return of individuals who have committed heinous crimes and joined a terrorist group engaged in an armed conflict abroad.
11. The Assembly considers that foreign fighters who are suspected of having taken part in genocide or in other serious international crimes constitute a serious threat to society. It is an ideology that drove them to commit such crimes, including genocide against the Yazidis, and this ideology will not disappear on its own. The Assembly considers that, having taken into account the ongoing threat posed by Daesh fighters, it is crucial to consider that they have forfeited their right to family life under Article 8 of the European Convention of Human Rights (ETS No. 5). Furthermore, separation from their children may also be necessary for the best interests of the child. States should therefore consider repatriating foreign fighters' children to their State of nationality to be with family members, without repatriating their parents.

**Amendment 1**

(If adopted, amendments 13, 10 falls)

**Tabled by the Committee on Social Affairs, Health and Sustainable Development**

*In the draft resolution, paragraph 11, delete the three last sentences.*

**Amendment 13**

(Falls if amendment 1 is adopted)

(If adopted, amendment 10 falls)

**Tabled by Ms Margreet De BOER, Mr Axel SCHÄFER, Ms Klotilda BUSHKA, Mr Erkin GADIRLI, Mr Claude KERN**

*In the draft resolution, paragraph 11, replace the last 3 sentences with the following words:*

*"The Assembly considers that, taking into account the ongoing threat posed by Daesh fighters, it is crucial to consider that their right to family life under Article 8 of the European Convention of Human Rights (ETS No. 5) must be restricted if national security or other legitimate grounds under Article 8 paragraph 2 so require. Furthermore, separation from their children may also be necessary for the best interests of the child. The Assembly reiterates that children should in principle be repatriated with their mothers or primary care givers, unless it is not in the best interest of the child, as already recommended in Resolution 2321 (2020) "International obligations concerning the repatriation of children from war and conflict zones", or if it is not in the best interest of society as a whole. States should, however, have the possibility, following a determination of the best interest of the child, and of the interest of society as a whole in accordance with Article 8 paragraph 2 of the ECHR, to repatriate foreign fighters' children to their State of nationality with a view to reuniting them with other family members, without repatriating their parents."*

**Amendment 10**

(Falls if amendments 1, 13 are adopted)

**Tabled by Mr Emmanuel FERNANDES, Mr Frédéric MATHIEU, Mr George KATROUGALOS, Ms Anne STAMBACH-TERRENOIR, Mr Marco NICOLINI, Mr Kriton-Ilias ARSENIS, Ms Laura CASTEL, Mr Hişyar ÖZSOY, Mr Andrej HUNKO, Ms Reada CRONIN, Mr Paul GAVAN**

*In the draft resolution, paragraph 11, replace the last three sentences with the following words:*

*"In the best interests of the child, States should give priority consideration to the repatriation of children of foreign fighters to the State of which they are nationals to live with their family members. While protecting children from phenomena of radicalisation, States must guarantee the preservation of the right to family life enshrined in Article 8 of the European Convention on Human Rights (ETS No. 5), without prejudice to the ability of the courts of the member States to assess whether maintaining the right to family life is compatible with the interests of the child, or whether the children must be temporarily or permanently separated from their parents in accordance with the second paragraph of the Article 8 of the European Convention on Human Rights (ETS No. 5)."*

**Amendment 2**

**Tabled by the Committee on Social Affairs, Health and Sustainable Development**

*In the draft resolution, after paragraph 11, insert the following paragraph:*

*"The Assembly reiterates the appeal made in Resolution 2321 (2020) "International obligations concerning the repatriation of children from war and conflict zones" to repatriate children together with their mothers or primary care givers, unless it is not in the best interest of the child. The Assembly is convinced that actively repatriating, rehabilitating and (re-)integrating these children without further delay are human rights obligations and a humanitarian duty, as well as a vital contribution to the national security of the countries concerned."*

**Amendment 3**

**Tabled by the Committee on Social Affairs, Health and Sustainable Development**

*In the draft resolution, paragraph 12, after the words "in which the survivors of Daesh crimes still live in Iraq or Syria," add the following words:*

*"including children,"*

12. The Assembly is extremely worried about the situation and the appalling conditions in which the survivors of Daesh crimes still live in Iraq or Syria, often in camps and without the possibility of a safe return to their areas of origin and homes. Many, particularly Yazidi women and children, are still missing.
13. On the basis of the foregoing, the Assembly calls on Council of Europe member States to:

- 13.1. give priority to the establishment of a special international tribunal or hybrid tribunal with jurisdiction over international crimes committed by Daesh foreign fighters, by actively contributing to the setting up of such a tribunal within the United Nations or other international organisations;

**Amendment 11**

(If adopted, amendment 8 falls)

**Tabled by Mr Max LUCKS, Ms Sibel ARSLAN, Ms Klotilda BUSHKA, Ms Etilda GJONAJ, Mr Titus CORLĂȚEAN**

*In the draft resolution, replace paragraph 13.1 with the following paragraph:*

*"recognize that attempts to establish a special international tribunal are desirable but have not been successful in recent years. The member States of the Council of Europe should prosecute their foreign fighters in their country with the aim of consistent criminal prosecution according to the principle of universal jurisdiction. A prerequisite for this is equipping prisons to deal with radicalism, which should be invested in."*

**Amendment 8**

(Falls if amendment 11 is adopted)

**Tabled by Ms Olena KHOMENKO, Mr Sergiy VLASENKO, Mr Kazimierz MATUSZNY, Mr Tomasz LATOS, Mr Markus WIECHEL, Ms Beatrice TIMGREN, Mr Bob van PAREREN, Ms Rita TAMAŠUNIENĖ, Ms Yelyzaveta YASKO, Ms Lesia ZABURANNA, Mr Yuriy KAMELCHUK, Ms Yuliia OVCHYNNYKOVA, Ms Yevheniia KRAVCHUK, Mr Serhii SOBOLIEV, Ms Larysa BILOZIR, Ms Iryna KONSTANKEVYCH, Mr Dmytro NATALUKHA, Mr Oleksandr MEREZHKO, Mr Pavlo BAKUNETS**

*In the draft resolution, paragraph 13.1, delete the words:*

*"or hybrid tribunal"*

- 13.2. pending the setting up of such a tribunal, give priority to the prosecution by their national courts of suspected Daesh fighters and members who come within their jurisdiction or control, on the basis of the principle of active personality (for nationals) or universal jurisdiction;
- 13.3. provide for universal jurisdiction over international crimes covered by the Rome Statute of the ICC, and if this is already the case, expand its use by not limiting the initiation of preliminary investigations to cases where the suspects are located within their territory, following the example set by Germany;
- 13.4. prioritise where possible cumulative prosecution of Daesh foreign fighters for both terrorism-related offences and international crimes such as genocide, crimes against humanity and war crimes, following recent examples in Germany and the Netherlands, duly reflecting the gravity and the different nature of the offences committed;
- 13.5. with respect to crimes committed against Yazidis and other affected minorities, prioritise genocide as a criminal charge, having regard to Daesh's declared intention to

destroy, in whole or in part, these groups, as stressed in Assembly Resolution 2190 (2017);

- 13.6. prosecute, in a non-discriminatory manner, avoiding gender stereotypes, all Daesh foreign fighters and members, including women, having regard to the actual role they may have played in the commission of crimes, as perpetrators, supporters, facilitators, recruiters or fund raisers;
- 13.7. where children are suspected of having committed criminal acts, prosecute only under internationally recognised juvenile justice and fair trial standards, in accordance with Resolution 2321 (2020) "International obligations concerning the repatriation of children from war and conflict zones" and the United Nations Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with links to United Nations Listed Terrorist Groups;
- 13.8. set up and adequately fund, specialised units or staff within prosecution, law enforcement and judicial co-operation services for the prosecution of foreign terrorist fighters;
- 13.9. make use of different types of evidence, including internet-based evidence and battlefield evidence, and ensure that such evidence is admissible for the successful prosecution of Daesh terrorist fighters, having regard to Recommendation CM/Rec(2022)8 of the Committee of Ministers of the Council of Europe to member States on the use of information collected in conflict zones as evidence in criminal proceedings related to terrorist offences and in full compliance with Article 6 of the European Convention on Human Rights;
- 13.10. make better use of evidence collected by United Nations investigative mechanisms such as UNITAD and the United Nations International Impartial and Independent Mechanism for Syria (IIIM), as well as by non-governmental organisations documenting atrocities in Iraq and Syria, and ensure that such evidence can be lawfully used in criminal proceedings in their jurisdictions;
- 13.11. contribute to the collection and preservation of evidence of Daesh crimes, including by making voluntary contributions, seconding national experts and signing co-operation agreements with UNITAD and IIIM;
- 13.12. make full use of existing mutual legal assistance tools between States in investigations and proceedings against Daesh foreign fighters, including under the relevant international, Council of Europe and European Union instruments, such as the possibility of setting up joint investigation teams like the one established in 2021 between France and Sweden to support proceedings concerning crimes committed against the Yazidis in Syria and Iraq;
- 13.13. take due account of the rights and needs of victims and witnesses in criminal proceedings against Daesh foreign fighters, including by taking the necessary measures to

**Amendment 4**  
**Tabled by the Committee on Social Affairs,**  
**Health and Sustainable Development**

*In the draft resolution, paragraph 13.6, delete the following words:*

*"in a non-discriminatory manner, avoiding gender stereotypes"*

**Amendment 5**  
**Tabled by the Committee on Social Affairs,**  
**Health and Sustainable Development**

*In the draft resolution, paragraph 13.7, replace the word "where" with the following word:*

*"if"*

- reach out to victims and affected communities, such as interpretation, broadcasting of the hearings and engaging with non-governmental organisations representing them;
- 13.14. insofar as they have not yet done so, ratify and fully implement the 2005 Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) and its 2015 Additional Protocol;
- 13.15. design and implement rehabilitation and reintegration strategies for all returning Daesh foreign fighters and their families, including, in particular, deradicalisation programmes specifically tailored for children and young adults. These programmes are necessary for all persons and are not a substitute for prosecution and punishment;
- 13.16. consider bringing before the International Court of Justice, proceedings against States which allegedly failed to prevent and punish acts of genocide committed by Daesh, in order to hold those States to account under the Genocide Convention;
- 13.17. support the Iraqi authorities, UNITAD and other organisations in locating the missing Daesh victims and ensuring the safe and voluntary return of the survivors to their areas of origin.
14. The Assembly also calls on:
- 14.1. Iraq to adopt legislation on international crimes without further delay, with the assistance of UNITAD and other relevant stakeholders, and to actively participate in negotiations with a view to establishing a special international tribunal or hybrid tribunal;
- 14.2. the ICC Prosecutor to reconsider the decision not to open a preliminary examination into crimes committed by Daesh foreign fighters who are nationals of State Parties to the Rome Statute of the ICC;
- 14.3. UNITAD and IIIM to continue their instrumental work of gathering evidence on crimes committed by Daesh members in Iraq and Syria and share such evidence with national courts to the extent possible.

**Amendment 9**

**Tabled by Ms Olena KHOMENKO, Mr Kazimierz MATUSZNY, Mr Bob van PAREREN, Ms Yelyzaveta YASKO, Ms Lesia ZABURANNA, Ms Iryna KONSTANKEVYCH, Ms Yevheniia KRAVCHUK, Ms Larysa BILOZIR, Mr Yuriy KAMELCHUK, Mr Oleksii GONCHARENKO, Mr Dmytro NATALUKHA, Mr Oleksandr MERZHKO, Mr Pavlo BAKUNETS**

*In the draft resolution, after paragraph 14.3, insert the following paragraph:*

*"online platforms to preserve content, and the metadata associated with this content, that potentially could provide evidence of war crimes and human rights violations".*

## B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2022) "Addressing the issue of Daesh foreign fighters and their families returning from Syria and other countries to the member States of the Council of Europe".
2. The Assembly recalls its support for the Council of Europe Counter-Terrorism Strategy (2018-2022), which has covered issues such as the gathering of evidence from conflict zones for the purpose of criminal prosecution, the prosecution of foreign terrorist fighters, deradicalisation, disengagement and social reintegration and the roles of women and children in terrorism.
3. The Assembly welcomes the adoption by the Committee of Ministers of its Recommendation CM/Rec(2022)8 to member States on the use of information collected in conflict zones as evidence in criminal proceedings related to terrorist offences.
4. The Assembly invites the Committee of Ministers to:
  - 4.1. draft a recommendation on deradicalisation, disengagement and social reintegration of those involved in terrorist offences, on the basis of the ongoing collection of good practices from member States by the Council of Europe Committee on Counter-Terrorism (CDCT);
  - 4.2. consider inviting the CDCT to examine the issue of cumulative prosecution of foreign terrorist fighters, for terrorism and other crimes under international criminal law and international humanitarian law, and also consider the interaction between anti-terrorism legislation and these branches of international law, and draft guidelines in this field;
  - 4.3. encourage all member States to participate in setting up a special international tribunal or hybrid tribunal with jurisdiction over international crimes committed by Daesh foreign fighters, and examine ways and means for the Council of Europe as a whole to play an active role in setting up and operating such a tribunal.

### Amendment 7

**Tabled by Ms Olena KHOMENKO, Mr Sergiy VLASENKO, Ms Iwona ARENT, Mr Kazimierz MATUSZNY, Ms Katarzyna SÓJKA, Mr Tomasz LATOS, Mr Markus WIECHEL, Ms Beatrice TIMGREN, Mr Bob van PAREREN, Mr Arkadiusz MULARCZYK, Mr Normunds DZINTARS, Ms Yelyzaveta YASKO, Ms Lesia ZABURANNA, Ms Mariia MEZENTSEVA-FEDORENKO, Ms Iryna KONSTANKEVYCH, Ms Yevheniia KRAVCHUK, Ms Yuliia OVCHYNNYKOVA, Mr Yuriy KAMELCHUK, Mr Serhii SOBOLIEV, Ms Larysa BILOZIR, Mr Oleksii GONCHARENKO, Mr Dmytro NATALUKHA, Mr Oleksandr MEREZHKO, Mr Pavlo BAKUNETS**

*In the draft recommendation, paragraph 4.3, delete the words:*

*"or hybrid tribunal"*

**Amendment 6**  
**Tabled by the Committee on Social Affairs,**  
**Health and Sustainable Development**

*In the draft recommendation, paragraph 4.3, after the words "Daesh foreign fighters," add the following words:*

*"on condition that it may not impose the death penalty,"*

**Amendment 12**  
**Tabled by Ms Sibel ARSLAN, Mr Max LUCKS,**  
**Ms Klotilda BUSHKA, Ms Etilda GJONAJ, Mr**  
**Titus CORLĂȚEAN**

*In the draft recommendation, after paragraph 4.3, insert the following paragraph:*

*"make it incumbent on the States to guarantee that children who are nationals of those States are not deprived of their nationality and may return with at least one of their parents. The conditions of reception, including in the context of criminal justice, must as far as possible keep separation of child and parent(s) to a minimum where this is in the child's best interest, and they must be applied on a "case-by-case" basis."*